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# 立方竞争法周报

Weekly Competition Law News

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## 1、国家工商总局竞争执法局公布2017年以来10起行政垄断典型案例

为推动公平竞争审查制度有序实施，普及竞争文化，国家工商总局竞争执法局对2017年以来各地滥用行政权力排除、限制竞争行为10起典型案例进行公布。

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### SAIC Competition Enforcement Bureau Publishes 10 Cases Involving Abuse of Administrative Power Since 2017

In order to promote the orderly implementation of the fair competition review system, and popularize the competition culture, the SAIC Competition Enforcement Bureau publishes 10 cases involving abuse of administrative power to hinder market competition since 2017.

The cases are as follows:

1. Shandong AIC Rectifies the Abuse of Administrative Power of Jinan Municipal Urban and Rural Construction Commission.
2. Hunan AIC Rectifies the Abuse of Administrative Power of Local economic and information regulators in Hunan.
3. Heilongjiang AIC Rectifies the Abuse of Administrative Power of Fangzheng Forest Area Administration Commission.
4. Hunan AIC Rectifies the Abuse of Administrative Power of Hunan Provincial Tax Service under the State Administration of Taxation.
5. Hunan AIC Rectifies the Abuse of Administrative Power of Loudi Municipal Commercial Food Bureau and other agencies.

【1】 [http://home.saic.gov.cn/fldyfbzdzjz/dxal/201806/t20180625\\_274743.html](http://home.saic.gov.cn/fldyfbzdzjz/dxal/201806/t20180625_274743.html)

6. Shandong AIC Rectifies the Abuse of Administrative Power of Guan County Health and Family Planning Bureau in Shandong's Liaocheng City.
7. Ningxia AIC Rectifies the Abuse of Administrative Power of Yinchuan Municipal Environmental Protection Bureau.
8. Hunan AIC Rectifies the Abuse of Administrative Power of Changsha Municipal Health and Family Planning Commission.
9. Jiangsu AIC Rectifies the Abuse of Administrative Power of Suzhou road transportation authority.
10. Huludao AIC Rectifies the Abuse of Administrative Power of Jianchang County Urban-Rural Planning and Construction Bureau.

## 2、国家市场监督管理总局自成立以来召开首次工作会议

2018年7月5日，国家市场监督管理总局成立以来召开首次工作会。国家市场监督管理总局局长张茅回顾了全国市场监管机构的上半年工作成果。他指出，公平竞争审查取得阶段性成效，公平竞争审查部际联席会议各成员单位、各省级政府、93%市级政府、50%县级政府已部署落实，各地区、各部门共对12.2万份文件开展了公平竞争审查；反垄断执法不断加强，上半年共审查经营者集中案件218件，同比增长40%；价格监管和反不正当竞争执法持续推进，至5月底，监管部门对价格违法行为实施经济制裁15.7亿元。

下半年监管机构将强化竞争政策实施，营造公平竞争的市场环境，切实发挥市场机制的决定性作用。围绕建设全国统一大市场，强化竞争政策在国家经济政策体系中的基础性地位，健全竞争政策体系，加大竞争执法力度，规范市场秩序，促进公平竞争。并重点强调了以下几点：全面实施公平竞争审查；强化反垄断执法；加大价格监管和反不正当竞争执法力度；加强知识产权保护。

【2】

### SAMR Holds Its First Work Meeting

China's State Administration for Market Regulation (SAMR) held its first work meeting on July 5th. Zhang Mao, director of the SAMR, said it has seen periodic success in fair competition reviews. All provincial governments, 93% of municipal governments, and 50% of county-level governments have implemented the new review system and relevant agencies have carried out fair competition review on 122,000 documents. The antitrust law enforcement has been strengthened, SAMR said. China reviewed 218 merger and acquisition cases in the first half of 2018, an increase of 40% year on year. Additionally, price regulation and anti-unfair competition enforcement have been further promoted. Regulatory agencies have imposed a cumulative fine of CNY 1.57bn (USD 23.6m) for illicit pricing behaviour till the end of May.

