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中国反垄断法律资讯：2014年3月 China Monthly Antitrust Update: March 2014

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Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. For any questions, please kindly contact us directly.

微信公众号名称：“反垄断实务评论”

微信号：Antitrust_Review

我们致力于提供中国反垄断法最新资讯，包括法规速递、执法机关动态、行政执法、民事诉讼、中外反垄断法交流、学术研究等。提供案例解析、理论介绍、律师实务操作指南，以及原创反垄断法评论和文章，部分内容为中英文双语。欢迎您的关注。



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立法动态 Legislation

商务部发布经营者集中简易案件适用标准

2014年2月13日,商务部在网站发布公告,《关于经营者集中简易案件适用标准的暂行规定》正式实施。暂行规定仅有六个条文,主要内容是规定了简易案件的认定标准、不应视为简易案件的情形和撤销对简易案件认定的情形。恰如其名,暂行规定仅规定了简易案件的认定标准,对于简易程序的适用则只字未提。目前,商务部正在起草相关程序规定,预计在年内出台。

详细信息: <http://fldj.mofcom.gov.cn/article/ztxx/201402/20140200487001.shtml>

MOFCOM Promulgates Applicable Criteria of Streamlined Cases for Merger Control

On February 13, 2014, the Ministry of Commerce (“MOFCOM”) released that the eye-catching *Interim Provisions on the Applicable Criteria of the Streamlined Cases Regarding Concentration of Undertakings* (“*Interim Provisions*”) was officially promulgated. The *Interim Provisions* only include six articles, mainly involving identification criteria for a streamlined case, circumstances that a case shall not be deemed as a streamlined case and circumstances that MOFCOM may revoke its determination as to a streamlined case. Please kindly note that the *Interim Provisions* only provides applicable criteria of streamlined cases, no provisions related to procedures of streamlined cases are mentioned. Currently, MOFCOM is working on drafting the procedural rules which we believe will be promulgated some time later this year.

For details, please visit: <http://fldj.mofcom.gov.cn/article/ztxx/201402/20140200487001.shtml>

执法机构 Authorities

海南价格监督检查与反垄断局正式挂牌成立

2014年2月28日,海南省价格监督检查与反垄断局挂牌仪式在海口举行。海南省委常委、常务副省长谭力、国家发展改革委价格监督检查与反垄断局局长许昆林出席仪式,并共同为海南省价格监督检查与反垄断局揭牌。

详细信息: <http://www.hinews.cn/news/system/2014/02/28/016493463.shtml>

Hainan Province Inaugurates Price Supervision and Anti-Monopoly Bureau

On February 28, 2014, Price Supervision and Anti-Monopoly Bureau of Hainan Province was formally established in Haikou. The member of Standing Committee and deputy governor of Hainan Province, Mr. Tan Li, and the Director-General of Supervision and Anti-Monopoly Bureau of National Development and Reform Commission (“NDRC”), Mr. Xu Kunlin, attended the ceremony and inaugurated its establishment.

For details, please visit: <http://www.hinews.cn/news/system/2014/02/28/016493463.shtml>

商务部召开“反垄断工作”专题新闻发布会

2014年2月27日,商务部新闻办公室召开“反垄断工作”专题新闻发布会,围绕反垄断的主题向大家重点介绍商务部反垄断工作的总体情况、商务部反垄断工作的最新进展和展望,

并回答大家关心的问题。商务部反垄断局局长尚明表示，关于经营者集中附加限制性条件的规定已完成起草工作，目前正在履行内部审批手续。该规定将对限制性条件的类型、磋商、剥离资产、剥离程序、限制性条件的变更和解除、法律责任等作出全面规定，取代 2010 年 7 月发布的《关于实施经营者集中资产或业务剥离的暂行规定》。

详细信息：<http://www.mofcom.gov.cn/article/ae/slfw/201402/20140200502174.shtml>

MOFCOM Holds Special Press Conference concerning Antitrust Enforcement

On February 27, 2014, MOFCOM held a press conference to introduce the overall situation, the progress and prospect of its antitrust enforcement, and respond to questions of concern. The Director-General of Anti-Monopoly Bureau (“AMB”) of MOFCOM, Mr. Shang Ming, said that the draft of *Provisions on Imposing Remedies in the Concentration of Undertakings* has been completed and under internal approval procedure. It will include comprehensive regulation of imposing remedies concerning the types, consultation, asset of divestiture, procedure of divestiture, alteration and liability, and will fully replace the *Interim Provisions on the Divestiture of Assets or Business in the Concentration of Undertakings* issued in July, 2010.

