

A stylized world map in shades of blue and grey, overlaid on a light blue grid background. The map shows the continents of North America, South America, Europe, and Asia.

Administrative dispute case
Thsware sues Guangdong Provincial
Department of Education for violation
of fair competition rights

---The review criteria of elimination and restriction
for competitive administrative behaviors

About the Speaker

Huang Weiming, presiding judge of the administrative court of the Guangdong Provincial Higher People's Court, senior judge, with a JSD from Renmin University of China and a master's degree in constitutional and administrative law from Fudan University, has extensive experience of administration and civil litigation in the field of anti-unfair competition, and anti-monopoly. He is also the presiding judge of the second instance in this case.

Key Issues of the Holding of the Court

In the course of fulfilling their responsibilities, the administrative agencies use their designated operators to provide free services to consumers without open and fair competitive selection procedures and legitimate reasons such as national security concerns, keeping state secrets and emergency responses. The business operator benefits from such behavior, such as through the increase of goodwill in the relevant product market and understating user habits. The behavior that harms the fair competition order of the market should be deemed to constitute the “abuse of administrative power, exclusion and limitation of competition” under the Article 8 and Article 32 of the Anti-Monopoly Law of the People's Republic of China. The administrative department only defense was on the ground that the higher authorities use the same goods in the process of performing their duties. The People’s court rejected the defense.

The Gist of the Dispute

1. In 2013, the Ministry of Education issued a document outlining the Organizing Committee and Executive Committee of the National Vocational College Skills Competition for 2013-2015. It decided to hold the National Vocational College Skills Contest and to include the “basic skills of construction cost” in the competition. In 2014, a decision was made to use Glodon’s software exclusively in this event.
2. In order to connect with national competitions, in 2014, the Guangdong Provincial Education Department also designated Glodon's software to be used exclusively in provincial competition projects such as the “Engineering Cost Basic Skills” in the Guangdong Provincial Trials.
3. The software company complained that the designated behavior of the Guangdong Provincial Education Department was an abuse of administrative power, in violation of the anti-monopoly law and anti-unfair competition law, infringement of its fair competition rights, and they filed a lawsuit to the Guangzhou Intermediate People's Court.

Claim of the Plaintiff

1. Confirm that the defendant has abused administrative powers to appoint or disguise the specific administrative actions that govern the exclusive use of Glodon's exclusive software.
2. The defendant and the third party Glodon Co., Ltd. assumed the reasonable expenses incurred by the plaintiff as a result of investigating and stopping the illegal activities of the defendant and Glodon Company, a total of RMB 10,800.

Referee results

- The Guangzhou Intermediate People's Court made the (2014) Sui Intermediate People's Court Initial No. 149 Administrative Judgement on February 2, 2015: 1. the court held that the defendant's conduct of the exclusive use of third-party Glodon company-related software in the Guangdong Provincial Qualification Project Cost Basic Skills Competition was illegal;
- Second, the Thsware's compensation request was rejected.
- After the verdict was handed down, both the Guangdong Provincial Department of Education and Glodon Company appealed.
- The Higher People's Court of Guangdong Province made (2015) the Administrative Judgement Higher Court Ultimate No. 228 on June 22, 2017: the appeal was rejected and the original judgment was upheld.

