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## **China's Anti-Monopoly Bureau Approves the Pfizer-Wyeth Transaction**

**On 29 September 2009, China's Ministry of Commerce ("MOFCOM") published another decision from its fledgling Anti-Monopoly Bureau ("AMB"), this time concerning the acquisition of Wyeth by US drug heavy-weight, Pfizer. Approval was granted to the transaction, ahead of approval from the US Federal Trade Commission, Australian ACCC and the Canadian Competition authority.**

On 15 June 2009, the AMB preliminarily accepted the application for approval, agreeing that the transaction met its thresholds for approval and that the application materials were sufficient to allow acceptance. The first phase of the investigation expired on 15 July, and the second (and usually final) phase was due to expire on 12 or 15 October 2009. Given the PRC national public holidays from 1 to 8 October, it was not surprising to see the decision issued on 29 September 2009.

It was not surprising that the AMB agreed to approve the transaction, given that consumer surveys generally supported the transaction, as did local Chinese industry groups. The decision of the AMB, clearly states that Pfizer and Wyeth had the opportunity to negotiate the approval conditions with the AMB and agreed to them prior to the decision being issued, thus they should not be surprised by the following conditions regarding the forced sale of Pfizer's swine mycoplasmal pneumonia vaccine business. AMB's conditions are as follows:

1. To strip Pfizer's swine mycoplasmal pneumonia vaccine business under Respire and Respire One brands in China (meaning China's mainland, not including Hong Kong, Macao and Taiwan);
2. To ensure the tangible assets and intangible assets required for the stripped business to be active and competitive (include intellectual property);
3. Pfizer must find purchasers for the stripped business through its agent and sign a sale agreement within six months after Ministry's approval of this concentration;
4. Purchasers shall be independent from both parties, must conform to the predefined qualification standards, and be approved by the Ministry;
5. If Pfizer can not find a purchaser within six months after the Ministry's approval of this concentration, the Ministry shall have the right to appoint a new trustee to dispose of the stripped business with no reserve price;
6. During the six months, Pfizer shall appoint an interim manager responsible for the management of the business to be stripped. The business principle of benefit maximization shall be observed to ensure the stripped business will have continuous development, marketability and competitive power, and be independent of other business operated by both parties;
7. Within three years after the stripping, according to the purchaser's request, Pfizer will have the obligation to provide the reasonable technical support to the purchaser, assist the purchaser to purchase materials for the swine mycoplasmal pneumonia vaccine, and provide technical training and consulting services to the relevant personnel of the purchaser.

It was pleasing to see the decision from the AMB referring to relevant regulations and guidelines, as well as the Hirschman Index. Even though the decision is only two pages in length, the AMB decision refers to market definition, relevant sub-markets, conclusions as to post-merger concentration and why this transaction could lead to lessened competition in the relevant sub-market. This is a great improvement on earlier decisions. Earlier decisions from the AMB have not gone into these details and left audiences wondering as to how the law and regulations were applied by the AMB, and what evidence the AMB had reviewed in arriving at its decisions and conditions for approval.

As to whether the conditions imposed on the parties are necessary in law or fact, it remains to be seen. We must say that the conditions are not surprising given Pfizer's strength in the sub-market for swine flu vaccines, and the high-profile nature of swine flu in China at present. It is uncertain as to how the acquisition of Wyeth would have increased Pfizer's market share in this sub-market however.

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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).