For details, please visit: <http://www.mofcom.gov.cn/article/ae/slfw/201402/20140200502174.shtml>

国家发改委就价格监管与反垄断工作情况举行新闻发布会

2014 年 2 月 19 日，国家发改委就价格监管与反垄断工作情况举行新闻发布会，对 2013 年所调查公布的案件(其中包括正在调查的重大案件)以及 2014 年的执法部署进行了介绍和展望。价格监督检查和反垄断局局长许昆林先生，副局长张光远先生，副巡视员卢延纯先生出席了该新闻发布会。

详细信息：http://www.china.com.cn/zhibo/2014-02/19/content_31502397.htm

NDRC Holds Press Conference regarding Price Supervision and Antitrust Enforcement

On February 19, 2014, NDRC held a press conference concerning its authority of price supervision and antitrust enforcement. NDRC released updates of investigation cases (including important cases under current investigation) in 2013 and expressed outlook of enforcement activities in 2014. Officials from Price Supervision and Anti-Monopoly Bureau, including Director-General, Mr. Xu Kunlin, Deputy Director-General, Mr. Zhang Guangyuan and Deputy Inspector, Mr. Lu Yanchun attended the press conference.

For details, please visit: http://www.china.com.cn/zhibo/2014-02/19/content_31502397.htm

商务部副部长发文探讨建立全国统一市场体系

2014 年 2 月 1 日，商务部副部长姜增伟在《求是》杂志上发表专文——《市场作用发挥好 先把市场建设好》。该文首先分析了建立全国统一市场的必要性，随后全面介绍了全国统一市场体系的六个方面特征，并指出解决市场分割，必须全面深化改革，采取一揽子方案，统筹解决。

详细信息：http://www.qstheory.cn/zxdk/2014/201403/201401/t20140127_316809.htm

Vice Minister of Commerce Authors Article on Establishing Unified National Market

On February 1, 2014, *Qiushi Journal*, published an article, “The Better a Market is Established, The Better Role it Plays”, written by Mr. Jiang Zengwei, Vice Minister of Commerce. The article analyzed the necessity of establishing a unified national market, followed by a comprehensive description of

the 6 characteristics of the unified national market system, and pointed out that to address the issue of market segmentation, measures such as comprehensively in-depth reform and package arrangement had to be taken.

For details, please visit: http://www.gstheory.cn/zxdk/2014/201403/201401/t20140127_316809.htm

行政调查 Public Enforcement

发改委：尚未对汽车零部件行业立案

2014年2月19日，在国家发改委就价格监管与反垄断工作情况举行新闻发布会上，针对近年来在其他国家沸沸扬扬的汽车零部件案，国家发改委价格监督检查和反垄断局局长许昆林宣称尚未正式立案，但一直对此保持关注，并做了一些外围的调查，同时也关注其他国家在该案件上的进展。

详细信息：http://www.china.com.cn/zhibo/2014-02/19/content_31502397.htm

NDRC Chief: No Antitrust Investigation Initiated Against Auto Parts Yet

On February 19, 2014, NDRC held a press conference concerning its authority of price supervision and antitrust enforcement. As for the cartel cases of auto parts in other jurisdictions in the last few years, Mr. Xu Kunlin, Director General of Price Supervision and Anti-Monopoly Bureau of NDRC, said that no antitrust investigation initiated against auto parts in China yet. But NDRC has always been keeping an eye on the case as well as its progress in other jurisdictions, and has conducted some external probe.

For details, please visit: http://www.china.com.cn/zhibo/2014-02/19/content_31502397.htm

IDC公司向国家发改委请求中止反垄断调查

2014年2月10日，IDC公司向国家发改委提交了中止调查申请并做出了一系列承诺。国家发改委表示目前正在对这些承诺进行研究，下一步会按照法律程序作出最后的决定。

详细信息：http://news.xinhuanet.com/fortune/2014-02/10/c_119270681.htm#rd

IDC Requests NDRC to Suspend the Antitrust Investigation

On February 10, 2014, as disclosed by Price Supervision and Anti-Monopoly Bureau of NDRC, InterDigital Group (“IDC”) had requested NDRC to suspend the antitrust investigation against its suspected monopolistic conducts by making a series of commitments. NDRC said it would make a final decision after a further study of the raised commitments in accordance with Anti-Monopoly Law (“AML”).

