

中国反垄断与数据保护法律资讯

China Monthly Antitrust & Data Protection Update

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第一部分：反垄断 Antitrust

立法动态 Legislation

全国人大常委会：修改《反垄断法》列入 2021 年立法计划

2021 年 4 月 21 日，全国人大常委会公布 2021 年度立法工作计划，明确将修改《反垄断法》纳入工作计划，并将进行初次审议。此前，反垄断执法机构国家市场监督管理总局（“**国家市场监督管理总局**”）曾于 2020 年 1 月发布《〈反垄断法〉修订草案（公开征求意见稿）》并向社会公开征求意见。¹

Standing Committee of the NPC: Amending the *Anti-Monopoly Law* Included in the Legislative Plan for 2021

On 21 April, 2021, the Standing Committee of the National People’s Congress (“**NPC**”) announced the legislative work plan for 2021. It clearly includes the revision of the *Anti-Monopoly Law* in the work plan which will be deliberated for the first time. Previously, the State Administration for Market Regulation (“**SAMR**”), the national anti-monopoly enforcement agency, had released the *Draft Revision of the Anti-Monopoly Law* in January 2020 and solicited public comments.¹

¹ <http://www.npc.gov.cn/npc/c30834/202104/1968af4c85c246069ef3e8ab36f58d0c.shtml>

执法机构 Authorities

交通部：配合相关部门加强反垄断调查，避免平台公司损害货车司机权益

2021年4月29日，交通运输部召开例行新闻发布会。新闻发言人表示将有序规范货运新业态经营行为，加强道路货运平台行业监管，督促平台公司合理确定服务费、会员费等标准，同时配合相关部门加强反垄断调查，避免平台公司利用垄断地位损害货车司机的权益。²

Ministry of Transport to Cooperate with Relevant Departments to Strengthen Anti-Monopoly Investigation and Avoid Platform Companies from Infringing the Rights of Truck Drivers

On 29 April, 2021, the Ministry of Transport held a routine press conference. The spokesman said that they will regulate the new mode of freight transport business behavior in an orderly manner, strengthen the supervision of the road freight platform industry, urge the platform companies to reasonably determine the service fees, membership fees and other standards, and while cooperating with the relevant departments to strengthen anti-monopoly investigation, prevent the platform companies from using monopoly position to damage the rights and interests of truck drivers.²

全国市场监管系统于云南昆明召开反垄断工作会议

4月22日，全国市场监管系统反垄断工作会议在云南省昆明市召开。国家市场监督管理总局副局长甘霖出席会议并讲话，云南省人民政府副省长张治礼出席会议并致辞。云南、上海、江苏、浙江、山东、湖南、广东、重庆、四川等9个地方市场监管部门作会议交流发言。全国各省、自治区、直辖市和新疆生产建设兵团市场监管部门有关负责同志参加会议。³

National Market Regulation System Holds Anti-Monopoly Work Conference in Kunming, Yunnan Province

On 22 April, the national market regulation system anti-monopoly work conference was held in Kunming, Yunnan Province. Gan Lin, Deputy Director of SAMR, attended the meeting and delivered a speech, and Zhang Zhili, Vice-governor of Yunnan Provincial People's Government, attended the meeting and delivered a speech. Nine local market regulation departments including Yunnan, Shanghai, Jiangsu, Zhejiang, Shandong, Hunan, Guangdong, Chongqing, Sichuan made remarks or exchanged views. Responsible persons from market regulation departments of other provinces, autonomous regions, municipalities directly under the central government and Xinjiang Production and Construction Corps attended the meeting.³

国家市场监督管理总局：将加大反垄断重大案件查办力度

² https://xxgk.mot.gov.cn/2020/jigou/zcyjs/202104/t20210429_3586347.html

³ http://www.samr.gov.cn/xw/zj/202104/t20210422_328111.html

4月15日，国家市场监督管理总局认证监管司司长刘卫军在北京表示，国家市场监督管理总局将根据《反垄断法》的规定，加大重大案件的查办力度。⁴

SAMR to Intensify the Investigation and Handling of Major Anti-Monopoly Cases

On 15 April, Liu Weijun, Director of the Certification Supervision Department of SAMR, said in Beijing that SAMR will intensify the investigation and handling of major cases in accordance with the provisions of the *Anti-Monopoly Law*.⁴

中国人民银行深入推进支付领域反垄断工作

4月14日，中国人民银行召开2021年支付结算工作电视会议。会议提出，深入推进支付领域反垄断工作，加快推动出台《非银行支付机构条例》，健全网络支付“四方模式”，适当降低小微企业支付手续费。⁵

People's Bank of China Deepens Anti-Monopoly Work in Payment Field

On 14 April, the People's Bank of China held a teleconference on payment and settlement work in 2021. The meeting proposed to promote the anti-monopoly work in the field of payment, accelerate the introduction of "non-bank payment institution regulations", improve the "four-party model" of online payment, and appropriately reduce the payment fees for small and micro enterprises.⁵

深圳正在争取反垄断执法部分授权

4月13日，据媒体报道，作为“副省级”城市，深圳正在争取反垄断执法授权试点的资格，如果获准，深圳将得到进行反垄断执法的“单独授权”。而根据现行法律制度框架，反垄断执法属于中央事权，仅中央执法部门和已经授权的省级监管部门有权执法。⁶

Shenzhen Is Seeking Empowerment for Antitrust Enforcement

On April 13, it was reported that Shenzhen, as a "sub-provincial" city, is striving for the pilot antitrust enforcement authorization. If approved, Shenzhen will receive a separate authorization for antitrust enforcement. According to the current legal framework, antitrust enforcement belongs to the central authority, and only the central law enforcement agency and authorized provincial-level agencies have the power to enforce the law.⁶

国家市场监督管理总局向社会公开三批互联网平台企业《依法合规经营承诺》

4月13日，国家市场监督管理总局会同中央网信办、税务总局召开了互联网平台企业行政指导会。会议针对平台经济领域存在的强迫实施“二选一”等突出问题，提出“五个严防”“五个确保”，

⁴ <http://www.chinanews.com/gn/2021/04-15/9455870.shtml>

⁵ http://finance.ce.cn/stock/gsgdbd/202104/15/t20210415_36473758.shtml

⁶ http://www.cb.com.cn/index/show/zj_m/cv/cv135120111261

明确要求各互联网平台企业在一个月内全面自检自查，逐项彻底整改。国家市场监督管理总局集中公布了与会互联网平台企业《依法合规经营承诺》，请社会各界予以监督。⁷

SAMR Publishes Three Batches of Internet Platform Enterprises' Commitment to Operate in Compliance with the Law to the Society

