

# China Competition Policy & IP

MONTHLY UPDATE

MAY 2021

© 2021 The Brattle Group



---

## TABLE OF CONTENTS

<b>Meetings/Seminars/Projects</b> .....	<b>1</b>
At Administrative Guidance Meeting for Internet Platform Enterprises, SAMR Orders Internal Reviews .....	1
Second Draft of Personal Information Protection Law Submitted for Public Comment .....	2
<b>Regulatory News</b> .....	<b>3</b>
SAMR Releases 2021 Legislative Work Plan .....	3
Ant Group Ordered to Form Financial Holding Company After Questioning .....	4
Financial Management Authorities Question 13 Online Platform Companies .....	5
Shanghai AMR Fines Sherpa’s for Monopoly Conduct.....	5
SAMR Imposes an Administrative Penalty on Yangtze River Pharmaceutical for Monopoly Agreement .....	6
SAMR Imposes Administrative Penalties on Nine Merger Cases for Failure to File .....	6
SAMR Imposes Administrative Penalties on Three Pharmaceutical Companies .....	7
<b>Industry Updates</b> .....	<b>8</b>
Both Meituan and Ele.me Lose Lawsuits Due to Unfair Competition .....	8
Ningbo Court Handles the First Monopoly Dispute over Abuse of IPR.....	8
<b>Learn More</b> .....	<b>9</b>

---

## ABOUT BRATTLE

The Brattle Group answers complex economic, regulatory, and financial questions for corporations, law firms, and governments around the world. We aim for the highest level of client service and quality in our industry.

We are distinguished by our credibility and the clarity of our insights, which arise from the stature of our experts; affiliations with leading international academics and industry specialists; and thoughtful, timely, and transparent work. Our clients value our commitment to providing clear, independent results that withstand critical review.

Brattle has over 400 talented professionals across three continents. For additional information about our experts and services, please visit [brattle.com](https://brattle.com).

# Meetings/Seminars/Projects

---

## At Administrative Guidance Meeting for Internet Platform Enterprises, SAMR Orders Internal Reviews

[Read the Chinese version here](#)

On April 13, 2021, the State Administration for Market Regulation (SAMR) – together with the Cyberspace Administration of China and the State Taxation Administration – held an administrative guidance meeting for internet platform enterprises. The meeting addressed several prominent issues related to monopolistic and tax-related violations, including “either-or” implementations in the platform economy. The 34 participating companies were ordered to conduct comprehensive internal reviews within one month and to undergo complete rectification of anticompetitive practices.

On April 14, 2021, 12 of the 34 participating internet companies issued pledges to operate legally. The group includes:

- Beijing Sankuai Online Technology Co., Ltd. (Meituan)
- Beijing Pocket Fashion Technology Co., Ltd. (Weidian)
- Beijing ByteDance Technology Co., Ltd. (ByteDance)
- Beijing Qihoo Technology Co., Ltd. (Qihoo 360)
- Beijing Jingdong Century Trading Co., Ltd. (JD)
- Suning.com Group Co., Ltd. (Suning)
- Vipshop (China) Co., Ltd. (Vipshop)
- Shanghai Xunmeng Information Technology Co., Ltd. (Pinduoduo)
- Beijing Baidu Netcom Science Technology Co., Ltd. (Baidu)
- Beijing Weimeng Chuangke Network Technology Co., Ltd. (Sina Weibo)
- Shanghai Yibaimi Network Technology Co., Ltd. (DingDong Fresh)
- Xingyin Information Technology (Shanghai) Co., Ltd. (Xiaohongshu)

---

# Second Draft of Personal Information Protection Law Submitted for Public Comment

[Read the Chinese version here](#)

On April 26, 2021, China's National People's Congress (NPC) Standing Committee submitted the second draft of the Personal Information Protection Law (PIPL) for public comment. Aimed at improving the relevant principles for processing personal information protection, the draft particularly strengthened the supervision of large internet platforms.

The second draft of the PIPL states that personal information processors, especially complex businesses providing basic internet platform services to a large number of users, should meet several relevant obligations. These obligations include:

- Establishing an independent body, composed mainly of external members, to supervise personal information processing activities.
- No longer serving the product or service providers that have seriously violated laws or administrative regulations in processing personal information.
- Regularly publishing social responsibility reports on personal information protection and accepting social supervision.

