



New Chinese merger control thresholds take effect

On 26 January 2024, the **State Administration for Market Regulation (SAMR)** finally published the *Regulation of the State Council on the Threshold for Notification of Concentration of Business Operators* (Final Thresholds Regulation), with immediate effect. SAMR had consulted publicly on a *Draft Amended Regulation of the State Council on the Threshold for Notification of Concentration of Business Operators* (Draft Thresholds Regulation) in June 2022.

Notably, the Final Thresholds Regulation significantly increases the turnover threshold for Chinese merger filings. This is expected to reduce the number of notifiable transactions and ease the regulatory burden for businesses.

In addition, while the Final Thresholds Regulation drops a proposed threshold targeting “killer acquisitions”, it reaffirms that SAMR retains the power to review below-threshold transactions that may have anti-competitive effect.

Increase of the turnover threshold

The Final Thresholds Regulation has adopted the turnover threshold increases proposed in the Draft Thresholds Regulation as follows:

	The previous thresholds	The current effective thresholds
Limb 1 of the threshold: combined turnover of all business operators to the concentration in the last fiscal year, exceeding:	<ul style="list-style-type: none">– Either RMB10 billion on a global basis (approx. USD1.4bn¹)– Or RMB2bn in mainland China (approx. USD283.8 million)	<ul style="list-style-type: none">– Either RMB12bn on a global basis (approx. USD1.7bn)– Or RMB4bn in mainland China (approx. USD567.6m)
Limb 2 of the threshold: turnover in mainland China of each of at least two business operators, exceeding:	<ul style="list-style-type: none">– RMB400m (approx. USD56.8m)	<ul style="list-style-type: none">– RMB800m (approx. USD113.5m)

¹ 1 USD = 7.0467 RMB, the foreign exchange rate being the annual average exchange rate for the calendar year 2023 published by the China Foreign Exchange Trade System.

Removal of the previously proposed threshold focusing on “killer acquisitions”

It is worth noting that the Final Thresholds Regulation does not include the controversial new threshold for transactions involving large business operators proposed in the Draft Thresholds Regulation. This was understood to be targeted at so-called “killer acquisitions” – acquisitions by large players of start-ups or small innovative firms. Under the proposed threshold, large business operators (with more than RMB100bn turnover in mainland China) would have been required to notify if the other merging entity or the target: (1) had a market value (or valuation) exceeding RMB800m (approx. USD113.5m); and (2) generated more than one third of its worldwide turnover in China.

This proposed threshold had raised practical questions. In particular, there were concerns over how it could be applied consistently and accurately across different transactional contexts, especially given difficulties in calculating the “market value (or valuation)” of companies without clear guidance. By eliminating the proposed threshold, the Final Thresholds Regulation preserves China’s historically succinct approach of focusing on the turnover of the parties to a transaction. This will ensure continued clarity for business operators seeking to comply with the country’s merger control requirements.

However, the Final Thresholds Regulation reaffirms that SAMR retains a discretion to review below-threshold transactions if there is evidence that the transaction has or may have the effect of eliminating or restricting competition. This aligns with the legislative principle provided in the amended PRC Anti-monopoly Law and would in practice catch “killer acquisitions”.

Antitrust regulators in prominent jurisdictions have also been cracking down on killer acquisitions that may harm competition by eliminating potential or nascent rivals. For example, the European Commission (EC) has now encouraged EU Member States to refer transactions (including completed deals) to it for review even where EU and national filing thresholds are not met. Under the *Digital Markets Act*, firms designated as “digital gatekeepers” are obliged to inform the EC (pre-closing) about all transactions involving services in the digital sector or that enable the collection of data.; in the U.S., the antitrust agencies issued revised Merger Guidelines in December 2023 that formalise their commitment to scrutinising “killer acquisitions”. While China has not yet explicitly addressed this issue in its legislation, we expect SAMR’s enforcement practice to provide some useful insights in the near future.

Enforcement and substantive review

The Final Thresholds Regulation reiterates SAMR’s authority to investigate failure to notify. Indeed, we expect SAMR to continue to focus on enforcement of failure to file or gun-jumping. To this end, we note SAMR has been strengthening its merger control enforcement and monitoring transactions that may have anti-competitive effects. In September 2023, SAMR issued *Antitrust Compliance Guidelines for Concentrations of Undertakings* (Merger Control Guidelines), which offer comprehensive and practical advice for business operators on how to comply with the merger control rules and avoid potential risks (see **our alert** for more information). Large companies are best advised to establish merger control compliance management system(s) covering the entire group, as recommended in the Merger Control Guidelines. The new turnover thresholds do not change this proposition.

In terms of the substantive aspects of the Chinese merger control regime, we cover, for example, the concept of “control”, actions that amount to “gun-jumping” and calculation of turnover in previous alerts (see **here** and **here** for more details). The Final Thresholds Regulation makes no changes to these aspects.

Practical implications for on-going deals

The Final Thresholds Regulation takes immediate effect upon promulgation. This lack of a grace period may pose procedural complications during the transitional period. For example, filings relating to transactions that are currently under review but that do not meet the new thresholds (no matter whether they have been formally accepted by SAMR or not) may need to be withdrawn. In addition, certain conditions precedent based on the previous turnover thresholds agreed in ongoing M&A deals may no longer apply.

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