



NEWSLETTER

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立方竞争法周报

Weekly Competition Law News

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1、贝恩资本收购东芝存储芯片部门计划仍未获得商务部批准

中国商务部正在审查贝恩资本 (Bain Capital) 与东芝存储芯片部门180亿美元的收购计划，目前仍未获得确定批准。

根据双方达成的收购协议，交易最后期限为3月31日，中国的反垄断审批必须在本周初提前完成。消息人士表示，行政程序和资金转移仍需时间才能完成。如果没有在最终期限之前完成，东芝可以选择退出全球第二大NAND芯片生产商的交易而不会受到惩罚——一些投资者已经敦促其考虑终止该交易。东芝发言人表示，该公司尚未放弃在本月底之前完成交易，即使截止日期已过，仍会尽快出售芯片部门。目前，东芝正在接受各国的反垄断审查。在欧洲和美国已经获得批准，仍在等待中国政府的审查。【1】

Toshiba Memory/Bain Consortium: MOFCOM Approval Timing Is Now Still Uncertain

China's Ministry of Commerce (MOFCOM) is reviewing the proposed \$18bn acquisition of Toshiba's memory chip unit by Bain Capital. Approval is now mired in uncertainty.

For the deal to close by its agreed deadline of March 31, antitrust approval from China must come by early this week. A source has said that administrative procedures and the transfer of money still need time to be completed. Failure to meet the deadline gives Toshiba the option of walking away from the sale of the world's No. 2 producer of NAND chips without penalty - a move that some investors have urged it to consider. A spokesman for Toshiba said the firm had not yet given up on closing the deal by the end of the month and that even if the deadline passed, it would still aim to sell the chip unit as soon as possible. Toshiba is currently undergoing antitrust review in various jurisdictions. It has been approved in Europe and the United States and is waiting for the Chinese government to review.

2、恩智浦半导体出售合资公司股份 缓解中国反垄断担忧

3月28日路透社称，美国芯片制造商恩智浦半导体公司宣布，已将其在苏州日月新半导体有限公司的40%股份以1.27亿美元的价格售予台湾合资伙伴日月光半导体公司，以争取其与高通之间440亿美元的并购交易能够获得中国反垄断监管机构批准。

高通已获得另外8个反垄断机构的批准，只需要再获得中国商务部批准，就可以完成对恩智浦的收购。

今年1月，恩智浦宣布将完成此项交易的最后期限延长至4月25日，此前已多次延期。【2】

【1】 <http://tech.sina.com.cn/roll/2018-03-27/doc-ifysrwvr5131377.shtml>

<https://finance.yahoo.com/news/china-says-reviewing-bain-consortiums-proposed-toshiba-chip-074957019--sector.html>

【2】 <http://finance.sina.com.cn/stock/usstock/c/2018-03-28/doc-ifysqfnh8933522.shtml>

NXP Semiconductors Sells JV Stake to Relieve China's Anti-Monopoly Concerns

According to Reuters on March 28, U.S. chipmaker NXP Semiconductors announced that it had sold its 40 percent of Suzhou ASEN Semiconductors Co Ltd to Taiwan venture partner Advanced Semiconductor Engineering Inc for \$127 million, in order to get the approval from Chinese anti-monopoly regulators in the case of Qualcomm's NXP acquisition.

Qualcomm has received approval from the other eight anti-monopoly regulators and the approval from Ministry of Commerce of PRC is all it need to complete its acquisition of NXP.

In January, NXP announced the end date for the transaction was extended to April 25, following multiple prior extensions.

