



NEWSLETTER

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Weekly Competition Law News



| 目录 | CONTENTS |

执法机构 | Authorities

1、电网系统涉嫌垄断，国家市场监督管理总局已授权湖南省工商局立案查处。

The SAMR has Authorized Hunan AIC to Investigate Alleged Monopolistic Activities of Power Grid System.

经营者集中 | Merger Control

2、中国重启对高通收购恩智浦的反垄断审核。

China Resumes the Antitrust Review of Qualcomm-NXP Deal.

民事诉讼 | Civil Litigation

3、爱奇艺诉指尖卓越不正当竞争索赔三百万元。

IQIYI Alleges Finger Excellence for Unfair Competition with a Claim for 3 Million Yuan.

海外动态 | Overseas News

4、华硕将为欧洲笔记本电脑业务的价格操纵行为支付6500万欧元罚款。

Asus Will Pay 65m Euro Settlement for Price Manipulation in its PC Business in Europe.

1、电网系统涉嫌垄断，国家市场监督管理总局已授权湖南省工商局立案查处

2018年1月，湖南省水电企业协会500多个会员单位联名向省工商局投诉，称部分地市电网公司强迫发电企业购买发电数据采集装置。省工商局经核查后认为，大部分市州经信部门就开展电网非统调电源发电数据采集工作制发的文件，未按规定进行公平竞争审查；其中9个市州经信部门制发的文件，涉嫌构成滥用行政权力排除、限制竞争行为。

湖南省工商局于2018年3月7日，向省经信委发出了行政建议函，建议其责成有关经信部门参照《国务院关于在市场体系建设中建立公平竞争审查制度的意见》及《公平竞争审查制度实施细则（暂行）》有关规定，就开展电网非统调电源发电数据采集工作制发的文件进行公平竞争补审，对违反审查标准的内容停止执行或调整；同时，向国家市场监督管理总局申请授权对经营者涉嫌垄断行为进行查处。4月19日，国家市场监督管理总局下发授权立案查处决定。目前，省工商局竞争执法局按市场监管总局的授权对该案进行查处。【1】

The SAMR has Authorized Hunan AIC to Investigate Alleged Monopolistic Activities of Power Grid System.

In January 2018, over 500 enterprise members of Hunan Hydropower Enterprise Institute jointly filed a complaint to Hunan Administration for Industry and Commerce (Hunan AIC), saying that part of the local power grid companies forced them to buy the power data collecting devices. After verification, Hunan AIC held that most documents issued by economy and information technology departments on data collection of unconsolidated power generation for power grids failed to have fair competition review. And the documents from 9 local economy and information technology departments were suspected of being involved in the abuse of administrative powers to eliminate or restrict competition.

On March 7, 2018, Hunan AIC issued an administrative proposal to Hunan Economy and Information Technology Commission (EITC) suggesting that relevant EITC should refer to Opinions of the State Council on Establishing the Fair Competition Review System in the Development of Market System and Implementation Rules for the Fair Competition Review System (for Trial Implementation) and conduct fair competition supplementary review on the documents of data collection of unconsolidated power generation for power grids, stopping implement or adjusting contents which violate the standards of review. Meanwhile, Hunan AIC would apply to the State Administration for Market Regulation (SAMR) for authorization to investigate operators' alleged monopolistic activities.

On April 19, the SAMR issued a decision to authorize Hunan AIC to initiate the investigation.. At present, Antimonopoly and Anti-Unfair Competition Enforcement Bureau of Hunan AIC is investigating the case under the authorization.

2、中国重启对高通收购恩智浦的反垄断审核

5月14日，据知情人士透露，中国监管机构已重新启动对高通收购恩智浦半导体（NXP

【1】 http://gsj.hunan.gov.cn/xxgk/gzdt/zwdt/ttxw/201805/t20180504_5006171.html

Semiconductors) 一案的反垄断审核。在此之前，高通公司宣布已将收购恩智浦半导体交易的有效期延长至2018年5月25日下午5点。

当前中美贸易谈判背景下，半导体及通信行业成为双方博弈的关键点。在中兴受到美国7年的拒绝令的处罚时，中国针对高通收购恩智浦的反垄断审核成为了另一焦点。此前4月19日商务部新闻发言人高峰曾表示，对于高通公司已经提出的救济措施方案难以解决相关市场竞争问题。

目前高通已获得全球8个监管部门的批准，只待中国监管部门的批准。如果得不到中国监管机构的批准，则高通需要向恩智浦半导体支付20亿美元的解约费。因此中国的态度至关重要。【2】

China Resumes the Antitrust Review of Qualcomm-NXP Deal

On May 14, it is said that Chinese authorities have resumed the anti-trust review of Qualcomm's acquisition of NXP (NXP Semiconductors). At earlier time, Qualcomm has announced to prolong the deadline of the acquisition of NXP to p.m. 5:00, May 25, 2018.

