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中国反垄断法律资讯：2014 年 5 月 China Monthly Antitrust Update: May 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.

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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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目录 Contents

立法动态 Legislation.....	4
商务部反垄断局发布《关于经营者集中简易案件申报的指导意见（试行）》	4
MOFCOM Promulgates Guidelines on Notifying Streamlined Cases	4
执法机构 Authorities	4
商务部反垄断局尚明局长召开反垄断专题新闻发布会.....	4
MOFCOM DG Holds Special Press Conference concerning Antitrust	4
商务部反垄断局副局长郑文会见嘉能可公司代表.....	4
MOFCOM DDG Meets Representative of Glencore	5
行政调查 Public Enforcement	5
IDC 披露在华反垄断诉讼及发改委调查进展	5
IDC Discloses Developments concerning Its Antitrust Litigation and Investigation by NDRC in China	5
高通总裁赴国家发改委反垄断局交换意见	5
NDRC Officials and Qualcomm CEO Exchange Views	6
江苏省物价局跨省调查药品垄断案件	6
China Provincial Regulator Investigates Price Monopolies Cases Cross-province	6
经营者集中 Merger Control.....	6
商务部附条件批准默克收购安智电子案	6
MOFCOM Conditionally Approves the Acquisition of AZ by Merck.....	6
商务部附条件批准微软收购诺基亚案件	7
MOFCOM Conditionally Approves the Acquisition of Nokia by Microsoft	7
商务部公布 2014 年第一季度无条件批准经营者集中案件列表.....	7
MOFCOM Releases Merger Control Data in the First Quarter of 2014	7
民事诉讼 Civil Litigations	7
广东高院公布华为诉 IDC 反垄断案终审判决.....	7
Gaungdong High Court Releases Full Text of Final Adjudication of Huawei/IDC Case.....	8
学术活动 Academia	8
“南湖论坛”热议互联网竞争政策	8
Intellectual Property Nanhu Forum Discusses Internet and Competition Policy.....	8
“反垄断与竞争政策高端论坛”在京举办	8
Antitrust and Competition Policy Summit Forum Held in Beijing.....	8
团队动态 Dacheng Team.....	9
大成反垄断团队获得 2014 年《亚洲法律杂志》大奖提名.....	9
Dacheng Antitrust Team Shortlisted by ALB as Antitrust & Competition Law Firm of 2014	9
戴健民律师在百业国际并购论坛就经营者集中的最新发展发表专家观点.....	9
Ken Dai Delivers Professional Views on Developments of Merger Control at Mergers Match Forum	9

大成反垄断团队举办企业合规论坛 并就反垄断调查与合规发表演讲.....	9
Dacheng Antitrust Team Co-Host Company Compliance Forum and Gives Lecture on Anti-Monopoly Investigation and Compliance.....	10
邓志松律师就社交软件的隐私保护问题发表评论.....	10
Jet Deng Delivers Views on Privacy Issue of Social Network Software.....	10
邓志松律师就四大行打压余额宝的竞争问题发表评论.....	10
Jet Deng Airs Views on Competition Issues Related to Banks' Suppression on Yu'E Bao	10

立法动态 Legislation

商务部反垄断局发布《关于经营者集中简易案件申报的指导意见（试行）》

2014 年 4 月 18 日，商务部反垄断局发布《关于经营者集中简易案件申报的指导意见（试行）》（“《指导意见》”）。该《指导意见》全文一共 10 条，涉及经营者集中简易案件申报的商谈、申请、需提交的文件资料、公示和撤销等内容。该指导意见与 2014 年 2 月份颁布的《关于经营者集中简易案件适用标准的暂行规定》一道，为中国经营者集中简易案件的申报提供了较为明晰且成体系的实体和程序指引。

详细信息：<http://fldj.mofcom.gov.cn/article/xgxz/201404/20140400555353.shtml>

MOFCOM Promulgates Guidelines on Notifying Streamlined Cases

On April 18, 2014, the Ministry of Commerce (“MOFCOM”) released the Procedural Guidelines for Streamlined Cases (*Guidelines on Notifying Streamlined Cases Regarding Concentration of Undertakings (Tentative)*). The Guidelines constitutes of 10 provisions, involving negotiation, application, documents to be submitted, publicity and revocation on filing of streamlined cases. The Guidelines, together with the Criteria Rules promulgated in February 2014 (*Interim Provisions on the Applicable Criteria of the Streamlined Cases Regarding Concentration of Undertakings*), provides the systemic guidelines for both substantive and procedural issues on antitrust filings of streamlined cases.

