

**MOFCOM Announcement [2010] No. 53 regarding
Conditional Approval of Novartis AG's Acquisition of Alcon Inc.**

The Ministry of Commerce of the People's Republic of China ("MOFCOM") has received a notification of a concentration of undertakings filed by Novartis AG ("Novartis") for the contemplated acquisition of Alcon Inc. ("Alcon"). Upon review, MOFCOM decides to conditionally approve this concentration. This announcement is hereby made as follows in accordance with article 30 of the Anti-Monopoly Law:

1. Acceptance and Review Process

MOFCOM received the notification on April 20, 2010 in connection with Novartis's contemplated acquisition of Alcon. Upon review of the notification, MOFCOM believed that the notification met the requisite standards under the relevant law, and accepted the notification as a new case and started preliminary review. During the preliminary review, MOFCOM found that the concentration raised concerns of restriction or elimination of competition, and decided to undertake further stage review of the transaction on May 17, with the deadline for this further stage review set for August 14.

2. Issues Reviewed

MOFCOM conducted a thorough review of the transaction in accordance with article 27 of the Anti-Monopoly Law from the following perspectives:

- (1) the market shares held in the relevant market by the undertakings participating in the concentration, and their control over the market;
- (2) the degree of market concentration in the relevant market;
- (3) the effect of the concentration on market entry and technological progress;
- (4) the effect of the concentration on consumers and other related undertakings; and,
- (5) the effect of the concentration on the development of the national economy.

3. Review Process

After MOFCOM accepted the notification, it consulted with relevant government agencies, industrial associations, examined and verified the authenticity and the completeness of the notification materials, as supplemented, and requested additional information and clarifications from the notifying parties on certain issues. During the review process, MOFCOM requested the notifying parties to submit relevant documents and evidences to address the following issues: market share of the overlapping products in China and worldwide, product pricing and sales model, product performance and quality, policy of industry supervision and management and the relationships between market participants and notifying parties. In order to understand the opinions from relevant parties, MOFCOM also obtained comments from competitors about relevant issues and conducted phone interviews with a few companies. To address the potential

restrictions on or elimination of competition in connection with the proposed concentration discovered during the review, MOFCOM has communicated and negotiated with the notifying parties to reach a mutually agreed resolution to prevent potential negative consequences.

4. Competition Concerns

Upon review, MOFCOM decides that the concentration may raise concerns of restricting or eliminating competition in the following two markets:

A. Ophthalmologic Anti-Inflammatory/ Anti- Infective Combinations

Ophthalmologic anti-inflammatory / anti-infective combinations are indicated for the anti-inflammatory and anti-bacterial treatment and are useful for the treatment of eye-inflammation / eye infections, especially for eye-inflammation / eye infections after an ophthalmologic operation. According to the review, the products constitute an independent relevant product market and the respective brands sold in China by Novartis and Alcon are Infectoflam and TobraDex. Application materials indicate that the post-concentration global market share of the trading parties exceeds 55% and the market share in China exceeds 60%. At present, the market share of Alcon in China exceeds 60% while Novartis holds less than 1% market share in China. According to the application materials, Novartis has made its decision to strategically withdraw from the global and Chinese market. As shown by analysis, Novartis is still competing in China. If Novartis decide to withdraw from the market strategically only for this transaction, it still has the capability to market the products again after the transaction. If the marketing reaches a certain extent, it may restrict or eliminate competition in China.

B. Contact Lenses Care Products

The application materials indicate that, post-concentration, the parties' global market share nearly reaches 60% and is much higher than other competitors. The market share of the two parties in China is nearly 20% and, post-concentration corporation, the combined entity will be the second largest one in China. Haichang Contact Lenses Co., Ltd ("Haichang"), which has a market share of more than 30%, is the largest competitor in the fields of production and sale in China.

As shown by investigation, Shanghai Shikang Trading Co., Ltd ("Shanghai Shikang"), a wholly owned subsidiary of Novartis signed *Sales and Distribution Agreement* with Haichang in 2008, which made Haichang the sole distributor of Shanghai Shikang in the territory of China. Shanghai Shikang and Haichang have set up a strategic affiliated partnership.

This agreement may lead to the result that when, post-concentration, the combined entity and Haichang market the said products, they can coordinate in the aspects of price, quantity, market zone, etc and may eliminate or restrict competition.

5. Negotiation of Restriction Conditions

To address the competition issues as described above, MOFCOM and the notifying parties held several discussions respectively on August 6 and August 9, 2010 regarding the restrictive conditions according to article 29 of the Anti-Monopoly Law. On August 9, 2010, the notifying

parties submitted the final plan of remedies to eliminate the negative effect of the concentration. After assessment, MOFCOM determined that the final plan was sufficient to eliminate the negative effect of the concentration over the Chinese market.

6. Review decision

Because the proposed concentration of undertakings between Novartis and Alcon would result in restriction or elimination of competition in ophthalmological anti-inflammatory / anti-infective compounds and contact lenses care products, MOFCOM decided to approve the concentration with conditions in order to reduce the proposed concentration's negative impact on market competition, and required Novartis and Alcon to fulfill the following obligations:

A. Ophthalmological Anti-Inflammatory/ Anti- Infective compounds

By the end of 2010, Novartis shall cease its sale of Infectoflam in China; at the same time, within 5 years of the effective date of the MOFCOM review decision, Novartis shall not re-launch Infectoflam or the same products under a new name into China. Novartis shall not launch the ophthalmic anti-inflammatory / anti-infective compounds which it sold in other countries outside of China before the delivery date of this transaction into China. In this 5-year period, Novartis shall report to the MOFCOM its performance of fulfilling commitments every year at the date from the date when the review decision becomes effective.

B. Contact Lenses Care Products

Within 12 months of the effective date of the MOFCOM review decision, Novartis shall terminate the *Sales and Distribution Agreement* between Shanghai Shikang and Haichang. Novartis shall report to the MOFCOM its performance of fulfilling commitments within 1 week of its termination of the *Sales and Distribution Agreement*.

From the date this decision comes into effect, MOFCOM has the right to supervise and inspect the above restrictive measures. Novartis shall, according to the MOFCOM Interim Provisions of the Ministry of Commerce on Implementing Assets or Business Divestiture Related to Concentration of Business Operators, entrust a supervisory trustee to supervise its performance of the obligations.

This decision is effective as of the date of its announcement.

MOFCOM Announcement
August 13, 2010