China to Merge Antitrust Authorities

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Over the past weekend, the Chinese legislature decided on a major restructuring of governmental agencies - a process that may have a profound impact on antitrust enforcement in the country. The restructuring plan is being accomplished by the State Council - the equivalent of China’s cabinet - on 13 March 2018 and was approved by the legislature on 21 March.

Although there had been discussions and rumors about the government restructuring for a while, the noted and significant ramifications of the proposed reform measures were beyond the expectations of many commentators. It is clear that there will be major changes to the ministries and other institutions under the State Council.

As for antitrust is concerned, this focus lies on the new super market regulator - the State Administration for Market Supervision ("SAMs"). This new agency will assume the functions of the existing State Administration for Industry and Commerce ("SAIC"); the Administration of Industry and Commerce Inspection, and Quarantine ("AICQ"); and the China Food and Drug Administration ("CFDA"). It is also tasked to supervise the restructuring State Intellectual Property Office ("SIPO").

Importantly for the antitrust world, the new merging antitrust enforcement body will unite the National Development and Reform Commission ("NDRC"), SAIC, and the Ministry of Commerce ("MOFCOM") in one new antitrust bureau - SAMs.

In short, while the longer-term implications of the government reshuffle for the antitrust community are not yet clear, I would expect antitrust enforcement to continue after the government restructuring.

The new antitrust bureau and its appointed leadership will have to determine which and how many officials will join the bureau and its appointed leadership. On a high-level note, however, the new antitrust bureau will still face the same types of activities as NDRC's, except where they are not related to pricing, and

1. The NDRC Price Supervision and Anti-Monopoly Bureau, whose prohibition covers enforcement actions against restrictive agreements, abuse of dominance and self-preferential governmental practices that are related to pricing.
2. The AICQ and MOFCOM Antitrust Enforcement Bureau, whose enforcement relates to the same types of activities as NDRC's, except where they are not related to pricing.
3. The SIPO and SIPO-MOFSAIC Bureau, whose jurisdiction covers enforcement actions against restrictive agreements, abuse of dominance and anti-competitive government practices that are not related to pricing.
4. The NDRC Anti-Monopoly Bureau, whose enforcement relates to the same types of activities as NDRC's, except where they are not related to pricing.

The new antitrust bureau has the potential of slowing down the pace of on-going proceedings such as merger investigations. In some instances, however, we may see the opposite effect - an acceleration in procedures relating to on-going cases – if the officials in the existing authorities want to “clean desks” before moving to the new agency.

The new antitrust bureau also has the potential of speeding up the pace of on-going proceedings such as merger investigations. In some instances, however, we may see the opposite effect - an acceleration in procedures relating to on-going cases – if the officials in the existing authorities want to “clean desks” before moving to the new agency.

In the medium term, I would expect the SAMs antitrust bureau to get off to a slow start. It would be understandable for the SAMs antitrust bureau to focus initially on clearing backlogs and on-going investigations. In some instances, however, we may see the opposite effect - an acceleration in proceedings relating to on-going cases – if the officials in the existing authorities want to “clean desks” before moving to the new agency.

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It is probably too early to have a clear idea about the direction of future competition policies and enforcement priorities of the new antitrust bureau. We will demand the newly-merged SAMs antitrust bureau to provide more information. But also in which way new officials will join the bureau and its appointed leadership. On a high-level note, however, I would anticipate some degree of continuity in policy and enforcement action. For example, the healthcare and pharmaceutical sector will continue to be the focus of antitrust enforcement in the medium term.

In short, while the longer-term implications of the government restructuring for the antitrust community are not yet clear, I would expect antitrust enforcement to continue after the government restructuring.