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## 中国反垄断法律资讯：2014年4月 China Monthly Antitrust Update: April 2014

本资讯仅提供一般性信息，因此不应被视作某种形式的法律建议。如果您有任何具体问题，请与我们联系。

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.

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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

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### 商务部讨论经营者集中简易案件适用程序草案

2014年3月17日，商务部在北京召开研讨会，讨论了《关于经营者集中简易案件申报的指导意见》（草案）。这是继2014年2月12日发布《关于经营者集中简易案件适用标准的暂行规定》之后，商务部进行有关简易案件配套程序的立法工作。

### MOFCOM Deliberates Draft Procedural Rules of Streamlined Cases for Meger Control

On March 17, the Ministry of Commerce (“MOFCOM”) held a seminar in Beijing to discuss the draft procedural rules of streamlined cases for merger control. On February 12, MOFCOM had promulgated its *Interim Provisions on the Applicable Criteria of the Streamlined Cases Regarding Concentration of Undertakings*.

### 两会代表热议反垄断法 建议取消反垄断审查对 VIE 的限制

2014年3月2-13日，全国人民代表大会和中国人民政治协商会议在北京举行，多位全国人大代表和全国政协委员就包括经营者集中审查、行政垄断、滥用市场支配地位在内的诸多反垄断问题发表了自己的观点和看法。其中，全国政协委员袁亚非建议取消反垄断审查对 VIE 的限制，并建议商务部制定更加宽松的政策。

详细信息：<http://news.12371.cn/2014/03/08/ARTI1394230485087414.shtml>

### Chinese Legislators Discuss VIE Issue and Merger Control

On March 2-13, 2014, National People's Congress (“NPC”) and Chinese People's Political Consultative Conference (“CPPCC”) were held in Beijing. Many representatives of NPC and members of CPPCC delivered their views and opinions on anti-monopoly issues such as anti-monopoly review of concentration of undertakings, administrative monopoly and abuse of dominance. Among them, Yuan Yafei, a member of CPPCC, proposed that the restriction of anti-monopoly review of concentration of VIE entities shall be abolished and a more easing policy shall be formulated by MOFCOM.

For details, please visit: <http://news.12371.cn/2014/03/08/ARTI1394230485087414.shtml>

## 执法机构 Authorities

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### 发改委反垄断局官员发文探讨滥用知识产权反垄断规制

2014年3月19日，国家发展改革委价格监督检查与反垄断局卢延纯副巡视员和刘健先生联名在《法制日报》发表专文《滥用知识产权反垄断规制刍议》，从宏观层面剖析反垄断法与知识产权制度的基本关系，在理论层面探寻滥用知识产权反垄断规制的理论基础，并提出滥用知识产权反垄断规制应当秉持的原则。

详细信息：[http://www.legaldaily.com.cn/bm/content/2014-03/19/content\\_5373442.htm?node=20740](http://www.legaldaily.com.cn/bm/content/2014-03/19/content_5373442.htm?node=20740)

### Officials of NDRC Author Article on Anti-Monopoly Regulation on Abuse of IPR

On March 19, 2014, *Legal Daily* published an article, “Attempting Discussion on Anti-monopoly

*Regulation on Abuse of Intellectual Property Right*”, co-written by Mr. Lu Yanchun, Vice Director-General of Price Supervision and Anti-Monopoly Bureau of National Development and Reform Commission (“**NDRC**”) and Mr. Liu Jian, another official from the agency. The article analyses the basic relationship between Anti-Monopoly Law (“**AML**”) and intellectual property right (“**IPR**”) from a macro perspective, probes the theoretical basis of anti-monopoly regulation on abuse of IPR and puts forward several principles that should be upheld in relevant law enforcement.

For details, please visit:

[http://www.legaldaily.com.cn/bm/content/2014-03/19/content\\_5373442.htm?node=20740](http://www.legaldaily.com.cn/bm/content/2014-03/19/content_5373442.htm?node=20740)

### 发改委反垄断局局长：关注打车软件价格战后续发展

2014年3月7日，中国国家发展和改革委员会价格监督检查与反垄断局局长许昆林在接受采访时表示，会关注打车软件竞争的后续发展，如果这种竞争损害到消费者利益，反垄断机构将出手调查和处罚。

详细信息：<http://finance.chinanews.com/auto/2014/03-07/5926226.shtml>

### NDRC Competition Chief: Watches Subsequent Development of Taxi Software Price War

On March 7, 2014, Mr. Xu Kunlin, Director General of Price Supervision and Anti-Monopoly Bureau of NDRC said in an interview that NDRC will pay attention on the subsequent development of competition in Taxi software industry and once such competition impairs the consumer welfares, the Anti-Monopoly Enforcement Agency (“**AMEA**”) will investigate and punish against relevant violations.

