



NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No.230

2021.04

立方竞争法周报

Weekly Competition Law News

NO.111

国内要闻 Domestic News

市场监管总局对扬子江药业集团垄断协议行为罚款7.64亿

SAMR Fines Yangtze River Pharmaceutical CNY 764 Million for Implementing Monopoly Agreement

央行召开支付结算工作电视会议，强化推进支付领域反垄断工作

PBOC Holds a Video Conference on Payment and Settlement Work Addressing the Work of Antitrust in Payment Field

三部门联合召开互联网平台企业行政指导会：严防垄断，要求平台企业全面自检自查

Three Departments Jointly Convenes an Administrative Guidance Meeting for Internet Platform Companies: Strictly Preventing Monopoly and Requiring Platform Companies to Conduct Comprehensive Self-Check and Self-Inspection

上海英文外卖平台因实施“二选一”被罚116万

An English Food Delivery Platform in Shanghai Fined CNY 1.16 Million for Implementing “Either-or”

互联网平台首例反垄断处罚：简析阿里案

First Antitrust Penalty for Internet Platform Company: Alibaba Case Analysis

海外动态 Overseas News

《数字市场竞争调查最终报告》获美国众议院司法委员会通过

House Judiciary Committee Passes the Final Report on Investigation of Competition in Digital Markets

美国联邦第五巡回上诉法院维持FTC对益邦制药的处罚决定

U.S. Court of Appeals for the Fifth Circuit Upholds FTC’s Opinion against Generic Pharmaceutical Company Impax Laboratories, LLC

日本公平贸易委员会发布关于修订版《反垄断法》下新制度的特别说明

JFTC Issues Special Feature on the New System under the Amended Antimonopoly Act

国内要闻 Domestic News

市场监管总局对扬子江药业集团垄断协议行为罚款7.64亿

2021年4月15日，国家市场监督管理总局（“市场监管总局”）发布了对扬子江药业集团有限公司（“扬子江药业”）的行政处罚决定书。经调查，扬子江药业在2015至2019年间在公司内设立定价委员会，制定价格政策，和各级经销商及终端零售实体达成并实施了固定、限制价格的垄断协议，且采取考核及惩罚措施强化协议实施，这些行为严重排除、限制了市场竞争。最终市场监管总局责令其停止违法行为，并处以2018年度销售额3%的罚款，约合人民币7.64亿元。

[\(查看更多\)](#)

SAMR Fines Yangtze River Pharmaceutical CNY 764 Million for Implementing Monopoly Agreement

On April 15, 2021, the State Administration for Market Regulation (“SAMR”) issued the administrative penalty decision against Yangtze River Pharmaceutical Group Co., Ltd. (“Yangtze River Pharmaceutical”). After investigation, from 2015 to 2019, Yangtze River Pharmaceutical established a price-setting committee within the company, formulated price policies, reached and implemented monopoly agreements with distributors at all levels and terminal retail entities to fix and restrict price, and take assessment and punishment measures to strengthen the implementation of such agreements. These behaviors severely eliminated and restricted market competition. In the end, SAMR ordered Yangtze River Pharmaceutical to stop illegal activities and imposed a fine of 3% of its sales in 2018, approximately CNY 764 million. [\(More\)](#)

央行召开支付结算工作电视会议，强化推进支付领域反垄断工作

2021年4月14日，中国人民银行（“央行”）召开2021年支付结算工作电视会议，提出要强化支付领域反垄断和防止资本无序扩张，稳步推进跨境支付体系建设。会议要求，下一阶段要积极完善顶层设计，深入推进支付领域的反垄断工作，加快构建跨境支付体系。 [\(查看更多\)](#)

PBOC Holds a Video Conference on Payment and Settlement Work Addressing the Work of Antitrust in Payment Field

On April 14, 2021, the People’s Bank of China (“PBOC”) held a 2021 payment and settlement work video conference, and proposed to strengthen antitrust in payment field, prevent the disorderly expansion of capital, and steadily promote the construction of the cross-border payment system. It is required during the meeting that in the next stage, PBOC should actively perfect the top-level design, deeply advance antitrust work in payment field and accelerate the construction of a cross-border payment system. [\(More\)](#)

三部门联合召开互联网平台企业行政指导会：严防垄断，要求平台企业全面自检自查

2021年4月13日，市场监管总局会同中央网信办、税务总局召开互联网平台企业行政指导会。会议指出，平台经济领域存在强迫实施“二选一”、滥用市场支配地位等问题。会议要求各平台企业在一个月内全面自检自查并向社会公开《依法合规经营承诺》，接受社会监督，市场监管部门将组织对平台整改情况进行跟踪检查。34家互联网企业代表以及各地市场监管局有关负责人参加会议。（[查看更多](#)）

