

Antitrust Enforcement in China: 15 Years in Review and Its Near-Term Prospects

ZHENGUO WU & MINGMING WU

SINCE THE ANTI-MONOPOLY LAW (AML) took effect in 2008, China has made significant progress in antitrust regulation and enforcement. This article provides a review of China's antitrust regulation and administrative enforcement over the past 15 years, and an outlook of China's antitrust administrative enforcement prospects in the near future.

A Review of China's Antitrust Regulation and Administrative Enforcement Achieved Over the Past 15 Years

Guided by China's economic development and antitrust objectives, significant progress was made in antitrust regulation and enforcement across various sectors, with a primary emphasis on safeguarding consumer interests and supporting overall economic and social advancement. The highlights of these efforts are discussed below.¹

A Unified and Efficient Antitrust Enforcement System and the Fundamental Position of Fair Competition Policy. Given the technical complexity and challenges of antitrust enforcement, there have been continuous efforts to refine the enforcement system and to enhance the enforcement capabilities over the years. The Anti-Monopoly Commission under the State Council has been instrumental in organizing, guiding, and coordinating these efforts since the enactment of the AML. Initially, the antitrust enforcement responsibilities were divided among the National Development and Reform Commission (NDRC), the Ministry of Commerce (MOFCOM), and the State Administration for Industry and Commerce (SAIC), before consolidation under the State Administration for Market Regulation (SAMR) in 2018, eliminating potential overlapping issues

and streamlining the enforcement structure. The SAMR's Notice on Authorization for Anti-Monopoly Law Enforcement issued in December 2018 empowered local authorities for regional enforcement. Continuous training initiatives have been implemented to enhance the professionalism and competence of enforcement officials through educational resources such as the Theory of China's Anti-Monopoly Legislation and Enforcement Practices and the Anti-Monopoly Law Enforcement Handbook, alongside case studies.²

Over the years, the central government has established the fair competition policy through in-depth market assessments in 20 key fields and sectors, including automobile, steel, semiconductor, active pharmaceutical ingredients, and platform economy. It has also established an antitrust precedents database, launched pilot competition policies in the Hainan Pilot Free Trade Zone, and facilitated collaborations and synergies among agencies and across policy areas. Furthermore, the amended AML explicitly stipulates that China shall adhere to the principles of market orientation and rule of law and strengthen the fundamental status of competition policies. Efforts to promote fair competition and public education have been ongoing through advocacy campaigns and events such as the China Fair Competition Policy Publicity Week, the China Competition Policy Forum, and annual reports on antitrust enforcement.

A Comprehensive Legal System. Since its implementation, the AML has been crucial in safeguarding fair competition and enhancing economic efficiency and development in China. After a four-year revision process, the AML was amended on August 1, 2022, incorporating several key changes to adapt to the evolving economic landscapes of China and the globe, such as: (1) adding specialized guidance on antitrust regulation for the digital economy, (2) fortifying fair competition policies, and (3) imposing stricter legal penalties to incentivize more compliance.³

The SAMR then fortified the amended AML by issuing and implementing key regulations specific to monopoly agreements, abuse of dominance, abuse of administrative power, abuse of intellectual property rights, and mergers.⁴ In addition, the Anti-Monopoly Commission, under the State Council and the SAMR, issued guidelines to enhance regulatory clarity in various industries such as automobiles, intellectual property, and platform economies, and guidance on specific issues such as the leniency program.⁵

Lastly, the SAMR's operating rules for antitrust enforcement have been improved with detailed protocols, reporting mechanisms, and case review procedures to establish a standardized and efficient process, and to enhance transparency. All administrative penalty decisions and merger prohibition and conditional approval decisions are published online. Basic information of the filing parties of simple cases and of unconditionally approved merger cases are also published online.

Administrative Antitrust Enforcement.⁶ The Chinese antitrust agencies—the SAMR after consolidation, and NDRC, MOFCOM and the SAIC before consolidation—

Zhenguo Wu is a former Director of Anti-Monopoly Enforcement Division I of China's State Administration for Market Regulation (SAMR). Mingming Wu is a Ph.D. candidate at Peking University Law School

have engaged in significant administrative antitrust enforcement efforts to uphold fair competition, protect consumer interests, and promote innovation and economic growth.

First, between 2008 and 2023, the Chinese antitrust agencies conducted a total of 243 monopoly agreement cases and 109 abuse of dominance cases, as shown in Figure 1 and Figure 2, with fines and confiscations totaling RMB 39.4 billion. Notable cases in the platform economy sector, such as those involving Alibaba, Meituan, and Tencent, set regulatory precedents and demonstrated a commitment to antitrust enforcement in this domain. Other enforcement highlights include actions in public utilities, pharmaceuticals, automotive, and consumer goods sectors. In 2023, a specialized antitrust enforcement program was introduced, leading to investigations and penalties in sectors vital to public welfare, resulting in 39 abuse of administrative power cases, and fines and confiscations totaling RMB 294 million for 16 monopoly agreement cases and RMB 1869 million for 11 abuse of dominance cases, in 2023.

