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市场监管总局发布三起未依法申报经营者集中案

2021年3月11日，国家市场监督管理总局（“市场监管总局”）公布了3起未依法申报经营者集中案的行政处罚决定。根据调查，市场监管总局认定三个案件均不具有排除、限制竞争的效果，因此对涉案的四家企业共处以95万元的罚款。值得注意的是，市场监管总局在决定处罚措施时，还综合考虑了新冠疫情对企业经营的影响和企业帮助抗疫的贡献并减轻了对有关企业的处罚。（[查看更多](#)）

SAMR Issues 3 Gun-jumping Cases

On March 11, 2021, the State Administration for Market Regulation (“SAMR”) issued 3 administrative penalty decisions on 3 gun-jumping cases. Upon investigation, SAMR found that none of these cases had the effect of eliminating or restricting competition and therefore 4 enterprises involved were totally fined CNY 950,000. It is worth noting that when deciding fines, SAMR also comprehensively considered the impact of COVID-19 on enterprise’s operation and the contribution of enterprise during the fight against COVID-19, and therefore decreased the fines imposed on such enterprises. ([More](#))

海南省市监局举办企业竞争合规管理培训活动

2021年3月10日，海南省市场监督管理局（“海南省市监局”）举办了企业竞争合规管理培训活动，省内供水、供电、供气、邮政等公用企业和省内旅游、酒店餐饮、广告、保险等行业协会以及电商平台、大型商超等企业代表共60余人参加了培训。本次培训围绕企业生产经营的过程，结合反垄断执法的相关案例，对相关的竞争法律法规进行了解读，并对企业的竞争合规管理制度、风险管理方面进行指导。同时，还倡导行业协会加强竞争指导，引领全行业合规经营。（[查看更多](#)）

Hainan AMR Holds Competition Compliance Management and Training Activity

On March 10, 2021, the Hainan Provincial Administration of Market Regulation (“Hainan AMR”) held competition compliance management and training activity. More than 60 representatives from local public enterprises like water supply, power supply, gas supply and postal service enterprises etc., as well as local industry associations such as tourism, hotel and catering, advertisement and insurance association etc., and other enterprises like e-commerce platforms and large supermarkets participated into this activity. Focusing on the enterprise production and operation, and combining with relevant antitrust law enforcement cases, this activity interpreted the relevant competition laws and regulations and guided enterprises’ competition compliance management system and risk management. Meanwhile, the Hainan AMR also advocated that the industry associations should strengthen the competition guidance and lead the whole industry to operate the business in accordance with the law. ([More](#))

百度招股书披露反垄断风险

2021年3月9日，根据百度在香港联合交易所网站提交的初步招股文件中披露的内容，如果百度被认为未能遵守相关的反垄断法律法规，或会导致政府对百度的调查、执法或诉讼，可能对百

度的业务经营、财务状况和业绩造成不利影响。文件还表明，2021年1月，市场监管总局曾就百度违法实施经营者集中进行立案，并于近期向百度发出了拟罚款50万的通知，百度并未提出反对，百度预计在全额支付罚款后，将不会受到进一步处罚。（[查看更多](#)）

Baidu Prospectus Discloses Antitrust Risks

On March 9, 2021, according to the preliminary Prospectus documents submitted by Baidu on the website of the Stock Exchange of Hong Kong, if Baidu is deemed as failing to comply with relevant anti-trust laws and regulations, it may lead to government investigations, law enforcement or litigation against Baidu, and may adversely affect Baidu's business operation, financial condition and company performance. The documents also show that in January 2021, SAMR filed a case against Baidu for gun-jumping and recently SAMR noticed Baidu that it intends to fine CNY 500,000. Baidu did not raise objections and it would pay the fine in full. Baidu predicted that after the fine, there would be no further penalties. ([More](#))

2021年政府工作报告：强化反垄断和竞争政策基础地位

2021年3月5日，国务院总理李克强向全国人民代表大会作政府工作报告，政府工作报告指出，要建设高标准市场体系，全面完善产权制度，推进要素市场化配置改革，强化竞争政策基础地位，支持平台企业创新发展、增强国际竞争力，强化反垄断和防止资本无序扩张，坚决维护公平竞争市场环境。（[查看更多](#)）

Report on the Work of the Government 2021: Strengthening Antitrust and the Foundational Role of Competition Policies

On March 5, 2021, the Premier of the State Council, Li Keqiang, presented the work of government before the National People's Congress. According to the *Report on the Work of Government 2021*, it required to build a high-standard market system, comprehensively improve the property rights system, promote the reform of the market-based allocation of production factors, reinforce the foundational role of competition policies, support platform enterprises to pursue innovative development and enhance international competitiveness, strengthen antitrust, prevent unregulated expansion of capital, and ensure fair market competition. ([More](#))

