FANGDA PARTNERS
方達津師事務所

2024
Antitrust China Annual Review

FANGDA PARTNERS
方達律師事務所

2024 Emerging Trends & 2025 Keeping an Eye on the Future

01 Antitrust 2.0: Boosting Effectiveness with Enforcement-Judiciary Collaboration

- **Reflecting on 2024:** China introduced key regulations to enhance **enforcement transparency**. Additionally, the Supreme People's Court ("**SPC**") issued a **revised judicial interpretation** of the Anti-Monopoly Law (the "**AML**") to provide **greater clarity** and **harmonize differences and bridge gaps** between regulatory enforcement and judicial interpretation.

- **Outlook for 2025:** Regulators will continue **refining** antitrust rules to clarify compliance requirements, further improving the **antitrust regulatory framework**. These efforts aim to provide **market participants** with clearer guidance on **compliance boundaries** and **permissible conduct**. Additionally, **antitrust enforcement and judicial interpretations** will continue to play a crucial role in **safeguarding public welfare**. China will also remain a key player in shaping the **global antitrust regulatory landscape**, addressing emerging challenges in competition policy.

02 The Move from Penalization to Prevention in Antitrust Enforcement

- **Reflecting on 2024:** Antitrust authorities increasingly used **non-punitive measures** (e.g., confidential warnings, guidance letters) to resolve issues efficiently. Public penalties declined, but expectations for compliance rose.

- **Outlook for 2025:** Antitrust enforcement is expected to place **greater emphasis on routine supervision** and **expand its regulatory scope**, highlighting the importance of **corporate compliance programs**. Businesses must **closely monitor these trends** and adopt **appropriate measures** to ensure **compliance and competitiveness** in the evolving regulatory landscape.

03 Continued Focus on Industries Impacting Public Welfare

- **Reflecting on 2024:** Consistent with the trends in previous years, the Chinese antitrust authorities prioritized **pharmaceuticals, utilities, and automotive sectors,** with heightened scrutiny in certain sectors owing to industry slowdowns and consumer complaints.

- **Outlook for 2025:** Focus on these sectors will continue. Multinational companies must also monitor how **geopolitical tensions** may influence China's antitrust priorities and enforcement trends.

04 New Notification Thresholds and Streamlining Review Procedures in Merger Control

- **Reflecting on 2024:** Revised **merger filing thresholds** were introduced, raising **notification requirements**. Simple cases will benefit from **streamlined information requirements** and **internal review timeline guidelines**, designed to **institutionalize review processes** and **reduce average review times**, making assessments **faster and more transparent**. Additionally, on **December 20, 2024**, the release of the **Guidelines on the Review of Horizontal Mergers** provided **greater clarity and transparency** in evaluating such transactions.

- **Outlook for 2025:** Looking ahead to **2025**, with these measures in place, **SAMR** is expected to allocate **more resources** to complex cases, allowing for **stricter and more detailed reviews** of both **standard cases** and **transactions that may raise competition concerns**.

05 Rise in Antitrust Litigation Expected Following New Judicial Interpretation

- **Reflecting on 2024:** Courts saw a surge in lawsuits against tech firms and public welfare industries. The release of the **new judicial interpretation** and continued publication of **landmark cases** by the **SPC** provided **greater guidance** on key **disputes and legal reasoning** in antitrust litigation.

- **Outlook for 2025:** Antitrust litigation is expected to remain **highly active**, driven by the **formal establishment of procedures** for **public interest lawsuits** and **follow-on cases**, particularly in **public welfare sectors**.

06 Geopolitics and the Global Race for Technological Leadership

- **Reflecting on 2024:** Semiconductors and critical technologies have been central to industrial policy and antitrust scrutiny in China. SAMR conditionally approved **one transaction** in the **semiconductor sector** and is reviewing other semiconductor transactions that did not meet the turnover thresholds. In addition, SAMR opened an investigation into NVIDIA.

- **Outlook for 2025:** SAMR's **investigations into NVIDIA and Google** in early **2025** underscore **China's shifting policy environment and enforcement priorities**, particularly its intensified efforts over the past year to **boost semiconductor self-sufficiency** amid export control restrictions. These actions are contributing to increased uncertainty around antitrust measures and interventions in China.

07 Enhancing Antitrust Rules Concerning IPR to Promote Innovation

- **Reflecting on 2024: New guidelines** addressed antitrust risks in the licensing of **standard essential patents** (e.g., patent hold-up tactics) and that in the **pharmaceutical sector** (e.g., product hopping, reverse payment agreements).

- **Outlook for 2025:** More licensees are expected to use antitrust litigation **as leverage** in licensing negotiations. For patent holders, key priorities will include **maintaining positive relationships** with implementers, conducting negotiations in good faith, and preventing disputes from evolving into antitrust conflicts. That said, recent decisions by the SPC indicate that Chinese courts may maintain a **balanced approach** when assessing whether intellectual property rights holders have market dominance or have engaged in abusive practices.

08 Levelling the Playing Field and Stricter Oversight on Local Protectionism

- **Reflecting on 2024:** On August 1, 2024, the Regulations on Fair Competition Review officially came into effect, marking a significant milestone in the development of China's antitrust regime. The Regulations **required governments to assess policies for anti-competitive effects**, leading to revisions of existing rules.

- **Outlook for 2025:** With enforcement driven by the implementation of the Regulations and the introduction of detailed implementation rules, administrative agencies are expected **to review their decision-making** and ensure fair competition among businesses. Stricter enforcement of the fair competition review regime may **disrupt subsidies** and **public-private partnerships**, requiring businesses to adapt to policy changes.

09 Advancing Consumer Protection and Curbing Unfair Competition in the Platform Economy

- **Reflecting on 2024:** The **Provisional Regulations on Anti-Unfair Competition on the Internet** took effect in September, and the **Draft Anti-Unfair Competition Law** passed its first review by the Standing Committee of the National People's Congress in December. New rules targeted anticompetitive conduct in the platform economy, covering data misuse, fake reviews, and algorithmic collusion.

- **Outlook for 2025: Consumer-led lawsuits** and **platform-related disputes** are likely to **increase**. Additionally, courts are expected to **tackle emerging issues** such as **click frauds** and **abuses in influencer marketing**, shaping the evolving **legal landscape** in the digital economy.

10 The Great Distortion? Chinese Subsidies and Global Competition

- **Reflecting on 2024:** The large majority of in-depth reviews and investigations brought by the European Commission under the **Foreign Subsidies Regulation** ("**FSR**") have primarily targeted Chinese investments and operations in Europe. In turn, China's Ministry of Commerce initiated its own investigation into the FSR and found that the European Commission's practices prevented Chinese entry and competitiveness.

- **Outlook for 2025:** The **EU is expected to maintain its focus on foreign subsidy oversight**, with particular attention on **Chinese companies' investments and operations**. The EU has released reports that offer detailed analysis of **sensitive sectors within China's economy that are susceptible to subsidy support and potential distortions**, which could guide future actions under the FSR.

CONTENTS

Class of 2024: Key Legislative Developments

Regulatory provisions/guidelines officially released in 2024

Name of the document	Date of publication of the finalized version	Date of publication of consultation draft
Regulatory provisions		
Provisions of the State Council on the Thresholds for Notification of Concentration of Undertakings	January 22, 2024	June 27, 2022
Guiding Opinions of the State Council on Further Standardizing and Supervising the Setting and Imposition of Fines	February 19, 2024	/
Rules on Fair Competition Review in the Field of Tendering and Bidding	May 1, 2024	December 12, 2023
Provisional Regulations on Anti-Unfair Competition on the Internet	May 6, 2024	August 17, 2021
Regulations on Fair Competition Review	June 6, 2024	May 12, 2023
Rules for the Handling of Fair Competition Review Complaints	October 13, 2024	July 23, 2024
Provisional Measures for Coordinated Enforcement in Online Transactions	December 21, 2024	/
Measures for the Implementation of the Fair Competition Review System in Chongqing	January 10, 2024	/
Measures for Fair Competition Review in Zhejiang	January 13, 2024	/
Regulations on Promoting Fair Competition in Fujian	September 27, 2024	/
Guidelines		
Antitrust Compliance Guidelines for Industry Associations	January 10, 2024	May 15, 2023
Guidance Manual on Merger Control Filing for Concentrations of Undertakings	January 31, 2024	/
Antitrust Compliance Guidelines for Undertakings	April 25, 2024	March 21, 2024
Antitrust Guidelines on Standard Essential Patents	December 6, 2024	June 30, 2023
Guidelines on the Review of Horizontal Mergers	December 20, 2024	June 17, 2024
Guidelines on Competition Compliance for Guangdong-Hong Kong Enterprises	January 11, 2024	/
Compliance Guidelines for Market Regulation in New Forms of Platform Economy (Trial) (Hangzhou)	December 6, 2024	/
Judicial interpretation		
Interpretation of the Supreme People's Court of Certain Issues Relating to the Application of the Law in the Trial of Monopoly-Related Civil Disputes	June 24, 2024	November 18, 2022

Class of 2024: By the Number

01 Antitrust 2.0: Boosting Effectiveness with Enforcement-Judiciary Collaboration

Outlook for 2025

In 2024, important regulations were introduced to enhance the predictability of antitrust enforcement and provide businesses with clearer compliance guidance.

In 2025, China's antitrust framework will continue to evolve through new regulations, enforcement measures, and judicial oversight. Several major rules and guidelines are expected to be formally issued to strengthen the antitrust regime, clearly defining both prohibited and acceptable practices. These enforcement efforts and judicial oversight will play a vital role in protecting the national economy and public interest while fostering a fair and competitive market.

China's antitrust regime has seen significant developments in 2024, with supporting regulations for the revised *2022 Anti-Monopoly Law* (the "**AML**") now in effect. The new implementation rules and guidelines formalized in 2024 provide a strong foundation for streamlining existing rules and introducing new ones, improving businesses' ability to predict and comply with competition laws across industries.

These developments also bolster China's role as a key global antitrust regulator. Consistent enforcement and proactive judicial measures ensure the effective application of these laws, creating a unified and robust regulatory framework.

1. Introduction of Key Regulations and Guidelines to Enhance Legal Certainty

In 2024, legislative efforts were focused on refining rules to align with the recent amendments to the AML, ensuring clearer guidance and stronger compliance processes.

- **Strengthening Antitrust Compliance and Related Guidelines:**
  - The *Antitrust Compliance Guidelines for Undertakings* offer clear, practical direction through rules and case studies. It encourages businesses to build robust antitrust compliance systems. The guidelines make it clear that these compliance systems will factor into penalty assessments.
  - The *Antitrust Compliance Guidelines for Industry Associations* encourage industry associations to enhance their internal antitrust compliance management based on practical considerations, establish and improve an effective compliance system, and strengthen the identification and assessment of antitrust compliance risks.
- **Enhancing Predictability in Merger Review Enforcement and Issuing Guidelines on Review and Penalty Standards:**
  - The *Guidelines on the Review of Horizontal Mergers* were officially released in 2024, setting forth clear criteria for evaluating horizontal mergers. These guidelines systematically organize the practical rules for horizontal mergers, including market definition methods such as the "left open" approach, which had not previously been accepted in China. Concurrently, the draft *Guidelines on the Review of Non-Horizontal Mergers* are currently in development.
  - The draft *Guidelines on Determining Administrative Penalties for Unlawful Concentrations* establish a comprehensive framework for addressing antitrust violations during merger filings. These guidelines define the legal basis, procedural steps, and key factors for determining penalties while also permitting negotiated settlements with penalized entities to the extent permitted by laws. This framework is designed to enhance the predictability of merger reviews and regulatory oversight.
- **Introduction of Specialized Antitrust Compliance Guidelines:** Targeted antitrust compliance guidelines to address industry-specific challenges have been introduced in two areas:
  - The *Draft Antitrust Guidelines for the Pharmaceutical Sector*: These guidelines provide detailed advice on specific business practices, including reverse payment agreements, collective purchasing of pharmaceuticals, joint research and development, and pharmaceutical sales platforms. They aim to address competition issues unique to the pharmaceutical sector while ensuring compliance with antitrust laws.
  - The *Antitrust Guidelines on Standard-Essential Patents* ("**SEPs**"): These guidelines are designed to balance the interests of patent rights holders and licensees, thereby promoting a fair and competitive landscape. With an emphasis on both "Made in China" and "Created in China" , the

guidelines seek to boost the international competitiveness of Chinese industries and establish a robust governance system for SEPs.

- **Advancing the Fair Competition Review System:** The 2022 amendments to the AML marked the first formal inclusion of a fair competition review system at the legislative level. The Regulations on Fair Competition Review, which came into force as administrative regulations, provide a comprehensive framework for addressing issues such as local protectionism and the abuse of administrative power that restricts market competition. These regulations support the development of a unified national market by eliminating barriers to fair competition. In addition, supporting rules have been introduced to ensure the effective implementation of the system, including:

  - The *Rules for Handling Reports on Fair Competition Review*, and

  - The *Rules for Fair Competition Review in the Field of Bidding and Tendering*.

These efforts aim to institutionalize fair competition practices, fostering greater market transparency and fairness.

2. Enforcement Focus: Protecting Livelihoods and Ensuring Fairness

In 2024, China's antitrust enforcement agencies (i.e., the State Administration for Market Regulation ("**SAMR**") and its local branches) continue prioritizing critical areas that directly impact the national economy and citizens' livelihoods, following recent regulatory trends.

Antitrust enforcement plays a vital role in safeguarding economic stability and addressing issues that affect citizens' daily life. Enforcement agencies are also adopting new regulatory tools, responding to public concerns, and enhancing both the effectiveness and adaptability of antitrust enforcement. By focusing on these strategic areas, China aims to build a fairer and more dynamic market environment.

- **Strengthening Antitrust Enforcement in Key Livelihood Sectors:** Antitrust enforcement in 2024 continues to prioritize critical sectors affecting daily life. Traditional industries critical to public welfare, including natural monopolies like gas and water utilities, as well as essential sectors such as pharmaceuticals, remain key areas of focus. This year has also seen numerous high-profile cases in industries closely connected to everyday life, such as real estate, vehicle inspections, insurance, used car trading, and driving school services.

- **Full Utilization of Regulatory Tools:** The "Three Letters and One Notice" system, introduced in late 2023, has become a vital regulatory tool deployed by market regulators at both national and local levels. The system uses three types of letters — reminder letters, interview letters, and investigation letters — to progressively address potential antitrust violations.SAMR has already issued Reminder Letters to five branded automotive suppliers and the Avanci Patent Pool (see **Chapter 07**). Local regulators have also adopted this tool—for example, the Jiangxi antitrust agency issued 32 reminder letters in the first half of 2024 alone. These tools strengthen regular supervision and provide businesses with an opportunity to self-correct potential violations before facing formal investigations. It will remain a cornerstone of antitrust enforcement moving forward.

- **Active Handling of Third-Party Complaints:** Third-party complaints continue to play a critical role in triggering enforcement actions. One notable example is the case against Ningbo Sumscope Information Technology Company Limited for abuse of market dominance, marking the first of such cases in the financial data sector. Initiated through a public "tip-off," this case highlights the

enforcement agencies' commitment to maintaining external monitoring channels and addressing public concerns. SAMR thoroughly investigates third-party complaints, ensuring impartial enforcement. Businesses under investigation are expected to cooperate fully, abiding by the full letter of the law, further emphasizing the importance of transparency and accountability.

