CPI COMPETITION POLICY INTERNATIONAL

CPI Antitrust Chronicle
February 2013 (2)

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I. INTRODUCTION

Understanding the requirements of different merger control regimes and coordinating a coherent approach across multiple jurisdictions is crucial to a successful global M&A strategy. China has become a major regulatory hurdle for cross-border transactions with a growing number of global mergers and acquisitions facing extensive scrutiny by its merger control agency, the Anti-Monopoly Bureau at the Ministry of Commerce ("MOFCOM"). Since China's Anti-Monopoly Law ("AML") came into effect in 2008 through December 2012, MOFCOM has reviewed more than 520 filings. Of these, it has rejected one transaction outright and approved 16 others with conditions. In those transactions in which it intervened, MOFCOM raised considerable competitive concerns.[2]

While economic analysis has clearly played an increasingly important role in MOFCOM's merger review, relatively little information is available to shed light upon the analytical framework employed by MOFCOM beyond the information documented in the published decisions. MOFCOM issued an official decision for each of the 17 transactions in which it intervened. The decisions summarize the agency's economic findings and discuss its competitive concerns. In this article, we examine the six decisions issued in 2012, discuss MOFCOM's evaluation of each key factor in a standard competitive analysis, and summarize the overall trends of MOFCOM's analysis of these economic factors.

Although around two-thirds of all cases reviewed are horizontal transactions, only two of the six transactions in which MOFCOM intervened in 2012 involved firms that were direct (horizontal) competitors prior to the merger: (i) the Western Digital Corporation ("Western Digital") acquisition of Hitachi Global Storage Technologies ("Hitachi"); and (ii) the United Technologies Corporation ("UTC") acquisition of Goodrich Corporation ("Goodrich"). MOFCOM's competitive analysis in both decisions focused on the potential for anticompetitive unilateral effects. In *Western Digital/Hitachi*, however, MOFCOM also expressed concern over potential coordinated effects from collusion among the remaining market participants.

Three of the six decisions issued in 2012 involved firms in a vertical relationship: (i) the joint venture between Henkel Hong Kong Holding Ltd ("Henkel") and Tiande Chemical

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[2] These concerns are documented in the decisions published on MOFCOM's website. *See* Ministry of Commerce of the People's Republic of China, Announcements, *available at* http://fldj.mofcom.gov.cn/static/ztxx/ztxx.html/1 (last visited January 18, 2013).

Holdings Ltd ("Tiande"); (ii) the Google Inc. ("Google") acquisition of Motorola Mobility Holdings, Inc. ("Motorola Mobility"); and (iii) the joint venture among ARM Holdings plc ("ARM"), Giesecke & Devrient GmbH ("Giesecke & Devrient"), and Gemalto NV ("Gemalto"). In all three cases, MOFCOM concluded that the transaction party in the upstream market possessed market power and that, post-transaction, the firm would have the incentive and ability to discriminate against competing firms downstream, thereby raising rivals' costs and stifling competition in the downstream market.

One decision in 2012 was deemed to raise conglomerate concerns. This transaction involved the proposal by Wal-Mart Stores, Inc. ("Wal-Mart") to increase its investment in Newheight Holdings Ltd. ("Newheight"), the owner of a leading Chinese online retailer. The decision was particularly noteworthy because of the generally controversial nature of competitive concerns in conglomerate mergers. MOFCOM concluded that Wal-Mart would likely leverage its comparative advantage in one market and extend it to other markets.

The following table summarizes the transactions in which MOFCOM intervened during 2012.

