

# Legal Liability in the concentration of undertakings System

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# Legal Liability in the concentration of undertakings System

- The provisions of the Anti-Monopoly Law and related regulations
- Investigations and punishment of illegal implementation in concentration of undertakings
- The main features of the legal liability system
- Difficulties in law enforcement
- Improvement direction and issues

# Related regulations on legal liability

## **The relevant provisions of the Anti-Monopoly Law**

- ◆ Article 48: In case that the concentration of undertakings is in violation of the relevant provisions of this Law, the Anti-monopoly Enforcement Authority under the State Council shall order the undertakings concerned to correct the situation, impose a fine of less than 500,000 RMB, and may also order the undertakings concerned to dispose of the stocks or assets within the specified period, transfer part of its business within the specified period, or adopt other necessary measures to revert to the pre-concentration condition.
- ◆ Article 49: To decide the amount of fines pursuant in Article 46, Article 47 and Article 48, the Anti-monopoly Enforcement Authority shall take factors such as the nature, degree and duration of the illegal conducts into consideration in determining the specific amount of the fines.
- ◆ In addition, the relevant provisions of Articles 50, 52, 53, and 54 of the Anti-Monopoly Law apply to all legal responsibilities in the investigation of suspected monopolistic behaviors.

# Related regulations on legal liability

- ◆ Article 15 of the *Measures for Review of Concentrations in Undertakings*
- ◆ Article 13, 16, 20 of the *Provisional Measures on Investigating and Sanctioning the Failure to File Concentration in Undertakings Law*
- ◆ Chapter 6 of the *Provisions on Imposing Restrictive Conditions on the Concentration in Undertakings* (Articles 29, 30, 31)

# The specific circumstances of illegal implementation of concentration of undertakings

- ◆ The behavior around implementation of concentration of undertakings without declaration;
- ◆ During the process of case review, the implementation of concentration of undertakings before the decision is made;
- ◆ Implementation of concentration of undertakings failed to obey the restrictive conditions;
- ◆ Concentration is still implemented after the prohibition decision of the implementation of concentration of undertakings is made.

# The main types of legal liability

I. Order to stop the implementation of the concentration

II. Order the deadline to deal with restitution and recover to original:

- Limit deadline to dispose of shares or assets
- Limit deadline to transfer business
- Other measures
- III. Fine
- 500,000 yuan or less

# Sanctions of illegal implementation of concentration of undertakings

Number	Case name	Object of punishment and decision
1	Unisplendour Group Co., Ltd. Acquires RDA Microelectronics	Unisplendour Group 300,000
2	Fujian Electronic Information (Group) Co., Ltd. acquires 35% Equity of Shenzhen Zhongnuo Communications Co., Ltd.	Fujian Electronic Information (Group) 150,000 yuan
3	Shanghai Fosun Pharmaceutical Industry Development Co., Ltd. acquires 35% stake in Suzhou Erye Pharmaceutical Co., Ltd.	Shanghai Fosun 200,000 yuan
4	CSR Nanjing Puzhen Vehicle Co., Ltd. established a joint venture with Bombardier Transportation Group Sweden Limited	CSR Puzhen 150,000 yuan Bombardier Sweden 150,000 yuan
5	BesTV New Media Co., Ltd. establishes joint venture with Microsoft Corporation Shanghai Baijiahe Information Technology Development Co., Ltd.	BesTV 200,000 yuan; Microsoft 200,000 yuan

# Sanctions of illegal implementation of concentration of undertakings

Number	Case name	Object of punishment and decision
6	Dade Holdings Co., Ltd. acquires 50% stake in Jilin Sichang Pharmaceutical Co., Ltd.	Dade holding 150,000 yuan
7	➤XinYu Group and Bombardier Sweden set up joint venture	XinYu Group 300,000 ; Bombardier Sweden 400,000
8	Beijing CNR Investment Co., Ltd. established a joint venture with Hitachi Ltd.	Beijing CNR 150,000 yuan; Hitachi Ltd. 150,000 yuan
9	Zhongshan Dayang Electric Co., Ltd. acquires equity in Beijing Peitelai Electric Co., Ltd.	Zhongshan DaYang 150,000 yuan
10	Continental Automotive Investment (Shanghai) Co., Ltd. established a joint venture with Huayu Automotive Systems Co., Ltd.	Continental car 200,000 yuan; Huayu automobile 200,000 yuan