3. Judicial Developments: Significant Progress in Establishment of Rules and Practices

In 2024, significant progress has been made in the judicial handling of antitrust cases, with advancements in both rules and practices. A major development is publication of the "Interpretation of the Supreme People's Court of Certain Issues Relating to the Application of the Law in the Trial of Monopoly-Related Civil Disputes (the "**2024 Antitrust Judicial Interpretation**").

This 2024 Antitrust Judicial Interpretation extracts key rules from judicial practice, providing clear guidance for courts to handle civil antitrust cases effectively. As antitrust cases grow in number and complexity, judicial proceedings have become essential for dispute resolution, bringing both challenges and opportunities to the courts.

The 2024 Antitrust Judicial Interpretation also refines existing judicial rules and provides clearer guidance for courts handling civil antitrust cases. As antitrust cases grow in number and scope, judicial channels have become crucial for resolving civil disputes. This development brings new challenges to antitrust judicial work while giving enterprises more options for legal strategy.

- **Further adjustment of the burden of proof between claimants and defendants:** The updated Antitrust Judicial Interpretation creates both opportunities and challenges for enterprises, particularly regarding burden of proof. Antitrust administrative penalty decisions now carry presumptive weight in civil disputes, reducing claimants' burden to define relevant markets and prove anticompetitive behavior. As a result, claimants now face a lower initial burden of proof when their cases are supported by administrative decisions. These changes make it easier for enterprises to use antitrust litigation to protect their rights.

- **Judicial rules and practices provide clearer guidance on substantive issues:** The 2024 Antitrust Judicial Interpretation, along with recent cases, clarifies complex substantive issues. The Antitrust Judicial Interpretation strengthens China's antitrust framework by establishing rules for single economic entities and agency relationships, while explaining how businesses can dispute collective market dominance claims. Clarifications have also been provided for reverse payments and pharmaceutical patent settlements. These changes give businesses clear guidance for compliance.

02 The Move from Penalization to Prevention in Antitrust Enforcement

Outlook for 2025

In 2025, we expect a more nuanced approach to antitrust enforcement.

Following the release of the *Antitrust Compliance Guidelines for Undertakings*, regulators are expected to focus on helping businesses build better compliance awareness and systems. Companies must adapt proactively in this evolving regulatory landscape. Regulators will likely prioritize private warnings and guidance over public penalties, while still ensuring effective enforcement. Increased scrutiny across various industries will compel businesses to enhance their compliance with antitrust regulations.

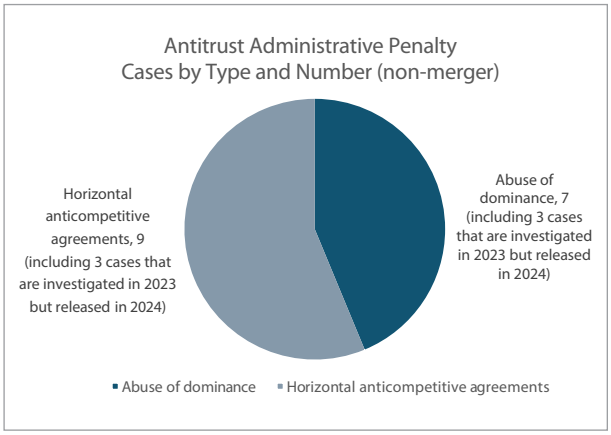
It is also expected that the scope of enforcement will expand beyond the focus on traditional anticompetitive agreements and market dominance. As regulators shift to a more targeted and precise approach to address emerging issues, businesses will need to remain vigilant about new legal risks and take proactive steps to implement preventive measures.

Introduced in December 2023, the "Three Letters and One Notice" system represents a significant shift in antitrust enforcement, moving from imposing penalties to proactive guidance and supervision. This system promotes antitrust compliance through three key procedures: (i) reminder letters which provide early warnings and opportunities for correction, (ii) interview letters which encourage timely improvements, and (iii) investigation letters serving as formal steps toward investigations.

Antitrust enforcement agencies are now focusing on encouraging business' compliance with the AML and preventing breaches. The Antitrust Compliance Guidelines for Undertakings, published in 2024, clarified the application of antitrust laws to business practices. These guidelines are designed to help companies integrate compliance into their operations and manage legal risks more effectively. This shift marks a transformation from traditional enforcement measures to a more preventative regulatory approach.

1. Increased Focus on Major Violations

In 2024, antitrust enforcement agencies issued 16 administrative penalties for anticompetitive behavior (excluding mergers). Of these, six penalties were from 2023 but announced in 2024. The cases included nine horizontal anticompetitive agreements and seven instances of market dominance abuse. This marked a decline from 2023's total of 20 cases. No penalty decisions against vertical anticompetitive agreement cases were announced in 2024.

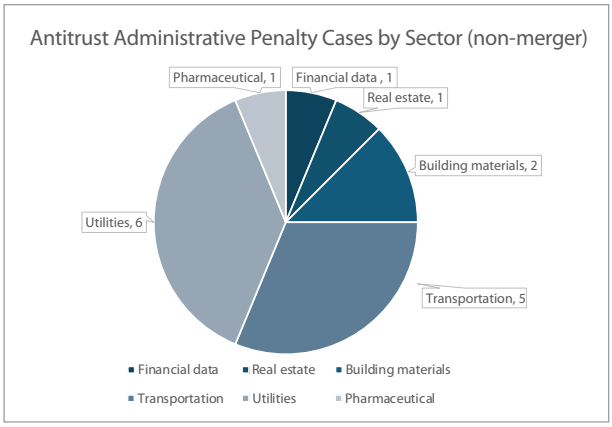


Antitrust enforcement cases in 2024 covered several key sectors: public utilities, transportation, construction, real estate, financial data, and healthcare. Public utilities and consumer sectors have come under particular scrutiny, representing about half of all disclosed cases.

Horizontal Anticompetitive Agreements

Enforcement in 2024 primarily targeted cartel behaviors - especially price-fixing and market allocation. Industry associations have often emerged as facilitators of these agreements. In response to these frequent violations, SAMR released the *Antitrust Compliance Guidelines for Industry Associations* in January 2024. The antitrust authorities announced three penalty decisions in relation to industry associations in 2024. In addition, based on publicly available information, local antitrust agencies have also been active in pursuing actions against industry associations.

- **Beijing Municipal Market Supervision Authority:** Opened investigations into five industry associations suspected of facilitating anticompetitive agreements.
- **Xinjiang Uygur Autonomous Region Market Supervision Authority:** Investigated 42 enterprises in the fireworks industry for alleged anticompetitive agreements facilitated by industry associations. These agreements involved price-fixing, restrictions on market entry, and exclusionary practices.



Abuse of Dominance

In 2024, antitrust enforcement targeted behaviors such as unfairly high pricing, restrictive transactions, and the imposition of unreasonable terms. Public utilities and sectors related to consumer welfare remained the focal points, with most cases involving market dominance arising from these areas.

Additionally, cases in 2024 involving the abuse of market dominance included industries such as domestic data management, intellectual property ("**IP**"), and financial data services. Regulators aimed to address practices that hinder fair market competition and disrupt industry dynamics, particularly those that restrict market entry or innovation.

Vertical Restraints

In 2024, antitrust enforcement agencies disclosed no penalty cases related to resale price maintenance ("**RPM**"). This marked a further decrease from 2023, which saw only one case - the Beijing Zizhu Pharmaceutical case. Regulators are increasingly focused on pre-emptive and ongoing supervision. For instance, in early 2024, SAMR initiated investigations into several car manufacturers and suppliers suspected of imposing unreasonable restrictions on downstream distributors, such as price-fixing and resale price maintenance. These investigations prompted self-audits and corrective actions by the implicated companies (see **Chapter 03**).

2. Strengthened Routine Enforcement Supervision

In December 2023, the State Council's Anti-Monopoly and Anti-Unfair Competition Committee Office and SAMR jointly announced the "Three Letters and One Notice" system for antitrust enforcement. This system establishes three levels of enforcement measures: advisory reminders, interviews, and formal case investigations. As a comprehensive regulatory tool, this system has improved the effectiveness of routine antitrust scrutiny.

Throughout 2024, antitrust agencies at national, provincial and local levels issued 2,615 "Three Letters and One Notice" documents. Of these, 2,385 (91.2%) were reminder letters and interview letters, showing a preference for pre-emptive measures. In September 2024, SAMR published its first set of representative cases from that year's special antitrust enforcement initiative in consumer-related sectors. This included two "advisory reminder" cases concerning the automotive industry and standard-essential patents ("**SEPs**").

- **Case in the Automotive Industry:** On January 18, 2024, SAMR issued compliance guidance to five car manufacturers and suppliers suspected of implementing restrictive "price increase clauses." The companies were required to conduct self-audits and rectify their practices. On July 23, 2024, SAMR followed up, requesting updates on their progress in eliminating these restrictive terms.

- **Case involving SEPs:** On June 27, 2024, SAMR concluded an investigation into Avanci, a licensing solution provider. The investigation found that Avanci had abused its market dominance by imposing unreasonable licensing terms on downstream businesses in relation to the licensing of certain SEPs. SAMR issued a formal warning, directing Avanci to correct its practices and strengthen compliance, while increasing scrutiny of the affected market (see **Chapter 07**).

These actions demonstrate the antitrust enforcement agencies' commitment to ensuring fair competition and preventing anticompetitive practices in key industries. This approach aligns with the broader goal of preventative enforcement in 2024.

SAMR and its local branches have implemented **compliance guidance** and **supervision processes** to address potential violations early in business operations. This proactive approach helps mitigate antitrust risks, especially in industries crucial to the national economy. Such supervision promotes sustainable industry development while maintaining economic stability, protecting consumer rights, and enhancing social welfare.

Local antitrust agencies have also strengthened their scrutiny by providing **antitrust compliance training**, issuing **compliance guidelines**, and raising antitrust compliance awareness among enterprises and industry associations.

Summary of Routine Supervision by Local Antitrust Agencies

Agency	Key Actions
Beijing Administration for Market Regulation	• Investigated and filed two cases from over 40 leads and issued two reminder letters. • Requested documentation from 14 entities across medical, automotive, and insurance sectors. • Enhanced antitrust enforcement on industry associations by investigating five associations for suspected anticompetitive practices.
Inner Mongolia Administration for Market Regulation	• Published a public notice on official media platforms to gather case leads, receiving ten complaints. • Held antitrust compliance training for regional enterprises, with over 310 company and association representatives attending. • Concluded two cases after investigating two administrative monopoly cases and two cases of market dominance abuse. • Developed guidelines for "three letters and one notice" system, issuing nine reminder letters and 12 interview letters.
Anhui Administration for Market Regulation	• Tasked law enforcement experts to review 22 leads, resulting in the conclusion of one anticompetitive agreement case, two cases of competitive restriction through administrative power abuse, and the filing of five market monopoly cases. • Implemented the "three letters and one notice" system, issuing one reminder letter, 15 interview letters, and three investigation letters.
Shaanxi Administration for Market Regulation	• Investigated 11 potential cases. • Issued 11 "three letters and one notice" documents and conducted interviews with two municipal and district governments. • Collaborated with the provincial high court to distribute over 10,000 antitrust compliance guidelines at a press conference.

3. Forecast of 2025 Antitrust Enforcement Trends

(1) Continuation of Routine Supervision

Regulatory efforts are expected to increasingly focus on prevention and continuous monitoring. Many cases in 2025 will likely be handled through **compliance guidance** and **warnings** rather than formal penalties and public disclosures.

While the number of formal enforcement cases may decrease, "light-touch" interventions - including compliance guidance and "rectification requirements" - will increase. This shift will drive companies to strengthen their antitrust compliance measures and internal practices.

(2) Focus on a Wider Range of Anticompetitive Behaviors

Beyond traditional concerns like abuse of market dominance, anticompetitive agreements and RPM, regulators may expand their focus to include **non-price vertical restrictions**. These include geographic restrictions and unreasonable supply constraints, particularly in the automotive sector.

The regulatory stance on vertical non-price restriction is not yet entirely clear. Historical enforcement cases from antitrust agencies show that these restrictions are typically seen only as tools for maintaining resale prices, with no penalties issued specifically for vertical non-price restrictions alone. However, SAMR's recent advisory on such practices in the automotive industry suggests that vertical non-price restrictions may draw regulatory scrutiny under certain conditions—particularly when relevant parties file reports. As a result, businesses must exercise caution, especially those operating in sectors vital to the national economy and public welfare. These companies should carefully evaluate the antitrust risks in their business strategies.

(3) Sectoral Focus: Industries Under Heightened Scrutiny

It is expected that the **automotive industry** will remain a priority for regulators, who will persist in scrutinizing anticompetitive practices by manufacturers and suppliers, including restrictive dealership agreements, throughout 2025. Companies in this sector are encouraged to proactively ensure compliance to avoid regulatory investigations. Additionally, critical industries impacting **livelihood** - such as pharmaceutical/healthcare and public utilities - are subject to heightened scrutiny, with a focus on eliminating restrictive practices that may hinder fair competition. **Semiconductors** could also face increased regulatory scrutiny, a topic that will be explored further in **Chapter 06**.

03 Continued Focus on Industries Impacting Public Welfare

Outlook for 2025

In 2024, China maintained vigorous antitrust enforcement, with a particular emphasis on sectors that directly impact public welfare, such as public utilities and pharmaceuticals. The automotive industry, already burdened by economic challenges, experienced a surge in antitrust complaints and reports, escalating enforcement risks for companies within this sector. Additionally, global antitrust trends and geopolitical considerations influenced domestic enforcement strategies, leading to heightened compliance challenges for major multinational technology firms. This dynamic regulatory environment underscores the importance for businesses to stay abreast of evolving legal requirements and enforcement priorities.

Considering this trend, in 2025, businesses should continue to carefully monitor antitrust enforcement trends, assess their business practices and disputes, and reduce regulatory risks.

In 2024, SAMR significantly intensified its antitrust scrutiny, particularly targeting sectors critical to citizens' daily life such as pharmaceuticals, automotives, and public utilities. This effort aimed to ensure fair competition and safeguard consumer interests. SAMR's proactive measures included releasing draft guidelines and launching specialized enforcement initiatives to rigorously apply antitrust laws. Additionally, the challenging economic environment heightened antitrust risks, as businesses undergoing necessary adjustments saw a surge in complaints—often leveraged strategically by downstream enterprises, competitors, and former employees. This underscored the need for proactive management of antitrust complaints and regulatory risks, as evidenced by several cases in 2024 that stemmed from such disputes.

Meanwhile, multinational corporations must manage antitrust compliance across many countries. With SAMR building stronger ties to global antitrust authorities, companies need clear compliance plans to handle enforcement risks in different regions.

1. Continued Focus on Antitrust Enforcement in Sectors Affecting Daily Life

In 2024, antitrust enforcement focused on investigating antitrust cases in key sectors affecting daily life, with intensified efforts to eliminate local protectionism. All 16 announced penalty cases involved sectors impacting public welfare. SAMR statistics indicate many additional enforcement cases are still pending announcement.

SAMR has strengthened its specialized antitrust enforcement in these vital sectors through various measures. In September 2024, SAMR released its first set of representative cases. These cases covered industries including automotives, bottled liquefied gas, vehicle inspection, driving schools, rock wool products, financial data, and public utilities (such as gas and water supply). At the regional level, SAMR's local branches in Beijing, Shanghai, Zhejiang, Jiangsu, and other provinces conducted special antitrust investigations, aligned with SAMR's unified approach to enforcement. There were significantly more enterprises under scrutiny in 2024 than in the previous two years.

