



# NEWSLETTER

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## 立方竞争法周报 Weekly Competition Law News

### 北京发布经营者集中反垄断审查工作年度报告

2023年8月12日，北京市经营者集中反垄断审查工作年度报告发布。报告指出，2022年8月1日至2023年8月1日期间，北京市市场监督管理局（“北京市市监局”）在国家市场监督管理总局（“市场监管总局”）的指导下，扎实开展经营者集中反垄断审查试点工作，审查范围辐射华北、东北8省区市。北京市市监局共收到委托审查案件65件，占市场监管总局委托各试点省市总量的21%，其中审结55件，终止委托4件，办理商谈8件，办理涉嫌未依法申报核查1件，平均受理时间16.4天，平均审结时间15.5天。案件所涉行业主要分布在制造业、金融业、房地产业、农业及其他服务业，涉及交易金额600亿元，涉及国有企业55件，民营企业32件，外资企业17件。

[\(查看更多\)](#)

### Beijing Releases its Annual Report on Anti-Monopoly Review of Concentration of Undertakings

On August 12, 2023, the Beijing Municipal Administration for Market Regulation (“Beijing AMR”) releases its annual report on the anti-monopoly review of concentration of undertakings. The report highlights that from August 1, 2022, to August 1, 2023, under the guidance of the State Administration for Market Regulation (“SAMR”), the Beijing AMR effectively conducted pilot work on anti-monopoly review of concentration of undertakings, covering eight provinces, autonomous regions and municipalities in North and Northeast China. The Beijing AMR received a total of 65 entrusted cases for review, accounting for 21% of the total cases entrusted by the SAMR. Among these, 55 were concluded, 4 were terminated, 8 underwent negotiation, and 1 was investigated for suspected failure to declare according to law, with an average acceptance time of 16.4 days and an average conclusion time of 15.5 days. The cases mainly involve industries such as manufacturing, finance, real estate, agriculture, and other services, with transaction amounts totalling CNY 60 billion. Among the cases, 55 involving state-owned enterprises, 32 involving private enterprises, and 17 involving foreign-invested enterprises. [\(More\)](#)

### 《反垄断法》实施十五周年暨新修改《反垄断法》实施一周年座谈会在新疆召开

2023年8月11日，《反垄断法》实施十五周年暨新修改《反垄断法》实施一周年座谈会在新疆维吾尔自治区乌鲁木齐市召开。会议指出，我国《反垄断法》实施十五年来，反垄断法律规则体系和监管体制机制更加科学完备，重点领域反垄断监管执法成效明显，国际交流合作深化拓展，公平竞争理念深入人心。全国依法查处各类垄断案件339件，罚没金额379亿元，审结经营者集中案5409件。新修改《反垄断法》实施一年来，全面修订《禁止垄断协议规定》等5部反垄断配套规章，深入开展民生领域反垄断执法专项行动，扎实推进妨碍统一市场和公平竞争的政策措施专项清理，为加快推进全国统一大市场建设、构建新发展格局、推动高质量发展作出积极贡献。 [\(查看更多\)](#)

### Forum Held in Xinjiang on 15th Anniversary of Implementation of Anti-Monopoly Law and 1st Anniversary of Newly Revised Anti-Monopoly Law

On August 11, 2023, the 15th anniversary of the implementation of the *Anti-Monopoly Law* and the first anniversary of its new amendment were held at a forum in Urumqi, Xinjiang Uygur Autonomous Region. The conference highlights that over the past fifteen years, China's anti-monopoly legal framework and regulatory mechanisms have become more scientifically robust. Significant progress has been made in anti-monopoly regulation and enforcement in key sectors, international exchange and cooperation have deepened, and the concept of fair competition has taken root. Nationwide, 339 monopoly cases of various types were investigated and prosecuted in accordance with the law, resulting in fines totalling CNY 37.9 billion, and 5,409 cases of concentration of undertakings were concluded. In the year since the new amendment of the *Anti-Monopoly Law*, comprehensive revisions have been made to five supporting regulations, including the *Prohibition of Monopoly Agreements*, targeted actions have been taken to enforce anti-monopoly laws in sectors related to people's livelihoods, and dedicated efforts have been made to clear policies and measures that hinder a unified market and fair competition. These actions have actively contributed to accelerating the establishment of a unified national market, the formation of a new development pattern, and the promotion of high-quality development. ([More](#))

### 北京市检四分院就反垄断工作与北京市市监局达成初步协议

2023年8月10日，北京市人民检察院第四分院（“北京市检四分院”）称，日前，北京市检四分院与北京市市监局就建立协调联动、专人联络、线索移送、办案协作、人才联合培养等制度机制达成初步协议。为落实会签协议，落实最高人民检察院《关于贯彻执行〈中华人民共和国反垄断法〉积极稳妥开展反垄断领域公益诉讼检察工作的通知》，北京市检四分院开启反垄断反不正当竞争领域公益诉讼检察专业化团队建设，近日派员参加北京市市监局执法总队举办的2023年京津冀辽反垄断执法业务同堂培训。（[查看更多](#)）

### Beijing Fourth People's Procuratorate Reaches Preliminary Agreement with Beijing AMR Regarding Antitrust Efforts

On August 10, 2023, the Beijing Fourth People's Procuratorate ("Fourth Branch") announced that they had recently reached a preliminary agreement with the Beijing AMR to establish mechanisms for coordination, designated contacts, transfer of leads, collaborative case handling, and joint talent development. In order to implement the co-signing agreement and carry out the *Notice from the Supreme People's Procuratorate regarding the Active and Prudent Conduct of Public Interest Litigation in the Field of Anti-Monopoly Enforcement in accordance with the Anti-Monopoly Law of the People's Republic of China*, the Fourth Branch is initiating the establishment of a specialized prosecutorial team for public interest litigation in the areas of anti-monopoly and unfair competition. Recently, representatives were sent to participate in the 2023 Beijing-Tianjin-Hebei-Liaoning anti-monopoly enforcement training organized by the enforcement division of the Beijing AMR. ([More](#))

