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## 中国反垄断法律资讯：2015 年 4 月 China Monthly Antitrust Update: April 2015

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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.

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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

### 人大代表提案修改反垄断法并增加入刑条款

3月5日，全国人大代表樊芸代表在议案中提出，应该修改反垄断法，增加入刑条例。2008年颁布的反垄断法中，只有不提供材料，回避检查者才有入刑责任，而对涉及到垄断的行为没有入刑责任，这种打击力度远远不够。

### NPC Member Proposes Amending AML and Regulating Monopoly Conduct through Criminal Law

On March 5, 2015, Fan Yun, a member of National People's Congress ("NPC") proposed that the Anti-monopoly Law ("AML") should be amended and the monopoly conduct should be regulated through Criminal Law. According to the AML enacted in 2008, law breakers had to face criminal penalty only when refusing to provide relevant materials or escaping from the investigation, while the person who conduct monopoly behavior would not face the criminal penalty. The sanction force of AML is far from enough.

## 执法机构 Authorities

### 社科院发布法治蓝皮书：反垄断执法体制走向完善

2015年3月18日，由中国社会科学院法学研究所、社会科学文献出版社联合主办的“2015年《法治蓝皮书》发布暨中国法治发展与展望研讨会”在北京举行，并发布了《近年商品领域反价格垄断执法工作分析报告》（“《报告》”）。《报告》指出，反垄断执法体制走向完善。法治蓝皮书指出，反价格垄断执法的法律规范日益健全。今后发展改革委将进一步加强反价格垄断工作，致力于维护公平竞争的市场秩序，保护消费者利益；进一步加强反垄断法律宣传，推进案件公开。同时，也将充分听取和吸收各方面的意见和建议，研究完善有关反价格垄断制度。

### CASS Releases 2015 Blue Book of Rule of Law: The Anti-monopoly Enforcement System Is Being Improved

On March 18, 2015, Seminar on the Release of 2015 Blue Book of Rule of Law and Development of Rule of Law of China was held in Beijing, co-hosted by Institute of Law of Chinese Academy of Social Sciences ("CASS") and Social Science Academic Press. On the seminar, the *Report on the Analysis of Anti-price Monopoly in the Commodity Market in Recent Years* ("the Report") was released. The Report pointed that the anti-monopoly system is being improved gradually. The Blue Book pointed out that the rules of anti-monopoly enforcement would be perfected gradually. In the future, NDRC will further strengthen the enforcement on anti-price monopoly in order to maintain market order of fair competition and protect the benefit of customers. At the same time, NDRC will reinforce the advocacy of AML and carry forward the case publicity. Meanwhile, NDRC will solicit comments and advises from the public and perfect the anti-price monopoly system.

**工商总局：共立案调查 47 件案件**

3 月 9 日，在全国在十二届全国人大三次会议记者会上，国家工商行政管理总局局长张茅表示，国家工商行政管理总局的职责是对于企业滥用市场支配地位，排除、限制竞争等垄断行为进行调查和处理。到 3 月 9 号为止，全国工商系统共立案调查了 47 件垄断案件，有 21 件已经结案，其他正在调查中。

**SAIC Initiates a Total of 47 Cases**

On March 9, 2015, on the press conference of Third Session of the Twelfth National People's Congress, Zhang Mao, the Director General of the State Administration for Industry and Commerce ("SAIC"), expressed that the responsibility of SAIC is to investigate and punish enterprises' monopoly conduct of abusing market dominant position and eliminating or restricting competition. Up to March 9, 2015, the administration for industry and commerce system had initiated investigations on 47 monopoly cases, 21 of which were terminated while the rest remained under investigation.

**国家发改委：2015 年将强化价格监管和反垄断执法**

2015 年 3 月 5 日第十二届全国人民代表大会第三次会议上，国家发改委将《2014 年国民经济和社会发展计划执行情况》与《2015 年国民经济和社会发展计划草案》提请十二届全国人大三次会议审议。在反垄断工作方面，国家发改委总结了 2014 年查处价格违法案件 2.5 万件，实施经济处罚 44.7 亿元，加强市场价格监管和反垄断执法的工作执行情况后，提出 2015 年总体要求、主要目标和政策取向，将加快推进价格改革，强化价格行为监管和反垄断执法，促进市场主体公平竞争。

**NDRC to Strengthen Price Supervision and Antitrust Enforcement in 2015**

On March 5, 2015, on Third Session of the Twelfth National People's Congress, National Development and Reform Commission ("NDRC") submitted *Implementation of the Plan for National Economic and Social Development in 2014* and *The Draft Plan for National Economic and Social Development in 2015* to the Congress for deliberation. In the aspect of anti-monopoly, NDRC summarized that it investigated and punished more than 25,000 cases, imposed fines of 4.47 billion yuan and strengthened price supervision and anti-monopoly enforcement in 2014. Then NDRC raised the general requirements, major goals and policy orientations in 2015, which includes accelerating the process of the reform of price and reinforcing price supervision and anti-monopoly enforcement, therefore promoting fair competition in the market.

