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## 中国反垄断法律资讯：2013 年 9 月 China Monthly Antitrust Update: September 2013

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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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## 立法动态 Legislation

### 《关于经营者集中简易案件适用标准的暂行规定》将在年内出台 Rules of Fast Track for Merger Control is Expected to be Promulgated within This Year

2013 年 9 月 16 日，在美国律师协会（ABA）在北京举办的“中国-境内和境内：反垄断、知识和其他规章在启动和运营境内外投资中的问题”会议上，商务部反垄断局局长尚明表示，商务部将在年内出台《关于经营者集中简易案件适用标准的暂行规定》。尚明还表示，目前，商务部反垄断局内部已经开始试点操作简易程序处理申报案件。

On September 16, 2013, Mr. Shang Ming, Director General of Anti-Monopoly Bureau (“AMB”) of Ministry of Commerce (“MOFCOM”) said on *China-Inside and Out: Antitrust, Intellectual Property and Other Regulatory Issues for Initiating and Operating Outbound and Inbound Investments*, a seminar held by American Bar Association (“ABA”) in Beijing that *Interim Provisions on the Standards Applicable to Simple Cases of Concentration of Undertakings* (Rules of Fast Track for Merger Control) is expected to be promulgated by MOFCOM within this year. He also said that the internal test to this “Interim Provision” has already been applied.

### 工商总局正在同时制定有关反垄断法在知识产权领域适用的规定和指南 SAIC is Formulating Both Provisions and Guidelines on Application of AML in IPR Field

2013 年 9 月 16 日，工商总局反垄断与反不正当竞争执法局局长任爱荣出席了美国律师协会在北京举办的“中国-境内和境内：反垄断、知识和其他规章在启动和运营境内外投资中的问题”国际会议，并做主题发言。她表示，国家工商总局正在加紧制定《工商行政管理机关关于禁止滥用知识产权排除、限制竞争行为的规定》，与此同时，《关于知识产权领域反垄断执法的指南》也在制定过程中。之前，外界曾误认为工商总局放弃了指南的制定，转而制定属于部门规章的规定。

On September 16, 2013, Ms. Ren Airong, Director General of Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau (“Competition Enforcement Bureau”) of State Administration of Industry and Commerce (“SAIC”) attended *China-Inside and Out: Antitrust, Intellectual Property and Other Regulatory Issues for Initiating and Operating Outbound and Inbound Investments*, a seminar held by ABA in Beijing and made a keynote speech. She disclosed that SAIC is speeding up the formulation of *Provisions on Industry and Commerce Authorities’ Prohibiting Abusing Intellectual Property Rights to Exclude or Restrict Competition* and, meanwhile, the formulation of *Guidelines on AML Enforcement in Intellectual Property Rights Field* is also under way. This statement denied previous guess by some observers that SAIC had given up formulating of the Guidelines and turned to promulgate the Provisions.

## 行政调查 Public Enforcement

### 国家发改委正在调查眼镜企业 NDRC is Investigating Glasses Enterprises

2013 年 9 月 16 日，在美国律师协会在北京举办的“中国-境内和境外：反垄断、知识和其他规章在启动和运营境内外投资中的问题”会议上，国家发改委价格监督检查和反垄断局局长许昆林表示，发改委目前正在调查眼镜企业，调查进展很顺利，企业已经承认有违法行为。之前有报道称发改委的调查涉及眼镜行业的转售价格维持行为，亦即反垄断法第 14 条所称的纵向垄断行为。

On September 16, 2013, Mr. Xu Kunlin, Director General of Price Supervision and Inspection and Anti-Monopoly Bureau of the National Development and Reform Commission (“NDRC”) said on *China-Inside and Out: Antitrust, Intellectual Property and Other Regulatory Issues for Initiating and Operating Outbound and Inbound Investments*, a seminar held by ABA in Beijing that NDRC is investigating glasses enterprises. Mr. Xu said the investigation progresses smoothly, and some enterprises have already admitted violations. Previous media reports had related that NDRC’s investigation refers to Resale Price Maintenance (“RPM”), i.e., vertical monopoly agreement as prohibited by article 14 of the Anti-Monopoly Law (“AML”).

