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Weekly Competition Law News

执法机构 Authorities

市场监管总局反垄断局局长吴振国：细化措施落实竞争政策，突出重点加强反垄断执法

Wu Zhenguo, Director of the Anti-Monopoly Bureau of SAMR: Refining Measures to Implement Competition Policy and Highlight Key Points to Strengthen Anti-Monopoly Law Enforcement

上海市监局终止调查两家隐形眼镜公司垄断案

Shanghai AMR Terminates Antitrust Probe into Two Contact Lens Companies

海外动态 Overseas News

美国法院判高通违反反垄断法

Qualcomm Violated Antitrust Law, Judge Rules

美国联邦贸易委员会扩大对博通芯片部门的反垄断调查

Broadcom Chip Unit Targeted in Widening U.S. Antitrust Probe

美国司法部欲反对T-Mobile与Sprint合并案

DOJ Leans Against Approving T-Mobile's Takeover of Sprint

意大利竞争局对Google发起反垄断调查

Italy's Watchdog Investigates Google for Alleged Antitrust Abuse

英国竞争和市场管理局指控四药企抗恶心药物不竞争协议违法

Drug Firms Accused of Illegal Market Sharing over Anti-nausea Tablets

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记者：党的十九届三中全会要求加强和优化政府反垄断职能，由市场监管总局承担反垄断统一执法职责，标志着我国反垄断工作进入新时代。目前，各地反垄断执法机构、人员已陆续到位，请问全国市场监管部门将如何加快实现融合，解决反垄断工作面临的实际问题和困难，形成执法合力？

吴振国：目前，各地市场监管部门在反垄断工作中面临的问题主要集中在细化公平竞争审查制度规则、完善体制机制、加强能力建设、强化监督指导、统一执法标准等方面。市场监管总局将认真分析研究，在今后的工作中逐步解决。在反垄断执法实践中，有两个问题较为突出，一是关于没收违法所得和罚款基数问题，二是关于公平竞争审查制度推进难的问题。对此，各地市场监管部门要统一思想，明确“解题”思路。

关于没收违法所得和罚款基数问题。执法实践中，计算违法所得往往难度较大，但要应算尽算，不能计算的要充分说明理由。罚款基数应为企业上一年度的全部销售额，而不是涉案产品的销售额。就此问题，市场监管总局已经专门请示全国人大常委会法工委，并得到明确答复。目前，市场监管总局正在研究制定垄断案件行政处罚裁量工作规则，统一执法尺度。

关于公平竞争审查制度推进难的问题。推进公平竞争审查制度是开展反垄断工作的重要组成部分。下一步，市场监管总局将通过细化规则、完善机制、加强指导，推进公平竞争审查制度实施。对于推进落实公平竞争审查制度，国务院已经将其列入今年重要的督查事项，市场监管总局将加大对此项工作的督查力度，研究省级政府文件审查难问题的解决措施，各地市场监管部门对此要高度重视、逐步推进，形成合力，切实抓出成效。¹

Wu Zhenguo, Director of the Anti-Monopoly Bureau of SAMR: Refining Measures to Implement Competition Policy and Highlight Key Points to Strengthen Anti-Monopoly Law Enforcement

Reporter: The Third Plenary Session of the 19th CPC Central Committee called for strengthening and optimizing the government's anti-monopoly functions. SAMR has taken the responsibility of unified Anti-Monopoly Law enforcement, marking the entry of China's anti-monopoly field into a new era. At present, Anti-Monopoly Law enforcement agencies and personnel have been put in place. How can national market supervision departments speed up the integration, solve the practical problems and difficulties faced by anti-monopoly work, and form a joint enforcement force?

Wu Zhenguo: At present, the problems faced by local market supervision departments in anti-monopoly field mainly focus on refining the rules of the Fair Competition Review System ("FCRS"), improving system and mechanism, strengthening capacity building, strengthening supervision and guidance, and unifying law enforcement standards. SAMR will carefully analyze these problems and gradually solve it in the future work. In the practice of Anti-Monopoly Law enforcement, there are two outstanding problems; one is the issue of confiscation of illegal gains and the base of fines, and the other is the difficulty of advancing the FCRS. In this regard, local market supervision departments should unify their thinking and clarify the idea of "solving problems".

