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## 中国反垄断法律资讯：2014 年 11 月 China Monthly Antitrust Update: November 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

### 自贸区颁布区内反垄断“四件套”

2014 年 10 月 16 日，上海市工商行政管理局在其网站上公布了《中国（上海）自由贸易试验区反垄断协议、滥用市场支配地位和行政垄断执法工作办法》。结合 2014 年 9 月上海市商务委公布的《中国（上海）自由贸易试验区经营者集中反垄断审查工作办法》和《中国（上海）自由贸易试验区反垄断工作联席会议制度方案》，以及上海市发展改革委公布的《中国（上海）自由贸易试验区反价格垄断工作办法》的通知，至此，处理区内反垄断问题的一套初步规定基本形成。

详细信息：

<http://www.china-shftz.gov.cn/PublicInformation.aspx?GID=4ef8f412-90ed-4f0e-bf3a-39b769744857&CID=953a259a-1544-4d72-be6a-264677089690&MenuType>

### SFTZ Releases a Set of Four Regulations to Cope with Antitrust Issues within SFTZ

On October 16, 2014, Shanghai Administration for Industry and Commerce published the *Rules on Enforcement of Monopoly Agreement, Abuse of Dominant Market Position and Administrative Monopoly for the Shanghai Free Trade Zone ("SFTZ")*. Combined with the *Merger Control Rules for the SFTZ* and the *Antitrust Joint Conference Scheme for the SFTZ* promulgated by Shanghai Municipal Commission of Commerce and the *Anti-price Monopoly Rules for the SFTZ* promulgated by Shanghai Municipal Development and Reform Commission in September, 2014, so far, a set of four regulations dealing with antitrust issues within SFTZ is established.

For details, please visit:

<http://www.china-shftz.gov.cn/PublicInformation.aspx?GID=4ef8f412-90ed-4f0e-bf3a-39b769744857&CID=953a259a-1544-4d72-be6a-264677089690&MenuType>

## 执法机构 Authorities

### 许昆林局长会见英美等国反垄断执法机构前官员

10 月 17 日，许昆林局长在委内会见了英国竞争委员会前主席、牛津大学奥利尔学院前院长 Derek Morris、美国联邦贸易委员会前主席、乔治华盛顿大学竞争法中心主任 William Kovacic，美国联邦贸易委员会前法律总顾问，摩根路易斯律师事务所高级合伙人谭观雄，世界银行前高级官员 Gerhard Pohl 和北京凯恩克劳斯基基金会执行主任 Cyril Lin 等一行。此次访问是北京凯恩克劳斯基基金会开展中外合作研究“强化中国市场竞争：国际视角的思考与建议”课题的一部分。许昆林局长介绍了我委反价格垄断工作的最新进展，并就课题有关研究内容和政策建议交换了意见。

详细信息：[http://jjs.ndrc.gov.cn/gzdt/201410/t20141020\\_629941.html#rd](http://jjs.ndrc.gov.cn/gzdt/201410/t20141020_629941.html#rd)

### NDRC DG Meets Former US, UK Antitrust Officials

On October 17, 2014, Mr. Xu Kunlin, the Director General ("DG") of the Price Supervision and Anti-Monopoly Bureau ("PSAMB") of the National Development and Reform Commission

("NDRC"), met Derek Morris, the former chairman of the UK's Competition Commission and former Dean of Oriel College, Oxford University, William Kovacic, the former General Counsel of the US Federal Trade Commission, Cyril Zhiren Lin, Executive Director of Cairncross Foundation, Willard Tom, a senior partner at Morgan Lewis law firm, and Gerhard Pohl, a former senior official at the World Bank. Their visit in China was part of the research program "Strengthening China's Market Competition: Thoughts and Proposals from an International Perspective" launched by Cairncross Economic Research Foundation. The DG, Mr. Xu Kunlin, introduced the latest development of anti-price monopoly in China and exchanged opinions on related research topic and policy suggestion.