### 工商总局披露最新执法案件数量 SAIC Disclosed Latest Number of Cases Investigated

2013 年 9 月 16 日，工商总局反垄断与反不正当竞争执法局局长任爱荣在美国律师协会在京举办的“中国-境内和境外：反垄断、知识和其他规章在启动和运营境内外投资中的问题”会议上介绍了工商总局自《反垄断法》实施以来的执法情况。截止到会议当日，工商机关共调查 27 件反垄断案件，其中工商总局调查 1 件，授权省级工商机关调查 26 件，其中结案 12 件。

On September 16, 2013, Ms. Ren Airong, Director General of Competition Enforcement Bureau of SAIC, disclosed SAIC’s latest enforcement information on *China-Inside and Out: Antitrust, Intellectual Property and Other Regulatory Issues for Initiating and Operating Outbound and Inbound Investments*, a seminar held by ABA in Beijing. As of the date of the seminar, Industry and commerce authorities had investigated 27 anti-monopoly cases, among them, 1 case was investigated by SAIC and 26 were by provincial industry and commerce authorities as authorized by SAIC, and 12 of the total 27 investigations were closed.

### 广东查处河砂滥用市场支配地位案件 Guangdong Punished River Sand Enterprises for Abusing Market Dominance

2013 年 9 月 4 日，广东省物价局曝光了一起滥用市场支配地位案件。据调查，广东韶关市的明华沙石场及林源公司合并占曲江开采加工河砂相关市场份额 75%以上，依据《反垄断法》第 19 条具有集体市场支配地位。两家河砂企业连年推高砂价，导致河砂价格提价幅度高达 54.5%，属于滥用市场支配地位以不公平的高价销售河砂的行为。在征询国家发改委相关意见后，广东省物价局按照《反垄断法》对两家企业处以 52.7950 万元的罚款。

详细信息：<http://www.gdpi.gov.cn/zwdt/419583.jhtml>

On September 4, 2013, Guangdong Price Bureau disclosed a case involving abuse of collective dominant market position (article 19 of the AML). According to officials of the Bureau, the combined market shares of Minghua Quarry and Linyuan Company, two companies based in Shaoguan City of Guangdong Province, accounts for more than 75% of the market shares of river sand mining and processing market in Qujiang District. These two river sand enterprises drove up the price in recent years, resulting in a 54.5% increase in the price of the river sand, which constitutes abuse of dominant market position and sale of river sand at an unfair high price. After consulting with NDRC, Guangdong Price Bureau fined these two enterprises a total of RMB 527,950 in accordance with AML.

For details, please refer to URL <http://www.gdpi.gov.cn/zwdt/419583.jhtml>

## 执法机构 Authorities

### 许昆林接受南方周末书面采访 NDRC Chief Gave a Written Interview to Southern Weekly

2013 年 9 月 27 日，国家发改委价格监督检查和反垄断局局长许昆林接受了南方周末记者的书面采访，就“发改委为什么在 2013 年以来突然发威？”、“如何查处反垄断案件的？”、“是否存在针对性执法？”、“查处中面临的困难？”等一系列问题做出了回复。

详细信息：<http://www.infzm.com/content/94654>

On September 27, 2013, Mr. Xu Kunlin, Director General of Price Supervision and Inspection and Anti-Monopoly Bureau of NDRC gave a written interview to *Southern Weekly*, answering a series of questions such as “why NDRC suddenly strengthens its Anti-Monopoly Law enforcement this year?”, “how does NDRC investigate and handle anti-monopoly cases?”, “does NDRC treat differently to SOEs, multinationals and private enterprises?”, “what are the difficulties in investigating and imposing penalty?”, and etc.

For details, please refer to URL <http://www.infzm.com/content/94654>

### 许昆林：逐步确立竞争政策的基础性地位 NDRC Chief: Gradually the Competition Policy Shall Play A Fundamental Role

2013 年 9 月 24 日，国家发改委价格监督检查与反垄断局局长许昆林在中国新闻社举办的“大势·大事·大市——中国经济形势分析会”上发表《逐步确立竞争政策的基础性地位》的主题演讲。许昆林表示，竞争是创新的源动力，应逐步确立竞争政策在经济政策中的基础性地位。

详细信息：<http://www.chinanews.com/gn/2013/09-24/5315630.shtml>

On September 24, 2013, Mr. Xu Kunlin, Director General of Price Supervision and Inspection and Anti-Monopoly Bureau of NDRC made a keynote speech, *Gradually the Competition Policy Shall Play A Fundamental Role, on Big Trend, Big Event, and Big Market-China's Economic Situation Analysis Conference* held by China News Service. Mr. Xu stated competition is the driving force of innovation and gradually the competition policy shall play a fundamental role in economic policy.

