



Antitrust in China and across the region

Quarterly Update

October to December 2015

C L I F F O R D
C H A N C E

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Quarterly Update: October to December 2015

In China, the fourth quarter of 2015 saw the Ministry of Commerce (MOFCOM) issue its first conditional merger clearances since 2014. On 19 October 2015, MOFCOM conditionally cleared Nokia's proposed acquisition of Alcatel-Lucent having accepted behavioural remedies offered by Nokia. In November, MOFCOM conditionally cleared NXP Semiconductor's proposed acquisition of Freescale Semiconductor following the acceptance of remedies offered by NXP Semiconductors, including the divestment of its radio frequency power business.

China's antitrust regulators also continue to be active on the enforcement side. On 28 December 2015, the National Reform and Development Commission announced that it had imposed fines totaling RMB 407 million (USD 61.8 million) on eight international shipping companies for price-fixing on shipping lines between China and North America, the EU and South America.

In the last quarter, local branches of the State Administration for Industry and Commerce (AIC) have also proven to be active regulators. Notably, on 13 October 2015, the Anhui AIC published the first decision by a local AIC imposing a fine on a Chinese company for failing to cooperate with the authority during an antitrust investigation. It fined Sunyard System Engineering RMB 200,000 (USD 31,480) for failing to cooperate and providing the relevant materials in an antitrust investigation.

Active enforcement by existing antitrust regulators, as well expansion of antitrust law into new jurisdictions, in Asia Pacific continued in the fourth quarter. In October 2015, the Taiwan Fair Trade Commission imposed its highest-ever international cartel fine of NT\$5.8 billion (USD 190 million) on seven aluminium capacitor companies and three tantalum capacitor companies. Similar investigations into capacitor companies are ongoing in several other jurisdictions globally, including within the Asia Pacific region. On 14 December 2014, the Hong Kong Competition Ordinance coming into full force, whilst key guidelines on the Ordinance's application were also published during the quarter.

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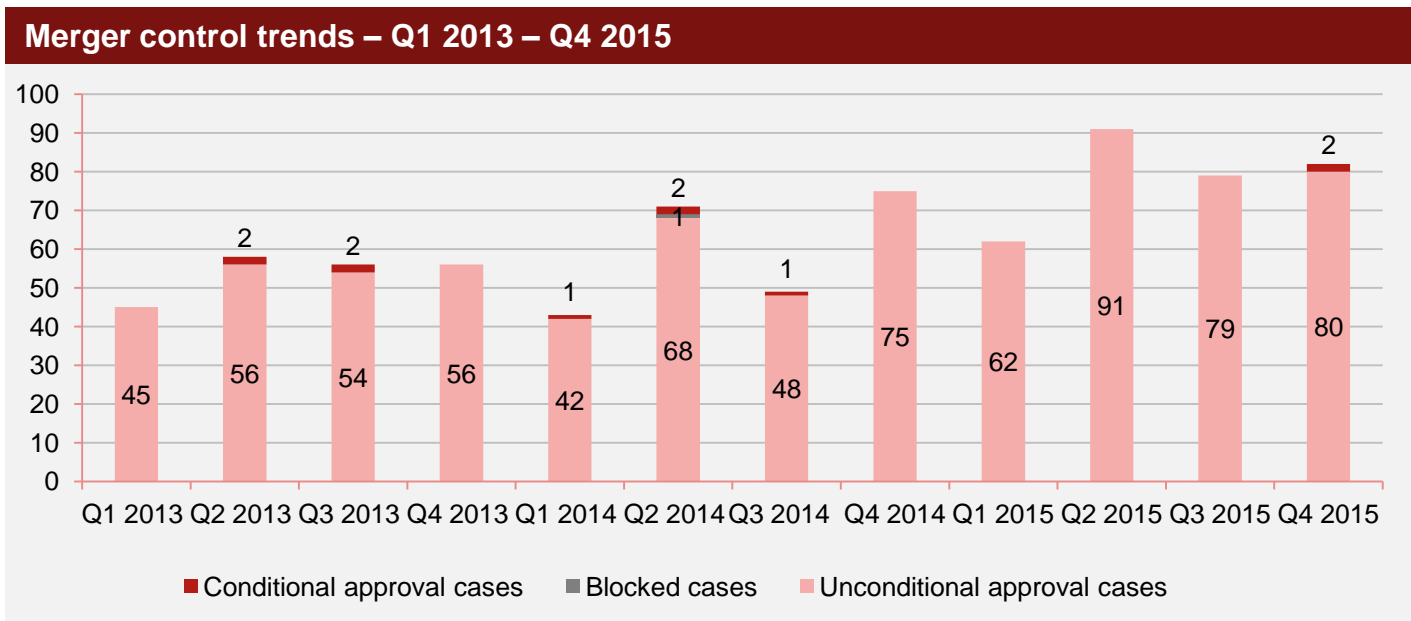


Merger Control



How many cases have there been?