For details, please visit: <http://finance.chinanews.com/auto/2014/03-07/5926226.shtml>

## 行政调查 Public Enforcement

### 巴西世界杯门票销售涉嫌垄断 工商总局调查盛开国际

2014年3月19日，央视《焦点访谈》栏目披露，作为获国际足联授权的2014巴西世界杯官方票务计划大中华区唯一代理机构，盛开国际体育公司捆绑销售2014巴西世界杯门票的行为涉嫌违反反垄断法等法律，国家工商总局已经介入调查。

详细信息：<http://sports.people.com.cn/n/2014/0320/c22176-24689600.html#rd>

### SAIC Probes Brazil World Cup Ticket Selling

On Mar 19, 2014, “Topics in Focus”, a famous program of China Central Television (“**CCTV**”), disclosed that, as the exclusive sales agent of hospitality packages of 2014 FIFA World Cup Brazil in Greater China authorized by Federation International Football Association (“**FIFA**”), Shankai Sports International Company was alleged to violate AML for bundling sales and the State Administration of Industry and Commerce (“**SAIC**”) had launched relevant investigation.

For details, please visit: <http://sports.people.com.cn/n/2014/0320/c22176-24689600.html#rd>

### 工商总局局长：利乐公司反垄断调查案取得阶段性成果

2014年3月5日，国家工商总局局长张茅表示，对利乐公司反垄断调查案，目前在各方的大力支持下，调查工作进行比较顺利，并且已经取得阶段性结果，整个调查完成后，会向社会

公布调查结果。

详细信息: <http://gb.cri.cn/42071/2014/03/05/6071s4449236.htm>

### Minister of SAIC: Tetra Pak Investigation Made Progress

On March 7, 2014, Mr. Zhang Mao, Minister of SAIC disclosed that the anti-monopoly investigation on Tetra Pak, receiving supports from all sectors of society, goes smoothly and has made substantial progress so far.

For details, please visit: <http://gb.cri.cn/42071/2014/03/05/6071s4449236.htm>

## 经营者集中 Merger Control

### 商务部将自 5 月 1 日起公布未依法申报经营者集中调查案件

2014 年 3 月 20 日, 商务部官方发布信息, 商务部决定将对 2014 年 5 月 1 日后立案调查的未依法申报经营者集中案件, 通过商务部网站向社会公布行政处罚决定。此前商务部于 2012 年 2 月 1 日开始实施《未依法申报经营者集中调查处理暂行办法》, 但尚未公布一起未申报经营者集中案件。

详细信息: <http://www.mofcom.gov.cn/article/ae/ai/201403/20140300524145.shtml>

### MOFCOM To Publicize Non-Notification Investigations from May 1<sup>st</sup>

On March 20, 2014, MOFCOM had announced that from May 1<sup>st</sup> it will publicly reveal fines and sanctions issued to merger parties who fail to notify a merger that passes the thresholds through its official website. Before, although *Provisional Measures on Investigating and Sanctioning the Failure to File Concentration between Undertakings According to Law* took effect at February 1<sup>st</sup>, 2012, no non-notification investigation has been revealed yet.

For details, please visit: <http://www.mofcom.gov.cn/article/ae/ai/201403/20140300524145.shtml>

## 学术活动 Academia

### 第八届中欧竞争周在京举行

2014 年 3 月 10-14 日, 商务部、国家发改委、国家工商总局与欧盟委员会竞争总司在北京联合举办第八届中欧竞争周活动。中国三大反垄断执法机构负责人、欧盟竞争总司执法官员、国务院反垄断委员会专家、跨国企业代表以及知名律所律师等 200 余人参加了本次活动。

3 月 10 日, 商务部反垄断局与欧盟委员会竞争总司共同举办研讨会, 会议围绕商务部将在近期出台的“《关于经营者集中附加限制性条件的规定》(征求意见稿)”, 就限制条件的确定、实施和监督等问题展开讨论。

3 月 11-12 日, 国家发改委价格监督检查与反垄断局与欧盟委员会竞争总司共同举办研讨会, 分别就社会普遍关注的汽车行业和在线零售行业所涉及的反垄断问题进行交流。

