



MMLC Group – China Update

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Business News

Dell plans to launch smartphones in China by end of 2009

Dell is planning to enter the smartphone market by end of 2009 in China. A Red Office spokeswoman has publicly confirmed her company was developing an operating system for a smartphone for Dell. Goldman Sachs wrote in a research note that Dell was working with its original design manufacturing partners and a third-party software company. Analysts said the roll-out would occur firstly in Mainland China, the world's largest cellular market in terms of numbers, followed by the United States and Europe. Convergence remains high on the agendas for the world's computer companies, making entering the telecommunications market almost essential for securing future expansion and growth plans.

Bank of China and Construction Bank to tighten loan rules

Two of China's biggest lenders, Bank of China (BOC) and China Construction Bank (CCB), are tightening loan rules and increasing scrutiny on the use of

borrowings. BOC has issued guidelines to its branches to monitor borrowers and the flow of loan capital in order to limit risks while continuing to maintain rapid business growth. CCB has started to inspect consumer loans, to make sure that the loans are used for their intended purposes and not for speculation on the stock market. China has suffered from major non-performing loan problems and is anxious not to see a blowout mirroring the problems of the 1990s.

China Big four banks to launch insurance company

China's big four State-controlled banks will be the first batch of banks to run their own insurance companies in a pilot program, following the issue of recent regulations allowing such activities by banks in China. An official from the China Banking Regulatory Commission said they have reached agreement with the insurance regulator on banks to set up their own insurance companies. Vice chairman of the China Insurance Regulatory Commission, Li Kemu, said that at least one insurance company should be launched by a Chinese bank later this year.

Bridgestone to invest more in China plant

Japan's largest tyre maker, Bridgestone Corp, plans to invest US\$98 million in a plant in Wuxi (Jingsu) to expand its capacity. The investment, which is scheduled to start in the second half of 2011, will enable the plant to make an additional 4,200 tyres per day, and increase its total daily capacity to 12,000 tyres.

China to regulate SOE share transfers

China's State-owned Assets Supervision and Management Commission (SASAC) will prohibit management staff of state-owned enterprises (SOEs) from transferring their shares in SOE affiliates and subsidiaries, to their close relatives, subject to approvals being obtained. The management staff are not allowed to sell the shares to their close relatives or the companies that the relatives control. Instead, the SOEs should be the first to buy those shares, whose prices should not exceed their audited net value in the previous fiscal year. The SOE senior and middle management staff, which include members of board of directors and supervisors, are required to transfer shares in SOE affiliates within a year of the publication of the October 2008 rule or resign from their posts.

China to build five nuclear power stations in 2009

China plans to build five nuclear power stations in the Eastern and Southern regions of China this year. The five projects will be constructed in the coastal Zhejiang Province, Shandong Province and Southern Guangdong and Hainan province. The construction of the Sanmen Nuclear Power Plant in Zhejiang has already begun – it will be the first third-generation pressurized water reactor in the country using AP 1000 technologies developed by U.S.-based Westinghouse, and also the first in the world using such technologies; the Shandong

Rongcheng Nuclear Power Plant, will begin its construction phase in September. In order to meet its economic growth goals, China planned to have 40 million KW of installed nuclear capacity by 2020, which would be 4 percent of projected electricity supply capacity, or double the current level.

China's Tianjin plans to merge four state-owned steel mills into a group

China's northern city of Tianjin plans to merge its four state-owned steel mills into a group with annual capacity of about 23 million tones - the four companies are Tianjin Tiantie Metallurgical Group, Tianjin Tiangang Steel Group, Tianjin Steel Pipe Group and Tianjin Metallurgical Group (Holdings) Ltd.

China's wind-power to outpace nuclear by 2020

China will have 100 GW of wind-power capacity by 2020, which means wind is set to be a bigger source of power than nuclear. The major suppliers to China's wind sector include China Wind Systems, China High, Hansen Transmissions, Siemens, Vestas, Suzlon and local leader Goldwind Science & Technology Co Ltd.

McDonald's scales back China expansion plans

McDonald's has responded to slowing sales in China by scaling back its expansion plans in the country. It expects to open 150 new outlets across the country this year, down from an earlier projection of 175. The scaling back would likely focus on Southern China due to factory closures in the region, and reduced income levels there. China accounts for about 2% of the company's operating income. While sales in other markets have been robust as consumers look for low-cost dining options, in China McDonald's faces a huge amount of cheaper local competition and is often seen as a mid-premium option for dining out.

Geely buys Australian auto parts supplier and looks at Volvo

Geely Holding Group, one of China's biggest private carmakers, in order to boost its capability in automobile parts technologies, has acquired Australian automatic transmission supplier Drivetrain Systems International (DSI) for over US\$32m. Geely will retain the DSI brand and its independence to ensure services to global clients and introduce DSI's products and technologies in the domestic automobile market and help DSI look for low-cost parts sourcing opportunities in China. This transaction will also provide funds to help Australian company's development and research on new products to maintain its leading position in the global market.