【2】 [http://samr.saic.gov.cn/xw/yw/zj/201807/t20180705\\_274924.html](http://samr.saic.gov.cn/xw/yw/zj/201807/t20180705_274924.html)

In the second half of the year, the authorities will strengthen the implementation of competition policies, create a fair competitive market environment, and develop the decisive role of the market mechanism. The authorities will focus on building a national unified large market, strengthen the basic position of competition policy in the national economic policy system, improve the competition policy system, increase competition enforcement, regulate market order, and promote fair competition. And SAMR emphasized the following matters: fully implementing the fair competition review; further strengthening the Anti-Monopoly Law enforcement; enhancing the law enforcement on price regulation and anti-unfair competition; strengthen the IPR protection. 【3】

### 3、天津市出台港口价格行为规则，明确34项禁止性价格行为

天津市发改委7月2日召开天津市港口价格行为规则发布会暨规范港口经营者价格行为提醒告诫会。《天津市港口价格行为规则（试行）》（以下简称“《规则》”）规定了港口经营者的定价规则和相关义务，列举了五条34项禁止性价格行为。根据该《规则》，港口收费的服务价格实行政府定价、政府指导价和市场调节价。

《规则》对港口经营者的以下行为规定了处罚条款（部分列举）：

**过高定价：**港口经营者有高于政府定价制定价格行为的，由价格主管部门责令改正，没收违法所得，并处违法所得5倍以下的罚款；没有违法所得的，处5万元以上50万元以下的罚款，情节严重的处50万元以上200万元以下的罚款；情节严重的，责令停业整顿。

**违反明码标价规定：**港口经营者违反明码标价规定的，由价格主管部门责令改正，没收违法所得，可以并处5000元以下的罚款。

**垄断协议：**港口经营者达成并实施垄断协议的，由反垄断执法机构责令停止违法行为，没收违法所得，并处上一年度销售额百分之一以上百分之十以下的罚款；尚未实施所达成的垄断协议的，可以处50万元以下的罚款。

**滥用市场支配地位：**港口经营者滥用市场支配地位的，由反垄断执法机构责令停止违法行为，没收违法所得，并处上一年度销售额百分之一以上百分之十以下的罚款。【4】

### Tianjin Development and Reform Commission Has Released Rules on Port Pricing and Clarified 34 Prohibited Pricing Behaviors

The Tianjin Development and Reform Commission held a press conference to warn port operators against any illicit price conduct on July 2. Tianjin Port Price Conduct Rules (For Trial Implementation)

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

【4】 [http://www.gov.cn/xinwen/2018-07/03/content\\_5303104.htm](http://www.gov.cn/xinwen/2018-07/03/content_5303104.htm)  
[http://fzgg.tj.gov.cn/dtxx/tzgg/201807/t20180705\\_70667.shtml](http://fzgg.tj.gov.cn/dtxx/tzgg/201807/t20180705_70667.shtml)

(Hereinafter referred to as “the rules”) stipulate the pricing rules and relevant obligations of port operators and has listed 34 prohibited pricing behaviors. According to the rules, service prices at ports should be pegged to either the charges set by the relevant price regulator, the government-guided charge, or market-adjusted rate.

The rules impose penalties on the following conducts (part of the list):

**Higher pricing:** Port operators who set prices higher than the mandated prices by the government shall be ordered to rectify the conduct by the authority, their illegal income shall be confiscated, and a fine of up to five times the illegal income shall be imposed. If there is no illegal income, a penalty between CNY 50,000 to CNY 500,000 will be imposed. For relatively serious violations, a fine of up to CNY 2m will be levied. If the violations are serious, the business may be suspended and ordered to correct the violation.

**Failure to mark prices:** Port operators who do not mark the prices clearly will be ordered to rectify the conduct by the authority, their illegal income shall be confiscated, and a penalty of up to CNY 5,000 will be imposed.

**Monopolistic agreements:** Port operators entering into and implementing monopolistic agreements shall be ordered by antitrust agency to stop the illicit conduct, their illegal income shall be confiscated, and a penalty ranging from 1% to 10% of their revenue in the previous year will be levied. If the pact has not yet been implemented, a fine of up to CNY 500,000 will be imposed.

