

Client Alert

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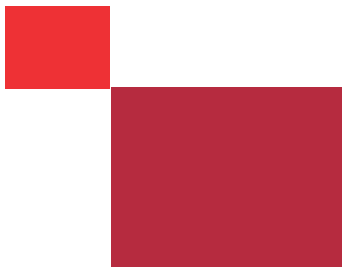
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Chinese antitrust authority urged companies to boost antitrust compliance management

The State Administration for Market Regulation ("**SAMR**") will launch new measures to boost antitrust compliance very soon, including encouraging companies to implement compliance programme and providing financial rewards scheme for whistle-blowers. The move is part of the growing emphasis by the China government to advocate corporate governance and a culture of legal compliance.

What is new?

- On 28 November 2019, SAMR released for public comment a *Draft of Anti-Monopoly Compliance Guidelines for Undertakings* (the "**Draft Antitrust Compliance Guidelines**"). According to the draft:
 - companies doing businesses in China may develop and implement antitrust compliance programs under the *Anti-Monopoly Law of China* (the "**AML**") and related regulations. Companies with resources and capabilities are encouraged to establish compliance departments or at least to include antitrust compliance into the existing legal and compliance framework;
 - the compliance management functions are construed broadly, including setting up the compliance framework, delivering compliance training, conducting internal "antitrust health checks", mitigating any risks and responding antitrust enforcement;
 - the compliance management should be construed as "from top to bottom" with senior management of the company to assume leadership roles and overall duties. Compliance departments should have necessary "independence" and be equipped with "authority" to implement compliance management;
 - companies are encouraged to develop frameworks to "punish" non-compliance and to improve compliance incentives through "rewards" and to have internal whistle-blower reporting channels, with protection afforded to whistle-blowers against retaliation;
 - companies may report development and implementation of compliance programs to the authority, but has not clarified whether such notifications may lead to consultations with SAMR regarding the compliance program's structure, content and implementation.
- In fact, before launching the Draft Antitrust Compliance Guidelines, SAMR had proposed to introduce a reward scheme for whistle-blowers. On 19 November 2019, SAMR published a draft of the *Interim Measures*





on Rewards for Complaints against Significant Illegal Conduct in the Market Regulation Field (the "Draft Reward Measures").

- The Draft Reward Measures provide a unified set of rules to offer financial incentives for whistle-blowers to obtain rewards by reporting "significant illegal conducts" for violations within the jurisdiction of SAMR. Among other things, "violations of the AML" have been explicitly included within the scope of their application.
- Only individual persons qualify for the rewards, incentivizing employees to report wrongdoing by their companies.
- The rewards for whistle-blowers can be as much as 5% of the amount of the fine and the illegal gains imposed on the company up to RMB 2 million (approx. USD 284,000).

Key takeaways

- The Draft Antitrust Compliance Guidelines do not add any substantive rules on top of the existing laws and regulations, so there is no change to what is prohibited under the AML.
- The primary goal of the Draft Compliance Guidelines is to encourage the establishment a culture of compliance under the pre-existing legal obligations.
- It is expected that the Draft Reward Measures could increase the likelihood of having employees report anti-competitive conduct to SAMR. Companies could consider establishing or improving internal whistle-blowing channels and conducting antitrust health check, which could help to identify and mitigate any risks before any complaints are made to the enforcement agency. .
- The Draft Antitrust Compliance Guidelines, unlike the recent compliance guidelines issued by the Department of Justice in U.S., do not explicitly provide that an existing compliance program could be considered as a mitigating factor in penalties. However, the developing social credit system¹ in China has clearly delivered the message that there would be more transparency with respect to the compliance status of business operators and may also work act as a deterrent against non-compliance.
- Companies active in China should be aware that there are unique challenges to antitrust risk management in China. Even for companies that have an existing global antitrust compliance program, they should consider whether the global program needs to be localized to implement a culture of effective compliance in their China operations.

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¹ See our previous client alert [Are you ready for China' Social Credit System?](#)