



# NEWSLETTER

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

### 金砖国家反垄断政策协调委员会会议召开

2023年9月27日，金砖国家反垄断政策协调委员会会议以线上线下相结合的形式在南非召开。国家市场监督管理总局副局长、国家反垄断局局长甘霖出席会议，并介绍中国反垄断有关工作情况。巴西经济防务行政理事会委员维克托·奥利维拉·费尔南德斯、俄罗斯联邦反垄断局副局长安德烈·茨冈诺夫、印度竞争委员会主席拉夫尼特·考尔、南非竞争委员会主席多丽丝·切佩出席会议。会上，金砖国家与会代表分别就反垄断立法执法最新进展、重点领域反垄断监管执法合作等共同关心的问题交换了意见，一致表示将秉持开放、包容、合作、共赢的金砖精神，继续携手同行，进一步深化反垄断领域交流合作，夯实合作成果，促进金砖国家经贸健康可持续发展。（[查看更多](#)）

### 8th BRICS International Competition Conference 2023 Held

On September 27, 2023, the 8th BRICS International Competition Conference 2023 is held in South Africa in a combined online and offline manner. Commissioners of competition authorities of BRICS countries, including Brazil, Russia, India, China and South Africa attended the meeting. At the meeting, representatives of BRICS countries exchanged views on the latest progress of antimonopoly legislation and enforcement, cooperation in key areas of antimonopoly regulation and enforcement, and other issues of common concern, and unanimously expressed that they would uphold the BRICS spirit of openness, inclusiveness, cooperation and win-win situation, and would continue to join hands to deepen exchanges and cooperation in the field of antimonopoly and consolidate the results of cooperation, so as to promote the healthy and sustainable development of BRICS countries' trade and economy. ([More](#))

### 韩国通信委员会考虑对谷歌和苹果滥用应用程序市场支配地位行为罚款共计680亿韩元

2023年10月6日，韩国通信委员会（KCC）发布公告，宣布其正在考虑对滥用市场地位的谷歌和苹果分别处以475亿韩元（约2.59亿人民币）和205亿韩元（约1.12亿人民币）的罚款，主要针对谷歌和苹果强迫应用程序市场运营商使用特定支付方式的不公平行为。2022年8月16日，KCC启动了对于不公平行为的事实调查，经调查，KCC认为谷歌和苹果违反了《电气通信事业法》的禁止性规定，滥用其市场地位，强迫应用程序市场运营商使用特定支付方式，并不公平地延迟了对应用程序的审核。除拟议处罚决定外，KCC还通报了针对苹果向韩国国内应用程序开发商收取歧视性费用的纠正措施草案。KCC将在听取相关意见、完成相关程序后做出最终处罚决定。（[查看更多](#)）

### Korea Communications Commission Contemplates up to 68 Billion Won Penalty Surcharge and Corrective Measures for Google and Apple

On October 6, 2023, The Korea Communications Commission (KCC) issues a notice, announcing that it is going to impose penalty surcharges and corrective measures for Google and Apple, including 47.5

billion won for Google and 20.5 billion won for Apple, over unfair practices. On August 16, 2022, the KCC initiated a fact-checking investigation over unfair practices, where the KCC found that Google and Apple violated prohibited acts of the Telecommunications Business Act as the two tech giants forced specific payment methods and unfairly delayed application assessment by abusing their market positions. In addition, the KCC notified a corrective measure draft for Apple's discriminatory charging of fees to domestic app developers. The KCC will make a final decision after hearing opinions from business operators on the draft and going through processes. ([More](#))

## 制药业巨头联合反抗反垄断改革

2023年10月5日，据媒体报道，五家制药业巨头艾伯维（AbbVie）、安进（Amgen）、吉利德（Gilead）、默克（Merck）和诺华（Novartis）牵头，与其他26家领先企业联合创建了“美国生命科学行业生态伙伴”（“PULSE”），以对抗美国联邦贸易委员会对联邦反垄断指南进行全面修订的提议，同时倡导促进行业内创新的合并活动。美国司法部和联邦贸易委员会于2023年7月公布了新修订的合并指南草案，这标志着美国在审查合并时将大大偏离传统的审查方法，尤其是针对制药行业内的合并。对此，PULSE认为，如果拟议的合并审查和执法得以落实，可能会破坏促成众多突破性医疗方法的医疗行业生态。 ([查看更多](#))

## Pharma Giants Unite Against Antitrust Overhaul

On October 5, 2023, according to media, five pharmaceutical industry giants—AbbVie, Amgen, Gilead, Merck, and Novartis—have joined forces with 26 other leading companies to create the “Partnership for the U.S. Life Science Ecosystem” (PULSE). The newly formed coalition aims to challenge and oppose a proposed overhaul of federal antitrust guidelines while advocating for mergers and acquisitions that promote innovation within the sector. The Department of Justice and the Federal Trade Commission unveiled their draft merger guidelines in July 2023, marking a significant departure from their traditional approach to examining mergers, particularly within the pharmaceutical industry. The PULSE believed that if the proposed changes to merger and acquisition (M&A) review and enforcement proceed, they could undermine the dynamic ecosystem responsible for numerous ground breaking medical treatments. ([More](#))

## 谷歌应德国联邦卡特尔局要求承诺进行进一步数据控制

2023年10月5日，德国联邦卡特尔局（Bundeskartellamt）发布公告，宣布谷歌已承诺更改其用户数据条款，以结束对其的反垄断诉讼。2021年1月，联邦卡特尔局根据《反限制竞争法》第19a条起诉谷歌，称其在用户不知情的情况下，随意利用大量用户数据并推送个性化广告，且设置措施限制竞争对手参与竞争。对此，谷歌承诺将会把谷歌服务的用户数据与其他谷歌或非谷歌来源的用户数据合并，或者在不同谷歌服务中交叉使用这些数据。欧盟委员会于2023年9月根据《数字市场法》（DMA）指定谷歌母公司Alphabet为“守门人”，要求相关核心平台服务符合DMA规定的全部义务要求。本次承诺将谷歌在DMA下的义务扩展到更多平台服务上，从而进一步约束Alphabet。 ([查看更多](#))



