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中国反垄断法律资讯：2015 年 1 月 China Monthly Antitrust Update: January 2015

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我们致力于提供中国反垄断法最新资讯，包括法规速递、执法机关动态、行政执法、民事诉讼、中外反垄断法交流、学术研究等。提供案例解析、理论介绍、律师实务操作指南，以及原创反垄断法评论和文章，部分内容为中英文双语。欢迎您的关注。



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立法动态 Legislation

商务部发布《关于经营者集中附加限制性条件的规定（试行）》

2014年12月4日，商务部在其网站上公布《关于经营者集中附加限制性条件的规定（试行）》，就限制性条件的确定、实施、监督、变更和解除等方面作了规定，并将于2015年1月5日起施行。

详细信息：<http://tfs.mofcom.gov.cn/article/zcfb/201412/20141200835233.shtml>

MOFCOM Publishes Provisions on Imposing Restrictive Conditions for Concentration of Undertakings (For Trial Implementation)

On December 4, 2014, the Ministry of Commerce (“MOFCOM”) published *the Provisions on Imposing Restrictive Conditions for Concentrations of Undertakings (For Trial Implementation)* on its website, which made stipulations on the process of forming, implementing, monitoring, changing and lifting of restrictive conditions. The provisions will take effect from 5 January, 2015.

For details, please visit: <http://tfs.mofcom.gov.cn/article/zcfb/201412/20141200835233.shtml>

执法机构 Authorities

发改委许昆林局长与高通公司就最终处理方案交换意见

2014年12月26日，国家发展改革委员会在其网站上公告了高通案的最新进展。公告表示，10月24日、12月5日，高通公司总裁 Derek Aberle 率团队第六次、第七次到国家发展改革委，就反垄断调查的最终处理方案与价格监督检查与反垄断局许昆林局长交换了意见。高通公司表示，将继续配合国家发展改革委做出最终的处理工作。许昆林局长表示，将尽快形成最终处理方案，按法定程序推进案件的处理。

详细信息：http://www.sdpc.gov.cn/fzgggz/jgidyfld/jjszhd/201412/t20141226_658120.html

NDRC DG Xu and Qualcomm Exchange Opinion on Final Result

On December 26, 2014, National Development and Reform Commission (“NDRC”) released the most updated news regarding Qualcomm case on its website. It is said Derek Aberle, the CEO of Qualcomm and his team met with NDRC on 24 October and 5 December for the sixth and seventh times, to discuss the final investigation result with Director-General of Price Supervision and Anti-Monopoly Bureau (“PSAMB”) under NDRC, Mr. Xu Kunlin. Qualcomm said it would continue to cooperate with NDRC in working out a final investigation result. Xu said that they would work out a final solution “as soon as possible” and the case will be carried forward in accordance with legal procedures.

For details, please visit:

http://www.sdpc.gov.cn/fzgggz/jgidyfld/jjszhd/201412/t20141208_651322.html

第25届中美商贸联委会联合成果清单公布

2014年12月16-18日，第25届中美商贸联委会在美国芝加哥成功召开。中美双方就出口管制、医疗器械和药品准入、竞争法、技术许可、知识产权合作、行政程序中的商业秘密保

护等诸多问题达成共识。其中，有关竞争法和标准必要专利的内容成为会谈的重要部分，并达成详细成果清单。

详细信息：<http://www.mofcom.gov.cn/article/ae/ai/201412/20141200848900.shtml>

The 25th JCCT Achievement List is Released

From December 16 to 18, 2014, the 25th US-China Joint Commission on Commerce and Trade (“JCCT”) was successfully held in Chicago, United States. The US and China have agreed on various topics such as export control, medical devices and pharmaceuticals access, competition law, technology licensing, IP cooperation and protection of trade secrets under administrative procedures. Amongst the topics, competition law and standard essential patent become essential parts of the bilateral talk and reached detailed achievements.