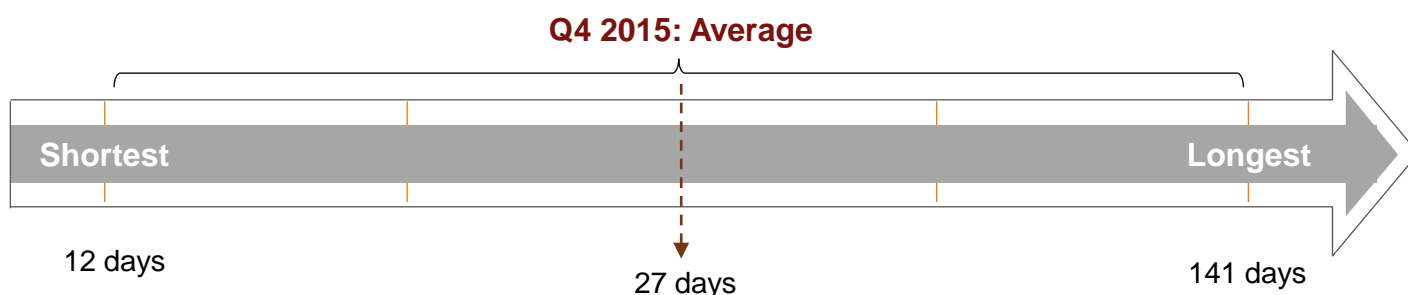
China's Ministry of Commerce (MOFCOM) issued 82 merger decisions in the fourth quarter of 2015, an increase of nearly 10% compared to the fourth quarter of 2014. More than 80% of these cases were notified under the simplified procedure. Two cases were conditionally cleared.



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.

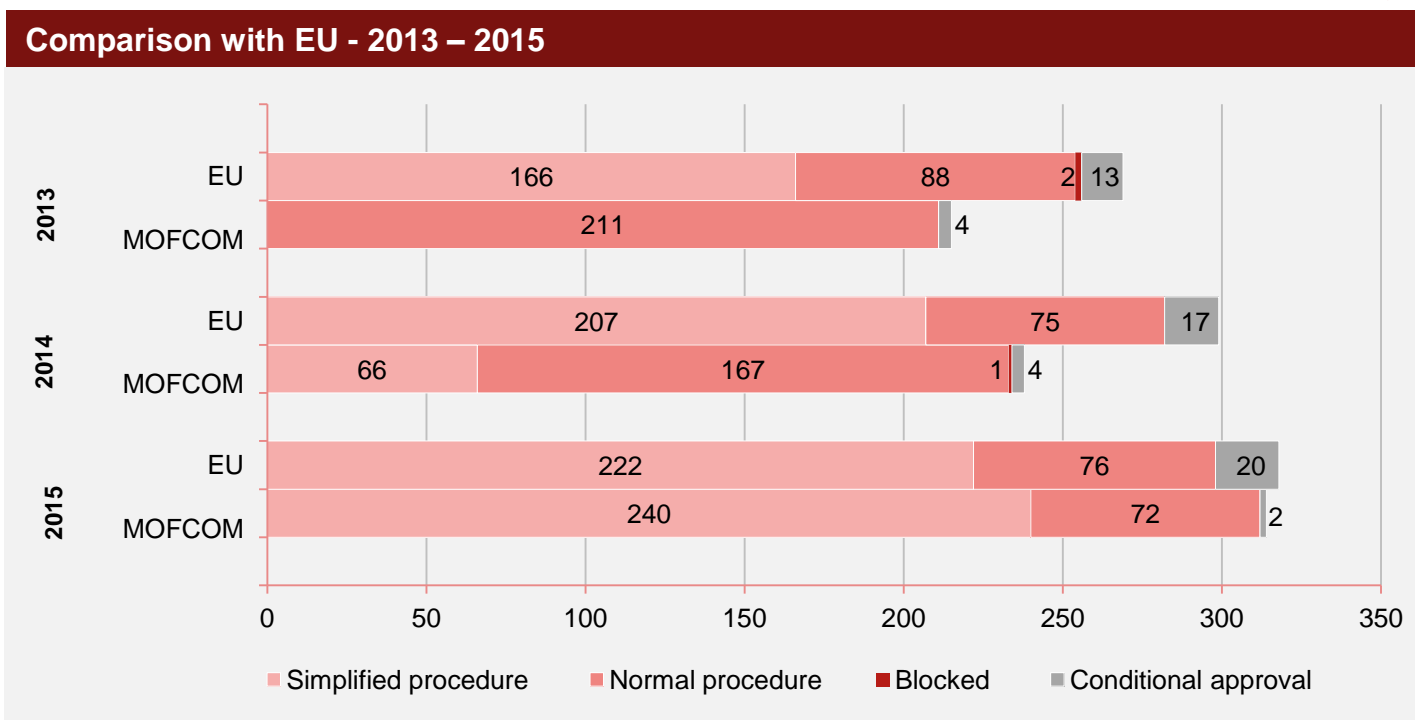
Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
Q4 2014	28 days	58.7%	4
Q1 2015	29 days	69.4%	11
Q2 2015	33 days	76.9%	19
Q3 2015	29 days	76.0%	12
Q4 2015	27 days	81.7%	7



