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International cooperation in solving antitrust issues

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One of the first steps in planning a strategy in an international transaction will be to establish a globally coordinated team of experts to deal with merger control issues and to navigate the transaction through all involved jurisdictions. This team of experts could be either a big law firm (the one which operates globally and has offices in major jurisdictions) or a network of independent high quality law firms (international networks are becoming more and more popular).

The second important step will be to adopt a well-thought-out strategy which will be followed from start to finish. The most successful strategy is to prepare a coherent substantive antitrust story which will be presented to domestic antitrust agencies in each country as well as consistent arguments to which all parties to the merger will adhere. This antitrust story must be reviewed and analysed by lawyers in respective countries. A good antitrust story must be true in all details but also it has to be convincing.

Once adopted, the story should not be changed at any point. Good coordination among lawyers in respective countries, especially in preparing the antitrust story, is vital to obtaining a clearance.

Even if the antitrust story is good and solid, naturally it is not sufficient to obtain clearance. We will not give you now an exact answer what is the right approach to merger control in your case. It depends on the circumstances and you will need to seek professional help. While designing a global strategy for a relatively easy transaction may be simple, a more sophisticated approach will be required to make a plan of action for a merger on a difficult market, especially in a case of a merger which involves remedies in one or more countries.

There is no “one size fits all” solution but definitely, being pro-active is key. For maximum effect, the parties need to think about all aspects upfront. The lawyers will need to decide whether to start obtaining clearance in one jurisdiction and then use it to engage with other antitrust agencies or whether to apply to all agencies at the same time.

All depends on the circumstances. The parties must be aware that when they supply data to one agency they are effectively supplying it to several others at the same time. This could be a benefit or a hazard – depending on a situation.