Re the confiscation of illegal gains and the base of the fine. In law enforcement practice, it is often difficult to calculate the illegal gains, but it should be calculated with all efforts. If it cannot be calculated, the reasons should be fully explained. The fine base should be the total sales of the company in the previous year, not the sales of the products involved. On this issue, SAMR has specifically requested the Standing Committee of the National People's Congress and received a clear reply. At present, SAMR is studying and establishing the rules of administrative punishments for monopolistic cases and standardizing the scale of law enforcement.

Re the difficulty of advancing the FCRS. It should be known that advancing the FCRS is an important part of the anti-monopoly work. In the next step, SAMR will promote the implementation of the FCRS by refining rules, improving mechanisms, and strengthening guidance. For the implementation of the FCRS, the State Council has included it in this year's important supervision matters. SAMR will intensify the supervision of this work and study the solutions to the problems of reviewing provincial government document. Local market supervision departments should pay more attention and gradually advance, form synergies and effectively achieve results.¹

¹http://www.cqn.com.cn/cj/content/2019-05/22/content_7276594.htm

上海市监局终止调查两家隐形眼镜公司垄断案

原上海市物价局于2017年11月2日对海昌隐形眼镜有限公司上海分公司、上海海俪恩隐形眼镜光学有限公司涉嫌垄断行为进行立案调查，于2018年3月16日作出中止调查决定，并对当事人履行整改承诺的情况进行监督。经查，当事人在规定的时限内履行了整改承诺，未出现法律所规定的恢复调查情形。依据《中华人民共和国反垄断法》有关规定，上海市市场监督管理局于2019年4月24日对本案作出终止调查决定。²

Shanghai AMR Terminates Antitrust Probe into Two Contact Lens Companies

The former Shanghai Price Bureau began an investigation on 2 November 2017 into the suspected monopolistic conduct of Hydron Contact Lens Co., Ltd. Shanghai Branch and Shanghai Horien Contact Lens Optical Co., Ltd., and decided to suspend the investigation on 16 March 2018. The parties' performance of the rectification commitments was also supervised. Upon investigation, the parties fulfilled the rectification commitments within the prescribed time limit and there was no situation for recovering the investigation as stipulated by the law. According to the relevant provisions of AML, the Shanghai Administration for Market Supervision decided to terminate the investigation on 24 April 2019.²

海外动态 Overseas News

美国法院判高通违反反垄断法

美国地区法院法官Lucy Koh裁定，高通公司利用其垄断地位强迫苹果等公司为其无线发明专利支付高额许可费，并要求高通公司进行重新谈判。高通表示将寻求上诉。

这项裁决可能会颠覆高通公司的商业模式，该模式不仅依赖于芯片销售，还依赖于对大量已纳入全球无线标准的发明专利收取许可费。Koh在周二的裁决中表示高通公司通过以停止向手机制造商销售芯片作为威胁而获得的收入过高。

Koh裁定高通公司使用手机价格作为许可费基础违反联邦专利法。Koh的裁决并未禁止高通公司以手机价值作为未来许可费谈判的基础。高通公司表示，将寻求暂缓执行并加快上诉。高通公司执行副总裁兼总法律顾问Don Rosenberg表示：“我们强烈反对法官的裁决、事实认定和法律适用。”³

Qualcomm Violated Antitrust Law, Judge Rules

U.S. District Judge Lucy Koh ruled that Qualcomm had used its monopoly power to bully companies such as Apple into overpaying for royalties on Qualcomm's wireless inventions, ordering Qualcomm to renegotiate its business deals. Qualcomm said it plans to appeal the decision.

The ruling could upend Qualcomm's business model, which relies not just on chip sales, but on royalty payments from myriad Qualcomm inventions that are incorporated into global wireless standards. In Koh's ruling Tuesday, Koh said Qualcomm earned more than it should have on those royalty payments by threatening to stop selling chips to handset makers.

