

The International Comparative Legal Guide to: Merger Control 2010

A practical insight to cross-border merger control issues



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1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

Under the *Anti-Monopoly Law of the People's Republic of China* (“**AML**”), China’s primary antitrust legislation, the Anti-Monopoly Commission (“**AMC**”) serves as the lead government supervisory authority on antitrust matters. Rather than undertaking actual enforcement activities itself, however, the AMC primarily formulates broad antitrust policies and coordinates the enforcement activities of the Anti-monopoly Enforcement Authorities (“**AMEAs**”). The AMEAs are: (1) the Ministry of Commerce (“**MOFCOM**”); (2) the State Administration of Industry and Commerce (“**SAIC**”); and (3) the National Development and Reform Commission (“**NDRC**”). MOFCOM, generally considered the pre-eminent ministry on international trade and investment issues, took the lead in drafting the *AML* merger control provisions and will oversee merger notifications and review. The other AMEAs will not have responsibility for merger control: SAIC issues business licences and administers various commercial laws, including the *Anti-Unfair Competition Law*, and will enforce *AML* prohibitions against monopoly agreements and abuses of market dominance, except for price-related abuses; NDRC supervises enforcement by local price bureaus of the 1997 *Price Law*, and will prosecute price abuses by dominant firms and related issues under the *AML*.

This decentralised enforcement framework reflects a careful compromise by the State Council to preserve the balance of power of the three agencies. Despite the fragmented enforcement structure, merger enforcement activities and guidance are the province of MOFCOM under the *AML*. Moreover, the State Council directed that AMC’s administrative office will be located at MOFCOM, further enhancing MOFCOM’s antitrust enforcement status in the years to come.

1.2 What is the merger legislation?

The National People’s Congress enacted the primary antitrust legislation, the *AML*, on August 30, 2007. The *AML* became effective on August 1, 2008. On August 3, 2008, the State Council issued the *Rules on the Notification of Concentrations of Undertakings* (the “**Notification Rules**”), which became effective on the same date and are intended to serve as implementing regulations for the sections of the *AML* relating to merger control.

In January 2009, MOFCOM published a series of draft guidelines and implementing regulations. Most of them remain in draft form at the time of this writing. That notwithstanding, they provide

helpful guidance on how to determine the reportability of transactions and how the merger review process is carried out. Two “Guidance Opinions,” which provide details on the procedural and documentary requirements for pre-merger notifications, took effect immediately upon their publication on January 7, 2009.

On July 7, 2009, the AMC issued the final *Guidelines on the Definition of Relevant Market*, which explains the approach to market definition to be used in merger and non-merger cases.

On July 15, 2009, MOFCOM, the People’s Bank of China (PBOC), the China Banking Regulatory Commission (CBRC), the China Securities Regulatory Commission (CSRC) and the China Insurance Regulatory Commission (CIRC) jointly promulgated the Measures for Computing Turnover for Notification of Concentration among Financial Services Companies (the “*Financial Merger Notification Measures*”), which supplement the *Notification Rules* and include guidance on how parties to proposed transactions in the financial services industry should compute their turnover to determine whether the notification thresholds under the *AML* are met. They became effective in mid-August 2009, thirty days after their promulgation.

Given that the *AML* has only been in force for slightly over a year at the time of this writing, and that MOFCOM only publishes its merger review decision when a transaction is denied or approved with conditions, there is limited precedent on how the provisions in the statute will be interpreted and how the authorities would enforce them. The *AML* was in part modelled after EU competition and U.S. antitrust laws, and MOFCOM has indicated that it will continue to look to best practices of other jurisdictions in implementing and enforcing the *AML*. This chapter was drafted with the above considerations in mind.

1.3 Is there any other relevant legislation for foreign mergers?

Currently, the *AML* is the only explicit basis for extraterritorial jurisdiction over foreign transactions. The *AML* applies to any concentration that exceeds enumerated thresholds or “restricts or eliminates” competition in China, regardless of whether the concentration is among domestic or foreign entities.

1.4 Is there any other relevant legislation for mergers in particular sectors?

Investment in China by both foreign and domestic investors is heavily regulated. Many sectors of the economy are off limits to foreign investors, while foreign as well as domestic investors in other sectors must obtain a number of regulatory approvals. Foreign direct investment requires approval by MOFCOM (or its

local counterparts), and the foreign-invested entity must register with the local-level SAIC. Investments in many industries require additional approvals from sector regulators.

