

Antitrust, Competition & Economic Regulation
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MOFCOM releases details of unconditional clearance decisions since 2008

The Anti-Monopoly Bureau ("**AMB**") of China's Ministry of Commerce ("**MOFCOM**") today posted on its webpage the names of the parties to all transactions it has cleared unconditionally under the Anti-Monopoly Law.

The uploaded list covers a time span of over four years – from the moment of the entry into force of the *People's Republic of China Anti-Monopoly Law* until the end of September 2012. It contains the names of the parties in 458 transactions, but does not feature information on the dates of notification, case acceptance and clearance, or other details of the transactions.

As expected, the transactions involving foreign elements make up the majority. This is consistent with the statistics on the transactions filed during the first half of 2012, which were alluded to by the AMB Director General at a recent conference. Namely, in the first six months, MOFCOM received 83 filings, of which 46 were foreign-to-foreign transactions, five were foreign-to-Chinese transactions, two were Chinese-to-foreign transactions, 22 were foreign-and-Chinese joint venture transactions, and eight were Chinese-to-Chinese transactions.

Going forward, MOFCOM has stated its intention to disclose the details of all unconditional merger clearance decisions on a quarterly basis.

For businesses, this new development may have an important impact. Many market players hope such information releases would mark the first step in a deliberate effort by MOFCOM to increase the transparency of its decision-making process. The fact that MOFCOM made reference to the *Regulation on Disclosure of Government Information*, whose aim is to boost government transparency and accountability, may provide some basis for such an upbeat assessment.

At the same time, it is clear that the road ahead is long and winding. For example, MOFCOM did not state it planned to share the information "in real time," like the European Commission's DG COMP does by publishing basic information on each notified transaction in the European Union's Official Journal and on its website, while the case is still pending.

On the other hand, the information released by MOFCOM may have a different impact on companies doing business in China. Some market participants would no doubt have preferred MOFCOM to have kept silent on this issue, as going forward, it will become relatively easy for third parties to check whether a given transaction was notified to MOFCOM; the names of the parties in all clearance decisions (both unconditional and conditional clearance decisions, the latter being published on the date when they are taken) will be public. By implication, for any transaction which is not listed among the clearance decisions, was not prohibited or withdrawn, and is not pending, the likely conclusion would be that it was not notified to MOFCOM. Third parties including competitors may feel tempted to report to MOFCOM transactions which they feel (rightly or wrongly) should have been reported.

In short, the risks associated with not filing reportable transaction are likely to increase following MOFCOM's latest move to disclose details on all unconditional decisions. Overall our verdict is that this is a net positive result for market transparency, but the news may be slightly unnerving to those who have previously filed and were not expecting today's mass information release.

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