



Antitrust in China and across the region

Quarterly Update: October to December 2014

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In China, the last quarter of 2014 saw a steep rise in the number of transactions cleared by MOFCOM – 75 in total, making it the busiest quarter since the Anti-Monopoly Law (AML) was introduced in 2008. This reflects the success of the simplified procedure introduced last April, with over 50% of cases being cleared under this procedure.

Last quarter also saw the first public fine being issued in China for failure to notify – RMB 300,000 (approximately USD 50,000) out of a possible maximum RMB 500,000 imposed on a partly Stated-owned buyer of a Chinese electronics firm. On the same day, two further fines were imposed on Western Digital for failing to comply with terms of its remedy commitments given in 2012 upon its acquisition of Viviti.

Enforcement by NDRC and SAIC over the same period however fell back massively, reflecting in part a temporary lull in enforcement against overseas companies during the APEC summit held in Beijing in November 2014. However, in a related development, last quarter saw the Chinese courts issue the first judgement on an appeal brought against a decision by NDRC under the AML. An appeal brought by two concrete producers against the Jiangsu branch of NDRC was dismissed on the basis it had been brought out of time.

Across the region, we have seen continued enforcement activity. Some notable developments include two firsts in Singapore merger control – the first failing firm decision and the first behavioural remedies; and from Australia, a rare example of a competition authority approving a resale price maintenance agreement.

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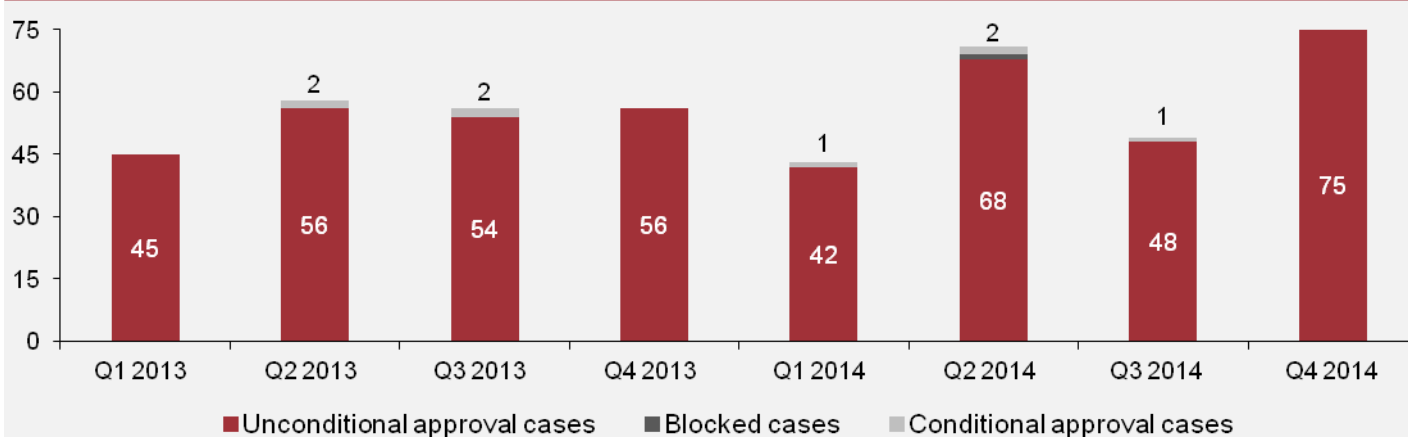


Merger Control

How many cases have there been?

China's Ministry of Commerce (MOFCOM) issued 75 merger decisions in the fourth quarter of 2014, a significant increase compared to the previous quarter. This trend reflects the success of the simplified procedure. MOFCOM cleared all 75 cases without imposing conditions.

Merger control trends – 2013 and 2014



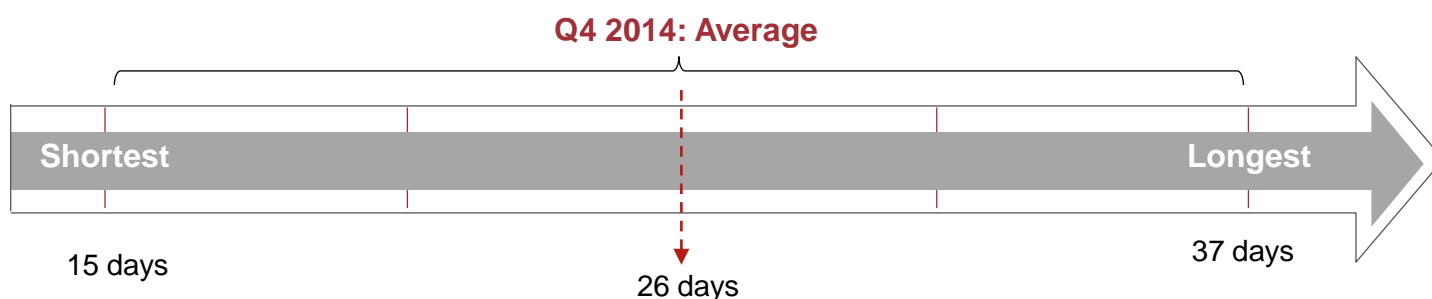
Simplified procedure: How quick is the review period?

