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## Weekly News By Lifang & Partners NO.26

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## Weekly Competition Law News

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### **Anhui AMR Fines and Confiscates A Water Supply Company Nearly CNY 1.8 Million for Abusing Its Dominant Market Position**

On February 10, 2022, Anhui Administration for Market Regulation (“**Anhui AMR**”) issued an anti-monopoly penalty on Fengyang County Yimin Water Supply Co., Ltd. for abusing its dominant market position. It was found that the company abused its dominant position in the water supply market in Fucheng Town, Linhuai Town, and other areas in Fengyang County, forcing the relevant parties to purchase water meters and secondary water supply equipment only from the company, charging improper deposits from temporary water users and real estate development enterprises, which excluded and restricted market competition and harmed the legitimate rights of the trade parties. Anhui AMR made a penalty of CNY 1,769,118.74 to the company. ([More](#))

### **Hainan IP Tribunal Delivers Decisions of Twelve Administrative Litigations on Anti-trust Penalties**

On February 9, 2022, the Hainan Free Trade Port Intellectual Property Tribunal (“**Hainan IP Tribunal**”) delivered the decisions of twelve litigations concerning the disagreement with the anti-monopoly administrative penalties. These cases were brought by twelve companies against Hainan Administration for Market Regulation (“**Hainan AMR**”). The court held the anti-monopoly administrative penalties. Previously, the Hainan AMR imposed administrative penalties on twelve companies, on the ground that they had jointly entered into a monopoly agreement with others, and therefore ordered the companies to stop their illegal acts and imposed a fine of one percent of its sales for the year of 2018 respectively. The companies were not satisfied with the above administrative penalty decisions and filed administrative lawsuits before the Hainan IP Tribunal, requesting the revocation of the corresponding administrative penalties. ([More](#))

### **Shandong AMR Corrects Administrative Monopoly Behavior by Heze Emergency Management Bureau**

On February 7, 2022, Shandong Administration for Market Regulation (“**Shandong AMR**”) issued a notice on correcting the administrative monopoly behavior by Heze Emergency Management Bureau. On November 6, 2020, Heze Emergency Management Bureau issued relevant document requiring the applicant for fireworks retail license must sign a chain management agreement with the wholesale enterprises in the Heze area, which constituted an abuse of administrative power, excluding and restricting the competition. During the investigation, the Heze Emergency Management Bureau proactively took measures to amend and publish the relevant document. ([More](#))

### **SPC’s Response to the *Proposal on Strengthening Internet Anti-Monopoly Enforcement and Preventing Capital from Interfering with Public Opinion* Issued**

On January 27, 2022, the Supreme People's Court (“**SPC**”) released its response to the National People's Congress’ *Proposal on Strengthening Internet Anti-Monopoly Enforcement and Preventing Capital from Interfering with Public Opinion*. SPC pointed out that in recent years, the People’s Courts have

promoted the construction of internet justice when handling with internet cases, by enhancing the policy system, perfecting the rules of jurisdiction, and properly handling cases. In response to the proposal on issuing a judicial interpretation on the jurisdiction rules for internet cases, the SPC said it will continue to improve the jurisdiction rules and introduce the judicial interpretation on anti-monopoly civil litigation according to the amendment of the *Anti-Monopoly Law* to clarify the standards for adjudicating of anti-monopoly civil cases. ([More](#))

## **Facebook Market Cap Falls Below USD 600 Billion, Which Could Actually Help It Dodge New Antitrust Scrutiny**

On February 8, 2022, Facebook, recently renamed Meta, closed with a market cap below USD 600 billion for the first time since May 2020. The stock fell 2.1%, bringing it to a market cap of USD 599.32 billion. The USD 600 billion market cap figure also happens to be the number House legislators picked as the threshold for a “covered platform” under a package of competition bills designed specifically to target Big Tech. If Facebook were to remain below that threshold, it could avoid the additional hurdles the bills would install for how it can conduct its business and make deals, while its larger peers like Amazon, Alphabet, and Apple become subject to the rules. ([More](#))