**Abuse of dominant position:** Port operators abusing their dominant position shall be ordered by antitrust agency to stop the illicit conduct, their illegal income shall be confiscated, and a penalty ranging from 1% to 10% of their revenue in the previous year will be imposed. 【5】

#### 4、陆逊梯卡、依视路延长并购期限，等待中国反垄断机构批准

陆逊梯卡(Luxottica Group SpA)与依视路(Essilor International)两家公司的合并交易截止日期推迟至2018年7月31日。原因是中国反垄断监管机构尚未批准这宗眼镜业史上最大规模的合并案。

据官方新闻稿显示，双方相信，该合并案能在未来几周内顺利得到中国和土耳其两国反垄断机构的批准。原定于2018年7月25日召开的合并后首次 Essilor Luxottica股东大会将在近期公布延期召开的时间。【6】

#### **Luxottica and Essilor Extend the Deadline for Merger, Pending Chinese Antitrust Nod**

Luxottica Group SpA and Essilor International have extended the deadline for their proposed merger to 31 July 2018 as they await Chinese antitrust approval. This is the largest merger in the history of the optical industry.

【5】 <https://app.parr-global.com/intelligence/view/prime-2666106>

【6】 [https://www.sohu.com/a/238650532\\_487885](https://www.sohu.com/a/238650532_487885)

According to the official press, the parties remain confident that they will succeed in completing the anti-trust processes in China and Turkey in the coming weeks. The first general meeting of Essilor Luxottica shareholders, which was scheduled for 25 July 2018, will be reconvened by the Essilor Luxottica's board of directors for a later date to be announced as soon as possible. 【7】

## 5、部分消费者起诉高通：不应借进口禁令垄断苹果芯片

部分苹果消费者于6月28日起诉称，高通不应借助美国贸易机构的力量排挤英特尔，阻碍其与之争夺苹果智能手机芯片订单。消费者在这起集体诉讼中指控高通违反反垄断法，希望旧金山地区法院法官高兰惠（Lucy Koh）阻止该公司申请任何可能阻碍苹果使用英特尔芯片的进口禁令。

高通已经向美国国际贸易委员会（ITC）提交专利侵权投诉，其中一起案件的初步裁决有望于9月公布。这也是苹果与高通之间的专利纠纷的一部分，这两家公司在苹果究竟应为使用高通的技术而支付多少费用上存在分歧。

原告消费者认为，“英特尔刚刚准备挑战高通的非法垄断地位，而进口禁令将会使得这项计划夭折”，“此举还将损害本就因为高通的反竞争行为受到打击的市场竞争”。美国联邦贸易委员会（FTC）之前也提起诉讼，指控高通滥用专利和市场地位打击竞争对手，尤其是在苹果设备领域。

高通否认存在垄断，并且认为他们理应因为其开发的移动设备技术而获得补偿。

### Qualcomm Shouldn't Get Import Ban on Apple, Consumers Contend

Qualcomm shouldn't be able to use a U.S. trade agency to knock out Intel as a competitor for chips inside Apple's smartphones, a group of Apple consumers said in a court filing on 28 June. Consumers in a consolidated class action lawsuit accusing Qualcomm of antitrust violations want District Court Judge Lucy Koh in San Jose, California, to prevent the company from pursuing any import ban that might be imposed on Apple phones using Intel chips.

Qualcomm has filed patent-infringement complaints against Apple at the U.S. International Trade Commission in Washington, with a preliminary decision in one case expected in September. It's part of a global billion-dollar battle between the companies over how much Apple should pay for access to Qualcomm's technology used in mobile phones.

“An import ban would freeze out Intel's nascent challenge to Qualcomm's illegal monopoly”, the consumers said, “it would injure competition in a market already suffering from Qualcomm's anticompetitive behavior”. The consumers filed their suits to piggyback on one filed by the U.S. Federal Trade Commission which claimed Qualcomm was misusing its patents and market power to shut out competitors, particularly for Apple devices.