In addition, the second draft of the PIPL states that platforms should provide individuals with prominent, convenient, and free means to refuse to receive certain commercial information. The draft ameliorates previous principles for processing personal information, clarifying that personal information shall not be processed in coercive ways. Additionally, personal information processing should be limited to the minimum extent necessary to realize the processing purpose, and in a manner that has a minimum impact on the rights and interests of individuals.

# Regulatory News

---

## SAMR Releases 2021 Legislative Work Plan

[Read the Chinese version here](#)

In April 2021, SAMR announced the legislative plan for 2021, specifying 67 legislative projects in total.



In 2021, legislative work will focus on urgent and difficult problems in the reform and development process that were proffered by the people, as well as prominent market regulation issues. Among them – and in order to strengthen and improve the enforcement of anti-monopoly and anti-unfair competition, as well as to effectively safeguard fair competition in the market – SAMR will continue to actively cooperate with the legislature in the revision of the Anti-Monopoly Law of the People’s Republic of China, the provisions on the protection of trade secrets, and other regulations. They will also cooperate to formulate and revise the several provisions regarding internet unfair competition acts.

SAMR requires that the 2021 legislative work strive to build a modern legal system for market regulation that can adapt to the new development pattern. The legislative work will adhere to the problem- and goal-oriented approach, strengthen legislation in key areas, and lay a solid legal foundation for the long-term development of market regulation.

---

# Ant Group Ordered to Form Financial Holding Company After Questioning

[Read the Chinese version here](#)

After ordering Ant Group Co., Ltd. (Ant Group) to comply with regulatory requirements in December 2020, several financial management authorities again questioned the financial technology giant on April 12, 2021 regarding its rectification plan. Ant executives were jointly questioned by the People's Bank of China (PBOC), the China Banking and Insurance Regulatory Commission, the China Securities Regulatory Commission, and the State Administration of Foreign Exchange.

PBOC Deputy Governor Pan Gongsheng summarized the proceedings for journalists:

- **Reasons for questioning Ant Group again**

Financial authorities questioned Ant Group again to demand it to overhaul its business after abusing its dominance in the fintech market. In order to ensure a legal operation and healthy development, Ant Group must draw up a plan and carry out an in-depth and effective rectification according to the regulatory requirements. It is also required to adhere to the principle of serving the real economy and the people, and must respond positively to national development strategies. Ant Group's fintech innovations must be in line with the prudential supervision requirements, and should increase contributions to the new development pattern of "domestic and international circulations."

- **Five main areas in the rectification plan**

1. Rectifying unfair competition in the payment business
2. Breaking the information monopoly
3. Applying to establish a financial holding company and improving its risk isolation measures
4. Strictly implementing prudential supervision requirements
5. Controlling liquidity risk for important fund products

- **The next step of strengthening the financial regulation of platform companies**

In line with the principles of fair and strict supervision, financial authorities will take both long-term and current situations into consideration and fill in the shortcomings in regulation. They will continue promoting fair competition, opposing monopoly, and preventing disorderly expansion of capital.

---

## Financial Management Authorities Question 13 Online Platform Companies

[Read the Chinese version here](#)

On April 29, 2021, the PBOC, the China Banking and Insurance Regulatory Commission, the China Securities Regulatory Commission, the Foreign Exchange Bureau, and other financial management authorities met with 13 online platform companies engaged in financial business, ordering them to strengthen compliance with regulations and prevent monopolistic behaviors. PBOC Deputy Governor Pan Gongsheng presided over the questioning of these companies, which included Tencent Holdings, Du Xiaoman Financial, JD Finance, ByteDance, Meituan Finance, Didi Finance, Lufax, Tianxing Digital, 360 DigiTech, Sina Finance, Suning Finance, Gome Finance, and Ctrip Finance.

While affirming the positive effect brought by online platform companies in reducing transaction costs and improving the efficiency of financial services and the inclusiveness of the financial system, the financial management authorities also pointed out some serious violations, such as engaging in financial business without a license or exceeding the licensed scope, practicing regulatory arbitrage, and performing unfair competitions. The financial management authorities ordered rectification requirements to address platform operation, and the participating companies attested their commitments to self-inspection and rectification. Under the guidance of the financial management authorities, they will formulate rectification plans and implement them in earnest.