## **CMA Cancels Its Investigation on the Takeover of Arm by NVIDIA**

On February 8, 2022, since the Chip manufacturer NVIDIA had abandoned its proposed deal with Arm, the Competition and Markets Authority (“CMA”) therefore confirmed it intends to cancel its investigation into the merger. The abandonment came ahead of the planned main party hearings, where the CMA inquiry group was set to scrutinize information relating to the deal as part of a formal process. The CMA once provided a report that the merged business would have the ability and incentive to harm the competitiveness in semiconductor chips and related products. ([More](#))

## **Amazon Pays USD 2.25 Million and Stops Its “Sold by Amazon” Third-Party Seller Program**

On January 26, 2022, the office of Attorney General of Washington State announced that Amazon will stop its “Sold by Amazon” third-party seller program and pay USD 2.25 million penalty for price-fixing. Amazon offered the “Sold by Amazon” program from 2018 through 2020 in which the sellers would receive a minimum payment for sales of their consumer goods. Consequently, if sales exceed the negotiated minimum payment, Amazon will split the surplus. The office of Attorney General of Washington State considered that the price-fixing program violates the antitrust law. ([More](#))

## **Cybersecurity and Data Protection**

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### **Revised Cybersecurity Review Measures Comes into Force**

On 15 February 2022, the Cybersecurity Review Measures (the Measures) jointly amended and issued by 13 ministries came into force. The Measures includes the situation that the data processing activities carried out by network platform operators affect or may affect national security into the network securi-

ty review and makes it clear that network platform operators with personal information of more than 1 million users shall apply to the Network Security Review Office for network security review when they are to be listed abroad. According to the actual needs of the review, CSRC is added as a member unit of the network security review mechanism, and the national security risk assessment factors are improved as well. ([More](#))

### **NISSTC Solicits Public Comments on Information Security Technology - Guideline for Mobile Internet Application (APP) Lifecycle Security Management (Exposure Draft)**

On 8 February 2022, the National Information Security Standardization Technical Committee (NISSTC) issues the GB/T *Information Security Technology - Guideline for Mobile Internet Application (APP) Lifecycle Security Management (Exposure Draft)* (the Guideline) to solicit public comments. The Guideline provides suggestions on the lifecycle security management of mobile Internet applications (APP), which is applicable to the development and operation of APPs by APP developers, the management of APPs by mobile application distribution platform manufacturers and mobile intelligent terminal manufacturers, and can also be used as a reference for third-party organizations to conduct security testing of APPs. The Guideline mainly solves the following problems: (1) to avoid the risks of malicious code attacks and application vulnerabilities introduced by development; (2) to avoid the leakage risks of personal privacy and sensitive data caused by improper application management; (3) to timely discover acts that infringe the rights and interests of users, such as collecting personal information without consent, forcing users to use directional push function, over asking for permission, cheating and misleading users, etc.; (4) to take measures to avoid the risk of information dissemination harm caused by security vulnerabilities. ([More](#))

### **MIIT Solicits Public Comments for Measures for the Administration of Data Security in the Field of Industry and Information Technology (Trial Version) for the Second Time**

On 10 February 2022, the Ministry of Industry and Information Technology (MIIT) solicited public comments for *Measures for the Administration of Data Security in the Field of Industry and Information Technology (Trial Version)* (the Measures) for the second time, and the deadline is 21 February 2022. The Measures aims to regulate data processing in the field of industry and information technology, including data processing and security supervision in the field of industry and information technology carried out in China. According to the Measures, data in the field of industry and digitization include industrial data, telecommunication data and radio data. Data processors in the field of industry and information technology refer to industrial enterprises, software and information technology service enterprises that carry out data processing activities in the field of industry and information technology, licensed telecom business operators, radio frequency users, radio station users and other subjects in the field of industry and information technology. The Measures regulate the categorical and hierarchical protection system, data lifecycle security management, data security monitoring, early warning and emergency management, as well as data security detection, certification and evaluation management in the field of industry and digitization. ([More](#))



