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## 中国反垄断法律资讯：2014 年 7 月 China Monthly Antitrust Update: July 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。



### 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.....	3
发改委制定《规范价格行政处罚权的若干规定》 .....	3
NDRC Promulgates Provisions on Regulating the Authority of Price-related Administrative Penalties .....	3
工商总局发布禁止滥用知识产权规定草案 .....	3
SAIC Releases New Draft on Prohibition of Abusing IPR.....	3
商务部修订《关于经营者集中申报的指导意见》 .....	3
MOFCOM Amends Notification Guidance of Merger Control .....	3
执法机构 Authorities .....	4
国家发改委与韩国公平交易委员会开展反垄断政策对话.....	4
NDRC Holds Antitrust Policy Dialogue with Korea Fair Trade Commission.....	4
尚明局长会见肯尼亚竞争局主席欧戴维 .....	4
Director General Shang Ming Meets the Chairman of Competition Authority of Kenya .....	4
郑文副局长率团赴韩国进行工作会谈 .....	5
MOFCOM Deputy DG Leads a Delegation to South Korea.....	5
行政调查 Public Enforcement .....	5
漳州水务违规收取天价违约金 被工商开 20 万罚单.....	5
Zhangzhou Water's Overcharge Was fined of RMB 200,000 by AIC.....	5
工商总局中止对世界杯门票代理商反垄断调查.....	5
SAIC Suspends Investigation into Tickets Agent of Word Cup .....	5
经营者集中 Merger Control.....	6
P3 联盟流产 商务部首次禁止全球性商业交易 .....	6
MOFCOM Prohibits the Proposed P3 Shipping Alliance .....	6
法院诉讼 Courts Proceedings .....	6
斯维尔诉广东省教育厅行政垄断案在广东中院开庭.....	6
Guangzhou Intermediate People's Court Hears the Anti-Monopoly Administrative Litigation by Thsware against Guangdong Department of Education .....	7
学术活动 Academia .....	7
上海市法学会竞争法研究会成立暨知识产权与反垄断法学术研讨会召开.....	7
Competition Law Research Council of Shanghai Law Society Is Inaugurated with a Symposium on IPR & Antitrust.....	7
团队动态 Dacheng Team.....	8
邓志松律师为对外经济贸易大学法律研究生讲授反垄断法.....	8
Jet Deng Lectures on Anti-Monopoly Law for Juris Master Candidates of UIBE .....	8

## 立法动态 Legislation

### 发改委制定《规范价格行政处罚权的若干规定》

2014 年 6 月 18 日，发改委网站公布关于印发《规范价格行政处罚权的若干规定》的通知。通知称为规范价格主管部门行使行政处罚权，维护公民、法人和其他组织的合法权益，特制定《规范价格行政处罚权的若干规定》。

详细信息：[http://jjs.ndrc.gov.cn/zcfg/201406/t20140618\\_615520.html](http://jjs.ndrc.gov.cn/zcfg/201406/t20140618_615520.html)

### NDRC Promulgates Provisions on Regulating the Authority of Price-related Administrative Penalties

On June 18, 2014, National Development and Reform Commission (“NDRC”) released a circular on issuing the *Provisions on Regulating the Authority of Price-related Administrative Penalties*, which was declared to be promulgated in order to regulate the authority of price regulators on administrative punishment and to protect legitimate interests of citizens, corporations and other organizations.

For details, please visit: [http://jjs.ndrc.gov.cn/zcfg/201406/t20140618\\_615520.html](http://jjs.ndrc.gov.cn/zcfg/201406/t20140618_615520.html)

### 工商总局发布禁止滥用知识产权规定草案

2014 年 6 月 11 日，国家工商总局在其网站上发布《工商行政管理机关禁止滥用知识产权排除、限制竞争行为的规定（征求意见稿）》，公开向社会征求意见。这是自 2009 年工商总局起草知识产权与反垄断法规以来的第八版，其中关于“安全港”规则、专利联营、标准必要专利等重要问题作了详细规定。

