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1、李克强总理在政府工作报告中谈及知识产权保护及打破垄断营造公平竞争环境

李克强总理在政府工作报告中指出要以保护产权、维护契约、统一市场、平等交换、公平竞争为基本导向，完善相关法律法规。强化知识产权保护，实行侵权惩罚性赔偿制度。加快技术、土地等要素价格市场化改革，深化资源类产品和公共服务价格改革，打破行政垄断，防止市场垄断。要用有力的产权保护、顺畅的要素流动，让市场活力和社会创造力竞相迸发。【1】

Premier Li Keqiang talks about protection of IPR and breakup of monopoly to create a level playing field in the government work report

Li Keqiang, premier of the State Council indicated in the Report on the Work of the Government that the government will complete the relevant laws and regulations in order to protect property rights, maintain contracts, unify the market, and ensure equally exchanges and fair competition. The government will strengthen the protection of intellectual property, and enforce a punitive compensation system for intellectual property rights infringements. The government will speed up reforms making the pricing of factors like technology and land increasingly market-based, deepen reform of the pricing mechanisms for resource products and public services, break government monopolies, and protect against market monopolies. The government will see that strong protection of property rights and fluid flows of the factors of production enable a great increase in market dynamism and public creativity.

2、工商总局竞争执法局与中国保险协会沟通反垄断案件调查情况

为发挥行业协会在促进企业合规经营等方面的积极作用，2月28日，工商总局竞争执法局与中国保险协会就工商机关查办保险行业垄断案件情况进行了沟通，介绍了案件的特点，交流了对共保问题的看法，并对如何更好地发挥行业协会的作用进行了讨论。

《反垄断法》施行以来，全国工商和市场监管部门共查处八起涉及保险业的垄断协议案。保险业成为仅次于公用企业和建材领域的垄断违法行为高发行业。自2012年至2017年，湖南、湖北、江西、广西等地工商管理总局先后对本地区保险行业的垄断行为进行了行政处罚，这八起案件中有六起涉及当地保险行业协会组织保险企业签订垄断协议的行为。【2】

【1】摘自北京知识产权法院微信公众号，《李克强在2018年政府工作报告中，关于知识产权说了什么？》，2018年3月6日。

【2】http://www.saic.gov.cn/fldyfbzdzjz/gzdt/201803/t20180307_272852.html

http://www.saic.gov.cn/xw/mtjj/201802/t20180208_272310.html

Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau of SAIC communicates with Insurance Association of China about the investigation of anti-monopoly cases

On February 28th, Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau of State Administration for Industry and Commerce (“SAIC”) communicated with Insurance Association of China (“IAC”) about anti-monopoly cases in the insurance industry in order to give play to the positive role of industry associations in promoting enterprise compliance management. The parties introduced the characteristics of these cases, exchanged views on the issue of co-insurance and had a discussion about how to make better use of industry associations.

Since the implementation of the *Anti-Monopoly Law*, the supervision authorities of industry, commerce and market across the country have investigated and dealt with eight monopoly agreement cases involving the insurance industry. The insurance industry has become a high-risk industry in the aspect of monopolistic conducts that is second only to the public enterprises and building materials industry. From 2012 to 2017, the Administration for Industry and Commerce of Hunan, Hubei, Jiangxi and Guangxi provinces successively imposed administrative penalties on the monopolistic conducts of the insurance industry in these regions. Six out of these eight cases involved local insurance industry associations, which organized insurance companies to reach monopoly agreements.

3、格罗方德举报台积电涉嫌垄断，已向国家发改委提出调查请求

据知情人士透露，全球第二大合同芯片制造商格罗方德已经向国家发展与改革委请求调查市场领先者台积电因采取不公平手段阻碍客户与格罗方德达成交易的行为违反《反垄断法》。台积电高级副总裁兼首席财务官Lora Ho周三回复称竞争对手向反垄断监管机构进行反垄断举报并不少见，台积电将积极配合调查。台积电认为当前市场竞争激烈，不存在限制竞争问题。国家发改委尚未立即发表评论。台积电是全球最大的合约芯片制造商，拥有55.9%的市场份额。在2017年下半年，格罗方德曾向欧盟委员会举报台积电运用回扣与惩罚措施阻止其客户与其他代工厂进行交易。

