

FAILURE TO FILE REPORTABLE MERGERS – UPDATE FROM CHINA



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Like many other jurisdictions, China has a system of compulsory pre-closing merger control. Like other jurisdictions, the Chinese antitrust authority – the State Administration for Market Regulation (“SAMR”) – investigates and punishes companies for failing to file reportable transactions. Quite unique to China, in contrast, is that companies are queuing up before SAMR to get fined. Why? This paper will take a deep look at China’s failure-to-file decisions and reply to this and other questions.

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This paper will take a deep look at China’s failure-to-file decisions and reply to this and other questions.

I. INTRODUCTION

Chinese antitrust enforcement under the Anti-Monopoly Law (“AML”) has visibly gained pace since the end of 2020. Some would even say Chinese antitrust has entered into a “new area.”² A key reason for the increased antitrust enforcement was the high-level backing which top leaders voiced for antitrust enforcement. For example, on December 11, 2020, President Xi Jinping presided over a top-level meeting that indicated that the strengthening of anti-monopoly efforts is one of the key tasks for China in 2021.³

Not long after that, SAMR issued its decision against Alibaba for abuse of dominance – “from-two-choose-one,” a form of exclusive dealing – with a record fine of over RMB 18 billion (around USD 2.9 billion).⁴

In the area of failure to file reportable transactions, too, enforcement levels increased dramatically. Since December 2020, 51 failure-to-file punishment decisions were adopted, of a total of 110 such decisions since 2014.⁵ In other words, in the half-year since December 2020 around half of all such decisions were issued – while the other half of decisions were adopted over a period of six years before December 2020.

The statistics of failure-to-file decisions reveal other interesting points. For example, 63 of the 71 companies fined for failure to file since December 2020 were from the Internet sector or related industries. Equally interesting, SAMR and its predecessor did not impose the maximum possible fine in any case prior to December 2020, but did so in over 80 percent of cases (45 of 51 cases) since then.⁶

In this paper, we will first set out the law applicable to failure-to-file cases (section 2) and explain the procedure for investigating such cases (section 3). Then, in section 4, we will explain the content of the actual failure-to-file decisions. Section 5 concludes.

² Sun Weiwei, *How to anti-monopolize in 2021: The Internet industry is the focus of law enforcement and the revision of the law may be completed*, January 7, 2021, <https://www.yicai.com/news/100905831.html>.

³ Xinhua Net, *The Meeting of the Political Bureau of the CPC Central Committee was held and presided by President Xi*, December 11, 2020, http://www.xinhuanet.com/politics/leaders/2020-12/11/c_1126850644.htm. Also see Xinhua Net, *The Central Economic Work Conference was held in Beijing with Xi Jinping and Li Keqiang delivering an important speech*, December 18, 2020, http://www.xinhuanet.com/politics/leaders/2020-12/18/c_1126879325.htm.

⁴ *Alibaba*, [2021] SAMR Notice No. 28, April 10, 2021.

⁵ From December 2014 to December 2020. Failure to file was not a priority at the beginning of China’s modern antitrust era. SAMR’s predecessor, the Ministry of Commerce, adopted the first failure-to-file decision in December 2014, over six years after the AML came into effect.

⁶ Since December 2020, the maximum fine was imposed in all of the Internet-related failure-to-file decisions (45 cases) and in one of six decisions against non-Internet companies.

II. LEGAL FRAMEWORK

The Chinese merger control regime is quite straight-forward. A filing with SAMR is required if (1) a transaction amounts to a “concentration between business operators” and (2) the relevant thresholds are met. The parties to a transaction are under a standstill obligation – the transaction cannot be closed before SAMR has issued clearance.⁷

The term “concentration between business operators” is explained in the AML: either a “merger” in the strict sense or an acquisition of a “controlling right” in one business operator by another (through acquisition of equity or assets, by contract or other means).⁸

In turn, the thresholds are not laid out in the AML but are set in a separate regulation adopted by the State Council. The thresholds are exclusively based on sales revenues.⁹ Somewhat reformulated, the thresholds are:

1. the combined revenue of all parties to the concentration in the last financial year was above RMB 10 billion (around USD 1.6 billion) globally or RMB 2 billion (around USD 310 million) in China; and
2. the individual revenue of each party to the concentration in the last financial year was above RMB 400 million (around USD 62 million) in China.

In the case of failure to file a reportable transaction, the AML provides that SAMR

“shall order the business operators to cease the implementation of the concentration, shall order the divestment of the shares or assets or the transfer of business operations within a given time limit, and shall take other measures necessary to restore the conditions prevailing before the concentration, and may impose fines of up to RMB 500,000.”¹⁰

III. PROCEDURE FOR FAILURE-TO-FILE INVESTIGATIONS

A SAMR regulation, the Interim Regulation on the Review of Concentrations between Business Operators (“Review Regulation”), implements the procedure for a failure-to-file investigation (among other things) in more detail.¹¹

In this section, we will first look at the Review Regulation’s guidance on the failure-to-file investigation before SAMR. Then, we will examine an additional procedural point for listed companies (or companies about to list): disclosure obligations.

A. SAMR’s Failure-to-file Investigation Procedure

The Review Regulation was released by SAMR and came into effect on December 1, 2020. It consolidated a number of prior rules and guidelines formulated by SAMR’s predecessor responsible for merger control, the Ministry of Commerce (“MOFCOM”).

The Review Regulation streamlined the procedure and timeline for SAMR’s investigation into failure-to-file cases. SAMR expected the Review Regulation to “further improve the efficiency of case investigation, increase the predictability undertakings dealing transaction, and better serve the high-quality economic growth.”¹²

⁷ AML, art. 21.

⁸ AML, art. 20. Apart from a “controlling right,” this provision also talks about the acquisition of the “ability to exercise decisive influence over another business operator.” However, in the AML implementing rules and in SAMR practice, this concept is not given a separate meaning but instead subsumed in the concept of “controlling right.”

⁹ State Council Regulation on the Notification Thresholds for Concentrations Between Business Operators, [2008] State Council Order No. 529, August 3, 2008.

¹⁰ AML, art. 48.

¹¹ Interim Regulation on the Review of Concentrations between Business Operators, [2020] SAMR Order Nr. 30, October 23, 2020.

¹² SAMR, *SAMR answers questions from the press regarding the release of the Interim Regulation on the Review of Concentrations between Business Operators*, October 27, 2020, http://gkml.samr.gov.cn/nsjg/xwxs/202010/t20201027_322668.html.