### HKCC和港大经管学院联合举办2023竞争法执法机构与学术界高峰会

2023年8月10日，香港竞争事务委员会（HKCC）发布公告，称将于2023年8月10日至11日与香港大学经管学院联合举办第二届竞争法执法机构与学术界高峰会（“高峰会”），以推动竞争法执法机构与学术界，就亚太区不同的竞争议题互相交流意见及经验，并提供加强彼此间合作的机会。为期两天的高峰会将包括七个专题讨论环节，涵盖一系列热门竞争议题，包括数字经济



带来的挑战、竞争法与环境可持续性之间的相互作用、操控转售价格安排的执法情况，以及运用数据筛选分析进行调查等。HKCC主席陈家殷先生表示高峰会有三大目标，汲取区内竞争法执法机构的经验、善用学术界的专业知识，以及强化各执法机构同行间的联系。（[查看更多](#)）

## **HKCC and HKU Business School Co-Organise 2023 Competition Enforcers and Academics Summit**

On August 10, 2023, the Hong Kong Competition Commission (HKCC) announced its collaboration with the Faculty of Business and Economics at the University of Hong Kong to host the Competition Enforcers and Academics Summit from August 10 to 11. The summit aims to facilitate dialogue and exchange of opinions and experiences among competition law enforcement agencies and academia in the Asia-Pacific region on various competition-related topics. The two-day summit will include seven thematic discussion sessions covering a range of prominent competition issues, including challenges posed by the digital economy, the interaction between competition law and environmental sustainability, enforcement of anti-resale price maintenance arrangements, and the use of data screening analysis in investigations. Mr. Samuel Chan, Chairman of HKCC, outlined three main goals for the summit: learning from the experiences of competition law enforcement agencies in the region, leveraging the expertise of academia, and strengthening connections among enforcement agencies. ([More](#))

## **吉利德科学支付2.468亿美元达成反向支付反垄断案和解**

2023年8月18日，据媒体报道，吉利德科学（Gilead Sciences, Inc.）同意支付2.468亿美元，与其HIV药物的购买者达成和解。此次和解解决了针对吉利德科学与Teva制药公司（Teva Pharmaceutical Industries Ltd.）合作推迟发布仿制药的指控。双方在长期的诉讼与谈判后，于7月24日达成了协议，原告最初在诉讼中请求约20亿美元的赔偿，最终拟议的和解方案将覆盖其估计损失的约12%。2023年8月9日，原告向加州联邦法院提出动议，请求初步批准吉利德科学提出的和解协议，以解决其在2018年2月至2022年9月期间针对艾滋病药物Atripla和Truvada超额付款的索赔。（[查看更多](#)）

## **Gilead Sciences Pays \$246.8 Million to Reach Settlement in Pay-For-Delay Case**

On August 18, 2023, media reports that Gilead Sciences (Gilead Sciences, Inc.) has agreed to pay \$246.8 million to settle with buyers of its HIV drugs. The settlement resolves allegations against Gilead Sciences and Teva Pharmaceutical (Teva Pharmaceutical Industries Ltd.) of delaying the release of generic drugs. After extended litigation and negotiations, an agreement was reached on July 24, with the plaintiffs initially seeking around \$2 billion in compensation. The proposed settlement, subject to preliminary approval by the California federal court on August 9, aims to cover approximately 12% of their estimated losses related to excessive payments for the HIV drugs Atripla and Truvada from February 2018 to September 2022. ([More](#))

## **美国红十字会与DOJ就反垄断法的范围进行辩论**

2023年8月16日，据媒体报道，美国红十字会和美国司法部（DOJ）就美国反垄断法的范围发生争执。血液检测公司Verax Biomedical（“Verax”）对美国最大的血液供应商红十字会提起诉

讼，引发了这场纠纷。Verax于2月14日向波士顿联邦法院提起诉讼，指控红十字会利用其在血小板市场的主导地位来压制抗污染服务的竞争。红十字会要求法院驳回此案，称其充当了美国政府的“工具”。DOJ在8月4日发表利益声明，反对这一观点，认为红十字会独立于政府，应受联邦反垄断法的约束。（[查看更多](#)）

## **American Red Cross and DOJ Engage in Debate Regarding Scope of Antitrust Law in US**

On August 16, 2023, according to media, there is a dispute between the American Red Cross and the U.S. Department of Justice (DOJ) regarding the scope of U.S. antitrust laws. Blood testing company Verax Biomedical (“Verax”) has filed a lawsuit against the American Red Cross, the largest blood supplier in the U.S. Verax filed the lawsuit on February 14 in the Boston federal court, accusing the American Red Cross of using its dominant position in the platelet market to suppress competition in anti-contamination services. The American Red Cross has requested the court to dismiss the case, arguing that it acts as an “instrument” of the U.S. government. On August 4, the DOJ issued a statement of interest opposing this view, asserting that the American Red Cross operates independently from the government and should be subject to federal antitrust law. ([More](#))

## **FTC阻止EQT与Quantum Energy交易中的连锁董事及反竞争信息交换**

2023年8月16日，美国联邦贸易委员会（FTC）发布公告，声明已通过一项同意令，以应对私募股权公司Quantum Energy（Quantum Energy Partners）和美国最大的天然气生产商EQT（EQT Corporation）之间52亿美元现金、股票交易引发的反垄断担忧。Quantum和EQT在美国最大的天然气生产区域阿巴拉契亚盆地的天然气生产和销售方面直接竞争。拟议收购会使Quantum成为EQT的最大股东之一，并获得EQT董事会的一个席位。FTC担忧该拟议交易将损害竞争，其在同意令中规定了结构性救济，禁止Quantum占据EQT董事会席位，要求Quantum出售其EQT股份，防止反竞争的信息交换行为，解除两家公司之间的反竞争性合资企业，并施加额外的限制以保护竞争。这是40年以来FTC首次执行克莱顿法（Clayton Act）第8条禁止连锁董事（interlocking directorate）的相关规定。（[查看更多](#)）