On 13 April, together with the Office of the Central Cyberspace Affairs Commission and the State Taxation Administration, SAMR held an administrative guidance meeting for Internet platform enterprises. The meeting addressed the outstanding issues such as forced implementation of “pick one from two” practice in the platform economy, put forward “five strict preventions” “five ensures”, and clearly required that the Internet platform enterprises conduct a comprehensive self-examination and thorough correction within one month. SAMR also published “Commitment to Operate in Compliance with the Law” of Internet platform enterprises that attended the meeting, and asked for supervision from the whole society.⁷

蚂蚁集团再被约谈：强调反垄断及个人信息保护

4月12日，人民银行、银保监会、证监会、外汇局等金融管理部门再次联合约谈蚂蚁集团。中国人民银行副行长潘功胜代表四部门就约谈情况回答了记者提问，强调将加强个人信息保护及反垄断。⁸

Ant Group Is Interviewed Again: Emphasis on Anti-monopoly and Personal Information Protection

On 12 April, financial management departments including the People's Bank of China, China Banking and Insurance Regulatory Commission, China Securities Regulatory Commission, the State Administration of Foreign Exchange, jointly interviewed Ant Group again. Pan Gongsheng, Deputy Governor of the People's Bank of China, answered reporters' questions on behalf of the four departments on the interview, emphasizing that personal information protection and anti-monopoly will be strengthened.⁸

国家市场监督管理总局计划增加反垄断执法人员编制

4月11日，据路透社报道称，国家市场监督管理总局反垄断局计划增加20至30个人编制。目前的人员编制仅为40个左右。⁹

SAMR Plans to Increase the Staffing Headcount of Antitrust Law Enforcement

On 11 April, Reuters reported that SAMR's Anti-Monopoly Bureau plans to increase its staffing by 20 to 30. The current staffing headcount is only about 40.⁹

⁷ https://mp.weixin.qq.com/s/fBZuB5nb9_ugiFJMnZDAWw?scene=25#wechat_redirect, https://mp.weixin.qq.com/s/_noRBOB00UCMy0fUdZNyMg, <https://mp.weixin.qq.com/s/SIDIWWOcsEt89isAEJKi3Q>

⁸ http://www.xinhuanet.com/2021-04/12/c_1127321490.htm

⁹ <https://www.reuters.com/world/china/exclusive-chinas-antitrust-regulator-bulking-up-crackdown-behemoths-widens-2021-04-11/>
Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners > 大成 > McKenna Long

国办印发政务公开工作要点：加强反垄断与反不正当竞争执法信息公开

4月9日，国务院办公厅印发《2021年政务公开工作要点》，指出加强反垄断与反不正当竞争执法信息公开工作，一视同仁公正监管，营造诚信守法的市场环境，有效维护人民群众利益。

10

General Office of the State Council Issues the Work Highlights of Government Transparency: Strengthen the Disclosure of Anti-Monopoly and Anti-Unfair Competition Enforcement Information

On 9 April, the General Office of the State Council issued the *Work Highlights of Government Transparency in 2021*, pointing out that the public disclosure of information on anti-monopoly and anti-unfair competition enforcement should be strengthened, fair supervision should be carried out without discrimination, a market environment of integrity and law-abiding should be created, and the interests of the people should be effectively safeguarded.¹⁰

天津市市场监管委：落实公平竞争审查制度，加强反垄断执法

4月6日，据报道，天津市各级市场监管部门以党史学习教育引领助推营商环境优化，推出七大方面38项深化改革举措，包括全面落实公平竞争审查制度，设立天津自贸试验区公平竞争审查办公室，加强反垄断和反不正当竞争执法。¹¹

Tianjin Municipal Market Regulation Commission: Implement the Fair Competition Review System and Strengthen Anti-Monopoly Enforcement

On 6 April, it was reported that to help optimizing the business environment through party history learning and education, market regulation departments at all levels in Tianjin launched 38 deepening reform initiatives in seven aspects, including full implementation of the fair competition review system, the establishment of a fair competition review office in the Tianjin Pilot Free Trade Zone and the strengthening of anti-monopoly and anti-unfair competition law enforcement.¹¹

¹⁰ http://www.gov.cn/zhengce/content/2021-04/23/content_5601602.htm

¹¹ <http://news.enorth.com.cn/system/2021/04/06/051204412.shtml>

行政调查 Public Enforcement

国家市场监督管理总局发布三家药企垄断协议案行政处罚决定

2021年4月30日，国家市场监督管理总局发布了对天津天药药业股份有限公司、天津太平洋化学制药有限公司、深圳市富海通医药有限公司达成并实施垄断协议的行政处罚决定，共计罚没人民币五千余万元。¹²

SAMR Issues Administrative Punishment Decision in the Case of Monopoly Agreements of Three Pharmaceutical Enterprises

On 30 April, 2021, SAMR issued a decision on the administrative penalties for entering into and implementing monopoly agreements against Tianjin Tianyao Pharmaceuticals Co., Ltd., Tianjin Pacific Chemical Pharmaceutical Co., Ltd., and Shenzhen Fuhaitong Pharmaceutical Co., Ltd., with a total fine of more than RMB 50 million.¹²

国家市场监督管理总局依法对美团涉嫌垄断行为立案调查

4月26日，国家市场监督管理总局发布公告称，近日根据举报，依法对美团实施“二选一”等涉嫌垄断行为立案调查。¹³

SAMR Initiates Investigation against Meituan for Alleged Monopolistic Behavior

On 26 April, SAMR released that recently, based on reports, it has initiated an investigation into the suspected monopolistic behavior of Meituan, including the implementation of “pick one from two” practice.¹³

国务院督察室通报深圳市建设工程运输车辆协会行业垄断等问题

4月15日，中国政府网发布消息，称国办督查室派员赴广东省深圳市明察暗访发现，深圳市有关部门和单位涉嫌违法设置砂石渣土运输市场准入条件、违法增设砂石渣土运输车辆营运行政许可，深圳市建设工程运输车辆协会利用行政委托事项违规收费，强制企业入会并收取会费，以自律名义搞行业垄断，严重破坏公平竞争的市场环境。深圳市政府已积极组织整改。国办督查室将密切跟踪后续进展情况，督促推动问题切实整改到位。¹⁴

State Council Inspection Division Denounces Industry Monopoly and Other Issues of Shenzhen Construction Engineering Transportation Vehicle Association

On 15 April, the Chinese government website released a news report, saying that the Inspection Division of the General Office of the State Council sent officers to Shenzhen, Guangdong Province

