



# Antitrust in China and across the region

Quarterly Update: April to June 2015

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**C H A N C E**

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Quarterly Update: April to June 2015

In China, the second quarter of 2015 has seen another record number of mergers reviewed – 91 cases, all cleared unconditionally, making it nearly a year since remedies were last imposed in a merger case.

On the enforcement side in China, there have been a number of fines imposed at provincial level, most notably a fine of RMB 358 million (USD 59 million) on Mercedes Benz and its dealers in Jiangsu province for resale price maintenance. Otherwise, enforcement activity by both NDRC and SAIC (and their local counterparts) has been directed at domestic companies, with intervention in key services such as water, public transport and telecoms.

More noteworthy have been NDRC's policy announcements and initiatives. In June, NDRC announced it was relaxing price control in the pharmaceutical sector but at the same time launched a six month antitrust investigation into pricing practices in that sector. In addition, shortly after SAIC finalized its guidelines on the abuse of dominance and intellectual property rights, NDRC started work on preparing its own guidelines on the same topic. NDRC is also developing guidelines for the auto industry as well as some further procedural guidance.

Across the region, strengthened international cooperation has been a common theme, with a collaborative agreement and memorandum of understanding signed by authorities in China, Australia and Japan, and the widely reported success of the working relationship between the US, South Korea and China in the Applied Materials / Tokyo Electron merger review.

Finally in June, the Philippines became the latest country in the region to pass a new competition law, which will prohibit anti-competitive agreements and mergers and the abuse of a dominant position as well as criminalising some types of cartel behaviour.

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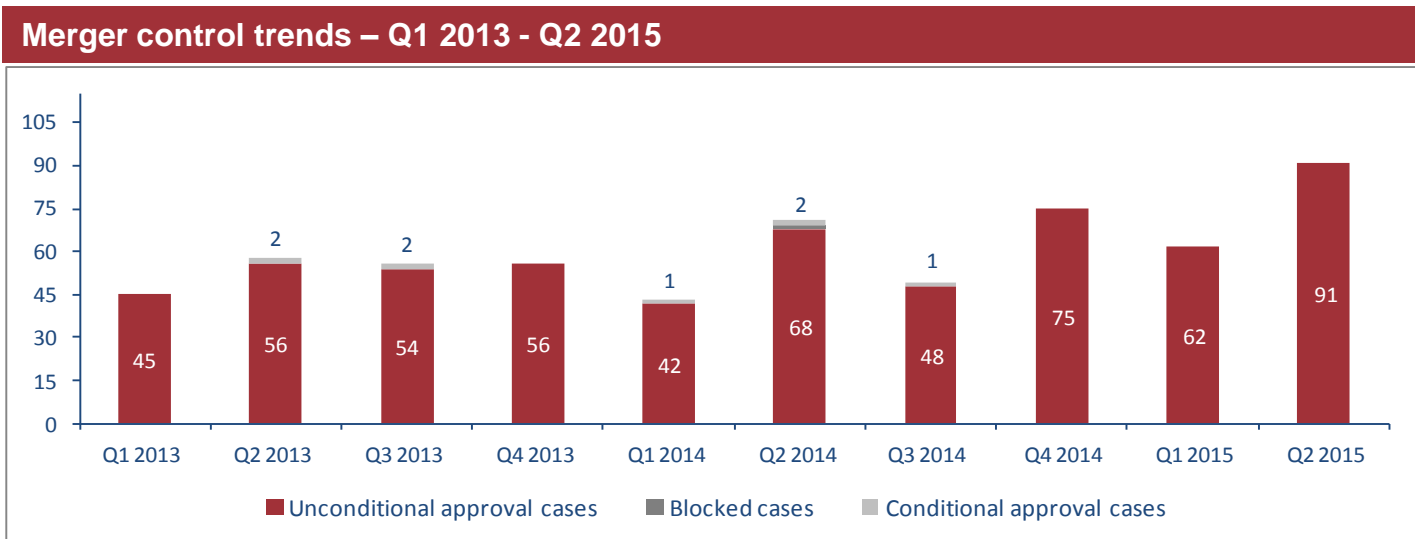




