

Domestic-to-Domestic Transactions— A Gap in China’s Merger Control Regime?

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China recently celebrated the fifth anniversary of its landmark enactment and implementation of the Anti-monopoly Law (AML) in August.¹ In the past five years, Chinese antitrust agencies carefully but steadily have expanded the scope of their enforcement activities and increased the sophistication of their enforcement. The State Council appointed three antitrust enforcement agencies: the Ministry of Commerce (MOFCOM), which handles mergers; the National Development and Reform Commission (NDRC), which has retained its responsibilities for price-related offenses, including cartels; and the State Administration for Industry and Commerce (SAIC), which regulates non-price-related abuse of dominance and monopoly agreements. To date, MOFCOM’s merger review remains the most prominent part of China’s AML enforcement, receiving over 700 notifications.² With a fast-growing record, MOFCOM has become a very significant antitrust regulator that cross-border M&A counsel cannot overlook.

As of December 31, 2013, MOFCOM cleared a total of 728 cases unconditionally.³ To date, it has imposed restrictive conditions in 21 transactions and prohibited one transaction.⁴ These transactions include InBev/Anheuser-Busch, Coca-Cola/Huiyuan (the only MOFCOM decision blocking a transaction), Mitsubishi/Lucite, GM/Delphi, Pfizer/Wyeth, Panasonic/Sanyo, Novartis/Alcon, Uralkali/Silvinit, Alpha V/Savio, GE (China)/Shenhua, Seagate Technology/Samsung Electronics, Henkel (Hong Kong)/Tiande Chemical, Western-Digital/Hitachi, Google Inc./Motorola Mobility, United Technologies/Goodrich, Wal-Mart/Yihaodian, ARM/Giesecke & Devrient/Gemalto, Glencore/Xstrata, Marubeni/Gavilon, Baxter/Gambro, MStar Semiconductor/MediaTek, and Thermo Fisher Scientific/Life Technologies.⁵ All of the transactions involve at least one “foreign” party, i.e., a company with its holding parent headquartered outside Mainland China.⁶ Further, other than the proposed Coca-

¹ See The Anti-monopoly Law of the People’s Republic of China [hereinafter AML] (promulgated by the Standing Comm. Nat’l People’s Cong., Aug. 30, 2007, effective Aug. 1, 2008), arts. 9 and 10, http://www.gov.cn/flfg/2007-08/30/content_732591.htm (China), translated in Nathan Bush, *The PRC Antimonopoly Law: Unanswered Questions and Challenges Ahead*, THE ANTITRUST SOURCE, Oct. 2007, appendix.

² See MOFCOM, *MOFCOM Spokesman Yao Jian Answered Questions from the Media Regarding the Anti-monopoly Review of Concentration of Undertakings* [hereinafter May 2013 MOFCOM Spokesman’s Remarks] (May 27, 2013) (stating that MOFCOM had received 698 filings by March 21, 2013).

³ See MOFCOM, Government Affairs, available at <http://fldj.mofcom.gov.cn/article/zcfb/> (providing links to past MOFCOM unconditional clearances on a quarterly basis).

⁴ MOFCOM, Public Announcements, available at <http://fldj.mofcom.gov.cn/article/ztxx>.

⁵ *Id.* No. 95 (2008); Nos. 22, 28, 76, 77 & 82 (2009); Nos. 53 (2010); Nos. 33, 73, 74 & 90 (2011); Nos. 6, 9, 25, 35, 49 & 87 (2012); Nos. 20, 22, 58 & 61 (2013); and No. 3 (2014).

⁶ Mainland China excludes Hong Kong, Macau, and Taiwan, which are generally considered to be outside the territory of the People’s Republic of China. See Norton Rose Group, *Antimonopoly Law in China 7* (Mar. 2012) [hereinafter Norton Rose Guide], available at <http://www.nortonrosefulbright.com/files/download-antimonopoly-law-in-china-63824.pdf>.

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Cola/Huiyuan merger, the GE (China)/Shenhua joint venture, and Wal-Mart's acquisition of control over Yihao dian, all transactions are among foreign companies.

These transactions' cross-border nature resulted in extensive coverage of each MOFCOM decision by many international antitrust practitioners and scholars. Especially in the aftermath of the first prohibited Coca-Cola/Huiyuan transaction in 2009, many commentators questioned the fairness of MOFCOM's application of the AML to foreign enterprises and domestic enterprises.⁷ Many suggested that the AML would be used to promote a protectionist agenda, shielding Chinese domestic industry from foreign competition or investment. Although the United States officially has been reluctant to confront China over antitrust rules, in an unusually direct speech in Beijing at a conference celebrating the fifth anniversary of the AML, FTC Commissioner Maureen Ohlhausen urged that "political decisions" should have no place in antitrust reviews.⁸

Rather than reviewing whether these MOFCOM decisions are substantively correct, this article examines the procedural fairness of the Chinese merger control regime by investigating whether Chinese domestic companies, including powerful state-owned enterprises (SOEs), are subject to the merger control regime and whether they routinely make pre-merger notifications with MOFCOM, as do their foreign counterparts. For the purpose of this article, "domestic" companies, i.e., those that are not "foreign," are those with holding parents that are headquartered in Mainland China.⁹ The article then explores possible reasons why foreign and domestic companies may receive different procedural treatment.

The Intention: To Apply the AML Equally to All

Largely following the model of the European Union and German competition laws, the AML includes merger rules to regulate significant M&A activities and prevent transactions that restrict competition, as well as rules that prohibit restrictive agreements and the abuse of administrative power that leads to restrictions of competition.

The AML applies to all "business operators" or "undertakings," which are defined to include any natural person, legal person, or any other organization that produces goods or provides services. Article 7 of the AML contains somewhat ambiguous language concerning the AML's application to SOEs, but the majority view is that the AML is intended to apply equally to all undertakings.¹⁰ The three antitrust enforcement agencies—NDRC, SAIC, and MOFCOM—all have stated publicly that they do not afford any preferential treatment to SOEs in the application of the AML.

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⁷ See MOFCOM, MOFCOM Held Anti-monopoly Work Status Special Press Conference on the 12th (Aug. 12, 2010) [hereinafter MOFCOM 2010 Press Conference], available at http://www.gov.cn/gzdt/2010-08/12/content_1678211.htm; MOFCOM Held "2011 Anti-monopoly Work Main Status" (Dec. 27, 2011) [hereinafter MOFCOM 2011 Press Conference], available at <http://www.mofcom.gov.cn/article/ae/slfw/201112/20111207901483.shtml>; Britton Davis, *China's Anti-Monopoly Law: Protectionism or a Great Leap Forward?*, 33 B.C. INT'L & COMPARATIVE L. REV. 305 (2010).