**海南：着力提升价格监管与反垄断成效**

2014 年，海南省共查处价格违法案件 130 件，实施经济制裁 3760.359 万元。2015 年，海南省发改委价监局的工作中心包括：突出市场整治；加强反价格垄断工作，助力维护市场竞争秩序；做好价格举报工作；建立人才专家库，助力提高执法水平。

**Hainan Focuses on Increasing Its Authority of Price Supervision and Antitrust Enforcement**

In 2014, Price Supervision and Anti-Monopoly Bureau of Hainan investigated and punished 130 anti-price monopoly cases in total, imposing economic sanctions of more than 37.6 million yuan. In 2015, the work of Price Supervision and Anti-Monopoly Bureau of Hainan will focus on

renovating the market, strengthening the work of anti-price monopoly and maintaining the order of the market competition, well dealing with the report relating to price and establishing the talents and experts base to assist improving the level of enforcement.

### 陕西省工商局：今年重点整治电信、水电气垄断行为

2014 年，陕西省工商全系统共受理消费者投诉、举报 23.81 万件，办复率 99.5%，为群众挽回损失 3062.43 万元。2015 年，陕西省工商局今年将开展电信行业的专项整治，继续开展反垄断执法，整治供水、供电、供气垄断行为和银行业利用格式合同条款加重消费者责任的行为。

### Shanxi AIC Focuses on Monopoly Conducts in Telecom Industry and the Industry of Water, Electricity and Gas in 2015

In 2014, Shanxi Provincial Administration for Industry and Commerce ("AIC") received a total number of 238,000 complaints and reports from customers and solved 99.5% of them, having recovered the damage of 30.6243 million yuan for customers. In 2015, Shanxi AIC will initiate specific rectification among telecom industry and carry out the anti-monopoly enforcement renovating the industry of water, electricity, gas supply and the conduct of imposing burden on customers by format clauses in bank industry.

## 行政调查 Public Enforcement

### 国家发改委发布山东省行政垄断案件处理结果

3月27日，国家发改委价监局发布山东省行政垄断案件处理结果。国家发改委根据举报，依法对山东省省交通运输厅排除和限制了监控平台市场和车载终端市场的竞争的案件进行了调查。依据《反垄断法》相关规定，国家发改委向山东省人民政府办公厅发出执法建议函，建议其责令交通运输厅改正相关行为，维护公平竞争的市场秩序。这是发改委继去年9月处理河北省行政垄断案件后，第二次建议地方政府纠正行政垄断案件。

详细信息：

[http://jjs.ndrc.gov.cn/fjgld/201503/t20150327\\_668911.html?gs\\_ws=weixin\\_635630734317286254&from=timeline&isappinstalled=0#rd](http://jjs.ndrc.gov.cn/fjgld/201503/t20150327_668911.html?gs_ws=weixin_635630734317286254&from=timeline&isappinstalled=0#rd)

### NDRC Issues the Decision of the Administrative Anti-monopoly Case in Shandong

On March 27, 2015, Price Supervision and Anti-Monopoly Bureau of NDRC published the decision of the administrative anti-monopoly case in Shandong. According to a report, NDRC conducted an investigation to the Department of Transportation in Shandong of its suspicious conduct of eliminating and restricting competition in the market of monitoring platform and vehicle terminal. Pursuant to the relevant provisions of AML, NDRC issued an enforcement advice letter to the general office of the Shandong Provincial People's Government and advised the latter to order the Department of Transportation to correct the relevant conducts and maintain market order of fair competition. This was the second time that NDRC advised provincial government to correct administrative monopoly behavior after the administrative monopoly case of Hebei in September 2014.

