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中国反垄断法律资讯：2014 年 12 月 China Monthly Antitrust Update: December 2014

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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

福建省人民政府发布关于促进市场公平竞争维护市场正常秩序的实施意见

2014 年 11 月 17 日，福建省人民政府在其网站发布关于促进市场公平竞争维护市场正常秩序的实施意见。意见指出，要打破地区封锁和行业垄断，严肃查处损害竞争、损害消费者权益以及妨碍创新和技术进步的垄断协议、滥用市场支配地位的行为；要加大经营者集中反垄断审查力度，有效防范通过并购获取垄断地位并损害市场竞争的行为；要改革自然垄断行业监管办法，强化垄断环节监管。

详细信息：http://www.fujian.gov.cn/zwgk/zxwj/szfwj/201411/t20141118_895241.htm

Fujian Provincial People's Government Issues Opinions on Improving Fair Market Competition and Maintaining Normal Market Order

On November 17, 2014, Fujian Provincial People's Government issued *Opinions on Improving Fair Market Competition and Maintaining Normal Market Order* on its website. The Opinion requires to break regional blockades and industrial monopolies, and to investigate and severely punish entities engaged in reaching monopolistic agreements that restrict competition, harm consumer rights as well as stifle technological progress and innovation or in abusing their dominant market position. It also requires to impose more strict rules on merge control in order to guard against monopolies and market competition destruction resulting from mergers and acquisitions, and to reform regulatory measures in areas of natural monopoly and consolidate regulation on monopoly segment.

For details, please visit:

http://www.fujian.gov.cn/zwgk/zxwj/szfwj/201411/t20141118_895241.htm

行政诉讼法修改助推行政垄断诉讼

2014 年 11 月 11 日，《中华人民共和国行政诉讼法》作出较大的修改。其中的部分修改，如扩大受案范围（具体行政行为扩大到行政行为）、立案登记和跨区域行政管辖等，将推动行政垄断诉讼的开展。

The Amended Administrative Procedure Law Contributes to Litigation against Administrative Monopoly

On November 11, 2014, the *Administrative Procedure Law of People's Republic of China* was amended. Some changes such as expanding the scope of administrative litigation, i.e. expanding specific administrative action to all the administrative actions, case filing registration and cross-region administrative jurisdiction, will facilitate the development of administrative monopoly suits.

执法机构 Authorities

商务部反垄断局举办 2014 年全国商务系统反垄断工作座谈会

2014 年 11 月 24 日至 25 日，商务部反垄断局在北京召开 2014 年全国商务系统反垄断工作座谈会。来自全国三十多个省级商务主管部门及有关商会、协会代表参加会议并发言。会议介绍了 2014 年商务系统反垄断工作开展情况，各与会代表在座谈中就工作中面临的问题进行了深入探讨，并对推进地方相关工作提出了意见和建议。会议取得了预期效果。

详细信息：<http://fldj.mofcom.gov.cn/article/xxfb/201411/20141100810170.shtml>

AMB under MOFCOM Holds the 2014 National Commerce System Antitrust Workshop

From November 24 to 25, 2014, Anti-Monopoly Bureau (“AMB”) under the Ministry of Commerce (“MOFCOM”) held the 2014 national commerce system antitrust workshop in Beijing. Representatives from over 30 provincial commerce departments, relevant chambers of commerce and trade associations attended the meeting and made speeches. The workshop gave a comprehensive overview of progress in antitrust work within commerce system in 2014 and the participants were engaged in a depth discussion about problems regarding antitrust work. Advice and suggestions were given to further advance the progress. The workshop reached the intended objective.

For details, please visit: <http://fldj.mofcom.gov.cn/article/xxfb/201411/20141100810170.shtml>

国家工商总局责成云南省工商局对西双版纳旅游协会进行调查

2014 年 11 月 21 日，国家工商总局发布消息表示，就 11 月 20 日央视等媒体报道的云南省西双版纳自治州旅游协会存在高额回扣、垄断经营的现象，国家工商总局高度关注报道所反映的问题，并已责成云南省工商局调查处理。

详细信息：http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201411/t20141121_150036.html

SAIC Instructs Yunnan AIC to Investigate Xishuangbanna Tourism Association

On November 21, 2014, the State Administration for Industry and Commerce (“SAIC”) announced the news that in relation to the high rebate and monopolistic conduct of tourism association in Xishuangbanna Autonomous Region, Yunnan Province reported by China Central Television (“CCTV”), SAIC paid close attention to the problem and has already instructed Yunnan Administration for Industry and Commerce to investigate this case.