详细信息：[http://www.saic.gov.cn/gzhd/zqyj/201406/t20140610\\_145803.html](http://www.saic.gov.cn/gzhd/zqyj/201406/t20140610_145803.html)

### SAIC Releases New Draft on Prohibition of Abusing IPR

On June 11, 2014, State Administration for Industry and Commerce (“SAIC”) released on its website the *Provisions of Administrations for Industry and Commerce on the Prohibition of Abuse of Intellectual Property Rights to Eliminate or Restrict Competition (Draft for Comments)*, intending to solicit public opinions. It’s the eighth version since SAIC set out in 2009 to draft regulation on intellectual property rights (“IPR”) and antitrust. The new version provides detailed provisions on safe harbor rule, patent pools and standard essential patents.

For details, please visit: [http://www.saic.gov.cn/gzhd/zqyj/201406/t20140610\\_145803.html](http://www.saic.gov.cn/gzhd/zqyj/201406/t20140610_145803.html)

### 商务部修订《关于经营者集中申报的指导意见》

2014 年 6 月 6 日，商务部反垄断局对 2009 年 1 月 5 日公布的《关于经营者集中申报的指导意见》进行了修订。根据五年来的实践，大幅增加和修订了申报的有关细则性规定，例如立案前商谈申请的文件和内容，申报义务人的确定，申报文件的形式等。

详细信息：<http://fldj.mofcom.gov.cn/article/xgxz/201406/20140600614679.shtml>

### MOFCOM Amends Notification Guidance of Merger Control

On June 6, 2014, Anti-Monopoly Bureau of Ministry of Commerce (“MOFCOM”) announced its amendment to *Guidance on Notification of Undertakings’ Concentration*, which was previously promulgated on January 5, 2009. According to the practices in the past five years, detailed

regulation on notification procedure was amended and expanded substantially, including the documents and contents of application for pre-notification consulting, who has the obligation to notify, and forms of notification materials, etc.

For details, please visit: <http://fldj.mofcom.gov.cn/article/xgxz/201406/20140600614679.shtml>

## 执法机构 Authorities

### 国家发改委与韩国公平交易委员会开展反垄断政策对话

2014年6月26日,价监局与韩国公平交易委员会竞争政策局在北京举办反垄断政策对话。价监局许昆林局长出席会议并致辞。会议由价监局李青副局长主持。会议期间,韩国公平交易委员会竞争政策局金聖夏局长介绍了韩国反垄断有关法律、执法机构和执法进展等情况。来自高丽大学、韩国发展研究院和天主教大学的专家,分别就知识产权领域的反垄断规制、反垄断经济学分析和滥用行政权力排除限制竞争等主题,介绍了韩国的做法和经验,以及对中国的借鉴意义。

详细信息: [http://jjs.ndrc.gov.cn/gzdt/201406/t20140627\\_616753.html](http://jjs.ndrc.gov.cn/gzdt/201406/t20140627_616753.html)

### NDRC Holds Antitrust Policy Dialogue with Korea Fair Trade Commission

On June 26, 2014, Price Supervision and Anti-Monopoly Bureau ("PSAMB") held antitrust policy dialogue with Competition Policy Bureau of Korea Fair Trade Commission ("KFTC") in Beijing. Director-General of PSAMB, Mr. Xu KunLin attended the meeting and speech was given by him. The whole meeting was host by Deputy Director-General of PSAMB, Ms. Li Qing.

During the meeting, the Director-General of Competition Policy Bureau of KFTC introduced relevant laws, enforcement authorities and enforcement development in Korea's Antitrust. Experts from Korea University, Korea Development Institution and Catholic University shared practice and experience in Korea on antitrust regulation on IPR, economy analysis on antitrust and abuse of administrative power to eliminate or restrict competition etc., which provided useful lesson for China.