---

## Shanghai AMR Fines Sherpa's for Monopoly Conduct

[Read the Chinese version here](#)

The Shanghai Municipal Administration for Market Supervision (Shanghai AMR) imposed an administrative penalty on Shanghai Sherpa's Trading Development Co., Ltd. (Sherpa's) for its monopolistic behaviors in the bilingual online food delivery and takeaway market.

Sherpa's, a Chinese-English bilingual online food delivery platform, connects users with offline restaurants and provides services through its website and mobile app. Shanghai AMR launched an investigation into Sherpa's in June 2019. According to the investigation, between January 2017 and October 2019, Sherpa's abused its dominant position in Shanghai's market of bilingual food delivery platforms to implement the "either-or" requirement. It signed exclusivity agreements with all cooperative merchants and prohibited them from providing delivery services on other platforms. Merchants that failed to follow this requirement would be removed from Sherpa's platform. Such behavior violated the Anti-Monopoly Law, restricted competition in the relevant market, and damaged the lawful interests of merchants and consumers on the platform.

Taking into account factors such as the nature, extent, and duration of its illegal conduct, Shanghai AMR imposed an administrative penalty decision on Sherpa's with a fine of RMB 1.16 million, which is 3% of its annual sales in 2018.

---

## SAMR Imposes an Administrative Penalty on Yangtze River Pharmaceutical Group for Monopoly Agreement

[Read the Chinese version here](#)

On April 15, 2021, SAMR issued an administrative penalty decision on Yangtze River Pharmaceutical Group (YRPG) for breaching the Anti-Monopoly Law. YRPG has a nationwide sales network and is one of China's top five largest pharmaceutical companies.

In November 2019, SAMR filed a case to investigate YRPG for allegedly reaching a monopoly agreement. The investigation found that, from 2015 to 2019, YRPG reached numerous agreements with downstream companies, such as drug wholesalers and retail pharmacies, to control retail prices of their products. To ensure the implementation of its monopoly agreement, YRPG also formulated implementation rules, hired a third party to monitor the drug prices, and penalized distributors that failed to comply with its pricing mechanism. Such conduct excluded and restricted competition, harmed the rights and interests of consumers, damaged the public interest, and violated the Anti-Monopoly Law.

In accordance with Article 46 and Article 49 of the Anti-Monopoly Law, SAMR ordered YRPG to cease its illegal conduct and imposed a fine of RMB 764 million, equivalent to about 3% of its 2018 revenue.

---

## SAMR Imposes Administrative Penalties on Nine Merger Cases for Failure to File

[Read the Chinese version here](#)

On April 30, 2021, SAMR announced administrative penalty decisions on nine cases for breaching the concentrations of undertakings provision under the Anti-Monopoly Law. Nine cases of illegal implementation of concentrations were involved, including:

- Tencent Holdings Ltd.'s acquisition of Bitauto Holdings Ltd.'s equity
- Tencent Holdings' acquisition of Shanghai Lantu Information Technology Co., Ltd.
- The establishment of a joint venture between Linzhi Tencent Technology Co., Ltd. and Dalian Wanda Commercial Management Group Co., Ltd.



- Shanghai Hantao Information Consulting Co., Ltd.'s acquisition of Shanghai Lingjian Information Technology Co., Ltd.'s equity
- The establishment of a joint venture between Jiaxing Venture Global Co., Ltd. and Toyota Motor Corporation
- Jiaxing Venture Global Co., Ltd.'s acquisition of Yingshitong Car Rental Co., Ltd.'s equity
- The establishment of a joint venture between Jinan Langchao Intelligent Investment Technology Co., Ltd. and DiDi Smart Transportation Technology Co., Ltd.
- Suning Rundong Equity Investment Management Co., Ltd.'s acquisition of the equity of Shanghai Yiguo E-commerce Co., Ltd.
- The establishment of a joint venture between Hongyun Jiukang Data Technology (Beijing) Co., Ltd. and Shanghai Yunxin Venture Capital Co., Ltd.

In accordance with Articles 48 and 49 of the Anti-Monopoly Law, SAMR fined each company RMB 500,000.

