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中国反垄断法律资讯：2015 年 3 月 China Monthly Antitrust Update: March 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

最高法发布《知识产权与竞争纠纷行为保全案件司法解释（征求意见稿）》

2015 年 2 月 26 日，最高人民法院公布了《最高人民法院关于审查知识产权与竞争纠纷行为保全案件适用法律若干问题的解释（征求意见稿）》，并面向社会公开征求意见。征求意见稿对审查知识产权与竞争纠纷行为保全案件的申请程序、审查程序、拒不履行保全裁定的处理等进行了规定。

详细信息：<http://www.court.gov.cn/zixun-xiangqing-13517.html>

SPC Releases Judicial Interpretation on Behavior Preservation of Disputes Regarding Intellectual Property and Competition (Exposure Draft)

On February 26, 2015, the Supreme People's Court ("SPC") released *Interpretations of the Supreme People's Court's Interpretation on the Issues Concerning the Laws Applicable to the Behavior Preservation of Disputes Regarding Intellectual Property and Competition (Exposure Draft)* to solicit public opinions. The Exposure Draft stipulates the application procedures, the review procedures and the penalties on refusing to execute the decisions of behavior preservation of reviewing behavior preservation dispute cases regarding intellectual property and competition

For details, please visit: <http://www.court.gov.cn/zixun-xiangqing-13517.html>

反不正当竞争法修订稿已提交国务院法制办

2015 年 2 月 17 日，据报道称，近日国家工商行政管理总局已向国务院法制办公室提交了反不正当竞争法修订稿。修改反不正当竞争法已列入十二届全国人大常委会立法规划。

The Draft Amendment of the Law of the People's Republic of China against Unfair Competition Has Been Submitted to SCLAO

On February 17, 2015, it was reported that the State Administration for Industry and Commerce ("SAIC") had already submitted the revised draft of the *Law of the People's Republic of China against Unfair Competition* to the Legislative Affairs Office of the State Council ("SCLAO") recently. The revision of *Law of the People's Republic of China against Unfair Competition* has been listed in the legislation programs of 12th National People's Congress.

商务部反垄断局公布《关于规范经营者集中案件申报名称的指导意见》

商务部反垄断局于 2015 年 2 月 6 日在其网站上公布了《关于规范经营者集中案件申报名称的指导意见》。该《指导意见》全文一共 10 条，提供了经营者集中申报案件名称的正确表述方法。

详细信息：<http://fldj.mofcom.gov.cn/article/i/201502/20150200891361.shtml>

AMB of MOFCOM Releases Guidelines on Standardizing the Names of Cases Regarding Concentration of Undertakings

On February 6, 2015, the Anti-Monopoly Bureau ("AMB") of the Ministry of Commerce ("MOFCOM") released the *Guidelines on Standardizing the Names of Cases Regarding Concentration of Undertakings* on its website. The Guidelines constitute of 10 provisions, providing

accurate standards to name the cases regarding concentration of undertakings.

For details, please visit: <http://fldj.mofcom.gov.cn/article/i/201502/20150200891361.shtml>

商务部就《中华人民共和国外国投资法（草案征求意见稿）》公开征求意见

2015 年 1 月 19 日，商务部公布了《中华人民共和国外国投资法（草案征求意见稿）》和相关说明，公开征求公众意见。草案实行准入前国民待遇加负面清单的管理模式，完善外资国家安全审查制度，加强事中事后监管，为外国投资者来华投资创造稳定、透明和可预期的法律环境。

详细信息: <http://tfs.mofcom.gov.cn/article/as/201501/20150100871010.shtml>

MOFCOM Solicits Public Opinions on *Foreign Investment Law of the People's Republic of China (Exposure Draft)*

On January 19, 2015, MOFCOM published the *Foreign Investment Law of the People's Republic of China (Exposure Draft)* with an "explanatory note" to solicit public opinions. The Exposure Draft introduces a negative list system that gives foreign investors pre-establishment national treatment in the industries not within the negative list. Also, the Exposure Draft perfects the national security review system and strengthens the supervision in the act and afterwards, creating a stable, transparent and predictable legal environment for foreign investors.