One notable change by the Review Regulation (as compared to prior rules) is that SAMR conducts a shorter investigation: maximum 210 days (instead of 300 days under the prior rules). According to the new rules, SAMR's investigation now follows a "30+30+30+120 days" period, down from the "30+60+30+180 days" timeline under the prior rules.

If we look at past cases, we can see that most of the failure-to-file investigations (close to 90 percent) were completed within the 300-days period, and the majority of investigations (nearly 85 percent) since December 2020 lasted shorter than 210 days. Annex 1 to this paper contains a list of all failure-to-file decisions under the AML until today, including an indication of the timeline of the investigations.

Normally, SAMR initiates failure-to-file investigations on its own motion, after receipt of third-party complaints or (most frequently) following a self-report of parties having failed to file reportable transactions.

The procedure and timeline are generally as follows:

- Examination and verification. SAMR examines and verifies a complaint or self-report of suspected failure to file and decides whether or not to initiate a case (*i.e.*, accept the case on file and initiate a formal investigation).
- Preliminary investigation. After SAMR has initiated the investigation and issued a formal case acceptance notice, the parties under investigation have 30 days to submit information and documents to SAMR for the purpose of assessing whether the transaction was notifiable and has been implemented.
- Once the information/documents have been submitted, SAMR must decide on whether or not there was a violation of the filing obligation within 30 days. If so, SAMR must start a "further investigation" into the substance of the case and notify the parties accordingly.
- Further investigation. For this procedural phase, SAMR requires the parties to submit relevant merger filing documents within 30 days of receipt of the written notice.

SAMR then has 120 days to conduct its substantive review to determine whether the transaction has or may have anti-competitive effects.

B. Stock Exchange Information Disclosure Requirements

A listed company involved in a failure-to-file procedure will need to consider its information disclosure requirements under stock exchange rules. A similar issue exists for companies which are planning an initial public offering ("IPO").

We will briefly consider the rules of the two key stock exchanges in Mainland China – the Shanghai Stock Exchange ("SSE") and the Shenzhen Stock Exchange ("SZSE") – as well as the Hong Kong Stock Exchange.

The SSE and SZSE listing rules require listed companies to report material risks in a timely manner. A government investigation resulting in a decision finding a violation of law *and imposition of significant administrative or criminal penalties* would clearly qualify as a material risk.

Although the rules (e.g. the Rules Governing the Listing of Stocks on the Shanghai Stock Exchange) have not further defined "significant administrative penalties," they do provide some guidance by stating that where the matter involves a specific monetary amount, the provisions on transaction disclosure standards shall be applied.¹³ One of the disclosure obligation-triggering standards involves "net profit related to the subject matter of the transaction for the most recent financial year accounts for more than 10 percent of the listed company's audited net profit for the same period, with the absolute amount of the net profit exceeding RMB 1 million."¹⁴

This means that the triggering amount for mandatory disclosure of a failure-to-file decision – or investigation – is typically RMB 1 million (or 10 percent of the company's audited net profit). Given the current cap of RMB 500,000 for failure-to-file fines under the AML, the imposition of a fine alone generally does not constitute a material risk requiring disclosure under current listing rules in Mainland China.

¹³ Rules Governing the Listing of Stocks on the Shanghai Stock Exchange, [2020] Shangzhengfa No. 100, December 31, 2020.

¹⁴ *Id.* art. 9(2).

Not surprisingly, among the domestic listed companies fined for failure to file from 2019 to July 2021, only five disclosed the relevant penalties or decision to investigation in filings to the stock exchange. Three of these companies disclosed the penalty or investigation decisions immediately upon receiving them, by making standalone announcements to the stock exchange.¹⁵ These announcements were made before SAMR published the failure-to-file decisions on its website.¹⁶

The other two companies disclosed the SAMR decisions in their IPO prospectus, restructuring progress announcement and other documents.¹⁷ The subject of disclosure may be the punished entity and its parent company, or the target.

In Hong Kong, the Securities and Futures Ordinance has similar requirements for listed companies to disclose information not generally known to the public which is likely to have a material effect on the price of securities.¹⁸ However, unlike the Mainland Chinese rules, the Hong Kong Stock Exchange rules do not explicitly mention an information disclosure obligation when a company has been imposed or faces significant administrative penalties. As the amount of a failure-to-file fine usually accounts for a (very) small proportion of companies' annual revenues and is not "likely to have a material effect on the share price," very few listed companies have chosen to disclose being subject to a failure-to-file investigation by SAMR or its predecessor under the Hong Kong rules.

In practice, if we look at the Hong Kong-listed companies fined for failure to file from 2019 to April 2021, we have only found one company which disclosed the information in its IPO prospectus in 2021: Baidu was fined RMB 500,000 for failing to notify its acquisition of Ainemo in 2020.¹⁹

IV. FAILURE-TO-FILE DECISIONS

All of the 110 failure-to-file decisions published by SAMR and its predecessor are very short. At most, they are four A4 pages long (in original). Most of them are quite "boring" in the sense that they do not discuss interesting details of the transactions or the procedure, or clarify the AML or implementing rules.

In particular, the absence of any meaningful discussion on (1) the key concept for a failure-to-file case – the acquisition of a "controlling right" – and (2) the substantive competition assessment is disappointing to the reader. In contrast, the text of a few decisions allows some (albeit limited) takeaways on the risks for multi-step transactions.

A. Controlling Right

As noted above, the acquisition of a "controlling right" is a prerequisite for any transaction to be deemed a "concentration between business operators" and therefore be notifiable under the AML (if the thresholds are met). Given the importance of the concept, one would expect in-depth discussions in the failure-to-file decision of whether a specific transaction gives rise to an acquisition of a controlling right.

Unfortunately, this is not the case. In none of the 110 failure-to-file decisions there is any meaningful discussion of whether a controlling right is acquired. The decisions only formulate the conclusion: the transaction leads to an acquisition of a controlling right, without any reasoning.

¹⁵ Soling, *Statement on Failure to File by its Controlling Shareholder*, March 2, 2021, <http://www.cninfo.com.cn/new/disclosure/detail?plate=szse&orgId=9900023703&stockCode=002766&announcementId=1209317713&announcementTime=2021-03-02>; Dewei Advanced Materials, *Statement on Receipt of SAMR's Pre-Notice of Penalty Decision on Failure to File*, January 23, 2019, <http://www.cninfo.com.cn/new/disclosure/detail?orgId=9900015469&announcementId=1205796209&announcementTime=2019-01-23%2019:33>, and Minmetals Development, *Statement on Receipt of SAMR'S Notice of Investigation of Suspected Failure to File*, April 20, 2021, <http://www.cninfo.com.cn/new/disclosure/detail?orgId=gssh0600058&announcementId=1209726574&announcementTime=2021-04-20>.

