

China Monthly Antitrust & Data Protection Update

January 2021

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Antitrust

Legislation

Anti-Monopoly Law Amendments Included in the 2021 Key Legislative Plan of the National People's Congress

On 21 December 2020, Yue Zhongming, spokesperson of the Legal Work Committee of the Standing Committee of the National People's Congress, introduced the key legislative plan of the National People's Congress in 2021 at a press conference, which includes the amendments of the Anti-Monopoly Law.¹

¹ <http://www.npc.gov.cn/npc/c30834/202012/f4fd27270f78471dbe8f88c31c47cb0f.shtml>

Authorities

The Standing Committee of the Zhejiang Provincial Party Committee Holds a Seminar on Antitrust and the Prevention of Disorderly Expansion of Capital

On 28 December 2020, the Standing Committee of the Zhejiang Provincial Party Committee held a seminar to thoroughly implement the requirements of the recent Political Bureau of the Central Committee of the Communist Party of China Conference and the Central Economic Work Conference to strengthen antitrust and prevent the disorderly expansion of capital and to research and deploy related work in the province. ²

People's Daily Releases 2019 Annual Report on Antitrust Enforcement

On 26 December, the People's Daily published the *2019 Annual Report on China's Antitrust Enforcement*, a report drafted by the Anti-Monopoly Bureau of the State Administration for Market Regulation ("SAMR") to thoroughly implement the important instructions of President Xi Jin Ping on competition policy and antitrust work, to strengthen and improve antitrust enforcement, to promote the modernisation of the governance system and governance capabilities, and to create a more open, transparent, standardised, orderly, fair and efficient legal environment for the compilation of the annual report. ³

SAMR Releases Ten Typical Antitrust Enforcement Cases in 2019

On 25 December, in order to continuously strengthen anti-monopoly law enforcement, protect fair competition in the market, and safeguard consumer interests, SAMR released the top ten typical antitrust enforcement cases in 2019, including the monopoly agreement case of Changan Ford Automobile Co., Ltd, the abuse of dominant market position case of Eastman (China) Investment Management Co., Ltd, and the case of abusing administrative power to exclude and restrict competition of Zhejiang Meteorological Bureau. ⁴

SAMR Sets Work Plan for the Next Year

On 25 December, the Party Group of SAMR held an enlarged conference to further study and implement the spirit of the Central Economic Work Conference, and to discuss and deploy priorities for the market supervision system next year. The conference emphasised that it is necessary to strictly implement the major decisions of the Party Central Committee on strengthening antitrust and anti-unfair competition, effectively improve antitrust work capabilities, and create an institutional environment for fair competition. ⁵

² https://mp.weixin.qq.com/s/NEWjT0QwXObH_pXa2wGlOO?scene=25#wechat_redirect

³ http://paper.people.com.cn/rmrb/html/2020-12/26/nbs.D110000renmrb_06.htm

⁴ https://mp.weixin.qq.com/s/TX7_jBVBarxtj7Vyp0PvyQ

⁵ http://www.samr.gov.cn/xw/zj/202012/t20201225_324717.html

SAMR and the Civil Aviation Administration Establish a Price Supervision Cooperation Mechanism

On 18 December, SAMR and the Civil Aviation Administration issued the *Notice of the State Administration for Market Regulation and the Civil Aviation Administration on Establishing a Civil Aviation Price Supervision Cooperation Mechanism* (Guo Shi Jian Competition [2020] No.193), aiming to jointly investigate and punish monopolistic activities in accordance with the law.⁶

The Central Economic Work Conference Determines Eight Key Tasks for the Next Year, including Strengthening Antitrust and Preventing the Disorderly Expansion of Capital