Transactions MOFCOM Intervened in 2012

Date of Decision	Transaction	Type
02/10/2012	Henkel Hong Kong/Tiande	Vertical
03/02/2012	Western Digital/Hitachi	Horizontal
05/19/2012	Google/Motorola Mobility	Vertical
06/15/2012	UTC/Goodrich	Horizontal
08/14/2012	Wal-Mart/Newheight	Conglomerate
12/06/2012	ARM/ Giesecke & Devrient/Gemalto	Vertical

Source: Announcements from Anti-Monopoly Bureau, MOFCOM (http://fldj.mofcom.gov.cn/ztxx/ztxx.html)

The remainder of this article is organized as follows: Section II discusses MOFCOM's analysis of the two horizontal mergers described above. We examine MOFCOM's treatment of seven key issues: market definition, market concentration, entry, unilateral effects, coordinated effects, powerful buyers, and efficiencies.[3] Section III describes the analysis employed in the three vertical transactions, while Section IV considers the Wal-Mart/Newheight conglomerate merger.

[3] *See* U.S. Department of Justice and the Federal Trade Commission, *2010 US Horizontal Merger Guidelines (Merger Guidelines), available at* http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf (last visited January 4, 2013).

Section V puts these decisions from 2012 into the context of the overall trend in MOFCOM's competitive analyses since the AML became effective.

II. HORIZONTAL MERGERS

According to standard economic theory, a merger between two competing firms eliminates a rival in the market, increasing the likelihood that the merged entity will unilaterally raise price.[4] The increased concentration may also increase the probability of collusion among the remaining competing firms. As a result, horizontal mergers are commonly scrutinized by merger review agencies around the world.

As mentioned, MOFCOM intervened in two horizontal mergers in 2012: the *Western Digital/Hitachi* transaction and the *UTC/Goodrich* transaction. *Western Digital/Hitachi* was a four-to-three merger, combining the second and third largest suppliers in a highly concentrated market for hard disk drives ("HDDs"). *UTC/Goodrich* combined the two largest manufacturers of AC power generation systems and, absent intervention, would have produced a post-merger Herfindahl-Hirschman Index ("HHI") of more than 7,000.[5] In both cases, MOFCOM found that the proposed transaction would likely restrict competition in the relevant market and remedies were imposed as a condition of clearing the mergers.

In both decisions, MOFCOM defined the relevant product and geographic markets, presented data on market share and market concentration, evaluated market entry conditions, and conducted a competitive effects analysis. Similar to the decisions issued in previous years, MOFCOM's competitive analysis focused on the potential for unilateral effects,[6] though in *Western Digital/Hitachi*, MOFCOM also noted the potential for coordinated effects and evaluated the implications of countervailing buyer power.

A. Market Definition

Market definition involves the relevant product market and the relevant geographic market. It provides a useful foundation in a merger analysis and is often a key area of disagreement between the merging parties and regulators.

1. Relevant Product Market:

In both *Western Digital/Hitachi* and *UTC/Goodrich*, MOFCOM first identified the overlapping products of the merging parties and defined relevant product markets consisting of those products. In each case, it is unclear whether MOFCOM considered any broader or narrower putative markets before it arrived at the relevant product market definition reported in its decision.

In *Western Digital/Hitachi*, both merging parties produced HDDs. As HDDs were substantially distinct from other auxiliary storage devices such as solid state drives and flash memory devices in terms of their capacity, price, and usage, MOFCOM concluded that HDDs

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[4] *See* U.S. Department of Justice, *Conglomerate Mergers and Range Effects: It's a Long Way from Chicago to Brussels*, *available at* http://www.justice.gov/atr/public/speeches/9536.htm (last visited January 4, 2013).

[5] Based on the Merger Guidelines, a market with HHI over 2,500 is considered "highly concentrated."

[6] *See* Joanna Tsai & Elizabeth Wang, *Merger Review in China: An Overview of the Competitive Analysis*, ABA INTERNATIONAL ANTITRUST COMMITTEE: THE NEWSLETTER (Summer 2012).

constituted a single relevant product market, with different segments based on end-use applications: enterprise HDDs, desktop HDDs, laptop HDDs, and HDDs used in electronic consumer products.[7]

In *UTC/Goodrich*, the overlapping products of the merging parties included aircraft electrical power systems, aircraft lighting systems, flight control actuation systems, and aircraft engine control systems, each of which was an important component of an aircraft or an aircraft engine. MOFCOM considered various demand and supply factors and, in particular, the procurement practices of downstream customers. It ultimately identified nine distinct relevant product markets.[8] However, in its competitive analysis, MOFCOM focused only on the market for AC power generation systems without any further discussion of the other eight relevant product markets.

