

China Monthly Antitrust & Data Protection Update

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Antitrust

Legislation

The Amendments to the Anti-monopoly Law Is to Be Reviewed Between 19 October and 23 October

On 28 September 2021, the 102nd Chairman meeting of the Standing Committee on 13th National People's Congress was held in Beijing. As decided at the meeting, the 31st session of the top legislature will be held between 19 October and 23 October. The meeting will review a motion submitted by the State Council on a draft amendment to the Anti-Monopoly Law ("AML"). ¹

The Code of Ethics for New Generation Artificial Intelligence Proposes to Maintain Orderly Competition in the Market

On 25 September, the National Professional Committee on Governance of New Generation Artificial Intelligence released the *Code of Ethics for New Generation Artificial Intelligence*, which mentions that behaviours including data monopoly and platform monopoly that may destroy the orderly competition in the market shall be prohibited. ²

Jiangsu Province Releases "Anti-Monopoly Compliance Guidelines for Operators in Jiangsu"

On 22 September, the Administration for Market Regulation of Jiangsu Province released the *Anti-monopoly Compliance Guidelines for Operators in Jiangsu*, which aims to encourage operators to cultivate a compliance culture of fair competition, guide operators to establish an anti-monopoly compliance system, improve the level of anti-monopoly compliance, promote the sustainable and healthy development of operators, and maintain a fair competition order in the market. ³

The Outline of Building a Powerful Intellectual Property Nation Proposes to Improve the Anti-Monopoly Laws and Regulations Related to Intellectual Property and the Fair Competition Review System

China's CPC Central Committee and State Council have recently published the *Outline of Building a Powerful Intellectual Property Nation (2021-2035)*, which proposes to improve the legal system regulating the abuse of intellectual property rights as well as legislation in areas such as anti-monopoly and anti-unfair competition related to intellectual property rights, and establish a sound system for the legality of intellectual property policies and fair competition review. ⁴

¹ <https://mp.weixin.qq.com/s/ircMSqo51Rx4ozViNkXQ0A>

² http://www.most.gov.cn/kjbgz/202109/t20210926_177063.html

³ http://scjgj.jiangsu.gov.cn/art/2021/9/22/art_78968_10023737.html

⁴ http://www.news.cn/2021-09/23/c_1127890442.htm

Hainan Free Trade Port Publishes the Third Party Assessment Measures for Fair Competition Review (for Trial Implementation)

On 10 September, Hainan Free Trade Port published the *Notice of the Anti-Monopoly Committee Office in China (Hainan) Pilot Free Trade Port on the Issuance of Third-Party Assessment Measures for Fair Competition Review* (for Trial Implementation), which aims to build a high-level Hainan Free Trade Port and promote the business environment. It proposes to strengthen the basic status of competition policy and establish a third party assessment mechanism for fair competition review.⁵

⁵ <http://www.hnftp.gov.cn/zcfg/zcwj/hnzc/202109/P020210910423797165613.pdf>

Authorities

The Central Commission for Discipline Inspection Comments on the Case of Administrative Monopoly: Forceful Enactment Is Capricious Use of Power

Recently, the market regulation department of Ningxia Hui Autonomous Region investigated and dealt with the case involving the emergency management department of Shizuishan using its administrative power in handling safety production licenses to forcefully designate specific insurance brokers. On 26 September 2021, the Central Commission for Discipline Inspection launched a sharp commentary on this case, pointing out that fair competition is a basic principle of market economy, and using administrative power to forcefully interfere with the free competition of market subjects will worsen the business environment. ⁶

Jiangxi Provincial Department of Finance Issues 160,000 Yuan to Subsidize the Antitrust Work

On 10 September, the Department of Finance of Jiangxi Province issued an anti-monopoly work subsidy of RMB 160,000 to support the investigation of antitrust cases to promote the local anti-monopoly work. ⁷

Compilation on Anti-monopoly Laws of Countries Related to the Belt and Road Has Been Published and Released

On 6 September, the translation of *Compilation on Anti-monopoly Laws of Countries Related to the Belt and Road* organized by the Anti-monopoly Bureau of the State Administration for Market Regulation (“SAMR”), was published by the Legal Publishing House and officially released. The Compilation systematically introduces the antitrust legislation and institutional settings of the countries along the route, which will also play a positive role in further promoting the exchange and cooperation between China and other countries in the field of antitrust. ⁸

The SAMR Releases 2020 Antitrust Enforcement Report and 10 Typical Cases of Antitrust Enforcement

