

中国反垄断法律资讯

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立法动态 Legislation

国家发改委《关于汽车业的反垄断指南》（征求意见稿）公开征求意见

根据国务院反垄断委员会的工作计划，经与有关部门研究，国家发改委于 2016 年 3 月 23 日公布了《关于汽车业的反垄断指南》（征求意见稿）（“《指南》”）。此次公开征求意见的时间为 2016 年 3 月 23 日至 2016 年 4 月 12 日。有关单位和社会各界人士可以登陆国家发展改革委门户网站，对《指南》提出意见建议，并将意见发送到国家发改委（价格监督检查与反垄断局）。¹

NDRC Publishes the Anti-monopoly Guidelines for Auto Industry (Draft for Comments) to Solicit Public Comments

In accordance with the working plan of the Anti-Monopoly Commission of the State Council, National Development and Reform Commission (“NDRC”), together with other relevant ministries and departments, drafted the *Anti-monopoly Guidelines for Auto Industry (Draft for Comments)* (“Guidelines”), and published the full text on its official website on 23 March 2016 to seek public comments. The period for solicitation lasts from 23 March 2016 to 12 April 2016. Relevant organizations and people from all walks of life may log on NDRC’s website to put forward suggestions and send them to NDRC (Price Supervision and Inspection and Anti-Monopoly Bureau) (“PSIAMB”).¹

最高人民法院发布司法解释 阐述 FRAND 原则

3 月 22 日，最高人民法院发布了《最高人民法院关于审理侵犯专利权纠纷案件应用法律若干问题的解释（二）》，其中第 24 条对标准必要专利（SEP）许可的公平、合理、无歧视原则（FRAND）进行了规定，这是我国法院首次以司法解释的形式对这一反垄断与知识产权保护交叉领域的热点问题明确表态。本次司法解释有助于法院和行政执法机构对此问题在态度上形成一致，也对目前知识产权反垄断指南的起草提供重要参考，对我国反垄断法律体系的完善具有重要意义。²

¹ http://jjs.ndrc.gov.cn/fjgld/201603/t20160323_795740.html

² <http://www.court.gov.cn/fabu-xiangqing-18482.html>

Supreme People's Court Issues Judicial Interpretation for FRAND Rule

On 22 March, the Supreme People's Court issued *Interpretations of the Supreme People's Court Concerning Certain Issues on Application of Law for Trial of Cases on Disputes over Patent Infringement (II)*, in which the Fair, Reasonable and Non-Discrimination Principle ("FRAND") of Standard Essential Patents ("SEP") is specified in Article 24. This is the first time that the Chinese court takes a stand on the hot issues of intersection of antitrust and intellectual property protection in the judicial interpretation. This judicial interpretation will help the courts and administrative enforcement institutions to reach a consensus on this issue, provides an important reference for the drafting of *Anti-monopoly Guidelines on Abuse of Intellectual Property Rights* and also has great significance to the perfection of our anti-monopoly legal system.²

国务院法制办公室《中华人民共和国标准化法（修订草案征求意见稿）》公开征求意见

3月22日，国务院法制办公室公布《中华人民共和国标准化法（修订草案征求意见稿）》。其中，第十七条规定：“禁止利用标准从事行业壁垒、地区封锁、不正当竞争等违法活动。”为充分了解社会各方面的意见和建议，提高立法质量，国务院法制办公室将征求意见稿全文公布，征求社会各方面意见。有关单位和各界人士如有修改意见可在2016年4月21日前提出。³

LAOSC Publishes the Standardization Law of the PRC (Revised Draft for Comments) to Solicit Public Opinion

On 22 March, Legislative Affairs Office of the State Council ("LAOSC") published the *Standardization Law of the People's Republic of China ("Standardization Law") (Revised Draft for Comments)*. Article 17 stipulates that it is prohibited to use the standard to engage in industry barriers, regional blockade, unfair competition and other illegal activities. In order to better understand the comments and suggestions from all aspects of the society, and to improve the legislation quality, LAOSC published the full text of the revised draft of *Standardization Law* to solicit public comments. Relevant organizations and people from all walks of life may put forward their revising suggestions before 21 April 2016.³