## Google Pledges Further Data Controls at Request of German Federal Cartel Office

On October 5, 2023, the German Federal Cartel Office (Bundeskartellamt) issues a notice, announcing that Google has pledged to give users better choice as to how Google processes their data, to terminate the proceeding against it. In January 2021, the Federal Cartel Office started a proceeding regarding Google's data processing under section 19a of the German Competition Act (GWB), alleging that it had arbitrarily exploited a large amount of user data and pushed personalised advertisements without their knowledge and that it had set up measures to restrict competitors from competing. In response, Google pledges to combine personal data from one Google service with personal data from other Google or non-Google sources or cross-use these data in Google services that are provided separately. In September 2023, the European Commission designated Alphabet as a "gatekeeper", requiring Alphabet to comply with the obligations under the DMA with regard to its core platform services. The Federal Cartel Office's decision to declare Google's pledges binding essentially extends Google's obligations under the DMA to further Google services and thus makes Alphabet subject to "further obligations" within the meaning of the DMA. ([More](#))

## CMA附条件批准日立铁路收购泰雷兹的地面运输业务

2023年10月4日，英国竞争与市场管理局（CMA）附条件批准了日立铁路（Hitachi Rail Ltd）以17亿欧元收购泰雷兹的地面运输业务（Thales SA's Ground Transportation business）。日立铁路和泰雷兹的地面运输业务是干线和城市轨道交通信号系统的全球供应商。在数字干线信号系统供应方面，CMA认为日立铁路和泰雷兹在信号系统供应上存在着竞争关系，合并将导致市场上的竞争者数量减少。作为回应，日立铁路提出出售其在英国、法国和德国的现有干线信号业务（包括员工、技术和生产研发基地）。在列车控制信号系统供应方面，CMA认为日立铁路不太可能满足伦敦交通局对列车控制信号系统供应商的相关要求，不会大幅减少竞争。基于以上两点，日立铁路出售其部分干线信号业务的提议解决了CMA对以上两家领先信号供应商合并的竞争担忧。（[查看更多](#)）

## CMA Conditionally Approves Hitachi Rail's Acquisition of Thales GTS

On October 4, 2023, The Competition and Markets Authority (CMA) has made its final decision in relation to Hitachi Rail Ltd (Hitachi Rail)'s €1.7 billion proposed purchase of Thales SA's Ground Transportation business (Thales GTS) following an in-depth investigation. Hitachi Rail and Thales GTS are both global suppliers of signalling systems for mainline and urban railway networks. Regarding the supply market for Digital Mainline Signalling Systems, the CMA found that Hitachi Rail and Thales GTS are both well placed to supply these systems and that, should the merger go ahead, few credible competitors would remain. In response, Hitachi has offered to sell its existing mainline signalling business in the United Kingdom, France, and Germany. Regarding the supply market for Communication Based Train Control Signalling Systems, the CMA found that Hitachi Rail would be unlikely to meet requirements for these projects, therefore no competition concern is raised. Therefore Hitachi Rail's proposal to sell part of its mainline signalling business addresses the CMA's competitive concerns about the proposed transaction of the two leading signalling suppliers listed above. ([More](#))

## JFTC宣布竞争执法者和决策者联合峰会将于2023年11月8日召开

2023年10月4日，日本公平贸易委员会（JFTC）发布公告，宣布G7竞争执法者和决策者联合峰会将于2023年11月8日举办。本次峰会由JFTC与内阁官房数字市场竞争本部秘书处共同举办，目的在于促进国际合作，共同推动数字领域的市场竞争和竞争法的有效实施。2023年11月9日，JFTC竞争政策研究中心将举办一场研讨会作为峰会的会外活动，专题讨论会将就“数字经济的执法和监管：竞争管理机构采取积极举措的趋势”和“合并监管的动态：追踪竞争管理机构的关注重点”两个主题进行讨论，着重关注数字经济执法和监管以及企业合并监管方面的最新举措。（[查看更多](#)）

## **JFTC Announces Joint Competition Enforcers and Policy Makers Summit to be Held on 8 November 2023**

On October 4, 2023, The Japan Fair Trade Commission (JFTC) is to host the G7 Joint Competition Enforcers and Policy Makers Summit on November 8, 2023 in Tokyo in cooperation with the Secretariat of Digital Market Competition Headquarters, Cabinet Headquarters, Cabinet Secretariat to facilitate international efforts to promote competitive markets and effective competition law enforcement. On November 9, 2023, the day after the Summit, the Competition Policy Research Center will host a symposium as the side event of the Summit. At this symposium, they will have panel discussions on two topics: “Enforcement and Regulation in the midst of Full-fledged Digitalized Economy: Trends of Active Efforts by Competition Authorities” and “Dynamisms of Merger Regulation: Tracking the Focus by Competition Authorities”. These panel discussions will focus on the status of these authorities' efforts on enforcement and regulation in the middle of digitalized economy and merger regulation. ([More](#))

## **FTC与17个州共同起诉亚马逊非法维持垄断地位**

2023年9月26日，美国联邦贸易委员会（FTC）发布公告，宣布和17个州的州检察长起诉亚马逊（Amazon.com, Inc），指控其利用一系列相互关联的反竞争和不公平策略非法维持其垄断力量。原告称，亚马逊的排他性行为阻碍了现有竞争对手的发展和竞争对手的出现。亚马逊通过扼杀价格、产品选择和质量方面的竞争，阻止当前或未来的竞争对手吸引足够数量的购物者和卖家，从而确保当前或未来的竞争对手都无法威胁到其主导地位。亚马逊的这一布局广泛影响着每年数千亿美元的零售业销售额，触及大小企业销售的数十万种产品，影响着超过一亿的消费者。对此，FTC与及17个州正在寻求联邦法院颁布永久禁令，禁止亚马逊从事其非法行为，从而撬动亚马逊的垄断地位，恢复市场竞争。（[查看更多](#)）

