



# Update China Desk

## China Law Brief

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English Version

### Approval of Glencore-Xstrata Merger and further Improvement of Merger Control

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On April 16, 2013, the Chinese Ministry of Commerce (“MOFCOM”) finally cleared the merger between Glencore International plc (“Glencore”) and Xstrata plc (“Xstrata”) after a review process of more than 12 months. The Chinese agency, however, has made this approval subject to strict and comprehensive commitment conditions. Moreover, the recent efforts made by MOFCOM to improve its regulatory procedures show the determination of this agency to advance its antitrust enforcement.

Glencore and Xstrata are both the world’s leading multinational mining companies, in particular in the international markets of zinc, copper and lead. Both of them have trading entities in China, and Xstrata also has a joint venture for production in China. MOFCOM has focused on copper concentrate, zinc concentrate and lead concentrate as the relevant products, and regarded the Chinese market as the biggest market for Glencore and the major market for Xstrata. Upon comprehensive competition analysis, in particular about market shares, competitors, market access difficulty as well as business integration on horizontal and vertical levels, MOFCOM came to the conclusion that this merger will lead to elimination or restriction of competition on the Chinese market.

After several rounds of negotiation, the commitments proposal submitted by Glencore on April 12, 2013 was finally accepted by MOFCOM. The commitments contain both structural and behavioural remedies, of which the main points include:

#### **Divestment of the Copper Concentrate Assets**

Glencore shall sell all of its post-merger ownership interest in Las Bambas to a purchaser approved by MOFCOM before September 30, 2014. The whole transaction shall be completed prior to June 30, 2015.

#### **Merger between Glencore and Xstrata** **Relevant Product Market** **Relevant Geographic Market**

#### **Commitments and Remedies**

If Glencore fails to fulfil the above obligation on schedule, it must appoint a divestiture trustee to sell, by way of auction and in a certain time limit, its whole equity interests in one of its mines specified by MOFCOM.

#### **Supply Commitments**

As regards copper concentrate, zinc concentrate and lead concentrate, Glencore shall, during the period of eight years from January 1, 2013 up to December 31, 2020, continue to offer to Chinese customers the supply under long-term contracts.

#### **Supervision and Reporting**

As regards the implementation of the commitments, Glencore shall appoint an independent monitoring trustee to supervise the execution. Furthermore, Glencore shall report to MOFCOM and the monitoring trustee regularly on its performance.

As regards merger control, MOFCOM recently issued two new draft ordinances: the draft regulation on merger remedy as of March 27, 2013 and the draft regulation on standards for determination of simple cases as of April 3, 2013.

The merger remedy draft provides detailed rules concerning commitments and remedies for clearance of a concentration and will replace the current provisional regulation which is comparatively simple. The new draft will bring many significant amendments, e.g. explicitly defining structural and behavioural remedies, setting forth time procedure for submission of commitment plans and the official assessing procedure, and even the term of implementation of remedy measures. One highlight is that MOFCOM can afterwards, upon the change of market situations, modify or rescind the existing remedy measures.

The simple cases standard draft clarifies the criteria for determining whether a concentration shall be considered a “simple” case, which is unlikely to raise competition concern. However, it is unknown whether a short or fast-track review process will apply to such a simple case. Given the delay and lengthy process in many merger control cases over the last years, the initiatives of this draft regulation are welcome.

### **More Efforts for Improvement of Regulatory Conducts**

#### **The Merger Remedy Draft**

#### **The Simple Cases Standard Draft**

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