

**GREETINGS...**

Greetings to our clients, associates, and friends in the US, China and Asia. Happy April Fool's Day! We hope you are enjoying the spring season. Hopefully, the current challenges in the global economy will lead to opportunities for all in the future. Please enjoy the latest edition of our Schechter + Chou company newsletter.

Sincerely,  
Aaron Schechter and Frances Chou

**HOT TOPICS...**

**China's Stimulus Package Update...**

In early March, China held its annual session of parliament, the National People's Congress (NPC), which lasted nine days. Recent tweaks to China's previously announced US \$585 billion stimulus package emerged. The revised stimulus plan increases spending on social services to 4% of the plan, instead of the 1% in the original version. Expanding public housing will get 10% of the total, up from 7% previously, and other infrastructure projects somewhat less. Subsidies for upgrading factory equipment and doing research more than doubled in the new version, to 9% of the total.



There are signs that the big fiscal package may be starting to work. Chinese investment in railways, roads and power grids boomed in the first two months of the year. China is also one of the few countries in the world where credit has accelerated, with bank lending having grown 24% over the past year. Car sales and electricity consumption have also picked up.

Some economic analysts believe that the current downturn, and China's response to reverse it, could make Chinese companies better able to compete in markets at home and abroad. China is awash in capital and has been acquiring natural resource companies and other foreign businesses abroad. China's commerce ministry recently led a delegation of corporate executives to Europe for the ministry's first mergers and acquisitions trip in the automotive, textiles, food, energy, machinery, electronics, and environmental protection sectors.

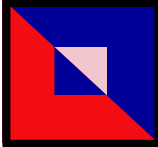
Challenges remain, with the current global recession having caused a record plunge in Chinese exports and putting 23 million migrant workers within China out of work. Longer term, experts believe that China must shift the mix of growth from exports to domestic consumption; with higher government spending on health care and a social safety net in order to reduce the high household savings rate and spur domestic consumption.

**Latest Survey of US Companies in China Released...**

Reflecting a slowdown in the Chinese economy, over one-third of U.S. companies in China expect their revenues to slow this year. Additionally, 39% of respondents are postponing or have canceled planned investments for 2009. The survey was taken by the American Chamber of Commerce in China, and took place during a November –December data collection period, with over 400 companies participating. Due to the deteriorating economy, a follow-up survey was taken this past February, which drew 200 respondents and 32% indicated they expect to hire more workers this year, while 21% said they would cut staff. Indicating an increase in the importance of China's markets to US companies, 63% responded that they were producing or sourcing goods and services in China expressly for the Chinese market, up from less than 50% in 2007. By contrast, only 9% of US companies in China are producing or sourcing in China for the US market, down from 16% in 2008 and 2007.

**Chinese Shopping Tours for US Real Estate...**

With the slumping real estate market in the US, home-buying trips to America are becoming one of the more popular tour group packages in China. The US real estate market is considered attractive because of its developed economy. The Chinese have cash to spend, with the Boston Consulting Group estimating that China had the world's fifth-largest population of millionaires in 2008 with 391,000, up 20% from the previous year. Chinese home buying tours in the US are part of a broader trend of individuals and businesses in China seeking greater investment opportunities abroad.



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**REGISTER NOW...**

**Asia Society Southern California's Annual Gala Dinner, June 30, 2009**

**Beverly Hilton Hotel, Beverly Hills, California**

Schechter + Chou is proud to be a Cooperating Organization for this special event. The event will honor Olympic Gold Medalist and the reigning NBA MVP **Kobe Bryant**. The second honoree will be **Tim Leiweke**, President and CEO of AEG and President of Staples Center. He has transformed AEG into one of the world's most innovative sports and entertainment organizations in China, the U.S., and around the world. For more information and to register for the event, please visit [www.AsiaSocietySoCal.org](http://www.AsiaSocietySoCal.org) or call 213/613-9934. Ext.24. Please be sure to mention that you were referred by Schechter + Chou to receive the member discount for the event.

**LEGALLY SPEAKING...**

The following is provided by Y.F. Chou, Prof. Corp. For questions, please contact [info@yfchou.com](mailto:info@yfchou.com).

**First Deal Blocked Under China's New Monopoly Law...**

On March 18, 2009, China's Ministry of Commerce (MOFCOM) announced its decision to block Coca Cola Co.'s ("Coca Cola's") proposed US \$2.8 billion acquisition of China's Huiyuan Juice Group Ltd. ("Huiyuan"). This announcement raises a lot of issues and controversy.

The announcement stated that MOFCOM had considered various factors involving the impact of the "concentration of business operators" relating to Coca Cola's acquisition of Huiyuan prior to reaching its decision to block this deal. It further stated that MOFCOM made an extensive investigation, soliciting information from other government authorities, trade associations, juice beverage industry competitors, suppliers, downstream sellers, legal experts, economists and agricultural experts.

The announcement further stated that after its review, MOFCOM found that this concentration will have an adverse impact on competition, because, (1) the acquisition would allow Coca-Cola to use its market dominance in carbonated soft drinks to limit competition in the juice market; (2) after the completion of the acquisition, Coca Cola will control two well known brands in the juice market, which can restrict entry to the market and would raise barriers against potential competitors; and (3) the concentration will reduce the room for smaller companies to survive and have an adverse effect on competition and innovation in China's juice market. MOFCOM concluded that the operators did not provide sufficient evidence to show that such concentration would create more beneficial effect than adverse effect on competition, and that Coca Cola had failed to provide a feasible solution as requested by MOFCOM. Therefore, MOFCOM decided to block the transaction.

This decision raises various concerns. First, the announcement did not provide any underlying data and evidence to support its conclusion. Second, MOFCOM found that Coca Cola has a dominant position in the Chinese soft drinks market but did not provide any data or evidence to support this finding. There is no discussion as to what kind of market share that Coca Cola will have, or whether Coca Cola has the power to control pricing or competition. Third, even assuming that Coca Cola had such dominant power in the soft drinks market, there is no explanation as to how Coca Cola can leverage such dominant position in the soft drinks market to increase its shares in the juice market. Fourth, MOFCOM did not address the issue related to entry barriers for building new brands but simply concluded that Coca Cola's acquisition of the "Huiyuan" brand would have substantial exclusionary effects in the Chinese beverage industry. Fifth, MOFCOM concluded that the concentration would hamper innovation by domestic juice makers but did not provide any basis for such a conclusion. It seems that MOFCOM imposes the burden of proof on the transaction parties and requires the transaction parties to disprove MOFCOM's theories of potential competitive harm, which makes it extremely difficult for any transaction parties to obtain approval from MOFCOM for similar acquisitions.

Therefore, some experts believe that foreign companies with substantial market positions or strong brands probably might think twice before seeking to make acquisitions in China, especially if the Chinese target company itself possesses a famous brand name.