¹⁶ *Zhongshan Lexing Enterprise Management Consulting Co., Ltd./ Shenzhen Soling Industrial Co. Ltd.*, [2021] SAMR Notice No. 5, February 23, 2021 (published by SAMR on its website on March 11, 2021); *Jiangsu Dewei Advanced Materials Co., Ltd./ Jiangsu Heshili New Material Co., Ltd.*, [2019] SAMR Notice No. 1, February 14, 2019; and *Hangzhou Alibaba Venture Capital Management/ Minmetals E-Commerce*, [2021] SAMR Notice No. 56, July 6, 2021.

¹⁷ Sanhe Pipe, IPO Prospectus (August 12, 2020 version), http://www.cscc.gov.cn/pub/zjpublic/G00306202/202008/t20200826_382213.htm; and Inly Media, Reply to Queries on the Private Placement, <http://www.cninfo.com.cn/new/disclosure/detail?orgId=9900024134&announcementId=1206936863&announcementTime=2019-09-20>, September 20, 2019.

¹⁸ Securities and Futures Ordinance (Cap 571), Part XV.

¹⁹ Baidu, Post Hearing Information Pack, March 9, 2021, <https://www1.hkexnews.hk/listedco/listconews/sehk/2021/0323/sehk21030901053.pdf>.

This is a missed opportunity – even more so, because the AML and its implementing rules provide very limited guidance on what the concept of a controlling right means. Article 3 of the Review Regulation sheds some light on controlling right, but the provision comes across as little operational, as it sets out high-level factors to be considered (not providing clear benchmarks).

In the past, MOFCOM had circulated three (mostly unofficial) draft AML implementing rules where the concept of a controlling right was defined in a specific way, similar to European Union rules: a controlling right was construed as a veto right over budget, business plan, appointment/dismissal of senior management, and/or major investments. In addition, in the draft proposal for amendment to the AML published in January 2020, SAMR defined a “controlling right” – in some more detail but still very broadly – as the right or actual condition to directly or indirectly, alone or jointly, have or likely to have decisive influence over the target’s production or operation activities or other major strategic decisions.²⁰

Against this dearth of rules, the failure-to-file decisions would have provided the ideal opportunity to show through “case studies” what the controlling right concept could mean. There are a number of cases, specially in the last half-year where the acquisition of (very) low minority shareholdings were held to amount to a controlling right – for example, in *Chesheng/Skio Matrix* (3.23 percent),²¹ *Hantao/Lingjian* (6.67 percent),²² *Tencent/Kingsoft Internet Security Software* (10 percent),²³ *Tencent/Mogu* (11.7 percent),²⁴ *Cheering Venture Global/Yestock Rental Car* (11.77 percent),²⁵ *Meigengmei Information Technology/Wangjiahuan Agriculture Products Group* (11.9 percent),²⁶ *Tencent/Xingin* (13.19 percent),²⁷ *Suning/Pateo* (14.08 percent),²⁸ *Xiaoju New Energy/Hainan Transport Investment/Hainan Grid* (15 percent),²⁹ *Mitsubishi Heavy Industries/Suning* (15 percent),³⁰ *Suning/Yiguo e-Commerce* (15.21 percent),³¹ and *Tencent/Yuan* (15.41 percent).³² These (and other) decisions did not provide any insights as to why these shareholdings gave the buyer a controlling right over the target.

As an exception of some sorts, the *Tencent/China Music Group* decision is a failure-to-file decision where SAMR provided language which may potentially give some, albeit limited, guidance on the concept of a “controlling right.”³³ *Tencent/China Music Group* is the first and so far only case where SAMR and its predecessor have imposed remedies in a failure-to-file investigation. Like in the other 109 cases, SAMR did not engage in a detailed discussion as to why Tencent’s acquisition of 61.64% of shares in China Music Group, agreed on in July 2016 and closed in December 2017, amounted to the acquisition of a “controlling right.”

However, SAMR imposed a number of remedies, both substantive (essentially, prohibiting exclusive licensing of music rights) and procedural, in that transaction. Among the procedural remedies, SAMR required Tencent to notify “concentrations” below the filing thresholds, if they have anti-competitive effects. In addition, for transactions which do not amount to “concentrations,” SAMR required Tencent not to participate in any commercial decision-making in the target (except for protecting its rights as a minority shareholder).³⁴ The term “commercial decision-mak-

²⁰ See SAMR draft proposal for amendment to the Anti-Monopoly Law of the People’s Republic of China, see at http://www.samr.gov.cn/hd/zjdc/202001/t20200102_310120.html, art. 23(2).

²¹ *Beijing Chesheng Technology Co., Ltd./ Zhejiang Skio Matrix Co., Ltd./ JV*, [2021] SAMR Notice No. 51, July 6, 2021.

²² *Shanghai Hantao Information Consulting Co., Ltd./ Shanghai Lingjian Information Technology Co., Ltd.*, [2021] SAMR Notice No. 33, April 28, 2021.

²³ *Tencent Holdings Limited/ Kingsoft Internet Security Software Holdings Limited*, [2021] SAMR Notice No. 60, July 6, 2021.

²⁴ *Tencent Holdings Limited/ Mogu Inc.*, [2021] SAMR Notice No. 61, July 6, 2021.

²⁵ *Cheering Venture Global Limited/ Yestock Rental Car Co., Ltd.*, [2021] SAMR Notice No. 35, April 28, 2021.

²⁶ *Chengdu Meigengmei Information Technology Co., Ltd./ Wangjiahuan Agriculture Products Group Co., Ltd.*, [2021] SAMR Notice No. 14, March 12, 2021.

²⁷ *Tencent Holdings Limited/ Xingin International Holding Limited*, [2021] SAMR Notice No. 59, July 6, 2021.

²⁸ *Suning Rundong Share Investment Management Co., Ltd./ Shanghai Pateo Electronic Equipment Manufacturing Co., Ltd.*, [2021] SAMR Notice No. 17, March 12, 2021.

²⁹ *Beijing Xiaoju New Energy Automobile Technology Co., Ltd./ Hainan Province Transport Investment Holding Co., Ltd./ Southern Power Grid Electric Vehicle Service Co., Ltd./ Hainan Power Grid Co., Ltd./ JV*, [2021] SAMR Notice No. 48, July 6, 2021.

