



国家市场监督管理总局

State Administration for Market Regulation

# Thoughts on Protecting and Encouraging Innovation through Competition Policies

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*Only representing personal views*



**1. Policies and Theoretical Basis for  
Protecting and Encouraging Innovation  
Through Competition Policies**

**2. China's Legislation  
and Law Enforcement Practice**

**3. Thoughts on Protecting and Encouraging  
Innovation through Competition Policies**

# I. Policies and Theoretical Basis for Protecting and Encouraging Innovation Through Competition Policies

## Report to the 19th CPC National Congress

- ✓ Pursue with firmness of the vision of innovative, coordinated, green, open and sharing development;
- ✓ Implement the innovation-driven development strategy;
- ✓ Make China a country of innovators

## National Strategy of Innovation-Driven Development

- ✓ To pursue technological innovation and institutional mechanism innovation.
- ✓ To build a national innovation system (competition policy)
- ✓ To achieve six transformations, including the transformation in the model of development from an inefficient model focusing on the scale expansion to a more sustainable one focusing on quality and efficiency.

# I. Policies and Theoretical Basis for Protecting and Encouraging Innovation Through Competition Policies

1

- Innovation is the foundation of a prosperous market economy.

2

- Competition is the core mechanism for promoting innovation.

3

- Introducing and implementing competition policy is a prerequisite for protecting and encouraging innovation

4

- Balanced development of competition policy and intellectual property protection



## II. China's Legislation and Law Enforcement Practice

### ■ *Anti-Monopoly Law* :

**Article 15.** Where undertakings can prove that an agreement reached by them falls under any of the following circumstances, the agreement shall be exempt from Articles 13 and 14 of this Law::

(i). For the purpose of improving technologies, researching, and developing new products;

**Article 27.** The following factors shall be taken into account during the review of the concentration of undertakings :

(iii). The impact of the concentration of undertakings on the market access and technological advancements;

### ■ *Provisional Regulation on the Prohibition of Abuse of Behavior Concerning Dominant Market Position* :

Article 20. When determining the “unfairness” referred to in Article 14 of the Regulation and the “justification” referred to in Articles 15 to 19 of the Regulation, an anti-monopoly law enforcement agency shall also consider the following factors:

(v) The impact of relevant behaviors on the business development, future investment and innovation of the undertakings ;

### **Regulation on the Prohibition of Excluding and Restricting Competition by Abusing Intellectual Property Rights:**

Article 7. An undertaking with dominant market position shall not refuse to permit other undertakings to use its intellectual property right under reasonable conditions without justification, and exclude or restrict competition, if the intellectual property right constitutes the necessary facilities for production and business activities.

(ii) Refusal to license the intellectual property right will result in adverse impact on competition or innovation in relevant market, harming the interest of consumers or public interest;

Article 16 . The following factors shall be considered when conducting analysis of the impact of the behavior of undertaking's exercising intellectual property right on competition:

(vi) The impact on facilitating innovation and technology promotion;

(vii) The speed of innovation capacity of undertaking and the speed of technological change;

## II. China's Practice

(1) Development of artificial intelligence industry driven by competition

### Development Overview of China's Artificial Intelligence Industry in 2018

Financing Amount	RMB 131.1 billion, increased by RMB 67.7 billion, increase rate: 107%
Number of Undertakings	1101 ( Ranking 2nd place in the world )
Number of Patents	Over 30,000 ( Ranking 1st place in the world )
Number of Talents	18,000 people ( Ranking 2nd place in the world )
Number of Patents Applied by Major Companies	Baidu ( 1522 ) , the State Grid ( 1173 ) , Tencent (766), Alibaba (709), Xiaomi (684), Huawei (681)



## II. China's Practice

### (2) Qualcomm Case

<b><i>Dominant Market Position</i></b>	Having dominant market position in the standard essential patent license market for wireless technology. Having dominant market position in the baseband chip market.
<b>Illegal behaviour (Damage Innovation)</b>	<ul style="list-style-type: none"><li>•Qualcomm forced certain licensees to conduct reverse license free of charge in the standard essential patent license for wireless technology (damaging licensee's innovation).</li><li>•In the standard essential patent license for wireless technology, without justification Qualcomm sold standard essential patent license for non-wireless technology in the mode of tied sale (damaging competitors' innovation).</li><li>•Qualcomm added unreasonable conditions in baseband chip sales (damaging customers' innovation)</li></ul>

## II. China's Legislation and Law Enforcement Practice

### (2) Case of Bayer Acquiring Monsanto

<b>May have a market that excludes or restricts competitive effect.</b>	China's non-selective herbicide market; China's onion seeds with long sunshine duration, cutt and processed carrot seeds, large-fruit tomato seeds and other vegetable seeds market; global corn, soybean, cotton, rapeseed market and digital agricultural market.
<b>Remedies</b>	<ul style="list-style-type: none"><li>•Bayer's vegetable seeds business, non-selective herbicide business (glyphosate business), corn, soybean, cotton, rapeseed business have been divested. Divested content includes related facilities, personnel, intellectual property (including patents, proprietary technology and trademarks) and other tangible and intangible assets. (divesting intellectual property rights can promote related market competition)</li><li>•Within five years, based on fair, reasonable and non-discriminatory terms, all Chinese agricultural software application developers are allowed to connect their digital agricultural software applications to the digital agriculture platform used by Bayer, Monsanto and post-concentration entities in China, and all Chinese users are allowed to register and use digital agricultural products or applications from Bayer, Monsanto, and post-concentration entities. (Ensuring the access promotes software developers' innovation)</li></ul>

### III. Thoughts on Protecting and Encouraging Innovation through Competition Policies

1. To establish a unified and open market system with orderly competition.

2. To make the protection and encouragement of innovation an important consideration factor in the enforcement of anti-monopoly law.

3. To conduct case-by-case analysis for cases from different industries in specific law enforcement from the perspective of protecting and encouraging innovation.