## **FTC and 17 States Sue Amazon for Illegally Maintaining Monopoly Power**

On September 26, 2023, the Federal Trade Commission (FTC) issues a notice, announcing that the FTC and 17 state attorneys general sued Amazon.com, Inc. alleging that the online retail and technology company is a monopolist that uses a set of interlocking anticompetitive and unfair strategies to illegally maintain its monopoly power. The plaintiff alleges Amazon engages in a course of exclusionary conduct that prevents current competitors from growing and new competitors from emerging. By stifling competition on price, product selection, quality, and by preventing its current or future rivals from attracting a critical mass of shoppers and sellers, Amazon ensures that no current or future rival can threaten its dominance. Amazon's far-reaching schemes impact hundreds of billions of dollars in retail

sales every year, touch hundreds of thousands of products sold by businesses big and small and affect over a hundred million shoppers. The FTC, along with its state partners, are seeking a permanent injunction in federal court that would prohibit Amazon from engaging in its unlawful conduct and pry loose Amazon's monopolistic control to restore competition. ([More](#))

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

### 国家互联网信息办公室发布《规范和促进数据跨境流动规定（征求意见稿）》

2023年9月28日，为保障国家数据安全，保护个人信息权益，进一步规范和促进数据依法有序自由流动，国家互联网信息办公室发布《规范和促进数据跨境流动规定（征求意见稿）》（以下简称《数据跨境规定》）并向社会公众公开征求意见，征求截止时间为2023年10月15日。

《数据跨境规定》明确规定，符合以下情形之一的，不需要申报数据出境安全评估、订立个人信息出境标准合同、通过个人信息保护认证：

（一）为订立、履行个人作为一方当事人的合同所必需，如跨境购物、跨境汇款、机票酒店预订、签证办理等，必须向境外提供个人信息的；

（二）按照依法制定的劳动规章制度和依法签订的集体合同实施人力资源管理，必须向境外提供内部员工个人信息的；

（三）紧急情况下为保护自然人的生命健康和财产安全等，必须向境外提供个人信息的。

此外，预计一年内向境外提供不满1万人个人信息的，不需要申报数据出境安全评估、订立个人信息出境标准合同、通过个人信息保护认证。

总体而言，《数据跨境规定》简化了数据出境的相关规定，进一步平衡了数据跨境流动与数据安全，有效降低了企业数据合规成本，是对《数据出境安全评估办法》《个人信息出境标准合同办法》等相关规定的修订和完善，更加具有灵活性。 ([查看更多](#))

### CAC Issues the Provisions on Regulating and Promoting Cross-border Data Flow (Draft for Comments)

On 28 September 2023, in order to safeguard national data security, protect the rights and interests of personal information, and further regulate and promote the free flow of data in an orderly and legally compliant manner, the Cyberspace Administration of China ("CAC") issued the *Provisions on Regulating and Promoting Cross-border Data Flow (Draft for Comments)* (the "*Cross-border Data Flow Provisions*"), which is open for public comments until 15 October 2023.

The *Cross-border Data Flow Provisions* specified that under any of the following circumstances, it is not required to apply for security assessment for data to be provided abroad, to conclude a standard



contract for personal information to be provided abroad or to pass the certification for personal information protection:

(i) where personal information must be provided abroad, as it is necessary for the conclusion and performance of a contract to which the individual is a party, such as cross-border shopping, cross-border remittance, air tickets and hotel booking, and visa processing, etc.;

(ii) For purposes of human resources management in accordance with the labor regulations and rules formulated in accordance with the law and collective contracts concluded in accordance with the law, it is necessary to provide abroad the personal information of internal employees; and

(iii) where personal information has to be provided overseas in order to protect the life, health and property safety of natural persons in an emergency.

In addition, where it is estimated to provide abroad personal information of less than 10,000 individuals within one year, it is not required to apply for security assessment for the data to be provided abroad, to conclude a standard contract for outbound provision of personal information or to pass the certification for personal information protection.

In general, if adopted the *Cross-border Data Flow Provisions* are aimed to simplify the relevant provisions on cross-border transfer of data, further balance the data cross-border flow and data security, effectively reduce the cost of data compliance for enterprises, and are a revision to and improvement of the *Measures for the Security Assessment of Outbound Data Transfer* and the *Measures for Standard Contracts for Outbound Transfer of Personal Information*, and other relevant provisions, making it more flexible. ([More](#))

### 信安标委发布《信息安全技术 存储介质数据恢复服务安全规范》（征求意见稿）

2023年9月28日，全国信息安全标准化技术委员会（以下简称“信安标委”）秘书处发布关于征求国家标准《信息安全技术 存储介质数据恢复服务安全规范》（征求意见稿）（以下简称《安全规范》）意见的通知，并向社会公众公开征求意见，征求截止时间为2023年11月27日。

《安全规范》适用于指导存储介质数据恢复服务机构针对非涉及国家秘密的数据恢复服务的实施和管理、存储介质数据恢复服务机构的自评价和第三方监督评审，也适用于存储服务使用单位采购数据恢复服务的评价。《安全规范》主要解决支撑《网络安全法》《数据安全法》等法规对数据恢复服务的安全要求，规范数据恢复从业机构、从业者、从业环境；提出数据恢复服务管理和技术安全要求；提出数据恢复服务安全要求评价体系。（[查看更多](#)）

### NISSTC Issues Information Security Technology - Security Regulations for Data Recovery Services for Storage Media (Draft for Comments)

On 28 September 2023, the Secretariat of the National Information Security Standardization Technical Committee (the “NISSTC”) issued the national standard, *Information Security Technology - Security Regulations for Data Recovery Services for Storage Media (Draft for Comments)* (the “Security Regulations”), which is open for public comments until 27 November 2023.