For details, please visit: <http://tfs.mofcom.gov.cn/article/as/201501/20150100871010.shtml>

执法机构 Authorities

发改委价监与反垄断局新任局长张汉东发表领导致辞

2015 年 2 月 27 日，发改委价监与反垄断局新任局长张汉东在网站上发表领导致辞。他表示，价格收费涉及千家万户，与人民群众利益密切相关。该局会主要负责监督检查价格改革方案、价格调控措施贯彻落实；依法调查、认定、处理重大价格垄断行为、不正当价格行为等。

详细信息: <http://jjs.ndrc.gov.cn/ldzc/>

Zhang Handong, the New Director General of PSAMB of NDRC Delivers Inaugural Speech

On February 27, 2015, Zhang Handong, the new Director General of the Price Supervision and Anti-Monopoly Bureau of Price Bureau ("PSAMB") of the National Development and Reform Commission ("NDRC"), delivered inaugural speech on the website. He expressed that price relates to numerous households and closely relates to the very interests of the people. PSAMB will take charge of the supervision and inspection of price reform program and the implementation of price control measures, and investigate, identify and handle the material cases including price-fixing and unfair pricing pursuant to the law.

For details, please visit: <http://jjs.ndrc.gov.cn/ldzc/>

商务部反垄断局郑文副局长会见西部数据公司代表

2015 年 2 月 10 日，反垄断局郑文副局长会见西部数据公司高级副总裁、总法律顾问 Michael Ray 一行，双方就西部数据行政处罚履行情况、申请解除有关限制性条件等事宜交换了意见。

详细信息: <http://fldj.mofcom.gov.cn/article/xxfb/201502/20150200894166.shtml>

Zheng Wen, Deputy Director General of AMB of MOFCOM Meets with Representative from Western Digital

On February 10, 2015, Zheng Wen, Deputy Director General of AMB of MOFCOM met with Michael Ray, the Senior Vice President and General Counsel of Western Digital. The two parties exchanged views on the fulfillment of the administrative penalty committed by Western Digital and application for removing restrictive conditions.

For details, please visit: <http://fldj.mofcom.gov.cn/article/xxfb/201502/20150200894166.shtml>

国家发改委副主任胡祖才会见韩国公平交易委员会副委员长

2015 年 1 月 29 日, 国家发改委副主任胡祖才在委内会见韩国公平交易委员会金学炫副委员长, 双方就中韩反垄断合作事宜交换了意见。双方表示愿意进一步加强对国际垄断案件的合作, 加强沟通和协调。

详细信息: http://www.sdpc.gov.cn/gzdt/201502/t20150204_663455.html

Hu Zucai, Vice Chairman of NDRC Meets Vice Chairman of Korean Fair Trade Commission

On January 29, 2015, Hu Zucai, Vice Chairman of NDRC, met Hag Hyun Kim, Vice Chairman of Korean Fair Trade Commission. The two parties exchanged views on Sino-Korea antitrust cooperation and expressed willingness to further reinforce the cooperation on international antitrust cases and enhance the communication and coordination.

For details, please visit: http://www.sdpc.gov.cn/gzdt/201502/t20150204_663455.html

行政调查 Public Enforcement

国家工商总局公布 2015 年第 2 号竞争执法公告

2015 年 2 月 12 日, 国家工商总局公布 2015 年第 2 号竞争执法公告。海南省工商行政管理局于 2014 年 7 月对海南省东方市自来水公司涉嫌垄断行为进行立案调查, 并于 2015 年 1 月对涉案当事人作出了行政处罚决定。

详细信息: http://www.saic.gov.cn/zwgk/gggs/jzzf/201502/t20150212_152067.html

SAIC Releases Competition Enforcement Announcement No.2 [2015]

On February 12, 2015, SAIC released Competition Enforcement Announcement No.2 [2015]. Administration for Industry and Commerce of Hainan initiated the investigation on alleged monopolistic conduct of Dongfang Water Supply Company in July 2014 and made decisions to impose administrative punishment on the company in January 2015.

