



NEWSLETTER

LIFANG & PARTNERS **立方观评**

No.69

2018.06

立方竞争法周报

Weekly Competition Law News



| 目录 | CONTENTS |

执法机构 | AUTHORITIES

1、国家市场监督管理总局召开“6·18”网络集中促销行政指导座谈会，禁止“二选一”。

The SAMR Holds a Symposium on the Administrative Guidance of the "6·18" Network Promotion Activities, forbidding "choosing one between two".

经营者集中 | MERGER CONTROL

2、高通周五宣布延长对恩智浦半导体的现金收购要约。

Qualcomm Announces Friday to Extend Its Cash Offer for NXP Semiconductor.

行政调查 | ADMINISTRATIVE INVESTIGATION

3、中国反垄断执法机构正式调查美光、三星、海力士存储三巨头。

SAMR Launches a Formal Investigation to Three Storage Chips Manufacturers, Samsung, SK Hynix and Micron.

民事诉讼 | CIVIL LITIGATION

4、芒果TV起诉百度不正当竞争，索赔300万元。

Mango TV Sues Baidu for Unfair Competition with a Claim for 3 Million Yuan.

5、腾讯与今日头条互诉不正当竞争。

Tencent and Toutiao Sue Each Other for Unfair Competition.

海外动态 | OVERSEAS NEWS

6、欧盟《通用数据保护条例》于2018年5月25日正式生效。

EU's General Data Protection Regulation Comes into Force on May 25, 2018.

7、AT&T 850亿美元收购时代华纳获美国法院支持。

US Judge Approves \$85 Billion AT&T-Time Warner Deal.

8、美国最高法院受理苹果App Store佣金反垄断案上诉。

U.S. Supreme Court Agrees to Hear Apple App Store Antitrust Appeal.

1、国家市场监督管理总局召开“6·18”网络集中促销行政指导座谈会，禁止“二选一”

国家市场监督管理总局近日召开“6·18”网络集中促销活动行政指导座谈会，京东、阿里巴巴、苏宁易购等12家网络交易平台（网站）相关负责人出席。

总局要求网络交易平台经营者强化“第一责任人”意识，在平台治理、公平竞争、消费者权益保护、知识产权保护、食品安全等方面履行网络经营主体责任，其中特别提到，禁止通过协议等方式限制、排斥促销经营者参加其他平台组织的促销活动。少数电商平台要求商家“二选一”、禁止商家在其他平台搞促销的问题，一方面限制了促销平台之间的公平竞争，甚至还引发了电商平台之间的纠纷，可谓徒生内耗；另一方面，也侵犯了商家和消费者的自由选择权利。对此，市场监管部门依法介入很有必要。

网监司相关负责人表示，下一步，各地工商和市场监管部门要协同开展监测监管工作，网络交易平台（网站）经营者要积极配合工商和市场监管部门的工作，强化“第一责任人”意识，切实履行网络经营主体责任。【1】

The SAMR Holds a Symposium on the Administrative Guidance of the "6·18" Network Promotion Activities, forbidding “choosing one between two”.

The SAMR recently held a symposium on the administrative guidance of the "6·18" network promotion activities, and the leaders of 12 network trading platforms (websites), including JD, Alibaba, Suning.com, etc. attended the forum.

The SAMR requires operators of online trading platforms to strengthen their consciousness of the "first responsible person". The SAMR also asks the e-commerce players to fulfill their responsibilities regarding platform governance, fair competition, protection of consumers' rights and interest, intellectual property rights protection, and food security during the promotional event. In particular, the SAMR mentions that operators cannot restrict or exclude vendors from taking part in promotional activities organized by rival platforms. A few e-commerce platforms require seller to "choose one between two" and prohibit the promotion on other platforms. On the one hand, it restricts the fair competition between the platforms, and even causes disputes between them. On the other hand, it also violates the free choice right of merchants and consumers. Therefore, it is necessary for market supervision regulators to intervene in accordance with the laws.

【1】 http://samr.saic.gov.cn/xw/yw/zj/201806/t20180608_274551.html

The relevant person in charge of the Network Supervision Department said local commerce and market regulators should cooperate in implementing the supervision and management work during the shopping festival. Operators of online trading platforms (websites) must actively cooperate with the market supervision regulators, strengthen the awareness of "the first responsible person," and effectively fulfill the responsibilities of the network operators.