【7】 [http://www.luxottica.com/sites/luxottica.com/files/2018\\_06\\_29\\_-\\_luxottica\\_essilor\\_-\\_update\\_combination.pdf](http://www.luxottica.com/sites/luxottica.com/files/2018_06_29_-_luxottica_essilor_-_update_combination.pdf)

Qualcomm denies having a monopoly and said it's entitled to compensation for the billions it spends on ways to make all mobile devices work better. 【8】

## 6、苹果三星7年专利之争以和解收场

美国苹果公司和韩国三星电子公司就长达7年的专利争端达成和解。法院27日文件显示，争端双方同意和解，但文件没有公布具体和解内容。

“这个案子不仅仅是金钱问题，”苹果公司说道，“苹果用iPhone引发了智能手机革命，三星公然剽窃我们的设计是事实，非常重要的一点是我们将继续保护苹果员工的辛勤工作和创新。”

三星拒绝发表评论。

### 专利之战：

2012年法院初审判定三星侵权，要求其支付赔偿金10.5亿美元。但三星对此提出了上诉，本案经历两次再审以及最高法院对如何裁定外观设计专利损失的审理。最高法院同意三星的意见，认为外观设计专利损失可以基于产品部件，而不是整个产品。但最高法院没有详细说明如何确定整体侵权产品是什么，并将案件发回地区法院。今年5月份在圣何塞地区法院，陪审团裁定三星公司必须支付5.39亿美元赔偿金。但是，5.39亿美元远远超过了原始赔偿金额3.99亿美元。不出意外，三星对判决提出上诉，要求法院驳回判决或再次发回重审。最终，根据6月27日提交法院的文件显示，两家公司同意就此案达成和解。

### Apple and Samsung Settle Their Epic Patent Infringement Battle

Apple and Samsung just ended their epic seven-year legal patent infringement fight. The two companies agreed to a settlement in the case, according to court documents filed on 27 June, but did not disclose the terms.

"This case has always been about more than money," Apple said at the time. "Apple ignited the smartphone revolution with iPhone and it is a fact that Samsung blatantly copied our design. It is important that we continue to protect the hard work and innovation of so many people at Apple."

Samsung declined to comment. 【9】

### Patent battle:

The initial trial in 2012 awarded Apple \$1.05 billion in damages for Samsung's infringement. But Samsung appealed the case, leading to two damages retrials and a hearing at the Supreme Court over how design

【8】 <https://www.msn.com/en-us/news/technology/qualcomm-shouldnt-get-import-ban-on-apple-consumers-contend/ar-AAziUGL>

【9】 <https://www.msn.com/en-us/news/technology/apple-and-samsung-settle-their-epic-patent-infringement-battle/ar-AAzfLcf>



patent damages can be decided. The Supreme Court agreed with Samsung and said design patent damages could be based on a segment of a product, not just the entire product. But it didn't detail how to determine what the overall infringing product was and sent the case back to district court. In May in San Jose, a jury determined that Samsung had to pay Apple \$539 million for infringing five patents with Android phones it sold in 2010 and 2011. But the \$539 million set by the jury was significantly more than the original damages tally of \$399 million. Unsurprisingly, Samsung appealed the verdict, asking the court to dismiss the judgment or order another retrial. Finally, the two companies agreed to a settlement in the case, according to court documents filed on 27 June. 【10】

## 7、迪士尼收购福克斯获美国司法部附条件批准

华特迪士尼以710亿美元收购21世纪福克斯公司娱乐资产的交易赢得美国反垄断审批，阻碍了康卡斯特提出竞争性报价。美国司法部6月28日表示，迪士尼同意出售福克斯的22个地区性体育频道，以解决司法部对该交易可能导致地方市场有线电视体育节目涨价的担心。

在迪士尼和康卡斯特争夺媒体行业最宝贵的资产之一的争夺中，这次获批代表了迪士尼的胜利。福克斯上周接受了迪士尼更新后的报价，后者在康卡斯特出价650亿美元之后提高了自己的报价。迪士尼的最终报价折合每股38美元，比12月份的出价高10美元左右，也比康卡斯特的出价高3美元。康卡斯特仍有时间回应。福克斯取消了原定7月10日就迪士尼交易进行投票的股东大会。一位知情人士表示，康卡斯特正在研究下一步计划，包括可能与私募基金联合竞购福克斯资产。华尔街预计这家有线电视巨头会带着竞争性报价卷土重来。

美国司法部反垄断部门负责人Makan Delrahim说，“今天的和解将确保，在迪士尼和福克斯争夺有线电视和卫星电视分销的地方市场中，体育节目领域将继续存在竞争。”

### Disney Wins U.S. Approval for Fox Deal with Conditions

Walt Disney Co. won U.S. antitrust approval for its \$71 billion purchase of 21st Century Fox Inc.'s entertainment assets, raising hurdles for a potential rival bid from Comcast Corp. Disney agreed to sell Fox's 22 regional sports networks to resolve the Justice Department's concerns that the deal would raise prices for cable sports programming in local markets, the department said on June 28.

