

**PRACTICAL GUIDANCE FOR COOPERATION ON REVIEWING MERGER CASES  
BETWEEN DIRECTORATE-GENERAL FOR COMPETITION OF EUROPEAN COMMISSION  
AND STATE ADMINISTRATION FOR MARKET REGULATION OF P.R. OF CHINA**

**2019**

1. Pursuant to the Terms of Reference of the EU-China Competition Policy Dialogue signed between Directorate-General for Competition of European Commission and State Administration for Market Regulation of the People's Republic of China (hereinafter referred to as the "Sides"), the Sides formulate this Practical Guidance for Cooperation in Reviewing Merger Cases which are subject to the review of both Sides.
2. Cooperation in reviewing merger cases which are subject to the review of both Sides builds trust between the Sides' and their staff and is beneficial for the Sides, the merging parties and third parties.
3. Cooperation increases efficiency of investigations and reduces the burden on merging parties. It also increases transparency of the review process, in particular when authorities are able to share information at an early stage and to discuss investigation timetables at key stages of investigations with each other and with merging parties.
4. The Sides have a common interest in outcomes of merger reviews that are efficient, consistent and non-conflicting.
5. For the cases which are to be subject to the review of both Sides, the Sides have a common interest in establishing at an early stage and maintaining communication prior to, during or after the respective review procedure, in accordance with the relevant confidentiality requirements of the Sides, on issues of procedure and substance including issues such as timing of the review, definition of relevant market, theory of harm, competitive impact assessment and the design of remedies. The Sides should develop cooperation during the supervision and implementation of the conditionally approved cases.
6. When confidentiality waivers have been exchanged for the purpose of a merger review procedure and the Sides communicate information in accordance with the confidentiality waivers during the course of case cooperation, they will ensure the protection of business secrets and other confidential information.
7. The Sides may, where necessary, coordinate information requests to the merging parties and third parties, including exchanging draft questionnaires. The Sides

may also upon request offer assistance to the other Side, and in accordance with the relevant confidentiality requirements of the Sides and after acquiring a waiver, in cases where it is hard to obtain relevant timely and sufficient market information to assess a transaction.

8. The Sides may each designate a liaison officer for receiving and facilitating requests regarding case cooperation. The liaison officers will regularly exchange information regarding relevant cases in the pipeline for review giving the Sides a better opportunity to cooperate on the review of such cases as well as coordinate their views on relevant remedies.
9. The Sides will use this Guidance in accordance with the Sides' respective laws and enforcement mandate.
10. The Sides reserve full discretion in the implementation of this guidance and cooperation does not prejudice any Sides' independent decision-making with respect to its cases. Nothing in this document is intended to modify or create any enforceable rights.

This Practical Guidance is signed in Haikou on 7 May 2019 in two copies, each in English and Chinese.

**For the Directorate-General for  
Competition of the European  
Commission**

**Carles ESTEVA MOSSO**  
Deputy Director General



**For the State Administration for  
Market Regulation of the People's  
Republic of China**

**GAN Lin**  
Vice Minister



## 中华人民共和国国家市场监督管理总局与欧盟委员会竞争总司 关于经营者集中案件审查合作的实务指引

2019年

1. 根据中国国家市场监督管理总局和欧盟委员会竞争总司（以下简称“双方”）签署的《中欧竞争政策对话框架协议》，双方就双方均审查的经营者集中案件开展执法合作制定本实务指引。
2. 就双方均审查的经营者集中案件开展执法合作，有助于双方及其执法人员彼此建立信任，对双方、交易方以及第三方都是有益的。
3. 合作可提高审查效率，减少集中各方的负担，同时增加审查过程的透明度，尤其可使执法机构在早期阶段共享信息，并在审查的各主要阶段相互及与当事方讨论审查时间表。
4. 确保案件审查结果的有效性、一致性和非冲突性，符合双方的共同利益。
5. 就双方均审查的经营者集中案件，双方应在符合各自相关保密规定的前提下，在早期阶段就审查实质性和程序问题，如审查时间表、相关市场界定、损害竞争理论、竞争受影响评估和救济措施的制定等，建立沟通渠道，并在各自实施相关审查程序之前、期间或之后保持沟通，这符合双方的共同利益。双方可以在附条件案件监督执行过程中开展相关合作。
6. 当双方出于集中审查需要交换弃权声明并根据该声明在案件合作过程中交换信息时，双方对商业秘密和其他秘密信息应当承担保密义务。
7. 双方可在必要时，协调对并购方和第三方的信息要求，包括交换调查问卷草稿。当难以获取交易评估所需的及时和充分市场信息时，双方可在符合本方相关保密要求并获得企业弃权声明的前提下，应另一方请求向其提供协助。
8. 为了确保案件合作顺利进行，双方可以指定一名联络官员，负责接收和处理对方案件合作请求。负责双方联络的人员定期交换相关正在审查的案件信息，以便于双方在审查执法中就有关案件更好地开展合作，就相关救济措施进行协调。
9. 双方执行本指引时，应遵守各自相关法律和执法授权。

10. 双方在本指引的实施上享有完全的自由裁量权。开展案件合作，不得妨碍任何一方对案件审查独立做出决定的权力。本指引无意修改或创设双方的执法权。

本《实务指引》于 2019 年 5 月 7 日在海口签署，一式两份，每份文本均用中文和英文写成。

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