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## 中国反垄断法律资讯：2014 年 8 月 China Monthly Antitrust Update: August 2014

本资讯仅提供一般性信息，因此不应被视作某种形式的法律建议。如果您有任何具体问题，请与我们联系。

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。



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## 立法动态 Legislation

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### 最高法院就专利纠纷案件适用法律司法解释公开征求意见

2014 年 7 月 16 日，最高人民法院在最高人民法院网和中国法院网公布《关于修改〈最高人民法院关于审理专利纠纷案件适用法律问题的若干规定〉的决定》（公开征求意见稿），向社会公开征求意见和建议，征求期为 1 个月。该征求意见稿涉及到侵权行为地、检索报告、权利要求书范围等共九项条款。

详细信息：[http://www.court.gov.cn/xwzx/yw/201407/t20140717\\_196482.htm](http://www.court.gov.cn/xwzx/yw/201407/t20140717_196482.htm)

### The SPC Solicits Public Opinions with Regard to Judicial Interpretation of Applicable Laws of Patent Dispute Cases

On July 16, 2014, the Supreme People's Court ("SPC") released *Decision on amending<Regulations of the Supreme People's Court on Issues concerning Applicable Laws to the Trial of Patent Dispute Cases>(Draft for Comments)* on the website of the SPC and China Court, intending to solicit public opinions and advices of which the duration is one month. The draft has nine articles involving loci delicti commissi, search reports, the range of claims, etc.

For details, please visit: [http://www.court.gov.cn/xwzx/yw/201407/t20140717\\_196482.htm](http://www.court.gov.cn/xwzx/yw/201407/t20140717_196482.htm)

### 国务院发布《关于促进市场公平竞争维护市场正常秩序的若干意见》

2014 年 7 月 8 日，国务院印发了《关于促进市场公平竞争维护市场正常秩序的若干意见》，该《意见》提出强化市场行为监管，创新监管方式，强化生产经营者主体责任、强化依据标准监管、严厉惩处垄断行为和不正当竞争行为、强化风险管理、广泛运用科技手段实施监管，保障公平竞争等方面的工作任务。

详细信息：[http://www.gov.cn/zhengce/content/2014-07/08/content\\_8926.htm](http://www.gov.cn/zhengce/content/2014-07/08/content_8926.htm)

### The State Council Releases Opinions on Improving Market Fair Competition and Maintaining Market Regular Order

On July 8, 2014, the State Council released *Opinions on Improving Fair Market Competition and Maintaining Market Order*. The Opinions proposes the tasks of enhancing supervision on market activities, innovating supervision measures, strengthening the responsibility of producers and operators, standardizing supervision, strictly punishing monopoly and unfair competition, reinforcing risk management, implementing supervision with technological methods widely, safeguarding fair competition and other aspects.

For details, please visit: [http://www.gov.cn/zhengce/content/2014-07/08/content\\_8926.htm](http://www.gov.cn/zhengce/content/2014-07/08/content_8926.htm)

## 执法机构 Authorities

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### 国家发改委与中国人民大学签署合作协议

2014 年 7 月 1 日，价监局许昆林局长和中国人民大学陈雨露校长共同签署合作协议。双方将进一步加强在反垄断相关领域的合作，发改委价监局可以根据实际工作需要向中国人民大学

提出理论研究需求，也将为中国人民大学师生提供实践指导，促进市场在资源配置中起决定性作用和更好发挥政府作用。

详细信息：[http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201407/t20140703\\_617676.html](http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201407/t20140703_617676.html)

### NDRC Signs Cooperation Agreement with Renmin University of China

On July 1, 2014, Director-General of Price Supervision and Anti-Monopoly Bureau (“PSAMB”), Mr. Xu Kunlin signed cooperation agreement with Headmaster of Renmin University of China (“RUC”), Mr. Chen Yulu. The two parties will further reinforce the cooperation on antitrust related realm. PSAMB of National Development and Reform Commission (“NDRC”) would propose requirements with regard to theory study to RUC in accordance with practical working demands, and provide practical instructions for staffs and students of RUC to promote the market to play a decisive role in the resource allocation and to better develop governmental functions.