# Merger Control

## How many cases have there been?

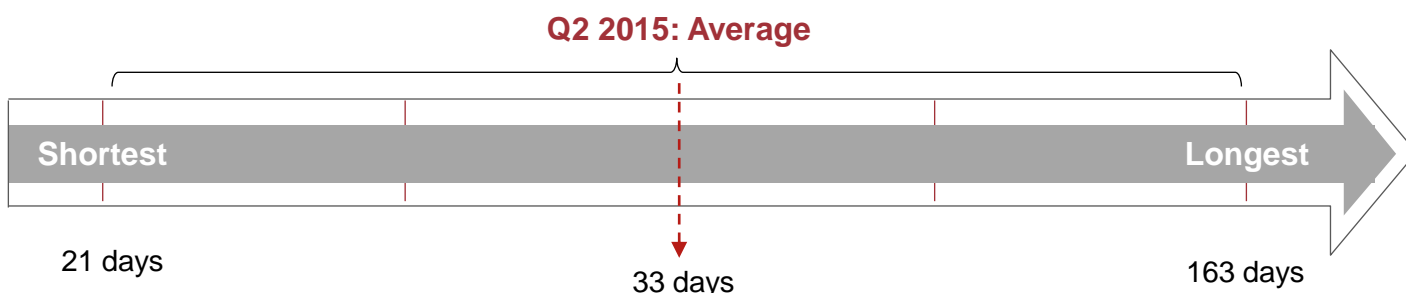
China’s Ministry of Commerce (MOFCOM) issued 91 merger decisions in the second quarter of 2015, an increase of nearly 30% on the second quarter of 2014. All were cleared without conditions. More than 75% of these cases were notified under the simplified procedure.



## Simplified procedure: How quick is the review period?

MOFCOM’s simplified procedure was introduced in April 2014 and has a non-binding target review period of 30 days for qualifying cases.

Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
Q2 2014	19 days	1.4%	0
Q3 2014	26 days	44.9%	3
Q4 2014	28 days	58.7%	4
Q1 2015	29 days	69.4%	11
Q2 2015	33 days	76.9%	19