For details, please visit:

http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201411/t20141121_150036.html

苏浙沪地区签订执法合作协议

2014 年 11 月 19 日，国家工商总局在其网站上公布消息，苏浙沪地区第七届竞争执法协作会议在江苏省徐州市举行。江苏省、浙江省和上海市工商局在会上签署了《长三角地区竞争执法合作协议书》，并开通“长三角竞争执法 QQ 群”。国家工商总局反垄断与反不正当竞争执法局负责人出席会议，上海市工商局、江苏省工商局、浙江省工商局有关负责人和执法人员均参与了此次会议。

详细信息：http://www.saic.gov.cn/jgzf/fldyfbzljz/201411/t20141119_149949.html

Shanghai, Jiangsu and Zhejiang Provinces Sign Competition Enforcement Co-operation Agreement

On November 19, 2014, SAIC released information on its website, announcing that the Seventh Competition Enforcement Co-operation Meeting of Shanghai, Jiangsu and Zhejiang provinces was held in Xuzhou, Jiangsu Province. Jiangsu, Zhejiang and Shanghai Administrations for Industry and Commerce signed the *Yangtze River Delta Competition Enforcement Co-operation Agreement* and set up competition enforcement QQ group. Officers from the SAIC's Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau attended the meeting. Officers and enforcement staff from the three provincial administrations for industry and commerce also attended this meeting.

For details, please visit: http://www.saic.gov.cn/jgzf/fldyfbzljz/201411/t20141119_149949.html

北京知识产权法院成立

2014 年 11 月 2 日，北京市第十四届人大常委会第十四次会议通过表决，任命宿迟为首任北京知识产权法院院长、审判委员会委员、审判员。早前于 8 月 31 日，十二届全国人大常委会第十次会议通过关于在北京、上海、广州设立知识产权法院的决定。至于是否今后所有的反垄断案件都会归入知识产权法院审理，还需进一步确定。

Beijing Intellectual Property Court is Established

On November 2, 2014, a resolution was passed in the fourteenth session of the 14th Standing Committee of Beijing People's Congress, appointing Su Chi as the first president of the Beijing Intellectual Property Court ("IP Court"), committee member of adjudication committee and judge. Previously on August 31, the decision of setting up IP Courts in Beijing, Shanghai and Guangzhou was passed in the tenth session of the 12th Standing Committee of the National People's Congress. But it remains unclear whether the specialized IP courts will handle all antitrust lawsuits or not.

行政调查 Public Enforcement

奔驰仍在配合发改委反垄断调查

2014 年 11 月 8 日，根据相关媒体报道，北京梅赛德斯-奔驰销售服务有限公司销售与市场营销执行副总裁段建军出席 2014 中国汽车流通行业年会。会后段建军透露，如今已被发改委“立案调查”的奔驰仍然在配合有关部门进行针对梅赛德斯-奔驰反垄断行为的调查取证，至于何时会出惩罚结果，段建军表示“无可奉告”。

Mercedes-Benz Still under Investigation by NDRC Co-operatively

On November 8, 2014, as reported by various media, Duan Jianjun, vice executive president in Sales and Marketing of Beijing Mercedes-Benz Sales Service Co., Ltd attended the *2014 China Automotive Dealer Industry Annual Conference*. After the conference, Duan Jianjun told the reporter that Mercedes-Benz, who is under investigation of NDRC, now is still co-operating with relevant departments in relation to the investigation of suspected monopolistic conduct. As to when the penalty decision will be issued, Dai Jianjun declined to comment.