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

2014	Average review period	Simplified procedure (%)*	Cases exceeding 30 days
Q2	19 days	1.4%	0
Q3	26 days	44.9%	3
Q4**	26 days	56%	2

* Of the total number of cases decided in the quarter

** Excludes the China Poly and Guizhou Jiulian Enterprises restructuring, which was filed under the simplified procedure and took 56 days to clear, but may have been pulled and re-filed under the normal procedure

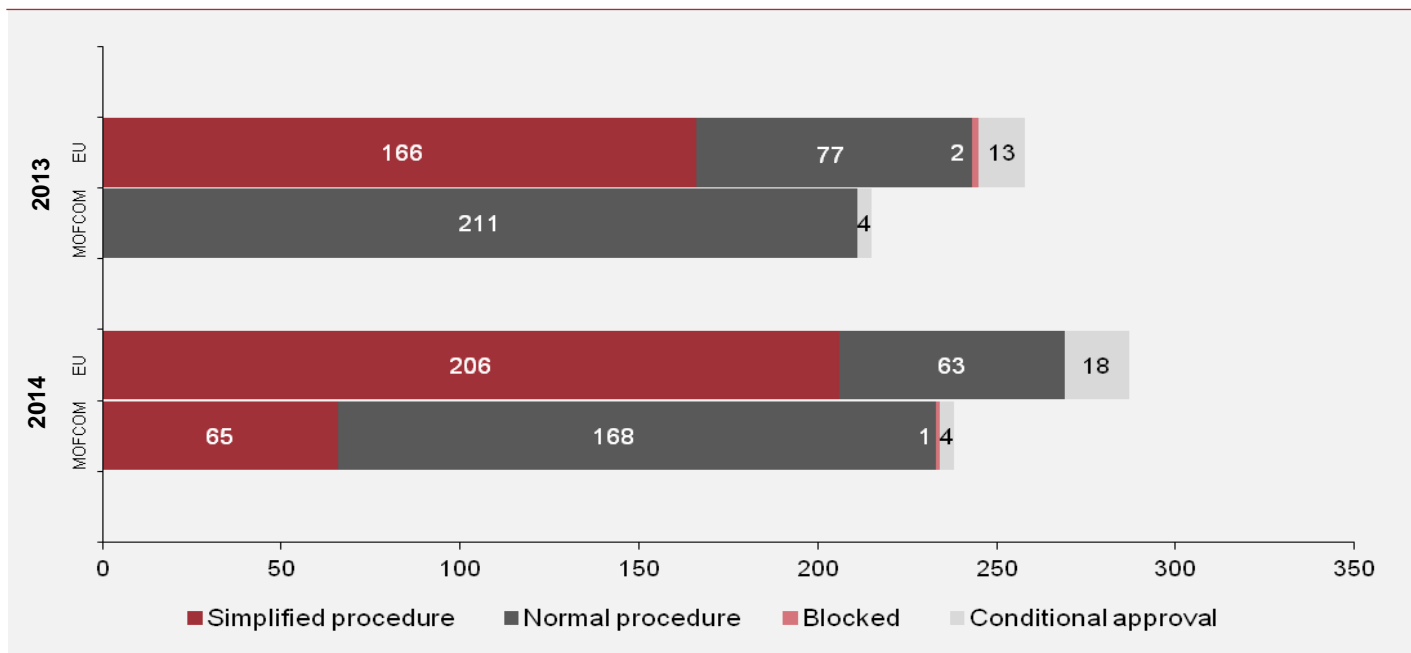




Merger Control (continued)

How does China compare internationally?

Comparison with EU - 2013 and 2014



Other news

MOFCOM issues first public fining decisions

In December 2014, MOFCOM issued its first public decision imposing a fine for failure to notify a transaction. State-owned Tsinghua Unigroup was fined RMB 300,000 (around USD 50,000) for failing to notify its acquisition of RDA Microelectronics (RDA) and, separately, Western Digital was fined RMB 600,000 in two separate decisions for failing to comply with conditions to clearance imposed by MOFCOM in the context of the company's 2012 acquisition of Viviti. The maximum potential fine in each case was RMB 500,000.

