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Antitrust & Compliance Team

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1、国家市场监督管理总局“三定”方案：下设反垄断局负责统一执法工作

2018年9月10日，中国机构编制部门发布《国家市场监督管理总局职能配置、内设机构和人员编制规定》（以下简称《规定》），国家市场监督管理总局承担市场综合监督管理、反垄断统一执法、监督管理市场秩序等职责，下设法规司、反垄断局、价格监督检查和反不正当竞争局等27个机构。《规定》自2018年9月30日起施行。

根据该《规定》，国家市场监督管理总局共承担19项职能（包括但不限于）：

（一）负责市场综合监督管理。起草市场监督管理有关法律法规草案，制定有关规章、政策、标准，组织实施质量强国战略、食品安全战略和标准化战略，拟订并组织实施有关规划，规范和维护市场秩序，营造诚实守信、公平竞争的市场环境。

（四）负责反垄断统一执法。统筹推进竞争政策实施，指导实施公平竞争审查制度。依法对经营者集中行为进行反垄断审查，负责垄断协议、滥用市场支配地位和滥用行政权力排除、限制竞争等反垄断执法工作。指导企业在国外的反垄断应诉工作。承担国务院反垄断委员会日常工作。

根据该《规定》，国家市场监督管理总局下设27个内设机构（包括但不限于）：

（七）反垄断局。拟订反垄断制度措施和指南，组织实施反垄断执法工作，承担指导企业在国外的反垄断应诉工作。组织指导公平竞争审查工作。承担反垄断执法国际合作与交流工作。承办国务院反垄断委员会日常工作。

（八）价格监督检查和反不正当竞争局（规范直销与打击传销办公室）。拟订有关价格收费监督检查、反不正当竞争的制度措施、规则指南。组织实施商品价格、服务价格以及国家机关、事业性收费的监督检查工作。组织指导查处价格收费违法违规行为和不正当竞争行为。

【1】

Three Settings of SAMR: Bureaus of Anti-Monopoly in Charge of Uniform Antitrust Enforcement

State Commission Office of Public Sectors Reform (SCOPSR) has published *Regulations on the Functions, Internal Units, and Personnel Arrangement of the State Administration for Market Regulation (SAMR)* (Hereinafter referred to as “the Regulations”) on 10 September 2018. SAMR will have functions of comprehensive market supervision, uniform antitrust enforcement, and supervision and

【1】 http://www.scopsr.gov.cn/bbyw/qwfb/201809/t20180911_308252.html

administration of market orders and so on. And it will have 27 divisions, including bureaus of law enforcement and inspection, anti-monopoly, price supervision and inspection and anti-unfair competition. *The regulations shall be implemented with effect from 30 September 2018.*

The regulations list 19 primary functions of SAMR, including, but not limited to:

1. Comprehensive market supervision: It shall prepare draft laws and regulations, and formulate policies and standards in relation to market supervision; organize the implementation of strategies for boosting competitiveness in relation to product/service quality, and food safety and standardization; prepare and organize the implementation of relevant plans; regulate and maintain market order; and help create a fair and competitive market environment, and ensure business operations are carried out honestly and credibly.

4. Uniform antitrust enforcement: SAMR shall coordinate the adoption of competition policies and guide the implementation of the Fair Competition Review System (FCRS); carry out antitrust review regarding concentration of undertakings and take charge of antitrust law enforcement in relation to monopoly agreements, abuse of dominance, and abuse of administrative power to eliminate or restrict competition; guide Chinese investors on antitrust lawsuits filed against them overseas; and assume routine tasks of the State Council Anti-monopoly Commission (AMC).

According to the Regulations, SAMR will have 27 divisions, including, but not limited to:

7. Anti-monopoly Bureau: The bureau shall formulate antitrust systems, measures, and guidelines, organize antitrust law enforcement work, and guide Chinese investors on antitrust lawsuits overseas; organize work relating to the FCRS; promote international cooperation on antitrust law enforcement; and carry out routine work for the AMC.

8. Price Supervision and Inspection and Anti-unfair Competition Bureau: The bureau shall formulate systems, measures, and guidelines on price and fee-charging supervision and inspection and anti-unfair competition law enforcement; organize work relating to supervision and inspection of commodity and service prices and fee-charging by national agencies exercising public functions; organize activities and provide guidance in relation to investigating and sanctioning relevant illicit price and fee-charging and unfair competition conduct.

2、山东公布7大反垄断执法典型案例，维护市场公平竞争秩序

近年来，山东省工商行政管理局不断完善反垄断执法机制建设，以维护市场公平竞争秩序、保护消费者利益和公共利益。该局16日召开新闻发布会，通报了该省7大反垄断执法典型案例，涉及经营者滥用市场支配地位、达成垄断协议等违法行为。

7大典型案例分别是：青岛新奥新城燃气有限公司滥用市场支配地位案、临沂25家会计师事务所垄断协议案、日照14家会计师事务所垄断协议案、山东银座家居有限公司等6家家居商场垄断协议案、冠县卫计局指定医药配送企业案、济南市城乡建设委员会指定太阳能热水器供应企业案以及济南市卫生局、教育局指定儿童入园查体医院案。【2】

【2】 <http://www.sdaic.gov.cn/sdgsj/xwzx/gsd/yw/977472/index.html>

Shandong AIC Publishes Seven Antitrust Cases, Maintaining a Fair Competition Order

In recent years, the Shandong Provincial Administration for Industry and Commerce has continuously improved the Anti-Monopoly law enforcement mechanism to maintain a fair market competition order, protect consumer interests and public interests. The bureau held a press conference on 16 August to report the seven major Antitrust investigation cases in the province, involving the case of abuse of market dominance and monopoly agreements.

The seven cases are:

1. Qingdao Xin Ao Xin Cheng Gas for abusing its market power.
2. 25 Linyi accounting firms for reaching and implementing monopoly agreements
3. 14 Rizhao accounting firms for entering into monopoly agreements.
4. 6 home furnishings retailers over monopoly agreements.
5. Guan County health authority for appointing medical suppliers.
6. Jinan housing authority for appointing solar water heating companies.
7. Jinan health and education authorities for issuing a notice ordering children to go through health examination at designated institutions before entering kindergarten.