Merger Control (continued)



How does China compare internationally?



Other news

MOFCOM drafting revised merger notification and review measures

In October 2015, MOFCOM circulated for comment drafts of its revised Measures for Review of Concentrations between Undertakings (Review Measures) and Measures for Notification of Concentrations between Undertakings (Notification Measures). The revised Notification Measures contain a number of new articles covering issues including definition of control, consultation procedures, simple case notification and withdrawal. For example, the draft Notification Measures clarify that control by an undertaking over another undertaking may be acquired by a positive right to unilaterally decide the business strategy of another undertaking or by a negative veto right. Currently, the drafting process to revise these Measures is ongoing.

MOFCOM conditionally clears two mergers and removes remedies imposed on two others

MOFCOM conditionally cleared two proposed acquisitions in the fourth quarter of 2015. These are the first two conditional clearances since mid-2014. Nokia's proposed acquisition of Alcatel-Lucent was cleared by MOFCOM on 19 October 2015, in light of the behavioural remedies agreed to by Nokia regarding 2G, 3G and 4G standard essential patents (SEPs) (including those held by Alcatel), which require Nokia to license SEPs on FRAND terms and to keep Chinese licensees and companies informed of SEP transfers to third parties. On 27 November 2015, MOFCOM conditionally cleared NXP Semiconductor's proposed acquisition of Freescale Semiconductor. MOFCOM found that the proposed deal could eliminate or restrict competition in the radio frequency (RF) power transistor product market and therefore imposed remedies including that NXP Semiconductor should sell its RF power business to Beijing Jianguang Asset Management. Separately, in October 2015, MOFCOM approved the partial removal of remedies imposed on the merger between Western Digital and HGST which was conditionally approved in 2012, and Seagate Technology's acquisition of the hard disk drive business of Samsung Electronics, conditionally approved in 2011.

MOFCOM signs new cooperation agreement with the EU

On 15 October 2015, the European Commission and MOFCOM signed an agreement to strengthen cooperation in their merger review processes. This follows a previously signed bilateral document between MOFCOM and the European Commission in 2004 which was a more general terms of reference for cooperation. The new agreement represents a step forward compared to the previous document, providing specific details on the mechanisms for cooperation, including enabling the authorities to exchange information, discuss their review timelines and share their considerations on specific issues such as market definition, theories of harm or potential remedies.

