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**MOFCOM Announcement [2011] No. 73 regarding Conditional Approval for the Acquisition of Savio Macchine Tessili S.P.A. by Penelope Company Limited)**

中华人民共和国商务部公告[2011年]第73号（关于附条件批准佩内洛普有限责任公司收购萨维奥纺织机械股份有限公司反垄断审查决定的公告）

2011-10-31

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| <p>中华人民共和国商务部（以下简称商务部）收到佩内洛普有限责任公司（以下简称佩内洛普）收购萨维奥纺织机械股份有限公司（以下简称萨维奥）的经营者集中反垄断申报。经审查，商务部决定附加限制性条件批准此项经营者集中。根据《中华人民共和国反垄断法》（以下简称《反垄断法》）第三十条，现公告如下：</p>   | <p>An anti-monopoly filing concerning a concentration of undertakings was submitted to and received by the Ministry of Commerce of the People’s Republic of China (“MOFCOM”) regarding the contemplated acquisition of Savio Macchine Tessili S.P.A. (“Savio”) by Penelope Company Limited (“Penelope”). After review, MOFCOM decides to clear this concentration of undertakings subject to restrictive conditions. The following announcement is hereby made under Article 30 of the Anti-Monopoly Law of the People’s Republic of China (“AML”):</p>  |
| <p><b>一、立案和审查程序</b></p> <p>2011年7月14日，商务部收到佩内洛普收购萨维奥经营者集中申报。经审核，商务部认为该申报材料不完备，要求申报方予以补充。9月5日，商务部确认经补充的申报材料符合《反垄断法》第二十三条的要求，对该项经营者集中申报开始立案审查。</p> <p>经初步审查，商务部认为此项集中将对自动络筒机电电子清纱器市场具有或可能具有排除、限制竞争效果。9月15日，商务部向申报方提出了对此项集中的竞争关注。9月23日，申报方向商务部提交了解决方案。9月30日，商务部决定实施进一步审查，截止日期为12月29日。在进一步审查过程中，商务部对申报方提出的解决方案进行了评估，认为该方案能够解决此项集中产生的竞争问题。10月31日，商务部作出了对该项经营者集中附加限制性条件的决定。</p> <p>审查过程中商务部征求了有关政府部门、行业协会、同业竞争者和下游企业的意见。</p> | <p><b>1 Accepting into Docket and the Review Process</b></p> <p>A filing of concentration of undertakings was received by MOFCOM on July 14, 2011 concerning Penelope’s contemplated acquisition of Savio. After review, MOFCOM concluded that the filing was incomplete, and required the filing party to submit supplemental information. On September 5, 2011, MOFCOM confirmed that the filing, as supplemented, met the requirements of Article 23 of the AML, and commenced the docketing and review of the said filing of concentration of undertakings.</p> <p>After an initial review, MOFCOM concluded that the said concentration will or may likely have the effect of restricting or eliminating competition in the market for electronic yarn clearers for automatic winders. On September 15, MOFCOM raised its anti-competitive concerns to the filing party. On September 23, the filing party submitted its proposed solutions to MOFCOM. On September 30, MOFCOM decided to have a further review until December 29, 2011. In the process of the further review, MOFCOM assessed the solutions proposed by the filing party and accepted that the proposed solution could address the competition issues arising from the concentration. On October 31, 2011, MOFCOM issued its decision to grant approval for this</p> |

