

## China to Consolidate Antitrust Law Enforcement Power

Article By:

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The Chinese government announced on March 13, 2018 that it will consolidate the duties of three competition agencies into a new government agency to handle all antitrust matters. While it is too early to tell how this reorganization will impact China's review of transactions and conduct cases, we believe that this change could lead to greater consistency and potentially more experienced attorneys reviewing competition matters.

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### WHAT HAPPENED

Since China promulgated its Anti-Monopoly Law (AML) in 2008, the antitrust law enforcement power has been shared by three authorities. The National Development and Reform Commission (NDRC) is responsible for investigating price related monopoly agreements, abuse of dominance and abuse of administrative power. The State Administration for Industry and Commerce (SAIC) is in charge of investigations into non-price related monopoly agreements and abuse. The Ministry of Commerce (MOFCOM) handles merger control filings. NDRC, SAIC and MOFCOM were separate antitrust divisions, with the Anti-Monopoly Committee of the State Council coordinating the three law enforcement agencies and making relevant policies.

On March 13, 2018, a plan for restructuring entities of the State Council (Plan) was proposed on the fourth plenary meeting of the first session of the 13th National People's Congress (NPC). According to the Plan, the AML enforcement power now shared by NDRC, SAIC and NDRC will be consolidated into a new government agency, the State Administration for Market Supervision (SAMS). The Anti-Monopoly Committee will still exist, and its office, which is now under MOFCOM, will also be integrated into SAMS. In addition to AML law enforcement, SAMS will also take on other market supervision duties currently assumed by SAIC, General Administration of Quality Supervision, Inspection and Quarantine, and China Food and Drug Administration. The NPC passed this Plan on March 17, 2018.

### WHAT THIS MEANS

After almost ten years' practice, the NDRC, SAIC and MOFCOM have established professional antitrust law enforcement teams and acquired substantial experience in investigations and merger control cases. However, this sharing of power among three separate agencies has sometimes created inefficiency, inconsistency and non-transparency. The hope is that the consolidation of

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antitrust law enforcement power in one agency will likely address these shortcomings.

The consolidation of antitrust power into one agency will hopefully lead to the following positive changes:

- The new antitrust authority will: incorporate the staff members of the current antitrust divisions of NDRC, MOFCOM and SAIC; consolidate their expertise; and optimize workforce structure. Antitrust enforcement will become a one-stop shop. Efficiency and consistency should improve.
- Separate investigations of the same company for related price and non-price violations will disappear. This should reduce concerns about companies facing double punishments for one violation.
- Because the new antitrust authority will unify rules, standards and procedures for implementing the AML, companies will get a clearer and more consistent guidance on compliance with the AML.

Nevertheless, the consolidation may also lead to more aggressive antitrust enforcement. In the past, due to a lack of manpower in some areas, the Chinese antitrust regulators were not always able to investigate certain issues. For example, post-consolidation, SAMS may start devoting more resources to investigating companies' failure to file for notifiable transactions or even start investigating smaller transactions that do not meet the merger notification filing thresholds.

The State Council will appoint the head of SAMS soon. In past years, the NDRC initiated a number of aggressive investigations against multinationals. If a former NDRC official becomes the leader of the new antitrust authority, this will likely signify that SAMS will be an aggressive antitrust enforcer, particularly with respect to large global companies. As a result, any company with business operations in China should implement a strong antitrust policy or update existing antitrust compliance policies.

Finally, because the integration of the various agencies within SAMS may take several months, ongoing antitrust investigations and merger reviews may be delayed or take longer to resolve. To avoid such delays, we recommend that companies with pending merger filings proactively contact and communicate with the regulators on a regular basis.

Alex An contributed to the post.

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