¹² http://www.samr.gov.cn/fldj/tzgg/xzcf/202104/t20210430_328493.html

¹³ http://www.samr.gov.cn/xw/zj/202104/t20210426_328234.html

¹⁴ http://www.gov.cn/hudong/ducha/2021-04/15/content_5599658.htm

for inspection and found that the relevant departments and units of Shenzhen are suspected of illegally setting the market access conditions for sand and gravel sludge transportation, illegally adding administrative permits for sand and gravel sludge transportation vehicle operation, and Shenzhen Construction Engineering Transportation Vehicle Association uses administrative entrustment matters to charge illegal fees, forces enterprises to join and charges membership fees, and engages in industry monopoly in the name of self-regulation, thereby seriously undermining the market environment of fair competition. Shenzhen Municipal Government has actively organized rectification. The Inspection Division of the General Office of the State Council will closely track the follow-up progress and supervise and promote the effective rectification of the problem in place.¹⁴

原料药厂家自首涉嫌垄断，已被河南省市监局立案调查

近日，据报道，因为涉嫌违犯《反垄断法》，河南一家原料药生产企业——商丘市龙兴制药有限公司主动投案自首，称与湖北拓思医药有限公司签订了奥硝唑原料药全国独家《代理协议》，目前已经被河南省市场监督管理局（“河南省市监局”）调查。¹⁵

API Manufacturer Confesses Antitrust Violation and Has Been Investigated by Henan AMR

Recently, it was reported that because of the alleged violation of the *Anti-Monopoly Law*, an active pharmaceutical ingredient (“API”) manufacturer in Henan Province, Shangqiu Longxing Pharmaceutical Co., Ltd., took the initiative to self-report, saying that it signed an exclusive national agency agreement for ornidazole API with Hubei Tuosi Pharmaceutical Co.¹⁵

医药行业反垄断开出最大罚单：扬子江药业因纵向价格垄断被罚 7.64 亿元

4月15日，国家市场监管总局发布对扬子江药业集团有限公司（“扬子江药业”）达成并实施垄断协议行为的处罚决定书，责令扬子江药业停止违法行为，并处罚以其2018年销售额254.67亿元3%的罚款，计7.64亿元。¹⁶

Highest Antitrust Fine in Pharmaceutical Industry: Yangtze River Pharmaceutical Fined RMB 764 Million for Resale Price Maintenance

On 15 April, SAMR issued a penalty decision on Yangtze River Pharmaceutical Group Limited (“Yangtze River Pharmaceutical”) for entering into and implementing a monopoly agreement, ordering Yangtze River Pharmaceutical to stop the illegal acts and imposing a fine of 3% of its 2018 sales of RMB 25.467 billion, totaling RMB 764 million.¹⁶

国家市场监管总局发布食派士滥用市场支配地位行政处罚决定

¹⁵ https://www.sohu.com/a/457932031_120524063

¹⁶ https://mp.weixin.qq.com/s/_NKH2eWbCaKIfLDESA400Q?scene=25#wechat_redirect

4月12日，国家市场监督管理总局发布对上海食派士商贸发展有限公司滥用市场支配地位行为的处罚决定，对当事人处以其2018年销售额3%的罚款，合计人民币116.86万元。¹⁷

SAMR Issues Administrative Penalty Decision on Sherpa's for Abuse of Market Dominance

On 12 April, SAMR issued a penalty decision on the abuse of market dominance by food delivery and service provider, Shanghai Sherpa's Trade Development Co., Ltd., for implementing "pick one from two" practice and imposed a fine of 3% of its 2018 sales, totaling RMB 1,168,600.¹⁷

阿里巴巴集团实施垄断行为被罚 182 亿元，创造反垄断执法新纪录

4月10日，国家市场监督管理总局对阿里巴巴集团滥用在中国境内网络零售平台服务市场的支配地位，强制平台内商家“二选一”的行为处以其2019年中国境内销售额4557.12亿元4%的罚款，计182.28亿元。同时，向阿里巴巴集团发出《行政指导书》，要求其围绕严格落实平台企业主体责任、加强内控合规管理、维护公平竞争、保护平台内商家和消费者合法权益等方面进行全面整改，并连续三年向国家市场监督管理总局提交自查合规报告。¹⁸

Alibaba Group Got Record-Breaking Fine of RMB 18.2 Billion for Monopolistic Practices

On 10 April, SAMR imposed a fine of RMB 18.228 billion on Alibaba Group for abusing its dominant position in the market of online retail platform services in China and forcing merchants on the platform to "pick one from two", which is 4% of its 2019 sales of RMB 457.512 billion in China. At the same time, Alibaba Group was issued an Administrative Guidance Letter, requiring it to carry out comprehensive rectification around the strict implementation of the main responsibilities of the platform, strengthen internal control and compliance management, maintain fair competition, and protect the legitimate rights and interests of merchants and consumers within the platform, and submit a self-study compliance report to SAMR for three consecutive years.¹⁸

国家市场监督管理总局发布四川富顺县天然气有限责任公司滥用市场支配地位案行政处罚决定

4月1日，国家市场监督管理总局发布对四川富顺县天然气有限责任公司滥用市场支配地位案的处罚决定，责令当事人停止违法行为，并处以2019年度销售额百分之一的罚款1,658,324元。

¹⁹

SAMR Issues Administrative Penalty Decision on Sichuan Fushun County Natural Gas Co., Ltd. for Abuse of Market Dominance

On 1 April, SAMR issued a penalty decision against Sichuan Fushun Natural Gas Co., Ltd. for abuse of dominant market position, ordering the party to stop the illegal acts and imposing a fine of one percent of its sales in 2019, totaling RMB 1,658,324.¹⁹

¹⁷ http://www.samr.gov.cn/fldj/tzgg/xzcf/202104/t20210412_327737.html

¹⁸ http://www.samr.gov.cn/xw/zj/202104/t20210410_327702.html

¹⁹ http://www.samr.gov.cn/fldj/tzgg/xzcf/202104/t20210401_327474.html

国家市场监督管理总局发布 5 家液化气充装企业达成并实施垄断协议案行政处罚书

4 月 1 日，国家市场监督管理总局发布对重庆巫山县兴隆石化等 5 家液化气充装企业达成并实施垄断协议案的行政处罚，责令当事人停止违法行为，罚没合计人民币 68,361.12 元。²⁰

SAMR Issues Administrative Penalties on 5 LPG Filling Enterprises for Reaching and Implementing Monopoly Agreement

On 1 April, SAMR issued administrative penalties on 5 LPG filling enterprises including Xinglong Petrochemical in Wushan County, Chongqing for entering into and implementing monopoly agreement, ordering the parties to stop the illegal acts and fined a total of RMB 68,361.12.²⁰

²⁰ http://www.samr.gov.cn/fldj/tzgg/xzcf/202103/t20210318_327033.html

经营者集中 Merger Control

国家市场监督管理总局发布互联网领域 9 起违法实施经营者集中案

2021 年 4 月 30 日，国家市场监督管理总局发布了对腾讯控股有限公司收购 Bitauto Holdings Limited 股权案等九起违法实施经营者集中案件的处罚决定，对腾讯控股有限公司等企业分别处以 50 万元人民币罚款。²¹

