




How Far Is China from An Appropriate Regime of Merger Regulation?

— Perspective of Predictability and Transparency

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I. Introduction: Predictability & Transparency are the characteristics of an appropriate regime of merger regulation

❖ 1. Inevitability

- ❧ P&T is demanded by the principle of socialist rule of law
- ❧ P&T is required by the socialist market economy
- ❧ P&T is the demand in perspective of economic globalization

I. Introduction: Predictability & Transparency are the characteristics of an appropriate regime of merger regulation

❖ 2. Significance

- ☞ are regarded by enterprises as the most significant interest
- ☞ They are advantageous to attract more foreign direct investment
- ☞ They are of benefit to consumers
- ☞ The efficiency of administration is enhanced.

I. Introduction: Predictability & Transparency are the characteristics of an appropriate regime of merger regulation

❖ 3. the elements of P&T

- ❧ clear and uniform goal of merger control**
- ❧ definite and harmonized criteria for notification and examination**
- ❧ unambiguous and normative procedures of examination**
- ❧ adequate remedy at law**

II. Clear and uniform goal of merger control——continuity

❖ 1. Article 5 of Chinese Antimonopoly Law :

“Undertakings may implement concentrations by law to expand their business scale and intensify competitiveness in the market through fair competition and voluntary coalition/cooperation.”

❖ 2. dual fundamental goal

- demands of China's socialist market economy.
- determined by the goals of economic and social development of China in present stage.
- value hierarchy

III. definite and harmonized criteria for merger control——legal certainty

- ❖ Vagueness of substantive rules of examination § 28 1st sentence
- ❖ The criteria contradict the factors that shall be taken into account during the examination § 27
- ❖ The conditions of merger exemption are not reasonable and the range is vague § 28 2nd sentence
- ❖ Lack of regulations for national security examinations § 31

IV. Unambiguous and normative procedures of notification and examination

- ❖ Case1: The Coca-Cola Company first got in informal contact with department of commerce. Then on 22nd Sept. it submitted the application for approval. After two months it didn't receive the confirmation of reception of the application. The 30 days long preliminary examination can only initialized after the acquisition of the confirmation.

IV. Unambiguous and normative procedures of notification and examination

❖ Case2

SBE merger case is deemed as the first case of anti-monopoly review, in which hearing is introduced and applied.

IV. Unambiguous and normative procedures of notification and examination

❖ Case 3

On 18th Nov. 2008 department of commerce declared the first case of anti-monopoly investigation and approved INBEV to buy AB company. The director of antimonopoly bureau in MOFCOM said, from 1st Aug to 19th Nov MOFCOM has received more than 10 notifications for concentration of undertakings, among which 13 have been registered and 8 have got decisions.

V. adequate remedy at law

- ❖ article 53 the judicial review of the administrative decisions
- ❖ article 50 private enforcement of AML

VI. Conclusion

- ❖ **There is just a small step for China to an appropriate regime of merger regulation.**
- ❖ **The uniform interpretation of law in favour of the protection of competition is of great significance for the reasonable and effective implementation of regulation of concentration of undertakings.**
- ❖ **It's urgent to make specific rules for the merger regulation in order to enhance the clarity, stability, continuity and unification of the substantive and procedural rules of merger control and foster the predictability and transparency of the implementation.**



Thank you!