## **FTC Acts to Prevent Interlocking Directorate Arrangement and Anticompetitive Information Exchange in EQT’s Transaction with Quantum Energy**

On August 16, 2023, the U.S. Federal Trade Commission (FTC) issued a statement announcing the approval of a consent order to address antitrust concerns arising from a \$5.2 billion cash-and-stock transaction between private equity firm Quantum Energy (Quantum Energy Partners) and the largest natural gas producer in the U.S., EQT (EQT Corporation). Quantum and EQT directly compete in the production and sale of natural gas in the Appalachian Basin, the largest natural gas production area in the U.S. The proposed acquisition would make Quantum a major shareholder of EQT and grant it a seat on EQT’s board of directors. The FTC is concerned that this proposed transaction could harm competition. The consent order includes structural remedies prohibiting Quantum from occupying EQT’s board seats, requiring Quantum to divest its EQT shares, preventing anticompetitive information exchange, undoing anticompetitive joint ventures between the two companies, and imposing additional restrictions to safeguard competition. This marks the first enforcement of the Clayton Act’s Section 8 prohibition on interlocking directorates by the FTC in 40 years. ([More](#))

## 塑胶工业公司台朔重工在价格固定案中达成和解

2023年8月15日，据媒体报道，台朔重工美国子公司已同意支付750万美元，并与原告就反垄断诉讼达成和解。原告指控该公司和其他公司在某项计划中限制了烧碱的供应来抬高价格，从2015年开始，数年合谋操纵烧碱价格，并于8月14日披露了与这家台湾公司美国子公司的初步和解协议。这是自2019年以来在纽约罗彻斯特联邦法院进行的诉讼中达成的首项协议。被告之一OxyChem表示，投诉中的指控“完全没有根据”，该公司将“继续积极为自己辩护”。台朔重工、Olin和Shintech的代表则没有做出回应。（[查看更多](#)）

## Plastic Industry Company Formosa Reaches Settlement in Price-Fixing Case

On August 15, 2023, according to media, Formosa Plastics Corp' US subsidiary has agreed to pay \$7.5 million and reached a settlement with the plaintiffs in an antitrust lawsuit. The plaintiffs accused the company and others of restricting the supply of caustic soda to inflate prices as part of a scheme, conspiring to manipulate caustic soda prices for several years starting in 2015. A preliminary settlement agreement with the US subsidiary of the Taiwanese company was disclosed on August 14. This marks the first agreement reached in litigation conducted since 2019 at the United States District Court for the Western District of New York. One of the defendants, OxyChem, stated that the accusations in the complaint are “wholly without merit” and the company intends to “continue to vigorously defend itself.” Representatives of Taisuo Heavy Industries, Olin, and Shintech have not responded. ([More](#))

## CMA暂时批准NHS医疗保健技术交易

2023年8月11日，英国竞争与市场管理局（CMA）经过深入调查，暂时批准了UnitedHealth（UnitedHealth Group Inc.）以12亿英镑对EMIS（EMIS Group PLC）的拟议收购计划。EMIS向英国国家医疗服务体系（NHS）提供数据管理系统；Optum（Optum, Inc.）属于美国医疗保健巨头UnitedHealth的一部分，目前向全科医生提供用于开药的软件，以及向NHS提供数据分析和咨询服务以改善整体医疗保健和医疗卫生服务。调查确认，EMIS在电子病历系统的供应方面具有特别强大的市场地位，但这一地位与Optum的活动结合起来不会引起竞争担忧。具体而言，在人口健康管理服务的供应方面，由于NHS的监管，UnitedHealth无法利用EMIS业务来损害竞争对手的竞争力；在药物优化软件的供应方面，UnitedHealth限制访问EMIS的电子病历系统这一策略的收益有限，并且在NHS干预下会进一步减少。（[查看更多](#)）

## CMA Provisionally Approves NHS Healthcare Technology Transaction

On August 11, 2023, following an in-depth investigation, the Competition and Markets Authority

(CMA) of the United Kingdom provisionally approved the proposed acquisition of EMIS (EMIS Group PLC) by UnitedHealth (UnitedHealth Group Inc.) for £1.2 billion. EMIS provides data management systems to the UK National Health Service (NHS), while Optum, a subsidiary of UnitedHealth, offers prescription software to general practitioners and provides data analysis and consulting services to the NHS to enhance overall healthcare and medical services. The investigation confirmed that EMIS holds a particularly strong market position in the supply of electronic medical record systems, but this



position combined with Optum's activities would not raise competitive concerns. Specifically, due to NHS regulations, UnitedHealth cannot exploit the EMIS business to harm the competitiveness of rivals in population health management services. In the supply of medication optimization software, the benefits of UnitedHealth's strategy to restrict access to EMIS's electronic medical record system are limited, and this restriction would further diminish under NHS intervention. ([More](#))

## 网络安全与数据合规 Cybersecurity and Data Protection

### 信安标委发布国家标准《信息安全技术 基于个人信息的自动化决策安全要求》征求意见稿

2023年8月16日，全国信息安全标准化技术委员会（以下简称信安标委）发布国家标准《信息安全技术 基于个人信息的自动化决策安全要求》征求意见稿（以下简称“《征求意见稿》”），意见征求截至2023年10月15日。《征求意见稿》规定了个人信息处理者进行自动化决策处理活动时，在数据处理及自动化决策相关典型应用场景下的数据安全和个人信息保护义务、自动化决策的透明度、决策结果公平公正、保障个人合法权益等方面的要求，适用于开展自动化决策活动的个人信息处理者规范其个人信息处理和决策活动，也适用于监管部门、第三方评估机构对自动化决策处理活动进行监督、管理、评估时参考。（[查看更多](#)）