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|   | <p>concentration of undertakings subject to restrictive conditions.</p> <p>In the review process, MOFCOM solicited opinions from relevant government authorities, trade associations, competitors in the same industry and downstream enterprises.</p>  |
| <p><b>二、竞争分析</b></p> <p>商务部根据《反垄断法》第二十七条规定的因素，对此项经营者集中进行了审查，深入分析了此项经营者集中对市场的影响，认为其可能具有排除、限制竞争的不利影响。</p> <p>收购方佩内洛普是专为此次交易成立的工具公司。佩内洛普的全资控股股东Alpha Private Equity Fund V（以下简称Alpha V）是一家私募股权基金，投资领域涉及有色金属回收利用，家用纺织品销售、纺织机械生产和销售等。Alpha V持有乌斯特技术有限公司（以下简称乌斯特）27.9%的股份，是乌斯特的第一大股东。被收购方萨维奥是一家纺织机械生产商，主要生产自动络筒机、自动络筒机电清纱器、转杯纺纱机和倍捻机等产品。络菲兄弟有限公司（以下简称络菲）是萨维奥的全资子公司。</p> <p>经调查，商务部发现乌斯特和络菲是全球仅有的两家自动络筒机电清纱器制造商。自动络筒机电清纱器是装配于自动络筒机的监控装置，功能是探测出纱线质量瑕疵后进行自动修补。该装置能够在极短的时间内高速处理纱线质量瑕疵，其他装置无法实现此项功能。自动络筒机电清纱器市场构成单独市场。</p> <p>商务部对此项集中涉及的自动络筒机电清纱器市场竞争状况、供求关系、采购模式和进入等问题进行了调查，利用第三方信息对申报方提供的数据进行了核实，并就有关问题咨询了行业专家的意见。商务部重点对Alpha V是否可能参与或影响乌斯特的经营活动进行了审查，内容包括乌斯特的股权结构、股东大会表决机制、股东大会历史出席记录、董事会的组成和表决机制等。商务部认为，不能排除Alpha V参与或影响乌斯特经营活动的可能性。</p> <p>自动络筒机电清纱器市场高度集中。作为仅有的两家自动络筒机电清纱器制造商，乌斯特和络菲2010年在全球市场的份额分别为52.3%和47.7%，在中国市场的份额与此类似。此项集中完成后，乌斯特和络菲</p> | <p><b>2 Competition Analysis</b></p> <p>MOFCOM reviewed the concentration in accordance with the factors specified in Article 27 of the AML, and made an in-depth analysis of the effect of the concentration on market competition, and on the basis of which, MOFCOM concluded that this transaction may likely have an adverse effect by restricting or eliminating competition in the market.</p> <p>The acquiring party, Penelope, is a special purpose vehicle set up specifically for this transaction. Penelope is wholly owned by Alpha Private Equity Fund V (“Alpha V”), a private equity fund investing in, among other industry sectors, the recycling of non-ferrous metals, sales of household textiles and production and sales of textile machinery. Alpha V is also the largest shareholder with a 27.9% equity stake in Uster Technologies Co., Ltd. (“Uster”). The target of the acquisition, Savio, is a producer of textiles machinery which includes, among others, automatic winders, electronic yarn clearers for automatic winders, rotor spinning machine, and two-for-one twister. Loepfe Brothers Ltd. (“Loepfe”) is a wholly owned subsidiary of Savio.</p> <p>During the investigation, MOFCOM found that Uster and Loepfe are the only two manufacturers of electronic yarn clearers for automatic winders in the world. An electronic yarn clearer is a monitoring and control device installed on an automatic winder to detect and automatically repair any defect in the yarns. It has the unique function to expeditiously treat yarn defects within extremely short time, and other devices are unable to conduct the same function. The market for electronic yarn clearers for automatic winders constitutes a separate market.</p> <p>MOFCOM made relevant investigations regarding, among other aspects, competition status, demand and supply, type of procurement and market entry in the market of electronic yarn clearers for automatic winders, verified the data provided by the filing party against information from third parties, and consulted with industry experts regarding relevant issues. In its review, MOFCOM focused on the possibility of Alpha V participating in or</p> |