The *Security Regulations* apply to guiding the implementation and management of storage media data recovery service organisations for data recovery services that do not involve state secrets, to the self-evaluation and third-party supervision and evaluation of storage media data recovery service organisations, and also to the evaluation of data recovery services procured by storage service users. The *Security Regulations* mainly deal with the security requirements for data recovery services underpinned by the *Cybersecurity Law*, the *Data Security Law* and other laws and regulations, and regulates data recovery practice organisations, practitioners and practice environments; put forward requirements for the management and technical security of data recovery services; and put forward a system for evaluating the security requirements for data recovery services. ([More](#))

## 上海市网信办会同相关部门召开部分商超企业个人信息保护合规工作座谈会

2023年9月19日，上海市网信办会同市市场监管局、市国资委、市商务委召集本市部分商超企业，组织召开个人信息保护合规工作座谈会，共计15家企业参加。

市网信办相关负责人指出，商超购物类APP、小程序与群众生活息息相关，且影响范围广、用户感知强、使用频次高，相关企业要认真对照以下《商超购物场景下常见个人信息保护问题自查清单》（以下简称《自查清单》），举一反三开展自查整改。《自查清单》中主要涉及隐私政策的提示、个人信息的收集、敏感个人信息收集、非必要个人信息或权限的索取以及账号注销功能的提供。（[查看更多](#)）

## Cyberspace Administration of Shanghai and Relevant Departments Held a Seminar on Personal Information Protection Compliance for Some Supermarket Enterprises

On 19 September 2023, the Cyberspace Administration of Shanghai, in conjunction with the Shanghai Municipal Market Regulation Bureau, the Shanghai State Asset Supervision and Administration Commission and the Shanghai Municipal Commission of Commerce, convened some of the Shanghai's superstores to organise and hold a symposium on personal information protection compliance, with a total of 15 enterprises participating.

The responsible person of the Cyberspace Administration of Shanghai stated that supermarket shopping APPs and applets are closely connected with the life of the public, and have a wide range of influence, strong user perception, and high frequency of use, so the relevant enterprises shall carefully check against the *Self-Inspection List of Common Personal Information Protection Issues in the Supermarket Shopping Scenario* (the “*Self-Inspection List*”), and carry out self-inspection and rectification by way of example. The *Self-Inspection Checklist* mainly involves the indication of privacy policies, the collection of personal information and sensitive personal information, the request for non-essential personal information or permissions, and the provision of the function of account cancellation. ([More](#))

## 中国信通院发布《数据要素白皮书（2023年）》

2023年9月26日，中国信息通信研究院发布了《数据要素白皮书（2023年）》。白皮书在《数据要素白皮书（2022年）》的基础上，进一步探讨数据要素理论认识，聚焦过去一年来数据要素

探索过程中不断涌现的新模式、新业态、新热点，重点关注资源、主体、市场、技术四大方面的发展。

资源方面，公共数据授权运营、企业数据资产入表、个人数据权益保护是各类数据发展的新趋势和着力点；主体方面，企业和政府逐步提升能力，双向发力推进数据要素可持续探索；市场方面，场外场内各有突破，相互促进、共同发展，推动数据资源的最优配置；技术方面，基于业务需求支撑数据要素发展的技术体系正加速创新。（[查看更多](#)）

### **CIACT Issues the *White Paper on Data Elements (2023)***

On 26 September 2023, the China Academy of Information and Communications Technology (“CAICT”) issued the *White Paper on Data Elements (2023)*. Based on the *White Paper on Data Elements (2022)*, the white paper further explores the theoretical understanding of data elements, focuses on the new modes, new business models, and new hotspots that have emerged in the exploration of data elements over the past year, and focuses on the development of four major aspects, including resources, subjects, markets, and technologies.

In terms of resources, the authorised operation of public data, the inclusion of enterprise data assets in financial statements, and the protection of personal data rights and interests are the new trends and focuses of various types of data development. In terms of the subjects, enterprises and the government are gradually improving their capabilities, and two-way efforts are made to promote the sustainable exploration of data elements. In terms of the markets, there are breakthroughs in both the off-site and on-site markets, which are mutually reinforcing and developing and are promoting optimal allocation of data resources. In terms of the technologies, innovation is accelerating in the technology system that supports the development of data elements based on business needs. ([More](#))

### **央行发布《金融信息系统网络安全风险评估规范》**

2023年8月6日，中国人民银行发布《金融信息系统网络安全风险评估规范》（GB/T 42926-2023）（以下简称“《评估规范》”），将于2023年12月1日实施。

《评估规范》适用于金融管理部门、金融业机构和网络安全风险评估服务机构开展金融信息系统网络安全风险评估工作。《评估规范》确立了风险评估工作的要点、原则、要素和原理，规定了风险评估准备阶段、识别阶段、风险计算及处理阶段工作的要求。《评估规范》在成熟的风险评估方法论基础上，结合金融信息系统特点以及信息系统安全建设需求，提出面向金融业务和金融信息系统共性的网络安全风险评估模型、流程和风险评估方法。（[查看更多](#)）

### **PBOC Issues *Specification for Cybersecurity Risk Assessment of Financial Information Systems***

On 6 August 2023, the People’s Bank of China (the “PBOC”) issued the *Specification for Cybersecurity Risk Assessment of Financial Information Systems* (GB/T 42926-2023) (the “Assessment Specification”), which is to be implemented on 1 December 2023.