³⁰ *Mitsubishi Heavy Industries, Ltd./ Suning.com Co., Ltd./ JV*, [2021] SAMR Notice No. 63, July 6, 2021.

³¹ *Suning Rundong Share Investment Management/ Shanghai Yiguo e-Commerce Co., Ltd.*, [2021] SAMR Notice No. 37, April 28, 2021.

³² *Tencent Holdings Limited/ Yuan Inc.*, [2021] SAMR Notice No. 13, March 12, 2021.

³³ *Tencent Holdings Limited/ China Music Group*, [2021] SAMR Notice No. 67, July 24, 2021.

³⁴ SAMR also required Tencent to submit an annual report to SAMR listing all such transactions for a period of three years.

ing” used in *Tencent/China Music Group* is similar to the terms used in the three prior MOFCOM drafts and the SAMR draft proposal for amendment to the AML for defining a “controlling right.” Against this background, the question now arises as to whether this requirement on Tencent not to participate in China Music Group’s decision-making could be interpreted as a (perhaps indirect) definition of a “controlling right.” If so, given that the benchmark is participation in decision-making, rather than deciding as such or vetoing decisions, such a definition would lower the threshold for a “controlling right” as compared to the MOFCOM drafts. Nonetheless, another interpretation is also possible, namely that SAMR wanted to subject Tencent to a different standard, hence the necessity for a remedy, so the *Tencent/China Music Group* benchmark would not be directly related to the definition of a “controlling right.”

B. Substantive Assessment

As noted, the Review Regulation mandates SAMR to examine in a failure-to-file investigation whether the given transaction has anti-competitive effects.

However, in none of the failure-to-file decisions there is any substantive discussion of the transaction’s effect on competition – except for the *Tencent/China Music Group* decision. Apart from that decision, all other decisions only state that the authority has examined the substance of the case and then provides the conclusion: there are no negative effects on competition. There is no reasoning whatsoever.

Of course, the largest part of transactions does not pose competition problems. This is reflected in the fact that SAMR and its predecessor have only imposed remedies (or issued prohibitions) in a very small amount of cases, less than 2 percent of all notified transactions.³⁵ Only one transaction which was prohibited (and nowhere remedies were imposed), among 110 failure-to-file decisions adopted so far, is not much beyond expectations.

However, apart from *Tencent/China Music Group*, there seem to have been other transactions with a sufficiently interesting background to at least deserve a more detailed substantive assessment to be shared in the public decision. By way of example, online reports suggest that the merging parties in *China Duty Free/Sunrise Duty Free* were two operators in a rather concentrated market (with potentially high market shares).³⁶ Similarly, reports indicate that the parties in the *Meinian Health/Ciming* case might have some, not negligible, market shares, even if not nation-wide so potentially at the city-level.³⁷

Again, we do not argue that remedies should have been adopted in the failure-to-file cases, quite to the contrary. But we think that the Chinese antitrust enforcers could have been more transparent in some of the cases to share the details of their competitive assessment.

As for the *Tencent/China Music Group* case, SAMR did make a substantive assessment of the transaction’s impact on the market. In particular, it found a high combined market share (70% in terms of revenues and higher on other metrics) in the relevant market post-transaction. SAMR further pointed to the high numbers on the Herfindahl-Hirschman Index, and the fact that the merging parties were close competitors. It found that the merged entity would be able to raise entry barriers through its large amount of exclusive music rights and by way of making high non-reimbursable royalty payments to music rights holders. In SAMR’s view, Tencent’s rich music right catalogue post-transaction would increase users’ switching costs and prevent rivals from reaching a viable scale. The authority further found that market entry by competitors had

35 Since the AML came into force in 2008, over 3,000 transactions have been cleared; only three transactions were blocked, and 50 transactions were conditionally cleared. A simple calculation would show that over 98 percent transactions were cleared without conditions. See the statistics at, for example, *SAMR answers questions from the press regarding the release of the Interim Regulation on the Review of Concentrations between Business Operators*, October 27, 2020, http://gkml.samr.gov.cn/nsjg/xwxcsl/202010/t20201027_322668.html.

36 *China Duty Free (Group) Co., Ltd./ Sunrise Duty Free (China) Co., Ltd.*, [2018] SAMR Notice No. 15, November 21, 2018. In 2019, the market share of China Duty Free reached 85 percent according to statistics. Qianzhan Industry Research Institute, *Analysis of the market status and competitive landscape of China’s duty-free industry in 2020*, September 27, 2020, <https://bg.qianzhan.com/report/detail/300/200927-02be30e0.html>.

37 *Meinian Health (Group) Co., Ltd./ Shanghai Tianyi Asset Management Co., Ltd./ Shanghai Weituo Investment Center/ Ciming Health Checkup Management Group Co., Ltd.*, [2017] MOFCOM Notice No. 206, May 5, 2017. Meinian reportedly held a 20-30 percent market share in non-public physical examination in China. Finance China, *Meinian: Physical examination plus insurance expands the boundaries of health management*, April 16, 2020, <http://finance.china.com.cn/industry/medicine/20200416/5250869.shtml>. Another report cites Meinian and Ciming with a combined market share of 26 percent, nation-wide. Chuancai Securities, *Non-public physical examination giants set sail again*, May 31, 2020, https://pdf.dfcfw.com/pdf/H3_AP202005311381347761_1.pdf?1601215040000.pdf. It is possible that health check services could be defined as local markets, similar to other healthcare services, see for example, the public notices in the following cases: *Zhejiang Medical and Health Group/ Zhejiang Jolly Pharmaceutical*, April 24, 2020; *China Resources Medical Holdings/ Huaiyin Hospital of Huai’an City*, May 13, 2021; *Warburg Pincus/ DKSH (China)*, August 21, 2018; *CITIC Capital Holdings/ Beijing Century Hong Shui Hospital Management*, June 6, 2018.

significantly decreased after closing (as compared to the period between signing and closing and before). As a result of these findings, SAMR imposed a series of post-closing remedies on Tencent.

C. Multi-step Transactions

Some transactions do not take place in “one go,” but are parceled into two or more steps. Many times, companies pursue a multi-step transaction entirely for business reasons.

Other times, multi-step transactions may be perceived as a tool to get around merger filing obligations. As noted above, under the AML, companies cannot implement the transaction before securing SAMR’s clearance. At times, facing a tight schedule, companies may sometimes be tempted to plan to restructure the transaction to allow them to partially proceed with the transaction while avoiding “gun-jumping” risks. One of the most debated plans would be to restructure the deal as a “multiple-step” transaction.