2、高通周五宣布延长对恩智浦半导体的现金收购要约。

为高通周五宣布延长对恩智浦半导体的现金收购要约,以等待监管机构的批准。此前知情人士表示,高通团队与国家市场监督管理总局于6月1日进行了会晤。这份收购要约原本定于美国东部时间6月15日下午5点(北京时间6月16日凌晨5点)到期,但现在则已被延长至美国东部时间6月22日下午5点。高通和恩智浦最初在2016年10月27日达成收购要约,此后经历股东反对、加价、延长收购要约期限等各种挑战。

分析师认为,在中美贸易和投资紧张局势未得到解决之前,中国监管机构不太可能批准这次交易。【2】

Qualcomm Announces Friday to Extend Its Cash Offer for NXP Semiconductor.

Qualcomm Inc. has extended on Friday its cash tender offer for NXP Semiconductor N.V., waiting for regulator's approval. Earlier, people familiar with the matter said a Qualcomm team and officials from the State Administration for Market Regulation (SAMR) had met on June 1. The expiration was extended to 5 p.m. ET on June 22, from 5 p.m. on June 15 (Beijing Time 5 a.m. on June 16). At the beginning, the offer is pursuant to the merger agreement dated Oct. 27, 2016, after which they experienced various challenges such as shareholder opposition, price increase, and extension of the offer period.

Analysts believe that the SAMR is unlikely to approve this acquisition until the Sino-US trade and investment tensions are resolved.

【2】 <http://wemedia.ifeng.com/65247753/wemedia.shtml>

3、中国反垄断执法机构正式调查美光、三星、海力士存储三巨头。

近日，国家市场监督管理总局正式启动对三星、海力士、美光三家存储芯片巨头有关动态随机存储器（DRAM）的反垄断调查。

国家市场监督管理总局于5月31日对三星、海力士、美光位于北京、上海、深圳的办公室展开突袭调查。三大巨头的涨价行为以及部分DRAM终端产品制造商的举报推动了此次调查的启动。

在全球DRAM市场上，三巨头占据90%以上市场份额。自2016年第三季度开始，存储芯片的涨价持续至今，已接近两年。中国是全球最主要的存储芯片消费国，受存储芯片涨价因素，2017年，中国进口存储芯片889.21亿美元，同比2016年的637.14亿美元增长39.56%。2017年底反垄断执法机构已就持续涨价问题约谈三星。当时DRAM正经历破纪录的七季连涨，国家发展改革委方面表示，已注意到DRAM行业价格的飙升，将会更多关注未来可能由行业“价格操纵”行为引发的问题，可能存在多家公司协同行动，推高芯片价格，谋求获利最大化的行为。2018年5月，国家市场监管总局约谈了美光，对过去几个季度内存芯片价格持续上涨表示担忧。此阶段涨价给中国芯片制造公司带来很大的零部件成本压力。同时，美光涉嫌限制设备商供货给福建晋华，滥用市场支配地位，妨碍公平竞争。

行业分析人士指出，由于DRAM生产周期长达八周以上，从投入资本支出后，到新增产能产出更长达至少一年，供应商才能增加芯片产能输出，DRAM供应商最有可能因涉嫌“限制商品中销售数量”被调查。【3】

SAMR Launches a Formal Investigation to Three Storage Chips Manufacturers, Samsung, SK-Hynix and Micron.

The State Administration for Market Regulation (SAMR) launched a formal investigation to Samsung, SK Hynix Semiconductor and Micron Technology, targeting the dynamic random access memory (DRAM) sector.

The Beijing, Shanghai and Shenzhen offices of Samsung, SK Hynix Semiconductor and Micron Technology were raided on 31 May by SAMR. It was said that the raids may have been sparked by recent price surges and complaints from DRAM terminal product makers.

