

Appetite for anti-unfair competition action in the Internet space

Kluwer Competition Law Blog
December 20, 2018

Adrian Emch (Hogan Lovells, China) and Qing Lyu (Hogan Lovells)

Please refer to this post as: Adrian Emch and Qing Lyu, 'Appetite for anti-unfair competition action in the Internet space', *Kluwer Competition Law Blog*, December 20, 2018, <http://competitionlawblog.kluwercompetitionlaw.com/2018/12/20/appetite-for-anti-unfair-competition-action-in-the-internet-space/>

It's been almost a year since the new "Internet clause" in China's Anti-Unfair Competition Law (**AUCL**) is in force. The enforcement authority hasn't used it much in 2018. But one decision is noteworthy.

AUCL amendment

On 1 January 2018, the first amendment to the AUCL since its enactment in 1993 came into effect. One of the major changes it brought was the addition of a new "Internet clause." Article 12 of the amended AUCL prohibits the use of technological means to obstruct or disrupt the regular operations of online competitors, and lists several examples of unfair competition practices.

Before 2018, allegations of unfair competition practices in the Internet space had been mainly handled under Article 2 of the AUCL, a catch-all provision referring to the high-level principles of fairness and good faith. Most, if not all, Internet cases under Article 2 were dealt with before the courts, not the enforcement authority.

Food app rivalry

In April 2018, a new authority was created – the State Administration for Market Regulation (**SAMR**) – whose jurisdiction includes AUCL enforcement. In July 2018, its local branch in Haining, close to Shanghai, adopted reportedly the first authority decision applying Article 12 of the amended AUCL.

The decision sanctioned the agent of a well-known food delivery app, Meituan, for engaging in unfair competition practices.

According to a report by SAMR's affiliated newspaper, the agent was appointed by Meituan to handle the relations with the restaurants listed on Meituan's food delivery app. According to the SAMR decision, Meituan's market share in the region fell as a result of the launch of a rival food delivery app. In response to the launch, the agent appears to have requested the restaurant owners listed on both apps to quit the rival app. As a punishment for uncooperative restaurants, the agent reportedly changed the data parameter at the backend of the Meituan app, narrowing the delivery scope for those restaurants from a 2.5-3 km to a 0.2-1.5 km radius. This meant that the restaurants were only visible to app users from within a short distance, but not when the users were further away. As a result, the affected restaurants experienced a sharp decline of orders from users of the Meituan app. Some of the restaurants were reportedly forced to close or stop their cooperation with the rival app.

The SAMR branch found this conduct to amount to unfair competition practices against the new rival by way of technological means, in violation of Article 12 of the AUCL.

Going forward

The food app decision from Haining was reportedly the first authority decision based on Article 12 of the AUCL. The relatively sparse use of the new "Internet clause" in the AUCL may in part be due to the fact that it doesn't apply retroactively, hence the facts must have occurred after 1 January 2018 – a limited period of time.

However, while we didn't find decisions in the public domain, there were reports on similar enforcement actions against food delivery apps by SAMR branches in Wuxi and Jinghua, both close to Shanghai.

Furthermore, the decision from Haining was selected by SAMR as one of the ten most important unfair competition cases in 2018. This may give a flavor of future AUCL enforcement in the Internet space.