3、国家市场监督管理总局发布经营者集中反垄断申报的修订后办事指南

9月29日，国家市场监督管理总局发布了修订后的七个涉及经营者集中反垄断申报的办事指南。这些文件主要是将其中的“商务部反垄断局”易名为“国家市场监督管理总局反垄断局”。

这七个文件为：

- (1) 关于经营者集中申报的指导意见；
- (2) 关于经营者集中申报文件资料的指导意见；
- (3) 经营者集中反垄断审查办事指南；
- (4) 关于施行《经营者集中反垄断审查申报表》的说明；
- (5) 关于经营者集中简易案件申报的指导意见；
- (6) 关于规范经营者集中案件申报名称的指导意见；
- (7) 监督受托人委托协议示范文本。【3】

【3】 <http://samr.saic.gov.cn/xw/yw/wjfb/>

SAMR Publishes Revised Guidelines for the Declaration of Concentration of Undertakings.

China's State Administration for Market Regulation (SAMR) published guidelines for the declaration of business concentration on 29 September. These documents mainly rename the "Anti-monopoly Bureau of the Ministry of Commerce" to the "Anti-Monopoly Bureau of SAMR".

7 documents are as follows:

- 1.Guiding Opinions for the Declaration of Concentration of Undertakings.
- 2.Guiding Opinions for the Materials of the Declaration of Concentration of Undertakings.
- 3.Anti-monopoly Review Guides for Concentrations of Undertakings.
- 4.Description on the Declaration for Anti-Monopoly Review of Concentration of Undertakings.
- 5.Guidelines for Declaring A Simple Case Regarding the Concentration of Undertakings.
- 6.Guidance on Regulating Declaration Title for Cases of Concentration of Undertakings.
7. Model Text for the Entrustment Agreement of Supervisory Trustee.

4、市场监管总局发布对PEBV收购Eldorado股权未依法申报案的行政处罚决定

2018年7月30日，国家市场监督管理总局对PEBV收购Eldorado股权未依法申报案作出行政处罚决定，罚款30万元人民币。

2017年9月2日，PEBV及其子公司 CA INVESTMENT (BRAZIL) S.A. (以下简称CA) 和J&F等卖方就收购Eldorado股权签署《股份购买协议》。该交易系股权收购，PEBV通过其子公司收购Eldorado100%股权，交易完成后将取得Eldorado控制权，符合《反垄断法》第二十条规定，构成经营者集中。此外，集中双方的营业额达到了达到了《国务院关于经营者集中申报标准的规定》第三条规定的申报标准，属于应当申报的情形。

截至2018年2月15日，PEBV 已通过其子公司CA取得Eldorado约49.41%股份，在此之前未依法申报，违反了《反垄断法》第二十一条，构成未依法申报的经营者集中。市场监管总局就该案对市场竞争的影响进行了评估，认为该项经营者集中不会产生排除、限制竞争的效果。

根据上述调查情况和评估结论，市场监管总局拟根据《反垄断法》第四十八条、第四十九条和《暂行办法》第十三条规定，对PEBV处以30万元人民币罚款的行政处罚。【4】

【4】 http://samr.saic.gov.cn/gg/201808/t20180810_275505.html

SAMR Announces a Penalty Decision against PEBV for Failure to Notify Their Equity Acquisition of Eldorado

The State Administration for Market Regulation (SAMR) has fined Paper Excellence (PEBV) CNY 300,000 over failure to notify its acquisition of Eldorado Brasil Celulose on 20 July, 2018.

On 2 September, 2017, PEBV and its subsidiaries, CA INVESTMENT (BRAZIL) S.A. (hereinafter referred to as CA) and J&F, signed the Share Purchase Agreement for the acquisition of Eldorado. The transaction is an equity acquisition. PEBV acquires 100% of Eldorado through its subsidiaries. The transaction would give PEBV full control of the target, therefore meeting the filing criteria stipulated in Article 20 of the *Anti-Monopoly Law*. Additionally, the local annual revenue of both parties reached the threshold of declaration, according to Article 3 of the *Provisions of the State Council on Thresholds for Prior Notification of Concentrations of Undertakings*.

By 15 February 2018, CA Investment held a 49.41% share in the target. PEBV failed to notify the transaction, which violated the AML provisions regarding concentration of undertakings under Article 21. However, after assessing the deal's impact on market competition, SAMR concluded the conduct had no anti-competitive impact.

Based on the above investigations and assessments, citing Articles 48 and 49 of the AML and Article 13 of the *Provisional Measures on Investigation and Punishments on Undertakings that Failed to Declare the Concentration of Undertakings as Required by Law*, SAMR imposed a fine of CNY 300,000 on PEBV.

5、市场监管总局发布对云南城投集团收购成都会展股权未依法申报案的行政处罚决定

2018年8月22日，国家市场监督管理总局对云南城投集团收购成都会展股权未依法申报案作出行政处罚决定，罚款30万元人民币。

2016年5月24日，云南城投集团与成都会展原股东签署了股权转让及增资协议，总计取得成都会展51%的股权，符合《反垄断法》第二十条规定，构成经营者集中。此外，集中双方的营业额达到了《国务院关于经营者集中申报标准的规定》第三条规定的申报标准，属于应当申报的情形。2016年6月17日完成交割，在此之前未依法申报，违反了《反垄断法》第二十一条，构成未依法申报的经营者集中。市场监管总局就该案对市场竞争的影响进行了评估，认为该项经营者集中不会产生排除、限制竞争的效果。

根据上述调查情况和评估结论，市场监管总局拟根据《反垄断法》第四十八条、第四十九条和《暂行办法》第十三条规定，对云南城投集团处以30万元人民币罚款的行政处罚。【5】

【5】 http://samr.saic.gov.cn/gg/201809/t20180911_275918.htm l

SAMR Announces a Penalty Decision against Yunnan Metropolitan Construction Investment for Failure to Notify Their Equity Acquisition of Chengdu Exhibition

The State Administration for Market Regulation (SAMR) has fined Yunnan Metropolitan Construction Investment (YMCI) CNY 300,000 over failure to notify its acquisition of a stake in Chengdu Exhibition on 22 August 2018.

