

Memorandum of Understanding
on a dialogue
in the area of the State aid control regime and the Fair
Competition Review System

between
on one side

The Directorate-General for Competition of the European Commission

and
on the other side

The National Development and Reform Commission
of The People's Republic of China

The Directorate – General for Competition of the European Commission and the National Development and Reform Commission of the People's Republic of China hereinafter referred to as the “Sides”.

Having regard to the consideration that the aim of the State aid control regime and the Fair Competition Review System is to prevent public policies from distorting and restricting competition while maintaining fair market competition and promoting a unified market.

Having regard to the mutual benefit for both Sides in a dialogue where they exchange experiences on how to optimise and steer the use of State resources to promote the efficient and sustainable economic development of both economies.

Having regard to the importance of having a dialogue between the Sides on the enhancement of an effective, transparent and non-discriminatory state aid control and fair competition review.

the Sides have reached the following understanding:

1. Scope and Objective

- 1.1. The primary objective of this Memorandum of Understanding is to establish a forum of consultation and transparency between the Sides on State aid control regime and the Fair Competition Review System, and to strengthen cooperation and coordination between the two Sides in this area (hereafter the dialogue). The ultimate aim is to increase mutual understanding and awareness of current and forthcoming trends and expected developments of relevant policy in their respective jurisdictions in the

understanding that State aid control is an important factor in ensuring consumer welfare and in providing a level playing field as well as legal certainty for the business community in the market. Without prejudice to the rights of the European Union and China under the WTO to address similar issues, this dialogue at technical level shall also contribute to smooth and sustainable trade relations between China and the EU.

- 1.2. The Memorandum of Understanding is based on the principles of equality and mutual benefits and should promote mutual considerations in a coordinated manner.

2. Structure

- 2.1. The dialogue, which will be co-chaired by a senior official in charge of respectively State aid control or fair competition review policy nominated by each administration, will be comprised of appropriate officials of each Side, accompanied by officials from other relevant authorities, as may be appropriate.
- 2.2. The contact points will be the Directorate for Policy and Strategy of the Directorate-General for Competition and the Bureau of Price Supervision and Anti-Monopoly of the National Development and Reform Commission. Any further activity or set up stemming from this dialogue should be taken by consensus. Each Side will also promptly notify the other of all changes of their responsible authorities for State aid control or fair competition review. In particular, the Sides will make sure that any modifications on the competence of the EU authorities in charge of State aid control or the Chinese authorities in charge of fair competition review will be adequately reflected in the structure of the dialogue.
- 2.3. The Sides, as part of the dialogue, may establish *ad-hoc* working groups to facilitate discussions at expert level.
- 2.4. The dialogue should take place at least once a year. Meetings are to alternate between Brussels and Beijing unless otherwise decided. The Sides will take advantage to the maximum of the opportunities to meet granted by forums of dialogue already in place between the EU and China in which both Sides participate.

3. Content

- 3.1. In view of the longstanding EU experience in State aid control and the idea set forth by China to implement a fair competition review system. The following exchanges can be envisaged:
 - (a) Exchange of views on developments in state aid control and fair competition review legislation and on their experience in the enforcement of this legislation;
 - (b) Exchange of experiences on the enhancement of the operation of the Sides' State aid control and fair competition review authorities;
 - (c) Exchange of views with respect to multilateral state aid control and fair competition review initiatives;
 - (d) Exchange of experiences on State aid control advocacy including on raising awareness of authorities, companies and the wider public of State aid control and fair competition review;
 - (e) Exchange of views and experiences regarding a coordinated approach to technical cooperation between the EU and China in the area of state aid control and fair competition review.

3.2. Both Sides will endeavour to support the objectives of this Memorandum of Understanding with appropriate and coordinated technical cooperation activities making efficient use of available resources.

4. Existing laws and confidentiality

4.1. Cooperation between the Sides under this Memorandum of Understanding is subject to the respective laws of the EU and China.

4.2. No Side is required to communicate information to the other if such communication is prohibited by the laws or regulations of the EU and China possessing the information or would be incompatible with the interests of that Side in the application of its laws. In so far as information is communicated, the recipient should, to the extent consistent with its laws, maintain the confidentiality of any such information communicated to it in confidence.

5. Costs

5.1. Each Side covers its own costs, including transportation costs for international travelling, travelling between cities and accommodation.

6. Final provisions

6.1. The working languages under this Memorandum of Understanding will be English and Chinese.

6.2. The Sides will apply the provisions of this Memorandum of Understanding on a voluntary basis.

6.3. The provisions of this Memorandum of Understanding are not designated or intended to create legal rights or obligations under international law.

6.4. The first period of operation of this Memorandum of Understanding will be five years as of the date of signature. The Sides will review the operation of this Memorandum of Understanding before the end of the first period.

6.5. Either side may terminate the Memorandum of Understanding by written notice to the other side and will strive to do sixty days before the date of such termination.

The present Memorandum of Understanding is signed in Brussels on 2nd June 2017 in two copies, both in English and Chinese.

