

Antitrust Law Blog

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Chinese Authorities Reject Coke-HuiYuan Acquisition Deal

On March 18, 2009, the Chinese Anti-monopoly Bureau of the Ministry of Commerce (“AMB”) issued its first rejection in the history of pre-merger filing under the Anti-monopoly Law (“AML”). Two days before the reviewing period deadline of 120 days, Coca-Cola (“Coke”) received the official decision issued by AMB rejecting its acquisition proposal of one of the biggest fruit juice manufacturers in China, HuiYuan Juice Group Co., Ltd., which is a listed Chinese company in the Hong Kong Stock market (“HuiYuan”).

Concerns Regarding Loss of Home-Grown Brand

This acquisition deal was closely watched by the Chinese media due to concerns regarding the potential loss of a home-grown Chinese brand. The acquisition proposal was first disclosed in September 2008, and was widely discussed in China regarding the potential damage to the domestic juice market and the Chinese brand. The biggest concern was that once Coke successfully acquired Huiyuan’s major brand “HuiYuan,” this Chinese famous home-grown brand would be diluted by Coke’s strong branding and could disappear in the market quickly. However, such concerns were not mentioned by any official of AMB or other anti-monopoly authorities, in the reviewing process of this case.

Developing Standardized Procedural Practices under AML

According to the public announcement, this case triggered various previously unapplied reviewing procedures, including:

1. Expanding the reviewing period from 30 days to 120 days;
2. Holding hearings involving competitors, suppliers and purchasers, industrial associations, experts, consumers and other governing governmental authorities;
3. Conducting on-site investigation and consulting with outside research institutions regarding juice and beverage industries;

4. Providing remedies to the applicant by allowing Coke to respond with reasons that the proposed deal will not affect the market competition, and to propose an adjustment proposal of the transaction that might eliminate the possible monopoly effect.

These above-mentioned procedures are all provided by the AML, but in vague or general description. The implementation by AMB of these procedures will set up important milestones for the implementation of AML in pre-merger reviews. These procedures will likely become the standardized procedures in the future work of AMB in reviewing critical cases, and should be carefully reviewed by companies planning on major merger and acquisition activities in China.

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