
The Landscape under China's New Anti-Monopoly Law: An Economic Perspective

Vanessa Yanhua Zhang, Rita Xiaoping Li and Verdi Choo¹

1 October 2024

China recently celebrated the 15th anniversary of its Anti-Monopoly Law and the first anniversary of its recent amendments. In this article, **Vanessa Yanhua Zhang, Rita Xiaoping Li** and **Verdi Choo** discuss developments in antitrust regulation in China and identify the trends that help navigate its evolving landscape.

Introduction

China's approach to antitrust is increasingly important, both for companies operating in China and for those operating globally. Its approach is also evolving. 2023 was particularly significant, as it marked the 15th anniversary of China's Anti-Monopoly Law (AML) and the first anniversary of its recent amendments (AML Amendments).

In this article, we explore the changing landscape of antitrust regulation in China. We highlight key developments in China's antitrust legislation, enforcement of mergers and antitrust investigations, and private litigation. For each area, we outline the main activities and provide insights and trends to help stakeholders navigate antitrust regulation in China.

Our goal is to give legal practitioners and litigators a thorough understanding of the latest developments in China to better advise clients on antitrust matters. Policymakers and antitrust enforcers may also find this analysis useful for understanding China's competition policies and their potential implications for global practices. Insights from China's antitrust enforcement and litigation cases, along with the analytical methods employed, may also serve as valuable references for

experts and scholars in antitrust-related economics and legal research.

Our review shows that China is adopting a multifaceted approach to antitrust issues, aiming to promote competition, protect intellectual property rights, and ensure consumer welfare and innovation. We identify and explain the following developments in four sections.

First, China's **antitrust legislation** is evolving. This legislative context affects the number and nature of transactions that the State Administration for Market Regulation (SAMR) investigates and clarifies how these assessments are conducted. We explore three important developments that demonstrate the evolving priorities and approach to antitrust investigations in China:

- **Five provisions to support the new AML:** These provisions offer clear guidance on business compliance by clarifying how the SAMR will handle specific matters, such as: cooperation agreements; "hub and spoke" agreements; various types of abuse of dominance; metrics for assessing concentration in markets; and abuse of Intellectual Property Rights (IPR).

- **Guidelines on SEPs and trade associations:** China, being a major jurisdiction for litigation related to standard essential patents (SEPs), has published draft guidelines that set out its priority in SEP cases: balancing the trade-off between implementers' and IP owners' financial interest. They have also published guidelines aimed to prohibit certain horizontal and vertical monopoly agreements relating to Trade Associations.
- **Higher filing threshold for mergers:** The State Council of the PRC has raised notification thresholds for mergers. This change should result in fewer transactions being reviewed, allowing the SAMR to focus on complex transactions in key sectors such as semiconductors and pharmaceuticals.

Second, China's approach to **merger enforcement** is changing. We provide an overview of the SAMR and local AMRs' merger reviews in 2023, analyse cases where the SAMR approved mergers subject to conditions, and identify trends for the future. In particular, we note:

- **A more rigorous analysis of non-horizontal mergers:** There has been an increase in non-horizontal cases, a trend that is likely to continue. In these cases, the SAMR has employed more rigorous economic theories of harm and gained experience using sophisticated economic methods and tools to assess anticompetitive effects.
- **Greater uncertainty of the merger review process on complex cases:** Recent administrative developments suggest that merging parties may face more uncertainty regarding the review process and the likelihood of obtaining clearance from the SAMR.
- **Novel approaches to review and enforcement:** The SAMR is increasingly applying new approaches to address its concerns and priorities. This includes reviewing mergers below the filing

thresholds, developing novel theories of harm, and requiring behavioural remedies to address competitive concerns.

Third, China's approach to **antitrust investigations** is advancing. We provide an overview of antitrust enforcement in 2023, analyse representative cases, and explore two trends relating the SAMR's priorities and focus:

- **A greater focus on industries affecting people's livelihoods:** Key sectors, such as the pharmaceutical industry, which directly affect people's livelihoods and social wellbeing, have drawn the most attention from antitrust authorities.
- **Resale price maintenance (RPM) regulation:** The SAMR is expected to renew its emphasis on RPM regulation, granting operators the opportunity to assert their defence by demonstrating that the alleged RPM practice does not have the effect of excluding or restricting market competition.

Finally, we explore China's **private litigations regarding antitrust issues**. We examine updates by the Supreme People's Court (SPC) on its judicial interpretation in these cases, consider representative cases, and highlight two trends:

- **Balancing antitrust and IPR protection:** There is a focus on balancing antitrust concerns with IPR protection. Specifically, assessments of excessive pricing should consider both adverse effects on consumer welfare and the potential impacts on investment initiatives by incumbents and potential newcomers.
- **Increasing role of economic analysis in court rulings:** Economic analysis is being increasingly adopted in various forms in antitrust court rulings in China, a trend we expect to continue.

Moving forward, economic analysis is expected to play an increasingly prominent role in antitrust matters in China, ensuring

equitable outcomes and fostering a competitive business environment.

China's antitrust legislation

China's antitrust legislation is evolving. Here, we outline three major developments in 2023:

- five provisions to supplement the new AML;
- Antitrust Guidelines on SEP and Trade Associations; and
- a new merger filing threshold.

Development 1: Five provisions to support the new AML

Following the AML Amendments in 2023,² the SAMR published five supporting Provisions on antitrust law enforcement (the Provisions) in different areas. The first four supporting Provisions were released on March 10, 2023, and came into effect on April 15, 2023; the fifth was released on June 25, 2023, and came into effect on August 1, 2023. They are:

- **the Provisions on Prohibiting Elimination and Restriction of Competition by Abuse of Administrative Power**, which refine the manifestations of abuse of administrative power in accordance with the AML Amendments, such as through the signing of cooperation agreements with undertakings to exclude other competitors, excluding or restricting undertakings from participating in bidding activities, and issuing regulations that contain provisions excluding or restricting competition. Strengthened regulations on the government would help build a fair business operation environment that directly benefits enterprises.³
- **the Provisions on Prohibiting Monopoly Agreements**, which add clarification to the concept of “companies with competitive relationship” based on the AML Amendments, including both incumbents and potential newcomers in the relevant market. The provisions also

specify the objective factual standards for identifying the “hub-and-spoke” agreements, reflecting a better alignment of judicial practice with antitrust enforcement.⁴

- **the Provisions on Prohibiting Abuse of Market Dominant Position**, which provide guidance on regulating abuse of dominance conducts implemented through data, algorithms, technologies and platform rules such as excessive pricing, refusal to deal, and exclusive dealing. These refine the AML Amendments' regulations on the platform economy. Moreover, the provisions do not presuppose that abuse of market dominance in the platform economies should be treated differently to other sectors, but objectively take into consideration technical characteristics, business models, and competition landscapes.⁵
- **the Provisions on Merger Review of Concentration of Undertakings**, which, based on the AML Amendments, further clarify the factors used to determine the implementation of concentration, calculations of the merging parties' turnovers, and applicable situations for the stop-the-clock mechanism, offering clearer compliance guidance to merging parties.⁶
- **the Provisions on Prohibiting Abuse of Intellectual Property Rights to Exclude and Restrict Competition**, which add provisions in line with the AML Amendments on excessive pricing, refusal to deal, and the hub-and-spoke agreements through IPR, as well as the rule of reason provision. The provisions seek to enhance regulations on the abuse of IPR, while also strike a balance between IPR protection and antitrust regulation.⁷

The Provisions complement and refine the AML Amendments in multiple aspects that contribute to a more structured and comprehensive legislative framework, which

may improve the feasibility of antitrust enforcement and provide clearer guidance on business compliance for enterprises.