On August 9, 2024, SAMR issued the *Draft Antitrust Guidelines for the Pharmaceutical Sector* for public consultation. The draft draws from years of antitrust enforcement experience. It reviews how the AML applies to pharmaceuticals and guides compliance for industry-specific practices like "reverse payments," centralized drug procurement, and joint pharmaceutical research. The official version has been published in January 2025.

SAMR and its local branches are maintaining strong antitrust enforcement in the pharmaceutical sector through thorough investigation and verification. In the first half of 2024, SAMR launched three new cases and actively investigated 14 cases involving anticompetitive agreements and market dominance abuse. This demonstrates their commitment to addressing antitrust issues and protecting public interests. The enforcement agencies are also urging pharmaceutical businesses to address compliance risks, enhance training, and prevent anticompetitive behaviors at their source.

2. Increased Risk of Antitrust Enforcement Due to Frequent Complaints and Reports

In the past two years, economic pressures have affected many industries, making it harder for businesses to handle conflicts, especially when changing sales channels or staff. In such environments, downstream enterprises, competitors, and even former employees may leverage antitrust laws to initiate complaints against companies, consequently sparking antitrust investigations and enforcement actions. Recently, SAMR has increasingly focused on investigating antitrust complaints, indicating that businesses must exercise heightened vigilance regarding antitrust regulatory risks that may emerge from business or labor disputes. Notably, in 2024,

at least two disclosed cases were directly initiated by complaints from transaction counterparts, underscoring the importance of maintaining compliant and transparent business practices to mitigate potential legal challenges.

SAMR Issues Warning Letters to Five Automotive Businesses

Since 2022, automotive dealers have reported to SAMR that the surge in new energy vehicles, fluctuations in purchase taxes, and intense price competition in the automotive industry have significantly heightened operational pressures for both vehicle suppliers and dealers. In response, several auto brand suppliers imposed what dealers considered to be unreasonable restrictions, potentially breaching the AML.

In a move to address these competitive concerns, on January 18, 2024, SAMR issued reminder and warning letters to five automotive businesses. These letters detailed the antitrust risks associated with their current business practices and emphasized the need for enhanced compliance and internal management to curb anticompetitive behavior.

Reacting swiftly, the five auto brand suppliers submitted correction reports outlining specific remedial actions they intended to implement to align with regulatory expectations. By July 23, 2024, SAMR had reviewed these corrective efforts and mandated the full implementation of the proposed measures, reinforcing its commitment to enforcing compliance and fostering fair competition within the automotive sector.

Abuse of market dominance remains a key concern for antitrust authorities worldwide, including China. A business with a dominant market position may unfairly restrict competition or exploit customers and partners through practices like predatory pricing, exclusive agreements, or refusing to supply vital resources to competitors. Due to the complexities of defining and proving such abuse, businesses must carefully consider how their market behavior might be viewed under the law. This caution is vital in fast-changing sectors like technology and pharmaceuticals, where innovations can rapidly shift market power.

Ningbo Sumscope's Abuse of Dominance

On September 6, 2024, the Shanghai Administration for Market Regulation announced a penalty decision against Ningbo Sumscope Information Technology Co., Ltd. ("**Ningbo Sumscope**"), a financial information service provider, for abusing its market dominance. The company was fined CNY4.5 million, which amounted to 2% of its sales revenue from the previous year of the investigation.

The antitrust investigation was initiated after a tip-off. Ningbo Sumscopewas found to have abused its dominant position in the market of single-currency brokerage bond voice broking real-time trading data sales within China.

The abusive practices identified include:

- **Refusal to Deal:** Ningbo Sumscope, through an "exclusive agency" arrangement, obtained real-time trading data from the largest currency brokerage company in China but refused to provide this data to downstream financial service providers.

- **Imposing Unreasonable Trading Conditions:** When providing full data services to trading institutions and investors, Ningbo Sumscope ignored the specific needs of its customers for certain types of bonds and unilaterally imposed a minimum sale amount condition.

The case illustrates how exclusive arrangements and other competitive moats built by businesses during collaborations with transaction counterparts can expose them to antitrust compliance risks. When a business dispute arises with these counterparts, the risk of being reported and potentially penalized by antitrust enforcement agencies increases significantly.

3. Conflict of Laws: Geopolitical Influences in Antitrust Enforcement across Multiple Jurisdictions

The Chinese antitrust enforcement agencies continue to coordinate with their international counterparts, such as those in the European Union (the "**EU**"). As geopolitical tensions intensify, key sectors vital to the national economy not only face investigations in other major jurisdictions but also come under scrutiny in domestic antitrust investigations. In August and early December 2024, NVIDIA, the U.S. artificial intelligence computing company, faced antitrust inquiries and investigations in the U.S. and the EU. Following these developments, SAMR also announced on December 9, 2024 that it would start an antitrust investigation against NVIDIA. For further discussion about this case, please refer to **Chapter 06**.

Parallel investigation of NVIDIA

In September 2024, the U.S. Department of Justice issued a subpoena to NVIDIA, requesting information for an antitrust investigation. The focus was on NVIDIA's dominant position in the AI chip market and potential unfair competitive practices, including whether it maintained market advantages through practices such as bundling sales and restricting customer choices, or by forcing cloud service providers to purchase multiple products.

On December 6, 2024, Reuters revealed that EU antitrust regulators were investigating NVIDIA's sales practices. The investigation centered on whether NVIDIA engaged in commercial or technical bundling of its graphics processing unit (GPU) products with other hardware such as networking equipment, and whether NVIDIA's sales contracts required customers to purchase networking hardware when buying GPUs.

On December 9, 2024, SAMR announced that it had initiated a formal investigation into NVIDIA for potentially violating the AML and the announcement from the Administration regarding restrictive conditions approved in NVIDIA's acquisition of Mellanox Technologies. The investigation might involve NVIDIA's failure to comply with obligations not to bundle sales or attach unreasonable transaction conditions as stipulated in the Mellanox acquisition case.

International cartel cases represent a significant area of risk for multinational businesses, particularly due to the potential for parallel enforcement across multiple jurisdictions. Following historical cases involving LCD panels, automotive parts, and roll-on/roll-off ships, Chinese antitrust enforcement agencies continue to pay attention to international cartel activities.

This continued attention underscores the importance for multinational corporations to be vigilant about the potential for antitrust investigations in China, especially if they are already facing investigations in other jurisdictions.

04 New Notification Thresholds and Streamlining Review Procedures in Merger Control

Outlook for 2025

In 2024, merger control remained a key focus of SAMR's antitrust efforts. SAMR strengthened and refined its rules for reviewing mergers and acquisitions, improving substance and procedures, while clarifying and extending penalties.

Looking ahead to 2025, we anticipate the following trends:

- As SAMR introduced new filing thresholds and streamlined information requirements for simple cases in 2024, this change is expected to reduce review times for more cases and allow SAMR to focus on complex mergers.
- The Horizontal Merger Guidelines now provide clearer direction for competitor reviews, requiring parties with high market shares to evaluate competitive impacts early.
- By resuming the publication of unreported mergers, SAMR has strengthened enforcement against failures of notification. Companies must now carefully assess their deals and plan closings to avoid gun-jumping risks.

In 2024, several key regulatory changes took effect. The State Council's *Provisions on Thresholds for Notification of Concentration of Undertakings* (the "**Notification Thresholds Provisions**") increased the merger filing thresholds in China. A streamlined scheme simplified reporting requirements for simple cases, reducing paperwork for transaction parties. The Horizontal Merger Guidelines also brought clearer standards for assessing horizontal merger deals.

1. The Provisions of the State Council on the Thresholds for Notification of Concentration of Undertakings were Officially Implemented

(1) Increase in the Turnover Threshold for Merger Filing, Leading to a Decrease in Merger Cases

On January 26, 2024, the new Notification Thresholds Provisions officially came into effect, raising the turnover thresholds for merger filings in China. According to SAMR's statistics, in the 10 months since the implementation of the new thresholds, SAMR received 580 merger filings, a decrease of 122 filings compared to the same period last year (representing a 17.4% decline).

Comparison of Old and Current Turnover Thresholds for Notification

Notification Standard	Old Threshold	Current Threshold
Threshold 1	The combined global turnover of all undertakings participating in the concentration in the previous fiscal year exceeds **CNY10 billion**, and at least **two undertakings** each have a turnover in China exceeding **CNY400 million** in the previous fiscal year.	The combined global turnover of all undertakings participating in the concentration in the previous fiscal year exceeds **CNY12 billion**, and at least **two undertakings** each have a turnover in China exceeding **CNY800 million** in the previous fiscal year.
Threshold 2	The combined Chinese turnover of all undertakings participating in the concentration in the previous fiscal year exceeds **CNY2 billion**, and at least **two undertakings** each have a turnover in China exceeding **CNY400 million** in the previous fiscal year.	The combined Chinese turnover of all undertakings participating in the concentration in the previous fiscal year exceeds **CNY4 billion**, and at least **two undertakings** each have a turnover in China exceeding **CNY800 million** in the previous fiscal year.

(2) Expanded Investigation Rights for SAMR Over Business Mergers Below Reporting Thresholds

The Notification Thresholds Provisions emphasize SAMR's authority to investigate business mergers that fall below thresholds but could potentially limit competition. This is particularly relevant for industries with high market concentration or sensitive sectors, where parties must now conduct thorough assessments of transactions that might raise competitive concerns.

For example, amid rising global geopolitical tensions, SAMR maintains strict oversight of transactions in the chip/semiconductor and technology sectors. In two notable cases—Synopsys' acquisition of Ansys and Keysight's acquisition of Spirent—the parties made merger filings to SAMR. (See **Chapter 06** for further discussion).

2.A New Optimization Plan for Simple Case Filing Requirements, Streamlining the Review Process to Make It Faster and More Transparent

(1) The Plan Optimizes Simple Case Filing Materials by Reducing Information Requirements for Market

Share Data and Competitive Assessments Across Different Categories

On September 14, 2024, SAMR published revised versions of the template notification form and public notice form for simple cases. These revisions streamline the filing requirements for simple cases of business concentration in China by reducing the required information for case filings.

The revision streamlines the filing process by removing certain information requirements that are not strictly necessary for the assessment. Key improvements include relaxed requirements for formalities, as well as simplified requirements for market share data and competitive assessment for purely offshore transactions.

(2) Introduction of the "Double 20" Internal Work Requirements for Simple Cases: Accelerated and Transparent Case Review Processes

In early 2024, SAMR announced the internal work requirements for simple cases under its "Double 20" policy. Under this policy, the timeline from submission to formal case acceptance should not exceed 20 days, and the period from acceptance to clearance should also stay within 20 days. This policy gives transaction parties clearer expectations for review timelines.

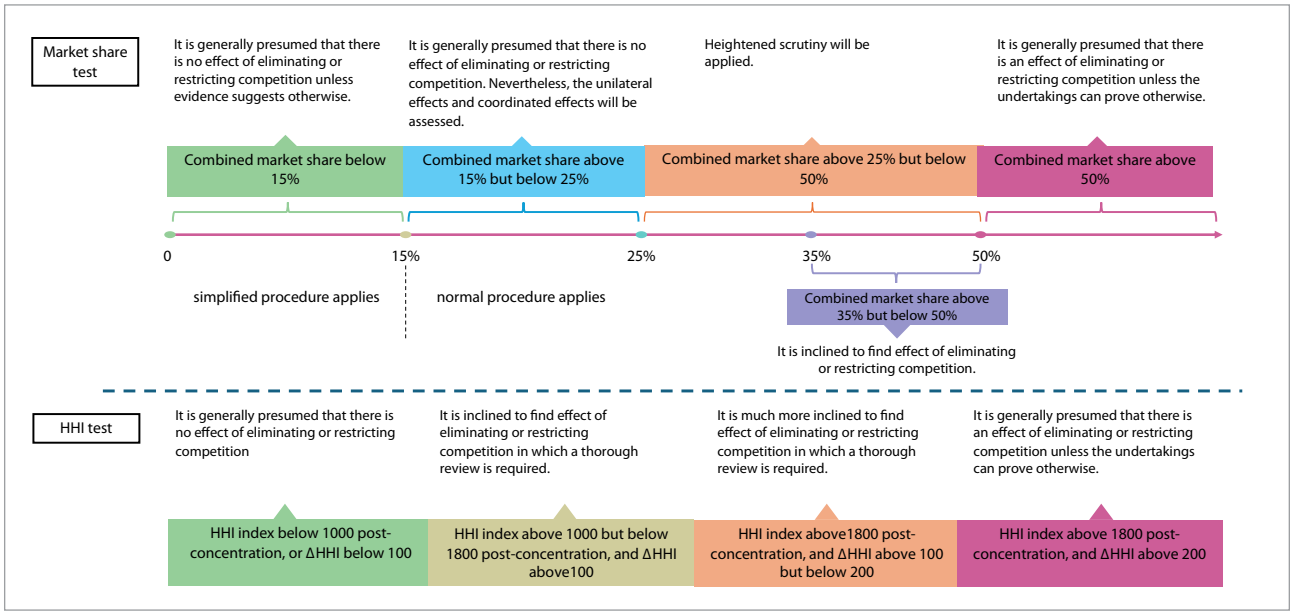
3. The Horizontal Merger Guidelines Introduces New Standards, Offering Greater Predictability for Horizontal Mergers

On December 20, 2024, SAMR officially released the Horizontal Merger Guidelines, providing transaction parties with a more defined legal framework and operational guidelines for horizontal mergers.

(1) Market Share and HHI Index Become Key Metrics for Determining Anti-Competitive Effects

- The Horizontal Merger Guidelines outline quantitative thresholds that reflect the likely review stance enforcement agencies may adopt based on varying market shares in horizontal mergers.

- The Horizontal Merger Guidelines explicitly adopt the HHI (Herfindahl-Hirschman Index), a standard measure of market concentration. The guidelines explain how to calculate the HHI and classify markets into categories based on their HHI levels.



(2) Three Key Defenses: Market Entry, Countervailing Buyer Power, and Efficiency

- **Market Entry:** Market entry is not limited to new entrants entering the market but also includes:
  - o Vertical expansion into the market by upstream or downstream businesses; and
  - o Business expansion by existing competitors (e.g., increasing production capacity).
- **Countervailing Buyer Power:** The evaluation of buyer power mainly considers:
  - o Whether a small number of customers account for a high proportion of procurement, i.e., the degree of buyer concentration.
  - o Whether buyers can easily switch between different suppliers, including vertically integrating upstream suppliers, or, alternatively, support upstream suppliers and new entrants.
- **Efficiency:** Historically, transaction parties commonly used efficiency improvements as a defense. While competitive efficiency is often cited, such claims tend to be speculative and hard to prove. Due to the difficulty in verifying and measuring these improvements, enforcement agencies rarely accept them. The Horizontal Merger Guidelines have now clarified which types of efficiency arguments are valid and under what conditions. This clarity should help transaction parties better structure their efficiency arguments. Specifically, the Horizontal Merger Guidelines clarify that efficiency gains from business concentrations recognized by antitrust enforcement agencies must meet the following conditions:

  (i) The efficiency must directly or indirectly benefit consumers, not limited to price reductions but also include improvements in product quality or benefits from product innovation.

  (ii) The efficiency must be specific to the concentration, directly resulting from it and not achievable otherwise.