⁸ Maureen K. Ohlhausen, Commissioner, Fed. Trade Comm'n, Nurturing Competition Regimes: Evaluation and Evolution, Remarks at the Competition Policy in Transition China Competition Policy Forum, Beijing (July 31, 2013), available at http://www.ftc.gov/sites/default/files/documents/public_statements/nurturing-competition-regimes-evaluation-and-evolution/130731compolicychina.pdf.

⁹ If an entity is a 50/50 joint venture between a domestic company and a foreign company, the entity is considered foreign.

¹⁰ See Norton Rose Guide, *supra* note 6, at 6.

Indeed, NDRC investigated several SOEs regarding their practices within China and MOFCOM imposed restrictive conditions on a cross-border joint venture involving an SOE.¹¹

Article 2 of the AML adopts the principle of extraterritorial jurisdiction, which is the ability of a government to exercise authority beyond its national boundaries, and states that the AML not only applies to monopolistic conduct inside the territory, but also to conduct outside the territory of the People's Republic of China if it eliminates or has a restrictive effect on competition in the domestic market. MOFCOM's imposition of regulation on foreign parties discussed herein shows that the principle of extraterritorial jurisdiction has been put in practice.

Although the international reaction toward the AML's enactment generally has been positive, there also has never been a shortage of skepticism over its fair application, and such skepticism becomes especially heightened each time the Chinese antitrust agencies flex their regulatory muscle against foreign enterprises.¹² MOFCOM has been quite sensitive to such skepticism and has consistently emphasized through many public statements that China does not discriminate against foreign companies in its application of the AML.

For example, the Director General of MOFCOM's Anti-monopoly Bureau held a press conference in August 2010, which, in part, specifically emphasized the non-discriminatory application of the merger control regime.¹³ In answering questions from an Associated Press reporter on the possible bias behind the phenomenon that MOFCOM's decisions to impose conditions seem to focus principally on foreign-to-foreign deals, the Director General emphasized that MOFCOM does not discriminate between concentrations that involve foreign enterprises and those that involve only domestic Chinese enterprises, though he acknowledged that he lacked concrete statistics in this respect. Moreover, he explained that foreign companies typically had a much higher probability of triggering the notification thresholds because of their significant capital and because they tend to be more active in making acquisitions.¹⁴

Similarly, at its annual press conference in December 2011, in answering an almost identical question posed by a *China Journal* reporter, MOFCOM re-emphasized that it does not discriminate among concentrations that involve foreign enterprises, SOEs, and domestic private enterprises—MOFCOM only takes into account the concentration's impact on competition.¹⁵ Then again, in May 2013, a spokesman remarked that MOFCOM would apply the AML equally to “all Chinese and overseas enterprises.”¹⁶ Thus, based on both the text of the AML and MOFCOM's

¹¹ See, e.g., Susan Xuanfeng Ning et al., *What Constitutes Anticompetitive Tying in China? The Wuchang Salt Company Case* (Nov. 30, 2010), available at <http://www.chinalawinsight.com/2010/11/articles/corporate/antitrust-competition/what-constitutes-anticompetitive-tying-in-china-the-wuchang-salt-company-case/>; Mayer Brown, *China Antitrust Moves Up a Gear* (Nov. 14, 2011), available at <http://www.mayerbrown.com/files/Publication/bc5aedc7-36ef-4a91-97dc-165dbc97984e/Presentation/PublicationAttachment/a2231f25-ee96-405e-81fa-30e363a6ab29/11808.pdf>; MOFCOM, Public Announcement No. 74 (2011), available at <http://fldj.mofcom.gov.cn/aarticle/zcfb/201111/20111107824342.html>.

¹² See, e.g., Qingxiu Bu, *Coca-Cola v. Huiyuan—Market-Economy Driven or Protectionism?*, 41 INT'L REV. INTELL. PROP. & COMPETITION L. 202–10 (2010); Grace Ng, *China Flexing Its Anti-Monopoly Law Muscle: Revenge or Self-Defense?* (July 10, 2013), available at <http://medcitynews.com/2013/07/china-flexing-its-anti-monopoly-law-muscle-revenge-or-self-defense>.

¹³ Yee Wah Chin, *M&A Under China's Anti-Monopoly Law, Emerging Patterns*, BUS. L. TODAY (NewsL. ABA Section of Business Law), Sept. 2010, available at http://www.americanbar.org/publications/blt/2010/09/05_chin.html.

¹⁴ MOFCOM 2010 Press Conference, *supra* note 7.

¹⁵ MOFCOM 2011 Press Conference, *supra* note 7.

¹⁶ MOFCOM Spokesman Yao Jian Answered Questions from the Media Regarding the Anti-Monopoly Review of Concentration of Undertakings (May 27, 2013), available at <http://english.mofcom.gov.cn/article/newsrelease/policyreleasing/201306/20130600150074.shtml>.

various public statements, it seems clear that MOFCOM intends to treat concentrating parties equally in all respects, including notification thresholds, notification procedures, and substantive evaluation criteria.

The Track Record: Clearance Decisions Reveal Limited Procedural Fairness

Although MOFCOM has made its intention to apply the AML equally to all undertakings abundantly clear, until recently there have been no statistics available to test whether such equality exists in practice. Until late 2012, MOFCOM had made public only its decisions to impose restrictive conditions on, or to prohibit, a notified concentration. Each of the 22 published decisions involved at least one foreign party; none of the decisions involved transactions with only domestic parties (domestic-to-domestic transactions). It therefore was not possible to determine whether MOFCOM cleared any domestic-to-domestic transactions or whether M&A counsel in China advised their clients to make notifications to MOFCOM in domestic-to-domestic transactions that triggered filing thresholds. Such procedural equality is a threshold issue in assessing whether merger control under the AML is indeed applied equally to all undertakings.

In a much-welcomed effort to enhance its transparency, in September 2012 MOFCOM went beyond the disclosure requirements under the AML and began regularly identifying all cases approved without conditions.¹⁷ Although these quarterly announcements reveal only limited information, such as the parties' names and the clearance date, they shed light on how often, if at all, parties involved in domestic-to-domestic transactions notified MOFCOM. This is an important piece of information in assessing the procedural fairness of the merger control regime under the AML. A review of all of MOFCOM's unconditional clearances from August 2008 until the end of 2013 shows that a very small number of notifications are domestic-to-domestic transactions. Out of 750 notifications, only approximately 8 percent, or 57 transactions, are domestic-to-domestic.¹⁸ (Each domestic-to-domestic transaction is listed in the Appendix.)