Development 2: Guidelines on SEPs and Trade Associations

China is a major jurisdiction for litigation relating to SEPs – where the intellectual property rights that protect technology essential to industry standards, such as 5G wireless communication, must be licensed on Fair, Reasonable, and Non-Discriminatory (FRAND) terms.

On June 30, 2023, the SAMR issued the Guidelines on Anti-Monopoly in the Field of Standard Essential Patents (Draft for Comments) (the Draft SEP Guidelines), inviting comments from the public until July 29, 2023. The Draft SEP Guidelines provide guidance on SEP-related anti-monopoly issues in order to uphold normal competition and encourage industrial development of emerging sectors where SEPs are crucial to the success of enterprises.

The Draft SEP Guidelines discuss FRAND principles, emphasising that they must achieve a balance between the interests of standard implementers and SEP holders. They state that, “whether the holder of a standard essential patent or its licensee violates the FRAND principles is an important factor in determining specific anticompetitive behaviours such as excessive pricing, unjustified refusal to license, tying, imposing other unreasonable trading conditions, or engaging in discriminatory licensing treatment without legitimate reasons.”⁸ Additionally, the Draft SEP Guidelines state that it is crucial to guarantee fair and reasonable returns for SEP innovation when analysing whether the SEP licensing would exclude or restrict competition.

The SAMR also released the Antitrust Guidelines on Trade Associations (Draft for Comments) (the Draft Trade Associations Guidelines) on May 21, 2023.⁹ The Draft Trade Associations Guidelines outline specific requirements for trade associations,

focusing on the prohibition of certain horizontal and vertical monopoly agreements. Prohibited conducts include restrictions on prices and quantities, the division of sales and raw material markets, restrictions on the development of new technologies, and RPM.

Development 3: a higher filing threshold for mergers

The State Council of the PRC issued the amended Rules on the Notification Thresholds for Concentrations of Undertakings (Amended Thresholds) on January 26, 2024.¹⁰ The Amended Thresholds raise the notification thresholds for the individual turnover of business operators as well as for the combined turnover of all operators involved in the merger. In particular, the threshold for (at least two) individual operators has doubled from CNY 400 million to CNY 800 million.

The Amended Thresholds represent a positive shift in China’s merger review system. It means that there will be potentially fewer transactions put under review. That reduction adapts to China’s economic developments and inflation. It also enables the antitrust authorities to concentrate their resources on cases that matter most – complex transactions in key sectors.

China’s antitrust enforcement: mergers

China’s antitrust enforcement is also evolving, particularly regarding merger investigations. Here, we provide:

- an overview of the SAMR and local AMRs’ merger reviews in 2023;
- an analysis of key cases where the SAMR approved the merger subject to conditions that remedied concerns; and
- highlight the main insights shaping the assessment of mergers in future.

An overview of merger review in 2023

The SAMR concluded 797 merger assessments in 2023, a similar number to the 794 cases concluded in 2022. Of those, it unconditionally approved 782 mergers (98% of the total) with a combined transaction amount of CNY 3,920 billion. It conditionally approved four cases, requiring remedies that addressed its concerns. It blocked no mergers.

In most cases, the review process was relatively swift with 90% of Fall cases (707 in total) concluded through the simplified procedure. The average processing time was 25.7 days, 0.8 days less than the previous year.¹¹

In 2023, the mix of competitive concerns that the SAMR assessed changed. Horizontal mergers continued to be the most common type of transaction, even as the number of non-horizontal merger cases increased. Of the 797 cases it assessed:

- 417 cases (52% of the total) involved horizontal mergers (an 11% increase from 2022 in the number of cases);

- 502 cases (63% of all cases) involved non-horizontal mergers (a 20% increase from 2022 in the number of cases) – 39% were vertical mergers (311 cases) and 24% were conglomerate mergers (191 cases);^{12,13} and
- 122 cases (15% of all cases) were both horizontal and non-horizontal mergers.

The SAMR's reviews focused on the real economy and industries related to people's livelihoods. Throughout the year, the highest number of cases concluded were in the manufacturing sector, totalling 291 cases (37% of total merger cases). Within the manufacturing sector, the manufacturing of chemical raw materials and products, automotive, computer and electronic equipment, and pharmaceutical products drew the most attention from the SAMR.¹⁴

An analysis of conditionally approved cases in 2023

In 2023, the SAMR approved four mergers subject to conditions: two of the cases were in the semiconductor sector; one in the active pharmaceutical ingredient (API) sector; and one in the chemical sector (see table).

Table 1: Summary of the conditionally approved merger cases

Trading parties	Approval date	Industry	Transaction type	Additional conditions
MaxLinear/ Silicon Motion	7/26/2023	Semiconductor	Conglomerate	Behavioural remedy
Broadcom/ VMware	11/21/2023	Semiconductor	Horizontal and conglomerate	Behavioural remedy
Simcere Pharmaceutical/ Tobishi	9/22/2023	API	Horizontal and vertical	Structural and Behavioural remedies
Wanhua Chemical/ Yantai Juli	4/7/2023	Chemical	Horizontal and vertical	Behavioural remedy

Source:

MaxLinear/Silicon Motion – SAMR, https://www.samr.gov.cn/zt/qhfdz/art/2023/art_a4a9dac753b84de3a306d4c707774607.html.

Broadcom/VMware – SAMR, https://www.samr.gov.cn/jzxts/tzgg/ftjpz/art/2023/art_d0aa211446c544609941c19e88a5a3d2.html.

Simcere Pharmaceutical/Tobishi – SAMR https://www.samr.gov.cn/jzxts/tzgg/ftjpz/art/2023/art_df8b96f7b29649ae8eabfdaff60c7b28.html.

Wanhua Chemical/Yantai Juli – SAMR, https://www.samr.gov.cn/jzxts/tzgg/ftjpz/art/2023/art_893506c4cd5840e0b01116bf45fe1b7e.html.

Case Study 1: MaxLinear/Silicon Motion

The SAMR conditionally approved MaxLinear's acquisition of Silicon Motion on July 26, 2023, 10 months after it received notification of merger. MaxLinear is a leading

provider of radio frequency, analogue, digital, and mixed-signal integrated circuits. Silicon Motion, the target, is a global leader in NAND flash controllers for solid-state storage devices, which is part of a technology- and capital-intensive industry.

Defining markets in a conglomerate merger

The SAMR defined the relevant markets as the third-party NAND flash memory controller market, and both customer-level and enterprise-level solid-state drive markets at the global level. In the assessment of market dominance, the SAMR took into account both Silicon Motion's large market share of 50-55% in the global and Chinese relevant markets, and its advanced technology endowment with more patents than any other supplier. The SAMR also considered Silicon Motion's capital and technology advantages in the customisation of NAND flash controllers to ensure fitness with the hardware storage, which was crucial to the final product's performance.

A novel theory of harm

As to the anticompetitive effects, instead of considering a traditional theory of harm, the SAMR developed a novel theory of harm about the stability of the supply chain. The SAMR concluded that the contemplated merger would significantly exclude or restrict competition in the relevant product markets within China. This is because the deal would negatively affect the stability of Silicon Motion's supply of third-party NAND flash controller chips to downstream customers. Without the stable and high-quality supply of Silicon Motion's solid-state drive products, the downstream customers in China would find it difficult to find new suppliers that would satisfy their demand in the short term, potentially leading to increased prices of

relevant products in the Chinese market, and impaired market competition in both the NAND flash controller and the downstream solid-state drive markets.

