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## 中国反垄断法律资讯：2015 年 2 月 China Monthly Antitrust Update: February 2015

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Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. For any questions, please kindly contact us directly.

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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。



### 联系方式 Contact Information

北京办公室 Beijing Office

邓志松 Jet Deng/Partner

电话 Tel.: 010- 5813 7038

邮箱 Email: [zhisong.deng@dachenglaw.com](mailto:zhisong.deng@dachenglaw.com)

上海办公室 Shanghai Office

戴健民 Ken Dai/Partner

电话 Tel.: 021- 5878 1965

邮箱 Email: [jianmin.dai@dachenglaw.com](mailto:jianmin.dai@dachenglaw.com)

## 目录 Contents

立法动态 Legislation.....	4
《反不正当竞争法》修订研究系列课题评审会在上海交大举行.....	4
Review Conference on the <i>Anti-unfair Competition Law</i> Amendment Research Held in Shanghai Jiao Tong University.....	4
执法机构 Authorities.....	4
商务部公布 2014 年反垄断工作年终综述.....	4
MOFCOM Publishes Annual Review on Anti-Monopoly Work of 2014.....	4
发改委价监局许昆林局长会见上海大学校长并签署合作框架协议.....	5
NDRC DG Xu Meets with the Principle of Shanghai University and Signs Cooperation Agreement.....	5
工商总局发布 2014 年反垄断工作年终综述.....	5
SAIC Publishes Annual Review on Anti-Monopoly Work of 2014.....	5
行政调查 Public Enforcement.....	5
齐齐哈尔 200 家浴池集体涨价涉嫌价格垄断被调查.....	5
Over 200 Bathhouses Being Investigated in Qiqihar for Alleged Price Monopoly.....	6
广西深入推进反不正当竞争执法.....	6
Guangxi Furthers Anti-unfair Competition Enforcement.....	6
国家工商总局发布 2015 年第 1 号竞争执法案例.....	6
SAIC Publishes the 1 <sup>st</sup> Anti-Monopoly Case of 2015.....	6
经营者集中 Merger Control.....	7
商务部一月份公布 14 起简易案件.....	7
MOFCOM Releases 14 Streamlined Cases in January.....	7
商务部公告解除谷歌收购摩托罗拉案部分义务.....	7
MOFCOM Releases Partial Obligation in Google/Motorola Case.....	7
民事诉讼 Private Actions.....	8
搜狗起诉 360 不正当竞争 被告判赔 510 万创行业最高赔偿金额.....	8
Sogou Sues 360 for Anti-unfair Competition and Wins Highest 5.1 Million Compensation in the Industry.....	8
中国矿大学生状告中国电信垄断经营案在南京中院开庭审理.....	8
Student at CUMT vs. China Telecom Case Heard in Nanjing Intermediate Court.....	8
石油系统首例反垄断案原被告均对一审提出上诉.....	8
The First Anti-Monopoly Case in Petroleum Industry Appealed by Both Parties.....	8
米时科技诉 360 垄断及不正当竞争一审败诉.....	9
Emiage Loses its First Trial against Qihoo 360 for Anti-Monopoly and Anti-Unfair Competition.....	9
学术活动 Academia.....	9
深化国有企业改革与反垄断研讨会在北京召开.....	9
The Seminar on Deepening SOE Reform and Anti-Monopoly Held in Beijing.....	9
竞争法理论与实务研讨会在湖北省武汉市举行.....	10

Competition Law Theory and Practice Seminar Held in Wuhan, Hubei .....	10
团队动态 Dacheng Team.....	10
大成被国际知名杂志 Corporate INTL 评选为年度最佳竞争法中国律师事务所 .....	10
Corporate INTL Lists Dacheng as Competition Law Firm of the Year in China.....	10
邓志松律师接受中央人民广播电台采访 就高通反垄断案发表观点.....	10
Jet Deng Airs Opinions on Anti-Monopoly Case of Qualcomm on CNR.....	10

## 立法动态 Legislation

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### 《反不正当竞争法》修订研究系列课题评审会在上海交大举行

2015 年 1 月 8 日至 9 日，为期两天的《反不正当竞争法》修订研究系列课题评审会在上海交通大学举行。此次会议由国家工商总局竞争执法局主办，上海交通大学竞争法律与政策研究中心承办。来自国家工商总局、国务院法制办公室、最高人民法院、北京知识产权法院、中国律师协会以及国内高校和各地工商局的 30 余位代表与会，就会议主题进行了热烈的研讨交流。

