

SAIC

国家工商行政管理总局 竞争领域对外交流与合作

(1995-2005)

State Administration for Industry and Commerce
Foreign Exchange and Cooperation in Competition Field

国家工商行政管理总局外事司 编著



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谨 以 此 书

感谢一贯关心和支持竞争领域国际交流合作的吴仪副总理！

感谢为推动我国竞争政策和竞争法律制度发展不懈努力的国内同仁和专家！

感谢为中国竞争立法执法提供帮助的国际组织和有关国家竞争主管机关！

With thanks to

Vice Premier Wu Yi who has been persistently concerning and supporting the international exchange and cooperation in competition field.

domestic colleagues and experts who are devoted to promoting our competition regime.

the international organizations and related foreign competition authorities that have provided assistance for the legislation and enforcement of Chinese competition laws.

序

竞争是市场经济的灵魂。以公平竞争、等价交换为核心的公平交易规则是市场经济的基本规则。竞争政策是政府影响市场竞争状态和行为的政策组合，竞争法是体现和支撑这些政策的法律体系。竞争政策和竞争法，就是公平交易规则在国家政策和法律上的体现。

竞争政策和竞争法在一个国家的经济发展中具有重要的地位和作用。通过实施竞争政策和竞争法，鼓励公平竞争，制止垄断和不正当竞争，可以促进形成开放统一的市场，有利于合理配置和利用资源，有效实施国家产业政策，提高整体经济效益；可以促进技术创新和其他创造性的经营活动，有利于形成自主知识产权和知名品牌，提高企业和国民经济的国际竞争力；可以促进管制改革等各项改革的深入，有利于增强经济活力，形成符合市场经济自身规律和经济全球化要求的经济体系；而这一切，都将促进形成产品丰富、质量可靠、价格合理的市场和消费环境，有利于从根本上保护消费者合法权益。

各国政府都很重视发挥竞争政策和竞争法对经济发展的作用，不仅如此，在经济全球化、市场国际化的大背景下，竞争领域的国际交流合作以及竞争政策、竞争

法律的国际协调，也得到了越来越多的关注和发展。

1993年9月2日中国颁布了第一部竞争法律——《反不正当竞争法》。根据该法规定和国务院授权，各级工商行政管理机关负责竞争执法。1994年，《反垄断法》立法正式启动，国家工商行政管理局被确定为起草小组成员单位。

为了借鉴国外经验，促进我国竞争立法、执法工作开展，国家工商行政管理总局很早就开始了竞争领域的国际交流合作。特别是从1995年开始，在吴仪同志的关心和支持下，国家工商行政管理总局与联合国开发计划署（UNDP）合作，成功实施了“公平市场规范”技术援助项目，在宣传普及竞争法律知识、加强竞争立法执法能力建设、促进市场监管改革、规范行政执法行为，特别是促进解决我国《反垄断法》立法和《反不正当竞争法》执法的重点、难点问题等方面，起到了极大的推动作用。同时，也为进一步开展竞争领域的多边、双边交流合作，拓宽了渠道，提供了丰富的技术和专家资源。

以这个项目为契机，国家工商行政管理总局在竞争领域的国际交流合作，随着我国社会主义市场经济的发展和改革开放的深入，不断拓展，交流合作的数量、形式、内容，也发生了很大的变化。十多年来，国家工商行政管理总局先后与45个国家（地区）的竞争主管机构和10多个相关国际、区域性组织建立了工作联系，始终立足我国国情，着眼建立完善现代竞争法律体系和执法体系，着眼有效监管日益融合的国内国际市场，分层次、有重点地积极推进竞争领域的国际交流合作，取得了比较明显的成效。

一是代表中国政府活跃在竞争领域的各种多边场合，广泛宣传我国竞争政策、竞争法及其实施成效，积极参与竞争政策和法律的国际协调及国际规则制订，参与多边公平交易执法合作，不断扩大我国在国际竞争领域的影响。二是结合国外经验，认真研究竞争政策与经济发展的关系，密切关注不同国家以及同一国家不同时期为适应经济社会发展需要而进行的竞争政策、竞争法律改革，为我国竞争政策的制定，以及正确处理竞争政策与产业政策的关系，提供参考。三是根据我国国情的需要，把各国和相关国际组织的有益经验，应用到《反垄断法》立法和《反不正当竞争法》执行中，促进我国竞争法律制度的进一步完善。四是与部分周边国家（地区）开展竞争领域的实质性双边合作，通过执行政府间或部门间协议，在反垄断、反不正当竞争、广告监管、消费者保护等方面，开展执法合作，共同维护经营者、消费者合法权益。五是学习借鉴国外经验，以竞争执法为核心，不断推动我国市场监管改革创新，为整顿规范市场经济秩序，促进社会经济又快又好发展，提供有力的保障。

国家工商行政管理总局外事司根据十多年的工作积累，编写这本书，不仅全面、系统地回顾了开展竞争领域国际交流合作的情况，更重要的是对20个有代表性的国家（地区）的竞争法律制度、竞争执法体系及其发展趋势，以及6个主要国际、区域组织关注和探讨的竞争领域重点问题，进行梳理介绍，与大家共享。这是一件很好的事情，尤其是在我国《反垄断法》、《反不正当竞争法》（修订）即将出台，竞争政策和竞争法律制度日趋完善的今天，具有一定的现实意义。

相信本书将为我国在新形势下制定和实施竞争政策、竞争法，提供新的借鉴和启示。同时，希望本书成为竞争领域国际交流合作一个新的、更高的起点。

王公厚

2006年6月6日

Foreword

Competition is the soul of market economy. The rules of fair trade, with the principles of fair competition and equal transaction as the core, are the basic rules of market economy. Competition policies are the policy portfolios taken by the government aiming to influence the performance of market competition, while competition laws are the legal system reflecting and supporting such policies. Competition policies and competition laws are the reflection of fair trade rules in terms of national policies and laws.