For details, please visit:

[http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201407/t20140703\\_617676.html](http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201407/t20140703_617676.html)

## 行政调查 Public Enforcement

### 工商局发布第 15 起和第 16 起反垄断调查案例

2014 年 7 月 25 日和 7 月 30 日，国家工商总局在其官网上先后发布了竞争执法公告 2014 年第 15 号和第 16 号。第 15 起案件为内蒙古自治区赤峰中心城区烟花爆竹批发企业实施垄断行为案。经查，该市 6 家花爆竹批发企业以行政机关限定为由分割批发销售市场，涉嫌垄断经营，罚款总额共计 58.37 万元。第 16 起案件为内蒙古自治区烟草公司赤峰市公司滥用市场支配地位案，该公司利用其在相关市场上的支配地位将畅销卷烟和平销卷烟捆绑销售，被处罚款 595.70 万元。

详细信息：[http://www.saic.gov.cn/zwgk/gggs/jzzf/cfid/201407/t20140725\\_147046.html](http://www.saic.gov.cn/zwgk/gggs/jzzf/cfid/201407/t20140725_147046.html)

### SAIC Publishes the 15th and the 16th Anti-Monopoly Cases

On July 25 and 30 respectively, 2014, State Administration of Industry and Commerce (“SAIC”) posted the 15th and 16th announcements in 2014 on its websites of competition enforcement. The 15th case concerns firecracker wholesalers in Chifeng, Inner Mongolia. The six firecracker wholesalers were sanctioned RMB 583, 700 for conducting monopoly operation of dividing the market in the name of limitation by the administration. The 16th case relates to the abuse of dominant market position conducted by the Chifeng subsidiary of Inner Mongolia Tobacco Company. The company took advantage of its dominance in the relevant market to bundle best-selling cigarettes and ordinary cigarettes, and was thus fined for RMB 5.957 million.

For details, please visit:

[http://www.saic.gov.cn/zwgk/gggs/jzzf/cfid/201407/t20140725\\_147046.html](http://www.saic.gov.cn/zwgk/gggs/jzzf/cfid/201407/t20140725_147046.html)

### 国家工商总局突击检查微软 证实已对其正式立案

2014 年 7 月 28 日，国家工商总局组织近百名工商执法人员对微软（中国）有限公司及其在上海、广州、成都的分公司同时进行反垄断突击检查。本案源于 2013 年 6 月部分企业举报微软存在对其 Windows 操作系统和 Office 办公软件相关信息没有完全公开造成的兼容性问题、

搭售、文件验证等问题。目前，国家工商总局已对微软公司涉嫌垄断行为立案，并正在调查中。

详细信息: [http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201407/t20140729\\_147122.html](http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201407/t20140729_147122.html)

### Microsoft Is Raided by SAIC and Confirmed to be under Formal Investigation

On July 28, SAIC organized nearly one hundred enforcement officers to raid Microsoft (China) Co., Ltd. with its branches in Shanghai, Guangzhou, and Chengdu simultaneously. It was caused by the complaint raised by some enterprises against Microsoft on issues like compatibility, which is due to Microsoft not fully disclosing relevant information concerning its Windows operating system and Office software, tying, and file validation, etc. So far the formal investigation against Microsoft's alleged monopoly has been launched by SAIC and is underway.