GlobalFoundries alleges to and requests NDRC to probe TSMC for violating antitrust laws

GlobalFoundries, the second-largest contract chipmaker in the world, has requested China's National Development and Reform Commission (“NDRC”) to probe market leader Taiwan Semiconductor Manufacturing Co. (“TSMC”) for adopting unfair practices to discourage customers from placing orders with others which violating anti-monopoly laws, said two industry sources familiar with the matter. TSMC Senior Vice President and Chief Financial Officer Lora Ho replied that it is common practice for a complainant alleging anti-monopoly violation. TSMC believed there is no anti-competition concern in such a highly

【3】 <https://asia.nikkei.com/Business/AC/US-chipmaker-GlobalFoundries-asks-China-to-probe-TSMC>

competitive industry. If there are inquiries or requests from regulators regarding any investigation, TSMC will cooperate fully. NDRC was not immediately available for comment. TSMC is the world's largest contract chipmaker with a 55.9% market share. In the second half of 2017, GlobalFoundries made a similar complaint to the European Commission, accusing TSMC of unfairly using rebates and even penalties to prevent customers from defecting to other suppliers.

4、合肥市工商局快办快结今年网络刷单炒信第一案

日前，安徽省合肥市工商局对合肥驿路电子商务公司作出停止违法行为并罚款5万元的行政处罚决定，标志着今年该局查办的网络刷单炒信第一案顺利办结。2017年底，合肥市工商局网监局接到群众举报，经调查取证后发现，该公司为其学员（商家）提供刷单服务，以虚构交易的方式提高商家的交易数量，以刷好评的方式提升商家信誉，认定其行为违反了《网络交易管理办法》和《反不正当竞争法》，属损害其他经营者合法权益、扰乱社会主义市场经济秩序的不正当竞争行为。

新修订的《反不正当竞争法》第8条第2款【4】增加了禁止虚假交易的规定，主要针对近年来常见的“刷单”、“刷评论”等在电子商务中出现的不正当竞争行为。同时，在第12条中，增加了利用互联网技术实施不正当竞争的条款，目的在于规范互联网行业的发展。【5】

Hefei AIC quickly initiates and completes the first online click farming case this year

Hefei Administration for Industry and Commerce (“Hefei AIC”) issued an administrative penalty decision against Hefei Yilu E-commerce Co., Ltd. (Hefei Yilu E-commerce) to desist from the illegal act and impose a fine of RMB 50,000, marking the successful completion of the first online click farming case this year. At the end of 2017, the Network Supervision Bureau of Hefei AIC received a report. After investigation, it had been recognized that the company provided click farming services and placed fake orders for its trainees (businesses) in order to get a favorable response, which violated *the Administrative Measures for Online Trading and Anti-Unfair Competition Law* (AUCL). Such unfair competition acts harm the lawful rights and interests of other operators and disrupt the order of the socialist market economy.

Article 8.2 of the revised AUCL increases the prohibition of false transactions, aiming at regulating click farming practice. 【6】 At the same time, in Article 12, any business shall not implement unfair acts by technical means, for the purpose of regulating the internet industry.

【4】《反不正当竞争法》第8条第2款：“经营者不得通过组织虚假交易等方式，帮助其他经营者进行虚假或者引人误解的商业宣传。”

【5】 http://www.saic.gov.cn/fldyfbzdjz/gzdt/201803/t20180306_272818.html

【6】AUCL Article 8 paragraph 2: “A business shall not help another business conduct any false or misleading commercial publicity by organizing false transactions or any other means.”