Antitrust Investigations

The National Development and Reform Commission (NDRC)

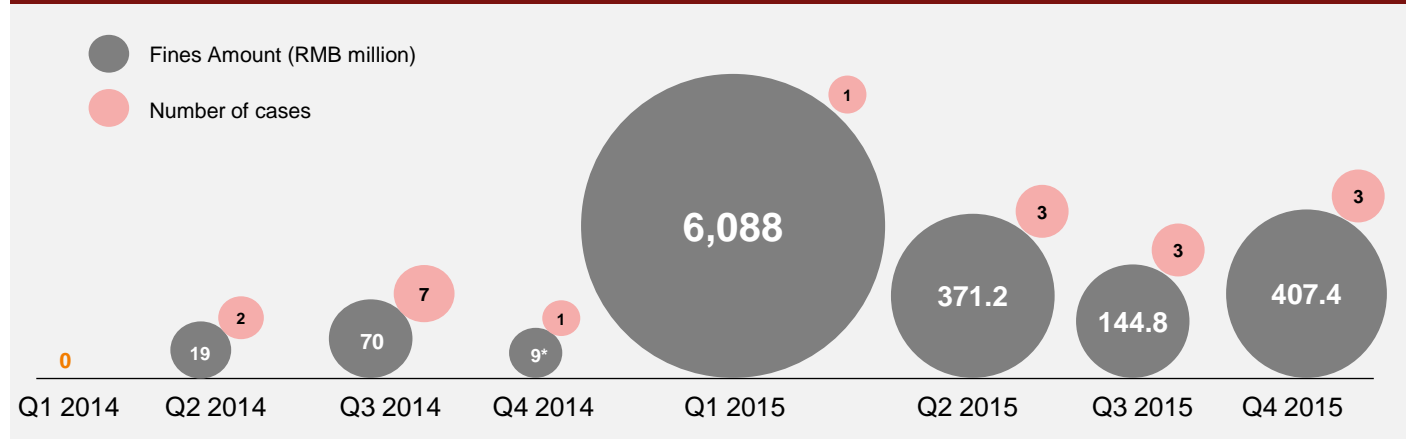


Cartel enforcement continues to be a priority for antitrust regulators in China. On 28 December 2015, the NDRC announced that it had imposed significant fines totaling RMB 407 million (USD 61.8 million) on eight international shipping companies for price-fixing. The NDRC concluded that the shipping companies had infringed China’s Anti-Monopoly Law by agreeing not to solicit each other’s business, exchanging sensitive information and bid rigging. Among the affected markets were shipping lines between China and North America, the EU and South America.

Separately, the NDRC and its local branches have also focused on administrative monopolies. The Gansu DRC investigated the Gansu transport regulator for excluding or restricting competition in relation to the construction, operation and installation of a public monitoring platform for dynamic information on moving vehicles. Additionally, the NDRC investigated the Sichuan and Zhejiang healthcare regulators for local protectionism in drug procurement. In response to the investigations, the infringing government agencies both agreed to correct their behavior.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
Pharmaceutical – The Health and Family Planning Commission of Sichuan Province and Zhejiang Province <i>NDRC</i>	November 2015	Abuse of administrative power to eliminate or restrict competition	NA	NA	NA	NA	NA
Transportations – The Gansu Provincial Department of Transport <i>Gansu DRC</i>	December 2015	Abuse of administrative power to eliminate or restrict competition	NA	NA	NA	NA	NA
Ocean shipping – Eight international shipping companies <i>NDRC</i>	December 2015	Horizontal price fixing	407,438	1,198	284,731	10 - 4	Yes

Enforcement trends – Q1 2014 to Q4 2015



Similar to MOFCOM, the NDRC has also continued to expand its cooperation with regulators in other jurisdictions. According to a press release by the Australian Competition and Consumer Commission (ACCC) on 5 November 2015, the ACCC and the NDRC have signed a memorandum of understanding (MoU) to cooperate on cartel investigations. The ACCC already had agreements in place with the other two antitrust regulators in China (the State Administration for Industry and Commerce since 18 September 2012 and with MOFCOM since 22 May 2014).

Antitrust Investigations (continued)

The State Administration for Industry and Commerce (SAIC)



Local branches of the SAIC continue to be particularly active. Notably, on 13 October 2015, the Anhui Administration for Industry and Commerce (Anhui AIC) published its decision (from 18 September 2015) to fine Sunyard System Engineering RMB 200,000 (USD 31,480) for failing to cooperate and providing the relevant materials as requested in an antitrust investigation. This is the first time a local AIC has imposed a fine on a Chinese company for failure to cooperate with the authority during an antitrust investigation. The investigation began in February 2015, with the Anhui AIC subsequently serving its investigation notices to Sunyard twice and calling Sunyard twice. However, Sunyard only responded after it received the second notice, and without providing any of the requested documents.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
Software Development <i>Anhui*</i>	November 2015	Failure to submit relevant materials	200	NA	NA	NA	No
Telecommunications <i>Inner Mongolia**</i>	November 2015	Abuse of dominance – Bundling	NA	NA	NA	NA	NA
Comics and Animation <i>Guangdong***</i>	December 2015	Organizing undertakings in its industry to engage in monopoly agreement	100	NA	NA	NA	No
Pharmaceutical <i>Chongqing</i>	December 2015	Abuse of dominance – Refusing to conduct business	439.3	NA	NA	3	No
Concrete <i>Hunan</i>	December 2015	Monopoly agreement – Sales volume partitioning	180	NA	NA	NA	Yes
Insurance <i>Hubei****</i>	December 2015	Monopoly agreement – Sales market partitioning	224.8	30	65.3	2 & 6	No