### ***Information Security Technology: Security Requirements for Automated Decision-Making Based on Personal Information (Draft for Comments) Issued by National Information Security Standardization Technical Committee***

On 16 August 2023, the National Information Security Standardization Technical Committee issued national standard *Information Security Technology: Security Requirements for Automated Decision-Making Based on Personal Information (Draft for Comments)* (the 'Draft Requirements'), which is open for public comments until 15 October 2023. The Draft Requirements stipulate requirements for data security and protection of personal information, transparency of automated decision-making, fairness of decision outcomes and safeguarding of legitimate individual rights and interests in typical application scenarios related to data processing and automated decision-making activities conducted by personal information processors. The Draft Requirements apply to personal information processors engaged in automated decision-making activities to standardize their personal information processing and decision-making activities. Additionally, the Draft Requirements serve as a reference for supervisory authorities, third-party assessment institutions when supervising, administrating and evaluating automated decision-making activities. ([More](#))

### 中国互联网协会发布团体标准《跨境数据流通技术要求》征求意见稿

2023年8月18日，中国互联网协会发布了团体标准《跨境数据流通技术要求》（征求意见稿）并公开征求意见（以下简称“《征求意见稿》”），意见征求截至2023年9月17日。《征求意见稿》规定了数据跨境的模式、基本原则、基本流程，以及跨境过程中相关方的行为准则与信息

安全保障措施。《征求意见稿》适用于开展数据跨境活动的相关机构参考使用，并为数据跨境活动的相关机构信息安全控制措施的部署提供指导。（[查看更多](#)）

### ***Technical Requirements for Cross-Border Data Flow (Draft for Comments) Issued by Internet Society of China***

On 18 August 2023, Internet Society of China issued the group standard *Technical Requirements for Cross-Border Data Flow (Draft for Comments)* (the ‘Draft Requirements’), which is open for public comments until 17 September 2023. The Draft Requirements stipulate the mode, basic principles and basic processes of cross-border data flows, as well as the codes of conduct and information security measures for the parties involved in the cross-border process. The Draft Requirements serve as reference for relevant institutions engaged in cross-border data activities and provide guidance for the deployment of information security control measures for relevant institutions engaged in cross-border data activities. ([More](#))

### **工信部发布《物联网新型基础设施标准体系建设指南（2023版）》征求意见稿**

2023年8月18日，工业和信息化部（以下简称工信部）发布了《物联网新型基础设施标准体系建设指南(2023版)》（征求意见稿）。该征求意见稿中明确了物联网新型基础设施标准体系框架，由基础标准、技术标准、建设运维标准、应用标准等组成。基础标准包括术语与分类、架构、标识、测评、安全可信、管理等标准。技术标准包括感知技术、网络与通信技术、数据处理技术、融合技术等标准。建设运维标准指导各行业推进物联网新型基础设施建设和规模化部署应用，为各领域物联网新型基础设施的统筹规划、集成实施、协同运维和统一管理提出总体性要求，包括规划设计、部署实施、运行维护的相关标准。应用标准立足行业需求，结合行业应用特点，从支撑行业数字化转型的角度出发，给出行业应用领域的物联网应用指南。（[查看更多](#)）

### ***Guidance for Construction of the Standard System for New Infrastructure for the Internet of Things (Draft for Comments) Issued by MIIT***

On 18 August 2023, the Ministry of Industry and Information Technology (the “MIIT”) issued the *Guidance for Construction of the Standard System for New Infrastructure for the Internet of Things (Draft for Comments)* (the “Draft Guidance”). The Draft Guidance specifies the framework of the standard system for new infrastructure for the Internet of Things (IoT), which consists of foundational standards, technical standards, construction and operation standards and application standards. Foundational standards include terminology and classification, framework, identification, evaluation, security and trustworthiness, management, etc. Technical standards include sensing technology, network and communication technology, data processing technology, integration technology, etc. Construction and operation standards guide various industries in advancing the construction and large-scale deployment of the new infrastructure for IoT. They propose comprehensive requirements for the overall planning, integrated implementation, collaborative operation, and unified managements of the new infrastructure for the IoT in various fields, which includes relevant standards for planning and design, deployment and implementation, as well as operation and maintenance. Application standards, based on the industry needs and characteristics of applications, provide IoT application guidelines tailored to specific industry features, with the aim to support digital transformation of the industry. ([More](#))

## 《人工智能法示范法 1.0（专家建议稿）》发布

2023年8月15日，中国社会科学院国情调研重大项目《我国人工智能伦理审查和监管制度建设状况调研》起草组发布了《人工智能法示范法1.0(专家建议稿)》（下称《示范法》）。《示范法》涵盖总则、人工智能支持与促进、人工智能管理制度、人工智能研发者和提供者义务、人工智能综合治理机制、法律责任和附则七大章节。

据起草组介绍，《示范法》提出了负面清单管理等治理制度，负面清单内人工智能研发、提供活动采取许可机制，实行事前监管，控制风险；负面清单外的研发、提供活动则采取备案机制，减轻企业合规负担。（[查看更多](#)）

### *Model Artificial Intelligence Act 1.0 Was Released*

On 15 August 2023, the drafting team of the major research project entitled Research on the Status of Construction of Ethical Review and Regulatory System for Artificial Intelligence in China, under the Chinese Academy of Social Sciences, released the *Model Artificial Intelligence Act 1.0 (Expert Draft) (the "Draft Model Act")*. The Draft Model Act consists of 7 chapters, including general principles, support and promotion of AI, administrative mechanism for AI, obligations of AI developers and providers, comprehensive governance mechanism for AI, legal liabilities, and supplementary provisions.

