

## **MOFCOM Conditionally Approved the Proposed Acquisition of Sanyo Electric Co., Ltd. by Panasonic Corporation**

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On October 30, 2009, the Ministry of Commerce (“**MOFCOM**”) issued an Announcement No. 82 (2009) to conditionally approve the proposed acquisition of Sanyo Electric Co., Ltd. (“**Sanyo**”) by Panasonic Corporation (“**Panasonic**”).

In some previous anti-monopoly decisions, MOFCOM offered little information regarding the reasons behind its decisions, which caused public calls for more information. For example, in its Coca Cola-Huiyuan decision, MOFCOM had to post a Q&A session on its website to clarify some key points behind the decision of this case in response to public doubts. In the decision regarding Panasonic-Sanyo, MOFCOM put much emphasis on the discussion of competition issues to illustrate its decision that this merger would result in restrictions on or elimination of competition.

### **1. Analysis of competition issues by MOFCOM**

MOFCOM concluded that this concentration would result in restrictions on or elimination of competition on the following three product markets: coin-sized lithium secondary battery, civil nickel-hydrogen battery and automobile-used nickel-hydrogen battery. For each product market, MOFCOM analyzed factors like the extent of concentration, the market shares of the operators participating in this concentration on the relevant market, the effect of this proposed concentration on market access, the effect on consumers, etc. to indicate that this proposed concentration would result in restrictions on or elimination of competition on the aforementioned three markets.

Compared with prior decisions, this decision defined the relevant markets more clearly, quoted numbers when discussing market shares, and fully analyzed the considered factors, which shows that MOFCOM is making effort to reveal more details in its anti-monopoly decisions.

### **2. Remedies**

During the examination, the notifying parties consulted with MOFCOM for many times and raised ultimate remedies. MOFCOM confirmed that such remedies could eliminate the adverse effect of this concentration on PRC market and then approved it conditionally. MOFCOM mainly opted for structural remedies which caused low monitoring cost. In respect to the abovementioned three product markets, MOFCOM required the following business divestment measures: divesting all of the coin-sized lithium secondary battery business currently conducted by Sanyo, divesting the civil nickel-hydrogen battery business conducted by one of Sanyo and Panasonic, divesting the automobile-used nickel-hydrogen battery business conducted by Panasonic. The announcement also put restrictions on the share percentage, the voting rights held by Panasonic in its jointly

invested corporation-PEVE (PEVE has absolute advantage on automobile-used nickel-hydrogen battery market).

In the examination process of this concentration, the remedies were raised by the notifying parties and finally accepted by MOFCOM through consultation between the notifying parties and MOFCOM. This sends a positive signal to the market that although unconditional approvals may be impossible in concentration transactions which raise complicated competition issues, it is still possible that the concentration transactions would be approved by MOFCOM with conditions acceptable to business operators and MOFCOM, through proactively and thoroughly communication between them.

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

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