For details, please visit: http://news.xinhuanet.com/fortune/2014-02/10/c_119270681.htm#rd

新闻联播报道高通涉嫌垄断案件 行业协会进行举报

2014年2月9日，央视《新闻联播》报道称，中国通信工业协会旗下的手机中国联盟近日向国家发改委进行举报，并递交了一份高通的商业模式损害中国手机产业的报告。手机中国联盟秘书长王艳辉对央视称，据手机中国联盟的调查，高通主要存在过度收取专利费和搭售的行为。由于国家发改委对高通涉嫌垄断案件的调查还在进行中，在此时间点，央视《新闻联播》对该调查进行报道可能意味着国家发改委将对高通进行反垄断罚款。

详细信息：<http://finance.sina.com.cn/world/mzjj/20140210/055418156556.shtml>

News Network Covers Qualcomm Antitrust Case

On February 9, 2014, News Network, the most influential news program in China Central Television (“CCTV”), reported that Mobile China Alliances, an organization under China Communications Industry Association, had submitted a report to NDRC alleging Qualcomm’s business model had damaged China’s mobile phone industry. Mr. Wang Yanhui, Secretary-General of Mobile China Alliances disclosed to CCTV that according to a survey of Mobile China Alliances, Qualcomm is believed to violate AML for collecting excessive royalties and tying. Since the antitrust investigation by NDRC on Qualcomm is still underway, the coverage of News Network at this point in time may mean NDRC is going to impose a fine on Qualcomm.

For details, please visit: <http://finance.sina.com.cn/world/mzjj/20140210/055418156556.shtml>

民事诉讼 Private Actions

最高院宣判腾讯诉奇虎不正当竞争纠纷上诉案

2014年2月24日，最高人民法院副院长奚晓明大法官担任审判长的五人合议庭对腾讯诉奇虎不正当竞争纠纷上诉案进行宣判。奚晓明大法官针对2013年12月4日公开庭审确定的五个争议焦点阐述了最高人民法院的意见，并宣布驳回奇虎公司的全部上诉请求，维持一审法院判决。此前，2013年4月25日，广东省高级人民法院对此案曾作出一审判决，奇虎公司构成不正当竞争，判令其赔偿腾讯公司500万元。

此案是最高法院审理的第一起涉及互联网领域不正当竞争的二审案件。通过该案的审理，最高人民法院澄清并确立了相关市场竞争规则，对相关互联网企业之间开展有序竞争，促进市场资源优化配置具有里程碑的意义。

详细信息: <http://www.chinanews.com/fz/2014/02-24/5876424.shtml>

Tencent Prevails Over Qihoo 360 in Milestone Anti-Unfair Competition Litigation in SPC

On February 24, 2014, Supreme People’s Court (“SPC”) released the final adjudication of Tencent’s anti-unfair competition litigation against Qihoo 360. After elaborating the SPC’s opinion on 5 issues raised in open trial on December 4, 2013, Xi Xiaomin, Vice President of SPC, adjudicated that all the requests of appeal of Qihoo 360 were rejected and the adjudication the first instance was affirmed. Previously, on April 25, 2013, Guangdong Higher People’s Court found in the case of first instance that Qihoo 360 had violated anti-unfair competition and shall compensate RMB 5 million to Tencent.

It’s noteworthy that the case is the first case of second instance heard by SPC in respect of anti-unfair competition in Internet industry. By hearing the case, the SPC clarified and established the rules of competition in the relevant market, which is a milestone for promoting the orderly competition among Internet companies and optimizing allocation of market resources.

For details, please visit: <http://www.chinanews.com/fz/2014/02-24/5876424.shtml>

最高院知识产权庭庭长挂职四川省政法委副书记

根据2014年2月19日的一则报道，最高人民法院知识产权庭庭长孔祥俊已挂职任四川省政法委副书记，挂职时间为两年。最高人民法院知识产权的主要职责包括但不限于：1、审理知识产权和竞争民事案件；2、负责对全国法院知识产权审判工作和垄断案件审判工作的调研、

指导和监督工作。

详细信息: <http://www.scdjw.com.cn/article-17494-1.html>

Chief Justice of IP Tribunal of SPC was Sent to Sichuan on Secondment

According to a report on February 19, 2014, Chief Justice of Intellectual Property (“IP”) Tribunal of SPC, Kong Xiangjun had been seconded as deputy secretary of politics and law committee of Sichuan province and the period of the secondment was 2 years. The authorities of SPC’s IP Tribunal include, without limitation: (1) hearing IP and competition civil cases; and (2) research, guidance and supervision of IP and competition trials nationwide.

