



MMLC Group – China Update

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Business News

Fortescue gets go-ahead for \$645m China deal

Fortescue Metals Group's \$645 million deal with the Chinese state-owned steelmaker Hunan Valin Iron and Steel Group has been given the green light by the Australian Federal government. Hunan Valin is already a major customer and shareholder of Fortescue. If the deal clears the final hurdle of Chinese government approval, Hunan Valin will increase its stake in Fortescue from 9.79 percent to 17.55 percent. Chinese government approval from the Ministry of Commerce, State Administration of Foreign Exchange and State Supervision Board is expected to be handed down very soon.

Chinese sports brands rush to ink pacts with elite stars

From Jelena Jankovic to pole vault queen Yelena Isinbayeva and NBA courts across America, Chinese sports brands are ignoring the doom and gloom of the global economic downturn and signing high-profile pacts with elite stars and franchises to make their presence felt in world markets. Local brand

Anta was the first to make a major move this year by signing former world WTA No. 1 Jankovic, during January's Australian Open. Anta is believed to have lured the Serb away from Reebok with a multi-million-dollar three-year deal. IMG (actually we share a wall with IMG in our Beijing office) and others are certainly active in China, but we are certainly seeing the rise of Chinese specialist sports managers.

Solar stocks go higher on speculation of \$30b China green stimulus

Solar stocks are climbing higher on the hopes for the China industry subsidy, with one analyst suggesting the price tag on the green stimulus package planned by China's National Development and Reform Commission in China could be as high as \$30 billion.

ICBC says M&A to focus on Asia and emerging markets

ICBC (Industrial and Commercial Bank of China), the world's biggest bank by market value, has announced it intends to become

more active in M&A over the next 12 months. It has said that it will focus its overseas acquisition strategy on emerging markets and Asia. ICBC owns 20 percent of South Africa's Standard Bank, Africa's biggest lender, and has said it will continue to look for overseas opportunities through acquisitions and by building on its existing business.

HP boosting China headcount

Hewlett-Packard is planning to ramp up the headcount at its outsourcing business unit in China, bucking the trend of multinationals cutting jobs amid the global economic crisis. The US technology giant could increase the headcount by as much as 25 percent. HP's outsourcing unit in China currently employs about 3,600 people, based in five delivery centers in Shanghai, Beijing, Dalian, Chongqing and Wuhan. Given the wages disparity between China and the US, the talent in China and the enormous job market, it is not surprising to see such a move.

Buyers return to housing market

The Chinese residential real estate market saw slight positive movement in January and February. Stimulated by declining prices and cheaper mortgages, nationwide home sales in the period increased 1.1% from a year earlier, compared with an overall decline of 20.3% in 2008, according to government statistics. Rising sales have yet to produce a significant increase in new construction projects, largely because inventory levels remain high. In our own office in Beijing, we have seen 30% of our employees take on new properties in the last two months. Confidence in the Chinese economy remains relatively strong, however post-Olympic price falls are also a contributing factor to the decision to buy now.

Manufacturing declines further in March

Manufacturing activity in China continued to contract in March, according to the CLSA China Purchasing Managers Index (PMI). The recent upward trend in the index ended in March, with PMI falling to 44.8 from 45.1 in February, quashing hopes that the decline in manufacturing had bottomed out. A score under 50 indicates contraction in the sector. However, the new export-order index rose to 41.4 in March from 39.5 in February, the most moderate contraction since October. The employment index also rose to 47.1 in March from 46.6 in February, though it marked the eighth straight month of reductions in Chinese manufacturers' employee headcount.

China stocks at 7-month high

China's benchmark stock index rose to a seven-month high, which tracks the bigger of China's stock exchanges, rose by 1.5% to 2,408.02, its highest close since August. The CSI 300 Index, which tracks exchanges in Shanghai and Shenzhen, gained 1.6% to close at 2,548.22. Zijin Mining Group and Jiangxi Copper gained on hopes that rising metals prices will boost earnings for commodity producers.

China's online gaming sector posts 77% surge in revenue

Sales volume of China's online gaming industry in 2008 increased by 76.6 percent year-on-year to reach 18.38 billion yuan (\$2.69 billion), despite the global financial crisis.

Carlyle invests \$20m in Chinese fashion brand Ellassay

Global private equity firm, The Carlyle Group, announced a \$20 million investment in Ellassay, a high-end Chinese women's fashion house. The investment, funded by Carlyle Asia Growth Partners (CAGP), is aimed at enhancing Ellassay's product development, market expansion and overall management. This private equity investment

comes at a time, when funding from foreign investors has declined dramatically over the last 6 months.