商务部尚明局长率团赴泰国、印度尼西亚进行竞争工作交流

2014年12月7日至13日，商务部反垄断局局长尚明率团赴泰国和印度尼西亚开展竞争工作交流。访问期间，尚明局长先后与泰国商业部内贸厅（贸易竞争委员会办公室）、印度尼西亚商业竞争监督委员会、东盟秘书处市场融合办公室、正大集团举行了工作会谈。访问增进了我国与东南亚国家和地区在竞争事务方面的相互了解，为未来合作奠定了良好基础。

详细信息：<http://fldj.mofcom.gov.cn/article/xxfb/201412/20141200838151.shtml>

MOFCOM DG Shang Ming Visits Competition Authorities in Thailand, Indonesia

From December 7 to 13, 2014, Director-General of Anti-Monopoly Bureau (“AMB”) under MOFCOM, Mr. Shang Ming visited antitrust authorities in Thailand and Indonesia and exchanged views on competition-related activities. During the visit, Mr. Shang Ming respectively held working talks with Thailand's Department of Internal Trade at the Ministry of Commerce (trade and competition commission office), Indonesia KPPU, Market Integration Office of the ASEAN Secretariat and Chia Tai Group. This visit enhanced mutual understanding between China and Southeast Asian countries and regions in competition matters and has laid a solid foundation for future cooperation.

For details, please visit: <http://fldj.mofcom.gov.cn/article/xxfb/201412/20141200838151.shtml>

发改委许昆林局长会见欧盟商会主席伍德克一行

2014年11月28日，发改委价监局许昆林局长会见了欧盟商会主席伍德克一行。双方就反垄断、药品价格改革等有关问题进行了交流。许昆林局长表示，当前中国价格改革在加快推进，政府定价项目将大幅度减少，与此同时也将进一步加强包括反垄断执法在内的事中事后监管。许昆林局长进一步表示，国家发展改革委始终坚持依法开展反垄断工作，对所有企业一视同仁，依法保障被调查企业进行陈述申辩、申请听证和提起行政复议、行政诉讼的权利。伍德克主席表示，欧盟商会期待着增强与国家发展改革委反垄断局的相互理解，在今后保持密切的沟通协作，共同维护公平竞争秩序。

详细信息：http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201412/t20141202_650789.html

NDRC DG Xu Meets the President of the European Chamber of Commerce

On December 28, 2014, Director-General of PSAMB under NDRC, Mr. Xu Kunlin, met the chamber president of the European Chamber of Commerce, Wuttke. Both parties exchanged the views on issues related to anti-monopoly and drug price reform. Xu said China was accelerating price

reforms and slashing government pricing projects, and that China would further strengthen in- and post-process supervision. Xu also said NDRC had carried out its anti-monopoly enforcement strictly in accordance with the law, and treated all companies equally. NDRC had protected lawful rights of all companies to state, argue, and apply for hearings, and to file for administrative reviews and litigation. Wuttke said the chamber was looking forward to strengthening mutual understanding, and maintaining close communication and co-operation with the PSAMB as to maintain equal competition order together.

For details, please visit:

http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201412/t20141202_650789.html

行政调查 Public Enforcement

宁夏回族自治区快递企业串通价格被处罚

2014年12月26日宁夏日报报道,宁夏地区从事快递经营的8家企业自今年3月起经多次电话沟通、召开会议等方式最终达成共识,就本地电子商务企业揽收邮件最低价格形成了书面统一涨价决定。最终,此举遭电商举报。历经8个月,宁夏回族自治区第一起反价格垄断案终于尘埃落定。其中,涉案的8家快递企业6家被处罚,2家被责令整改。

Couriers Punished in Price Collusion Case in Ningxia

According to *Ningxia Daily* reporting on December 26, 2014, eight couriers in Ningxia autonomous region held multiple phone conversations and meetings since March this year and reached an agreement to raise prices for courier services to e-commerce companies. This price collusion was eventually reported by e-commerce companies and it is the first anti-monopoly case ever punished in Ningxia after 8 months of investigation. Six of the eight couriers involved in the case were given fines and the other two were required to implement rectification measures.

