Antitrust in China and across the region

Quarterly Update

July to September 2015

CLIFFORD CHANCE

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In China, the third quarter of 2015 saw MOFCOM intensify its enforcement against gun-jumping. On 29 September 2015, MOFCOM published four decisions imposing fines of RMB 150,000 or 200,000 (USD 25,000 to USD35,000) on a number of Chinese and foreign companies.

This takes place against a backdrop of organizational change as MOFCOM has re-structured its three case handling divisions on an industry sector basis. This means that the same case team will now be responsible for a transaction from filing all the way through the review process, which is expected to allow cases to be dealt with more quickly and efficiently. MOFCOM is also considering introducing new and more detailed guidance on the definition of control, which transactions are notifiable and specific deadlines on case acceptance.

On the enforcement side in China, the National Reform and Development Commission (NDRC) continues to place the automotive and pharmaceutical sectors at the center of its enforcement priorities with its only three cases this quarter coming from these two sectors respectively. In the largest fine this quarter, the Guangdong DRC fined Dongfeng-Nissan 123.3 million RMB for resale price maintenance. Also, the State Administration for Industry and Commerce's (SAIC) regulation on the abuse of intellectual property rights came into effect on 1 August 2015.

Across the region, the development of competition law continues to be a major theme. Notably, the Hong Kong Competition Ordinance is scheduled to come into full force in December 2015. Singapore and Malaysia have both began consultations on amendments to their respective competition laws, whilst the Philippines, Laos and Thailand saw the enactment of new competition laws. In terms of enforcement, South Korea saw its first criminal prosecution of a foreign firm for participation in an international cartel.

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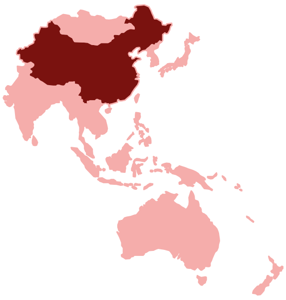
China Focus

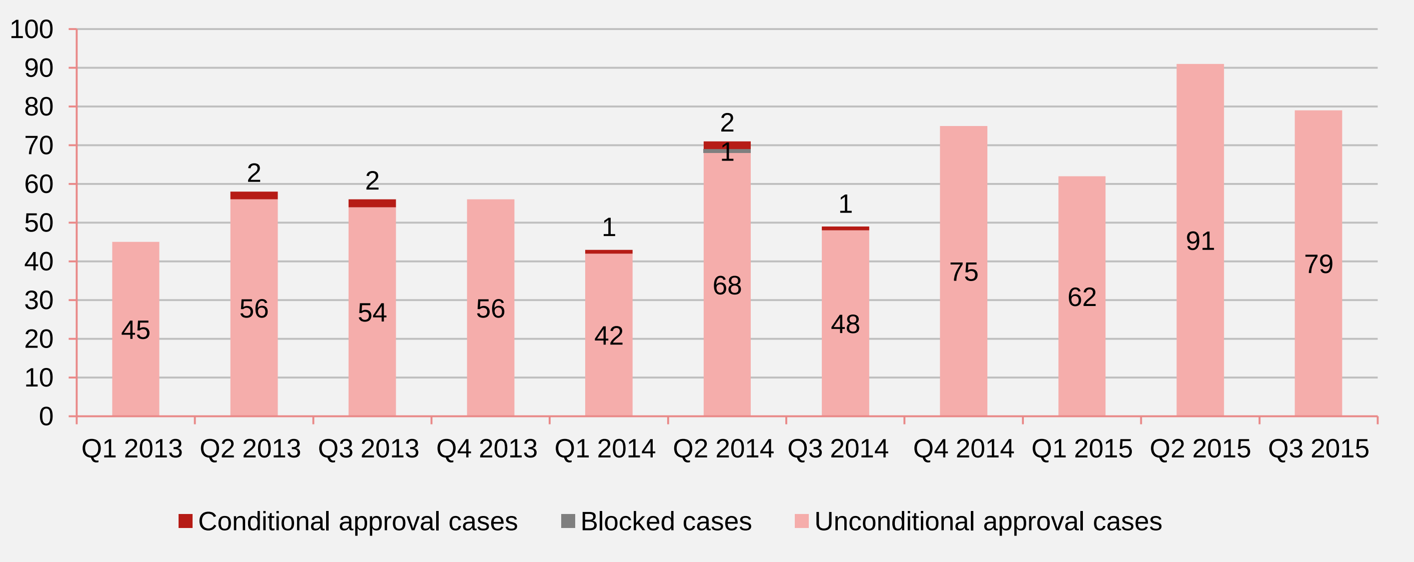
Merger Control



How many cases have there been?