As shown by the five-year clearance records, at least some parties involved in domestic-to-domestic transactions filed pre-merger notifications with MOFCOM and received clearance like their foreign counterparts. Notably, at least 26 of the 57 domestic-to-domestic transactions involve at least one party that is an SOE, showing that even the all-powerful SOEs in major strategic sectors (such as steel, energy, civil aviation, and minerals) follow the AML's notification procedures. On the other hand, given their financial size and the relatively frequent major reorganizations and consolidations SOEs have gone through,¹⁹ it is not surprising that transactions involving SOEs tend to trigger filing thresholds. The clearance records, however, also reveal that on average, parties involved in domestic-to-domestic transactions filed approximately 10 to 11 notifications with MOF-

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¹⁷ MOFCOM, MOFCOM Held Special Press Conference on "Anti-Monopoly Work Progress in 2012" (Jan. 5, 2013), available at <http://english.mofcom.gov.cn/article/newsrelease/press/201301/20130108513014.shtml>.

¹⁸ According to a 2013 study, which based the nationality of the company on the location of its headquarters, among all transactions reviewed by MOFCOM from August 2008 through June 2013, approximately 18% of acquisitions involved a domestic acquirer and domestic seller and 10% of non-acquisitions (typically joint ventures) involved a domestic acquirer and domestic seller. The nationality of each firm in this study is defined based on the location of its headquarters and the study includes as "domestic" companies those with headquarters in Mainland China, Hong Kong, Macau, and Taiwan. See Fei Deng & Cunzhen Huang, *A Five Year Review of Merger Enforcement in China*, ANTITRUST SOURCE, Oct. 2013, available at http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/oct13_deng_10_29f.authcheckdam.pdf.

¹⁹ The State-Owned Assets Supervision and Administration Commission [hereinafter SASAC] announced in 2006 that it would be China's goal to foster 30 to 50 large "internationally competitive" SOEs in seven strategic industries by 2010. See Xinhua News, *SOEs to Maintain Overwhelming Control in Seven Sectors* (Dec. 19, 2006), available at http://news.xinhuanet.com/fortune/2006-12/19/content_5504591.htm.

COM every year, while parties involved in transactions with at least one foreign party filed well over 100 such notifications each year. This contrast casts doubt over whether notifying domestic-to-domestic mergers is a routine practice in China.

Could the 8 percent low filing rate be merely due to a lack of domestic-to-domestic transactions in China? Several third-party M&A data sources appear to call that proposition into question. Using Thomson Reuters data from August 1, 2008 through December 31, 2013, there were a total of 19,480 M&A transactions involving a target whose primary business was located in Mainland China, of which 15,177 deals, or approximately 78 percent, involved an acquirer whose primary business was also located in Mainland China.²⁰ Data from Dealogic appear to be consistent in suggesting that domestic M&A deals accounted for approximately 81 percent of China-targeted deals from the same period in terms of number of deals.²¹ Both sets of M&A data are based only on announced deals and only act as references to give some perspective on how frequently domestic companies acquire domestic targets compared to foreign companies.

Furthermore, one cannot directly compare the 8 percent domestic-to-domestic filing rate based on MOFCOM's quarterly announcements with the high 70–80 percent figures from the third-party data providers. The Thomson Reuters and Dealogic data do not capture many foreign-to-foreign deals that trigger MOFCOM notifications, such as Google's acquisition of Motorola in 2012, because those companies' primary businesses or headquarters are not in Mainland China. However, these M&A data do suggest that domestic-to-domestic transactions comprise a large share of M&A activities targeting Chinese companies.

Could the low number of domestic-to-domestic notifications result from the fact that such transactions typically do not reach the AML's relatively high notification thresholds?²² Third-party data do not appear to support this proposition. From August 1, 2008 through December 31, 2013, Thomson Reuters reports 606 M&A transactions (1) that exceed US\$200 million in value²³ and (2) in which both the target and buyer have their primary business in Mainland China; and a subset of 214 transactions with deal values over US\$500 million. Similarly, Dealogic reports 737 domestic M&A transactions valued²⁴ at over US\$200 million and 219 such transactions valued at over US\$500 million. Both numbers exclude deals with undisclosed deal values.

²⁰ Thomson Reuters (SDC Platinum), International Mergers database [hereinafter IMA database]. The IMA database includes all announced deals, but excludes withdrawn deals between August 1, 2008 through December 31, 2013.

²¹ Dealogic Analytics database [hereinafter Dealogic database]. The Dealogic database includes all announced deals, but excludes withdrawn deals between August 1, 2008 through December 31, 2013. Domestic M&A deals as reported by Dealogic include deals in which both parties are headquartered in Mainland China. China-targeted deals include all deals in which the target is headquartered in Mainland China.

²² The AML revenue thresholds include: (1) the global sales of the undertakings involved exceed RMB10 billion (approximately US\$1.7 billion) and each of at least two undertakings involved have sales exceeding RMB400 million (approximately US\$66.0 million) in Mainland China in the previous accounting year; or (2) the sales in Mainland China of all undertakings involved exceeds RMB2 billion (approximately US\$330.0 million) and each of at least two undertakings involved have sales exceeding RMB400 million (approximately US\$66.0 million) in Mainland China in the previous accounting year. See Regulation on Notification Thresholds for Concentrations of Undertakings (promulgated by the 20th General Meeting of the State Council, Aug 1, 2008, effective Aug. 3, 2008), available at http://www.gov.cn/zwjg/2008-08/04/content_1063769.htm, translated in <http://www.lawinfochina.com/display.aspx?id=7024&lib=law>.

²³ This value is calculated by subtracting the value of any liabilities assumed in a transaction from the transaction consideration and by adding the target's net debt.

²⁴ Deal value is either directly disclosed by one of the parties (total consideration given in press release) or, for public companies, calculated based on the offer price per share on a fully diluted basis. In general, deal value is being defined as a cost to the acquirer for the stake/company/assets acquired. Net debt is included in full once the 50% threshold has been breached. See Dealogic database, *supra* note 21.

One cannot directly compare the number of domestic-to-domestic transaction notifications disclosed by MOFCOM's quarterly announcements (57) with the numbers of domestic M&A transactions valued over US\$200 million or US\$500 million reported by Thomson Reuters or Dealogic, as the transaction value is, at best, a very rough proxy of the filing thresholds, which are measured by the global and domestic revenues of both parties involved in the transaction. However, third-party data do appear to suggest that there is no dearth of large domestic-to-domestic M&A transactions in China, contrary to what the small number of domestic-to-domestic MOFCOM notifications may have suggested.

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Thus, although the equal application of the AML to all undertakings has been repeatedly emphasized by MOFCOM, the small number of domestic-to-domestic transactions cleared by MOFCOM seems to suggest that many such transactions may not in fact be notified to MOFCOM. It is difficult to attribute a single reason for the potential differentiated treatment of domestic and foreign mergers in China, and one should not simply assume protectionism. Merger control is better understood in the context of the history of the AML and MOFCOM, as well as MOFCOM's administrative status.

