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MOFCOM Announcement [2011] No. 74 regarding the Anti-Monopoly Review Decision for Conditional Clearance of the Contemplated Joint Venture between GE (China) Co., Ltd. and China Shenhua Coal to Liquid and Chemical Co., Ltd.

商务部公告 2011 年第 74 号 关于附条件批准通用电气（中国）有限公司与中国神华煤制油化工有限公司设立合营企业反垄断审查决定的公告

2011-11-10

<p>中华人民共和国商务部（以下简称商务部）收到通用电气（中国）有限公司（以下简称通用中国）与中国神华煤制油化工有限公司（以下简称神华煤制油）设立合营企业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>The Ministry of Commerce of the People's Republic of China ("MOFCOM") received an anti-monopoly filing in connection with the contemplated joint venture between GE (China) Co., Ltd. ("GE China") and China Shenhua Coal to Liquid and Chemical Co., Ltd. ("CSCLC"). After review, MOFCOM decides to clear this concentration between undertakings subject to restrictive conditions. The decision is hereby announced as follows in accordance with Article 30 of the Anti-Monopoly Law of the People's Republic of China ("AML"):</p>
<p>一、立案和审查程序</p> <p>2011年4月13日，商务部收到通用中国与神华煤制油设立合营企业经营者集中申报。经审核，商务部认为该申报文件、资料不完备，要求申报方予以补充。5月16日，商务部确认经补充的申报文件、资料符合《反垄断法》第二十三条的要求，对该项经营者集中申报予以立案并开始初步审查。</p> <p>经审查，商务部认为此项集中对水煤浆气化技术许可市场可能具有排除、限制竞争效果。6月15日，商务部决定对此项集中实施进一步审查。9月13日，商务部决定延长进一步审查期限。</p> <p>审查过程中，商务部征求了政府有关部门、行业协会、同业竞争者的意见，利用第三方信息对申报方提供的数据进行了核实，就有关问题咨询了行业专家的意见。</p>	<p>1 Docket and Review Procedures</p> <p>On April 13, 2011, MOFCOM received the anti-monopoly filing for the contemplated joint venture between GE China and CSCLC. After review, MOFCOM decided that the filing documents and materials were incomplete, and requested additional information. On May 16, 2011, MOFCOM confirmed that the filing documents, as supplemented, complied with the requirement of Article 23 of the AML, accepted the filing into docket and commenced the preliminary review.</p> <p>After review, MOFCOM determined that this concentration is likely to have the effect of restricting or eliminating competition in the licensing market of coal-water slurry gasification technology. On June 15, 2011, MOFCOM decided to conduct further review of the concentration. On September 13, MOFCOM decided to extend the period of the further review.</p> <p>In the process of review, MOFCOM solicited comments from relevant governmental authorities, trade associations and other competitors in the market, and verified the information that the filing party submitted against third-party information, and solicited opinions from industry experts regarding relevant issues.</p>

二、竞争分析

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竞争的影响，认为其可能具有排除、限制竞争的不利影响。

参与设立合营企业一方通用中国是通用电气公司在中国设立的外商投资公司。通用基础设施技术公司是通用电气公司的子公司，在本次交易中负责向拟设立合营企业许可通用水煤浆气化技术。参与设立合营企业的另一方神华煤制油主要从事煤炭液化、煤化工项目及配套项目的开发经营。神华煤制油的母公司神华集团有限责任公司（以下简称神华集团）是综合性能源企业，以煤炭、电力、热力的生产和供应，以及铁路、港口运输服务为主营业务。

拟设立合营企业的业务主要是向工业和电力项目提供水煤浆气化技术许可和工程服务。水煤浆气化技术是将固体形态的煤炭转变成水煤浆，经过再加工生产出一氧化碳和氢气等混合气体的一种煤气化技术。水煤浆气化技术与其他煤气化技术在技术工艺、原料煤要求和进料方式等方面存在显著区别，水煤浆气化技术许可市场构成相关商品市场。拟设立合营企业营业范围限于中国，且国内水煤浆气化技术需求方选择技术提供方的范围限于中国国内，此项集中的相关地域市场为中国市场。

