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中国反垄断法律资讯：2015年8月 China Monthly Antitrust Update: August 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

发改委价监与反垄断局召开“垄断行为违法所得及罚款计算”和“垄断协议豁免程序”课题开题会

按照国务院反垄断委员会工作部署，国家发展改革委会同商务部、工商总局等相关部门，负责起

草《关于对反垄断法第 46、47 条规定的执法指南》和《关于垄断协议豁免程序的指南》。为做好相关工作，国家发展改革委价监局委托清华大学法学院和北京大学法学院，分别对两项指南开展课题研究，为指南起草提供理论支持。

详细信息：http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201507/t20150730_743396.html

PSAMB of NDRC Launches the Project Proposal of *Calculating the Illegal Gains and Fines for Monopoly Conducts and the Procedures of Monopoly Agreements Exemption*

According to the work arrangement of the Anti-monopoly Committee of the State Council, National Development and Reform Commission (“NDRC”) jointly with Ministry of Commerce (“MOFCOM”), State Administration for Industry and Commerce (“SAIC”) and other relevant departments takes the responsibility to draft the *Enforcement Guidelines for Article 46 & 47 of the Anti-monopoly Law* and the *Guidelines for the Procedures of Monopoly Agreements Exemption*. In order to implement these tasks efficiently, the Price Supervision and Anti-Monopoly Bureau of Price Bureau (“PSAMB”) of NDRC delegated School of law, Tsinghua University and School of Law, Peking University respectively to carry out the research on the two guidelines and to provide theoretical support for drafting the guidelines.

For details, please visit:

http://www.sdpc.gov.cn/fzgggz/jgdyfld/jjszhd/201507/t20150730_743396.html

国家工商总局竞争执法局解读《关于禁止滥用知识产权排除、限制竞争行为的规定》

国家工商总局今年 4 月 7 日出台的《关于禁止滥用知识产权排除、限制竞争行为的规定》将于 8 月 1 日施行。这是国家工商总局制定的第六个《反垄断法》配套规章，对指导反垄断执法实践具有重要意义。近日，中国工商报刊发国家工商总局反垄断与反不正当竞争执法局对《规定》制定的必要性，如何有效实施，以及有关内容的解读，供各地工商、市场监管部门在实践中参考。

详细信息：<http://www.yjggsxzglj.com/News/View.asp?ID=559>

Enforcement Bureau of SAIC Interprets the Provisions on Prohibiting the Abuse of Intellectual Property Rights to Eliminate or Restrict Competition

The *Provisions on Prohibiting the Abuse of Intellectual Property Rights to Eliminate or Restrict Competition* (the “Provisions”), which have been published on 7 April 2015 by SAIC, will come into force on 1 August 2015. This is the sixth supporting regulation enacted by SAIC for Anti-monopoly Law, which is important in guiding Anti-monopoly Law enforcement. Recently, China Industry and Commerce News published the interpretation of the Anti-monopoly and Anti-unfair Competition Enforcement Bureau of SAIC on the necessities of enactment of the Provisions, the methods of effective enforcement and the relevant contents, which provides reference for the local AICs and market supervision departments in their enforcement practice.

For details, please visit: <http://www.yjggsxzglj.com/News/View.asp?ID=559>

执法机构 Authorities

商务部上半年收到反垄断申报 160 件，同比增长 55%

商务部 7 月 20 日召开例行发布会，通报上半年商务运行情况。商务部新闻发言人沈丹阳表示，上半年共收到经营者集中反垄断案件申报 160 件，同比增长 55%。

详细信息：http://jjs.ndrc.gov.cn/gzdt/201507/t20150713_737156.html

MOFCOM Receives 160 Anti-monopoly Notifications during the First Half of 2015, with a Year-on-year Growth of 55%

MOFCOM held a regular press conference on 20 July 2015, reporting the commerce operation situation in the first half of 2015. Danyang Shen, Spokesman of MOFCOM, said that MOFCOM has received 160 anti-monopoly notifications of concentration of undertakings in the first half year, with a year-on-year growth of 55%.