For details, please visit: <http://www.scdjw.com.cn/article-17494-1.html>

学术活动 Academia

反垄断国际研讨会在海南举行

2014年2月19-21日,由中国政法大学中国国际反垄断和投资研究中心和乔治华盛顿大学法学院联合主办的国际反垄断研讨会在海南三亚举行。会议就“诉讼资格问题”、“我们所依赖的证据是否正确”、“如何界定相关市场”,“纵向价格固定与转售价格维持”等议题进行了深入讨论。最高人民法院知识产权庭庭长孔祥俊法官,美国联邦贸易委员会前主席、美国乔治华盛顿大学法学院 William Kovacic 教授、中国政法大学中国国际反垄断和投资研究中心执行主任 Frank Fine 教授和国务院反垄断委员会专家咨询组副组长、对外经济贸易大学竞争法中心黄勇教授出席了会议。

International Antitrust Workshop Held in Hainan

On February 19-21, 2014, an International Antitrust Workshop co-sponsored by China Institute of International Antitrust and Investment (“CIIAI”) of China University of Political Science and Law (“CUPL”) and George Washington Law School was held in Sanya City, Hainan Province. The meeting had an in-depth discussion on issues such as “The issue of standing to sue”, “Are we relying upon the right evidence?”, “How to define the relevant markets?” and “Vertical price-fixing and resale price maintenance”. Kong Xiangjun, Chief Justice of IP Tribunal of SPC, Prof. William Kovacic, Former Chairman of Federal Trade Commission and Director of the Competition Law Center of George Washington Law School, Prof. Frank Fine, Executive Director of CIIAI of CUPL and Prof. Huang Yong, Vice Chair of the Expert Advisory Board of the State Council Anti-Monopoly Commission attended the meeting.

团队动态 Dacheng Team

邓志松律师在《国际竞争政策》发表专文 讨论新《消法》对反垄断民事诉讼的影响

2014年2月11日,大成律师事务所合伙人律师邓志松博士与对外经济贸易大学博士生宁度先生联名在《国际竞争政策》反垄断年鉴(CPI Antitrust Chronicle)发表专题论文“The Impact of the Newly Revised Consumer Protection Law on Private Antitrust Enforcement in China”。该文指出,新《消费者权益保护法》确立了消费者协会可以以自己的名义提起针对损害社会公共

利益行为的“公益诉讼”制度，将极大刺激反垄断集团诉讼的发展，并将成为连接反垄断行政执法的桥梁，最终对整个中国反垄断民事诉讼产生深远影响。

详细信息：<https://www.competitionpolicyinternational.com/chronicle>

Jet Deng Authors an Article for CPI Antitrust Chronicle on New Consumer Protection Law and Private Antitrust Enforcement

On February 11, 2014, Competition Policy International Antitrust Chronicle (“**CPI Antitrust Chronicle**”) published an article, “The Impact of the Newly Revised Consumer Protection Law on Private Antitrust Enforcement in China” co-written by Dr. Jet Deng, partner of Dacheng Law Offices and Du Ning, PhD candidate at the University of International Business and Economics. The article believes that the “Public Interest Litigation”, established by the newly revised *Law on the Protection of Consumer Rights and Interests*, which will take effect on March 15, 2014, (“**New Consumer Protection Law**”), that a consumer association could brought an action against conducts detrimental to the public interest in its own name, will greatly stimulate the development of antitrust class action, function as bridge to connect public with private antitrust enforcement, and hence have significant impact on private antitrust enforcement in China.

For details, please visit: <https://www.competitionpolicyinternational.com/chronicle>

大成律师事务所被 ACQ 杂志评为 2013 年度中国竞争律师事务所

由于在反垄断和竞争法方面的杰出实务经验，大成律师事务所被国际知名杂志 ACQ (Acquisition Finance) 评为 2013 年度中国竞争律师事务所，再次印证了大成反垄断服务团队的国际影响。ACQ 创刊 11 年以来，为全球超过 106,000 名高层管理人员提供服务，是并购咨询方面的领先杂志。

Dacheng Law Offices is Awarded China - Competition Law Firm of the Year 2013 by ACQ

Due to its outstanding practical experience regarding antitrust/competition law, Dacheng Law Offices was awarded China - Competition Law Firm of the Year 2013 by globally renowned magazine ACQ (Acquisition Finance), demonstrating the global influence of Dacheng Antitrust Team. Over the last 11 years, ACQ magazine has firmly established itself as the leading monthly title for the M&A advisory community, requested by over 106,000 senior executives in the market.