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Guiding Opinions on Operator's Concentration Filing ??????????????

Released on January 7, 2009 and effective as of the same date

These Guiding Opinions, issued by the Anti-Monopoly Bureau (AMB) of the Ministry of Commerce (MOFCOM), provide guidance with regard to the filing process for operators that reach thresholds based on AM-related laws and mainly address:

• Pre-negotiation mechanisms for operators who plan to file for an operator's concentration registration with the AMB.

• Situations where the operator is concentrated by means of merger. In such cases, all the operators participating in the merger shall file for an operator's concentration registration. Where the operator is concentrated by other means, the controlling operator or the operator that can execute decision-making power shall file for the operator's concentration registration.

The Guiding Opinions further stipulate that:

• Operators may file by themselves or engage third parties to file on their behalf;

• Operators shall abide by Article 23 of the PRC Anti-Monopoly Law;

• An operator can change or supplement its registration documents if the AMB finds them incomplete or inaccurate. If such changes are not received by the AMB within a set time period, the operator will be deemed as having not applied for registration.

• AMB can reject or revoke the filing application if the submitted documents and materials are found to conceal purposefully significant conditions, or provide false information.

In addition, these Guiding Opinions outline the documentation that filing parties must submit to the AMB, and annex a template filing form that parties may use in preparing their applications.

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