International Antitrust Webinar 2023

China Antitrust Roundtable

Panel Discussion

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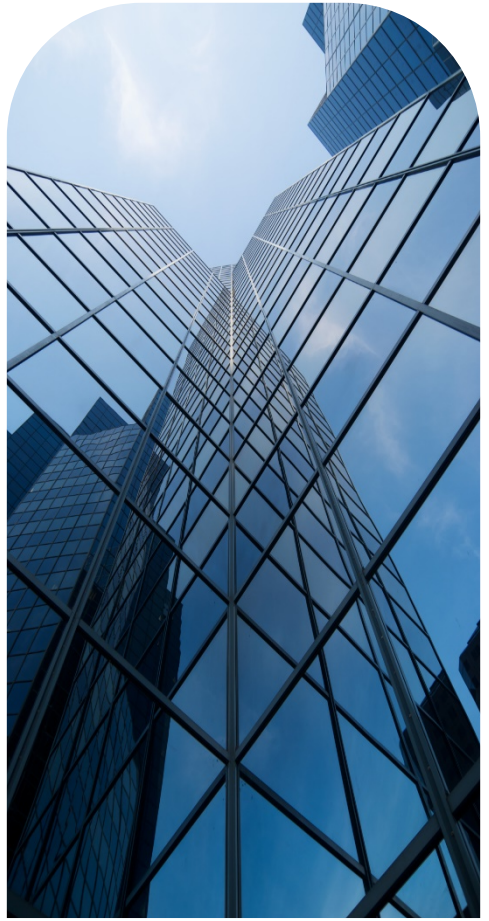
How to Clear High-Tech Mergers in China

Pre-assessment

- Conduct analysis in advance to see whether there will be any concerns in SAMR's review
- To assess whether it will trigger or invite NSR filing
- Any ongoing investigation or litigation in China which may impact the merger review process (e.g., Bain Capital/Hitachi Metals)



Design strategies

- Take measures in advance to eliminate potential concerns, if possible (e.g., Celanese/DuPont, ON/Fairchild)
- Make filing as early as possible to allow enough time for review
- Assess the possible questions from SAMR and other stakeholders, and prepare response in advance

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Engagement with stakeholders

- Active engagement rather than passive waiting (e.g. DuPont/Rogers)
- Keep regular communication and closely monitor the review process
- Address the negative comments or concern (if any) in time

Other factors

- “Stop-the-clock” influence?
- “Withdrawal and refile”
- Geopolitical reasons?
- New notification threshold? (killer acquisition, unicorn)

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■ Case: Maxlinear/Silicon Motion

Timeline

- 2022.9.15 - Initial filing
- 2022.10.28 – Acceptance
- 2022.11.25 – Entering Phase 2
- 2023.1.6~7.14 – Stop-Clock
- 2023.7.26 – SAMR Approval
- 2023.7.27 – Terminated the deal

Remedy Imposed

Among others,

- Continue to supply NAND flash controller (FRAND)
- Not materially change the existing business model and operation
- Maintain Simo's R&D in Taiwan

Observations

- Most high-profile tech mergers can get clearance in China if handled properly (length of time may vary)
- Withdraw-Refile is replaced by Stop-clock mechanism
- Suggest not use SAMR to achieve secret purposes

How to Clear High-Tech Mergers in China

Celanese/DuPont

- Took around 6 months for review in China
- Successfully obtain the unconditional approval 3 days before the hard deadline
- No stop-the-clock or withdrawal-refile applied
- EU approved with conditions

- Engage with SAMR and other stakeholders actively
- Concern identification
- Targeted problem solving

Latest status of VIEs

- Between 2020 and 2022, SAMR penalized several batches of companies for failing to report cases involving VIE
- Many VIE companies sought punishment before the new Anti-Monopoly Law (AML) took effect
- On July 10, 2022, SAMR announced the latest round of penalties on VIE companies (Alibaba, Tencent, Didi etc.)
- Results for high-profile cases like Didi/Uber are still pending

THANK YOU

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