  (iii) The efficiency must be verifiable, with more accurate and persuasive efficiency claims by transaction parties increasing the likelihood of acceptance by antitrust enforcement agencies.

4. Standardization of Enforcement for Gun-Jumping Cases and Improvements to the Penalty Process

(1) Standardization of Enforcement for Failures to Notify: The Critical Role of Compliance

Between mid-2022 and 2023, SAMR temporarily suspended public announcements of "failure to notify" cases. However, SAMR maintained strong enforcement and legislative efforts in this area throughout this period.

During a routine policy briefing at the State Council Information Office on February 5, 2024, SAMR reported that it imposed administrative penalties on 32 non-notified transaction cases in accordance with regulations - similar to the number of penalties announced in 2022.

Following further refinements to the antitrust regime and new guidance documents, SAMR announced three cases of unlawful concentration in 2024, imposing total fines of CNY6.15 million. These cases took an average of 227 days to investigate.

(2) New Penalty Guidelines for Non-Notified Transactions: Refining the Penalty Framework

On August 16, 2024, SAMR released the *Guidelines on Determining Administrative Penalties for Unlawful Concentrations* ("**Draft Guidelines for Unlawful**

Concentrations"). These guidelines establish clear criteria for determining penalties in cases of unlawful business concentration.

The Draft Guidelines for Unlawful Concentrations introduce a classification system for penalties based on whether the concentration creates exclusionary or restrictive effects on competition, while outlining specific steps and factors for fine calculation.

Crucially, the Draft Guidelines for Unlawful Concentrations confirm that implementing an antitrust compliance system serves as a mitigating factor for penalties. This approach aligns with the compliance incentives outlined in both the *Antitrust Compliance Guidelines for Undertakings* (2024) and the *Antitrust Compliance Guidelines in Concentrations of Undertakings* (2023), highlighting antitrust enforcement agencies' commitment to promoting corporate antitrust compliance systems.

05 Rise in Antitrust Litigation Expected Following New Judicial Interpretation

Outlook for 2025

The year 2024 witnessed significant developments in China's antitrust civil litigation. The formal promulgation and implementation of the 2024 Antitrust Judicial Interpretation provided more comprehensive and clear guidance for the practice of antitrust civil litigation. The number of cases filed and concluded increased significantly, including several landmark cases in sectors closely linked to public welfare.

Looking ahead to 2025, with the formal establishment and implementation of follow-on litigation and public interest litigation processes, coupled with the momentum of antitrust judicial activities in sectors affecting public welfare, we can expect continued activities in antitrust litigation.

1. Statistical Data and Observation of Trends

In 2024, there was a noticeable increase in the number of antitrust civil cases tried and adjudicated by Chinese courts. According to data from the Supreme People's Court ("**SPC**"), the Intellectual Property Court of the SPC handled a total of 256 antitrust cases and concluded 191 cases from its inception in January 2019 to August 31, 2024. Between January 1 and August 31, 2024, the court accepted 111 antitrust cases and concluded 45 cases. The cases accepted in the first nine months of 2024 represented nearly half of all cases processed by the Intellectual Property Court since January 2019.

Among the antitrust and unfair competition "model cases" announced by the SPC in 2024, four involved antitrust disputes, all resulting in appellate rulings in favour of the claimants. These cases, which concentrated on sectors vital to public welfare including telecommunications, television, catering, and retail, demonstrate the judiciary's increased readiness to address anticompetitive behavior and to balance the rights and obligations of civil parties. The refinement of rules for follow-on litigation and evidence has notably enhanced the likelihood of success for claimants.

With the greater overlap between judicial proceedings and administrative investigations, enterprises need to develop overall strategies for managing potential legal risks.

2. Finalization of the Antitrust Judicial Interpretation

On June 24, 2024, the SPC formally issued the 2024 Antitrust Judicial Interpretation. This marks the first comprehensive amendment and improvement of antitrust civil litigation rules by the SPC since 2012. The 2024 Antitrust Judicial Interpretation is a new, integrated judicial interpretation introduced based on prior judicial practices.

From the procedure perspective, the 2024 Antitrust Judicial Interpretation provides more detailed guidance on the allocation of burden of proof and the probative force of evidence for claimants and defendants in various types of antitrust disputes. To address the longstanding challenge claimants face in presenting evidence, the interpretation relaxes the initial burden of proof for claimants and imposes an explanatory obligation on defendants (under specific circumstances). Additionally, it clarifies procedural issues such as the determination of interest of action, jurisdiction, and the consolidation of suits.

The 2024 Antitrust Judicial Interpretation introduces foundational concepts such as "single economic entity" and "agent". It also supplements adjudication rules on issues such as horizontal coordination, reverse payment agreements, hub-and-spoke arrangements, and efficiency defenses for vertical agreements, drawing on practical case-handling experience. The 2024 Antitrust Judicial Interpretation provides more comprehensive and clear rules to guide antitrust civil litigation practices, covering both procedural and substantive aspects.

In addition, the SPC clarified key and challenging issues in judicial practice by issuing model cases. In 2024, the SPC released two sets of model cases, underscoring its strong focus on antitrust civil litigation in sectors closely tied to public welfare. These model cases provide guidance on various issues, including the non-exclusion of court jurisdiction by arbitration clauses, the alleviation of the claimant's burden of proof in follow-on litigation after administrative investigations, and the finding of the illegality of hub-and-spoke arrangements prior to the 2022 amendment of the AML.

3. Law Enforcement and Administration of Justice

(1) Proactive coordination between antitrust judicial and administrative enforcement at both the central and local levels

In November 2022, the SPC noted the need for greater coordination between antitrust law enforcement

and administration of justice in aspects such as determination standards for illegal conduct, procedural suspensions, and case referrals in its draft antitrust judicial interpretation. Although the process for case referrals between courts and antitrust enforcement agencies was removed in the formal version of the 2024 Antitrust Judicial Interpretation, practical developments show that coordination and alignment between antitrust law enforcement and administration of justice continued to happen, both at the central and local levels.[1]

(2) Strengthened two-way interaction between antitrust enforcement and administration of justice

Article 10 of the 2024 Antitrust Judicial Interpretation formally provides systematic institution of follow-on litigation. Following its promulgation, the SPC further clarified in the natural gas company bundling case that claimants in follow-on litigation do not have to prove the existence of anticompetitive conduct if they base their claims on a valid administrative penalty decision.[2] This case was included as one of the 2024 model cases on antitrust and unfair competition. This highlights the judiciary's motivation to support processes for follow-on litigation.

Another important development in antitrust practice in 2024 stemmed from cases in which the same conduct became subject to administrative enforcement after judicial proceedings were concluded. For example, in November 2024, two years after the SPC issued a final ruling on Weihai Water Group's abuse of market dominance through exclusive dealing[3], SAMR issued an administrative penalty decision against Weihai Water Group for abuse of market dominance.[4] As shown in the comparison table below, although the penalty decision did not explicitly refer to the prior litigation and only disclosed that the investigation was initiated based on a report, the time period, relevant markets, and abusive conduct identified in the decision are highly consistent with those in the prior judgment.

Furthermore, we note that in addition to penalizing the conduct of abusing market dominance by restricting the developers in who they could engage to design and build the water supply facilities, the penalty decision also identified and penalized the company for imposing "unreasonable transaction conditions" by charging fees for water supply/drainage engineering services in violation of national regulations.

The case highlights the distinction between private litigation, which adheres to the principle of *non ultra petita* (where a court may not decide more than it has been asked to), and administrative enforcement, where enforcement agencies possess broader and more flexible investigative and punitive powers. These agencies may investigate additional potential violations based on their findings.

The consequence is that companies involved in litigation should be fully aware of the potential risk of administrative investigations triggered by antitrust civil litigation. When faced with commercial disputes that may involve antitrust compliance issues, it is

1. Following the November 1, 2023 roundtable meeting between SAMR and the Beijing Intellectual Property Court on the coordination between antitrust enforcement and judicial processes - where a regular communication liaison process was also established - the SPC announced that it would regularly engage with SAMR to hold joint discussions on addressing the abuse of intellectual property rights to exclude or restrict competition. At the local level, on March 27, 2024, the Beijing Administration for Market Regulation and the Fourth Branch of the Beijing People's Procuratorate signed a memorandum of understanding to establish a system of coordination for administrative enforcement and prosecutorial public interest litigation in the areas of antitrust and unfair competition. They announced plans to strengthen the transfer of leads, enhance case collaboration, and effectively amplify the synergies between market regulation and prosecutorial functions.

2. SPC's Civil Judgment, (2023) SPC Civil Final No. 1547.

3. SPC's Civil Judgment, (2022) SPC Civil Final No. 395.

4. Shandong Administration for Market Regulation Administrative Penalty Decision, Lu Market Regulation Administrative Penalty No. (2024)

essential that they conduct a comprehensive risk assessment early, devise reasonable response plans and strategies, and avoid the heightened risks of administrative enforcement stemming from litigation.

Compared to antitrust civil litigation, administrative penalties often pose a greater risk to businesses. This is because enforcement agencies, under the AML, have the authority to impose fines of up to 10% of the undertaking's group revenue for the preceding year and confiscate illegal gains. As illustrated in the comparison table between Weihai Water Group's antitrust litigation and administrative enforcement, the company faced total fines and confiscations amounting to CNY65 million due to administrative enforcement, while the civil liability it bore in the litigation was limited to CNY150,000.

	Litigation	**Enforcement**
Cause of action	Initiated by claimant	Complaint (unclear whether the complainant is the claimant in the litigation)
The timeframe of alleged conduct	Around 2018 (when the claimant was subject to exclusive dealing)	2018–2023
The relevant markets where dominance was established	The market for urban public water supply services in Weihai's urban area The market for water supply facility construction in Weihai's urban area	The market for urban public tap water supply services in Weihai's urban area
Alleged abusive conduct	**Exclusive dealing:** The defendant indirectly imposed restrictions on the claimant by only providing the contact information of its affiliated enterprises, thereby subtly limiting the claimant's choices to these entities for the design and construction of water supply facilities.	**Exclusive dealing:** By establishing specific procedural designs and acceptance criteria for water supply services, the investigated party limited users' options, compelling them to engage only its approved design and construction firms. **Unreasonable trading conditions:** The investigated party charged fees for water supply and drainage engineering services beyond the property boundary line, which was in contravention of national regulations.
Legal liability	Weihai Hongfu Real Estate Co., Ltd. was ordered to pay reasonable expenses of CNY150,000.	Ordered to cease the illegal conduct; Confiscation of illegal gains amounting to CNY35 million; Fined 3% of the previous year's sales revenue, amounting to CNY30.2 million

(3) Public interest litigation officially started, and the significant role of procuratorates in antitrust civil litigation is gradually emerging

In 2024, prosecutorial authorities made multiple public statements expressing their commitment to actively pursuing public interest litigation in antitrust.[5] The introduction of antitrust public interest litigation following the 2022 amendments to the AML means that the process has formally been initiated. Antitrust public interest litigation is effectively up and running.

Case	Date	Competent Authority	Industry/ Parties	Conduct	Status
Administrative monopoly/ horizontal anticompetitive agreement in bike sharing	March 2024	People's Procuratorate of Heze City, Shandong Province	Three bike-sharing companies	Administrative monopoly; horizontal anticompetitive agreement	Problematic conduct rectified
Abuse of dominance by a liquefied gas company	April 2024	People's Procuratorate of Yangzhou City, Jiangsu Province	Gas / Yangzhou Xinda Energy Co., Ltd.	Abuse of dominance	Ongoing
Vertical anticompetitive agreement by pharmaceutical enterprises	July 2024	People's Procuratorate of Pingxiang City, Jiangxi Province	Pharmaceutical / Anhui Donghua Pharmaceutical Technology Co., Ltd. and Jiangxi Changsheng Pharmaceutical Co., Ltd.	Vertical anticompetitive agreement	Ongoing

Based on publicly available information, most of the cases formally initiated remain in the early stages, and the specific practical rules relating to public interest litigation are still developing. Overall, drawing upon the actions and statements released by prosecutorial authorities, public interest litigation is already being applied in cases involving horizontal and vertical anticompetitive agreements, abuse of market dominance, and even administrative monopolies. We can expect to see more such cases in future.

Compared to claimants in ordinary antitrust civil lawsuits, prosecutorial authorities are better positioned to organize, coordinate, and mobilize resources, enabling more effective investigation and evidence collection, as well as addressing the challenges claimants face in adducing the evidence. Given the trend of increasingly active antitrust public interest litigation, businesses need to be more aware of the need to have policies and processes in place to ensure that they comply with China's antitrust laws and regulations.

5. On March 11, 2024, Xu Xiangchun, Director of the Eighth Procuratorate of the Supreme People's Procuratorate, stated in response to a journalist's question about advancing antitrust public interest litigation that procuratorial authorities would continue to strengthen case leads analysis and gather antitrust leads. He said the key focus areas for supervision would include the internet, public utilities, pharmaceuticals, and other fields closely tied to public welfare. Director Xu also emphasized the need to improve the coordination between antitrust enforcement and public interest litigation, facilitating collaboration with antitrust enforcement agencies in areas such as information sharing, and expert consultation. https://www.spp.gov.cn/ zdgz/202403/t20240311_649258.shtml

06 Geopolitics and the Global Race for Technological Leadership

Outlook for 2025

Semiconductors and critical technologies have been central to global industrial policies and antitrust scrutiny in China. As the race for tech dominance intensifies, competition policies in major jurisdictions are now deeply tied to industrial strategies, national security, and economic goals. In early 2025, the SAMR launched investigations into NVIDIA and Google. High-profile semiconductor deals such as Synopsys/Ansys and Keysight/Spirent face significant merger control challenges to secure clearance, underscoring China's efforts drive to safeguard its strategic interests.

Semiconductors and critical technologies remain a central focus of industrial policy and feature high on China's antitrust agenda. In 2024, the only conditional clearance decision in China (regarding JX Nippon/ Tatsuta) concerned semiconductor-related materials utilized by semiconductor developers. Beyond this, SAMR has reviewed non-notifiable deals in the semiconductor sector, including Synopsys' proposed acquisition of Ansys and Keysight's proposed acquisition of Spirent. The year concluded with SAMR announcing an investigation into NVIDIA for allegedly violating the AML by failing to uphold its continuous supply commitments made during its acquisition of Mellanox in 2020. Early 2025 saw further scrutiny of U.S. Big Tech companies, with investigations targeting Google, under the increasing geopolitical tension between China and the U.S.

A broader global transformation is underway, where competition policy is evolving from a focus solely on regulating market behavior to a more integrated approach that aligns with industrial policy, thereby supporting national economic and security objectives. As governments increasingly prioritize protecting national interests in critical sectors like semiconductors, traditional views of competition law are coming into conflict with the need for strategic trade measures. The Draghi report in Europe signals potential changes on the horizon, advocating for a modernization of EU competition policy to account for a number of non-competition related goals, including broader industrial policies, security considerations, and trade defence.[1]

1. Global developments

(1) Export control restrictions and related measures

In December 2024, the U.S. government strengthened its export control measures, targeting China's semiconductor industry as part of broader efforts to limit China's technological advancements, particularly in military and artificial intelligence ("**AI**") related applications. New restrictive measures have been imposed on key technologies, including semiconductor manufacturing equipment and software tools for developing or producing advanced semiconductors, high-bandwidth memory (HBM) critical for AI and advanced computing, and design software like electronic computer-aided design (ECAD) when used for advanced-node circuit designs.