Over the six plus years of active failure-to-file enforcement, there have been a number of cases involving multi-step transactions. In most authority decisions on these transactions, there is not much guidance. But some decisions allow certain inferences.

A prior MOFCOM draft rule had indicated a seemingly straightforward rule for multi-step transactions: if the first step of the transaction confers a controlling right, there is a concentration between business operators and a filing is required; if the first step does not confer such right, a filing is not required. This idea is reflected in many of the failure-to-file cases.

In several transactions, the first step of a multi-step transaction was already found to give the buyer a “controlling right” over the target. This was the case in *Fujian Electronic Information Group/Chino-e Communication*,³⁸ *Fosun Pharmaceuticals/Erye Pharmaceuticals*,³⁹ *Zhuo'er Development/ Zhongnon Net*,⁴⁰ and *Suqian Hanbang Investment Management/Five Star Appliances*.⁴¹

In other transactions, in particular *Dade / Sichang Pharmaceuticals*,⁴² *Paper Excellence/Eldorado*,⁴³ and *Alibaba Investment/Yingtai Commercial Group*⁴⁴ only the second step was found to confer a controlling right and trigger the notification obligation.

In a limited number of transactions, the authorities departed from the principle of checking each individual transaction step whether a controlling right is acquired.

In these transactions, the authorities looked at the entire transaction as a single “concentration between business operators.” They focused on the interconnection between the various steps of the transaction, instead of examining which step individually gave rise to a controlling right. As such, in *OCI/Tokuyama Malaysia*, the buyer structured its acquisition of 100 percent of shares in the target in three parts, 16.5 percent, 34.2 percent and 49.3 percent. The buyer closed the first step within around a week of signing the transaction agreement. Before closing the second and third steps, planned for half a year later, the buyer self-reported to MOFCOM. MOFCOM found that the three steps were a “package deal” with a single transaction goal and interdependent transaction steps, amounting to a single concentration between business operators. As a result, MOFCOM held the updating of the target’s business license after the first step to be a breach of the AML. With almost identical wording, MOFCOM found the *Meinian Health/Ciming* merger to be a “package deal” with a single transaction goal and interdependent transaction steps.⁴⁵

38 *Fujian Electronic Information (Group) Co., Ltd./ Shenzhen Chino-eCommunications Co., Ltd.*, [2015] MOFCOM Notice No. 668, September 16, 2015.

39 *Shanghai Fosun Pharmaceutical Development Co., Ltd./ Suzhou Erye Pharmaceutical Co., Ltd.*, [2015] MOFCOM Notice No. 669, September 16, 2015.

40 *Zhuo'er Development Holding Limited/ Shenzhen Zhongnong Net Company Limited*, [2020] SAMR Notice No. 7, March 30, 2020. But first step of the transaction gave the buyer a shareholding above 50 percent.

41 The decision is not very clear whether the first step (46 percent of shares) or only the second step (the remaining 54 percent of shares) entailed the acquisition of a controlling right. In one part, the SAMR decision states that the acquisition of 100 percent of shares in the target amounted to a concentration between business operators. At another part, decision mentioned the dates of updating the business license for both steps, saying that this constitute a breach of the law.

42 *Dade Holdings Inc./ Jilin Sichang Pharmaceuticals Co., Ltd.*, [2016] MOFCOM Notice No. 173, April 21, 2016.

43 *Paper Excellence BV/ Eldorado Brasil Celulose S.A.*, [2018] SAMR Notice No. 4, July 30, 2018.

44 *Alibaba Investment Limited/ Yintai Retail (Group) Co., Ltd.*, [2020] SAMR Notice No. 26, December 14, 2020.

45 *Meinian Health (Group) Co., Ltd./ Shanghai Tianyi Asset Management Co., Ltd./ Shanghai Weituo Investment Center/ Ciming Health Checkup Management Group Co., Ltd.*, *supra* note 45.

One of the most remarkable examples of the “holistic” approach of considering several steps as a single concentration is *Canon/Toshiba Medical*.⁴⁶ In that case, Canon agreed to buy 100 percent of the shares in Toshiba Medical from Toshiba. Canon designed the transaction into two steps, implemented the first step and made a merger filing for the second step. MOFCOM held Canon to have jumped the gun.

In that case, Canon used a so-called “warehousing” structure involving an interim buyer. In anticipation of the transaction, the seller (Toshiba) created three types of equity-related rights in relation to Toshiba Medical: 20 shares with voting rights; one share without voting rights; and 100 share options, allowing the owner to convert them into ordinary shares. In addition, a special purpose vehicle (“SPV”) was established by three unidentified natural persons before the transaction.

As noted, the transaction was implemented in two steps. As a first step, the SPV acquired the voting shares in Toshiba Medical for close to JPY 100,000 (around USD 900), whereas Canon acquired the non-voting share and the share options for approximately JPY 665 billion (around USD 6 billion). As a second step, the plan was for Canon to exercise the share options and convert them into ordinary shares and for Toshiba Medical to buy the 20 shares with voting rights from the SPV and the non-voting share from Canon.

After closing of the first step but before implementation of the second step, Canon made a merger filing with MOFCOM.

However, MOFCOM considered that the two steps were closely connected and formed an indivisible part of Canon’s acquisition of Toshiba Medical. Consequently, MOFCOM concluded that the closing of the first step was an implementation of the transaction in violation of the standstill obligation.

V. CONCLUSIONS

As noted in the introduction, a large part of the failure-to-file cases within the last half-year involves Internet companies.

To an extent, this is not a phenomenon limited to the failure-to-file area. The largest case this year, the *Alibaba* investigation, was followed by the publication of another penalty decision against an e-commerce player, *Sherpa’s*.⁴⁷ Furthermore, in April 2021, SAMR called a meeting with online platforms and asked them to report back on their antitrust compliance and possible rectification measures.⁴⁸

However, there is also a sector-specific driver behind the numerous recent failure-to-file cases against Internet companies. Due to certain regulatory phenomena, many transactions by Internet companies were not filed with SAMR and MOFCOM in the past. In that sense, the numerous failure-to-file penalty decisions against Internet companies since December 2020 show that the past is catching up for them.

But why are the Internet companies queuing up to self-report?

The reason is simple: the AML is currently in the legislative process for its first-ever amendment.⁴⁹ Both officially and unofficially circulated drafts of the to-be-amended AML contain a change in the fine level for failure-to-file cases – instead of RMB 500,000, the new fine would be up to 10 percent of the company’s annual revenue in the previous year.