The Potential Reasons Behind the Limited Procedural Fairness

The History of Merger Control in China. Article 1 of the AML explains its purpose—to prevent and restrain monopolistic conduct, protect fair competition in the market, enhance economic efficiency, safeguard the interests of consumers and social public interest, and promote the healthy development of the socialist market economy. Nevertheless, it appears clear that an unstated but important goal of the AML is to address issues associated with foreign investors acquiring domestic companies through M&A transactions.²⁵

As part of economic reform efforts beginning in 1978, China experimented with opening up to foreign investment in selected coastal cities and in special economic zones and industrial parks with a focus on attracting export-oriented manufacturing investment.²⁶ To join the World Trade Organization (WTO) in 2001, China made a strong commitment to open up its economy to foreign competition and agreed to drastically reduce tariff levels.²⁷ In the following years, foreign investors increasingly shifted their investment in China toward acquiring domestic companies, which led to heightened concerns that foreign companies might begin to dominate China's industries. China responded by taking measures to protect and nurture domestic industries, including setting ad hoc limitations on M&A transactions by foreign companies, revoking some of the preferential treatments previously accorded to foreign investors, and imposing new restrictions to increase foreign investors' cost of doing business in China.²⁸

With this historical backdrop, China introduced a pre-merger anti-monopoly review of M&A transactions in 2003 with the issuance of the Provisional Rules on the Takeover of Domestic Enter-

²⁵ See Bruce M. Owen et al., *China's Competition Policy Reforms: The Antimonopoly Law and Beyond*, 75 ANTITRUST L.J. 230, 252 (2008).

²⁶ The World Bank, *Foreign Direct Investment—the China Story* (July 16, 2010), available at <http://www.worldbank.org/en/news/feature/2010/07/16/foreign-direct-investment-china-story>.

²⁷ See Owen et al., *supra* note 25, at 252.

²⁸ See *id.* at 252–53 & n.63; see also Peter Wang & Yizhe Zhang, *Chinese Merger Control*, ASIA-PACIFIC ANTITRUST REV., 2007, at 1, available at <http://www.jonesday.com/files/Publication/039e0b51-6bbc-4e4a-affe-12337096e670/Presentation/PublicationAttachment/b0e8ba1a-8734-42ff-8704-31176aa0bd1f/China%20merger%20control.pdf> (providing examples that antitrust policy and enforcement in China may face increasing pressure to target foreign multinational corporations in order to protect domestic Chinese industry).

prises by Foreign Investors (2003 Provisional M&A Rules).²⁹ The Interim Rules on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (2006 M&A Rules) subsequently replaced the 2003 Provisional M&A Rules in 2006.³⁰ Many saw this change as the first step toward using competition policy as an additional tool to limit foreign investment in certain sectors. The 2006 M&A Rules followed the pre-merger notification thresholds in the 2003 Provisional M&A Rules and applied only to transactions involving foreign purchasers acquiring control in certain key economic sectors. Although the AML's implementation in 2008 superseded the competition review provisions in the 2006 M&A Rules, and the final text of the AML does not single out foreign companies, there remains some concerns that the AML merger control regime is a remnant from the 2006 M&A Rules and could be primarily used to target foreign companies.³¹

The History of MOFCOM. While the 2006 M&A Rules may partially explain why the new merger control enforcement under the AML is potentially biased against foreign investors, MOFCOM's history sheds light on why the merger control regime may not be enforced against domestic-to-domestic transactions. A careful examination of that history reveals that for over 50 years, MOFCOM's predecessors had been "foreign-facing" agencies in charge of foreign trade and economic activities outside the territory of China, with little jurisdictional or enforcement power over purely domestic activities.

On November 2, 1949, one month after the founding of the People's Republic of China, the Ministry of Trade (MOT) of the Central People's Government was established.³² MOT was in charge of trade management in China, such as approving business and financial plans of businesses, managing the funds and inventories of state trading, and setting the wholesale goods price of state trading companies.³³ As China had just started to recover from World War II and the Chinese Civil War, the trading activities were very limited. In order to strengthen foreign trade and more effectively carry out domestic trade work by reducing the MOT workload, the 17th Session of the Central People's Government Committee passed a resolution on August 7, 1952, that dissolved MOT and established the Ministry of Foreign Trade (MOFT), which would oversee foreign trade. The former MOT head was appointed to run MOFT, and the Central People's Government Department of Commerce was assigned responsibility for domestic trade. As MOFT was established to unify the management of foreign trade in China, the nine enumerated functions all focused on matters relating to foreign trade.³⁴

²⁹ Provisional Regulations Regarding Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (promulgated by the Ministry of Foreign Trade and Economic Cooperation, State Administration of Taxation, SAIC, and State Administration of Foreign Exchange, Mar. 13, 2003, effective Apr. 12, 2003), available at <http://tfs.mofcom.gov.cn/aarticle/date/i/s/200509/20050900366385.html>.

³⁰ Interim Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (Aug. 10, 2006), available at <http://english.mofcom.gov.cn/article/policyrelease/Businessregulations/201303/20130300045825.shtml>.

³¹ See Owen et al., *supra* note 25, at 252–54.

³² See The Ministry of Trade under the Central People's Government 1949.11-1952.8 (Dec. 7, 2010), available at <http://english.mofcom.gov.cn/history.shtml> (outlining that the MOT was established pursuant to Article 18 of the Organic Law of the Central People's Government and the Circular of the Government Administration Council on November 1, 1949).

³³ The MOT's functions included managing the funds and inventories of state trading; overseeing the business plan of professional companies; determining the wholesale goods price of state trading companies; and guiding private businesses, among others. See *id.*

³⁴ The enumerated functions of MOFT included overseeing China's import and export plans and the foreign exchange expenditure plans; drafting and implementing plans and regulations on foreign trade, customs, and economic cooperation; supervising import, export, and transport and packaging of state foreign trading companies; and issuing licenses for import, export, and transit trade, among others. See *id.*

In March 1982, pursuant to a resolution passed at the 22nd Session of the Standing Committee of the Fifth National People's Congress, MOFT was merged with the Ministry of Economic Relations with Foreign Countries, the State Import and Export Administration Commission, and the State Foreign Investment Administration Commission,³⁵ and became the Ministry of Foreign Economic Relations and Trade (MOFERT), the new administrative agency in charge of foreign trade, foreign economic and technological cooperation, and foreign exchange-related issues in China.³⁶ On March 16, 1993, MOFERT was renamed the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), pursuant to a resolution passed at the first Session of the Eighth National People's Congress. MOFTEC's main responsibilities mirrored those of MOFERT in regulating China's foreign trade and international economic relations.³⁷

Only in 2003 was MOFCOM put in charge of the integrated functions of domestic and foreign trade. As a result, there is still a strong perception in China that MOFCOM is largely a foreign-facing ministry.