In January 2025, the U.S. further expanded its list of export control rules on advanced computing items (including advanced integrated circuits) and added controls on AI model weights for the first time. In addition, the U.S. also expanded the license requirements and due diligence procedures for front-end fabs and outsourced semiconductor assembly and test (OSAT) companies that seek to export, reexport, or transfer certain advanced computing integrated circuits to circumvention risks of supply controls to countries such as China.

Along with these controls, the U.S. Entity List has been expanded to include additional Chinese semiconductor companies, including semiconductor fabs, tool companies, etc., thereby restricting U.S. firms from supplying critical technology or equipment to these entities.

(2) Trade practices and subsidy regulation

The U.S. and the EU have voiced growing concerns over subsidies in the semiconductor industry, a trend expected to intensify by 2025 as both regions advance their regulatory strategies to address global trade and competition.

United States. Alongside export control measures, a fresh U.S. trade investigation will focus on the dominance of China's foundational semiconductor

1. See: https://commission.europa.eu/topics/strengthening-european-competitiveness/eu-competitiveness-looking-ahead_en#paragraph_47059.

mature-node chips, or legacy chips, in supply chains that support U.S. critical infrastructure.[2] The investigation was announced in late December 2024 and will assess China's "non-market" actions, policies, and practices in relation to the production of silicon carbide substrates and other wafers used in semiconductor manufacturing, including through unfair trade practices and subsidies.[3] The outcome of the investigation could lead to tariffs or other restrictive measures on imports of critical semiconductors and related products, including medical devices, automobiles, smartphones, and weapons. In early 2024, the U.S. announced plans to raise tariffs on Chinese legacy semiconductors from 25% to 50% by 2025.

Europe. In Europe, scrutiny of China's trade practices in the semiconductor sector is expected to deepen. First, in April 2024, the European Commission ("**EC**") released an updated report on significant state-induced distortions created by China's economy, which included a chapter on strategies employed by Chinese government to develop and manage its semiconductor industry.[4] The report is widely regarded as a blueprint for implementing trade protection measures in sensitive sectors in the EU. Second, as detailed in **Chapter 10**, the EU's comprehensive regime to regulate foreign subsidies could also be applied to semiconductor-related trade practices in the future, based on the insights of the EC's findings on China's subsidy-related distortions.

(3) Investment restrictions imposed on China

On October 28, 2024, the U.S. Treasury Department issued final rules on investments in China, implementing the executive order signed by President Biden on August 9, 2023. These rules aim to restrict U.S. persons from investing in specific national security technology and product sectors in China, particularly in areas such as semiconductors, microelectronics, quantum information technology, and artificial intelligence. The rules will take effect on January 2, 2025. This regulation is widely viewed as a significant measure by the U.S. to reduce close ties with China in the high-tech sector, and has attracted extensive attention from the global investment community and high-tech industry since its conception.

2. China developments

While regulatory measures to scrutinize China's semiconductor supply chains have proliferated globally, there have been comparatively few competition-related legislative and policy developments within China itself in the past year to address semiconductor self-sufficiency.

Where to next? To address the impact of external trade restrictions on the semiconductor industry, China has revisited its frameworks of assessment for evaluating deals, introducing more targeted remedies for cross-border semiconductor deals, and driving strategic partnerships that bolster both domestic production and international competitiveness in semiconductor technologies.

(1) FRAND supply guarantees

Industrial policy and non-competition considerations have long been integral to China's merger control framework.[5] In recent years, FRAND (Fair, Reasonable, and Non-Discriminatory) supply guarantees have taken center stage in critical semiconductor remedy decisions, which continue to represent the majority of conditional clearances in China. Since 2019, nearly all semiconductor transactions that received conditional approval from SAMR have included commitments to

2. See: https://www.bis.gov/press-release/bis-publishes-assessment-use-mature-node-chips/.

3. See: https://www.bis.gov/press-release/bis-publishes-assessment-use-mature-node-chips.

4. See: https://policy.trade.ec.europa.eu/news/commission-updates-report-state-induced-distortions-chinas-economy-2024-04-10_en.

5. Article 7 of China's AML allows the government to protect industries which have a bearing on the lifeline of the national economy, national security, and industries with monopolies over the production and sale of certain commodities.

ensure the ongoing supply of specific products or to maintain supply under existing or FRAND terms. This focus underscores the importance of securing a stable semiconductor supply for Chinese customers.

Case study
JX Nippon's acquisition of Tatsuta

In June 2024, SAMR issued its only conditional clearance decision of the year. The deal attracted long review timeframes (the review clock was stopped for almost a year) and remedies due to exposure to China's sensitive chip sector, particularly downstream manufacturers of flexible printed circuit boards.

SAMR adopted a pure conglomerate effects theory of harm and was concerned about the adjacent markets between JX Nippon's blackened rolled copper foil and stainless-steel stiffeners for flexible printed circuits and Tatsuta's electromagnetic interference shielding films and isotropic conductive films. Each of these products is used in the manufacture of flexible printed circuits. JX Nippon and Tatsuta were found to have significant market power and held leading positions in the markets for blackened rolled copper foils and isotropic conductive films. SAMR was concerned about potential tying/bundling practices and found that the combined entity would have the ability and incentive to eliminate or restrict competition in the China markets for each of the flexible printed circuit component products through tie-in sales.

SAMR imposed behavioral remedies, requiring the parties to (i) refrain from tying or bundling practices; (ii) continue to supply products on FRAND terms; and (iii) maintain interoperability between the parties' products with third-party FPC components. The remedies are effective for eight years.

The expansion of U.S. export controls is creating significant challenges for compliance with semiconductor FRAND supply guarantees imposed in conditional clearances. A growing number of semiconductor tools, equipment, and technologies are now restricted from being supplied to Chinese customers on the Entity List.

The tension between FRAND supply guarantees and U.S. export control measures is drawing increasing intervention. In December 2024, SAMR announced an investigation into potential compliance issues by NVIDIA regarding the commitments made in connection with its 2020 acquisition of Mellanox. SAMR approved the deal on the condition that NVIDIA would continue supplying Chinese customers with its GPU accelerators and Mellanox's high-speed network interconnection devices on FRAND terms. Additional remedies included ensuring interoperability between NVIDIA's GPUs and third-party network devices, as well as between Mellanox's interconnection devices and third-party accelerators. These, together with FRAND supply commitments to Chinese customers, which are believed to be the primary focus of the investigation.

(2) Review of below-threshold deals

SAMR has powers to call-in transactions that do not meet the turnover thresholds but have or may likely have the effect of eliminating or restricting competition in China.[6] Following the increased turnover notification thresholds in January 2024, SAMR has more frequently exercised its call-in powers to review transactions that do not meet the new turnover thresholds but show signs of harming competition in China.

In 2024, SAMR called-in the high-profile Synopsys/ Ansys deal despite falling below China's turnover thresholds. The deal attracted significant scrutiny after concerns were reportedly raised by Chinese industry. Additionally, at the time of writing, SAMR is also reviewing the Keysight/Spirent deal, which similarly did not meet the turnover thresholds. SAMR also reportedly also called-in the Qualcomm/Autotalks deal, which Qualcomm ultimately abandoned in March 2024 due to antitrust concerns, particularly in Europe and the U.S.[7]

Synopsys/ Ansys. The USD 35 billion proposed acquisition of Ansys by Synopsys has been confirmed to have been called-in despite not meeting the turnover thresholds in China.[8]

The deal parties are broadly active in simulation software and electronic design automation tools and have reportedly significant key strategic sectors in China, including semiconductors, automotive and aerospace. The deal has been approved in the EU subject to a divestment remedy but SAMR is still reviewing the transaction at the time of writing.

Table 1: Key milestones of Synopsys/Ansys transaction in China

Indicative dates	Milestone
15 January 2024	Deal parties announce transaction
14 May 2024	SAMR issues notice to deal parties to call-in transaction
10 July 2024	Deal parties make notification in response to SAMR's notice
9 Jan 2025	The EC approves deal subject divestment
First half of 2025	Closing timeframe

Keysight/ Spirent. Keysight has also confirmed that its USD 1.46 billion proposed acquisition of Spirent has been notified to SAMR despite reportedly not meeting the turnover thresholds.[9] Both Keysight and Spirent provide test and measurement equipment used in critical downstream applications such as high-speed Ethernet and telecommunications, etc. The deal parties have been engaging with SAMR and notified the deal in November 2024.

(3) Antitrust investigations

In February 2025, following the imposition of tariffs on Chinese products by the newly elected U.S, President, SAMR announced antitrust actions against Google. There have also been rumors of antitrust actions against other U.S. Big Tech companies.

6. Article 26 of the *AML*.

7. US Federal Trade Commission's Press Release (25 March 2024), please see: *https://www.ftc.gov/news-events/news/press-releases/2024/03/statement-regarding-termination-qualcomms-proposed-acquisition-autotalks*.

8. Public Announcement of Ansys, Inc. (12 July 2024), please see: *https://investors.ansys.com/static-files/f81c9991-0a27-4422-803b-2cfbfc76a22d*.

9. Public announcement of Keysight: https://www.businesswire.com/news/home/20241201010321/en/Update-on-Regulatory-Clearances-for-Recommended-Cash-Acquisition-of-Spirent-Communications-by-Keysight

07 Enhancing Antitrust Rules Concerning IPR to Promote Innovation

Outlook for 2025

New antitrust regulations introduced in 2024 cover SEPs and pharmaceuticals, prompting patent holders to review their asset management practices for potential antitrust issues. Given the current economic situation, patent implementers are likely to be more sensitive to licensing fees.

For patent holders in 2025, key priorities will include maintaining positive relationships with implementers, conducting negotiations in good faith, and preventing disputes from evolving into antitrust conflicts. Particularly, in civil litigations, more licensing parties are using antitrust litigation as leverage in licensing negotiations. That said, recent decisions by the SPC indicate that Chinese courts may maintain a balanced approach when assessing whether intellectual property rights ("**IPR**") holders have market dominance or have engaged in abusive practices.

Striking a balance between encouraging innovation, protecting IPR, and ensuring fair market competition has always been a central theme in antitrust discussions related to IPR. In 2024, SAMR officially released the *Antitrust Guidelines on Standard Essential Patents* ("**Antitrust Guidelines on SEPs**"). These guidelines clarify the boundaries between SEP licensing and antitrust regulation while emphasizing both *ex-ante* (preventive) and ongoing oversight. The goal is to use more flexible enforcement measures to guide patent holders in mitigating antitrust risks.

Moreover, in the pharmaceutical sector, which faces patent issues more frequently than any other industry, SAMR issued the *Draft Antitrust Guidelines for the Pharmaceutical Sector* (the "**Draft Pharmaceutical Antitrust Guidelines**") for public consultation, providing more guidance on enforcement of antitrust regulation of pharmaceutical IPR.

Judicial perspective

The SPC released the 2024 Antitrust Judicial Interpretation. For the first time, this clarified the factors considered by Chinese courts when determining the market dominance of IPR holders.

The SPC also delivered an appellate judgment in the first case concerning the refusal to license a non-SEP as an abuse of dominance. This ruling overturned the previous finding that the patent holder held a dominant market position. The judgment emphasized the importance of "careful adjudication" in the realm of IPR and antitrust, highlighting the need for meticulous analysis and consideration in these complex legal intersections.

1. Further Refinement of Antitrust Rules for SEPs

With the widespread adoption of 5G standards and the proliferation of the Internet of Things ("**IoT**"), the global wave of disputes over 5G SEPs has resurged. Against the backdrop of strengthened antitrust enforcement, the issue of SEPs is poised to become the next battleground.

To align with international governance trends and industrial development imperatives, SAMR expedited the formulation of antitrust rules for SEPs. In November 2024, it issued the Antitrust Guidelines on SEPs, clarifying, from a Chinese perspective, the boundaries between the legitimate exercise of SEP rights and antitrust regulation. These guidelines embody a spirit of balancing the interests of SEP holders and implementers:

- First, the Antitrust Guidelines on SEPs introduce for the first time a set of "best practices" covering information disclosure, licensing commitments, and good-faith negotiations related to SEPs. Antitrust enforcement agencies encourage SEP holders to disclose SEP information in a timely and comprehensive manner, make fair, reasonable, and non-discriminatory ("**FRAND**") licensing commitments, and engage in good-faith licensing negotiations with implementers. Whether SEP holders and implementers meet the "standards" and guidance laid out in this chapter will be a key factor for enforcement agencies when analyzing potential abuse of market dominance by SEP holders.

- Second, the guidelines clarify the criteria for determining abuse of market dominance in SEP licensing. The Antitrust Guidelines on SEPs leave some room for SEP holders to argue that they do not hold a dominant market position in individual cases. For example, the guidelines allow consideration of factors such as whether there are close substitutes within different standards or technologies, the objective conditions and actual ability of implementers to constrain SEP holders, the downstream product market's reliance on the SEPs, and the possibility of replacing the SEPs. Additionally, the guidelines provide rules and considerations for identifying specific types of abusive behavior, including excessive pricing, refusal to license, tying, imposing unreasonable

transaction conditions, discriminatory treatment, and abusive use of injunction relief.

- Third, the guidelines specify the criteria for identifying anticompetitive agreements related to SEP licensing. On the one hand, The Antitrust Guidelines on SEPs highlight the potential risks of exclusionary conduct constituting joint boycotts at different stages of standard-setting and implementation. On the other hand, while recognizing that patent pools typically promote competition, the guidelines caution businesses to avoid using patent pools to exchange competitively sensitive information (such as prices or quantities), exclude competing patents, jointly restrict SEP holders from granting individual licenses, or use the patent pool as a hub to facilitate anticompetitive agreements between SEP holders.

2. Antitrust Regulation of Pharmaceutical Patents Becomes a Key Focus

R&D achievements in the pharmaceutical sector have a direct bearing on public health and safety. This sector is characterized by high levels of technical innovation and market concentration. It is therefore crucial both to protect IPR to incentivize innovation and at the same time to regulate the abuse of IPR and unlawful market monopolization to maintain fair competition.

The Draft Antitrust Guidelines for the Pharmaceutical Sector provide guidance on antitrust compliance concerning unique commercial practices in the pharmaceutical sector involving IPR, such as originator drug "product hopping", reverse payment agreements, and transactions related to pharmaceutical IPR. The key points include:

- **Originator drug "product hopping" may constitute abuse of market dominance**: "Product hopping" is a practice employed by originator drug companies to avoid competition from generics. This involves making non-substantial modifications to existing patented technology and reapplying for patent, effectively extending the patent's protection period. For the first time in the context of the substantive rules of the AML, the draft guidelines suggest that product hopping by originator drug companies could constitute a novel form of abuse of market dominance. The guidelines emphasize assessing whether the new patented drug represents non-substantial improvements - such as merely altering the dosage form or combination - without significantly enhancing the drug's utility, efficacy, or safety (i.e., whether it constitutes "pseudo-innovation").

- **Clarification of factors for determining the illegality of reverse payment agreements as anticompetitive agreements**: Reverse payment agreements involve the patent holder (typically an originator drug company) paying compensation or other benefits to (potential) patent challengers (typically generic drug companies) in exchange for delaying the market entry of generic drugs or, in some cases, withdrawing the patent challenge entirely. The draft guidelines outline factors for assessing whether a reverse payment agreement constitutes an anticompetitive agreement, including: (i) whether the amount of the reverse payment significantly exceeds the cost of resolving the patent dispute without reasonable justification, (ii) the likelihood of the challenged patent being invalid, and (iii) whether the agreement effectively extends the period of the exclusivity of the patent holder or obstructs the entry of generic drugs into the relevant market.

