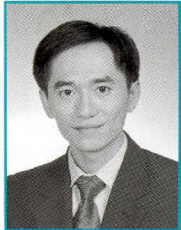


Impact of New Anti-Monopoly Law of PRC on International Mergers or Acquisitions



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The Anti-Monopoly Law of the People's Republic of China ("AML") was passed on August 30, 2007. It will impact more than 12 existing laws and regulations of China, and affect almost all commercial transactions in China.

The AML sets forth legal standards for monopoly in China, such as monopoly agreement, abuse of market position and prohibition of abuse of administrative powers to restrict competition. For foreign companies, they will be directly impacted by Chapter IV and Article 31 of the AML.

Chapter IV - Concentration

Chapter IV of AML ("Chapter IV") deals with concentration, and most importantly, sets forth procedures relating to submission of notification of concentration to the Anti-monopoly Enforcement Authority under the State Council.

The concept of pre-merger notification is not new in China. As a matter of fact, it is included in the Provisions on the Takeover of Domestic Enterprise by Foreign Investor ("Takeover Provision") and Guideline on Filing of Anti-Monopoly Notification ("Notification"). Until August 1, 2008, the Takeover Provision and the Notification remain as the law of China governing pre-merger notification by foreign investors.

The Takeover Provision and Notification had a dramatic impact on the global mergers or acquisition transactions involving China as companies must include China as a list of countries which require pre-merger notification. Many foreign companies

viewed the Takeover Provision as a turning point in the China legal history, in it, for the first time, the Chinese government is reaching beyond its border by making the notification requirement. However, such global reach was not mentioned in the AML. For foreign companies, whether such requirement will continue after the coming into effect of the AML is the most critical question, as it will determine the decision of whether or not to file pre-merger notification under the AML.

The officials with the Anti-Monopoly Review Office of the Ministry of Commerce did not provide a direct answer when this question was raised during the Anti-Monopoly Law seminars held in Beijing and Xiamen respectively, other than mentioning that implementation rules or guidelines on enforcement of the AML should be issued prior to the effectiveness of the AML.

It should be noted that the procedures for pre-merger notification under the AML is less detailed than that of the Takeover Provision. The Chinese government did, however, include broad language of "Other information required by the Anti-monopoly Enforcement Authority under the State Council." in Article 23 (5) of the AML as requirement for notification, thus leaving room for it to adopt any other new requirement, including those currently listed in the Takeover Provision, at a later time.

Article 31

Article 31 of the AML ("Article 31") states:

"In the case that national security is concerned,

besides the examination on concentration in accordance with this Law, the examination on national security according to the relevant regulations of the State shall be conducted as well on the acquisition of domestic undertakings by foreign capital or other circumstances involving the concentration of foreign capital."

The concept of Article 31 has already been adopted by the U.S. and it has already used this concept to block a Chinese company from acquiring a U.S. company of the oil sector.

This is the first instance where Chinese authority has put such concept in a written form. Based upon the current language of Article 31, it essentially makes the Chinese government the final gate on merger or acquisition involving foreign capital. How would the Chinese government use such power will be the key focus of the foreign companies. It would be interesting to see the first case being brought under this law.

The AML is perhaps one of the most important laws passed by China since its entry into the WTO. It signifies China's economy as a global power and at the same time, ensures fair competition. How the AML will be implemented and whether it will replace or supersede the existing laws remain to be seen. One thing is for certain, the promulgation of the AML has drawn instant attention around the world, as disclosed by the founder of www.antitrustchina.com, its site traffic has increased ten folds since the announcement of the law. The next year marks an interesting period in the China legal sector. ●