In other words, it makes a great deal of economic sense to file and get punished under the AML as it currently stands. According to China’s administrative penalty rules, the amended AML would be applicable to transactions completed before the amendment’s entry into force as long as the merged entities or JVs continue to exist – i.e., the violation may be deemed to be ongoing.

⁴⁶ *Canon Co., Ltd./ Toshiba Medical System Co., Ltd.*, [2016] MOFCOM Notice No. 965, December 16, 2016.

⁴⁷ *Sherpa’s*, [2020] Shanghai AMR Notice No. 06201901001.

⁴⁸ SAMR, *The Administration for Market Regulation, the Central Cyberspace Administration of China, and the State Administration of Taxation jointly convene an administrative guidance meeting for Internet platform enterprises*, April 13, 2021, http://www.samr.gov.cn/xw/zj/202104/t20210413_327785.html.

⁴⁹ Currently, the Standing Committee of the National People’s Congress has included the AML amendment in its legislative plan for 2021. Xinhua Net, *China will amend the Anti-Monopoly Law*, March 8, 2021, http://www.xinhuanet.com/politics/2021-03/08/c_1127184680.htm.

Generally speaking, multinationals have a better understanding of the merger control regime and higher compliance standard due to their experience in other jurisdictions with older merger control regimes than China. However, quite some of the past failure-to-file cases involved foreign companies, in particular JV projects with Chinese companies. Our experience is that this is partly due to the fact that some Chinese parties to the JV projects insist on not making merger filings in order to save time and costs, and some even promise to compensate the foreign parties in the event of fines being imposed for failure-to-file. Now that the amended AML is going to significantly change the landscape of China's merger control system, both foreign and Chinese companies need to realign and readjust their way of dealing with merger control issues in China.

No.	Case	Time of decision	Duration of procedure (days)	Fine (RMB)
1	Tsinghua Unigroup Co., Ltd./ RDA Microelectronics Co., Ltd.	December 2, 2014	112	300,000
2	Fujian Electronic Information (Group) Co., Ltd./ Shenzhen Chino-e Communication Co., Ltd.	September 16, 2015	275	150,000
3	Shanghai Fosun Pharmaceutical Development Co., Ltd./ Suzhou Erye Pharmaceutical Co., Ltd.	September 16, 2015	184	200,000
4	Nanjing Nanche Puzhen Car Co., Ltd./ Bombardier Transportation Group Sweden Co., Ltd./ JV	September 16, 2015	197	150,000 each
5	BesTV New Media Co., Ltd./ Microsoft Corporation/ JV	September 16, 2015	253	200,000 each
6	Dade Holdings Inc/ Jilin Sichang Pharmaceuticals Co., Ltd.	April 21, 2016	/	150,000
7	New United Group Co., Ltd./ Bombardier Transportation Sweden AB	April 21, 2016	/	300,000 / 400,000
8	Beijing Beiche Investment Co., Ltd./ Hitachi, Ltd. / JV	April 21, 2016	/	150,000 each
9	Zhongshan Broad-Ocean Motor Co., Ltd./ Prestolite Electric (Beijing) Ltd.	August 31, 2016	/	150,000
10	Continental Holding China Co., Ltd./ Huayu Automotive Systems Company Limited/ JV	August 31, 2016	/	200,000 each
11	Canon Co., Ltd./Toshiba Medical System Co., Ltd.	December 16, 2016	56	300,000
12	Cummins (China) Investment Co., Ltd./ Xiangyang Kanghao Mechanical & Electricity Co., Ltd./ JV	January 9, 2017	355	150,000 each
13	OCI Company Ltd./ Tokuyama Malaysia Co., Ltd.	April 21, 2017	101	150,000
14	Guangdong Rising H.K. (Holding) Limited/ PNA Australia Co., Ltd.	May 5, 2017	465	150,000

No.	Case	Time of decision	Duration of procedure (days)	Fine (RMB)
15	Meinian Health (Group) Co., Ltd./ Shanghai Tianyi Asset Management Co., Ltd./ Shanghai Weituo Investment Center/ Ciming Health Checkup Management Group Co., Ltd.	May 5, 2017	284	300,000
16	Wuhu Construction Investment Co., Ltd./ Chery New Energy Automobile Co., Ltd./ Yaskawa Electric Corporation/ JV	July 11, 2017	235	150,000 each
17	Svitzer Asia Pte. Ltd./ Binhai Port Investment Development Co., Ltd./ JV	July 11, 2017	257	150,000 each
18	Grand Baoxin Auto Group Co., Ltd./ Beijing Yanbao Car Service Co., Ltd./ Sichuan Ganghong Investment Neoteric Stock Co., Ltd.	January 10, 2018	233	300,000 each
19	Yihai Kerry Investment Co., Ltd./ CJ Cheiljedang Co., Ltd./ JV	January 19, 2018	386	150,000 each
20	Shandong Sun Holding Group Co., Ltd./ International Paper & Sun Cartonboard Co., Ltd./ Shandong International Paper & Sun Coated Paperboard Co., Ltd./ Shandong Ip & Sun Food Packaging Co., Ltd.	January 19, 2018	336	300,000
21	Qingdao Port Merchants International Container Terminal Co., Ltd./ Qingdao Port (Group) Co., Ltd./ JV	April 4, 2018	238	200,000 each
22	Qingdao Port Merchants International Container Terminal Co., Ltd./ Qingdao Xinqianwan Container Terminal Co., Ltd./ JV	April 4, 2018	238	200,000 each
23	Yunnan Metropolitan Real Estate Development Co., Ltd./ Tianjin Yinrun Investment Co., Ltd./ Cangnan Yintai Property Co., Ltd./ Hangzhou Haiwei Real Estate Development Co., Ltd./ Pingyang Yintai Property Co., Ltd./ Hangzhou Lixiang Real Estate Co., Ltd./ Fenghua Yintai Real Estate Co., Ltd./ Chengdu Yincheng Real Estate Co., Ltd./ Ningbo Taiyue Co., Ltd.	April 26, 2018	260	150,000
24	Tianjin Haiguang Advanced Technology Investment Co., Ltd./ Advanced Micro Devices Inc./ JV	April 26, 2018	421	150,000 each
25	Paper Excellence BV/ Eldorado Brasil Celulose S.A.	July 30, 2018	124	300,000