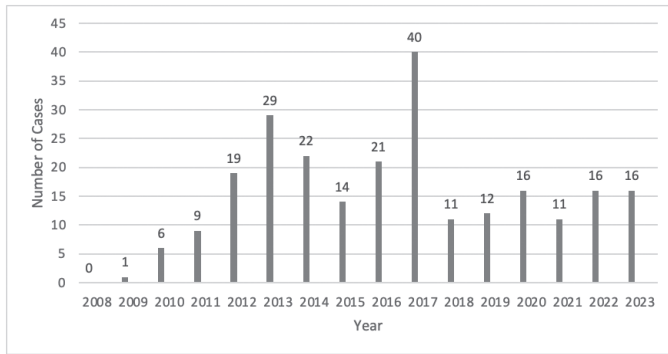


Figure 1 Monopoly Agreement Cases from 2008 to 2023

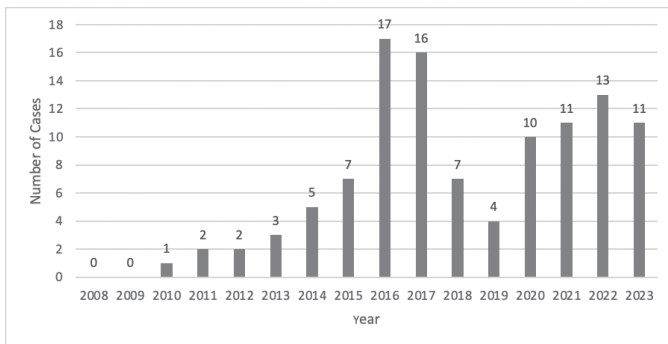


Figure 2 Abuse of Dominance Cases from 2008 to 2023

Second, the merger review process was significantly streamlined through initiatives such as simple case notification procedure and electronic submission, leading to enhanced

efficiency and quality. Between 2008 and 2023, 5,789 merger cases were reviewed (see Figure 3), including three prohibitions and 61 conditional clearances (see Figure 4). Semiconductors, biomedicine, and automobile manufacturing have been identified as priority industries to investigate, alongside overseeing mergers in state-owned enterprises in industries such as petrochemicals, steel, and ports. Economic analyses and market competition assessments have been refined to ensure accuracy of the agencies' analyses. With improved process and transparency, the average review period decreased by 141% from 62 days in 2012 to 25.7 days in 2023, with 98% of simple cases concluded at the preliminary review stage. Enforcement against non-compliance with notification procedure resulted in penalties for 289 instances of gun-jumping violations between 2008 and 2023 (see Figure 5). The implementation of categorized merger reviews at central and local levels, including pilot programs in key regions including Beijing, Shanghai, Guangdong, Chongqing and Shaanxi, has further bolstered efficiency and quality.

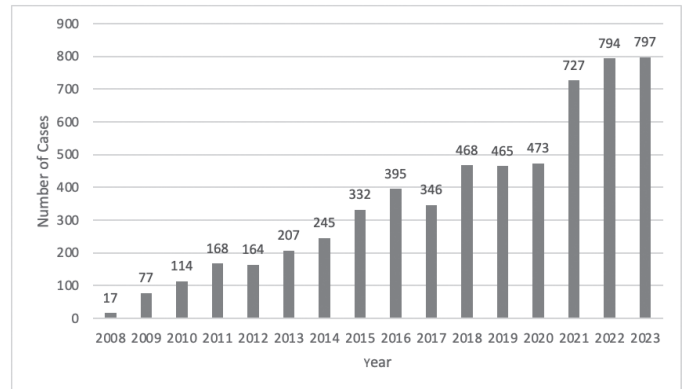


Figure 3 Cases of Concentration of Undertakings from 2008 to 2023

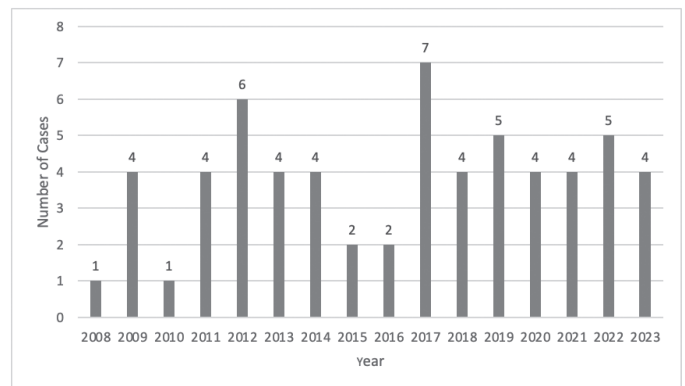


Figure 4 Cases of Concentration of Undertakings Approved with Conditions from 2008 to 2023