For details, please visit: [http://jjs.ndrc.gov.cn/gzdt/201406/t20140627\\_616753.html](http://jjs.ndrc.gov.cn/gzdt/201406/t20140627_616753.html)

### 尚明局长会见肯尼亚竞争局主席欧戴维

2014年6月13日,反垄断局尚明局长会见了来访的肯尼亚竞争局主席欧戴维(Mr. David O. Ong'olo),双方就各自的反垄断立法执法进展和加强反垄断合作等事宜交换了意见,并共同签署《中华人民共和国商务部与肯尼亚竞争局关于反垄断合作的谅解备忘录》。

详细信息: <http://fldj.mofcom.gov.cn/article/xxfb/201406/20140600626481.shtml>

### Director General Shang Ming Meets the Chairman of Competition Authority of Kenya

On June 13, 2014, the Director-General of Anti-Monopoly Bureau ("AMB"), Mr. Shang Ming, met the chairman of Competition Authority of Kenya, Mr. David O. Ong'olo. The two parties exchanged opinions on development of antitrust legislation and enforcement in each country and signed the *Memorandum of Understanding on Antitrust Cooperation between MOFCOM and Competition Authority of Kenya* together.

For details, please visit: <http://fldj.mofcom.gov.cn/article/xxfb/201406/20140600626481.shtml>

### 郑文副局长率团赴韩国进行工作会谈

2014 年 6 月 11 日至 13 日，郑文副局长率团赴韩国进行反垄断工作交流。在韩期间，郑文副局长先后与韩国公平交易委员会市场结构改善政策司、三星电子株式会社就经营者集中反垄断审查进行了工作会谈。会谈起到了加深了解、促进合作的良好效果。

详细信息: <http://fldj.mofcom.gov.cn/article/xxfb/201406/20140600627482.shtml>

### MOFCOM Deputy DG Leads a Delegation to South Korea

From 11st June to 13th June, 2014, Deputy Director-General of AMB under MOFCOM, Mr. Zheng Wen with his delegation went to South Korea for antitrust communication. During the trip, Zheng Wen had a bilateral meeting on competition policy respectively with Market Structure Division of KFTC and Samsung Electronics in respect of antitrust review of merge control. The meeting not only strengthened the interaction but also promoted cooperation between China and South Korea. For details, please visit: <http://fldj.mofcom.gov.cn/article/xxfb/201406/20140600627482.shtml>

## 行政调查 Public Enforcement

### 漳州水务违规收取天价违约金 被工商开 20 万罚单

2014 年 6 月 13 日，漳州发展水务集团(下称漳州水务)对逾期交纳水费的市民，收取“天价”违约金被漳州市工商局立案调查之事，有了新进展。漳州市工商局经调查后已正式认定水务集团违法事实成立，对其开出 20 万元的罚单，并纠正违规行为。不过，漳州水务表示不接受这张罚单，并提出了行政复议，复议结果将于近期揭晓。

详细信息: <http://fj.sina.com.cn/news/s/2014-06-13/110159644.html#rd>

### Zhangzhou Water's Overcharge was Fined of RMB 200,000 by AIC

On June 13, 2014, the latest news came concerning Zhangzhou Development Water Group's ("Zhangzhou Water") overcharge to citizens who paid its water fee overdue. Zhangzhou Administration for Industry and Commerce ("AIC") deemed it illegal after investigation and a fine of 200,000 in Renminbi was imposed with an additional requirement to rectify the illegal conduct. Zhangzhou Water said that they would not accept the fine and already filed for administrative reconsideration, the result of which remains to be seen.

