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CHINA UPDATE: China Antitrust Authority Blocks Second Transaction in Its History

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Editor's Note: This article was authored by antitrust partner Ilene Knable Gotts and associate Yuni Yan Sobel of Wachtell, Lipton, Rosen & Katz.

Main Article:

The Anti-Monopoly Bureau of the Ministry of Commerce in China ("MOFCOM") issued a decision last month prohibiting the formation of the P3 Network, a long-term container shipping alliance among A.P. Møller-Maersk, Mediterranean Shipping Company and CMA CGM, which are Danish, Swiss and French companies, respectively. In the six years since the adoption of a pre-merger notification law, MOFCOM had previously imposed restrictive conditions in 23 cases and rejected only one transaction, out of the approximately 800 transactions notified to MOFCOM. In the decision, MOFCOM indicates that it blocked the transaction due to insufficient evidence that the P3 Network's "benefits would outweigh its harm" to competition or that the proposed transaction was "in keeping with the public interest." According to the decision, the proposed alliance would result in a combined market share in the Asia-Europe routes of approximately 46.7% and would "greatly increase market concentration." The parties abandoned the plan for the proposed alliance in light of the decision.

The P3 Networks decision occurred on the very last day of a lengthy MOFCOM review. The parties announced their proposed formation of the P3 Network on June 18, 2013. The parties had submitted their draft MOFCOM notification on September 18, 2013, which MOFCOM formally accepted three months later on December 19, 2013. The transaction subsequently entered into an extended Phase II review. MOFCOM does not have the ability to further extend the review period beyond the prescribed 180 days. Thus, in a transaction opposed by MOFCOM, unless the transaction parties withdraw their notification, MOFCOM must either obtain satisfactory commitments from the parties or block the transaction.

Transaction parties in cross-border deals must plan carefully if their deal will require MOFCOM pre-consummation approval. Parties should engage regulatory counsel to assess the substantive antitrust issues as early as possible and, in transactions raising antitrust issues, be prepared for the MOFCOM review process to involve significant time and effort. Parties also must be prepared to address MOFCOM's questions and concerns quickly to avoid an adverse outcome.

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