

China Monthly Antitrust & Data Protection Update

March 2021

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Antitrust

Legislation

Sichuan AMR Issues the Anti-Monopoly Guidelines for Operators in Sichuan Province

On 24 February 2021, in order to encourage operators to operate in compliance with laws and regulations, to improve the awareness of fair competition among all types of operators in Sichuan province, to enhance the ability to prevent and control anti-monopoly violation risks, and to further optimize the business environment, Sichuan Provincial Administration for Market Regulation (“**Sichuan AMR**”) issued the *Anti-Monopoly Guidelines for Operators in Sichuan Province*, which is effective as of 1 March 2021.¹

The Anti-Monopoly Committee of the State Council Issues the Anti-monopoly Guidelines on Platform Economy

On 7 February, the Anti-Monopoly Commission (“**AMC**”) of the State Council issued the *Anti-monopoly Guidelines on Platform Economy* (“**Guidelines**”) to further clarify the principles of the Anti-Monopoly Law (“**AML**”) enforcement in the field of platform economy. The Guidelines provide clearer guidance for operators in the field of platform economy to operate in accordance with laws and regulations, and it is helpful to strengthen the pertinence of law enforcement, to enhance the scientific nature of supervision and to promote the orderly, innovative and healthy development of the platform economy.²

¹ <http://scjgj.sc.gov.cn/scjgj/c104492/2021/2/26/3caf9c6e16f4450aa371fb007a492bde.shtml>

² http://gkml.samr.gov.cn/nsjg/fldj/202102/t20210207_325967.html

Authorities

The First Antitrust Case in Fujian: Rectify Fuzhou Transportation Bureau's Abuse of Administrative Power to Exclude and Restrict Competition

On 24 February 2021, Fujian Provincial Administration for Market Regulator (“**Fujian AMR**”) published the first case of anti-monopoly administrative enforcement in Fujian. In December 2020, Fujian AMR had issued a notice to investigate the suspected abuse of administrative power by Fuzhou Transportation Bureau to exclude and restrict competition. It is ascertained that on 27 April 2019, Fuzhou Transportation Bureau issued the *Notice on Promoting the Application of Fuzhou Road Transportation Enterprise Safety Training Management Service Platform (Rongjiaoan [2019] No.74)*, requiring the road transportation enterprises and relevant staff in Fuzhou to install and apply the service platform named *Antubang* from 1 June 2019. It violated Article 32 and Article 37 of the AML. Fujian AMR issued an administrative proposal to the Fuzhou Municipal Government, advising it to order the Fuzhou Transportation Bureau to rectify the illegal behaviour.³

The Overview of Anti-monopoly Work of SAMR 2020 is Published

On 5 February, China's State Administration for Market Regulation (“**SAMR**”) released an overview of anti-monopoly work in 2020. In 2020, a total of 108 monopoly cases were concluded across the nation, with the total amount of confiscations and fines reaching 391 million yuan; a total of 481 cases of concentration of undertakings were filed, 473 cases were concluded, and 4 cases of concentration of undertakings were approved with restrictive conditions, including Nvidia's acquisition of Mellanox.⁴

Shanghai AMR Publishes the Overview of Market Supervision Work in Shanghai 2020

On 5 February, Shanghai Administration for Market Regulation (“**Shanghai AMR**”) released a diagram overview of market supervision work in 2020. In 2020, Shanghai AMR concluded 11 anti-monopoly cases and issued the *Guidelines for Competition and Compliance for Business Operators* which is the first local standard in China.⁵

³ <https://mp.weixin.qq.com/s/1LrH5ntXRhaKRyFkN49FAw>

⁴ http://www.samr.gov.cn/xw/zj/202102/t20210205_325918.html?from=timeline&isappinstalled=0

⁵ <https://mp.weixin.qq.com/s/rMmeBnq8mS2xh-3pGPo5rA>

Public Enforcement

SAMR Publishes an Administrative Penalty Decision on Mengzi Sitong Taixing Water Supply Co., Ltd.