On 3 September, the SAMR released *2020 Antitrust Enforcement Report* and 10 Typical Cases of Antitrust Enforcement. The report highlights the achievements of the SAMR regarding regulating the order of competition in the platform economy and deepening anti-monopoly enforcement in the livelihood sector in 2020. ⁹

⁶ https://www.ccdi.gov.cn/pl/202109/t20210926_251238.html

⁷ http://jxf.jiangxi.gov.cn/art/2021/9/10/art_39232_3578822.html

⁸ http://www.samr.gov.cn/fldj/sjdt/gzdt/202109/t20210906_334442.html

⁹ <http://www.gov.cn/xinwen/2021-09/24/5639102/files/77006c5bccc04555aa05f30c9a296267.pdf>

Public Enforcement

Bulls Is Fined 290 Million Yuan for Engaging in Resale Price Maintenance

On 27 September 2021, the SAMR issued a penalty decision by the Zhejiang Administration for Market Regulation in relation to the monopoly agreement of Bull Group Corporation (“**Bull Group**”), fining the Bull Group RMB 294.81 million. The investigation found that from 2014 to 2020, the party concerned had entered into and implemented monopoly agreements with counterparties (dealers) to fix and limit prices in the sales channels of power connection and electricity extension products nationwide, which excluded and restricted market competition and harmed consumers’ welfare.¹⁰

Anhui AMR Corrects the Anhui Provincial Working Committee on Aging’s Behaviour Involving Abuse of Administrative Power to Exclude and Restrict Competition

On 15 September, the Anhui Administration for Market Regulation (“**Anhui AMR**”) released the results of an investigation into the alleged abuse of administrative power by the Office of the Anhui Provincial Working Committee on Aging to exclude and restrict competition and corrected the latter’s behaviour involving abuse of administrative power by designating an insurance company as responsible for providing elderly insurance protection products and services.¹¹

Shanxi AMR Corrects Abuse of Administrative Power by Relevant Departments of Jinzhong Municipal People’s Government to Exclude and Restrict Competition

On 15 September, the Shanxi Administration for Market Regulation (“**Shanxi AMR**”) released the results of the investigation into the abuse of administrative power by the Office of the People’s Government in Jinzhong and other departments to exclude and restrict competition. The behaviours including issuing documents and adding restrictive conditions to restrict the types of cruising cars conducted by relevant departments were corrected according to the law.¹²

Director of the SAMR Proposes to Strengthen Competition Regulation in a Strong and Orderly Manner

On 6 September, Zhang Gong, director of the SAMR, said at a press conference of the State Information Office that the market regulator will strengthen competition regulation in a strong and orderly manner, resolutely oppose monopoly and prevent disorderly expansion of capital. The regulator will also focus on regulating the order of competition in the platform economy and create a fair, efficient and orderly market competition environment.¹³

¹⁰ http://www.samr.gov.cn/fldj/tzgg/xzcf/202109/t20210927_335175.html

¹¹ <http://amr.ah.gov.cn/xwdt/gsgg/146065171.html>

¹² http://www.samr.gov.cn/fldj/tzgg/qlpc/202109/t20210915_334781.html

¹³ http://www.moj.gov.cn/jgsz/gjjwzsfbjz/zyzsfbjzyw/202109/t20210913_437544.html

Merger Control

SAMR Releases 64 Simple Cases for Merger Control Review in September

Up to 30 September 2021, the SAMR has released 64 simple cases in September on its website.¹⁴

¹⁴ <http://www.samr.gov.cn/fldj/ajgs/jzjyajgs/index.html>

Courts Litigation

The SPC Rejects Apple's Jurisdictional Appeal in an Anti-Monopoly Case

On 27 September 2021, the Supreme People's Court ("SPC") of China has dismissed an appeal filed by Apple Computer Trading (Shanghai) regarding jurisdiction in an antitrust lawsuit. The plaintiff of the case has claimed that the defendants abused their dominant position in the market for the app sales platform in smart terminals using the IOS mobile operating system in mainland China. The ruling stated that "the plaintiff sued to claim that Apple abused its dominant market position to have the effect of excluding and restricting competition in the Chinese market and harming the rights and interests of consumers, over which the Chinese courts have jurisdiction". The second instance ruled that the appeal was rejected and the original decision was upheld.¹⁵

The SPC Published 10 Typical Antitrust and Anti-Unfair Competition Cases

On 27 September, the SPC published 10 typical antitrust and anti-unfair competition cases. The SPC also pointed out that it was pushing forward with the formulation of a second judicial interpretation of the Anti-monopoly Law and would launch a consultation to the public in due course.¹⁶

The SPC's Final Ruling in the OPPO v. SHARP Case Clarified That China Has Jurisdiction over Global Rates of SEPs