For details, please visit:

[http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201407/t20140729\\_147122.html](http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201407/t20140729_147122.html)

### 发改委对汽车市场进行反垄断调查

2014 年 7 月，多家知名车企的亚太区负责人上周到国家发改委价格监督检查与反垄断局接受了反垄断调查，执法机构确认一些车企存在横向限制、纵向限制以及滥用市场支配地位等涉嫌垄断行为，很快将出台有关处罚结果。国家发改委价格监督检查与反垄断局副局长卢延纯在 2013 年中国汽车流通年会上表示，作为经营者，在一些同行会议、区域会议、企业合作或者组建产业联盟、战略联盟的过程中，要避免讨论和商定价格；要避免纵向价格限制，《反垄断法》禁止经营者与交易相对人达成固定转售价格，或者限定最低转售价格的垄断协议；同时要注意避免滥用市场支配地位。

详细信息: [http://jckb.xinhuanet.com/2014-07/18/content\\_513260.htm#rd](http://jckb.xinhuanet.com/2014-07/18/content_513260.htm#rd)

### NDRC Launches Anti-Monopoly Investigation on Automobile Market

In July, 2014, several Asia Pacific principals of famous automobile enterprises have been under anti-monopoly investigation by PSAMB of NDRC. The law enforcement agency is affirming that some automobile enterprises have implemented horizontal restriction, vertical restriction, abuse of dominant market position and other behaviors related to monopoly and the penalty will come out soon. Lu Yanchun, the deputy-inspector of PSAMB said on the Chinese Automobile Annual Meeting of 2013 that at some industrial meetings, regional meetings and enterprises cooperation or in the process of establishment of industrial alliance or strategic alliance, the business operators shall avoid discussing and consult the price, avoid vertical price restricting, Anti-Monopoly Law ("AML") prohibits anti-monopoly agreements by business operators to maintain resale price or to fix minimum resale price, and abuse of dominant market position shall be avoided..

For details, please visit: [http://jckb.xinhuanet.com/2014-07/18/content\\_513260.htm#rd](http://jckb.xinhuanet.com/2014-07/18/content_513260.htm#rd)

### 海南 5 家加气砖企业垄断市场操纵价格被罚 53 万元

2014 年 7 月 17 日，海南省价格监督检查与反垄断局对 5 家加气砖经营企业的价格垄断行为依法作出处罚决定，海南厚德新世纪建材有限公司等 5 家企业签垄断协议，操纵加气砖价格被罚 53 万元。经查，5 家加气砖企业于 2012 年 10 月份成立未经批准的“加气砖协会”，统一协调各企业加气砖的销售价格，监控并统计各企业加气砖生产、销售和发货情况。

详细信息: <http://www.hinews.cn/news/system/2014/07/17/016806697.shtml#rd>



## 5 Air-added Brick Enterprises Receive a total fine of RMB 530,000 for Manipulating Price

On July 17, 2014, PSAMB of Hainan Province decided to impose a total fine of RMB 530,000 to the five air-added brick enterprises. Five enterprises including Hainan Houde New Century Construction Materials Company reached a monopoly agreement to manipulate the price of air-added brick. According to the investigation, the five air-added enterprises established without approval an "Air-added Brick Association" in October, 2012, to coordinate the sale price of air-added brick and supervise and summarize the production, sale and delivery of each enterprise. For details, please visit: <http://www.hinews.cn/news/system/2014/07/17/016806697.shtml#rd>

### 全国各地价格主管部门扣减违规燃煤发电企业的脱硫电价款并对其进行罚款

按照国家发展改革委、环境保护部联合下发的《关于组织开展全国脱硫电价专项检查的通知》精神,各地价格主管部门会同环保部门对全国所有燃煤发电企业 2013 年度脱硫电价执行情况进行了检查。检查发现,部分燃煤发电企业存在擅自停运发电机组脱硫设施,脱硫设施未能与发电机组同步投运,享受脱硫电价补贴但脱硫设施不正常运行等问题。各地价格主管部门对检查发现的问题依法进行了处理,据统计,截止到目前,全国各地价格主管部门已对违规的燃煤发电企业脱硫电价款进行扣减和罚款,共计 5.19 亿元。发改委网站公布了 10 家违规企业的处罚情况。

详细信息: [http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201407/t20140715\\_618798.html](http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201407/t20140715_618798.html)