For details, please visit: <http://fj.sina.com.cn/news/s/2014-06-13/110159644.html#rd>

### 工商总局中止对世界杯门票代理商反垄断调查

2014 年 6 月 6 日，国家工商总局决定对在销售巴西世界杯门票中存在涉嫌垄断行为的北京盛开体育发展有限公司中止反垄断调查。此前，北京盛开公司在销售巴西世界杯门票过程中，涉嫌利用独家代理商的优势地位搭售巴西当地酒店住宿、交通以及旅游服务的垄断行为，国家工商总局执法人员对北京盛开公司进行了反垄断调查。

详细信息: <http://www.chinanews.com/gn/2014/06-06/6252285.shtml>

### SAIC Suspends Investigation into Tickets Agent of Word Cup

On June 6, 2014, SAIC revealed that it decided to suspend the antitrust investigation on Shankai

Sports' suspicious conducts during its selling of tickets of World Cup Brazil in 2014. It was reported that Beijing Shankai Sports was suspicious of tying its ticket to Brazil local hotel, traffic and relevant travelling service by using its advantageous position as an exclusive agency. Enforcement officials from SAIC carried out investigation in Shankai Sports.

For details, please visit: <http://www.chinanews.com/gn/2014/06-06/6252285.shtml>

## 经营者集中 Merger Control

### P3 联盟流产 商务部首次禁止全球性商业交易

2014 年 6 月 17 日，商务部禁止马士基、地中海航运、达飞海运 3 家航企设立 P3 联盟网络中心。反垄断法生效以来，本案是继 2009 年可口可乐/汇源案后中国反垄断执法机构第二次否决交易。本案也是中国反垄断执法机构第一次否决纯粹的全球性重大交易。此案定性为“紧密型联营”，而非并购，提出了联营是否也可以作为经营者集中对待的全新问题，也提出了协议申报是由发改委、工商总局还是商务部主管的新问题。

详细信息: <http://fldj.mofcom.gov.cn/article/ztxx/201406/20140600628586.shtml>

### MOFCOM Prohibits the Proposed P3 Shipping Alliance

On June 17, 2014, MOFCOM announced its decision to prohibit the proposed P3 network shipping alliance by Maerskline, MSC and CMA-CGM. Since the enactment of the Anti-Monopoly Law ("AML"), it's the second prohibited transaction by Chinese antitrust regulator following the prohibited acquisition of Huiyuan by Coca Cola. It's also the first time that Chinese antitrust regulator block a significant global transaction. The case was defined as a 'close alliance' instead of a traditional M&A, therefore providing insight on arising issues such as whether alliance can be considered as a concentration of undertakings, or whether it should be notified with NDRC, SAIC or MOFCOM.

For details, please visit: <http://fldj.mofcom.gov.cn/article/ztxx/201406/20140600628586.shtml>

## 法院诉讼 Courts Proceedings

### 斯维尔诉广东省教育厅行政垄断案在广东中院开庭

2014 年 6 月 26 日下午 2:15，深圳市斯维尔科技有限公司诉广东省教育厅行政垄断案在广州中院开庭审理。这是 2008 年反垄断法生效以来、继四大防伪公司诉国家质检总局案之后具有对抗性的第二起行政垄断诉讼案件。根据此前住建部和教育部下属部门规定，2014 年全国职业院校技能大赛“工程造价基本技能”赛项指定使用广联达软件。深圳市斯维尔科技有限公司认为，广东省教育厅指定独家软件的做法涉嫌违反反垄断法规定，并涉嫌构成行政垄断。本案有专家证人出庭就专业问题进行作证，他们是来自北京大学的行政法和反垄断法专家。大成律师事务所反垄断团队的魏士廩律师作为原告律师将出席庭审并发表专业意见。

## Guangzhou Intermediate People's Court Hears the Anti-Monopoly Administrative Litigation by Thsware against Guangdong Department of Education

At 2:15 p.m. of June 26, 2014, Guangzhou Intermediate People's Court heard the trial of anti-monopoly administrative litigation by Shenzhen Tsinghua Sware Software Hi-Tech Co., Ltd. ("Thsware") against Department of Education of Guangdong Province. It's the second adversarial litigation concerning administrative monopoly since the promulgation of the AML in 2008, the first being the lawsuit brought by four anti-counterfeiting enterprises against General Administration of Quality Supervision, Inspection and Quarantine. According to the regulations of divisions of Ministry of Housing and Urban-Rural Development and Ministry of Education, Glodan software was designated for the item of "Basic Skills of Construction Cost" of National Vocational Students Skills Competition specifically. Therefore Thsware considered that, by specifying the exclusive software, Department of Education of Guangdong Province conducted administrative monopoly and violated the AML. Expert witnesses, including experts on administrative laws and antitrust laws from Peking University, appeared in court to testify on professional issues. Wei Shilin from Dacheng Antitrust Team was also present as the plaintiff's attorney and delivered professional opinions.