No.	Case	Time of decision	Duration of procedure (days)	Fine (RMB)
26	Yunnan City Construction Investment Group Co., Ltd./ Chengdu Global Century Exhibition & Travel Group Co., Ltd.	August 22, 2018	176	300,000
27	GEM (Wuhan) City Urban Mineral Recycling Industrial Park Development Co., Ltd./ Wuhan GHM Auto Parts Remanufacturing Co., Ltd.	August 30, 2018	171	300,000
28	Linde Gas (H.K.) Limited/ Shanghai Huayi Energy Chemical Technology Co., Ltd./ JV	September 11, 2018	265	300,000 each
29	Linde Gas (H.K.) Limited/ Dahua Group Co., Ltd./ JV	October 10, 2018	300	300,000 each
30	China Duty Free (Group) Co., Ltd./ Sunrise Duty Free (China) Co., Ltd.	November 21, 2018	252	300,000
31	Linde Gas (H.K.) Limited/ Guangzhou Iron Holding Limited/ JV	December 4, 2018	230	300,000 each
32	Goji Medicine Co., Ltd./ Henan Baijiahao Yisheng Medicine Co., Ltd.	December 21, 2018	172	400,000
33	Jiangsu Dewei Advanced Materials Co., Ltd./ Jiangsu Heshili New Material Co., Ltd.	February 14, 2019	205	300,000
34	Inly Media Co., Ltd./ Shanghai Zhiqu Advertising Co., Ltd.	February 19, 2019	267	200,000
35	Overseas Hong Kong Investment Co., Ltd./ Weifang Sendamai Liquefied Product Terminal Co., Ltd.	February 19, 2019	333	300,000
36	Praxair (China) Investment Co., Ltd./ Nanjing Refinery Co., Ltd./ JV	April 28, 2019	275	300,000 each
37	Yageo Corporation/ Junyao Holding Limited	June 25, 2019	272	300,000
38	Tianneng Battery Group Co., Ltd./ Anhui Hongda Power Supply Co., Ltd.	August 16, 2019	94	300,000
39	Harbin Electric Co., Ltd. / GE (China) Co., Ltd./ JV	September 3, 2019	162	300,000 each
40	Speed Up Development Co., Ltd./ Harbin Dili Fresh Agricultural Products Enterprise Management Co., Ltd.	September 16, 2019	297	300,000
41	China Post Capital Co., Ltd./ Chengdu Wolaila Information Technology Co., Ltd.	September 16, 2019	418	400,000

No.	Case	Time of decision	Duration of procedure (days)	Fine (RMB)
42	Guangxi Liuzhou Iron and Steel Group Co., Ltd./ Guangxi Zhongjin Medal Technology Co., Ltd.	September 16, 2019	196	350,000
43	BAIC Motor Co., Ltd./ HCS Co., Ltd./ Hyundai Motor Group(China) Ltd./ JV	September 27, 2019	130	300,000 each
44	Tibet Dejin Enterprise Management Co., Ltd./ Shanghai Huitong Energy Co., Ltd.	September 29, 2019	173	300,000
45	Suzhou Quanyi Health Pharmacy Chain Co., Ltd./ Suzhou Jianshengyuan Yiyao Co., Ltd.	September 29, 2019	163	300,000
46	Pierburg Pump Technology Co., Ltd./ Shanghai Xingfu Motorcycle Co., Ltd./ JV	November 1, 2019	235	350,000 each
47	Guangzhou Port Co., Ltd./ Zhongshan Port Co., Ltd.	December 9, 2019	193	300,000
48	Liaoning Port Group Co., Ltd./ Yingkou Port Group Co., Ltd.	December 9, 2019	246	350,000
49	New Hope Investment Group Co., Ltd./ Xingyuan Environment Technology Co., Ltd.	December 13, 2019	193	400,000
50	MBK Partners, L.P. JC Fourth Limited Partnership/ Shanghai Siyanli Industrial Co., Ltd.	December 20, 2019	175	350,000
51	Zhuo'er Development Holding Limited/ Shenzhen Zhongnong Net Company Limited	March 30, 2020	215	300,000
52	Guangdong Sanhe Pipe Co., Ltd./ Guangdong Jianhua Pipe Co., Ltd./ JV (Guangdong Hejian)	June 9, 2020	473	300,000 each
53	Guangdong Sanhe Pipe Co., Ltd./ Guangdong Jianhua Pipe Co., Ltd./ JV (Guangdong Tuona)	June 9, 2020	473	300,000 each
54	Taiwan Cement Corporation/ Ordu Yardimlasma Kurumu/ JV	June 25, 2020	317	300,000 each
55	Jiangxi Jemincare Pharmaceutical Industry Investment Co., Ltd./ Nanjing Hencer Pharmaceutical Co., Ltd.	June 25, 2020	335	300,000
56	Ordos Junzheng Energy & Chemical Industry Co., Ltd./ Sinochem International Logistics Co., Ltd.	June 25, 2020	216	350,000
57	Zhejiang Infrastructure Investment Group Co., Ltd./ Dohia Group Co., Ltd.	September 3, 2020	184	350,000

No.	Case	Time of decision	Duration of procedure (days)	Fine (RMB)
58	ANE Fast Logistics (Hong Kong) Limited/ Changshan Giant Truck Supply Chain Management Limited	October 23, 2020	243	300,000
59	Jiangsu Yueda Investment Co., Ltd./ Beijing Changjiu Logistics Co., Ltd./ JV	November 6, 2020	292	300,000 each
60	Alibaba Investment Limited/ Yintai Retail (Group) Co., Ltd.	December 14, 2020	40	500,000
61	China Literature Limited/ New Classics Media Limited	December 14, 2020	40	500,000
62	Shenzhen HIVE Box Network Technology Co., Ltd./ China Post Zhidi Technology Co., Ltd.	December 14, 2020	174	500,000
63	Xinjiang Xuefeng Investment Holding Limited/ Yuxiang-Diversifous Poplar Chemical Co., Ltd.	December 30, 2020	204	300,000
64	Zhuhai Huafa Real Estate Management Service Co., Ltd./ Beijing Jones Lang LaSalle Property Management Services Co., Ltd./ JV	January 27, 2021	237	350,000 each
65	Baoneng Motor Group Co., Ltd./ Qoros Automotive Co., Ltd.	February 23, 2021	308	350,000
66	Zhongshan Lexing Enterprise Management Consulting Co., Ltd./ Shenzhen Soling industrial Co., Ltd.	February 23, 2021	240	300,000
67	Wuhan Jinyu Free Trade Development Co., Ltd./ Dhl Logistics (Beijing) Co., Ltd./ JV	February 24, 2021	670	150,000 each
68	Yintai Retail (Group) Co., Ltd./ Kaiyuan Commercial Co., Ltd.	March 12, 2021	46	500,000
69	Tencent Holdings Limited/ Yuan Inc	March 12, 2021	46	500,000
70	Chengdu Meigengmei Information Technology Co., Ltd./ Wangjiahuan Agriculture Products Group Co., Ltd.	March 12, 2021	46	500,000
71	Suqian Hanbang Investment Management Co., Ltd./ Jiangsu Five Star Appliance Co., Ltd.	March 12, 2021	46	500,000
72	Baidu Holdings Limited/ Ainemo Inc	March 12, 2021	46	500,000
73	Suning Rundong Share Investment Management Co., Ltd./ Shanghai Pateo Electronic Equipment Manufacturing Co., Ltd.	March 12, 2021	46	500,000
74	Didi Mobility Pte. Ltd./ SoftBank Corp./ JV	March 12, 2021	46	500,000 each

