



# 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于3月21日正式成立，张茅任局长毕井泉任党组书记

新组建的国家市场监督管理总局于3月21日正式成立。由原国家工商行政管理总局局长张茅任国家市场监督管理总局局长，原国家食品药品监督管理总局局长毕井泉任国家市场监督管理总局副局长。

根据国务院机构改革方案，将不再保留国家工商行政管理总局、国家质量监督检验检疫总局、国家食品药品监督管理总局，组建国家市场监督管理总局。国家市场监督管理总局的主要职责是，负责市场综合监督管理，统一登记市场主体并建立信息公示和共享机制，组织市场监管综合执法工作，承担反垄断统一执法，规范和维护市场秩序等。【1】

### The SAMS Was Formally Established on March 21. Zhang Mao Will Take the Post as the New Chief, and Bi Jingquan as Party Secretary

The State Administration of Market Supervision (“SAMS”) was formally established on March 21. It was announced that Zhang Mao, director of the State Administration for Industry and Commerce (“SAIC”) will take the post as the new chief for the SAMS, while Bi Jingquan, director of the China Food and Drug Administration (“CFDA”), will become the deputy director and party secretary at the SAMS.

According to the cabinet restructuring plan of the State Council, the SAIC, the General Administration of Quality Supervision, Inspection and Quarantine (“AQSIQ”), the CFDA will no longer be retained, and the new SAMS will be established. The main responsibilities of the new agency include comprehensive supervision and management of the market, unified registration of market entities, establishment of information disclosure and sharing mechanisms, organization of supervision of market and comprehensive law enforcement, enforcement of anti-monopoly law, and standardization and maintenance of the market order.

## 2、中国钢铁行业应对美国337调查胜诉

美国国际贸易委员会3月19日裁定，决定终止对中国钢铁的337反垄断调查。该委员会裁定，申请反垄断调查的原告需要具有反垄断损害，但原告不能证明其遭受了反垄断损害，不具有此诉的原告资格。至此，对中国钢铁的“337调查”宣告终止。中方在“337调查”中的反垄断、盗窃商业秘密、虚构原产地三个诉点全部胜诉。

【1】 [http://www.thepaper.cn/newsDetail\\_forward\\_2036753](http://www.thepaper.cn/newsDetail_forward_2036753)

2016年4月26日，美国钢铁公司指控部分中国钢铁企业生产、销售的部分产品存在不公平贸易行为，要求美国国际贸易委员会启动“337调查”，禁止被诉产品对美销售。2016年5月26日，美国国际贸易委员会宣布对中国输美碳钢与合金钢产品发起“337调查”，调查共涉及宝钢、首钢、武钢等中国钢铁企业及其美国分公司共计40家企业。中国钢铁工业协会立刻组织有关钢铁企业积极应对，聘请了国际上经验丰富的律师团队进行抗辩，经过20个月的努力，中国钢铁企业在337调查中取得全部胜诉。【2】

### Chinese Iron and Steel Industry Wins the US Section 337 Investigation

The US International Trade Commission (“USITC”) ruled on March 19th that it decided to terminate its investigation into Chinese iron and steel for antitrust violation of Section 337. USITC ruled that the plaintiff applying for an antitrust investigation needed to have antitrust injury, but the plaintiff could not prove that it suffered antitrust injury and therefore did not have the plaintiff's qualifications for the suit. At this point, the "Section 337 investigation" of Chinese iron and steel was terminated. China won all three complaints about antitrust, theft of trade secrets, and fictitious origin in this investigation.

On April 26, 2016, U.S. Steel Company accused some of the products produced and sold by some Chinese iron and steel companies for unfair trade practices. The USITC was requested to initiate the "Section 337 investigation" and prohibited the accused products from being sold to the US. On May 26, 2016, the USITC announced that it launched the "Section 337 investigation" into China's carbon steel and alloy steel products exported to the United States, which involved 40 Chinese iron and steel companies such as Baosteel, Shougang and Wuhan Iron and Steel and their US branches. The China Iron and Steel Association immediately organized relevant iron and steel companies to actively respond and hired an internationally experienced team of lawyers to defend themselves. After 20 months of hard work, the Chinese iron and steel companies won all the "Section 337 investigation".