## 学术活动 Academia

### 上海市法学会竞争法研究会成立暨知识产权与反垄断法学术研讨会召开

2014年6月13日,上海市法学会竞争法研究会成立暨知识产权与反垄断法学术研讨会在上海交通大学凯原法学院举行。政府官员、专家、学者、律师、企业等各界代表出席了这次会议,其中包括国家工商总局反垄断与反不正当竞争执法局局长任爱荣,以及国务院反垄断委员会专家咨询组副组长、对外经贸大学竞争法中心主任黄勇教授等。与会嘉宾就6月10日公布的《工商行政管理机关禁止滥用知识产权排除、限制竞争行为的规定(征求意见稿)》展开了热烈的学术研讨。作为上海市法学会竞争法研究会的第一届理事,大成律师事务所反垄断团队的戴健民律师也出席了这一会议并积极参与讨论,针对拒绝许可、标准制定以及反向支付等内容提出了自己的建设性意见。

详细信息:

<http://mp.weixin.qq.com/s?biz=MzA3NTMwMTkxNA==&mid=201696607&idx=1&sn=308635df3d24f49c42d936d49601233b#rd>

## Competition Law Research Council of Shanghai Law Society Is Inaugurated with a Symposium on IPR & Antitrust

On June 13, 2014, the inauguration of Competition Law Research Council of Shanghai Law Society, together with the symposium of IPR & antitrust, was held at KoGuan Law School of Shanghai Jiaotong University. Representatives of the government, experts, academia, lawyers and enterprises attended the event, including the Director-General of Antimonopoly and Anti-unfair Competition Enforcement Bureau of SAIC, Ms. Ren Airong, and the leader of Expert Advisory Board of the State Council Anti-Monopoly Commission and head of Competition Law Research Center of University of International Business and Economics ("UIBE"), Prof. Huang Yong. The attendees discussed heatedly on the *Provisions of Administrations for Industry and Commerce on the*

*Prohibition of Abuse of Intellectual Property Rights to Eliminate or Restrict Competition (Draft for Comments)*, which was recently released on June 10. Ken Dai from Dacheng Antitrust Team, as an initial member of the Competition Law Research Council of Shanghai Law Society, also participated in the event and contributed to the discussion from professional perspective of refusal to license, standard setting and reverse payment.

For details, please visit:

[http://mp.weixin.qq.com/s?\\_\\_biz=MzA3NTMwMTkxNA==&mid=201696607&idx=1&sn=308635df3d24f49c42d936d49601233b#rd](http://mp.weixin.qq.com/s?__biz=MzA3NTMwMTkxNA==&mid=201696607&idx=1&sn=308635df3d24f49c42d936d49601233b#rd)

## 团队动态 Dacheng Team

### 邓志松律师为对外经济贸易大学法律研究生讲授反垄断法

2014年6月3日,大成北京办公室邓志松律师为对外经济贸易大学法学院的研究生做了有关中国反垄断法的讲座。邓志松律师主要介绍了新修订的消费者权益保护法的背景和概要,以及和反垄断执法实践的关系,并在讲座结束时回答了学生们提出的问题。

### Jet Deng Lectures on Anti-Monopoly Law for Juris Master Candidates of UIBE

On June 3, 2014, Jet Deng from Dacheng Beijing office gave a lecture on Chinese AML to Juris Master candidates of UIBE. Jet Deng introduced the background and summary of the newly revised Consumer Protection Law, as well as its interaction with anti-monopoly enforcement, and answered questions raised by the students at the end of the lecture.