On 24 May, 2016, YMCI signed agreements of share transfers and capital increase with the original shareholders of Chengdu Exhibition, acquiring a total of 51% of the equity of Chengdu Exhibition, therefore meeting the filing criteria stipulated in Article 20 of the *Anti-Monopoly Law*. Additionally, the local annual revenue of both parties reached the threshold of declaration, according to Article 3 of the *Provisions of the State Council on Thresholds for Prior Notification of Concentrations of Undertakings*. On 17 June, 2016, YMCI completed the acquisition and failed to notify the transaction, which violated the AML provisions regarding concentration of undertakings under Article 21. However, after assessing the deal's impact on market competition, SAMR concluded the conduct had no anticompetitive impact.

Based on the above investigations and assessments, citing Articles 48 and 49 of the AML and Article 13 of the *Provisional Measures on Investigation and Punishments on Undertakings that Failed to Declare the Concentration of Undertakings as Required by Law*, SAMR imposed a fine of CNY 300,000 on YMCI.

6、市场监管总局发布对格林美武汉收购武汉三永股权未依法申报案的行政处罚决定

2018年8月30日，国家市场监督管理总局对格林美武汉收购武汉三永股权未依法申报案作出行政处罚决定，罚款30万元人民币。

2017年11月20日，格林美武汉与Honest签署了股权转让协议，收购武汉三永30%股权，符合《反垄断法》第二十条规定，构成经营者集中。此外，集中双方的营业额达到了《国务院关于经营者集中申报标准的规定》第三条规定的申报标准，属于应当申报的情形。交易双方2017年12月20日完成相关工商变更登记手续，在此之前未依法申报，违反了《反垄断法》第二十一条，构成未依法申报的经营者集中。市场监管总局就该案对市场竞争的影响进行了评估，认为该项经营者集中不会产生排除、限制竞争的效果。

根据上述调查情况和评估结论，市场监管总局拟根据《反垄断法》第四十八条、第四十九条和《暂行办法》第十三条规定，对格林美武汉处以30万元人民币罚款的行政处罚。【6】

SAMR Announces a Penalty Decision against GEM (Wuhan) for Failure to Notify Their Equity Acquisition of GHM(Wuhan)

The State Administration for Market Regulation (SAMR) has fined GEM(Wuhan) CNY 300,000 over failure to notify its acquisition of a stake in GHM(Wuhan) on 30 August 2018.

On 20 November, 2017, GEM signed agreements of share transfers with Honest, acquiring 30% of the equity of GHM(Wuhan), which met the filing criteria stipulated in Article 20 of the *Anti-Monopoly Law*. Additionally, the local annual revenue of both parties reached the threshold of declaration, according to Article 3 of the *Provisions of the State Council on Thresholds for Prior Notification of Concentrations of Undertakings*. On 20 December, 2017, they completed the industrial and commercial registration change formalities, but failed to notify the transaction, which violated the AML provisions regarding concentration of undertakings under Article 21. However, after assessing the deal's impact on market competition, SAMR concluded the conduct had no anticompetitive impact.

Based on the above investigations and assessments, citing Articles 48 and 49 of the AML and Article 13 of the *Provisional Measures on Investigation and Punishments on Undertakings that Failed to Declare the Concentration of Undertakings as Required by Law*, SAMR imposed a fine of CNY 300,000 on GEM (Wuhan).

7、全球铝业巨头收购案在中国陷入垄断争议

印度铝业公司诺贝丽斯 (Novelis) 收购爱励铝业 (Aleris) 股权交易案于中国反垄断局官网公示于10月9日结束。当日,一位国内铝加工企业负责人对记者称,该交易案涉及垄断,若两家企业合并成功,将对中国航空板及汽车板产业带来不利影响。

该案被中国反垄断局列为“简易案件”,理由是“铝板带产品”在中国市场所占份额均小于5%。上海有色网铝行业资深分析师刘小磊认为,对于股权案申请“简易案件”的条件,“铝板带”的含义比较宽泛,如果算整体铝板带,两家企业的确不超过5%,但是对于相应的航空航天板材和汽车铝板两家市场占比很高。

针对有中国企业认为该股权案将对中国航空板、汽车板市场构成不利影响的问题,记者向中国反垄断局和爱励铝业发邮件询问,截止发稿两方均未回复。【7】

The Global Aluminum Giant Acquisition Case Falls into a Monopoly Dispute in China

The public comment period of Novelis' (Indian Aluminum Corporation) acquisition of Aleris on SAMR website ended on October 9. On the same day, a person in charge of a domestic aluminum processing enterprise told reporters that the transaction involved a monopoly. If the merger of the two companies is successful, it will have an adverse impact on the Chinese aviation board and automobile panel industry.

The case is currently listed as a “simple case” by the China Anti-Monopoly Bureau due to the reason that the “aluminum strip products” account for less than 5% of the Chinese market. Liu Xiaolei, a senior analyst of the aluminum industry in Shanghai, believes that the “aluminum strip” has a broader meaning for the application of “simple cases”. If the overall aluminum strip is counted, the two companies

【7】 http://finance.ifeng.com/a/20181013/16526980_0.shtml

do not exceed 5%, but the corresponding Aerospace panels and automotive aluminum panels account for a high proportion.

In response to questions that Chinese companies believe that the equity case will have an adverse impact on the Chinese aviation board and automotive board market, the reporter sent an e-mail to the China Anti-Monopoly Bureau and Alaris, and both of them did not reply.

8、苹果起诉西电捷滥用市场支配地位，索赔520万元

日前，西安西电捷通无线网络通信股份有限公司（下称西电捷通）因起诉苹果公司侵犯其标准必要专利权，继而被苹果公司起诉涉嫌滥用市场支配地位的反垄断纠纷引发业界广泛关注。2016年，原告苹果公司向北京知识产权法院起诉西电捷通因持有标准必要专利，涉嫌滥用市场支配地位，请求法院判令西电捷通立即停止垄断行为，赔偿经济损失及合理开支520万元等。

此次苹果公司提起的反垄断诉讼，在经历北京知识产权法院、北京高院的管辖权争议后，该案最终确定仍由北京知识产权法院审理，目前，该案正在进一步审理中。【8】

Apple Sues IWNCOMM over the Abuse of Market Dominance, Claiming 5.2 Million Yuan

Recently, China IWNCOMM Co., Ltd. (hereinafter referred to as IWNCOMM) sued Apple for infringing its SEPs, and then was sued by Apple for allegedly abusing market dominance, which drew wide attention. In 2016, the plaintiff Apple sued IWNCOMM at the Beijing Intellectual Property Court for abusing the market dominance due to the holding of SEPs, and petition for an order that IWNCOMM immediately stop the monopolistic behavior, compensation for economic losses and reasonable expenses of 5.2 million Yuan etc..

