
US Antitrust Agencies Sign MOU with Chinese Counterparts

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On July 27 in Beijing, the Department of Justice and Federal Trade Commission signed a Memorandum of Understanding on Antitrust and Antimonopoly Cooperation with their Chinese counterparts: the National Development and Reform Commission (NDRC), Ministry of Commerce (MOFCOM) and State Administration for Industry and Commerce (SAIC).

The MOU is intended to formalize and deepen cooperation and communications between competition agencies of the two countries. The most important item with respect to cooperation is the institution of a joint dialogue on competition policy at the senior official level. The two countries have instituted dialogues across a broad range of policy areas which help to enhance mutual understanding and trust between the two countries.

Improving cooperation between US and Chinese authorities is becoming increasingly important given that China has quickly become one of the world's most important jurisdictions for competition policy. The MOU also provides for communication and cooperation between individual agencies at the senior level or working level.

As to substance, each side has agreed to build on existing cooperation by working together to share information on significant policy and enforcement efforts in their respective jurisdictions; develop training

programs, internships, and other activities to enhance each agency's capabilities; exchange enforcement experiences "when appropriate"; seek information or advice on enforcement and policy; comment on proposed changes to laws and regulations; exchange views on multilateral issues; and exchange experiences in raising awareness of competition law.

The qualifier "when appropriate" indicates that the two sides may move relatively slowly in cooperating on specific enforcement matters. Any exchange of information belonging to parties under investigation would, at a minimum, require the consent of the parties involved and a commitment to maintain confidentiality, but there is also uncertainty about the uses of any information to be exchanged.

As China becomes a more and more important player in global competition enforcement, enhanced cooperation between the US and Chinese agencies is a welcome development. For both cross-border mergers & acquisitions and other areas in the international competition realm, efficiency, predictability, and rationality of outcomes should be enhanced as the United States and China develop better common understanding and practices.

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