



# NEWSLETTER

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## 立方竞争法周报

Weekly Competition Law News

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## 1、国家市场监督管理总局建议纠正内蒙古自治区公安厅滥用行政权力排除、限制竞争的行为

2013年4月23日，内蒙古自治区公安厅印发公文（“60”号文），直接指定内蒙古恭安金丰网络印章科技有限责任公司（简称金丰公司）统一负责全区新型防伪印章系统软件的开发建设。

在执行“60号文”过程中，内蒙古自治区公安厅采取各种措施强制各盟市公安机关和刻章企业卸载正在使用的、经公安部检测通过的系统软件，统一安装金丰公司开发的系统软件，并要求刻章企业向金丰公司购买刻章设备和装有加密电子芯片的硬质章材。

国家市场监督管理总局认为，内蒙古自治区公安厅上述做法违反了《反垄断法》有关规定，排除和限制了印章治安管理信息系统软件市场以及刻章设备、章材市场的竞争，侵犯了各盟市公安机关和刻章企业的自主选择权，人为增加了企业刻章生产成本，不合理地推高了印章价格。

日前，国家市场监督管理总局发出了建议纠正内蒙古自治区公安厅滥用行政权力排除限制竞争有关行为的函件。目前，内蒙古自治区公安厅已决定对不合法不合规的行政行为立即叫停和纠正，依法严格规范印章管理工作。【1】

### **SAMR Urges the Public Security Department of the Inner Mongolia Autonomous Region to Rectify the Abuse of Administrative Power**

The Public Security Department of Inner Mongolia Autonomous Region issued a document (“No. 60 document”) on 23 April 2013 appointing Inner Mongolia Gong’an Jinfeng Network Seal Technology Co., Ltd (“Jinfeng”) to develop a new type of region-wide anti-counterfeiting seal system software.

During the implementation of the “No. 60 document”, the department enforced several measures to compel local seal companies and lower-level security departments into uninstalling other authorized and in-use seal system software in order to facilitate the installation of only Jinfeng’s software. In addition, seal companies were required to buy equipment and materials with encrypted electronic chip from Jinfeng only.

The SAMR concluded that the department had violated the *Anti-Monopoly Law* by excluding and restricting competition in the markets for seal security management system software, seal equipment and seal material, infringing upon the rights of lower-level public security departments and seal companies to make independent choices, deliberately increasing the production cost of seal companies, and pushing up seal prices to unreasonable levels.

Recently, the SAMR issued a notice proposing to rectify the conduct of abuse of administrative power by the Public Security Department of the Inner Mongolia Autonomous Region. At present, the Public Security Department of the Inner Mongolia Autonomous Region has decided to immediately stop and correct illegal and non-compliant administrative acts, and strictly regulate the management of seals according to laws.

【1】 [http://samr.saic.gov.cn/xw/yw/wjfb/201806/t20180622\\_274726.html](http://samr.saic.gov.cn/xw/yw/wjfb/201806/t20180622_274726.html)

## 2、国家市场监督管理总局对深圳4家拖轮公司垄断行为作出行政处罚决定

根据2018年6月25日公告，国家市场监督管理总局对深圳盐田拖轮有限公司、深圳联达拖轮有限公司、深圳赤湾拖轮有限公司、深圳市大铲湾拖轮有限公司4家拖轮公司达成并实施垄断协议的行为作出行政处罚决定，合计罚款1286万元人民币。

国家市场监督管理总局于2017年11月起，对4家涉案企业进行调查。经查，自2010年以来，4家拖轮公司每年均定期或者不定期召开会议。一方面，就拖轮收费等事宜进行沟通，以保持收费水平总体走势一致。2010年以来，4家公司收费水平均呈稳中上涨态势，变化的时间节点和幅度基本一致，具有价格行为的一致性。另一方面，4家公司就个别船公司的拖轮收费问题进行沟通，保持谈判策略基本一致。

国家市场监督管理总局认定4家拖轮公司的行为限制了各拖轮公司之间的竞争，违反了《中华人民共和国反垄断法》第十三条第一款第（一）项的规定，属于达成并实施“固定或者变更商品价格”垄断协议的行为。【2】

### **SAMR Publishes Administrative Penalty Decisions against 4 Shenzhen Tugboat Companies over Monopolistic Conduct**

The State Administration for Market Regulation (SAMR) has imposed CNY 12.86m in cumulative fines on four Shenzhen tugboat companies (i.e. Shenzhen Yantian Towage Co., Ltd., Shenzhen Lianda Towage Co., Ltd., Shenzhen Chiwan Towage Co., Ltd. and Shenzhen Dachanwan Towage Co., Ltd.) for monopoly agreements, according to an SAMR announcement issued on 25 June.

The SAMR started investigating the four companies in November 2017. The regulator found that the four companies held regular or irregular meetings every year since 2010. On one hand, they communicated about towage fees to maintain the general price trends at the same level. Since 2010, the four had steadily raised their service charge. There was consistency in the price hikes, as the timing and the range for the change were basically identical between the companies. On the other hand, the four communicated with each other to ensure the same strategy would be used when negotiating with other shipping companies.

