

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

张穹介绍《反垄断法》修正草案八大主要修改

近日，在《中国反垄断十二年：回顾与展望》编委会新书发布仪式上，国务院反垄断委员会专家咨询组首任组长、原国务院法制办副主任张穹在仪式上介绍了《反垄断法》征求意见稿的八大主要修改，包括：一是认定互联网领域经营者具有市场支配地位，增加考虑网络效应、规模经济、锁定效应、掌握和处理相关数据的能力等因素。二是将强化竞争政策基础地位和公平竞争审查制度的相关内容写入征求意见稿，突出体现了完善社会主义市场经济体制、推动高质量发展的内在要求。三是关于提高反垄断法律体系的权威性，反垄断法律和执法、司法必须具有权威性、公信力。四是关于坚决打破行政垄断，增强调查和处罚力度。五是关于禁止组织、帮助达成垄断协议。六是关于主动调查涉嫌垄断的经营者集中。七是对反垄断执法机构的调查行为，必要时公安机关应当依法予以协助，以增强执法力度。八是关于大幅度提高罚款标准，特别是对垄断协议、违法集中等，都大幅提高了罚款标准。¹

Zhang Qiong Introduces Eight Major Draft Revisions of the Anti-Monopoly Law

Recently, at the book launch ceremony of the editorial board of *Twelve Years of Chinese Antitrust: Retrospect and Prospects*, Zhang Qiong, the former head of the Expert Advisory Group of the Anti-Monopoly Committee of the State Council and the former Deputy Director of the Legislative Affairs Office of the State Council introduced eight major draft revisions of the *Anti-Monopoly Law*, including (1) adding the determination of market dominance of operators in the Internet field, including factors such as network effect, economies of scale, lock-in effect, and the ability to collect and process relevant data; (2) adding the strengthening of the fundamental position of competition policy and the fair competition review system, highlighting the inherent requirement of improving the socialist market economy system and promoting high-quality development; (3) improving the authority of the anti-monopoly legal system, enhancing the authority and credibility of anti-monopoly laws and related law enforcement and judiciary system; (4) breaking administrative monopoly and enhancing investigation and punishment; (5) prohibiting the organizing and aiding of reaching monopoly agreements; (6) proactively investigating suspected monopolistic concentration of undertakings; (7) assistance of public security organs in the anti-monopoly enforcement; and (8) significantly increasing the standard of fines, especially for monopoly agreements and illegal concentrations.¹

¹ http://dz.jjckb.cn/www/pages/webpage2009/html/2021-06/15/content_74827.htm

国务院 2021 立法计划：提请人大常委会审议反垄断法修正草案

6 月 11 日，国务院办公厅公开发布《国务院 2021 年度立法工作计划》，拟提请人大常委会审议反垄断法修正草案。²

State Council's 2021 Legislative Plan: Draft Amendments to the Anti-Monopoly Law to Be Submitted to the Standing Committee of the National People's Congress for Consideration

On 11 June, the General Office of the State Council publicly released the State Council's 2021 Legislative Work Plan, which is to be submitted to the Standing Committee of the National People's Congress for consideration of the draft amendments to the *Anti-Monopoly Law*.²

《海南自由贸易港公平竞争条例（草案）》提请初审

5 月 31 日至 6 月 1 日，海南省六届人大常委会第二十八次会议在海口召开。由海南省市场监督管理局负责起草的《海南自由贸易港公平竞争条例（草案）》（“《条例草案》”）提请常委会会议进行初次审议。提请初次审议的《条例草案》共分为七章、三十六条，分为总则、公平竞争政策、公平竞争审查、影响公平竞争的行为、对影响公平竞争行为的调查、法律责任以及附则。³

Draft Hainan Free Trade Port Fair Competition Regulation Submitted for Preliminary Review

From 31 May to 1 June, the twenty-eighth meeting of the Standing Committee of the Sixth Session of Hainan Provincial People's Congress was held in Haikou. The *Hainan Free Trade Port Fair Competition Regulation* drafted by Hainan Administration for Market Regulation (“*Draft Regulation*”) was submitted to the Standing Committee meeting for initial consideration. The *Draft Regulation* submitted for initial consideration encompasses seven chapters and thirty-six articles, including general provisions, fair competition policy, fair competition review, conduct affecting fair competition, investigation of conduct affecting fair competition, legal liability and miscellaneous.³

² http://www.gov.cn/zhengce/content/2021-06/11/content_5617194.htm

³ http://hnrh.hinews.cn/html/2021-06/02/content_58465_13459247.htm

执法机构 Authorities

广东省市监局透露竞争执法工作重点

2021 年 6 月 25 日，广东省市场监督管理局（“广东省市监局”）公布《广东省市场监督管理局关于广东省十三届人大四次会议第 1040 号代表建议答复的函》，并透露了下一步工作重点，称将重点加强对大型互联网平台“二选一”“大数据杀熟”“封禁”等行为的执法规制，规范行业竞争秩序。⁴

