Llinks Client Alert

Antitrust and Competition

February 2021

Shanghai · Beijing · Shenzhen · Hong Kong · London

LLINKS Law Offices

通力律师事务所

Llinks awards in antitrust and competition

- Law Firm of the Year (China) : Client Service by *Chambers and Partners* (2020)
- Excellent Law Firm in Enterprise Compliance and Excellent Comprehensive Law Firm of the Year (Shanghai) by *China Business Law Journal* (2020)
- Leading PRC Law Firm in Antitrust and Competition by *LEGALBAND* (2016-2020)
- Leading PRC Law Firm in Antitrust and Competition by *Legal 500* (2017- 2020)
- Top Ten Firms in China's Power List by *Asian Legal Business* (2015, 2016)
- Leading PRC Law firm in Competition by *IFLR1000* (2017-2019)
- Leading PRC Law Firm in Antitrust and Competition by *Chambers and Partners (*2009-2011)

I. Legislation

1. The Anti-Monopoly Commission of the State Council issues the *Anti-monopoly Guidelines on Platform Economy*, in order to prevent monopolistic activities in the field of platform economy and protect fair market competition. Based on the *Anti-Monopoly Law*, the Guidelines consist of six chapters and twenty-four articles, including general provisions, monopoly agreements, abuse of market dominance, concentration of undertakings, abuse of administrative power to exclude restrictions on competition, and supplementary provisions.

Llinks Comments: One important issue in the Guidelines is relevant market definition. Previously, the draft provided that for certain cases, if the prescribed conditions are satisfied, the monopolistic activity can be directly determined without defining relevant market, which caused widespread controversy and the provision was ultimately deleted. Therefore, for Internet-related antitrust cases, it is still necessary to follow the traditional analysis path, starting with the definition of the relevant market, and applying the substitutability analysis. For bilateral or multilateral platforms, multiple relevant markets can be defined separately, and the mutual relationship and influence between each relevant market should be considered. Operators of platforms should pay more attention to and take into consideration of the transmission effects and foreclosure effects of its market dominance in relevant markets.

II. Law Enforcement

1. The State Administration for Market Regulation ("**SAMR**") releases its overview of 2020 anti-monopoly work, covering law enforcement, legal system and regulatory environment in 2020. It states that 108 antitrust cases were concluded, with a total fine of RMB 391 million; 481 cases of merger filing were filed, 473 of which were

closed, and 4 cases of merger filing were approved with restrictive conditions including Nvidia's acquisition of Melox.

2. The SAMR fined Vipshop RMB 3 million for unfair competition. From August to December 2020, in order to obtain competitive advantages and business opportunities, Vipshop developed and used a patrol system to obtain information of brands which are sold on both platforms of Vipshop and other companies, and use technical means to influence user choices, limit user traffic, block users and remove products. Vipshop diverted consumers' attention, traffic and transaction opportunities of brands, restricted sales channels of brands, and hindered and affected the normal operation of network products and services of brands and other operators.

III. Judicial Practice

1. ByteDance sued Tencent in the Beijing Intellectual Property Court, arguing that WeChat and QQ restrict users from sharing contents from Douyin, which constitutes a "monopolistic activity that abuses market dominance and excludes or restricts competition" prohibited by the *Anti-Monopoly Law*, and requested the court to order Tencent to immediately cease this activity and compensate ByteDance for economic losses and reasonable expenses of RMB 90 million. The Beijing Intellectual Property Court has officially accepted this case.

Llinks Comments: The monopoly dispute between ByteDance and Tencent becomes the first domestic antitrust lawsuit between online platforms after the issuance of the *Anti-monopoly Guidelines on Platform Economy*, which will provide practical experience for the definition of the relevant market and determination of the market dominance in the field of platform economy. It will further promote the implementation of antitrust systems including the *Anti-monopoly Guidelines on Platform Economy*. Simultaneously, regulatory authorities will also strengthen the law enforcement on monopolistic activities towards online platforms and the era of antitrust supervision in the field of platform economy has come. We suggest that platform operators evaluate their business models based on the legal framework under the *Anti-monopoly law*, and take prudent measures on unclear issues to cope with such new period of law enforcement.

2. The Intermediate People's Court of Jinhua, Zhejiang Province ruled on the unfair competition of Meituan (Jinhua Branch of Beijing Three Fast Technology Co., Ltd.) which requires some merchants to enter into exclusive transactions with Meituan. The judgment provides that Meituan used its market advantages to improperly hinder the business between a large number of merchants and its competitor, disrupted competition order, and seriously damaged the rights of Lazars Network Technology (Shanghai) Co., Ltd. (E Le Me) and the legitimate rights of merchants. Meituan should bear the civil liability to Lazars for its economic losses of RMB 1 million.

IV. Foreign Trend

1. The German Bundestag approved the Tenth Amendment to the *German Act against Restraints of Competition* submitted by German Government and the Federal Parliament, and the amendment to Germany's competition act comes into force. Key developments are centred around abuse of market power of the *German Act against Restraints of Competition*, in respect of assessing market power, new theories of abusing market power and new enforcement power. Beyond new theories of abuse of dominance, the amendment also introduces the changes of Cartels, merger thresholds, "killer acquisitions", etc.

2. The U.S. Department of Justice opens an antitrust probe against Apple and its "Sign in with Apple" feature. The problems stem from Apple's insistence that any app offering a third-party sign-in option from Google, Facebook or other services also include the "Sign In with Apple" option. Probing "Sign in with Apple" is a part of a broader antitrust investigation on Apple, and other investigations include allegations made by Spotify and Epic Games against the App Store's tight control and App Store fees.

About Llinks's Antitrust Compliance Services

To meet clients' ever-growing needs in antitrust compliance, Llinks assembled a team consisting of experienced antitrust compliance experts. The antitrust compliance team is comprised of former general counsels and compliance heads of fortune 500 companies and other leading Chinese companies, former law enforcement officers as well as transaction and litigation lawyers specialized in antitrust compliance in relation to sectors under stringent antitrust compliance regulatory framework, such as drugs and health, automobiles and auto parts, energy and chemicals, and finance and insurance.

Llinks team is capable of utilizing its profound knowledge and experience in serving all kinds of antitrust compliance needs of clients, including monopoly agreements, compliance of companies with dominant position, and merger filings. Based on its deep understanding of antitrust laws and clients' industries, Llinks team is well capable of advising clients on antitrust issues, assisting clients to establish internal antitrust compliance system, providing highly efficient merger filing services, and assisting clients to respond to administrative dawn raids.

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