For details, please refer to URL <http://www.chinanews.com/gn/2013/09-24/5315630.shtml>

**尚明会见美国联邦贸易委员会委员及美国司法部反托拉斯局副局长 MOFCOM Chief Met Officials from FTC and DOJ**

2013 年 9 月 17 日，商务部反垄断局尚明局长会见来访的美国联邦贸易委员会委员约书亚·莱特（Joshua Wright）及美国司法部反托拉斯局副局长雷纳塔·赫希（Renata Hesse）一行。双方就中美反垄断合作等事宜交换了意见。

详细信息：<http://fdj.mofcom.gov.cn/article/xxfb/201309/20130900314140.shtml>

On September 17, 2013, Mr. Shang Ming, Director General of AMB of MOFCOM, met visiting delegations led by Joshua Wright, Commissioner of the US Federal Trade Commission (“FTC”) and Renata Hesse, Deputy Assistant Attorney General of Antitrust Division of the US Department of Justice (“DOJ”). Both parties exchanged their opinions on such matters as Sino-US anti-monopoly cooperation.

For details, please refer to URL

<http://fdj.mofcom.gov.cn/article/xxfb/201309/20130900314140.shtml>

**学术活动 Academia****中国经济法学会 2013 年年会在沈阳召开 2013 Annual Meeting of China Economic Law Studies Association Held in Shenyang**

2013 年 9 月 28-29 日，由中国法学会经济法研究会主办，辽宁大学法学院承办的中国法学会经济法学会 2013 年年会暨第二十一届全国经济法理论研讨会在沈阳举行。国务院反垄断委员会专家咨询组副组长黄勇教授、中国社会科学院王晓晔研究员参加了本届年会市场规制法组的分组讨论，就有关反垄断问题发表了观点。200 余位专家学者参加了本次研讨会。

详细信息：<http://www.chinalaw.org.cn/html/ljrd/6685.html>

On September 28-29, 2013, the 2013 Annual Meeting of China Economic Law Studies Association (“CELSA”) of China Law Society (“CLS”) & the 21th National Economic Law Theory Symposium, hosted by CELSA of CLS and organized by Law School of Liaoning University, was held in Shenyang. Prof. Huang Yong, Vice Chair of the Expert Advisory Board of the State Council Anti-Monopoly Commission and Wang Xiaoye, Researcher of Chinese Academy of Social Science, joined the panel of market regulation law and exchanged opinions regarding antitrust law and enforcement. More than 200 experts and scholars attended the event.

For details, please refer to URL <http://www.chinalaw.org.cn/html/ljrd/6685.html>

**湖南大学首届竞争法与竞争政策国际研讨会在长沙举行 The 1st International Symposium on Competition Law & Policy Held in Changsha**

2013 年 9 月 21-22 日，湖南大学首届竞争法与竞争政策国际研讨会在长沙举行。研讨会紧紧围绕“反垄断相关市场界定”这一主题进行了深入的探讨。来自美国、德国、英国、韩国等国及国内高校的竞争法学、经济学专家、反垄断相关执法机构负责人、执业律师 80 余人参加会议。

详细信息：<http://law.hnu.edu.cn//index.php/cms/item-view-id-589.shtml>



On September 21&22, 2013, the 1st International Symposium on Competition Law & Policy, hosted by Hunan University, was held in Changsha. The attendees had an in-depth discussion on “the anti-monopoly relevant market definition”, the theme of the symposium. More than 80 competition law and economic experts, leaders of relevant AML enforcement agencies, and lawyers attended the meeting.