Guangdong AMR Reveals the Priority of Competition Enforcement

On 25 June, 2021, Guangdong Administration for Market Regulation (“Guangdong AMR”) announced the *Response Letter of Guangdong AMR to the Proposal of No. 1040 Representative of the Fourth Session of the Thirteenth National People’s Congress of Guangdong Province*, in which the authority revealed that enforcement priority will include strengthening the regulation of practices of large Internet platforms, such as “pick one from two”, “personalized discrimination using big data”, “blocking”, etc., to maintain the order of competition in the industry.⁴

中国钢铁行业或迎来反垄断执法

6 月 21 日，国家市场监督管理总局（“国家市场监管总局”）价监竞争局与国家发展改革委价格司赴北京铁矿石交易中心开展调研，详细了解今年以来铁矿石交易及价格变化情况，并召开专题座谈会，研究做好铁矿石等大宗商品保供稳价工作。会议指出，将密切关注现货交易价格变化，及时排查异常交易和恶意炒作行为，对达成实施垄断协议、散播涨价信息、哄抬价格、囤积居奇等行为将依法予以严厉处罚并公开曝光，维护良好市场秩序。⁵

China’s Steel Industry May Encounter Anti-Monopoly Enforcement

On 21 June, the Price Supervision and Competition Bureau of the State Administration for Market Regulation (“SAMR”) and the Price Division of the National Development and Reform Commission (“NDRC”) carried out research in Beijing Iron Ore Trading Center, gained detailed understanding of iron ore trading and price changes since this year, and held a special forum to study the supply and price stabilization of iron ore and other bulk commodities. It was pointed out that close attention will be paid to changes in trading prices and timely investigation of abnormal transactions and malicious speculation will be carried out. Conducts such as implementation of monopoly agreements, proliferation of price increase information, price jack up, hoarding and profiteering will be severely punished and publicly exposed in accordance with the law to maintain good market order.⁵

⁴ http://amr.gd.gov.cn/gkmlpt/content/3/3329/post_3329588.html#2966

⁵ <https://mp.weixin.qq.com/s/8jv2GeIu1hRT8ZK4AHsVDO?scene=25>

广东省发改委等部门进一步清理规范涉企收费

6月15日，广东省发展改革委、广东省民政厅、广东省财政厅、广东省市场监管局发布进一步清理规范涉企收费有关问题的通知。通知明确，中介机构严禁借助行政权力垄断经营、强制服务、强行收费。政府职责范围内委托由事业单位或中介组织承担的事项，不得向第三方收取费用。⁶

Guangdong Development and Reform Commission and Other Departments to Further Clean up and Regulate Enterprise-Related Service Fees

On 15 June, Guangdong Development and Reform Commission, Guangdong Department of Civil Affairs, Guangdong Department of Finance and Guangdong AMR jointly issued a notice to further clean up and regulate issues related to enterprise-related service fees. The notice specifies that intermediaries are strictly prohibited from wielding administrative power to monopolize, provide mandatory services, or levy forced fees. Matters entrusted to public institutions or intermediary organizations that are within the scope of government responsibilities shall not charge fees.⁶

京津冀市场监管执法协作机制建立

6月10日，京津冀市场监管执法协作机制签约仪式在京举行，三地市场监管部门主要负责同志签署了区域执法协作框架协议以及公平竞争、价格监管、食品安全、知识产权等四个领域协同联动执法协议。国家市场监督管理总局副局长甘霖、北京市副市长卢映川出席签约仪式并讲话。⁷

Market Regulation and Law Enforcement Cooperation Mechanism Established among Beijing, Tianjin and Hebei

On 10 June, Beijing, Tianjin and Hebei market regulation and enforcement cooperation mechanism signing ceremony was held in Beijing, the main responsible persons of the three market regulation departments signed a regional law enforcement cooperation framework agreement and other collaborative joint enforcement agreements in four areas of fair competition, price regulation, food safety, and intellectual property rights. Gan Lin, deputy director of SAMR, and Lu Yingchuan, vice mayor of Beijing, attended the signing ceremony and made speech.⁷

湖南省市场监管局发布《湖南省经营者反垄断合规指引》

6月7日，湖南省市场监督管理局（“湖南省市场监管局”）于官网发布《湖南省经营者反垄断合规指引》，贯彻落实党中央关于强化反垄断和防止资本无序扩张的决策部署，大力宣传反垄断

⁶ http://drc.gd.gov.cn/bdzt/content/post_3329218.html

⁷ <https://mp.weixin.qq.com/s/M1UKPJegZGaBJCx9MJhVuQ?scene=25>

断法律法规，营造公平竞争的市场环境，增强经营者反垄断合规意识，促使经营者依法合规经营。⁸

Hunan AMR Releases Antitrust Compliance Guidelines for Operators in Hunan Province

On 7 June, Hunan Administration for Market Regulation (“Hunan AMR”) released the *Antitrust Compliance Guidelines for Operators in Hunan Province* on its official website in order to implement the decision and deployment of the Party Central Committee on strengthening anti-monopoly and preventing disorderly capital expansion, vigorously promote anti-monopoly laws and regulations, create a fair and competitive market environment, enhance operators’ awareness of anti-monopoly compliance, and prompt operators to operate in compliance with the law.⁸

