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Transparency Regulation <sup>4</sup>

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3 OECD, Executive Summary of the Roundtable on Access to the Case File and Protection of Confidential Information Annex to the Summary Record of the 130th Meeting of Working Party No. 3. on Co-operation and Enforcement, Working Party No. 3 on Co-operation and Enforcement, DAF/COMP/WP3/M(2019)2/ANN2/FINAL, p.2.

4 Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents OJ L145/43.

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5 Charter of Fundamental Rights of the European, OJ C326/391.

6 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No. 45/2001 and Decision No. 1247/2002/EC OJ L 295/39. 45/2001

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statement of objections

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		leniency corporate statement			settlement submission		

2014/104

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<sup>9</sup> 2014/104

“ ” pre-existing evidence

### The Freedom of Information Act

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1974

The Privacy Act of 1974

Antitrust

Civil Process Act

Federal Rules of Criminal Procedure

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civil investigation demands CIDs

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<sup>9</sup> Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union OJ L349/1, recital para. (16).

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<sup>11</sup> 15U.S.C. 1313, § 49.2.

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12 *U.S. Department of Justice Antitrust Division, Antitrust Division Manual (5th ed.)*, <https://www.conniff.com/wp-content/uploads/Fifth-Ed-DOJ-Antitrust-Division-Manual.pdf>, p.62.

13 Federal Rules of Criminal Procedure, Rule 6(e).

14 Federal Trade Commission Act, 15 U.S. C. § 57b –2.





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<sup>23</sup> Case T-437/08, CDC Hydrogene Peroxide v. Commission 2001, ECR II-08251, ECLI:EU:T:2011:752, para. 49.

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hearing officer

data room

confidential ring

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30 European Commission DG Competition, Best Practices on the disclosure of information in data rooms in proceedings under Articles 101 and 102 TFEU and under EU Merger Regulation, [https://ec.europa.eu/competition/mergers/legislation/disclosure\\_information\\_data\\_rooms\\_en.pdf](https://ec.europa.eu/competition/mergers/legislation/disclosure_information_data_rooms_en.pdf), 2022 8 9 .





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## **Protection of Information by Categories in the Implementation of Anti-monopoly Law**

LA Sen

**Abstract:** As concerning the implementation of the Chinese Anti-monopoly Law, there are four problems: (1) confidentiality provisions are overly principled; (2) the scope of the subject with the confidentiality obligations and the scope of the content of confidentiality are too narrow; (3) lack of transparent implementation rules for confidentiality procedures, and (4) the connection between administrative enforcement and civil litigation is insufficient. The protection and disclosure of different categories of information need to be based on the coordination of different value objectives in the implementation of the Anti-monopoly law, among which the most important value objectives are the conflict between commercial secrets, personal privacy and personal information and the right of defense of the investigated undertakings, as well as the



conflict between the protection of important evidences in the leniency procedure and the need to obtain evidences in the follow-on action. Firstly, based on the reconciliation of different value objectives, it is necessary to construct framed rules of protection of information by categories in the Anti-monopoly Law, expanding the scope of subjects with confidentiality obligations and the scope of the content of confidentiality, and clarifying confidentiality procedures and measures. Secondly, in accordance with the differences in the degree and duration of confidentiality and the need to be informed of the parties concerned, different types of information are classified into three categories for the protection in administrative enforcement procedures. Finally, it is necessary to allow the reports and important evidence in the leniency procedure to play evidential value in the follow-on action under the precondition of confidentiality, and to appropriately reduce the civil liability of the leniency recipients.

**Keywords:** Anti-monopoly Law; Protection of Information by Categories; Leniency System; Personal Privacy; Personal Information