



Antitrust in China and across the region
Quarterly Update
January to March 2016

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C H A N C E

Antitrust in China and across the region

Quarterly Update: January to March 2016

The continued development of antitrust law continued as a major theme for all three of China's antitrust authorities in the first quarter of 2016. China's Ministry of Commerce finalised the draft merger review section of its intellectual property rights (IPR) guidelines, which will be included in a consolidated set of IPR guidelines to be prepared by the Anti-Monopoly Commission, which will also include IPR guidelines being drafted by SAIC, NDRC and the State Intellectual Property Office.

On the enforcement side, the beginning of 2016 has been relatively quiet. In January, the National Development and Reform Commission (NDRC) fined five pharmaceuticals companies, including Chongqing Qingyang Pharmaceutical, RMB 3.99 million (USD 607,300) for reaching and implementing monopoly agreements on allopurinol tablets. Notably, this follows a previous decision in 2015 by the Chongqing branch of SAIC to fine Chongqing Qingyang Pharmaceutical for abuse of dominance, specifically refusal to supply allopurinol, the main ingredient for producing allopurinol tablets. In February, the Jiangxi branch of the State Administration for Industry and Commerce (SAIC) fined 17 insurance firms RMB 5.22 million (USD 793,000) for agreements to divide the construction casualty insurance market.

Across the Asia-Pacific region, developments in merger control have taken place, with revised merger control rules introduced in India, and transitional rules for notifiable transactions issued in the Philippines. Enforcement priorities have also been announced in Australia, South Korea and Hong Kong.

Contacts



Richard Blewett

Partner

Head of Antitrust, China

T: +86 106535 2261

M: +86 13910554829

E: richard.blewett

@cliffordchance.com



Dave Poddar

Partner

Head of Antitrust, Asia Pacific

T: +61 28922 8033

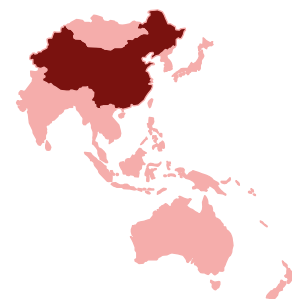
M: +61 28922 8033

E: dave.poddar

@cliffordchance.com



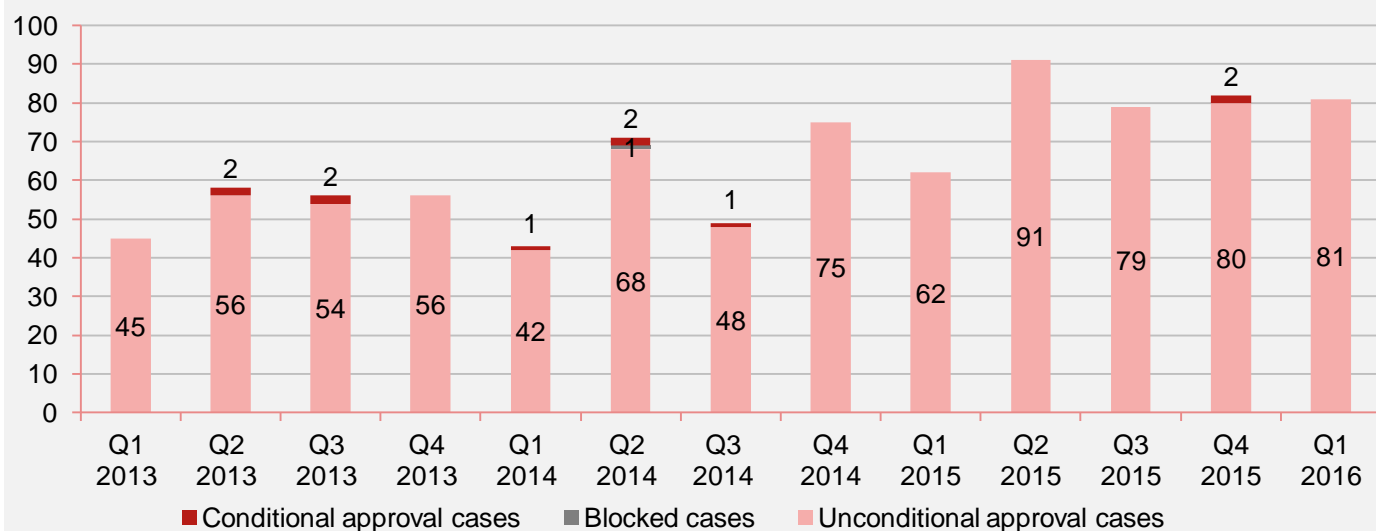
Merger Control



How many cases have there been?

