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中国反垄断法律资讯：2015 年 5 月 China Monthly Antitrust Update: May 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

国家工商总局公布《关于禁止滥用知识产权排除、限制竞争行为的规定》

2015 年 4 月 13 日，国家工商总局公布《关于禁止滥用知识产权排除、限制竞争行为的规定》（“《规定》”），将于 8 月 1 日起施行。《规定》共 19 条，对滥用知识产权排除、限制竞争行为和相关市场等概念作了解释，同时禁止经营者之间利用知识产权达成垄断协议，规定了安全港规则。《规定》还对具体滥用行为作了禁止性规定，并明确界定了专利联营中行使知识产权行为可能构成垄断行为的具体情形。

详细信息：

http://www.saic.gov.cn/zwgk/zyfb/zjl/fld/201504/t20150413_155103.html#rd?sukey=cbbc36a2500a2e6c0bd580a5261920113ddc66f63a030869ddb61c7257bb8a7a3d42d8813a4f53f6a32e90c857c1424b

SAIC Releases Provisions on Prohibiting the Abuse of Intellectual Property Rights to Exclude and Restrain Competition

On April 13, 2015, the State Administration for Industry and Commerce (“SAIC”) released *Provisions on Prohibiting the Abuse of Intellectual Property Rights to Exclude and Restrain Competition*, which will take effect on August 1, 2015. The Provisions include 19 articles, which explain some definitions such as abuse of intellectual property right, conduct of restraining competition and relevant market. Also, the Provisions prohibit undertakings reaching monopoly agreement by intellectual property right and provide the safe harbor rules. The Provisions provides prohibitive provisions on specific conduct of abuse and clearly defines the specific situations under which the use of intellectual property right constitutes monopolistic conduct in patent pool.

For details, please visit:

http://www.saic.gov.cn/zwgk/zyfb/zjl/fld/201504/t20150413_155103.html#rd?sukey=cbbc36a2500a2e6c0bd580a5261920113ddc66f63a030869ddb61c7257bb8a7a3d42d8813a4f53f6a32e90c857c1424b

湖北公布价格条例草案征求意见稿

湖北省政府于 3 月 26 日公布《湖北省价格条例（草案）》（征求意见稿），公开征求公众意见。该草案规定了经营者和行业组织的价格垄断行为，且禁止社会团体利用行政权力和垄断地位强制服务并收费，或只收费不服务。公开征求意见起止时间为 2015 年 3 月 26 日至 2015 年 4 月 27 日。

详细信息：

<http://www.hbzffz.gov.cn/zwgk/gsgk/13386.htm#rd?sukey=cbbc36a2500a2e6cee2c3b058be23b4c7b88628776010b36b6fef549dd234a8c4aa5626e5da6a448adc3af3bbd0b3b18>

Hubei Releases New Draft on Regulations of Hubei on Price

On March 26, the Hubei Provincial People’s Government released *Regulations of Hubei on Price (Draft for Comments)* to solicit public opinion. The Draft Regulations provide the price monopolistic conduct of undertakings and industry organizations and prohibit social organizations

forcing services and charging fees by administrative power and monopolistic position, or charging without providing any service. The Regulations were soliciting from March 26, 2015 to April 27, 2015.

For details, please visit:

<http://www.hbzffz.gov.cn/zwgk/gsgk/13386.htm#rd?sukey=cbbc36a2500a2e6cee2c3b058be23b4c7b88628776010b36b6fef549dd234a8c4aa5626e5da6a448adc3af3bbd0b3b18>

执法机构 Authorities

国家发改委价监局张汉东局长会见美国驻华使馆代表一行

4月16日,国家发改委价监局张汉东局长会见了美国驻华使馆公使衔经济参赞 Jonathan Fritz、公使衔贸易参赞 James Green 等美国驻华使馆代表一行。张汉东局长介绍了国家发展改革委反垄断工作的有关情况、中国反垄断执法中保障当事人权利的有关做法,以及目前增强反垄断执法透明度的相关工作,并表示愿意与美方就有关问题进行充分的沟通 and 交流。美方对国家发展改革委在反垄断方面的有关做法表示赞赏,并希望进一步加强双方之间的信息交流。

详细信息: http://jjs.ndrc.gov.cn/gzdt/201504/t20150422_688954.html

Director General of PSAMB of NDRC Meets a Delegation of Representatives of US Embassy in China