Geely is also looking at buying Ford's Volvo operations. Various Chinese newswires have claimed that Geely officials visited Volvo's factory in Sweden, and was preparing a bid. Ford wants to sell Volvo for US\$2 billion, less than a third of what it paid for the acquisition ten years ago. Geely announced its 2008 net profit increased by 190.6%. The Volvo acquisition would be Geely's third foreign purchase.

GM's sales in China increased 50% in April

General Motors (GM)'s sales in China increased 50% from a year earlier on strength in its Buick and Wuling brands. The company recorded China sales of 151,084 units last month. The popularity of GM's smaller vehicles in China underscores the impact of government measures to boost demand for autos. China, in January, halved the purchase tax to 5% for vehicles with engines of 1.6 liters or less. Sales were also lifted by the launch of the Buick Regal midsize sedan in March and the Chevrolet Cruze compact sedan in April. However,

some analysts warned that the boost from government incentives would likely wear off by the end of June.

Macquarie to launch a trust joint venture in China

Australian lender Macquarie is preparing to launch a trust joint venture in China, and will take a 20% stake in the joint venture with Kunming International Trust as it tries to expand its investment business in China. Since trust companies are given more freedom to invest than other financial services companies in China, this joint venture may give Macquarie the ability to conduct a wide range of financial businesses, including corporate banking services. The venture's English name has not been released, but its Chinese name may be translated directly as "Sino-Australian Trust and Investment Co."

Legal News

China issues income tax policy for clean development mechanism

The PRC State Administration of Taxation (SAT) and the Ministry of Finance jointly issued a long-awaited circular on 23 March 2009 (Circular No. 30, "Circular regarding the Enterprise Income Tax Policy for Clean Development Mechanism Fund and Clean Development Mechanism ("CDM") Implementing Enterprises in China"), which provides guidance on the tax treatment of CDM related income. The circular took effect retroactively on 1 January 2007. The income related to CDM fund, for example the portion of Certified Emission Reduction (CER) sales revenue paid to the PRC government, may be exempt from enterprise income tax. For a CDM project implementing enterprise, some

portion of CER sales revenue paid to the PRC government based on the "CDM Project Measures" may be deductible.

"Bird's Nest" fireworks spark ongoing IPR lawsuit

Recently, the Olympic National Stadium Co. Ltd filed a lawsuit in the Beijing No. 1 Intermediate Court against Beijing Panda Fireworks (Group) Holding Co. Ltd and three other relevant companies, accusing them of illegally using its "Bird's Nest" design, the shape of the National Stadium. The Plaintiff claimed that the Defendants not only produced and marketed a firework named "Wonderful Bird's Nest", which looked like a "Birds Nest in the air" but also sought to use the National Stadium's enormous reputation to promote sales. The National Stadium Ltd. Co. brought an action against the Defendants to stop the infringement immediately, issue a public apology and payment of compensation in the amount of US\$60 million, under China's Law Against Unfair Competition and Copyright Law.

China's first hotel and restaurant background music infringement case tried

According to the Music Copyright Society of China (MCSC), Hangzhou Intermediate People's Court recently accepted China's first case involving the unauthorised use of background music in hotels and restaurants. The Plaintiff asked the Defendants to stop playing the music and pay compensation of US\$10,000. MCSC claimed that Hangzhou Hyatt Regency Hotel and Hangzhou 900 Bowls Restaurant used musical works that were protected by MCSC without first gaining their authorization or paying any copyright royalties. In recent years, MCSC has signed over 10,000 "paid use grant agreements" with some hotels, restaurants, supermarkets, airline companies, etc.

China SAIC handles 56,634 trademark infringement cases in 2008

According to the recent release by the State Administration for Industry and Commerce (SAIC), 56,634 trademark infringement cases were investigated in 2008, a 12.55% increase from the cases investigated in 2007. This figure is made up of 45,492 domestic cases and 11,142 foreign-related ones, an increase of 13.74% and 7.97% respectively. In a recent meeting with the Deputy Chief of the State Intellectual Property Office, concerns were expressed as to the IP enforcement offices lacking resources in certain regions of China – SIPO recognized these issues and has undertaken to address them in the near future, in accordance with its 2020 vision for an counterfeit free China.

Harley-Davidson wins first instance trademark dispute in Beijing

The Beijing No. 2 Intermediate Court in its first instance judgment ruled in favour of Harley-Davidson in a recent dispute involving Harley-Davidson's trademark. The Court held that Chrome Horse Motorcycles Beijing use of Harley-Davidson's registered trademark was unauthorized and their use of the Chinese character "哈雷" which translates to "Harley" amounted to unfair competition. Chrome Horse Motorcycles Beijing has appealed the case to the Beijing High Court.

China new border measures to take effect in July 2009

The General Administration of Customs (GAC) recently enacted the new Implementation Rules for the Regulations on Customs Protection of Intellectual Property Rights. The new Implementing Rules require a more detailed form when making an application to the GAC for the recordal of IPRs and have a number of key amendments including applications for customs recordal, ex-officio investigations and disposal of

infringing goods – it takes effect from 1 July 2009.