甘肃省工商局行政约谈汽车经销商

2014 年 11 月 6 日，甘肃省工商局就部分汽车经销商强制消费者购买指定商业保险现象约谈 10 家汽车销售商和 4 家保险公司，通报工商部门调查情况，对相关公司涉嫌违反相关法律法规的行为提出行政指导意见，要求有关企业立即对可能侵害消费者合法权益的问题开展自我清查，限时整改；由兰州市汽车行业协会督促整改，研究制定相关行业自律制度。

详细信息：<http://www.gsaic.gov.cn/zwdt/bdxx/2014/11/07/1415357577881.html>

Gansu AIC Interviews Local Car Dealers

On November 6, 2014, the Gansu Administration for Industry and Commerce ("Gansu AIC") interviewed ten local car dealers and four insurance companies in terms of forcing consumers to pay for the designated commercial insurance by some automotive dealers, and gave administrative instruction to related companies involved in the suspected conduct that violated relevant law according to the investigation result of industry and commerce department. Gansu AIC required these companies to conduct self-examination to solve problems that may infringe upon rights and interests of consumers, and Gansu AIC also set a deadline for rectification. Lanzhou Automotive Industry Association is responsible for supervising the rectifying process as well as formulating relevant self-regulatory rules.

For details, please visit: <http://www.gsaic.gov.cn/zwdt/bdxx/2014/11/07/1415357577881.html>

国家工商总局发布第 17 起和第 18 起反垄断调查案例

2014 年 11 月 4 日，国家工商总局在其官网上发布了竞争执法公告第 17 号和第 18 号。第 17 起案件为重庆巫溪县东翰采石场等四家采石场垄断协议案。经查，4 家采石场负责人通过协商达成口头协议对砂石料销售对象进行划分，达成垄断协议，罚款总额共计 40 万元。第 18 起案件为江苏徐州市烟草公司邳州分公司滥用市场支配地位案，该公司在相关市场上拥有支配地位，对条件相同的卷烟零售商实行差别待遇，被处罚款 172.4 万元。

详细信息：<http://www.saic.gov.cn/zwgk/gggs/jzzf/>

SAIC Publishes the 17th and the 18th Anti-Monopoly Cases

On November 4, 2014, SAIC issued the 17th and 18th Competition Enforcement Announcements on its website. The 17th case concerns quarry mine in Wuxi County, Chongqing. Directors of four quarries were sanctioned RMB 400,000 for reaching a verbal monopoly agreement on allocating customers in quarry mine market. The 18th case relates to the abuse of dominant market position conducted by the Pizhou branch of Jiangsu Xuzhou Tobacco Company. The company was fined RMB 1.724 million for taking advantage of its dominance in the relevant market and impose discriminatory treatment on tobacco retailers that are in the same condition.

For details, please visit: <http://www.saic.gov.cn/zwgk/gggs/jzzf/>

经营者集中 Merger Control

商务部十一月份公布 14 起简易案件

截至 2014 年 11 月 30 日，商务部十一月份在其网站上公布了 14 起经营者集中简易案件，简易案件总量达 64 起。

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

MOFCOM Releases 14 Streamlined Cases in November

Up to November 30, 2014, MOFCOM released 14 streamlined cases of concentration of undertakings in November on its website, with the total amount reaching 64 so far.

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

学术活动 Academia

上海市法学会竞争法研究会 2014 年年会在上海召开

2014 年 11 月 8 日,上海市法学会竞争法研究会 2014 年年会暨反垄断法热点案例的法律与经济分析——中国和韩国的比较视角学术研讨会在上海举行。本次研讨会由上海市法学会竞争法研究会主办,上海交通大学竞争法律与政策研究中心承办,中国人民大学—高丽大学中韩市场暨规制法研究中心协办。与会者从微软案的国际经验、反垄断执法程序及反垄断承诺制度等方面研讨了中韩反垄断立法、执法的异同,来自国内外高校、科研机构、行政执法机构、法院、律所、企业的 100 余名代表参加了会议。国家工商总局反垄断与反不正当竞争执法局反垄断法律指导处有关负责人介绍了工商部门近期反垄断法执法、立法工作的情况。

