

E-ALERT | Antitrust & China Practice

November 30, 2011

US & CHINESE AGENCIES ISSUE GUIDANCE ON COOPERATION IN ANTITRUST MERGER INVESTIGATIONS

The US and China have taken a step towards closer coordination of their investigations of mergers and other transactions under their respective antitrust laws. Yesterday, after high-level consultations in Washington, the two countries' antitrust merger control agencies released *Guidance for Case Cooperation between the Ministry of Commerce and the Department of Justice and Federal Trade Commission on Concentration of Undertakings (Merger) Cases* ("[Guidance Statement](#)"). The release was the first joint statement by the agencies since they and China's two other competition law enforcement agencies signed a *Memorandum of Understanding on Antitrust and Antimonopoly Cooperation* in Beijing in July ("[US-China MOU](#)").

The Guidance Statement provides a framework for cooperation between the two countries' agencies when they are investigating the same transaction and determine that coordination would be appropriate. In such cases, according to the Guidance Statement, they may exchange information (subject to their confidentiality obligations) regarding their respective investigations, such as: relevant market definitions; theories of competitive harm; economic analyses; evaluations of the proposed transaction's likely competitive effects; the timing of their investigations; and potential remedies. Each agency has committed to maintain the confidentiality of any information communicated by the other in confidence during the course of such case cooperation, to the extent consistent with their respective laws.

The US agencies consult frequently with the Chinese government on competition policy and they have done so since China's Anti-Monopoly Law, which went into effect in August 2008, was still in the drafting stage. Like the US-China MOU, yesterday's Guidance Statement provides some formal structure to that bilateral relationship. By facilitating case-specific dialogue between the countries' agencies, it may reduce the likelihood of conflicting enforcement outcomes and may eventually foster convergence on issues of general merger policy and investigation practices. As a practical matter, it may also result in the kind of close coordination on investigations that is the norm between the US agencies and their counterparts in other jurisdictions, such as the European Union, where the US has antitrust cooperation agreements in place. Clients planning transactions that may be subject to review in the US and China (and elsewhere) should therefore work with antitrust counsel to develop a coordinated global strategy for securing merger clearance.

Covington is well positioned to assist companies regarding their operations in China. If you have any questions concerning the material discussed in this client alert, please contact the following members of our firm:

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