

中国反垄断法律资讯

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联合负责人 Co-Chairs

邓志松/Jet Deng

合伙人/Partner

北京办公室/Beijing Office

电话/Tel.: 010 - 5813 7038

邮箱/Email: zhisong.deng@dentons.cn

戴健民/Ken Dai

合伙人/Partner

上海办公室/Shanghai Office

电话/Tel.: 021 - 5878 1965

邮箱/Email: jianmin.dai@dentons.cn

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立法动态 Legislation

国务院发布《降低实体经济企业成本工作方案》反垄断为重要路径

8月22日，国务院发布《降低实体经济企业成本工作方案》（“《方案》”），旨在有效缓解实体经济企业困难、助推企业转型升级，实施开展降低实体经济企业成本工作。《方案》指出，国务院将着力降低制度性交易成本，打破地域分割和行业垄断，加强公平竞争市场环境建设；进一步降低企业用能用地成本，加快推进能源领域改革，放开竞争性环节价格；落实降成本工作配套措施，加强反垄断、反不正当竞争、知识产权保护、质量安全监督等市场监管。¹

State Council Publishes the Working Scheme to Lower Costs for Real Economy Enterprises

On 22 August, the State Council published the *Working Scheme on Reducing Cost of Real Economy Enterprises* (“**Scheme**”), which is aimed at alleviating difficulties of real economy enterprises effectively, helping enterprises on transformation and upgrading, and taking measures to lower costs for real economy enterprises. The Scheme includes that the State Council will devote on reducing institutional transaction costs with efforts to break regional blockade and industry monopoly and strengthening development of market circumstance of fair competition; the State Council will further reduce land costs of enterprises, impel revolution in energy field and deregulate price in competition area; and the State Council will carry out supporting measures on reducing costs, strengthen regulations in respect of antitrust, anti-unfair competition, IP protection, quality safety supervision, etc.

江苏省出台《公平竞争审查制度实施意见》

8月22日，江苏省人民政府出台了《江苏省公平竞争审查制度实施意见》（“《意见》”）。《意见》要求，江苏省涉及市场主体经济活动的规章、规范性文件和其他政策措施以及提请人大审议的地方性法规草案等相关文件，均应该在起草过程中进行公平竞争审查。政策制定机关在政策措施制定过程中，要严格对照审查标准进行自我审查。未经过公平竞争审查的政策措施等相关文件，一律不得出台。此外，《意见》还为江苏省各级政府部门清理和废除妨碍全国统一市场和公平竞争的各种规定和做法设定了时间表。²

¹http://www.gov.cn/zhengce/content/2016-08/22/content_5101282.htm。

²http://www.js.xinhuanet.com/2016-08/26/c_1119460391.htm。

Jiangsu Government Issues Opinions on Implementing the Fair Competition Review System

On 22 August, People's Government of Jiangsu Province issued the *Opinions on Implementing the Fair Competition Review System of Jiangsu Province* ("Opinions"). According to the Opinions, regulations, normative documents, policies and measures that have bearing on the business of market participants as well as drafts of local laws and regulations that requested for review by the People's Congress, etc., should be reviewed in terms of fair competition during drafting process. Policymaking departments should enforce self-review strictly according to the review standard during policies and measures making process. Policies, measures and relevant documents are banned to be issued until reviewed in terms of fair competition. Meanwhile, the Opinions set deadlines for government departments of Jiangsu at all levels to clear and abolish the relevant regulations and measures that obstruct unified market and fair competition.

国家烟草专卖局、中国烟草总公司印发意见要求建立烟草行业公平竞争审查制度

8月17日，国家烟草专卖局、中国烟草总公司印发意见，要求建立烟草行业公平竞争审查制度。各级烟草专卖局、烟草公司及其他相关单位在制定市场准入、招标投标、经营行为规范等涉及市场主体经济活动的规范性文件和其他政策措施时，应当进行公平竞争审查，以法律、法规为最终审查标准，实行自我审查与外部监督相结合的审查方式。³

State Tobacco Monopoly Administration and China National Tobacco Corporation Publish Opinion to Establish Fair Competition Review System in Tobacco Industry

On 17 August, the State Tobacco Monopoly Administration and China National Tobacco Corporation published an opinion, which requires establishing fair competition review system in tobacco industry. Tobacco monopoly bureaus and tobacco corporations at all levels and other relevant departments should enforce fair competition review while enacting normative documents, policies and measures related to market entry, tendering and bidding, operation standard, etc., that have bearing on the business of market participants, should take laws and regulations as final review standard and should combine self-review with external supervision.