As China entered the WTO in November 2001 and the Chinese economy sped up its integration with the global economy, the line between domestic trade and foreign trade was blurred. To streamline its bureaucracy and keep pace with its post-WTO economic developments, China reorganized several major government ministries and agencies in 2003. In connection with the reorganization and pursuant to a plan and notice passed at the first Session of the Tenth National People's Congress, MOFTEC was renamed MOFCOM, which assumed MOFTEC's responsibilities over foreign trade and foreign economic cooperation.

At the same time, MOFCOM assumed parts of the State Economic and Trade Commission's functions relating to domestic trade, foreign economic coordination, and organization and implementation of plans for the import and export of major industrial products, and parts of the State Development and Planning Commission's functions relating to implementation of state planning for the import and export of agricultural products.³⁸ Thus, about 51 years after MOT's dissolution, its much-evolved successor, MOFCOM, gained some responsibilities over domestic trade.

Before MOFCOM's establishment in 2003, all of its predecessors, with the exception of MOT for a brief three-year period, had assumed the foreign-facing responsibilities associated with foreign trade and international economic cooperation for over 50 years. Only in 2003 was MOFCOM put in charge of the integrated functions of domestic and foreign trade. As a result, there is still a strong perception in China that MOFCOM is largely a foreign-facing ministry. Given its predecessors' long history of managing foreign trade, investment, and economic relations related

³⁵ The State Import and Export Administration Commission and the State Foreign Investment Administration Commission were established in August 1979. The main functions of the two commissions are, among others, to formulate the guidelines, policies, statutes and regulations on, and together with the National Economic Planning Commission (currently the National Development and Reform Commission), China's long-term planning and annual planning of, import and export, technology import, foreign capital utilization and foreign economic cooperation; to organize departments, provinces and municipalities to adopt forceful measures on enlarging export and increasing foreign exchange income; and to formulate and enforce the statutes and relevant measures regarding joint ventures; and to review the long-term economic cooperation and long-term trade agreements and treaties between Chinese and foreign governments. *See id.*

³⁶ The main functions of this new ministry are, among others, to implement the planning and policies on developing foreign economic relations and trade, to regulate and coordinate the foreign economic and trade activities, to improve multilateral and bilateral economic and technological cooperation, to utilize foreign capital, to administer technological import and export foreign project contract and labor service overseas, and to serve socialist modernization and development of international relations. *See id.*

³⁷ Among the many enumerated functions of the MOFTEC are: to formulate and implement laws, regulations, policies, and reform plans of foreign trade, foreign economic cooperation, and foreign investment; to formulate and execute medium- and long-term programs and development strategies of foreign trade; to formulate and execute policies and manage technology import and export; and to formulate policies and manage China's foreign aid. *See id.*

³⁸ Susan Munro & Sherry Yan, *Recent Government Reorganization in China, China Law and Policy Newsflash* (O'Melveny & Myers) (July 30, 2003), available at <http://omm.com/files/Publication/0917ead3-7fb1-4a9f-bc47-56f85252183b/Presentation/PublicationAttachment/cca1351c-d4f4-4e37-a04c-5a3781b30cbc/clp030730.pdf>.

issues, it became a natural candidate for the enforcement of the merger control regime under the 2003 Provisional M&A Rules and 2006 M&A Rules, where the pre-merger notification requirement was only imposed on foreign acquirers specifically. Although the AML imposes pre-merger filing obligations on all undertakings, parties involved in purely domestic-to-domestic transactions may not consider notifying MOFCOM, a traditionally foreign-facing agency, as a necessary step in consummating such transactions.

Furthermore, in regulating domestic-to-domestic transactions, MOFCOM could potentially run into turf battles with NDRC or SAIC. Both have a much longer history of regulating domestic activities than MOFCOM, and MOFCOM consults both in connection with merger review. Specifically, with its broad administrative and planning control over the Chinese economy, NDRC and its predecessors have been responsible for formulating and implementing strategies for national economic and social development, including price policies, since 1952.³⁹ SAIC and its predecessors have been responsible for regulating the Chinese industry and commerce through administrative enforcement and regulations since 1953.⁴⁰ Under the AML, NDRC primarily regulates pricing practices and MOFCOM administers the merger control regime. They supervise competition in their respective areas, in addition to their other administrative authority in the fields of domestic economic development and international trade, respectively.⁴¹ By contrast, SAIC takes a more holistic view of competition law and looks at it within the larger framework of consumer protection, including fraud and unfair trading.⁴²

The distribution of antitrust enforcement power among three institutions inevitably creates conflict and friction. Large domestic-to-domestic transactions may be where the fragmentation of antitrust authority is most salient. While such transactions may fall within the merger control enforcement of MOFCOM, given that the parties are large domestic companies traditionally regulated by NDRC and SAIC, MOFCOM, acting in what is for China still fairly uncharted territory, may take a more conservative approach in exerting its enforcement power in relations to NDRC and SAIC.

The Administrative Status of MOFCOM. In addition to the Chinese merger regime and MOFCOM's historical foreign focus, the Chinese administrative structure may also impose unique constraints on MOFCOM's ability to enforce the merger control regime over domestic companies. To provide clear identification of the administrative hierarchy and the power of the administrative decisions among institutions, the State Commission for Public Sector Reform categorizes the status of Chinese governmental institutions and agencies into five administrative levels, in descending order: state level, ministry (province) level, department/bureau level, county (section) level, and

³⁹ The NDRC is a successor of the State Planning Commission, which had managed the country's centrally planned economy from 1952 through 1998, and then, through several restructuring and reorganizations, became NDRC in 2003. The State Planning Commission was renamed the State Development Planning Commission (SDPC) in 1998. After merging with the State Council Office for Restructuring the Economic System and part of SETC in 2003, the SDPC was restructured into the NDRC. See NDRC, Brief Introduction of the NDRC, available at <http://en.ndrc.gov.cn/brief/default.htm>.

⁴⁰ *History and Functions of SAIC*, XINHUA NEWS, available at http://news.xinhuanet.com/zhengfu/2003-02/26/content_746623.htm.

⁴¹ Salil K. Mehra & Yanbei Meng, *Against Antitrust Functionalism: Reconsidering China's Antimonopoly Law*, 42 VA. J. INT'L L. 380, 407 (2008).

