Interim Provisions on the Review of Concentrations of Undertakings of the People's Republic of China

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Chapter I — General Provisions

Article 1 — These Provisions are formulated in accordance with the Anti-Monopoly Law of the People's Republic of China and the Provisions of the State Council on the Standards for Filing of Concentrations of Undertakings for the purpose of regulating the review of concentrations of undertakings and improving the quality and efficiency of such review.

Article 2 — The State Administration for Market Regulation (SAMR) shall be responsible for the anti-monopoly review of concentrations of undertakings, and shall investigate and penalize concentrations that illegally eliminate or restrict competition. SAMR shall, in accordance with the needs of its work, entrust

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the market regulation departments of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government to assist in the review of concentrations of undertakings within their respective administrative regions.

Article 3 — SAMR shall strengthen the informatization of the review of concentrations of undertakings, fully utilize modern information technologies such as the internet, big data, and artificial intelligence, and promote the electronic and intelligent review of concentrations of undertakings. Undertakings may file declarations of concentration and submit relevant documents and materials in electronic form through the online declaration system.

Chapter II — Filing Standards for Concentrations

Article 4 — A concentration of undertakings refers to the following circumstances: (1) merger of undertakings; (2) acquisition of control over another undertaking through the acquisition of equity or assets; or (3) acquisition of control over another undertaking or the ability to exercise decisive influence over another undertaking through contractual or other means.

Article 5 — Where the following thresholds are met, undertakings shall file a declaration with SAMR in advance, and shall not implement the concentration before the declaration is filed: (1) the aggregate global turnover of all undertakings participating in the concentration exceeded 10 billion yuan in the previous fiscal year, and the turnover within the territory of China of each of at least two undertakings exceeded 400 million yuan in the previous fiscal year; or (2) the aggregate turnover within the territory of China of all undertakings participating in the concentration exceeded 2 billion yuan in the previous fiscal year, and the turnover within the territory of China of each of at least two undertakings exceeded 400 million yuan in the previous fiscal year.

Article 6 — For the purposes of calculating turnover as specified in these Provisions, turnover shall include the turnover of the undertaking itself and all undertakings that are directly or indirectly controlled by the undertaking. The turnover of an undertaking shall be the total revenue from the sale of products and provision of services in the previous fiscal year, less relevant taxes and surcharges. The turnover of a financial institution shall be calculated in accordance with the relevant provisions.

Chapter III — Filing Procedures

Article 7 — A declaration of concentration shall be filed by the undertakings that enter into the merger or by the undertaking that acquires control or the ability to exercise decisive influence. Where a concentration of undertakings is implemented by way of merger between undertakings, all undertakings participating in the merger shall jointly file the declaration. Where a concentration is implemented by other means, the undertaking that acquires control or the ability to exercise decisive influence shall file the declaration; other undertakings shall provide cooperation.

Article 8 — Undertakings filing a declaration shall submit the following documents and materials: (1) a written declaration; (2) explanations of the impact of the concentration on competition in the relevant market; (3) the concentration agreement; (4) the audited financial and accounting reports of the undertakings participating in the concentration for the previous fiscal year; (5) basic information on the undertakings participating in the concentration, including their names, domiciles, business scope, and the structure of the undertakings and their affiliates; and (6) other documents and materials required by SAMR.

Article 9 — SAMR shall examine the documents and materials submitted, and shall handle the matter in accordance with the following provisions: (1) where the documents and materials are complete, SAMR shall accept the case and notify the undertakings in writing; (2) where the documents and materials are incomplete, SAMR shall notify the undertakings in writing within the prescribed period of all the documents and materials that need to be supplemented. Where the undertakings fail to supplement the documents and

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materials within the time limit, the declaration shall be deemed not to have been filed.

Chapter IV — Review Procedures

Article 10 — SAMR shall, within 30 days from the date of acceptance of a case, conduct a preliminary review of the declared concentration and make a decision on whether to implement further review. Where SAMR decides not to implement further review, the undertakings may implement the concentration. Where SAMR decides to implement further review, it shall notify the undertakings in writing; where SAMR fails to make a decision within the time limit, the undertakings may implement the concentration.