The *Assessment Specification* applies to financial management authorities, financial industry organizations and cybersecurity risk assessment service providers in carrying out cybersecurity risk assessment of financial information systems. The *Assessment Specification* specifies the main points, principles, elements and principles of risk assessment, and stipulates the requirements for the work in the preparation step, identification step, risk calculation and processing step of risk assessment. The *Assessment Specification*, on the basis of comprehensive risk assessment methodology and combining the characteristics of financial information systems and the needs of information system security construction, put forward a network security risk assessment model, process and methodology for financial business and financial information systems. ([More](#))

## 天津部署加快新能源和智能网联汽车产业发展

2023年9月28日，为全面贯彻党的二十大精神，深入实施制造业高质量发展行动，将新能源和智能网联汽车产业打造成为天津市新的支柱产业，天津市政府办公厅印发《天津市加快新能源和智能网联汽车产业发展实施方案（2023—2027年）》（以下简称《实施方案》）。

《实施方案》提出，将坚持电动化、网联化、智能化发展方向，推动天津市汽车产业向新能源化、智能网联化、高端化转型升级，大力发展新能源整车，抢占智能网联汽车产业新赛道，多技术路线布局商用车产业，优化提升关键核心零部件产业链，完善基础设施体系，重塑汽车服务业版图，推动新能源和智能网联汽车产业高质量发展。《实施方案》指明重点任务是推动整车企业转型发展、布局智能网联汽车新赛道、打造商用车新增长点、推动汽车核心零部件企业集聚发展、完善基础设施体系、打造优质汽车服务业。（[查看更多](#)）

## Tianjin Deployed to Accelerate the Development of New Energy and Smart Cars Industry

On 28 September 2023, in order to fully implement the guiding principles of the 20th CPC National Congress, deeply implement the high-quality development action of the manufacturing industry, and build the new energy and Smart Cars industry into a new pillar industry in Tianjin, the General Affairs Office of Tianjin Municipal People's Government issued the *Tianjin Municipal Implementation Programme for Accelerating the Development of the New Energy and Smart Cars Industry (2023-2027)* (the "Implementation Programme").

The "Implementation Programme" proposed that it will adhere to the development direction of electrification, internet connectivity and intelligence, promote the transformation and upgrading of Tianjin's automobile industry to new energy, Smart Cars and high-end vehicles, vigorously develop new energy vehicles, seize positions of advantage in the new race track of Smart Cars industry, lay out the commercial vehicle industry in multi-technology routes, optimize and improve the industry chain of key core parts and components, improve the infrastructure system, reshape the automobile service industry, and promote the high-quality development of new energy and Smart Cars industry. The "Implementation Programme" specifies that the key tasks are to promote the transformation and development of vehicle enterprises, take advantage of the new race track of Smart Cars, create a new growth point for commercial vehicles, promote the development of clustering of core automotive parts and components enterprises, improve the infrastructure system, and create a high-quality automotive service industry. ([More](#))



## 中国支付清算协会印发《非银行支付机构业务合规发展自律指引(2023修订版)》

2023年9月15日，中国支付清算协会发布《非银行支付机构业务合规发展自律指引(2023修订版)》（以下简称《自律指引》）。《自律指引》共113条，从银行卡收单、网络支付、预付卡发行与受理、备付金、收单外包服务、金融服务创新、消费者权益保护、信息科技、风险信息共享、反诈拒赌、反洗钱、自律监督等12个方面明确了合规发展自律要求。《自律指引》第八章消费者权益保护强调了个人信息保护，要求支付机构处理个人信息应当遵循合法、正当、必要和诚信原则，不得通过误导、欺诈、胁迫等方式处理个人信息。支付机构处理个人信息应当具有明确、合理的目的，并应当与处理目的直接相关，采取对个人权益影响最小的方式。（[查看更多](#)）

### ***PCAC Issues the Self-Regulatory Guidelines for Compliance and Development of Business of Non-Bank Payment Institutions (Revised Version 2023)***

On 15 September 2023, the Payment & Clearing Association of China (“PCAC”) issued *the Self-Regulatory Guidelines for Compliance and Development of Business of Non-Bank Payment Institutions (Revised Version 2023)* (the “Self-Regulatory Guidelines”). The “Self-Regulatory Guidelines” consists of 113 articles, specifying the self-regulatory requirements for compliance and development in 12 aspects, including bank card acquiring, network payment, prepaid card issuance and acceptance, provision of funds, acquiring outsourcing services, financial service innovation, consumer protection, information technology, risk information sharing, anti-fraud and anti-gambling, anti-money laundering, and self-regulatory supervision. Chapter 8 of the “Self-Regulatory Guidelines” on Consumer Protection emphasizes the protection of personal information, requiring that payment institutions shall follow the principles of legality, justifiability, necessity and good faith in the handling of personal information, and shall not process personal information through misleading, fraudulent or coercive means. Payment institutions shall process personal information for a clear and reasonable purpose, which is directly related to the purpose of processing, and in a manner that minimizes the impact on the rights and interests of individuals. ([More](#))

## 国家密码管理局发布《商用密码检测机构管理办法》《商用密码应用安全性评估管理办法》

2023年9月26日，为规范商用密码检测活动和应用安全性评估，国家密码管理局发布《商用密码检测机构管理办法》《商用密码应用安全性评估管理办法》，自2023年11月1日起施行。

《商用密码检测机构管理办法》对商用密码检测机构的监管体制、资质认定条件和程序、从业规范等作出了规定，明确了从事商用密码产品检测、网络与信息系统商用密码应用安全性评估等商用密码检测活动，向社会出具具有证明作用的数据、结果的机构，应当经国家密码管理局认定，依法取得商用密码检测机构资质。《商用密码应用安全性评估管理办法》规范了商用密码应用安全性评估的概念定义、管理体制、程序及内容要求、实施规范等内容，明确了商用密

码应用安全性评估，是指按照有关法律法规和标准规范，对网络与信息系统使用商用密码技术、产品和服务的合规性、正确性、有效性进行检测分析和评估验证的活动。（[查看更多](#)）

## State Cryptography Administration Issues Administrative Measures for Commercial Cryptography Testing Organisations and Administrative Measures for Security Assessment of Commercial Cryptography Applications

On 26 September 2023, in order to regulate commercial cryptography testing activities and application security assessment, the State Cryptography Administration issued the *Administrative Measures for Commercial Cryptography Testing Organisations* and the *Administrative Measures for Security Assessment of Commercial Cryptography Applications*, which are to be implemented on 1 November 2023.