2. Relevant Geographic Market:

In both decisions, MOFCOM noted that the supply and procurement of the relevant products were conducted on a worldwide basis. In the case of *UTC/Goodrich*, MOFCOM further noted that the pricing of AC power generation systems was also on a worldwide basis without price differences across geographic regions. Thus, MOFCOM defined a global relevant geographic market in both cases. In *Western Digital/Hitachi*, MOFCOM also indicated that its focus was on Chinese consumers affected by the transaction.

B. Market Shares and Market Concentration

Market share and market concentration are two crucial factors MOFCOM considers when evaluating the potential competitive harm due to a merger. It is well-established in standard economic theory that a merger between significant competitors in an already highly concentrated market will likely reduce competition and often causes antitrust concerns.

In *Western Digital/Hitachi,* MOFCOM found that the HDD market was "highly concentrated" and that it had become increasingly more concentrated over the past two decades. Western Digital and Hitachi accounted for 29 percent and 18 percent, respectively, of the HDD market based on 2010 global and Chinese data.[9] In *UTC/Goodrich,* MOFCOM found that UTC's share amounted to 72 percent of the market for AC power generation systems, while Goodrich accounted for 12 percent. The merger would have increased HHI by 1,728 with a post-merger HHI of 7,158.

[7] *See* MOFCOM, "Decision of Clearing the Western Digital/Hitachi Acquisition with Conditions," *available at* http://fldj.mofcom.gov.cn/aarticle/ztxx/201203/20120307993758.html (last visited January 4, 2013).

[8] The nine relevant product markets include: AC power generation systems, aircraft cabin lighting systems, secondary flight control actuation systems, rotorcraft flight control actuation systems, horizontal stabilizer trim actuators, missile actuation systems, electronic engine control systems, fuel metering devices, and main fuel pumps. *See* MOFCOM, "Decision of Clearing UTC/Goodrich Acquisition with Conditions," *available at* http://fldj.mofcom.gov.cn/aarticle/ztxx/201206/20120608181083.html (last visited January 4, 2013).

[9] MOFCOM also identified and provided share information on each competing HDD supplier in addition to that of the two merging parties: Seagate (33 percent), Toshiba (10 percent), and Samsung (10 percent). MOFCOM approved the Seagate acquisition of Samsung's HDD business in December 2011, subject to conditions.

C. Market Entry

Market entry continued to be among the key factors that MOFCOM considered in its competitive analysis. In both decisions, MOFCOM examined the current market conditions as well as historical entry experience in the industry and concluded that there were high barriers to entry. It identified two common sources of entry barriers in both transactions: substantial investment in R&D and significant economies of scale in production.

In *Western Digital/Hitachi*, MOFCOM further recognized that entry into the HDD market required access to intellectual property rights, technical know-how, and the availability of a highly skilled technical team. In *UTC/Goodrich*, MOFCOM also noted that an AC power generation system has a relatively long life cycle; thus, once an aircraft platform adopts a particular AC power generation system, it would not be making any changes for a very long time. Hence, the limited market opportunity presents another source of barrier that potential entrants would have difficulty overcoming.[10]

D. Unilateral Effects[11]

Unilateral effects continued to be the center issue in MOFCOM's competitive analysis in 2012. As in previous decisions, the agency evaluated the extent to which the elimination of a competitor could reduce competition and its focus remained on whether the combined entity would become a leading or dominant player. Further, both decisions referred to the procurement process in which competing suppliers were invited by customers to submit bids. Moreover, MOFCOM considered the impact of the merger on Chinese consumers as well as on economic development in China.