For details, please visit: <http://fldj.mofcom.gov.cn/article/xgxz/201404/20140400555353.shtml>

执法机构 Authorities

商务部反垄断局尚明局长召开反垄断专题新闻发布会

2014 年 4 月 8 日，商务部反垄断局尚明局长召开反垄断专题新闻发布会，公布商务部附条件批准微软收购诺基亚设备和服务业务案的决定，以及商务部有关将公开对于未依法申报经营者集中行政处罚决定的政策。

详细信息：<http://fldj.mofcom.gov.cn/article/xxfb/201404/20140400542509.shtml>

MOFCOM DG Holds Special Press Conference concerning Antitrust

On April 8, 2014, Mr. Shang Ming, Director General of the Anti-Monopoly Bureau (“AMB”) of MOFCOM held a special press conference concerning antitrust. The conference released that the decision in which MOFCOM had conditionally approved the acquisition of Nokia equipment and services by Microsoft. The conference also gave comments on the authority’s policy to publicize administrative punishment of failure to file concentration between undertakings according to the law.

For details, please visit: <http://fldj.mofcom.gov.cn/article/xxfb/201404/20140400542509.shtml>

商务部反垄断局副局长郑文会见嘉能可公司代表

2014 年 4 月 1 日，商务部反垄断局郑文副局长会见了嘉能可公司代表。双方就履行商务部 2013 年第 20 号公告所附条件事宜交换了意见。2013 年 4 月 16 日，商务部做出了附加限制性条件

批准嘉能可公司收购斯特拉塔公司的经营者集中反垄断审查决定。

详细信息: <http://fldj.mofcom.gov.cn/article/xxfb/201404/20140400536722.shtml>

MOFCOM DDG Meets Representative of Glencore

On April 1, 2014, Zhen Wen, the deputy director general of the AMB of MOFCOM met with the representative of Glencore. The two parties changed their views on the performance of conditions of No.20 announcement in 2013 of MOFCOM. On April 16, 2013, MOFCOM decided to conditionally approve the transaction of acquisition of Xstrata Plc by Glencore.

For details, please visit: <http://fldj.mofcom.gov.cn/article/xxfb/201404/20140400536722.shtml>

行政调查 Public Enforcement

IDC 披露在华反垄断诉讼及发改委调查进展

2014 年 5 月 1 日, IDC 在向美国证券交易委员会提交的一份公开文件中, 披露了其与华为诉讼及应对发改委调查的最新进展。该文件显示, IDC 于 2014 年 4 月 14 日向最高人民法院正式提出再审申请, 要求对于广东高院去年年底有关其与华为的诉讼判决进行再审, 申请主要认为法院判决的有关 SEP 专利费率不当。此外, IDC 还透露正在继续配合发改委的反垄断调查, 且已于 2014 年 3 月 3 日正式提交了经营者承诺的书面申请。

详细信息:

<http://www.sec.gov/Archives/edgar/data/1405495/000140549514000017/idcc-20143312014.htm#sC9240CF5F5A753D656B388B46719C341>

IDC Discloses Developments concerning Its Antitrust Litigation and Investigation by NDRC in China

On May 1, 2014, Inter Digital Group ("IDC") disclosed updates concerning its lawsuit against Huawei in China and investigation by National Development and Reform Commission ("NDRC") in a public document filed with the U.S. Securities and Exchange Commission ("SEC"). It reveals that in April 14, 2014, IDC appealed to the Supreme People's Court ("SPC") against the decision made by Guangdong High People's Court regarding its lawsuit against Huawei, mainly due to the royalty rates of Standard Essential Patents ("SEP") decided by the court. In addition, IDC also said it is still cooperating with NDRC on its antitrust investigation, and has officially applied in written for commitments on March 3, 2014.