From 16 December to 18 December, the Central Economic Work Conference was held in Beijing. The conference emphasised that antitrust and anti-unfair competition are inherent requirements for improving the socialist market economic system and promoting high-quality development. The state supports platform enterprises to innovate, develop and enhances their international competitiveness, supports the common development of the public and non-public economies, and at the same time regulates development in accordance with the law and perfects digital rules. It is necessary to improve the legal norms for the identification of platform enterprise monopoly, the management of data collection and use, and the protection of consumer rights. It is necessary to strengthen regulation, enhance supervision capabilities, and actively oppose monopoly and unfair competition. Financial innovation must be carried out upon prudential supervision.⁷

Beijing Market Supervision Integrated Law Enforcement Unit Established

On 15 December, the Beijing Municipal Market Supervision Integrated Law Enforcement Unit was officially found. The Enforcement Unit integrated the responsibilities of five enforcement teams. In the future, it will exercise the power of administrative punishment that should be exercised by provincial administrative departments in the fields of antitrust and intellectual property rights, and will be responsible for the investigation and handling of related cases and related administrative law enforcement.⁸

The Political Bureau of the Central Committee of the CPC Conference: Strengthening Antitrust and Preventing Disorderly Expansion of Capital

On 11 December, the Political Bureau of the CPC Central Committee held a conference to analyse and discuss the economic work in 2021. The conference called for the overall promotion of reform and opening up, strengthening the national strategic scientific and technological power, enhancing the independent controllability of the industrial supply chain, forming a strong domestic market, consolidating the agricultural foundation, strengthening antitrust and preventing the disorderly expansion of capital.⁹

⁶ http://gkml.samr.gov.cn/nsjg/jjjzj/202012/t20201224_324674.html

⁷ http://www.xinhuanet.com/politics/leaders/2020-12/18/c_1126879325.htm

⁸ <https://m.21jingji.com/article/20201216/herald/34ca802eb3573e5a82dd5aedf1516a11.html>

⁹ http://www.xinhuanet.com/politics/leaders/2020-12/11/c_1126850644.htm

23 Provinces Holds an Antitrust Work Symposium in Hangzhou

On 10 December, an antitrust work symposium of several provinces was held in Hangzhou, Zhejiang Province. The symposium studied and implemented the spirit of the Fifth Plenary Session of the 19th Central Committee of the Party in-depth, summarised the achievements in antitrust work, and thoroughly analysed the new situation, new tasks and new challenges; it also discusses and deploys antitrust work during the “14th Five-Year Plan” period. Gan Lin, the deputy director of SAMR, attended the meeting and delivered a speech. ¹⁰

¹⁰ http://www.samr.gov.cn/xw/zj/202012/t20201210_324275.html

Public Enforcement

A Subsidiary of the State-Owned Nanjing Water Affairs Group Punished for Abuse of Dominant Position

On 16 December 2020, SAMR announced on its official website that on 30 November, the Jiangsu Administration for Market Regulation made an administrative penalty decision on the abuse of dominant position case of Nanjing Water Group Gaochun Co., Ltd; the company was fined CNY 1.82 million for exclusive dealing conducts.¹¹

SAMR Launches an Investigation into Alibaba's Suspected "Choosing One out of Two" Monopolistic Behaviour

Recently, SAMR, based on the tips-off, launched investigations into Alibaba Group Holdings Co., Ltd. for suspected monopolistic conduct such as "choosing one out of the two".¹²

¹¹ http://www.samr.gov.cn/fldj/tzgg/xzcf/202012/t20201216_324415.html

¹² http://www.samr.gov.cn/xw/zj/202012/t20201224_324638.html

Merger Control

SAMR Imposes Administrative Penalties on Three Gum-Jumping Cases

On 14 December 2020, SAMR issued penalty decisions on the gum-jumping cases of Alibaba Investment Co., Ltd.'s acquisition of the equity of Yintai Commercial (Group) Co., Ltd., China Reading Group's acquisition of the equity of Xinli Media Holdings Co., Ltd, Shenzhen Hive Box Network Technology Co., Ltd.'s acquisition of the equity of China Post Smart Delivery Technology Co., Ltd., The three companies were fined CNY 500,000 respectively.¹³