国家发改委发布贯彻公平竞争审查制度内部工作程序

7月27日，国家发改委办公厅印发了《关于贯彻落实<关于在市场体系建设中建立公平竞争

³http://www.gov.cn/xinwen/2016-08/22/content_5101149.htm。

审查制度的意见>委内工作程序的通知》，要求国家发改委各司局按照“谁起草、谁负责”的原则进行自我审查；各司局在审查中认为有必要的，可以征求价格监督检查与反垄断局意见；各司局将相关政策措施提交法规司进行合法性审查时，一并提交公平竞争审查结论。⁴

NDRC Publishes Internal Working Procedure of Implementing Fair Competition Review System

On 27 July, the National Development and Reform Commission (“NDRC”) published the Notice of Internal Working Procedure on Implementing the Opinions on Establishing the Fair Competition Review System in Market System Development, which requires all departments of NDRC to conduct self-review according to the principle that “whoever formulates a policy shall be responsible for policy clean-up”; all departments can solicit opinion from the Price Supervision and Inspection and Anti-Monopoly Bureau if deemed necessary; all departments should submit the conclusion of fair competition review while submitting the relevant policies and measures to Laws and Regulations Department for legal review.

广东省将分步实施公平竞争审查制度

7月25日，广东省人民政府发布《广东省人民政府转发国务院关于在市场体系建设中建立公平竞争审查制度意见的通知》（“《通知》”），要求广东省各级政府部门加快建立、分步实施公平竞争审查制度，省直各有关部门自2016年7月起在政策措施制定过程中必须进行公平竞争审查，市县级人民政府及所属部门自2017年起逐步开展公平竞争审查。《通知》同时要求广东省各级政府部门有序清理和废除妨碍统一市场和公平竞争的相关规定和做法，并健全相关工作机制。⁵

Guangdong Province Will Enforce the Fair Competition Review System Stepwise

On 25 July, People’s Government of Guangdong Province published the *Notice of People’s Government of Guangdong Province on Transmitting the Opinions on Establishing the Fair Competition Review System in Market System Development* (“Notice”), which requires government departments of Guangdong at all levels to accelerate the establishment and enforcement of the fair competition review system. The relevant departments at provincial level must enforce fair competition review in enacting process of policies and measures from July 2016, while governments and departments of city and county level should enforce

⁴http://jjs.ndrc.gov.cn/gzdt/201608/t20160802_813868.html?sukey=3997c0719f1515209c54f2a8fec4895f234f97ef446d99735efeb01162b85a0870f1e2f8ea96459111cb32987c6978a。

⁵http://zwgk.gd.gov.cn/006939748/201608/t20160804_666598.html。

fair competition review gradually from 2017. The Notice requires government departments of Guangdong at all levels, at the same time, to clear and abolish orderly the relevant regulations and measures that obstruct unified market and fair competition, as well as complete the relevant working mechanism.

执法机构 Authorities

国家三大反垄断执法机构在各地开展公平竞争审查制度调研活动

8月16日以来，国家三大反垄断执法机构（国家发改委、国家工商总局与商务部）在重庆、天津、河北、四川、湖南等地开展公平竞争审查制度调研活动。各调研组就贯彻落实公平竞争审查制度和营造公平竞争的市场环境等问题开展专题调研活动，并就行业市场竞争基本情况等问题与政府部门、行业协会、企业代表等进行座谈，听取建议和意见。⁶

NDRC, SAIC and MOFCOM Launch Surveys about Fair Competition Review System in Several Provinces

China's antitrust enforcement authorities (NDRC, the State Administration for Industry and Commerce ("SAIC") and the Ministry of Commerce ("MOFCOM")) conducted on-site surveys on the fair competition review system in Chongqing, Tianjin, Hebei, Sichuan, Hunan, etc. since 16 August. Survey groups carried out surveys in respect of the implementation of the fair competition review system and the development of the fair competition market circumstance, discussed with delegates of government departments, industry associations and enterprises in terms of basic circumstances of market competition within industry and listened to their suggestions and opinions.

