And then there was one: China merges its antitrust agencies, and other legal developments

May 17, 2018

There have recently been several significant legal developments in China, including: the merger of three antitrust agencies into a new single agency for all antitrust enforcement; new regulations issued by the CBRC to accelerate the liberalisation of China's banking sector for foreign investment; and the formalisation of State Council regulations on foreign direct investment in China's Free Trade Zones (FTZs), confirming the previous foreign investment measures of last year.

Merger of antitrust agencies

On 17 March 2018, China's National People's Congress approved the merger of China's antitrust enforcement agencies into a new, single agency: the State Administration for Market Regulation (SAMR). Before the merger, China's antitrust enforcement was divided between three authorities: the National Development and Reform Commission (NDRC), which was responsible for price-related antitrust violations; the Ministry of Commerce (MOFCOM), in charge of merger control; and the State Administration for Industry and Commerce (SAIC), responsible for non-price related violations. SAMR assumes both the antitrust investigation functions and the merger review functions of these agencies.

The merger intends to improve the efficiency, predictability and transparency of antitrust enforcement by resolving the current ambiguity in rules and in enforcement between the different antitrust agencies. The new agency creates more certainty and consistency in antitrust enforcement, which is beneficial for businesses active in China. Under the new regime, the State Council directly supervises the SAMR, which demonstrates China's determination for better antitrust enforcement. Consequently, the merger is expected to result in more enhanced antitrust enforcement. We recommend that parties active in China become aware of these changes and remain alert for future developments in China's antitrust enforcement.

Liberalisation of foreign investment in China's banking sector

In December 2017, the regulator formerly known as the China Banking Regulatory Commission (CBRC, merged with the China Insurance Regulatory Commission on 13 March 2018 into the CBIRC) announced plans to open up China's banking sector to foreign investment. On 13 February 2018, the CBRC followed up on this announcement by publishing the Decision on Amending the CBRC's Implementation Measures for the Administrative Licensing Matters of Foreign-Invested Banks (CBRC Decision). The CBRC Decision helps streamline foreign investment into the banking sector by clarifying the administrative licensing procedures and by replacing numerous approval requirements with reporting requirements.

At the Boao Forum for Asia on 11 April 2018, Yi Gang, the newly appointed governor of the People's Bank of China, announced measures to further open up the banking sector. These measures are to be implemented this year. On 27 April 2018, new implementing regulations were issued on the relaxation of foreign investment in banking institutions. The regulations are a major step forward in opening up China's financial sector to foreign investment.

These consecutive changes show that China is serious about its foreign investment liberalisation and market access within the banking sector, which could lead the way to more equal treatment between foreign and domestic investors.

Formalisation of regulations on foreign investment in Free Trade Zones

On 9 January 2018, the Chinese State Council released the Decision on Temporarily Adjusting Relevant Administrative Regulations, State Council Documents and Departmental Rules Approved by the State Council within Free Trade Zones. This decision is meant to smooth the implementation of the 2017 FTZ Negative List and the Catalogue for the Guidance of Foreign Investment Industries. As seven new FTZs opened in 2017, the decision updates its 2016 predecessor and now applies to all 11 FTZs in China.

While the decision merely formalises existing regulations, it confirms the relative liberalisation of FDI in China and the increasing removal of restrictions. The decision signals that industry regulators are set to move forward with the proposed regulations. We expect industry-specific and regional-specific regulations to be announced soon.