⁴² See Office of the State Council's Notice on the Major Duties of the Internal Structure and Staffing Requirements of SAIC (July 11, 2008), available at http://www.law-lib.com/law/law_view.asp?id=261207.

township (sub-division) level. Each of these five levels also has a chief level and deputy level.⁴³ Civil servants in China are ranked on the same five levels.⁴⁴

Falling under the direct supervision of the State Council, which is a state-level agency, MOFCOM, NDRC, and SAIC are all ministry-level agencies. Many SOEs in China also fall directly within the State Council's supervision and are ministry-level agencies. The antitrust enforcement agencies—the Anti-monopoly Bureau of MOFCOM, the Price Supervision and Anti-monopoly Bureau of NDRC, and the Anti-monopoly and Unfair Competition Enforcement Bureau of SAIC—are bureau-level agencies, ranked lower in administrative status than many powerful SOEs. Although many such SOEs undergo major reorganizations or carry out domestic M&A transactions that could potentially trigger the notification thresholds, this disparity in administrative level may constrain MOFCOM's ability to enforce the merger control regime against SOEs.⁴⁵

Relatedly, the heads of the antitrust enforcement bureaus are bureau-level civil servants, who typically rank lower than the Chief Executive Officers of many powerful SOEs. This status disparity among the head civil servants may further complicate the enforceability of the merger regime over the SOEs. Thus, the hierarchical nature of the Chinese governmental institutions and civil service, deeply rooted in the Chinese political system, may present difficulties in the independence and enforcement practices of the antitrust enforcement agencies.

Many foreign commentators have assumed that because of the SOEs' ties to the central government, major SOEs are largely exempt from antitrust enforcement efforts, as no government agency would subject these companies to investigations or public criticism by the antitrust authorities.⁴⁶ However, MOFCOM has emphasized in public statements that its antitrust enforcement powers came from the AML and the administrative status does not constrain MOFCOM in any way.⁴⁷

Further, recent NDRC enforcement actions suggest that the Chinese antitrust agency is prepared to take action against powerful SOEs and is starting to take significant actions using powers granted under the AML. In early 2011, NDRC launched an investigation into the practices of two telecom giants—China Telecom and China Unicom—for charging rivals higher fees for broadband access while failing to optimize network speed.⁴⁸ The investigation was suspended after the two companies announced that they would substantially raise their broadband speeds while further lowering broadband costs over the next five years. While it is unclear whether the power and status of the telecom giants affected NDRC's decision not to impose any fines over monopolistic conduct, this case, as China's first one involving large SOEs since the implementation of the AML, is significant. It remains to be seen whether MOFCOM will impose any conditions, or even block, any domestic-to-domestic transactions, such as major reorganizations by SOEs.

⁴³ State Commission Office for Public Sector Reform, Institutional Classification, http://www.scoprs.gov.cn/once/bzcs/201008/t20100830_14516.htm.

⁴⁴ Civil Servant Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 27, 2005, effective Jan. 1, 2006), art. 16, translated in <http://www.asianlii.org/cn/legis/cen/laws/tcsolproc462/>.

⁴⁵ Du Qiang, *The AML, These Past Four Years*, S. METROPOLIS DAILY, May 11, 2012, available at <http://gcontent.oeeee.com/e/0e/e0e9ac104fdeb345/Blog/7fa/b5bc2d.html>.

⁴⁶ See Henry (Litong) Chen et al., *China Cracks Down on Anti-Competitive Practices of Major State-Owned Enterprises* (Nov. 10, 2011), available at <http://www.mwe.com/publications/uniEntity.aspx?xPST=PublicationDetail&pub=6611&PublicationTypes=80ca8ee8-02a5-4d6c-bb51-fe2194cf5ea2>.

⁴⁷ MOFCOM 2010 Press Conference, *supra* note 7.

⁴⁸ Loretta Chao, *China Telecom, China Unicom Face Monopoly Probe*, WALL ST. J. (Nov. 9, 2011), available at <http://online.wsj.com/article/SB10001424052970204358004577027283900972206.html>.

The Future: The “Failure-To-Notify” Statutes and More Transparency

Although for a variety of reasons the Chinese merger control regime may not be applied to domestic and foreign entities equally, the young regime is showing promising signs of moving toward more equality, especially in light of the recent adoption of certain transparency measures and failure-to-notify statutes.

In its 2011 end-of-year press conference, MOFCOM's Anti-monopoly Bureau warned companies that one of its priorities for 2012 will be to investigate and sanction parties who do not notify the transactions to MOFCOM.⁴⁹ To that end, MOFCOM promulgated the new Interim Measures for Investigating and Handling of Failure to Notify Business Operator Concentration (Failure-to-Notify Statutes), effective on February 1, 2012,⁵⁰ signaling increased efforts to ensure compliance with the AML. The procedures established under the Failure-to-Notify Statutes allow any member of the public or an entity to report a “suspicious” transaction. It is noteworthy that MOFCOM is obligated to keep the informant's identity secret and even must initiate an investigation if the complaint is in writing and is complete in terms of facts and evidence.

Additionally, as previously noted, about half a year after the Failure-to-Notify Statutes became effective, in an effort to increase transparency, MOFCOM began to release all unconditional approval cases to the public on a quarterly basis.⁵¹ Although the releases only give limited information about the names of the notifying parties, such releases allow anyone to verify whether a consummated transaction, especially a high-profile one, has been notified. The new transparency measure coupled with the Failure-to-Notify Statutes essentially opened the door for whistleblowers to come forward to expose unnotified transactions. By August 2013, MOFCOM had given warning or imposed fines on eight cases, and several of the cases had been instigated by whistleblowers' reports.⁵² It is unclear if any of the investigations involved domestic-to-domestic transactions.

Conclusion

Since the AML's implementation, Chinese antitrust agencies have made major progress on many aspects of their work. They have demonstrated an increasing willingness to strengthen China's antitrust enforcement regime and exact monetary, structural, and behavioral relief from parties who have violated or could violate the AML. In particular, MOFCOM has demonstrated its willingness to impose both structural and behavioral remedies to cross-border transactions that have generated antitrust concerns in China.

While recognizing the progress MOFCOM has made in the last five years, some members of the international legal and business community have questioned the impartiality of MOFCOM's

⁴⁹ See MOFCOM 2011 Press Conference, *supra* note 7.

⁵⁰ Interim Measures for Investigating and Handling of Failure to Notify Business Operator Concentration (promulgated by MOFCOM, Dec. 30, 2011, effective Feb. 2, 2012), available at <http://www.mofcom.gov.cn/aarticle/b/c/201201/20120107914884.html>, translated in <http://www.blankrome.com/siteFiles/EnglishTranslation.pdf>.

⁵¹ On a related note, both SAIC and NAIC are also implementing transparency measures. On July 29, 2013, SAIC set up a new online platform to publish its antitrust investigations. Zhang Xiaosong, *SAIC Publishes 12 Investigations through “Antimonopoly Investigations Publishing Platform,”* XINHUA PRESS, July 29, 2013, available at http://www.gov.cn/jrzq/2013-07/29/content_2457563.htm. NDRC is also contemplating a platform for releasing decisions. See Yasue Nao Koblitiz, *Antitrust Investigations in China: Putting Things in Perspective* (Sheppard Mullin) (Aug. 29, 2013), available at <http://www.antitrustlawblog.com/2013/08/articles/article/antitrust-investigations-in-china-putting-things-in-perspective/>.

