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BELARUS



### Upgrading the Belarusian anti-monopoly regulation

by Maria Rodich and Alexey Anischenko

September 2016 marked an important stage in the formation of Belarusian anti-monopoly regulation: a new independent competition authority – the Ministry of Anti-monopoly Regulation and Trade (MART) – was established. The structure of MART embraced the territorial agencies for anti-monopoly and pricing policies, as well as the Pricing Policy Department previously subordinated to the Ministry of Economy.

MART is entrusted to prevent monopolistic activities and promote competition in the Belarusian market. It regulates and supervises activities of subjects of natural monopolies, prices and tariffs and monitors and regulates product markets, public procurement contracts, advertising

and consumer protection activities.

Starting from autumn 2016 MART is actively increasing its activity in the field of competition. It investigates unfair competition claims, publishes results thereof on its official website (which has never happened before), performs obligatory merger clearance procedures and regulates trade activity of business entities. For instance, within the first six months of 2017 MART has conducted nine investigations that resulted in acknowledging unfair competition and imposing fines and prohibitions on business entities that breached legislation. At the same time, information on cleared mergers is not being made public and there are no general reviews on MART's

activity in this sphere.

The reform of anti-monopoly legislation continues: the government introduced amendments to the main competition law in Belarus – the Law On Counteraction to Monopolistic Activity and Competition Development. The bill contains a range of amendments on reducing the dominance thresholds and clarifying the categories of unfair competition.

The government has refocused its attention away from price regulation by redistributing powers in favor of the anti-monopoly authority. The transfer of regulatory functions to a new body is just the beginning of active changes in the competition law regime.

CHINA



### How to assess 'control' under MOFCOM's latest draft of measures for reviewing notification of concentrations

by John Yong Ren and Wesley Zhining Wang

The Ministry of Commerce of China (MOFCOM) released the latest draft of the Measures for Reviewing Notification of Concentrations (Draft Measures) on 8 September 2017. It is regarded as one of MOFCOM's fundamental rule for implementing merger control under the China Anti-Monopoly Law.

The Draft Measures deals with an important issue: how to assess 'control', i.e. how to assess whether an undertaking is able to impose control or decisive impact upon another undertaking.

According to the Draft Measures, to determine whether an undertaking obtains control or the ability to exert decisive influence upon the target, one shall consider:

- the situation of voting right or simi-

lar rights and interests; and

- the influence on operating decision and management of the target such as appointment, dismissal of senior management, financial budget, business plan, etc.

To further assess the existence of control or ability to exert decisive influence, according to the Draft Measures, practitioners shall mainly base the assessment on related legal documents and consider the following factors:

- purpose of the transaction and business plan after the transaction;
- undertakings' equity structure and its changes before and after the transaction;
- matters decided by vote and the vot-

ing mechanism of shareholder meeting or general meeting of shareholders of undertakings;

- historical attendance and outcome of voting of shareholder meeting or the general meeting of shareholders of undertakings;

• constitution, matters decided by vote, voting mechanism and historical voting outcome of the board of directors, board of supervisors and other similar decision-making bodies of undertakings

Undoubtedly, with the coming into force of the Measures for Reviewing Notification of Concentrations, legal certainty of MOFCOM's merger review practice will be significantly increased.