

TERMS OF REFERENCE OF THE EU - CHINA COMPETITION POLICY DIALOGUE
BETWEEN ON THE ONE SIDE
THE DIRECTORATE-GENERAL FOR COMPETITION OF THE EUROPEAN COMMISSION
AND ON THE OTHER SIDE
**THE STATE ADMINISTRATION FOR MARKET REGULATION OF THE PEOPLE'S REPUBLIC OF
CHINA**

2019

The Terms of Reference of the EU-China Competition Policy Dialogue were signed with the Ministry of Commerce on 6 May 2004. They established a permanent forum for consultation and transparency to increase the understanding and awareness of policy approaches as well as to promote exchanges and cooperation in the area of competition policy and legislation, including the Practical guidance for cooperation on reviewing merger cases.

The Memorandum of Understanding on Cooperation in the area of anti-monopoly law was signed with the National Development and Reform Commission and the State Administration of Industry and Commerce on 20 September 2012. It agreed to strengthen cooperation and coordination in the area of competition and Anti-Monopoly legislation.

The State Council of the Peoples' Republic of China decided on 13 March 2018 to establish the State Administration for Market Regulation.

The Directorate-General for Competition of the European Commission and the State Administration for Market Regulation of the People's Republic of China hereinafter referred to as the "Sides".

Considering the importance of dialogue, cooperation and coordination between the Sides with a view to enhance an effective, transparent and non-discriminatory enforcement of the competition rules of both jurisdictions, have reached the following understanding:

1. Scope and Objective

- 1.1. The primary objective of these Terms of Reference is to establish on a voluntary basis a dialogue between the Sides on competition legislation and enforcement in both jurisdictions in an aim to strengthen cooperation and coordination between the Sides in this area. The aim of the dialogue is to increase mutual understanding and awareness of current and expected developments in competition policy and enforcement in the respective jurisdictions in the shared understanding that effective competition policy and enforcement is an important factor in ensuring consumer welfare, in providing a level playing field as well as in furthering legal certainty for the business community in the market.
- 1.2. The Terms of Reference are based on the principles of equality and mutual benefits and should promote mutual considerations in a coordinated manner.

2. Structure

- 2.1. The Sides intend to hold a dialogue at least once a year. Meetings should alternate between Brussels and Beijing unless otherwise decided. The Sides aim to take advantage of the opportunities to meet that are offered by forums of dialogue that are already in place between the EU and China and in which both Sides participate.
- 2.2. The dialogue should be co-chaired by a senior official in charge of competition policy nominated by each Side and comprised of appropriate officials of each Side, accompanied by officials from other relevant authorities, as may be appropriate.
- 2.3. The contact points are the Directorate for Policy and Strategy of the Directorate-General for Competition and the Anti-Monopoly Bureau of the State Administration for Market Regulation.
- 2.4. Each Side envisages to promptly inform the other Side of all institutional changes of their respective authorities.
- 2.5. The Sides may establish ad hoc working groups to facilitate discussions at expert level.

3. Content

- 3.1. Both Sides consider that it is in their common interest to exchange views on matters regarding competition policy and enforcement in their respective jurisdictions, subject to reasonably available resources. The following exchanges may be envisaged:
 - (a) Exchange of views on developments in competition law and on their experience in the enforcement of the law;
 - (b) Exchange of experiences on the functioning of the Sides' competition authorities;
 - (c) Exchange of views with respect to competition related multilateral initiatives;
 - (d) Exchange of experiences on competition advocacy including on raising awareness of companies and the wider public of competition policy;
 - (e) Exchange of views and experiences regarding technical cooperation between the EU and China in the area of competition policy and enforcement.
 - (f) Formulation of practical guidance documents to facilitate cooperation with respect to the concrete enforcement of their respective competition laws.
- 3.2. Should the two Sides pursue enforcement activities concerning the same or related matters, they may exchange non-confidential information, experiences and views on the matter and they would endeavour to coordinate their enforcement activities, where appropriate and practicable.

4. Assistance to be provided between the Sides

- 4.1. If one of the Sides believes that anti-competitive behaviour carried out on the territory of the other Side adversely affects competition in its territory, it may request that the other Side initiates appropriate enforcement activities as per their applicable competition law.
- 4.2. The requested Side may, in accordance with the requirements of its legislation, consider the possibility of initiating enforcement activities or expanding on-going enforcement activities with respect to the alleged anti-competitive behaviour,

identified by the requesting Side. The requested Side may inform the other Side about the results of such consideration.

- 4.3. Nothing in this Terms of Reference limits the discretion of the requested Side to decide whether to undertake enforcement activities with respect to the anti-competitive actions identified in the request, or may preclude the requesting Side from withdrawing its request.

5. Avoidance of conflicts

- 5.1. The Sides acknowledge that it may be in their common interest to minimize any potentially adverse effects of one Side's enforcement activities on the other Side's interests in the application of their respective competition laws.
- 5.2. Should one Side inform the other Side that enforcement activities of the latter may affect the informing Side's interests in its application of its competition law, the other Side may endeavour to provide an opportunity to exchange views and conduct consultations on the issues raised by the informing Side.

6. Technical cooperation and capacity building

- 6.1. In the framework of the EU-China cooperation projects, both parties may endeavour to support the objectives of the Dialogue with appropriate competition-related technical assistance and capacity building activities such as the organisation of training, seminars, studies etc.

7. Existing laws and confidentiality

- 7.1. Cooperation between the Sides under this Terms of Reference is subject to the respective laws of the EU and China.
- 7.2. No Side is required to communicate information to the other Side if such communication is prohibited by its laws or regulations or would be incompatible with the interests of that Side. In so far as information is communicated, the receiving Side should, to the extent consistent with its laws, maintain the confidentiality of any such information communicated to it.

8. Costs

- 8.1. Each Side covers its own costs, including translation, travel and accommodation.

9. Final provisions

- 9.1. The working languages under this Terms of Reference are English and Chinese.
- 9.2. The Sides may apply the provisions of this Terms of Reference on a voluntary basis.
- 9.3. The Sides should discuss between them any questions arising from the present Terms of Reference, including questions on the interpretation or application of the present Terms of Reference in as timely a manner as circumstances permit.
- 9.4. The provisions of this Terms of Reference are not designed or intended to create legal rights or obligations under international law.
- 9.5. The first period of operation of this Terms of Reference will be five years as of the date of signature. The Sides may review the operation of this Terms of Reference before the end of the first period.

9.6. These Terms of Reference may be discontinued by each Side by written notice to the other Side. The Side giving the notice should strive to do so sixty days before such discontinuation.

The present Terms of Reference is signed in Brussels on 9 April 2019 in two copies, each in English and Chinese.

**For the European Commission
(Directorate-General for Competition)**

**For the State Administration for
Market Regulation**



Margrethe VESTAGER
Commissioner



Zhang MAO
Minister