⁵² See MOFCOM, *Positive Progress Made in Enforcement of the Anti-Monopoly Law*, Aug. 6, 2013, available at <http://english.mofcom.gov.cn/article/newsrelease/significantnews/201308/20130800231761.shtml>.

merger enforcement, equating its Anti-monopoly Bureau to a “Great Wall of 35 persons” that creates a blockage to global M&A activities, and have persistently called for increased predictability, transparency, and fairness in its enforcement.⁵³ This impartiality may be further questioned by this article’s analysis of MOFCOM’s five-year clearance records, which show a potential gap between filings for domestic-to-domestic transactions compared to their foreign counterparts. However, as this article has discussed, historical and administrative factors may have contributed to this gap.

In the coming years, MOFCOM may find that it can better achieve its stated goal of equality for all before the AML by pursuing additional procedural fairness, such as ensuring that domestic companies and foreign companies equally comply with the notification requirements. To that end, the new transparency measures, coupled with the regulations on failure-to-notify, set the stage for MOFCOM to narrow the gap by investigating all transactions that fail to file the proper notifications, especially domestic-to-domestic transactions. As the Great Wall of China has transformed from a means of border control against foreign invasion, MOFCOM’s merger control enforcement has the potential to continue enhancing its transparency and fairness. ●

⁵³ See *Global Acquisitions Meet a “Great Wall of 35 Persons,”* NIKKEI CHINA, May 20, 2013, available at <http://cn.nikkei.com/china/economy/5568-20130520.html>; Ohlhausen, *supra* note 8.

APPENDIX

Unconditionally Cleared Domestic-to-Domestic Transactions

(August 31, 2008–December 31, 2013)⁵⁴

NO.	PARTIES TO THE CONCENTRATION	CLEARANCE DATE	INDUSTRY
1	Chongqing Department Store; New Century Department Store	August 2008– September 2012	Retail Stores
2	Nanjing First Pesticide Group Co.; Nanjing Red Sun Co., Ltd.	August 2008– September 2012	Agriculture
3	Sanyuan Group (an SOE); Sanlu Group (an SOE)	August 2008– September 2012	Dairy
4	Chongqing Department Store; New Century Department Store	August 2008– September 2012	Retail Stores
5	Shanghai Sugar Cigarette & Wine (Group) Co., Ltd. (an SOE); China Yinmore Sugar Co. Ltd.	August 2008– September 2012	Retail
6	Qinghai Salt Lake Potash Co., Ltd. (an SOE); Qinghai Salt Lake Industry Group Co. (an SOE)	August 2008– September 2012	Steel
7	Tangshan Iron and Steel Co., Ltd. (an SOE); Handan Iron and Steel Group Co., Ltd. (a Key SOE); Chengde Xinxin Vanadium and Titanium Co., Ltd. (an SOE)	August 2008– September 2012	Steel
8	China Eastern Airlines (a Key SOE); Shanghai Airlines	August 2008– September 2012	Airline
9	Ping An of China; Shenzhen Development Bank	August 2008– September 2012	Insurance/Bank
10	Sichuan New Hope Agribusiness Co., Ltd.; Shandong Liuhe Group Co., Ltd.; Sichuan New Hope Farming Co., Ltd.	August 2008– September 2012	Agriculture
11	Jinan Iron and Steel Co., Ltd. (a Key SOE); Laiwu Steel Corporation (a Key SOE) et al.	August 2008– September 2012	Mining

⁵⁴ MOFCOM, *2008.8.1–2012.9.30 List of Unconditional Clearance for Concentrations of Undertakings*, items 17, 34, 46/70, 52, 61, 62, 69, 78, 84, 100, 113, 124, 135, 138, 151, 154, 188, 189, 192, 206, 235, 236, 237, 247, 325, 347, 349, 383, 398, 399, 431 & 458 (Nov. 16, 2012), available at <http://images.mofcom.gov.cn/flj/accessory/201211/1353031118730.pdf>; MOFCOM, *List of Unconditional Clearance for Concentrations of Undertakings in Q4 2012* (Jan. 6, 2013), items 21, 22, 37, 40, and 53, available at <http://fldj.mofcom.gov.cn/article/zcfb/201301/20130108512781.shtml>; MOFCOM, *List of Unconditional Clearance for Concentrations of Undertakings in Q1 2013*, items 9, 10, 17, 18, 20 & 45 (Apr. 2, 2013), available at <http://fldj.mofcom.gov.cn/article/zcfb/201304/20130400075697.shtml>; MOFCOM, *2013 List of Unconditional Clearance for Concentrations of Undertakings in Q2 2013*, items 10, 16, 27, 35, and 43 (July 3, 2013), available at <http://fldj.mofcom.gov.cn/article/zcfb/201307/20130700184718.shtml>; *2013 List of Unconditional Clearance for Concentrations of Undertakings in Q3 2013*, items 4, 5, 28 & 51 (Oct. 8, 2013), available at <http://fldj.mofcom.gov.cn/article/zcfb/201310/20131000336357.shtml>; MOFCOM, *List of Unconditional Clearance for Concentrations of Undertakings in Q4 2013*, items 1, 13, 16, 26, and 50 (Jan. 11, 2014), available at <http://fldj.mofcom.gov.cn/article/zcfb/201401/20140100457358.shtml>. Lists of Key SOEs and Central SOEs are available at the websites of State-Owned Assets Supervision and Administration Commission of the State Council [hereinafter SASAC]. See SASAC, *Key SOEs by Provinces*, available at http://www.sasac.gov.cn/wzlj/wzlj_zdqy.htm; SASAC, *Central SOEs*, available at <http://www.sasac.gov.cn/n2963340/n2971121/n4956567/index.html>. Other SOEs are identified based on publicly available information to the extent known.

