

China's Ministry of Commerce Revises the Guiding Opinions on the Declaration of Concentration by Business Operators

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On June 6, 2014, the **Ministry of Commerce** published a revised version of the Guiding Opinions on the Declaration of Concentration by Business Operators (the 2014 Guiding Opinions), which took effect on the same day. The 2014 Guiding Opinions made certain significant changes to the 2009 version, adding greater clarity to the merger-control filing requirements. Such changes are summarized below:

Control. Under the PRC Anti-Monopoly Law, the procurement of direct or indirect control by an operator (the acquiring operator) over another operator (the target operator) is a form of business concentration. The 2014 Guiding Opinions clarify that control includes sole control and joint control. Further, the determination of whether there is control is a case-by-case determination requiring consideration of various factors including (but not limited to):

- The purpose of the transactions and future plan;
 - The capital structure of the target operator prior to and subsequent to the transactions and changes thereto;
 - The shareholder voting mechanisms of the target operator;
 - The composition and the voting mechanism of the board of directors of the target operator;
 - The appointment and dismissal of the senior executives of the target operator;
 - Any voting agreements or arrangements among the shareholders or directors of the target operator; in the relationship between the shareholders and directors of another business operator; and
 - Whether the acquiring operator and the target operator have any significant business dealings or alliance arrangements.

- Joint Control. A business concentration is deemed to have occurred when two business operators establish and have joint control over a joint venture. If only one business operator has control over the new joint venture, no concentration is deemed to have occurred.
- Series of Transactions Deemed to be a Single Transaction. If the same business operators enter into several separate concentration transactions, none of which individually satisfies the conditions requiring the operators to make a merger-control filing, and the transactions occur within two years of each other, the transactions would be deemed to be one single concentration transaction for the purposes of determining whether a merger-control filing is required.

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