

China Blocks Transaction Under New Anti-Monopoly Law

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Companies considering transactions reportable in China should take note of the recent decision of the Chinese Ministry of Commerce (MOFCOM) blocking Coca-Cola's purchase of China Huiyuan Juice Group. The decision marks the first time China has stopped a deal under its new Anti-Monopoly Law, which became effective in August 2008.

MOFCOM provided three reasons for concluding the deal would harm competition:

- It would enable Coke to use bundling and tying to leverage its market power in the carbonated soft drinks market to limit competition in the juice market.
- Coca-Cola would be able to prevent entry.
- The deal would make it harder for small and mid-sized local companies to compete, adversely affecting "the structure of competition in China's juice market."

Although one should not read too much into one decision, companies should heed several important lessons:

- MOFCOM and the antimonopoly law are new and powerful forces in the Chinese business market. Companies must consider Chinese antitrust before entering into any transaction that could require a filing in China. MOFCOM's statement made clear that the agency considered several factors in its assessment, including "market share and market control, the degree of market concentration, the impact on market access and technological progress, the impact on consumers and other business operators, and the impact of brands on market competition in the juice market."
- Chinese review can take time. This transaction was announced about six months ago.
- Chinese review is not limited to mergers of horizontal competitors. In fact, review is apparently not limited to vertical issues. This transaction raised no issues that fall into either of those categories. Rather, the concern appears to have been one of monopoly leveraging that would be the result of entry into a new market by way of merger. It remains to be seen if such analysis will

be reserved for foreign purchasers of Chinese companies, but it does appear that MOFCOM cares very much about the effect of a transaction on Chinese competitors.

- Remedies might be possible. MOFCOM stated that the agency considered several remedies that Coca-Cola proposed (the decision does not describe them), but concluded that they would not be satisfactory.

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