MOFCOM issues updated remedies guidelines

In December 2014, MOFCOM issued updated guidelines on merger remedies. These replace the 2010 interim guidelines and provide more detail on MOFCOM's approach. Notable developments include a clearer timetable for parties to offer remedies (no later than 20 days prior to the end of MOFCOM's review) and confirmation that MOFCOM may follow international practice in requiring crown jewel or upfront buyer remedies. MOFCOM has also recently agreed to remove a merger remedy for the first time, releasing Google from the requirement to treat all Android platform-related original equipment manufacturers equally following Google's 2012 acquisition of Motorola. Motorola was acquired by Lenovo in October 2014, meaning that Google is no longer active in smartphone manufacturing.

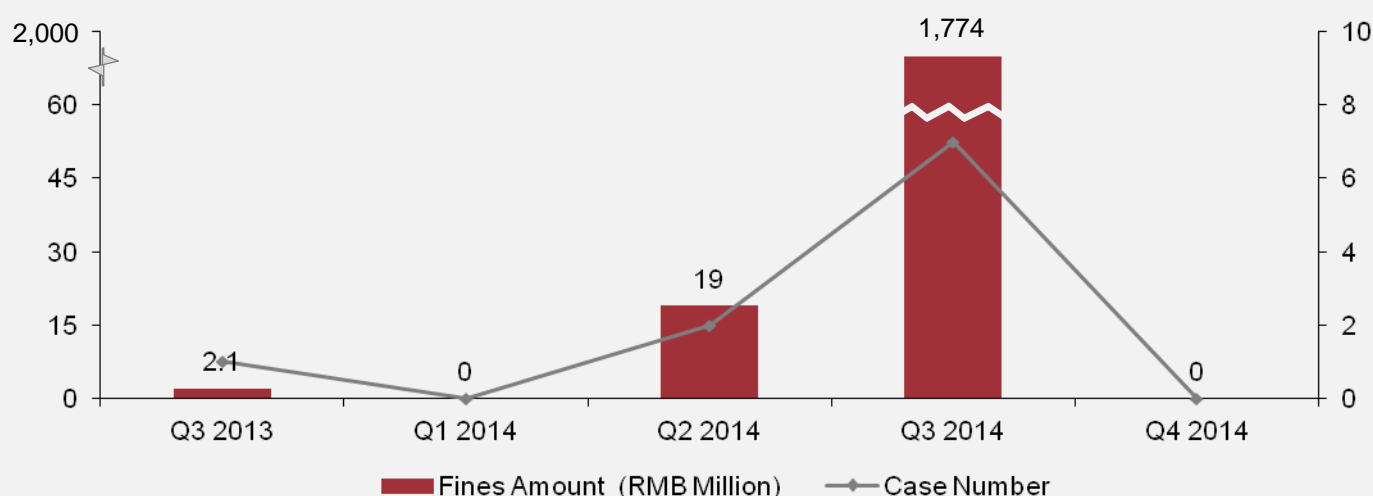


Antitrust Investigations

The National Development and Reform Commission (NDRC)

The NDRC is responsible for the investigation and sanctioning of price-related anticompetitive conduct in China. In contrast with the massive RMB 1,774 million in fines imposed by NDRC in the third quarter of 2014, NDRC was quiet in the fourth quarter, with no fines having been issued – although the long-awaited Qualcomm decision is expected in early 2015. Nonetheless, 2014 has been NDRC's busiest year since the AML was implemented in 2008, with RMB 1.8 billion in fines imposed against foreign and domestic companies in 9 separate cases.

Enforcement trends – Q4 2013 to Q4 2014



First appeal against a decision by China's antitrust authorities is dismissed

In the first case of its kind, the Nanjing Intermediate People's Court has dismissed appeals brought by concrete producers against fines imposed by a local counterpart of NDRC. In December 2013, the Jiangsu provincial regulator imposed fines totaling RMB 39 million (around USD 6 million) on a trade association and 37 concrete companies, having found that they had engaged in price fixing in violation of China's AML. Three of the concrete companies appealed their fines on the grounds that the agreements reached had not been formally adopted or implemented, and the fines imposed were, therefore, excessive. While one of the companies withdrew its appeal, the remaining two appeals were dismissed by the Court for being brought after the three month limitation period had expired. Although the merits of the appeals were apparently not considered, the case marks the first time that appeals have been publicly brought against a decision by any of China's antitrust authorities, although it has recently been reported that decisions of local counterparts of the State Administration for Industry and Commerce have also been appealed.