- **Transactions involving pharmaceutical IPR may constitute concentrations of undertakings**: Article 34 of the draft guidelines highlights that the pharmaceutical industry is an IPR-intensive sector. Transactions involving pharmaceutical IPR that grant one undertaking control over another or the ability to exert decisive influence may constitute a concentration of undertakings. Specifically, pursuant to Article 20 of the Antitrust Guidelines for the IPR Sector, the analysis of

whether the transfer or licensing of IPR constitutes a concentration of undertakings may consider the following factors: (i) whether the IPR constitutes an independent business, (ii) whether the IPR generated independent and calculable revenue in the previous fiscal year, and (iii) the manner and duration of the IPR licensing.

3. Strengthening Ex-Ante and Ongoing Supervision of IPR Antitrust

The Antitrust Guidelines on SEPs explicitly emphasize the need to strengthen *ex-ante* and ongoing supervision. Antitrust enforcement agencies may employ the "Three Letters and One Notice" system, including reminders, urging compliance, interviews for rectification, and other measures to enhance supervision. These methods require standard-setting organizations, managers or operators of patent pools, holders of SEPs, and standard implementers to propose improvement measures and proactively address and rectify any contentious issues. In practice, antitrust enforcement agencies have already implemented *ex-ante* and ongoing supervision measures in 2024 for potential antitrust issues in the licensing of SEPs in the automotive wireless communication industry. These measures aim to guide patent holders in mitigating antitrust risks.

SAMR Takes Issue with Avanci Patent Pool, Issuing Reminder and Providing Guidance on Avoidance of Antitrust Risks

On June 27, 2024, SAMR met with representatives of the Avanci patent pool and formally delivered a letter of reminder. SAMR highlighted potential antitrust risks associated with the licensing of SEPs for automotive wireless communication and urged Avanci to conduct a thorough risk assessment in order to make sure it complied with the AML. Avanci was instructed to take effective measures to strengthen its antitrust compliance, and mitigate antitrust risks.

According to an official statement released by Avanci the following day, SAMR's communication primarily focused on licensing solutions Avanci offers to Chinese automotive manufacturers. Similar to antitrust enforcement agencies in other jurisdictions, SAMR provided guidance on Avanci's collective licensing practices.

Based on currently available public information, although SAMR has not disclosed the specific behaviors of the Avanci patent pool that might violate the AML, the above case indicates that SAMR has started paying close attention to antitrust risks associated with patent pools and SEP licensing similar to those of the Avanci patent pool.

It is anticipated that after the issuance of the Antitrust Guidelines on SEPs, antitrust enforcement agencies will further strengthen antitrust enforcement in the communications and Internet of Vehicles sectors using more flexible enforcement methods. These measures aim to strike a balance between efficiency and intervention, guiding negotiations between patent holders and licensees on patent licensing while placing greater focus on collective licensing arrangements and similar practices.

4. Judicial Responses to Balancing Antitrust and IPR Protection

Civil litigation involving the abuse of IPR rights has long been a focus of antitrust lawsuits. Article 33 of the 2024 Antitrust Judicial Interpretation explicitly states that merely owning IPR rights is insufficient to presume that the rights holder has a dominant market position. Instead, a comprehensive evaluation is required, taking into account whether the IPR itself is the object of transactions, the market power of the IPR and the goods enabled by it, the substitutability of supply and demand, and the innovation and technological developments in the relevant market. This includes assessing whether the IPR constitutes

a separate product market and whether the rights holder possesses a dominant market position.

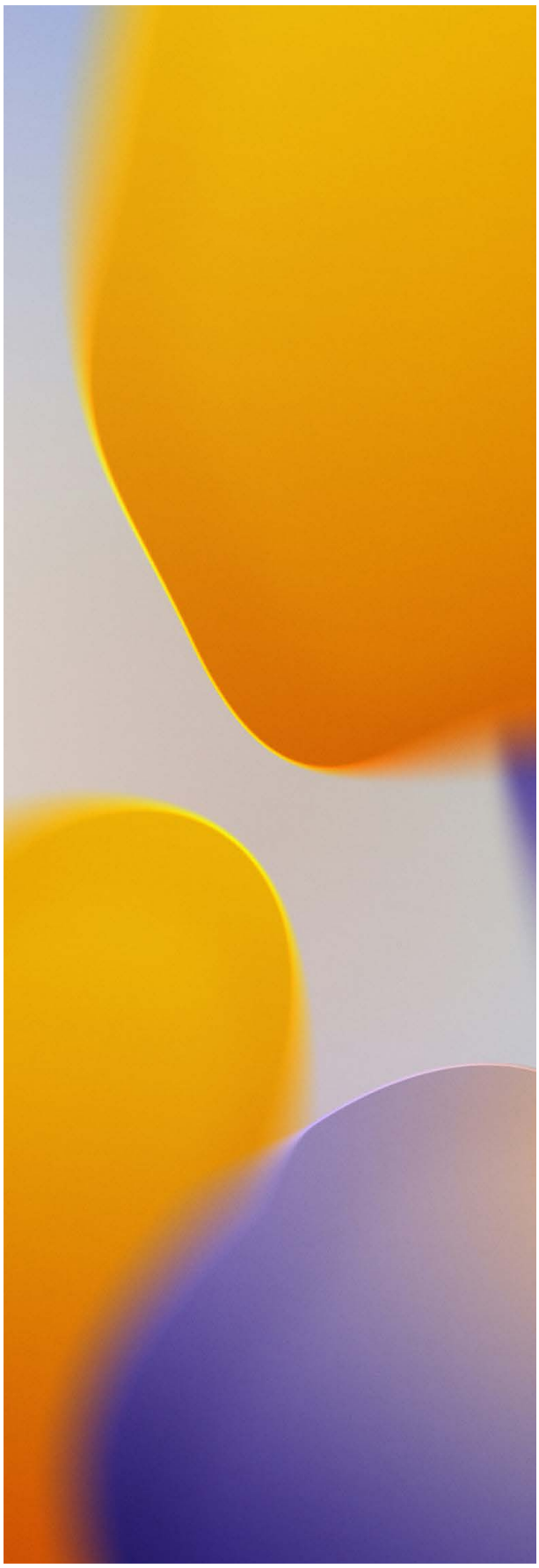
In practice, the SPC has already begun applying these considerations in adjudication to determine whether IPR rights holders have a dominant market position.

Assessment Market Dominance in Hitachi Metals Case – Reflecting the SPC's Cautious Approach

In the second-instance judgment of a civil dispute involving Hitachi Metals and four Ningbo-based magnet companies over alleged abuse of dominance, released in February 2024, the SPC concluded that the claimant failed to establish the irreplaceability of Hitachi Metals' patents on sintered NdFeB materials. The SPC defined the relevant product market as the market for production technology of sintered NdFeB materials, taking into account the substitutability in demand for this technology.

The SPC reasoned that the production technology for sintered NdFeB materials, being integral to the production of the materials themselves, meant that the market conditions for these materials would more accurately reflect the dynamics of the production technology market. Therefore, the market power of technology owners could be assessed by looking at the market share of sintered NdFeB materials. Based on this analysis, the SPC determined that Hitachi Metals did not hold a dominant market position.

The case has been published as a model case by the SPC, reinforcing this judicial perspective. This ruling, following the landmark 2023 *Yangtze River Pharmaceutical v. Hefei Medical and Pharmaceutical* case, is another example of the SPC's cautious approach in determining whether patent holders occupy a dominant market position and engage in abusive conduct. This underscores the judiciary's meticulous stance on such matters.



08 Leveling the Playing Field and Stricter Oversight on Local Protectionism

Outlook for 2025

On August 1, 2024, the *Regulations on Fair Competition Review* ("**Fair Competition Review Regulations**") officially came into effect, marking a significant milestone in the development of China's antitrust regime. Following the promulgation of the Fair Competition Review Regulations, local governments have commenced active review of existing policies and the incorporation of fair competition review processes into the formulation of new policies.

Looking forward to 2025, with enforcement driven by the implementation of the Fair Competition Review Regulations and the introduction of detailed implementation rules, administrative agencies are likely to review their decision-making and ensure the fair competition rights of businesses.

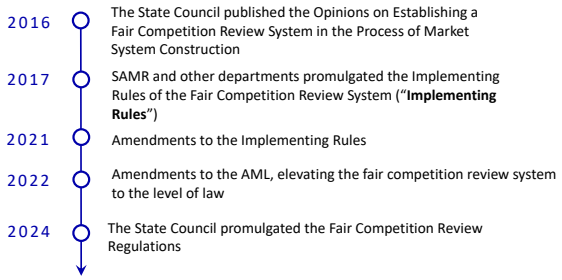
The fair competition review regime will continue removing administrative and policy barriers to market entry while potentially leading to changes in public-private cooperation models and subsidy systems. Businesses should assess the risks that potential policy adjustments may bring to their operations and formulate appropriate response plans.

The fair competition review system was established prior to the formal issuance of the Fair Competition Review Regulations. At its core, fair competition is defined as competition that is reasonable from the perspective of both the competitors and the public, and which avoids practices legally recognized as harmful to public interest and consumer welfare. The State Council initiated this system as early as 2016, issuing documents to create a review mechanism specifically designed to regulate government policies and actions that could potentially exclude or restrict market competition. This initiative was aimed at promoting the adoption of fair competition principles by local governments across the nation. Despite these efforts, the fair competition review system was primarily governed by government regulations and lacked a robust legal foundation at a higher legislative level until 2022.

In June 2022, the fair competition review system was officially incorporated into the revised AML. On August 1, 2024, the Fair Competition Review Regulations were introduced, providing in the form of administrative regulations a comprehensive, systematic, and detailed set of provisions on the objects, standards, mechanisms, and oversight of fair competition review. This filled the legislative gap in the fair competition review regime and truly completed the "legal upgrade" of the system from a policy to an important national legal framework.

According to data published by SAMR, the fair competition review system, from its initial introduction through June 2024, has seen a total of 1.6 million policy measures reviewed nationwide, and 93,000 policy measures that exclude or restrict competition abolished or amended. The implementation of the Fair Competition Review Regulations and a series of supporting regulations this year is expected to trigger another enforcement wave from the central to local levels in China.

Legislative development of China's fair competition review legal framework:



Other administrative regulations and local laws on fair competition review promulgated in 2024 include:

- *Rules for the Handling of Fair Competition Review Complaints*
- *Rules on Fair Competition Review in the Field of Tendering and Bidding*
- *Regulations on Fair Competition Review Procedures (Provisional) in Beijing*
- *Measures for the Implementation of the Fair Competition Review System in Chongqing*
- *Measures for Fair Competition Review in Zhejiang*
- *Regulations on Promoting Fair Competition in Fujian*

With the elevation of the fair competition review system in the Chinese legal hierarchy, there has been a more active assessment of the fairness of local government policy measures. For businesses, the fair competition review system will mainly have the following impacts:

- Business opportunities obtained through cooperation with the government (such as exclusive arrangements in public/private cooperation agreements, cooperative arrangements with restrictive conditions, etc.) may be suspended or terminated due to violations of regulations;

- Government support received by businesses (such as government subsidies, government awards, etc.) may be suspended due to violations of the fair

competition review system, and payments received may need to be returned.

- The fair competition review system provides businesses with legal tools to supervise government policy-making behaviors.

1. Potential Impacts on Public/Private Cooperation

(1) Exclusive Trading Opportunities may be Suspended or Terminated due to Violations of Fair Competition Review Regulations

Articles 8 and 9 of the Fair Competition Review Regulations specifically prohibit policy-making bodies from creating policy documents that directly or indirectly restrict market entry and exit, as well as the free movement of goods and other factors ("**restrictive policies**"). In practice, these restrictive policies can lead to certain businesses gaining exclusive trading opportunities. For instance, a policy might allow only businesses registered locally to engage in specific activities, effectively granting these local businesses exclusive rights. Alternatively, a policy-making body might directly appoint a specific company or a particular category of businesses as the sole supplier for certain services or products, thereby providing them with exclusive trading opportunities.

These practices may be deemed illegal by fair competition reviews conducted through random checks, complaints, or supervisory inspections, leading to legal consequences such as mandatory revision or even abolition. Any exclusive purchase or cooperation agreement between the policy-making body and the benefiting company may also face the risk of termination. In the fair competition review cases published by market regulation authorities in recent years, such exclusive cooperation agreements have been terminated.

Exclusivity Clause in Electric Bike Service Agreement Terminated

In March 2020, a county people's government signed a "Strategic Cooperation Agreement for Pinecone Electric Scooter Project" with a company from Beijing and another from Tianjin, with a duration of five years. The document stipulated: "Party A (the county government) will be the sole partner for shared electric bicycle services in the county during the term of this agreement and shall not accept the deployment of shared electric bicycles from other brands. If any are found, they must be ordered to be removed." The provincial market regulation authority determined that this policy violated Article 8(3) of the Fair Competition Review Regulations, which prohibits "restricting the operation, purchase, or use of goods or services provided by specific undertakings". Ultimately, the county people's government terminated the agreement.[1]

Nevertheless, based on our observations, businesses are generally not required to return the unjust enrichment obtained during the period of exclusive cooperation after the relevant agreements are terminated, nor are they subject to corresponding administrative penalties.

(2) Could the Benefiting Businesses be Disqualified from Participating in Related Projects after the Restrictive Policies are Abolished?

The termination of a cooperation agreement with the government due to violations of the fair competition review system does not disqualify an offending company from participating in local government projects in the future. Once the policy documents are amended or abolished, if the underlying project

1. Representative fair competition review cases in Shanxi 2024: https://scjgj.shanxi.gov.cn/xwzx/dtyw/202412/t20241202_9714410.shtml

still needs to be carried out, the policy-making body would often restart the bidding process. In such bidding and announcements, we have not yet found cases of any company being disqualified.

City Rescinds Scooter Contracts to Open Market Competition

In 2022, a city's urban management bureau chose two shared two-wheeled electric scooter operating businesses through bidding and signed "Operation Service Contracts" with each of them, with a duration of five years.

The provincial market regulation authority found that the bureau limited the participants of the shared two-wheeled electric scooter service market, which should have been open to competition, to two businesses through the bidding process without proper legal or regulatory basis. This excluded and restricted other qualified businesses from entering the market and hindered fair competition in the market, thereby violating Article 39 of the AML.

During the investigation, the bureau actively conducted "rectification" (i.e., put right the process and agreements that were in breach of the regulations) and announced the abolition of the relevant contracts.

In November 2023, the bureau announced the full opening to competition of the city's shared two-wheeled electric scooter service market. According to its website announcement, the market will be open to all entities that "have the requisite service capabilities and a complete management team", without excluding the two businesses who previously participated in the operation.

2. Impact on Businesses' Ability to Receive Preferential Policies

(1) Risks Associated with Preferential Policies Under Fair Competition Review Regulations

Article 11 of the Fair Competition Review Regulations mandates that policy-making bodies should not develop policies that offer tax preferences to specific business operators or provide selective and differential financial rewards or subsidies that influence the production and operating costs of these operators ("preferential policies") unless there is a proper legal or administrative basis, or unless these policies have been approved by the State Council. From our experience with cases in this area, it is evident that local governments' tax incentives aimed at attracting investment, along with special rewards and subsidies directed at operators, are likely to breach the principles of fair competition review. These practices may risk contravening established guidelines intended to ensure equal competitive conditions for all business operators.