¹³ <http://www.samr.gov.cn/fldj/tzgg/xzcf/>

Courts Litigation

Wuhan Intermediate People's Court Issues an Anti-Suit Injunction on Samsung v. Ericsson SEP Licence Fee Dispute

On 25 December 2020, the Wuhan Intermediate People's Court granted Samsung an anti-suit injunction against Ericsson, prohibiting Ericsson from, before the judgment of the case takes effect: (1) seeking or applying for injunctive relief or administrative measures worldwide for the enforcement of 4G and 5G standard-essential patents; (2) suing for courts to determine license conditions (including license rates) or license fees worldwide, or to confirm whether they have fulfilled FRAND obligations; (3) seeking an anti-suit injunction.¹⁴

The Supreme People's Court Rules that Abuse of Dominant Position Disputes is Bound by Arbitration Clauses

On 24 December, the China Judgements Online published the Supreme People's Court's retrial ruling in the abuse of market dominance dispute case between Shanxi Changlin Industrial Co., Ltd. and Shell (China) Co., Ltd; it found that the antitrust dispute, in this case, shall be bound by the arbitration clause in the "Distributor Agreement" between the two parties, and therefore rejected the plaintiff's application for a retrial.¹⁵

Qinghai Natural Gas Company Files an Administrative Lawsuit after Being Punished for Abuse of Dominant Position and Obstructing Investigation

On 22 December, the Xining Railway Transportation Court heard an administrative lawsuit brought by Qinghai Minhe Chuanzhong Petroleum and Natural Gas Co., Ltd. against the anti-monopoly administrative penalty imposed by Qinghai Administration for Market Regulation.¹⁶

Chongqing Intermediate People's Court Upholds the Punishment of the Two Parties in the Chongqing Sintered Brick Horizontal Monopoly Agreement Case

On 10 December, the First Intermediate People's Court of Chongqing Municipality issued a judgment on the appeal case of Chongqing Sintered Brick Horizontal Monopoly Agreement case. On 9 August 2019, the Chongqing Administration for Market Regulation made administrative penalty decisions on nine parties in the case, including Yunyang Rongming Shale Brick Co., Ltd. ("**Rongming**") and Yang Tao (the person in charge of Yanghe Brick Factory in Shuangjiang Town); Rongming and Yang Tao were fined CNY 224,900 and CNY 284,506.4 respectively. Subsequently, both parties filed lawsuits at a district court, requesting the cancellation of the penalty decision, which was rejected by the court. After that, both parties filed an appeal to the Chongqing First Intermediate People's Court; the appeal was rejected by the Intermediate People's Court.¹⁷

¹⁴ <https://mp.weixin.qq.com/s/v0fchJURyG7YjbHwLg5O7g>

¹⁵ <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXS4/index.html?docId=b6495f06739646388ab9ac9e01247ebc>

¹⁶ <http://tingshen.court.gov.cn/live/16691974>

¹⁷ <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXS4/index.html?docId=b6495f06739646388ab9ac9e01247ebc>

Latest Update on the Two Pharmaceutical Companies Suing SAMR

On 15 December, the Beijing No. 1 Intermediate People's Court heard the case of Weifang Puyunhui Pharmaceutical Co., Ltd. ("Puyunhui") v. SAMR. Before, SAMR made an administrative penalty decision on 9 April against three calcium gluconate API distributors including Puyunhui for their abuse of dominant position.¹⁸

Wuhan Intermediate People's Court Rejects InterDigital's Application for a Reconsideration of Xiaomi's FRAND Rate Dispute

