

## COCA-COLA BANNED FROM BUYING HUIYUAN



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On March 18, 2009, the Ministry of Commerce (MOC) of the People's Republic of China published Announcement No. 9, 2009. In the announcement, the MOC stopped the purchase of China Huiyuan Juice Group by *Coca-Cola*. The case represents the first time that the Ministry of Commerce has rejected a proposed acquisition or merger of two companies since the Anti-Monopoly Law took effect on August 1, 2008.

On September 18, 2008, the MOC received application documents from *Coca-Cola* to purchase Huiyuan. In accordance with the related provisions of the Anti-Monopoly Law, the MOC reviewed the transaction from a number of angles. It considered the market share of the combined entity; its market control; its degree of concentration on the market; the effect of the transaction on market entry for other businesses and technological progress; the effect of the deal on consumers and other related enterprises; and the influence of the Huiyuan brand on competition in the juice beverages market. The review conformed with the related laws and rules. During the review process, the views of a number of concerned parties were also heard.

After the review, the MOC concluded that the transaction, if allowed, would have an adverse effect on competition. Post such a transaction, *Coca-Cola* may have utilised its dominant position in the carbonated soft drink market to remove the other juice beverage enterprises and limit the competition. This would have meant the rights of drink consumers could have been impaired.

Furthermore, because of the limiting effect of the existing brands on the market entry, the transaction would raise the bar for potential competitors to enter the juice beverage market. In addition, the transaction would squeeze out smaller juice manufacturers in China, which would harm competition in the juice beverage market.

In order to reduce the potential negative influence of the deal on the competition, the MOC communicated to *Coca-Cola* several additional restrictive conditions and asked it to come up with a plan. *Coca-Cola* responded to the problems highlighted by the MOC, and submitted an initial plan and then a revised plan. However, after evaluating the plans, the MOC concluded that the revised plan still did not effectively reduce the negative influence of the concentration on competition. As a result, under Article 28 of the Anti-Monopoly Law, the MOC prevented the transaction from going ahead.

### China's national IP strategy

The Supreme People's Court of the People's Republic of China published *Comments on Implementing the National Intellectual Rights*

“IN ORDER TO REDUCE THE POTENTIAL NEGATIVE INFLUENCE OF THE DEAL ON THE COMPETITION, THE MOC COMMUNICATED TO COCA-COLA SEVERAL ADDITIONAL RESTRICTIVE CONDITIONS AND ASKED IT TO COME UP WITH A PLAN.”

*Strategy* on March 29, 2009. This document comprised six parts and 36 detailed comments.

The comments defined principles and policies in dealing with various types of IP cases and gave a series of directions on how to deal with certain particularly important and difficult problems that could occur in 16 types of IP cases relating to patents, trademarks, copyright, trade secrets, unfair competition, monopoly and so on.

### Amended measures for customs protection

On March 3, 2009, the General Administration of Customs of the People's Republic of China issued Decree No. 183, which published the amended Implementation Measures of the General Administration of Customs of the People's Republic of China on Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights. The implementation measures will take effect on July 1, 2009. The measures they replace, which were first published on May 25, 2004 in Decree No. 114, will be abolished accordingly.

The new Implementation Measures have a total of 43 articles divided into six chapters. These include general provisions; a record of intellectual property rights; detention in accordance with the application; *ex officio* investigation and process; the disposal of goods and fees; and supplementary provisions.

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