SAMR Publishes 9 Gun-Jumping Cases in the Internet Sector

On 30 April 2021, SAMR published 9 gun-jumping cases, including the acquisition of equity interests in Bitauto Holdings Limited by Tencent Holdings Limited, and imposed fines of RMB 500,000 on Tencent Holdings Limited and other gun-jumpers respectively.²¹

五矿发展：涉嫌违法实施经营者集中被立案调查

4 月 19 日，五矿发展发布公告称，五矿发展股份有限公司于近日收到国家市场监督管理总局出具的《涉嫌违法实施经营者集中立案调查通知书》，因公司与阿里巴巴集团控股有限公司设立合营企业五矿电子商务有限公司（现已更名为“龙腾数科技术有限公司”）的交易涉嫌构成违法实施经营者集中，国家市场监督管理总局决定予以立案调查。²²

Minmetals Development: Investigated for Suspected Gun-jumping

On 19 April, Minmetals Development Co., Ltd. announced that it had recently received a Notice of Investigation of Suspected Illegal Implementation of Concentration of Undertakings from SAMR, which had decided to investigate the transaction between the company and Alibaba Group Holding Limited, a joint venture of Minmetals E-Commerce Limited (now renamed as Longteng Digital Technology Limited), for suspected gun-jumping.²²

国家市场监督管理总局就应用材料放弃收购 KOKUSAI 发布公告

4 月 1 日，国家市场监督管理总局发布公告，就应用材料公司放弃收购国际电气公司一事表示遗憾。此前，国家市场监督管理总局对该交易进行了经营者集中反垄断审查，对应用材料提交的附加限制性条件方案进行了市场评估，结果表明应用材料的方案不能解决竞争关注，故进一步审查延长阶段截止日至 2021 年 4 月 15 日。对于应用材料和国际电气因双方约定的交易期限到期而决定放弃本次交易一事，国家市场监督管理总局表示遗憾。²³

²¹ http://www.samr.gov.cn/xw/zj/202104/t20210430_328470.html

²² <https://news.windin.com/ns/findsnap.php?id=527218288&fontsize=normal&skin=black&device=ios&column=T4&terminaltype=wft.m&version=20.1.2&code=423820BFA0FD&show=wft&share=wechat>

²³ http://www.samr.gov.cn/zt/qhfdzf/202104/t20210401_327502.html

SAMR Makes an Announcement on Abortion of Applied Materials' Acquisition of KOKUSAI

On 1 April, SAMR issued a notice, saying it feels sorry that Applied Materials, Inc. abandoned its acquisition of Kokusai Electric Corporation. Previously, SAMR conducted an anti-monopoly review of the transaction for concentration and conducted a market assessment of the proposal with additional restrictive conditions submitted by Applied Materials, Inc., which showed that Applied Materials, Inc. could not address competition concerns, and therefore the deadline for further review of the extended phase was set on April 15, 2021. SAMR expressed sympathy that Applied Materials, Inc. and Kokusai Electric Corporation decided to abandon this transaction due to the expiration of the agreed transaction deadline between the parties.²³

法院诉讼 Courts Litigation

首例非标准必要专利拒绝许可垄断案出炉，运用必需设施理论

2021年4月23日，浙江省宁波市中级人民法院就宁波科田磁业有限公司与日立金属株式会社滥用市场支配地位纠纷案作出判决：一、被告日立金属株式会社立即停止针对原告宁波科田磁业有限公司实施的拒绝交易的垄断民事侵权行为；二、被告日立金属株式会社自本判决生效之日起十日内赔偿原告宁波科田磁业有限公司经济损失人民币490万元；三、驳回原告宁波科田磁业有限公司的其他诉讼请求。²⁴

First Non-SEP Refusal-to-license Monopoly Case Applies the Essential Facilities Doctrine

On 23 April, 2021, Zhejiang Ningbo Intermediate People's Court issued the following verdict on the dispute between Ningbo Ketian Magnet Co., Ltd. and Hitachi Metals, Ltd. on dominance abuse: 1. the defendant Hitachi Metals, Ltd. shall immediately stop the civil infringement of refusal to trade; 2. the defendant Hitachi Metals, Ltd. shall compensate for the economic loss of RMB 4.9 million within ten days from the date of this judgment to the plaintiff Ningbo Ketian Magnetic Industry Co., Ltd.; 3. all other claims of the plaintiff Ningbo Ketian Magnetic Industry Co., Ltd. are dismissed.²⁴

人民法院将加强反垄断审判，防止资本无序扩张

2021年4月22日，最高人民法院召开知识产权宣传周新闻发布会，介绍全国法院2020年知识产权司法保护的总体情况，知产法庭副庭长指出未来工作重点：一是积极稳妥做好垄断案件审理工作，二是依法支持和监督反垄断行政执法，三是适时制定反垄断民事诉讼司法解释。会上还发布了《人民法院知识产权司法保护规划（2021—2025年）》以及2020年度知识产权十大案例、五十件典型案例，其中包含三起垄断案件。²⁵

People's Court to Strengthen Anti-Monopoly Trials to Prevent Disorderly Expansion of Capital

On 22 April, 2021, the Supreme People's Court held a press conference for Intellectual Property Rights Publicity Week to introduce the general situation of judicial protection of intellectual property rights by the courts nationwide in 2020, and the Vice President of the Intellectual Property Court pointed out future work priorities: first, to actively and steadily conduct trials of monopoly cases; second, to support and supervise anti-monopoly administrative enforcement in accordance with the law, and third, to formulate judicial interpretation of anti-monopoly civil litigation in due course. The *People's Court Intellectual Property Judicial Protection Plan (2021-2025)* and the *Top Ten IP Cases and Fifty Typical Cases* of 2020, including three monopoly cases, were also released at the meeting.²⁵

²⁴ https://mp.weixin.qq.com/s/2_eu4Zg055-6HKnk7IUdZA?scene=25#wechat_redirect

²⁵ https://mp.weixin.qq.com/s/dk7qFj8pAde0WUznd2vDvg?scene=25#wechat_redirect

广东高院首次发布互联网领域反不正当竞争和反垄断十大案例

4月20日，广东省高级人民法院首次发布互联网领域反不正当竞争和反垄断十大案例。此次入选的十大案例涉及网络游戏、网络直播、搜索引擎、电子商务等互联网新兴产业，涵盖了滥用市场支配地位、竞价排名、数据抓取、商业诋毁、侵害商业秘密、集体形象商品化权益保护等与互联网经济发展息息相关的内容。²⁶

Guangdong High People's Court Releases Top Ten Cases of Anti-Unfair Competition and Anti-Monopoly in the Internet Field for the First Time