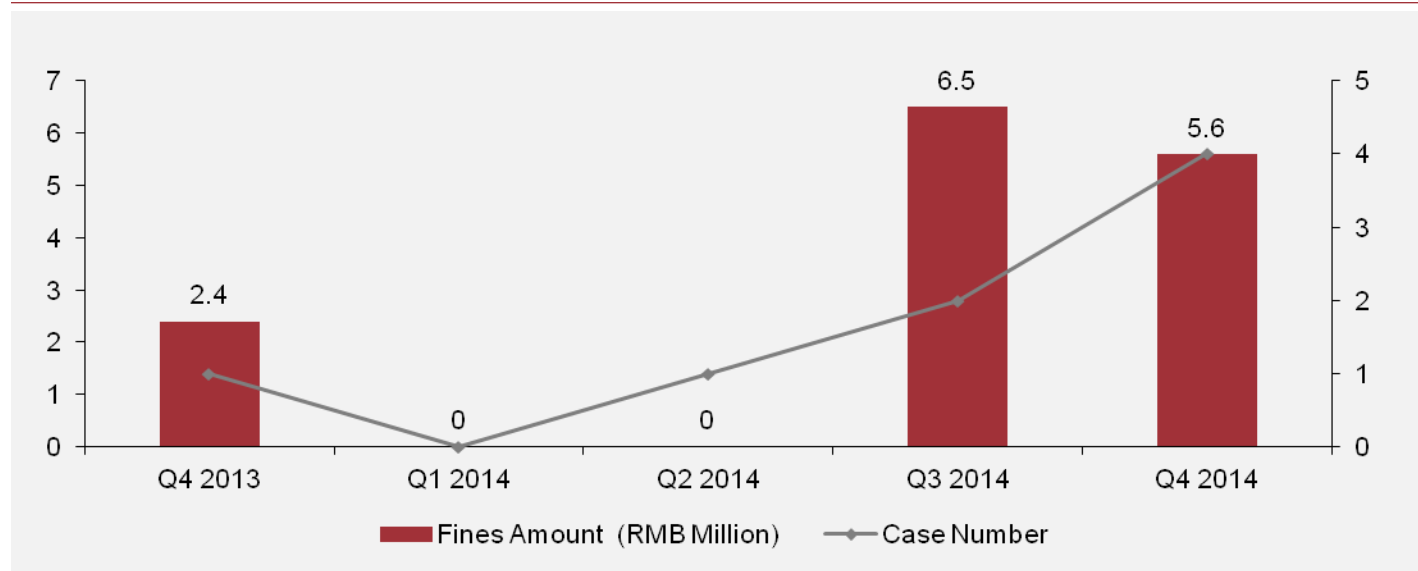
Antitrust Investigations (continued)

The State Administration for Industry and Commerce (SAIC)

The SAIC is responsible for the investigation and sanctioning of non price-related anticompetitive behaviour in China. In the last quarter, fines were imposed by SAIC's local counterparts in Chongqing, Jiangsu, Chongqing and Zhejiang. Local counterparts of SAIC are taking increasing enforcement activity against small and medium-sized enterprises in their respective administrative regions, while the central SAIC is focussing its investigative activities on large international corporations.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turn over	Leniency/ Co-operation
Quarries – Chongqing	October 2014	Horizontal agreements – Market partitioning	400	40	200	N/A	N
Tobacco – Jiangsu	October 2014	Abuse of dominance – Discriminatory treatment	1,720	N/A	N/A	1%	Y
Gas – Chongqing	November 2014	Abuse of dominance – Imposing unreasonable trading conditions	1,790	N/A	N/A	1%	Y
Concrete – Zhejiang	December 2014	Horizontal agreements – Market partitioning	1,720	10	400	N/A	Y

Enforcement trends – Q4 2013 to Q4 2014



Other Asia Pacific news in brief

India

In December 2014, the Competition Commission of India (CCI) issued its first conditional merger decision, clearing the tie up between Sun Pharmaceutical Industries and Ranbaxy Laboratories, one of around 70 mergers cleared in 2014.

In terms of enforcement, by the end of October, the CCI had imposed fines of nearly INR 27 billion (USD 425 million) in 2014, but has been able to recover less than 10% of the fines it has imposed to date due to successful challenge in the courts.