## Shandong Province Passes the Measures of Shandong Province on Opening Public Data

On 31 January 2022, the Big Data Bureau of Shandong Province announced *the Measures of Shandong Province on Opening Public Data* (the Measures), which will come into force as of 1 April 2022. The Measures regulates openness of public data within the administrative region of Shandong Province. The Measures stipulate the principles of public data openness, including: (1) Follow the principles of demand orientation, innovative development, safety and order; (2) Make public data be accessible in principle, with exception of non-openness. The Measures stipulate the obligations of all parties in the openness of public data, including (1) Government shall establish a public data opening management system, formulate public data categorical and hierarchical rules, conduct performance evaluation and risk evaluation of public data opening activities, and build a unified public data opening platform; (2) Public data providers shall open public data through a unified public data open platform, and give priority to the opening of data related to market supervision, health, natural resources, ecological environment, employment, education, transportation, meteorology and other data closely related to the digital economy, public services, public security, social governance, livelihood security and other fields, as well as administrative licensing, administrative punishment, enterprise public credit information and other data. In addition, citizens, legal persons and other organizations are able to apply to public data providers for conditional access to public data. ([More](#))

## Guangdong Province Solicits Public Comments for Measures of Guangdong Province for the Administration of Public Data Security (Exposure Draft)

On 7 February 2022, Guangdong Government Affairs Service Data Management Bureau announced *Measures of Guangdong Province for the Administration of Public Data Security (Exposure Draft)* (the Measures) to solicit public comments. The Measures stipulate that the managing department of public data in Guangdong Province shall establish a registration and filing system for platforms or systems carrying public data processing activities, take the lead in formulating guidelines for the classification and classification of public data, and clarify the principles and rules of categorical and hierarchical data protection. The Measures set a chapter to stipulate the data security management in the whole lifecycle, including collection security, storage security, use and processing security, transmission security, provision security and disclosure security during data processing. In addition, the Measures also specify that when the public management and service organizations are providing intelligent public services, a full consideration shall be given to the need to the elderly, disabled people and other groups in order to avoid obstacles brought by data security to the enjoyment of public services. ([More](#))

## Zhejiang Province Notifies a List of 38 Apps that Collect Personal Information in Violation of Laws and Regulations

On 10 February, the special treatment working group of App illegal collection and use of personal information in Zhejiang Province reported a list of 38 Apps that collect personal information in violation of laws and regulations, covering various types of apps such as practical tools, online shopping, learning and education, etc. According to the notification, the main problems of the notified Apps include:

(1) The notified App doesn't make the rules for collecting and using personal information public; (2) The notified App collects personal information without the user's consent; (3) The notified App collects personal information unrelated to the services provided; (4) There're security vulnerabilities that cause personal information disclosure. For the problems found in the inspection, App operators shall complete the rectification within 10 working days from the date of issuance of the notice. If the rectification is not completed within the time limit, the Zhejiang App special treatment working group will make punishment in accordance with the law and regulations. ([More](#))

### **A Technology Company Use Crawler Technology to Steal 210 million Resume Data: The Court Sentenced the Individual to 7 Years' Imprisonment, and the Company Fined 40 million Yuan**