China's Ministry of Commerce (MOFCOM) issued 79 merger decisions in the third quarter of 2015, an increase of 61% compared to the third quarter of 2014. All were cleared without conditions. More than 75% of these cases were notified under the simplified procedure.

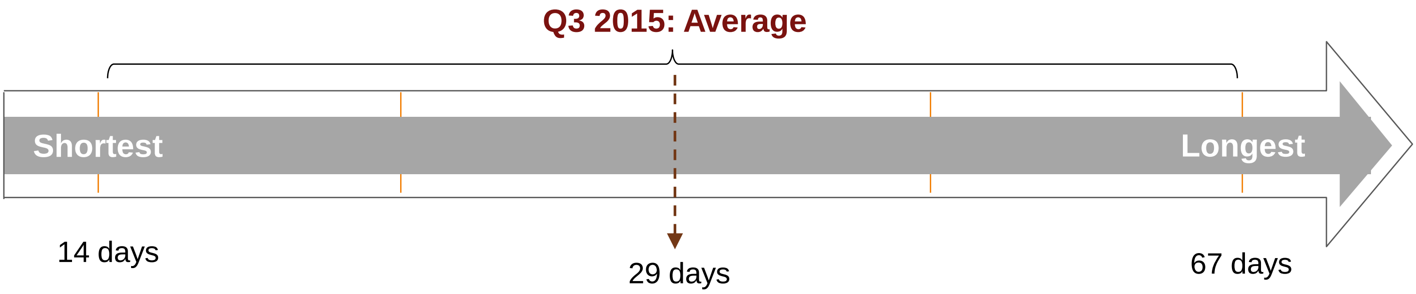
Merger control trends – Q1 2013 – Q3 2015



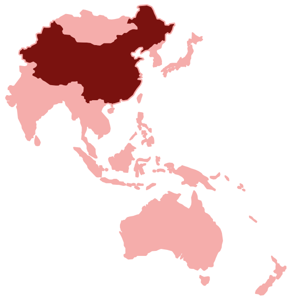
Simplified procedure: How quick is the review period?

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
Q4 2014	28 days	58.7%	4
Q1 2015	29 days	69.4%	11
Q2 2015	33 days	76.9%	19
Q3 2015	29 days	76.0%	12