浙江省市监局召开全省平台企业行政指导会

6月1日，浙江省市场监督管理局（“浙江省市监局”）在杭召开全省平台企业行政指导会，部署开展全省平台企业自查整改和评估督导工作。会议指出平台经济发展中存在的突出问题，对平台企业提出全面自查、限期整改的严格要求，并要求平台所在地市场监管部门深入细致开展评估督导。全省310家平台企业及其属地市场监管部门主要负责人参加会议。⁹

Zhejiang AMR Holds an Administrative Guidance Meeting for Local Platform Enterprises

On 1 June, Zhejiang Administration for Market Regulation (“Zhejiang AMR”) held an administrative guidance meeting in Hangzhou to deploy the work of carrying out self-examination, rectification and assessment supervision for the province’s platform enterprises. The outstanding problems in the development of the platform economy were pointed out on the meeting, comprehensive self-examination and rectification within time limit were required to be carried out by the platform enterprises, and in-depth and meticulous assessment and supervision were also required to be carried out by local market regulation authorities. 310 platform enterprises in the province and the main responsible persons of local market regulation authorities attended the meeting.⁹

国家市场监管总局再次强调加强和改进反垄断监管执法

6月1日，在国新办举行的国务院政策例行吹风会上，针对平台强制经营者“二选一”、乱收费等行为，市场监管总局再次强调要加强规范和监督。¹⁰

⁸ http://amr.hunan.gov.cn/amr/zwx/xxgkmlx/tzggx/202106/t20210607_19443072.html

⁹ <https://xw.qq.com/cmsid/20210601A0C7PM00>

¹⁰ <https://www.bbtnews.com.cn/2021/0602/398165.shtml>

SAMR Re-emphasizes on Strengthening and Improving Anti-Monopoly Regulation and Enforcement

On 1 June, at the State Council Policy Briefing Meeting held at the State Council Information Office, SAMR once again emphasized the need to strengthen the regulation and supervision on platforms' practices such as forcing operators to "pick one from two" and charging indiscriminate fees.¹⁰

行政调查 Public Enforcement

甘肃三行政机关因滥用权力发“排他”文件遭反垄断调查

2021年6月2日，甘肃省市场监督管理局发布三起行政调查案件，分别纠正张掖市甘州区人力资源和社会保障局滥用行政权力排除、限制竞争行为，纠正天水市财政局滥用行政权力排除、限制竞争行为，纠正嘉峪关市财政局滥用行政权力排除、限制竞争行为。¹¹

Three Administrative Organs in Gansu Investigated for Abusing Power to Issue Exclusive Documents

On 2 June, 2021, Gansu Administration for Market Regulation disclosed three administrative investigations to correct the abuse of administrative power to exclude and restrict competition by the Human Resources and Social Security Bureau of Ganzhou District Zhangye City, by the Finance Bureau of Tianshui City, and by the Finance Bureau of Jiayuguan City respectively.¹¹

¹¹ <http://scjg.gansu.gov.cn/info/6836>; <http://scjg.gansu.gov.cn/info/6837>; <http://scjg.gansu.gov.cn/info/6838>

经营者集中 Merger Control

国家市场监管总局附条件批准丹佛斯收购伊顿股份有限公司的液压业务

2021年6月7日，国家市场监管总局发布公告，认为丹佛斯收购伊顿股份有限公司的液压业务在中国摆线马达市场具有或可能具有排除、限制竞争效果，故根据申报方提交的附加限制性条件承诺方案，附加限制性条件批准此项集中，要求剥离丹佛斯动力系统（江苏）有限公司的摆线马达业务，包括所有有形资产和无形资产（包括知识产权）、协议、租约、承诺和客户订单，以及人员等。¹²

SAMR Grants Conditional Approval to Danfoss's Acquisition of the Hydraulic Business of Eaton Corporation

On 7 June, 2021, SAMR declared that considering Danfoss's acquisition of the hydraulic business of Eaton Corporation has or may have the effect of excluding or restricting competition in the Chinese cycloidal motor market, it therefore approved the concentration with additional restrictive conditions based on the commitment proposal submitted by the filing parties, requiring the divestiture of the cycloidal motor business of Danfoss Power Solutions (Jiangsu) Co., Ltd.¹²

国家市场监管总局就银泰投资有限公司未依法申报违法实施经营者集中处以 50 万罚款

6月3日，国家市场监管总局就中国银泰投资有限公司（“银泰投资”）收购杭银消费金融股份有限公司（“杭银消金”）股权未依法申报违法实施经营者集中案对银泰投资处以 50 万元人民币罚款的行政处罚。2019 年 1 月，银泰投资和杭银消金签署《股份认购协议》，以认缴新增注册资本的形式收购杭银消金 34.92% 股权，取得杭银消金的共同控制权；同年 8 月 7 日，杭银消金完成股权变更登记，在此之前银泰投资未依法申报，构成违法实施的经营者集中。¹³