On 8 February 2022, Haidian District Procuratorate released the case where a Beijing technology company (the Company) and WANG accused of infringing citizens' personal information. The first instance judgment was upheld by the Beijing First Intermediate People's Court and comes into effect. The Company was founded in 2014, mainly engaged in recruitment tool software and big data analysis. From 2015 to 2019, the Company established a special crawler technology team to secretly crawl the resume data of job seekers on the domestic mainstream recruitment platform without the direct authorization of job seekers and platforms. In the process of case review, the prosecutor put forward specific guidance for the massive resume data of citizens involved and found more than 210 million personal information with reptile characteristics from the data involved. The case involves many people, many electronic storage devices and a huge amount of data. The defendant's means of committing a crime is of high technology. In view of these problems, the scientific and technological crime team of Haidian District procuratorate timely engaged in the case in advance and closely cooperated with the public security organ in obtaining evidence. Finally, the Company was sentenced to a fine of 40 million yuan, the defendant WANG was sentenced to seven years' imprisonment and a fine of 10 million yuan, and the other defendants were sentenced to corresponding penalties. The amount of fine imposed on the defendant, the term of imprisonment and the amount of fine imposed on the defendant in this case are the heaviest cases of similar cases in China in recent years. ([More](#))

### **MyBank Fined RMB 22.365 million for Failure to Keep Customer Identity Information and Transaction Records as Required**

On 29 January 2022, according to the announcement on the official website of Hangzhou central branch of the People's Bank of China (PBC), MyBank, a Chinese private bank, was warned and fined RMB 22.365 million for failure to keep customer identity information and transaction records as required. Meanwhile, several principals of MyBank were also fined, ranging from 20,000 yuan to 80,000 yuan. This is not the first bank to be fined for violating personal information protection obligations. In January 2022, Chongzuo branch of Agricultural Bank of China was warned and fined RMB 114.2 million for using personal financial information in violation of regulations and failing to keep the customer's identity data completely as required. ([More](#))



## **SEC Proposes Cybersecurity Risk Management Rules and Amendments for Registered Investment Advisers and Funds**

On 9 February 2022, The Securities and Exchange Commission (SEC) voted to propose rules related to cybersecurity risk management for registered investment advisers, and registered investment companies and business development companies (funds), as well as amendments to certain rules that govern investment adviser and fund disclosures. The proposed rules would require advisers and funds to adopt and implement written cybersecurity policies and procedures designed to address cybersecurity risks that could harm advisory clients and fund investors. The proposed rules also would require advisers to report significant cybersecurity incidents affecting the adviser or its fund or private fund clients to the Commission on a new confidential form. Additionally, the proposal would set forth new recordkeeping requirements for advisers and funds that are designed to improve the availability of cybersecurity-related information and help facilitate the Commission's inspection and enforcement capabilities. ([More](#))

## **U.S. Senators Introduces Algorithmic Accountability Act of 2022 to Require New Transparency and Accountability for Automated Decision Systems**

On 3 February 2022, U.S. Senator Ron Wyden, D-Ore., with Senator Cory Booker, D-N.J., and Representative Yvette Clarke, D-N.Y., introduced the Algorithmic Accountability Act of 2022, a landmark bill to bring new transparency and oversight of software, algorithms and other automated systems that are used to make critical decisions about nearly every aspect of Americans' lives. The bill requires companies to conduct impact assessments for bias, effectiveness and other factors, when using automated decision systems to make critical decisions. It also creates, for the first time, a public repository at the Federal Trade Commission of these systems and adds 75 staff to the commission to enforce the law. ([More](#))

## **Ukrainian President Signs Law on Electronic Communications Watchdog**

On 10 February 2022, Ukrainian President Volodymyr Zelensky has signed the law "On the National Commission for State Regulation in the Spheres of Electronic Communications, Radio Frequency Spectrum and the Provision of Postal Services of Ukraine," which the Verkhovna Rada approved on December 16, 2021. The law lays the foundation for the proper functioning from 2022 of the Law of Ukraine 'On Electronic Communications,' the fulfillment of obligations under the Association Agreement in this area and integration into the EU Digital Single Market. The new watchdog will ensure the out-of-court settlement of disputes between consumers and operators/providers, disputes over access to infrastructure, as well as the state supervision of their activities. In particular, it will be able to apply administrative and economic sanctions. ([More](#))