For details, please visit:

<http://www.sec.gov/Archives/edgar/data/1405495/000140549514000017/idcc-20143312014.htm#sC9240CF5F5A753D656B388B46719C341>

高通总裁赴国家发改委反垄断局交换意见

2014 年 4 月 3 日, 美国高通公司总裁 Derek Aberle 先生到国家发展改革委价格监督检查与反垄断局拜访。根据发改委官方网站, 双方在会谈中就中国当局正在对高通进行的反垄断调查有关问题坦率地交换了意见。

详细信息: http://jjs.ndrc.gov.cn/gzdt/201404/t20140403_605787.html

NDRC Officials and Qualcomm CEO Exchange Views

On April 3, 2014, Mr. Derek Aberle, Qualcomm CEO paid a visit to Price Supervision and Anti-Monopoly Bureau of NDRC. According to NDRC's website, during the visit, the parties frankly exchange views concerning the on-going antitrust investigation by NDRC on Qualcomm.

For details, please visit: http://jjs.ndrc.gov.cn/gzdt/201404/t20140403_605787.html

江苏省物价局跨省调查药品垄断案件

据《江苏法制报》报道，近期，国家发改委指定江苏省物价局反价格垄断分局调查处理某药品企业价格垄断行为，案件涉及江苏、安徽、上海、浙江、河北、辽宁 6 省市 9 家医药生产经营企业。这是首起由省级反价格垄断执法部门承办的跨省案件。自 2013 年 6 月独立运行以来，江苏省物价局反价格垄断分局紧紧围绕促公平、保民生的理念，先后查处了驾校、奶制品、混凝土、自行车、保险等不同领域的价格垄断案件，经济制裁 3976 万元。

详细信息: <http://roll.sohu.com/20140425/n398785865.shtml>

China Provincial Regulator Investigates Price Monopolies Cases Cross-province

Accordingly to *Jiangsu Legal News*, NDRC recently authorized the Anti-Price Monopoly Bureau of Jiangsu province to investigate nine pharmaceutical companies across six provinces or municipal cities for potential price-related antitrust violations. The investigation is taking place in Jiangsu province, Anhui province, Zhejiang province, Hebei province, Liaoning province, and Shanghai. It said that was the first cross-province antitrust investigation undertaken by a provincial price regulator. Since beginning operations in June 2013, the Anti-Price Monopoly Bureau of Jiangsu has investigated price-related antitrust cases involving driving schools, dairy products, concrete products, bicycles and insurance; and it has imposed economic sanctions totaling CNY 39.76m (USD 6.37m), according to the newspaper.

For details, please visit: <http://roll.sohu.com/20140425/n398785865.shtml>

经营者集中 Merger Control**商务部附条件批准默克收购安智电子案**

2014 年 4 月 30 日，商务部在历时三个月的审查后批准了默克公司收购安智电子材料公司的经营者集中反垄断申报。在结合经济学分析和行业调查问卷情况后，商务部认为本次集中完成后，默克具有利用相邻产品关系进行捆绑销售或交叉补贴的能力，可能损害市场竞争，因此决定附加行为性限制条件批准该案。

详细信息: <http://fldj.mofcom.gov.cn/article/ztxx/201404/20140400569060.shtml>

MOFCOM Conditionally Approves the Acquisition of AZ by Merck

On April 30, 2014, MOFCOM conditionally approved the acquisition of AZ Electronic Materials S.A. by Merck KGaA after three months of review. Taking economic analysis and industry survey into account, MOFCOM was concerned that, after the concentration, Merck will have the ability of bundling or cross-subsidies by means of adjacent products, and may harm market competition consequently. Therefore, behavioral remedies was imposed on the deal.

