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1、中国反垄断执法“三合一”组建国家市场监督管理总局

根据3月13日公布的国务院机构改革方案,为完善市场监管体制,国务院将国家工商行政管理总局的职责、国家发展和改革委员会的价格监督检查与反垄断执法职责、商务部的经营者集中反垄断执法以及国务院反垄断委员会办公室等职责整合,组建国家市场监督管理总局,作为国务院直属机构。其主要职责包括负责市场综合监督管理,统一登记市场主体并建立信息公示和共享机制,组织市场监管综合执法工作,承担反垄断统一执法,规范和维护市场秩序等。【1】

有关专家评论指出,此次合并将进一步促进建立公平竞争的市场环境,并对中国反垄断执法格局产生重大影响。三家反垄断机构合并后,中国的反垄断执法标准会更加统一,预计执法力度也将进一步加强。

China Integrates Three Antitrust Authorities into A New State Market Regulatory Administration

According to the cabinet restructuring plan of the State Council unveiled on March 13, in order to improve the market supervision system, functions of the State Administration for Industry and Commerce (“SAIC”), the price supervision and anti-monopoly law enforcement functions of the National Development and Reform Commission (“NDRC”), the anti-monopoly law enforcement function about concentration of undertakings of the Ministry of Commerce (“MOFCOM”) and the functions of Anti-Monopoly Committee of the State Council will be incorporated into the State Market Regulatory Administration, which will be set up as an organization directly under the control of State Council. The main responsibilities of the new agency include comprehensive supervision and management of the market, unified registration of market entities, establishment of information disclosure and sharing mechanisms, organization of supervision of market and comprehensive law enforcement enforcement of anti-monopoly law, and standardization and maintenance of the market order.

As pointed out by the antitrust experts, this integrate would further promote the establishment of the fair competition environment of the market and attach a great significance to the enforcement structure of Anti-monopoly law. After the consolidation of the three antitrust regulators, the standards of China’s antitrust enforcement would be more unified and it is expected that the law enforcement would be strengthened.

2、第16届中欧竞争政策周研讨会在京举行

2018年3月12-13日,商务部反垄断局与欧盟委员会竞争总司在商务部举办第16届中欧竞争政策周研讨会,反垄断局吴振国局长出席会议并致辞。欧盟委员会竞争总司、欧盟驻华使团以及反垄断局代表30余人参加会议。在此次研讨会期间,反垄断局与欧方进行了双边工作交流。【2】

【1】 http://www.xinhuanet.com/politics/2018lh/2018-03/13/c_137035541.htm

【2】 <http://fldj.mofcom.gov.cn/article/xxfb/201803/20180302719154.shtml>

2018年3月15日,国家发改委价监局与欧盟委员会竞争总司举办第十六次中欧竞争周研讨会。国家发改委价监局李青副局长与欧盟委员会竞争总司部门主管Torben Toft主管致开幕辞,欧盟普通法院院长Marc Jarger发表了关于国家援助制度的司法视角的演讲。来自欧盟委员会竞争总司的官员、欧盟法院的法官和价监局相关处室同志围绕欧盟国家援助制度和中国公平竞争审查制度实施的案例和最新进展、司法视角下的国家援助制度等主题分享经验。研讨会后,价监局与欧方开展了双边工作交流。【3】

The 16th EU-China Competition Week Seminar Took Place in Beijing

On March 12th-13th, 2018, the Anti-Monopoly Bureau of the Ministry of Commerce (“MOFCOM”) and the Directorate-General for Competition of the European Commission (“EC”) held the 16th EU-China Competition Week seminar at MOFCOM. Wu Zhenguo, the Director of Anti-Monopoly Bureau, attended the meeting and delivered a speech. More than 30 representatives of Directorate-General for Competition of EC, the EU diplomatic corps in China and the Anti-Monopoly Bureau attended the meeting. During this seminar, the Anti-Monopoly Bureau had bilateral exchanges on work with the European side.

On March 15, 2018, the Price Supervision Bureau of the National Development and Reform Commission (“NDRC”) and the Directorate-General for Competition of EC held the 16th EU-China Competition Week Seminar. Li Qing, Deputy Director of the Price Supervision Bureau of NDRC, and Torben Toft, the Director of Directorate-General for Competition of EC, addressed an opening speech. Marc Jarger, the President of the General Court of EU, gave a speech on the state aid system from the judicial perspective. Officials from the Directorate-General for Competition of EC, judges of the European Court of Justice, and officials of the Price Supervision Bureau shared their experiences on topics such as the EU state aid system and the implementation of the China fair competition review system, and the state aid system under the judicial perspective. After the seminar, the officials of Price Supervision Bureau and European side conducted bilateral exchanges on work.