A behavioural remedy, using FRAND principles

To address the concerns on supply chain stability, the SAMR approved the merger with additional restrictive conditions, including their continuous supply to Chinese customers on the basis of FRAND principles. The SAMR also required the post-merger entity to retain Silicon Motion's field application engineers within China as part of the R&D resources to provide customer support. In addition, the SAMR specifically prohibited the post-merger entity from adding malicious coding to the design of NAND flash memory controllers sold in China.¹⁵

Case Study 2: Broadcom/VMware

The SAMR conditionally approved Broadcom's acquisition of VMware on November 21, 2023. Broadcom is mainly engaged in the design, manufacture and sale of semiconductor products for wired and wireless communications, as well as the provision of specific types of infrastructure software solutions. VMware offers virtualisation software products used in data centres and cloud computing environments.

Related markets in a conglomerate merger

The SAMR found that Broadcom and VMware have a horizontal overlap in the endpoint protection software market. At the same time, Broadcom's fibre channel adapters, storage adapters, and Ethernet network card products are in an adjacent market to VMware's virtual software, and have a common customer base. Hence, the relevant markets were defined as the endpoint protection software market, virtual private cloud software market, fibre channel adapter market, storage adapter market, and Ethernet network card market at the global level.

The SAMR found that VMware held a dominant position in the virtual private cloud software market as the firm with the highest market shares in 2021 of 92-97% (globally) and 22-27% (in China). Broadcom held a dominant position in both the global and China duopoly markets of fibre channel adapters, with market shares of 60-65% and 70-75% in 2021 respectively. The merged entity would also have a relatively strong competitive advantage in the storage adapter and the Ethernet network card markets.

Concerns about tying, bundling, interoperability, and innovation

The SAMR concluded that the merged entity would have both the ability and incentive to tie and bundle VMware's software products and Broadcom's hardware products (i.e., fibre channel adapters, storage adapters and the Ethernet network cards), because of a highly overlapping customer base, a large price discrepancy between Broadcom's hardware products and VMware's software products which worked as complements, and a lack of substitutes of Broadcom's hardware products in the downstream hardware market.

The merged entity could potentially degrade interoperability between VMware's software and Broadcom's competitors' hardware products. It would also gain access to commercially sensitive information provided to VMware by Broadcom's rival hardware manufacturers, which could be deployed to exclude or restrict competition and negatively impact on technological innovation within the industry.

A range of targeted behavioural remedies

Considering the potential negative effects on competition, the SAMR approved the merger with additional restrictive conditions, including prohibiting the tying or bundling of each party's products, prohibiting discrimination in sales of the relevant products in the Chinese market, ensuring interoperability of VMware's server virtualisation software with third-party hardware products sold in the Chinese

market, and continuing to ensure interoperability with third-party server virtualisation software. In addition, protective measures for confidential information of third-party hardware manufacturers were to be established.

Comparison across jurisdictions

This deal has received clearance in multiple jurisdictions, including China, Australia, Brazil, Canada, the European Union (EU), Israel, Japan, South Africa, South Korea, Taiwan, and the United Kingdom.¹⁶ A number of jurisdictions, including the EU, China and South Korea, have conditionally approved the transaction. Authorities in these countries are concerned about tying or reduced interoperability between Broadcom's hardware and VMware's software.

They determined that post-merger, Broadcom would have the ability and incentive to foreclose its rival in the FC HBA market through degraded interoperability.¹⁷ In particular, the EC concluded that this would eventually result in higher prices, lower quality and less innovation for Broadcom's customers.¹⁸

However, different jurisdictions might approach the issue in different ways and hand out separate review opinions. For example, the UK's Competition and Markets Authority issued its decision with no harm concluded. Therefore, it unconditionally cleared the tie-up following an in-depth Phase 2 investigation.¹⁹

Regarding the remedies, authorities in the EU, China and South Korea imposed similar behavioural remedies, which involved preserving comprehensive access and interoperability between third-party FC HBAs and VMware's server visualisation software.

In addition to the above interoperability commitment, the behavioural remedies in China also included maintaining interoperability of Broadcom's FC HBAs with third-party visualisation software.

Case Study 3: Simcere/Tobishi

The acquisition of Beijing Tobishi Pharmaceutical Co., Ltd. (Tobishi) by Simcere Pharmaceutical Group Limited (Simcere) was conditionally approved by the SAMR on September 22, 2023. The acquirer Simcere was responsible for the sales and distribution of the batroxobin API in China through an exclusive agreement with DSM, a global supplier of this API, while the target Tobishi was the only supplier of batroxobin injections in the downstream market, constituting a vertical relationship. In addition, the two parties also had horizontal overlaps in the batroxobin injection market because Simcere was also engaged in the R&D of batroxobin injections.

Defining the markets

The SAMR defined the relevant markets in this case as an upstream sales market for batroxobin API and a downstream market for the batroxobin injection. The SAMR found that this merger would give the parties the ability and incentive to engage in input foreclosure in the batroxobin injection market in China. Since Simcere distributed batroxobin API exclusively in the upstream market in China, the competitors in the downstream market would have little bargaining power in purchasing the API from Simcere, and other potential entrants would also face high barriers to entry. The merged entity would be incentivised to stifle competition by limiting access to, or raising prices of, the API in the batroxobin injection market to maximise profits.

Additionally, the SAMR asserted that Simcere held a unique R&D advantage in the downstream market as it was the supplier of the API. The merger would eliminate the potential competition between Simcere and Tobishi in the downstream market.

Structural and behavioural remedies

To address the competition concerns arising from this merger, the SAMR issued a divestiture decision of Simcere's R&D

business of batroxobin injections. The SAMR further mandated Simcere to terminate its agreement with its upstream supplier DSM for the exclusive distribution of batroxobin API in China and relinquish its resale rights, thereby preventing potential input foreclosure against other downstream competitors. The SAMR required that the merged entity should reduce the retail price of batroxobin injection by no less than 20% post-merger; if Simcere failed to terminate the agreement by the specified date, or the divestiture was not completed by the specified date, or the buyer of the divestiture failed to implement R&D, the merged entity should reduce the retail price of the batroxobin injection by no less than 50% post-merger.

Below-threshold filing

This merger was the first concentration voluntarily filed to the SAMR by the merging parties despite not meeting the threshold for notification. Moreover, as regulated in the Provisions on Merger Review of Concentration of Undertakings, if the concentration of undertakings does not meet the filing threshold but there is evidence that such concentration has or may have the effect of eliminating or restricting competition, then the SAMR may require the undertakings to file a notification. Therefore, merging parties should proceed with greater caution and actively seek compliance under the new antitrust regulations.

Assessment of innovation effects

It is worth noting that the SAMR is concerned about eliminating innovation races and competition. In this case, Simcere did not launch its generic drugs in the downstream market. However, the SAMR believed the merger could result in Simcere halting its innovative research and development, potentially leaving downstream markets dominated by a single player. Therefore, the divestiture of Simcere's R&D business was a necessary remedy to foster the competition in the downstream market. This approach mirrors the EU's decision to block the Illumina/Grail deal. It suggests that merger

reviews in the pharmaceutical industry may also encompass considerations of innovation competition.