Three Departments Jointly Convenes an Administrative Guidance Meeting for Internet Platform Companies: Strictly Preventing Monopoly and Requiring Platform Companies to Conduct Comprehensive Self-Check and Self-Inspection

On April 13, 2021, SAMR, together with the Cyberspace Administration of China and the State Taxation Administration, jointly held an administrative guidance meeting for internet platform companies. The meeting pointed out the problems such as the implementation of “either-or” and abuse of dominant position in the relevant markets. The meeting required all platform companies to conduct a comprehensive self-check and self-inspection within one month and disclose the *Commitment to Operate in Compliance with Laws* to the public for social supervision. The market regulation authorities will organize follow-up inspections for rectification. Representatives from 34 internet companies and relevant officers in charge of local administrations for market regulation attended the meeting. ([More](#))

上海英文外卖平台因实施“二选一”被罚116万

2021年4月12日，上海市市场监督管理局（“上海市市监局”）发布了对上海食派士商贸发展有限公司（“食派士”）的处罚决定书。食派士为互联网餐饮外送平台，主要提供英语餐饮外送服务信息和外送服务。经调查，上海市市监局认定，自2017年1月至2019年10月，食派士利用其在上海市提供英文服务的在线餐饮外送平台服务市场的支配地位，无正当理由实施了“二选一”、签订排他性合作协议的限定交易行为。综合考虑后，上海市市监局最终对其处以2018年度销售额3%的罚款，合计人民币116.86万元。（[查看更多](#)）

An English Food Delivery Platform in Shanghai Fined CNY 1.16 Million for Implementing “Either-or”

On April 12, 2021, the Shanghai Municipal Administration for Market Regulation (“Shanghai AMR”) issued a penalty decision against Shanghai Sherpa's Delivery & Service Co., Ltd (“Sherpa's”). Sherpa's is an internet food delivery platform, which mainly provides English food delivery service information and delivery services. After investigations, Shanghai AMR found that from January of 2017 to October of 2019, Sherpa's took advantage of its dominant position in the service market of online food delivery platform that provides English services in Shanghai and restricted transaction through “either-or” and exclusive cooperation agreements without justifiable reasons. After comprehensive consideration,

Shanghai AMR finally imposed a fine of 3% of Sherpa's 2018 sales, totaling CNY 1.1686 million. ([More](#))

互联网平台首例反垄断处罚：简析阿里案

2021年4月10日，市场监管总局发布了对阿里巴巴集团控股有限公司（“阿里巴巴”）的处罚决定书和行政指导书。市场监管总局认定阿里巴巴滥用其在中国境内网络零售平台服务市场的支配地位，排除、限制了相关市场竞争，责令其停止违法行为，并处以人民币182.28亿的罚款。行政指导书要求阿里巴巴制定整改方案，并连续三年向总局报送年度自查合规报告。这是中国反垄断机构开出的首张“百亿罚单”，且结案周期远低于反垄断调查平均周期，本案也是首次针对具体企业同时做出行政处罚与行政指导。（[查看更多](#)）

First Antitrust Penalty for Internet Platform Company: Alibaba Case Analysis

On 10 April 2021, SAMR issued the administrative penalty decision against Alibaba Group Holding Limited (“Alibaba”) as well as administrative guidance opinions. SAMR found that Alibaba had abused its dominant position in China online retailing platform service market to eliminate and restrict competition in the relevant market, and ordered Alibaba to stop the illegal conduct and imposed a fine of CNY 18.228 billion. As the meantime, the administrative guidance opinions require Alibaba to propose rectification measures and annually submit self-inspection compliance report to SAMR in the following three years. This is the first “10 Billion Fine” issued by China antitrust authority, and the investigation period is far below the average antitrust investigation period. This is also the first time that administrative penalty and administrative guidance are issued simultaneously for a specific company. ([More](#))

海外动态 Overseas News

《数字市场竞争调查最终报告》获美国众议院司法委员会通过

2021年4月14日，美国众议院司法委员会通过了《数字市场竞争调查最终报告》。司法委员会主席杰罗德·纳德勒（Jerrod Nadler）发表声明称，“当今的数字市场高度集中，最大的公司已经从创新型初创公司变为强大的市场守门员。这份报告还指明了反垄断机构执法的缺位。此外，法院也错误地理解和适用反垄断法规，与国会背道而驰”。纳德勒提出要现代化、重振反垄断法律规范和执法，确保司法部和联邦贸易委员会利用所有可用工具充分公平地执法，并及时为执法机构提供其所需要的额外工具、人员和资源。（[查看更多](#)）