3、商务部附条件批准拜耳股份公司收购孟山都公司股权案

3月13日,商务部发布2018年第31号《关于附加限制性条件批准拜耳股份公司收购孟山都公司股权案经营者集中反垄断审查决定的公告》。商务部认为,拜耳股份公司收购孟山都公司案的经营集中对中国非选择性除草剂市场,中国长日照洋葱种子、经切削加工销售胡萝卜种子、大果番茄种子等蔬菜种子市场,全球玉米、大豆、棉花、油菜性状市场及数字农业市场,具有或可能具有排除、限制竞争效果。根据申报方向商务部提交的限制性条件建议最终稿,商务部决定附加限制性条件批准此项集中。

【3】 http://www.ndrc.gov.cn/gzdt/201803/t20180316_879639.html

据悉,2016年9月,总部位于密苏里州圣路易斯的孟山都公司和总部位于德国的拜耳公司宣布了其660亿美元的合并计划,该计划正在美国、欧洲、俄罗斯、墨西哥等多个司法管辖区进行审查。拜耳表示,目标在2018年第二季度完成这项交易。若交易成功,将产生一家占据全球种子及农药市场逾1/4份额的全球最大农药和转基因种子供应商。【4】

MOFCOM Conditionally Approves the Acquisition of the Shares of Monsanto by Bayer

On March 13, the Ministry of Commerce of the People's Republic of China (the "MOFCOM") issued the Announcement No.31 of 2018, *The Decision of Conditionally Approved the Acquisition of the Shares of of Monsanto by Bayer*. MOFCOM indicated that the deal may eliminate or restrict competition in the Chinese markets for non-selective herbicides and certain vegetable seeds such as long-day onion seed, cutting machined carrot seed, and big tomato seed as well as the global markets for corn, soybean, cotton, rapeseed trait and digital agriculture. According to the final version of the suggested restrictive conditions submitted to MOFCOM by the parties, MOFCOM decided to approve this merger with restrictive conditions.

It is reported that in September 2016, Monsanto, based in St. Louis, Missouri, and Bayer, headquartered in Germany, announced their \$66 billion merger plan, which is currently under review in multiple jurisdictions including United States, Europe, Russia, Mexico and so on. Bayer says that it plans to complete the transaction in the second quarter of 2018. If the transaction is successful, it will create a world's largest supplier of the pesticide and genetically modified seeds, which accounts for more than 1/4 of the global seed and pesticide market.

4、恩智浦/高通正在与商务部进行补救谈判

高通和恩智浦目前正在继续与中国商务部进行有关行为性救济的协商。商务部的批准是总部在圣地亚哥的高通完成对荷兰恩智浦的报价所需要获得的最后一个反垄断监管机构的批准。这两家半导体公司上周将高通要约收购期延长至3月16日。高通或许可以确保下个月获得商务部的批准,因为据了解该公司似乎愿意接受商务部要求的其他行为性承诺。

据报道,如果没有在4月4日之前获得商务部批准,高通需要重新向美国联邦贸易委员会(FTC)申报。4月25日是该交易的最后期限。当商务部对本案进行审查时,美国总统特朗普本周以美国国家安全为由禁止总部位于新加坡的博通公司对高通进行敌意收购。据了解,这一事件的发展不会影响商务部对恩智浦交易的审查,因为商务部是以反垄断为基准对交易进行评估。高通和恩智浦没有对此进行回应。

【4】 <http://fdj.mofcom.gov.cn/article/ztxx/201803/20180302719123.shtml>

NXP/Qualcomm in Ongoing MOFCOM Remedy Talks

Qualcomm and NXP are understood to be continuing to negotiate behavioral remedies with the Chinese Ministry of Commerce (“MOFCOM”). MOFCOM is the last remaining antitrust regulatory clearance needed for San Diego-based Qualcomm to complete its bid for NXP of the Netherlands. The semiconductor companies last week extended the tender offer period for the Qualcomm bid till 16 March. Qualcomm may be able to secure MOFCOM clearance next month as it appears the company is open to making additional behavioral commitments that have been requested by MOFCOM, it is understood.