For details, please visit: [http://jjs.ndrc.gov.cn/gzdt/201410/t20141020\\_629941.html#rd](http://jjs.ndrc.gov.cn/gzdt/201410/t20141020_629941.html#rd)

## 行政调查 Public Enforcement

### 浙江省绍兴上虞办结混凝土分割市场垄断案件

2014 年 10 月 21 日, 国家工商总局公布浙江省绍兴市上虞区市场监管局日前成功办结了一起由总局授权经办的上虞混凝土企业垄断行为案件。本案的专案小组通过全方位的调查, 查明 8 家混凝土企业以成立上虞区混凝土协会的形式, 对各企业的商品混凝土市场份额占有率进行划分。该行为违反了《反垄断法》规定, 属于具有竞争关系的经营者达成分割销售市场的垄断协议的行为。浙江省工商局日前根据调查结果, 依法对 8 家涉案企业和上虞市混凝土协会予以罚款。

详细信息: [http://www.saic.gov.cn/jgzf/fldyfbzljz/201410/t20141021\\_149246.html](http://www.saic.gov.cn/jgzf/fldyfbzljz/201410/t20141021_149246.html)

### Zhejiang Province Punishes Concrete Cartel for Carving up Market

On October 21, 2014, the State Administration for Industry and Commerce ("SAIC") released on its website that the Market Supervision Bureau in the Shangyu district of the city of Shaoxing, in China's Zhejiang province, has closed an investigation of a concrete cartel authorised by SAIC. In its thorough investigation, Shangyu's Market Supervision Bureau discovered that eight local concrete firms had formed an association and entered into agreements to allocate market share among themselves. The Bureau concluded that the companies had reached and implemented a monopoly agreement to allocate the market, which fall foul of the China's Anti-Monopoly Law ("AML"). The Zhejiang Provincial Administration for Industry and Commerce handed down financial penalties to the concrete companies and to the association based on the investigation result.

For details, please visit: [http://www.saic.gov.cn/jgzf/fldyfbzljz/201410/t20141021\\_149246.html](http://www.saic.gov.cn/jgzf/fldyfbzljz/201410/t20141021_149246.html)

## 经营者集中 Merger Control

### 商务部十月份公布 16 起简易案件

截至 2014 年 10 月 31 日, 商务部十月份在其网站上公布的简易案件数量达到 16 起, 简易案件总量达 51 起。

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

## MOFCOM Releases 16 Streamlined Cases in October

Up to October 31, 2014, the Ministry of Commerce (“MOFCOM”) released 16 streamlined cases in October on its website, with total amount reaching 51 so far.

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

## 民事诉讼 Private Actions

### 最高法院驳回 360 上诉，腾讯赢得世纪反垄断判决

10 月 16 日上午消息，最高人民法院就 360 诉腾讯滥用市场支配地位纠纷案二审宣判，法院认为，一审判决认定事实虽有不当之处，但适用法律正确，裁判结果适当，故驳回上诉，维持原判。

### The SPC Dismisses Qihoo's Appeal against Tencent in Landmark Antitrust Case

On October 16, 2014, the Supreme People's Court (“SPC”) dismissed Qihoo's appeal in a landmark abuse of dominance lawsuit against Tencent, upholding a lower court's decision, and holds that despite of some minor flaws, the Guangdong court applied the appropriate laws to reach a legitimate ruling, so the SPC rendered the judgment dismissing the appeal and upholding the original judgment in this case.