MOFCOM's decision in *Western Digital/Hitachi* provides one of the agency's most detailed competitive analysis discussions. It describes in considerable detail the quarterly procurement model employed by large computer manufacturers, and found that the elimination of one important HDD supplier likely would reduce the competitive pressure faced by the remaining bidders. MOFCOM also noted the high average capacity utilization rate and the limited ability for competitors to expand. It further recognized that innovation is an important dimension in which HDD suppliers compete and that first movers tend to achieve higher market shares and larger profits than do followers. MOFCOM concluded that the merger would likely reduce the combined firm's incentive for R&D and thereby slow innovation.

In *UTC/Goodrich,* MOFCOM found that UTC possessed market power in the relevant market because of its advanced technology in AC power generation systems. MOFCOM investigated the bidding data and found that UTC won most of the bids while Goodrich was one of the key competitors. It concluded that the combination could further strengthen the market power of UTC by reducing the number of suppliers available to customers.

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[10] However, MOFCOM recognized that the emergence of new aircraft platforms and technical renovation might provide opportunities for new entrants to the AC power generation system market.

[11] According to the Merger Guidelines, "[T]he elimination of competition between two firms that results from their merger may alone constitute a substantial lessening of competition," which the Guidelines refers to as "unilateral effects." *Supra* note 3 at 20.

E. Coordinated Effects[12]

Coordinated effects have rarely been discussed in MOFCOM's published decisions. *Western Digital/Hitachi* was one of only three transactions in which coordinated effects were explicitly addressed.[13] MOFCOM observed that the HDD products are homogenous, and that the market was transparent in terms of technology, costs, production, and sales among suppliers. It concluded that the merger would increase the likelihood of coordination among the HDD producers "due to the transparency in the relevant market and HDD suppliers' ability to predict rivals' behaviors."[14]

The general lack of discussion of coordinated effects by MOFCOM in its published decisions is a notable departure from the decisions issued by merger control agencies in other jurisdictions such as those in the United States and the European Union. It will be important to continue to monitor discussions of coordinated effects in future MOFCOM decisions.

F. Powerful Buyers

MOFCOM investigated the extent to which powerful buyers might constrain the merging parties' ability to raise prices. In *Western Digital/Hitachi,* MOFCOM distinguished between two types of buyers for HDD products: large computer manufacturers and distributors that sold to end-users. MOFCOM found that distributors did not have countervailing bargaining power vis-à-vis the HDD manufacturers. It also found that large computer manufacturers did not have sufficient motivation to discipline the HDD prices, because they were able to pass along HDD price increases to the end users.

G. Efficiencies

As in previous decisions, MOFCOM did not explicitly discuss any efficiency or other pro-competitive effects in either *Western Digital/Hitachi* or *UTC/Goodrich*.

III. VERTICAL TRANSACTIONS

A vertical merger may cause antitrust concerns when it eliminates a key supplier or customer. The combination may, in such cases, provide the merged firm with the ability and incentive to raise its rivals' costs thereby reducing competition.

As noted, MOFCOM intervened in three vertical transactions in 2012: *Henkel/Tiande joint venture*, *Google/Motorola Mobility* acquisition, and *ARM/Gemalto/ Giesecke & Devrient joint venture*. Each transaction involved an upstream input supplier and one or more of its downstream partners. In all three cases, MOFCOM found insufficient competition in the upstream market and concluded that the upstream firm would have the incentive and ability to discriminate against competitors in the markets downstream, thus potentially stifling competition in those markets.

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[12] According to the Merger Guidelines, "[A] merger may diminish competition by enabling or encouraging post-merger coordinated interaction among firms in the relevant market that harms customers," which the Guidelines refer to as "coordinated effects." *Supra* note 3 at 24.

[13] The other two decisions that discussed coordinated effects were *Novartis/Alcon* in 2010 and *Seagate/Samsung HDD* in 2011.

[14] *Supra* note 8.

A. Market Definition

1. Relevant Product Market

In all cases, MOFCOM defined relevant product markets separately for the upstream product and the downstream product.