As reported, Qualcomm would need to re-file for clearance with the US Federal Trade Commission (FTC) if MOFCOM clearance does not come by 4 April. The transaction has a 25 April long-stop date. The ongoing MOFCOM review comes as President Donald Trump this week blocked Singapore-based Broadcom from pursuing a hostile bid for Qualcomm on US national security grounds. This development is understood to not be affecting the MOFCOM review of the NXP deal as the agency is evaluating the merger on antitrust grounds. Qualcomm and NXP did not respond to requests for comment. 【5】

5、特朗普以国家安全为由禁止博通收购高通

美国总统特朗普3月12日以国家安全为由，否决了半导体巨头博通对美国芯片制造商高通公司总额高达1170亿美元的收购案。

特朗普在声明中称：“有可信的证据让我相信，根据新加坡法律设立的博通有限公司……通过对一家特拉华州的公司——高通行使控制权，可能会采取损害美国国家安全的行动。”

特朗普的这一决定是应外国在美投资委员会(CFIUS)的建议作出的。该委员会此前表示，担心博通收购高通后削减研发经费，从而削弱美国在下一代无线通信技术领域的竞争优势。高通拥有大量3G、4G网络技术专利，同时也是5G网络技术的主要竞争者。

3月14日，博通发表声明，宣布放弃收购高通。博通原为美国公司，2016年被新加坡安华高科技公司收购后总部迁至新加坡。为规避外国在美投资委员会的审查，博通正加速将总部从新加坡迁回美国，搬迁工作预计4月3日前完成。【6】

Trump Blocks Broadcom’s \$117 Billion Bid for Qualcomm on National Security Grounds.

U.S. President Donald Trump issued an order blocking \$117 billion bid of the chip-making giants Broadcom and Qualcomm, citing national security concerns.

【5】 <https://app.parr-global.com/intelligence/view/prime-2602939>

【6】 http://www.xinhuanet.com/2018-03/13/c_1122530305.htm

http://www.xinhuanet.com/english/2018-03/13/c_137035518.htm

http://www.thepaper.cn/newsDetail_forward_2029045

“There is credible evidence that leads me to believe that Broadcom Limited, a limited company organized under the laws of Singapore (Broadcom)..., through exercising control of Qualcomm Incorporated, a Delaware corporation, might take action that threatens to impair the national security of the United States”, Trump said in the order.

Trump’s order came after the recommendation proposed by the Committee on Foreign Investment in the United States (CFIUS). CFIUS had expressed its concern previously that Broadcom might cut the research and development found after the acquisition of Qualcomm, which would weaken the U.S's competitive edge of developing the next generation of wireless technology. Qualcomm has a large number of 3G and 4G network technology patents, and is also the main competitor of 5G network technology.

On March 14, Broadcom issued a statement announcing its abandonment of the acquisition of Qualcomm. Broadcom was originally a U.S. company whose headquarters was relocated to Singapore in 2016 after being acquired by Singapore's Anwar High-Tech. In order to escape from the CFIUS’s review, Broadcom is speeding up the relocation of its headquarters from Singapore to the United States. The relocation work is expected to be completed by April 3.

6、日本反垄断机构再次搜查亚马逊办公室

据英国《金融时报》报道，日本反垄断机构公平取引委员会周四(3月15日)突击了美国在线零售巨头亚马逊在当地的办公室，因该公司涉嫌违反反垄断法，要求其平台上的第三方卖家承担部分成本，以折价销售商品，从而打击竞争对手。亚马逊在一份声明中表示，正全力配合当局调查，但拒绝提供更多细节。这是亚马逊第二次因为涉嫌违法反垄断法而受到日本最高反垄断机构的调查。2016年夏天，日本公平取引委员会就曾因类似问题搜查亚马逊的办公室。【7】

JFTC Raids Amazon’s Tokyo Headquarters Once Again

According to the *Financial Times*, on Thursday (March 15), the Japan Fair Trade Commission (JFTC) raided Amazon’s Tokyo headquarters on suspicion of a possible anti-trust violation for forcing third-party vendors on its website to bear part of the costs when it offers discounts in order to attack its competitors. Amazon said in a statement that it was fully co-operated with the authorities but refused to provide more details. It was the second time that Amazon had been investigated by the highest antitrust regulator in Japan for the suspicion of violating antitrust laws. JFTC had raided Amazon’s Japan office in the summer of 2016 for similar problems.

【7】 <https://finance.qq.com/a/20180315/023306.htm>



IMPORTANT INFORMATION

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