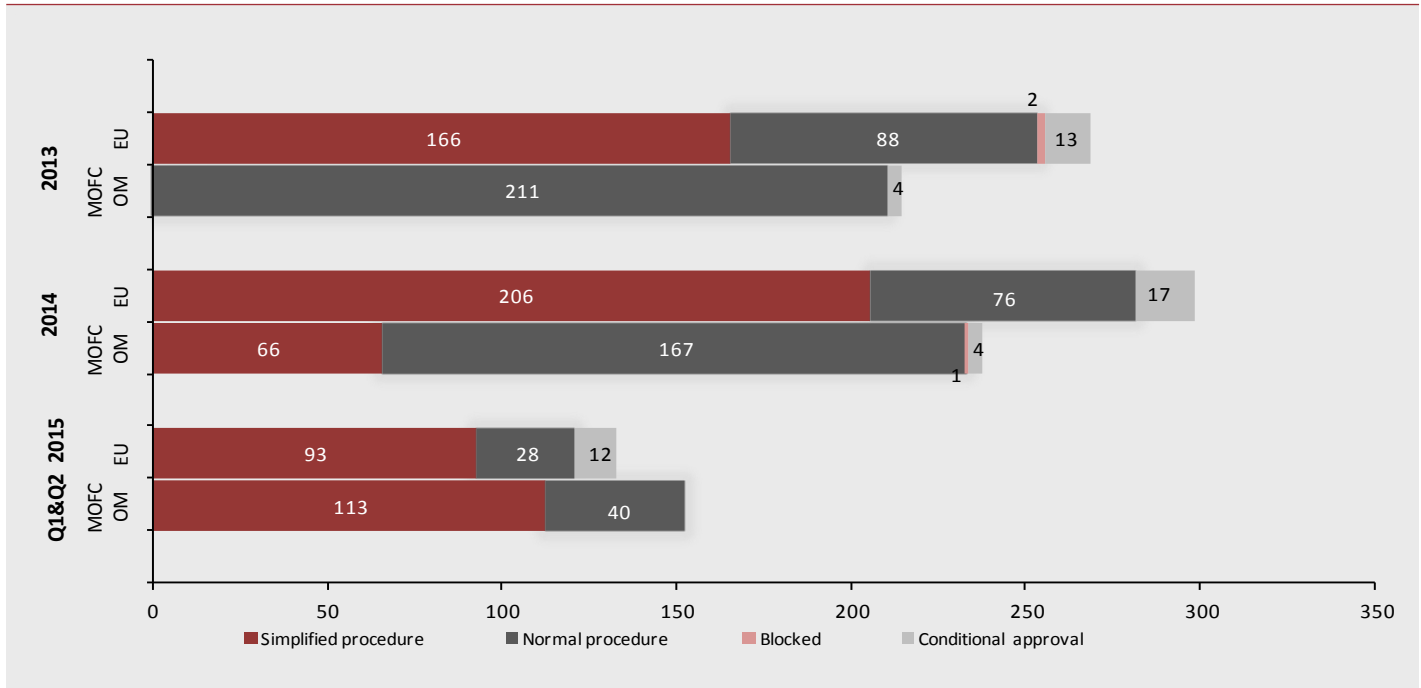




# Merger Control (continued)

## How does China compare internationally?

### Comparison with EU - 2013 - Q2 2015



## Other news

### Reforms to MOFCOM’s internal procedures

The success of the simplified procedure has led to a steady increase in the number of filings submitted to MOFCOM and increased expectations that (for simple cases at least) the review period will be in line with other major jurisdictions. At the same time, MOFCOM (like all other Government agencies in China) is subject to restrictions on increasing headcount, which has led to MOFCOM making a number of changes to its internal procedures in order to increase its efficiency. These are currently being rolled out and should provide more consistency throughout the review process and between transactions.

### MOFCOM continues to strengthen ties with overseas antitrust authorities

In an official statement released in April, MOFCOM reported that it had consulted and worked closely with the Department of Justice in the US (DoJ) and the Korea Fair Trade Commission during its review of the ultimately abandoned Applied Materials / Tokyo Electron merger. Monthly calls were reportedly held between MOFCOM and the DoJ throughout the review process. In the last quarter, MOFCOM also entered into a new memorandum of understanding (MoU) with Canada’s Competition Bureau. The MoU was signed in May and is intended to enhance co-operation between the two authorities on antitrust matters. This is the fifth such MoU with a foreign competition agency entered into by MOFCOM.



# Antitrust Investigations

## The National Development and Reform Commission (NDRC)

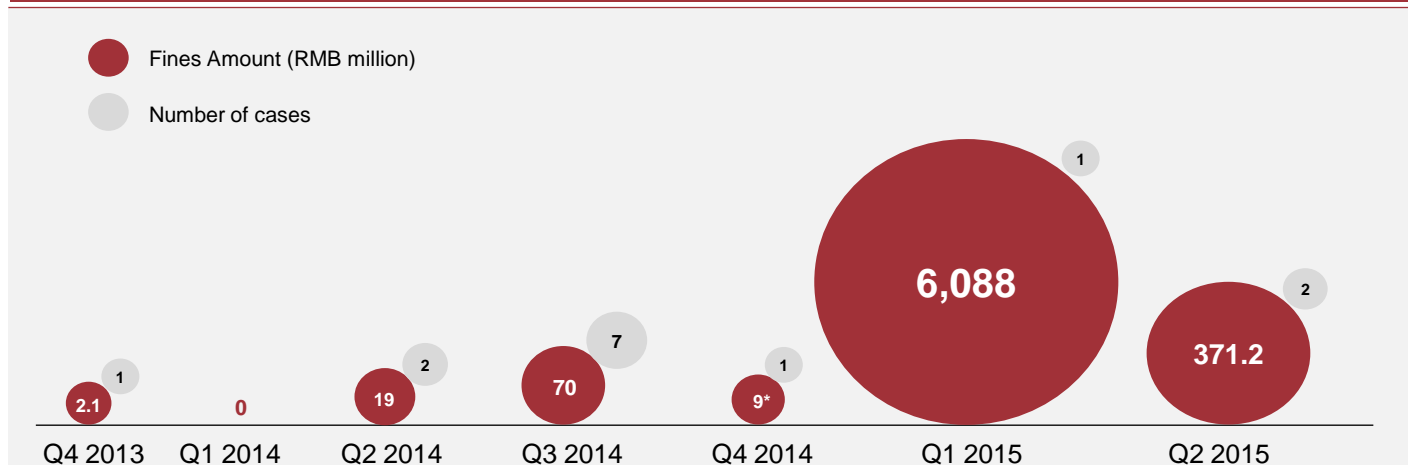
This quarter has been a relatively quiet period for NDRC on the enforcement side, with NDRC's local counterparts imposing fines for anticompetitive behaviour in the strategic automotive and telecoms sectors.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turn over	Leniency/ Co-operation
<b>Automobile – Mercedes Benz*</b> <i>Jiangsu Price Bureau</i>	April 2015	Resale price maintenance	350,000	NA	350,000	7	N
<b>Telecoms – Yunnan Development and Reform Commission**</b>	June 2015	Abuse of administrative power to enter into price monopoly agreements	13,180	200	NA	2	N

\* Mercedes Benz dealers involved were reported to have been given a separate fine of RMB 7,869,000

\*\*China Unicom, China Telecom and China Mobile were each fined 2% of revenue, however China Tietong was fined RMB 200,000 as it did not implement the agreement.