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| <p>有可能通过Alpha V协调其经营活动，排除、限制自动络筒机电子清纱器市场的竞争。同时，Alpha V也有可能通过对乌斯特和络菲的控制和影响从事上述排除、限制竞争行为。</p> <p>商务部对自动络筒机电子清纱器的市场进入进行了调查。调查发现，有关专利、专有技术和商业秘密对研发和生产自动络筒机电子清纱器具有关键作用，自动络筒机电子清纱器技术已受专利等知识产权的保护，新企业进入这一市场难度很大。同时，规模经济对包括自动络筒机电子清纱器在内的纺织机械行业十分重要，新的市场进入者很难在短期内形成规模经济。调查未发现最近三年有新的企业成功进入这一市场。证据表明，2009年曾有企业合作研发自动络筒机电子清纱器，但其产品未获客户认可，2010年未取得市场份额。商务部认为自动络筒机电子清纱器市场进入难度很大。</p> <p>综上，商务部认为此项集中将对自动络筒机电子清纱器市场具有或可能具有排除、限制竞争的效果。</p> | <p>influencing the operations of Uster, and MOFCOM's review covered the shareholding structure of Uster, the voting mechanism at Uster shareholder's meeting, the chronological attendance history of Uster shareholder meeting, the composition of Uster's board of directors and voting mechanisms. MOFCOM concluded that the possibility of Alpha V participating in or influencing the operations of Uster could not be ruled out.</p> <p>The market for electronic yarn clearers for automatic winders is highly concentrated. As the only two producers of electronic yarn clearers for automatic winders in the world, Uster and Loepfe respectively have global market shares of 52.3% and 47.7%, with a similar market share split in China, for 2010. After the concentration, Uster and Loepfe are likely to coordinate their business activities through Alpha V, to restrict or eliminate competition in the market for electronic yarn clearers for automatic winders. At the same time, Alpha V is also likely to engage in activities restricting or eliminating competition by way of its control and influence over Uster and Loepfe.</p> <p>MOFCOM investigated market entry for electronic yarn clearers for automatic winders. The investigation found that the relevant patents, know-how and trade secrets play a key role in the research, development and production of electronic yarn clearers for automatic winders, and the relevant technologies are protected by patents and other intellectual property rights, which is a significant barrier for new entrants. In addition, economies of scale are quite important in the industry of textile machinery including electronic yarn clearers, and it is very difficult for new entrants to establish economies of scale in a short time. The investigation did not find any successful case of new entry into this market during the past three years. Evidence shows that there were companies collaborating to research and develop electronic yarn clearers for automatic winders in 2009, but their product did not receive customer recognition, and did not win any market share in 2010. MOFCOM concluded that there are considerable difficulties for new entry into the market of automatic yarn clearers for automatic winders.</p> <p>In summary, MOFCOM concluded that this concentration will or is likely to have the effect of restricting or eliminating competition in the market for electronic yarn clearers for automatic winders.</p> |
| <p><b>三、附加限制性条件的商谈</b></p> <p>商务部与申报方就如何消除上述竞争问题进行了多轮商谈。9月23日，Alpha V的最终控制实体Apef</p>  | <p><b>3 Negotiations over the Imposition of Restrictive Conditions</b></p> <p>MOFCOM and the filing party held multiple rounds of</p>  |

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| <p>Management Company 5 Limited (以下简称Apef 5) 提交了最终解决方案。经过评估, 商务部认为该解决方案可以消除此项经营者集中对竞争的不利影响。</p>   | <p>negotiations regarding how to address the above competition concerns. On September 23, Apef Management Company 5 Limited (“Apef 5”), the ultimate controlling entity of Alpha V, submitted the final proposed solution. After evaluation, MOFCOM concluded that the proposal could eliminate the adverse effect of this concentration over competition.</p>  |
| <p><b>四、审查决定</b></p> <p>鉴于佩内洛普收购萨维奥后对自动络筒机电子清纱器市场具有或可能具有排除、限制竞争效果, 商务部决定附加限制性条件批准此项集中, 要求Alpha V的最终控制实体Apef 5履行如下义务:</p> <p>(一) 商务部作出审查决定起6个月内将其持有乌斯特的股份转让给独立第三方。</p> <p>(二) 向商务部报告受让方的身份、交易量以及交易日期, 确保转让乌斯特的股份不会产生新的排除、限制竞争问题。</p> <p>(三) 转让乌斯特的股份完成前不得参与或影响乌斯特经营管理活动。</p> <p>(四) 根据商务部《关于实施经营者集中资产或业务剥离的暂行规定》(商务部公告2010年第41号), 委托独立的监督受托人对转让股份进行监督。</p> <p>自本决定生效之日起, 商务部有权对上述限制性条件的实施进行监督检查。</p> | <p><b>4 Review Decision</b></p> <p>Considering that the acquisition of Savio by Penelope will or is likely to have the effect of restricting or eliminating competition in the market for electronic yarn clearers for automatic winders, MOFCOM decided to approve this concentration subject to restrictive conditions, and requested Alpha V’s ultimate controlling entity Apef 5 to perform the following obligations:</p> <p>(1) to transfer its shares in Uster to an independent third party within 6 months as from the date of this decision by MOFCOM;</p> <p>(2) to report to MOFCOM the identity of the transferee, and the amount and date of the transaction, to ensure that such transfer of Uster shares will not give rise to new competitive concerns regarding restriction or elimination of competition;</p> <p>(3) not to participate in or influence the operations and management of Uster prior to completion of the transfer; and</p> <p>(4) to appoint an independent supervising trustee to supervise the equity transfer in accordance with the Provisional Regulations regarding Divesture of Assets or Businesses of Concentrations among Undertakings (MOFCOM Announcement (2010) No. 41).</p> <p>As from the effective date of this decision, MOFCOM has the right to monitor and inspect the implementation of the above restrictive conditions.</p> |
| <p>本决定自公告之日起生效。</p>   | <p>This decision comes into effect on the date of its announcement.</p>   |