The *Administrative Measures for Commercial Cryptography Testing Organisations* stipulate the supervisory system, conditions and procedures for accreditation of commercial cryptography testing organisations, and practice standards, etc., and clarify that organisations engaging in commercial cryptography testing activities such as commercial cryptography product testing, security assessment of commercial cryptography applications of network and information systems, and issuing data and results with proof to the society, shall be accredited by the State Cryptography Administration to obtain the qualification of commercial cryptography testing organizations by law. The *Administrative Measures for Security Assessment of Commercial Cryptography Applications* regulates the definition of security assessment of commercial cryptographic applications, the management system, the procedures and content requirements, and the implementation specifications. It specifies that the security assessment of commercial cryptographic applications refers to the activities of testing, analysing and evaluating the compliance, correctness and effectiveness of the use of commercial cryptographic technologies, products and services in network and information systems in accordance with relevant laws, regulations and standards. ([More](#))

## 欧盟公布《网络安全弹性法案》

2022年9月，针对当前硬件和软件产品越来越容易受到网络攻击的问题，欧盟公布了《网络安全弹性法案》（以下简称为《法案》）。

《法案》强化网络安全规则，以确保更安全的硬件和软件产品，同时明确了相关目标，旨在确保市场内部的正常运作。该《法案》适用于所有直接或间接连接到另一设备或网络的数字产品，其中，数字产品包括任何软件或硬件产品及其远程数据处理解决方案，包括单独投放市场的软件或硬件组件。该法案将适用于这些产品从设计阶段到淘汰阶段的整个生命周期。《法案》还指出了适用范围与制造商责任范围，并指出下一步将采取的行动。（[查看更多](#)）

## EU Releases Cybersecurity Resilience Act

In September 2022, the EU released the *Cybersecurity Resilience Act* (the “Act”) in response to the current problem of hardware and software products becoming increasingly vulnerable to cyberattacks.

The *Act* strengthens cybersecurity rules to ensure safer hardware and software, along with clarifying related objectives, and to ensure normal functioning within the market. The *Act* applies to all digital

products that are directly or indirectly connected to another device or network, where a digital product includes any software or hardware product and its remote data-processing solutions, including software or hardware components that are placed on the market separately. The *Act* will apply to the entire life cycle of these products from the design stage to the phase-out stage. The *Act* also indicates the scope of application and the extent of manufacturers' liabilities, and indicates the next steps to be taken. ([More](#))

## 知识产权 Intellectual Property

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### 商标局：12月1日起全面推行异议案件网上申请

2023年10月7日，根据国知局官网消息，为进一步提升商标异议申请电子化水平，推动商标事业绿色发展，国家知识产权局商标局将全面推行商标代理机构异议案件网上申请。通告主要包括以下两项内容：

一、自2023年12月1日起，商标代理机构办理异议业务，原则上应通过商标网上服务系统提交电子申请，不再提交纸质材料。

二、自通告发出之日起至12月1日为全面提升商标代理机构异议案件网上申请的“过渡期”，商标代理机构需做好各项准备工作，尚无商标网上服务系统账户的代理机构需尽快申请注册。

来源：国家知识产权局商标局

### Trademark Office: Online Application for Trademark Opposition Will be Comprehensively Implemented From 1 December, 2023

On 7 October, 2023, according to the official website of the China National Intellectual Property Administration (CNIPA), in order to further enhance the electronic level of trademark opposition applications and promote the green development of the trademark industry, the Trademark Office of the CNIPA will comprehensively implement opposition application from trademark agencies online. The notice mainly includes the following two points:

The Trademark Office's opposition business will primarily accept electronic filings through the Trademark Online Service System and will no longer accept paper filings from 1 December, 2023.

From the notice issue date until 1 December, there will be a "transition period" for a comprehensive update of the trademark agencies' online opposition application. Agencies should make necessary preparations, and those without an account on the Trademark Online Service System should register without delay.

Source: Trademark Office of the China National Intellectual Property Administration

### 最高院明确：确认不侵权之诉的目的及审理范围

近日，最高人民法院就北京博睿勤信息技术有限公司与东莞市华盾电子科技有限公司、广州阔源电子科技有限公司确认不侵害专利权纠纷一案作出终审判决，判决撤销一审判决，发回重审。

法院认为，确认不侵害专利权之诉的目的在于，当被警告人或利害关系人受到侵权警告时，经书面催告，权利人怠于行使诉权或者不撤回警告可能致使被警告人或利害关系人处于一种不安的状态，为此需要为被警告人或利害关系人提供法律救济，使其有渠道摆脱所承受的不安状态，开展正常生产经营。人民法院在处理该类纠纷时，基于确认不侵害专利权之诉的法律目的，首先需要查明权利人的警告所涉及的行为和产品范围，以明确警告给被警告人可能带来负面影响的范围。如果权利人的侵害专利权警告未明确其所指向的具体被警告侵权产品，人民法院可以在被警告人因该警告而受到负面影响的产品范围内，结合被警告人的诉讼请求，合理确定确认不侵害专利权案件所应审理的具体被警告侵权产品。

来源：最高人民法院

### **The Supreme People's Court Clarifies on Scope of Patent Non-infringement Cases**

Recently, the Supreme People's Court issued a final judgement of non-infringement of patent between Beijing Boruiqin Information Technology Co., Ltd. (Plaintiff) and Dongguan Huadun Electronic Technology Co., Ltd., et. al (Defendants). The court revoked the original judgment and remanded for trial.

The court held that the purpose of the non-infringement action is that, when a warned person or an interested party is warned of infringement and, after a written reminder, the right holder's negligence in exercising its right of action or its failure to withdraw the warning may put the warned person or the interested party in a state of anxiety, and for this reason, it is necessary to provide the warned person or the interested party with legal remedies, so as to enable them to have a channel to get rid of the anxiety, and to continue to operate its business as usual. When dealing with this type of dispute, the court, based on the legal purpose of confirming the non-infringement action, firstly needs to ascertain the scope of the behaviour and products involved in the right holder's warning, so as to clarify the scope of the warning's possible negative impact on the warned. If the warning does not specify the exact infringing product, the court may reasonably determine the specific infringing product to be considered in the non-infringement action within the scope of the products adversely affected by the warning, in conjunction with the claim of the warned.