According to a notice on OPPO's official website published on 2 September, the SPC final ruling in the OPPO v. SHARP case has clarified that China has jurisdiction over global rates of SEPs. In this decision, the Intellectual Property Court of the SPC clarified the standard of "proper connection", holding that the case had a proper connection with China and that the Chinese courts had jurisdiction over this case, then the decision denied SHARP's appeal.¹⁷

¹⁵ https://mp.weixin.qq.com/s/9O8HY4q8JJsYpHX8tSnsZA?scene=25#wechat_redirect

¹⁶ <http://www.court.gov.cn/zixun-xiangqing-324721.html>

¹⁷ <https://www.oppo.com/cn/newsroom/patent/463/>

Data Protection

Legislation

Nine Departments Jointly Issued the Guidance On Strengthening the Comprehensive Governance of Internet Information Service Algorithms

On 29 September 2021, the Cyberspace Administration of China (“CAC”) issued a notice regarding the issuance of the *Guidance on Strengthening the Comprehensive Governance of Internet Information Services Algorithms* by nine departments. The Guidance proposes to establish an algorithm filing system, manage the use and development of algorithm applications, and comprehensively improve the network governance capability.¹⁸

The State Council: the SPC Is Formulating Judicial Interpretations Involving Personal Information Protection

On 23 September, the State Council Information Office held a press conference, upon which a Vice President of the SPC said that the SPC will strengthen the sanctions of infringement on the internet, protect personality rights, especially personal privacy strictly. At present, the SPC is formulating judicial interpretations regarding personal information protection, personality rights infringement injunction, etc.¹⁹

Information Security Technology - Identification Guide of Key Data (Draft for Comments) Is Released

Recently, the national standard *Information Security Technology - Identification Guide of Key Data* (Draft for Comments), which is supervised by the National Standardization Administration Committee, was released. The guide puts forward the characteristics of key data and clearly classifies key data from the national security perspective, and it will provide an important reference for the establishment and implementation of data classification and grading system in China.²⁰

China’s MIIT Issues the Notice on Strengthening Cybersecurity and Data Security Work of the Internet of Vehicles

On 16 September, China’s Ministry of Industry and Information Technology (“MIIT”) issued the *Notice on Strengthening Cybersecurity and Data Security Work of the Internet of Vehicles*. The notice brings up 17 specific requirements in 6 aspects including the basic requirements of cybersecurity and data security, strengthening the security of networked intelligent vehicles, strengthening the security

¹⁸ http://www.cac.gov.cn/2021-09/29/c_1634507915623047.htm

¹⁹ <http://www.scio.gov.cn/xwfbh/xwfbh/wqfbh/44687/46962/wz46964/Document/1713269/1713269.htm>

²⁰ <http://std.samr.gov.cn/gb/search/gbDetailed?id=C1A899E763E0B470E05397BE0A0A9571>

of the cybersecurity protection of the Internet of vehicles (“IoV”), strengthening the security of the IoV service platform, strengthening data security protection, promoting security standards system.²¹

The Data Security Law Comes into Force

On 1 September, the *Data Security Law of the People’s Republic of China* (“DSL”) was officially implemented. The DSL puts forward clear requirements in terms of data security and development, security system, security protection obligations, government data security and openness, etc. China's legal system regarding cyberspace security governance has been further improved.²²

²¹ https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_ba43080de41242e4ab6d6d5fa3218ff9.html

²² <http://www.npc.gov.cn/npc/c30834/202106/7c9af12f51334a73b56d7938f99a788a.shtml>

Enforcement Authority/ Judiciary

Zhuhai Creates the First “Chain Credit” Database in China

On 27 September 2021, Zhuhai created the first “chain credit” database in China, which breaks the barriers of data circulation and breaks through the traditional peer-to-peer data sharing method with blockchain technology.²³

China’s First Professional Collegial Panel for Data-Related Disputes Is Set up in Guangzhou

On 26 September, China’s first professional collegial panel for data-related disputes was set up at the Guangzhou Internet Court. The collegial panel will hear first-instance cases involving data collection, storage, use, processing, transmission, provision, disclosure, deletion and data security of personal information, enterprise data and public data under the centralized jurisdiction of the court.²⁴

Six Departments Strengthen Cybersecurity and Data Security Supervision of Education Apps

On 16 September, the General Office of the Ministry of Education and other 5 departments requested to strengthen the cybersecurity and data security supervision of education Apps, involving a number of requirements such as classified protection, data localization and evaluation.²⁵

Shanghai Will Prepare to Build a Data Exchange and Promote Comprehensive Data Legislation