Sanyuan pays US\$7m for bankrupt Sanlu milk producer

The well known dairy conglomerate, the Sanyuan Group, successfully bid 49 million yuan (\$7.2 million) on 9 April to buy a 95-percent stake in the Sanlu (Shandong) dairy company, previously owned by the Sanlu Group, the bankrupt dairy firm at the center of the melamine contamination scandal. Sanlu (Shandong), which was set up in 2006, specializes in making and selling liquid milk products. Four companies participated in the auction, with the opening bid coming in at 33 million yuan. The other three bidders were Beijing investment consultancy Tongde Tongyi, a Hebei food company Xiangyao, and Wandashan dairy company from northeast Heilongjiang Province. It is understood that various valuable assets of Sanlu were sold prior to this auction.

Legal News

Competition Law

Coca-Cola purchase of China's Huiyuan fails to pass antimonopoly review

The Ministry of Commerce (MOFCOM) announced on 18 March that Coca-Cola's proposed bid to acquire China Huiyuan Juice Group "failed to meet the Anti-monopoly Law". This is the first rejection of a merger or acquisition since the law took effect on 1 August 2008, and caught foreign commentators by surprise. According to Article 27 of the Anti-monopoly Law, MOFCOM conducted a comprehensive examination of the proposed acquisition

with regard to the following aspects: 1) the business operators' market share in the relevant market and their controlling power over that market; 2) the degree of market concentration in the relevant market; 3) the impact of the concentration of business operators on the market access and technological advancements; 4) the impact of the concentration of business operators on the consumers and other business operators; 5) the impact of the concentration of business operators on national economic development; and 6) the competitive profile of the Huiyuan brand in the market for fruit drinks.

After the examination, which carried on for 6 months, MOFCOM confirmed the proposed acquisition would give rise to the following three undesirable effects related to competition issues, according to its published decision: 1) through this acquisition Coca-Cola could leverage its dominance in carbonated soft drinks into the fruit drinks sector, which would have the effect of inhibiting and restricting competition among existing fruit drink suppliers; 2) "branding" is a key element of competition, and adding two prominent Chinese brands currently owned by Huiyuan to Coca-Cola's already substantial portfolio of brands in carbonated soft drinks would significantly raise entry barriers for new suppliers of fruit drinks; 3) the transaction would make it more difficult for the remaining domestic small and medium fruit drink suppliers to operate, reducing their market share and stifling further innovation and development in the domestic Chinese fruit drink market.

Further, prior to the issuing of the decision, MOFCOM had discussions with Coca-Cola about possible remedial conditions that would allow the transaction to move forward with some modifications or limitations, in accordance with Article 29 of the Anti-monopoly Law - however, it finally thought the remedial measures proposed by Coca-Cola would not be sufficient to reduce the anti-competitive effects of the proposed acquisition.

This decision did not surprise Mainland Chinese consumers, with an Internet poll showing that 85% of respondents agreed with the decision within 48 hours of it hitting the headlines.

The decision appears to suffer from political overtones however, and certainly should serve as a warning to foreign investors in China – regarding the more sensitive acquisitions, we recommend early communication with various levels of the Ministry of Commerce, extreme caution in drafting plans and reports for submission to the Ministry of Commerce, and development of a public relations strategy to deal with consumer and government public relations issues.

China Mobile sued on anti-monopoly grounds

A customer of China Mobile, Zhou Ze, has accused the company of “illegally charging a monthly rental charge on top of its regular charges” and abusing its large share of the market. The suit was accepted by Beijing Dongcheng District People’s Court on March 30.

According to the Anti-monopoly Law, Article 17 in Chapter Three specifies acts which may constitute an abuse (including bundling of products/services, imposing unreasonable trading conditions on trading counterparties, discriminating between counterparties with the same ability to execute a transaction, and refusing to deal or supply) and also provides “valid reasons” to excuse otherwise abusive activities. But so far there have been no reported decisions or judgments concerning the application of Chapter Three of the Anti-monopoly Law, nor has any further guidance been published by any anti-monopoly enforcement agency. So how this will work in practice is still unknown.

Intellectual Property

Nike sues Chinese companies over logo

American sporting goods giant Nike is suing two Chinese companies for copying one of its logos - a silhouette of former basketball star Michael Jordan slam-dunking. Shanghai Century Lianhua Chengshan Supermarket Co Ltd was illegally displaying and selling fake sports pants bearing the logo for nearly a year, and it purchased the pants from the second defendant, Shanghai Kangchen Garment Co Ltd., Nike International told Shanghai No 2 Intermediate People's Court at a hearing. But the two contend that the logo they are using is actually not the same as Nike's. No verdict has been reached yet. According to the China Trademark Law, using a trademark that is identical with *or similar* to a registered trademark in respect of the same or similar goods without the authorization from the trademark registrant or selling goods that infringe the exclusive right to use a registered trademark constitutes infringement of the exclusive right to use a registered trademark. Consumer confusion becomes central to the case when a similar mark is involved – always difficult to prove in the Chinese courts. One thing that Nike has going for it, is the fact that Qiaodan (Jordan’s Chinese brand of shoes) have been successfully marketed in China for around 10 years – these shoes included the well known silhouette prominently on the tongue and side of the shoes.