On 20 April, Guangdong High People's Court released for the first time the top ten cases of anti-unfair competition and anti-monopoly in the Internet field. The selected top ten cases involved online games, online live broadcast, search engines, e-commerce and other emerging Internet industries, covering abuse of dominant market position, competitive ranking, data scrapping, commercial defamation, infringement of trade secrets, protection of rights and interests in commercialization of collective image and other contents closely related to the development of Internet economy.²⁶

三汽修企业固定服务价格协议被判决无效上诉遭驳回

4月6日，中国裁判文书网公布贵定县新利源汽修厂、贵定县凯洛迪汽车服务有限公司合同纠纷二审民事判决书，确认案涉合同违反《反垄断法》第十二条、第十三条规定，属垄断行为故合同无效；且本案仅对合同效力进行认定，不属于反垄断行为引发的民事纠纷案件。因此，应予维持一审判决。²⁷

Appeal Dismissed as Agreement of Fixing Service Price Reached by Three Auto Repair Enterprises Ruled Invalid

On 6 April, China Judgments Online published the civil judgment of the second trial of the contract dispute between Guiding County Xinliyuan Auto Repair Factory and Guiding County Kailuodi Auto Service Co., Ltd., confirming that the contract in question violates the provisions of Article 12 and Article 13 of the *Anti-Monopoly Law* and therefore is invalid. Because the case only determines the validity of the contract, it is not a civil dispute case arising from the anti-monopoly act. Therefore, the first instance judgment should be upheld.²⁷

²⁶ https://mp.weixin.qq.com/s/-VJyvFYC273_7-EjsBQa-w?scene=25#wechat_redirect

²⁷ <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXS4/index.html?docId=6b78f56fd3bb4f5d95d4ac87016b02e2>
Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners > 大成 > McKenna Long

学术动向 Academia

十三届全国人大常委会举行专题讲座，聚焦完善反垄断法律制度

2021年4月29日上午，十三届全国人大常委会第二十八次会议在北京人民大会堂闭幕。闭幕会后，十三届全国人大常委会举行第二十三讲专题讲座，栗战书委员长主持。对外经济贸易大学法学院教授、国务院反垄断委员会专家咨询组成员黄勇作了题为《完善反垄断法律制度 强化竞争政策基础地位》的讲座。²⁸

Standing Committee of the 13th NPC Holds a Special Lecture Focusing on Improving the Anti-Monopoly Legal System

On the 29 April, 2021, the 28th meeting of the Standing Committee of the 13th NPC closed at the Great Hall of the People in Beijing. After the closing session, the Standing Committee of the 13th NPC held the 23rd special lecture, chaired by Chairman Li Zhanshu. Huang Yong, a professor of the Law School of the University of International Business and Economics and member of the Expert Advisory Group of the Anti-Monopoly Committee of the State Council, gave a lecture entitled “Improving the Anti-Monopoly Legal System, Reinforcing the Fundamental Position of Competition Policy”.²⁸

²⁸ <http://www.npc.gov.cn/npc/c30834/202104/2c6651232feb47b0824d72c81d9ac578.shtml>

第二部分：数据保护 Data Protection

立法动态 Legislation

《个人信息保护法》和《数据安全法》草案二次审议稿发布并公开征求意见

2021年4月29日，全国人大常委会发布《个人信息保护法》和《数据安全法》的草案二次审议稿，并向社会公开征求意见。这两部重要法律的二审稿充分吸收了各方对第一稿的意见，同时回应了公众的若干关注。总体而言，《个人信息保护法》二审稿考虑到过度与非法收集个人信息等突出问题，通过完善个人信息处理的原则和规则以及明确主管机关的职责，进一步加强对个人信息的保护，还对大型互联网企业规定了专门性义务。《数据安全法》二审稿则衔接并补充了现行《网络安全法》下有关数据安全管理的规则，并强调数据分类分级保护、网络安全等级保护以及监管数据跨境传输的重要性。这两部法律预计将在今年内正式审议通过并可能在过渡期后于明年生效实施。²⁹

Second Drafts of Personal Information Protection Law and Data Security Law Released for Public Opinions

On 29 April 2021, the Standing Committee of the National People's Congress, China's top legislature, released the second drafts of the Personal Information Protection Law ("PIPL") and the Data Security Law ("DSL") and solicit opinions from the public. The second drafts of the PIPL and the DSL fully absorbed the opinions of all parties on the first drafts, and at the same time responded to several concerns of the public. Overall, in consideration of the issues such as excessive and unscrupulous collection of personal information, the second draft of the PIPL further enhances the protection of personal information, by improving the principles and rules for processing personal information, clarifying the duties of competent authorities and requiring additional obligations on Internet giants. The second draft of the DSL echoes and supplements the rules on security management of data under the Cybersecurity Law, by reiterating the importance of data classification and categorization protection system, multi-level protection system and the regulation of cross-border transfer of important data. The two laws are expected to be finally approved within this year, and will come into force early next year with a grace period.²⁹

工信部征求意见：App 违规从事个人信息处理，情节严重直接下架

4月26日，工信部会同公安部、国家市场监督管理总局发布《移动互联网应用程序个人信息保护管理暂行规定（征求意见稿）》（“规定”）向社会公开征求意见。规定强调，App 个人信息处理活动应当采用合法、正当的方式。App 第三方服务提供者未经用户同意，不得将收集到的

²⁹ <http://www.npc.gov.cn/flcaw/>

用户个人信息共享转让。规定还明确将下架作为法律责任之一。对于违反本规定的行为，监管部门可对 App 相关主体提出整改，要求 5 个工作日内进行整改及时消除隐患；未完成整改的，向社会公告。对于仍拒绝整改或者整改后仍存在问题的，可能面临下架处理。³⁰

MIIT Solicits Comments for New App Regulation: Apps Can be Removed from Appstore in Serious Circumstances of Illegal Processing Personal Information

On 26 April, the Ministry of Industry and Information Technology (“MIIT”), together with the Ministry of Public Security and the State Administration for Market Regulation, issued the *Interim Provisions on the Protection and Management of Personal Information in Mobile Internet Applications (Draft for Comments)* (“Provisions”) to solicit public opinions. The Provisions emphasize that personal information processing activities in apps should adopt legal and proper manners. Third-party service providers of apps may not share and transfer users’ personal information without consent. The Provisions also explicitly take “removing from app store” as one of the legal liabilities. The authority may propose rectifications to the relevant operation entities of the app in violations of the Provisions, requiring rectifications within 5 working days to eliminate hidden threat in a timely manner. Those who still refuse to rectify or have still problems after rectification may face removal from app stores.³⁰