Article 31 of the *AML* provides that, where a transaction involving a foreign investor is deemed to implicate national security, in addition to the review of anti-competitive effects under the *AML*, a separate national security review would also be conducted in accordance with applicable law. Please see question 4.1 for further details.

Informal enforcement is possible through the administration of licensing, permit requirements and other regulatory approvals in particular sectors. As an example, in 2008, the Chinese government imposed - then subsequently lifted - an import ban on cars produced by Hyundai Motor Co. and its affiliate Kia Motors Corp. reportedly for allegedly acting in an anti-competitive manner by pressuring their PRC dealers to meet certain sales targets.

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught - in particular, how is the concept of "control" defined?

The merger control regime under the *AML* broadly defines the following transactions as "concentrations" that are subject to the *Notification Rules*: (i) the merger of two or more independent businesses; (ii) an acquisition by one party of control over another party via either a share/equity or asset purchase; or (iii) an acquisition of control or the ability to exert decisive influence over another party by contract or other means.

The *Draft Interim Measures for Notifications of Concentration of Business Operators* - first published in January 2009, then in a slightly revised form in March 2009 and remain in draft form at the time of this writing (the "*Draft Notification Guidelines*") - define "acquiring control" as: (a) acquiring more than 50% of the voting shares or assets of another business operator; **or** (b) through the acquisition of shares or assets or by contractual or other means, obtaining the ability to nominate one or more directors, to appoint core management personnel, to make decisions regarding the financial budget, sales and operations, pricing, major investments or other significant management, and operational matters of another business operator.

2.2 Can the acquisition of a minority shareholding amount to a "merger"?

Minority shareholdings that do not confer control or the ability to exercise a decisive influence should not be subject to notification. The *Draft Notification Guidelines* state that the granting of minority shareholder protection rights such as veto rights over amendments to a company's articles of association, changes in registered capital or liquidation shall not be considered an acquisition of control over the company by such minority shareholders. That said, acquisition of a minority interest, together with other governance rights may constitute "control" or "decisive influence". Such a transaction could give rise to a notification obligation, even if an investor acquires only a minority stake in a Chinese company. See also discussion in question 2.1.

2.3 Are joint ventures subject to merger control?

The *AML* does not expressly address whether the formation of a

joint venture is a reportable transaction. The *Notification Rules* also provide no guidance on whether the formation of a joint venture would require notification. However, the *Draft Notification Guidelines* do confirm that joint ventures are covered by the *AML*. The January 2009 version of the *Draft Notification Guidelines* stated that where two or more businesses jointly establish a new enterprise, the transaction falls within the meaning of a "concentration" under the *AML*. However, this broad statement was modified in the amended version of the *Draft Notification Guidelines* issued in March 2009, which provide instead that only the formation of a lasting, independently operated new enterprise would be considered a "concentration", and that the establishment of a new enterprise that is set up solely to carry out on its parents' behalf a specific function, such as research and development, sales or manufacturing of specific products, will not be deemed a reportable concentration. In other words, under the *Draft Notification Guidelines*, not all joint ventures would be reportable. Rather, only the establishment of a "full-function" joint venture is considered a reportable concentration if the relevant turnover thresholds are met.

Despite the foregoing, in light of prior MOFCOM practice and the fact that the *Draft Notification Guidelines* remain in draft form, it would be prudent for parties establishing joint ventures - full-function or otherwise - to seek advice from counsel and consult with MOFCOM as appropriate to determine whether the transaction need to be notified if the filing thresholds under the *Notification Rules* are met.

2.4 What are the jurisdictional thresholds for application of merger control?

Once a transaction qualifies as a concentration under the *AML*, the *Notification Rules* require pre-merger notification when the proposed transaction satisfies either of the following thresholds:

- the combined worldwide turnover in the preceding fiscal year of all parties to the concentration exceeds RMB 10 billion, **and** each of at least two parties to the concentration has turnover in China exceeding RMB 400 million; or
- the combined turnover in China in the preceding fiscal year of all parties to the concentration exceeds RMB 2 billion, **and** each of at least two parties to the concentration has turnover in China exceeding RMB 400 million.

The *Draft Notification Guidelines* provide some guidance on the methodology to compute turnover. Key provisions include:

- The turnover of a business includes the turnover of all businesses it is under common control with, excluding intra-group sales.
- Where a concentration involves the acquisition of parts of one or more undertakings, only the turnover attributed to those parts of a seller involved in the concentration shall be included when computing its turnover.