## Local Competent Pricing Departments Deduct Price of Desulfurization Electricity of Coal-Fired Power Enterprises Violating the Regulations and Impose Fines

In accordance with the spirit of *Notification on Organizing Special Inspection of Price of Desulfurization Electricity Nationwide* co-released by NDRC and Ministry of Environmental Protection, the local competent pricing departments jointly with departments of environment protection proceed inspection on execution situation of price of desulfurization electricity in all the coal-fired power enterprises in the year of 2013. Through the inspection, problems involving stopping operating desulfurization facilities of generator sets without permission, non-synchronization operation of desulfurization facilities and generator sets, enjoying subsidies of desulfurization electricity price with desulfurization facilities operating abnormally exist in part of coal-fired power enterprises. The local competent pricing departments handle the exposed problems pursuant to laws. According to statistics, until now, local competent pricing departments in the nation have deducted and fined price of desulfurization electricity of coal-fired power plant violating the regulations, with a sum of RMB 519 million. NDRC releases the penalty of ten violators on its website.

For details, please visit:

[http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201407/t20140715\\_618798.html](http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201407/t20140715_618798.html)

### 高通公司总裁第三次到国家发展改革委接受反垄断调查

2014 年 7 月 11 日,美国高通公司总裁 Derek Aberle 第三次率团到国家发展改革委,就反垄断调查的有关问题与价格监督检查与反垄断局许昆林局长、卢延纯副巡视员交换意见并接受调查询问。

详细信息: [http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201407/t20140711\\_618478.html](http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201407/t20140711_618478.html)

### Qualcomm CEO Pays a Third Visit to NDRC for Antitrust Investigation

On July 11, 2014, Mr. Derek Aberle, Qualcomm CEO, leading the delegation, paid a third visit to NDRC to exchange views with Mr. Xu Kunlin, Director General of the PSAMB of NDRC, and Mr. Lu Yanchun, deputy-inspector and receive inquiries on its antitrust investigation.

For details, please visit:

[http://www.sdpc.gov.cn/fzgggz/jgidyfld/jjszhd/201407/t20140711\\_618478.html](http://www.sdpc.gov.cn/fzgggz/jgidyfld/jjszhd/201407/t20140711_618478.html)

## 经营者集中 Merger Control

### 商务部附加限制性条件批准丰田中国等 4 家企业设立合营企业

2014 年 7 月 2 日，商务部公布对湖南科力远新能源股份有限公司、丰田汽车（中国）投资有限公司、Primearth EV Energy 株式会社、常熟新中源创业投资有限公司和丰田通商株式会社拟设立合营企业的反垄断审查结果。商务部根据《反垄断法》第二十七条规定的因素，从相关市场的集中度、参与集中经营者的市场份额及市场控制力、市场进入的难易程度等方面进行了审查，认为交易后丰田对混合动力汽车产业链的控制力进一步加强，可能会对全球车用镍氢电池市场和中国混合动力汽车市场产生排除、限制竞争的效果，对中国混合动力汽车企业产生封锁效应。因此，决定附加限制性条件批准此项集中。

详细信息：<http://fldj.mofcom.gov.cn/article/ztxx/201407/20140700648291.shtml>

### MOFCOM Conditionally Approves Establishment of Joint Venture by Toyota (China) and Other Enterprises

On July 2, 2014, Ministry of Commerce ("MOFCOM") announced the anti-monopoly review results of proposed establishment of joint venture among Hunan Keliyuan New Energy Co., Ltd, Toyota Motor (China) Investment Co., Ltd, Primearth EV Energy Co., Ltd, Changshu Xinzhongyuan Ventures Investment Co., Ltd and Toyota Tsusho Corporation. MOFCOM conducted the review in respect of concentration ratio of relevant market, the market share and the ability of controlling the market of the concerned undertakings, the difficulty for market entry and other aspects in accordance with elements regulated by the Article 27 of AML and concluded the control power of Toyota in the hybrid electric vehicle industrial chains would be further strengthened, which might lead to the effect of eliminating and restricting competition to the automotive nickel-metal hydride battery market of the world and China's hybrid electric vehicle market and blocking China's hybrid electric vehicle enterprises. Therefore, the authority has decided to approve the concentration with restrictive conditions.