Insights: merger control trends

The recent merger reviews by the SAMR provide several insights about the direction of merger enforcement in China.

- **More rigorous analysis on non-horizontal mergers.** Non-horizontal cases are on the rise as they start to draw more attention from antitrust authorities. The SAMR has gained extensive experience in employing more economic tools to investigate these concerns, and those in other types of complex cases.
- **Uncertainty about the review process on complex cases.** The SAMR has implemented several significant changes to its merger review process to adapt to the evolving economic landscape, which can introduce uncertainty for high-profile or complex cases.
- **Increasingly novel approaches to review and enforcement.** The SAMR has reviewed mergers below the filing thresholds. It has also developed novel theories of harm and increasingly adopts FRAND behavioural remedies to conditionally approve cases.²⁰

Trend 1: More rigorous analysis on non-horizontal mergers

Non-horizontal cases are on the rise, and that is likely to continue. As disclosed by the SAMR, the total vertical cases that were closed increased from 94 in 2019 to 311 in 2023, while the total conglomerate cases that were closed increased from 165 in 2019 to 191 in 2023.²¹

When assessing the potential anticompetitive effects of these transactions, the SAMR has gained experience in employing more rigorous economic theories of harm. Recent conditionally approved mergers show that the parties not only have horizontal overlaps but are also related at vertical or conglomerate

levels. In particular, all cases that the SAMR conditionally approved in 2023 involved non-horizontal transactions. In these types of case, the SAMR will focus on the parties' capabilities and incentives to engage in foreclosure strategies.

The SAMR has also gained experience in using more rigorous economic methods and tools for assessing these anticompetitive effects.²² For example, in the Broadcom/VMware case, the SAMR relied on market surveys and economic analysis to conclude that since the prices of VMware's software products were more than 30 times that of compatible hardware products, customers faced high switching costs if they wanted to replace VMware's software products. The merged entity would have the ability to bundle VMware's software and Broadcom's hardware products. In addition, the merged entity could potentially increase profit by degrading interoperability between VMware's software products with third-party hardware products, inducing customers to replace the incompatible hardware products of competitors with Broadcom's hardware products.²³

Trend 2: Uncertainty of merger review process on complex cases

For complex cases in sectors under scrutiny, the merging parties may face more uncertainty around the review process, and the likelihood of securing clearance from the SAMR.

Uncertainty about stopping the clock

One of the reasons for increasing uncertainty is the recent introduction of the "stop-the-clock" mechanism, whereby the SAMR may suspend its review process if, for instance, further assessment of restrictive conditions is required or the parties failed to respond to the SAMR's requests in time.²⁴

The impact on parties is illustrated by the MaxLinear/Silicon Motion and Broadcom/VMWare cases, where the clock was stopped for more than six and two

months respectively. The parties were unclear why the SAMR had stopped the clock and so they were unable to foresee when the review would resume.

Uncertainty about simplified review

Another uncertainty for merging parties in sectors under scrutiny is that they might not be able to utilise the “simple case first” tactic. Mergers such as the MaxLinear/Silicon Motion case suggest that qualifying criteria for a simplified review is not transparent. On August 31, 2022, the SAMR advised MaxLinear and Silicon Motion to refile under the normal review procedure, following their simplified filing on July 6, 2022.²⁵ Merging parties in sensitive sectors may have to anticipate the SAMR’s rejection of simple case filings and plan sensible merging timelines in advance.

Trend 3: Novel approaches to review and enforcement

Increasingly, we see the SAMR apply new approaches, in situations where that helps to address concerns and priorities.

Review of mergers below filing thresholds

If a transaction falls below the filing thresholds but is likely to exclude or restrict competition, the SAMR has the authority to investigate and require the parties to file the merger. This regulation allows the SAMR to closely monitor and intervene in potential killer acquisitions of nascent companies, thus preserving market competition.

In 2023, the SAMR published its first public decision on the Simcere/Tobishi case, which was below the filing threshold and voluntarily filed by the parties.²⁶ Industries such as semiconductors and pharmaceuticals continue to be the key sectors under stricter scrutiny.

Developing novel theories of harm

The SAMR has adopted novel theories of harm when assessing the competitive effects

of mergers. For example, the SAMR took into consideration stability of supply concerns put forward by downstream customers in the Maxlinear/Silicon Motion case. The SAMR also adopted an analysis of anticompetitive behaviours that would stifle potential innovation in reviewing the Simcere/Tobishi case. The extent of the use of such novel theories of harm and its implications for future merger reviews remain to be seen.

Increasing adoption of FRAND remedies

The SAMR has increasingly adopted FRAND remedies in merger reviews to address antitrust concerns. From 2018 to 2023, 20 of the 26 conditionally approved cases incorporated FRAND obligations as part of behavioural remedies. This reflects the SAMR’s proactive stance in ensuring fair competition and promoting innovation while safeguarding broader public interests.

3: China’s antitrust enforcement: antitrust investigations

China’s enforcement through antitrust investigations is also evolving. Here, we provide:

- An overview of antitrust enforcement in 2023;
- An analysis of representative cases; and
- Insights and trends in antitrust enforcement.

An overview of antitrust enforcement in 2023

In 2023, the SAMR investigated and dealt with a total of 27 cases involving monopoly agreements and/or abuse of market dominance. It issued fines of CNY 2,163 million in total.²⁷

Enforcement against monopoly agreements

According to public information, the antitrust administrative enforcement authorities investigated a total of 18 cases relating to

monopoly agreements. Among them, 17 cases involved horizontal monopoly agreements, while only one case involved a vertical monopoly agreement.

The horizontal cases mainly involved illegal conduct of fixing or changing product prices, division of sales and raw material markets, and restricting sales volumes. The monopoly agreements investigated were mostly in the construction and pharmaceutical industries, followed by the insurance, energy and explosive equipment industries.²⁸

Enforcement against abuse of market dominance

In 2023, the authorities investigated nine cases for abuse of market dominance. All nine cases were in industries related to people's livelihoods: five in the pharmaceuticals industry; and four in municipal services.

The most common illegal monopolistic behaviour investigated was the imposition of unreasonable trading conditions, which applied in five of the nine cases. The other four cases related to excessive prices, all within the pharmaceutical sector.²⁹

An analysis of representative cases

Here, we analyse two cases in the pharmaceutical sector that provide insight into the recent antitrust investigations in China: Zizhu Pharma's monopoly agreements (RPM conduct); and the abuse of market dominance by four pharma companies. As represented by the two cases below, excess pricing and restrictions on setting prices are common abusive conducts in the pharmaceutical sector. They could lead to unjustified high costs for consumers and healthcare systems that directly link to people's livelihoods. Thus, the pharmaceutical sector is a key area of focus under the scrutiny of the SAMR.

Case study 1: Zizhu Pharma's monopoly agreements

On May 29, 2023, SAMR released the administrative penalty decision of the Beijing Administration for Market Regulation (Beijing AMR) against Beijing Zizhu Pharmaceutical Co., Ltd. (Zizhu Pharma) for its RPM conduct.³⁰ The relevant products of this case were two emergency contraceptive levonorgestrel tablets of different dosages.

From 2015 to 2021, Zizhu Pharma reached vertical monopoly agreements with its primary and secondary distributors nationwide to fix and restrict the resale prices of the relevant products. Zizhu Pharma also took multiple measures to ensure the implementation of the monopoly agreement, including refining its sales management system, hiring a data company to monitor the resale prices of its distributors, and reinforcing its internal monitoring mechanisms.