海外动态 Overseas News

脸书申请法院驳回联邦和各州对其提起的反垄断诉讼

2021年3月10日，据报道，脸书（Facebook）已向法院申请，请求法院驳回美国联邦和州对其发起的反垄断诉讼。美国联邦贸易委员会（Federal Trade Commission, “FTC”）和48个州于2020年12月提起诉讼，并寻求可能包含强制剥离脸书旗下的Instagram和WhatsApp的救济措施。FTC认为脸书采取了“系统性策略”，例如以收购规模较小的潜在竞争对手的方式消除竞争，脸书分别于2012年收购了和2014年收购了Instagram和WhatsApp。（[查看更多](#)）

Facebook Asks a Court to Dismiss Federal and State Antitrust Suits

On March 10, 2021, according to the reports, Facebook has asked a court to dismiss state and federal antitrust lawsuits. The antitrust suits, filed in December of 2020 by the Federal Trade Commission (“FTC”) and 48 states, are seeking remedies that could include a forced spinoff of the social network’s popular Instagram and WhatsApp services. The FTC suit asserts that Facebook has engaged in a “systematic strategy” to eliminate its competition, including by purchasing smaller up-and-coming rivals like Instagram in 2012 and WhatsApp in 2014. ([More](#))

欧盟委员会就自由职业者集体谈判所涉竞争法适用问题征集意见

2021年3月5日，欧盟委员会启动了公众意见征集，向所有利益相关方征集意见和证据，以确保欧盟竞争规则不会妨碍部分自由职业者们的集体谈判。在数字经济和其他领域中，和部分公司或劳动购买者相比，一些自由职业者们可能处于谈判地位不平衡的谈判情景中，这导致他们几乎无法提升薪酬和工作条件。而集体谈判则是一个可以帮助他们实现更好的工作条件的强大工具。根据欧盟竞争法，自由职业者们被视为“企业”，因此在进行集体谈判时会有违反竞争规则的风险。这一征集活动可以确保欧盟的竞争规则不会阻碍处于弱势地位的自由职业者们参与集体谈判或协议以改善他们的工作条件。 ([查看更多](#))

European Commission Collects Comments on the Application of EU Competition Law to Collective Bargaining Agreements for Self-employed

On March 5, 2021, the European Commission launched a public consultation to gather views and evidence from all interested parties to ensure that EU competition rules do not stand in the way of collective bargaining by certain solo self-employed people. Both in the digital economy and beyond, some solo self-employed might be in a situation of unbalanced negotiating power vis-à-vis certain companies/buyers of labor, leading them to have little influence over their payment and working conditions. Collective bargaining can be a powerful tool to help them to achieve better working conditions. According to EU competition law, self-employed are considered ‘undertakings’ and thus risk infringing competition rules when they bargain collectively. The consultation could ensure that EU competition rules do not prevent self-employed in a weak position from engaging in collective negotiations or agreements to improve their working conditions. ([More](#))

欧盟委员会就梯瓦制药是否滥用市场支配地位展开反垄断调查

2021年3月4日，欧盟委员会就以色列梯瓦制药工业有限公司（Teva，“梯瓦制药”）非法延迟其治疗多发性硬化症药物Copaxone的竞争药品进入市场的行为进行调查，欧盟委员会将评估其行为是否构成滥用市场支配地位。欧盟委员会将调查在专利到期后，梯瓦制药是否通过战略性地利用申请和撤回分案专利，反复推迟仿制药竞争对手进入市场，以人为性地延续其在Copaxone市场的排他性。此外，欧盟委员会还将调查梯瓦制药是否利用公关宣传活动以阻碍竞争药品的使用。这是欧盟委员会历史上首次对制药行业中可能的如不正当利用专利程序和对竞品进行排他性诋毁的滥用行为展开正式调查。 ([查看更多](#))

European Commission Opens Formal Antitrust Investigation into Possible Abuse of Dominance of Teva

On March 4, 2021, the European Commission has opened a formal antitrust investigation to assess whether the Israel pharmaceutical company Teva has illegally delayed the market entry and uptake of medicines that compete with its blockbuster multiple sclerosis drug Copaxone. The European Commission will investigate whether Teva has abused a dominant market position. The European Commission will investigate whether, following the patent expiry, Teva may have artificially extended the market exclusivity of Copaxone by strategically filing and withdrawing divisional patents, repeatedly delaying entry of its generic competitors. In addition, the European Commission will also examine whether Teva may have pursued a communication campaign to unduly hinder the use of competing products. This is the European Commission's first formal investigation into potential abuses relating to the misuse of patent procedures and exclusionary disparagement of competing products in the pharmaceutical industry. [\(More\)](#)

立方律师事务所编写《立方观评》的目的仅为帮助客户及时了解中国法律及实务的最新动态和发展，上述有关信息不应被看作是特定事务的法律意见或法律依据，上述内容仅供参考。



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