Article 11 — Where SAMR decides to implement further review, it shall complete the review within 90 days from the date of the decision and make a decision on whether to prohibit the concentration, unless the undertakings agree to extend the review period. Under any of the following circumstances, SAMR may, upon notifying the undertakings in writing, extend the further review period by no more than 60 days: (1) the undertakings agree to the extension; (2) the documents or materials submitted by the undertakings are inaccurate and need further verification; or (3) the circumstances of the undertakings have changed significantly after the declaration.

Article 12 — During the review process, SAMR may conduct market research, solicit the opinions of the relevant government departments, industry associations, upstream and downstream undertakings, consumers, experts, and scholars, and may require the undertakings to provide supplementary information. The review may be conducted in writing, but where necessary, hearings or field investigations may be conducted.

Article 13 — Where undertakings participating in a concentration provide inaccurate or misleading information, SAMR may, as the circumstances warrant, require the undertakings to make corrections or withdraw the declaration. Where the circumstances are serious, SAMR may, in accordance with the law, impose administrative penalties on the undertakings.

Chapter V — Restrictive Conditions and Remedies

Article 14 — Where a concentration of undertakings has or may have the effect of eliminating or restricting competition, SAMR may make a decision to prohibit the concentration. However, where the undertakings participating in the concentration can demonstrate that the positive effects of the concentration on competition clearly outweigh the negative effects, or that the concentration is in the public interest, SAMR may make a decision not to prohibit the concentration.

Article 15 — For a concentration that is not prohibited, SAMR may decide to attach restrictive conditions to reduce the adverse impact of the concentration on competition. Restrictive conditions may include the following types: (1) structural conditions, such as the divestiture of tangible assets, intangible assets such as intellectual property rights, or related rights and interests; (2) behavioral conditions, such as the opening of networks or platforms and other infrastructure, licensing of key technologies, or termination of exclusive agreements; or (3) a combination of structural and behavioral conditions.

Article 16 — Where SAMR decides to attach restrictive conditions, it shall specify in the decision the content of the restrictive conditions, the time limit for performance, and the supervision mechanism. Undertakings shall perform the restrictive conditions in accordance with the requirements of the review decision and report the performance status to SAMR on a regular basis.

Chapter VI — Legal Liability

Article 17 — Where an undertaking implements a concentration in violation of the provisions of the Anti-Monopoly Law, SAMR shall order it to cease the implementation of the concentration, dispose of shares or assets, transfer the business within a prescribed time limit, or take other necessary measures to restore

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the competitive situation prior to the concentration, and may impose a fine of not more than 500,000 yuan.

Article 18 — Where an undertaking refuses to provide relevant materials or information, provides false materials or information, conceals, destroys, or transfers evidence, or otherwise refuses or obstructs an investigation, SAMR shall order it to make corrections and may impose a fine of not more than 20,000 yuan on an individual and not more than 200,000 yuan on an entity. Where the circumstances are serious, a fine of not less than 20,000 yuan but not more than 100,000 yuan shall be imposed on an individual, and a fine of not less than 200,000 yuan but not more than 1,000,000 yuan shall be imposed on an entity. If the case constitutes a crime, criminal liability shall be pursued in accordance with the law.

Article 19 — Where SAMR and its staff members abuse their powers, neglect their duties, or engage in malpractices for personal gain in the course of conducting anti-monopoly reviews, sanctions shall be imposed in accordance with the law. If the case constitutes a crime, criminal liability shall be pursued in accordance with the law.

Chapter VII — Supplementary Provisions

Article 20 — These Provisions shall apply, with appropriate modifications, to the review of the concentration of undertakings by means of acquisition of domestic enterprises by foreign investors or other means. Where a concentration of undertakings triggers the national security review of foreign investment, the national security review provisions shall apply.

Article 21 — SAMR shall be responsible for the interpretation of these Provisions.

Article 22 — These Provisions shall come into force on December 1, 2020.

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