Llinks Client Alert

Antitrust and Competition

January 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 General Office of the State Council issues the *Opinions on Cleaning and Regulating Charges for the Urban Water Supply, Power Supply, Gas Supply and Heating Supply Industry to Promote High-quality Development* formulated by the National Development and Reform Commission and other departments. The Opinions requires that the charge of public utility operators be regulated, and unreasonable fees incurred by forced services and bundled services should be strictly prohibited. Illegal activities such as non-implementation of government pricing or government-guided prices, charging unreasonable fees, reaching and implementing monopoly agreements, exclusion and restriction of competition by abusing dominant market positions and administrative power, are the main targets of the investigation and punishment conducted by regulatory authorities.

2. In order to strengthen the supervision and management of non-bank payment institutions and regulate the behavior of non-bank payment institutions, the People's Bank of China issues the *Regulations on Non-bank Payment Institutions (Draft for Comment),* which emphasizes the requirements of antitrust and fair competition in the payment field, and clarifies the scope of the relevant market and the standards for determining market dominance, so as to maintain a fair competition in the market order.

Llinks Comments: The *Regulations on Non-bank Payment Institutions (Draft for Comment)* innovatively provides an early warning mechanism for the market share of non-bank payment institutions. If an institution reaches the regulated market share, it may close to a dominant market position. The People's Bank of China and the anti-monopoly law enforcement agency will take measures such as interviews and verbal warnings, and such institution should be more cautious in its antitrust risks. It needs to be emphasized that although the relevant market for determining the market dominance is the "national electronic payment market", the standard of the early warning mechanism is the "non-bank payment service market", and non-bank payment institutions should pay attention to the distinction of these two standards.

II. Law Enforcement

1. The National Market Supervision Work Conference was held in Beijing. The conference requires strengthening anti-monopoly and anti-unfair competition regulatory work, taking various measures to standardize the online economic competition order, investigating and punishing a batch of typical cases of monopoly and unfair competition. Besides, it stresses that speed up the establishment of fair competition system, complete the draft revision of the *Anti-monopoly Law*, release the *Guidelines for Operators' Anti-monopoly Compliance*, vigorously implement the fair competition review system, and issue the first annual report on China's anti-monopoly enforcement.

2. In response to the phenomenon that the prices of domestic float glass and photovoltaic glass rose sharply in 2020, which led to difficulties for companies in downstream industries, the State Administration for Market Regulation, based on the clues of the whistle-blowing, conducts an investigation on China Building Glass and Industrial Glass Association for its alleged organization of some glass companies to reach a monopoly agreement.

Llinks Comments: According to public statistics, since the implementation of the *Anti-Monopoly Law*, the regulatory authorities have investigated and settled 29 monopoly cases organized by industry associations. At the end of 2020, the Sichuan Provincial Market Regulation Administration issued a fine of more than RMB 59.81 million in total against the Sichuan Cement Association (a fine of RMB 500,000) and its five member enterprises for implementing monopolistic activities. Business operators who are members of various industry associations should pay attention that, even if the industry association is the organizer and dominant player in monopolistic activities, it is difficult for the operators participating in the activities to avoid penalty, regardless of whether the operators sign the agreement, actively participate in the activities, or have objected to the agreement once. As long as the monopolistic agreement that excludes and restricts competition is reached and implemented, and the exemption conditions are not met, severe sanctions or even huge penalties may be imposed.

III. Judicial Practice

1. The Supreme People's Court amended the *Regulations of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Disputes Caused by Monopoly Behaviors*. Five amendments were made, involving the introduction, the definition of monopolistic civil disputes (Article 1), The jurisdiction of the court of monopolistic civil disputes (Article 3), market investigations or economic analysis reports (Article 13), the enforceability of the agreement (Article 15) and the statute of limitations (Article 16). The amendments take effect on January 1, 2021.

2. The Supreme People's Court issues the *Opinions on the People's Court Providing Judicial Services and Guarantees for the Construction of Hainan Free Trade Port*, which emphasizes strengthening judicial protection in the field of intellectual property rights, strengthening civil and criminal judicial protection for commercial secrets, restraining monopoly behaviors in accordance with the law, and accelerating the improvement of the application of the *Anti-monopoly Law* in the Internet and digital economy fields.

3. The People's Court of Haidian District of Beijing pronounced the judgment of the first case of unfair competition dispute over voice commands in smart products. The plaintiff Baidu Online Network Technology (Beijing) Co., Ltd. sued Beijing Zile Technology Co., Ltd. for its prominent use of "小杜" to refer to its product of Duyaya learning machine, and use of the voice command of "xiaodu xiaodu" to wake up and operate the machine. The Court decided that the behavior of the defendant constituted unfair competition.

IV. Foreign Trend

1. BGI Americas Corp., MGI America's Inc., and Complete Genomics, Inc. have filed suit against Illumina, Inc. alleging violation of federal antitrust statutes and California unfair competition laws. The complaint contends that Illumina obtained at least three of the patents Illumina has asserted against Complete Genomics in an unlawful, anticompetitive manner, and thus prevented the CoolMPS high-throughput sequencing reagent kits launched by MGI entering into the U.S. markets.

2. U.S. distributor Valve Corp, owner of the world's largest video game distribution platform Steam, and 5 video game publishers received a 7.8-million-euro EU antitrust fine for blocking cross-border sales in Europe. The penalty followed a four-year investigation, as part of the European Commission's crackdown on cross-border curbs on online trade.

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.

For more information, please contact:

David Pan

Mob: +86 136 2172 0830

Tel: +86 21 3135 8701

david.pan@llinkslaw.com

Nigel Zhu

Menglin Jia

Susan Deng