详细信息: http://www.saic.gov.cn/jgzf/fldyfbzljz/201411/t20141119_149950.html

2014 Annual Conference of Competition Law Research Council of Shanghai Law Society Held in Shanghai

On November 8, 2014, the annual conference of Competition Law Research Council of Shanghai Law Society, together with Legal and Economic Analysis of Antitrust Hot Cases—Symposium from Comparative Perspective between China and Korea, was held in Shanghai. The Symposium was hosted by Competition Law Research Council of Shanghai Law Society, organized by the Center for Competition Law and Policy of Shanghai Jiao Tong University, and co-organized by China-Korea Market and Regulation Law Center by Renmin University of China-Korea University. Participants discussed the Microsoft case experience, antitrust enforcement procedure and commitment program to further explore the differences and similarities of legislation and enforcement between China and Korea. Over 100 representatives from universities, research institutes, administrative enforcement institutions, court, law firms and enterprises attended this meeting. Officers from Legal Instruction Office under Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau in SAIC introduced SAIC's recent legislation and enforcement situation.

For details, please visit: http://www.saic.gov.cn/jgzf/fldyfbzljz/201411/t20141119_149950.html

团队动态 Dacheng Team

戴健民律师、邓志松律师作为发言人出席第九届中国《反垄断法》高级研讨会

2014 年 11 月 7 日至 8 日,由 Duxes (Shanghai) Business Consulting 所举办的第九届中国《反垄断法》高级研讨会在北京召开。国务院反垄断委员会专家咨询组副组长、对外经济贸易大学竞争法中心主任黄勇,中国《反垄断法》审查修订专家小组专家、北京大学法学院教授盛杰民以及香港岭南大学经济学教授林平等作为专家委员出席了本次会议。会议主要邀请了来自

反垄断执法机构、知名高校、企业及律所的各界人士出席本次会议。大成律师事务所反垄断团队的邓志松律师、戴健民律师作为会议发言人参与了此次研讨会。会上，邓志松律师主要就企业如何应对执法部门的调查这一问题做了演讲。戴健民律师则主要通过分析近期典型的案例指引企业如何适应中国不断变化的反垄断环境并开展合规。

Ken Dai and Jet Deng Give Lectures at the Ninth China Anti-Trust Law Seminar 2014

From November 7 to November 8, 2014, the 9th China Anti-Trust Law Seminar 2014 hosted by Duxes (Shanghai) Business Consulting was held in Beijing. Prof. Huang Yong, the deputy head 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, and Prof. Sheng Jiemin, the expert from Expert Panel in Review and Amendment of Chinese Anti-Monopoly Law and law professor from Peking University, and Li Ping, the economic professor from Lingnan University, attended this meeting as expert board. The meeting also invited professionals from antitrust enforcement authorities, famous universities and various enterprises as well as law firms. Jet Deng lectured on how to deal with antitrust investigation by antitrust enforcement authority. Ken Dai advised enterprises on antitrust compliance by analyzing recent antitrust cases to adjust to the evolving antitrust environment in China.

戴健民律师、邓志松律师参与编写《中国企业国际化报告 2014》

近期，戴健民律师、邓志松律师作为国内唯一受邀的反垄断律师参与《中国企业国际化报告 2014》的编写工作。二人共同撰写的《跨境并购中的反垄断与国家安全审查》作为报告的重要部分，着重介绍及分析跨境并购中可能遇到的反垄断审查制度及国家安全审查制度对并购交易流程和实质的影响，帮助我国企业建立跨境并购的风险防范机制应对相关的法律风险。

Ken Dai and Jet Deng Co-Author Article in the Report on Globalization of Chinese Enterprises (2014)

Recently, Ken Dai and Jet Deng participated as the only Chinese antitrust lawyers in producing *the Report on Globalization of Chinese Enterprises (2014)*. The co-authored article, “*Antitrust and National Security Review in Cross-border M&A Transaction*”, as an important part of the report, introduces the procedure and substantial influence of antitrust review and national security review on cross-border M&A transactions, which helps domestic enterprises to establish risk precaution mechanism in cross-border M&A transaction to cope with relevant legal risk.