# Sanctions of illegal implementation of concentration of undertakings

Number	Case name	Object of punishment and decision
11	Canon Inc. acquires Toshiba Medical Systems Co., Ltd.	Canon 300,000 yuan
12	Cummins (China) Investment Co., Ltd. establishes joint venture with Xiangyang Kanghao Electrical and Mechanical Engineering Co., Ltd.	Cummins China 150,000 yuan; Kang Hao 150,000 yuan
13	Korea Oaseya Corporation acquires Tesan Malaysia	South Korea Oaseya 150,000 yuan
14	Guangsheng Hong Kong Holdings Co., Ltd. acquires Australian Pan-Australia Limited	Guangsheng Hong Kong 150,000 yuan
15	The Health 100 Industry and other related parties have successively acquired the equity of Ciming Health Check Management Group Co., Ltd.	Health 100 300,000yuan

# Sanctions of illegal implementation of concentration of undertakings

Number	Case name	Object of punishment and decision
16	Wuhu Construction Investment Co., Ltd., Chery New Energy Automotive Technology Co., Ltd. and Yaskawa Electric Co., Ltd. set up a joint venture	Wuhu Construction Investment, Chery New Energy and Yaskawa Electric each cost 150,000 yuan
17	SCHWITZER Asia Pte. Ltd. and Binhai County Binhai Investment Development Co., Ltd. established a new joint venture	SCHWITZER Asia 150,000 yuan; Binhai Investment 150,000 yuan
18	Guanghui Baoxin Auto Group Co., Ltd. and Beijing Yanbao Automobile Service Co., Ltd. acquired 100% equity of Sichuan Hong Kong Enterprise Management Co., Ltd.	Guanghui Baoxin and Beijing Yanbao each 300,000 yuan
19	YIHAI KERRY Investment Co. Ltd. and CJ first sugar company set up a joint venture	Yihai Kerry 150,000 yuan; Xijie first sugar 150,000 yuan
20	Shandong sun Holdings Limited takeover part of the Wanguo paper industry	Sun Holdings 300,000 yuan

# Sanctions of illegal implementation of concentration of undertakings

<b>Number</b>	<b>Case name</b>	<b>Object of punishment and decision</b>
1	Western Digital violates its obligations under the "Notice"	Western Digital 300,000 yuan
2	Western Digital violates its obligations under the "Notice"	Western Digital 300,000 yuan
3	Thermo Fisher Scientific violates its obligations under the "Notice"	Thermo Fisher 150000 yuan

# Main characters

- ◆ Different legal liability from other suspected monopolistic behaviors
- ◆ Relatively simple principle of provisions on legal liability.
- ◆ All sanction of cases are fines
- ◆ Fines of less than 500,000 yuan, mainly between 150,000–400,000

# Difficulties in law enforcement

## **Low fines and insufficient deterrent power**

Cases:

- New United Group and Bombardier Sweden set up joint venture
- Unisplendour Group's acquisition of RDA

# Difficulties in law enforcement

**Differences in the amount of fines are relatively small and it is difficult to reflect the specific circumstances of illegal behaviors**

Cases:

- New United Group and Bombardier Sweden set up joint venture
- Cummins and Kang Hao set up a joint venture

# Difficulties in law enforcement

## **Undiscriminated illegality, single type of liability**

- For example: For cases in which there may be exclusion of restricting the impact of competition in the case of non-legal reporting, should they all be ordered to reinstate?

# Improvement direction and issues

- ◆ **Ensuring effective implementation of concentration of undertakings system:** should the legal liability of illegal implementation of concentration of undertakings be distinguished from other monopolistic behavior?
- ◆ **Improving administrative deterrence:** Should the fine limit be increased? Is it possible to calculate the fine according to the turnover? whether or not set up a daily fine?
- ◆ **Adding the types of illegal situation and legal liability:** Should there be additional types of legal liability, such as warnings, additional restrictive conditions, etc.?



Thank you!

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