For details, please visit: http://www.saic.gov.cn/zwgk/gggs/jzzf/201502/t20150212_152067.html

国家发改委宣布对高通的处罚结果

2015 年 2 月 10 日, 国家发展改革委对高通公司滥用市场支配地位, 实施排除、限制竞争的垄断行为, 依法作出人民币 60.88 亿元的罚款决定。同时责令高通公司停止违法行为, 包括: 对在我国境内销售的手机, 不再按整机批发净售价收取专利费; 将向购买高通专利产品的中国企业提供专利清单, 不再对过期专利收取许可费; 销售基带芯片时不再要求签订附加不合理条件的协议等。

详细信息: http://jjs.ndrc.gov.cn/fjgld/201503/t20150302_666170.html

NDRC Releases the Penalty Decision on Qualcomm

On February 10, 2015, NDRC announced its decision on Qualcomm for the abuse of dominant position in relevant market and the monopolistic behavior of eliminating or restricting competition, deciding to impose a fine of RMB 6.088 billion. Also, NDRC ordered Qualcomm to terminate illegal conducts, including: no longer calculating royalty on the basis of the net selling price of the complete device for cellphones sold in China; providing patent lists to its current Chinese enterprises and not charging the expired patent any more; and not conditioning the sale of baseband chips on the chip customer signing a license agreement with unreasonable terms; etc.

For details, please visit: http://jjs.ndrc.gov.cn/fjgld/201503/t20150302_666170.html

发改委反垄断局介入调查郑州中石化囤油待涨行为

2015 年 2 月 9 日, 国家发改委价格监督与反垄断局负责人透露, 内地油价上调前夕, 郑州不少中石化加油站出现了“缺油”的状况, 民众怀疑企业刻意“囤油待涨”以获取更多利润。该机构已经派人赶赴郑州, 如发现经营者存在滥用市场支配地位等违法行为, 将依法严肃查处。

NDRC Launches Relevant Investigation on Zhengzhou Sinopec for Its Monopolistic Behavior

On February 9, 2015, a person in charge from PSAMB under NDRC disclosed that many Sinopec gas stations in Zhengzhou alleged they faced a shortage of gas before the increase of domestic gas price, which was suspected as an intention to store gas for the price increase to gain more profits. NDRC had already sent investigators to Zhengzhou and investigated in the matter. Once they find there is any illegal behavior including abuse of dominance position, they will investigate and penalize it pursuant to law.

经营者集中 Merger Control

商务部二月份公布 19 起简易案件

截至 2015 年 2 月 28 日, 商务部二月份在其网站上公布的简易案件数量达到 19 起, 简易案件总量达 111 起。

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

MOFCOM Releases 19 Streamlined Cases in February

Up to February 28, 2015, MOFCOM released 19 streamlined cases in February on its website, with total amount reaching 111 so far.

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

民事诉讼 Private Actions

小灵通用户起诉联通垄断案件在北京知识产权法院立案

小灵通的用户向北京知识产权法院提起诉讼，认为北京联通未经充分协商就单方宣布终止小灵通业务的做法涉嫌滥用市场支配地位，要求北京联通撤销单方面终止小灵通业务的行为，并赔偿相应的损失。2015 年 1 月 29 日，该案件已在北京知识产权法院立案。

Beijing Intellectual Property Court Initiates the Antitrust Case of PAS Users Suing China Unicom

Personal Access Phone System (“PAS”) users sued China Unicom at Beijing Intellectual Property Court for its alleged abuse of dominance position through terminating PAS service without thorough consultation, and requested China Unicom to withdraw the decision to terminate PAS service and pay the damage as well. On 29 January, 2015, the case was initiated at Beijing Intellectual Property Court.

团队动态 Dacheng Team

大成作为发改委反垄断局律师团队成员全程参与高通案调查过程

在近期公布的高通反垄断调查案中，大成反垄断团队作为国家发改委律师团队成员，全程参与了本案的调查，多次出席发改委的有关案件论证会议，并在案件的多个方面为发改委提供了专业的法律意见。

详细信息: <http://www.yicai.com/news/2015/03/4580623.html>

Dacheng Antitrust Team Acts as Counsel to NDRC for Qualcomm Case

In the Qualcomm case recently concluded and released, Dacheng Antitrust Team served as Counsel of NDRC throughout the whole investigation, participated in many of discussions with NDRC, and provided professional legal advice to the Chinese antitrust authority in many aspects of the case.

For details, please visit: <http://www.yicai.com/news/2015/03/4580623.html>