Beijing AMR found that Zizhu Pharma's conduct disrupted the normal functioning of the market, harmed the order of market competition, and undermined the interests of consumers. Therefore, the regulator ordered Zizhu Pharma to stop the illegal conduct and imposed a 2% fine of its 2020 sales in China – about CNY 13 million.

Case study 2: Abuse of market dominance by pharma companies

On December 13, 2023, Shanghai Administration for Market Regulation (Shanghai AMR) issued a penalty decision on Shanghai First Biochemical Drug Co., Ltd. (Shanghai First Biochemical) and three other pharmaceutical companies in an abuse of market dominant position case, ordering them to cease the illegal behaviour, and imposed a total fine of CNY 1,219 million.³¹ Shanghai First Biochemical is the downstream manufacturer of the relevant injectable product. The other three companies – Wuhan Huihai Pharmaceutical Co., Ltd (Wuhan Huihai), Wuhan Kede Pharmaceutical Co., Ltd (Wuhan Kede), and

Hubei Minkang Pharmaceutical Co., Ltd (Hubei Minkang) – are owned by the same person and are the exclusive suppliers of the API of the injectable products to Shanghai First Biochemical and the exclusive distributors of the injectable products in this case.

These four companies were found to have collaborated closely and abused their dominant market position by selling injection-grade polymyxin B sulphate at prices ranging from CNY 2,303-2,918 per unit from December 2017 to June 2023, constituting excessive pricing.

The relevant market in this case was defined as the Chinese market for injection-grade polymyxin B sulphate. The four companies held a 100% share in the relevant market by securing exclusive supply from their upstream foreign API supplier Xellia Pharmaceuticals ApS., while there were no domestic suppliers of the polymyxin B sulphate API.

From March 2017, the injection-grade polymyxin B sulphate successfully enrolled into the list of drugs under the centralised procurement organised by healthcare security administrations in multiple provinces. Shanghai AMR calculated the ratio of its listed pricing and cost of production to be 157-339:1 during the period investigated from December 2017 to June 2023, while the same ratio was calculated to be 7-29:1 for other products from the same production line.

Shanghai AMR also found that the four companies circulated the imported API, through 38 pharmaceutical distribution companies with progressively increased markups, gradually inflating the price of the API from CNY 73-94 per gram to CNY 18,000-35,000 per gram. Third-party data was used as evidence to prove that the listed price of the injection-grade polymyxin B sulphate in China was disproportionately high at 35-44 times the weighted average price in other major markets in the world.

The excessive pricing behaviour in this case significantly distorted the market price

mechanism and increased national medical insurance fund expenditure, severely damaging the interests of patients and the public.

Insights: antitrust investigation trends

In 2023, antitrust investigations focused on pharma and other sectors affecting people's livelihoods and RPM regulation. These are trends we expect to continue.

Trend 1: Focus on pharma and sectors affecting people's livelihoods

Looking at recent antitrust enforcements, key sectors such as the pharmaceutical industry, which directly concern people's livelihoods and social wellbeing, have drawn the most attention from antitrust authorities. This is a feature of the antitrust enforcement landscape in China more broadly. As indicated in the summaries of investigations and mergers above, the pharmaceutical industry has been under strict scrutiny by the SAMR with more investigation cases than any other industry in 2023.

Trend 2: Focus on resale price maintenance regulation

The AML Amendments adopted in 2022 specify that RPM conduct shall not be prohibited if the operator can demonstrate that it does not have the effect of excluding or restricting competition, providing operators with potential defence avenues.

The SAMR is expected to take a more balanced and sophisticated approach to address RPM conducts, weighing up the pro-competitive benefits and anticompetitive harms, which potentially indicates more investigations on RPM.

China's private litigations on antitrust issues

The landscape for private litigation relating to antitrust issues in China is also evolving. Here we describe:

- Updates by the SPC on its judicial interpretation in these cases;
- An analysis of two representative cases; and
- Insights on developing trends.

Updates on the SPC's judicial interpretation

In 2023, two developments informed how the SPC of China would approach monopoly-related civil disputes in future: its draft provisions concerning the application of law in monopoly-related civil disputes and a summary of 10 “typical” cases released by the SPC.

The draft Provisions

On November 18, 2022, the SPC released the Draft of Provisions of the Supreme People's Court of the People's Republic of China on Several Issues concerning the Application of Law in the Trial of Monopoly-related Civil Dispute Cases (the Draft).³² Drawing on its predecessor in 2012, the Draft summarises the experience and achievements from past antitrust litigations and incorporates new legislation in response to modern antitrust concerns.

Specifically, the Draft has several adaptations directed at cases in digital sectors. It accounts for internet platforms separately when assessing market dominance and refusal to deal through denial of access to technology, data, application programming interfaces and so forth. It also sets out novel indicators when calculating market shares, which can better reflect the actual status of competition in the market, such as user volume, usage time duration, number of views and clicks, and digital assets.

In the Draft, the SPC also introduces concepts such as “competing undertakings”, “single economic units” and “as-efficient competitors”, offering more analytical guidance for assessing alleged monopolistic conduct.

Summary of 10 typical cases

The SPC released 10 typical cases of anti-monopoly and anti-unfair competition in September 2023,³³ of which half were antitrust cases and half were anti-unfair competition cases.

The five antitrust cases include two cases separately involving horizontal and vertical monopoly agreements: the commercial concrete manufacturers' horizontal monopoly agreement case; and the General Motors' vertical monopoly agreement case. Additionally, three cases involved abusive behaviours: the *Yangtze River Pharmaceutical Group (Yangtze Pharma) v. HIPI Pharma Tech (HIPI)* case; the jurisdiction objection case of *Tobishi v. Simcere*; and the refusal to deal case in the basic funeral service industry.

The abusive behaviours involved included excessive pricing, restrictive transactions, imposition of unreasonable trading conditions, and refusal to deal. These cases encompassed sectors related to people's livelihood, such as the pharmaceutical, funeral service, automobile, construction material, and household appliance sectors.

The five anti-unfair competition cases involved confusion, false advertising, infringement of trade secrets, and disputes related to online unfair competition. The cases spanned sectors such as household appliances, short videos, online gaming, restaurant reviews, and other consumer areas, as well as technology-intensive fields.

Analysis on representative cases:

Here, we analyse two cases that provide insights on the recent antitrust litigation trends in China: *Yangtze River Pharma v. HIPI Pharma*; and *Ketian et al. v. Hitachi Metals*.

Case Study 1: Yangtze River Pharma v. HIPI Pharma³⁴

On May 25, 2023, the SPC issued its final judgment on the *Yangtze Pharma v. HIPI*

case, which marked the conclusion of the first antitrust litigation in the Chinese API sector.

The SPC overturned the decision made by the court of first instance, annulling allegations of abusive conducts by HIPI. HIPI is an upstream supplier of the desloratadine citrate disodium compound (DCD). DCD is a patented API used in the production of two finished second-generation antihistamines, including the Beixue tablet produced by Yangtze Pharma and the Ruipukang capsule medicine produced by HIPI's subsidiary.

Yangtze Pharma alleged to the court that HIPI had abused its dominance in the DCD API market through exclusive dealing, excessive pricing, tying and imposing unreasonable trading conditions.

