

# China's antitrust enforcer imposes record fines on tech giants for failure to notify their concentrations

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On 12 March 2021, the State Administration for Market Regulation (SAMR), China's competition authority responsible for the enforcement of the Anti-Monopoly Law (AML), has announced ten decisions imposing maximum fines for the failure to notify economic concentrations under the applicable merger control rules. The sanctions targeted China's leading tech companies, which have been recently subjected to increased antitrust scrutiny.

In 2018, Yintai Commercial (Group) Co., Ltd., a Cayman Islands corporation controlled by Alibaba Group acquired Kaiyuan Commercial Co., Ltd., a company based in Xi'an and engaged in department store retail business in Shaanxi province.

In 2018, Tencent Holdings acquired Beijing Yuanli Education Technology, a company engaged in online education services (distance tutoring, databases with learning materials, online classes, etc.).

In 2018, Suning Rundong Equity Investment Management Co., controlled by Suning, China's largest retailer of home appliances, acquired Shanghai Botai Yuezhen Electronic Equipment Manufacturing Co., a company producing entertainment systems for automobiles.

In 2018, Didi Mobility Pte. Ltd., a Singapore-based subsidiary of Didi, China's leading ride-hailing platform, and SoftBank Corp. (Japan) engaged in the business of telecommunications, Internet of Things, have established a joint venture in Japan to operate taxi platforms in the major Japanese cities.

In 2019, Shanghai Oriental Press, a company controlled by Shanghai United Media Group (a state-owned enterprise under the control of the Shanghai government) and Beijing Quantum Jump Technology Co., a subsidiary of Bytedance, the company operating TikTok short videos app, have established a joint venture dealing with blockchain, artificial intelligence, internet data services, and software development.

In 2019-2020, Suqian Hanbang Investment Management, a company controlled by e-commerce giant Jingdong, acquired Jiangsu Wuxing Electric Co, a manufacturer of electric appliances.

In 2020, Chengdu Meigenmei Information Technology, a company engaged in food processing and software developed, controlled by Meituan, a leading food delivery services platform, acquired Wangjiahuan Agricultural Products Group, a company specializing in food processing and sales.

In 2020, China's leading internet search engine Baidu acquired AI Nemo Inc. ('Little Fish' or Xiaoyu Zaijia), a home hardware terminal manufacturer, which prior to the merger was servicing Baidu's flagship home terminal - Xiaodu.

Pursuant to Article 21 AML, the intended concentrations reaching the turnover thresholds set by the State Council have to be notified for clearance to the competition authority. These thresholds are set at: (1) CNY 10 billion globally for all undertakings involved and CNY 400 million realized in China for by at least two undertakings involved separately; (2) CNY 2 billion in China realized by all undertakings involved and at least two undertakings involved realized CNY 400 million in China separately. Each of the above-mentioned concentrations, according to SAMR's calculations, has reached the specified turnover thresholds and had to be notified for clearance to SAMR once it replaced the Anti-Monopoly Bureau of the Ministry of Commerce as an authority responsible for merger control in 2018.

Furthermore, in its 2020 Interim Provisions on the Examination of Concentrations Between Undertakings, SAMR explained that a concentration that does not meet the requisite notification standards but has or may have the effect to eliminate or limit competition may be investigated by SAMR *ex officio*. Thus, the undertakings concerned may consider submitting a voluntary notification to SAMR for a preliminary assessment, which in case of existing anti-competitive concerns may be transformed into a formal assessment procedure.

The antitrust enforcer has carried out the competitive assessment of the abovementioned transactions and concluded that they did not raise anti-competitive concerns. Nevertheless, each of the companies that had a duty to notify their transaction for clearance under merger rules was fined CNY 500,000, a maximum penalty for the failure to notify concentration under the AML. *Reportedly*, until mid-2020 the maximum penalty imposed by SAMR in similar cases never exceeded CNY400,000. In December 2020, the SAMR announced its intention to penalize Alibaba, Tencent and Hive Box for not reporting their deal for merger scrutiny. The SAMR's decisions also specified that each of the companies concerned was informed about their infringement but none have submitted any statements in their defense or requested a hearing at SAMR to explain their position.

The unprecedented collection of penalties for failure to notify their mergers issued by the SAMR against China's leading tech companies follows the recent uptake on antitrust and regulatory enforcement in the digital economy undertaken by the Chinese authorities. Earlier in 2021, the Anti-Monopoly Commission of the State Council issued the Anti-Monopoly Guidelines for the Platform Economy. In relation to merger control, the Guidelines encouraged SAMR to step up the assessment of concentrations in the online platform and sharing economy sectors. The Anti-Monopoly Commission reminded the tech companies that their merger transaction can be scrutinized by SAMR even if it does not reach the mandatory notification thresholds fixed in the AML and advised the companies to file voluntary notifications that would permit SAMR to check the planned mergers and acquisitions for their compatibility with the competitive market environment.