House Judiciary Committee Passes the Final Report on Investigation of Competition in Digital Markets

On April 14, 2021, the House Judiciary Committee passed the *Final Report on Investigation of Competition in Digital Markets*. The House Judiciary Committee Chairman Jerrod Nadler issued a statement, stating that “Today’s digital markets are highly concentrated. The largest companies have morphed from being innovative startups into powerful gatekeepers. The Report also makes clear that the Antitrust

enforcement agencies have been missing in action. Furthermore, the courts have incorrectly interpreted and applied the antitrust statutes in ways that run counter to Congress.” Nadler proposed to modernize and reinvigorate antitrust law and enforcement, ensure that the Department of Justice and the Federal Trade Commission use all the tools at their disposal to fully and fairly enforce the law, and immediately provide the additional tools, staff and resources that agencies need. ([More](#))

美国联邦第五巡回上诉法院维持FTC对益邦制药的处罚决定

2021年4月13日，美国联邦贸易委员会（Federal Trade Commission, “FTC”）发布通告称，美国联邦第五巡回上诉法院维持了FTC对益邦制药公司（Impax Laboratories, LLC, “益邦制药”）实施反向支付协议行为的处罚决定。2017年，FTC对益邦制药提起行政诉讼，指控其与远藤制药公司（Endo Pharmaceuticals Inc., “远藤制药”）于2010年违法约定，将益邦制药旗下药品进入市场的时间推迟至2013年1月以避免竞争，该药品为远藤制药开发的Opana ER的仿制药。作为交换，远藤制药向益邦制药支付约1.12亿美元。2021年1月，FTC再次起诉，此次联邦第五巡回上诉法院维持了FTC的处罚决定。（[查看更多](#)）

U.S. Court of Appeals for the Fifth Circuit Upholds FTC’s Opinion against Generic Pharmaceutical Company Impax Laboratories, LLC

On April 13, 2021, the U.S. Court of Appeals for the Fifth Circuit upheld the Federal Trade Commission (“FTC”)’s penalty decision against Impax Laboratories, LLC (“Impax”) for implementing a reverse payment agreement. In 2017, FTC filed an administrative complaint against Impax, charging that in 2010, Impax and Endo Pharmaceuticals Inc. (“Endo”) illegally agreed that Impax would not compete by marketing a generic version of Endo’s Opana ER until January 2013. In exchange, Endo paid Impax more than USD 112 million. In the January of 2021, FTC charged again. This time, the U.S. Court of Appeals for the Fifth Circuit upheld FTC’s determination. ([More](#))

日本公平贸易委员会发布关于修订版《反垄断法》下新制度的特别说明

2021年4月13日，日本公平贸易委员会（Japan Fair Trade Commission, “JFTC”）发布了关于修订版《反垄断法》下新制度的特别说明。修订的《反垄断法》对课征金制度（surcharge system）、宽大制度以及决定程序进行了调整。修订的课征金制度中包含了新增的课征金计算基础和修订的计算费率。新的宽大制度引入企业在查处案件过程中的配合程度来增加减免率。同时，从使新的宽大制度更为有效的同时实质性保障法律咨询保密性、以及确保行政调查程序正当性的考虑出发，新增了行政调查过程中的决定程序。（[查看更多](#)）

JFTC Issues Special Feature on the New System under the Amended Antimonopoly Act

On April 13, 2021, the Japan Fair Trade Commission (“JFTC”) issued the Special Feature on the New

System under *the Amended Antimonopoly Act*. *The Amended Antimonopoly Act* revised the surcharge system, the leniency program and determination procedures. The revised surcharge system includes an addition of the basis for the calculation and a revision of the calculation rate. The new leniency program introduced adding reduction rates according to the degree of enterprises' cooperation in revealing the case. At the same time, from the perspective of making the new leniency program more effective while substantially protecting confidential legal advice, and ensuring the appropriateness of administrative investigation procedures, the determination procedures in the administrative investigation procedures were newly introduced. ([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。

This Newsletter has been prepared for clients and professional associates of Lifang & Partners. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.



Subscribe to our WeChat community

扫码关注公众号“立方律师事务所”和“竞争法视界”

北京 | 上海 | 武汉 | 广州 | 深圳 | 韩国
Beijing | Shanghai | Wuhan | Guangzhou | Shenzhen | Korea