3、陕西省物价局开出220余万元反垄断罚单 13家人防防护设备企业受处罚

3月27日，陕西省物价局公布一起商品领域价格垄断案件，13家人防防护设备企业受到处罚，罚款220余万元。

经陕西省物价局查明，2016年以来，陕西省13家人防防护设备企业为保持产品价格水平，多次聚会协商，成立“陕西省人防防护设备企业自律平台”，并共同签订《陕西省人防防护设备企业自律章程》等书面协议，达成并实施了固定人防门销售价格、分割销售市场的横向垄断协议，排除、限制了相关市场竞争，抬高了全省人防门市场整体销售价格，违反了《中华人民共和国反垄断法》相关规定。

为破除行业垄断，进一步优化营商环境，陕西省物价局已于2017年末向省内13家人防防护设备企业下发行政处罚决定书，对涉案企业分别处以2016年度人防门设备销售金额1%到3%不等的罚款，合计220余万元，并责令整改。【3】

Shaanxi Province Price Bureau Issues More Than 2.2 Million RMB Anti-Monopoly Fines; 13 Civil Air Defense Equipment Companies Punished

On March 27th, the Shaanxi Provincial Price Bureau announced a price monopoly case in the commodity field. 13 civil air defense equipment companies were fined more than 2.2 million RMB.

According to the Shaanxi Province Price Bureau, since 2016, 13 civil air defense equipment enterprises in Shaanxi have held several consultations to establish a “self-discipline platform for civil air defense equipment enterprises in Shaanxi” and jointly signed written agreements such as “self-regulation of civil air defense equipment enterprises in Shaanxi” in order to maintain product price levels. These enterprises reached and implemented a horizontal monopoly agreement on the price fixing and sales market dividing of civil air defense doors, which eliminated and restricted relevant market competition, and raised the overall sales price of the province's civil air defense door market, and was in violation of the relevant provisions of the *Anti-Monopoly Law of the People's Republic of China*.

【3】 <http://sn.people.com.cn/n2/2018/0328/c378288-31392780.html>

In order to eliminate the monopoly of the industry and further optimize business environment, the Shaanxi Province Price Bureau issued an administrative punishment decision to the 13 civil air defense equipment enterprises in the province by the end of 2017. The fines imposed to each enterprise ranged from 1% to 3% of the amount of sales of civil air defense equipment in 2016 and added up to more than 2.2 million RMB. The enterprises involved were ordered to make rectification.

4、西电捷通公司诉索尼移动公司WAPI专利侵权案北京高院维持一审原判决

西电捷通外部律师4月2日发布的新闻称，北京高院已于2018年3月28日就本案作出二审判决，维持北京知识产权法院一审判决，西电捷通胜诉。这意味着西电捷通诉索尼案判决已正式生效。在三月初，西电捷通披露索尼向二审法院提交了西电捷通与苹果的许可协议作为证据。【4】

以下为本案的时间线：

涉诉专利：ZL02139508.X

起诉日期：2015年6月

专利复审委员会专利无效程序：2015年8月至2016年3月

一审庭审：2016年2月

一审判决：2017年3月22日

二审庭审：2017年8月

二审判决：2018年3月28日

Beijing High Court Upholds the First-Instance Judgment of IWNCComm v. Sony Mobile on WAPI Patent Infringement Dispute

According to news released by IWNCComm's external counsel on April 2, the Beijing High Court has issued its appeal decision (dated March 28, 2018), confirming the trial decision by Beijing IP Court in favor of IWNCComm. It means the IWNCComm v. Sony decision takes effect. IWNCComm also disclosed in early March that Sony introduced the license agreement between IWNCComm and Apple as evidence in the appeal.

Below is the timeline for this case.

Patent-in-suit: ZL02139508.X

Case filed: June 2015

PRB invalidation: From August 2015 to March 2016

【4】 http://mp.weixin.qq.com/s/2h_HS_xCfGqWHc4V3Nyeg,
<http://www.iwncomm.com/cn/ShowArticle.asp?ArticleID=730>.



Trial hearing: February 2016

Trial decision issued: 22 March 2017

Appeal hearing: August 2017

Appeal decision issued: 28 March 2018



IMPORTANT INFORMATION

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