---

## SAMR Imposes Administrative Penalties on Three Pharmaceutical Companies

[Read the Chinese version here](#)

On April 30, 2021 SAMR issued administrative penalty decisions on three pharmaceutical companies for implementing a monopoly agreement, including Tianjin Tianyao Pharmaceutical Co., Ltd. (Tiaoyao), Tianjin Pacific Chemical & Pharmaceutical Co., Ltd. (Pacific), and Shenzhen Fuhaitong Pharmaceutical Co., Ltd. (Fuhaitong).

On September 24, 2020, the Tianjin Municipal Administration for Market Supervision (Tianjin AMR) launched an investigation into the above-mentioned companies for their alleged acts of monopolistic behavior. It was found that these companies all sell fluocinolone acetonide, an active pharmaceutical ingredient (API), nationwide. Since 2008, they repeatedly participated in reaching and implementing monopoly agreements to split the market and fix the price of fluocinolone acetonide APIs. Such conduct eliminated and restricted the market competition and harmed the interests of consumers.

In accordance with the law, Tianjin AMR ordered the three companies to stop their illegal activities, confiscated their illegal gains, and imposed a total fine of approximately RMB 50.78 million. As the largest manufacturer and seller of fluocinolone acetonide APIs in China, Tianyao was the main perpetrator of organizing monopoly agreements, and was fined RMB 44.02 million, accounting for 4% of its previous year's sales. Pacific and Fuhaitong were fined, respectively, 3% and 2% of their previous year's sales.

# Industry Updates

---

## Both Meituan and Ele.me Lose Lawsuits Due to Unfair Competition

[Read the Chinese version here](#)

On April 14, 2021, the Huai'an Intermediate People's Court of Jiangsu Province (Jiangsu court) made a judgment that Beijing Sankuai Technology Co., Ltd. (Meituan) should pay RMB 352,000 as compensation to Shanghai Lazhasi Information Technology Co., Ltd. (Ele.me) for its "either-or" conduct. It is the first time that Article 12 of the Anti-Unfair Competition Law of the People's Republic of China was applied to unfair competition infringement cases in the food takeout industry.

According to the Jiangsu court, Meituan's Huai'an branch forced merchants to sign exclusive cooperation agreements and punished merchants who failed to follow the "either-or" requirement with higher commissions, traffic restrictions, and smaller delivery scopes. This behavior restricted and hindered normal transactions between merchants and Meituan's competitors.

Similarly, the judgment of the Wenzhou Municipal Intermediate People's Court (Wenzhou court) shows that Ele.me's Wenzhou branch asked merchants to close their online shops on Meituan and forced them to sign an exclusive cooperation agreement, which constitutes a violation of the Anti-Unfair Competition Law. Wenzhou court ordered Ele.me to compensate Meituan with RMB 80,000.

From the perspective of judicial adjudication, these judgments emphasize the illegitimacy of the "either-or" conduct and will play a positive role in maintaining a healthy business environment in the online food takeaway market.

---

## Ningbo Court Handles the First Monopoly Dispute over Abuse of IPR

[Read the Chinese version here](#)

On April 23, 2021, the Ningbo Intellectual Property Court handed down its judgment of the dispute between the plaintiff Ningbo Ketian Magnet Co., Ltd. (Ketian Magnet) and the defendant Hitachi Metals Co., Ltd. (Hitachi Metals).

Hitachi Metals, a Tokyo-based company, is the world's largest manufacturer and distributor of sintered NdFeB magnets. It has over 600 patents relating to sintered NdFeB, some of which are essential patents for production. Ketian Magnet specializes in the production and sale of sintered NdFeB magnets.

Ketian Magnet believed that Hitachi Metals abused its dominant market position by tying goods and refusing to trade without legitimate reasons. In 2015, it filed a lawsuit against Hitachi Metals, seeking for Hitachi Metals to cease the infringing acts and compensate RMB 7 million for Ketian Magnet’s economic loss.

This is the first monopoly dispute involving the misuse of intellectual property rights. According to the judgment, Hitachi Metals must immediately cease the monopolistic conduct against Ketian Magnet, and compensate Ketian Magnet with RMB 4.9 million within 10 days of the effective date of the judgment.

## Learn More

---

To follow our WeChat Public Account, please scan the QR code below or enter “CompetitionResearch” in the WeChat official account search box.