SAMR Fines Yintai Investment Co. CNY 500,000 For Gun-jumping

On 3 June, SAMR imposed an administrative penalty of CNY 500,000 on China Yintai Holding Co., Ltd. (“Yintai”) for failing to declare the illegal implementation of concentration in accordance with the law in relation to the acquisition of equity interests in Bank of Hangzhou Consumer Finance Co., Ltd. (“Hang Yin”). In January 2019, Yintai and Hang Yin signed the Share Purchasing Agreement to acquire 34.92% equity interest in Hang Yin in the form of subscription of additional registered capital, thus acquiring joint control of Hang Yin; on 7 August of the same year, Hang Yin completed the registration of change of equity interest before which Yintai failed to declare in accordance with the law and constituted an illegal concentration.¹³

¹² http://www.samr.gov.cn/fldj/tzgg/ftjpz/202106/t20210607_330289.html

¹³ http://www.samr.gov.cn/fldj/tzgg/xzcf/202106/t20210610_330567.html

法院诉讼 Courts Litigation

租赁合同纠纷中被告提出垄断抗辩，二审法院裁定移送管辖

2021 年 6 月 23 日，中国裁判文书网发布甘肃廣和公交集团酒泉再生资源回收有限公司、严某等垄断纠纷二审民事裁定书，审查认为本案需要依据反垄断法对酒泉再生资源回收有限公司的行为是否构成滥用市场支配地位垄断经营作出裁判，故撤销一审法院甘肃省酒泉市肃州区人民法院作出的判决，移送甘肃省兰州市中级人民法院管辖。¹⁴

Court of Second Instance Rules to Transfer the Lease Contract Dispute due to an Antitrust Related Defense

On 23 June, 2021, the Chinese Judgment Online released the civil ruling of the second trial of the monopoly dispute between Gansu Guanghe Bus Group Jiuquan Renewable Resources Recycling Co., Ltd. and an individual Yan, etc. The court concluded that the case shall be adjudicated based on the *Anti-Monopoly Law* on whether the behavior of Jiuquan Renewable Resources Recycling Co., Ltd. constituted an abuse of dominant market position to monopolize business, so the decision made by the People's Court of Jiuquan City Suzhou District court of Gansu Province, the court of first instance, was revoked and the case was transferred to the Intermediate People's Court of Lanzhou City of Gansu Province.¹⁴

重庆知识产权法庭成立，管辖重庆市一审垄断纠纷案件

6 月 16 日，经最高人民法院（“最高院”）、重庆市委批复，重庆知识产权法庭在重庆市第一中级人民法院正式揭牌成立。¹⁵

Chongqing Intellectual Property Tribunal Established to Govern the First Instance Monopoly Disputes in Chongqing

On 16 June, approved by the Supreme People's Court and Chongqing Municipal Committee, Chongqing Intellectual Property Tribunal was officially inaugurated under Chongqing First Intermediate People's Court.¹⁵

上海知产法院就手机用户诉苹果支付垄断案发布管辖裁定书

6 月 2 日，上海知识产权法院就某手机用户诉苹果支付垄断案作出民事裁定，认定本案所涉纠纷为垄断纠纷，其地域管辖依据有关侵权、合同纠纷等的管辖规定。原告主张被告实施了滥用市场支配地位的搭售行为和不公平高价行为使其利益受损，故本案属侵权纠纷，由侵权

¹⁴ <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXS4/index.html?docId=14d843292dd74fec951aad26005e3224>

¹⁵ <https://mp.weixin.qq.com/s/fJ8SofpRaGPQ9X9eNZdiXw?scene=25>

行为地（包括侵权行为实施地、侵权结果发生地）或者被告住所地人民法院管辖，原告住所地可以作为侵权损害结果发生地。当公民住所地与经常居住地不一致时，应以公民经常居住地作为确定管辖的依据。因原告已证明上海市长宁区为其经常居住地，故上海知识产权法院对本案具有管辖权。¹⁶

Shanghai Intellectual Property Court Issues Jurisdictional Ruling on a User's Claim against Apple Pay

On 2 June, Shanghai Intellectual Property Court issued the ruling on the monopoly case of a cell phone user against Apple Payment and found that the case involves a monopoly dispute, the territorial jurisdiction of which shall be determined based on the jurisdictional provisions regarding tort or contract disputes. The plaintiff claimed for damage due to defendant's abuse of dominant position in the market by tying and setting unfairly high prices, therefore rendering the case as a tort dispute. Therefore, the court located in the place of tort (including the place where the tort is committed and the place where the damage occurs) or the place of residence of the defendant shall have jurisdiction. The place of residence of the plaintiff can be the place where the damage occurs. When the citizen's residence and habitual residence are not the same, the habitual residence of the citizen should be used as the basis for determining jurisdiction. Since it has been proved that Shanghai Changning District is the habitual residence of the plaintiff, Shanghai Intellectual Property Court shall have jurisdiction over this case.¹⁶

最高法院表示正在研究起草反垄断相关司法解释

5月31日，最高院召开互联网典型案例新闻发布会，提及将积极参与反垄断法、电子商务法等法律的修订工作，认真研究起草有关反垄断、反不正当竞争的司法解释。¹⁷

Supreme People's Court Announces to Be Studying and Drafting Antitrust-related Judicial Interpretations

On May 31, the Supreme People's Court held a press conference on typical Internet cases, mentioning that it will actively participate in the revision of anti-monopoly laws, e-commerce laws and other laws, and carefully study and draft judicial interpretations on anti-monopoly and anti-unfair competition.¹⁷