详细信息: [http://cclp.sjtu.edu.cn/Show.aspx?info\\_lb=671&info\\_id=3537&flag=647](http://cclp.sjtu.edu.cn/Show.aspx?info_lb=671&info_id=3537&flag=647)

### Review Conference on the Anti-unfair Competition Law Amendment Research Held in Shanghai Jiao Tong University

From January 8 to January 9, 2015, review conference on the Anti-unfair Competition Law amendment research was held in Shanghai Jiao Tong Universities. This meeting was hosted by the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau of the State Administration for Industry & Commerce ("SAIC") and organized by Centre for Competition Law and Policy of Shanghai Jiao Tong University. Over 30 representatives from SAIC, Legislative Affairs Office of the State Council, the Supreme People's Court, Beijing Intellectual Property Court, All China Lawyers Associations and domestic universities as well as regional administration of industry & commerce ("AIC") attended the meeting, having heated discussions and exchanges in respect of the theme.

For details, please visit: [http://cclp.sjtu.edu.cn/Show.aspx?info\\_lb=671&info\\_id=3537&flag=647](http://cclp.sjtu.edu.cn/Show.aspx?info_lb=671&info_id=3537&flag=647)

## 执法机构 Authorities

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### 商务部公布 2014 年反垄断工作年终综述

2015 年 1 月 29 日，商务部在其网站上公告了 2014 反垄断工作的年终综述。综述主要从做好反垄断委员会工作、有效推进执法工作、集中精力办好重点案件、着力规范执法程序、不断提高执法效率、努力提高执法透明度、积极开展国际交流合作七个方面介绍了 2014 年商务部反垄断工作的进展。

详细信息: <http://www.mofcom.gov.cn/article/ae/ai/201501/20150100882509.shtml#rd>

### MOFCOM Publishes Annual Review on Anti-Monopoly Work of 2014

On January 29, 2015, MOFCOM published the annual review on anti-monopoly work for the year of 2014 on its official website. The review summarized the progress of MOFCOM on anti-monopoly work in 2014 from seven aspects: assuring the work of Anti-monopoly Commission; effectively advancing enforcement of anti-monopoly; focusing on key cases; emphasizing on standardizing procedure of enforcement; constantly improving the efficiency of enforcement; efforts to improving transparency of enforcement; actively carrying out international cooperation.

For details, please visit:

<http://www.mofcom.gov.cn/article/ae/ai/201501/20150100882509.shtml#rd>

**发改委价监局许昆林局长会见上海大学校长并签署合作框架协议**

2015 年 1 月 14 日，发改委价监局许昆林局长在委内会见了上海大学党委书记、校长罗宏杰一行。许昆林局长希望上海大学能够充分利用学科和区域优势，整合有关资源，积极开展有关理论问题研究，在上海地区形成竞争法研究的中心，为促进竞争政策和反垄断法实施发挥积极作用。会见结束后，双方共同签署了合作框架协议。根据协议，双方将在反垄断相关领域开展合作。

详细信息: [http://www.ndrc.gov.cn/fzgggz/jgdyfld/jjszhd/201501/t20150116\\_660433.html#rd](http://www.ndrc.gov.cn/fzgggz/jgdyfld/jjszhd/201501/t20150116_660433.html#rd)

**NDRC DG Xu Meets with the Principle of Shanghai University and Signs Cooperation Agreement**

On January 14, 2015, the Director-General of Price Supervision and Anti-Monopoly Bureau under National Development and Reform Commission ("NDRC"), Xu Kunlin, met with the principle also Party secretary of Shanghai University, Luo Hongjie, and his team. DG Xu hoped that Shanghai University can take advantage of its disciplinary and regional advantages to integrate relevant resources and carry out relevant theory research actively, forming a competition research centre in Shanghai, to facilitate the implementation of competition policy and anti-monopoly law enforcement activities. After the meeting, both parties co-signed the cooperation agreement. According to the cooperation agreement, both parties will cooperate in anti-monopoly field in the future.