天津三家房产中介串通价格被处以反垄断罚款

2014年12月20日有关新闻报道,近期天津市价格主管部门对今年8月三家房地产中介机构“串通”后同时上调中介费的价格垄断行为开出反垄断罚单,罚金高达531万元。这三家房地产中介分别为我爱我家、链家地产以及中原地产。

Three Tianjin Housing Agents Fined over Price Fixing

According to relevant news reported on December 20, 2014, Tianjin Development and Reform Commission recently has slapped a fine of RMB 5.31 million on three housing agents over price fixing and increasing agent fees simultaneously in August. The three housing agents are, respectively, 5i5j, Homelink and Centaline Property Agency.

不服江苏物省价局垄断罚款 江苏两家混凝土企业提起行政诉讼败诉

2014年12月8日,国家发展改革委员会在其网站上公告了江苏混凝土不服垄断处罚提起行政诉讼案的最新进展。最终,南京市中级人民法院依据江苏省物价局的申请,对两家参与价格垄断拒不缴纳行政罚款的混凝土企业实行了强制执行,并以“超过诉讼时效”为由依法驳回了两家不服处罚决定的混凝土企业的行政诉讼。

详细信息: http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201412/t20141208_651322.html

Two Concrete Companies Lost its Suits against Jiangsu Price Bureau over Monopoly Penalty Decision

On December 8, 2014, NDRC released the most updated news about Jiangsu concrete companies suing against Jiangsu Price Bureau over its antitrust penalty decision on its website. Eventually the Nanjing Intermediate People's Court in China's Jiangsu province issued an injunction to carry out compulsory execution measures for an administrative enforcement decision imposed on two concrete cartel members by Jiangsu Price Bureau, and dismissed the administrative lawsuit brought by two concrete companies on the grounds of expiration of statute of limitation.

For details, please visit:

http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201412/t20141208_651322.html

国家工商总局发布第 19 起和第 20 起竞争执法案例

2014 年 11 月 28 日和 12 月 1 日，国家工商总局公布了第 19 号和第 20 号竞争执法公告。第 19 号案件为重庆燃气集团股份有限公司垄断行为案，该公司利用其支配地位在交易时附加不合理条件及搭售，被处以罚款 179 万。第 20 号案件为上虞市商品混凝土协会及会员单位垄断协议案，经查，八家水泥企业通过成立上虞市混凝土协会的形式，签署协议对各企业的商品混凝土市场份额占有率进行划分，违反了《反垄断法》第 13 条的规定，共处罚款 171 万。

详细信息：http://www.saic.gov.cn/zwgk/gggs/jzzf/201412/t20141201_150200.html

SAIC Publishes the 19th and the 20th Anti-Monopoly Case

On November 28 and December 1, 2014, the State Administration for Industry and Commerce ("SAIC") issued the 19th and 20th Competition Enforcement Announcements on its website. The 19th case relates to the monopoly conduct by Chongqing Gas Group Limited. The company was fined RMB 1.79 million for taking advantage of its dominance position in the relevant market and impose unreasonable conditions and tying on transactions. The 20th case concerns monopoly agreement by Concrete Association and its members in Shangyu. Eight concrete companies were fined RMB 1.71 million for reaching monopoly agreement to allocating market share in concrete market by forming Shangyu Concrete Association and therefore constituted a violation of Article 13 of Anti-Monopoly Law ("AML").

For details, please visit: http://www.saic.gov.cn/zwgk/gggs/jzzf/201412/t20141201_150200.html

经营者集中 Merger Control

商务部十二月份公布 16 起简易案件

截至 2014 年 12 月 31 日，商务部十二月份在其网站上公布的简易案件数量达到 16 起，简易案件总量达 80 起。

详细信息：<http://fldj.mofcom.gov.cn/article/jyzizjyajs/>

MOFCOM Releases 16 Streamlined Cases in December

Up to December 31, 2014, MOFCOM released 16 streamlined cases in December on its website, with total amount reaching 80 so far.