人脸识别国家标准公开征求意见：不得强制刷脸、预测偏好

4 月 23 日，《信息安全技术 人脸识别数据安全要求》国家标准的征求意见稿（“国标”）发布。该国标主要为解决人脸数据滥采、泄露或丢失，以及过度存储、使用等问题，对于《个人信息保护法》草案中人脸识别相关的规定也有一定的体现和细化。国标要求，收集人脸识别数据时，应提供除人脸识别外的其他身份识别方式供用户选择，不得因用户不同意收集人脸识别数据而拒绝数据主体使用基本业务功能等。³¹

National Standard for Facial Recognition Solicits Public Opinions: No Mandatory Use of Facial Recognition or for Preference Prediction

On 23 April, the draft national standard *Information Security Technology - Facial Recognition Data Security Requirements* (“National Standard”) was released for public comments. The National Standard aims to solve the problems of over-collection, leakage or loss of face data, and excessive storage and use. It also reflects and refines the provisions related to facial recognition in the draft Personal Information Protection Law and requires that when collecting facial recognition data, other identification methods other than facial recognition should also be provided for users to choose. The data subject must not be refused to use basic business functions if he/she does not agree to the collection of facial recognition data.³¹

³⁰ <https://www.bjnews.com.cn/detail/161942071115281.html>

³¹ <http://m.21jingji.com/article/20210424/herald/90c29d85cf1cd757b7e6b06b361c83bb.html>

App 个人信息安全测评国家标准公开征求意见

近日，全国信息安全标准化技术委员会（TC260）发布推荐性国家标准——《信息安全技术 移动互联网应用程序（App）个人信息安全测评规范》（“规范”）并公开征求意见。规范旨在设立统一的测评标准，既适用于第三方机构和监管部门，也适用于企业自评，有助于提高测评的准确性、规范性、公平性，降低第三方测评机构的测评开销和企业自身的合规投入。³²

National Standard on Evaluation of Apps' Personal Information Security Solicits Public Opinions

Recently, the National Information Security Standardization Technical Committee (TC 260) issued a recommended national standard *Information Security Technology - Personal Information Security Evaluation Specification for Mobile Internet Applications (App)* (“Specification”) and solicited opinions. The Specification aims to establish a unified evaluation standard, which is applicable to third-party agencies, regulatory agencies as well as self-evaluations conducted by companies. It helps to improve the accuracy, standardization, and fairness of evaluation, and reduces the cost of evaluation by third-party evaluation institutions and the internal compliance investment of companies.

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³² https://mp.weixin.qq.com/s/qjK-0lR-Yc8iw9FDncUu2g?scene=25#wechat_redirect

执法机构 Enforcement Authority

多部委约谈+行政指导会+合规承诺：监管机构聚焦平台数据保护

2021年4月12日，人民银行、银保监会、证监会、外汇局等四家金融管理部门再次联合约谈蚂蚁集团，就整改措施与蚂蚁集团进行了深入沟通。从整改内容来看，保障个人和国家信息安全成为重点之一。4月13日，国家市场监管总局会同中央网信办、税务总局召开互联网平台企业行政指导会，要求互联网平台企业对“信息泄露”等问题，在一个月内全面自检自查。从4月14日起连续三天，国家市场监管总局集中公布与会34家互联网平台企业《依法依规经营承诺》，请社会各界予以监督，包括京东、百度、美团、字节跳动等。³³

Multi-Ministerial Interview + Administrative Guidance Meeting + Compliance Commitment: Authorities Focus on Data Protection of Internet Platforms

On 12 April 2021, four authorities in the finance sector including the People's Bank of China, the China Banking and Insurance Regulatory Commission, the China Securities Regulatory Commission and Foreign Exchange Bureau once again jointly interviewed Ant Group and conducted in-depth communication on rectification measures. The protection of personal and national information security has become one of the key points in rectification. On 13 April, the State Administration for Market Regulation (“SAMR”), together with the Cyberspace Administration of China, and the State Taxation Administration held an administrative guidance meeting for Internet platforms and required platforms to conduct a comprehensive self-inspection on data breach and other issues within one month. For three consecutive days from 14 April, the SAMR released the *Operation Commitments in Compliance* signed by 34 Internet platform companies and called for supervision from the society.³³

工信部拟加强监管：智能网联车企收集的个人信息和重要数据应在境内存储

4月7日，工信部就《智能网联汽车生产企业及产品准入管理指南（试行）》（征求意见稿）（“指南”）向社会公开征求意见。指南指出，智能网联汽车生产企业应依法收集、使用和保护个人信息，实施数据分类分级管理，制定重要数据目录，不得泄露涉及国家安全的敏感信息。在中国境内运营中收集和产生的个人信息和重要数据应当按照有关规定在境内存储。因业务需要，确需向境外提供的，应向行业主管部门报备。³⁴

³³ https://mp.weixin.qq.com/s/PKcZHLrGLP94e3JkvBkNA?scene=25#wechat_redirect

³⁴ https://www.miit.gov.cn/jgsj/zbys/qcgy/art/2021/art_67412baef004441a9cafc0a440a928a2.html

MIIT Plans to Strengthen Supervision: Personal Information and Important Data Collected by Connected Vehicles Should Be Stored within China

On 7 April, the MIIT released the draft *Guidelines for the Market Access Management of Manufacturers and Products of Intelligent Connected Vehicles (Trial Version)* (“**Guidelines**”) for soliciting public opinions. The Guidelines point out that connected vehicles manufacturers should collect, use, and protect personal information in accordance with the law, implement multi-level protection of data, develop catalogs of Important Data, and must not disclose sensitive information related to national security. Personal information and Important Data collected and generated during operations in China shall be stored within China in accordance with relevant regulations. If it is necessary to provide it abroad due to business purpose, a filing should be made with the competent authority.³⁴

60 款 App 因侵害用户权益被下架

4 月 6 日，工信部要求相关应用商店下架 60 款 App。此前 3 月份，工信部向社会通报了 136 家存在侵害用户权益行为 App 企业的名单。截至目前，经第三方检测机构核查复检，尚有 60 款 App 未完成整改，工信部遂组织对这些 App 进行下架。³⁵

60 Apps Removed from App Stores Due to Infringement of Users’ Rights

On 6 April, the MIIT required relevant app stores to remove 60 apps. Previously, the MIIT announced a list of 136 Apps that violated users’ rights and interests in March. After verification and re-examination by a third-party evaluation agency, there are still 60 apps that have not been rectified. As a result, the MIIT requires relevant app stores to remove these Apps.³⁵

全国首起电信运营商拒不履行信息网络安全管理义务案在云南宣判

近日，虚拟运营商远特（北京）通信技术有限公司的董事长及部分高管，因该公司拒不履行信息网络安全管理义务罪，被法院一审判处一年四个月至一年十个月的有期徒刑或拘役。该公司作为电信运营商对手机卡实名制监管不到位，造成电信网络诈骗犯罪严重后果发生。这是我国电信运营商因拒不履行信息网络安全管理义务罪受到刑事处罚的第一起案例。³⁶