After the antitrust lawsuit went through the jurisdiction dispute by the Beijing Intellectual Property Court and the Beijing High Court, the case was finally determined to hear by the Beijing Intellectual Property Court. At present, the case is under further investigation.

9、北京电力公司诉韩国LS株式会社构成垄断

北京知识产权法院依法受理原告国网北京市电力公司（以下简称北京电力公司）诉被告韩国LS电缆株式会社（LS Cable & System Ltd，以下简称LS电缆）垄断协议纠纷一案。

北京电力公司诉称，欧盟委员会曾于2014年4月2日认定，自1999年至2009年1月欧盟委员会开展调查为止，被告LS电缆等11家地下电缆、海底高压电缆产品达成固定价格、划分销售区域和客户市场的垄断协议并付诸实施，限制了欧盟经济区及世界范围内的高压电缆产品市场

【8】 <http://www.gaohangip.com/article/4734.html>

区域和客户市场的垄断协议并付诸实施，限制了欧盟经济区及世界范围内的高压电缆产品市场竞争，故对包括LS电缆在内的多家高压电缆生产商作出总额近3.02亿欧元的处罚决定。

原告作为电网的投资建设运营主体，需要长期采购大量的高压电缆产品。在被告LS电缆实施欧盟委员会认定的垄断协议行为期间，原告曾向被告采购了大量的高压电缆产品，因此受到前述垄断协议行为的严重影响和重大损害。

北京电力公司主张，LS电缆公司实施的前述涉案行为违反了我国反垄断法、价格法等法律的相关规定，请求北京知识产权法院确认LS电缆公司对其实施了垄断协议行为，并判令LS电缆公司承担此案全部诉讼费。同时，北京电力公司亦声明保留依法享有的索赔等其他权利。

目前，本案正在进一步审理之中。【9】

Beijing Electric Power Sues against LS Cable & System over Cartel Conduct

The Beijing Intellectual Property Court has accepted a lawsuit filed by Beijing Electric Power against South Korea's LS Cable & System Ltd. (hereinafter "LS Cable") in relation to monopolistic agreements.

Beijing Electric Power stated that on 2 April 2014, from 1999 to January 2009 when the European Commission (EC) began to take investigations, EC fined 11 producers of underground and submarine high-voltage power cables, including defendant LS Cable, a total of EUR 302m for entering into and implementing a monopolistic agreement over price fixing, dividing sale market and allocating customers, which limiting competition in the high-voltage cable products market in the EU economic zone and all over the world.

As an electrical grid investment and construction operator, the plaintiff Beijing Electric Power needs to purchase a large amount of high voltage cable products on a long-term basis. During the implementation of the monopoly agreement determined by EC, the plaintiff had many purchases from the defendant, and suffered serious losses from the monopolistic agreement.

Beijing Electric Power claimed that LS Cable had violated China's *Anti-Monopoly Law* (AML) and *Price Law* and has asked the Beijing Intellectual Property Court to confirm that LS Cable engaged in monopolistic agreements and should bear all legal costs related to the case. Meanwhile, Beijing Electric Power stated that it should reserve other rights, such as claims.

Recently, the case is under trial.

10、杭州互联网法院对大数据产品不正当竞争首案作出一审判决

杭州互联网法院对原告淘宝(中国)软件有限公司(“淘宝公司”)与被告安徽美景信息科技有限公司(“美景公司”)涉“生意参谋”零售电商数据平台(“涉案数据产品”)不正当竞争纠纷案

【9】 <http://www.cneip.org.cn/html/8/29714.html>

进行网上公开宣判。这是杭州互联网法院宣判的首例大数据产品不正当竞争纠纷案。

原告淘宝公司开发、运营的涉案数据产品，主要功能是为淘宝、天猫商家的网店运营提供系统的数据化参考服务，帮助商家提高经营水平。

被告美景公司运营的“咕咕互助平台”及“咕咕生意参谋众筹”网站，以提供远程登录已订购涉案数据产品用户电脑技术服务的方式，招揽、组织、帮助他人获取涉案数据产品中的数据内容，并从中获取利益。

该院认为，涉案数据产品系淘宝公司付出了人力、财力开发完成，能为淘宝公司带来可观的商业利益与市场竞争优势。淘宝公司对涉案数据产品享有竞争性财产权益，对于侵犯其权益的不正当竞争行为有权提起诉讼。

该院认为，美景公司“搭便车”行为，如不加禁止将挫伤大数据产品开发者的创造积极性，阻碍大数据产业的发展，进而会影响到广大消费者福祉的改善。

根据美景公司自行公布的用户数量、版本分类、收费标准计算，美景公司在本案中的侵权获利已超过200万元。根据《反不正当竞争法》相关规定，杭州互联网法院判令美景公司停止侵权行为并赔偿淘宝公司经济损失及合理费用共200万元。【10】

Hangzhou Internet Court Made First Instance Judgment on the First Case of Unfair Competition in Big Data Products

The Internet court in Hangzhou issued a ruling after conducting an open online trial in the case that Taobao (China) Software Co., Ltd. (“Taobao”) sued against Anhui Meijing Information Technology Co., Ltd (“Meijing”) on illegally obtaining e-commerce data platform (“alleged data products”), alleging unfair competition. It is the first anti-unfair competition case the court has concluded regarding big data products.

Taobao develops and processes alleged data products, providing a systematic data reference service to help online retailers at taobao.com and Tmall improve their business operation.

The defendant Meijing operated the website of the “Gugu mutual assistant platform” and the “Business advisor crowd-funding”, in order to provide remote access to the computer technology services of the users who have subscribed to the alleged data products, recruiting, organizing and help others to obtain data from the alleged data products, and gain benefits from it.

The court believes that Taobao's data product has been developed after considerable financial and labor inputs and can bring considerable commercial benefits and market competitive advantages to Taobao. Taobao enjoys competitive property rights to the alleged data products, so it has a right to file a suit against any party infringing on its interest.