## **Illinois McDonald's Restaurants Pays \$50M Settlement over Lack of Biometric Disclosures:**

On 3 February 2022, McDonald's agreed to pay \$50 million to its Illinois employees who entered biometric data to log into the restaurant's system as part of a class-action lawsuit. Class members alleged Illinois McDonald's restaurants violated the state Biometric Information Privacy Act by requiring some

employees to enter biometric information without providing proper disclosures or obtaining their consent. Plaintiffs hired on or before Dec. 31, 2018, are eligible for up to \$375, while those hired after that date can receive up to \$190. ([More](#))

### **The CNIL Finds Use of Google Analytics Non-compliant with GDPR**

On 10 February 2022, the CNIL announced that the transfers of Google Analytics, a service that can be integrated by websites such as online sale sites in order to measure the number of visits by Internet users, of data collected to the United States currently not sufficiently regulated. Indeed, in the absence of an adequacy decision concerning transfers to the United States, the transfer of data can only take place if appropriate guarantees are provided for this flow in particular. Although Google has adopted additional measures to regulate data transfers in the context of the Google Analytics functionality, these are not sufficient to exclude the accessibility of this data for US intelligence services. The CNIL notes that the data of Internet users is thus transferred to the United States in violation of Articles 44 et seq. of the GDPR. The CNIL therefore ordered to the website manager to bring this processing into compliance with the GDPR, if necessary, by ceasing to use the Google Analytics functionality or by using a tool that does not involve a transfer outside the EU. The website operator in question has one month to comply. ([More](#))

### **CMA Approves Google's Proposal of Removal of Third-party Cookies**

On 11 February 2022, The CMA accepted a revised offer from Google of commitments relating to its proposed removal of third-party cookies from the Chrome browser (known as the Privacy Sandbox proposals). The CMA has secured legally binding commitments from Google to address competition concerns over its Privacy Sandbox. CMA now moves into the next phase where it will supervise Google to ensure the Privacy Sandbox is developed in a way that benefits consumers. The Competition and Markets Authority's (CMA) competition investigation was launched in January 2021 over concerns that the proposals would cause online advertising spending to become even more concentrated on Google, weakening competition and so harming consumers who ultimately pay for the cost of online advertising. The CMA was also concerned that the proposals could undermine the ability of online publishers, such as newspapers, to generate revenue and continue to produce valuable content in the future - reducing the public's choice of news sources. The final commitments accepted by the CMA today are a result of an in-depth investigation and extensive engagement with Google and market participants, including 2 formal public consultations. They address the CMA's competition concerns and Google has also said that the commitments will be rolled out globally. ([More](#))

## **Intellectual Property**

### **China National Intellectual Property Administration: No more paper patent certificates to be issued from March 1, 2022**

On February 9, 2022, China National Intellectual Property Administration announced that it will implement the electronic service of patent examination and conduct the "one-stop service" for patent approv-

al. It will no longer accept paper patent certificate requests for electronic patent applications from March 1, 2022, and relevant patent certificates will only be issued through the electronic patent application system.

Source: China National Intellectual Property Administration

### **The Supreme People's Court made a preliminary antitrust review of the settlement agreement (drug reverse payment agreement) in a patent infringement case**

Recently, the Supreme People's Court made a final ruling on the patent dispute over "Saxagliptin tablet", allowing the plaintiff withdraws its application for appeal. In the ruling, the court initiatively examined whether the settlement agreement violated the Anti-monopoly Law.

In the case, the court firstly clarified that a drug reverse payment agreement may be identified as a type of monopoly agreement, it also clarified the criteria for examining whether a "drug patent reverse payment agreement" violates the Anti-monopoly Law, the core is whether it is suspected of excluding or restricting competition in the relevant market.

The ruling has important implications for the dispute settlement and transaction compliance of the patent owners and generic drugs applicants in the pharmaceutical field.