Separately, the *Financial Merger Notification Measures* set forth a unified approach to compute turnover of financial institutions:

- Identify the amount for each applicable category of revenue (e.g., interest income, commissions, fees, investment gains, income from insurance premium, etc.).
- Sum up the amounts for all applicable categories of revenue.
- Deduct any business taxes and other applicable charges to arrive at a net aggregate revenue.
- Multiply the net aggregate revenue by 10% to come up with the turnover of the party for purposes of determining if the notification thresholds are met.

The *Financial Merger Notification Measures* apply to turnover computation in transactions involving banking institutions,

securities and futures dealers, fund management companies, insurers and other financial institutions, including asset management companies, trust companies, leasing companies, automotive finance companies, currency brokers and other institutions regulated by the relevant financial regulatory agencies.

Notwithstanding the thresholds above, the *Notification Rules* confer broad discretion to MOFCOM, which may investigate a transaction that falls below the thresholds if it believes that the transaction may have the effect of restraining or harming competition in China. See question 2.7.

2.5 Does merger control apply in the absence of a substantive overlap?

Yes, if a concentration exceeds any of thresholds it will be subject to merger control even in the absence of a substantive overlap.

2.6 In what circumstances is it likely that transactions between parties outside China ("foreign to foreign" transactions) would be caught by your merger control legislation?

The *AML* does not provide any exclusion for foreign-to-foreign transactions. If the parties have the requisite Chinese and/or worldwide turnover, the transaction will be subject to merger control.

2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

The *Notification Rules* confer broad discretion to MOFCOM, which may require a notification for transactions that fall below the jurisdictional thresholds if it believes that the transaction may have the effect of restraining or harming competition in China. On the other hand, the *Notification Rules* allow for the exemption of certain concentrations among parties subject to common control. See question 3.2.

The *Draft Interim Measures for the Investigation and Handling of Concentrations of Business Operators that have Failed to be Notified in accordance with the Law*, published in January 2009 but remain in draft form, set out the procedures for the investigation of concentrations that do not meet the notification thresholds but are considered potentially anti-competitive.

2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

The *Draft Notification Guidelines* provide for "aggregation" of prior transactions. Where, within one year, the same group of undertakings engage in a series of transactions involving the acquisition of parts of one or more of such undertakings, and no individual transaction in such series meets the notification thresholds, such series will be deemed a single concentration. The turnover for the undertakings in the concentration will be the sum of all turnover involved in the individual transactions. The date of the concentration will be the date of the last transaction in the series.

3 Notification and its Impact on the Transaction Timetable

3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

If the jurisdictional thresholds are met, notification is compulsory and must be filed at least 30 days before the parties effect the concentration. The *AML*, however, provides no concrete filing deadlines. Therefore, unless and until the State Council, AMC or MOFCOM issues further guidance on this issue, merging parties are advised to notify their transaction to MOFCOM after having reached a definitive agreement on the transaction but well prior to consummating it. In appropriate circumstances, the parties may also engage MOFCOM officials in informal consultations to negotiate a desirable filing deadline.

3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

The *AML* provides two exemptions from mandatory notification when parties to a concentration share common majority ownership as follows: (a) one party to the concentration possesses 50% or more of the voting shares or assets of every other party to the concentration; or (b) one business operator who is not party to the concentration possesses 50% or more of the voting shares or assets of every party involved in the concentration.

Where a state-owned enterprise is involved in a concentration, it is possible that MOFCOM would decide not to enforce the *AML* notification provisions with respect to transactions in sectors deemed important. Article 7 of the *AML* provides, in pertinent part: "The State shall protect the lawful business activities of business operators controlled by the state-owned economy in industries that have bearing on the essential well-being of the national economy and national security ..."

3.3 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

Where parties implement the concentration in violation of the *AML*, MOFCOM is empowered to order parties to terminate and/or unwind the transaction, dispose of relevant assets, shares/equity or businesses within a certain period, and take other measures to restore the conditions that existed before the transaction. MOFCOM may also impose fines of up to RMB 500,000 on the violators.

Parties to any transaction that reduces competition may be liable to third parties for any losses caused by the reduction in competition. As a practical matter, transactions that are not notified or that close prior to clearance may be at an increased risk for such actions.