Relevant market and market dominance

The SPC upheld the relevant market as the DCD API market in China as there were no alternatives for the production of the downstream drugs.

However, according to the expert on behalf of HIPI, the market presents a unique type of market structure, in which the supplier side is monopoly and the demand side is monopsony (Coasian market). The court considered the Coase theorem submitted by the defendant and took the monopsony factor into account when assessing HIPI's market power.

The SPC held that the stronger the correlation between the demand of the intermediate goods and the demand of the finished goods, the greater the indirect competitive restraints from the market of finished goods. In this case, HIPI supplied DCD API to only one external customer, Yangtze River Pharma, for the production of Beixue, which competes with other second-generation antihistamines downstream. Moreover, there was no substantial barrier or cost for Yangtze River Pharma to switch to production of other competing drugs as it held official production approvals for multiple second-generation antihistamine drugs, most of which did not have patent protection and

exclusive production equipment requirements. Therefore, the SPC determined that the market power of HIPI in the upstream market was restricted by indirect competition constraints from its downstream market.

Analysis of abusive conducts and anticompetitive effects

The SPC also analysed the alleged abuse conduct, including exclusive dealing, excessive pricing and tying other unreasonable trading conditions.

For the alleged exclusive dealing, the SPC specified that the exclusive one-on-one supply and demand relationship between HIPI and Yangtze Pharma was the outcome of the legal exclusivity of the 998' patent. Therefore, the SPC held that the exclusive dealing in question was justified by patent protection as opposed to the abusive conduct prohibited by the Anti-Monopoly Law.

For the alleged excessive pricing, HIPI had charged Yangtze Pharma CNY 48,000/kg for its DCD API since June 2016, higher than the previous CNY 19,900/kg from February 2011 to May 2016. But the SPC found that HIPI's sales price did not constitute excessive pricing, relying on the economic analysis using the internal rate of return (IRR) performed by the defendant's expert. The IRR calculation is a prevalent method in practice to measure the return on investment relative to production costs, R&D expenses, and the probability of success in new drug discovery. The IRR for the DCD API was determined to be 24.4%, falling below the IRRs observed in Chinese innovative drug companies, which typically exceeded 20% and could reach 40%-50%. In addition to the IRR calculation, the API in question was not overpriced when compared to the significant economic value it conveys to the finished drug. Furthermore, the price of API at issue accounted for only 4% of the price of Beixue, much lower than the price of APIs in other pharmaceutical preparations, effectively addressing the exploitative aspect of the excessive pricing argument. The API's price

increase did not necessarily lead to excessive pricing, given that the API was an innovative patented product with a promotional price at the beginning of sales. In addition, the SPC assessed the competitive effects on consumer welfare. The SPC found that despite HIPI raising the price of the DCD API in 2016, Yangtze Pharma remained highly profitable and modestly reduced the price of Beixue. As a result, consumer welfare was not adversely affected.

The SPC dismissed the plaintiffs' allegations of tying and imposing unreasonable trading conditions. The SPC concluded that the tying conduct claimed by the plaintiffs should be analysed in the context of the alleged excessive pricing, which was not sustained in this case.

This case shows that economic analysis conducted by experts has been increasingly adopted by the courts in China as evidence for assessment of alleged abusive conduct. The SPC determined that HIPI did not engage in abusive conduct and completely overturned the first instance judgment by the lower court. The SPC considered the unique attributes of patented products in the pharmaceutical industry and granted the protection of innovation by China's judicial authorities, affirming that the lawful exercise of intellectual property should be protected and compatible with antitrust laws.

Case study 2: [Ketian et al. v. Hitachi Metals](#)³⁵

On December 14, 2023, the SPC issued the ruling for the antitrust lawsuit between four Chinese manufacturers of rare earth magnets and Hitachi Metals, Ltd, overturning the decision made by the court of first instance.³⁶ This case stood out as one of the few antitrust cases involving patent licensing, which demonstrated the SPC's attitude towards the conflict and balance between antitrust and IPR protection.

The defendant, Hitachi Metals, is a leading manufacturer and patent holder of sintered

neodymium-iron-boron (NdFeB) magnets, holding over 600 relevant patents worldwide.

In December 2014, four Chinese manufacturers of rare earth magnets (the Plaintiffs) filed a lawsuit against Hitachi Metals at the Ningbo Intermediate People's Court, alleging that Hitachi Metals had abused its dominant position in the patent licensing market for the sintered NdFeB essential patents held by Hitachi Metals, by refusing to license to the Plaintiffs and by bundling its essential patents with non-essential patents.

The Ningbo Intermediate People's Court upheld the Plaintiff's allegations, defining two relevant markets, a downstream product market of sintered NdFeB products and an upstream licensing market for the sintered NdFeB "essential patents" owned by Hitachi Metals. The court of the first instance also adopted the "essential facility doctrine" for the first time in China's antitrust litigation involving intellectual property licensing. The doctrine facilitated the court's ruling that the patents owned by Hitachi Metals constituted an essential facility, on the basis that access to these patents was indispensable for other firms to participate in competition: Hitachi Metals had exclusive control over its essential patents; competitors could not replicate the facility through reasonable efforts; Hitachi Metals refused the use of the facility by others; and it was feasible for Hitachi Metals to provide access to the facility.

Definition of relevant market

The SPC overturned the judgment of the court of the first instance, rejecting the narrowly defined licensing market for sintered NdFeB essential patents, and redefined it to be the broader technology market of sintered NdFeB magnets, including both patented and non-patented technologies that were closely substitutable.

The SPC highlighted the contradiction in the Plaintiffs' assertions regarding Hitachi Metals' essential patents, which they claimed were indispensable yet contended that their

production did not infringe upon them. The alleged essential patents of Hitachi Metals proposed by the Plaintiffs' technical expert could all be technically bypassed and were thus non-essential.

The definition of a broader technology market reflects the acknowledgment that the transfer of IPR for technologies may take various forms, including transactions of patented and non-patented IPR, and transactions of technological processes, know-how, etc. The transfer of IPR for technologies does not necessarily involve essential patents, as it was in this case, where Hitachi Metals' patents could not be proven as essential.

Therefore, it was decided that the relevant market should not be limited to the licensing market for sintered NdFeB essential patents.

Assessment on market power

The SPC concluded that Hitachi Metals did not possess market dominance by analysing its market share, and its ability to control transaction conditions and market entry. Specifically, as the size and market shares of technology markets were difficult to gauge, the SPC proposed that the market share of downstream products that implemented the technology could be an accurate and viable indicator to reflect the competition of the relevant technology market. In this case, the SPC found that Hitachi Metals did not possess market dominance in the upstream technology market, on the basis that Hitachi Metals and its eight Chinese licensees held a total market share of less than 20% in the sintered NdFeB product market in China, which would be even lower at the global level.

The SPC also conducted substitutability analysis of relevant technologies from both technical and commercial perspectives to further assess Hitachi Metals' market position. From the technical aspect, it found that only a portion of Hitachi Metals' patents directly contributed to enhancing the performance metrics of NdFeB products. Hence, disregarding the patented technology at issue would not significantly escalate

manufacturing costs for the Plaintiffs. From the commercial aspect, between 2014 and 2017, the Plaintiffs witnessed a growth in their output and sales revenue of sintered NdFeB, suggesting that the absence of a patent license from Hitachi Metals did not necessarily hinder market entry. Thus, the SPC concluded that Hitachi Metals' refusal to license did not constitute abuse of market dominance as it did not have a dominant position in the market.