China’s First Criminal Case of Telecom Operator’s Refusal to Perform Cybersecurity Obligations Pronounced in Yunnan

Recently, the Chairman of and some senior executives of the virtual network operator Yuante (Beijing) Communication Technology Co., Ltd., were sentenced by the court to imprisonment or criminal detention of a year plus four months to a year plus ten months for the company’s refusal to perform its cybersecurity management obligations. As a telecommunications operator, the company did not

³⁵ http://www.ce.cn/xwzx/gnsz/gdxw/202104/06/t20210406_36446019.shtml

³⁶ <http://www.chinanews.com/sh/2021/04-26/9464353.shtml>

implement the real-name system of mobile phone cards, causing serious consequences for telecom fraud crimes. This is the first case in which a Chinese telecom operator has been punished for this crime.³⁶

魔蝎爬虫案判决书发布：未经授权存了 2100 万条用户账号、密码，构成侵害公民个人信息罪

近期，备受瞩目的魔蝎公司因使用爬虫技术涉刑一案宣判，公司法定代表人、高管均被判处有期徒刑，公司被处罚金人民币 3000 万元，同时没收违法所得 3000 万元。2019 年 9 月，魔蝎公司被杭州警方调查。随后，检察院以侵犯公民个人信息罪，向法院提起公诉。法院认为，魔蝎公司以及该公司直接负责主管人员和其他直接责任人员的行为，均已构成侵犯公民个人信息罪。³⁷

Judgment of Scorpion’s Data Crawling Case Released: 21 Million Pieces of Users’ Account Information Stored without Authorization and Constituted Crime of Infringing Personal Information

Recently, the high-profile case of Scorpion Company was sentenced to criminal liabilities for its use of data crawling technology. The company’s legal representative and senior management were sentenced to fixed-term imprisonment. The company was fined RMB 30 million (approx. USD 4.66 million) and confiscated RMB 30 million (approx. USD 4.66 million) of illegal gains. In September 2019, Scorpion Company was investigated by Hangzhou police. Subsequently, the procuratorate filed a public prosecution to the court for the criminal liabilities. The court held that the actions of Scorpion Company and the company’s responsible officers constituted crimes of infringing on citizens’ personal information.³⁷

最高检：向工信部发出第六号检察建议，对 App 违法违规收集个人信息等提出治理建议

近日，最高人民检察院（“最高检”）表示，将利用检察建议推动行业监管。据披露，2020 年最高检成立惩治网络犯罪、维护网络安全研究指导组，并曾向工信部发出第六号检察建议，围绕网络黑灰产业链条整治、App 违法违规收集个人信息、未成年人网络保护等问题，提出治理建议并抄送公安部等部门。³⁸

SPP Issues No. 6 Prosecutorial Suggestion to MIIT and Put Forward Governance Advice on Illegal Collection of Personal Information of Apps

Recently, the Supreme People’s Procuratorate (“SPP”) stated that it would use procuratorial suggestion to promote regulation. In 2020, the SPP set up a research group targeting cybercrimes and cyber security and issued No. 6 Procuratorial Suggestion to the MIIT. The Suggestion focused on the rectification of the gray business on the Internet, the illegal collection of personal information by

³⁷ https://mp.weixin.qq.com/s/ZpQ1qn_YXLb13WFQxcJwA?scene=25#wechat_redirect

³⁸ https://mp.weixin.qq.com/s/F5vaOCynFtJVfeu_cNIzXQ?scene=25#wechat_redirect

Apps, and the online protection of minors etc. The Suggestion was copied to the Ministry of Public Security and other authorities.³⁸

法院诉讼 Courts Litigation

最高检发布个人信息保护公益诉讼典型案例 11 件

2021 年 4 月 22 日，最高检发布检察机关个人信息保护公益诉讼典型案例 11 件。这些案件涉及诸多行政机关的个人信息监管、政府信息公开问题，还涉及快递、医疗机构、校外培训机构等泄露个人信息问题。其中，民事公益诉讼案包括互联网企业违法收集个人信息和消费欺诈等问题。刑事附带民事公益诉讼案件涉及通过技术软件、物业服务等不同手段非法获取并交易个人信息问题。³⁹

SPP Releases 11 Typical Cases of Public Interest Litigations Concerning Personal Information Protection

On 22 April 2021, the SPP issued 11 typical cases of public interest litigations for the protection of personal information brought by procuratorial organs. These cases involve the personal information supervision of many administrative agencies and the disclosure of government information, as well as the breach of personal information by express providers, medical institutions, and off-campus training institutions. Among them, the civil public interest litigation cases related to Internet companies' illegal collection of personal information and consumption fraud. The public interest litigations collateral to criminal proceedings involved the illegal collection and transaction of personal information through different manners such as technical software and property services.³⁹

关闭定位仍被精准推送当地广告？豆瓣遭起诉侵犯隐私

4 月 15 日，据北京互联网法院消息，该院受理了一起涉豆瓣 App 隐私权、个人信息保护纠纷案。据悉，某用户在使用豆瓣 App 时发现，即便关闭定位，依然能收到豆瓣依据其位置推送的广告信息，遂诉至法院。该用户认为，地理位置信息属于个人敏感信息，具有隐私属性，豆瓣未经许可获取前述信息并定向推送广告，侵犯其隐私权和个人信息，遂诉至法院，请求判令豆瓣 App 停止侵害、赔礼道歉、提供退出定向推送选项，并赔偿损失一元。目前该案正在进一步审理中。⁴⁰

Douban Sued for Privacy Violations Due to Targeting Advertisement Despite Turning off Geolocation

On 15 April, according to the Beijing Internet Court, the court received a litigation involving privacy and personal information protection of Douban app. It is reported that while using the Douban app, a user found that even if geolocation was turned off, he/she could still receive the advertising

³⁹ https://www.spp.gov.cn/xwfbh/wsfbt/202104/t20210422_516357.shtml#1

⁴⁰ https://mp.weixin.qq.com/s/89GuEYx3trZV1t9_G9Lnzg?scene=25#wechat_redirect

information sent by Douban based on his location. The user believes that the geolocation is personally sensitive and privacy. Douban obtained the information without consent and sent targeting advertisement, infringing on the user's privacy and personal information. The user requested Douban App to stop the infringement, apologize, provide the option to opt out of targeted notifications, and compensate for the loss by RMB 1. The case is currently under further trial.⁴⁰

“人脸识别第一案”终审宣判，法院未审查强制消费者注册人脸识别的条款

4月9日，“中国人脸识别第一案”在杭州市中级人民法院二审宣判。此前的一审判令被告杭州野生动物园赔偿原告郭兵合同利益损失及交通费共计1038元，删除郭兵办理指纹年卡时提交的包括照片在内的面部特征信息。二审判决在此基础上增加一项：动物园应删除采集的郭兵的指纹识别信息，但法院驳回了郭兵的其他诉讼请求。郭兵对于判决表达了失望。他认为，“未注册人脸识别的用户将无法正常入园”条款是一个“霸王条款”，但两审法院均未应其请求对该条款进行审查。⁴¹