For details, please visit: <http://fldj.mofcom.gov.cn/article/jyzizjyajs/>

商务部首次公布经营者集中相关的行政处罚决定书

2014年12月8日，商务部首次公开违反经营者集中相关规定的行政处罚决定书。经查，西部数据公司未经批准，撤销 Viviti/HGST 公司发展部门，并将有关员工转移至西部数据公司，并将 Viviti 公司的美国子公司 HGST 美国公司转移到西部数据科技公司旗下，成为西部数据科技公司的全资子公司，上述行为违反了关于“确保 Viviti 公司维持独立的法人地位并独立开展业务”的要求，共被处以罚款 60 万。紫光集团有限公司则因“收购锐迪科微电子公司达到申报标准未申报”而被罚款 30 万。

详细信息：<http://tfs.mofcom.gov.cn/article/ckts/ckzcfg/>

MOFCOM Publishes Administrative Penalty Decision related to Concentration of Undertakings for the First Time

On December 8, 2014, MOFCOM published the administrative penalty decisions related to concentration of undertakings which fail to comply with the provisions for the first time. MOFCOM has issued a total of RMB 600,000 of fines against Western Digital for failure to comply with the requirement of "ensure Viviti to maintain an independent legal status and conduct business independently" by eliminating the development division of Viviti/HGST without prior approval and transferring all employees to Western Digital, together with consolidating Viviti's US unit, HGST, into Western Digital and became a wholly owned subsidiary. Unigroup was imposed a fine of RMB 300,000 for its failure to notify its acquisition of RDA Microelectronics which reached mandatory notifying threshold with MOFCOM.

For details, please visit: <http://fldj.mofcom.gov.cn/article/jyzizjyaigs/>

民事诉讼 Private Actions

上海知识产权法院成立

2014年12月28日，上海知识产权法院正式揭牌成立。上海知识产权法院与上海市第三中级人民法院合署办公，设院长1名、副院长2名。在其网站所列的管辖范围中，明确了一审垄断民事案件亦属于其管辖范围之内。

详细信息：<http://shzcfy.hshfy.sh.cn/zcfy/inter/index.html>

Shanghai Intellectual Property Court Established

On December 28, 2014, Shanghai Intellectual Property Court ("IP Court") was officially established. The Shanghai IP Court is housed together with the Shanghai No. 3 Intermediate People's Court, with one president and two vice presidents in place. According to the jurisdiction published on Shanghai IP Court's website, it makes clear statement that civil cases of first instance related to monopoly are fall into the jurisdiction of Shanghai IP Court.

For details, please visit:

http://www.sdpc.gov.cn/fzgggz/jgidvld/jjszhd/201412/t20141202_650789.html

大学生诉中国电信垄断案

近日，中国矿业大学大学生向南京市中级人民法院提起反垄断诉讼，诉称中国电信徐州分公司滥用市场支配地位，对不同年级的学生实行不同的优惠套餐，违反了《反垄断法》第十七

条第一款第六项“没有正当理由，对条件相同的交易相对人在交易价格等交易条件上实行差别待遇”的规定，侵犯了学生的合法权益。该案目前已被法院受理，并将于 2015 年 1 月 20 日开庭审理。

College Student Sues China Telecom for Dominance Abuse

In December 2014, a student at the China University of Mining and Technology has filed an antitrust lawsuit at the Nanjing Intermediate People's Court against China Telecom, which alleged Xu Zhou branch of China Telecom has abused of its market dominance by offering different discount packages to different grades of students. It is alleged that this behavior constituted an abuse of market dominance and was in violation of item 6 of Article 17 (1) of AML, “applying discriminating treatment on prices or other transaction terms to relative trading parties with equal standing without any justification” and therefore infringed the legitimate rights and interests of the students. The local court has accepted the case and will convene a hearing on January 20, 2015.

石油系统首例反垄断案中石化败诉

2014 年 12 月 17 日有关报道显示，此前于 2014 年 7 月审理的中国石油系统首例反垄断案已作出一审判决，判定中石化云南分公司违反反垄断法，并判令其在判决生效后三十日内将该民营企业的生物柴油纳入销售体系进行销售。由于原告提交的证据不能证明其经济损失，故法院未给予支持其赔偿经济损失方面的要求。目前中石化云南分公司已提起上诉。

The First Anti-Monopoly Case in Petroleum Industry Rule against Sinopec

According to the relevant news on December 17, 2014, the first anti-monopoly case in China's petroleum industry heard in July had made its judgment of first instance. The judgment ruled that Sinopec Yunnan Branch has violated AML and ordered Sinopec to sell biodiesel produced by a private biofuel company within 30 days of the effective date of the ruling. Due to the evidence provided by the plaintiff failed to prove its economic losses, the court rejected the claim for compensation. Sinopec Yunnan Branch has filed appeal to the judgment so far.