### 米时科技诉奇虎 360 滥用市场支配地位案

2014 年 10 月 16 日，米时科技对 360 公司发起了反垄断和反不正当竞争诉讼。米时科技称，360 手机卫士在客户不知情的情况下拦截米时科技的“易米片”、“米洽”产品，致使客户不能正常使用米时科技的产品。360 凭借其在手机市场上的地位，压制其他软件的发展。据此，米时科技索赔 500 多万元。本案原定于 10 月 23 日（周四）下午两点开庭但最终延期，理由是知识产权法院有可能于 11 月 5 日挂牌，届时该案可能转移到知识产权法院，但也有可能继续在北京二中院审理。

### Qihoo360 Sued by New Internet Company Emiage for Dominance Abuse

On October 16, 2014, Emiage sued Chinese security software giant Qihoo for abuse of dominance and unfair competition. According to Emiage, 360 Mobile Safe blocked or trashed scanned messages without MiChat and eMiPian users' knowledge so restricting clients from normal use of Emiage's product. Therefore, Eimage claimed RMB 5 millions to Qihoo. The case was scheduled to be heard on 23 October, Thursday, but eventually postponed. The reason was that the Beijing IP court would be officially unveiled on 5 November and that this case may be moved to IP court, while the possibility remains that it is to be heard in Beijing No.2 Intermediate People's Court.

## 学术活动 Academia

### 2014 年第二期《反垄断法》宣传培训班在成都举行

2014 年 10 月 21 日至 22 日，本年度第二期（总第二十一期）商务系统《反垄断法》宣传培训班在四川省成都市举行。商务部反垄断局尚明局长出席本次培训班并致辞。培训内容包括

中国反垄断法律制度、经营者集中申报和审查实务以及经营者集中反垄断执法监督。来自全国 24 个省级商务部门、40 余家国资委直属央企的近百名代表参加了培训。

详细信息: <http://fldj.mofcom.gov.cn/article/xxfb/201410/20141000770470.shtml>

### Second Phase of 2014 AML Training Conducted in Chengdu

From October 21 to 22, 2014, this year's second phase (the 21th in whole) of AML training within commerce system was conducted in Chengdu City, Sichuan Province. Mr Shang Ming, the DG of Anti-Monopoly Bureau ("AMB") of MOFCOM, attended the meeting and gave a speech. This training included China antitrust regime, review, notification and enforcement supervision of concentration of undertakings. Almost one hundred representatives from commerce department cross 24 provinces and from more than 40 state-owned key enterprises under State-owned Assets Supervision and Administration Commission of the State Council attended this training.

For details, please visit: <http://fldj.mofcom.gov.cn/article/xxfb/201410/20141000770470.shtml>

### 商务部反垄断局在成都举办中欧反垄断法研讨会

2014 年 10 月 20 日, 商务部反垄断局与欧盟竞争总司在四川省成都市举办中欧竞争政策周反垄断法研讨会。来自欧盟、英国、葡萄牙等竞争执法机构的官员参加会议并发言。研讨会围绕经营者集中审查计划的制定与实施、证据的识别与收集以及审查的时间问题等内容展开讨论。

详细信息: <http://fldj.mofcom.gov.cn/article/xxfb/201410/20141000770472.shtml>

### EU-China Antitrust Workshop Held in Chengdu by MOFCOM

On October 20, 2014, officials from MOFCOM and the European Union's Directorate General for Competition ("DG Comp") held an Antitrust Workshop for EU-China Competition Policy Week. Enforcement officers from EU, UK and Portugal attended this meeting and gave speeches. The Workshop had an in-depth discussion on issues such as formulation and enforcement scheme of reviewing concentration of undertakings, identification and collection of evidence and timeframe of review process, etc.

For details, please visit: <http://fldj.mofcom.gov.cn/article/xxfb/201410/20141000770472.shtml>

### 中国工商报社在北京举办反垄断舆论热点问题研讨会

2014 年 10 月 18 日, 中国工商报社在北京举办“反垄断舆论热点问题研讨会”, 就舆论关注的反垄断热点以及法律适用问题进行专题研讨。会议主要围绕反垄断执法公正性、行政垄断问题、行政执法的跨区域协作和建立反垄断合规体系进行探讨, 上海交通大学法学院教授王先林、国家工商总局竞争执法局原局长宁望鲁、湖北省工商局公平交易局袁晓光、浙江省宁波市市场监管局于平以及北京大成律师事务所合伙人邓志松律师等做了发言。