Samsung, SK Hynix, and Micron account for 90% of the DRAM global market. Since the third quarter of 2016, the price of DRAM has continued to rise so far, nearly two years. China is the world's leading consumer of DRAM. Due to the price surges, China imported DRAM of US\$88.921 billion in 2017, an increase of 39.56% year-on-year to US\$637.14 billion in 2016. At the end of 2017, the Chinese

【3】 <http://tech.qq.com/a/20180602/013015.htm>
<http://www.expreview.com/61618.html>

NDRC said that it had noticed price surges of DRAM industry. It would pay more attention to future problems that may be triggered by “price manipulation”. There may be multiple companies working together to push up prices and maximize their profits. On May 2018, the SAMR held a meeting with Micron to express concerns about the continuing price increase of DRAM over the past quarters. The rising prices have made Chinese manufacturers struggling under component cost pressure. At the same time, Micron is suspected of restricting the supply of equipment to Fujian Jinhua, abusing the dominant market position and impeding fair competition.

Industry analysts point out that the production cycle of DRAM is more than eight weeks; and it takes at least one year for the CAPEX to turn into new production capacity so that suppliers can increase the chip output. Therefore, DRAM manufacturers are most likely to be investigated due to “limiting the amounts of products for sale”.

4、芒果TV起诉百度不正当竞争，索赔300万元。

湖南快乐阳光互动娱乐传媒有限公司以不正当竞争为由将北京百度网讯科技有限公司诉至法院，要求百度停止通过其经营的“袋鼠遥控”客户端实施屏蔽视频贴片广告、阻止芒果TV软件下载和投屏至电视机和机顶盒端等不正当竞争行为，并赔偿经济损失及维权合理费用共计300万。原告湖南快乐阳光公司认为，百度作为经营规模巨大的互联网公司，其所开发运营的“袋鼠遥控”软件享有庞大的用户群体，且其实施的不正当竞争行为严重破坏了芒果TV的正常商业模式，给芒果TV造成极大的经济损失。

海淀法院受理了此案，目前，案件正在进一步审理中。【4】

Mango TV Sues Baidu for Unfair Competition with a Claim for 3 Million Yuan.

Hunan Happy Sunshine Interactive Entertainment Media Co. Ltd. (Happy Sunshine) has filed a civil lawsuit against Beijing Baidu Netcom Science & Technology Co., Ltd. (Baidu) over alleged unfair competition. Happy Sunshine has sought CNY 3 million in compensation and an injunction requiring the defendant to stop unfair activities through the “Kangaroo Remote Control” software it operates, such as blocking video adverts, preventing Mango TV software downloads and casting screen to TVs and set-top boxes. The plaintiff, Happy Sunshine, believes that Baidu, as a large-scale Internet company, has a huge user base for the development and operation of the “Kangaroo Remote Control” software, and its unfair competition activities have severely damaged the normal business model of Mango TV, which caused great economic losses to them.

【4】 <http://bjhdfy.chinacourt.org/public/detail.php?id=5434>

5、腾讯与今日头条互诉不正当竞争。

6月1日，腾讯公司发布公告称，“今日头条”及“抖音”系列产品运营者北京字节跳动科技有限公司、北京微播视界科技有限公司涉嫌诋毁商誉的不正当竞争行为，通过其自有新闻媒体平台等渠道大量发布、传播贬损诋毁腾讯公司的言论、文章或视频，导致腾讯公司商誉受损。腾讯公司即日起正式起诉上述两家公司，要求其在自有新闻媒体平台全量推送公开道歉，索赔人民币1元，并宣布暂停与“今日头条”和“抖音”的全部合作事宜。

同日，今日头条向海淀法院起诉，案由分别为腾讯QQ空间和腾讯安全管家拦截、屏蔽其网页链接。今日头条提起的两起案件案由均是不正当竞争诉讼，今日头条要求腾讯公司立即停止一切相关行为，公开赔礼道歉，并赔偿损失9000万元。目前，腾讯尚未对今日头条的这一起诉做出回应。这一诉讼或将直指《反不正当竞争法》于2017年底修订后新加入的第12条，这一法条被称为互联网专条，本次诉讼中，海淀法院有很大可能将结合这一条款对双方行为具体判定。

尽管已经进入司法场域，法学学者多对两起商业竞争引发的诉讼持谨慎观望态度。由于起诉事实目前并不明确，司法裁判结果如何，有待事实进一步披露。【5】

Tencent and Toutiao Sue Each Other for Unfair Competition.