### 3、陕西加强对垄断行业价格监管

记者3月19日从陕西省物价局获悉，陕西省将进一步加强加强对垄断行业的价格监管，对于没有提供实质性服务的经营性服务收费一律不得收取。《关于进一步加强垄断行业价格监管的实施方案》中指出，陕西省将积极落实煤热、气热价格联动机制，理顺城市集中供热价格。

垄断行业主要包括输配电、天然气管道运输等基础性行业以及居民供水供气供热等公用事业。根据方案，陕西省将健全成本监审办法和价格形成机制，规范垄断行业收费，降低企业成本，提高企业效率。【3】

【2】 <http://finance.sina.com.cn/chanjing/cyxw/2018-03-20/doc-ifysmwyp3715657.shtml>

【3】 [http://news.ifeng.com/a/20180321/56911578\\_0.shtml](http://news.ifeng.com/a/20180321/56911578_0.shtml)

## Shaanxi Strengthens Price Regulation in Monopolized Industries

The reporter learned from Shaanxi Province Price Bureau on March 19 that Shaanxi Province will further strengthen the price regulation of monopolized industries, and charges for operating services that do not provide substantive services shall not be collected. As stated in the *Implementation Plan on Further Strengthening Price Regulation in Monopolized Industries*, Shaanxi will actively implement the coal heating and gas heating price interaction mechanism and rationalize central heating price of cities.

Monopolized industries mainly include basic industries such as power transmission and distribution and natural gas pipeline transportation, as well as public utilities such as water supply and heating supply for residents. According to the plan, Shaanxi will improve cost supervision and examination measures and price formation mechanisms, and regulate the charges in monopolized industries, in order to cut enterprise costs and raise enterprise efficiency.

## 4、欧盟委员会附条件批准拜耳收购孟山都公司

欧盟委员会已根据《欧共体并购条例》批准拜耳收购孟山都公司，附加剥离救济条件，以解决双方在种子、杀虫剂和数字农业方面的重叠问题。欧委会评估了2000多个不同的产品市场，并审查了270万份内部文件，得出的结论是，申报交易将大大减少欧洲以及全球在众多不同市场上的价格和创新竞争。委员会还担心这将加强孟山都在拜耳是其主要竞争对手的市场上的主导地位。拜耳提交的承诺全面解决了欧委会的竞争担忧，解决了各方在种子，农药和数字农业方面的重叠问题。在此基础上，欧委会得出结论，剥离方案使合适的买方能够可持续地取代拜耳在这些市场中的竞争力，并继续创新，为欧洲农民和消费者带来利益。拜耳已提出巴斯夫公司作为剥离业务的买方。拜耳和孟山都只能在欧委会完成对拟议买方的审查后才能实施交易。

## The European Commission Clears Bayer's Acquisition of Monsanto, Subject to Conditions

The European Commission has approved under the EU Merger Regulation the acquisition of Monsanto by Bayer. The merger is conditional on the divestiture of a remedy package, which addresses the parties' overlaps in seeds, pesticides and digital agriculture. The Commission has assessed more than 2,000 different product markets and reviewed 2.7 million internal documents. It concluded that the transaction as notified would have significantly reduced competition on price and innovation in Europe and globally on a number of different markets. The Commission also had concerns that it would have strengthened Monsanto's dominant position on certain markets, where Bayer is an important challenger of Monsanto. The commitments submitted by Bayer meet these competition concerns in full, addressing the parties' overlaps in seeds, pesticides and digital agriculture. On this basis, the Commission concluded that the divestment package enables a suitable buyer to sustainably replace Bayer's competitive effect in these markets and continue to innovate, for the benefit of European farmers and consumers. Bayer has proposed BASF as purchaser for the remedy package. Bayer and Monsanto can only implement the transaction when the Commission has completed its review of the proposed buyer. 【4】

【4】 [http://europa.eu/rapid/press-release\\_IP-18-2282\\_en.htm](http://europa.eu/rapid/press-release_IP-18-2282_en.htm)

## 5、欧盟对八家电容器生产商卡特尔案作出2.54亿欧元处罚

欧盟委员会对日本埃尔纳 (Elna) , 日立化成 (Hitachi Chemical) , 禾伸堂 (Holy Stone) , 日本松尾 (Matsuo) , 东金电子 (NEC Tokin) , 日本尼吉康 (Nichicon) , 黑金刚 (Nippon Chem-Con) 和红宝石 (Rubycon) 罚款253, 935, 000欧元。加上被豁免的三洋公司 (Sanyo) , 这9家公司在1998至2012年间实施了有关供应铝、钽电解电容器的卡特尔行为。委员会经调查发现, 这9家公司召开多边会议, 进行双边或三边交流以交换商业敏感信息, 尤其是这些公司交换了有关未来价格、定价意图以及未来供求信息。在某些情况下, 参加者还达成了价格协议并监督其执行情况。他们的目标是协调未来行为并且避免价格竞争。主管竞争政策的欧盟委员会专员Margrethe Vestager说道: “电容器几乎是所有电子产品的重要组成部分, 包括智能手机, 家用电器, 汽车电子系统和风力发电机组等。被罚款的九家公司为使自身利润最大化而实施共谋, 这可能不仅是以制造商为代价, 而且也是以消费者为代价。我们的处罚决定再次表明, 即使发生在欧洲以外, 我们也不会容忍可能影响欧洲消费者的限制竞争行为。”