中国水煤浆气化技术许可市场集中度较高，仅有通用基础设施技术公司水煤浆气化技术、兖矿华东理工多喷嘴对置式水煤浆气化技术与西北化工研究院多元料浆气化技术三家主要竞争者，其中通用基础设施技术公司水煤浆气化技术市场份额最高。

水煤浆气化技术对原料煤的灰分含量、灰熔点度和内水含量有特定要求，技术需求方新建水煤浆气化项目必须具备可靠的原料煤的供应。我国神府地区（含内蒙古自治区鄂尔多斯和陕西省榆林地区）的煤质能够适应水煤浆气化技术的要求。神华集团在神府地区的煤矿所产煤炭占该地区煤炭总产量的份额最高，且质量管理严格、煤质稳定。神华集团神府地区煤矿所产煤炭被多个水煤浆气化技术项目用作原料煤。2010年，神华集团是水煤浆气化技术原料煤的最大供应商。此外，神华集团神府地区煤炭外运主要依靠自营铁路和煤炭码头，运输成本较低。

2 Competition Analysis

On the basis of the factors specified in Article 27 of the AML, MOFCOM reviewed the concentration of undertakings, and analyzed in depth the effect of this concentration over market competition, and concluded that it is likely to have adverse effects that may restrict or eliminate competition.

One party to the joint venture, GE China, is a foreign invested company incorporated by GE in China. GE Infrastructure Technology Company is a subsidiary of GE, and in the context of this joint venture, it is responsible for licensing the coal-water slurry gasification technology to the contemplated joint venture. The other party to the joint venture, CSCLC, primarily engages in the development and operation of coal liquefaction, coal chemical projects and associated projects. The parent company of CSCLC, Shenhua Group Co., Ltd. (“Shenhua Group”), is a complex energy enterprise focuses on the production and supply of coal, electricity and heat, as well as railway and port transportation services.

The contemplated joint venture will primarily provide technology licensing and engineering services of coal-water slurry gasification to industrial and electrical power projects. The coal-water slurry gasification technology is a coal gasification technology to transform coal from its solid form into coal-water slurry, which will be further processed to produce a mixture of gases, including carbon monoxide and hydrogen, etc.. Since coal-water slurry gasification technology is significantly different from other coal gasification technologies in terms of technological processes, requirements for raw coals, feeding method, etc., the licensing market of coal-water slurry gasification technology constitutes the relevant product market. Since the operational scope of the contemplated joint venture is limited to China, and the scope in which domestic demanders of coal-water slurry gasification technology choose technology suppliers is limited to inside China, the relevant geographic market for this concentration is the China market.

The market for licensing of coal slurry gasification technologies in China is highly concentrated, with only three major competitors, including GE Infrastructure Technology Company with its coal-water slurry gasification technology, Yankuang East China Science and Technology with its opposed multi-injector coal-water slurry gasification technology, and Northwest Chemical Research Institute with its multi-component slurry

商务部对水煤浆气化技术许可市场进入进行了调查。调查发现，水煤浆气化技术是多项复杂技术的集合体，涉及的工艺技术和工程技术需经过长期实践才能成熟，未经过充分试验的新技术存在很高的商业风险。进入水煤浆气化技术许可市场，必须寻找愿意承担部分首套示范装置成本的技术使用方，新的技术许可方进入这一市场难度很大。水煤浆气化技术科技含量高，涉及大量专利保护。技术研发和实现工业化应用周期很长。商务部认为水煤浆气化技术许可市场进入难度很大。

综上，神华集团是水煤浆气化技术原料煤的最大供应商，通用基础设施技术公司在水煤浆气化技术市场份额最高。通用中国与神华煤制油设立合营企业从事水煤浆气化技术许可，可能利用神华集团原料煤优势，通过控制原料煤的供应，限制水煤浆气化技术许可市场的竞争。

gasification technology, among which the coal-water slurry gasification technology of GE Infrastructure Technology Company has the highest market share.