On June 1, Tencent announced that Beijing Byte Dance Telecommunications Co., Ltd and Beijing Micro-Vision Technology Co., Ltd, which operate Toutiao and Douyin, defamed reputation of them, engaging in unfair competition. Two companies released, spread speeches, articles or videos to denigrate Tencent through channels of their own news media platform, which caused damage to Tencent's reputation. Tencent formally sued these two companies and asked them to apologize publicly in their own news media platforms, claiming 1 yuan, and announced the suspension of all cooperation with "Toutiao" and "Douyin".

On the same day, Toutiao filed two civil lawsuits against Tencent's QQ space and Tencent's Safety Manager for intercepting and blocking users' access to the company's content. The two cases are unfair competition lawsuits. Toutiao requires Tencent to immediately cease all related activities, publicly apologize and compensate for the loss of 90 million yuan. At present, Tencent has not responded to the litigations. These lawsuits may refer to Article 12 of the newly revised Competition Law. Article 12 is also called the Internet special article. In this case, it is likely that the Haidian court will refer to this clause to determine both parties' behaviors.

Although it has entered the judicial field, law scholars are cautious about the two lawsuits triggered by commercial competition. As the facts of the litigations are not clear at present, the results of judicial deci-

【5】 <https://weibo.com/1846456085/Gjmyfpo4H?type=comment>
<http://news.hexun.com/2018-06-03/193134181.html>
<http://net.chinabyte.com/498/14523998.shtml>

6、欧盟《通用数据保护条例》于2018年5月25日正式生效。

《通用数据保护条例》将代替1995年制定的《数据保护指令》。随着移动互联网的广泛普及，旧版的《数据保护指令》已经不能适应时代需要。经过四年的审议，欧盟议会于2016年4月14日通过了《通用数据保护条例》。两年的过渡期结束，该条例于2018年5月25日正式生效。

GDPR大幅拓展了对于个人数据的定义，个人在要求公司披露或删除所持有的个人数据方面拥有更大的话语权；监管机构将首次能够在整个欧盟范围内协同工作，而不是在每个辖区内开展单独的行动；并且他们的执法行动将会有真正的效力，现在最高罚款额达到2000万欧元或者全球营业额的4%。对公司来说，受到影响最大的将是那些商业模式依赖大规模获取和利用消费者数据的公司。如果公司依赖于获得同意后处理数据，那么相关条款必须明确并告知用户，如果改变数据使用方式，条款也需要更新。

EU's General Data Protection Regulation Comes into Force on May 25, 2018.

The General Data Protection Regulations (GDPR) is a replacement for the 1995 Data Protection Directive. With the popularity of mobile Internet, the old version can no longer meet the needs of the times. After four years of deliberation, the EU Parliament passed GDPR on April 14, 2016. After two years of transition, the regulations came into effect on May 25, 2018.

GDPR will significantly strengthen a number of rights: individuals will find themselves with more power to demand companies reveal or delete the personal data they hold; regulators will be able to work in concert across the EU for the first time, rather than having to launch separate actions in each jurisdiction; and their enforcement actions will have real teeth, with the maximum fine now reaching the higher of €20m (£17.5m) or 4% of the company's global turnover. The largest impact will be on firms whose business models rely on acquiring and exploiting consumer data at scale. If companies rely on consent to process data, that consent now has to be explicit and informed - and renewed if the use changes. 【6】

7、AT&T 850亿美元收购时代华纳获法院支持。

经过持续六周的审判，在当地时间6月12日下午，美国联邦地区法院法官Richard Leon无条件批准美国电话电报公司(AT&T)以850亿美元收购时代华纳集团(Time Warner)的交易案，驳回了美国司法部提出的此项交易涉嫌垄断的诉讼。Leon的裁决做出后，许多行业的公司可能会更自由地达成交易。

【6】 <https://www.theguardian.com/technology/2018/may/21/what-is-gdpr-and-how-will-it-affect-you>

“我们对法院今天的决定感到失望。”美国司法部反托拉斯部门负责人Maken Delrahim在一份声明中说到，“我们仍然认为，AT&T与时代华纳之间的合并计划，将削减付费电视市场的竞争力和创新力。”反托拉斯部门将对判决进行复核，Maken Delrahim称，“考虑采取下一步行动。”

最初，这些公司计划采用“选择性执法”的抗辩，称由于特朗普对CNN的蔑视，政府阻止了这笔交易。最终这些公司选择仅以反托拉斯理由应诉，其被证明是有效的。

US Judge Approves \$85 Billion AT&T-Time Warner Deal.