On 4 December, the Wuhan Intermediate People's Court ruled on the reconsideration application by InterDigital against the previous anti-suit injunction application by Xiaomi. On 9 June, Xiaomi filed a lawsuit in the Wuhan Intermediate People's Court, requesting the court to make a ruling on the global rates or the range of rates involved in the negotiation of standard-essential patent license fees between the two parties in accordance with FRAND rules. On 29 July, InterDigital sued Xiaomi for patent infringement and sought injunctive relief in the Delhi High Court of India. On 4 August, Xiaomi filed an anti-suit injunction application to the Wuhan Intermediate People's Court. On 23 September, the Wuhan Intermediate People's Court made a ruling, demanding InterDigital to immediately withdraw or suspend the temporary and permanent injunctions application to the District Court of Delhi for Xiaomi's 3G and 4G standard-essential patents involved in this case, and refrain from applying for enforcement of the temporary and permanent injunctions that have been obtained or may be obtained against Xiaomi on the 3G and 4G standard-essential patents involved in this case in China or other countries and regions. InterDigital applied for reconsideration. On 4 December, the Wuhan Intermediate People's Court made a ruling and rejected the InterDigital's reconsideration application.¹⁹

Beijing Intellectual Property Court Dismisses the Abuse of Dominant Case against PetroChina and BECKBURY

On 7 December, the China Judgements Online published the judgment of the abuse of dominant position case between Panjin Dongxing Oil Well Measures Service Co., Ltd., PetroChina and BECKBURY Company. The Beijing Intellectual Property Court rejected the plaintiff's request because the plaintiff could prove neither that PetroChina and BECKBURY had a dominant market position in the relevant market nor the existence of the accused conduct of discrimination and refusal to deal without justification.²⁰

¹⁸ https://mp.weixin.qq.com/s/NrISEKVAzdQsvMdc1HVDag?scene=25#wechat_redirect

¹⁹ https://mp.weixin.qq.com/s/VqZRr1XQzzhE4dAW4F7MEw?scene=25#wechat_redirect

²⁰ <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXS4/index.html?docId=46472a4cfa924c93a56dac89000a0f99>

Shenzhen Intermediate People's Court Confirms Jurisdiction over SEP's Global License Rate

In December, the Shenzhen Intellectual Property Court of the Shenzhen Intermediate People's Court made a ruling on the jurisdiction objection in the case of OPPO v. Sharp; Sharp's application for jurisdictional objection was rejected.²¹

The Supreme People's Court Rejects the Appeal of the Abuse of Market Dominant Position Case against China Environmental Monitoring Station

On 3 December, the China Judgments Online published the verdict on the abuse of dominant position case of Guangzhou Quanxing Environmental Protection Equipment Co., Ltd. v. China Environmental Monitoring Station. The Supreme People's Court rejected the plaintiff's request because the plaintiff failed to prove that it had a direct interest in the claim.²²

²¹ http://www.ipeconomy.cn/index.php/mobile/news/magazine_details/id/2004.html

²² <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXS4/index.html?docId=a55d8836ee344ee683ffac8500d120f6>

Academia

Sino-German Antitrust Experts Discuss Antitrust and Platform Economy

In December 2020, the Social Sciences Literature Press and the China Trade Research Institute of Beijing International Studies University jointly hosted the antitrust and platform economy academic seminar and the release conference of a new book, *Uneasy Change: Market Competition and Public Welfare in the Digital Age*. Antitrust experts and scholars from Germany and China interacted and discussed the development of the digital economy and antitrust issues of the platform economy in Germany, the European Union, and China. ²³

²³ http://dz.jckb.cn/www/pages/webpage2009/html/2020-12/29/content_70346.htm

Data Protection

Legislation

Shenzhen Introduces the First Comprehensive Data Legislation in China and Plans to Establish A Negative List Mechanism for Public Data Sharing