For details, please visit:



[http://jjs.ndrc.gov.cn/fjgld/201503/t20150327\\_668911.html?gs\\_ws=wxweixin\\_635630734317286254&from=timeline&isappinstalled=0#rd](http://jjs.ndrc.gov.cn/fjgld/201503/t20150327_668911.html?gs_ws=wxweixin_635630734317286254&from=timeline&isappinstalled=0#rd)

### 国家发改委公布高通反垄断案件处罚决定全文

3月2日，国家发改委公布高通反垄断案件处罚决定全文，认定高通实施了滥用市场支配地位的行为，收取不公平的高价专利许可费，没有正当理由搭售非无线通信标准必要专利许可，并在基带芯片销售中附加不合理条件。发改委责令高通停止滥用市场支配地位的违法行为并处其2013年度在中华人民共和国境内销售额8%的罚款，计60.88亿元人民币。

详细信息：[http://jjs.ndrc.gov.cn/fjgld/201503/t20150302\\_666170.html#rd](http://jjs.ndrc.gov.cn/fjgld/201503/t20150302_666170.html#rd)

### NDRC Publishes the *Decision of Administrative Penalty on Qualcomm*

On March 2, 2015, NDRC Published the full text of *Decision of Administrative Penalty on Qualcomm*, identifying Qualcomm abusing its market dominant position by charging unfairly high patent royalties, tying in sales of non-wireless SEPs without justified reasons and imposing unfair terms on sales of baseband chips. NDRC ordered Qualcomm to stop its abuse of market dominant position and imposed a fine of 8% of its Chinese sales in 2013, totaling CNY 6.088 billion yuan.

For details, please visit: [http://jjs.ndrc.gov.cn/fjgld/201503/t20150302\\_666170.html#rd](http://jjs.ndrc.gov.cn/fjgld/201503/t20150302_666170.html#rd)

## 经营者集中 Merger Control

### 商务部三月份公布 23 起简易案件

截至2015年3月31日，商务部三月份在其网站上公布的简易案件数量达到23起，简易案件总量达134起。

详细信息：<http://fldj.mofcom.gov.cn/article/jyzjzjyajs/>

### MOFCOM Releases 23 Streamlined Cases in March

Up to March 31, 2015, the Ministry of Commerce (“MOFCOM”) released 23 streamlined cases in March on its website, with total amount reaching 134 so far.

For details, please visit: <http://fldj.mofcom.gov.cn/article/jyzjzjyajs/>

## 民事诉讼 Private Actions

### 行政垄断司法判决首例：广东省教育厅指定赛事软件一审被判违法

2月2日，广州市中级人民法院对深圳市斯维尔科技公司诉广东省教育厅涉嫌行政垄断一案作出一审判决，判决广东省教育厅违反反垄断法的规定，在“工程造价基本技能赛项”比赛中，指定广联达股份软件有限公司软件为独家参赛软件。在这是国内首例对行政垄断的行政诉讼。

## First Judicial Decision on Administrative Monopoly: Department of Education of Guangdong Province Violates AML by Assigning Software Used in the Competition

On February 2, 2015, Guangzhou Intermediate People's Court ruled on Shenzhen Tsinghua Software Hi-Tech Co., Ltd. ("THSWARE") vs. Department of Education of Guangdong Province for administrative monopoly in favor of THSWARE. The court held the view that Department of Education of Guangdong Province violated AML by assigning Glodon Software Company as exclusive software company to take part in the Competition of Basic Skills of Engineering Cost. This is the first judicial decision on administrative monopoly in China.

## 学术动向 Academia

### 中国社会科学院美国研究所在京举办反垄断与知识产权研讨会

2015年3月21日,中国社会科学院美国研究所在北京唐拉雅秀酒店举办反垄断与知识产权研讨会。国家发改委价格监督检查与反垄断局局长张汉东、中国社会科学院美研究所所长郑秉文出席会议并致辞。来自法院、执法机关的官员代表、社科院和各大学法学院的专家学者就知识产权的反垄断实践、专利许可、FRAND原则与标准必要专利许可费的计算等问题进行了主题发言并展开讨论。

### Institutes of American Studies of CASS holds Anti-monopoly and IPR Seminar in Beijing

On March 21, 2015, Institutes of American Studies of Chinese Academy of Social Sciences ("CASS") held Anti-monopoly and IPR seminar in Beijing Tang La Ya Xiu Hotel. Mr. Zhang Han Dong, Director General of the Price Supervision and Anti-Monopoly Bureau ("PSAMB") of NDRC and Mr. Zhen Bing Wen, Director of Institutes of American Studies of CASS attended the seminar and delivered speeches. The officials from courts and enforcement authorities, the experts and scholars from CASS and universities came together to address the key note speeches and discussion around the topics of anti-trust practice of IPR area, patent license, FRAND principle and the calculation of royalty fee of SEP.