Henkel/Tiande: Tiande is a manufacturer of ethyl cyanoacetate, a chemical product used in the production of cyanoacrylate monomer. Henkel is a customer of Tiande and is a manufacturer of cyanoacrylate monomer and cyanoacrylate adhesives, among other products. The proposed *Henkel/Tiande* joint venture was formed to produce cyanoacrylate monomer. MOFCOM identified three separate relevant product markets, which corresponded to three successive production stages: (i) upstream product, ethyl cyanoacetate; (ii) what MOFCOM referred to as the "middle-stream" product, cyanoacrylate monomer; and (iii) downstream product, cyanoacrylate adhesives.[15]

Google/Motorola Mobility: Motorola Mobility is a manufacturer of mobile devices such as smart phones and computer tablets, while Google controls the Android operating system used for mobile devices. MOFCOM concluded that the smart mobile devices constituted a relevant downstream product market because of their open operating system platform, unique human-computer interaction experience, and portability. MOFCOM also considered the upstream product, the smart mobile device operating system, to be a separate relevant product market, as smart mobile device operating systems are distinct from other operating systems such as operating systems of desktop computers.[16]

ARM/Geisecke & Devrient/Gemalto: The *ARM/Giesecke & Devrient/Gemalto* joint venture was formed to develop a Trusted Execution Environment ("TEE") solution[17] for use with application processors embedded with ARM's TrustZone® technology and to promote the adoption of a common security standard in mobile devices.[18] Although MOFCOM did not explicitly define a relevant product market in this decision, it apparently considered the licensing of the intellectual property for home electronics application processors as the upstream market and the provision of TEE solutions as the downstream product market.[19]

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[15] *See* MOFCOM, *"Decision of Clearing the Henkel/Tiande Joint Venture with Conditions," available at* http://fldj.mofcom.gov.cn/aarticle/ztxx/201202/20120207960466.html (last visited on January 4, 2013).

[16] *See* MOFCOM, *"Decision of Clearing the Google/Motorola Mobility Acquisition with Conditions," available at* http://fldj.mofcom.gov.cn/aarticle/ztxx/201205/20120508134324.html (last visited on January 4, 2013).

[17] TEE is a type of security solution that protects sensitive sources and data by setting up an independent execution environment surrounding the operation system.

[18] *See* ARM, *ARM, Gemalto and Giesecke & Devrient Form Joint Venture To Deliver next-Generation Security For Services Running On Connected Devices, available at* http://www.arm.com/about/newsroom/arm-gemalto-giesecke-devrient-form-joint-venture-deliver-next-generation-security.php (last visited on January 4, 2013); *see also* Reuters, *UPDATE 2-Arm, Gemalto and G&D tie up on mobile security, available at* http://www.reuters.com/article/2012/04/03/arm-idUSL6E8F30DF20120403 (last visited on January 4, 2013).

[19] *See* MOFCOM, *Decision of Clearing the ARM/Gemalto/Giesecke & Devrient Joint Venture with Conditions, available at* http://fldj.mofcom.gov.cn/aarticle/ztxx/201212/20121208469841.html (last visited on January 4, 2013).

2. Relevant Geographic Market

In both *Henkel/Tiande* and *Google/Motorola Mobility*, MOFCOM defined the relevant geographic market as global, but focused on the impact on Chinese consumers. Although MOFCOM did not explicitly define a relevant geographic market in *ARM/Geisecke & Devrient/Gemalto*, it appeared to have determined a worldwide geographic market based on the global nature of each party's businesses.[20]

B. Market Concentration in the Upstream and Downstream Markets

In each of these decisions, MOFCOM found that the upstream market was highly concentrated while there was significant pre-merger competition in the downstream market.

In *Henkel/Tiande*, MOFCOM found that there were only two major suppliers of upstream ethyl cyanoacetate in the world, each accounting for around 45 to 50 percent of the relevant market, resulting in an HHI of around 4,050. MOFCOM concluded that there was "sufficient competition" in the "middle-stream" cyanoacrylate monomer market, and did not express any competitive concerns in the downstream market.