【10】 <http://news.sina.com.cn/o/2018-08-16/doc-ihhvciiiv9695672.shtml>

The court found that Meijing's free-riding conducts should be prohibited to avoid stifling of innovation, to protect the big data industry growth, and to protect consumer welfare.

According to the number of users, version classification and charging standards published by Meijing, its infringement profit in this case has exceeded 2 million yuan. According to the relevant provisions of the Anti-Unfair Competition Law, the Hangzhou Internet Court ordered Meijing to stop the infringement and compensate Taobao for economic losses and reasonable expenses, totaling 2 million yuan.

11、高通与台湾反垄断机构达成和解

高通(Qualcomm)已与台湾反垄断机构达成和解，解决了这家移动芯片制造商在全球范围内面临的几起法律纠纷之一。

高通表示，该协议允许它继续根据整个设备的价格设置许可条款，只要该设备使用了其技术和知识产权，而不仅仅是调制解调器等组件。

去年10月，台湾公平交易委员会对高通处以7.74亿美元的罚款，称其滥用其在手机无线数据连接芯片供应方面的支配地位。高通公司否认了这些指控，并提起上诉。

8月10日，台湾公平交易委员会和高通表示它们已经解决了争议，并将初始罚款减少到27.3亿新台币（合9300万美元），这笔罚款已支付。

台湾监管机构将开始监督高通与被许可方的谈判，以确保未来五年谈判“公平”。在同一时期，高通还必须增加在台湾的商业投资，包括合作开发5G，以及在台开设一个新的制造与工程中心。【11】

Qualcomm Settles Antitrust Dispute in Taiwan

Qualcomm has settled its antitrust dispute in Taiwan, resolving one of several legal battles the mobile chipmaker is facing around the world.

Qualcomm said the agreement allows it to continue setting licensing terms based on the price of an entire device using its technology and intellectual property, rather than just components such as modems.

Last October, the Taiwan Fair Trade Commission (TFTC) fined Qualcomm USD 774m, alleging that it had abused its dominant position in providing chips for wireless data connections in mobile phones. Qualcomm had denied the allegations and launched an appeal.

TFTC announced on 10 August a settlement with Qualcomm. The parties agreed to reduce the initial fine to TWD 2.73bn (\$ 93 million) and Qualcomm has already paid the penalty.

【11】 <http://www.mofcom.gov.cn/article/i/jyj1/m/201808/20180802777289.shtml>

TFTC will supervise the licensing negotiations between Qualcomm and the licensee, ensuring fair negotiations in the next five years. Meanwhile, Qualcomm must expand commercial investment in Taiwan—including 5G collaborations, and the development of an operation and manufacturing center in Taiwan.

12、日本对苹果启动调查，涉嫌压制雅虎日本旗下游戏平台

苹果公司迫使雅虎日本关闭与App Store形成竞争的游戏平台，日本公平贸易委员会已经开始介入调查。

雅虎日本旗下游戏平台Game Plus于2017年7月上线，允许用户在不需要下载的情况下可以直接玩游戏，对于开发者来说，Game Plus有着比苹果App Store更为宽松的销售、费用和软件更新限制。

在去年秋天突然削减Game Plus的预算后，雅虎现在几乎停止推广这项服务。据日经新闻报道，雅虎向多家商业合作伙伴通报说，由于苹果公司背后的压力，雅虎不得不暂停该服务。报告称，自2017年秋季以来，日本公平贸易委员会和工业部就开始收到来自雅虎有关其游戏平台Game plus的报告，苹果和雅虎对此未予置评。

Apple Probed in Japan For Pressuring Yahoo to Quash Its Gaming Platform

Apple allegedly pressured Yahoo Japan to quash a game platform that offered competition to the App Store. Japan Fair Trade Commission has initiated an investigation.

Launched in July 2017, Yahoo Japan's Game Plus allows users to play games without needing to download apps and gives developers lesser restrictions in matters relating to sales, fees and software updates than Apple's App Store.

After abruptly slashing its budget for Game Plus last autumn, Yahoo has now all but stopped promoting the service. Yahoo informed multiple business partners that it was compelled to pull back because of pressure behind the scenes from Apple, the Nikkei report said. Japan Fair Trade Commission and the industry ministry began receiving reports from Yahoo last autumn about issues surrounding its Game Plus platform, said the report, adding that Apple and Yahoo did not immediately respond to requests for comment. 【12】

13、沃尔玛160亿美元收购Flipkart，获印度反垄断机构批准

8月8日，印度竞争委员会（CCI）宣布，批准美国零售巨头公司沃尔玛收购印度最大的电子商务交易平台Flipkart。沃尔玛在5月份宣布以160亿美元收购Flipkart77%股份。

【12】 <https://www.firstpost.com/tech/news-analysis/apple-probed-in-japan-for-pressuring-yahoo-to-quash-its-gaming-platform-4976191.html>

印度反垄断机构在批准决定中指出，该交易受到来自行业协会、零售商等反对。反对意见担心，Flipkart在市场上对某些卖家的掠夺行为和选择性对待是否符合外商直接投资（FDI）规定，反对意见还指出就业、企业家以及中小企业等方面的问题。此外，CCI认为这些因素值得从反不正当竞争角度予以考虑，但公开事实显示“Flipkart的打折行为，以及它优选线上市场的电子零售商（如果有的话）都不是针对该并购案，因此即使没有沃尔玛的收购，这些行为也是普遍存在的”。

上述反对意见的忧虑主要来自印度交易联盟（CAIT）和印度在线商家协会（AIOVA）。CAIT秘书长Praveen Khandelwal在一项声明中说道，他们会对反垄断机构的该决定向法院起诉。

India Antitrust Authorities Clear Walmart's \$16 Billion Flipkart Deal

The Competition Commission of India has approved the acquisition of India's largest e-commerce marketplace Flipkart by US-based retail giant Walmart Inc, the agency said on August 8. In May, Walmart had announced acquisition of 77 per cent stake of Flipkart for \$16 billion.

In its order approving the combination, the antitrust body has said it received representations against the acquisition from trade associations, retailers, etc, which besides expressing concerns on compliance of FDI norms by Flipkart by engaging into predatory practices and preferential treatment to specified sellers on the market place, also raised issues pertaining to employment, entrepreneurship, small and medium scale enterprises, etc. Further, the Competition Commission said that while these factors merited examination from the anti-competitive perspective, the facts on record showed that “the discounting practice of Flipkart and its preference, if any, to select etailers in its online marketplaces are not specific to the Proposed Combination, as they are already prevalent in the market even without the proposed acquisition by Walmart”.