No.	Case	Time of decision	Duration of procedure (days)	Fine (RMB)
75	TAL Education Group/ DaDa Education Group	March 12, 2021	46	500,000
76	Shanghai Dongfang Newspaper Co., Ltd./ Beijing Quantum Jump Technology Co., Ltd./ JV	March 12, 2021	46	500,000 each
77	Beijing Nucarf Network Technology Co., Ltd./ Hebei Baoruitong Electronic Commerce Co., Ltd.	March 12, 2021	46	500,000
78	Hongyun Jiukang Data Technology Co., Ltd./ Shanghai Yunxin Venture Capital Management Co., Ltd./ JV	March 22, 2021	56	500,000 each
79	Tencent Holdings Limited/ Bitauto Holdings Limited	April 28, 2021	48	500,000
80	Tencent Holdings Limited/ Shanghai Lantu Information Technology Co., Ltd.	April 28, 2021	48	500,000
81	Linzhi Tencent Technology Co., Ltd./ Dalian Wanda Commercial Properties Co., Ltd./ JV	April 28, 2021	48	500,000 each
82	Shanghai Hantao Information Consulting Co., Ltd./ Shanghai Lingjian Information Technology Co., Ltd.	April 28, 2021	48	500,000
83	Cheering Venture Global Limited/ Toyota Motor Corporation/ JV	April 28, 2021	48	500,000 each
84	Cheering Venture Global Limited/ Yestock Rental Car Co., Ltd.	April 28, 2021	40	500,000
85	Didi Smart Transportation Technology Co., Ltd./ Jinan Inspur Intelligent Investment Technology Co., Ltd./ JV	April 28, 2021	48	500,000 each
86	Suning Rundong Share Investment Management Co., Ltd./ Shanghai Yiguo E-commerce Co., Ltd.	April 28, 2021	48	500,000
87	China Yintai Investment Co., Ltd./ Hangyin Consumer Finance Co., Ltd.	June 3, 2021	56	500,000
88	Huidi (Tianjin) Business Service Co., Ltd./ China FAW Group Corporation/ JV	July 6, 2021	112	500,000 each
89	Huaxia Trip Co., Ltd./ Huidi (Tianjin) Business Service Co., Ltd./ JV	July 6, 2021	109	500,000 each
90	Beijing Xiaoju Smart Car Technology Co., Ltd./ Beijing New Energy Automobile Co., Ltd./ JV	July 6, 2021	109	500,000 each

No.	Case	Time of decision	Duration of procedure (days)	Fine (RMB)
91	Huidi (Tianjin) Business Service Co., Ltd./ Teld New Energy Co., Ltd. / JV	July 6, 2021	85	500,000 each
92	Beijing Xiaoju New Energy Automobile Technology Co., Ltd./ Hainan Province Transport Investment Holding Co., Ltd./ Southern Power Grid Electric Vehicle Service Co., Ltd./ Hainan Power Grid Co., Ltd./ JV	July 6, 2021	117	500,000 each
93	Huidi (Tianjin) Business Service Co., Ltd./ Tibet Aotong Venture Investment Co., Ltd. (Zhejiang Dishi)/ JV	July 6, 2021	83	500,000 each
94	Huidi (Tianjin) Business Service Co., Ltd./ Tibet Aotong Venture Investment Co., Ltd. (Hangzhou Dishi)/ JV	July 6, 2021	83	500,000 each
95	Beijing Chesheng Technology Co., Ltd./ Zhejiang Skio Matrix Co., Ltd./ JV	July 6, 2021	85	500,000 each
96	Alibaba (China) Network Technology Co., Ltd./ Tianxianpei (Shanghai) Technology Co., Ltd.	July 6, 2021	117	500,000
97	Hangzhou Alibaba Venture Capital Management Co., Ltd./ Shanghai Commercial Investment Co., Ltd./ JV	July 6, 2021	109	500,000 each
98	Alibaba (China) Network Technology Co., Ltd./ Theland New Cloud (Shanghai) Digimart Co., Ltd.	July 6, 2021	109	500,000
99	Alibaba (China) Network Technology Co., Ltd./ Guangzhou Evergrande Football Club Co., Ltd.	July 6, 2021	85	500,000
100	Haiyan Ali Venture Capital Co., Ltd./ Minmetals E-Commerce Co., Ltd.	July 6, 2021	43	500,000
101	Haiyan Ali Venture Capital Co., Ltd./ Zhejiang Province Chuangxin Fazhan Investment Co., Ltd./ JV	July 6, 2021	85	500,000 each
102	Tencent Mobility Limited/ 58 City	July 6, 2021	117	500,000
103	Tencent Holdings Limited/ Xingin International Holding Limited	July 6, 2021	117	500,000
104	Tencent Holdings Limited/ Kingsoft Internet Security Software Holdings Limited	July 6, 2021	85	500,000
105	Tencent Holdings Limited/ Mogu Inc.	July 6, 2021	85	500,000
106	Suning.com Co., Ltd./ Bank of Nanjing Co., Ltd. / JV	July 6, 2021	109	500,000 each

No.	Case	Time of decision	Duration of procedure (days)	Fine (RMB)
107	Mitsubishi Heavy Industries, Ltd./ Suning.com Co., Ltd./ JV	July 6, 2021	85	500,000 each
108	Beijing Sankuai Technology Co., Ltd./ Acewill Information Technology (Beijing) Co., Ltd.	July 6, 2021	83	500,000
109	Tencent Holdings Limited/ Sogou Co.	July 6, 2021	162	500,000
110	Tencent Holdings Limited/ China Music Group	July 24, 2021	180	500,000



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