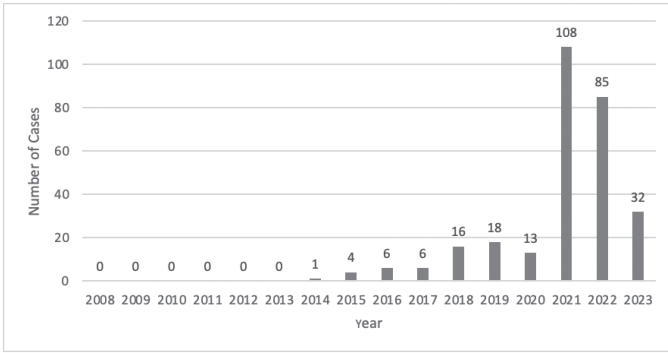


Figure 5 Cases of Implementation of Concentration of Undertakings in Violation of the AML from 2008 to 2023

Third, a comprehensive fair competition review system has been enacted to prohibit administrative monopolies and ensure a fair business environment. Between 2008 and 2023, the Chinese antitrust agencies have prosecuted 421 cases of abuse of administrative power leading to the elimination or restriction of competition (see Figure 6). In 2022, the SAMR conducted a dedicated administrative monopoly enforcement program, handling 73 cases that restricted transactions, impeded free trade, restrained non-local enterprises from participating in bidding, and set market entry thresholds unlawfully.

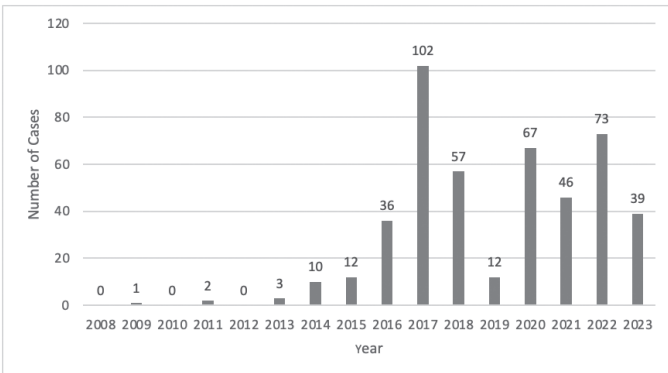


Figure 6 Cases Involving Abuse of Administrative Power to Eliminate or Restrict Competition from 2008 to 2023

International Exchange and Cooperation. China’s antitrust agency actively participates in international exchanges regarding competition policy and antitrust enforcement. It has signed 59 cooperation documents with antitrust enforcement agencies from 35 countries and regions, including the United States and the European Union. Collaborations have taken place with competition authorities in the United States, the European Union, Germany, Canada, India, South Africa, and other jurisdictions on dozens of

major cross-border merger review cases. The agency engaged regularly in bilateral and multilateral cooperation activities on competition policy, including with the United States and the European Union. It also participated in forums hosted by international organizations such as the United Nations Conference on Trade and Development (UNCTAD), the World Trade Organization (WTO), the Asia-Pacific Economic Cooperation (APEC), and the Organization for Economic Cooperation and Development (OECD), and antitrust conferences such as the annual Antitrust Law Spring Meeting organized by the ABA Antitrust Law Section.

An Outlook of China’s Antitrust Administrative Enforcement Prospects in the Near Future

Amid the evolution of the global economy, China’s economic progress is characterized by the continual emergence of new industries and innovative business models. Both online and offline markets are expanding concurrently and in an interconnected fashion, while the dynamics of competition and collaboration among market participants are experiencing significant transformation. Accordingly, China’s antitrust enforcement is facing the new challenges of vigorous expansion of capital and development of the digital economy, rapid evolution of technology, and innovation of business models. There have been profound changes in the methods, patterns, intensity, and complexity of competition, and it has become increasingly difficult to identify and evaluate anticompetitive conduct. Faced with these new challenges, development of China’s antitrust administrative enforcement in the following areas may be expected in the near future.

First, there may be a focus on strengthening the rule of law and improving the fair competition system, including improving the classified and tiered merger review system as well as refining the general review process to further enhance efficiency. The government may also issue sector-specific guidelines and enhance enforcement procedures for key industries and fields that are vital to the national economy.

Second, SAMR’s antitrust enforcement will likely continue to prioritize protecting fair market competition and enhancing economic growth. Antitrust regulations in the platform economy sector can be enhanced through studying the characteristics of the digital economy to establish targeted measures for more effective oversight. This includes analyzing monopolistic behaviors, issuing compliance guidelines, and encouraging compliance to uphold legal standards. Efforts may also focus on safeguarding consumer welfare, promoting innovation, and improving undertaking concentration reviews by identifying harmful “killer acquisitions,” optimizing notification processes, and refining early warnings system.