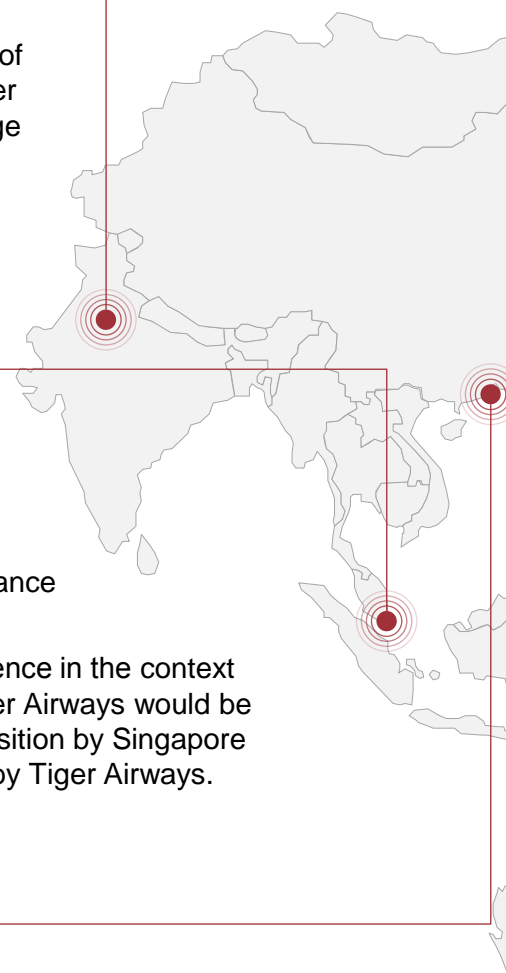
Singapore

The Competition Commission of Singapore (CCS) has, for the first time, imposed behavioural remedies in the context of a merger review – SEEK's acquisition of JobStreet, the two main online recruitment advertising service providers in Singapore. Structural remedies are often preferred by competition authorities as behavioral remedies present compliance monitoring issues and may be harder to implement.

Separately, the CCS has, also for the first time, accepted a 'failing firm' defence in the context of Singapore Airlines' acquisition of Tiger Airways. The CCS found that Tiger Airways would be likely to exit the market in the absence of the acquisition, and that the acquisition by Singapore Airlines would be less detrimental to competition in Singapore than an exit by Tiger Airways.

Hong Kong

In October 2014, Hong Kong's Competition Commission issued a set of six draft guidelines in anticipation of the Competition Ordinance coming into force during 2015. These drafts set out the approach the Commission intends to adopt. The main points to note were the absence of market share thresholds above which market power could be presumed and the signaling of a tough stance on resale price maintenance. Over the next six months, the Commission is expected to finalise the guidelines and issue its leniency policy and enforcement priorities.





Japan

An Advisory Panel has issued its report on recommended investigative procedures of the Japan Fair Trade Commission (JFTC), following the enactment of Japan's partially revised Anti-Monopoly Act in December 2013. In relation to dawn raids, the Report noted that, while the subject of a dawn raid "may" have an attorney present, the presence of an attorney is not a right such that a company may refuse an inspection until an attorney arrives. Copies of materials seized by the JFTC may only be copied by the company during the dawn raid to the extent that the materials are deemed necessary for the daily business operations of the company and the copying does not interfere with the dawn raid, although copies may subsequently be taken by the company at the JFTC. The Report is similarly restrictive in recommending that: (i) the JFTC should continue to refuse to acknowledge attorney-client privilege; and (ii) the presence of an attorney during depositions should not be permitted, nor may a deponent take notes during the deposition.

South Korea

The Korean Fair Trade Commission has imposed fines totalling KRW 19.3 billion on construction companies, Samsung C&T and Hyundai Development Co, for bid-rigging on contracts for the Seoul Metro Line 9 construction project. The fines follow other significant fines imposed in the previous quarter by the Korean authority against companies involved in bid-rigging in a number of sectors. Most significantly, 28 construction companies were fined a total of KRW 435 billion (USD 424 million) for bid rigging on the Honam high-speed railway project. The Commission has indicated that it is strengthening its monitoring of bid-rigging (particularly on government projects) and will impose severe sanctions against detected infringements.

Australia

The Australian Consumer & Competition Commission (ACCC) has, for the first time, conditionally "authorised" Resale Price Maintenance (RPM), by allowing Tooltechnic to set minimum retail prices for its Festool power tool products for a period of four years. In most jurisdictions, RPM is presumed to be anticompetitive, and is therefore prohibited unless parties to an RPM arrangement can prove that it has pro-competitive effects. While the authorisation indicates a shift from a per se prohibition on resale price maintenance, the ACCC was at pains to stress the particular fact pattern of this case.

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* Linda Widyati & Partners in association with Clifford Chance.