



Update China Desk China Law Brief

01-02/2014
English Version

Acquisition of Life Technologies by Thermo Fisher Scientific approved by MOFCOM

Dr. Yiliang Dong, LL.M.

On 14 January 2014 the acquisition of Life Technologies, a NASDAQ listed company, by Thermo Fisher Scientific, another US listed company, was finally approved by the Chinese Ministry of Commerce (MOFCOM). In principle, MOFCOM's decision was made in line with the clearance of other competition authorities like the US Federal Trade Commission (FTC) and the European Commission. In the frame of such conditional approvals, all competition authorities have asserted certain remedies, like divestiture of certain business. However, the requirements of MOFCOM exceed these.

Thermo Fisher Scientific is a US precision laboratory equipment company which was founded as a result of the merger between Thermo Electron and Fisher Scientific in 2006. This transaction was suspended by FTC due to anticompetitive concern and only approved by FTC after Fisher Scientific divested its business *Genevac Ltd.* to Riverlake Partners LLC, a private equity firm. Now, Thermo Fisher Scientific is a worldwide leading provider of laboratory equipment for pharmaceutical and biotech companies, hospitals and clinical diagnostic laboratories, universities, research institutions and public authorities, as well as environmental and industrial control institutes.

Life Technologies is also a US-based, globally operating manufacturer of biotechnology tools that provides products and services for scientific research, genetic analysis and applied sciences in relationship with advanced personalized medicine, regenerative science, molecular diagnostics, agricultural and environmental research.

The competition review of the MOFCOM took into account totally 59 relevant products from areas such as molecular biology, protein biology and cell culture technology in biotechnology industry. The MOFCOM used the Herfindahl-Hirschman

Acquiring Party: Thermo Fisher Scientific

Target: Life Technologies

Relevant Products, Relevant Market and HHI

Index (“HHI”) to assess the level of market concentration and found severe competition concern in several relevant products such as cell culture products, sequence specific primers (SSP) kit, protein standards for SDS-PAGE and small interfering RNA (siRNA).

Upon this finding and through several rounds of negotiation regarding the obligations to be imposed on the notifying parties, the MOFCOM approved this acquisition. One of the restrictive conditions imposed is the divestiture of Thermo Fisher’s global business in the areas of cell culture and gene modulation. Furthermore, Thermo Fisher Scientific is obliged to sell its 51% shares in its Chinese joint venture, Lanzhou National Hyclone Bio-Engineering Co., Ltd.

A further significant obligation of Thermo Fisher Scientific is to reduce the price of some products - SSP kits and SDS-PAGE protein standards - over the next 10 years and to keep already granted favorable discounts to Chinese distributors or not to decrease these. This point shows the effort of the Chinese government to build up a leading biotech industry in China and promote the basic research by trying to protect future pricing in this key focus area.

The MOFCOM is gaining experience in merger control by dealing with individual notifications and issuing detailed regulations or guidelines. However, improvement is still to be expected. For instance, the MOFCOM has used in the above case the HHI to justify its assessment of market concentration and competition restriction. The MOFCOM has mentioned the HHI once in one of its Regulations, but has never defined or specified at which HHI level a market shall be regarded as concentrated. For the purpose of legal certainty, a more predictable and measurable analysis approach is necessary.

Remedies: Divestiture

Remedies: Price Cut and Rebates

Need for Improvement in Legal Certainty

Dr. Yiliang Dong, LL.M.

董一梁 (法学博士/律师)
Attorney-at-Law PRC (Lü Shi)
China Desk
Heuking Kühn Lüer Wojtek
Tel: +49 (40) 35 52 80-787
Fax: +49 (40) 35 52 80-80
Email: yiliang.dong@heuking.de



**Your Contact:
“China Desk”**

in cooperation with

Global Law Office (Beijing, Shanghai, Shenzhen) ♦ www.globallawoffice.com.cn

CHINA DESK

Please find out more information about our China Desk on our website under
<http://www.heuking.de/en/about-us/international/china-desk.html>

INFORMATION

- We will be glad to receive your any comments or suggestions. Please contact us via email: china-desk@heuking.de.
- This Newsletter “*Update China Desk*” does not constitute legal advice. While the information contained in this Newsletter has been carefully researched, it only offers a partial reflection of the law and its developments. It can be no substitute for individual advice appropriate to the facts of an individual case.
- This Newsletter is sent as a group email. To unsubscribe to this newsletter, please write to: china-desk@heuking.de.

Berlin

Unter den Linden 10
10117 Berlin/Germany

Brussels

Avenue Louise 326
1050 Brussels/Belgium

Chemnitz

Weststrasse 16
09112 Chemnitz/Germany

Cologne

Magnusstrasse 13
50672 Cologne/Germany

Düsseldorf

Georg-Glock-Strasse 4
40474 Düsseldorf/Germany

Frankfurt

Grüneburgweg 102
60323 Frankfurt a. M./Germany

Hamburg

Neuer Wall 63
20354 Hamburg/Germany

Munich

Prinzregentenstrasse 48
80538 Munich/Germany

Zurich

Bahnhofstrasse 3
8001 Zurich/Switzerland

www.heuking.de