The SAMR concluded that the conduct hindered competition, and amounted to reaching and implementing monopoly agreements to fix or change commodity price in breach of Article 13 of the *Anti-Monopoly Law*.

## 3、“今日头条”诉“百度”不正当竞争索赔千万

近日，“今日头条”客户端和“头条网”网站运营者，北京字节跳动科技有限公司以不正当竞争纠纷为由，将北京百度网讯科技有限公司、百度在线网络技术（北京）有限公司诉至海淀法院，要求二被告停止侵权、赔礼道歉并赔偿损失1000万元。

【2】 [http://samr.saic.gov.cn/gg/201806/t20180625\\_274741.html](http://samr.saic.gov.cn/gg/201806/t20180625_274741.html)

“今日头条”认为，二被告的网站及APP上《碰瓷、卖惨，今日头条正在发动第二次“3Q”大战》专题系列文章中，有关“今日头条”的内容均是伪造、虚假和带有误导性的信息，降低了公众对“今日头条”的评价和关注度。二被告故意对“今日头条”进行诋毁、贬损，构成恶意诋毁商誉的不正当竞争行为。

日前，此案正在进一步审理当中。【3】

### Toutiao Sues Baidu for Unfair Competition with a Claim for 10 Million Yuan

Recently, Beijing Byte Dance Telecommunications Co., Ltd, which operates “Toutiao” app and “Toutiao” website, filed a lawsuit against Beijing Baidu Netcom Science and Technology Co., Ltd and Baidu Online Network Technology (Beijing) Co., Ltd for unfair competition before Haidian District Court, and required two defendants to cease the infringement, publicly apologize and compensate for the loss of 10 million yuan.

“Toutiao” claimed the series of articles in the special column “By Touching Porcelain and Selling Misery, Toutiao Is Launching a Second ‘3Q’ War” on the website and APP of two defendants contained forged, false and misleading contents about “Toutiao”. It made the public lower the evaluation and interest on “Toutiao”. Two defendants intentionally defamed and derogated “Toutiao”, which constitutes unfair competition of maliciously defamation on goodwill.

This case is currently under further investigation.

## 4、欧盟正式对卡塔尔石油公司展开反垄断调查

欧盟委员会正式对出口液化天然气（LNG）的卡塔尔石油公司展开正式调查，以评估该公司和欧洲进口商之间的供应协议是否违反了欧盟反托拉斯法，阻碍了欧洲经济区（EEA）内天然气的自由流通。

负责竞争政策的专员Margrethe Vestager说：“能源应当在欧洲自由流通，不管它来自何方。我们已经展开反垄断调查，彻查卡塔尔石油公司天然气供应合同中是否存在区域限制条款。此类条款可能会损害竞争，阻止消费者享受欧洲能源市场一体化带来的利益。”

卡塔尔石油公司系欧盟乃至全球最大的液化天然气供应商，控制着数家液化天然气出口公司，欧盟委员会将以欧洲经济区为范围，彻查卡塔尔石油公司是否在长期供气合同(多为20年或25年)中含有直接或间接区域限制条款。

公报称，欧盟委员会尤其将调查合同中的转售条款，即卡塔尔石油公司是否直接或间接限制欧洲经济区进口商转售购入的液化天然气，包括是否完全禁止转售或限制转售区域及转售量，致使卡塔尔石油公司出口的液化天然气无法在欧洲经济区“自由流通”，割裂了欧洲天然气市场。

【3】 <http://bjhdfy.chinacourt.org/public/detail.php?id=5527>

## EU Commission Initiates Formal Investigation into Qatar Petroleum

The European Commission has opened a formal investigation to assess whether supply agreements between Qatar Petroleum companies exporting liquefied natural gas (LNG) and European importers have hindered the free flow of gas within the European Economic Area (EEA), in breach of EU antitrust rules.

Commissioner Margrethe Vestager, in charge of competition policy, said: "Energy should flow freely within Europe, regardless of where it comes from. We have opened an investigation to look at whether there are problematic territorial restriction clauses in gas supply contracts with Qatar Petroleum. Such clauses may harm competition and prevent consumers from enjoying the benefits of an integrated European energy market."

Qatar Petroleum is the largest exporter of LNG globally and to Europe, controlling several companies that produce and export LNG to Europe. The Commission will further investigate whether Qatar Petroleum's long-term agreements (typically 20 or 25 years) for the supply of LNG into the EEA contain direct and/or indirect territorial restrictions.

In particular, certain clauses contained in these agreements appear to, directly or indirectly, restrict the EEA importers' freedom to sell the LNG in alternative destinations within the EEA. For example, some contractual clauses prevent any diversion of cargoes to another destination or restrict the territories to which diversion can take place or the volumes that can be diverted. As a result, these clauses may unduly limit the free flow of LNG sold by Qatar Petroleum in the EEA, segmenting the EU's internal gas market.

The Commission will now carry out its in-depth investigation as a matter of priority. An opening by the Commission of a formal investigation does not prejudice its outcome. **【4】**

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【4】 [http://europa.eu/rapid/press-release\\_IP-18-4239\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4239_en.htm)



## IMPORTANT INFORMATION

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