

# Chinese First Anti-Monopoly Law Adopted

June 2008

From the Danone-Wahaha  
disputes to see the PRC  
legislative process on anti-  
monopoly issues in foreign  
mergers and acquisitions

# Case study of Danone and Wahaha disputes

- Burst into public eyes in April 2007
- Biggest JV disputes in China's history
- Official intervention of two countries
- Triggered heated discussion on China's anti-monopoly legislation in foreign mergers and acquisitions

# Quick glance at the story-- *Who*

- Group Danone
  - Paris-based Multinational Corporation (MNC)
  - Giant in the global dairy products and bottled water
- Hangzhou Wahaha Group
  - From a three-people small factory to the largest Chinese bottled water company
  - Its growth mainly resulted from the drive and the talent of its founder, Zong Qinghou

# Quick glance at the story --*How*

- Established first JV in 1996
- Number of JVs grew from 5 to 39
- Danone held majority of stake of JVs at 51% after Asian Financial Crisis
- Danone accused Zong had set up mirror companies and breached JV agreement of 1996.
- Zong responded in kind.
- More than a dozen of lawsuits are pending.
- Negotiations have broken down even through the official facilitation in April 2008.

# Quick glance at the story -- *What*

## One of the arguments of Zong's

- The JV agreement of 1996 was unfair.
- Non-compete terms was not set to restrict Danone.
- Danone had intention to control China's beverage market.
- Foreign mergers and acquisitions should go through the anti-monopoly check.
- China should promulgate Anti-Monopoly Law as soon as possible.

# The road of Danone for 20 years in China

1987	First yoghurt manufacturing plant in Guangzhou
1994	JVs with <b>Bright</b> Dairy & Food Co. in Shanghai and held 45.2% of shares
1996	Purchased 54.2% shares of Wuhan East and West Lake Beers Co.
	JVs with <b>Wahaha</b> and held 41% shares, further to 51%
	Purchased 54.2% shares of Shenzhen <b>Yili</b> Food Co., further to 100%
2000.3	Purchased 92% shares of <b>Robust</b> (Guangdong) Beverage & Food Co.
2001	Purchase 5% shares of <b>Bright</b> Dairy & Food Co.
2004	Purchase 50% shares of Shanghai <b>Maling Aqarius</b> Co. (bottled water)
2005.4- 2006.4	Increased shares to 20.01% in <b>Bright</b> Dairy & Food Co. through three consecutive purchases.
2006.7	22.18% shares in <b>Huiyuan</b> Beverage and Food Group, further to 24.32% in Feb. 07
2006.12	Plan JV with <b>Mengniu</b> Dairy Co. and hold 50% shares in JV

# Danone's deployments in China (up to October 2007)



# Data about Danone's performance in 2006

Sales of the whole group	Exceeded EUR 14 billion (RMB 150 billion)
Sales in Asian market	Exceeded EUR 2.4 billion (RMB 26 billion)
Net profit	Exceeded RMB 10 billion
Percentage of dairy products in whole sales	56%
Percentage of beverages in whole sales	28%
Percentage of Asian Market in dairy & beverage sales	51%
Share in China bottled water market	23% (number one)

# Chinese legislative process on anti-monopoly issues in foreign mergers and acquisitions (1)

- **Provisions on the mergers and divisions of enterprise with foreign investment 1999**
  - Issued by Ministry of Foreign Trade and Economic Cooperation, the State Administration for Industry and Commerce in Nov. 1999 and revised in 2001
  - Article 24 :  
Where the Ministry of Foreign Trade and Economic Cooperation is the examining and approving department of corporate mergers, if the MOFTEC thinks that the corporate merger tends towards industry monopoly or it may constitute a predominant position in the market for particular commodities or services, which will hamper fair competition, the MOFTEC may, upon receipt of the documents as listed in the preceding paragraph, organize the relevant departments and agencies to hear the case of proposed corporate merger and conduct investigations into the company and the related market.

# Chinese legislative process on anti-monopoly issues in foreign mergers and acquisitions (2)

- **The Interim Provisions on Introducing Foreign Investment to Reorganize State-Owned Enterprises 2002**
  - Issued by Ministry of Foreign Trade and Economic Cooperation, the State Administration for Industry and Commerce, the Ministry of Finance and the State Administration of Foreign Exchange in Nov. 2002
  - Article 6 :  
Introducing foreign investment to reorganize state-owned enterprises shall follow the principles listed below: ...6. Promote fair competition, and not lead to market monopoly
  - Article 9:  
...In case the reorganization may lead to market monopoly and hinder fair competition, a public hearing shall be organized before the check and ratification. ...

# Chinese legislative process on anti-monopoly issues in foreign mergers and acquisitions (3)

- **Provisions Concerning on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors 2006**  
***(The Six Ministries and Commissions' Provisions)***
  - Issued by the Ministry of Commerce, State-owned Assets Supervision and Administration Commission of State, the State of Taxation, the State Administration for Industry and Commerce, China Securities Regulatory Commission, and the Administration of Foreign Exchange in Aug. 2006.
  - Based on ***The Interim Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign investors*** of 2003

# Chinese legislative process on anti-monopoly issues in foreign mergers and acquisitions (3) -cont'd

- **Provisions Concerning on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors 2006**  
*(The Six Ministries and Commissions' Provisions)*
  - **Article 51** If a foreign investor merges and acquires a domestic company under any of the following circumstances, the investor shall report the information involved to the Ministry of Commerce and the State Administration for Industry and Commerce:
    - (1) The business volume of any party of the M&A in Chinese market in current year o exceeds RMB 1.5 billion yuan;
    - (2) Merging and acquiring more than 10 enterprises in the domestic connective industries within 1 year;
    - (3) The market share of any party relating to the M&A has reached 20% in Chinese market; and
    - (4)The M&A leads to the fact that the market share of the party to the M&A has reached 25% in China.

# Chinese legislative process on anti-monopoly issues in foreign mergers and acquisitions (3) -cont'd

- **Provisions Concerning on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors 2006**  
*(The Six Ministries and Commissions' Provisions)*
  - **Article 12** If a foreign investor merges or acquires a domestic enterprise and obtains the actual right to control it, and it involves major industry, has or may have the influence on the state security or caused the transference of the actual right of the domestic enterprise owning famous trademark or having a name of long history, the person concerned shall submit a report on it to the Ministry of Commerce.

# Chinese legislative process on anti-monopoly issues in foreign mergers and acquisitions (4)

## ■ Anti-Monopoly Law

- Began to be drafted in 1994
- Promulgated on August 30, 2007
- Will come into effect on August 1, 2008
- Article 31:  
In case the acquisition of domestic enterprises by foreign investors or other manners to concentrate referred to national security, besides being reviewed according to this law, shall be carried out national safety review according to related regulations.