### Enforcement trends – Q4 2013 to Q2 2015



### Enforcement priorities and procedures

In May, NDRC published a new notice on "Strengthening the Supervision of Pricing Activities in the Pharmaceutical Industry", which sets out measures in support of the recent reforms by the NDRC of pricing in the pharmaceutical sector. The NDRC and its local branches will launch a special six-month campaign to investigate unlawful activities with respect to pharmaceutical pricing across the pharmaceutical and healthcare industry. The Notice lists a range of unlawful activities which will be subject to careful scrutiny including certain infringements under the Anti-Monopoly Law.

NDRC is also reportedly drafting a suite of new enforcement guidelines on the auto industry, intellectual property (IP), leniency, calculation of fines, suspension of investigations and exemption of monopolistic agreements. In the context of IP enforcement, NDRC has separately indicated that it will try to avoid excessive intervention.



# Antitrust Investigations (continued)

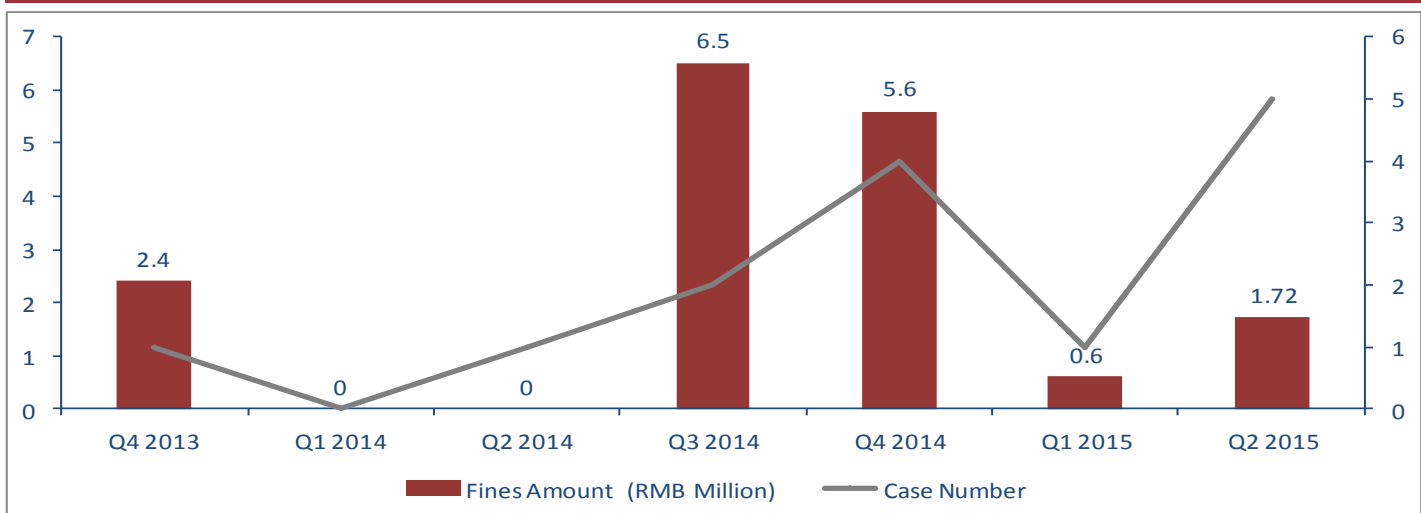
## The State Administration for Industry and Commerce (SAIC)

A number of investigations into bundled sales were announced by SAIC's local counterparts in the last quarter. Bundled sales will usually only be treated as an infringement of competition law if the seller is dominant, but it is not clear that dominance was a relevant factor in each of these cases.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turn over	Leniency/ Co-operation
<b>Cinema – Ningxia</b>	April 2015	Bundling sales	10	NA	NA	NA	N
<b>Water supply – Hainan</b>	April 2015	Abuse of dominance – Bundling sales	110	NA	NA	NA	N
<b>Public transport – Ningxia</b>	April 2015	Charge of unlawful fee	50	NA	NA	NA	N
<b>Shale bricks – Hunan</b>	April 2015	Horizontal agreement	1,389.4	54	205	4	Y
<b>Flight tickets – Hainan</b>	April 2015	Abuse of dominance – Bundling sales	160	NA	NA	NA	N

Ningxia AIC also suspended an investigation into China Telecom, China Unicom and China Tietong after they committed, *inter alia*, to offer unbundled landline with broadband services.