On 18 February, 2021, SAMR published an administrative penalty decision on Mengzi Sitong Taixing Water Supply Co., Ltd (“**Sitong Taixing**”). According to the clues reported in the fifth inspection of the State Council, in December 2018, Yunnan Provincial Administration for Market Regulation (“**Yunnan AMR**”) initiated an investigation into the suspected monopolistic conduct of Sitong Taixing. On 21 January 2021, Yunnan AMR concluded an administrative penalty decision on Sitong Taixing in accordance with the law, which ordered Sitong Taixing to stop the illegal activities, and imposed a fine of 6% of the sales amount in 2018 (a total of CNY2,495,422.79 yuan).⁶

SAMR Publishes an Administrative Penalty Decision on Zibo Lianhe Cement Corporate Management Co., Ltd. and Other Relevant Undertakings for Reaching and Implementing a Monopoly Agreement

On 9 February, SAMR publishes the administrative penalty decision on Zibo Lianhe Cement Corporate Management Co., Ltd. and 7 relevant cement companies for reaching and implementing a monopoly agreement. According to a real-name report, Shandong Provincial Administration for Market Regulation (“**Shandong AMR**”) launched an investigation on the 8 parties mentioned above for the suspected monopoly agreement in April 2019. On 28 January 2021, the 8 undertakings were confiscated the illicit gains, reaching CNY 86.572 million yuan and fined 2% of their annual sales in 2018, totaling CNY141.723 million yuan by Shandong AMR. The overall amount of confiscation and fines are CNY 22.29 million yuan.⁷

CAIGA Responds to Anti-Monopoly Investigations and Expresses that It will no Longer Organize Price Coordination and other Similar Activities

On 5 February, the China Architectural and Industrial Glass Association (“**CAIGA**”) issued a statement in its official website that SAMR had conducted an anti-monopoly investigation on the CAIGA for “organizing glass companies to reach a monopoly agreement”. CAIGA stated that it actively cooperated with the authority in the investigation and carried out self-assessment in accordance with AML. Upon the self-assessment, CAIGA has realized that it failed to comply with the requirements of AML strictly in the working process. CAIGA expressed it had immediately ceased and will no longer participate in or organize member companies to carry out any activities, such as price coordination, production reduction, production restriction, etc.⁸

⁶ http://www.samr.gov.cn/fldj/tzgg/xzcf/202102/t20210218_326110.html

⁷ http://www.samr.gov.cn/fldj/tzgg/xzcf/202102/t20210209_326018.html

⁸ <https://m.jiemian.com/article/5653987.html>

Merger Control

SAMR Releases 23 Simple Cases for Merger Control Review in February

Up to 28 February 2021, SAMR has released 23 simple cases in February on its website.⁹

⁹ <http://www.samr.gov.cn/fldj/ajgs/jzjvajgs/index.html>

Courts Litigation

A User Sued Apple Inc for its Monopoly Conduct and the Shanghai Intellectual Property Court Accepts the Case

On 23 February 2021, it was reported that an Apple user, Xin Jin, sued Apple Inc for abusing its dominant market position, alleging that Apple engaged in anti-competitive practices such as charging high commissions in the App Store, tying Apple Pay, exclusive dealing, and refusal to deal. Xin Jin sued Apple for a compensation of CNY100,000 yuan and a public apology. The Shanghai Intellectual Property Court has accepted the case in February 2021.¹⁰

The Supreme People’s Court Ruled on the Jurisdiction Issue of Alipay’s Monopoly Case

It is reported on 19 February that the Supreme People’s Court (“SPC”) issued two civil rulings on the retrial applications of the Alipay’s abuse of market dominance cases brought by Zhen Li. The SPC ruled that the monopoly disputes should not be under the jurisdiction of the Shanghai Financial Court, and rejected Li Zhen’s application for retrial.¹¹

Tik Tok Filed an Antitrust Lawsuit in Beijing Intellectual Property Court against Tencent to Lift the Block

On 2 February, Tik Tok formally filed a complaint with the Beijing Intellectual Property Court, suing Tencent for monopoly conduct. It was the first domestic antitrust lawsuit between internet platforms since the publication of the *Anti-monopoly Guidelines on Platform Economy (Draft for Comment)* at the end of 2020. Tik Tok alleged that Tencent restricts users from sharing Tik Tok content through WeChat or QQ, which constitutes a “monopoly behaviour that abuses market dominance to exclude or restrict competition” prohibited by AML. Tik Tok claims for injunctive remedies imposed on Tencent, a public statement by Tencent to eliminate the negative effects, and a compensation for economic losses and reasonable expenses of CNY 90 million yuan in total.¹²

¹⁰ <https://m.mp.oeeee.com/a/BAAFRD000020210223442865.html>

¹¹ https://mp.weixin.qq.com/s/AxWnT2hmq03p6C_3vUWWPw

¹² <http://www.bianews.com/news/details?id=80458&type=0>

Dentons Team

The Legal 500 Ranks Jet Deng and Ken Dai as the Recommended Lawyers in “Antitrust and Competition Law” Specialization in Asia Pacific Region