(2) Are Businesses Required to Return Benefits Already Received if the Relevant Policies are Amended or Abolished?

Based on previous policy documents, businesses can challenge the obligation to return benefits by citing the principle of non-retroactivity and the government's prior commitments. For example, the 2016 State Council's "Opinions on Establishing a Fair Competition Review System in the Process of Market System Construction" clearly states that "for preferential policies given to businesses in the form of contracts, agreements, etc., as well as policy measures that would result in significant impacts if immediately terminated, a transition period should be set to allow necessary buffering; for preferential policies that have been already implemented, benefits should not be retroactively revoked."

Regarding tax preferential policies, the State Council's *Notice on Matters Related to Tax and Other Preferential Policies* issued on May 10, 2015 also stated that "preferential policies in contracts already signed with businesses shall remain effective; benefits already implemented should not be retroactively revoked." In principle, if the local government requires the termination of related preferential policies, businesses can try to assert that the implemented preferential policies should not be returned and request a reasonable buffer period for the termination time.

However, since government preferential policies are highly discretionary — especially older policies not guided by unified higher-level laws—local governments often implement them differently. As fair competition reviews become stricter, local governments may require businesses to return benefits previously received under preferential policies. This risk is particularly high for businesses that received tax exemptions or refunds that could violate higher-level tax and finance laws. These arrangements may need to be returned or discontinued.

(3) Businesses' Supervision of Government's Policy Making

The fair competition review system offers businesses a mechanism to protect their interests against inappropriate government policy-making actions. For example, local governments often require businesses to establish a local branch to receive preferential policies. However, Article 9 of the Fair Competition Review Regulations clarify that such practices — forcing or indirectly forcing non-local businesses to establish local branches — hinder the free flow of goods and services and thus contravene the principles of fair competition. When facing unreasonable requirements from local governments, businesses can request fair competition reviews during negotiations. This review process can help persuade governments to withdraw their demands.

In addition, Article 22 of the Fair Competition Review Regulations stipulates a reporting/complaint process. Parties who believe they have been unfairly treated or illegally denied competitive advantages by applicable government policies can file complaints with market regulation authorities. These authorities are responsible for investigating and handling violations under the fair competition review system.

(4) How should businesses adjust and adapt to the fair competition review system?

The establishment and implementation of the fair competition review system plays a vital role in building a unified domestic market and a fair competition environment. That said, businesses will need to actively adjust their strategies for future negotiations and cooperation with local governments or others to maximize the protection of their rights and interests. Businesses should consider the following key points:

- Before entering any exclusive "cooperation agreement" with the relevant government, businesses should assess whether such exclusive cooperation is supported by higher-level laws and whether it may exclude or restrict local competition. They should look to minimize the risk of the agreement's later termination for lack of legal basis and violation of the fair competition review system, which may give rise to potential losses.

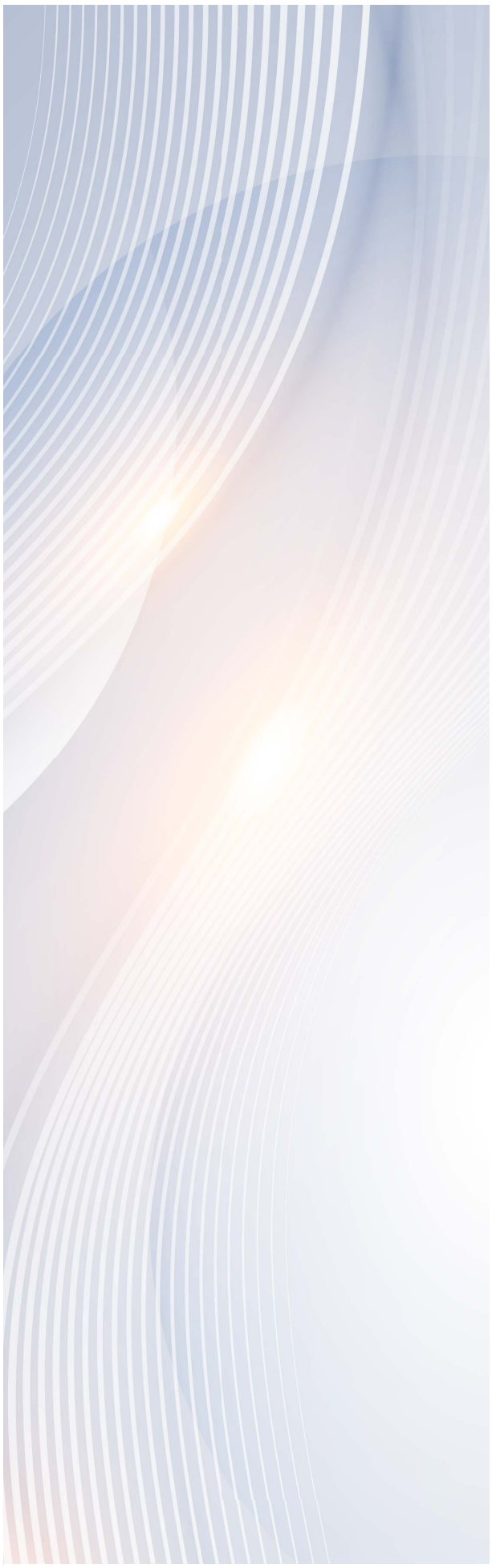
- Businesses can benefit from changing how they work with local government authorities. Instead of handling each matter individually, they should rely more on established policies and standard systems. This approach reduces uncertainty from case-by-case negotiations and creates a more stable, transparent operating environment.

- Businesses should review their existing preferential policies and promised future benefits to assess risks of withdrawal or non-implementation of such benefits by the local governments. They

should proactively engage with local government authorities to resolve any potential implementation issues early.

- The Fair Competition Review Regulations remain relatively generic. Local market regulation authorities may have different interpretations of the Fair Competition Review Regulations when conducting fair competition reviews and assessments. For example, the interpretation of "certain businesses" and the distinction between fiscal subsidies and fiscal rewards may still be open to debate. Businesses are advised to seek advice and assistance from external legal counsel when reviewing any agreements and preferential policies they may have with local governments and others.

- In the event businesses are harmed by policies and measures that violate the fair competition review system, they are encouraged to report to SAMR or local market regulation authorities.



09 Advancing Consumer Protection and Curbing Unfair Competition in the Platform Economy

Outlook for 2025

In 2024, two significant developments occurred in the area of the *Anti-Unfair Competition Law* ("**AUCL**"). The *Provisional Regulations on Anti-Unfair Competition on the Internet* (the "**AUCL Internet Provisional Regulations**") took effect in September, and the *Anti-Unfair Competition Law (Draft for Comments)* (the "**Revised Draft AUCL**") passed its first review by the Standing Committee of the National People's Congress in December.

Entering 2025, the legal framework for anti-unfair competition is expected to expand, with increased enforcement and judicial proceedings. In the digital economy, more consumers and platforms are likely to resolve their commercial disputes through anti-unfair competition complaints and civil lawsuits.

In 2024, China made significant progress in developing the Anti-Unfair Competition Law (the "**AUCL**") regime, focusing on digital economy regulations. The AUCL Internet Provisional Regulations set tougher compliance rules for internet platforms. The Revised Draft AUCL also tackles new challenges that have emerged from rapid economic and tech changes.

Set to take effect in 2025, the Revised Draft AUCL focuses extensively on the digital economy. It extends beyond traditional antitrust law by regulating more potentially harmful competitive behaviors and placing additional responsibilities on platforms and large enterprises.

1. The AUCL Internet Provisional Regulations will Provide Specific Dos and Don'ts for Digital Platforms

The AUCL Internet Provisional Regulations establish a structured framework to address the complexities and unpredictabilities of the digital economy. The regulations examine how traditional unfair competition has evolved in the digital space and introduce new measures to address gaps in previous regulatory oversight. Additionally, they build upon Article 12 of the existing AUCL, which pertains to online competition (the "**Internet-Specific Provision**"). For digital platforms, these provisions serve as definitive guidelines for online competitive behaviors. They promote the constructive use of digital technologies while imposing higher standards for compliance, thereby fostering a fairer and more transparent online market environment.

- **Addressing evolved unfair competition practices in the digital realm through the AUCL Internet Provisional Regulations**: The AUCL Internet Provisional Regulations address new manifestations of traditional unfair competition behaviors that have evolved alongside internet technologies. These traditional practices, such as counterfeiting, false advertising, bribery, and defamation, now appear in modified forms in the digital economy. To tackle these challenges, the regulations have been expanded to cover a wide range of digital features, including apps, mini-programs, WeChat public accounts, livestreaming platforms, online stores, and gaming interfaces. Furthermore, the regulations specifically address internet-centric elements such as usernames, marketing copy, top comments, rankings, traffic data, and virtual property. They also confront emerging issues unique to the digital environment, like fake orders, artificial rating inflation, and incentivized positive reviews. By doing so, the AUCL Internet Provisional Regulations aim to ensure that the digital marketplace remains competitive and fair, preventing new forms of digital deceit and manipulation that could harm consumers and undermine the integrity of online commerce.

- **Refinement of the three types of unfair competition behaviors in the Internet-Specific Provision**: The AUCL Internet Provisional Regulations enhance the clarity in identifying and defining three specific types of unfair competition as outlined in the AUCL: traffic hijacking, malicious interference, and malicious incompatibility.

  - **Traffic hijacking**: While originally limited to illegal link redirection, this practice has expanded to include newer tactics like embedding products or services, using keyword association, and setting false operation options. These changes broaden the definition to encompass more subtle ways of unfairly diverting user traffic.

  - **Malicious interference**: This behavior now covers both interfering with other network applications and unfairly favoring one's own applications—practices that distort competition.

  - **Malicious incompatibility**: The regulations now detail seven key factors to assess malicious incompatibility, which include the subjective intent of the actions, their effects, the specific

targets involved, and the overall impact on competition. These criteria help determine whether actions are intentionally designed to exclude or limit the functionality of competitive offerings unfairly.

These refinements in the AUCL Internet Provisional Regulations aim to provide more precise guidelines for addressing evolving unfair competition practices on the internet, ensuring fair competition across digital platforms.

- **Expansion of the catch-all clause to regulate new types of unfair online competition behaviors**: The AUCL Internet Provisional Regulations expand the scope of the AUCL to address emerging market competition issues. The provisions now cover new types of unfair online practices, including fake orders for credit manipulation, malicious blocking, forced exclusivity, price discrimination, data-based price gouging, and illegal data scraping. These provisions offer clearer definitions of what constitutes unfair competition. The rules on malicious blocking set standards for how internet platforms must handle link blocking and connection refusal. For forced exclusivity and data-based price gouging, the provisions set lower thresholds for identification and enforcement compared to the AML, creating stricter compliance requirements for digital platforms. Looking ahead, we expect more digital platforms to use these provisions to resolve business disputes and protect their rights.

2. The Revised Draft AUCL Focuses on the Regulatory Oversight of Competition between Platforms and Large Enterprises

The Revised Draft AUCL was published for public comments on December 25, 2024. The previous version from 2022 used a single provision – "abuse of superior bargaining power" – to group several anticompetitive behaviors, including forced exclusivity, tying arrangements, and unreasonable trading conditions. In contrast, the new draft specifically addresses competition compliance issues for platforms and large enterprises. This revision clarifies the ambiguous and potentially arbitrary nature of the original "abuse of superior bargaining power" clause, making it a more effective complement to existing antitrust laws and regulations.

- **Imposing higher compliance obligations on digital platforms**: The revised draft of the Revised Draft AUCL strengthens obligations for internet platforms. It requires platforms to establish clear rules for fair competition in their general provisions, ensuring fair competition among businesses operating on their platforms. The draft also introduces detailed regulations for specific behaviors that may affect market competition. Article 13 addresses platforms' abuse of their rules and malicious transactions, while Article 14 tackles recent issues of predatory pricing by prohibiting platforms from forcing vendors to sell below cost. These measures demonstrate regulators' commitment to protecting the legitimate rights of platform sellers.

- **Focusing on the "superior bargaining power" issue of large enterprises**: While the "abuse of superior bargaining power" clause has sparked significant debate in both academic and business circles, the Revised Draft AUCL retains these provisions with key refinements. The draft clarifies the meaning of "superior bargaining power" and narrows its scope. Article 15 defines this "superior bargaining power" large enterprises hold over small and medium-sized companies in terms of capital, technology, trading channels, and industry influence. The law now specifically targets two types of abuse: imposing unreasonably burdensome trading conditions and forcing exclusive arrangements. These amendments strike a careful balance between protecting smaller businesses and ensuring clear, predictable law enforcement.

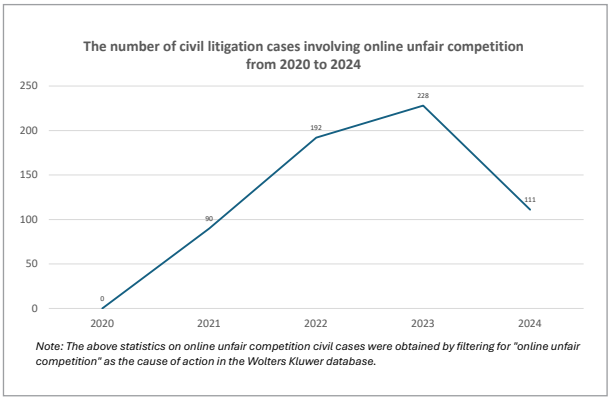
- **Further increases in fines lead to higher infringement costs for businesses**: The Revised Draft AUCL further increases the potential levels of fines. For example, the upper limit of fines for violating the provisions related to the regulation of digital platforms and large enterprises has been raised from CNY3 million to CNY5 million. The increases in potential fines significantly enhance the deterrent power of administrative law enforcement under the AUCL.

- **The regulatory scope extends to extraterritorial unfair competition behaviors**: The appendix of the Revised Draft AUCL added a provision targeting extraterritorial unfair competition behaviors that disrupt the market competition within China or harm the legitimate rights and interests of domestic businesses. In December 2023, the Intermediate People's Court of Chengdu adjudicated a case in which Youku sued Jifeng Technology. The unfair behavior involved in the case was that the VPN software operated by Jifeng Technology assisted overseas users in bypassing the IP address restrictions set by Youku for copyright protection, thereby allowing improper overseas use of Youku's streaming media services intended only for domestic users. Although users of Jifeng Technology's VPN software were located overseas, the improper competitive behavior affected market competition within China, falling under the jurisdiction of the AUCL. Although the extraterritorial effect clause might not have been operative in this case as Jifeng itself was registered in China, the clause is expected to be valuable in addressing jurisdictional challenges under the AUCL involving behaviors by foreign companies that affect market competition in China, such as foreign imposters of Chinese companies in recent years. The introduction of this clause may offer a new perspective for resolving such extraterritorial unfair competition behaviors. Having said that, how China's enforcement agencies and courts will investigate, enforce, and execute judgments against foreign companies remains to be further observed.

3. Focus on Cross-Department Joint Law Enforcement under the Market Regulation Umbrella

Along with the Revised Draft AUCL and AUCL Internet Provisional Regulations, the AML, E-Commerce Law, and Price Law also regulate unfair online trading. Together, they form a comprehensive framework to combat unfair practices. Given this comprehensive regulatory framework, we can expect an increase in coordinated enforcement actions by various regulatory authorities responsible for market oversight.