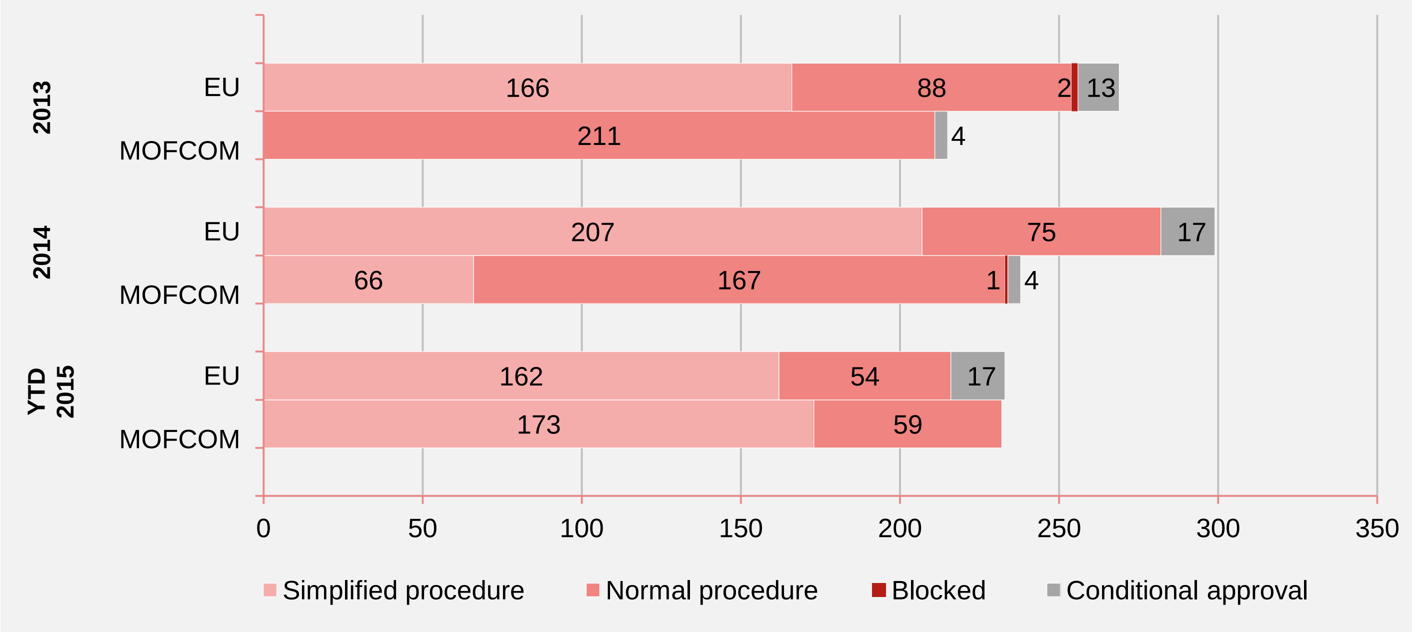


Merger Control (continued)



How does China compare internationally?

Comparison with EU - 2013 – YTD 2015



Other news

MOFCOM undergoing internal restructuring

MOFCOM's Anti-Monopoly Bureau has indicated that it is currently undergoing an internal restructuring that will result in the Consultation Division carrying out the same role as the other two case-handling divisions. After restructuring, all three divisions will be responsible for reviewing cases based on industry. These changes have caused some short term delays but are expected to lead to a more streamlined review process once embedded.

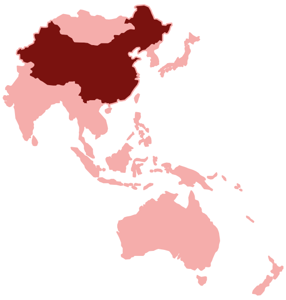
MOFCOM steps up enforcement against gun-jumping

MOFCOM has intensified enforcement against transactions that meet the merger filing thresholds but were either not notified or were implemented prior to clearance. On 29 September 2015, MOFCOM published four decisions imposing fines of RMB 150,000 or RMB 200,000 (USD 25,000 to USD 35,000) on a number of Chinese companies (Fujian Province Electronic Information, Shanghai Fosun Pharmaceutical Development, Nanjing Puzhen Rolling Stock Works and BesTV) as well as foreign companies (Bombardier Transportation and Microsoft) for gun-jumping. While each of the transactions at issue appears to have had a clear China nexus (i.e. a Chinese target company or joint venture), the decisions serve as a reminder that foreign companies are not immune from fines for gun-jumping in China. In addition, fines were imposed despite none of the transactions ultimately being found to restrict competition. To date, MOFCOM has investigated more than 50 companies and concluded 31 failure to notify cases. Of these cases, 11 cases involving 17 companies led to penalties.

MOFCOM approves AB InBev’s increase of stake in Zhujiang Brewery

In August, MOFCOM approved Anheuser-Busch InBev's (AB InBev) increase of its stake in Zhujiang Brewery from 25.62% to 29.99%. The transaction was subject to MOFCOM review as one of the conditions for MOFCOM's approval of InBev's acquisition of Anheuser-Busch in 2008. The 2008 approval specifically required that InBev would not increase its then 28.56% equity interest in Zhujiang Brewery without MOFCOM approval.