Recently, the Legal 500 released the 2021 Asia-Pacific region ranking, and Dentons is designated in the list again. Jet Deng and Ken Dai were selected as Recommended Lawyers in “Antitrust and Competition Law” specialization in Asia Pacific Region.¹³

¹³ <https://mp.weixin.qq.com/s/-wBkMPG33VYk5-JDW6tLrw>

Data Protection

Legislation

Beijing's New Bike-sharing Regulations Seek Comments and Require Personal Information to be Stored within China

On 7 February 2021, the Beijing Municipal Commission of Transportation, in order to promote the healthy and orderly development of Beijing's Internet rental bicycle industry and advocate green travel, drafted the Beijing Municipal Local Standard *Technical and Service Specifications for Internet Rental Bicycle Systems (draft for public comment)* in accordance with the *Regulations on the Management of Non-motorized Vehicles in Beijing*, which is now open to the public on the websites. The deadline for comments is 1 March 2021. The Draft requires that bike-sharing platforms shall not collect user information beyond the scope necessary to provide services, and shall adopt technical measures and other necessary measures to ensure the security of business data; the personal information collected and the business data generated shall be stored and used within mainland China and the retention period shall not be less than two years.¹⁴

Provisional Regulations on App Personal Information Protection Management to be Introduced

On 6 February, it was reported that in order to address issues arising from compulsory and excessive acquiring privacy authorization, over-scope collection of personal information, illegal and irregular use of personal information, etc. in using apps, the Ministry of Industry and Information Technology ("MIIT") recently solicited comments on the *Interim Provisions on the Administration of Personal Information Protection for Mobile Internet Applications*, which clarify the two basic principles of personal information protection, informed consent and minimum necessity.¹⁵

¹⁴ http://jtw.beijing.gov.cn/zmhd/myzj/202102/t20210207_2278945.html

¹⁵ https://mbd.baidu.com/newspage/data/landingsuper?context=%7B%22nid%22%3A%22news_10677290669458785841%22%7D&n_type=-1&p_from=-1

Enforcement Authority

MPS Investigates and Handles More Than 3,100 Criminal Cases of Infringement of Citizens' Personal Information in 2020

On 26 February 2021, the Ministry of Public Security (“MPS”) informed that all 683 proposals and suggestions brought up by the annual parliamentary meeting and handed over to the MPS in 2020 were completed within the prescribed time limit. According to the statistics, in 2020, the national public security system investigated and handled more than 3,100 criminal cases of infringement of citizens' personal information, arrested more than 9,700 suspects, investigated and handled more than 3,400 administrative cases of public security, and dealt with more than 3,600 offenders.¹⁶

Shanghai Communications Administration Releases Typical Cases of App Infringements on Users' Rights and Interests

On 25 February, the Shanghai Municipal Communications Administration released a number of typical cases of app infringements on users' rights and interests. The punishment cases include frequent requests for privacy permission from users, failure to implement rectification requirements, providing users' personal information to third-party software development kits (SDKs) without consent, and defaulting setting of having read and agreed to the privacy policy by users.¹⁷

Guangdong Communications Administration Names 215 Apps for Infringements of Users' Rights and Security Issues

On 23 February, the Guangdong Provincial Communication Administration monitored and named that 215 apps were found to have infringed on users' rights and bear security risks, and issued *Violation Notice for Illegal Apps* to the app operators according to the laws and regulations such as the *Cybersecurity Law* and *Provisions on Protection of Personal Information of Telecom and Internet Users*. These apps were ordered to rectify within a deadline and app stores were notified to supervise the rectification. For the progress of the app rectification announced in January, it was found that there were still 7 apps that had not been rectified or were not completely rectified, and they were named publicly again.¹⁸

MIIT Removes 37 Unrectified Apps from the Shelf

On 4 February, the official website of MIIT issued the *Notice on List of Apps that Infringe on Users' Rights and Interests and Removal from App Stores*, announcing that after verification and re-inspection by a third-party testing agency, among the 157 App operators previously notified to the society for infringing on users' rights and interests, there are still 37 Apps that have not completed