第一期价格监管与反垄断执法培训班结业仪式在中国政法大学举行

8月12日，第一期价格监管与反垄断执法培训班结业仪式在中国政法大学昌平校区国际交流中心举行。国家发改委价监局副局长陈志江、国家发改委价监局综合处处长陈达、副处长刘健、中国政法大学副校长时建中、中国政法大学继续教育学院副院长张晓琴出席了结业仪式。培训旨在提升我国反垄断执法队伍的执法能力与水平，更好地维护市场公平竞争秩序，保护消费者合法权益。第二期培训将在8月28日至9月23日举行。⁷

⁶http://www.hunan.gov.cn/zw/hnyw/tjdt/201608/t20160818_3234495.html;

http://www.saic.gov.cn/fldyfbzdz/gzdt/201608/t20160822_170548.html;

<http://fldj.mofcom.gov.cn/article/xxfb/201608/20160801383721.shtml>;

<http://www.sc.gov.cn/10462/10464/10465/10574/2016/8/24/10393326.shtml>。

⁷<http://www.gx211.com/news/2016819/n5574388225.html?sukey=3997c0719f1515209c54f2a8fec4895c1e608717a5c1d1e22b8b2da16910c71558062b438c739d980bb7d918d13ace6>。

The First Phase of the Training Program of Price Supervision and Antitrust Enforcement Graduation Ceremony Held at CUPL

On 12 August, the first phase of the training program of price supervision and antitrust enforcement graduation ceremony was held in International Communication Center of Changping campus of China University of Political Science and Law (“**CUPL**”). Mr. Chen Zhijiang, Deputy Director-General of the Price Supervision and Inspection and Anti-Monopoly Bureau (“**PSIAMB**”), Mr. Chen Da and Mr. Liu Jian, Director and Deputy Director of the General Office of PSIAMB, Mr. Shi Jianzhong, Deputy President of CUPL, Ms. Zhang Xiaoqin, Deputy Dean of CUPL’s School of Further Education, attended the commencement. The training program was held for improving enforcement ability of antitrust enforcement authority so as to better preserve fair competition order of market and protect legitimate rights and interests of consumers. The second phase will be held from 28 August to 23 September.

国家工商总局竞争执法局会见中国城市燃气协会一行

8月3日，国家工商总局反垄断与反不正当竞争执法局（“**竞争执法局**”）与到访的中国城市燃气协会（“**燃气协会**”）秘书长迟国敬一行座谈。竞争执法局介绍了近期工商机关开展公用企业限制竞争和垄断行为专项执法行动的情况，双方就燃气行业目前存在的一些涉嫌限制、排除竞争的问题进行了沟通和交流。燃气协会表示会积极支持国家工商总局的专项执法行动，组织协会成员自查自纠，对发现的违规问题主动整改，未来将进一步加强行业自律，同时也希望国家工商总局对燃气行业的经营行为给予更多指导。⁸

CEB of SAIC Meets a Delegation from China Gas Association

On 3 August, the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau (“**CEB**”) of SAIC met a delegation led by Mr. Chi GuoJing, Secretary-General of China Gas Association (“**CGA**”). CEB introduced the status of the special enforcement implemented by AICs against public utilities which restrict competition and commit monopolistic conduct. Both sides exchanged opinions and discussed on existing problems which are suspected of monopoly and anti-unfair competition in gas industry. It was expressed that CGA will support the special enforcement by SAIC actively, organize self-review of members, rectify irregular issue discovered and reinforce self-discipline within industry in future. CGA was, meanwhile, looking forward to receiving more guidance from SAIC towards business operation in gas industry.

⁸http://www.saic.gov.cn/fldyfbzdjz/gzdt/201608/t20160804_170247.html.

江苏省工商局督查集中整治公用企业专项执法行动

7月12日至20日，江苏省工商局组成5个督查组，对全省工商和市场监管部门在开展集中整治公用企业限制竞争和垄断行为突出问题专项执法行动实施督查。江苏省工商局近日召开会议对督导情况进行了通报，并对下一段工作提出了新的要求。⁹

Jiangsu AIC Supervises the Special Enforcement Action against Public Utilities

From 12 July to 20 July, the Administration of Industry and Commerce of Jiangsu Province (“**Jiangsu AIC**”) composed 5 inspection teams for supervising the special enforcement action to rectifying the conduct of competition restriction and monopoly by public utilities. Jiangsu AIC held a meeting to brief the supervision and brought up new requirements for the future work.

⁹http://www.saic.gov.cn/ywdt/gsyw/dfdt/xxb/201608/t20160810_170330.html。

行政调查 Public Enforcement

四川省工商局举行公用企业集中整治行动典型案例分析会

8月26日，四川省工商局举行全省公用企业集中整治行动典型案例分析会。会议通报了目前四川省公用企业集中整治行动开展情况，针对个案查处过程中遇到的疑难问题进行研讨，并对下一步工作提出要求。国家工商总局竞争执法局派员参加。¹⁰

Sichuan AIC Holds an Analysis Meeting on Representative Cases in the Enforcement Campaign against Public Utilities

On 26 August, the Administration of Industry and Commerce of Sichuan Province (“**Sichuan AIC**”) held an analysis meeting on representative cases in the enforcement campaign against public utilities. The status of play of the enforcement campaign against public utilities in Sichuan Province was communicated, difficult issues in individual cases were discussed and further requirements on the next step work were put forward during the meeting. Officials of SAIC also attended the meeting.

