

## 'Killer acquisitions' call for revamp of China's merger-control threshold, SAMR says

Insight | 26 May 20 | 07:59 GMT

By Yonnex Li

### In Brief

China's competition regulator should consider requiring companies to file a transaction for a review based on the value of the deal, so as to capture so-called "killer acquisitions" that may not reach the current notification thresholds but have anticompetitive implications, an antitrust official said.

China's competition regulator should consider requiring companies to file a transaction for a review based on the value of the deal, so as to capture so-called "killer acquisitions" that may not reach the current notification thresholds but have anticompetitive implications, an antitrust official said.

The State Administration for Market Regulation, or SAMR, may refer to practices in foreign jurisdictions such as Germany and Austria in including transaction value as a consideration, in addition to the current threshold based on the turnover of merging parties, according to Xiao Di, a veteran investigator with the Antimonopoly Bureau's merger-control division.

"Large companies often stifle emerging competition and suppress innovative forces by acquiring starts-ups with innovative technologies or disruptive business models," Xiao said in a bylined article published recently in SAMR's publication China Market Regulation News. "To promote the high-quality development of the economy, [the authority] should strengthen its research and response to related issues when conducting merger reviews."

Revising the notification threshold would allow SAMR to regulate those "killer acquisitions," in which a start-up may be too small to have a meaningful turnover, but the acquisition price would reflect the target company's development potential and market value, Xiao said.

In addition, given that market-share figures may not be applicable in the analysis of those transactions due to the target company's small size, Xiao suggested including dimensions such as technological innovation and dynamic efficiency in assessing the competition effects.

Under current Chinese merger rules, transactions must be notified to SAMR for antitrust approval if, in the previous financial year, the combined global turnover of the merging parties exceeded 10 billion yuan (\$1.4 billion), or their combined sales in China exceeded 2 billion yuan, and each of at least two of the undertakings

each had China turnover of more than 400 million yuan.

The 12-year-old filing requirements have been criticized for failing to reflect the rapid growth of China's economy and its inflation situation. This is reflected in the review caseload showing SAMR and its predecessor, the Ministry of Commerce, reviewed more than 3,000 transactions worth over 50 trillion yuan since the Antimonopoly Law took effect in 2008.

While the current thresholds were set by the State Council, SAMR however released in January a draft amendment to the Antimonopoly Law that seeks to empower the agency to set and adjust the thresholds based on factors such as economic development and industry size. The authority hasn't published official updates to its thoughts on the matter since.

Xiao also commented on the review of deals involving digital companies, a challenge facing the Chinese regulator as well as its global counterparts, due to their differences from traditional industries.

SAMR will stick to its "prudent and inclusive" approach to allow Internet companies to grow while maintaining a fair and orderly market, Xiao said. The official suggested that SAMR publishes "as soon as possible" antitrust guidelines specifically addressing mergers and acquisitions within the digital economy.

#### **Tags**

**Subjects:** Antitrust, Intellectual Property, Mergers & Acquisitions, Regulation

**Industries:** Non Industry Specific

**Regulators/Courts:** China Courts, Ministry of Commerce (MOFCOM), The National Development & Reform Commission (NDRC), The State Administration for Industry & Commerce (SAIC)

**Jurisdictions:** Asia, China, North East Asia

#### **Related case file(s)**

Antitrust - Antimonopoly Law - Legal revisions (China)