Source: The Supreme People's Court

### **公平合理的裁量性赔偿方式不受法定赔偿限额的限制**

近日，最高人民法院就深圳迈瑞生物医疗电子股份有限公司诉深圳市科曼医疗设备有限公司、石家庄利斯通医疗器械销售有限公司侵害发明专利权纠纷一案作出终审判决，被告需停止侵权，并承担500万元的赔偿责任。

法院认为，本案中，侵权获利所需的被诉侵权产品销售数量、金额及利润率等均缺乏精确数据予以确定。因此，为进一步提高损害赔偿计算的合理性，在确定侵权所得的赔偿数额时，人民法院可以在一定事实和数据的基础上，运用裁量权确定计算赔偿所需的其他数据，最终确定一个公平合理的赔偿数额。并且，根据上述方法酌定的赔偿数额，可以不受法定赔偿最高或者最低限额的限制。



来源：最高人民法院

## **Fair and Reasonable Discretionary Damages are Not Subject to Statutory Damages Limits**

Recently, the Supreme People's Court issued a final judgement of invention patent infringement between Shenzhen Mindray Bio-Medical Electronics Co., Ltd. (Plaintiff) v. Shenzhen Comen Medical Instrument Co., Ltd. et. al (Defendants). The Defendants are ordered to stop infringement with damages of RMB 5 million.

The court held that in this case, there was a lack of precise data on the sales volume, sales and the profit margin of the infringing products necessary to determine the profitability of the infringement. Therefore, in order to further improve the rationality of the damage calculation, when determining the damages derived from the infringement, the court may, on the basis of certain facts and data, use its discretion to determine other data necessary for the damage calculation, and ultimately determine a fair and reasonable damage amount. Moreover, the damages determined by the above method are not subject to the statutory damages maximums or minimums.

Source: The Supreme People's Court

## **广知院：设计图纸上签名不当然构成著作权法中的署名行为**

近日，广州知识产权法院就景森设计股份有限公司、梁某标、周某同、张某仪（原告）与广东建筑艺术设计院有限公司、李某红、孙某浩、毛某中、奥园集团（韶关）有限公司（被告）著作权侵权纠纷一案作出二审判决，判决撤销一审判决，驳回原告全部诉讼请求。

法院认为，被告根据项目工程的实际情况补充或修改项目工程设计图纸，并以设计单位名义在工程项目报建报审的图纸上署名签章，既是建艺公司作为设计单位的合同义务，也是涉案工程项目建设获得行政管理部门审批的前提。但被告并不能因其在涉案设计图的图签行为而成为涉案施工设计图纸作品的著作权人，也不能因在涉案设计图纸署名而享有在涉案合同约定工程项目范围之外使用该设计图的权利或据此获利。

来源：广州知识产权法院

## **Guangzhou IP Court: Signatures on Design Drawings May Not be a Definite Exercise of the Right of Authorship**

Recently, the Guangzhou Intellectual Property Court issued a second instance judgement of copyright infringement between Jingsen Design Co., Ltd. and others (the Plaintiffs) and Guangdong Architectural Design and Research Institute Co., Ltd. (the GADRI) and others (the Defendants). The court revoked the original judgment and dismissed all claims of plaintiffs.

The court held that the defendant supplemented or modified the design drawings of the engineering project according to the project's actual situation, as well as signed and sealed the drawings in the name of the design unit on the project's submission for review, which were both the contractual obligations of GADRI as a design unit and the premise for obtaining the administrative approval for the con-

struction of the engineering project. However, the Defendants did not become the copyright holder of the construction design drawings because of the signature, nor did it have the right to use the design drawings outside the contractual scope of the project or to make profit from it because of the signature.

Source: Guangzhou IP Court

### 侵犯他人权利的作品，不影响作者对该作品因创作享有的著作权

近日，北京知识产权法院就湖南大兵点酱贸易有限公司（被告）与朱某尊、清和源（北京）商业顾问服务有限公司、福州贵森航德电子商务有限公司、北京京东叁佰陆拾度电子商务有限公司（原告）著作权权属、侵权纠纷案作出二审判决，判决驳回上诉，维持原判。

法院认为，本案涉及著作权和肖像权的冲突，二者作为各自独立的民事权利，二者所保护对象和调整的法律关系并不相同，具有各自的权利边界。但著作权的产生系基于创作这一事实，如果创作成果体现了作者特有的智力判断与选择，具有独创性，即属于著作权法所保护的作品。即使该作品具有侵犯他人权利的因素，都不影响作者对其创作的独创性部分享有著作权。对其侵权部分，权利人可另行采取相关救济。故本案中作者是否获得肖像权人的许可，都不影响其对涉案作品所享有的著作权。

来源：北京知识产权法院

### Infringing Work Shall Not Affect the Author's Copyright on the Work

Recently, the Beijing IP Court issued a final judgement on copyright infringement between Hunan Dabingdianjiang Trading Co., Ltd (Defendant) and Qingheyuan (Beijing) Business Consultancy Services Co., Ltd. et. al (Plaintiffs). The court affirmed the original judgement.

The court held that the case involved a conflict between copyright and portrait rights, which, as independent civil rights, do not have the same protection object and regulation of juristic relationship, having their own right boundaries. However, copyright arises from creation, and if the creative work embodies the author's unique intellectual judgement and choice, and is original, it is the work protected by the Copyright Law. Even if the work contains elements that infringe the other's rights, it does not affect the author's copyright on the original part. For the infringing part, the right holder can seek other relevant remedies. Therefore, whether or not the author obtained the permission of the portrait right holder in this case does not affect the author's copyright.