¹⁶ <https://mp.weixin.qq.com/s/rjag9I90E1F13hgR6wHh9A?scene=25>

¹⁷ <http://www.court.gov.cn/zixun-xiangqing-306371.html>

第二部分：数据保护 Data Protection

立法动态 Legislation

工信部拟发文加强智能网联汽车网络安全工作

2021 年 6 月 22 日，工信部发布《关于加强车联网（智能网联汽车）网络安全工作的通知（征求意见稿）》。该通知拟以规范性文件形式印发，并已向社会征求意见。通知旨在加强车联网（智能网联汽车）网络安全管理工作，提升网络安全保障能力，促进车联网（智能网联汽车）产业规范健康发展。¹⁸

MIIT Intends to Issue a Document to Strengthen the Network Security of Intelligent Connected Vehicles

On 22 June 2021, the Ministry of Industry and Information Technology (“MIIT”) issued the *Notice on Strengthening the Network Security of the Internet of Vehicles (Intelligent Connected Vehicles) (Draft for Solicitation of Comments)* (“Notice”). The Notice will be issued as a normative document and has been released to solicit opinions. The Notice aims to strengthen the network security management of the Internet of vehicles (intelligent connected vehicles), improve network security assurance capabilities, and promote the standardized and healthy development of the Internet of vehicles (intelligent connected vehicles) industry.¹⁸

《数据安全法》正式表决通过，将于 9 月 1 日起生效

6 月 10 日，全国人大常委会表决通过《数据安全法》。相比此前的二次审议稿，表决通过的《数据安全法》最终稿的主要修改包括：（1）建立工作协调机制；（2）对关系国家安全、国民经济命脉、重要民生、重大公共利益等数据实行更严格的管理制度；以及（3）加大对违法行为的处罚力度等。《数据安全法》将于 2021 年 9 月 1 日生效。¹⁹

Data Security Law Officially Adopted and Will Take Effect as of 1 September

On 10 June, the Standing Committee of the National People’s Congress (“NPC”) voted to pass the *Data Security Law*. Compared with the previous second review draft, the major amendments to the final draft of the Data Security Law passed by voting including: (1) establishing a work coordination mechanism; (2) implementing a more stringent management system on data concerning national security, national economy, people’s livelihood, and major public interests; and (3) increasing penalties for violations, etc. The *Data Security Law* will take effect on 1 September 2021.¹⁹

¹⁸ http://wap.miit.gov.cn/gzcy/yjzj/art/2021/art_81bcc454e9c34749b1abafae4f392b1a.html

¹⁹ <https://www.cebnet.com.cn/20210607/102753332.html>

国务院未成年人保护工作领导小组首份政策文件出台，重点加强未成年人个人信息网络保护

6月8日，国新办举行《国务院未成年人保护工作领导小组关于加强未成年人保护工作的意见》（“《意见》”）的发布会。意见提出了25项未成年人保护的重点任务，包括“加强未成年人个人信息网络保护”。《意见》要求：相关部门要监督网络运营者有效履行未成年人个人信息网络保护的平台责任，指导网络运营者对未成年人及其监护人提出的更正、删除未成年人个人信息的诉求予以配合。²⁰

First Policy Document Issued by Leading Group for Protection of Minors of State Council Focuses on Strengthening Online Protection of Minors' Personal Information

On 8 June, the Information Office of the State Council held a press conference on the *Opinions of the Leading Group for the Protection of Minors of the State Council on Strengthening the Protection of Minors* (“**Opinions**”). The Opinions put forward 25 key tasks for the protection of minors, including strengthening the protection of minors' personal information online. The Opinions requires that: relevant departments should supervise network operators to effectively perform platform responsibilities for the protection of minors' personal information, and guide network operators to cooperate with minors and their guardians' requests for correction and deletion of minors' personal information.²⁰

“个保法”草案二审稿收到意见 776 条，加强处罚力度最受关注

6月4日，全国人大常委会法制工作委员会举行记者会，法工委发言人臧铁伟披露，4月个人信息保护法草案进行了二次审议后，目前共有239名社会公众提出了776条意见，另收到来信12封。这些意见主要集中在：细化完善个人信息处理规则；进一步规范各行业以及政府部门处理个人信息的行为；提高信息处理的透明度；加强对未成年人个人信息和敏感个人信息的保护；加大对非法收集买卖个人信息的处罚力度等方面。²¹

Second Draft of Personal Information Protection Law Receives 776 Pieces of Comments, Strengthening Penalties Receives Most Attention

On 4 June, the Legal Affairs Committee of the Standing Committee of the NPC held a press conference. The spokesperson of the Legal Affairs Committee Zang Tiewei disclosed that after the second review of the Personal Information Protection Law in April, a total of 239 members of the public have put forward 776 pieces of opinions. Another 12 letters were received. These opinions mainly focus on: refining and improving rules of personal information processing; further regulating the handling of personal information by various industries and government departments; improving the transparency of information processing; strengthening the protection of minors' personal

²⁰ <http://xxgk.mca.gov.cn:8011/gdnps/pc/content.jsp?id=14968&mtype=1>

²¹ <https://www.chinanews.com/gn/2021/06-04/9492492.shtml>

information and sensitive personal information; punishment of illegal collection and sale of personal information, etc.²¹