湖北省工商局查处保险行业协会垄断协议案

8月16日，国家工商总局公布了湖北省工商局对湖北省保险行业协会组织本行业经营者实施垄断协议行为案作出的处罚决定。湖北省工商局认定，湖北省保险行业协会从2003年5月开始，陆续组织27家保险公司达成垄断协议，对新车保险市场份额进行划分的行为，违反了《反垄断法》第16条的规定。湖北省工商局对湖北省保险行业协会处以罚款20万元。¹¹

Hubei AIC Fines Insurance Industry Association for Monopoly Agreement

On 16 August, SAIC released penalty decision imposed by the Administration of Industry and Commerce of Hubei (“**Hubei AIC**”) on Insurance Industry Association of Hubei Province for organizing industry participants to implement monopoly agreement. Hubei AIC found that since May 2003 the Insurance Industry Association of Hubei Province organized 27 insurance companies to conclude monopoly agreement on dividing up the new car

¹⁰ <http://www.cicn.com.cn/zggsb/2016-08/31/cms90518article.shtml?sukey=3997c0719f15152034bee303c26668ee5156b04ea33b9fd2701e239d22c649a76b55f884268509741f31c976b49e9e4b>。

¹¹ http://www.saic.gov.cn/zwgk/gggs/jzzf/201608/t20160816_170435.html。

insurance market, which violates Article 16 of the *Anti-monopoly Law* (“**AML**”). Hubei AIC imposed penalties of RMB 200,000 on the Insurance Industry Association of Hubei Province.

上海市物价局查处家电销售公司维持转售价格垄断协议案

8月12日，上海市发展和改革委员会公布上海市物价局对重庆新日日顺家电销售有限公司上海分公司、重庆海尔家电销售有限公司上海分公司、重庆海尔电器销售有限公司上海分公司（“**当事人**”）实施垄断协议行为案作出的处罚决定。上海市物价局认定，当事人与经销商达成并实施限定向第三人转售商品最低价格的垄断协议，违反了《中华人民共和国反垄断法》第十四条第（二）项和《反价格垄断规定》第八条第（二）项的规定。上海市物价局对当事人合计罚款 1234.80 万元。¹²

Shanghai Price Bureau Fines Three Home Appliance Selling Companies for RPM

On 12 August, the Development and Reform Commission of Shanghai released penalty decision imposed by Shanghai Price Bureau on Chongqing RRS Household Appliances Selling Company (Shanghai branch), Chongqing Haier Electronics Selling Company (Shanghai branch) and Chongqing Haier Household Appliances Selling Company (Shanghai branch) (“**Parties**”) for committing monopoly agreement. Shanghai Price Bureau uncovered that the Parties concluded and implemented agreements on maintaining resale price towards third parties, which violates Article 14(2) of the AML and Article 8(2) of the *Provisions against Price Monopoly*. Shanghai Price Bureau fined the Parties RMB 12.348 million in total.

¹²<http://www.shdrc.gov.cn/fzgggz/jggl/jghzcfjds/24137.htm?sukey=3997c0719f151520d9d8ab22467f976c98c4d515fe7612d065f5b252164f77246e2681dc3fe38a088feeff499b492570>。

经营者集中 Merger Control

商务部 8 月公布 24 起简易案件

截至 2016 年 8 月 31 日，商务部八月份在其网站上公布的简易案件数量达到 25 起，简易案件总量达到 506 起。¹³

MOFCOM Releases 25 Streamlined Cases in August

Up to 31 August 2016, MOFCOM has released 25 streamlined cases in August on its website, with total amount reaching 506 so far.