详细信息: [http://www.cicn.com.cn/content/2014-10/22/content\\_146906.htm](http://www.cicn.com.cn/content/2014-10/22/content_146906.htm)

### Antitrust Hot Issues Workshop Held by China Industry & Commerce News in Beijing

On October 18, 2014, China Industry & Commerce News held the Antitrust Hot Issues Workshop in Beijing to discuss antitrust hot issues and applicable law. The meeting discussed issues such as impartiality of antitrust enforcement, administrative monopoly, cross-region collaboration of antitrust enforcement and establishment of antitrust compliance program. Mr. Wang Xianlin, professor of Shanghai Jiao Tong University, Lu Ningwang, the former DG of AMB, Yuan Xiaoguang,



official from Fair Competition Bureau under Hubei Administration for Industry & Commerce, Yu Ping, Market Supervision Bureau of Ningbo City, Zhejiang Province and Jet Deng, partner at Dacheng Law Firm made speeches on the meeting.

For details, please visit: [http://www.cicn.com.cn/content/2014-10/22/content\\_146906.htm](http://www.cicn.com.cn/content/2014-10/22/content_146906.htm)

### **发改委价监局与欧盟竞争总司联合举办中欧国家援助控制研讨会**

2014 年 10 月 17 日, 国家发展和改革委员会价监局与欧盟委员会竞争总司在北京联合举办“中欧国家援助控制研讨会”, 对欧盟国家援助控制制度和中国反垄断法关于滥用行政权力排除限制竞争的内容进行了研讨。

详细信息: [http://jjs.ndrc.gov.cn/gzdt/201410/t20141017\\_629743.html](http://jjs.ndrc.gov.cn/gzdt/201410/t20141017_629743.html)

### **EU-China Workshop on State Aid Control by PSAMB and DG Comp Held in Beijing**

On October 17, 2014, the PSAMB of NDRC and the DG Comp co-held the EU-China Workshop on State Aid Control in Beijing, which discussed the state aid control in EU and prohibition or restriction of abusing administrative power under China AML.

For details, please visit: [http://jjs.ndrc.gov.cn/gzdt/201410/t20141017\\_629743.html](http://jjs.ndrc.gov.cn/gzdt/201410/t20141017_629743.html)

## **团队动态 Dacheng Team**

### **邓志松律师被钱伯斯评为“亚太地区反垄断领军人物”**

2014 年 10 月, 邓志松律师被世界知名法律评级机构——钱伯斯 (Chambers and Partners) 评为“亚太地区反垄断领军人物”。钱伯斯总部位于英国伦敦, 是世界知名的法律评级机构, 迄今已有四十余年的历史。该机构每年均会评选出不同法律领域的全球顶尖律师, 有关评选结果已经成为全球客户寻求高端法律服务的重要依据。

### **Jet Deng Ranked as “Antitrust Leader in Asia-Pacific” by Chambers and Partners**

In October 2014, Jet Deng was ranked as “Antitrust Leader in Asia-Pacific” by world famous ranking institution, Chambers and Partners. Chambers and Partners, whose headquarter in London, has been a world famous ranking institution with its history more than 40 years. It will rank top lawyers at different fields every year and the outcome has been an important indicator of high-end legal services for global clients.

### **戴健民律师被 ALB 评选为“客户首选的中国前 20 位律师之一”**

2014 年 10 月, 戴健民律师被 ALB 评选为“客户首选的中国前 20 位律师之一”。《亚洲法律杂志 (Asian Legal Business)》下属汤森路透集团, 是全球最大的专业信息服务提供商。

### **Ken Dai Ranked as “2014 China Client Choice 20” by ALB**

In October 2014, Ken Dai was ranked as “2014 China Client Choice 20” by Asia Legal Business (“ALB”). ALB is owned by Thomson Reuters, the world’s leading source of intelligent information for businesses and professionals.