In *Google/Motorola Mobility*, MOFCOM found that there was "fierce competition" in the downstream smart mobile device market while the upstream operating system market was highly concentrated. In the fourth quarter of 2011, Google's Android system accounted for 74 percent of the Chinese mobile operating system market, while Nokia's Symbian system and Apple's iOS accounted for 12.5 percent and 10.7 percent, respectively. Because of its high market share, its superior technical development capabilities, its financial resources, the high market entry barriers, and the strong reliance of smart mobile device manufacturers on the Android system, MOFCOM concluded that Google's Android system had a "dominant position" in the upstream product market.

In *ARM/Giesecke & Devrient/Gemalto,* MOFCOM noted that in the upstream market for the IP licensing of home electronics application processors, ARM had an "industry-recognized" position and had "strong control" of the market. MOFCOM did not appear to be concerned about competition in the downstream TEE market given the lack of discussion of market conditions in its decision.

C. Market Entry

MOFCOM concluded that the barriers to entry into the upstream relevant market were high in each case. The agency considered similar factors of entry barriers in these vertical transactions as it did in evaluating the two horizontal mergers discussed in Section II.C. In particular, in *Google/Motorola Mobility*, MOFCOM noted the presence of high switching costs as an important entry barrier. In *Henkel/Tiande*, as the production of ethyl cyanoacetate involves hazardous chemicals and generates high levels of pollution, the product is subject to strict governmental regulations with respect to its production, transportation, storage, and distribution. MOFCOM found that entry is "very difficult" due to these regulatory hurdles.

[20] *Supra* note 19.

D. Unilateral Exclusionary Effects

One common competitive concern that MOFCOM expressed in all three decisions was that the transaction would lead the party in the upstream market to discriminate against the competitors in the downstream market. Because of the highly concentrated upstream market, downstream competitors have few available substitutes to avoid harm. Therefore, the combined firm can raise its competitors' costs and extend its market power in the upstream market to the downstream market. Hence, competition in the downstream market would likely be limited.

In *Google/Motorola Mobility* particularly, MOFCOM raised a number of specific concerns. First, MOFCOM concluded that the Android operating system was a crucial input for many downstream software application developers and smart mobile device manufacturers. MOFCOM was concerned that, after the transaction, Google might stop offering the Android operating system on a free and open basis to competing smart mobile device manufacturers. Further, in light of Google's dominant position in mobile operating system technology, MOFCOM concluded it had both the incentive and ability to favor Motorola Mobility over other smart mobile device manufacturers.[21] In addition, since Motorola Mobility was the holder of a large number of essential patents in the mobile phone area, MOFCOM found that Google might extend its dominant position in the mobile device market and impose "unreasonable licensing terms" on competing manufacturers, thereby harming consumers.

E. Coordinated Effects, Powerful Buyers, and Efficiencies

Notably, coordinated effects, powerful buyers, and efficiencies were not discussed in any of the three decisions on vertical transactions. In particular, the well-established efficiencies generated from vertical mergers through eliminating the double marginalization problem were not mentioned in any of the decisions.

IV. CONGLOMERATE MERGER

A conglomerate merger is one in which there are no horizontal overlaps or vertical relationships between the merging parties. Unlike a horizontal or vertical merger, a conglomerate merger does not involve the elimination of any actual player in any relevant market. While U.S. regulators generally consider conglomerate mergers to be efficiency enhancing and therefore conclude that "antitrust should rarely, if ever, interfere with any conglomerate merger,"[22] MOFCOM's decision in the *Wal-Mart/Newheight* transaction seems to suggest that China's position departs from the current policy of the United States and the European Commission, and resembles the position that the European Commission took over a decade ago—that is, conglomerate mergers would make the merged firm "a stronger competitor that may *ultimately* be able to drive rivals from the market"[23] and therefore could be a cause for concern.