NO.	PARTIES TO THE CONCENTRATION	CLEARANCE DATE	INDUSTRY
12	Air China Co., Ltd. (a wholly owned subsidiary of China National Aviation Holding Company, a Key and Central SOE); Shenzhen Airlines	August 2008– September 2012	Airline
13	China State Construction Engineering Corporation (a Central SOE); Xinjiang Construction Engineering Group	August 2008– September 2012	Construction
14	Beijing Building Materials Group Corporation; Hebei Taihang Cement Co., Ltd.	August 2008– September 2012	Building Materials
15	China Minmetals Corporation (a Central SOE); Hunan Nonferrous Metals Holdings Group Co., Ltd.	August 2008– September 2012	Minerals/Metals
16	Shanghai Friendship Group Inc.; Shanghai Bailian Group Co., Ltd.	August 2008– September 2012	Retail Stores
17	China National Medical Equipment Industry Co. (a wholly owned subsidiary of China National Pharmaceutical Group Corporation, a Central SOE)	August 2008– September 2012	Healthcare
18	Anshan Iron and Steel Group Company (a Central SOE); Panzihua Iron and Steel Group Co., Ltd. (used to be an SOE)	August 2008– September 2012	Steel
19	China Grand Automotive Services Co.; Xian Qinchuan Tangdu Machinery Auto Parts Sales Co., Ltd.; Shanxi Tangxing Auto Sales Services Ltd. Co.	August 2008– September 2012	Automotive Services
20	China Grand Automotive Services Co.; Shandong Sunhover Industry Group Co., Ltd.	August 2008– September 2012	Automotive Services
21	Home Inns & Hotels Management Inc.; Motel168	August 2008– September 2012	Hotel
22	China Grand Automotive Services Co.; Inner Mongolia Yiyan Huizhong Auto Sales Co., Ltd. et al.	August 2008– September 2012	Automotive Services
23	China Grand Automotive Services Co.; Tangshan Guangrun Hetian Auto Parts Sales Co., Ltd. et al.	August 2008– September 2012	Automotive Services
24	China Zhengtong Auto Services Holdings Limited; Tongfang Ltd. Co.	August 2008– September 2012	Automotive Services
25	Jiangsu Rongsheng Heavy Industries Group Co., Ltd.; Anhui Quanchai Group Co., Ltd. (a Key SOE)	August 2008– September 2012	Industrial
26	Shanghai Pharmaceutical Holding Co., Ltd. (a SOE) China Health System Ltd.	August 2008– September 2012	Pharmaceutical
27	GAC Group (an SOE); GAC Changfeng Motor Co.	August 2008– September 2012	Automotive Services
28	China Grand Automotive Services Co.; Jilin Ruifu Investment Ltd. Co. et al.	August 2008– September 2012	Automotive Services
29	China Zhengtong Auto Services Holdings Limited; Tongfang Ltd. Co.	August 2008– September 2012	Automotive Services
30	China Zhengtong Auto Services Holdings Limited; Lasa Hong Jin Auto Trading Ltd. Co.	August 2008– September 2012	Automotive Services

NO.	PARTIES TO THE CONCENTRATION	CLEARANCE DATE	INDUSTRY
31	Air China Ltd. (a wholly owned subsidiary of China National Aviation Holding Company, a Key and Central SOE); Tibet Airlines	August 2008– September 2012	Airline
32	State Grid Electric Power Research Institute (a research institute of the State Grid Corporation of China and a Central SOE); Shanghai Zhixin Electric Ltd. Co.	August 2008– September 2012	Energy
33	China Grand Automotive Services Co.; Daqing Yeqin Rongxin Auto Sales & Services Ltd. Co. et al.	November 26, 2012	Automotive Services
34	China Grand Automotive Services Co.; Ningxia Shangling Mailun Auto Sales and Services Ltd. Co.; Ningxia Yinchuan Shangling Fengtian Auto Sales and Services Ltd. Co.	November 26, 2012	Automotive Services
35	China National Pharmaceutical Group Corporation (a Central SOE); Winteam Pharmaceutical Group Co., Ltd.	December 14, 2012	Pharmaceutical
36	Jiangling Motors Co. (a Key SOE); Taiyuan Changan Heavy Vehicle Co. (an indirect subsidiary jointly controlled by Aviation Industry Corporation of China and China South Industries Group Corporation, two Central SOEs)	December 17, 2012	Automobile
37	Datong Coal Mining Group's (a Key SOE); Shanxi Zhangze Electric Power Co., Ltd.	December 28, 2012	Energy
38	Yunnan Yuntianhua Co., Ltd. (a Key SOE)	January 18, 2013	Agriculture/ Chemicals
39	Zhejiang Provincial Energy Group Co., Ltd. (an SOE); Ningbo Marine Group Co., Ltd.	January 18, 2013	Energy/ Transportation
40	Suning Appliance Co., Ltd.; Beijing Red Baby Internet Technologies Co., Ltd. and four affiliates et al.	January 31, 2013	Household Appliances
41	Shenhua Group Co., Ltd (a Central SOE); State Grid Energy Development Co., Ltd. (a subsidiary of State Grid Corporation of China, a Central SOE)	January 31, 2013	Energy
42	Baoxin Auto Group Ltd.; Ruian Baolong Automobile Service Co., Ltd.; Shanghai Chenlong Auto Sales Co., Ltd.	February 5, 2013	Automobile
43	iSoftStone; Huawei Telecommunications Co.	March 25, 2013	Information Technology
44	Tongfang Co., Ltd.; Beijing Ereneben Information Technology Co., Ltd.	April 10, 2013	Internet
45	Anhui Shanying Paper Industry Co., Ltd.; Maanshan Paper Industry Group; Fujian Taisheng Industrial Co., Ltd.	April 25, 2013	Paper
46	Beijing Wangfujing International; PCD Stores (Group) Limited	May 16, 2013	Retail Stores
47	Xinjiang Longze Automobile Services; Harbin Meitong Automobile Sales and Services Co., Ltd.	May 30, 2013	Automobile

NO.	PARTIES TO THE CONCENTRATION	CLEARANCE DATE	INDUSTRY
48	Midea Group; Midea Appliances	June 8, 2013	Household Appliances
49	Anlong Air Rental Co. Ltd; Fuguo Air Co., Ltd.	July 3, 2013	Air Services
50	Xiamen Port Holding Group (an SOE); Xiamen ITG Holding Co., Ltd. et al.	July 3, 2013	Transportation
51	China National Corp. of Traditional & Herbal Medicine (an SOE); Guizhou Tongjitang Pharmaceutical Co., Ltd.	August 21, 2013	Medicine
52	NARI Technology Development Co., Ltd.; Beijing Kedong Electrical Control Systems Co., Ltd.	September 25, 2013	Electrical
53	Dongfeng Motor Co., Ltd. (a central SOE); Sanjiang Renault Motor Co., Ltd.	October 10, 2013	Automobile
54	Tsinghua Unigroup Ltd. (an SOE); Spreadtrum Communications, Inc.	November 4, 2013	Technologies/ Semiconductor
55	Heilan Group; Rongji International Co., Ltd.; Sancanal Technology Co., Ltd.	November 8, 2013	Garment Manufacturing
56	Inner Mongolia Erdos Energy Electric Services; Qinghai Baitong High Pure Materials Development Co., Ltd.	November 20, 2013	Energy
57	Beijing Jiangho Curtain Wall Co., Ltd.; Guangyuan Architectural Decoration Co., Ltd.	December 17, 2013	Construction