### Enforcement trends – Q4 2013 to Q2 2015



### Enforcement priorities

In April, SAIC published its guidelines on abuse of intellectual property rights, which require that certain holders of IP rights to licence their technology where the IP is a SEP or essential facility. The guidelines will take effect on 1 August 2015. None of the antitrust cases initiated by the SAIC so far have involved IP abuse. It is reported that SAIC would take a cautious approach when considering refusals to license and applying the essential facility doctrine.

# Other Asia Pacific news in brief

## India

The Competition Commission of India (CCI) has issued revised procedural merger control regulations. Major changes include the publication of a transaction summary on the CCI's website on notification; stricter rules on the type of documents that may trigger the statutory 30 calendar day filing deadline; and an increase in the Phase I review timeline from 30 calendar days to 30 working days, in addition to provisions enabling the CCI to 'stop the clock' for 15 working days during the Phase I review period to seek comments from third parties.

## Singapore

The Competition Commission of Singapore is reportedly undertaking a study of the functioning of competition in e-commerce markets. China is also expected to crack down on antitrust infringements in the e-commerce sector in light of the State Council's recently published guidelines on e-commerce development, while the European Commission has also launched a sector inquiry into the e-commerce sector to identify possible competition concerns, the preliminary findings of which are due to be published in mid-2016.

## Indonesia

Indonesia's Commission for the Supervision of Business Competition (KPPU) has reportedly submitted a proposal to legislators to increase fines for antitrust infringements from the current maximum of IDR 25 billion (USD 1.9 million) to a maximum of IDR 500 billion (USD 39 million), with the aim of increasing the deterrent effect on businesses. Earlier this year the KPPU imposed the current IDR 25 billion maximum fine on a company involved in a tyre cartel, where fines imposed totaled IDR 150 billion (USD 11.7million).

## Philippines

In June, the Philippines' 16<sup>th</sup> Congress passed the long-awaited Philippine Competition Act. The law will penalise anti-competitive agreements, abuse of dominance, and anti-competitive mergers. The proposed law will also criminalise certain cartel-behaviour, which the Philippines' Department of Justice's Office for Competition will be responsible for investigating.



## South Korea

The Korea Fair Trade Commission (KFTC) has imposed total fines of KRW 7.5 billion (USD 6.8 million) on JTEKT (KRW 2 billion) and Schaeffler Korea (KRW 5.5 billion) for price fixing in relation to automotive bearings during the period from 2001 to 2008. In November 2014, Schaeffler and JTEKT were also subject to fines by the KFTC for their involvement in a separate bearings cartel, where total fines of KRW 77.8 billion (USD 70 million) were imposed by the KFTC.

## Japan

Reforms to the Anti-Monopoly Act of Japan, which were approved in December 2013, took effect on 1 April. The reforms abolish the appeal process to the Japan Fair Trade Commission (JFTC) for JFTC issued fines and cease and desist orders, and transfers this function to the Tokyo District Court. In addition, the reforms create a new pre-order hearing conducted by the JFTC with a viewing to enhancing due process for the parties.

In June, the JFTC released details of antitrust queries received in its financial year ended 31 March 2015. Of the 1,463 queries handled, two-thirds related to distribution agreements and anticompetitive business practices.

## Taiwan

In addition to extensive the amendments to Taiwan's Fair Trade Act passed in January, preliminary approval has reportedly been granted for an amendment to the Fair Trade Act that would allow for the establishment of a fund for payment of whistleblowers in antitrust investigations.

## Australia

The Australia Competition and Consumer Commission (ACCC) has launched a 12 month inquiry into the competitiveness of wholesale gas prices in Eastern and Southern Australia. The ACCC published its issues paper for consultation in June, and also intends to hold public hearings which will enable the ACCC to hear directly from parties in relation to the issues being considered in the inquiry. The deadline for the ACCC to report on its findings is April 2016.

Separately, Australia's Federal Court is to end the practice of regulators, including the ACCC, agreeing on penalties for offenders. The Court has ruled that the setting of penalties is for the courts and pre-agreed penalties will be disregarded except to the extent that they represent the degree of remorse or cooperation on the part of the offender.



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