

MOFCOM makes public for the first time decisions finding violations of merger control rules

On 8 December 2014, China's Ministry of Commerce ("**MOFCOM**") imposed a fine on the state-owned Tsinghua Unigroup Ltd. ("**Tsinghua Unigroup**") for failure to notify its acquisition of RDA Microelectronics Inc. On the same day, MOFCOM's decision was [published on its website](#).

MOFCOM found that the acquisition had triggered the notification requirements under the Anti-Monopoly Law, but Tsinghua Unigroup completed the acquisition on 18 July 2014 without going through the merger control review process. In its decision, MOFCOM indicated that it had assessed the effects on competition resulting from the acquisition, but had concluded there would not be any anti-competitive impact. MOFCOM imposed a fine of RMB 300,000 (approximately USD 48,000) on Tsinghua Unigroup.

This is the first case where MOFCOM has published its penalty decision for failure to notify a reportable transaction. MOFCOM is said to have imposed fines for failure to notify transactions in the past. However, it did not publish any of the decisions. Yet, in March 2014, MOFCOM made it clear that it would publish this type of decision with a view to deterring future violations. Interestingly, the first public decision relates to a state-owned enterprise in China.

On the same day, on 8 December, MOFCOM also sanctioned Western Digital (a US company) for breaches of hold-separate commitments made in relation to the company's acquisition of Hitachi's hard disk drive business, a transaction cleared conditionally by MOFCOM in March 2012, in another public decision (see [here](#) and [here](#)).

These two developments illustrate that multinational and domestic capital companies alike need to take account of MOFCOM's increasingly assertive enforcement stance. In particular, companies need to be aware that MOFCOM will now not shy away from making public any of its decisions finding companies to have breached their merger control filing or other obligations: this is likely to have a material impact on the reputation of those singled out.

The ultimate weapon in MOFCOM's arsenal is, of course, its power to order the unwinding of a transaction which was not notified according to the law, though to the best of our knowledge, MOFCOM has yet to exercise this power.

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