China Focus



Antitrust Investigations

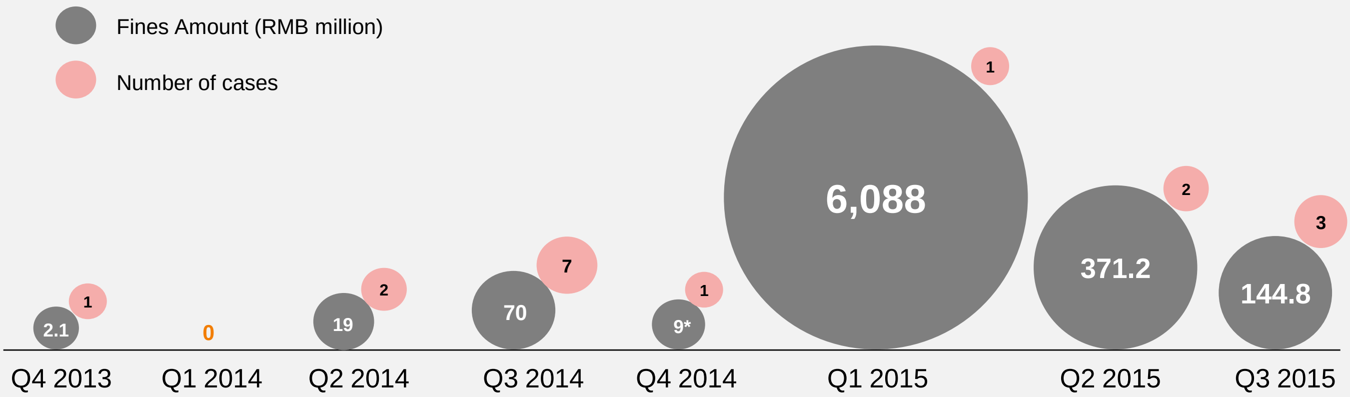
The National Development and Reform Commission (NDRC)

Enforcement in the automotive sector continues to remain a high priority for antitrust regulators in China. In August, the Guangdong Bureau of the NDRC fined Dongfeng-Nissan RMB 123.3 million for entering into price-fixing agreements with distributors. The NDRC is also currently drafting auto antitrust guidelines to be published next year. Concurrently, the SAIC has also recently stepped up its enforcement against illegal sales practices in the automotive sector. The Shanghai AIC has fined several foreign automobile makers this year for various conduct such as false advertisement and illegal surcharges under Shanghai's Anti-Unfair Competition Rules which cover a range of illegal sales practices.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
Pharmaceuticals – the Health and Family Planning Commission of Bengbu city *NDRC*	August 2015	Abuse of administrative power to eliminate or restrict competition	NA	NA	NA	NA	NA
Pharmaceuticals – Unnamed Pharmaceutical Company *Hubei Price Bureau*	August 2015	Abuse of Dominance	2,421	NA	NA	NA	NA
Auto – Dongfeng-Nissan *Guangdong DRC**	September 2015	Resale Price Maintenance	123,300	NA	123,300	3	NA

* 17 Dongfeng-Nissan distributors involved were reported to have also been fined an aggregate of RMB 19.12 million (2%-4% of the preceding financial year's turnover)

Enforcement trends – Q4 2013 to Q3 2015



The pharmaceutical and healthcare sectors continue to remain at the forefront for China's antitrust authorities' enforcement concerns. In a recent report on its July 2015 cases, the NDRC noted that healthcare and pharmaceuticals were among its top 5 sectors for complaints, notably on the issue of pharmaceutical institutions' illicit fees. There have also been several important antitrust enforcement matters in the pharmaceutical sector. In August, the NDRC ordered the Bengbu Municipal Health and Family Planning Commission in Anhui Province to remedy its abuse of administrative power behaviour. The conduct in question included designating suppliers of drugs in its procurement activities and setting differential eligibility criteria in biddings to exclude non-local bidders. Separately, in the same month, the Hubei Price Bureau imposed an antitrust fine of RMB 2.42 million on an unnamed pharmaceutical company for alleged abuse of market dominance.

China Focus

Antitrust Investigations

The State Administration for Industry and Commerce (SAIC)