¹⁶ https://www.sohu.com/a/452795966_163278

¹⁷ http://sh.xinhuanet.com/2021-02/26/c_139768254.htm

¹⁸ https://gdca.miit.gov.cn/xwdt/gzdt/art/2021/art_c09595d33c554695897f39f4d6916683.html

the rectification according to the requirements of the MIIT. These 37 Apps that infringe on users' rights and interests have been removed from app stores.¹⁹

MIIT Names and Criticizes Apps that Infringe on Users' Rights and Interests by Illegally Activating Microphone, Address Book, Photo Album and Other Users' Authorizations

On 5 February, the official website of MIIT issued a notice on apps that violated the rights and interests of users by illegally activating microphone, address book, photo album and other authorizations. The MIIT found that these 26 apps had not completed the rectification by organizing third-party testing agencies to inspect these mobile applications and required these apps to complete the rectification by 10 February.²⁰

Agricultural Bank Fined RMB 4.2 Million by CBIRC for Various Data Security Violations

Recently, China Banking and Insurance Regulatory Commission ("CBIRC") released the first notice of monetary penalty in 2021. The Agricultural Bank of China was fined RMB 4.2 million by CBIRC for the following six violations: failure to report important emergencies of information systems; card-making data illegally retained in plaintext; improper protection of business network and wireless interconnection network of bank branches; careless data security management; risk of data breach and a number of vulnerabilities in network systems; and data breach of sensitive information on internet portal.²¹

Bank of China Liaoning Branch Fined RMB 1.147 million for Failure to Collect Consumers' Personal Financial Information as Required

Recently, the People's Bank of China Shenyang Branch publicized an administrative punishment information. The Liaoning Branch of Bank of China Limited was fined RMB 1.147 million for five violations: first, failure to collect and use consumers' personal financial information in accordance with the regulations; second, conducting misleading advertising in marketing activities against regulations; third, overdue filings with the People's Bank of China for the cancellation of bank settlement accounts in record-type units; fourth, issues in acting on behalf of the state treasury; and fifth, failure to fulfill customer identification obligations as required.²²

¹⁹ https://mp.weixin.qq.com/s?_biz=MzI1ODY3NDk2Nw==&mid=2247497475&idx=2&sn=1edc25b5ab53eed7797b26204fd53fe&chksm=ea062f7bdd71a66d7846824fe520a26c141e2dea5394d1478e07adb5bc438a72724c7f099c00&token=401327113&lang=zh_CN#rd

²⁰ https://www.miit.gov.cn/xwdt/gxdt/sjdt/art/2021/art_97515491d41345d999f874e316198066.html

²¹ https://mp.weixin.qq.com/s/A9UJy7ywgGj_p6Y9LWzAZQ?scene=25#wechat_redirect

²² https://finance.sina.cn/2021-02-18/detail-ikftssap6304051.d.html?oid=3817712835109008&vt=4&wm=8001_0003&cid=76653&node_id=76653

Courts Litigation

Social Platform Maimai Sending Information to Unregistered Users Found to Violate the Right to Privacy

On 28 February 2021, the Beijing Haidian Court reportedly found that the Maimai website operated by the defendant Beijing Taoyou Tianxia Tech Co., Ltd. violated the plaintiff's right to privacy by sending text messages to the plaintiff in the name of his friends without permission, and should stop infringing on the plaintiff's right to privacy, permanently delete his personal information, and publish an apology statement on China Consumer News.²³

Shenzhen Nanshan Court Rules at First Instance that Friend Relationships on WeChat are Not User's Privacy

It is reported that, on 22 January, the Shenzhen Nanshan District People's Court ruled on a user's tort dispute against Tencent, clarifying that friend relationships on WeChat are not personal privacy. The court held that the WeChat friend relationships claimed by the plaintiff did not include the private relationship that he did not want others to know. Others could not judge his personality through his WeChat friend relationship, thus causing him to suffer from negative or improper evaluation. Therefore, the court determined that the WeChat friend relationship did not constitute the plaintiff's privacy, and the plaintiff's claim was rejected accordingly.²⁴

²³ https://mp.weixin.qq.com/s/NB7s9oNqEM_SVtE8iCXOvw?scene=25#wechat_redirect

²⁴ https://www.toutiao.com/i6924907969503248903/?tt_from=weixin_moments&utm_campaign=client_share&wxshare_count=3×tamp=1612338995&app=news_article&utm_source=weixin_moments&utm_medium=toutiao_android&use_new_style=1&req_id=202102031556350100260601541807178D&share_token=1f389a01-c65b-414a-85c5-9e079734096b&group_id=6924907969503248903