Zhang Handong, the Director General of the Price Supervision and Anti-Monopoly Bureau of Price Bureau ("PSAMB") of the National Development and Reform Commission ("NDRC") met a delegation led by the Economic Minister Counselor of US Embassy in China, Jonathan Fritz and the Trade Minister Counselor, James Green. Mr. Zhang introduced the work of PSAMB of NDRC, practice in ensuring the right of parties in antitrust enforcement of China and relevant work in enhancing the transparency of antitrust enforcement. Also, he expressed the willing to fully communicate with the representatives from US. The representatives appreciated NDRC's practice in the field of antitrust and would further strengthen the communication with NDRC.

For details, please visit: http://jjs.ndrc.gov.cn/gzdt/201504/t20150422_688954.html

行政调查 Public Enforcement

奔驰因价格垄断被罚款 3.5 亿元

4月,江苏省物价局对奔驰汽车垄断案依法作出行政处罚,对奔驰公司罚款 3.5 亿元,对部分经销商罚款 786.9 万元。奔驰公司与江苏省内经销商达成并实施了限定 E 级、S 级整车及部分配件最低转售价格的垄断协议,违反了《反垄断法》第十四条的规定,排除、限制了相关市场竞争,损害了消费者利益。

Benz Receives a Fine of RMB 350 Million for Price Monopoly

In April, Jiangsu Price Bureau made an administrative decision on Benz antitrust case, imposing a fine of RMB 350 million on Benz Company and a total fine of RMB 7.869 million on certain dealers. Benz and dealers in Jiangsu reached and implemented a monopoly agreement, which fixed the

minimum resale price for E-class and S-class vehicles and some auto parts. The agreement violated Article 14 of the Anti-monopoly Law by excluding and restraining competition in relevant market, therefore harming the benefit of customers.

山东省行政垄断案件后续

4 月，山东省交通运输厅已全面放开车辆卫星监控平台市场和卫星定位终端市场，恢复市场竞争。3 月 27 日，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行政垄断行为。

Follow-up of Shandong Administrative Antitrust Case

In April, the Department of Transportation in Shandong had fully opened the market of monitoring platform and vehicle terminal and restored the competition in relevant market. Earlier on March 27, 2015, 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 administrative monopolistic conducts.

经营者集中 Merger Control

商务部四月份公布 21 起简易案件

截至 2015 年 4 月 30 日，商务部三月份在其网站上公布的简易案件数量达到 21 起，简易案件总量达 155 起。

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

MOFCOM Releases 21 Streamlined Cases in April

Up to April 30, 2015, MOFCOM released 21 streamlined cases in April on its website, with total amount reaching 155 so far.

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

美国应用材料公司和日本毅力科创株式会社因未能解决中国反垄断审查竞争关注，放弃合并计划

2015 年 4 月 27 日，美国应用材料公司和日本东京毅力科创株式会社向商务部递交正式函件，宣布放弃合并交易。该交易于 2013 年 11 月 19 日向商务部申报经营者集中反垄断审查，由于交易双方提出的救济措施没有解决商务部以及其他相关司法辖区的竞争关注，交易双方宣布放弃合并计划。

详细信息：<http://www.mofcom.gov.cn/article/ae/ai/201504/20150400955517.shtml#rd>

Applied Materials Company and Tokyo Electron Company Give up Proposed Merger since Competition Concern in China

On April 27, Applied Materials Company of the U.S and Tokyo Electron Company of Japan submitted an official statement to MOFCOM, expressing that they would give up the proposed merger transaction. The transaction filed a notification of concentration of undertakings to MOFCOM on November 19, 2013. Since the remedy measures proposed by both parties did not solve the competition concerns of MOFCOM and in other jurisdictions, they announced to give up

the proposed merger.

For details, please visit:

<http://www.mofcom.gov.cn/article/ae/ai/201504/20150400955517.shtml#rd>

中国南车、中国北车合并通过商务部反垄断审查

中国南车与中国北车 4 月 3 日联合发布公告，4 月 3 日收到商务部反垄断局出具的《审查决定通知》，南北车进行合并已通过商务部反垄断局的经营者集中反垄断审查。但本次合并的实施仍受限于《合并协议》规定的其他生效条件和实施条件的满足。

The Merger of CSR and CNR Passes Antitrust Review of MOFCOM

On April 3, 2015, CSR and CNR jointly announced that they had received the Notice of Decision of Inspection Anti-Monopoly Bureau ("AMB") of MOFCOM, indicating that the merger of CSR and CNR had passed the antitrust review of MOFCOM. But the proposed merger was still subjected to the fulfillment of other conditions in the merger agreement between CSR and CNR.

