



## ● Top News

### **MOFCOM Conditionally Approves the Acquisition of Alcon by Novartis**

## ● Inside the News

On 13 August 2010, the Ministry of Commerce of the People's Republic of China ("MOFCOM") issued its conditional clearance decision on the anti-monopoly notification for the proposed acquisition of Alcon, Inc (**Alcon**) by Novartis AG (**Novartis**). Early on April 20, 2010, the MOFCOM received the anti-monopoly notification for the proposed transaction.

### **Concerned Issues**

MOFCOM focused its concerns about the competition issues in two relevant markets: (a) the market for ophthalmic anti-inflammatory and anti-infective products; and (b) the market for contact lens care products.

In terms of the products of ophthalmic anti-inflammatory and anti-infective, the combined global shares after the transaction will exceed 55% while the combined shares in China market will be over 60%. Currently, Alcon's market share in China is over 60%, whilst Novartis' market share is less than 1%. Although Novartis expressed they would withdraw from the global market including China market with regard to the ophthalmic anti-inflammatory and anti-infective products, MOFCOM was of the view that Novartis was still the competitor in China market and, if it took the withdrawal only as a strategic exit for this transaction, it may still have the capability of reentering the market after the transaction, and thus may result in the exclusion and restriction of competition in China after the transaction.

In the contact lens care products market, the merged entity will hold a global market share of nearly 60% and a share of around 20% in China, which will make the merged entity the second largest enterprise in China with respect to the contact lens care products. In 2008, the

subsidiary of Novartis, Shanghai Ciba Vision Trading Co., Ltd. (“**Ciba Vision**”) entered into a distribution agreement with Hydron Contact Lens Co., Ltd. (“**Hydron**”) that is a subsidiary of the Taiwanese company Ginko International Co. Through said exclusive distribution agreement, the post acquisition entity may collude on pricing, quantity, sale geography and other issues with Hydron and consequently impose the impact of exclusion and restriction of competition. Hydron is now the biggest manufacturer and seller in China with over 30% market share. It is worth noting that this is the first time that MOFCOM imposes conditions on a proposed merger on the ground that the merger may have “coordinated effects” and thus have the effects of excluding or restricting competition in China.

### **Restriction Conditions**

Specific to the issues of exclusion and restriction of competition, MOFCOM approved the transaction and stipulated the following requirements for Novartis and Alcon:

By the end of 2010, Novartis shall cease to supply Infectoflam in China. MOFCOM further stipulated that within a period of 5 years upon the effectiveness of the clearance decision, Novartis shall not supply Infectoflam, product of Infectoflam under a different product name, or ophthalmic anti-inflammatory and anti-infective products that were sold outside the territory of China prior to the closing of the transaction in China. During the five year period, Novartis shall report its performance of such requirements to MOFCOM on every anniversary after the effective date of the clearance decision.

Novartis shall terminate the distribution agreement between Ciba Vision and Hydron within the twelve months upon the effective date of the conditional clearance by MOFCOM and report the performance to MOFCOM within one week after the termination of such distribution agreement.

### **Conclusion**

Since the effectiveness of the Law of the People’s Republic of China on Anti Monopoly, MOFCOM has accepted around 140 anti-monopoly notifications and decided for the most cases. The Novartis/Alcon decision is only the sixth decision on which MOFCOM imposed conditions. The prior five conditional clearance were all specific to foreign companies. Although MOFCOM claimed that they apply the Anti Monopoly Law equally to foreign and domestic applicants, to date, among the published decisions in two years, only foreign companies have been issued clearance decisions with conditions.

If you have any questions regarding the foregoing, please feel free to contact us. Thank you!

## **Important Announcement**

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