For details, please visit: <http://fldj.mofcom.gov.cn/article/ztxx/201404/20140400569060.shtml>

商务部附条件批准微软收购诺基亚案件

2014 年 4 月 8 日，在第三阶段最后关头，微软收购诺基亚设备和服务业务案获得商务部反垄断局反垄断审查附条件通过。此前，美国和欧盟都已经无条件通过该案。经审查，商务部认为微软可能会凭借其安卓项目许可排除、限制中国智能手机市场竞争；本项集中还可能引发的诺基亚专利滥用问题。根据微软、诺基亚向商务部作出的承诺，商务部决定附加限制性条件批准该案。

详细信息：<http://fldj.mofcom.gov.cn/article/ztxx/201404/20140400542415.shtml>

MOFCOM Conditionally Approves the Acquisition of Nokia by Microsoft

On April 8, 2014, at the last gasp of the third stage, the transaction of acquisition of Nokia by Microsoft was conditionally approved by AMB of MOFCOM. Before then, the transaction was unconditionally approved by Europe Commission and America. After investigation, MOFCOM believed that Microsoft may eliminate and restrict competition in China's smart phone market with its Android project; the transaction could also trigger the problems of patent misuse of Nokia. Based on the commitments by Microsoft and Nokia, MOFCOM decided to conditionally approve the transaction.

For details, please visit: <http://fldj.mofcom.gov.cn/article/ztxx/201404/20140400542415.shtml>

商务部公布 2014 年第一季度无条件批准经营者集中案件列表

2014 年 4 月 4 日，商务部公布了 2014 年第一季度无条件批准经营者集中案件列表。2014 年第一季度，商务部反垄断局无条件批准经营者集中案件共 42 起。

详细信息：<http://fldj.mofcom.gov.cn/article/zcfb/201404/20140400540463.shtml>

MOFCOM Releases Merger Control Data in the First Quarter of 2014

On April 4, 2014, MOFCOM released the case list of concentrations of undertakings unconditionally approved in the first quarter of 2014. According to the case list, there were a total of 42 anti-monopoly notifications being unconditionally approved by AMB of MOFCOM in the first quarter of 2014.

For details, please visit: <http://fldj.mofcom.gov.cn/article/zcfb/201404/20140400540463.shtml>

民事诉讼 Civil Litigations

广东高院公布华为诉 IDC 反垄断案终审判决

2014 年 4 月 17 日，广东省高级人民法院公布华为公司诉 IDC 反垄断案的终审判决，该案围绕“原审诉讼程序是否不当”、“相关市场如何界定”、“交互数字在相关市场是否具有支配地位”、“交互数字相关被控行为是否构成滥用市场支配地位的行为”、“原审判决数额是否合理”五个争议焦点进行审理，最终判决驳回上诉人华为公司、交互数字的上诉请求，维持原审判决。由于该案涉及标准必要专利费率和 FRAND 原则等专业反垄断与知识产权法律问题，该案也成为了中国标准必要专利第一案，广东法院也成为世界范围内首个适用 FRAND 原则直接确定许可费率的法院。

详细信息：

<http://www.gdcourts.gov.cn/gdcourt/front/front!content.action?lmdm=LM43&gjid=20140417030902158689>

Gaungdong High Court Releases Full Text of Final Adjudication of Huawei/IDC Case

On April 17, 2014, The Guangdong High People's Court released the full text of its final adjudication of Huawei's litigation against IDC. After an detailed analysis on five issues including "whether the procedure of the first instance trial is proper", "how to define the relevant market", "does IDC hold a dominant position in the relevant market", "does the alleged behavior constitute abuse of dominance" and "is the compensation of the first trial appropriate", the court dismissed the appeals raised by Huawei and IDC and upheld the original verdict of Shenzhen court. Since the case involves complex antitrust and intellectual property rights ("IPR") issues such as royalty rate of SEPs and fair, reasonable, and non-discriminatory terms ("FRAND"), it's been called "the first SEPs case of China". This is also the first civil case in which a court directly determines the royal rate based on FRAND in the world.