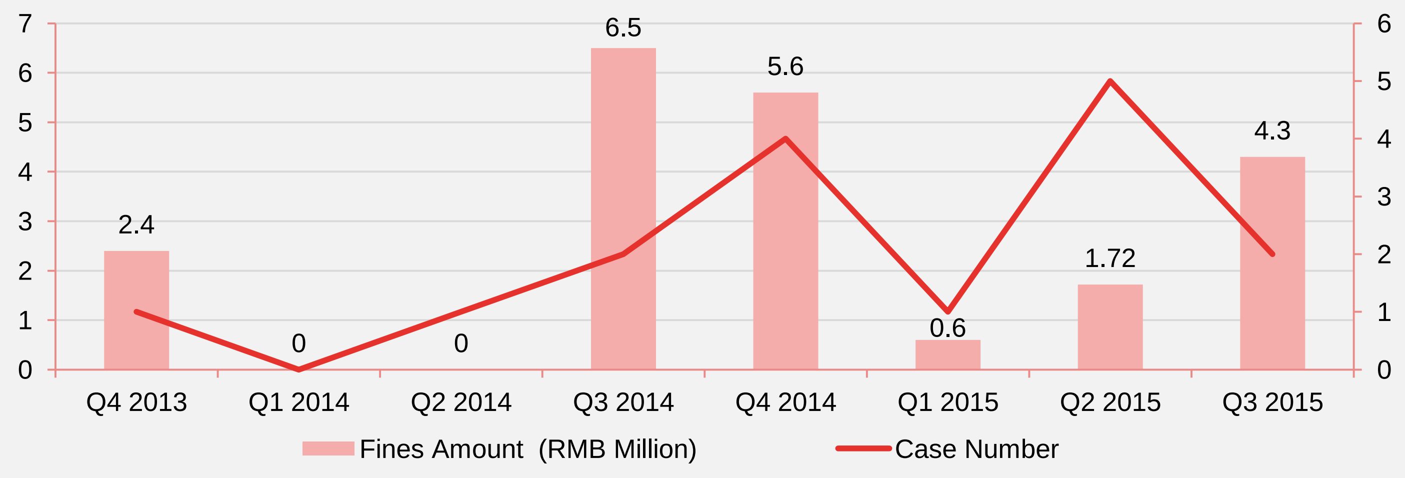
Intellectual property rights continue to remain a priority for the SAIC. On 28 July 2015, the SAIC published its interpretation of its regulation on prohibiting abuse of intellectual property rights to eliminate and restrict competition. The regulation itself came into effect on 1 August 2015. The publication provides clarifications on a wide variety of issues including the background to the regulations, the relationship between antitrust and IP rights, the application of the safe harbour rule, how to define abuse of market dominance and how to effectively implement the regulations. Additionally, SAIC officials have indicated that the regulation will be enforced retrospectively covering IP abuses since enactment of the AML in 2008.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
Tobacco *Liaoning**	August 2015	Abuse of Dominance – Bundling	4,334.498	NA	NA	1	NA
Telecommunications *Inner Mongolia***	September 2015	Abuse of Dominance – Unreasonable Trading Conditions	NA	NA	NA	NA	NA

* The decision was made in June 2015 and published by SAIC in August 2015

** The investigation was suspended after China Mobile committed to mitigating the anti-competitive harm

Enforcement trends – Q4 2013 to Q3 2015

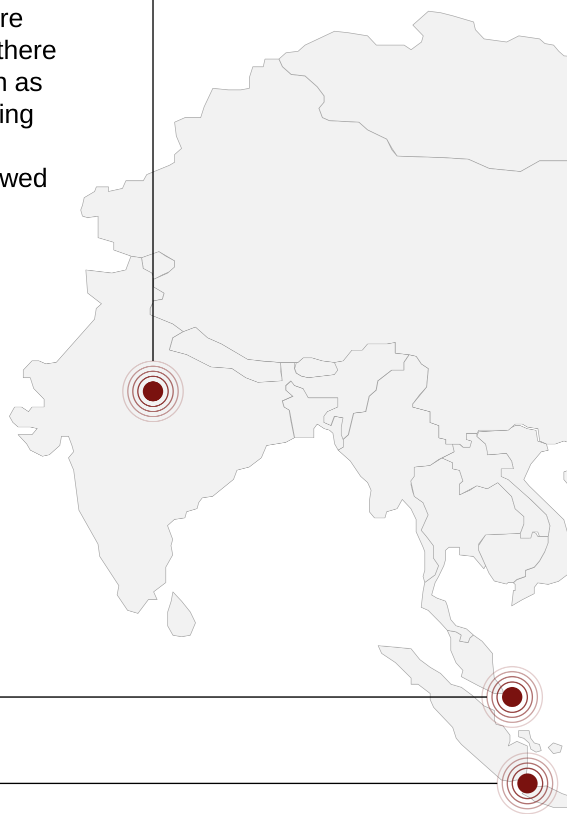


In September, the SAIC introduced interim regulations for online promotional sales of goods and services. According to the interim regulations, organizers of online sales promotion campaigns shall not restrict or eliminate participants from taking part in similar campaigns organized by other third-party online marketplaces which violate the Anti Monopoly Law. This follows the increased focus on the e-commerce sector by the SAIC. The Shanghai AIC has fined e-retailer Yihaodian 16 times in the last 10 months for unfair conduct under the Anti-unfair Competition Law, e-commerce management measures, the Product Quality Law and the Advertisement Law.