Source: Beijing Intellectual Property Court

### 北京高院：形成于域外的宣传使用证据不影响商标知名度的判定

近日，北京市高级人民法院就广州市韩惠娇人化妆品有限公司与国家知识产权局、海飞安妃有限公司商标权无效宣告请求行政纠纷案作出二审判决，驳回原告上诉请求。

法院认为，尽管诉争商标申请日“V7 Toning Light”与第三人韩国海飞公司推出和宣传推广“V7 Toning Light”品牌的时间仅相差数月，且海飞公司提供的商标使用和宣传等证据多形成于域外，但在网络时代下，本土的相关消费者通过新型营销模式购买境外热销商品的情形较为常见，从而可以认定相关消费者在诉争商标申请日前对海飞公司的“V7 Toning Light”面霜已有一定程度的了解和认知。法院结合本案具体情况认定，该商标于诉争商标申请日前在韩国已经使用且具有一定知名度。

来源：北京市高级人民法院

### **Beijing High Court: Extraterritorial Evidence of Promotion and Use Can be Used to Prove Trademark Reputation**

Recently, the Beijing High Court issued a second instance judgement of the administrative dispute on invalidation of the trademark. The court rejected the plaintiff's appeal.

The court held that although there was a difference of only a few months between the date of filing of the application for "V7 Toning Light" and the date when the third party, HAVE & BE, launched and publicised the "V7 Toning Light" brand, and the evidence of use and promotion provided by HAVE & BE was mostly extraterritorial, it is quite common for local consumers to purchase overseas hot-selling goods through new marketing way in the Internet age, so it can be concluded that the relevant consumers had a certain degree of familiarity with HAVE & BE's "V7 Toning Light" cream prior to the application date of the disputed trademark. The Court considered the specific circumstances of the case and found that the trade mark had been used in Korea prior to the filing date of the disputed trade mark and had a certain degree of reputation.

Source: Beijing High Court

### **“盼盼”商标侵权案迎终审：赔偿超亿元**

近日，最高人民法院就盼盼安居门业有限责任公司诉四川鑫蓬汇门业有限公司、成都市新都区万象顾阳金属门厂、周某某、方某某侵害商标权及不正当竞争纠纷一案作出终审判决，被告需停止侵权，并承担1亿元赔偿责任及65万元合理支出。

法院认为，原告的涉案系列商标已达到驰名程度，应作为驰名商标受我国商标法的保护。被告使用的熊猫吉祥物形象，构成反不正当竞争法规定的其他足以引人误认为是他人商品或者与他人存在特定联系的混淆行为，同时被告还存在虚假宣传、商业诋毁等行为，情节严重。本案侵害商标权部分，应按照被告获利适用惩罚性赔偿；不正当竞争部分，结合被告的主观故意程度以及侵权情节严重程度，对原告要求的500万元赔偿请求予以支持。

来源：最高人民法院

## "Panpan" Case: Damages Over RMB 100 Million Awarded

Recently, the Supreme People's Court issued a final judgement of trademark and unfair competition infringement between Panpan Anju Door Industry Co., Ltd. (Plaintiff) v. Sichuan Xinponghui Door Industry Co., Ltd et. al (Defendants). The Defendants are ordered stop the infringement and pay damages of RMB 100 million, plus reasonable expenses of RMB 650,000.

The court held that the Plaintiff's series of trademarks in question had been qualified as well-known trademarks. The Defendants' use of the panda mascot image constituted other acts of confusion, which was sufficient to mislead people to believe that they were the goods of others or that they had a specific connection with others, as regulated by the Anti-Unfair Competition Law. The Defendants also engaged in acts of false promotion and commercial defamation, which reached a severe level. For the trademark infringement, punitive damages should be applied according to the Defendants' profits; For the unfair competition, combined with the subjective intent of the Defendants and the severity of the infringement, the Plaintiff's claim for RMB 5 million shall be supported. Therefore, the Defendants are ordered to pay the Plaintiff damages of RMB 95 million for trademark infringement, plus RMB 5 million for unfair competition, and reasonable expenses of RMB 650,000.

Source: The Supreme People's Court

## 谷歌在移动技术专利案中胜诉

近日，谷歌说服德克萨斯州韦科市的一名联邦法官，驳回了Brazos Licensing and Development公司就该科技巨头的移动应用程序中的追踪技术提出的专利侵权指控，使该案的陪审团审判戛然而止。

位于韦科的Brazos公司于2020年提起诉讼，指控谷歌的Awareness API以及使用该技术的设备 and 应用（如谷歌的Pixel智能手机和谷歌地图应用）侵犯了其专利。据谷歌公司网站称，应用程序接口（API）可以检测用户的位置和情况，从而创建“定制体验”，比如当用户戴上耳机开始慢跑时，它会推荐一个播放列表。

据法院工作人员和谷歌代表称，美国地区法官Alan Albright表示，谷歌没有侵犯Brazos公司的专利。这项专利最初归诺基亚公司所有，涉及根据设备用户的位置来提供移动服务的技术。

来源：REUTERS

## Google Defeats a Patent Case at Trial over Mobile Technology

Recently, Google convinced a Waco, Texas federal judge to reject patent infringement claims by Brazos Licensing and Development over tracking technology in the tech giant's mobile apps, bringing a jury trial in the case to an abrupt end.

Waco-based Brazos filed the lawsuit in 2020. It accused Google's Awareness API and devices and apps that use the technology, like Google's Pixel smartphones and Google Maps application, of infringing the patent. Google's API detects a user's location and situation and responds by creating





"customized experiences," like suggesting a playlist when a user plugs in headphones and starts to jog, according to the company's website.

U.S. District Judge Alan Albright said that Google did not infringe the Brazos patent and ended the trial before it had completed, according to court staff and a Google representative. The patent, originally owned by Nokia NOKIA.HE, relates to delivering mobile services based on a device user's location.

Source: [REUTERS](#)

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 [www.lifanglaw.com](http://www.lifanglaw.com)

 Email: [info@lifanglaw.com](mailto:info@lifanglaw.com)

 Tel: +8610 64096099

 Fax: +8610 64096260/64096261