SASAC issues new measures

The SASAC (“State-owned Assets Supervision and Administration Commission”) issued Implementing Measures for the Disclosure of Information Relating to the Supervision and Administration of State-owned Assets on 5 February 2009. The purpose of the Measures are to improve the transparency of SASAC’s work, promote SASAC’s fulfillment of its responsibilities as an investor, and provide information regarding the supervision and

administration of state-owned assets. According to the Measures, the methods of information disclosure include voluntary disclosure and disclosure upon request.

Decision in Swarovski case crystal clear

Swarovski, the world famous manufacturer of crystal based in Liechtenstein, has been successful in its case for trade mark infringement and unfair competition against Beijing Swarov Wedding Photo Co., Ltd. (“BS”) in the Beijing No. 2 Intermediate People’s Court. The court held that “SWAROVSKI” and “施华洛世奇” (SWAROVSKI in Simplified Chinese) are well-known trade marks and have already been recognized as such by the State Administration for Industry and Commerce. BS’s prominent use of “SWAROV”, “施华洛” (SWAROV in Simplified Chinese) constituted trade mark infringement as the marks were similar enough to confuse consumers. BS was ordered to cease the infringing activities and to compensate Swarovski in the amount of RMB210,000.

Sotheby’s trademark victory

The international auction house Sotheby’s has won a victory in the Beijing Court against a Chinese auction company “Sichuan苏富比 (Su Fu Bi in Chinese) Auction Company”. “Su Fu Bi” represents the same characters as used by Sotheby’s and is pronounced the same way. The mark “Sotheby” and its traditional Chinese character version have been registered as trade marks in China. However, the Chinese mark in simplified characters has not yet been approved. In spite of this, and even though Sotheby’s has not actually conducted any official auctions in China, the Court held that Sotheby’s name is “well-known”. Sichuan Su Fu Bi was barred from using any name containing “苏富比” (Su Fu Bi in Chinese) as an enterprise name in providing auction services, and was ordered to pay Rmb110,000 in damages and to publish an apology in local newspapers.

New licensing association approved to handle karaoke copyright in China

With karaoke being one of the most popular past-times on the Mainland, the Government has started to impose a long expected copyright charge on operators of the estimated 100,000 karaoke establishments in China. The long-awaited China Audio-Video Collective Administration Association (CAVCAA) was finally established in Beijing in 2008, representing copyright owners such as video or music TV producers. The Karaoke Copyright Operation Centre is the executive agency of CAVCAA.

Insurance, Media and Publishing

Chinese insurance companies allowed to invest in real estate

Chinese insurance companies may invest in real estate in China when the Amendments to the PRC Insurance Law (the “Amendments”), recently passed by the legislature in China, become effective on October 1, 2009. Such a change could release significant funds into the real estate market and open up investments in infrastructure projects. The Amendments are in line with China’s recently announced policy of allowing Chinese insurance companies to invest in marketable securities, such as company stocks and securities funds. The Amendments do not identify any limits for investing such as a certain proportion of assets etc – specific rules will be promulgated by the China Insurance Regulatory Commission (“CIRC”) in the near future.

EU and China agree level playing field for financial information providers

The EU, together with the United States and Canada, has reached an agreement with China on the treatment of financial services information in China. Financial service suppliers such as Thomson Reuters, Bloomberg and Dow Jones will benefit from

the new rules to be put in place in China. The Chinese Government has agreed to a new regulatory regime. Responsibility for the agency will now pass to an independent regulator and the requirement that foreign service providers act through a Chinese agent will be removed. China has committed to put the new regime into effect by 1 June 2009.

China to dilute state publishing monopoly

The Chinese government has promised to dilute the state publishing houses' monopoly by allowing private companies to produce books for the first time in more than half a century. The General Administration of Press and Publications, the industry regulator, said the government would "encourage and support non-public capital" and "make non-public publishers an important component" of the Chinese

language book industry. Under the regulator's proposals, state-owned publishers affiliated to schools and local government institutions will be restructured by the end of the year, and those connected with central government institutions by the end of 2010. The plan envisages the formation of six or seven large publishing groups through mergers and acquisitions and public listings. These would have a regional or thematic focus with annual revenues of more than Rmb10bn. They would also be encouraged to set up publishing businesses abroad. The policy does not affect foreign publishers such as Penguin Books, an affiliate of Pearson, the parent company of the Financial Times, which are already allowed to publish foreign language books in China.

This update is aimed at keeping our clients informed of developments in Greater China. Whilst every care has been taken to ensure the accuracy of this update, it should not be relied upon before individual advice is obtained. The MMLC Group is an international legal and corporate advisory group.