



观韬律师事务所

GUAN LAW FIRM

Tel: 86 10 66578066 Fax: 86 10 66578016
E-mail: guantao@guantao.com
http: // www.guantao.com

中国北京市西城区金融大街 28 号
盈泰中心 2 号楼 17 层
邮编: 100140

17/F, Tower 2, Yingtai Center, No.28
Finance Street, Xicheng District, Beijing
100140, China

March & April 2010

Time Management for PRC Anti-Monopoly Filings

By Shaosong Sun and Yuye Lu

Since 2008 under the PRC's new Anti-Monopoly law framework, a concentration of undertakings exceeding certain thresholds would have to be filed to the Anti-Monopoly Bureau ("AMB") of MOFCOM for approval before the concentration measures can be implemented. As a consequence many M&A transactions reaching the reporting thresholds – such as mergers, share acquisitions, asset acquisitions and any other form of contracting creating control of one undertaking over another – would have to be reported to AMB. This means parties to the transaction need to allow extra time in the deal to complete this procedure.

After the report is officially filed with AMB it will be passed to the general office of AMB for its preliminary review, which will last for 30 days. The 30-day clock starts ticking when an initiation notice is issued. If AMB decides to conduct a further review, it shall normally be completed within 90 days and in special circumstances after AMB has notified the parties in writing, an extension of 60 days can be imposed. Regardless of the pre-filing preparation period, the shortest official time period from initiation to conclusion is 30 days, and the longest can be up to 180 days.

北京 · 上海 · 西安 · 成都 · 大连 · 深圳 · 济南 · 厦门 · 香港 · 天津
Beijing · Shanghai · Xi'an · Chengdu · Dalian · Shenzhen · Jinan · Xiamen · Hong Kong · Tianjin

Parties	Date of filing	Date of initiation	Difference between filing and initiation (days)	Date of public notice	Length between initiation and notice (days)
Inbev and ABC	2008.9.10	2008.10.27	47	2008.10.27	22
Coca Cola and Huiyuan	2008.9.18	2008.11.20	63	2008.11.20	118
Mitsubishi Rayon and Lucite	2008.12.22	2009.01.20	29	2009.01.20	94
GM and Delphi	2009.08.18	2009.08.31	13	2009.08.31	28
Pfizer and Wyeth	2009.06.09	2009.06.15	6	2009.06.15	106
Panasonic and Sanyo	2009.01.21	2009.05.04	103	2009.05.04	179
Average			43.5		91.2

As shown above from the six cases which have been published by AMB, the average time between the date of filing and the initiation is 43.5 days. Among them, the shortest takes only six days, but later takes 106 days for the final notice to be published, which was probably due to supplementary information AMB asked for. The average time between initiation and public notice for these six cases is 91.2 days, with the shortest among them taking only 28 days.

It must also be noted that the published cases are more complicated and high-profile. In most unpublished cases, it normally takes 14 days from official filing to the initiation and around 30 days for MOFCOM to make the decision. Given all these circumstances, parties should allow 50 days when structuring the deal.

In order to ensure the process goes smoothly the following steps are advisable:

1. Take full advantage of pre-filing consultation. Before the official filing, the parties should use the opportunity for pre-filing consultation to find out any questions that AMB has on the filing to better prepare.

2. Comply with the required formality when preparing the report. Parties should ensure that each question is answered and each criterion specified by AMB is fulfilled as much as possible.
3. Prepare market data as fully as possible, even though in some industry markets data is difficult to find. It is still advisable to formulate reasonable methods to persuade AMB of your claims.



Shaosong Sun:
Email: sunshs@guantao.com

Yuye Lu
Email: luyy@guantao.com

Shaosong Sun
Partner,
Guantao Law Firm

This information has been prepared by Guantao Law Firm.

For further information, please contact Ms. Xu Ling (xuling@guantao.com)

or your usual adviser.