On 28 December 2020, the Standing Committee of the Shenzhen People's Congress deliberated for the first time on the *Data Regulations of Shenzhen Special Economic Zone* (Draft) ("**Shenzhen Data Regulations**"), which is the first basic and comprehensive legislation in the data field of China. The Shenzhen Data Regulations proposes the protection of "data rights and interests" as the first of its kind in domestic legislation and provides the legal basis for the legislation. In addition, the Shenzhen Data Regulations tries to design a negative list mechanism for data sharing; that is, public data should be shared without restrictions except in special circumstances in which data cannot be provided, where a clear legal basis should be given and, after review, be included in the negative list. Public data outside the negative list should be share between public administration and service agencies for free.²⁴

Deputy Governor of the Central Bank: Interim Measures on the Protection of Personal Financial Information Will be Promulgated

On 25 December, the State Council Information Office held a regular briefing on State Council policies. Chen Yulu, deputy governor of the People's Bank of China ("**Central Bank**"), attended the meeting and answered questions from reporters. Chen said: The Central Bank regards "ensuring security" as one of the three key points of credit management work and will promptly promulgate the *Interim Measures on the Protection of Personal Financial Information* with greater efforts to regulate the financial use of personal information in compliance with laws and regulations to safeguard the legitimate rights and interests of personal information subjects.²⁵

China's First Regulation in the Online Recruitment Field Will Be Implemented and Highlights Personal Information Protection by HR Service Agencies

On 24 December, the Ministry of Human Resources and Social Security announced the *Administrative Regulations on Online Recruitment Services*, which clearly requires HR service agencies to review the authenticity and legality of the materials provided by employers, and not to disclose, illegally sell, or illegally provide to others the personal information it collects. Offenders will be punished in accordance with the *Cybersecurity Law* (which includes penalties including correction order, warning, confiscation of illegal income, fine, suspension of business for rectification, website

²⁴ http://www.gd.gov.cn/gdywdt/dsdt/content/post_3161802.html

²⁵ <https://m.mpaypass.com.cn/news/202012/26172906.html>

shutdown and revocation of business license, etc.). As China's first regulation on the ministry level in the field of online recruitment services, the Regulations will be implemented on 1 March, 2021.²⁶

MIIT Will Formulate Interim Regulations on the Protection of Personal Information in Apps

On 24 December, Wen Ku, spokesperson for the Ministry of Industry and Information Technology ("MIIT") and Director of the Information and Communication Development Department, said at a press conference that the MIIT will study and formulate interim regulations on the protection of personal information in Apps at the ministerial rule level; at the same time, the MIIT will continue to promote the formulation of industry standards, improve the system functions of the technology platform for App inspection, and continue to carry out special regulation actions targeting the infringement of users' rights and interests in Apps.²⁷

Central Economic Work Conference Determines Eight Key Tasks for Next Year including Improving the Regulation of Data Collection and Use by Platform Enterprises

From 16 to 18 December, the Central Economic Work Conference was held in Beijing. All members of the Standing Committee of the Politburo of the CPC Central Committee attended the conference. The conference confirmed that eight key tasks will be taken as the focus of next year, including strengthening anti-monopoly and preventing the disorderly expansion of capital. The specific work plan includes improving digital rules while supporting the innovation and development of platform enterprises, strengthening the legal norms for the identification of platform enterprise monopoly, the management of data collection and use, and the protection of consumer rights.²⁸

Chairman of CBIRC: Regulations on the Protection of Financial Data Security is Under Research and Formulation

On 8 December, Shuqing Guo, Chairman of the China Banking and Insurance Regulatory Commission ("CBIRC"), delivered a speech entitled *Fintech Development, Challenges and Regulation* at the Singapore Fintech Festival 2020. Chairman Guo pointed out that loopholes in the data privacy protection system need to be filled up. He believes that some technology companies take advantage of the market to excessively collect and use corporate and personal data, and even illegally trading them. These actions are not authorized by users, and seriously violate the interests of enterprises and personal privacy. Regulatory authorities are studying and formulating regulations on the protection of financial data security to build more effective protection mechanisms for preventing data breaches and abuse.²⁹