* The decision was made in September 2015 and published in November 2015

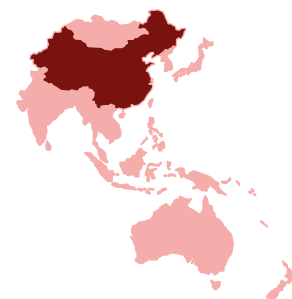
** The investigation was suspended after China Mobile committed to mitigating the anti-competitive harm

*** The decision was made in July 2015 and published in December 2015

**** The decision was made in June 2015 and published in December 2015

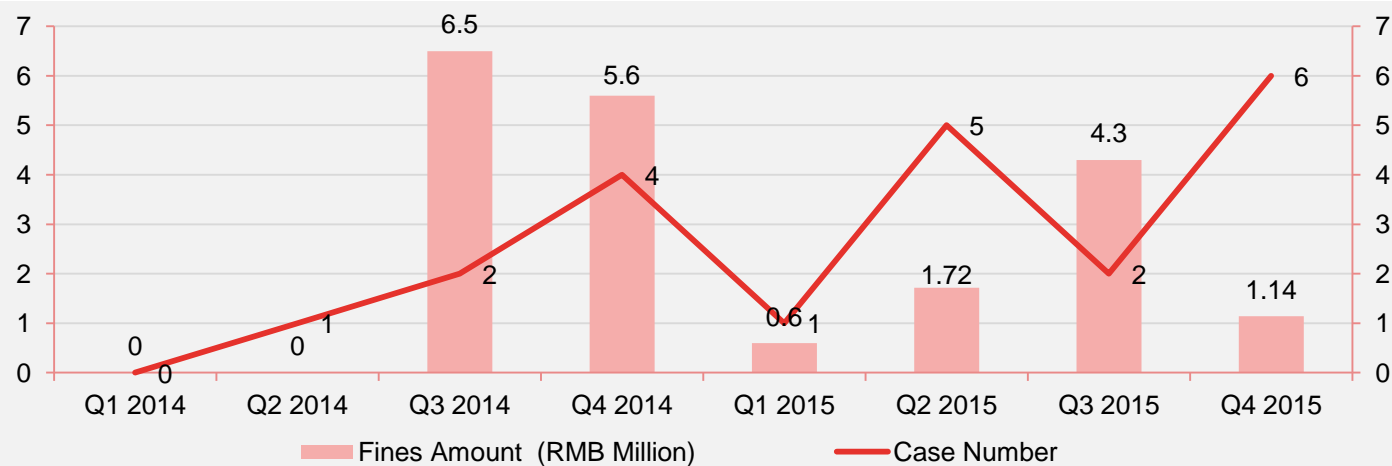
Antitrust Investigations (continued)

The State Administration for Industry and Commerce (SAIC)



A recent abuse of dominance investigation by the Chongqing branch of the SAIC indicates that abuse of dominance continues to be a major area of focus for the SAIC, as well as providing significant insight into the regulator’s approach to such investigations. On 22 December 2015, the Chongqing AIC published its decision (made on 28 October 2015) to fine Chongqing Qingyang Pharmaceutical RMB 439,308 (USD 66,687) (3% of its 2013 turnover) for abuse of dominance, specifically, refusal to supply. The investigation officially commenced in December 2014 following an approach by the company to the AIC. Chongqing Qingyang Pharmaceuticals had entered into an exclusive distribution agreement with Hunan Xiangbaihe Pharmaceuticals but had then subsequently refused to supply allopurinol, the ingredient for producing allopurinol tablets, from October 2013 to March 2014. The Chongqing AIC found that Chongqing Qingyang Pharmaceutical had a dominant market position (relevant factors included the company’s 100% market share and barriers to entry), and that the company had abused that position by refusing to supply, which resulted in significant increases in the price of ingredients as well as the finished drug. The Chongqing AIC concluded that the refusal to supply could not be justified after examining several factors including the purpose for executing the exclusive agreement and the purposes and effects of the refusal to supply. However, the fine imposed was reduced on the basis of mitigating factors including that the Company was cooperative during the investigation, realised the violation and had resumed supply.