For details, please visit:

<http://www.gdcourts.gov.cn/gdcourt/front/front!content.action?lmdm=LM43&gjid=20140417030902158689>

学术活动 Academia**“南湖论坛”热议互联网竞争政策**

2014年4月19-20日,“2014知识产权南湖论坛”在武汉举行。在以“互联网竞争政策问题”为主题分论坛上,会议各方就互联网竞争与不正当竞争法的完善、互联网不正当竞争诉讼等问题展开了讨论。国务院反垄断委员会专家咨询组副组长、对外经济贸易大学黄勇教授、湖北工商局公平交易分局朱亚萍局长、华东政法大学徐士英教授出席了会议。

Intellectual Property Nanhu Forum Discusses Internet and Competition Policy

On April 19-20, 2014, 2014 Intellectual Property Nanhu Forum was held in Wuhan. In the session of "Competition Policy Issues in Internet Industry", the attendees deliberated issues such as "competition in Internet industry and the improvement of Anti-Unfair Competition Law" and "unfair competition litigation of Internet industry". Prof. Huang Yong, Vice Chair of the Expert Advisory Board of the State Council Anti-Monopoly Commission, Zhu Yaping, Director of Fair Trade Bureau of Hubei AIC and Prof. Xu Shiying from East China University of Political Science and Law attended the event.

“反垄断与竞争政策高端论坛”在京举办

2014年4月2日,由中国人民大学汉青经济与金融高级研究院反垄断与竞争政策研究所举办的“反垄断与竞争政策高端论坛”在北京举行。美国科罗拉多大学陈勇民教授以“反垄断的经济理论与公共政策”为题,介绍了反垄断的基本经济理论及其历史发展,并且用现实的案例分析了经济学理论在反垄断案件中的应用。反垄断执法机构官员以及清华大学、人民大学的师生参加了会议。

详细信息: <http://www.hanqing.ruc.edu.cn/detail.php?class=news&iClassID=8&iInfoID=1720>

Antitrust and Competition Policy Summit Forum Held in Beijing

On April 2, 2014, Antitrust and Competition Policy Summit was held by Antitrust and Competition Policy Center of Hanqing Advanced Institute of Economics and Finance of Renmin University of China ("RUC") in Beijing. Prof. Chen Yongmin from University Colorado gave a lecture entitled

“Economic Theories and Public Policy of Antitrust”, introducing the basic economic theories of antitrust and its historical development and analyzing the application of economic theories in antitrust cases. Officials of Anti-Monopoly Enforcement Agencies, scholars and students from Tsinghua University and RUC attended the meeting.

For details, please visit: <http://www.hanqing.ruc.edu.cn/detail.php?class=news&iClassID=8&iInfoID=1720>

团队动态 Dacheng Team

大成反垄断团队获得 2014 年《亚洲法律杂志》大奖提名

由于在反垄断业务领域的突出表现，大成反垄断团队获得 2014 年《亚洲法律杂志》大奖的以下提名：年度反垄断与竞争律师事务所。在过去的一年，大成反垄断团队为多家跨国公司和国内知名企业提供高质量的法律服务，包括但不限于经营者集中申报，反垄断合规和应对反垄断调查等。

Dacheng Antitrust Team Shortlisted by ALB as Antitrust & Competition Law Firm of 2014

Due to the outstanding performance in the antitrust field, Dacheng Antitrust Team was shortlisted by *Asian Legal Business* (“ALB”) as *Antitrust & Competition Law Firm of the Year* in 2014. In the past year, Dacheng Antitrust Team provided excellent legal services for many multinational and domestic enterprises, including but not limited to: legal assistance for merger control, antitrust compliance and antitrust investigations.

戴健民律师在百业国际并购论坛就经营者集中的最新发展发表专家观点

2014 年 4 月 25 日，戴健民律师应邀参加百业国际并购论坛并就经营者集中的最新发展发表专家观点，包括：简易程序的最新规定，未依法申报交易的处理，赛默飞世尔收购立菲技术案，涉及 VIE 结构之经营者集中申报，以及上海自贸区的反垄断审查与国家安全审查等等。百业并购融资联盟负责人当场表示希望邀请戴健民律师及大成反垄断团队专门做一场经营者集中申报与审查实践的专题研讨会。

Ken Dai Delivers Professional Views on Developments of Merger Control at Mergers Match Forum

On April 25, 2014, Ken Dai was invited to participate in *Merger Match Forum* and delivered professional views on latest developments of merger control, including the recent regulation of streamlined cases, punishment of failure to make merger filing, the acquisition of Thermo Fisher by Life Technologies, merger filing cases involving VIE structure, antitrust review and national security review of Shanghai Pilot Free Trade Zone. The head of Merger Alliance said that he would invite Ken and Dacheng Antitrust Team to hold a seminar focusing on merger control.