3.4 Is it possible to carve out local completion of a merger to avoid delaying global completion?

The Chinese authorities have not directly addressed this issue to date. However, on occasion, MOFCOM has demonstrated flexibility, particularly for offshore acquisitions, to allow the transaction to close while suspending only the Chinese portion of the transaction until it issues approval.

3.5 At what stage in the transaction timetable can the notification be filed?

The *AML* does not provide any guidance as to when the parties should submit the notification. However, the parties are required to submit the concentration agreement in connection with the notification, so it is presumed that the notification should not be filed until the parties have reached a definitive agreement, and that it is premature to file a notification at the letter of intent stage.

3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

Once a notification for a reportable transaction has been prepared and filed, the *AML* provides that MOFCOM shall, within 30 days of the filing, conduct a preliminary examination of the transaction, render a decision as to whether further examination is required and notify the filing parties in writing. If MOFCOM finds that additional information is needed, which is not uncommon, it can suspend the counting of days until the additional information is submitted. Although the *AML* and *Notification Rules* are silent on the issue, MOFCOM has informally advised that it interprets “days” as working days rather than calendar days (i.e., no weekends or holidays) consistent with its general practice. If MOFCOM fails to make a decision within the 30-working day waiting period, the parties may implement the concentration.

MOFCOM has the authority to conduct a further examination, which must be completed within 90 working days from the extension date. The examination period can be further extended by 60 working days if: (1) the filing parties consent to such extension; (2) documents and other materials previously submitted are inaccurate and further verification is necessary; or (3) a material change in the relevant circumstances has occurred after the initial filing was made.

3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks in completing before clearance is received?

The concentration under review must be suspended until the authorities have cleared the transaction or the relevant waiting periods under the *AML* have expired without an adverse decision.

Parties that consummate concentrations in contravention of the *Notification Rules* may be subject to an order to (i) stop implementing the concentration, (ii) dispose of the wrongly-acquired assets and/or shares within a prescribed period, or (iii) adopt other measures to “restore the market situation that has existed before the concentration.” In addition, the parties are subject to fines of up to RMB 500,000 for failure to file notification prior to consummation. Further, parties to any transaction that reduces competition may be liable to third parties for any losses caused by the reduction in competition. As a practical matter, transactions that are not notified or that close prior to clearance may be at an increased risk for such actions.

3.8 Where notification is required, is there a prescribed format?

The *AML* sets forth certain limited information that the parties must submit. The *Notification Rules* do not provide further details, but MOFCOM has provided a prescribed form. Information that

should be provided in a notification includes:

- information on the parties to the transaction, including the parties’ names, legal addresses, principal business activities, and affiliates or foreign investment enterprises in China, if any;
- description of the transaction, including the structure, transaction value, relevant industries and products at issue, and the economic rationale for the transaction;
- parties’ annual sales in and market share information for all relevant markets from the two preceding fiscal years, together with sources of data relied on for market share;
- the merger or acquisition agreement;
- the estimated closing date;
- audited financial statements from all parties for the most recent fiscal year;
- definition of relevant markets involved, with a list of top five (5) competitors in each relevant market and their market share;
- a list of top customers and suppliers for the parties;
- description of competitive conditions in relevant markets, including ease of entry, entries in the past three years, and prior horizontal or vertical collaborations, if any, in the relevant markets;
- information regarding merger filings and notifications in other jurisdictions; and
- any other information requested by the reviewing authorities.

Parties should submit two sets of hardcopy materials, together with one set of softcopy materials on a CD-ROM.

3.9 Is there a short form or accelerated procedure for any types of mergers?

No specific procedural rule is available at the time of this writing.

3.10 Who is responsible for making the notification and are there any filing fees?

The *AML* requires the relevant undertakings to file a notification, without distinguishing between the acquiring and acquired parties. The *Draft Notification Guidelines* provides that where a concentration is implemented by way of a merger, all undertakings participating in the merger should notify the transaction to MOFCOM. Where a concentration is implemented in other ways, the undertaking(s) acquiring a controlling right or exercising a decisive influence should notify and the other participating undertaking(s) should cooperate with the notifying undertaking(s). Undertakings participating in a concentration but not obligated to notify may nevertheless elect to participate in a joint filing. There are no filing fees.

4 Substantive Assessment of the Merger and Outcome of the Process

4.1 What is the substantive test against which a merger will be assessed?

The *AML* broadly prohibits “concentrations among undertakings that have or are likely to have the effect of eliminating or restricting competition”. If, however, the undertakings proffer sufficient evidence that (a) the favourable, pro-competitive impact of the concentration on competition exceeds its potential adverse impact, or (b) the concentration is in harmony with the public interest, the

authorities may allow the concentration.