Furthermore, factors other than the market share can also be quantitatively analysed to determine the alleged party's market dominance. For instance, comparing the profit margins of an upstream IPR owner and its downstream licensees would indicate whether the IPR owner was able to transfer its market power in the upstream market to the downstream market by increasing royalties or refusing to license, providing an indication of its ability to control the markets. Comparing the profit margins of licensed and unlicensed manufacturers that use the relevant technologies would also indicate the degree of reliance of downstream customers on the alleged party's technologies. The profit margin comparison serves as a useful tool in the assessment of the alleged party's market power.

Assessment on anticompetitive effects

The court of the first instance incorporated the concept of "essential facility doctrine" in its analysis, which was the first time this doctrine had been introduced in an intellectual property-related antitrust case in China.

Although the SPC did not evaluate the applicability of this doctrine, it concluded that the patented technology owned by Hitachi Metals was not indispensable in the production of sintered NdFeB materials, and that it was reasonable for Hitachi Metals' competitors to replicate the same facilities. The analysis by the SPC shows that at least two of the five conditions on which the court of first instance based its finding that Hitachi

Metals' patents constituted essential facilities were not met.

The essentiality of certain facilities can also be evaluated quantitatively based on economic models. One approach is to calculate and evaluate the break-even cost threshold. The break-even cost threshold for competing in the market refers to the level of costs at which a firm's operating revenues equal its costs. If the unlicensed manufacturers have a higher break-even cost threshold than their actual cost for competing in the market, it means that the manufacturers have the scope to develop or purchase alternative manufacturing technologies to bypass the patented technology at issue even at a higher cost, indicating that the patented technology at issue is not indispensable for downstream manufacturers to compete and cannot constitute an "essential facility". The economist expert team representing the defendant in the second trial instance conducted such a quantitative analysis.

Quantitative analysis in assessing the alleged anticompetitive effects is also applicable in this case. A proper model that describes the market structure of the downstream product market can be used to simulate the market outcome of the "counterfactual" scenario in which Hitachi Metals was mandated to license its patents to all other firms. The simulated counterfactual market outcome can be used to compare competition in the actual market with competition in the counterfactual scenario, through a comparison of indicators of market concentration and competitiveness, such as the Herfindahl-Hirschman Index (HHI), Lerner Index or overall price level. The economist expert team representing the defendant also conducted such a quantitative analysis.

Insights on private litigation relating to antitrust issues

Two trends emerge in the recent developments in private litigation: the balance between preventing antitrust abuses

and protecting IPR; and the increasing role of economic analysis in court rulings.

Trend 1: Balancing antitrust and IPR protection

Based on the above cases, the SPC safeguarded IPR and innovation by striking a balance between IPR protection and stringent antitrust judicial supervision. It emphasised that the assessment of excessive pricing should consider both adverse effects on consumer welfare and potential effects on the investment initiatives of incumbents and potential newcomers.

The SPC made it clear in the *Ketian et al. v. Hitachi Metals* case that IPR covers not only patents but also other rights such as know-how. Patented and non-patented technologies can be close substitutes. Therefore, a broader range of IPR should be put under careful examination by competition authorities.

The SPC has also been cautious about applying the "essential facilities doctrine" in the field of intellectual property. The tendency to apply the essential facility doctrine to IPR and the requirement of mandatory licensing of IPR could disincentivise the R&D of firms and create underinvestment. On one hand, with the fast development of technologies, it may be challenging for an intellectual property owner to exclude entry of newly developed patented technologies, which suggests that the essential facilities doctrine may not be applicable to the IPR sector. On the other hand, if a firm anticipates that its technology will be classified as an essential facility, it may initially opt out of investment, resulting in detriment to innovation in the long run.

Trend 2: The increasing role of economic analysis in court rulings

It can be expected that economic analysis in various forms will be adopted in antitrust court rulings in China.

The SPC has considered multiple factors when assessing the market dominance of

alleged parties, including market shares and the competition status of the relevant markets, ability to control the sales and raw material markets, finance and technology conditions, reliance of other operators on the alleged parties and market entry barriers.

In the final decision of the *Yangtze Pharma v. HIPI*, the SPC relied on the IRR calculation analysis to overturn findings of excessive pricing. The IRR analysis considers various critical factors including production costs,

R&D expenses and the likelihood of R&D success to reflect the relative return against investment. This is recognised by the SPC as more robust and accurate as compared to traditional cost-benefit analyses or calculating a profit margin.

The increasing role of economic analysis in court rulings sets higher requirements for the parties to back up their assertion with more persuasive and robust analytical tools.

1 Vanessa Yanhua Zhang is an Executive Vice President at Compass Lexecon (New York and Beijing) and Senior Researcher at MRLC of Renmin University (Beijing). Rita Xiaoping Li is a Vice President at Compass Lexecon (Beijing). Verdi Choo is a Senior Economist at Compass Lexecon (Singapore). The authors have been involved in several merger and litigation cases discussed in the article. The views expressed in this article are the views of the authors only and do not necessarily represent the views of Compass Lexecon, its management, its subsidiaries, its affiliates, its employees or its clients.

2 For more discussion of the AML Amendments, see Huikuang Jiang, Scott Yu, and Xiansheng Jiang, “Antitrust v2.0—What Multinational Companies Should Know About China’s Amended Anti-Monopoly Law,” *Antitrust Magazine Online*, June 2023,

https://www.americanbar.org/groups/antitrust_law/resources/source/2023-june/antitrust-v20/.

3 SAMR, The Provisions on Prohibiting Elimination and Restriction of Competition by Abuse of Administrative Power, March 10, 2023,

https://www.samr.gov.cn/zw/zfxxgk/fdzdqknr/fgs/art/2023/art_b96953818d5a4737a60527c675c1d1cb.html.

4 SAMR, The Provisions on Prohibiting Monopoly Agreements, March 10, 2023,

https://www.samr.gov.cn/zw/zfxxgk/fdzdqknr/fgs/art/2023/art_e96bccd087754167bcac253683435f23.html.

5 SAMR, The Provisions on Prohibiting Abuse of Market Dominant Position, March 10, 2023,

https://sifg.samr.gov.cn/law/pageInfo/main.main?order=10&iframe=pageInfo/law_search_new.law_details?lawId=b406a972416d4468a862a008434d985b.

6 SAMR, The Provisions on Merger Review of Concentration of Undertakings, March 10, 2023,

https://sifg.samr.gov.cn/law/pageInfo/main.main?order=10&iframe=pageInfo/law_search_new.law_details?lawId=4effd1c44f0f4f96a125cde94856da2e.

7 SAMR, The Provisions on Prohibiting Abuse of Intellectual Property Rights to Exclude and Restrict Competition, June 25, 2023,

https://www.samr.gov.cn/zw/zfxxgk/fdzdqknr/fgs/art/2023/art_e155397fbe5c4c05ad3c1838c1322ad2.html.

8 SAMR, Guidelines on Anti-Monopoly in the Field of Standard Essential Patents (Draft for Comments), June 30, 2023,

https://www.samr.gov.cn/hd/zjdc/art/2023/art_6422b2fb728f486b9814349213ea07c6.html.

9 SAMR, Antitrust Guidelines on Trade Associations (Draft for Comments), May 21, 2023,

https://www.gov.cn/lianbo/bumen/202305/content_6875397.htm.

