



Update China Desk China Law Brief

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English Version

New Decision of Chinese Merger Control: Joint Venture between ARM, G&D and Gemalto

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Conditional Approval of a proposed Joint Venture between ARM, G&D and Gemalto

Profiles of the participating Parties and the JV

TEE and the Relevant Market

On 6 December 2012 the Chinese Ministry of Commerce (“MOFCOM”) announced its approval of a proposed joint venture (“JV”) between ARM of UK, Giesecke & Devrient (“G&D”) of Germany and Gemalto of the Netherlands. This approval is however subject to certain conditions which shall be carried out under the supervision of a monitoring trustee approved by MOFCOM.

ARM is a semiconductor intellectual property (“IP”) supplier, creating and providing developers with IP solutions in the form of microprocessors, physical IP, application-specific standard products and so on. G&D is a provider of security solutions, in particular for smart cards, cashless payment and mobile business application. Gemalto is a digital security company and provides secure personal devices like secure elements and tokens. On 3 April 2012, ARM, G&D and Gemalto announced to establish a joint venture which shall be dedicated to delivering a secure, accessible environment for advanced services running on the growing range of connected devices such as tablets, smart-TVs, games consoles and smartphones, the so-called “Trusted Execution Environments” (“TEE”).

A TEE solution, which creates a separate secure operating system for consumer electronic devices, such as smartphones, tablets, and smart TVs, is regarded by MOFCOM as a relevant market in which several actual or potential competitors are active. Both the JV and other competitors would provide TEE solutions based on the ARM TrustZone technology which is a central component of the ARM architecture and is integrated into the ARM Cortex-A processor series.

Taking into consideration that ARM holds a very strong position in the upstream market for IP architecture for application processors, MOFCOM sees the danger of competition elimination or limitation in this market, if ARM favors the JV by degrading the interoperability of its IP architecture with TEE solutions competing with the JV's TEE solution in the way of withholding the necessary information for these competitors' TEE to run on ARM's processor architecture and/or by modifying ARM's design of the TrustZone IP.

In order to confront MOFCOM's competition concerns, ARM proposed to undertake certain commitments. On this basis, MOFCOM cleared the establishment of this JV under the conditions that ARM shall - following the non-discriminatory principle - make available secure monitor code as well as other information such as the standard terms and conditions of any license concerned which are necessary for a TEE solution based on ARM TrustZone; ARM may not design its intellectual property intentionally to degrade performance of third party TEEs. These commitments shall remain in force for a period of eight years and ARM shall submit to MOFCOM an annual report about execution of these commitments.

This conditional approval under the Chinese Merger Control is the fifth one of MOFCOM in this year 2012. Up until now, there are total 16 conditional approvals adopted and published by MOFCOM. Already in November this year, MOFCOM published a list of unconditional approvals of total 458 merger notifications during the period from 1 August 2008 to 30 September 2012. Furthermore, MOFCOM decided to give a quarterly unconditional approvals notice including the case title and the participating parties. Although this additional publication is not required in the Anti-Monopoly Law, this transparency effort is in compliance with the Governmental Information Disclosure Regulation and shows the improvement of its enforcement by MOFCOM.

Market Analysis and Competition Concern

Commitments and Conditions

Improvement in Transparency

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