3 月 13-14 日, 国家工商总局竞争执法局与欧盟委员会竞争总司共同举办研讨会, 会议围绕“反垄断行政调查程序”的议题进行了全面深入探讨。

中欧竞争周活动是“中国-欧盟世贸项目二期”的重要议程之一, 根据中欧双方协议, 每年举行两次, 最近一次活动于 2013 年 10 月在云南昆明举行。

详细信息: [http://www.saic.gov.cn/ywdt/gsyw/sjgz/xxzx\\_1/201403/t20140319\\_143106.html](http://www.saic.gov.cn/ywdt/gsyw/sjgz/xxzx_1/201403/t20140319_143106.html)

### **The Eighth EU-China Competition Week Held in Beijing**

On March 10-14, 2014, the eighth *EU-China Competition Week* was jointly hosted by MOFCOM, NDRC, SAIC and DG Competition of European Commission (“**DG COMP**”) at Beijing. More than 200 officials of authorities, experts, representatives of enterprises and lawyers from China and EU attended the event.

On March 10, 2014, the Anti-Monopoly Bureau (“**AMB**”) of MOFCOM and DG COMP co-held a workshop, deliberating, around the draft of *Provisions on Imposing Restrictive Conditions on the Concentration of Undertakings*, the issues such as the determination, implementation and supervision of imposing restrictive conditions.

On March 11-12, 2014, Price Supervision and Anti-Monopoly Bureau of NDRC and DG COMP co-held a workshop, discussing anti-monopoly issues in automotive sectors and online retail industry.

On March 13-14, 2014, Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau (“**Competition Enforcement Bureau**”) of SAIC and DG COMP co-held a workshop and gave a comprehensive discussion around the issue of “procedure of anti-monopoly administrative investigation”.

*EU-China Competition Week* is an important agenda of *EU-China Trade Program II* and, in accordance of relevant agreements, is held twice each year. The previous activity was held in October 2013 at KunMing City, Yunnan Province.

For details, please visit: [http://www.saic.gov.cn/ywdt/gsyw/sjgz/xxzx\\_1/201403/t20140319\\_143106.html](http://www.saic.gov.cn/ywdt/gsyw/sjgz/xxzx_1/201403/t20140319_143106.html)

### **中保协召开保险业反垄断工作研讨会**

2014年3月14日,中国保险行业协会在北京召开保险业反垄断工作研讨会。国家发展改革委反垄断局副局长李青、中保协会会长朱进元、中国保监会有关部门官员和国内高校知名学者共25人参加了会议。

详细信息: [http://www.iachina.cn/content\\_0b2c768c-adb5-11e3-8572-adccf566216f.html](http://www.iachina.cn/content_0b2c768c-adb5-11e3-8572-adccf566216f.html)

### **China Insurance Association Hosts Anti-Monopoly Workshop**

On March 14, 2014, Insurance Association of China held a Workshop on Anti-Monopoly in Insurance Industry. 25 people, including Ms. Li Qing, Vice Director-General of Price Supervision and Anti-Monopoly Bureau of NDRC, Mr. Zhu Jinyuan, Chairman of Insurance Association of China, officials from China Insurance Regulatory Commission and scholars attended the meeting.

For details, please visit: [http://www.iachina.cn/content\\_0b2c768c-adb5-11e3-8572-adccf566216f.html](http://www.iachina.cn/content_0b2c768c-adb5-11e3-8572-adccf566216f.html)

### **中国外商投资企业协会举办《反垄断法》讲座**

2014年3月13日,中国外商投资企业协会举办《反垄断法》专题讲座。会议分别就中国《反垄断法》的主要内容、经营者集中申报程序及要求以及反不正当竞争法的立法与实践等内容进行了讨论。中国外商投资企业协会李玲副会长、商务部反垄断局监察执法处叶军处长和来自不同领域的外商投资企业和机构逾90位代表参加了会议。

详细信息: <http://caefi.mofcom.gov.cn/article/cz/huiyuan/201403/20140300516855.shtml>

### CAEFI Holds AML Seminar

On March 13, 2014, the China Association of Enterprises with Foreign Investment (“CAEFI”) held a seminar on AML, discussing the main content of AML, the procedure of notification of concentration of undertakings and the legislation and practice of *Anti-Unfair Competition Law*. More than 90 people, including Ms. Li Ling, Vice Chairwoman of CAEFI, Mr. Ye Jun, Director of AMB of MOFCOM and representatives of foreign-funded enterprises and organization in various sectors attended the meeting.