Competition policies and laws play an important role in the development of a country's economy. By enforcing competition policy and law, encouraging fair competition and prohibiting monopoly and unfair competition, it may promote the formation of an open and unified market favorable to the rational allocation and utilization of resource, effective implementation of national industrial policies, and thus to enhance the overall economic efficiency; it may boost technology innovation and other creative activities that is beneficial to the establishment of independent intellectual property and well-known brands as well as the improvement of international competitiveness of enterprises and national economy; it may facilitate the in-depth development of such reforms as regula-

tory reform, so as to create a much vigorous economy and establish a sound economic regime in conformity with the inherent law of market economy and the requirements of economic globalization. All these advantages above mentioned would consequently promote the creation of a market and consumer environment with diversified products, reliable product quality and reasonable product price, and would be ultimately beneficial to the protection of consumers' legitimate rights and interests.

Governments all over the world attach great importance to the significance of competition policies and laws exerting on economic development. What's more, with the economic globalization and market integration, international cooperation in competition field as well as international coordination of competition policies and laws attract more and more attention and undergo profound development.

The Anti-unfair Competition Law promulgated on September 2, 1993 is the first competition legislation in China. In accordance with the Law and entrusted by the State Council, the Administrations for Industry & Commerce (AICs) are the competent authorities in charge of competition law enforcement. Since the legislation work for Antimonopoly Law was initiated in 1994, the State Administration for Industry and Commerce (SAIC), as one of the members of drafting team, has been actively participating in this work.

In order to benefit from the foreign experience and push the domestic legislation and enforcement of competition laws, the State Administration for Industry and Commerce (SAIC)

has been engaged in international exchange and cooperation in competition field for a long time. Particularly under the support of Vice Premier Wu Yi, SAIC and the United Nations Development Programme (UNDP) successfully launched the technical assistance program in name of “ Fair Market Regulations ” in 1995. This program gave a great impulse to the advocacy of competition laws, the capacity building of competition law enforcement, the reform of market supervision and the regulation of administrative enforcement practices. Particularly, it promotes the solution to the key and difficult issues in our legislation of the Antimonopoly Law and the enforcement of the Anti-unfair Competition Law. Meanwhile, the program expands the channels and provides rich technology and expert resources for bilateral and multilateral exchanges and cooperation in competition field.

With the in-depth development of market economy and opening up in China, this program became the catalyst in expanding international exchange and cooperation between SAIC and the competition circles in the world that has brought about a great change in the amount, form and contents of foreign exchange and cooperation. Up to now, SAIC has established sound working contacts with the competition authorities of 45 countries and areas as well as more than 10 international and regional organizations in related domain. For decades, SAIC has been actively promoting competition exchange and cooperation with the world, being based on the real situations of China, aiming at the establishment of a well-functioned modern competition legal regime and the effective supervision on the ever-inte-

grated domestic and international markets, as well as giving consideration to its working emphasis and different rank of staff, and has achieved remarkable results.

Firstly, on behalf of the Chinese government, SAIC actively involves itself in multilateral affairs of competition field, advocating the legislation and enforcement of Chinese competition policies and laws, positively participating in the international coordination of competition policies and laws and the establishment of related international rules. Hence, the impact of China in competition field is widely expanding.

Secondly, taking the experiences of other countries into consideration, SAIC undertakes thorough research and study on the interaction of competition policies and economic development, and keeps close watch on the reforms taken by different countries or a specific country, in accordance with the practical needs of economic society in different phases, which provides a best reference for the policy drafting as well as a benchmark for balancing the competition policy and industry policies.

Thirdly, according to the requirements of Chinese real situation, SAIC incorporated the best practices of other countries and related international organizations into the legislation of Antimonopoly Law and the revision of Anti-unfair Competition Law, which enhanced the perfection of Chinese competition law system.

Fourthly, SAIC has carried out substantive bilateral cooperation with some neighboring countries and areas via implementing governmental or departmental agreements, in the

fields of antimonopoly, anti-unfair competition, advertising regulation, consumer protection and so forth, and conducted enforcement cooperation to make concerted efforts to protect business and consumers.

Finally, by means of learning from foreign experience, with competition law enforcement as the core, SAIC does its best to encourage innovation of market regulation reform, which provides a firm guarantee for the market rectification and consequently promotes the ever-faster and ever-better development of social economy.

The Department of Foreign Affairs of SAIC, in accord with the accumulation of the past 10 years, compiled this book which not only retrospect the history of international exchange and cooperation in competition field, but, more important, conclude, introduce and share the information of competition legislation, enforcement system and their development tendency of 20 representative countries as well as the hot issues which are concerned by 6 key international and regional organizations. Especially, under such historic time that the promulgation of Antimonopoly Law and revision of Anti-unfair Competition Law of China are imminent, and competition policy and competition legal system have witnessed new progress, it is sure to be of great significance to publish this book.

I have every confidence that this book would introduce new ideas and inspiration to impel the establishment and enforcement of competition policies and laws in China under the new situations. Meanwhile, I sincerely hope this book would

make a fresh and higher start for the international exchange and cooperation in the field of competition in China.

王中孚

Wang Zhongfu

June 6 , 2006