Reasoning

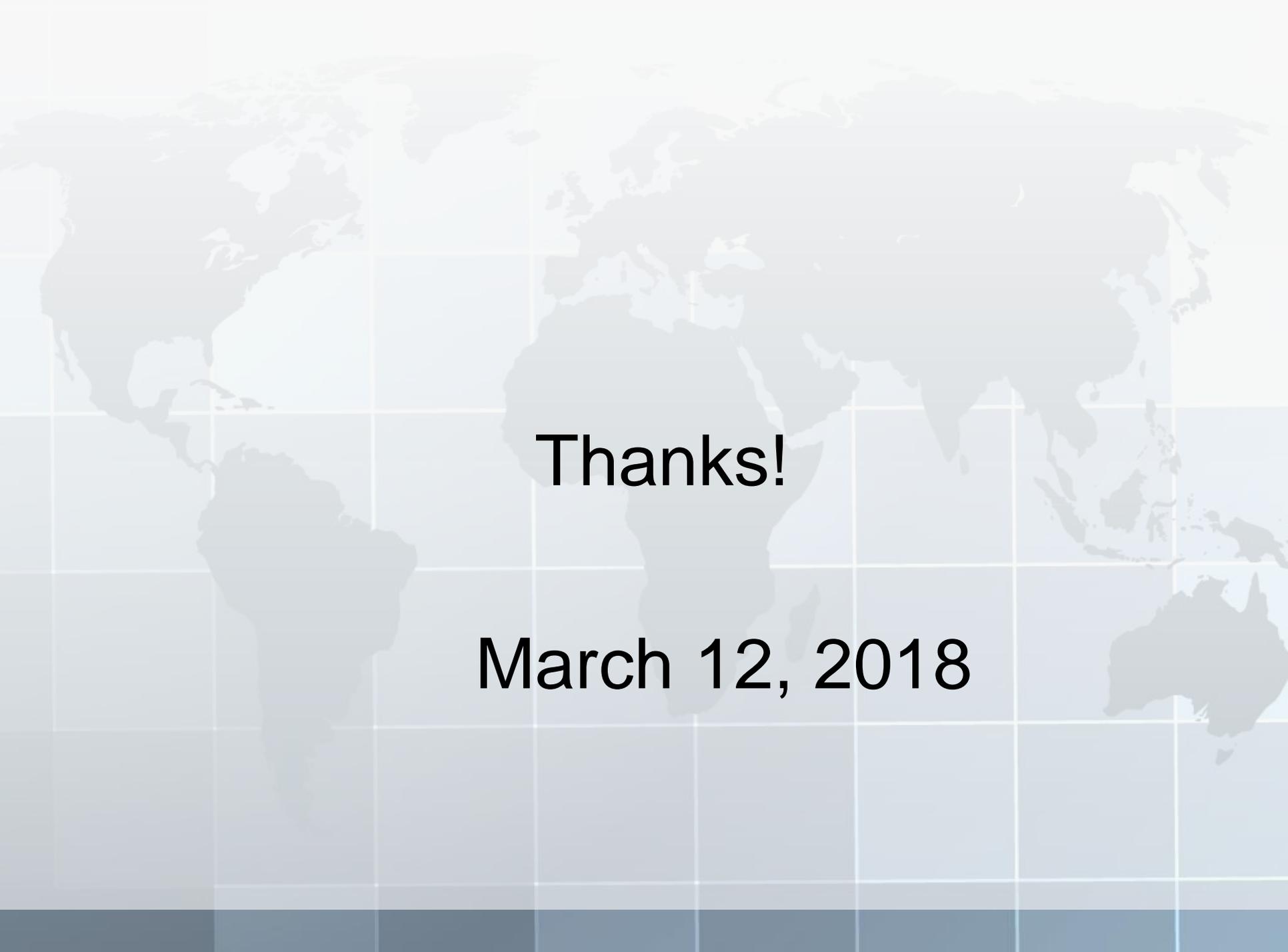
- 1. There is a question over whether, by designating the exclusive use of related software provided by Glodon free of charge, the Guangdong Provincial Department of Education should face an administrative case?
- The Department of Education of Guangdong Province has the responsibility for managing the events organized by vocational and technical colleges; the project-related basic engineering skills competitions are sponsored by the Department of Education of Guangdong Province; and the above-mentioned technical specifications and contest regulations need to be reviewed by the Department of Education of Guangdong. It falls within the scope of administrative proceedings.

Reasoning

- 2. Is it legal for the Department of Education of Guangdong Province to designate the exclusive use of related software provided by Glodon for free in the case involved?
- The Guangdong Provincial Department of Education did not conduct legality and rationality arguments, nor did it provide other evidence to prove that it was in accordance with an open and fair competitive selection procedure to designate the exclusive use of Glodon's software. The behavior did not have legitimate reasons. It eliminated and restricted the competition, damaged the fair market competition order and violated the Articles 8 and 32 of the Anti-Monopoly Law of the People's Republic of China.

The Significance of the Case

- In this case, the Department of Education of Guangdong Province did not apply due process when handling Glodon and the exclusive usage of the company's software. The consideration of whether the designated use behavior had resulted in the exclusion and limitation of competition is part of the determination of illegality, which provides valuable precedents for evidence review of the administrative authorities' abuse of administrative power as well as exclusion and limitation of competition; it will have a far-reaching impact on preventing the abuse of administrative power and administrative intervention, encouraging and promoting free and fair competition.



Thanks!

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