According to the drafting team, the Draft Model Act proposes governance measures such as negative list management. AI research and provision activities within the negative list are subject to a licensing mechanism and ex-ante supervision to control risks. Research and provision activities beyond the negative list are subject to a record-filing mechanism to reduce compliance burdens for enterprises. ([More](#))

## 《贵州省数据流通交易促进条例(草案)》征求意见稿发布

2023年8月16日，贵州省大数据发展管理局发布《贵州省数据流通交易促进条例（草案）》（征求意见稿）。该条例旨在促进数据流通交易，激活数据潜能，培育壮大数据要素市场，规范数据流通交易行为，推进数字经济发展创新区建设，涵盖总则、数据交易场所建设和管理、数据授权使用、数据权益保护、收益分配、数据流通交易生态培育、安全保障、法律责任、附则共九章。

征求意见稿提到，支持贵阳大数据交易所建设国家级数据交易所，突出其公共属性和自律合规监管功能，面向和服务全国统一大市场，负责数据流通交易平台日常运营，实现与贵州公共资源网上交易大厅互联互通，推动与其他数据交易场所互联互通。征求意见稿明确，依法保护数据来源者合法权益，保障其享有获取或者查阅、复制、转移由其促成产生数据的权益。依法保护数据流通交易市场主体在数据流通交易活动中享有的数据资源持有、数据加工使用、数据产品经营等合法权益。（[查看更多](#)）

## ***Regulations on the Promotion of Data Circulation and Transactions in Guizhou (Draft for Comments) Issued***

On 16 August 2023, the Big Data Development Administration of Guizhou Province issued the *Regulations on the Promotion of Data Circulation and Transactions in Guizhou (Draft for Comments)* (the “Draft Regulations”). The Draft Regulations aim to promote data circulation and transactions, unleash the potential of data, cultivate and expand the market for data elements, regulate data circulation and transaction activities, and advance the construction of innovation digital economic development zones. The Draft Regulations consist of nine chapters, including general provisions, construction and management of data trading venues, data authorization and usage, protection of data rights and interest, profit allocation, cultivation of a data circulation and transaction ecology, security assurances, legal liabilities, and supplementary provisions.

The Draft Regulations also indicate support for the construction of a national-level data exchange in Guiyang City, Guizhou, highlighting its public nature and self-disciplinary regulatory functions. The Draft Regulations aim to serve the unified national market, be responsible for the daily operations of the data circulation and transaction platform, achieve interconnection with online trading hall of Guizhou’s public resource platform, and promote interconnection with other data trading venues. The Draft Regulations stipulate the protection of the legitimate rights and interest of data providers, ensuring their rights to access, review, copy and transfer data generated through their facilitation. Additionally, the Draft Regulations protect legitimate rights and interests of market entities in data circulation and transaction activities, including data resource ownership, data processing and usage, and data product operations. ([More](#))

## **交通银行湖南省分行因涉征信信息安全、金融消保、反洗钱等13项违规被罚87.5万**

2023年8月11日，中国人民银行长沙中心支行发布的行政处罚显示，交通银行湖南省分行因存在虚报、瞒报金融统计数据、违反征信信息安全管理要求、未按规定履行客户身份识别义务等违法行为被警告，并被罚款87.5万元。同时，7人对交通银行湖南省分行违法违规行为负有责任，被罚款1万至3.5万元不等。（[查看更多](#)）

## **Bank of Communications, Hunan Branch, Was Fined RMB 875,000 for 13 Violations, Including Violations of Credit Information Security, Financial Consumer Protection, Anti-Money Laundering Etc.**

On 11 August 2023, according to the administrative penalty issued by the People’s Bank of China, Changsha Central Sub-branch, Bank of Communications, Hunan Branch, was warned and fined RMB 875,000 for false reporting, concealment of financial statistical data, violation of credit information security requirements, and failure to fulfill customer identification obligations, among others . Meanwhile, 7 individuals responsible for the illegal and irregular acts of Bank of Communications, Hunan Branch, were fined between RMB 10,000 and RMB 35,000. ([More](#))

## **上海市网信办组织少儿培训机构个人信息保护培训**

2023年8月17日，上海市网信办会同市教委、市科委等行业主管部门，组织开展个人信息保护



普法培训，新东方、学而思、梅洛体育、金芭蕾、小码王等130余家上海市培训机构相关负责人参加，共涉及本市门店701家。培训结束后，上海市网信办专门下发《少儿培训场景下常见个人信息保护问题自查清单》，要求培训机构对照收集与培训业务无关的个人信息、频繁索取权限、超范围收集个人信息等6类问题，举一反三自查整改，建立健全覆盖个人信息收集、存储、使用等处理全过程的保护措施，确保消费者个人信息权益不受侵害。（[查看更多](#)）

## **Shanghai Cyberspace Administration Organized Personal Information Protection Training for Children's Training Institutions**

On 17 August 2023, Shanghai Cyberspace Administration, together with Shanghai Municipal Education Commission, Science and Technology Commission of Shanghai Municipality and other regulatory departments, organized a personal information protection legal training. More than 130 representatives from training institutions in Shanghai, including New Oriental, Xueersi, Melo Sports, Golden Ballet Dance, Xiaomawang, etc., involving a total of 701 branches. After the training, Shanghai Cyberspace Administration issued a *Self-Inspection Checklist for Common Personal Information Protection Issues in Children's Training Institutions*, requiring training institutions to conduct self-inspection and rectification regarding six categories of issues, such as collection of personal information unrelated to training business, frequent permission requests, excessive collection of personal information, etc. Additionally, they are required to establish and improve protective measures covering the entire process of personal information collection, storage and usage so as to ensure that the personal information rights and interests of consumers are not infringed. ([More](#))

## **江西南昌某高校发生数据泄露案件**

据2023年8月16日南昌公安消息，近期，南昌公安网安部门工作发现，南昌某高校3万余条师生个人信息数据被黑客窃取，在境外互联网上被公开售卖。南昌公安网安部门立即开展调查，成功抓获该黑客犯罪团伙犯罪嫌疑人3名。同时，对涉案高校不履行数据安全保护义务违法行为开展执法检查。

