

Guidance for Case Cooperation between the Ministry of Commerce
and the Department of Justice and Federal Trade Commission
on Concentration of Undertakings (Merger) Cases

November 29, 2011

1. The Memorandum of Understanding on Antitrust and Antimonopoly Cooperation signed on July 27, 2011, sets out the framework for cooperation between, among others, the Ministry of Commerce (MOFCOM) and the Federal Trade Commission and Department of Justice (hereinafter referred to as the U.S. Antitrust Agencies).
2. When MOFCOM and either of the U.S. Antitrust Agencies are investigating the same merger, case cooperation between the investigating agencies may help improve the efficiency of their investigations, and thereby maintain competition in their jurisdictions.
3. Case cooperation is to be carried out in accordance with the laws and regulations applicable to each agency and within their respective mandates.
4. When MOFCOM and the relevant U.S. Antitrust Agency each deems it appropriate, as well as consistent with confidentiality obligations under their respective laws, they may decide to exchange information regarding a merger they both are investigating. The relevant agencies may decide to exchange information on such issues as the timing of their respective investigations and technical aspects of cases, such as definition of relevant market(s), evaluation of competitive effects, theories of competitive harm, economic analysis, and remedies.
5. Case cooperation does not prejudice each agency's independent decision-making with respect to its cases.
6. MOFCOM and the U.S. Antitrust Agencies should, to the extent consistent with their respective laws, maintain the confidentiality of any information communicated to them during the course of case cooperation in confidence.
7. MOFCOM and each U.S. Antitrust Agency intend to designate a contact person for receiving and facilitating requests regarding case cooperation. Information exchanges may be conducted by telephone, video conference, in-person meeting, or other appropriate means.
8. This Guidance is not intended to create any legally binding rights or obligations for any of the agencies, limit any agency's ability or discretion to engage in case cooperation with any other agency or institution, or prevent any of the agencies from seeking or providing information assistance to one another pursuant to other bilateral or multilateral arrangements.