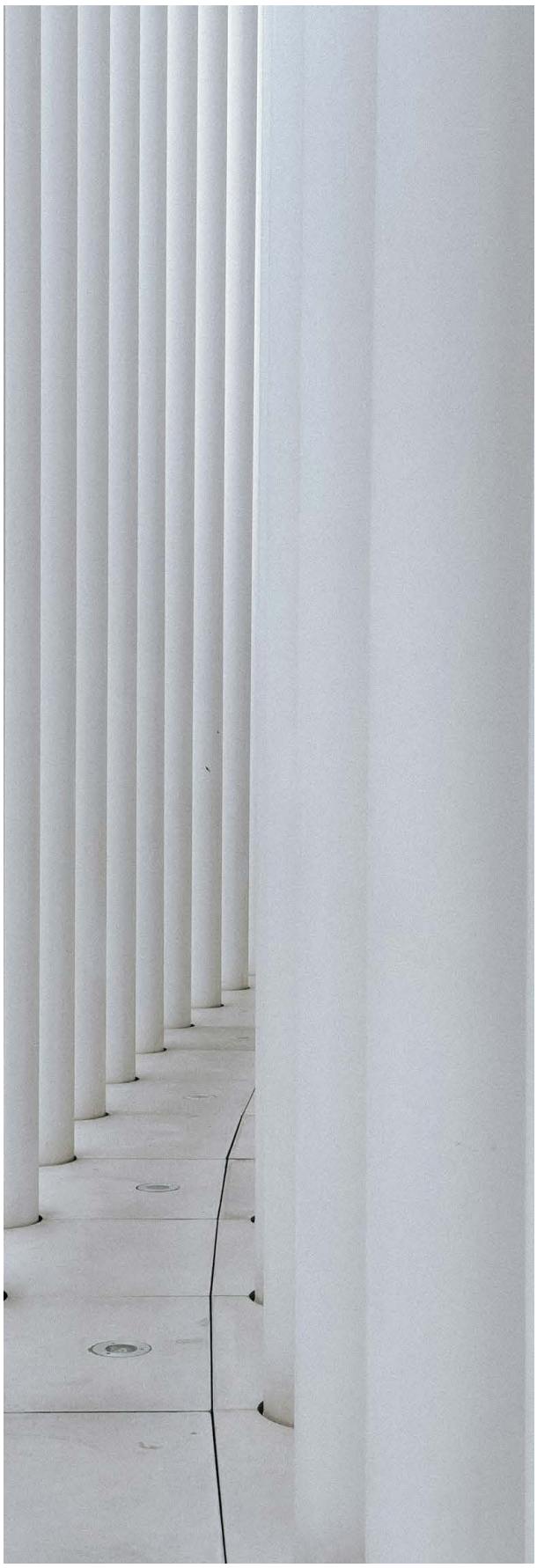
- **Regulatory overlap and complementarity among AUCL, AML, E-Commerce Law, and Price Law:** As the AUCL and its related legal framework evolve, they aim to improve market competition, supporting the objectives of AML. The AUCL sometimes overlaps with the AML, E-Commerce Law, and Price Law in regulating certain behaviors. While the Law of Administrative Penalties generally prevents double penalties under different regulations, businesses still face increased legal risks when multiple enforcement agencies coordinate their efforts under market regulation.



Note: The above statistics on online unfair competition civil cases were obtained by filtering for "online unfair competition" as the cause of action in the Wolters Kluwer database.

- **Anti-unfair competition civil litigations could be on the rise**: As the AUCL regulatory framework continues to evolve—particularly regarding digital platform competition—and with the new AUCL set to take effect in 2025, civil litigation over unfair competition is emerging as an effective way for parties to protect their rights. We anticipate increases in similar actions by consumers and digital platforms alike to protect individual rights and resolve business disputes.

- **Enterprises should pay more attention to the "legitimacy" and "reasonableness" of their business practices**: Unlike the antitrust regime, the AUCL and related regulations do not provide specific and detailed criteria as to what constitutes an abusive conduct. Therefore, consumers, market players and enforcement agencies alike enjoy more leeway and freedom in arguing for the abusiveness of a business' behaviors. Under the anti-unfair competition regulatory regime, businesses need to focus on the "legitimacy" and "reasonableness" of their behaviors. Specifically, businesses may refer to Article 26 of the AUCL Internet Provisional Regulations to assess whether their conduct is sufficiently legitimate and reasonable. Key factors to consider include frequency and duration of the conduct concerned, geographic and temporal impact, potential disruption to other businesses' operations, unjustified cost increases or traffic reduction for competitors, effects on end-user experience, and unfair competitive advantages. Businesses should evaluate these factors carefully to ensure compliance with the AUCL Internet Provisional Regulations and prevent violations.



10 Emerging Trends in Global Antitrust and Future Enforcement Directions in China

Outlook for 2025

As global economic integration deepens, government subsidies have emerged as a key factor influencing competition in international markets. The EU has increasingly tightened its regulation of foreign subsidies, with a particular focus on scrutinizing Chinese companies that benefit from government support. In 2025, this trend is set to intensify further, as the European Commission ("**EC**") continues to rigorously enforce the Foreign Subsidies Regulation ("**FSR**"), carrying out more comprehensive reviews of Chinese companies' investments and business activities within the EU.

Regulators globally are stepping up scrutiny about the potential "distortive" effects of subsidies on competition. The primary concern is that foreign subsidies, particularly from China, can unfairly disadvantage competitors "locally" that do not receive such support and destroy the fair competition environment of the local market. In the U.S., new merger control notification requirements under the Hart-Scott-Rodino ("**HSR**") Antitrust Improvements Act require that filing parties disclose financial contributions, particularly from China, including grants, tax credits, and direct cash payments. In Europe, the EC is now charged with administering the FSR, which regulates foreign subsidies that could distort the EU market through M&A transactions and public procurement projects above certain thresholds. The EC can also launch its own investigations (ex officio) into suspected market-distorting foreign subsidies based on complaints or market intelligence. Meanwhile, in China, the newly released horizontal merger guidelines also state that subsidies will be taken into account in competition assessments if there is evidence of their adverse effects.

In 2025, we expect the EC's enforcement under the FSR to remain active and vigorous. Chinese companies (particularly those in sensitive sectors where the EU believes China may be heavily subsidized) will remain under heightened scrutiny.

EU's FSR regime breaks ground on subsidy regulation

Within the first year of the FSR's operation, the EC received more than 100 M&A notifications and more than 1,300 public procurement notifications. Of these notifications, the EC initiated in-depth reviews of (i) one M&A transaction; and (ii) three public procurement projects. Almost 80% of all notified mergers to the EC involved notifications subject to both the merger control and foreign subsidy regimes. The EC also exercised its powers to conduct ex officio investigations in two cases relating to wind turbines and security equipment, which also involved a "dawn raid". As shown in the table below, all but one of the M&A transaction filings involved Chinese enterprises.

In-depth reviews and ex officio investigations in 2024

	Case	Date	FSR tool	Sector	Status
	In-depth review of bid by China state-owned train manufacturer for Bulgaria's public procurement tender for electric "push-pull" trains[1]	Feb 2024	Public procurement tool	Rolling stock	Closed after withdrawal of Chinese bids from tender
	Two separate in-depth reviews into bids by Chinese companies for Romania's public procurement tenders for the design/construction of a solar photovoltaic park[2]	Apr 2024	Public procurement tool	Solar	Closed after withdrawal of Chinese bids from tender
	First ex officio investigation of wind turbine sector, focusing on Chinese suppliers of wind turbines and expansion of wind farms in Spain, Greece, France, etc. [3]	Apr 2024	General investigations tool	Wind turbines	Ongoing
	Dawn raids of Dutch and Polish premises of Chinese firm active in the production and sale of security equipment[4]	Apr 2024	General investigations tool	Security equipment	Ongoing (subject to appeal of the EU General Court's rejection of an application for interim measures to suspend data provisions from China, etc.) [5]
	In-depth review of Emirates Telecommunications (e&)'s acquisition of PPF Telecom Group, a European telecoms operator[6]	Jun 2024	M&A tool	Telecommunications	Cleared with conditions

[1] See, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_887.
[2] See, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1803.
[3] See, https://ec.europa.eu/commission/presscorner/detail/en/speech_24_1927.
[4] See, https://ec.europa.eu/commission/presscorner/detail/en/mex_24_2247.
[5] See, https://eur-lex.europa.eu/eli/C/2024/5824/oj/eng.
[6] See, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3166.

Key FSR cases

First M&A transaction conditionally approved – the proposed acquisition by Emirates Telecommunications Group Company PJSC ("**e&**") of PPF Telecom Group BV ("**PPF**").

On September 24, 2024, the EC approved e&'s acquisition of PPF for the first time with behavioral restrictions after 107 days of intensive review.

The EC found that the foreign subsidies received by e& did not have an actual or potential adverse effect on competition during the acquisition process of the acquisition transaction, but could distort competition in the EU market after the transaction. In particular, according to the press release issued by the European EC in this case, we can see that unlimited liability guarantees are considered as subsidies that are "highly likely to distort the EU market".

To counter the distortive effects of subsidies, the EC has evaluated and accepted these remedial measures:

- Articles of Association Commitment: e& commits that its articles of association will not deviate from ordinary UAE bankruptcy law, thereby removing the unlimited State guarantee.
- Funding Restrictions: Emirates Investment Authority and e& are prohibited from providing any funding for PPF's activities in the EU internal market. Exceptions apply to certain non-EU activities and "emergency funding", which the EC will scrutinize strictly. All other transactions between these companies must follow market terms.
- Future Acquisition Notifications: e& is required to report future acquisitions to the EC, even when these acquisitions fall below the notification thresholds in the FSR.

First case appealed - EC's dawn raid against a Chinese security equipment manufacturer

In April 2024, the EC conducted a dawn raid of the European premises of a Chinese security equipment manufacturer under the FSR for the first time. The EC has powers to conduct raids as part of preliminary investigations when there are indications that foreign subsidies are distorting the EU market.

In response, the Chinese security equipment manufacturer appealed the use of such powers to the EU General Court. The EU General Court confirmed that the EC has very broad enforcement powers in relation to dawn raids: the EC has power to inspect the EU premises of non-EU companies and request information stored on servers outside the EU. Although the company raided may claim that complying with EU laws could lead to violations of foreign laws, the EU General Court has set a very high standard for burden of proof, making it difficult for these defenses to succeed.

When cooperating with enforcement authorities in other jurisdictions by providing requested information, Chinese companies must ensure that the cross-border transfer of requested data is in compliance with Chinese laws and regulations, including Data Security Law, Personal Information Protection Law,

Measures for Security Assessments of Data Export, State Secrets Protection Law, and the Anti-Espionage Law, etc.

Based on the ruling of the EU General Court in this case, if the company raided by EC would like to refuse the EC's data request on grounds of conflicts with Chinese laws, it has to prove that (i) it has applied to Chinese authorities for permission to provide data to the EC but was rejected; and (ii) submitting the requested data to the EC without authorization from China would expose relevant employees of the company to severe legal liabilities under Chinese laws (such as criminal liability).

Impact on Chinese investments and operations

The EC's track record so far indicates that the FSR has heavily scrutinized the investments and operations of Chinese businesses. Chinese companies engaging in M&A transactions or participating in public procurement projects in the EU are more likely to be subject to EU foreign subsidy scrutiny, especially in industries that enjoy high levels of government subsidies. Specifically:

- In 2024, the EC updated its report on "state-induced distortions in China's economy", which included an in-depth analysis of alleged distortions across multiple Chinese industries. The report, spanning over 700 pages, covers more than 20 industries and over 250 Chinese companies, including but not limited to steel, aluminum, chemicals, ceramics, telecommunications, semiconductors, railway vehicles, environmental products (renewable energy), and new energy vehicles. The sectors outlined in this report may guide future investigations.

- The EU has published other reports setting out sectors where China may be heavily subsidized, including marine facilities and shipping, non-ferrous metals, artificial intelligence, biomedicine, manufacturing, new materials.

On 9 January 2025, China's Ministry of Commerce ("**MOFCOM**") concluded a six-month investigation into the practices of the EC in administering the FSR, and found that the FSR constituted a "trade barrier" that harmed the competitiveness of Chinese enterprises operating in the EU. MOFCOM found that the EC practices in conducting FSR reviews and investigations selectively targeted Chinese companies and relied on ambiguous definitions in the assessment of "foreign subsidies" and "market distortions".

MOFCOM has stated its intention to pursue bilateral negotiations and other appropriate measures to urge the EU to modify its FSR practices, ensuring that Chinese companies can invest and operate in the EU fairly and without discrimination.

China's pre-eminent competition practice

Since its inception in 2008, China's antitrust regime has quickly evolved to become one the world's most influential and active systems alongside that of Europe and the United States. Our team continues to be the market leader in defending clients before China's competition authority across all competition matters.

Your antitrust contacts

Michael Han
Antitrust Partner, Beijing / Shanghai
E: michael.han@fangdalaw.com

Caroline Huang
Antitrust Partner, Beijing
E: caroline.huang@fangdalaw.com

Jin Wang
Antitrust Partner, Beijing / Hong Kong
E: jin.wang@fangdalaw.com

Bivio Yu
Antitrust Partner, Beijing
E: bivio.yu@fangdalaw.com

Christoph van Opstal
Antitrust Partner
(Registered Foreign Lawyer)
christoph.vanopstal@fangdalaw.com

No 1 across the board

Antitrust and Competition (PRC Firms): Tier 1

The Legal 500 - China, 2025

Competition/Antitrust (PRC Firms): Band 1

Chambers Greater China, 2024

GCR100 Chinese Law Firm: Elite

Global Competition Review (GCR) 100, China Jurisdiction, 2024

Competition/Antitrust: Outstanding

Asialaw Profiles, 2023

Competition/Antitrust Firm of the Year

Legal expertise awards, Regional Awards, Asialaw Awards, 2022/23

Beijing

27/F, North Tower
Beijing Kerry Centre
1 Guanghua Road
Chaoyang District
Beijing 100020, China

Tel: +86 10 5769 5600
Fax: +86 10 5769 5788

Guangzhou

66/F, Guangzhou CTF
Finance Centre
6 Zhujiang East Road
Zhujiang New Town
Guangzhou 510623, China

Tel: +86 20 3225 3888
Fax: +86 20 3225 3899

Hong Kong

26/F, One Exchange Square
8 Connaught Place, Central
Hong Kong

Tel: +852 3976 8888
Fax: +852 2110 4285

Nanjing

38/F, Asia Pacific Business Building
2 Hanzhong Road
Gulou District
Nanjing 210005, China

Tel: +86 25 8690 9999
Fax: +86 25 8690 9099

Shanghai

24/F, HKRI Centre Two,
HKRI Taikoo Hui
288 Shi Men Yi Road
Shanghai 200041, China

Tel: +86 21 2208 1166
Fax: +86 21 5298 5599

Shenzhen

9/F, Tower One, Kerry Plaza
1 Zhong Xin Si Road
Futian District
Shenzhen 518048, China

Tel: +86 755 8159 3999
Fax: +86 755 8159 3900

Singapore

1 Raffles Place #55-00
One Raffles Place Tower 1
Singapore 048616

Tel: +65 6859 6789
Fax: +65 6358 2345

---

www.fangdalaw.com