广东省教育厅因指定赛事软件被诉行政垄断

2014 年 11 月 21 日，广东省深圳市斯维尔科技有限公司（以下简称“斯维尔”）代理律师向广州市中级人民法院发出“询问函”，就斯维尔诉广东省教育厅涉嫌行政垄断一案询问进展情况。据本资讯 7 月版报道，本案已于 6 月 26 日在广州市中级人民法院进行一审开庭审理。如今该案已超过一审审限规定，斯维尔作为原告方，也从未接到法院正式的“延期审理通知”，因此律师发出上述“询问函”。

DEGP is Accused of Administrative Monopoly for Appointing Exclusive Software for Competition

On November 21, 2014, the representative of Shenzhen Tsinghua Sware Software Hi-Tech Co., Ltd. (“Thsware”) filed an inquiry letter to Guangzhou Intermediate People's Court in regard of the latest news on Thsware vs. Department of Education of Guangdong Province (“DEGP”) for alleged administrative monopolies. As reported in Update July 2014, Guangzhou Intermediate People's Court heard this case of first instance on June 26, 2014. So far, the time limit for trial of this case has been expired while the plaintiff, Thsware, never received any official continence notice. Therefore the attorney issued the inquiry letter in the first place.

学术活动 Academia

许昆林、任爱荣在环球时报“跨国企业投资论坛”上发表讲话

2014年12月6日，国家发展和改革委员会价格司司长和价格监督检查与反垄断局局长许昆林与国家工商行政管理总局反垄断与反不正当竞争执法局局长任爱荣在环球时报“跨国企业投资论坛”上发表演讲。

许昆林表示，截至目前，国家发展改革委及省级价格主管部门查处的价格垄断案件，共涉及单位339家。其中，2008年至2012年查处的案件涉及单位131家，只有1起案件涉及韩国和中国台湾地区6家境外企业。2013年至2014年，查处案件涉及单位208家，其中行业协会和内资企业180家，行政机关1家，外资企业和境外企业27家。

任爱荣表示，《反垄断法》实施6年来，工商机关共计立案调查垄断案件43件，目前，工商机关已查结垄断案件19件，中止调查1件，所有案件处罚决定和中止决定均通过工商总局网站向社会公布。

NDRC and SAIC Antitrust Chiefs Make Speech on Multinational Company Investment Forum

On December 6, 2014, Mr. Xu Kunlin, the head of Price Department and Director-General of PSAMB under NDRC, and Ms. Ren Airong, the Director-General of Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau (“AACEB”) under SAIC delivered a speech on Multinational Company Investment Forum.

Xu said NDRC and Price Supervision Bureaus at the provincial level across the country have investigated price-related antitrust cases and issued punishments against 339 companies. From 2008 to 2012, the authorities launched investigations targeting 131 companies, of which only one case involved six overseas enterprises from South Korea and Taiwan. From 2013 to 2014, the authorities conducted antitrust investigations of 208 companies, of which 180 were industry associations or domestic companies, one was an administrative organizations, and 27 were foreign enterprises

Ren said, for the six years since AML enacted, provincial industry and commerce regulators have initiated investigation into 43 antitrust cases. So far, the investigations of 19 cases have been concluded while one case has been suspended, all the penalty decisions and suspension decisions have been published via SAIC’s website.

2014 竞争合规和行政性垄断国际研讨会在上海举行

2014年12月1日，华东政法大学携手联合国贸易和发展会议竞争与消费者政策署举办“2014竞争合规和行政性垄断国际研讨会”。联合国贸易和发展会议竞争与消费者政策署署长哈桑·卡卡亚、国家发改委价格监督检查和反垄断局局长许昆林、国家工商总局反垄断与反不正当竞争执法局副局长刘焯等出席研讨会。在反垄断领域颇具经验的国际组织，竞争执法机构、司法机构以及国内外知名学者、律师和企业界代表等亦聚首讨论相关议题。