The aforementioned concerns were raised primarily by the Confederation of All India Traders (CAIT) and the All India Online Vendors Association (AIOVA). In a statement, CAIT Secretary General Praveen Khandelwal said that the body will move court against the order of the antitrust agency. 【13】

14、涉嫌串通垄断电容器价格，韩国对9家日本电容器企业开3200万美元罚单

韩国公司监管机构9月16日表示，已决定对9家日本公司开出合计3200万美元的罚单，因为这些公司涉嫌串通维持或提高智能手机和许多其他电子设备中主要使用的电容器价格。

【13】 <https://indianexpress.com/article/business/companies/competition-commission-clears-walmart-flipkart-deal-5298397/>

根据韩国公平贸易委员会（FTC）的说法，Tokin Corp和其他八家日本公司在2000年7月至2014年1月之间，共谋在韩国和其他国家销售的电容器价格。该委员会称，这些公司同意避免过度降价并且分享相关信息，以共同回应降价要求。

韩国监管机构表示，在上述期间这些垄断的行为影响了销售给三星电子公司、LG电子公司和其他韩国本地电子公司价值7370亿韩元的电容器价格。

FTC表示，日本厂商的电容器占了韩国当地市场的40%至70%。反垄断监管机构也表示，自2014年6月以来一直在与日本、欧盟、台湾地区和新加坡当局共同进行调查。

Korean Regulator Fines 9 Japanese Capacitor Firms USD 32m for Allegedly Conspiring to Maintain or Raise Prices of Capacitors

On 16 September 2018, South Korea's corporate regulator said it has decided to hit a total USD32 million in fines on nine Japanese firms for allegedly conspiring to maintain or raise prices of capacitors, a main electrical component used in smartphones and many other electric devices.

The Fair Trade Commission (FTC) said Tokin Corp. and eight other Japanese firms have schemed to rig prices of capacitors sold in South Korea and other nations, between July 2000 and January 2014. According to the FTC, they agreed to avoid excessive price cuts and share related information in order to jointly respond to calls for price cuts.

The regulator said the cartel activities have affected prices of capacitors worth 737 billion won sold during the cited period to Samsung Electronics Co., LG Electronics Inc. and other local electronic companies.

Japanese capacitors account for between 40 percent and 70 percent of the local market, the FTC said. The antitrust regulator said it has been probing the case since June 2014, along with its counterparts in Japan, the European Union, Taiwan and Singapore. 【14】

15、Visa、万事达卡就刷卡费集体诉讼达成和解，或将支付62亿美元

Visa、万事达卡以及其他几家美国顶尖银行与因“刷卡费”提起集体诉讼的商家达成协议，同意支付62亿美元的和解金。

这宗诉讼可追溯到13年前，美国国内领先的零售商，认为Visa、万事达卡公司违反联邦反托拉斯法，通过固定价格使银行受益。这是迄今为止最大规模的反托拉斯法诉讼。该诉讼2012年达成和解协议，但遭到主要零售商以协议不公平为由的反对，该和解协议于2016年被

【14】 <http://www.koreaherald.com/view.php?ud=20180916000110>

联邦上诉法院驳回。先前协议的反对者认为和解会限制零售商未来诉讼的能力，并且并未采取足够行动来解决限制竞争问题。

万事达卡法务负责人墨菲 (Tim Murphy) 称：“我们可以翻开新的一页并继续专注于与我们的商户创新，以提供消费者所期望的体验和便利。”

Visa法务负责人塔里尔 (Kelly Mahon Tullier) 也表示：“经过多年的面面俱到的谈判，我们很高兴能够达成这项协议，我们与商家将金属合作，为消费者提供便捷、可靠、安全的支付方式。”

新修订协议较原协议增加了9亿美元。Visa和万事达卡公司已通过新修订协议，但该协议仍需获得法院批准。根据新协议，Visa将支付额外6亿美金，万事达卡将支付额外1.08亿。这两家公司表示，在本案中与商家达成协议是重要一步。

原告律师之一考夫琳 (Patrick Coughlin) 称，沃尔玛、Target和Kroger等大型零售商已退出了诉讼。他说，这是因为大型零售商有底气与Visa和万事达卡谈判，拿到比普通零售商更好的价格。

考夫琳称：“前1%零售商占25%的销售额，他们永远不会成为协议的一部分。但是，这对剩余99%的商家十分重要。”

Visa and MasterCard Agree to Settle Swipe Fee Class Action for \$6.2 Billion

Visa and MasterCard, along with some top US banks, have agreed to pay as much as \$6.2 billion in a class action settlement with US retailers over swipe fees.

The settlement ends a 13-year old suit brought by the nation's leading merchants, which claimed that Visa and MasterCard violated antitrust laws by fixing prices to benefit the banks. It's the largest antitrust settlement ever. The original settlement reached in 2012 was rejected by major merchants as unfair and overturned on appeal in 2016. Opponents of the earlier agreement argued it would have limited the retailers' ability to bring future lawsuits and done little to end uncompetitive practices.

"We can put this behind us and focus on continuing to innovate with our merchant partners to deliver the experience and convenience that consumers expect," said Tim Murphy, general counsel for MasterCard.

"After years of thoughtful negotiation, we are pleased to be able to reach this agreement and move forward in our partnership with merchants to provide consumers convenient, reliable, secure ways to pay," said Kelly Mahon Tullier, Visa's general counsel.

The amended settlement represents a \$900 million increase over the previous one. The new settlement was disclosed in corporate filings by Visa and MasterCard. It must still be approved by the court. Under the new deal, Visa will pay an additional \$600 million, while MasterCard will pay an additional \$108 million. MasterCard and Visa said it was an important step to finally reach an agreement with merchants in this case.

But many of the largest merchants in the nation, including Walmart, Target and Kroger, have already opted out of this settlement said Patrick Coughlin, one of the lawyers who brought the case. Major retailers have the clout to negotiate better deals with Visa and MasterCard than are available to the typical retailer, he said.