In an effort to clarify the merger review standards, the *AML* sets forth the following six factors that the authorities should generally take into account when analysing competitive effects of concentrations:

- the relevant operators' market share and their controlling power over that market;
- the level of concentration of the relevant market;
- the impact of such concentration on market access and technological progress;
- the impact of such concentration on the consumers and other operators;
- the impact of such concentration on national economic developments; and
- other factors that may affect the market competition and deemed necessary by the authorities.

In other instances, the authorities may allow the concentration but impose restrictive remedial conditions, similar to consent decrees in the United States, to reduce the adverse impact of such concentration on competition.

In addition to purely antitrust considerations, Article 31 of the *AML* specifies that a national security review - one that is analogous to the national security review initiated by the Committee on Foreign Investment in the United States - should be conducted where a transaction involving a foreign investor is deemed to implicate national security. The *AML*, however, does not elaborate on how the review procedures will be carried out, with some observers predicting that the scope of review could implicate issues that broadly impact the Chinese economy outside the realm of national security, including job security, social stability, protection of important national brands and technologies. Such review would be conducted by an inter-ministerial national security review committee to be jointly established by MOFCOM, NDRC and other yet-to-be named agencies. Though the inter-agency "national security review" process remains unsettled, foreign investments in key sectors will likely face added regulatory scrutiny.

4.2 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

Any organisation or individual has the right to report any suspected monopolistic conduct to the AMEAs. This right to report presumably includes the right to notify the AMEAs of unreported concentrations. The AMEAs are obligated to maintain the confidentiality of such reporting organisation or individual.

As part of the regulatory investigation, the AMEAs are expressly permitted to question interested parties and other relevant organisations or individuals in order to clarify the relevant facts and circumstances.

4.3 What information gathering powers does the regulator enjoy in relation to the scrutiny of a merger?

As part of the regulatory investigation, the AMEAs are expressly permitted to take the following measures:

- enter into the business premises of the undertaking being investigated or other relevant places for investigation;
- question the undertakings being investigated, interested parties, and other relevant organisations or individuals, requesting them to clarify the relevant facts and circumstances;
- examine and copy relevant documents, agreements, accounting books, business correspondence, electronic data

and other materials of the undertakings being investigated, interested parties and other relevant organisations or individuals;

- seal or seize relevant evidence; and
- make inquiries about the bank accounts of the undertakings.

The *AML* does not specifically identify the measures the AMEAs may take in connection with a merger investigation. Some of the measures listed above are presumably more likely to be taken when AMEAs investigate alleged abuses of market dominance and monopoly agreements.

The *Draft Interim Measures for Review of Concentration of Business Operators* - first published in January 2009, then in a slightly revised form in March 2009 and remain in draft form at the time of this writing (the "*Draft Review Guidelines*") - provide that MOFCOM may convene hearings to investigate and collect evidence, and hear the opinions of relevant parties. Participants may include parties to the concentration, their competitors, upstream and downstream businesses, and representatives from other relevant parties. MOFCOM may also invite experts, trade association representatives, government representatives and consumers to participate. Such hearings will not be held in public.

4.4 During the regulatory process, what provision is there for the protection of commercially sensitive information?

The *AML* explicitly requires that the authorities fully comply with "the obligation to keep confidential all trade secrets provided by the parties during the course of law enforcement proceedings". The *Draft Review Guidelines* expressly stipulate that MOFCOM, the notifying parties and others involved in the review have the obligation to maintain the confidentiality of commercial secrets and other confidential information that are obtained through the review process.

5 The End of the Process: Remedies, Appeals and Enforcement

5.1 How does the regulatory process end?

If MOFCOM does not notify the undertakings concerned of its intention to initiate a further investigation within 30 working days from the date of receipt of completed notification materials, the undertakings may implement the concentration. If a further investigation is initiated within the preliminary review period, MOFCOM shall have an additional 90 working days (which can be extended up to 60 additional working days; see question 3.6) in which to complete the review and notify the undertakings in writing whether it prohibits the concentration, approves the concentration, or approves the concentration subject to certain restrictive conditions. If no notification is forthcoming after the 90-day period (plus any applicable extension) has expired, the parties may implement the concentration.

5.2 Where competition problems are identified, is it possible to negotiate "remedies" which are acceptable to the parties?