Enforcement trends – Q1 2014 to Q4 2015



Other news

SAIC continues focus on e-commerce sector

This quarter, the SAIC continued its focus on strengthening regulations in the e-commerce sector, publishing its Opinions on Strengthening Regulation on the Internet Market on 9 November 2015. Key provisions of the document include that the SAIC will regulate online business activities in the interest of ensuring market order and fair competition. Market regulators intend to investigate abuse of dominance by e-commerce operators and other anti-competitive conduct such as misleading or false advertising online and slandering the reputation of brands or products. According to the Opinion, the SAIC will also establish an internet market regulation leading group which will include among its members, Airong Ren, the SAIC anti-monopoly and anti-unfair competition enforcement bureau’s director-general.

Other Asia Pacific news in brief

India

On 17 November 2015, the Competition Commission of India (CCI) announced that it had passed the final order related to a complaint against local airlines Jet Airways, InterGlobe Aviation (IndiGo), SpiceJet, Air India and GoAir alleging they had indirectly agreed on air cargo transport rates. As a result, fines totaling INR 2.58 billion (USD 39 million) were imposed on IndiGo, Jet Airways and SpiceJet. No penalty was imposed upon Air India because its conduct was not found to be in parallel with the other airlines. Similarly, no penalty was imposed upon Go Airlines as it gave its cargo space to third party vendors and had no further control on any part of commercial/economic aspects of its cargo operations.

Separately, the CCI's 2012 decision fining cement manufacturers INR 63 billion (USD 940.5 million) for price fixing was overturned in December 2015 by the Competition Appellate Tribunal for violating the principles of natural justice since the CCI Chairman, who signed the order, was not present at three of the CCI hearings. The matter has been remitted to the CCI for a re-hearing and new decision within 3 months. Notably though, the CCI Director General's report was still considered valid and the companies will have to defend themselves against the report at the re-hearing.

Taiwan

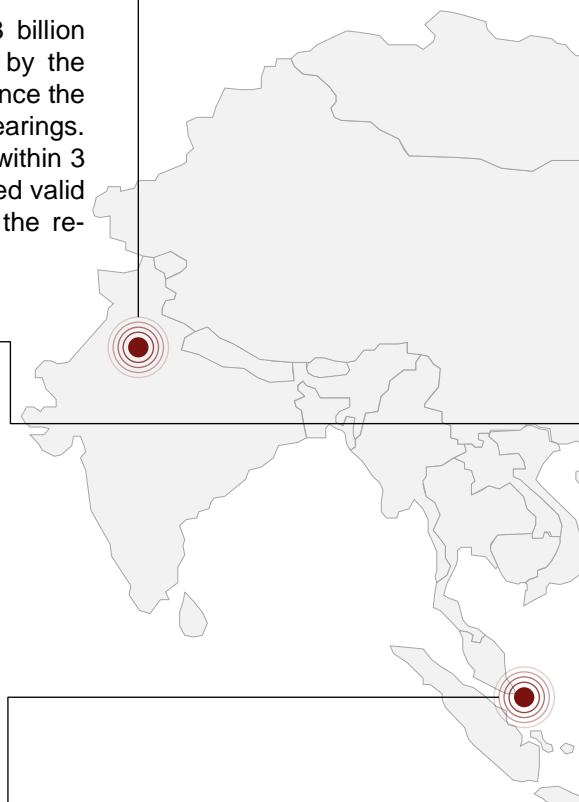
The last quarter of 2015 has proven to be an active one for Taiwan's antitrust regulator. In October 2015, the Taiwan Fair Trade Commission (TFTC) imposed fines of NT\$500,000 (USD 15,000) on Taiwan Taxi for failure to notify its two proposed acquisitions and, in December 2015, imposed its highest-ever international cartel fine of NT\$5.8 billion (USD 190 million) on seven aluminium capacitor companies and three tantalum capacitor companies. The companies had covertly exchanged sensitive commercial information and discussed prices in meetings. The TFTC noted that similar investigations are ongoing in several other jurisdictions including the EU, the US, Japan, South Korea, Singapore and China. It noted that Taiwan is the first jurisdiction to issue penalty decisions against the capacitor producers.