²⁶ http://www.xinhuanet.com/politics/2020-12/24/c_1126904156.htm

²⁷ <https://baijiahao.baidu.com/s?id=1686931384784722736&wfr=spider&for=pc>

²⁸ http://www.xinhuanet.com/politics/leaders/2020-12/18/c_1126879325.htm

²⁹ <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=947694&itemId=915>

CAC Issues the Scope of Necessary Personal Information for Common Types of Mobile Applications (Draft)

On 1 December, the Cyberspace Administration of China (“CAC”) issued the *Scope of Necessary Personal Information for Common Types of Mobile Applications (Draft for Public Comments)* which stipulates the scope of necessary personal information for 38 common types of Apps such as map navigation, online car-hailing, and instant messaging. In addition, “necessary personal information” is clearly defined as personal information necessary to ensure the normal operation of the basic functions of the App, without which the App cannot provide basic functional services. If the user agrees to provide the necessary personal information, the App must not refuse the user to install and use its service. The deadline for soliciting comments is 16 December.³⁰

Tianjin Promulgates Local Legislation: Market Credit Information Providers Shall Not Collect Financial and Biometric Information of Natural Persons

On 1 December, the Standing Committee of the Tianjin People’s Congress passed the *Tianjin Social Credit Regulations* (the “**Regulations**”), which will come into force on 1 January, 2021. The Regulations has 8 chapters and 66 articles, including chapters on general provisions, social credit information, credit incentives and penalty, protection of the rights of credit subjects, development of the credit service industry, construction of the social credit environment, legal liabilities, and supplementary provisions, etc. The Regulations highlights the protection of the rights and interests of credit subjects. Article 16 clearly stipulates that “Market credit information providers shall not collect natural persons’ religious beliefs, blood types, disease and medical history, biometric information, and other personal information prohibited from collection by laws and administrative regulations.”³¹

CPC Central Committee Issues the Implementation Outline for Building a Society with Rule of Law, Clarifying Key Points of Cyberspace Governance for the Next Five Years

In early December, the Central Committee of the Communist Party of China issued the *Implementation Outline for Building a Society with Rule of Law (2020-2025)* (“**Outline**”). The Outline mainly clarifies the key contents in promoting the rule of law from five aspects, including “Cyberspace Governance by Law”, and proposed specific measures. The Outline points out that it is necessary to establish and improve the security protection of critical information infrastructure and network security management systems, such as data security management and network security review. The Outline also highlights formulating personal information protection laws, as well as strictly regulating the collection and use of personal information, including personal ID and communications.³²

³⁰ http://www.cac.gov.cn/2020-12/01/c_1608389002456595.htm

³¹ <https://www.cnbeta.com/articles/tech/1060837.htm>

³² http://www.gov.cn/zhengce/2020-12/07/content_5567791.htm

TAF Issues Standards for Collecting Facial Information, Users Should Not Be Forced or Deceived to Scan Their Faces

In early December, the Telecommunication Terminal Industry Forum Association (“TAF”) issued a group standard: *App Evaluation Standards for Minimum Necessary Collection and Use of Personal Information - Facial Information* (“**Facial Information Standard**”). The Facial Information Standard stipulates the minimum necessity specifications and evaluation methods in the collection, use, storage, and destruction of facial information by Apps, and requires Apps not to force or deceive users to scan their faces. The Facial Information Standard also uses typical application scenarios in personal information processing activities to illustrate how to implement the principle of minimum necessity, including four types of scenarios: smart experience, local authentication, remote authentication, and “local and remote” authentication.³³

Shenzhen Releases Taxi Management Regulations (Draft): Maximum Fine of CNY 10,000 for Disclosing Passengers’ Personal Information in Online Car-hailing

In early December, the Standing Committee of the Shenzhen People’s Congress issued the *Taxi Regulations of Shenzhen Special Economic Zone (Draft)* (“**Taxi Regulations**”) and solicited opinions from the public. The Taxi Regulations incorporates online car-hailing into the taxi Regulation system and stipulates that operators and drivers who illegally use or disclose passengers’ personal information shall be fined between CNY 2,000 and CNY 10,000 by the public security organs, and those who cause losses shall bear civil liabilities.³⁴