For details, please visit: <http://fldj.mofcom.gov.cn/article/ztxx/201407/20140700648291.shtml>

## 学术活动 Academia

### 竞争法实务研讨会在成都召开

2014 年 7 月 26 日，北京大学竞争法研究中心在四川成都召开竞争法实务研讨会，最高院知



产庭庭长孔祥俊、山东、广东等地高院知产庭庭长以及武汉、成都、长沙等地方中级法院知产庭庭长、北京大学竞争法研究中心主任肖江平等人参加了此次会议的讨论和交流。

### Competition Law Practice Seminar Opens in Chengdu

On July 26, 2014, Competition Law Research Center of Peking University held competition law practice seminar in Chengdu, Sichuan province. Mr. Kong Xiangjun, president of intellectual property chamber of SPC, presidents of intellectual property chamber of high people's court of Shandong, Guangdong provinces, presidents of intellectual property chamber of intermediate people's courts of Wuhan, Chengdu, Changsha, Mr. Xiao Jiangping, the chairman of the research center and other experts participated in the discussion of the conference.

## 团队动态 Dacheng Team

### 戴健民律师为中欧国际夏令营学生作题为《反垄断法与律师实务》的专题演讲

2014 年 7 月 31 日，大成上海办公室戴健民律师为中欧国际夏令营(China Europe International Summer School)的学生作了题为《反垄断法与律师实务》的专题讲座。戴律师从以下八大方面介绍了中国律师可以围绕《反垄断法》提供诸多法律服务：(1)反垄断与并购交易；(2) 反垄断与资本市场；(3) 反垄断与行政调查；(4) 反垄断与民事诉讼；(5) 反垄断与知识产权；(6) 反垄断与外海投资；(7) 反垄断与行业协会；(8) 反垄断与公司合规等；并在讲座结束时回答了学生们提出的若干问题。

### Ken Dai Addresses Keynote Speech on AML and Legal Practice to China Europe International Summer School Students

On July 31, 2014,, Ken Dai from Dacheng Shanghai Office gave a presentation concerning PRC AML and Legal Practice to the students from the China Europe International Summer School. Ken Dai conducted the speech on how the PRC attorney can render legal services pertain to AML based on the following eight aspects: (1) Antitrust and M&A; (2) Antitrust & Capital Market; (3) Antitrust and Public Investigation; (4) Antitrust and Private Litigation; (5) Antitrust and Intellectual Property; (6) Antitrust and Outbound Investment; (7) Antitrust and Trade Association; (8) Antitrust and Corporate Compliance. Ken Dai further answered a number of questions raised by the students at the end of this seminar.

### 戴健民律师应邀作反垄断专项培训

2014 年 7 月 30 日及 31 日，大成上海办公室戴健民律师受 AsiaLegalCouncil 之邀分别就反垄断行政调查与并购中的反垄断问题进行专题演讲。其中，30 日下午，戴律师主要介绍了反垄断调查的相关问题，从调查前的合规准备，到调查中的实务应对，再到调查后的积极整改与策略实施，给参会者带来全面的分析；31 日下午，戴律师从以下四个方面介绍了经营者集中反垄断审查的热点问题：(1) 简易程序的适用标准与实践；(2) 涉及 VIE 结构的经营者集中申报问题；(3) PE 参与的经营者集中申报问题；(4) 如何处理第三方对经营者集中交易的质疑。

### Ken Dai Provides Antitrust Training upon Invitation

On July 30 and July 31, 2014, upon the invitation from AsiaLegalCouncil, Ken Dai from Dacheng

Shanghai Office made a training speech concerning antitrust investigation and antitrust issues pertain to M&A respectively. Among which, in the afternoon of July 30, Ken Dai introduced the issues in antitrust investigation, from compliance preparation prior to the investigation, to the practice of handling the investigation, and further to proactive correction & strategy implementation. And in the afternoon of July 31st, Ken Dai introduced the hot topics in the field of antitrust review of concentration of undertakings from the following four aspects: (1) applicable standard and practice of streamlined procedure; (2) notification pertain to the transactions involving VIE structure; (3) notification involving private equity; (4) how to deal with the challenges against the concentration from third party.