For details, please visit:

[http://www.ndrc.gov.cn/fzgggz/jgdyfld/jjszhd/201501/t20150116\\_660433.html#rd](http://www.ndrc.gov.cn/fzgggz/jgdyfld/jjszhd/201501/t20150116_660433.html#rd)

**工商总局发布 2014 年反垄断工作年终综述**

2015 年 1 月 7 日，工商总局在其网站上公告了各省市的工商局在 2014 年开展的反垄断与反不正当竞争法执法工作的情况，以及对 2015 年的工作展望。其中公告的省市包括上海市、广东省、黑龙江省、湖南省、吉林省、山东省、河北省、福建省、江苏省、山西省、四川省、天津市。

详细信息: [http://www.saic.gov.cn/jgzf/fldyfbzljz/201501/t20150107\\_151113.html](http://www.saic.gov.cn/jgzf/fldyfbzljz/201501/t20150107_151113.html)

**SAIC Publishes Annual Review on Anti-Monopoly Work of 2014**

On January 7, 2015, SAIC published the anti-monopoly and anti-unfair competition enforcement activities in 2014 as well as work prospect in 2015 in various cities and provinces on its official website. The cities/provinces concerned including Shanghai, Guangdong Province, Heilongjiang Province, Hunan Province, Jilin Province, Shandong Province, Hebei Province, Fujian Province, Jiangsu Province, Shanxi Province, Sichuan Province, Tianjin.

For details, please visit: [http://www.saic.gov.cn/jgzf/fldyfbzljz/201501/t20150107\\_151113.html](http://www.saic.gov.cn/jgzf/fldyfbzljz/201501/t20150107_151113.html)

## 行政调查 Public Enforcement

**齐齐哈尔 200 家浴池集体涨价涉嫌价格垄断被调查**

2015 年 1 月 15 日，黑龙江省物价局发布消息称，元旦期间齐齐哈尔市 200 多家浴池集体涨价，依据相关法律法规，此次浴池集体涨价已涉嫌行业价格垄断。目前，省物价局已敦促齐齐哈尔市沐浴协会及经营者积极配合价格执法调查，纠正价格违法行为。此案正在进一步处

理调查中。

### Over 200 Bathhouses Being Investigated in Qiqihar for Alleged Price Monopoly

On January 15, 2015, Heilongjiang's Price Bureau announced the news that over 200 bathhouses in Qiqihar collectively raised price during the New Year Holiday, allegedly engaging in price fixing. Currently, the provincial price bureau already urged Qiqihar City Bath Association and the undertakings to cooperate with the investigation and correct the price violation conduct. Now the case is still under further investigation.

### 广西深入推进反不正当竞争执法

2015 年 1 月 3 日，国家工商总局在其网站上公告了广西推进反不正当竞争执法的情况。截至 2014 年 12 月底，全区共查处各类案件 19940 件，其中不正当竞争突出问题案件 420 件，案值 1808.03 万元，并重点依法查处供电、供水、供气、有线电视、交通运输等垄断性行业强制交易、强制服务等限制竞争行为。

详细信息：[http://www.saic.gov.cn/jgzf/fldyfbzljz/201501/t20150112\\_151205.html](http://www.saic.gov.cn/jgzf/fldyfbzljz/201501/t20150112_151205.html)

### Guangxi Furthers Anti-unfair Competition Enforcement

On January 3, 2015, SAIC released the anti-unfair competition enforcement activities in Guangxi Province on its official website. Up to the end of December 2014, Guangxi has handled a total of 19,940 cases last year, of which 420 involved unfair competition and had a combined value of RMB 18.08 million, with a particular focus on the anti-competition conduct such as forced transaction or forced service in monopolistic sectors including power supply, water and gas supply, cable television and transport.

For details, please visit: [http://www.saic.gov.cn/jgzf/fldyfbzljz/201501/t20150112\\_151205.html](http://www.saic.gov.cn/jgzf/fldyfbzljz/201501/t20150112_151205.html)

### 国家工商总局发布 2015 年第 1 号竞争执法案例

2015 年 1 月 13 日，国家工商总局在其网站上公布了 2015 年第 1 号竞争执法公告。2015 年第 1 号案件为北京盛开体育发展有限公司垄断行为案，国家工商总局于 2014 年 3 月 19 日对北京盛开体育发展有限公司涉嫌垄断行为启动反垄断调查，于 2014 年 6 月 3 日对本案作出中止调查决定，并委托天津市工商行政管理局对当事人履行整改承诺的情况进行监督（见竞争执法公告 2014 年第 14 号）。经查，当事人在规定的时限内履行了整改承诺，未出现法律所规定的恢复调查情形。经研究，国家工商总局依据《中华人民共和国反垄断法》及《工商行政管理机关查处垄断协议、滥用市场支配地位案件程序规定》有关规定，于 2014 年 12 月 24 日对本案作出终止调查决定。