³³ <https://mp.weixin.qq.com/s/ghUDvaymHPZ9VDepbmtMgA>

³⁴ http://wb.sznews.com/MB/content/202012/03/content_958100.html

Enforcement Cases

MIIT Releases the Seventh Batch List of 63 Apps that Infringe Users' Rights in 2020

On 21 December 2020, the MIIT issued a notification on apps' infringements of user rights and interests and *the List of Problematic Apps of 2020 (the seventh batch)*. The list includes 63 apps that have not yet been rectified. The MIIT requires these apps to complete the rectification before 28 December. The MIIT found that Apps still has many problems with regards to collecting device information of MAC address and sharing users' personal information to a third-party through software development kits (SDKs) without prior consent.³⁵

Beijing Promotes Pilot Project for the Security Management on Cross-Border Data Flow

On 18 December, the first policy matchmaking meeting of the pilot project for the security management on cross-border data flow organized by the Cyberspace Administration of Beijing was held in Beijing, with more than 40 companies participated. This pilot project targets mainly the Zhongguancun Software Park, Jinzhan International Cooperation Service Zone, Daxing Airport Area of the Free Trade Zone, and several other zones. The pilot project will focus on key areas such as artificial intelligence and biomedicines for the cross-border data flow in accordance with the demands of enterprises. In addition, the security assessment for personal information export and certification of corporate data protection capabilities will also be important aspects of the pilot project.³⁶

MIIT Removes 26 Apps from App Stores and Strengthens Special Enforcement against Infringements on Users' Rights and Interests

On 16 December, the MIIT required several App stores to remove 26 Apps that infringed on users' rights. Previously, the MIIT had notified 60 Apps that have violated user rights on 3 December and requested that rectification be completed within the prescribed time limit. However, after a check and re-examination by a third-party information security agency, 19 apps still failed to comply with the requirements. In addition, the Sichuan Provincial Communications Bureau also found that another 7 Apps had not yet been rectified during an inspection. The MIIT, therefore, decided to remove these 26 Apps from app stores.³⁷

MIIT Releases the Sixth Batch List of 60 Apps That Infringe Users' Rights in 2020

On 3 December, the MIIT issued a notification on apps' infringements of user rights and interests and the *List of Problematic Apps of 2020 (the sixth batch)*. Previously, the MIIT has authorized a third-party testing agency to inspect mobile applications and urge companies with problems to make

³⁵ https://www.miit.gov.cn/xwdt/gxdt/sjdt/art/2020/art_fb7c796f64304c0d8a5c9c3e45e714f8.html

³⁶ https://www.sohu.com/a/439208589_114988

³⁷ https://www.miit.gov.cn/xwdt/gxdt/sjdt/art/2020/art_20732862cb56406bbf6c890f36f7721f.html

rectifications. The List of Problematic Apps includes 60 Apps that have not yet rectified their problems. The MIIT requires these Apps to complete the rectification before 10 December.³⁸

Shanghai Communications Bureau Names 22 Apps Infringing Users' Personal Information including Anjoke and Spring Airlines

On 2 December, the Shanghai Communications Bureau (“SCB”) announced a list of 22 Apps, including Anjoke and Spring Airlines, with typical personal information protection problems. The problems involved not specifying the purpose, method, and scope of collecting and using personal information. According to the requirements of the MIIT, the SCB has recently deployed a special action for the evaluation and testing of App data security and personal information protection. At present, the operation has tested more than 7,000 Apps and conducted special interviews and notifications for the first batch of more than 50 App operators with problems. They were ordered to rectify within a limited period. There are still 22 App operators who have not submitted the App compliance assessment reports on using personal information or have problems such as defective rectification reports.³⁹

