

China's Antitrust Agencies to Merge into One.

China's State Council (footnote 1) has submitted proposals to the National People's Congress (**NPC**) to merge China's three antitrust authorities into a single agency under a new government body called the State Administration for Market Supervision. The reform follows several years of speculation of an eventual merger among the three authorities.

Background

Since China's Anti-Monopoly Law (**AML**) came into force in 2008, China's antitrust enforcement responsibilities have been divided among three separate authorities: the Anti-Monopoly Bureau of the Ministry of Commerce (**MOFCOM**), responsible for merger reviews; the Price Supervision and Inspection and Anti-Monopoly Bureau of the National Development and Reform Commission (**NDRC**), responsible for price-related conduct; and the Anti-Monopoly and Anti-Unfair Competition Bureau of the State Administration of Industry and Commerce (**SAIC**), responsible for non-price-related conduct. The State Council's Anti-Monopoly Commission, which serves as China's antitrust enforcement and policy coordinator, will also be merged into the new agency.

This is part of a wider reform to rationalise the number of agencies with market oversight in China, including in the areas of quality inspection, food and drugs administration, consumer protection, and now antitrust enforcement. The proposal to merge was part of the State Council's Plan on Deepening Reform of Party and State Institutions, which was presented to the First Session of

the 13th NPC, currently in session in Beijing between 5 and 20 March 2018.

The proposal does not provide details on timing. The reforms are expected to be confirmed this week and, if adopted, a new session of the State Council will be formed to consider the finer details of the merged antitrust authority including its structure and senior leadership after the NPC session concludes. It will take some time thereafter before the reforms are formally implemented.

Possible contenders to head the new agency include senior NDRC officials with a history of robust enforcement of the AML.

Implications

Further details of the merged antitrust authority have yet to be published. Therefore, it remains too early to predict the implications of the proposed reforms, although the leadership structure is likely to be instrumental. Generally speaking, however, change in China is typically gradual and we would expect any shift in approach to antitrust enforcement to be similarly gradual.

In the meantime, we expect the proposed reform to likely have four key implications:

- **Competition law becoming central to China's economy and development.** The reform underlines the increasing importance of competition in China, and its centrality to the continued development of China's market economy. According to the State Council's presentation to the NPC yesterday, the objective of the reform is to create a unified market oversight system in order to establish an open, orderly and fair competitive market in China. Consolidating China's antitrust enforcement powers is seen as an essential step to achieve this goal.

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- **Competition law enforcement expected to be streamlined.** The merger of the three authorities is expected to streamline competition law enforcement in China and encourage the development of consistent practices. For example, the allocation of jurisdiction between the NDRC and the SAIC has not always been clear-cut, as certain practices scrutinized by the authorities have both price- and non-price-related elements. Enforcement practices and guidelines adopted by the NDRC and the SAIC may also differ (such as in relation to the treatment of leniency applicants). Whilst we do not expect China's competition policy to fundamentally change overnight, we anticipate the reform to improve consistency, thereby streamlining antitrust enforcement in China.
- **Potential for enhanced enforcement and increased role for public interest interventions.** China's competition law enforcement has been increasingly robust in recent years. In 2017, MOFCOM imposed remedies on seven transactions, hitting a record high since the AML came into effect. On the conduct side, the NDRC and the SAIC have also been very active, pursuing high-profile investigations and imposing penalties on MNCs such as Qualcomm, Tetra Pak and various multinationals active in the healthcare, auto parts and bearings, roll-on, roll-off ocean shipping, and chemicals sectors as well as on several major domestic companies. Merging the three authorities under a single agency, empowered to protect the market and drive the Chinese government's broader market reforms, could result in more robust enforcement, although not necessarily on competition law grounds alone. With the antitrust authorities integrated into a larger, ministry-level agency with a broader policy portfolio, public and national interest may play a bigger role in future antitrust enforcement.
- **Robust enforcer.** It has been reported that one of the main contenders to lead the new antitrust agency is Mr. Xu Kunlin, the former Director General of NDRC's antitrust branch. A wave of high-profile investigations began under his administration, including against Qualcomm, culminating in a fine of approximately USD 975 million (approximately 8% of the company's turnover in China at the time).

Footnotes

1. The State Council is the supreme administrative body of the Chinese government. Its members consist of the Premier, Vice Premiers, State Commissioners, Ministers and other high-ranking officers.

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