### The European Commission Fines Eight Producers of Capacitors €254 Million for Participating in Cartel

The European Commission has fined Elna, Hitachi Chemical, Holy Stone, Matsuo, NEC Tokin, Nichicon, Nippon Chemi-Con, Rubycon € 253 935 000. Together with the immunity company, Sanyo, these companies operated a cartel for the supply of aluminium and tantalum electrolytic capacitors between 1998 and 2012. The Commission's investigation found that the nine companies participated in multilateral meetings and engaged in bilateral or trilateral contacts to exchange commercially sensitive information. In particular, the companies exchanged information on future prices and pricing intentions, and on future supply and demand information. In some instances, the participants also concluded price agreements and monitored their implementation. The objective was to coordinate future behaviour and avoid price competition. Commissioner Margrethe Vestager, in charge of competition policy said: "Capacitors are an essential part of almost all electronic products, ranging from smart phones to appliances in our homes, electronic systems in our cars and wind turbines producing electricity. The nine companies fined today colluded to maximise their profits. This may have happened not only at the expense of manufacturers but also of consumers. Our decision again makes clear that we will not tolerate anti-competitive conduct that may affect European consumers, even if anti-competitive conduct take place outside Europe." 【5】

【5】 [http://europa.eu/rapid/press-release\\_IP-18-2281\\_en.htm](http://europa.eu/rapid/press-release_IP-18-2281_en.htm)

## 6、Micromax与爱立信和解结束与标准必要专利相关的长期纠纷

印度手机制造商Micromax将获得瑞典电信设备制造商爱立信的全球专利许可。按照此项许可，Micromax将为每台在印度或国外销售的2G和3G设备向爱立信支付许可费。

这两家公司过去五年来一直在德里高级法院进行诉讼战，谈判协商最终使双方在今年年初达成协议，结束了双方正在进行的诉讼纠纷。德里高等法院作出的判决明确指出，爱立信和Micromax已经于2018年1月26日达成了全球专利许可协议，鉴于其执行情况，双方友好地终止了纠纷。

两家公司之间的法律纠纷始于2013年3月，爱立信将Micromax告上法庭，指控后者拒绝就爱立信的包括GSM、EDGE和3G等多项无线技术标准专利签订许可协议。另一方面，Micromax辩称爱立信没有提供公平、合理、无歧视的许可条款。Micromax和另一个印度手机制造商Intex进一步向印度竞争委员会（CCI）指控爱立信向其索取高额专利许可费，实施了不公平的贸易行为。

### Long Standing Dispute Related to SEPs between Micromax and Ericsson Settled

Indian mobile manufacturing company, Micromax will take a global patent licence from the Swedish telecom gear maker, Ericsson. Under the licence, Micromax will pay royalties to Ericsson for every 2G and 3G set sold in India or abroad.

The two companies were engaged in a legal battle for the past five years before the Delhi High Court and negotiations led to the ultimate agreement between the parties early this year, ending all the ongoing and pending litigation disputes between the two. The judgment pronounced by the Delhi High Court clearly stated that Ericsson and Micromax have entered into a Global Patent License Agreement dated 26th January, 2018 and in light of its execution, they have put an amicable end to their disputes.

The legal disputes between the two companies started when in March 2013, Ericsson dragged Micromax to Court alleging that the latter had refused to enter into a licensing agreement covering its patented innovations across several wireless technology standards such as GSM, EDGE and 3G. On the other hand, Micromax contested that Ericsson was not providing its patents on fair, reasonable and nondiscriminatory or FRAND terms. Micromax, along with another Indian mobile manufacturing company Intex, further moved to the CCI alleging Ericsson for adopting unfair trade practices by demanding exorbitant royalties from them. 【6】

【6】 <https://theindianjurist.com/2018/03/15/long-standing-dispute-micromax-ericsson-settled-micromax-getting-patent-ericsson-royalties/>





## IMPORTANT INFORMATION

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