For details, please refer to URL <http://law.hnu.edu.cn//index.php/cms/item-view-id-589.shtml>

### **美国律师协会在京举办反垄断国际会议 ABA Held Anti-Monopoly International Conference in Beijing**

2013 年 9 月 16-17 日，由美国律师协会举办的“中国-境内和境外：反垄断、知识和其他规章在启动和运营境内外投资中的问题”会议在北京举行。会议就“全球反垄断审查中的中国部分”、“中国及其他法律的反垄断与知识产权”等议题展开了讨论。来自中国、美国、欧盟、日本等近 200 名执法机构代表、学者、企业代表、律师参加了本次会议。

On September 16-17, 2013, *China-Inside and Out: Antitrust, Intellectual Property and Other Regulatory Issues for Initiating and Operating Outbound and Inbound Investments*, a seminar held by ABA, was held in Beijing. The attendees discussed around such topics as “The China Dimension of a Global Merger Review”, “Antitrust and Intellectual Property in China and Other Jurisdictions”, and etc. About 200 representatives of AML enforcement agencies, scholars, representatives of enterprises and lawyers attended the event.

## **团队动态 Dacheng Team**

### **大成律师事务所在上海举办“反垄断法的最新发展和热点问题”研讨会 Dacheng Law Offices Held Seminar on Recent Developments and Hot Issues of AML**

2013 年 9 月 26 日，大成律师事务所举办的“反垄断法的最新发展和热点问题”研讨会在上海举行。大成反垄断团队戴建民律师、邓志松律师分别做题为“反垄断法的最新热点分析”和“并购反垄断申报实务及最新发展”的主旨演讲，从实务角度就如何应对反垄断调查、反垄断合规及反垄断申报等问题进行了深入探讨。此外，来自美国查尔斯·里弗顾问公司(CRA)的王晓茹博士也应邀讨论了反垄断案件中经济分析的作用。本次会议现场气氛热烈，参会人员发言踊跃，收到了良好效果。共计 120 多家跨国公司、私人企业及国有企业参加了本次研讨会。

On September 26, 2013, the *Seminar of Recent Developments and Hot Issues of AML* was held in Shanghai by Dacheng Law Offices. Dacheng antitrust team members, Ken Dai and Jet Deng, made keynote speeches of “Analysis on Recent Hot Issues of AML” and “Practice of Anti-Monopoly Notification for M&A and the Recent Developments” respectively, which gave insights on issues such as how to deal with the antitrust investigations in China, how to conduct the antitrust compliance, and practical tips on merger control and antitrust notifications in China from the perspective of practitioners. In addition, Elizabeth Wang, Principal from CRA, discussed the role of economic analysis in antitrust cases. More than 120 companies, including multinationals, private enterprises and SOEs attended the seminar.

**邓志松律师接受《新京报》采访，就“垄断”的定义发表观点 Jet Deng Interviewed by Beijing News, Airing Views on the Definition of “Monopoly”**

2013 年 9 月 13 日，大成北京办公室的邓志松律师接受《新京报》的采访，就其报道“张维迎与中移动副总激辩‘垄断’”发表观点。邓律师阐述了经济学意义和法律意义上对于垄断的不同定义，澄清了公众在这个问题上的一些误解。

详细信息：<http://www.bjnews.com.cn/finance/2013/09/13/283197.html>

On September 13, 2013, Jet Deng, Partner of Dacheng Beijing Office, gave an interview to *The Beijing News*, delivering opinions on its coverage, “Dispute on ‘Monopoly’ between Zhang Weiying and the Vice President of CMCC”. Mr. Deng introduced the different definitions of monopoly in term of economics and antitrust law, and clarified some misunderstandings on this issue by the public.

For details, please refer to URL <http://www.bjnews.com.cn/finance/2013/09/13/283197.html>

**戴健民律师应邀参加亚洲竞争协会年会并发表专题演讲 Ken Dai invited to attend Annual Meeting of ACA and made Keynote Speech**

2013 年 9 月 6 日，大成上海办公室的戴健民律师应邀参加了亚洲竞争协会(Asia Competition Association)的年会，并用英文作了题为《More Economic Analysis: Observation from Latest Merger Review Practice by MOFCOM》的专题演讲，获得与会者的一致好评。同时，戴健民律师还主持了第四单元《全球视角：滥用市场支配地位的最新发展》的活动，取得了良好的效果。

On September 6, 2013, Ken Dai, Partner of Shanghai Office of Dacheng Law Office, was invited to attend the Annual Meeting of Asia Competition Association and made a keynote speech, “*More Economic Analysis: Observation from Latest Merger Review Practice by MOFCOM*”, which is unanimously welcomed by the attendees. Mr. Dai also moderated Session IV, *Global Perspective: the Recent Developments of Abuse of Market Dominance*.