经查，该高校在开展数据处理活动中，未建立全流程数据安全管理制度，未采取技术措施保障数据安全，未履行数据安全保护义务，导致学校存储教职工信息、学生信息、缴费信息等3000余万条信息的数据库被黑客非法入侵，其中3万余条教职工、学生个人敏感信息数据被非法兜售。南昌公安网安部门根据《中华人民共和国数据安全法》第四十五条的规定，对该学校作出责令改正、警告并处80万元人民币罚款的处罚，对主要责任人作出人民币5万元罚款的处罚。（[查看更多](#)）

## **A Data Breach Incident Occurred at A University in Nanchang, Jiangxi**

According to the Nanchang Public Security Bureau on 16 August 2023, the Nanchang Public Security Cybersecurity Department recently discovered that over 30,000 pieces of students' and teachers' personal information in a University in Nanchang were stolen by hackers and sold publicly on the internet overseas. The Nanchang Public Security Cybersecurity Department immediately launched an investigation and successfully captured 3 suspects involved in this hacker criminal group. Meanwhile, they con-

ducted inspections on the university involved which failed to perform the obligations of data security protection.

During the investigation, it was found that the university had not established a comprehensive data security management system, failed to implement technical measure to safeguard data security, and failed to perform its data security protection obligations. As a result, the university's database that contains over 30 million pieces of information including staff and student data, payment information, and other information was illegally attacked by hackers. More than 30 million pieces of sensitive personal information of staff and students were illegally sold. In accordance with Article 45 of the *Data Security Law of the People's Republic of China*, the university was warned and fined RMB 800,000, and the primary responsible individuals were fined RMB 50,000 each. ([More](#))

### 房源数据服务商遭勒索软件攻击，美国房地产市场陷入混乱

据2023年8月15日消息，过去五天，美国加州一家房源挂牌服务提供商遭遇网络攻击，导致全国各地房屋买家、卖家、房地产经纪人和房源网站业务受阻。该公司提供一项追踪挂牌房源的关键在线工具。

这次攻击始于8月9日，袭击对象是位于加州的软件和服务提供商Rapottoni公司。该公司为全美各地区房地产集团提供多重房源挂牌服务。 ([查看更多](#))

### Real Estate Markets Scramble Following Cyberattack on Listings Provider

According to the report on 15 August 2023, home buyers, sellers, real estate agents, and listing websites throughout the US have been stymied for five days by a cyberattack on a California company that provides a crucial online service used to track home listings.

The attack, which commenced on 9 August, hit Rapottoni, a software and services provider that supplies Multiple Listing Services to regional real estate groups nationwide. ([More](#))

### 美国联邦通信委员会发布美国网络信任标志标记计划拟议规则的制定通知

2023年8月10日，美国联邦通信委员会（FCC）宣布发布《拟议规则制定通知》（NOPR），就白宫于2023年7月18日宣布的美国网络信任标志计划征求公众意见。这是一项自愿性的网络安全标记计划，预计将于2024年投入使用，旨在帮助美国公众更轻松地选择更安全、更不易受到网络攻击的智能设备。

联邦通信委员会指出，随着时间的推移，预计会有越来越多的制造商参与到该自愿性计划中

来，以表明他们对隐私和安全的承诺，因为消费者对易于识别的可信智能产品的需求会越来越大。 ([查看更多](#))

### FCC Published Notice of Proposed Rulemaking for the U.S. Cyber Trust Mark Labeling Program

On 10 August 2023, the Federal Communications Commission (FCC) announced the publication of its Notice of Proposed Rulemaking (NPR), seeking public comments on rolling out the U.S. Cyber Trust Mark program, which was announced, on 18 July 2023, by the White House. This is a voluntary cybersecurity labeling program, which is expected to be operational in 2024, aiming to help Americans to more easily choose smart devices that are safer and less vulnerable to cyberattacks.

The FCC noted that it expects that, over time, an increasing number of manufacturers would participate in the voluntary program to demonstrate their commitment to privacy and security, as there would be increased consumer demand for easily identifiable trustworthy smart products. ([More](#))

## 知识产权 Intellectual Property

### 隔膜企业专利纷争再起：索赔超2亿元

继今年5月恩捷股份披露子公司诉河北金力新能源科技股份有限公司（以下简称金力股份）3项专利侵权之后，恩捷股份8月8日又再次起诉其侵害公司另外2项发明专利权，索赔金额合计2.1亿元。

恩捷股份最新披露的诉讼与5月相比，不同点体现在两个方面：一方面是原告方的差异，此次诉讼原告方除了恩捷股份子公司，还包括日本帝人。另一方面则是涉案专利涉及领域方面，通过在国家知识产权局查询，5月份披露的3个涉案专利与锂离子电池隔膜或涂布隔膜相关，而最新披露的2个涉案专利则与非水系二次电池用隔膜相关。

来源：每日经济新闻

### Diaphragm Companies Involved again in Patent Dispute: Claims Exceeding RMB 200 Million

After the disclosure of Enjie shares ("Enjie") of its subsidiary against Hebei Jinli New Energy Technology Co. ("Jinli") for three patent infringement in May this year, Enjie again sued Jinli for infringement of the other two invention patents on 8 August, claiming a total of RMB 210 million.

Enjie's two lawsuits reveals two differences. On the one hand, the plaintiffs in this litigation now include not only Enjie's subsidiaries but also the Japan's Doren. On the other hand, the difference is the patents involved. According to database of the China National IP Administration, the three patents in the former suit related to lithium-ion battery diaphragm or coated diaphragm, while the two patents in the latter suit related to non-aqueous secondary battery diaphragm.