For details, please visit: <http://caefi.mofcom.gov.cn/article/cz/huiyuan/201403/20140300516855.shtml>

## 团队动态 Dacheng Team

### 戴健民律师与邓志松律师在《电子知识产权》发表专文讨论高通反垄断调查案件

《电子知识产权》2014年3月刊发表了戴健民律师与邓志松律师的文章，题目是《风起于青萍之末：高通反垄断案述评》，从专业角度讨论了国家发改委对于高通的反垄断调查案件。这一案件因为涉及专利和外企，以及可能的巨额罚款而广受关注。本文从政府机构、行业参与者以及其他反垄断法域等多方角度，分析这一案件背后的博弈。如欲获知文章详情，请与我们联系。

### Ken Dai and Jet Deng Co-Author Article on Electronics Intellectual Property Discussing Antitrust Investigation into Qualcomm

The March 2014 issue of *Electronics Intellectual Property* published an article co-authored by Ken Dai and Jet Deng, “*Commentary on Qualcomm Antitrust Case*”, which professionally introduces the antitrust investigation into Qualcomm by NDRC. The case involves IP, a foreign company, as well as potential huge penalty, and consequently arouses wide-spread attention. This article analyzes the game beneath the case from perspectives of government agencies, industry subjects and other jurisdictions. Please contact us if the article interests you.

### 邓志松律师接受《中国工商报》专访 剖析互联网不正当竞争中的损害赔偿问题

2014年3月18日，北京大成律师事务所邓志松律师接受《中国工商报》专访，就互联网行业反不正当竞争案件损害赔偿范围问题进行剖析。邓志松律师结合互联网行业特性，对损害赔偿范围的基本分类和各国关于赔偿范围的规定进行了介绍，指出中国《反不正当竞争法》应考虑互联网竞争生态的特性，明确将商誉损失列为法定损害项目。

详细信息：[http://www.cicn.com.cn/content/2014-03/18/content\\_138452.htm](http://www.cicn.com.cn/content/2014-03/18/content_138452.htm)

### Jet Deng Delivers Views on Unfair Competition Issue in Internet Industry on China Industry & Commercial News’s Exclusive Interview

On March 18, 2014, Jet Deng, Partner of Dacheng Beijing Office, took exclusive interview by *China Industry & Commercial News* and aired his professions opinions on the scope of damages in anti-unfair competition cases involving Internet industry. Combined with the characteristics of Internet sector, Jet Deng gave a comprehensive introduction of the basic classification of the scope of damages and the applicable laws on the scope of damages in Germany and Japan and pointed out that *Anti-Unfair Competition Law* should give consideration on the features of competition in Internet industry and list compensation of Goodwill loss as one of the statutory

damages.

For details, please visit: [http://www.cicn.com.cn/content/2014-03/18/content\\_138452.htm](http://www.cicn.com.cn/content/2014-03/18/content_138452.htm)

### 邓志松律师接受《中国工商报》采访 就腾讯与奇虎 360 不正当竞争上诉案发表观点

2014 年 3 月 5 日，北京大成律师事务所邓志松律师接受《中国工商报》采访，就腾讯与奇虎 360 不正当竞争上诉案发表观点。邓志松律师指出，我国《反不正当竞争法》将侵权人造成的“损害”界定为权利人的实际损失，但具体是哪些损害，在《反不正当竞争法》及司法解释中都没有明确作出规定，有可能导致实际赔偿不足。

详细信息: [http://www.cicn.com.cn/content/2014-03/05/content\\_137820.htm](http://www.cicn.com.cn/content/2014-03/05/content_137820.htm)

### Jet Deng Airs Views of Tencent v. Qihoo Unfair Competition Appeal Case on China Industry & Commercial News

On March 5, 2014, Jet Deng, Partner of Dacheng Beijing Office, took interview by *China Industry & Commercial News*, and pointed out that *Anti-Unfair Competition Law* defines the “loss” caused by the infringer as “actual loss” of injured party and has no specific rules to clear what kind of loss should be included in the “actual loss”, which may lead to insufficient compensation.

For details, please visit: [http://www.cicn.com.cn/content/2014-03/05/content\\_137820.htm](http://www.cicn.com.cn/content/2014-03/05/content_137820.htm)