After a six-week trial, on the afternoon of June 12, local time, US District Court Judge Richard Leon unconditionally approved AT&T to purchase Time Warner for US\$85 billion and rejected that the US Department of Justice filed a lawsuit in which this transaction was suspected of monopoly. Companies in many industries may feel more free to strike deals as a result of Leon's ruling.

Maken Delrahim, head of Antitrust Division, US Department of Justice, said in a statement, “we were disappointed in the ruling”, “we continue to believe that the pay-TV market will be less competitive and less innovative as a result of the proposed merger between AT&T and Time Warner”. The antitrust department will review the verdict, said Maken Delrahim, "considering taking the next step”.

Initially, the companies planned to use a "selective enforcement" defense, alleging that the administration was blocking the deal because of Trump's disdain for CNN. They chose to litigate the case on pure antitrust grounds. And ultimately that's what worked. 【7】

8、美国最高法院受理苹果App Store佣金反垄断案上诉。

美国最高法院周一同意受理苹果的上诉，后者之前在一起诉讼中被控其垄断iPhone 软件应用程序市场并迫使用户支付高额费用的行为，违反联邦反垄断法。下级法院之前决定恢复iPhone用户针对苹果通过App Store收取佣金的方式发起的集体诉讼。美国最高法院决定受理苹果对此提出的上诉。该案将给那些快速增长的电子商务公司带来更大的反垄断威胁，他们目前每年在美国的零售行业获得数千亿美元营收。美国特朗普政府支持苹果，并呼吁最高法院受理此案。

有可能受到此类诉讼威胁的电商平台包括App Store、票务网站StubHub、亚马逊的Marketplace和eBay等卖家独立定价的平台。

【7】 <http://money.cnn.com/2018/06/12/media/att-time-warner-ruling/index.html>

U.S. Supreme Court Agrees to Hear Apple App Store Antitrust Appeal.

The U.S. Supreme Court on Monday agreed to take up Apple Inc.'s bid to escape a lawsuit accusing it of breaking federal antitrust laws by monopolizing the market for iPhone software applications and causing consumers to pay more than they should. The justices said they would hear Apple's appeal of a lower court's ruling that revived the proposed class-action lawsuit by iPhone buyers over commissions that the company receives through its App Store. The case could expand the threat of antitrust damages against companies in the rapidly growing field of electronic commerce, which generates hundreds of billions of dollars annually in U.S. retail sales. President Donald Trump's administration backed Apple and urged the justices to take the case.

Businesses that potentially could be threatened by such consumer litigation are electronic marketplaces like the App Store, ticket site StubHub, Amazon's Marketplace and eBay where individual sellers set prices. 【8】

【8】 <https://venturebeat.com/2018/06/18/u-s-supreme-court-agrees-to-hear-apple-app-store-antitrust-appeal/>



IMPORTANT INFORMATION

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.

For more information, please visit our website at www.lifanglaw.com. If you have any questions, please contact us at info@lifanglaw.com or

Beijing Office

Add: Room 1105, Tower A, Nan Xin Cang International Building, No.A22, Dongsishitiao Street, Dongcheng District, Beijing, P.R.China 100007

Tel: 8610-64096099

Fax: 8610-64096260,64096261

Shanghai Office

Add: Room 2805, China Insurance Building, No.166 Lujiazui East Road, Pudong New Area, Shanghai, China

Tel: 8621-58501696

Fax: 8621-68380006

Guangzhou Office

Add: Room 3806, Building G, G.T.Land Plaza, No. 16, Zhujiang East Road, Zhujiang New Town, Tianhe District, Guangzhou P. R. China

Tel: 8620-85561566, 85561660, 38898535

Fax: 8620-38690070

Wuhan Office

Add: Room 1002, Tower C, Han Street Headquarter International, No.171 Zhongbei Road, Wuchang Dist, Wuhan, Hubei, P. R. China

Tel: 8627-87301677

Fax: 8627-86652877

Seoul Office

Add: Guanghuamun Officia Building 1416, Saemunan-ro 92, Jongno-gu, Seoul Republic of Korea

Tel: 0082 02 69590780

