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## **Another Interesting Competition Law from China's Anti-Monopoly Bureau**

**On 24 April 2009, China's Ministry of Commerce ("MOFCOM") published yet another controversial decision from its fledgling Anti-Monopoly Bureau ("AMB") concerning the acquisition of British owned chemical producer, Lucite, by Mitsubishi Rayon. Approval was granted to the transaction, following approvals from every other competition bureau around the world, however that approval was made subject to some controversial conditions.**

On 24 April 2009, China's Ministry of Commerce ("MOFCOM") published yet another controversial decision from its fledgling Anti-Monopoly Bureau ("AMB") concerning the acquisition of British owned chemical producer, Lucite, by Mitsubishi Rayon. Approval was granted to the transaction, following approvals from every other competition bureau around the world, however that approval was made subject to some controversial conditions:

“(1) Production Capacity “Peeling off”

Lucite International (China) Chemical Co., LTD (Lucite China) shall peel off 50% of its yearly production capacity, and sell it to one or more of the purchaser's non-affiliated parties (third party purchaser), within 5 years. The third party purchaser shall have the right to buy Lucite China's MMA products at production cost and management cost (cost price, without any additional profit), the cost price will be verified yearly by the independent auditors.

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If the production capacity peeling off is not completed within the time limit, both parties agree that the MOFCOM shall have the right to assign independent trustee to sell 100% of the shares of Lucite China to a third party (whole peeling off). The peeling off shall be commenced within 6 months time. If the Lucite Company has reasonable ground to postpone, then MOFCOM shall have the right to extend the above time limit for another 6 months (peeling off term).

(2) Independent Operation of Lucite Chinese Company until Completion of Capacity Peel off

During the period from the completion of proposed transaction until the completion of the whole capacity peeling off (independent operation period ), Mitsubishi Company and Lucite China Company's monomer MMA business in China will be operated independently, have their respective management and board members.

Within the independent operation period, the concentration parties shall sell MMA in China on the basis of mutual competition, the two companies shall not exchange the pricing of relevant Chinese market, customers and other competitive information.

Within the independent operation period, if the concentration parties violate their commitments and cause serious violations, they will have to pay the penalty with a total amount between RMB 500,000 and RMB 250,000, the specific amount will be decided by the MOFCOM according to the nature of the relevant serious violations and the impact on China's market competition.

(3) No New purchase And No New Plant for the Next Five Years

Without prior approval of the MOFCOM, the Mitsubishi Company shall not engage in the following actions within 5 years after the proposed transaction settlement:

1. Purchase of MMA monomer and PMMA polymer or casting plastic manufacturers in China.
2. Establishment of new MA monomer and PMMA polymer or casting plastic plants in China.”

The conditions seem to be unnecessarily burdensome given that the market share of the merged entity seems to be below 40% in China and throughout the world. One would have to wonder whether submissions from Chinese MMA suppliers have indicated that they would be interested in purchasing Lucite or at least a large percentage of Lucite's Chinese production capabilities – it seems that MOFCOM may end up taking on a new role of business broker, if it continues to issue these types of decisions.

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A fluent Chinese speaker, Matthew has over 18 years of China and Asia Pacific legal and business experience, focusing on IP, M&A (including competition law), tax, disputes and investments. Matthew has been listed as a leading corporate lawyer by various publishers and institutions and is an ADR panelist with the Hong Kong International Arbitration Centre, and the Asian Domain Name Dispute Resolution Centre. He is currently the China Chair of the International Technology Lawyers Association, and a member of the Commonwealth Lawyers Association, Queensland Law Society, Law Society of England and Wales, Australian Institute of Company Directors, the International Trademarks Association and the Intellectual Property Society of Australia and New Zealand. Prior to joining MMLC, he was with Freshfields Bruckhaus Deringer (Hong Kong and London).