On 9 September, the Shanghai Municipal Government held a press conference to introduce the situation regarding *Shanghai’s Fourteenth Five-year Plan on Advanced Manufacturing Development*. The press conference revealed that Shanghai is currently promoting comprehensive data legislation, preparing for the establishment of a data exchange, creating a joint laboratory for industrial big data, promoting the innovation of industrial algorithms and industrial software innovation.²⁶

Five Departments Jointly Interview 11 Ride-Hailing Platforms, Requiring User Information Protection and Data Security

On the morning of 1 September, the Ministry of Transport, together with the CAC, the MIIT, the Ministry of Public Security, the SAMR and other members of the inter-ministerial joint meeting on the coordinated supervision of new modes of transport, jointly interviewed Caocao Chuxing, AutoNavi, Didi Chuxing and other 8 ride-hailing platform companies. The interview required the platform companies to check their own problems and immediately rectify.²⁷

²³ http://www.zhuhai.gov.cn/zwfwglj/gkmlpt/content/3/3002/mpost_3002623.html#1678

²⁴ <https://m.chinanews.com/wap/detail/zw/sh/2021/09-26/9574084.shtml>

²⁵ http://www.moe.gov.cn/srcsite/A29/202109/t20210918_564368.html

²⁶ <https://view.inews.qq.com/k/20210910A015HP00>

²⁷ <http://m.news.cctv.com/2021/09/02/ARTIf5fvVYFPBQ8k1asXFjZR210902.shtml>

The MIIT: the National Vulnerability DataBase Is Officially Launched

On 1 September, the National Vulnerability DataBase (<https://www.nvdb.org.cn>), which is organized and established by the MIIT Network Security Administration, was officially launched. The purpose of the database is to implement the *Network Product Security Vulnerability Management Regulations* and realize the requirement of timely reporting relevant vulnerability information to the database.²⁸

²⁸ https://mp.weixin.qq.com/s/igkqR-syMIMJOEuE1orGtA?scene=25#wechat_redirect

Enforcement Cases

Kohler Bathroom Agents Are Fined in Many Places for Illegal Collection of Facial Information

On 2 September 2021, the Liu'an Administration for Market Regulation in Anhui Province announced that Kohler's Building Materials Business Department in Liu'an was recently ordered to rectify and was fined 30,000 yuan for infringing on consumers' personal information. Previously, the Ningguo Administration for Market Regulation has also imposed a fine of 20,000 yuan on Kohler's lavatory agents for collecting personal information of consumers without the consent.²⁹

Jiangsu Announces Three Typical Cases Involving Illegal Collection of Consumer Facial Information

On September 1, the Jiangsu Administration for Market Regulation announced three typical cases involving illegal collection of consumers' facial information, two of which involved real estate companies illegally installing cameras in their stores. The companies involved were fined 500,000 yuan, 100,000 yuan and 100,000 yuan respectively.³⁰

²⁹ <https://mp.weixin.qq.com/s/PSL6KRfhp5E2HT18nWXp6A>

³⁰ <https://new.qq.com/omn/20210901/20210901A07DBC00.html>

Court Litigation

A Court Responds on Whether the Platform Can Impose Penalties Based on Algorithmic Automated Decisions

On 13 September 2021, the Hangzhou Internet Court issued a verdict on a network service dispute, deciding that the plaintiff had violated rules of the platform by conducting promotion behaviors and the platform had the right to take punitive measures. The court held that if the explanation to the algorithm is reasonable and the user is unable to provide evidence to the contrary to refute it, then the user should bear the responsibility for breach of contract; if the explanation to the algorithm is not reasonable and the core elements of the algorithm contract are defective, then the contract with insufficient consent would be invalid and the platform should bear the legal responsibility for revoking the penalty.³¹

CCA Supports Chongqing CRPC to File Public Interest Litigation on Personal Information Protection

On 2 September, the First Intermediate People's Court of Chongqing heard the case of Chongqing Consumer Rights Protection Commission (“**Chongqing CRPC**”) regarding a civil public interest lawsuit against a company in Chongqing for illegally leaking the personal information of 10,000 consumers. The case is the first consumer civil public interest litigation case in Chongqing and is supported by the First Branch of Chongqing People's Procuratorate. China Consumer Association (“**CCA**”) also expressed support for the action of the Chongqing CRPC.³²

³¹ https://mp.weixin.qq.com/s/I5_ZzMat8BlepW3nLo-nZg?scene=25#wechat_redirect

³² https://mp.weixin.qq.com/s/3CKwVixQLJxEzY1deyFUkg?scene=25#wechat_redirect