### 中欧反垄断研讨会在京举行

2015年3月16日,商务部反垄断局与欧盟竞争总司在京举办中欧竞争政策周反垄断研讨会。反垄断局郑文副局长出席会议并致辞。来自欧盟、英国等竞争执法机构的官员参加会议。中欧双方围绕经营者集中审查中的控制权及知识产权等问题介绍了相关情况并展开讨论。

详细信息:

<http://fldj.mofcom.gov.cn/article/xxfb/201503/20150300913159.shtml#rd?sukey=9d9133d184f6d8b10d206c5a30fae6134744137ef489418cafaba58489044f0242ab5e6a6fc47daf6f688d993c4e8ce4>

### EU-China Antitrust Seminar Held in Beijing

On March 16, 2015, Anti-monopoly Bureau ("AMB") of MOFCOM and the European Commission-Competition held Antitrust Seminar of EU-China Competition Policy Week in Beijing. Mr. Zheng Wen, Deputy Director General of the AMB of MOFCOM, attended the seminar and delivered a speech. Officials from the competition enforcement authorities of EU, UK and etc. attended the meeting. Experts from EU and China made the introduction and discussion around several issues, including the control of the notification of concentration of undertakings and



intellectual property right.

For details, please visit:

<http://fldj.mofcom.gov.cn/article/xxfb/201503/20150300913159.shtml#rd?sukey=9d9133d184f6d8b10d206c5a30fae6134744137ef489418cafaba58489044f0242ab5e6a6fc47daf6f688d993c4e8ce4>

## 团队动态 Dacheng Team

### 邓志松律师为对外经贸大学法学院学生做“反垄断案例研究”专题讲座

3月26日, 应对外经贸大学法学院邀请, 大成反垄断团队邓志松律师为法学院的学生就“反垄断案例研究”的专题进行了授课。邓志松律师着重就高通滥用市场支配地位案和奇虎360诉腾讯垄断案中“界定相关市场”、“识别市场支配地位”、“识别滥用支配市场地位行为”、以及“分析滥用行为对市场竞争的影响”这四个关键环节进行了详尽的分析和介绍。

### Jet Deng Gives a Keynote Speech in the Law School of University of International Business and Economics

On March 26, Jet Deng, the partner of Dacheng Antitrust Team was invited by the Law School of University of International Business and Economics and gave a lecture on the topic of “Research on antitrust cases”. The lecture gave specific introduction and analysis on four key stages in the antitrust case of Qualcomm abusing its market dominant position and Qihoo 360 vs. Tencent antitrust case. The four stages were “identifying the relevant market”, “identifying the market dominant position”, “identifying the abuse of market dominant position” and “analyzing on the effect of the abusing conduct on market competition”.

### 戴健民律师应邀参加全球竞争法论坛并发表专题演讲

3月25日, 大成反垄断团队戴健民律师应邀赴土耳其出席全球竞争法论坛(Global Competition Law Forum), 并以英文发表题为Antitrust enforcement on Sep in China: Anatomy of landmark Qualcomm Case的专门演讲。同时, 戴健民律师也作为中国的反垄断法专家, 参加小组讨论, 与来自土耳其、欧盟等地区的专家交流反垄断法在中国的快速发展, 包括但不限于卡特尔调查, 经营者集中的反垄断审查, 滥用市场支配地位, 反垄断民事诉讼, 以及知识产权与反垄断的交叉领域。本次全球性论坛面向土耳其和中东地区, 有15位竞争法领域的专家在论坛中发言。

### Ken Dai Attends Global Competition Law Forum and Gives a Keynote Speech

On March 25, Ken Dai, the partner of Dacheng Antitrust Team was invited to participate in Global Competition Law Forum in Turkey and delivered an keynote speech named *Antitrust enforcement on Sep in China: Anatomy of landmark Qualcomm Case*. Ken Dai also took part in the group discussion with experts from Turkey, EU and other regions, exchanging views on the rapid development of antitrust law in China. The topics included but not limited to Cartel investigation, the antitrust notification of concentration of undertakings, abusing market dominant position, antitrust civil lawsuits and the crossing field between Intellectual property right and antitrust law. This global forum was opened to Turkey and the Middle East area, in which 15 competition law experts gave speeches.

**国家发改委发感谢信高度肯定邓志松律师在高通反垄断调查中的专业贡献**

2015 年 3 月 10 日，国家发改委价格监督检查与反垄断局给大成律师事务所发来感谢信，表示邓志松律师为高通案件研究论证和处理提供了大量有益的专家意见和建议，高度肯定其作出的重要贡献。

详细信息：<http://www.dachengnet.com/cn/news/dachengNews/34050.html>

**NDRC Sends “Letter of Acknowledgment” to Highly Appreciate Jet Deng’s Expert Contribution to Qualcomm Investigation**

On March 10, 2015, the Price Supervision and Anti-Monopoly Bureau under NDRC sent Dacheng Law Offices “Letter of Acknowledgment”, expressing that Jet Deng provided expert advice and suggestions for the proper dealing of the investigation and highly appreciating his crucial contribution.

For details, please visit: <http://www.dachengnet.com/cn/news/dachengNews/34050.html>