³ <http://www.chinalaw.gov.cn/article/cazjgg/201603/20160300480477.shtml>

执法机构 Authorities

国家工商总局竞争执法局召开反不正当竞争重大案件分析会

3月30日，国家工商总局竞争执法局反不正当竞争重大案件分析会在海南省海口市召开。会议就医药和家装行业的商业贿赂等不正当竞争案件进行交流讨论，为有关行为的定性和类似案件的查办工作提供了参考。来自全国17个省市的竞争执法部门和经济检查总队负责人及代表参加会议。⁴

CEB under SAIC Holds a Seminar to Discuss Significant Anti-Unfair Competition Cases

On 30 March, Competition Enforcement Bureau (“**CEB**”) under the State Administration for Industry and Commerce (“**SAIC**”) held a seminar to discuss significant anti-unfair competition cases in Haikou city of Hainan province. The commercial bribery in the pharmaceuticals and home decoration industries were discussed in the seminar, which could be a reference for determining the nature of such behaviors and dealing with similar cases. The Leading officials and representatives of CEB and Economic Inspection departments from 17 provinces/cities attended the seminar.⁴

爱立信公司拜访国家工商总局竞争执法局

3月24日，国家工商总局竞争执法局会见来访的爱立信公司知识产权和竞争部负责人 Dina Kallay 一行，听取了爱立信公司关于总局近期起草的知识产权反垄断执法指南的意见建议，双方就竞争及知识产权合规管理等问题进行深入交流。⁵

Leading Officials of Ericsson Visit CEB under SAIC

On 24 March, CEB under SAIC met a delegation led by Dina Kallay, leading official of the Intellectual Property Rights and Competition Department of Ericsson and listened to the opinions and suggestions of Ericsson about Anti-monopoly Enforcement Guidelines on Abuse of Intellectual Property Rights drafted by SAIC recently. The two parties exchanged opinions on competition, intellectual property compliance management and other issues in

⁴ http://www.saic.gov.cn/fldyfbzdjz/qzdt/201603/t20160331_167681.html

⁵ http://www.saic.gov.cn/fldyfbzdjz/qzdt/201603/t20160324_167528.html

depth.⁵

国家发改委价监局张汉东局长与中国政法大学黄进校长商谈反垄断战略合作事宜

3月16日下午，国家发改委价格监督检查与反垄断局张汉东局长一行赴中国政法大学（昌平校区），与黄进校长等校领导就双方开展反垄断战略合作进行了商谈。国家发改委价格监督检查与反垄断局陈志江副局长和综合处相关人员陪同会见。⁶

Zhang Handong, DG of PSIAMB under NDRC, Discusses Anti-Monopoly Strategic Cooperation with Huang Jin, President of CUPL

On the afternoon of 16 March, a delegation led by Zhang Handong, Director-General (“DG”) of Price Supervision & Inspection and Anti-Monopoly Bureau (“PSIAMB”) under NDRC, went to China University of Political Science and Law (Changping campus) (“CUPL”), and discussed with Huang Jin and other school leaders of CUPL about anti-monopoly strategic cooperation issues. Chen Zhijiang, Deputy Director-General of PSIAMB, and relevant officials from the Comprehensive Office also attended the meeting.⁶

苹果公司拜访国家工商总局竞争执法局

3月8日上午，中华人民共和国国家工商行政管理总局反垄断与反不正当竞争执法局会见了来访的苹果公司销售、零售和竞争事务总法律顾问凯尔·安德尔一行，听取了苹果公司关于总局近期起草的知识产权反垄断执法指南的意见建议，并就竞争及知识产权合规管理等问题进行深入交流，积极倡导苹果公司增强在中国的竞争法律合规意识，切实维护消费者的合法权益。⁷