China's Ministry of Commerce (MOFCOM) issued 81 merger decisions in the first quarter of 2016, an increase of 30% compared to the first quarter of 2015. More than 70% of these cases were notified under the simplified procedure. All 81 cases were unconditionally cleared.

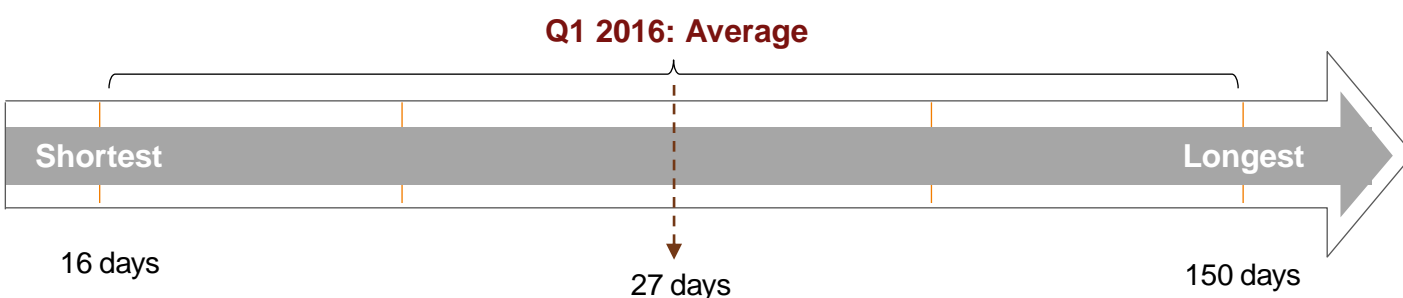
Merger control trends – Q1 2013 – Q1 2016



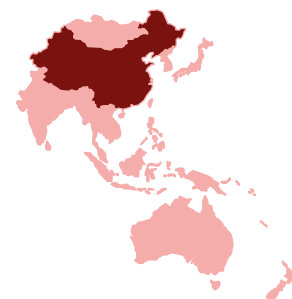
Simplified procedure: How quick is the review period?

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

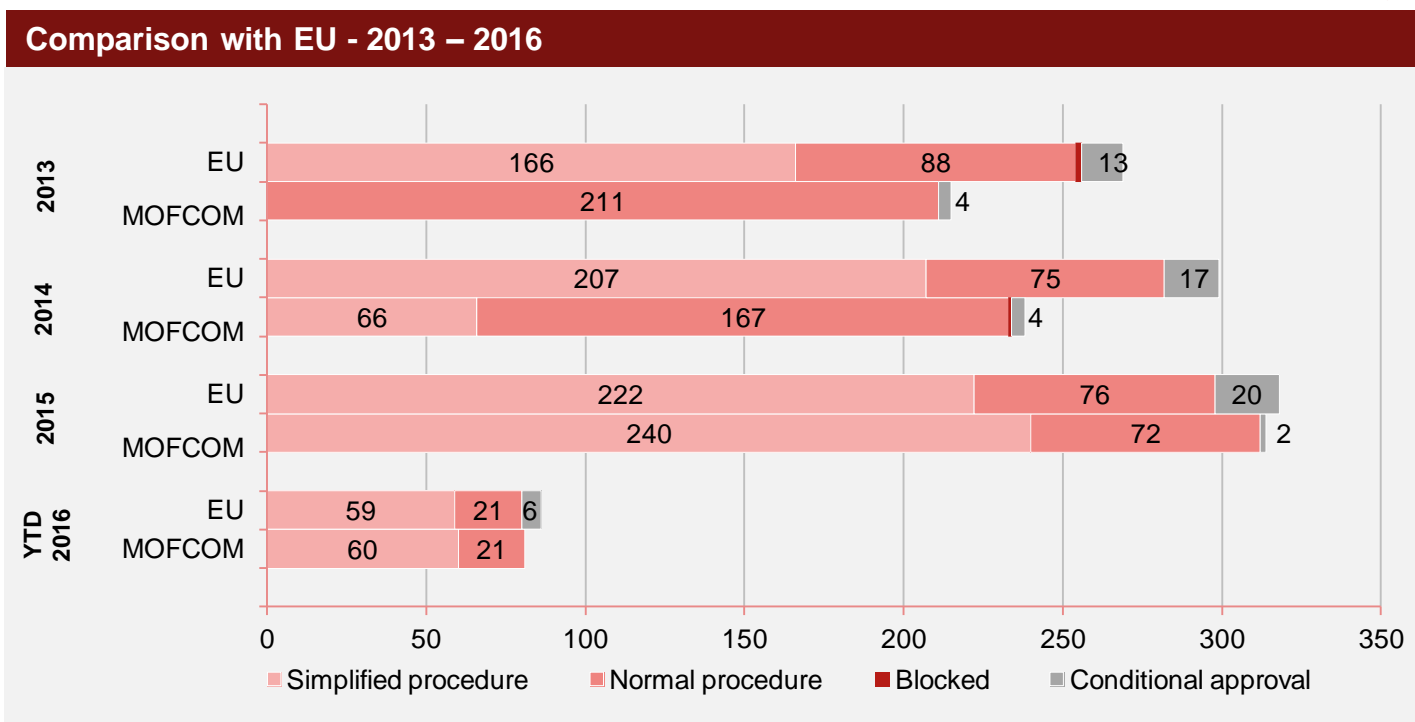
Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
Q4 2014	28 days	58.7%	4
Q1 2015	29 days	69.4%	11
Q2 2015	33 days	76.9%	19
Q3 2015	29 days	76.0%	12
Q4 2015	27 days	81.7%	7
Q1 2016	27 days	74.1%	2



