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# Handling Overseas and China Anti-Monopoly Investigations

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# Globalization of antitrust enforcement

- Occurring rapidly, especially for cartels
  - Against one set of conduct affecting global markets
  - Or against parallel/similar conduct across various parts of a global business
- Result is multiple investigations around the world
  - Global coordination and consistency is critical
  - But differences in laws and procedures
- China involvement → jurisdiction here
  - A key market
  - A critical link in most supply chains
  - Effects on the China market and/or domestic industry
    - as suppliers, customers, competitors

# Critical first steps

- Initial handling and prior preparation
  - Awareness that investigation is coming
    - Raids; extremely short response times for information demands
    - Limited opportunity to convince investigators
    - First notice may come from investigative actions overseas
      - Close global internal coordination needed
  - Quick, appropriate response to investigation
    - Full cooperation with regulators
    - Preserving and developing defenses, and not making things worse – in China or elsewhere
  - Both require extensive advance preparation
    - Trainings; compliance and reporting culture; identifying problems proactively; enabling in-house teams
    - Want internal investigation before agency investigation

# Substance

- Is there really a problem?
  - Not only about cartels
- What is its scope?
  - Affected sales/market in China?
  - China involvement?
  - Facts/evidence in China?
- Responsive arguments/evidence
  - Need to decide very quickly what approach to take
  - Very little time to get facts straight
  - Various approaches, including:
    - Didn't do it
    - Not a violation
    - Unauthorized
    - Limited effects
    - Already remedied

# Process

- Preliminary or threshold issues
  - Handling potentially implicated personnel
  - “Upjohn warnings”
  - Separate counsel
  - Document retention
  - Handling company documents and information
- Providing information to authorities
  - Some cross-jurisdiction issues
    - Restrictions on disclosure
    - Differences in discoverability
    - Privilege and other protections
  - In US, for example, criminal enforcement brings more aggressive investigative tools
  - Burden and cost issues

# Resolution and results

- Leniency
  - A very competitive race
  - Different procedures, risks, benefits
  - Different coverage scope
  - Disadvantages of being out of sync
- Remediation and other options
- Penalties
  - Fines
  - Criminal enforcement against individual executives
  - Effects / company involvement in each jurisdiction
  - Cooperation vs. obstruction, and other factors
- Follow-on problems