

MEMORANDUM OF UNDERSTANDING ON
ANTITRUST AND ANTIMONOPOLY COOPERATION BETWEEN
THE UNITED STATES
DEPARTMENT OF JUSTICE AND
FEDERAL TRADE COMMISSION,
ON THE ONE HAND,
AND
THE PEOPLE'S REPUBLIC OF CHINA
NATIONAL DEVELOPMENT AND REFORM COMMISSION,
MINISTRY OF COMMERCE, AND
STATE ADMINISTRATION FOR INDUSTRY AND COMMERCE,
ON THE OTHER HAND

OBJECTIVES

The United States Federal Trade Commission, the United States Department of Justice (together the "U.S. antitrust agencies"); and the People's Republic of China National Development and Reform Commission, Ministry of Commerce, and State Administration for Industry and Commerce (together the "PRC antimonopoly agencies"),

Desiring to enhance the effective enforcement of their competition laws and policies by creating a framework for long-term cooperation between the U.S. antitrust agencies and the PRC antimonopoly agencies,

Recognizing the benefit of technical cooperation between the U.S. antitrust agencies and the PRC antimonopoly agencies in order to enhance an environment in which the sound and effective enforcement of competition law and policy supports the efficient operation of markets and economic welfare of the citizens of their respective nations,

Recognizing that the development of a well-functioning system for effectively implementing competition law and policy involves the respective antitrust or antimonopoly agencies, and also other government agencies, the judiciary, and the legal, business, and academic sectors, and

Recognizing that establishing good communications between U.S. and PRC government agencies on competition law and policy, including establishing this framework for cooperation between the U.S. antitrust agencies and the PRC antimonopoly agencies, will contribute to improving and strengthening the relationship between the United States and China,

intend to cooperate as follows:

STRUCTURE

The U.S. antitrust agencies and the PRC antimonopoly agencies are the counterparts of this Memorandum of Understanding ("Memorandum"), which sets out a framework for cooperation.

The framework for cooperation between the U.S. antitrust agencies and the PRC antimonopoly agencies is composed of two parts: the first is the joint dialogue among all parties to this Memorandum on competition policy at the senior official level (the “joint dialogue”) and the second is communication and cooperation on competition law enforcement and policy between individual U.S. antitrust agencies and PRC antimonopoly agencies.

With regard to the first part, unless otherwise agreed, the location of the joint dialogue should alternate between China and the United States, and the host should alternate among the relevant antitrust or antimonopoly agencies. The U.S. antitrust agencies and the PRC antimonopoly agencies intend to convene the joint dialogue periodically, in principle once a year. Based upon the initiative of either side, the parties to this Memorandum may establish ad hoc working groups under the joint dialogue to facilitate discussions on particular issues regarding competition policy and laws. The ad hoc working groups could be conducted in tandem with the joint dialogue or separately as agreed by the individual antitrust or antimonopoly agencies to satisfy their particular needs.

With regard to the second part, the U.S. antitrust agencies and each of the PRC antimonopoly agencies, individually, may also engage in communication and cooperation, separate from the joint dialogue, at the senior or working level.

No agency leads the cooperation under this Memorandum on behalf of each side. Each agency plans to appoint a liaison for the purpose of facilitating contact in furtherance of this Memorandum.

Communications between the agencies may be carried out by telephone, electronic mail, videoconference, meeting, or other means, as appropriate.

The U.S. antitrust agencies and the PRC antimonopoly agencies intend to notify the other promptly of significant changes regarding their authorities responsible for competition policy and law enforcement.

CONTENT

The U.S. antitrust agencies and the PRC antimonopoly agencies recognize that it is in their common interest to work together, including in the following areas, subject to reasonably available resources: (a) keeping each other informed of significant competition policy and enforcement developments in their respective jurisdictions; (b) enhancing each agency’s capabilities with appropriate activities related to competition policy and law such as training programs, workshops, study missions and internships; (c) exchanging experiences on competition law enforcement, when appropriate; (d) seeking information or advice from one another regarding matters of competition law enforcement and policy; (e) providing comments on proposed changes to competition laws, regulations, rules and guidelines; (f) exchanging views with respect to multilateral competition law and policy; and (g) exchanging experiences in raising companies’, other government agencies’ and the public’s awareness of competition policy and law.

Each agency recognizes that, when a U.S. antitrust and a PRC antimonopoly agency are investigating related matters, it may be in those agencies’ common interest to cooperate in

appropriate cases, consistent with those agencies' enforcement interests, legal constraints, and available resources.

The U.S. antitrust agencies and the PRC antimonopoly agencies plan to evaluate the effectiveness of the above-mentioned activities under this Memorandum on a regular basis to ensure that their expectations and needs are being met.

WORK PLANS

The U.S. antitrust agencies and each individual PRC antimonopoly agency intend to develop detailed work plans of cooperative activities under this Memorandum, which may include law enforcement capacity building and other activities, and to revise and update such work plans as necessary.

CONFIDENTIALITY

It is understood that the U.S. antitrust agencies and the PRC antimonopoly agencies do not intend to communicate information to the other if such communication is prohibited by the laws governing the agency possessing the information or would be incompatible with that agency's interests. Insofar as information is communicated, the recipient should, to the extent consistent with its laws, maintain the confidentiality of any such information communicated to it in confidence.

EFFECTIVE DATE

Cooperation under this Memorandum is effective as of the date of signature.

This Memorandum is intended to set forth an advisory framework. Nothing in this Memorandum is intended to create legally binding rights or obligations, to change existing law, contracts or treaties, to prevent the parties to this Memorandum from seeking or providing assistance to one another pursuant to other bilateral or multilateral agreements or arrangements, or to exclude other technical cooperation projects.

The parties to this Memorandum intend to consult regarding any questions concerning the understanding or implementation of this Memorandum.

Signed in Beijing on July 27, 2011, in five copies, in the Chinese and English languages, with both versions being equally official.

/s/ Jon Leibowitz
United States Federal Trade Commission

/s/ Christine A. Varney
United States Department of Justice

/s/ Peng Sen
PRC National Development
and Reform Commission

/s/ Gao Hucheng
PRC Ministry of Commerce

/s/ Zhong Youping
PRC State Administration for
Industry and Commerce