10 The State Council of the People’s Republic of China, Amended Rules on the Notification Thresholds for Concentrations of Undertakings, January 26, 2024,

https://www.gov.cn/zhengce/content/202401/content_6928387.htm.

11 SAMR, “Interpretation of the State Administration for Market Regulation’s Review of Cases of Concentrations of Undertakings in 2023,” January 23, 2024,

https://www.samr.gov.cn/xw/zj/art/2024/art_626627829db34e92901f776931077f4e.html.

12 There were cases that involved both horizontal and non-horizontal mergers in 2023.

13 SAMR, “China Antitrust Enforcement Annual Report (2022),” June 9, 2023, p. 16,

<https://www.gov.cn/lianbo/bumen/202306/P020230612294618624831.pdf>.

14 SAMR, “Interpretation of the State Administration for Market Regulation’s Review of Cases of Concentrations of Undertakings in 2023,” January 23, 2024,

https://www.samr.gov.cn/xw/zj/art/2024/art_626627829db34e92901f776931077f4e.html.

15 On the same day the merger was approved, MaxLinear announced that it had terminated its merger agreement with Silicon Motion. See MaxLinear, “MaxLinear Provides Update on Proposed Acquisition of Silicon Motion,” July 26, 2023,

<https://investors.maxlinear.com/press-releases/detail/509/maxlinear-provides-update-on-proposed-acquisition-of>.

16 Broadcom, “Broadcom and VMware Intend to Close Transaction on November 22, 2023,” November 21, 2023,

<https://investors.broadcom.com/news-releases/news-release-details/broadcom-and-vmware-intend-close-transaction-november-22-2023>.

17 SAMR, “Announcement of the State Administration for Market Regulation on the Anti-Monopoly Review Decision of Broadcom’s Acquisition of VMware with Additional Restrictive Conditions,” November 21, 2023,

https://www.samr.gov.cn/jzxts/tzgg/ftjz/art/2023/art_d0aa211446c544609941c19e88a5a3d2.html;

KFTC, “Announcement of deliberation results on Broadcom’s acquisition of VMware stock,” October 23, 2023, http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=10255.

18 European Commission, “Mergers: Commission clears acquisition of VMware by Broadcom, subject to conditions,” July 12, 2023, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3777.

19 GOV.UK, “CMA clears Broadcom’s deal to buy VMware,” August 23, 2023, <https://www.gov.uk/government/news/cma-clears-broadcom-s-deal-to-buy-vmware>.

20 Vanessa Yanhua Zhang, Richard Zhao, and Angela Gunn, “FRAND Remedies in China’s Merger Control: An Economic Perspective,” *The Antitrust Source*, February 2024, https://www.americanbar.org/groups/antitrust_law/resources/source/2024-february/frand-remedies-china-merger-control/.

21 SAMR, “China’s Antitrust Enforcement Annual Report (2019)”, December 16, 2020, <https://www.gov.cn/xinwen/2020-12/25/5573435/files/195171fdee024615933c10d57f141171.pdf>;
SAMR, “Interpretation of the State Administration for Market Regulation’s Review of Cases of Concentrations of Undertakings in 2023,” January 23, 2024, https://www.samr.gov.cn/xw/zj/art/2024/art_626627829db34e92901f776931077f4e.html.

22 Vanessa Yanhua Zhang, Rita Xiaoping Li, and Josephine Duh, “China’s Merger Control of Non-Horizontal Transactions: The Growing Role of Economic Analyses and Behavioral Remedies,” *Antitrust Magazine Online*, February 2022, https://www.americanbar.org/groups/antitrust_law/resources/source/2022-february/chinas-merger-control-non-horizontal-transactions/.

23 For more discussion of the economic analysis in merger reviews, see Janet Hui, Wei Huang and Vanessa Yanhua Zhang, “Antitrust and Economic Analysis of Key Sectors under the New Anti-Monopoly Law,” *Antitrust*, Fall 2023, https://www.americanbar.org/groups/antitrust_law/resources/magazine/2023-fall/antitrust-and-economic-analysis-new-anti-monopoly-law/.

24 Article 32, Anti-Monopoly Law of the People’s Republic of China, June 24, 2022.

25 MaxLinear, Form 8-K Current Report, August 31, 2022, p.2, <https://investors.maxlinear.com/all-sec-filings/content/0001104659-22-096560/0001104659-22-096560.pdf>.

26 CIP Lawyer, “The State Administration for Market Regulation ‘for the First Time’ Granted Conditional Approval to a Merger Transaction Voluntarily Filed that Did Not Meet the Filing Thresholds,” September 25, 2023, https://www.ciplawyer.cn/html/flid_zh/20230925/151593.html?prid=364.

27 CCTV News, “SAMR: 27 Cases of Monopoly Agreements and Abuse of Market Dominance Were Investigated and Dealt With Last Year, and CNY 2,163 Million was Fined and Confiscated,” February 29, 2024, <https://news.cctv.com/2024/02/29/ARTImp82O2bE4RG2W4agU7z1240229.shtml>.

28 Due to a lack of systematic official announcements, the cases involving monopoly agreements were organised from SAMR’s official website, <http://www.samr.gov.cn>.

29 Due to a lack of systematic official announcements, the cases involving abuse of market dominance were organised from SAMR’s official website, <http://www.samr.gov.cn>.

30 SAMR, “Announcement of the State Administration for Market Regulation on the Beijing Administration for Market Regulation’s Penalty Decision of the Monopoly Agreement Implemented and Reached by Beijing Zizhu Pharmaceutical Co., Ltd.,” May 29, 2023, https://www.samr.gov.cn/jzxts/tzgg/xzcf/art/2023/art_56a68c0dad4b480a8c2b62d33df46c16.html.

31 SAMR, “Announcement of the State Administration for Market Regulation on the Shanghai Administration for Market Regulation’s Penalty Decision of the Abuse of Market Dominant Position Implemented by Shanghai No.1 Biochemical and Pharmaceutical Co.,Ltd. and Three Other Companies,” December 22, 2023, https://www.samr.gov.cn/jzxts/tzgg/xzcf/art/2023/art_ace743582e8a4013b155d62e5025c91b.html.

32 SPC, Draft of Provisions of the Supreme People’s Court of the People’s Republic of China on Several Issues concerning the Application of Law in the Trial of Monopoly-related Civil Dispute Cases, November 18, 2022, <https://ipc.court.gov.cn/zh-cn/news/view-2104.html>.

33 ChinaCourt, “The Supreme People’s Court Released Typical Cases of Anti-monopoly and Anti-Unfair Competition in 2023,” September 14, 2023, <https://www.chinacourt.org/article/detail/2023/09/id/7532109.shtml>.

34 *Yangtze River Pharmaceutical Group v. HIPI Pharma Tech*, Case No. (2020) Zui Gao Fa Zhi Min Zhong No.1140. See more discussion in Vanessa Yanhua Zhang, John Jiong Gong and Rita Xiaoping Li, “A Closer Look At China’s Landmark Pharma Antitrust Ruling,” *Law360*, August 25, 2023, <https://www.law360.com/articles/1710479/a-closer-look-at-china-s-landmark-pharma-antitrust-ruling>.

³⁵ *Ketian et al. v. Hitachi Metals*, Case No. (2021) Zui Gao Fa Zhi Min Zhong No. 1398, 1413, 1449, and 1482.
³⁶ Hitachi Metals, Ltd changed its corporate name to Proterial, Ltd on January 4, 2023.