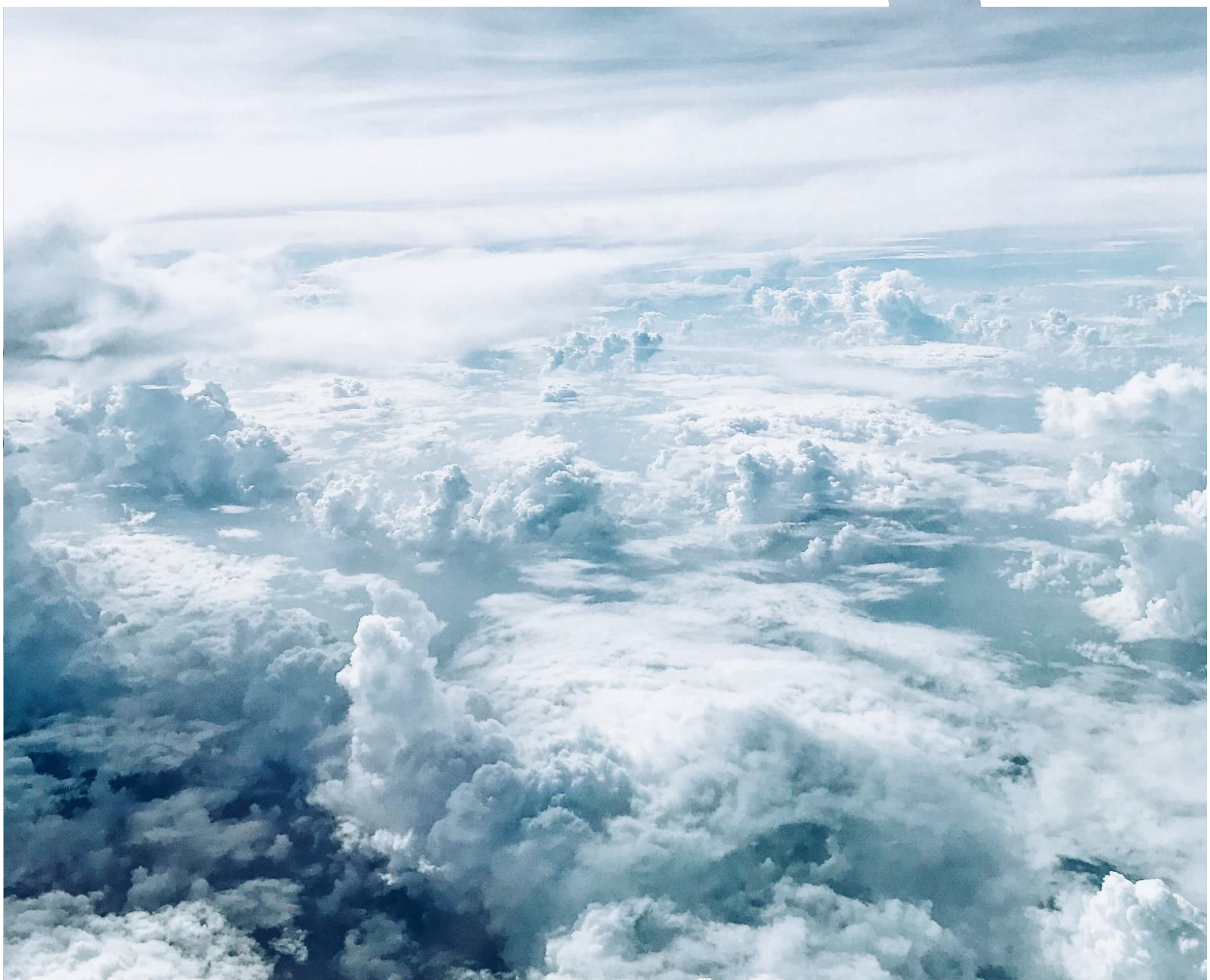
Llinks Client Alert

Antitrust and Competition

September 2020



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 State Administration for Market Regulation ("**SAMR**") issues the *Guidelines for Overseas Antitrust Compliance for Enterprises (Draft for comments)*. The draft consists of five chapters and twenty-five articles, including general rules, provisions of compliance management system, major compliance risks, and overseas antitrust compliance risk management and prevention, and supplementary provisions. It aims to guide businesses in establishing sound antitrust compliance management systems to prevent overseas antitrust risks.

