

Advanced Seminar on China Antitrust

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Navigating MOFCOM's Conditional Approvals and Simple Case Review Process: How to Ensure Your Deal Obtains Timely Approval

商务部最新条件性合并审批及简易程序：
如何确保节约您的合并审批时间

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Tweeting about this conference?

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Case studies on recent MOFCOM decisions on simple case procedure

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- How to avoid and handle the concerns from third parties and competition
- Discussing the cases that still go through the normal review process, with remedies that may be imposed by MOFCOM
- Look forward to future trend by contrasting US and European Merger Control Review
- Contrasting inbound and outbound merger situations
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- What is an effective lobbying strategy



• Criteria threshold for horizontal and vertical mergers

1、 In the same relevant market, all parties represents less than 15% in total.在同一相关市场，所有参与集中的经营者所占市场份额之和小于15%。

2、 When the parties are suppliers and users, any party represents less than 25% in upstream and downstream market.存在上下游关系的参与集中的经营者，在上下游市场所占的市场份额均小于25%。

3、 When enterprises are not in the same relevant market, and are not upstream and downstream relationship, any party represents less than 25% in each market.不在同一相关市场、也不存在上下游关系的参与集中的经营者，在与交易有关的每个市场所占的份额均小于25%。

4、 Set up JV outside of he territory of China, and the JV is not going to do business in China.参与集中的经营者在中国境外设立合营企业，合营企业不在中国境内从事经济活动。

5、 Purchase shares or assets abroad, and the target company is not doing business in China.参与集中的经营者收购境外企业股权或资产的，该境外企业不在中国境内从事经济活动。

6、 JV controlled by two enterprises, controlled by one of them after the deal.由两个以上的经营者共同控制的合营企业，通过集中被其中一个或一个以上经营者控制。



Introducing electronic online filing system, and its pros and cons

- Standard forms-A system good for casehandlers, good for record keeping.
- Double working for narrative and attachments.
- Updated the e-filing each time if revised, one version.
- Attachments to be pasted into narrative.
- Not stable yet. To be assisted by IT people.



Timeline and procedure of new merger control review process, Planning efficiently in the early stage of merger to save review time

- Initiation in 30 days once qualified documents were accepted.
- Once deal is confirmed, start prep ASAP.
- Choose right definition of relevant markets.
- Prepare for each scenarios, plan A & B. File a different version when required.
- One or two supplemental questions before initiation, one or two supplemental after initiation.
- Communicate with casehandlers.
- Be flexible!
- Win in 30 days!



- How to avoid and handle the concerns from third parties and competition
- Association: Start communication once filing submitted.
- Ministries: NDRC, MIIT, Ministry of Agriculture.
- MOFCOM: Foreign Investment Department.



Other Issues

- Remedies in the in normal review process: Regulation 201406 “Restrictive Conditions on Concentrations of Enterprises”
- Future trend: Procedure from EU and Analysis from US.
- Inbound and outbound merger situations: Still many inbound cases, but more and more investment to foreign markets.



- How to gather sufficient information on market share data as soon as the deal is being mulled

- Collect data as early as possible under different scenarios.
- Research based on different sources: government website (statistics, government reports)
- Publications, Articles, Association Reports.
- Certificates or Letters from Associations or Information Companies.
- Geographic Market: Market shares by districts.
- Use public information.



- What is an effective lobbying strategy
 - Understand the casehandlers' work and requests.
 - Be cooperative.
 - Be flexible and think in different ways.
 - Change strategies immediately.
 - Keep calling every week.
 - Talk to the boss when necessary.
 - Prepare strong proof before lobbying.



•Merger Review Legal Update

- Q&A
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