Final Trial of “First Case of Facial Recognition” Pronounced, Contractual Term on Consumers’ Compulsory Registration for Face Recognition Not Reviewed by Court

On 9 April, the “first case of facial recognition in China” was pronounced in the second instance of the Hangzhou Intermediate Court. The previous first instance ordered the defendant Hangzhou Wildlife Zoo to compensate the plaintiff Bing Guo for the loss of contractual interests and transportation expenses totaling RMB 1,038, and delete the facial information including photos submitted by Mr. Guo when he applied for the annual card based on fingerprint. The second-instance judgment added one finding on this basis: the zoo should delete the fingerprint information of Mr. Guo. But the court rejected Mr. Guo’s other claims. Mr. Guo expressed disappointment at the judgement. He believes that the term “consumer who have not registered for face recognition will not be able to enter the park” is an imparity clause. However, the courts of the two instances did not review the term.⁴¹

车主起诉二手车服务平台，法院：案涉历史车况信息不属于个人隐私

近日，广州互联网法院对某二手车服务平台被诉侵犯隐私一案宣判。车主余某诉称，他在与车辆意向购买人磋商过程中，得知对方用其提供的机动车行驶证上所载的车架号，在查博士APP上付费查询了车辆的历史车况信息，并获得了详细记录车辆的行驶数据、维保数据等信息的《历史车况报告》。余某认为，车况报告属于他的个人信息及个人隐私，查博士APP未经其同意，擅自有偿向他人提供上述信息，侵犯其个人信息及隐私。广州互联网法院审理后认为，历史车况信息并非个人信息，判决驳回原告的全部诉讼请求。⁴²

⁴¹ https://www.thepaper.cn/newsDetail_forward_12140453

⁴² https://news.dayoo.com/gzrbmt/202104/10/158562_53868798.htm

Car Owner Sued Used Car Transaction Platform, Historical Information of Cars Not Considered as Privacy by Court

Recently, the Guangzhou Internet Court pronounced a judgement in which a second-hand car platform was sued for infringement of privacy. The car owner, Mr. Yu, said that in the process of negotiating with the buyer, he learned that the buyer used the vehicle identity number provided by him, and paid to check the historical information of his car on the “Dr. Search” app, and obtained detailed records of the driving data of his car, maintenance information and a full report. Mr. Yu believes that the vehicle condition report contains his personal information and personal privacy. Dr. Search app provides the above information to others without his consent and violates his personal information and privacy. After the trial, the Guangzhou Internet Court held that the historical information of vehicle condition was not personal information and ruled to reject all claims of the plaintiff.⁴²

首例涉直播平台数据行为禁令：直播数据“被窃”，法院诉中“喊停”

近日，抖音运营商微播视界公司以非法抓取、展示抖音直播数据为由，将“小葫芦”网站经营者六界公司诉至杭州市余杭区人民法院。微播视界认为六界公司的行为构成不正当竞争，同时向法院申请了诉中行为保全。余杭法院经审查，对六界公司做出行为禁令——立即停止获取抖音平台直播数据、删除已存储的数据。该案被称为首例涉直播平台数据行为禁令。⁴³

First Case of Act Preservation Concerning Live Streaming Platform: Court Issues Injunction for Stealing Live Streaming Data

Recently, Microlive Vision Company, the operator of TikTok, sued Liujie Company, the operator of the “Xiaohulu” website, to the Court of Yuhang District, Hangzhou City on the grounds of illegally capturing and displaying live streaming data of TikTok. Weibo Vision believes that the behavior of Liujie Company constitutes unfair competition, and at the same time applied to the court for act preservation during the lawsuit. After review, the court issued an act preservation against Liujie company: to immediately stop obtaining data from TikTok platform and delete data. This case is known as the first case involving an act preservation of data crawling on a live streaming platform.⁴³

⁴³ https://mp.weixin.qq.com/s/wBnQMz834xo59DQvXMOOBQ?scene=25#wechat_redirect

大成团队 Dentons Team

戴健民律师在“2021 中国网络安全合规与个人信息保护高峰论坛”发布主题演讲

2021 年 4 月 21 日，由 The Global Initiator Consulting Group 主办的“2021 年度中国网络安全合规与个人信息保护法高峰论坛”在上海浦东举行，大成上海办公室戴健民律师受邀发表题为《数据跨境传输的监管挑战与企业应对》的主题演讲。戴律师从数据跨境传输的常见场景出发，对《网络安全法》第 37 条下数据跨境传输的规制作出深入而独特的解读，并结合金融、医疗等强行业的特殊监管规则，以及涉及数据的出口管制规则，为企业数据出境的合规实践提出多角度的实务建议。本次高峰论坛吸引来自阿斯利康、米其林集团、锦江酒店、博泽等近百家国内外大型企业代表参会。⁴⁴

Ken Dai Delivered A Keynote Speech at 2021 China Summit of Cybersecurity Compliance and Personal Information Protection

On 21 April 2021, the 2021 China Summit of Cybersecurity Compliance and Personal Information Protection Law was hosted by the Global Initiator Consulting Group (GIC) in Pudong, Shanghai. Ken Dai from Dentons Shanghai Office was invited to deliver a keynote speech titled “Regulatory Challenge and Solution of Cross-border Data Transfer”. Starting from the common scenarios of cross-border data transfer, Ken has made an in-depth and unique interpretation of the regulations for cross-border data transmission under Article 37 of the Cybersecurity Law, combined with the special regulatory rules of several key industries as well as data export control rules. Ken also provided practical advice from multiple perspectives for compliance practices of data export. This summit attracted participants from nearly 100 domestic and foreign-investment companies, including AstraZeneca, Michelin Group, Jin Jiang Hotel, and Brose.⁴⁴

⁴⁴ <https://mp.weixin.qq.com/s/r4xWtQgdIIPWtnUIBroufg>

微信公众号 WeChat Public Accounts

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This Public Account focus on updates of China's antitrust law, including legislation, authorities, public enforcement, merger control, private litigation, academia, etc. Case study, theory introduction, practice guidance, original antitrust law reviews and articles are also contained. Welcome to join us.



名称：个人信息与数据保护实务评论

微信号：DataProtectionReview

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Name: Personal Information and Data Protection Practice Review

ID: DataProtectionReview

This Public Account focus on updates of China's personal information, data and privacy protection, including legislation, authorities, public enforcement, private litigation, academia, etc. Case study, theory introduction, practice guidance, original personal information, data and privacy protection reviews and articles are also contained. Welcome to join us.



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