Source: The Supreme People's Court

### **The Shandong Higher People's Court: Unauthorized manufacturing and selling wine bottles similar to three-dimensional trademark constitutes infringement**

Shandong Higher People's Court upheld the original judgement on the trademark infringement case between Hennessy and Shandong Yuncheng Xinde Packaging Company. Previously, the court of first instance ordering the defendant to stop the infringement and pay damages of RMB 90,000.

The court of second instance held that wine bottles and wine are closely related in use and function, and their consumption objects and sales channels are overlapping. For the relevant consumers, wine bottles and wine are generally regarded as commodities with specific connection, and should be identified as similar commodities. And the shape of wine bottle in the three-dimensional trademark has double properties, the container that holds the wine is also the trademark logo. If others manufacture and sell the wine bottle with the same shape as the three-dimensional trademark without permission, it can be regarded as manufacturing and selling of the three-dimensional trademark logo.

Source: Shandong Higher People's Court

### **Punitive damages applied in the Xiaomi trademark case, the plaintiff was awarded damages of RMB 30 million**

On December 31, 2021, Shenzhen Intermediate People's Court in the first instance of the Xiaomi trademark infringement case, ordering the defendant to stop trademark infringement and unfair competition acts, eliminate the impact and pay damages of RMB 30 million.

The court held that the defendant constituted malicious infringement and punitive damages should be applied. Based on the popularity of the plaintiff's trademark and brand name, the defendant's use and

business mode, etc., and the court determined that the contribution of the plaintiff's trademark and brand name to the defendant's profit was 50%, of which the contribution of the trademark right was 30% and the contribution of the brand name was 20%.

Based on the fact the defendants intentionally carried out numerous large-scale infringements and the profits of infringement were very large. The court finally decided to apply three times punitive damages.

**Lifang & Partners comments:** The court discussed in detail how to determine the contribution rate of a brand, considering the brand's popularity, the competition in the relevant market, and the right holder's emphasis on and investment in brand operation, and clarified that sales on e-commerce platforms are highly competitive, which also leads to increased investment in the operation of the brand. And by determining the impact of the infringement on the relevant public, it was concluded that the defendant's trademark infringement contributed more to the profit than the counterfeiting of the brand name. This case reflects the court's efforts to make the amount of damages more reflective of the pursuit of value of the market value of the plaintiff's rights and the nature and circumstances of the defendant's infringement, which has certain reference significance for similar cases.

[Source: Shenzhen Intermediate People's Court](#)

### **The court referred to the quantity of inventory to calculate infringement profit in "Shante" trademark infringement case**

Guangdong Higher people's court made a second trial ruling on the "Shante" trademark infringement case, revoked the first-instance judgment, ordered three defendants to pay damages of RMB 4.75 million, and one of the other defendants to pay damages of RMB 250,000.

The court of second instance held that the defendants constituted trademark infringement and unfair competition, also held that although the quantity of inventory shown on the website is not equal to the actual sales volume, and the price online is not equal to the actual transaction price, the plaintiff applied to the court to investigate the sales volume of the infringing products in both the first and second trials. In the situation of the relevant sales data is in the possession of the defendant and it doesn't submit any profit data, the plaintiff has exhausted its ability to prove the turnover and profit rate of the product, its profit calculation method has a certain degree of reasonableness and scientific. Therefore, the quantity of inventory and the price of sales can be regarded as a reference for the quantity of sales.

[Source: Guangdong Higher People's Court](#)

### **Kyocera filed 337 lawsuits against Koki**

On January 21, a US Court of Appeals overturned the import injunction on nail guns of Hitachi and Metabo and remanded the case to the ITC for retrial. The injunction was filed with the US International Trade Commission (USITC) by Kyocera Senco Industrial Tools, Inc. The two brands of nail guns are manufactured by Koki Holdings America Ltd. The court held that the ITC had made multiple errors in its earlier ruling in the case and should be remanded for retrial.

[Source: China Intellectual Property Lawyers Network](#)

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