"The top 1% of the merchants make up 25% of the nation's commerce," he said. "They were never going to be part of the deal, but this is important for the other 99%." 【15】

16、欧盟委员会对宝马、戴姆勒、大众可能涉嫌串谋行为正式启动反垄断调查

欧盟委员会已开展深入调查评估宝马、戴姆勒和大众（大众、奥迪、保时捷）是否串谋避免在汽油和柴油乘用车的清洁排放技术的开发和推出上进行竞争。

2017年10月，欧委会曾对宝马、戴姆勒、大众、奥迪的德国经营场所展开调查。欧委会深入调查了，被称为“五人圈”的宝马、戴姆勒、大众、奥迪和保时捷参加的开发、部署限制有害汽车尾气排放的技术在内的讨论会。特别是，欧委会正在评估这些公司是否串通限制开发和推出用于欧洲经济区内销售的汽车的某些排放控制系统。此次深入调查旨在确定宝马、戴姆勒和大众的行为是否违反欧盟禁止卡特尔和限制性商业行为的反垄断规则，包括限制或控制技术发展的协议。目前，欧委会称没有迹象表明涉案车企相互协调使用非法欺骗设备蒙混监管测试。

The European Commission Opens Formal Investigation into Possible Collusion Between BMW, Daimler and the VW Group

The European Commission has opened an in-depth investigation to assess whether BMW, Daimler and VW (Volkswagen, Audi, Porsche) colluded to avoid competition on the development and roll-out of technology to clean the emissions of petrol and diesel passenger cars.

In October 2017, the Commission carried out inspections at the premises of BMW, Daimler, Volkswagen and Audi in Germany. The Commission's in-depth investigation focusses on information indicating that BMW, Daimler, Volkswagen, Audi and Porsche, also called the "circle of five", participated in meetings where they discussed inter alia the development and deployment of technologies to

【15】 <https://money.cnn.com/2018/09/18/news/companies/visa-mastercard-lawsuit-settlement/index.html>

limit harmful car exhaust emissions. In particular, the Commission is assessing whether the companies colluded to limit the development and roll-out of certain emissions control systems for cars sold in the European Economic Area. The in-depth investigation will aim to establish whether the conduct of BMW, Daimler and VW may have violated EU antitrust rules that prohibit cartels and restrictive business practices, including agreements to limit or control technical development. At this stage, the Commission has no indications that the parties coordinated with each other in relation to the use of illegal defeat devices to cheat regulatory testing. 【16】

17、可口可乐收购英国连锁咖啡公司Costa对垒星巴克

世界饮料巨头可口可乐公司8月31日宣布将以51亿美元从母公司Whitbread手中全资收购Costa咖啡，交易预计于2019年上半年完成。

Costa是英国著名的咖啡公司，目前在全球拥有近4000家零售店。Costa在2018年度创造了17亿美元的收入和3.12亿美元的税息折旧及摊销前利润。

“Costa将为可口可乐提供咖啡方面的能力和专业知识，并且可口可乐的营销体系将为Costa在全球范围内发展创造更多机会。”可口可乐公司总裁兼CEO James Quincey说，“在可口可乐的全品类饮料战略中，热饮是为数不多的一个可口可乐尚未有全球品牌的部分。Costa将为我们提供强大的咖啡平台，以深入热饮市场。”

因世界范围内消费者口味更多地转向天然饮料，此交易使得可口可乐公司能够进一步实现生产业务多样化而非仅依靠碳酸饮品。

Coca-Cola Acquires U.K. Coffee Chain, Starbucks Rival Costa

The global beverage giant announced on 31 August that it had agreed to acquire Costa Limited from its parent company, Whitbread PLC. for about \$5.1 billion. Coca-Cola expects to complete the deal in the first half of 2019.

Costa has nearly 4,000 locations in many markets, including a large presence in the U.K. Costa had about \$1.7 billion in revenue in its 2018 fiscal year and \$312 million in earnings before interest, taxes, depreciation and amortization.

“Costa gives Coca-Cola new capabilities and expertise in coffee, and our system can create opportunities to grow the Costa brand worldwide,” Coca-Cola CEO James Quincey said in a statement. “Hot beverages are one of the few segments of the total beverage landscape where Coca-Cola does not have a global brand. Costa gives us access to this market with a strong coffee platform.”

【16】 http://europa.eu/rapid/press-release_IP-18-5822_en.htm

The move enables Coca-Cola to further diversify its business away from sodas as the world's tastes turn toward more natural drinks. 【17】

18、亚马逊涉嫌滥用销售数据问题面临欧盟反垄断审查

9月19日，欧盟竞争委员会委员Margrethe Vestager在布鲁克林新闻发布会上表示，欧盟正在初步调查亚马逊是否滥用其收集的网站内商户的销售数据，使自营产品占据竞争优势并因此获得更高的销售额。

Vestager 指出，亚马逊平台有双重用途，它在为第三方卖家提供销售渠道的同时，亚马逊官方也在销售自营产品，这使得亚马逊在消费者数据方面比相竞争的第三方卖家具有天然优势。

“这里问题关键是亚马逊从其网站中获取的中小卖家的数据”，Vestager说道，“如果其使用这些数据来增强自己的算法呢？或是分析当下什么产品最好卖？人们喜欢哪些商品？消费者喜欢什么样的优惠？是什么原因驱动消费者购买这款商品呢？这也是我们展开初步调查的原因”。

Amazon Faces an EU Antitrust Probe into Its Abuse of Sales Data

EU Competition Commissioner Margrethe Vestager said at a press conference in Brussels on 19 September that her department had begun a preliminary probe into whether data the e-commerce giant collects from retailers that sell on its site gives Amazon an edge in marketing its own products to customers and squeezing out more sales as a result.

Vestager noted Amazon's dual role as a platform for retailers to sell their goods as well as a merchant in its own right. That position makes Amazon privy to data about the customers of retailers it competes with.