Apple Corporation Visits CEB under SAIC

On the morning of 8 March, CEB under SAIC met a delegation led by Kyle-Andel, the General Legal Counselor of Sale, Retail and Competition of Apple, and listened to the opinions and suggestions of Apple on the Anti-monopoly Enforcement Guidelines on Abuse of Intellectual Property Rights published by SAIC recently. Both parties shared opinions on competition, intellectual property compliance management and other issues in depth. CEB under SAIC actively advocated Apple to enhance the compliance awareness of competition law in China, and earnestly protect the customers' legal rights and interests.⁷

⁶ <http://www.fadaren.com/Fadaren/20160331094047.shtml>

⁷ http://www.saic.gov.cn/fldyfbzdzjz/gjil/201603/t20160309_167116.html

国家发改委价监局张汉东局长会见欧盟驻华使团贸易处主任

3 月 7 日下午，国家发改委价监局张汉东局长在委内会见了欧盟驻华使团贸易处主任 Francisco Perez Canado 先生。双方就欧盟委员会与国家发改委在竞争政策领域合作的有关事宜交换了意见。价监局竞争政策与国际合作处、国际司欧洲处参加了会见。⁸

Zhang Handong, DG of PSIAMB under NDRC, Meets the Director of Trade Division of EU Mission in China

On the afternoon of 7 March, Zhang Handong, DG of PSIAMB under NDRC, met with Francisco Perez Canado, the Director of Trade Division of European Union Mission in China. Both parties exchanged views on the cooperation in the field of competition policy between NDRC and European Commission. Representatives from Competition Policy and International Cooperation Office under PSIAMB, European Office under Bureau of International Organization Affairs attended the meeting.⁸

国家发改委：“十二五”期间反价格垄断取得重大进展

“十二五”期间，全国共查处价格垄断案件 97 件，实施经济制裁 103.97 亿元。其中，国家发展改革委直接查处 29 件，省级价格主管部门查处 68 件；查处垄断协议案件 76 件，滥用市场支配地位案件 13 件，行政垄断案件 8 件。⁹

NDRC: Anti-Price Monopoly Makes Significant Progress during the 12th Five-Year-Plan Period

During the 12th Five-Year-Plan period, CAs of China investigated and dealt with 97 cases of price monopoly with a total fine of RMB 10.397 billion. Among them, NDRC directly investigated and dealt with 29 cases, while the provincial price supervision bureaus investigated and dealt with 68 cases. 76 cases on monopoly agreements, 13 cases on abuse of dominant position and 8 cases on administrative monopoly have been completed.⁹

⁸ http://jjs.ndrc.gov.cn/qzdt/201603/t20160308_792227.html

⁹ http://www.sdpc.gov.cn/qzdt/201603/t20160304_791948.html

经营者集中 Merger Control

商务部三月份公布 31 起简易案件

截至 2016 年 3 月 31 日，商务部三月份在其网站上公布的简易案件数量达到 31 起，简易案件总量达 395 起。¹⁰

MOFCOM Releases 31 Streamlined Cases in March

Up to 31 March 2016, the Ministry of Commerce (“**MOFCOM**”) has released 31 streamlined cases in March on its website, with total amount reaching 395 so far.¹⁰

爱康国宾举报美年垄断 美年强调市场占比小

3 月 9 日，爱康国宾向商务部实名举报美年健康及其实际控制人俞熔违反反垄断法，商务部反垄断局受理了举报材料；日前，其又以美年健康未依反垄断法提交申报为由向证监会和深交所进行书面实名举报。3 月 29 日，美年健康宣称，“美年健康作为一家专业机构，所占市场份额相对整个体检市场非常小，不构成所谓的垄断。”大成律师事务所反垄断律师邓志松接受腾讯财经采访时表示，商务部反垄断局审查经营者集中时会考虑实际控制人因素。¹¹

Ikang Reports Health 100 for Monopoly, Health 100 Emphasizes Its Possessing of Small Market Share