Koh ruled that Qualcomm's use of a phone's price as the royalty base is inconsistent with federal patent law. Koh's ruling did not prohibit Qualcomm from negotiating future royalty rates that are based on the value of handsets. Qualcomm said it will seek to put a hold on Koh's ruling and move for an expedited appeal. "We strongly disagree with the judge's conclusions, her interpretation of the facts and her application of the law," said Don Rosenberg, Qualcomm's executive vice president and general counsel.³

²http://www.samr.gov.cn/fldj/tzgg/xzcf/201905/t20190521_293971.html

³https://www.washingtonpost.com/technology/2019/05/22/qualcomm-violated-antitrust-law-judge-rules/?_utm_term=.3e1042f4e698

美国联邦贸易委员会扩大对博通芯片部门的反垄断调查

5月21日消息，据彭博社报道，据相关文件和一位知情人士透露，美国反垄断监管机构官员正在扩大他们对博通的调查范围，他们将重点放在这家芯片制造商是否滥用其主导地位销售部分最重要的半导体产品上。

据彭博社获得的一份上周发布的民事调查要求显示，美国联邦贸易委员会正在寻找证据，证明博通的行为损害了Wi-Fi和交换芯片市场的竞争。该机构正在调查博通是否强迫客户与其进行独家交易。

这份类似传票的文件显示，目前，执法人员正将目标对准博通的绝大多数芯片业务。去年，该公司披露了一项调查，并称其“无关紧要”。

此外，上述知情人士还表示，欧盟发起的另一项调查还在继续。去年10月，彭博社报道称，这项调查正在审查博通的机顶盒硬件芯片的销售情况。有线电视和卫星行业需要机顶盒硬件的支持，才能向消费者提供电视和互联网服务。

根据调查要求，美国执法人员不仅审查机顶盒中使用的芯片，还审查网络交换机使用的组件。⁴

Broadcom Chip Unit Targeted in Widening U.S. Antitrust Probe

U.S. antitrust officials investigating Broadcom Inc. are significantly broadening their scrutiny to focus on whether the chipmaker abused its dominance to sell some of its most important semiconductor products, according to documents and a person familiar with the probe.

The Federal Trade Commission is seeking evidence that Broadcom's conduct harmed competition in Wi-Fi and switch-chip markets, according to a civil investigative demand issued last week and obtained by Bloomberg News. The agency is looking into whether the company forced customers to deal with it exclusively.

The document, which is akin to a subpoena, shows that enforcers are now targeting the vast majority of Broadcom's chip business. The company had disclosed an investigation last year that it said was "immaterial."

A separate European Union investigation is continuing, the person said. That inquiry is examining Broadcom's sales of chips in set-top box hardware used by the cable and satellite industry to provide television and internet to consumers, Bloomberg reported in October.

U.S. enforcers are asking not just about chips used in set-top boxes but also components used in network switches, according to the investigative demand.⁴

美国司法部欲反对T-Mobile与Sprint合并案

据知情人士透露，美国司法部倾向于反对T-Mobile与Sprint合并案，即使该合并案已得到联邦通信委员会主席的支持。

周一早些时候，无线运营商提出的救济措施远不足以消除美国司法部对交易可能造成的竞争损害的担忧。因调查的保密性，这位知情人士不愿透露姓名。

美国司法部反垄断局负责人Makan Delrahim对该合并案持反对态度，使之成为美国司法部与联邦通信委员会之间的罕见分歧。此前，两部门在合并审查中往往并肩工作，通常就是否批准交易持一致意见。⁵

DOJ Leans Against Approving T-Mobile's Takeover of Sprint

The Justice Department is leaning against approving T-Mobile US Inc.'s proposed takeover of Sprint Corp., according to a person familiar with the review, even after the companies won the backing of the chairman of the Federal Communications Commission.

The remedies proposed by the wireless carriers earlier Monday don't go far enough to resolve the department's concerns that the deal risks harming competition, said the person, who asked not to be named because the investigation is confidential.