Source: National Business Daily

### 迈瑞医疗诉宝莱特专利侵权，追加索赔三千万

8月14日，广东宝莱特医用科技股份有限公司（300246，宝莱特）发布涉诉公告。公告显示，深

圳迈瑞生物医疗电子股份有限公司（简称“迈瑞”）对宝莱特及其经销商南平晨瑞医疗器械有限公司（简称“晨瑞公司”），向福州市中级人民法院提出了三起专利侵权的民事诉讼：（2023）闽01民初936号、（2023）闽01民初937号、（2023）闽01民初938号，每起各索赔1000万元，共计3000万元。这三起案件针对的都是宝莱特的“监护仪”产品，涉及两个型号：P1和P18。

据悉，迈瑞早在今年4月就发起了针对宝莱特和晨瑞公司的“监护仪”专利维权。截至目前，迈瑞打响的这场“监护仪”专利保卫战，总索赔金额已达4000万元。

来源：企业专利观察

### **Myriad Sued Biolight for Patent Infringement: Additional Claims for RMB 30 Million**

On 14 August, Guangdong Biolight Meditech Co. ("Biolight") released a lawsuit announcement. It shows that, Shenzhen Mindray Bio-Medical Electronics Co. ("Mindray") filed three patent infringement lawsuits against Biolight. Each case claimed RMB 10 million, totalling RMB 30 million. These three cases against Biolight's "monitor" products, involving two versions: P1 and P18.

So far, in the "monitor" patent defense battle started by Myriad, the total amount of claims has reached RMB 40 million.

Source: Shanghai Securities Journal

### **模仿LUNA洁面仪装潢，法院判决赔偿215万**

近日，浙江省杭州市中级人民法院就深圳市云翔意林科技有限公司（简称“云翔意林公司”）等与斐洛尔（上海）贸易有限公司（简称“斐洛尔公司”）等擅自使用与他人有一定影响的商品名称、包装、装潢等相同或者近似的标识纠纷案作出二审判决，判决侵权方赔偿斐洛尔公司经济损失215万。

法院认为，产品的外观设计专利不能等同于商品装潢，外观设计专利权的无效审查、专利权评价报告的情况与判断产品装潢是否为显著特征、是否构成近似装潢无直接关联。对于被诉侵权产品的装潢是否与原告斐洛尔公司产品的装潢构成近似，仍然应当遵循“整体观察与比对主要部分”的方法。装潢近似是指模仿他人有一定影响商品装潢的主要部分，加以不妨碍总体形象的增删或变动，使相关公众施以一般注意力也不免产生混同或误认的情形。

来源：浙江省杭州市中级人民法院

### **Copied LUNA Facial Cleanser Decoration: RMB 2.15 Million in Damages Awarded**

Recently, Hangzhou Intermediate Court issued a second-instance judgement of unfair competition between FOREO (Shanghai) Trading Co. (Plaintiff) versus Zhuhai Jindao Electrical Co. and others (Defendants).



The court held that design patent cannot be equal to commodity decoration, as the invalidation review of the design patent right and the patent evaluation report are not directly related to the decision of whether the product decoration is a distinctive feature or whether it constitutes a similar decoration. As to whether the decoration of the accused products is similar to that of the plaintiff's, the method of "observing the whole and comparing the main parts" shall still be followed. Similarity of decoration means the imitation of the essential elements of another's decoration, with some negligible changes, resulting in a high degree of confusion or misidentification of the relevant public.

Source: Hangzhou Intermediate Court, Zhejiang

### 浙江高院：商标是否容易导致混淆，应结合相关公众的注意程度进行认定

近日，浙江高院就浙江逗哈科技股份有限公司与长城汽车股份有限公司、杭州元胜汽车有限公司侵害商标权纠纷一案作出二审判决，认定被告长城公司与元胜公司不构成商标侵权。

法院认为，尽管涉诉商标为“itank”与“TANK”，但被诉侵权商品不同于普通生活用品。消费者一般不会仅凭商标标识给其留下的第一印象就在很短的时间内作出购买决定，而会在选择的时候从汽车商品的品质、性能、售后服务以及生产商的信誉、技术实力等方面进行反复斟酌、比较。就涉案商品而言，相关公众对于商标标识之间的差异会施以更高的注意，因此对是否容易导致混淆亦应有更高的判断标准。

来源：浙江省高级人民法院

### Zhejiang High Court: Determination of Confusion Shall Consider the Degree of Relevant Public's Attention in Respect of the Automobile

Recently, Zhejiang High Court issued a second-instance judgement of trademark infringement between Zhejiang Douha Technology Co. (the plaintiff) and Great Wall Motor Company Limited and Hangzhou Yuansheng Automobile Co.(the defendants). The court found that the defendants did not constitute trademark infringement.

The Court held that although the trade marks in dispute were "itank" and "TANK", the infringing goods were different from ordinary household goods. Consumers typically do not make purchase decisions solely based on a trade mark's first impression. Instead, they usually make repeated deliberations and comparisons based on factors such as quality, performance, after-sale services, manufacturer credibility, and technological strength when choosing automobile goods. Regarding the goods in question, the general population will pay more attention to the differences between the marks, so the assessment of the likelihood of confusion should be based on a higher standard.

Source: Zhejiang High Court

### 上海高院认定6件“特斯拉”商标为驰名商标

近日，上海高院就特斯拉（上海）有限公司与中饮食品有限公司、广东中饮食品有限公司、糖玖网络科技（上海）有限公司侵害商标权及不正当竞争纠纷案作出二审判决，被告需立即停止侵权行为，并赔偿损失共计500万元。

法院认为，涉案第 7792673 号、第 13690430 号、第 13690434 号商标、第 8008888 号商标、第 13690442 号商标、第 G1199678 号商标核准注册后，一直组合使用于特斯拉品牌汽车、产品用户指南、宣传画册、充电桩、充电车位、销售门店招牌和装潢、相关活动仪式、展会展台以及各官方网络宣传账号中。特斯拉有限公司及其关联公司对特斯拉品牌进行了大量宣传，涉案商标获得了众多荣誉，还获得了多种形式的司法行政保护；综上，可以认定涉案商标经过广泛的宣传、使用，在第12类电动汽车、电动运载工具、汽车商品上于 2019 年已为中国境内相关公众广为知晓，属于驰名商标。

来源：上海市高级人民法院

### **Shanghai High Court Recognised 6 Tesla Trademarks as Well-known Trademarks**

Recently, Shanghai High Court issued a second-instance judgement of trademark infringement and unfair competition between Tesla (Shanghai) Co. (Plaintiff) and Zhongyin Food Co. And others (Defendants). Defendants was ordered to pay damages of RMB 5 million and immediately stop the infringement acts.