商务部再次回答滴滴与优步中国合并案所涉经营者集中申报问题

8 月 17 日，商务部发言人沈丹阳在例行新闻发布会上针对滴滴与优步中国合并案所涉经营者集中申报问题再次作出回应：经营者应严格按照有关规定计算营业额后依法申报，如果达到申报标准，经营者未依法事先向商务部申报而实施集中，需承担相应的法律责任，未达到申报标准，但按照规定程序收集的事实和证据表明该经营者集中具有或者可能具有排除、限制竞争效果的，商务部应当依法进行调查。¹⁴

MOFCOM Commented on the Didi&Uber China Merger Filing Issue for the second time

On 17 August, Mr. Shen Danyang, the spokesperson of MOFCOM commented on the Didi&Uber China merger filing issue for the second time during the routine press conference: Enterprises shall calculate turnover according to relevant regulations strictly and make filing in advance to MOFCOM; enterprises shall take responsibility if they implement the concentration without merger filing while the concentration reaches the filing threshold; if the concentration of enterprises leads, or may lead, to elimination or restriction of competition which is indicated from the fact or evidence collected in accordance with regulations, MOFCOM shall carry out investigation according to law even though the concentration doesn't reach the thresholds.

¹³<http://fldj.mofcom.gov.cn/article/jyzizijaigs/>。

¹⁴<http://www.mofcom.gov.cn/xwfbh/20160817.shtml>。

行政诉讼 Administrative Litigation

会计师事务所垄断协议案当事人提起行政诉讼，法院一审维持山东省工商局处罚决定

2016 年 8 月 11 日，山东省济南市历下区人民法院做出一审判决，维持山东省工商局对会计师事务所垄断协议案的处罚决定。山东省工商局于 2014 年 8 月对鸿诚会计师事务所有限公司等涉嫌从事垄断协议行为进行立案调查，并于 2016 年 3 月对 23 家涉案当事人做出行政处罚决定。5 月，七家涉案当事人不服行政处罚决定向山东省济南市历下区人民法院提起行政诉讼，请求依法撤销山东省工商局做出的行政处罚决定。经审理，法院认为山东省工商局行政处罚程序合法，认定事实清楚，证据确凿，适用法律法规并无不当，判决驳回原告的诉讼请求。¹⁵

Accounting Firms File an Administrative Litigation against Antitrust Penalty Imposed by Shandong AIC but Lose the First Instance

On 11 August 2016, a first-instance judgment made by Lixia district court in Jinan of Shandong Province upheld the penalty decisions made by the Administration of Industry and Commerce of Shandong Province (“**Shandong AIC**”) towards a cartel among accounting firms. In August 2014, Shandong AIC investigated the cartel engaged in by Hongcheng Accounting Firm, etc., and made penalty decisions towards 23 accounting firms in March 2016. In May, seven accounting firms involved in the cartel filed an administrative litigation against Shandong AIC for revoking the penalty decision. Upon trial, the court found that Shandong AIC has complied with the administrative penalty procedures and collected sufficient facts and evidence, and also has applied laws and regulations rightly. Then the court dismissed the claims of the plaintiffs.

¹⁵http://www.saic.gov.cn/fldyfbzdzjz/qzdt/201609/t20160906_170867.html。

大成团队 Dentons Team

邓志松律师就滴滴与优步中国合并案所涉经营者集中问题接受多家媒体采访

2016年8月1日，滴滴出行宣布收购优步中国的品牌、业务、数据等全部资产。大成律师事务所高级合伙人邓志松律师就该项交易所涉及的备受各界关注的经营者集中申报问题接受了《南方都市报》、中国经济网、腾讯财经、彭博社等中外媒体的采访。邓志松律师表示，“滴滴优步合并案”是否需要进行经营者集中申报主要取决于其是否达到了中国的申报标准，而对交易双方营业额的计算则是判断是否达到申报标准的关键。此外，商务部如果进行反垄断审查，则重点在于双方合并的市场力量有多大，这在实践中通常会看合并的市场份额；而计算市场份额的前提是界定相关市场，即需考量滴滴和优步所提供的服务能否被其他类似服务所替代。

Jet Deng Interviewed on the Didi&Uber China Merger Filing Issue by Several Media

On 1 August 2016, Didi announced acquisition of all assets of Uber China, including its brand, business operations and data. Jet Deng, Senior Partner of Dentons China Antitrust Team, was interviewed on the high-profile merger filing issue in this transaction by domestic and foreign media including Southern Metropolitan Daily, China Economic.com, Tencent Finance and Bloomberg. Jet Deng commented that whether the Didi&Uber China merger needs to undergo China's merger filing procedure depends on whether the filing thresholds of China are met, which in turn depends on how to calculate the turnover of the merging parties. Separately, if MOFCOM carries out antitrust review, it will focus on how significant the market power of the merging parties will be, which is often indicated by the combined market share. In this regard, relevant market needs to be first defined, which will consider whether the car-hailing service provided by Didi and Uber can be substituted by other similar services.

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