On 9 March, Ikang reported Health 100 and its actual controller Yu Rong’s violation of Anti-Monopoly Law in real name, and Anti-Monopoly Bureau (“**AMB**”) of MOFCOM has accepted the reporting materials. Recently, Ikang submitted written materials to China Securities Regulatory Commission (“**CSRC**”) and Shenzhen Stock Exchange to report that Health 100 violated the Anti-Monopoly Law for reason of not notifying to MOFCOM for the concentration of undertakings. However, on 29 March, Health 100 declared that “As a professional institution, Ikang’s small market share did not constitute “monopoly”, compared with the other competitors in the market.” Jet Deng, an Antitrust Lawyer of Beijing Dentons, said that AMB of MOFCOM’s review of a concentration of undertakings would consider the factor of actual controller during an interview with the Tencent Finance.¹¹

¹⁰ <http://fdj.mofcom.gov.cn/article/jyzjzjyags/>

¹¹ <http://finance.qq.com/a/20160310/050226.htm>

民事诉讼 Private Actions

北京知识产权法院受理普华优科诉 VMware、神州数码等七被告滥用市场支配地位案

近日，北京知识产权法院受理普华优科（北京）科技有限公司（“普华优科公司”）诉 VMware Inc.（“VMware 公司”）和神州数码科技有限公司（“神州数码公司”）等七被告垄断纠纷一案。普华优科公司认为，VMware 公司和神州数码公司等七被告滥用其在虚拟软件市场的支配地位，给普华优科公司造成了巨大的经济损失。因此，请求法院判令被告停止垄断行为并连带承担赔偿责任 1000 万元人民币及本案的诉讼费用。¹²

BIPC Accepts Case Filled by Power Unique against Seven Defendants, including VMware and Digital China for Market Dominance Abuse

Recently, Beijing Intellectual Property Court (“BIPC”) accepted an antitrust lawsuit against seven defendants, including VMware and Digital China, brought by Power Unique. Power Unique alleged that the seven defendants, including VMware and Digital China abuse their market dominance in virtualization software market, resulting in its huge loss. Therefore, Power Unique requested the Court to order the defendants to stop monopolistic practices and bear joint and several liability for losses of RMB 10 million and the litigation cost.¹²

最高人民法院院长周强：去年审结不正当竞争和垄断案件 1802 件

3 月 13 日上午，第十二届全国人民代表大会第四次会议在人民大会堂举行第三次全体会议，听取最高人民法院院长周强关于最高人民法院工作的报告，听取最高人民检察院检察长曹建明关于最高人民检察院工作的报告。周强在其报告中指出，去年依法审结不正当竞争和垄断案件共 1802 件。¹³

Zhou Qiang, President of Supreme People's Court: 1802 Cases of Unfair Competition and Monopoly Completed Last Year

On the morning of 13 March, The Fourth Session of the Twelfth National People's Congress held the Third Plenary Meeting in the Great Hall of the People. In the meeting, Zhou Qiang, President of the Supreme People's Court, reported on the work of the Supreme People's

¹² http://www.cnipr.com/sfsj/zscqfy/201603/t20160317_195711.htm

¹³ <http://politics.caijing.com.cn/20160313/4086795.shtml#rd>

Court. Cao Jianming, Attorney General of the Supreme People's Procuratorate, reported on the work of Supreme People's Procuratorate. Zhou Qiang concluded in his report that the courts completed 1802 cases of unfair competition and monopoly in the last year.¹³

学术动向 Academia

中国人民大学经济法学研究中心和中韩市场暨规制法研究中心共同主办“竞争政策背景下的标准必要专利问题”研讨会

3月27日，由中国人民大学经济法学研究中心和中韩市场暨规制法研究中心共同主办的“竞争政策背景下的标准必要专利问题”研讨会在京举行，国内外部分学者、反垄断机构相关负责人、公司代表针对标准必要专利热点问题进行研讨。¹⁴

The Economic Law Research Center of RUC and China & Korea Market Regulation Law Research Center Co-hold a Seminar of “SEP Issues in the Context of Competition Policies”