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



Margrethe VESTAGER
Commissioner

**For the National Development and
Reform Commission**



He Lifeng
Chairman

欧盟委员会竞争总司与中华人民共和国国家发展和改革委员会
关于在国家援助控制制度和公平竞争审查制度领域建立对话机制的
谅解备忘录

“欧盟委员会竞争总司”与“中华人民共和国国家发展和改革委员会”，以下简称“双方”，

考虑到国家援助控制制度和公平竞争审查制度都是为了防止公共政策排除限制竞争，促进统一市场建设，维护市场公平竞争。

考虑到通过对话交换经验以优化和引导国家资源以促进双方经济发展的效率和可持续性符合双方的利益，

考虑到双方实行高效、透明和非歧视的公平竞争审查制度和国家援助制度对话十分重要，

双方就以下内容形成谅解：

1. 范围和目标

- 1.1. 本谅解备忘录的主要目标是就国家援助控制制度和公平竞争审查制度为双方建立透明的协商论坛，并加强双方在此领域的合作与协调（以下简称“对话”）。鉴于国家援助控制和公平竞争审查是保证消费者福利，向市场主体提供公平竞争环境和法律确定性的重要因素，本备忘录的最终目的是增进相互间对制度当前情况、未来发展趋势以及在各自管辖区内发展预期的理解和认识。在不损害欧盟与中国在 WTO 的框架下处理类似问题的权利的前提下，本对话在技术水平也应有助中国和欧盟之间平稳和可持续的贸易关系。
- 1.2. 本谅解备忘录基于平等与互利的原则并应该通过协作的方式促进双方的考量。

2. 结构

- 2.1. 对话由各自指定的负责国家援助控制事务或公平竞争审查的高级别官员共同主持，由双方合适的官员组成，并在可能适当的情况下，其他相关部门的官员也可出席。
- 2.2. 由欧盟竞争总司政策和战略司和国家发展和改革委员会价格监督检查与反垄断局担任联络机构。任何活动以及为实现本对话目的而建立的工作

机制等，都应通过共识达成。一方的相关机构在国家援助控制或公平竞争审查方面的职责发生任何变化，都应及时通知另一方。特别地，双方应保证在欧盟的国家援助控制部门或中国的公平竞争审查部门有所调整的时候，这些变化应充分体现在对话的结构中。

2.3. 双方可以成立专项工作组以便利专家层面的讨论。

2.4. 对话应至少每年召开一次。除非另有决定，会议应在北京和布鲁塞尔轮流召开。双方应最大限度地利用双方都参加的现有的中欧之间的对话机制的机会开展会面。

3. 内容

3.1. 由于欧盟在国家援助控制领域具有长久的经验，以及中国在实施公平竞争审查制度上的理念，双方认识到加强对话符合共同的利益。可以设想以下内容的交流：

(a) 就国家援助控制制度和公平竞争审查制度的立法进展和执法经验交换意见。

(b) 就双方国家援助控制和公平竞争审查部门的运行交换经验。

(c) 就开启多边的国家援助控制或公平竞争审查倡议交换意见。

(d) 就倡导国家援助控制或竞争审查，包括提升政府部门，公司以及公众对国家援助控制和公平竞争审查的认知交换经验。

(e) 就双方技术合作的协调方法交换意见和经验。

3.2. 双方应致力于支持本谅解备忘录目标的达成，并协调技术合作的活动并高效利用现有资源。

4. 现有的法律及保密

4.1. 双方就本谅解备忘录的合作应遵守中国和欧盟的法律。

4.2. 对于被欧盟和中国相关法律法规所禁止交流的信息，或按照法律规定不符合另一方利益的信息，各方均不应向对方提出信息交流的请求。在信息被交换的情况下，接收方应按照法律对该类信息的保密规定，最大限度地对信息进行保密。

5. 费用

5.1. 各方承担各自的开支，包括国际交通，城市之间的交通以及住宿费用等。

6. 最终条款

6.1. 本谅解备忘录下的工作语言是中文和英语。

6.2. 双方对本谅解备忘录的采纳以自愿为基础

6.3. 本谅解备忘录的条款无意或不旨在制造现行国际法律条款下的法律义务。

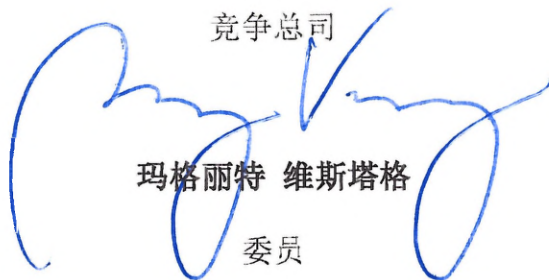
6.4. 本谅解备忘录自签署之日起生效，第一个有效期为 5 年。双方应在本谅解备忘录第一个生效期满前对其执行情况进行审议。

- 6.5. 一方若终止本谅解备忘录需通过书面通知的形式知会另一方，并应尽量在终止前给予 60 天的时间。

本谅解备忘录与于 2017 年 6 月 2 日 签署于布鲁塞尔。中英版本一式两份。

欧盟委员会

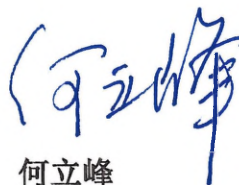
竞争总司

A large, stylized handwritten signature in blue ink, belonging to Margrethe Vestager.

玛格丽特 维斯塔格

委员

国家发展和改革委员会

A handwritten signature in blue ink, belonging to He Lifeng.

何立峰

主任