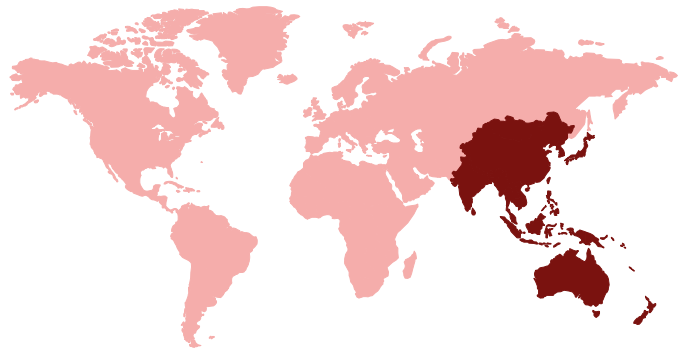
Singapore

In October 2015, the Competition Commission of Singapore (CCS) stopped its investigation into Asia Pacific Breweries Singapore following the submission of voluntary commitments by Asia Pacific Breweries to stop supplying draught beer to retail outlets on an exclusive basis. The CCS noted that the brewery's practice had prevented retail outlets from selling draught beers from competing suppliers and restricted the choice of draught beers available to retailers and consumers. During the investigation, the CCS obtained information on the beer market in Singapore from retailers and beer suppliers.

Japan

On 25 December 2015, the Japan Fair Trade Commission (JFTC) publicized its revised guidelines for administrative investigation procedures. The revised guidelines are intended to improve the regulator's transparency for Antimonopoly Act administrative investigations. Some key provisions of the revised guidelines include the JFTC making clear procedures to be adhered to while conducting raids and hearings on suspected violations of antitrust laws, in issuing orders and stipulating specific procedures on lodging complaints against the JFTC's onsite inspections and hearings. The revised guidelines took effect on 4 January 2016.





South Korea

The Korean Fair Trade Commission (KFTC) has recently increased its focus on cartel investigation procedural issues including releasing, on 23 November 2015, a notice on regulatory penalties related to its leniency application norms. Under the notice, leniency applicants will be restricted from sharing information with a third party. Furthermore, the leniency application forms will include a term specifying that entities not abiding by the regulatory rules will be excluded from the leniency process. This follows the KFTC's recent imposition of penalties on two karaoke system manufacturers in October 2015 for allegedly abusing its leniency policy.

Separately, the Korean government announced new measures in November 2015 to prevent collusive bidding and corruption in government tenders. These include a compensation payment of 5-10% of the contract value to be made by a company found to have been involved in bid rigging.

Hong Kong

On 14 December 2015, the Hong Kong Competition Ordinance (CO) came into full force. A series of guidelines and policy documents have also been issued to guide the enforcement of the CO. Notably, on 19 November 2015, the Competition Commission published its Enforcement Policy and Cartel Leniency Policy. Under its Enforcement Policy, the Commission will prioritise cases involving cartels, other agreements contravening the First Conduct Rule causing significant harm to competition and abuses of substantial market power involving exclusionary behavior by incumbents. When considering whether to investigate and how to resolve individual cases, in addition to the facts of the case, the Commission will consider three factors: compliance focus; severity factors; and effective and appropriate remedies. The Cartel Leniency Policy sets out the Commission's approach to leniency for undertakings engaged in cartel conduct. Under the policy, where all the requirements for leniency are met, the Commission will agree not to commence proceedings for a pecuniary penalty against the first cartel member who reports the cartel in exchange for that cartel member's cooperation.

Australia

On 16 December 2015, the Australian Competition and Consumer Commission (ACCC) discontinued Federal Court of Australia proceedings against Coles Express. In August 2014, the ACCC instituted proceedings at the Federal Court against Informed Sources, a petrol price information sharing service, as well as several petrol retailers, including Coles Express, for infringing antitrust laws in relation to information exchange which allowed petrol retailers to communicate with each other about prices. In exchange for the ACCC discontinuing its proceedings, Coles Express has agreed to certain commitments, including not entering into any similar price information sharing service agreements, as well as not giving effect to any such arrangement at the expiration and termination of the current term of the Informed Sources agreement in April 2016. Proceedings against Informed Sources, as well as several other petrol retailers, are ongoing.

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