Opposition to the deal by the Justice Department's antitrust chief, Makan Delrahim, would mark a rare break with the FCC. The two agencies work side by side on merger reviews and typically emerge on the same page about whether to approve deals.⁵

⁴<http://finance.sina.com.cn/roll/2019-05-21/doc-ihvhiqay0237840.shtml>

<https://finance.yahoo.com/news/broadcom-chip-unit-targeted-widening-183944581.html>

⁵<https://finance.yahoo.com/news/doj-leans-against-approving-t-200846732.html>

意大利竞争局对Google发起反垄断调查

意大利竞争局周五表示已启动对Google涉嫌滥用市场支配地位的调查程序。该机构表示，Google通过安卓系统在智能设备运营系统方面占据市场支配地位。Google涉嫌滥用市场支配地位，拒绝将Enel公司开发的应用软件“Enel X Recharge”纳入安卓系统。该软件用于电动汽车充电的信息发布和服务。⁶

Italy's Watchdog Investigates Google for Alleged Antitrust Abuse

Italy's competition watchdog said on Friday it had opened an investigation into alleged abuse of a dominant market position by Google in the smart device sector. The watchdog said in a statement Google had allegedly refused to integrate the app “Enel X Recharge”, developed by utility Enel, in its Android Auto app. Enel's app allows drivers of electric cars to find charging points for their vehicles and book them.⁶

英国竞争和市场管理局指控四药企抗恶心药物不竞争协议违法

英国竞争和市场管理局（Competition and Markets Authority, “CMA”）在其发布的异议声明中指出，2013年6月至2018年7月期间，Alliance Pharmaceuticals, Focus, Lexon和Medreich四家公司达成有关向英国国家医疗服务体系（NHS）供应处方药丙氯拉嗪（Prochlorperazine）的不竞争协议。丙氯拉嗪是一种用于治疗恶心和头晕的重要药物。

CMA调查发现，Lexon和Medreich分享了Focus向Alliance Pharmaceuticals供应产品的利润份额，并同意不与其在英国市场内竞争。

CMA调查发现Alliance Pharmaceuticals, Focus, Lexon和Medreich达成了框架协议，并通过两个独立的协议实施——分别为Alliance Pharmaceuticals和Focus之间，以及Focus、Lexon和Medreich之间。根据协议，Alliance Pharmaceuticals向Focus独家供应丙氯拉嗪。Focus将销售给Alliance产品的部分利润分享给Lexon。转而，Lexon与Medreich进行分享。

CMA称，相关协议均违反竞争法。⁷

Drug Firms Accused of Illegal Market Sharing over Anti-nausea Tablets

In a statement of objections issued, the Competition and Markets Authority (“CMA”) alleges that, between June 2013 and July 2018, Alliance Pharmaceuticals, Focus, Lexon and Medreich agreed not to compete for the supply of prescription-only Prochlorperazine 3mg dissolvable or “buccal” tablets to the NHS. Prochlorperazine is an important drug used to treat nausea and dizziness.

The CMA has provisionally found that Lexon and Medreich were paid a share of the profits earned by Focus on the supply of the Alliance Pharmaceuticals product, and agreed not to compete for the supply of Prochlorperazine in the UK.

The CMA provisionally finds that Alliance Pharmaceuticals, Focus, Lexon and Medreich entered into an overarching agreement that was implemented through 2 separate agreements – one between Alliance Pharmaceuticals and Focus, and one between Focus, Lexon and Medreich. Under these alleged agreements Alliance Pharmaceuticals supplied Prochlorperazine exclusively to Focus. Focus then paid Lexon a share of the profits it earned on the onward sales of Alliance Pharmaceuticals' Prochlorperazine. Lexon, in turn, shared these payments with Medreich.

The CMA alleges that each of the agreements between Alliance Pharmaceuticals and Focus and between Focus, Lexon and Medreich, individually broke competition law.⁷

⁶<http://www.mofcom.gov.cn/article/i/jyj/m/201905/20190502864203.shtml>

<https://finance.yahoo.com/news/italys-antitrust-opens-abuse-dominant-063653220.html>

⁷<https://www.gov.uk/government/news/drug-firms-accused-of-illegal-market-sharing-over-anti-nausea-tablets>

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 www.lifanglaw.com

 Email: info@lifanglaw.com

 Tel: +8610 64096099

 Fax: +8610 64096260/64096261