《深圳经济特区数据条例（征求意见稿）》发布

6月初，在经过两次审议后，《深圳经济特区数据条例（征求意见稿）》（“《条例》”），日前公开征求意见，为本月底的“三审”做准备。作为经济特区，《条例》体现了深圳在立法上的先行姿态。拥有全国人大及其常委会的授权，深圳进行了诸多敢为人先的立法探索：不得对未成年人用户画像、严罚大数据杀熟、明确数据权益等。其中，大数据杀熟5万起罚、最高罚5000万的规定受到广泛关注。²²

Data Regulations of Shenzhen Special Economic Zone (Draft for Comments) Released

In early June, after two rounds of deliberations, the *Data Regulations of Shenzhen Special Economic Zone (Draft for Comments)* (“**Regulations**”) were publicly solicited for comments and for preparation of the third review at the end of this month. As a local law of the special economic zone, the Regulations embodies Shenzhen’s leading posture in legislation. With the authorization of the NPC and its Standing Committee, Shenzhen has carried out many pioneering legislative explorations: prohibition of profiling of minor users, severe penalty of big data discrimination, clarification of data rights and so on. Among them, a minimum fine of RMB 50,000 and a maximum fine of RMB 50 million for big data discrimination have received widespread attention.²²

²² <https://m.21jingji.com/article/20210605/herald/8d4a523b9a74c3940fc485ec94f3445e.html>

执法机构 Enforcement Authority

国家网信办启动制定数据跨境传输标准合同

2021 年 6 月底，据外媒报道，知情人士表示国家网信办已启动“中国版 SCC”——数据跨境传输标准合同的起草工作。根据全国人大常委会 2021 年 4 月 29 日发布的《个人信息保护法（草案）》（二次审议稿）第三十八条，个人信息处理者因业务等需要，确需向中华人民共和国境外提供个人信息的，可以按照国家网信部门制定的标准合同与境外接收方订立合同，约定双方的权利和义务，并监督其个人信息处理活动达到本法规定的个人信息保护标准。²³

CAC Initiates the Formulation of Standard Contract for Cross-border Data Transmission

In late June 2021, according to foreign media, it is said that the Cyberspace Administration of China (“CAC”) has initiated the drafting of the “Chinese version of SCC” - a standard contract for cross-border data transfer. According to Article 38 of the *Personal Information Protection Law (Second Draft)* promulgated by the Standing Committee of the NPC on 29 April 2021, if personal information controllers do need to provide foreign recipients with personal information for business needs, they can conclude a contract with an overseas recipient in accordance with the standard contract issued by CAC, agreeing on the rights and obligations of both parties, and supervise their personal information processing activities to meet the personal information protection standards stipulated in this law.²³

工信部专项整治 App 侵害用户权益问题，组织下架 329 款拒不整改 App

6 月底，记者从工信部获悉，截至 2021 年 6 月 21 日，App 侵害用户权益专项整治行动共检查 117 万款 App，对 4002 款违规 App 提出了整改要求，公开通报 1248 款整改不到位的 App，组织下架 329 款拒不整改的 App。²⁴

MIIT Specifically Rectifies App Infringement on User Rights, And Removes 329 Apps from App Stores

In late June, it is reported that the MIIT has examined a total of 1.17 million Apps in the special rectification action for App infringement of users' rights and interests by 21 June 2021. Among them, 4,002 Apps that violate regulations have been rectified. The MIIT also publicly notified 1,248 Apps that were not rectified and organized the removal of 329 Apps that refused to be rectified.²⁴

²³ <https://mp.weixin.qq.com/s/KurpRdrelMreAjCK6Bm87g>

²⁴ https://www.ccdi.gov.cn/yaowen/202106/t20210626_244566_m.html

工信部规范“618”短信营销：“默认”用户同意就擅自发送属违法侵权

6月15日，工信部信息通信管理局召开行政指导会，规范电商平台“618”短信营销行为。信息通信管理局指出，自5月下旬以来，发现部分电商平台企业未充分核实注册用户意愿，默认用户同意，擅自发送“618”商业营销短信，引发相关用户投诉，违反法律规定。在会上，相关企业郑重承诺将严格落实垃圾信息治理相关要求，并全面自查自纠。²⁵

MIIT Regulates “618” SMS Marketing: Users’ “Default” Consent to Marketing without Authorization Considered Illegal

On 15 June, the Information and Communication Bureau of the MIIT held an administrative guidance meeting to regulate the “618” SMS marketing behaviours of e-commerce platform. The Information and Communications Bureau pointed out that it has been found that some e-commerce platform companies have not fully verified the consent of registered users and adopt users’ default consent to receive 618 marketing text messages without authorization since late May. This triggers complaints from related users and violates the law. At the meeting, relevant companies also committed to strictly implement the relevant requirements for spam control and conduct comprehensive self-examination and self-correction.²⁵