"The question here is about the data Amazon collects from smaller merchants on its site", Vestager said, "Do you then also use this data to do your own calculations, as to what is the new big thing, what is it that people want, what kind of offers do they like to receive, what makes them buy things? That has made us start a preliminary investigation". 【18】

【17】 <https://www.usatoday.com/story/money/2018/08/31/coca-cola-costa/1155235002/>

【18】 <https://gadgets.ndtv.com/internet/features/amazon-hipster-antitrust-probe-case-eu-probe-1919458>

19、欧委会就“班轮运输联营豁免条例”是否延期征求意见

2018年9月27日，欧盟委员会就班轮运输联营的豁免条例（Liner Shipping Consortia Block Exemption Regulation）征求意见。该航运豁免条例允许在某些特定条件下，合计市场份额低于30%的航运公司签订合作协议，联合提供货物航运服务。该条例将于2020年4月25日到期，此次征求意见旨在聆听各方声音，以协助欧盟委员会评估是否继续延长豁免条例，以及是否要附加条件。

EU Commission Invites Comments on Prolongation for Liner Shipping Consortia Block Exemption Regulation

The European Commission is inviting comments on Liner Shipping Consortia Block Exemption Regulation on 27 September, 2018. The maritime Consortia Block Exemption Regulation allows, under certain conditions, shipping lines with a combined market share of below 30% to enter into cooperation agreements to provide joint cargo transport services.

The Consortia Block Exemption Regulation will expire on 25 April 2020. The Commission has therefore launched a consultation seeking to collect views from stakeholders to assist the Commission's assessment of the impact and relevance of the Consortia Block Exemption Regulation, and to provide evidence for determining whether it should be left to expire or prolonged, and if so, under which conditions. 【19】

20、微软或将获欧盟反垄断批准，以75亿美元收购GitHub

据两位知情人士于10月8日透露，美国软件巨头微软将以75亿美元对面向私有软件项目托管平台GitHub的收购，将获得欧盟无条件的反垄断审查的批准。

微软于今年6月份宣布了这笔收购交易消息，这是微软自2016年以260亿美元收购LinkedIn以来最大的一笔收购交易。预计收购GitHub交易将提振美国这家软件巨头的云计算业务，并且对市场领导者亚马逊形成挑战。

GitHub是全球最大的代码托管平台，目前有超过2800万开发人员使用这个平台。一旦收购完成，该平台将成为微软旗下智能云（Intelligent Cloud）部门的一个组成部分。

有的用户担心地认为，被微软收购之后，GitHub可能会比竞争对手更青睐微软产品。为了

【19】 http://europa.eu/rapid/press-release_IP-18-5921_en.htm

打消用户的这一担心，微软首席执行官萨蒂亚·纳德拉(Satya Nadella)表示，在该收购交易完成后，GitHub将继续是一个适用于所有公共云的开放平台。

欧委员会将在10月19日前就是否批准这笔收购交易做出决定。针对以上消息，欧委会没有回应，而微软拒绝置评。

Microsoft's \$7.5 Billion GitHub Deal Sets for EU Approval

U.S. software giant Microsoft is set to win unconditional EU antitrust approval for its \$7.5 billion purchase of privately held coding website GitHub, two people familiar with the matter said on October 8.

Microsoft announced the deal in June, its largest acquisition since it bought LinkedIn for \$26 billion in 2016. The GitHub deal is expected to boost the U.S. software giant's cloud computing business and challenge market leader Amazon.

GitHub, the world's largest code host, has more than 28 million developers using its platform. It will become a part of Microsoft's Intelligent Cloud unit once the acquisition is completed.

Microsoft Chief Executive Satya Nadella has tried to assuage users' worries that GitHub might favor Microsoft products over competitors after the deal, saying GitHub would continue to be an open platform that works with all public clouds.

The European Commission, which is set to decide on the deal by Oct. 19, did not respond to a request for immediate comment. Microsoft declined to comment. 【20】

21、谷歌已对欧盟Android 43亿欧元的反垄断罚款提起上诉

2018年10月10日，三个月前欧盟反垄断监管部门因谷歌借助安卓操作系统阻碍竞争对手，对其开出了创纪录的43.4亿欧元的罚款。10月9日谷歌对这一罚款提起了上诉。

谷歌在一封邮件中声称：“我们已经对欧盟普通法院作出的判决提起了上诉。”谷歌之前就宣称，将向卢森堡的欧盟第二高院提起上诉。谷歌还提到了7月欧盟裁决下来当天CEO Sundar Pichai提供的资料，其中的主要内容称安卓已经为消费者提供了更多的选择而不是更少。

欧盟委员会在7月份的决议中称，谷歌自2011年就已经开始滥用自己的市场支配地位。目前制造商可以免费安装的安卓系统已经占据了全世界大约80%的智能手机。欧盟市场竞争监管部门称，谷歌的非法行为包含了迫使制造商在手机上预装了谷歌搜索引擎、Chrome浏览器以及Google Play应用商城。

【20】 <https://www.ibtimes.com/microsofts-75-billion-github-deal-set-eu-approval-report-2723236>

欧盟反垄断部门称，谷歌也通过付费的方式让制造商只预装谷歌搜索，并阻止他们使用竞争对手的安卓系统。这个复杂的案子可能需要数年时间才能最终尘埃落定。终审上诉有可能在欧盟的最高法院——欧洲法院宣判，但这也只是从法律的角度进行判定。

Google Challenges Record 4.3 Billion Euro EU Antitrust Fine to Android

Alphabet unit Google on October 9 challenged a record 4.34-billion euro fine imposed by European Union antitrust regulators three months ago for using its popular Android mobile operating system to thwart rivals.

"We have now filed our appeal of the EC's Android decision at the General Court of the EU," Google said in an email. It had previously said it would take the case to Europe's second highest court in Luxembourg. The company referred to arguments put forward by Chief Executive Sundar Pichai on the day of the EU ruling in July, of which the main one is that Android has created more choice for consumers, not less.

The European Commission in its July decision said Google had abused its market dominance since 2011. Android, used by device makers for free, is found on about 80 percent of the world's smartphones. EU competition enforcers had said Google's illegal practices included forcing manufacturers to pre-install Google Search and its Chrome browser together with its Google Play app store on their Android devices.

The EU antitrust authorities said the company also paid manufacturers to pre-install only Google Search and blocked them from using rival Android systems. The complex case could take several years before judge's rule on it. A final appeal is possible at Europe's top court, the Court of Justice of the European Union, but only on points of law. 【21】

【21】 <https://sg.finance.yahoo.com/news/google-challenges-record-5-billion-eu-antitrust-fine-181536768--finance.html>

IMPORTANT INFORMATION

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