详细信息：[http://www.saic.gov.cn/zwgk/gggs/jzzf/201501/t20150112\\_151220.html](http://www.saic.gov.cn/zwgk/gggs/jzzf/201501/t20150112_151220.html)

### SAIC Publishes the 1<sup>st</sup> Anti-Monopoly Case of 2015

On January 13, 2015, SAIC issued the 1<sup>st</sup> Competition Enforcement Announcement of 2015 on its website. The 1<sup>st</sup> case relates to the monopoly conduct by Beijing Shankai Sports. SAIC initiated the investigation on alleged monopoly conduct on March 19, 2014, then suspended the investigation on June 3, 2014 and delegated Tianjin AIC to supervise the fulfillment of the rectifications committed by Shankai (please refer to 14<sup>th</sup> Competition Enforcement Announcement of 2014 for details). After examination, Shankai was found to have fulfilled its rectification commitment within the prescribed time and none of the events for resuming investigation as provided by law ever



occured. After the discussion, SAIC decided to terminate the investigation of this case according to relevant provisions in *Anti-Monopoly Law of People's Republic of China ("AML")* and *Provisions and Procedures on Investigation and Handling Cases of Monopoly Agreements and Abuse of Dominant Market Position by Administration for Industry and Commerce* on December 24, 2014.

For details, please visit: [http://www.saic.gov.cn/zwgk/gggs/jzzf/201501/t20150112\\_151220.html](http://www.saic.gov.cn/zwgk/gggs/jzzf/201501/t20150112_151220.html)

## 经营者集中 Merger Control

### 商务部一月份公布 14 起简易案件

截至 2015 年 1 月 31 日，商务部一月份在其网站上公布的简易案件数量达到 14 起，简易案件总量达 92 起。

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

### MOFCOM Releases 14 Streamlined Cases in January

Up to January 31, 2014, the Ministry of Commerce ("MOFCOM") released 14 streamlined cases in January on its website, with total amount reaching 92 so far.

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

### 商务部公告解除谷歌收购摩托罗拉案部分义务

2015 年 1 月 10 日，商务部反垄断局公布了 2015 年第 2 号公告，即关于解除谷歌收购摩托罗拉案部分义务的公告。据了解，2012 年 5 月 19 日，商务部发布 2012 年第 25 号公告，附条件批准谷歌收购摩托罗拉移动公司，要求谷歌履行四项义务。2014 年 12 月 1 日，谷歌向商务部提出申请称，2014 年 10 月 30 日，联想完成对摩托罗拉移动的收购，谷歌不再控制摩托罗拉移动，根据商务部 2012 年第 25 号公告，申请确认解除 25 号公告中的第（二）项义务。经审查，商务部决定同意谷歌申请，确认商务部 2012 年第 25 号公告第（二）项义务解除，其余内容继续有效。

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

### MOFCOM Releases Partial Obligation in Google/Motorola Case

On January 10, 2015, the Anti-Monopoly Bureau ("AMB") under MOFCOM released the 2<sup>nd</sup> announcement of 2015, i.e. announcement on removing partial obligation in Google/Motorola case. It is known that MOFCOM on 19 May 2012 cleared the Motorola/Google case with remedies in the 25<sup>th</sup> Announcement of 2012, imposing four obligations on Google. On 1 December 2014, Google applied to MOFCOM to remove the second condition imposed by the 25<sup>th</sup> Announcement after Lenovo finished its acquisition of Motorola and Google has no controlling power over Motorola any more. After examination, MOFCOM decided to approve Google's application to remove the second remedy imposed by the 25<sup>th</sup> Announcement, with the rest remaining in place.

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

## 民事诉讼 Private Actions

### 搜狗起诉 360 不正当竞争 被告判赔 510 万创行业最高赔偿金额

2015 年 1 月 19 日，北京市第二中级人民法院就搜狗起诉 360 不正当竞争一案进行宣判，一审判决搜狗胜诉。法院认定，360 安全卫士阻碍搜狗浏览器正常安装，并阻止用户将搜狗浏览器设为默认浏览器的行为构成不正当竞争，被判赔偿搜狗 510 万元。据悉，这是目前业内同类型案件中的最高赔偿金额。

详细信息：<http://it.sohu.com/20150119/n407904402.shtml#rd>

### Sogou Sues 360 for Anti-unfair Competition and Wins Highest 5.1 Million Compensation in the Industry

On January 19, 2015, Beijing No.2 Intermediate People's Court ruled on Sogou vs. Qihoo for anti-unfair competition in favor of Sogou. The court held that 360 security guards hinder Sogou Browser installed properly and prevent users from setting Sogou Browser as default browser, therefore constituting unfair competition, and shall indemnify Sogou RMB 5.1 million. It is known as the maximum amount of compensation for the same type of cases in the industry so far.