大成反垄断团队举办企业合规论坛 并就反垄断调查与合规发表演讲

2014 年 4 月 16 日，大成律师事务所与律讯管理在北京联合举办“第三届企业合规论坛 2014”。大成律师事务所的邓志松律师发表了题为“反垄断调查：企业应对指南和合规体系建设”的演讲。邓律师介绍了反垄断调查的程序、可能带来的法律风险以及从律师实务的角度提示企业应当如何应对反垄断调查，建立对应的合规体系，做到防患于未然从而降低企业的反垄断

法律风险。大成反垄断团队的戴健民律师也进行了精彩的点评。演讲完毕，企业代表就实务中遇到的问题提问，两位律师根据其丰富的从业经验进行了专业的回答。

Dacheng Antitrust Team Co-Host Company Compliance Forum and Gives Lecture on Anti-Monopoly Investigation and Compliance

On April 16, 2014, the 3th Company Compliance Forum 2014 was co-held by Dacheng Antitrust Team and Asia Legal Council in Beijing. Jet Deng, Partner of Dacheng Beijing Office, gave a lecture entitled "Anti-Monopoly Investigations: Practical Guidelines for Enterprises and Establishment of Compliance Program". He comprehensively introduced the procedures of anti-monopoly investigation and anti-monopoly risk in China and, from the perspective of an anti-monopoly practitioner, gave suggestions on how to deal with anti-monopoly investigation and how to establish compliance program. Ken Dai, another partner from Dacheng Antitrust Team, delivered professional comments on the lecture. After the lecture, based on their enriched practice experience, Jet Deng and Ken Dai answered questions from participants.

邓志松律师就社交软件的隐私保护问题发表评论

2014年4月10日，北京大成律师事务所邓志松律师接受《北京日报》采访，就具有匿名发布状态和匿名评论功能的社交软件发表评论。邓志松律师表示，社交平台上涉及个人的恶意攻击的确有侵犯名誉权的风险，运营者对于传播的信息负有注意义务。

详细信息：http://bjrb.bjd.com.cn/html/2014-04/10/content_168644.htm

Jet Deng Delivers Views on Privacy Issue of Social Network Software

On April 10, 2014, Jet Deng, Partner of Dacheng Beijing Office, took interview by *Beijing Daily* and aired views on the social network software that has functions of release information and comments anonymously. Jet Deng pointed out that social platforms do have risk of infringing right of reputation if information involving hostile attack is spread on it, and operators bear duty of care for those widely spread information.

For details, please visit: http://bjrb.bjd.com.cn/html/2014-04/10/content_168644.htm

邓志松律师就四大行打压余额宝的竞争问题发表评论

2014年4月3日，北京大成律师事务所邓志松律师接受《中国贸易报》采访，就工行、农行、中行、建行等银行陆续下调支付宝快捷支付额度发表观点。邓志松律师指出，四大行在同时期进行类似的下调限额举动，如果不能提供合理解释，将涉嫌实施《反垄断法》所禁止的垄断协议行为。

详细信息：<http://www.chinatradenews.com.cn/html/shangwushouce/2014/0403/4714.html>

Jet Deng Airs Views on Competition Issues Related to Banks' Suppression on Yu'E Bao

On April 3, 2014, Jet Deng, Partner of Dacheng Beijing Office took interview by *China Trade News* and delivered views on four state-owned banks' (Industrial and Commercial Bank of China, Agricultural Bank of China, Bank of China and China Construction Bank) successively lowering amounts quotas consumers could transfer through quick-payment-channel of Alipay, which is believed to have the purpose of jointly suppressing Yu'E Bao. Jet Deng pointed out that if the four state-owned banks could not give reasonable explanation, their similar conducts of lowering payment limit at about the same time might constitute monopoly agreement, which would violate

the AML.

For details, please visit: <http://www.chinatradenews.com.cn/html/shangwushouce/2014/0403/4714.html>