四部门开展摄像头偷窥等黑产集中治理，保护公民个人隐私安全

6月11日，中央网信办、工业和信息化部、公安部、市场监管总局决定，自今年5月至8月，在全国范围组织开展摄像头偷窥等黑产集中治理，切实保护公民个人隐私安全。治理行动要求：互联网平台要清理平台内发布的涉摄像头破解教学、漏洞风险利用等违法信息；摄像头生产企业提升产品安全能力；电商平台要对假冒伪劣摄像头做清理、下架；公安机关将依法打击相关违法犯罪活动；各部门将严格监管和执法。²⁶

Four Departments Carry Out Centralized Management of Black Assets Such as Camera Peeping to Protect Citizens’ Personal Privacy

On 11 June, the CAC, the MIIT, the Ministry of Public Security, and the SAMR jointly decided to organize a nationwide centralized management action of black industry such as camera peeping from May to August this year to effectively protect the privacy of citizens. The action requirements includes: Internet platforms must clean up illegal information related to camera cracking teaching, utilization of vulnerability risk and other illegal information posted on the platform; camera manufacturers must improve product security capabilities; e-commerce platforms must clean up and remove fake and inferior cameras. Public security organs will crack down on relevant illegal and criminal activities according to the law. Relevant departments will strictly supervise and enforce the law.²⁶

²⁵ https://www.miit.gov.cn/jgsj/xgj/gzdt/art/2021/art_b917c671a05e478e8def878d44472c76.html

²⁶ https://mp.weixin.qq.com/s/hzUAVCpvMZKof-TayYFfzA?scene=25#wechat_redirect

国家网信办通报 129 款 App 违法违规收集使用个人信息

6 月 11 日，国家互联网信息办公室通报了 Keep 等 129 款 App 违法违规收集使用个人信息的情况。这些 App 涉及运动健身、新闻资讯、网络直播、应用商店、女性健康等类型的。相关问题主要包括违反必要原则，收集与服务无关的信息，以及未经用户同意等。²⁷

CAC Notifies 129 Apps That Illegally Collect and Use Personal Information

On 11 June, the CAC notified 129 Apps including Keep that illegally collect and use personal information. These Apps involve sports and fitness, news information, live web casts, application stores, women's health, and other types. Related issues mainly include violating the principle of necessity, collecting information unrelated to the service and lack of users' consent.²⁷

工信部通报 83 款问题 App，涉及违规收集个人信息等行为

6 月 8 日，工信部发布公告称，近期进一步加大对 App 相关个人信息问题的整治力度，充分保障用户的知情权和选择权。这些问题包括：弹窗信息关不掉或者未显著提供关闭功能标识，开屏信息、弹窗信息利用文字、图片、视频等方式欺骗误导用户跳转至其他页面等。83 款 App 因未完成整改被工信部通报，并被要求 6 月 16 日前完成整改。²⁸

MIIT Notifies 83 Problematic Apps Involving Illegal Collection of Personal Information and Other Issues

On 8 June, the MIIT issued an announcement stating that the rectification of App-related personal information issues will be strengthened further recently to fully protect users' right to know and to choose. These problems include: the pop-up information cannot be closed or the closing button is not provided; the screen-opening information and the pop-up information use text, pictures, videos, and others to deceive and mislead users to jump to other pages, and so on. A total of 83 Apps were notified by the MIIT for not completing the rectification and were required to complete the rectification before 16 June.²⁸

浙江省将开展 2021 年度 App 违法违规收集使用个人信息专项治理工作

6 月 1 日，浙江省四部门（省互联网信息办公室、省公安厅、省市场监督管理局、省通信管理局）决定，自 2021 年 6 月至 2021 年 12 月，联合开展 2021 年度 App 违法违规收集使用个人信息专项治理工作。本次治理针对在浙江省设立或注册的法人、其他组织以及个人建设、运营、管理的 App 和应用商店。治理重点为违法违规收集使用个人信息，与个人信息泄露等安全隐患。²⁹

²⁷ http://www.cac.gov.cn/2021-06/11/c_1624994586637626.htm

²⁸ https://www.miit.gov.cn/xwdt/gxdt/sjdt/art/2021/art_38d4220505c443a288c708782151263d.html

²⁹ https://mp.weixin.qq.com/s/TebAZSTvTwa3xLccmmQ9bg?scene=25#wechat_redirect

Zhejiang Province Carries out 2021 Special Regulation Task on Illegal Collection and Use of Personal Information by Apps

On 1 June, four government departments of Zhejiang Province (namely the Cyberspace Office, the Public Security Department, the Bureau for Market Regulation, and the Communication Administration) decided to jointly launch the 2021 special regulation task on the illegal collection and use of personal information by Apps from June 2021 to December 2021. This special regulation task is aimed at Apps and Application stores that are established, registered in Zhejiang Province by legal persons, other organizations and that are built, operated, and managed by individuals in Zhejiang Province. The focus is on the collection and use of personal information in violation of laws and regulations, and potential safety threats such as personal information breach.²⁹

北京四部门联合开展 App 违法违规收集使用个人信息专项治理行动

近日，北京市市委网信办、市公安局、市市场监督管理局、市通信管理局联合发布通告，组建北京市 2021 年度 App 违法违规收集使用个人信息的专项治理工作组，将自发布通告之日起至 11 月，在北京组织开展 App 个人信息专项治理行动。³⁰