Under the background of Sino-US trade negotiation, the semi-conduct and communication industries have been the key points in two sides' game. ZTE is penalized by the US with 7-year denial order. Meanwhile the antitrust review of the Qualcomm-NXP deal becomes another focus. Earlier on April 19, the spokesperson of the Ministry of Commerce Gao Feng stated that Qualcomm's proposed remedies were insufficient to resolve the competition issues in relevant market.

Qualcomm has already received approval of the deal from eight global regulators. Chinese clearance is the only one pending. If the deal cannot get approval from the Chinese authorities, Qualcomm needs to pay NXP a \$2 billion termination fee. Therefore China is crucial.

3、爱奇艺诉指尖卓越不正当竞争索赔三百万元

爱奇艺以不正当竞争纠纷为由将浏览器经营者北京指尖卓越科技有限公司诉至法院，要求该公司立即停止快进广告和视频下载服务的不正当竞争行为、赔偿经济损失和合理费用共计300万元。日前，北京市海淀区人民法院受理了此案。

原告爱奇艺诉称，公司基础业务运营模式为通过投放贴片广告收取广告费，同时为用户提供下载服务吸引用户提高客户端使用量，该模式是视频互联网行业主要合法的运营模式。但被告指尖卓越公司研发的浏览器软件允许用户快进爱奇艺网站上的贴片广告，并且可以在不安装爱奇艺客户端的情况下直接下载视频作品。爱奇艺认为，其为购买视频作品投入了巨额的版权费用，而指尖卓越公司的上述行为主观上具有恶意，客观上导致其合法权益受到巨大侵害，属于不正当竞争行为。

目前，此案正在进一步审理中。【3】

【2】 http://www.sohu.com/a/231538287_115565

【3】 <https://www.chinacourt.org/article/detail/2018/05/id/3298909.shtml>

IQIYI Alleges Finger Excellence for Unfair Competition with a Claim for 3 Million Yuan

IQIYI has filed a civil lawsuit against a web browser company Beijing Finger Excellence Technology Co., Ltd. over alleged unfair competition. IQIYI has sought CNY 3 million in compensation and an injunction requiring the defendant to stop unfair activities allowing users to bypass the ads and download videos without installing iQIYI's app. The Haidian District People's Court in Beijing has accepted the lawsuit and the case is in the trial stage.

IQIYI said its business operated under a lawful and common model of the internet video industry which relied on advertising fees and providing a video download services to attract users downloading its app. However, the defendant's web browser allowed users to bypass the ads on its video website and download the videos without installing iQIYI's app. IQIYI believes that it has invested a huge amount of copyright fees for the purchase of videos, and the alleged conducts of Fingertip Excellence are subjectively malicious. These conducts significantly harmed iQIYI's lawful rights and interests, which constituted unfair competition.

At present, this case is under further investigation.

4、华硕将为欧洲笔记本电脑业务的价格操纵行为支付6500万欧元罚款

2018年5月11日，台湾华硕电脑公司（华硕）称，其与欧盟就被控欧洲笔记本电脑业务的价格操纵行为达成协议，金额达6,500万欧元（约7760万美元）。

2017年2月，欧盟针对华硕、天龙和马兰士、飞利浦、先锋涉嫌违反欧盟竞争规定，分别发起反垄断调查。这些公司被认为限制网络零售商对笔记本、hi-fi产品和家用电器等消费者电子商品的定价能力。

被控价格操纵行为不仅会对与这些公司合作的线上零售商产生广泛影响，还会影响到其他的网络零售商。这是因为，据欧盟媒体去年2月的报道，很多网络零售商的价格软件会自动根据主要的线上竞争者的价格来调整价格。

对华硕的调查持续近一年，其首席财务官称，华硕已预留出6,500万欧元来应对该调查。这对华硕1-3月份的第一季度利润造成损失，比去年同期缩水35%。

Asus Will Pay 65m Euro Settlement for Price Manipulation in its PC Business in Europe

On May 11 2018, Taiwan's Asustek Computer, known as Asus, said it reached an agreement with the European Union to pay about 65 million euros (\$77.6 million) to settle allegations of price manipulation in its PC business in Europe.

The European Commission in February 2017 launched separate antitrust investigations into Asus, Denon & Marantz, Philips, and Pioneer for allegedly breaching EU competition regulations. The companies were probed for restricting the ability of e-commerce operators to set their own prices for consumer electronics such as notebooks, hi-fi products and household appliances.

The suspected price manipulation may have a broader impact on not only the online retailers who collabo-

rate with the companies but also on other e-tailers. This is because the pricing software of many online retailers automatically adjusts prices to those of leading e-commerce competitors, according to the European Commission's press release in February last year.

The probe into Asus lasted nearly a year. CFO Wu said Asus had set aside 65 million euros to settle the case. That took a toll on the bottom line for the January-March quarter, which plunged 35% on the year.【4】

【4】 <http://asia.nikkei.com/Business/AC/Asus-to-pay-65m-euro-settlement-for-price-manipulation>



IMPORTANT INFORMATION

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