For details, please visit: <http://it.sohu.com/20150119/n407904402.shtml#rd>

### 中国矿大学生状告中国电信垄断经营案在南京中院开庭审理

2015 年 1 月 20 日，中国矿业大学学生王鑫宇诉中国电信徐州分公司垄断纠纷一案在南京市中级人民法院开庭。庭审中，双方就被告在相关市场是否具有垄断地位、有无滥用市场支配地位实行差别待遇这两个焦点展开了激烈的辩论。因为原告表示不愿接受调解，审判长宣布庭审结束，择日宣判。

详细信息：[http://epaper.cnxz.com.cn/pcwb/html/2015-01/20/content\\_296677.htm](http://epaper.cnxz.com.cn/pcwb/html/2015-01/20/content_296677.htm)

### Student at CUMT vs. China Telecom Case Heard in Nanjing Intermediate Court

On January 20, 2015, the case raised by a student at China University of Mining and Technology ("CUMT"), Wang Xinyu, suing China Telecom Xuzhou Branch for monopoly dispute, was heard in Nanjing Intermediate People's Court. During the trial, both parties argued on whether the defendant has dominant market position in the relevant market and whether the defendant's conduct constitutes abuse of market dominance via discriminatory treatment. Since the plaintiff refused to take mediation, the presiding judge announced to end the trial and announce adjudication on a fixed date.

For details, please visit: [http://epaper.cnxz.com.cn/pcwb/html/2015-01/20/content\\_296677.htm](http://epaper.cnxz.com.cn/pcwb/html/2015-01/20/content_296677.htm)

### 石油系统首例反垄断案原被告均对一审提出上诉

根据新华网 2015 年 1 月 6 日新闻报道，“石油反垄断第一案”原告、被告双方均表示不服昆明市中级人民法院一审判决结果。据了解，原告上诉请求为：改判中石化和其云南分公司均接纳生物柴油产品；判令被告赔偿原告的经济损失。而一审被告诉请撤销原审判决，在查明事实后改判，驳回一审原告全部诉讼请求。目前，双方的已先后向云南省高院上诉。

### The First Anti-Monopoly Case in Petroleum Industry Appealed by Both Parties

According to the Xinhua News dated on January 6, 2015, both parties in the first anti-monopoly



case in petroleum industry appealed the judgment against Yunnan Intermediate People's Court. It is known that the plaintiff revised the claims as demanding that the Sinopec as well as Sinopec Yunnan Branch accepts the biodiesel, and that the defendants therein indemnify the economic loss sustained by the plaintiff. While the defendants plead to revoke the Court's first ruling and dismiss all claims of the plaintiff after establishing the facts. Up to date, both parties in the case already appealed at Yunnan High People's Court in succession.

### 米时科技诉 360 垄断及不正当竞争一审败诉

2014 年 12 月 31 日，米时科技诉奇虎 360 垄断及不正当竞争案宣判，北京市二中院判决驳回米时科技公司的全部诉讼请求，法院认为：米时公司提供的证据不足以证明 360 公司在相关市场上占有市场支配地位，也不能证明 360 实施的行为构成滥用市场支配地位的行为或者不正当竞争行为。故 360 公司的行为没有针对性，也没有故意，而是根据拦截规则所做出的结论，根据短信的内容进行判断。故认为米时公司诉讼请求没有事实和法律依据，全部予以驳回。对此，米时公司表示，将继续上诉。

### Emiage Loses its First Trial against Qihoo 360 for Anti-Monopoly and Anti-Unfair Competition

On December 31, 2014, in the dispute of Emiage vs. Qihoo 360 for anti-monopoly and anti-unfair competition, Beijing No.2 Intermediate People's Court dismissed all claims filed by Emiage and hold that the evidence provided by Emiage could neither prove the dominance position of Qihoo 360 in the relevant market, nor can they prove the behavior conducted by Qihoo 360 constituting abuse of market dominance or anti-unfair competition. Therefore the conduct of Qihoo 360 was not targeted at specific company or with any intention; instead it behaved according to the blocking rules based on the content of the message. Therefore the claims of Emiage lacked both factual and legal basis and shall be dismissed in all. Emiage indicated that they would continue to appeal the judgment.