5、江苏省物价局反价格垄断分局查处了全国手机行业反价格垄断第一案，依法对vivo手机江苏总经销纵向控制产品价格案处罚698.3万元

3月8日，江苏省全省价格工作会议在南京召开。记者从会上获悉，2017年江苏省物价局反价格垄断分局查处了全国手机行业反价格垄断第一案，依法对VIVO手机江苏总经销纵向控制产品价格案处罚698.3万元。

省物价局相关人士透露，此前他们收到了VIVO手机省内分经销商的举报，称VIVO手机江苏总经销对下级代理商实行限制零售价格的作法，禁止代理商开展促销或是回馈老顾客之类的活动，一旦不执行总经销商的定价，就会遭遇断货。经过深入调查，江苏省物价局反价格垄断分局查实，VIVO手机江苏总经销确实存在纵向控制产品价格行为。根据相关规定，对其处于2016年度总经销额1%的罚款698.3万元。【7】

Jiangsu Province Price Bureau Anti-price-monopoly Branch investigates and deals with the first case against price fixing in China's mobile phone industry and imposes a fine of 6.983 million yuan on the general distributor of VIVO mobile phones in Jiangsu for its vertical price control

Jiangsu Province Price Working Conference was held in Nanjing on March 8th. The reporter learned from the conference that, in 2017, Jiangsu Province Price Bureau Anti-price-monopoly Branch investigated and dealt with the first case against price fixing in China's mobile phone industry and imposed a fine of 6.983 million yuan on the case of the general distributor of VIVO mobile phones in Jiangsu for its vertical price control.

According to relevant sources of the Province Price Bureau, they had received report from distributors of VIVO mobile phones in this province which indicated that the general distributor of VIVO mobile phones in Jiangsu had imposed restrictions on retail prices for subordinate agents and prohibited agents from carrying out sales promotion or repaying old customers. If the general distributor's pricing is not implemented, the supply will be cut off. After an in-depth investigation, the Price Bureau of Jiangsu Province Anti-Price-Fixing Branch verified that there was indeed vertical price control conduct carried out by the general distributor. According to relevant regulations, the authority imposed a fine of 1% of its total sales in 2016, which amounted to 6.983 million yuan.

【7】 <http://www.yangtse.com/app/zhengzai/2018-03-08/528855.html>

6、德国联邦法院认同联邦卡特尔局在EDEKA一案中关于不公平交易具有里程碑意义的决定

德国联邦法院在其2018年1月23日的裁决中确认联邦卡特尔局关于零售商EDEKA滥用诉讼的决定，并阐明了禁止向供应商索取不公平利益的一般性问题。诉讼涉及EDEKA要求“条件一致性”，“调整付款条件”和“合作伙伴报销”的要求。联邦法院与联邦卡特尔局观点相同，认为实力雄厚的零售商将过高的商业风险转移给制造商是违法的。

法院还发现，EDEKA要求将其本身的付款条件调整为“额外条件”，违反了《反对限制竞争法》。此外，法院还认为该公司要求起泡酒生产商通过“合作伙伴报销”的方式来分摊商店翻新的费用，涉嫌滥用议价能力。联邦卡特尔局反对EDEKA公司让供应商分担本应由自己承担的收购费用的计划。

Federal Court of Justice confirms key points of Bundeskartellamt's landmark decision concerning unfair trading practices in EDEKA case

In its decision dated 23 January 2018, the Federal Court of Justice confirmed the Bundeskartellamt's decision in its abuse proceedings against the retailer EDEKA and clarified general issues concerning the prohibition to demand unjustified benefits from suppliers. The proceedings concern EDEKA's demands for an "alignment of conditions", an "adjustment of payment terms" and a "partnership reimbursement". The Federal Court of Justice, like the Bundeskartellamt, declared the practice of powerful retailers to shift an excessive amount of their entrepreneurial risk to manufacturers illegal.

The court also found that EDEKA's demand for its own payment terms to be adjusted per se to those of "Plus" violated competition law. It also regarded the company's demands on the sparkling wine manufacturers to share the costs for the refurbishment of outlets by way of a "partnership reimbursement" as an abuse of bargaining power. The Bundeskartellamt had objected to EDEKA's intention to have its suppliers share in the acquisition costs which should be borne solely by the company. 【8】

【8】 <https://webgate.ec.europa.eu/multisite/ecn-brief/en/content/federal-court-justice-confirms-key-points-bundeskartellamts-landmark-decision-concerning>

IMPORTANT INFORMATION

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