Other Asia Pacific news in brief

India

Seen as a signal of the rejuvenating economy in India and globally, the Competition Commission of India (CCI) has seen an increase in the number of merger filings submitted this year. In part to respond to this surge, the CCI is in the process of setting up an e-filing system which is expected to be launched soon . With more than 300 merger filings already dealt with by the CCI to date, the CCI expects there to be a 20% increase in filings this year, mostly in connection with sectors such as pharmaceutical, mines and minerals, financial, auto and components. The e-filing system is expected to facilitate the CCI's merger review more efficiently. The number of filings could increase further if the de minimis exemption is not renewed beyond its current March 2016 expiry date.



Singapore

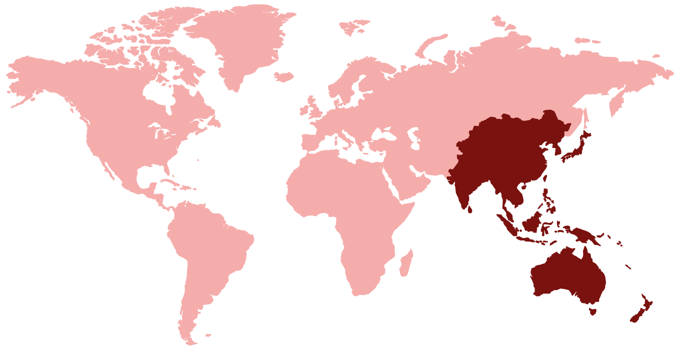
Following a review of the Competition Act (which came into effect on 1 January 2005), the Competition Commission of Singapore (CCS) is considering a new round of amendments to the Act, which are intended to provide a more business friendly approach to addressing competition concerns and increased clarity on how the Act is enforced. On 25 September 2015, the CCS launched a public consultation on amendments to its suite of guidelines, which provides the conceptual, analytical and procedural framework within which CCS will administer and enforce the Act. Of particular note is the introduction of a new Fast Track (or settlement) framework for abuse of dominance and cartels under which infringing parties are required to admit liability in return for a reduction in fines. The consultation closes on 6 November 2015.