Coal-water slurry gasification technology has specific requirements regarding the ash content, ash fusion point and water content of the raw coal, and a newly built coal-water slurry gasification project by a technology demander must have reliable supply of raw coal. The quality of coal in Shenfu area in China (including Erdos in Inner Mongolia Autonomous Region and Yulin region in Shaanxi Province) is able to meet the requirements for coal-water slurry gasification technology. The coal production of Shenhua Group in Shenfu area accounts for the largest share in this area, and Shenhua applies strict quality managements and the quality of the coal produced is reliable and stable. The coal produced by Shenhua Group from the Shenfu area was used by many coal-water slurry gasification projects as raw coal. In 2010, Shenhua Group is the largest supplier of raw coal for coal-water slurry gasification technology. In addition, the coal produced by Shenhua Group from the Shenfu area was mainly transported by self-operated railway and coal wharf operated, and the freight costs are relatively low.

MOFCOM investigated the entry of the licensing market of coal-water slurry gasification technology. The investigation revealed that the coal-water slurry gasification technology is a complex of many sophisticated technologies, and the process and engineering technologies involved could only become mature after a long period of practice, and there are significant commercial risks for new technologies that have not been sufficiently tested. To enter the licensing market for coal-water slurry gasification technology, it is necessary to seek a technology user who is willing to share part of the costs for the first set of demonstrative equipment, and thus it is very difficult for the new licensor of the technology to enter this market. The coal-water slurry gasification technology is technology intensive, and protected by a large number of patents. It is a long period for the R&D and industrialized application of the technology. MOFCOM concluded that there are significant difficulties for new entry into the licensing market for licensing of coal-water slurry gasification technology.

In summary, Shenhua Group is the largest supplier of the raw coal for coal-water slurry gasification technology, and GE Infrastructure Technology Company has the largest share in the market for

	coal slurry gasification technology. The joint venture between GE China and CSCLC to provide licensing of coal-water slurry gasification technology may restrict competition in the licensing market of coal-water slurry gasification technology, by taking Shenhua Group's advantage in raw coal and by controlling the supply of raw coal.
<p>三、附加限制性条件的商谈</p> <p>商务部向申报方提出了此项集中可能存在的限制竞争问题，并要求申报方作出解释说明，提出解决问题的措施。经多次商谈，10月28日，神华集团和神华煤制油提交了最终解决方案。经评估，商务部认为，神华集团和神华煤制油提交的最终解决方案可以解决竞争关注。</p>	<p>3 Negotiation of Restrictive Conditions</p> <p>MOFCOM raised anti-competitive concerns to the filing party about the concentration, and requested the filing party to provide explanations and propose solutions. After many rounds of discussion, a final solution was submitted by Shenhua Group and CSCLC on October 28, 2011. After evaluation, MOFCOM concluded that the final solution presented by Shenhua Group and CSCLC could resolve the anti-competitive concerns.</p>
<p>四、审查决定</p> <p>鉴于通用中国与神华煤制油设立合营企业对中国水煤浆气化技术许可市场可能具有限制竞争影响，商务部决定附加限制性条件批准此项集中，要求神华集团和神华煤制油履行如下义务：</p> <p>通用中国与神华煤制油设立合营企业，从事水煤浆气化技术许可，不得利用限制供应水煤浆气化技术原料煤，或者以供应原料煤为条件，迫使技术需求方使用该合营企业的技术，或者提高使用其他技术的成本。</p> <p>商务部有权对上述限制性条件的实施进行监督检查。</p>	<p>4 Review Decision</p> <p>Considering the joint venture between GE China and CSCLC may restrict competition in the licensing market of coal-water slurry gasification technology in China, MOFCOM decided to clear this concentration subject to restrictive conditions, and requested Shenhua Group and CSCLC to perform the following obligations:</p> <p>GE China and CSCLC, which establish the joint venture to license coal-water slurry gasification technology, must not force technology customers into using joint venture's technology, or raise the costs of using other alternative technologies, by restricting the supply of raw coal for the coal-water slurry gasification technology, or by conditioning the license on the supply of raw coal.</p> <p>MOFCOM has the power to supervise and inspect the implementation of the above restrictive condition.</p>
<p>本公告自发布之日起生效。</p>	<p>This announcement comes into effect as of the date of its release.</p>