商务部公布 2015 年第一季度无条件批准经营者集中案件列表

2015 年 4 月 3 日，商务部公布了 2015 年第一季度无条件批准经营者集中案件列表。2015 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 62 起。

详细信息：<http://fldj.mofcom.gov.cn/article/zcfb/201504/20150400932418.shtml>

MOFCOM Releases Merger Control Data in the First Quarter of 2015

On April 3, 2015, MOFCOM released the case list of concentrations of undertakings unconditionally approved in the first quarter of 2015. According to the case list, there were a total of 62 anti-monopoly notifications being unconditionally approved by AMB of MOFCOM in the first quarter of 2015.

For details, please visit: <http://fldj.mofcom.gov.cn/article/zcfb/201504/20150400932418.shtml>

学术动向 Academia

美国律师协会反垄断春季会议于华盛顿召开

4 月 15 日至 4 月 17 日，美国律师协会反垄断春季会议于华盛顿召开。此次会议邀请到来自各个国家和地区的反垄断执法者、学者以及律师，讨论的议题覆盖了当下最受关注的反垄断议题，涉及互联网、通信、医药以及媒体等广泛行业。大成反垄断团队邓志松律师、戴健民律师参加了此次会议，并与世界各地的反垄断律师同仁进行了交流。

Antitrust Law Spring Meeting of ABA Held in Washington DC

From April 15, 2015 to April 17, 2015, the Antitrust Law Spring Meeting of American Bar Association ("ABA") was held in Washington DC. The meeting invited enforcers of antitrust law, scholars and lawyers from various countries and regions. The topics of the meeting covered the most concerned topics in antitrust field, relating to a wide range of industries such as internet, communication, medicine and media. Jet Deng and Ken Dai, the partners of Dacheng Antitrust Team also participated in the meeting and communicated with antitrust lawyers from all over the world.

团队动态 Dacheng Team

邓志松律师参加中国信息通信研究院举办的专利法草案征求意见稿研讨会并发表专业意见

4月29日，中国信息通信研究院在北京召开研讨会，就《中华人民共和国专利法修改草案(征求意见稿)》中第14条和第82条的必要性和可行性进行深入讨论。草案第14条是关于专利权滥用的原则性条款与标准，第82条是关于专利条款的规定。大成反垄断团队邓志松律师也应邀参加了此次研讨会，并发表了专业意见。

Jet Deng, Partner of Dacheng Antitrust Team Participates in Seminar on Draft Revisions to the Patent Law Held by CATR and Gives Professional Opinions

On April 29, 2015, China Academy of Telecommunication Research ("CATR") held a seminar in Beijing to have an in-depth discussion on the necessity and feasibility of Article 14 and Article 18 of the *Draft Revisions to the Patent Law of the People's Republic of China (Draft for Comments)*. Article 14 provides principled provisions and standards of abuse of patent right, while Article 82 relates to the patent provisions. Jet Deng, the partner of Dacheng Antitrust Team also participated in the seminar and gave professional opinions.

戴健民律师参加第二届中英商法年度研讨会并介绍中国反垄断执法

4月25日，第二届中英商法年度研讨会在清华大学法学院召开。作为中国反垄断法律师的代表，戴健民律师向参会者介绍中国的反垄断执法近况与趋势，包括执法机构的发展、卡特尔调查、纵向限制、滥用市场支配地位、知识产权与反垄断、反垄断民事诉讼等，获得了积极的反馈。

Ken Dai Participates in the 2nd Sino-UK Annual Conference on Commercial Law and Introduces Antitrust Enforcement in China

On April 25, the 2nd Sino-UK Annual Conference on Commercial Law was held in Tsinghua University School of Law. As a representative of antitrust lawyers in China, Ken Dai briefly introduced for participants the status and trends of antitrust enforcement in China, including the development of enforcement agencies, cartel investigation, vertical restraints, abuse of dominant market position, intersection between IP and antitrust, antitrust civil action, etc., with positive feedbacks.