[21] For example, Google might offer the latest Android system to Motorola Mobility before offering it to other downstream competitors.

[22] *Supra* note 4.

[23] *Id.*

A. Market Definition

MOFCOM noted that Wal-Mart is a world-leading brick-and-mortar retailer with strong brand recognition among Chinese consumers. It also enjoys a competitive advantage in procurement, storage, product line, store network, service, and logistics. Newheight owns Yihaodian, the largest online supermarket in China, which contracts with more than 1,000 suppliers and offers more than 100,000 products. Yihaodian is also involved in a value-added telecommunication service ("VATS") that offers online trading platform solutions to third-party online retailers. In this transaction, Wal-Mart proposed to increase its stake in Newheight from 18 percent to 51 percent.[24]

MOFCOM defined the relevant product market for this acquisition as the business-to-consumer ("B2C") online retail market based on a number of market factors such as the scope of the merging parties' business, their business models and characteristics, and demand and supply substitution patterns. It appears that MOFCOM also considered two other separate product markets in its analysis: brick-and-mortar retail (in which Wal-Mart is a "major" player in China) and VATS (which Yihaodian provides).

Based on "consumption habits, transportation, and customs," MOFCOM defined the relevant geographic scope of the B2C online retail market as the Chinese national market.

B. Leveraging Effects

MOFCOM concluded that the acquisition would likely reduce competition via a twofold leveraging effect. First, after the proposed transaction, Wal-Mart would have the ability to leverage its competitive advantage in the brick-and-mortar retail market into the online retail market in which Yihaodian operates. Furthermore, if Wal-Mart enters the VATS market through Yihaodian subsequent to the acquisition, it could leverage its comparative advantage in both the brick-and-mortar retail and online retail markets, and gain an advantage over other providers of VATS. As a result, the acquisition may restrict competition in the VATS market.

C. Efficiencies

It is well-recognized in antitrust literature that conglomerate mergers often provide the merged firm opportunities to enhance efficiencies. However, MOFCOM's decision in the *Wal-Mart/Newheight* transaction was silent as to the potential for merger-specific efficiencies, just as with its decisions in the vertical transactions. It is unclear if efficiencies were considered at all, or if the cognizable efficiencies were deemed to be insufficient to offset the potential harm to competition.

V. CONCLUSION

From the *InBev/Anheuser-Busch* decision in November 2008 to the *ARM/ Giesecke & Devrient/Gemalto* decision in December 2012, MOFCOM has shown increasing transparency and growing sophistication in its economic analysis. Its economic findings have moved beyond the basic concentration analysis in its earlier decisions and now include considerations of complex dynamic competitive factors such as entry, innovation, and vertical relationships.

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[24] *See* MOFCOM, *Decision of Clearing the Wal-Mart/Newheight Acquisition with Conditions*, *available at* http://fldj.mofcom.gov.cn/aarticle/ztxx/201212/20121208469841.html (last visited on January 4, 2013).

In general, MOFCOM's decisions are consistent with mainstream antitrust approaches. Notably, MOFCOM has increasingly incorporated key economic factors into its competitive analysis, especially in areas such as market definition, the assessment of unilateral effects, and entry. However, significant risks associated with China's evolving antitrust legal framework and unpredictable political influences remain. Although MOFCOM is keen to engage in discussions and exchange ideas with other antitrust regulators, the agency reached its own conclusions based on its independent analysis and, at times, is inconsistent with the decisions reached in other jurisdictions. It is not unusual, for example, that after EU and/or U.S. regulators have cleared a transaction without any required remedial action, MOFCOM imposes conditions for clearance on the same transaction (for example, *Google/Motorola Mobility*).

As the published decisions continue to show increasing breadth and depth in the economic analysis of competitive effects by MOFCOM, we look forward to furthering our understanding of the agency's developing analysis. In particular, we are interested in learning more about MOFCOM's position in some of the areas in which its views have been more limited and less transparent, such as merger-specific efficiencies and coordinated effects.