2. The SAMR publishes the *Antitrust Compliance Guidelines* issued by the Anti-Monopoly Commission of the State Council ("**AMC**"), which aims to encourage businesses to raise the awareness of fair competition, establish an antitrust compliance system, recognize monopolistic conducts, and prevent antitrust compliance risks. The Guidelines only provide general rules for antitrust compliance and are not mandatory.

3. The SAMR publishes four antitrust guidelines, including the *Antitrust Guidelines for the Automotive Sector*, the *Antitrust Guidelines for Intellectual Property Rights*, the *Antitrust Guidelines for Application of Leniency in Horizontal Monopoly Agreement Cases*, and the *Antitrust Guidelines for Commitment Decisions in Monopoly Cases*. Previously, these four antitrust guidelines were included in the *Compendium of Antitrust Regulations and Guidelines of 2019* compiled by the Anti-Monopoly Bureau.

Llinks Comments: the SAMR's successive publication of antitrust guidelines offers certain insights: from the perspective of law enforcement, the guidelines refine and confine law enforcement actions; from the perspective of businesses, the guidelines provide detailed reference for corporates to evaluate their own antitrust compliance status and a framework to establish an antitrust compliance system. We recommend that businesses establish an antitrust compliance management system based on their business sector, scale and other conditions, design and implement business models based on such compliance management system, or conduct an antitrust compliance assessment on existing business models.

II. Law Enforcement

1. In response to the State Council's decision and deployment on fair competition review, law enforcement agencies across the country have been promoting their fair competition review work. For example, Lingang New Area in Shanghai incorporated the fair competition review system into their policies for strengthening competition; four departments of Gansu Province jointly issued a notice requiring that policies and measures affecting market economic activities must not be issued without fair competition review; Zhejiang Quzhou innovated the "3+1" mode for fair competition review.

2. The SAMR published 36 cases qualified for expedited merger review and unconditionally approved 55 cases, involving energy, technology, automotive, finance, food and other industries.

3. Taiwan-based LED giants Epistar and Lextar announced that they decided to reschedule their stock swap deal for their establishment of EnnoStar from October 20, 2020 to January 6, 2021, because it has not been approved by the SAMR. This case has been approved by Taiwan's Fair Trade Commission in early September, and it is still awaiting the antitrust clearance by the mainland China's regulatory authority.

4. The SAMR, the Shanghai agency and the Beijing agency jointly imposed administrative penalties in a total amount of RMB 61 million on two affiliated coffee companies and 43 other companies for violating the *Anti-Unfair Competition Law*. The companies were accused of falsifying key marketing metrics, using false marketing data in promotion and contributed to false advertising and promotion.

Llinks Comments: according to the provision in the *Anti-Unfair Competition Law* that "undertakings shall not assist others to make false or misleading market promotion by way of false transactions", parties contributing to false commercial promotion can also be legally responsible for false promotion activities. As the regulations in the *Anti-Unfair Competition Law* do not distinguish administrative penalties imposed on the implementing party and the contributory party for the false promotion, the regulatory authority may determine that the contributory party conducts a severe violation and thus impose a large amount of fines based on the duration of the violation, the degree of damage and the social influence.

III. Foreign Trend

1. The Italian Competition Authority (AGCM) announced that it had launched six investigations into unfair competitive practices in the cloud storage operations of Apple, Google, and Dropbox. These six simultaneous

probes are related to alleged unfair commercial practices and the existence of unfair terms and conditions in customer contracts, especially the terms of the collection and use of user data for commercial purposes.

2. The French luxury brand LVMH confirmed that it had submitted its proposed takeover of U.S. jewelry brand Tiffany & Co. for antitrust approval by the European Commission. Previously, Tiffany filed a lawsuit accusing that LVMH deliberately delayed the completion of the antitrust clearance in various countries, and requested to force LVMH to complete the acquisition as scheduled.

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

Susan Deng