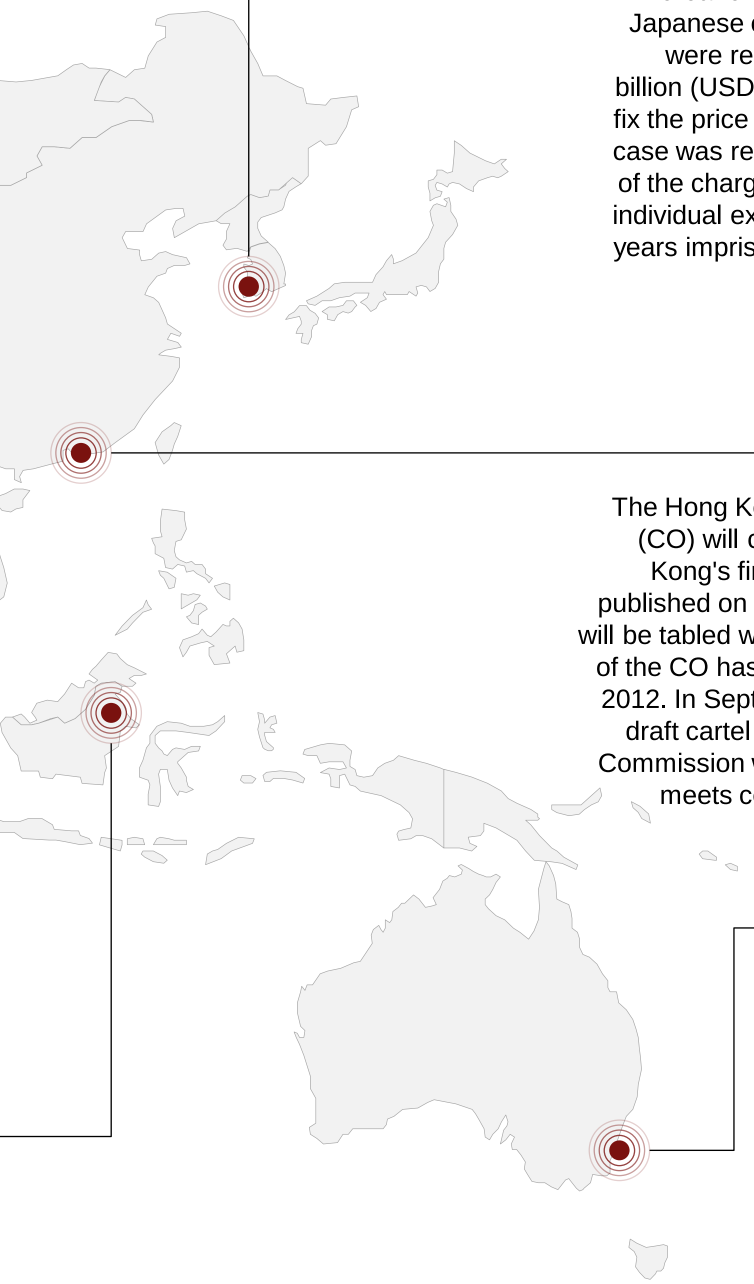
Malaysia and Indonesia

The Malaysia Competition Commission (MyCC) will consult on amendments to the Competition Act 2010 and the Competition Commission Act 2010. Among the proposed amendments, MyCC is seeking to strengthen its powers of investigation by enabling MyCC to obtain information and documents related to investigations. Similarly, Indonesia's Commission for the Supervision of Business Competition (KPPU) is seeking to raise its status and obtain more independent powers to enable it to combat cartels.

Philippines, Laos and Thailand

The last quarter has seen developments in several newly established competition law regimes in ASEAN member states, with July having been a particularly active month. Laos became the ninth ASEAN member state to enact a competition law. Also in July, the Philippine president signed the bill to enact the nation's Competition Act, which was passed by Congress in June. The Thai National Reform Council also approved a new trade competition bill for various sectors to replace the antitrust law that has been in force for the past 16 years but rarely applied. The new bill includes an expanded definition of business operators, revised definitions of market dominance and an increased fine of up to THB 9 million (USD 260,800) for violations, while fines for violations of specific orders could ultimately amount to 20% of turnover.





South Korea

A foreign company is for the first time facing criminal prosecution in South Korea for its participation in an international cartel. In November 2014, two Japanese companies, Minebea and NSK, and their South Korean branches were respectively fined KRW 4.9 billion (USD 4.15 million) and KRW 3.7 billion (USD 3.1 million) by the Korea Fair Trade Commission for colluding to fix the price of the bearings supplied to electronics manufacturers. Minebea's case was referred to the Seoul District Prosecutor's Office and, if found guilty of the charges, the company could face a fine of up to KRW 200 million, with individual executives facing fines of up to KRW 200 million and/or up to three years imprisonment. NSK has avoided prosecution in accordance with South Korea's leniency regime.

Hong Kong

The Hong Kong Government has announced that the Competition Ordinance (CO) will come fully into force on 14 December 2015. The CO will be Hong Kong's first cross-sector competition law. The commencement notice was published on 17 July 2015 in the Hong Kong Government Gazette and the CO will be tabled with the Legislative Council in October 2015. The commencement of the CO has been a much anticipated event given it was enacted on 14 June 2012. In September, Hong Kong's Competition Commission also published its draft cartel leniency policy for public consultation. Under the draft policy, the Commission will agree not to bring to court the first whistleblower for a fine if it meets certain requirements. Additionally, the Competition Commission is expected to release a statement of enforcement priorities before the CO comes into full force in December.

Australia

In July, the Australian Competition and Consumer Commission (ACCC) blocked Sea Swift's proposed acquisition of Toll Marine. The parties were found to be the two largest suppliers of marine freight services in Australia's Northern Territory and far north Queensland, and had been engaged in a two year price war prior to the deal being proposed. The deal was blocked on the basis that it would eliminate competition between the parties as well as result in increased barriers to entry or expansion for other freight services providers. The ACCC last blocked a merger in June 2014. Sea Swift and Toll Marine are appealing the ACCC's decision to the Australian Competition Tribunal.

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