The approval is a victory for Disney in its battle with Comcast for one of the media industry's biggest prizes. Fox last week accepted a sweetened bid from Disney, which upped its offer following Comcast's competing \$65 billion bid. The \$38-a-share price is about \$10 a share higher than what Disney offered in December — and \$3 above Comcast's bid. Comcast still has time to respond. Fox canceled a shareholder meeting to vote on the Disney deal that had been planned for July 10. Comcast is now mulling its next steps, including possibly teaming up with private equity investors in its pursuit of Fox assets, a person familiar with the situation said. Wall Street expects the cable giant to come back with a counterbid.

【10】 <https://www.cnet.com/news/apple-and-samsung-finally-settle-their-patent-dispute/>

"Today's settlement will ensure that sports programming competition is preserved in the local markets where Disney and Fox compete for cable and satellite distribution," said Makan Delrahim, the head of the department's antitrust division. 【11】

## 8、谷歌将面临新一轮巨额反垄断罚款，欧盟委员会或于7月18日公布处罚决定

谷歌即将面临新一轮巨额反垄断罚款。在美国总统特朗普访问布鲁塞尔后，欧盟委员会最快可能于7月18日公布处罚决定。

虽然此次罚款金额将受到媒体关注，但持续最久的影响，将是谷歌应当如何解决人们对其Android移动操作系统的担忧。知情人士透露，欧盟可能要求谷歌调整移动业务的运营方式。这可能迫使谷歌阐述相关计划，增加市场竞争。据其中两名知情人士称，监管部门尚未就如何解决这方面问题与谷歌展开实质性讨论。对于欧盟即将做出的决定，预计谷歌将向欧盟法院上诉欧盟委员会，这是叫停欧盟委员会处罚裁定的唯一途径，但这无疑将使局面产生更大的不确定性。

受益于在Android设备中的核心地位，谷歌建立了庞大的网页横幅广告和视频广告业务。据市场研究公司e Marketer数据显示，2018年谷歌将占到全球移动广告市场份额的三分之一，在美国以外该公司的销售额将约为400亿美元。如果被迫在Android业务上做出让步，谷歌可能损失巨额广告营收。

### Google Will Face a New Round of Huge Antitrust Fines. The EU May Announce the Penalty Decision on July 18

The decision could come as soon as July 18, judging by the gaping hole in the European Commission's calendar the week after U.S. President Donald Trump visits Brussels.

But while the size of the penalty will grab the headlines, the most enduring impact could be a dispute over how Google should address concerns with its Android mobile operating system. Google will likely be told by the European Union to change how it runs its mobile phone business, according to people familiar with the case. That will force the Alphabet Inc. unit to interpret what it should do to bring about more competition, they said. Regulators haven't held any substantial discussion with Google about how it should address concerns, according to two of the people. Adding to uncertainty over how it must comply with an order, the search-engine operator is expected to challenge any EU finding against Android at the EU courts, the only way to halt a commission decision.

Google has built a massive business of banner and videos ads, thanks largely to its central role on Android devices. Google will account for a third of all global mobile ads in 2018, according to research firm e Marketer, giving the company around \$40 billion in sales outside the U.S. The company risks losing that traction if it is forced to surrender its real estate on millions of Android phones. 【12】

【11】 <http://www.craigslist.com/article/20180628/news/166631/disney-wins-us-approval-fox-deal-agrees-sell-foxs-22-regional-sports>

【12】 <https://finance.yahoo.com/news/android-fine-may-come-mid-113305624.html>



## IMPORTANT INFORMATION

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