On 27 March, the Economic Law Research Center of Renmin University of China (“RUC”) and Chinese & Korean Market Regulation Law Research Center co-held a seminar of “SEP Issues in the Context of Competition Policies” in Beijing. Some scholars from home and abroad, relevant officials of Anti-monopoly authorities and company representatives discussed hot issues of SEP in the seminar.¹⁴

中欧竞争周于北京举行

3月14-15日，国家发展改革委价监局与欧盟竞争总司在北京联合召开“中欧竞争周”研讨会。价监局介绍了正在起草的《反垄断案件经营者承诺指南》、《横向协议案件宽大制度适用指南》、《关于垄断协议豁免程序的指南》、《关于认定违法所得和确定罚款的指南》四项反垄断指南；来自欧盟委员会竞争总司的执法官员、波兰竞争与消费者保护办公室前主席以及葡萄牙竞争局的执法官员介绍了欧盟、波兰、葡萄牙关于宽大、承诺、罚款等相关政策制度的设计和做法，对中方起草的反垄断指南提出了意见建议。3月16日，国家工商总局和欧盟竞争总司在北京共同举办了第十二届“中欧竞争政策周”活动，就竞争损害的量化和垄断行为主体责任等热点、疑难问题进行了深入交流。竞争周期间国家工商总局局长张茅、商务部部长高虎城、国家发展改革委副主任胡祖才分别会见了来访的欧盟委员会竞争事务委员玛格丽特·维斯塔格。¹⁵

¹⁴ <http://www.cicn.com.cn/zggsb/2016-03/30/cms83932article.shtml>

¹⁵ http://www.sdpc.gov.cn/gzdt/201603/t20160317_792968.html

China- EU Competition Week Held in Beijing

From 14 to 15 March, PSIAMB under NDRC and EU Competition Division jointly held China-EU competition week seminar in Beijing. PSIAMB introduced the on-going drafted documents: *Guidelines for Commitment of Business Operators in Anti-monopoly Cases*, *Guidelines for Application of the Leniency Program to Cases of Horizontal Monopoly Agreements*, *Guidelines for the Exemption Procedure on Monopoly Agreements* and *Guidelines on the Determination of Illegal Gains and Penalties*. Competition enforcement officials from Competition Division of EU Commission, former president from Competition and Consumer Protection Office of Poland and officials from Portugal CEB introduced the regulations and practice on leniency, commitment, penalties and other related policy and system of EU, Poland and Portugal, offered opinions and suggestions on the drafting of China antitrust guidelines. On 16 March, SAIC and the EU Competition Division jointly held the 12th China-EU competition policy week activities in Beijing. Both parties exchanged views on competition damage quantification, entity responsibilities of monopolistic behaviors and other hot and complicated issues in depth. During the competition week, Director-General of SAIC Zhang Mao, Minister of MOFCOM Gao Hucheng, Deputy Director of NDRC Hu Zucai met the Competition Commissioner Margrethe Vestager of EU Commission respectively.¹⁵

大成团队 Dentons Team

戴健民律师受邀在伦敦“竞争执法所面临的跨境挑战”国际会议上发言

近期，大成反垄断与竞争业务团队负责人之一戴健民律师应邀参加了伦敦大学玛丽女王学院（Queen Mary University of London）商法研究中心全球法律、经济和金融学院所举办的主题为“竞争执法所面临的跨境挑战”（Cross-Border Challenges in Competition Enforcement）的国际会议。作为中国的唯一参会代表，戴健民律师在“新兴产业中的单边行为”（Unilateral Conduct in Dynamic Industries）环节作为小组嘉宾进行发言；其通过分析美国高通公司滥用市场支配地位等前沿案例，结合自己多年的反垄断实务经验，向与会者介绍了中国在规制单边行为的最新发展。在该环节中，来自欧盟竞争委员会的执法官员 Nicholas Banasevic 先生与美国 Google 公司的高级竞争顾问 Oliver Bethell 先生也先后分享了欧盟与美国在适用竞争法规制新兴产业中的单边行为的经验。

Ken Dai Delivers a Speech in the International Conference of “Cross-Border Challenges in Competition Enforcement”