For details, please visit: http://jjs.ndrc.gov.cn/gzdt/201507/t20150713_737156.htm

发改委价监局张汉东局长会见日本公平交易委员会山本和史委员

7 月 20 日上午，发改委价监局张汉东局长在发改委会见了日本公平交易委员会委员山本和史委员一行。双方相互介绍了反垄断法律法规体系、执法程序及近年来执法情况，并肯定了双方近年来在竞争领域合作取得的成效。双方一致表示，在反垄断执法日趋国际化的背景下，今后双方要进一步深化合作交流，继续沟通反垄断合作谅解备忘录有关事宜。

详细信息：http://jjs.ndrc.gov.cn/gzdt/201507/t20150720_738421.html

Handong Zhang, Director General of the PSAMB under NDRC Meets Mr. Yamamoto from JFTC

In the morning of 20 July 2015, Handong Zhang, Director General of the PSAMB under NDRC met a delegation lead by Mr. Yamamoto from Japanese Fair Trade Commission (“JFTC”). The two parties briefed each other’s antitrust laws, regulations, enforcement procedures and enforcement situations in recent years, and expressed affirmation on effects from cooperation in competition field. Both parties agreed that, with the globalization of antitrust law enforcement, they would conduct further communication and coordination and further discuss relevant matters on the Memorandum of Understanding (“MOU”) concerning anti-monopoly cooperation.

For details, please visit: http://jjs.ndrc.gov.cn/gzdt/201507/t20150720_738421.html

发改委价监局张汉东局长参加联合国竞争原则及规则审议大会并访问欧盟竞争总司

7 月 5 日至 12 日，发改委价监局张汉东局长赴瑞士参加第七届竞争原则及规则审议大会，并访问欧盟竞争总司。此次会议上，张汉东局长被选举为大会副主席，在“医药领域反竞争行为控制”圆桌会议上进行了主题发言，并主持了“并购领域的国际合作”圆桌会议。之后，张汉东局长赴比利时访问了欧盟竞争总司，就双方反垄断工作进展及进一步加强合作交流交换了意见。

详细信息：<http://www.chinanews.com/cj/2015/07-21/7417997.shtml>

Handong Zhang, Director General of the PSAMB under NDRC Attends the Seventh UN Review Conference and Visits DG COMP

From 5 July to 12 July 2015, Handong Zhang, Director General of the PSAMB under NDRC participated in the Seventh United Nation Competition Principles and Rules Review Conference (the "Conference") in Geneva, Switzerland and visited DG Competition of European Commission ("DG COMP"). In the Conference, Handong Zhang was selected to be the vice president of the Conference and delivered a keynote speech on the round-table symposium regarding Controlling Anti-Competition Conducts in Pharmaceutical Industry. Meanwhile, he hosted the round-table symposium regarding International Corporation in M&A Field. Then, Handong Zhang visited DG COMP in Belgium and exchanged opinions on further communication and cooperation between NDRC and DG COMP in the anti-monopoly enforcement.

For details, please visit: <http://www.chinanews.com/cj/2015/07-21/7417997.shtml>

行政调查 Public Enforcement

重庆市工商系统开展对汽车销售“霸王条款”的检查

近年来，消费者关于汽车销售领域的投诉居高不下。重庆市工商系统自去年12月开始对汽车销售行业合同格式条款开展了集中整治，共检查汽车销售企业322户，收集合同文本591份，梳理出问题条款60条，主要集中于4大类问题，即免除或减轻汽车经销商的责任、加重购车消费者的责任、排除或限制购车消费者的权利、扩大汽车经销商的权利等。并于近日披露了七条不合理的格式条款：1) 延迟发货成不可抗力；2) “三包”权益需车主购买；3) 一经售出概不退换；4) 车主有联络厂商责任；5) 经销商逃避一般违约责任；6) 车主承担风险责任；7) 不够交付条件强行交车。

详细信息：<http://zxb.ccn.com.cn/shtml/xfzb/20150706/253635.shtml>

Chongqing Industry & Commercial System Carries Out Investigations on “Overbearing Clauses” in Auto Sales Area

In recent years, the amount of consumer complaints in the auto sales area stays at a high level. Chongqing Industry & Commercial System carried out problem-addressing actions towards format clauses in auto sales industry intensively since December 2014. During this investigation, 322 auto sales enterprises were covered, 591 copies of contracts were collected and 60 problematic terms were revealed, which concentrated on the following four aspects: exempting or reducing the responsibilities of distributors, tightening the responsibilities of consumers, eliminating or restricting the rights of consumers and expanding the rights of distributors. Recently, seven unfair format clauses were disclosed as below: 1) delivery delay is deemed as force majeure; 2) the “three guarantees” are required to be bought by consumers; 3) final sale without any returns or changes; 4) consumers have liabilities to contact the manufacturers; 5) distributors evade general liabilities for breach of contracts; 6) consumers have to bear risks; 7) force to deliver the cars without reaching certain delivery conditions.