Four Departments in Beijing Jointly Launch a Special Governance Action on Illegal Collection and Use of Personal Information by Apps

Recently, Beijing's Cyberspace Administration, Municipal Public Security Bureau, Municipal Market Supervision Administration, and Municipal Communications Administration jointly issued a notice to set up a special governance work group for the collection and use of personal information against laws and regulations by Apps in Beijing in 2021. From the date of the announcement to November, a special governance action for App personal information will be organized in Beijing.³⁰

³⁰ http://news.china.com.cn/txt/2021-06/21/content_77578441.htm

法院诉讼 Courts Litigation

上海市二中院：庭前会议展示爱奇艺观影记录，并不侵犯个人信息

2021 年 6 月 16 日，上海二中院经审理认为，爱奇艺和一家律所在不公开审理的庭前会议程序中为证明其主张，向法庭递交并展示吴某在爱奇艺平台的登录记录和观影记录，没有侵害他人权利的主观过错，目的合法正当，该行为不构成侵权，故驳回上诉，维持原判。此前，在吴某与爱奇艺的诉讼中，爱奇艺和一家律所曾查看并向法院递交吴某的登录记录和观影记录。吴某认为此举侵犯其个人隐私。³¹

Shanghai Second Intermediate Court: Displaying Personal Viewing Records of iQiyi at Pre-trial Meeting Does Not Infringe Personal Information

On 16 June 2021, the Shanghai Second Intermediate People's Court ruled on the case that iQiyi and a law firm submitted and displayed Wu's login records and viewing records on the iQiyi platform to the court in the pre-trial proceedings in order to prove their claims. The court held that, there was no subjective fault of infringing on the rights of others in the viewing records, and the purpose was legitimate, as such the act did not constitute an infringement, so the Appeal was rejected, and the original judgment was upheld. Previously, in Wu's lawsuit against iQiyi, iQiyi and a law firm had accessed and submitted Wu's login records and viewing records to the court. Wu believed that this infringes on his privacy.³¹

杭州互联网法院：发布涉电子商务平台十大典型案例

6 月 1 日，杭州互联网法院召开新闻发布会，介绍电子商务案件特征与趋势，并发布十大典型案例。这些案例包括“淘宝（中国）软件有限公司诉安徽美景信息科技有限公司不正当竞争纠纷案”、“深圳市腾讯计算机系统有限公司等诉浙江搜道网络技术有限公司等不正当竞争纠纷案”等。此外，新闻发布会披露，2018 年至 2020 年，杭州互联网法院受理电子商务类案件 6695 件，审结 6826 件。³²

Hangzhou Internet Court Releases Ten Typical Cases Involving E-Commerce Platforms

On 1 June, the Hangzhou Internet Court held a press conference to introduce the characteristics and trends of e-commerce civil litigations and released ten typical cases. These cases include “*Taobao (China) Software Co., Ltd. v. Anhui Meijing Information Technology Co., Ltd.*”, “*Shenzhen Tencent Computer System Co., Ltd., etc. v. Zhejiang Soudao Network Technology Co., Ltd.*”, etc. In addition,

³¹ https://mp.weixin.qq.com/s/5Agnv7Jhv2fUR3kvhu_oMQ?scene=25#wechat_redirect

³² https://mp.weixin.qq.com/s/K7A_gppIYsojdv0r06udtQ?scene=25#wechat_redirect

the press conference disclosed that from 2018 to 2020, Hangzhou Internet Court accepted 6,695 e-commerce cases and concluded 6,826 cases in total.³²

阿里巴巴遭遇网络爬虫，泄露 11.8 亿条淘宝个人信息

近日，河南省商丘市睢阳区人民法院公开一份刑事判决书，显示一名大学生逯某自 2019 年 11 月起，对淘宝实施了长达八个月的数据爬取并盗走大量用户数据。在阿里巴巴注意到这一问题前，已经有超过 11 亿 8 千多万条用户信息泄露。该案中，另一名黎某利用这些信息，建了 1100 个微信群，每个群 90-200 人不等。黎某每天用机器人在群里发淘宝优惠券，赚取返利，并在 8 个月内获利 34 万余元。最终，两人分别被判处 3 年 6 个月和 3 年 3 个月的有期徒刑，并被处罚金。³³

Alibaba Encounters Web Crawler and Breach of 1.18 Billion pieces of Taobao Users' Personal Information

Recently, the People's Court of Suiyang District, Shangqiu City, Henan Province published a criminal verdict, showing that a college graduate Lu had carried out data crawling on Taobao for eight months and stole a large amount of user data since November 2019. Before Alibaba noticed this problem, more than 1.18 billion pieces of user information had been leaked. In this case, another person Li used this information to form 1,100 WeChat groups, each has 90-200 members. Li used robots to send Taobao coupons in the group every day to earn rebates and made more than RMB 340,000 in 8 months. In the end, Lu and Li were sentenced to fixed-term imprisonment of 3 years and 6 months and 3 years and 3 months and received criminal fines.³³

³³ https://mp.weixin.qq.com/s/JZ9ihLmE-r11qO19B_8gGQ?scene=25#wechat_redirect

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