

Study on the Application of the General Clause of Anti-Unfair Competition Law in China

China's amended Anti-Unfair Competition Law (AUCL) comes into force on 1 January 2018. In addition to Chapter Two of AUCL which provides expressly negative lists of conducts regarded to be unfair, Article two contains a General Clause unchanged with the former legislation which envisages "Any Stakeholder doing business shall abide by the principle of voluntariness, equality, fairness, honesty and good faith and also adhere to any law and business morality".

In previous legal practice, this General Clause has been used very frequently in Chinese judicial decisions to examine the unfair nature of the alleging activity when such activity cannot fall into the statutory categorization of unfair trade practices, especially in cases that involved new business models and competing methods. There are lots of criticism of the over-broad application of the General Clause and complaints of abuse of judicial discretion on defining the concepts therein. It has to be noted, however, that, due to the inclusion of an Internet Clause -- Article 12 "Unfair Internet Activities" into the new AUCL, the threshold for the application of the general clause might presumably be lower than under the old legislation.

The proposed paper intends to summarize firstly the circumstances of the two models how the Supreme People's Court apply the General Clause, that is, as a subsidiary consideration and as an independent imputation, and then illustrate explicitly how the Chinese courts define the concept of fairness and morality in unfair competition cases, and the distinction among different values laid down in the AUCL. The paper will also take the interrelation between the General Clause and the Internet Clause as an example to discuss the role of principle of fairness and morality in balancing competition and innovation brought by new information technology.

Author Information:

Qian TAO, Associate Professor, China University of Political Science and Law, Beijing, PRC.
qian.tao@cupl.edu.cn