For details, please visit: <http://zxb.ccn.com.cn/shtml/xfzb/20150706/253635.shtml>

经营者集中 Merger Control

商务部七月份公布 21 起简易案件

截至 2015 年 7 月 31 日，商务部七月份在其网站上公布的简易案件数量达到 21 起，简易案件总量达 209 起。

详细信息：<http://fldj.mofcom.gov.cn/article/jyzjzjyajs/?2>

MOFCOM Publicizes 21 Streamlined Cases in July

Up to 31 July 2015, MOFCOM publicized 21 streamlined cases in July on its website, with total amount reaching 209 so far.

For details, please visit: <http://fldj.mofcom.gov.cn/article/jyzjzjyajs/?2>

商务部公布 2015 年第二季度无条件批准经营者集中案件列表

2015 年 7 月 6 日，商务部公布了 2015 年第二季度无条件批准经营者集中案件列表。根据该列表，商务部反垄断局在 2015 年第二季度无条件批准经营者集中案件共 91 起。

详细信息：<http://fldj.mofcom.gov.cn/article/zcfb/201507/20150701034930.shtml>

MOFCOM Releases Merger Control Data in the Second Quarter of 2015

On 6 July 2015, MOFCOM released the case list of concentration of undertakings unconditionally approved in the second quarter of 2015. According to the case list, there were a total of 91 anti-monopoly notifications being unconditionally approved by the Anti-monopoly Bureau of MOFCOM in the second quarter of 2015.

For details, please visit: <http://fldj.mofcom.gov.cn/article/zcfb/201507/20150701034930.shtml>

学术动向 Academia

发改委价监局召开“强化现阶段竞争政策的基础性地位”课题开题研讨会

7 月 17 日下午，发改委价监局组织召开“强化现阶段竞争政策的基础性地位”课题开题研讨会。张汉东局长对课题研究提出了明确要求，此项课题的研究要使市场在资源配置中起决定性作用。

详细信息：http://jjs.ndrc.gov.cn/gzdt/201507/t20150720_738422.html

PSAMB under NDRC Holds the Proposal Seminar on “Strengthening the Fundamental Position of the Competition Policy at the Current Stage”

On 17 July 2015, PSAMB under NDRC held the proposal seminar on “Strengthening the Fundamental Position of Competition Policy at the Current Stage”. Handong Zhang, Director General of PSAMB, stated clearly that the purpose of this project was to ensure that market plays a decisive role in allocating resources.

For details, please visit: <http://news.sjtu.edu.cn/info/1010/621898.htm>

团队动态 Dacheng Team

邓志松律师应邀参加全球竞争法论坛并发表专题演讲

2015年7月9日，大成反垄断团队邓志松律师应邀参加了在北京举办的全球竞争法论坛，并就中国反垄断执法的进展与趋势与近100位与会嘉宾做了分享。本次论坛共有来自中国、美国、韩国等国家和地区的十余位竞争法领域的专家参与，分享和讨论的话题包括但不限于全球竞争法的最新发展、滥用市场支配地位、欧洲竞争法、中国反垄断调查等。

Jet Deng Attends Global Competition Law Forum and Delivered a Keynote Speech

On 9 July 2015, Jet Deng, partner of Dacheng Antitrust Team was invited to participate in Global Competition Law Forum in Beijing and delivered a keynote speech on the progress and trend of antitrust enforcement in China to almost 100 attendees. More than 10 competition law experts from China, the US, Korea and other regions attended this forum, sharing and discussing the topics including but not limited to the latest development of global competition law, abuse of market dominance, European competition law and anti-monopoly investigation in China.

戴健民律师应邀参加联合国第七届竞争原则及规则审议大会

2015年7月6日至10日，大成反垄断团队戴健民律师应邀参加联合国第七届竞争原则及规则审议大会，该会议覆盖多个重要议题，包括但不限于：(1) 提升执法机构的竞争推广与执法工作的方法；(2) 并购交易的反垄断审查之国际合作；(3) 药品领域竞争的作用及其给消费者带来的利益；(4) 竞争执法机构的能力建设等。在本次大会上，戴健民律师除了认真学习国际上关于竞争法的前言话题之外，还与各国的竞争执法机构官员及学者交流了中国反垄断法的执法动态及趋势。

Ken Dai Attends the Seventh UN Review Conference

From 6 July to 10 July 2015, Ken Dai, partner of Dacheng Antitrust Team was invited to participate in the Seventh UN Review Conference. In the conference multiple topics were discussed, including but not limited to: (1) increasing the competition promotion and enforcement methods of enforcement authorities; (2) international cooperation in antitrust review in M&A transactions; (3) the role of competition in the pharmaceutical sector and its benefits for the consumers; (4) the capacity building for competition law enforcement institutions. In this conference, Ken Dai learned from the leading topics of competition law overseas as well as communicated the trends of antitrust enforcement in China with officers and scholars from different competition authorities all over the world.