## 学术活动 Academia

### 深化国有企业改革与反垄断研讨会在北京召开

根据 2015 年 1 月 19 日光明日报报道，由首都经济贸易大学中国产业经济研究院、山东大学反垄断与规制经济学重点研究基地、东北财经大学产业组织与企业组织研究中心联合主办的深化国有企业改革与反垄断研讨会日前在北京召开，来自高等学校、科研院所的 70 余名专家学者参加会议。

### The Seminar on Deepening SOE Reform and Anti-Monopoly Held in Beijing

According to Guangming Daily News dated on January 19, 2015, the seminar on deepening the state-owned enterprises ("SOE") and anti-monopoly co-held by China Centre for the Industrial Economy at Capital University of Economics and Business, Anti-Monopoly and Regulation Research Centre at Shandong University and Centre for Industrial and Business Organization at Dongbei University of Finance and Economics, was held in Beijing. Over 70 experts and scholars from universities and research institutions attended the meeting.

### 竞争法理论与实务研讨会在湖北省武汉市举行

2014 年 12 月 31 日, 国家工商总局在其网站上报道, 竞争法理论与实务研讨会在湖北省武汉市举行。该研讨会由武汉大学法学院主办, 武汉大学知识产权法研究所、湖北省工商局公平交易分局、湖北省工商学会秘书处承办, 与会人员围绕反不正当竞争、反垄断以及知识产权保护中的法律适用与执法实践等问题进行了研讨。

详细信息: [http://www.saic.gov.cn/jgzf/fldyfbzljz/201412/t20141231\\_150995.html](http://www.saic.gov.cn/jgzf/fldyfbzljz/201412/t20141231_150995.html)

### Competition Law Theory and Practice Seminar Held in Wuhan, Hubei

On December 31, 2014, SAIC released on its website the competition law theory and practice seminar was held in Wuhan, Hubei Province. The seminar was hosted by Wuhan University School of Law, organized by Intellectual Property Research Institution at Wuhan University, Bureau of Fair Competition at Hubei AIC and Hubei Institute of Commerce and Industry Secretariat. The attendees focused on enforcement practice and applicable laws under unfair competition, antitrust and intellectual property protection in the discussion.

For details, please visit: [http://www.saic.gov.cn/jgzf/fldyfbzljz/201412/t20141231\\_150995.html](http://www.saic.gov.cn/jgzf/fldyfbzljz/201412/t20141231_150995.html)

## 团队动态 Dacheng Team

### 大成被国际知名杂志 Corporate INTL 评选为年度最佳竞争法中国律师事务所

近期, 凭借在反垄断与竞争法专业领域的卓越表现, 及优秀的客户口碑, 邓志松律师与戴健民律师领衔大成律师事务所继 2013 年后再次被英国 Corporate INTL 杂志评选为年度最佳竞争法中国律师事务所。Corporate INTL 是一家侧重商业、金融及法律等行业的英国媒体, 旨在为全球的商业人士提供交流平台, 读者不乏金融顾问、财务顾问、公司法律顾问、律师、企业高管、风险投资等专业人士。Corporate INTL 主要通过独立的市场研究团队在全球范围内评选出优秀的法律、财务顾问。

### Corporate INTL Lists Dacheng as Competition Law Firm of the Year in China

Recently, due to the outstanding performance in anti-monopoly and competition field and good reputation from clients, Dacheng antitrust team led by Jet Deng and Ken Dai was, again after honored in 2013, selected as Competition Law Firm of the Year in China by an England magazine, Corporate INTL. Corporate INTL is an England media focused on commercial, financial and legal industries, aiming to provide communication platform for global businessman. Its readers include financial consultants, accounting consultants, corporate legal consultants, lawyers, senior officers and venture capitalists. Corporate INTL selected worldwide excellent legal and financial consultant through independent market research.

### 邓志松律师接受中央人民广播电台采访 就高通反垄断案发表观点

根据央广网财经 2015 年 1 月 4 日消息, 大成律师事务所邓志松律师接受了中央人民广播电台经济之声《天下财经》的采访, 并就高通案的最终处罚结果、结合相关法律对高通可能得到的处罚进行了分析。

### Jet Deng Airs Opinions on Anti-Monopoly Case of Qualcomm on CNR

According to the news from Finance CNR dated on January 4, 2015, Jet Deng took interview by

National Finance from China Business Radio in CNR and aired his professional analysis towards the anti-monopoly case of Qualcomm, together with possible penalty Qualcomm might get according to relevant laws and regulations.