Recently, Ken Dai, the Partner of Dentons Beijing Antitrust Team was invited to participate in the “Cross-Border Challenges in Competition Enforcement” international conference held by the Institute for Global Law, Economics and Finance at the Centre for Commercial Law Studies of Queen Mary University of London. As the only delegate from China, Ken Dai delivered a speech in the panel of "Unilateral Conducts in Dynamic Industries". He introduced the latest development of unilateral conducts in China to the participants by analyzing the leading cases, including Qualcomm's abuse of dominant market position, and combining with his rich experience in antitrust practice. In this panel, Mr. Nicholas Banasevic, official from the European Commission and Mr. Oliver Bethell, Senior Competition Counsel from Google also shared the experience of the application of competition law to unilateral conducts in emerging industries in European Union and United States respectively.

大成律师事务所举办“中国大陆与香港竞争法实务研讨会”

3月14日下午，由大成律师事务所主办的“中国大陆及香港竞争法实务交流研讨会”在北京举行。此次研讨会吸引了来自高校、律所、企事业单位的40余位嘉宾参加。来自北京大成律师事务所高级合伙人于绪刚律师，亚洲竞争论坛创始人、墨尔本大学法学院教授 Mark Williams，对外经济贸易大学竞争法中心主任、法学教授黄勇，大成反垄断团队邓志松律师以及大成反垄断团队的张炜先生在会上分别做了精彩发言。同时，参会嘉宾提问踊跃，围绕中

国大陆与香港竞争法的诸多热点问题，特别是就有关企业经营法律风险的管控进行了充分讨论。

Beijing Dentons Holds “Symposium on Competition Law Practice in Mainland China and Hong Kong”

On the afternoon of 14 March, Beijing Dentons held the “Symposium on Competition Law Practice in Mainland China and Hong Kong” in Beijing. The symposium attracted more than 40 guests from universities, law firms, enterprises and institutions. Yu Xugang, the Senior Partner from Beijing Dentons, Professor Mark Williams, the Founder of Asia Competition Forum from the Law School of Melbourne University, Professor Huang Yong, Director of Competition Law Center of the University of International Business and Economics, Partner Jet Deng, Head of Beijing Dentons Antitrust Team and Mr. Zhang Wei from Beijing Dentons Antitrust Team delivered speeches at the meeting. Meanwhile, the participants asked some questions about the hot issues of competition laws in mainland China and Hongkong, and fully discussed legal risk management and control of business management.

邓志松律师出席“全球竞争评论”第五届亚太法律领袖年度论坛并就中国竞争法律和实务分享经验

3月3日、4日，大成合伙人邓志松律师应邀出席了全球竞争评论（Global Competition Review or GCR）在新加坡举行的“第五届亚太法律领袖年度论坛”（5th Annual Asia-Pacific Law Leaders Forum），并在论坛上就中国竞争法律和实务分享了经验。论坛中，邓律师还与中、日、韩及台湾地区执法机构官员、法律顾问、律师等探讨了反垄断与知识产权、纵向限制等热点问题。论坛聚焦东盟、北亚司法管辖区竞争法律及实务。GCR是竞争法领域全球领先的新闻和出版机构，本次论坛为中外专家提供了良好的交流和沟通的机会。

Jet Deng Attends the Fifth Annual Asia-Pacific Leaders Forum of GCR and Shares the Practical Experience of Competition Law in China

From 3 to 4 March, Jet Deng, the partner of Beijing Dentons, was invited to attend the Fifth Asia-Pacific Legal Annual Leadership Forum of Global Competition Review (“GCR”) held in Singapore, and shared his practical experience of Competition Law in China. In the forum, Jet Deng discussed the hot issues, such as antitrust, intellectual property and vertical restrictions, with law enforcement officials, legal counsels and lawyers from China, Japan, South Korea and Taiwan area. This Forum focused on the Competition Law and practice in ASEAN and North Asia jurisdictions. GCR is one of the world’s leading news and publishing agency in competition law area and this forum provided a good communication opportunity for Chinese and foreign experts.

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