China to set up IP courts

Recently the China Supreme People's Court (SPC) issued the "Third Five-Year Reform Outline of People's Court (2009-2013)", which proposes that municipalities and medium-sized cities with large amounts of IP cases should explore the setting up of specialized and dedicated IP courts. SIPO has also recommended that such actions occur, particularly in Beijing, where IP case lists are very active.

China updates regulations of telecom operations licensing

China's Ministry of Industry and Information Technology of (MIIT) promulgated the Administrative Measures for Telecommunications Operations Licensing on March 1, 2009. The New Measures took effect on April 10, 2009. Compared with the Old Measures, the New Measures make the telecommunications sector more accessible to investors by lowering the market access threshold, enact specific operational requirements and incorporate new rules for exiting from the telecommunications market.

WTO issues mixed ruling in China piracy dispute with United States

In response to a 2007 complaint by the United States against China over rampant entertainment and software piracy and counterfeiting, the World Trade Organization issued a formal ruling finding that China failed to protect and enforce intellectual property rights in some cases. As the case is with many trade disputes, the verdict was mixed, with both sides chalking up wins in some aspects of the dispute and losses in others. The dispute panel agreed with the United States that China broke WTO rules by refusing to grant copyright protection to films, music, and books that

state censors had not approved for sale, and also ruled that China could not permit the public auction of counterfeit items seized by Chinese customs authorities, with the requirement that phony brands or trademarks be taken off. China successfully refuted a key U.S. claim, that Chinese copyright pirates and counterfeiters have no fear of criminal prosecution because the threshold for lawsuits was too steep. The United States and China both issued statements trumpeting their victories and downplaying or ignoring their defeats in the case.

Schneider reaches settlement in IP case in China

Schneider Electric will pay US\$23 million to a Chinese low-voltage equipment manufacturer to settle a patent lawsuit. It is the largest recorded settlement for an IP infringement case in China. Traditionally the cases involve foreign firms suing Chinese companies over patent infringements and the damage awards have been small, so the size of the Schneider settlement was a "wake-up call" to foreign companies about the growing legal risks of Chinese companies asserting IP rights.

China promulgates Second Board Rules

China Securities Regulatory Commission (CSRC) promulgated the Tentative Administrative Measures for IPOs and Listing on the Second Board (Second Board Rules), which took effect on May 1 2009. The promulgation of the Second Board Rules is a milestone in developing a multi-level capital market in China. The purpose of the second board market is to target "self-innovation" and "growth" enterprises and offer an avenue for them to capitalize on their growth opportunities if they cannot fulfill the profitability and track record requirements for the IPO and listing on the main board.

China Releases Long-Awaited Measures to Implement Transfer Pricing Rules

China's State Administration of Taxation (SAT) has formally released the long-awaited Special Tax Adjustment Implementing Measures (the TP Measures). The TP Measures will implement the Enterprise Income Tax Law's transfer pricing-related provisions, taking effect retroactively from January 1, 2008, the same date when the Enterprise Income Tax Law went into effect. With the implementation of these laws, China repeals certain former transfer pricing regulations (the Former Regulations).

China strengthens enforcement of anti-tax avoidance provisions

Two cases recently considered by China's tax authorities highlight the need to carefully structure investments when investing in the PRC. In the first case considered by Xinjiang Tax State Bureau and agreed by the State Administration of Taxation, the PRC tax authorities have sought to tax a gain arising from the sale of a PRC company by an offshore entity on the grounds that the offshore seller was not a resident of the jurisdiction where it was incorporated due to the lack of economic substance in that jurisdiction; in the second case considered by the Chongqing Municipal Tax Bureau, the PRC tax authorities imposed tax on the gain derived by a non-resident investor from the sale of another offshore company that held shares in a PRC company. The PRC tax authorities disregarded the offshore company, using arguments that seemed to be driven by general anti-avoidance considerations.

This approach of the PRC tax authorities to look through an offshore holding company and to tax gains by non-residents of shares in PRC company alert all investors, including private equity using offshore SPVs. Accordingly, investors should review

their current structures and future investments into the PRC. Particular consideration should be given to implementing and maintaining sufficient economic substance in the jurisdictions in which they establish offshore holding companies.

P&G to seek reversal of TRAB ruling in China

Recently, P&G instituted a lawsuit against Trademark Review Board in the Beijing No.1 Intermediate People's Court for approving Guangzhou Yaman Cosmetics Manufacturer to register the trademark of HUSHIBAO for sanitary towels and tissues with pharmaceutical lotions. It claimed that the mark the mark HUSHIBAO is similar to HUSHUBAO (P&G's well known mark) and was aimed at taking advantage of the reputation established by HUSHUBAO and would create confusion. The TRAB argued that the trademark HUSHIBAO was obviously different from P&G's trademark HUSHUBAO in terms of the Chinese characters, pronunciation and meaning and there was no evidence showing that HUSHIBAO was a willful imitation of HUSHUBAO. What's more, HUSHUBAO was not an identified well-known mark. The case is being keenly watched by trademark lawyers, since if P&G was to win the case, it will mean that the courts are willing to take a wide view as to whether a mark is "similar" or not, based on pronunciation, not simply the Chinese characters involved.

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.