Third, the government may eliminate local protectionism and administrative monopolies in favor of a national unified market. The national unified market would allow

for such enhancements to the fair competition review system as expediting regulation formulation, implementing an assessment index, standardizing processes, establishing an independent review system, and improving the complaint reporting mechanism. It would likely be accompanied by stricter enforcement measures that target administrative monopolies, and industrial policies that facilitate a level playing field for all businesses.

Fourth, the government may engage in more in-depth evaluations of market competition to identify monopolistic practices that hinder the development of small and medium-sized enterprises (SMEs) and harm consumer welfare with tailored enforcement mechanisms. Systematic and adaptive strategies can be designed during antitrust enforcement by combining rigorous approaches such as administrative fines with flexible approaches such as administrative interview and guidance, industry guidelines, and rectification commitments, tailored to each case. Digitalized systems leveraging internet technologies will optimize regulation, while public awareness campaigns and training programs foster a fair competition culture. Social supervision is encouraged from industry groups, businesses, consumers, and media, promoting a multi-party governance model integrating corporate autonomy, industry self-discipline, government regulation, and social oversight for effective governance solutions.

Finally, we hope that international exchanges and cooperation on competition policy can be expanded with an open mindset. Maintaining openness is crucial amidst global protectionist trends. This approach extends to fostering a fair competition culture domestically and enhancing international collaboration through active participation in bilateral and multilateral exchanges, as well as international forums. ■

¹ For a more comprehensive overview, see Zhenguo Wu, *China's Path of Anti-Monopoly Regulation: Historical Review and Outlook*, 4 *TSINGHUA UNIV. L. J.*, 7-21 (2022).

² See THE ANTI-MONOPOLY BUREAU OF THE SAMR, CHINA'S ANTI-MONOPOLY LEGISLATION AND ENFORCEMENT PRACTICES (China Commerce Press ed., June 2020); THE ANTI-MONOPOLY BUREAU OF THE SAMR AND THE ANTI-MONOPOLY LAW ENFORCEMENT DIVISION I OF THE ANTI-MONOPOLY COMMISSION, ANTI-MONOPOLY LAW ENFORCEMENT HANDBOOK (2020, 2023).

³ Xinhua News Agency, The Decision of the Standing Committee of the National People's Congress of China on Amending the Anti-Monopoly Law (June 25, 2022), https://www.gov.cn/xinwen/2022-06/25/content_5697697.htm.

⁴ See, e.g., THE SAMR, INTERIM PROVISIONS ON PROHIBITING MONOPOLISTIC AGREEMENTS (June 26, 2019); THE SAMR, INTERIM PROVISIONS ON PROHIBITING ABUSE OF MARKET DOMINANCE (June 26, 2019); THE SAMR, INTERIM PROVISIONS ON CURBING ABUSE OF ADMINISTRATIVE POWER TO ELIMINATE OR RESTRICT COMPETITION (June 26, 2019).

⁵ See, e.g., THE STATE COUNCIL ANTI-MONOPOLY COMMISSION, ANTI-MONOPOLY COMPLIANCE GUIDELINES OF UNDERTAKINGS (Sept. 11, 2020); THE STATE COUNCIL ANTI-MONOPOLY COMMISSION, ANTI-MONOPOLY GUIDELINES OF PLATFORM ECONOMY (Feb. 7, 2021); ANTI-MONOPOLY GUIDELINES OF THE ACTIVE PHARMACEUTICAL INGREDIENTS SECTOR (Nov. 18, 2021).

⁶ Data in this section are collected from various sources, including STATE ADMINISTRATION FOR MARKET REGULATION, REVIEW AND PROSPECTS OF CHINA'S ANTI-MONOPOLY LAW (Aug. 1, 2018); WEN LIN, CHINA'S ANTI-MONOPOLY ADMINISTRATIVE ENFORCEMENT REPORT 2008-2015 (2016); Xinjian Xu, *Forging Ahead for the People: Safeguarding Fairness and Empowering Development Towards a New Journey—On the Occasion of the 15th Anniversary of the Implementation of the Anti-Monopoly Law*, CHINA ECON. NET, Aug. 1, 2023; JIANZHONG SHI, ANALYSIS AND INTERPRETATION OF TYPICAL CASES IN ANTI-MONOPOLY ADMINISTRATIVE ENFORCEMENT 2008-2018 (2018); ANTI-MONOPOLY BUREAU OF THE STATE ADMINISTRATION FOR MARKET REGULATION, ANNUAL REPORT OF ANTI-MONOPOLY ENFORCEMENT IN CHINA (2019-2020); STATE ANTI-MONOPOLY BUREAU, ANNUAL REPORT OF ANTI-MONOPOLY ENFORCEMENT IN CHINA (2021-2023).