³⁸ https://mp.weixin.qq.com/s/Bu9WiSmgdVVZuYyeJ2m7cA?scene=25#wechat_redirect

³⁹ <https://www.163.com/dy/article/FSS0CLO805129QAF.html>

Courts Litigation

Appeal of the First Facial Recognition Case is Publicly Heard in Hangzhou

On 29 December, the Hangzhou Intermediate Court publicly heard the appeal of the service contract dispute between Guo Bing and Hangzhou Wildlife World Co., Ltd. (“Zoo”). The case has received widespread attention because it involves personal biometric data such as fingerprints and facial recognition data. Prior to the appeal, on 20 November, the Hangzhou Fuyang District Court made a first-instance judgment on the case. Guo Bing and Wildlife World both decided to appeal. Guo argued that the notices and SMS notifications issued by the Zoo about the collection of personal biometric information are unfair and unreasonable provisions for consumers and should be avoided; besides, Guo believes that the Zoo has frauded him when collecting his personal biometric information, thus all of his related personal information should be deleted. The judgment will be pronounced later another day.⁴⁰

The defendant in the First Case involving Infringements of Privacy during COVID-19 Was Ordered to Make Compensation of CNY 1 Yuan

In mid-December, the Chongqing Yubei District Court accepted and concluded the first civil litigation concerning infringing citizens’ privacy rights during the COVID-19 pandemic in China. In this civil case, the court ruled that the defendant, a marketing planning company in Chongqing, should publish a written apology letter on its registered WeChat public account and authoritative newspapers to apologize to the plaintiff and compensate the plaintiff with CNY 1 for mental loss. Since the pandemic, the sources of the information breach and the forwarders received more often administrative penalties from the police in similar cases. Although the case occurred during a special time of Covid-19 pandemic, the court clearly held that the defendant had illegally released the personal information of more than 10,000 individuals and disclosed the plaintiff’s privacy in a malicious manner.⁴¹

Beijing Third Intermediate Court Released Information on Crimes involving Personal Information: Accommodation and Express Industries Heavily Hit by Data Breach

On 4 December, the Beijing Third Intermediate Court Released Information on typical criminal cases involving infringements of personal information. According to statistics, since the establishment of the court in July 2013, the court has received 75 criminal cases concerning personal information crimes involving 104 accused individuals and 2 accused organizations, including 16 appeal cases. A review of these cases shows that the number of criminal cases concerning personal information has increased exponentially in recent years, and companies such as hotels, express companies, and food

⁴⁰ https://mp.weixin.qq.com/s/i1_8Y0_0h9x84lm2POjE2w?scene=25#wechat_redirect

⁴¹ <https://m.mp.oeeee.com/a/BAAFRD000020201220397995.html?layer=3&share=chat&isndappinstalled=0&wxuid=ogVRcdASK8k-4ioxgetHh0Tv3C1g&wxsalt=36695c>

delivery platforms have become the hardest-hit areas of data breaches. More and more companies, general managers, and employees have jointly borne criminal liabilities.⁴²

First Public Interest Litigation concerning Infringement of Privacy via Internet Pronounced, 65 Defendants Ordered to Apologize

On 3 December, the Intermediate Court of Baoding, Hebei heard a public interest litigation involving 65 defendants who have infringed on others' privacy rights via the Internet. The verdict was pronounced in court. This case is the first public interest litigation on the ground of infringement of citizens' privacy rights in China. The court held that the defendants have used technical means to crack others' cameras and monitor equipment, infringing on the privacy of others and harming social welfare. The court ruled that the defendants should stop using the software to hack cameras, delete the illegally obtained videos and pictures, and publicly apologize on national media.⁴³

⁴² http://www.xinhuanet.com/legal/2020-12/05/c_1126824105.htm

⁴³ https://mp.weixin.qq.com/s/nZaEdrWoc3HGKsWtQZ7bXg?scene=25#wechat_redirect