The Seminar on International Competition Compliance and Administrative Monopolies 2014 held in Shanghai

On December 1, 2014, the seminar on international competition compliance and administrative monopolies was jointly hosted by the Competition Department of UN Conference on Trade and

Cooperation Development (“UNCTAD”) and the East China University of Political Science and Law (“ECUPL”). Hassan Kakaya, the head of the competition department at UNCTAD, Xu Kunlin, the DG of PSAMB under NDRC and Liu Ye, deputy director of the AACEB under SAIC attended this seminar. International organizations with considerable experience in antitrust field, antitrust and competition law enforcement agencies, the judiciary and the well-known scholars, lawyers and business representatives gathered to discuss relevant issues.

团队动态 Dacheng Team

大成被《全球竞争评论》列为中国重点推荐的反垄断律师事务所

近期，邓志松律师与戴健民律师领衔大成律师事务所反垄断团队被国际知名杂志《全球竞争评论》评选为中国重点推荐的反垄断律师事务所。此次国际性获评再次彰显了大成律师事务所在反垄断与竞争法领域的领先地位。《全球竞争评论》对大成反垄断团队的优势继续了以下重点推荐：（1）首先，大成在中国超过 42 分所的网络优势与反垄断团队的专业优势相结合，为客户在中国大陆地区能提供最广范围的反垄断法律服务；（2）其次，以北京（4 名合伙人，和 7 名律师与助理）和上海（3 名合伙人，和 6 名律师与助理）为双核的反垄断团队是中国目前在该领域规模最大的团队；（3）邓志松律师与戴健民律师带领团队，已经为众多客户（大部分是跨国 500 强）提供各个方面的反垄断法律服务。

GCR Lists Dacheng as Highly Recommended Antitrust Firm in China

Recently, Dacheng antitrust team lead by Jet Deng and Ken Dai was selected as Highly Recommended Antitrust Firm in China by a world famous magazine, Global Competition Review (“GCR”). This honor, once gain, highlights the leading position of Dacheng Law Offices in antitrust and competition field. Dacheng antitrust team is recommended by GCR for the following competitive edges: Firstly, the scale advantage of Dacheng for over 42 firms across China combine with the professional advantage of Dacheng antitrust team can provide antitrust legal service to the widest range of Mainland China for clients. Secondly, the antitrust team based in Beijing (4 partners and 7 attorneys and associates) and Shanghai (3 partners and 6 attorneys and associates) is the largest team in this field in China at present. Thirdly, the team led by Jet Deng and Ken Dai has already provided antitrust legal service for a large number of clients (most of them are Fortune 500) from various aspects.

邓志松律师作为发言人出席“2014 竞争合规和行政性垄断国际研讨会”

2014 年 12 月 1 日，华东政法大学携手联合国贸易和发展会议竞争与消费者政策署举办“2014 竞争合规和行政性垄断国际研讨会”在上海召开。其中，北京大成律师事务所合伙人邓志松律师应邀出席会议并做主题为“针对行政性垄断司法审查”的精彩演讲。

联合国贸易和发展会议竞争与消费者政策署署长哈桑·卡卡亚、国家发改委价格监督检查和反垄断局局长许昆林、国家工商总局反垄断与反不正当竞争执法局副局长刘焯等出席研讨会。在反垄断领域颇具经验的国际组织，竞争执法机构、司法机构以及国内外知名学者、律师和企业界代表等亦聚首讨论相关议题。

Jet Deng Makes Speech on the Seminar on International Competition Compliance and Administrative Monopolies

On December 1, 2014, the seminar on international competition compliance and administrative monopolies jointly hosted by the Competition Department of UNCTAD and the ECUPL was held in Shanghai. Jet Deng from Dacheng Law Offices was invited and delivered an excellent speech in the topic of *Judicial Review on Administrative Monopolies*.

Hassan Kakaya, the head of the competition department at UNCTAD, Xu Kunlin, the DG of PSAMB under NDRC and Liu Ye, deputy director of the AACEB under SAIC attended the seminar. International organizations with considerable experience in antitrust field, antitrust and competition law enforcement agencies, the judiciary and the well-known scholars, lawyers and business representatives gathered to discuss relevant issues.