The Court held that, after the six marks at issue were approved for registration, they were used in combination on Tesla-branded vehicles, product user manuals, brochures, charging stacks, charging parking spaces, retail store signs and decorations, related event celebrations, trade show booths, and various official online promotional accounts. The Plaintiff and its affiliates have extensively advertised the Tesla brand, and the trademarks in question receiving multiple awards and legal protections. In conclusion, after widespread use and publicity, these trademarks has become well-known to Chinese relevant public in 2019, within class 12, and have become Well-known Trademarks.

Source: Shanghai High Court

### **上知院：“爱库存”平台作为销售者，构成商标侵权及不正当竞争**

近日，上海知识产权法院就上海众旦信息科技有限公司与内蒙古鹿王羊绒有限公司、浙江秀米网络科技有限公司侵害商标权纠纷、不正当竞争纠纷一案作出二审判决，驳回了被告秀米公司、众旦公司的全部上诉请求。被告需立即停止侵犯注册商标专用权及不正当竞争行为，赔偿原告经济损失20,000元、维权合理费用10,000元。

二审法院认为，被告秀米公司在被告众旦公司经营的平台申请商品上架后，众旦公司对于上架商品种类、上架期间均具有选择决定权。众旦公司作为被控侵权产品的销售者，其明知涉案商品未经授权（授权已过期），却仍安排档期予以上架，应对侵权结果承担民事责任。一审判决认定二被告共同实施了销售行为，具有事实依据，可予支持。

来源：上海知识产权法院

### **Shanghai IP Court: Sales platforms Constituted Trademark Infringement and Unfair Competition**

Recently, Shanghai IP Court issued a second-instance judgement of trademark infringement and unfair competition between Inner Mongolia Deer King Cashmere Co. (Plaintiff) and Shanghai Zhongdan Information Technology Co. and others (Defendants). The second instance court dismissed all the claims of Defendants, and ordered Defendants to pay RMB 30000.

The court held that, after Xiumi applied to store their goods on the platform operated by Zhongdan, Zhongdan had the authority to select the type of goods to be shelved and the duration of storage. As a seller of the infringing products, Zhongdan knew that the goods were unauthorized (expired authorization). Therefore, they shall be liable for the infringement acts, and the first instance judgment is valid.

Source: Shanghai IP Court

### **侵犯商业秘密被立案后仍“借壳”作案：获刑4年罚400万元**

近日，法院二审判决维持以侵犯商业秘密罪判处关某有期徒刑四年并处罚金400万元的判决。

据悉，2020年10月，公安机关将一起涉外贸公司经营信息的侵犯商业秘密案移送鄞州区检察院审查起诉。在该案中，宁波市鄞州区检察官联合公安机关，查实关某在行政调查甚至刑事立案后，仍在他人的配合和帮助下继续实施侵权行为，相互串供逃避侦查，“借壳”进行外贸交易，金额高达5000余万元，给权利人造成实际损失570余万元。

来源：检察日报

### **Infringement on Trade Secrets was Recognized but Continuing Infringement with Shell-company: Criminal Sentence to 4 Years with Fine of RMB 4 million**

In October 2020, the public security bureau transferred a case of infringement of commercial secrets involving the business information of a foreign trade company to the Yinzhou District Procuratorate for review and prosecution. Through digital empowerment, the procuratorate discovered the transaction details of the persons hidden behind the abnormal data, and prosecuted an additional RMB 4.9 million.

In January 2023, following the Yinzhou District Procuratorate's prosecution, the court issued a first-instance criminal judgement. The suspect was found guilty of infringing trade secrets and was sentenced to four years' imprisonment and fined RMB 4 million. The court of second instance has recently dismissed the appeal and upheld the original judgement.

Source: Procuratorate Daily

### **蓝牙配对专利案暂告段落：苹果胜诉，不构成侵权**

8月14日，苹果公司和 One-E-Way 之间的专利诉讼案件暂告段落，美国法院裁定苹果公司胜诉，旗下AirPods耳机并未侵犯后者的两项蓝牙配对专利。

One-E-Way于2020年开始起诉苹果公司，该公司认为苹果多款耳机侵犯其“无线数字音频音乐系统”专利。该系统使用了一种无线通信的码分多址技术来推动“私人收听”，即发射器包含

一个代码生成器，可生成与特定用户相关的“唯一用户代码”，以便在发射器和接收器之间配对。该公司认为通过向耳机发送代码，基于该专利实现配对。

来源：PATENTLYO

## **Apple's Major Products Do Not Infringe Bluetooth Pairing Patents**

On 14 August, the Court of Appeals for the Federal Circuit, in a non-precedential opinion in *One-E-Way, Inc. v. Apple Inc.*, affirmed a decision that tech giant Apple's AirPods do not infringe the former's two Bluetooth pairing patents.

In 2020, One-E-Way, Inc. ("One-E-Way") filed suit against Apple Inc. ("Apple") alleging that several popular Apple products, including Apple's AirPods and particular headphones in the Beats product line, infringe the claims of two patents related to a wireless digital audio system that allows private listening without interference. The system uses a transmitter connected to an audio source and a receiver connected to headphones. The transmitter contains a code generator that generates a "unique user code" associated with a specific user to allow pairing between the transmitter and receiver. One-E-Way contended that even though the Bluetooth address codes are associated with devices, the codes are associated with individual users through operation of the device.

Source: PATENTLYO



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