Under Article 29 of the *AML*, if the enforcement authority (MOFCOM) does not prohibit the concentration, it may decide to impose restrictive conditions to reduce the adverse effects the concentration may have on competition. The *Draft Review Guidelines* provide that either the filing parties or MOFCOM may propose restrictive conditions to mitigate the anti-competitive effects of a concentration under review.

Article 45 of the *AML* provides that, where a party being investigated for alleged violation of the *AML* commits itself to taking specific actions to eliminate the effects of anti-competitive conduct within the time limit approved by the enforcement authority, the authority may decide to suspend the investigation. The authority shall monitor the accused party's activities and, if the party has fulfilled its commitments as agreed upon within the specified time, the authority may decide to terminate the investigation. See also question 5.3.

5.3 At what stage in the process can the negotiation of remedies be commenced?

The *Draft Review Guidelines* state that both MOFCOM and the parties participating in the concentration under review may propose restrictive conditions to mitigate the anti-competitive effects of the concentration "during the review process". Accordingly, MOFCOM officials will likely agree to meet with undertakings and their counsel to discuss potential remedies at any time during the review process.

5.4 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

The Chinese authorities have not directly addressed this issue to date.

5.5 Can the parties complete the merger before the remedies have been complied with?

Where a conditional clearance includes restrictive conditions that are to be implemented post-closing (e.g., divestment that is to be completed within a certain time limit), the parties may complete the transaction before fully fulfilling their obligations under such restrictive conditions. However, failure to comply with the agreed upon remedies can lead MOFCOM to take further action under applicable provisions of the *AML*.

5.6 How are any negotiated remedies enforced?

The *Draft Review Guidelines* state that MOFCOM will establish a system to supervise the implementation of conditionally approved concentrations, including those with negotiated remedies. The parties to such concentration must regularly report to MOFCOM regarding the implementation status of the restrictive conditions imposed, and MOFCOM will monitor the parties' compliance with such conditions. If the parties fail to comply with the agreed upon restrictive conditions, MOFCOM has the authority to set a time limit for corrective action. If the parties still fail to comply, MOFCOM can take further action in accordance with the provisions of the *AML*.

5.7 Will a clearance decision cover ancillary restrictions?

MOFCOM can and has issued conditional clearances that include ancillary restrictions, such as restrictions on future acquisitions or organic growth within a specified time period.

5.8 Can a decision on merger clearance be appealed?

Article 53 of the *AML* provides that interested parties may apply for administrative reconsideration of MOFCOM's decisions on mergers. Decisions resulting from such administrative reconsideration are subject to appeal through administrative lawsuits.

5.9 Is there a time limit for enforcement of merger control legislation?

The Chinese authorities have not directly addressed this issue to date.

6 Miscellaneous

6.1 To what extent does the merger authority in China liaise with those in other jurisdictions?

China has yet to formally enter into any international competition cooperation agreements; however, MOFCOM continues to explore international cooperation on a range of anti-monopoly issues.

In addition, China has increased cooperation discussions with regional competition authorities from Asia, including the member states of the Association of Southeast Asian Nations. In 2007, for example, China joined competition authorities from Japan, South Korea, Thailand, Indonesia, Brunei, Myanmar, Malaysia, Cambodia, Laos, Mongolia, Vietnam, Hong Kong, Taiwan, Singapore and the Philippines at the East Asia Conference on Competition Law to discuss ways to improve cooperation among regional competition authorities. MOFCOM has also maintained close contact with competition authorities and practitioners in the United States and European Union. The *AML* was developed with substantial input from US and EU competition authorities and practitioners. In light of this cooperation, it is likely that the Chinese authorities will continue to liaise with authorities and practitioners from other jurisdictions as implementation issues arise in connection with the *AML*.

6.2 Please identify the date as at which your answers are up to date.

October 31, 2009.

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Patrick also counsels and assists clients in designing and developing their IP portfolios and exploiting and defending their IP rights through licensing and litigation. He has successfully litigated major cases involving claims of patent infringement, trade secret misappropriation and unfair competition before various courts and adjudicative bodies, including Section 337 proceedings before the US International Trade Commission (ITC). He also advises clients on the IP aspects of foreign direct investments into China, including the use of offshore holding company structures, issues concerning mergers and acquisitions, as well as technology transfer and licensing arrangements involving patents, copyrights, trademarks, domain names and other proprietary rights.

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