#### 邓志松律师接受中央电视台采访 就高通反垄断案发表观点

2014 年 7 月 23 日,大成律师事务所邓志松律师接受了中央电视台 2 套经济信息联播节目采访,主要就高通涉嫌反垄断案件进行了剖析。邓律师结合《反垄断法》等相关规定,阐述了高通涉嫌违法行为的性质以及其可能触及到的《反垄断法》条款,同时表示高通的罚款可能会创历史记录。

详细信息: <http://tv.cntv.cn/video/C10330/bc9b3fa6e4d54645a872268c14830bff>  
<http://tv.cntv.cn/video/C10330/7686f25b11be4f8c9b0b084932d7b26b>

#### Jet Deng Airs Opinions on Anti-Monopoly Case of Qualcomm on CCTV-2

On July 23, 2014, Jet Deng took interview by "Economic Information Simulcast" of CCTV-2 and aired his professional analysis on the anti-monopoly case of Qualcomm. Combined with AML and other regulations, Jet Deng explained the nature of Qualcomm's conduct and the related articles it may breach. He also expressed the fine received by Qualcomm would break a new record.

For details, please visit:

<http://tv.cntv.cn/video/C10330/bc9b3fa6e4d54645a872268c14830bff>  
<http://tv.cntv.cn/video/C10330/7686f25b11be4f8c9b0b084932d7b26b>

#### 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

2014 年 7 月 22 日,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《天下公司》栏目的采访,主要就高通涉嫌反垄断案件进行了深入分析。邓律师结合相关法律对高通可能得到的处罚进行了详细说明。

详细信息:

[http://musicplayer.cnr.cn/flash/player/MusicPlayer\\_for\\_WMA02.html?danqu=true&id=705436&download=null&mediaType=dbzb](http://musicplayer.cnr.cn/flash/player/MusicPlayer_for_WMA02.html?danqu=true&id=705436&download=null&mediaType=dbzb)

#### Jet Deng Airs Opinions on Anti-Monopoly Case of Qualcomm on China Business Radio

On July 22, 2014, Jet Deng took interview by Column "Corporations" of China Business Radio and aired his professional analysis towards the anti-monopoly case of Qualcomm. Combined with related laws and regulations, Jet Deng gave a detailed explanation of the fine Qualcomm may receive.

For details, please visit:

[http://musicplayer.cnr.cn/flash/player/MusicPlayer\\_for\\_WMA02.html?danqu=true&id=705436&download=null&mediaType=dbzb](http://musicplayer.cnr.cn/flash/player/MusicPlayer_for_WMA02.html?danqu=true&id=705436&download=null&mediaType=dbzb)

**邓志松律师和戴健民律师会见日本公平贸易委员会前干事长**

2014 年 7 月 17 日，大成律师事务所邓志松律师和戴健民律师赴日本东京与日本公平贸易委员会前事务总局局长上杉秋则举行了会谈。双方就在东亚建立竞争法中心等若干问题交换了意见。

**Jet Deng and Ken Dai Meet the Former Secretary General of Japanese Fair Trade Commission**

On July 17th, 2014 Jet Deng and Ken Dai of Dacheng Law Offices paid a visit to Tokyo to have a meeting with Akinori Uesugi, the former Secretary General of Japanese Fair Trade Commission. Both parties exchanged views in respect of establishing the East Asia Competition Law Center.