Merger Control (continued)



How does China compare internationally?



Other news

China's Shang Ming reviews MOFCOM performance over past seven years

In January, Shang Ming, the newly retired former director general of MOFCOM's Anti-Monopoly Bureau reportedly made a speech assessing MOFCOM's performance in merger control over the past seven years. Notably, Mr. Shang highlighted several points indicating MOFCOM's development and progress over the past few years. First, while MOFCOM has seen increased filings, up 31% from 2014 to 2015, it has also increased its efficiency by increasing the number of Phase I clearances among closed cases by 18% over the same time period. Second, the ratio of horizontal mergers to other types of mergers has decreased significantly over the past few years, from above 60% in 2012 to 35% in 2015. Third, the number of pure China deals increased to 25% in 2015, up 5% from 2014, compared to China cross-border and pure foreign deals. Fourth, the majority of mergers which were notified were still in the manufacturing sector, which accounted for 56% of closed cases in 2015. Finally, MOFCOM has continued to strengthen its enforcement against companies for failure to file. Mr. Shang observed that of the 15 failure to file cases which MOFCOM had sanctioned, 9 were in 2015.

MOFCOM finishes draft of merger review related IPR guidelines

MOFCOM has reportedly finalised a draft of the merger review section of its intellectual property rights (IPR) guidelines. The guidelines set out how MOFCOM will assess various IPR issues in merger reviews, including impact on competition, defining the relevant market and possible types of remedies. The guidelines discuss transfer and acquisition of IPRs, post research and development issues in regards to patent pools, joint research and exclusive IPR licensing in the context of a merger review. MOFCOM will submit a finalised version of its guidelines to the Anti-Monopoly Commission, which will produce a consolidated set of IPR guidelines including those produced by MOFCOM, as well as those being drafted by SAIC, NDRC and the State Intellectual Property Office (SIPO).

Antitrust Investigations

The National Development and Reform Commission (NDRC)



In January, NDRC announced that it had fined five pharmaceutical companies a total of RMB 3.99 million (USD 607,300) for reaching and implementing monopoly agreements concerning allopurinol tablets, a drug used to treat gout and hyperuricemia. The five companies fined were three allopurinol tablet manufacturers (Chongqing Qingyang Pharmaceutical, The Place Pharmaceutical Jiangsu and Shanghai Xinyi United Medicinal Herbs) and two distributors (Chongqing Datong Pharmaceutical and Shangqiu Huajie Pharmaceutical). NDRC found that the five companies held four meetings from April 2014 to September 2015 in order to reach and implement agreements to increase the price of allopurinol tablets. Additionally, the three producers agreed to divide the sales market for allopurinol tablets by limiting their respective tendering activities to within the sales area allocated to each producer. NDRC decided to impose an 8% fine on Chongqing Qingyang Pharmaceutical and Chongqing Datong Pharmaceutical for their lead role in the agreements and 5% fines on The Place Pharmaceutical Jiangsu, Shanghai Xinyi United Medicinal Herbs and Shangqiu Huajie Pharmaceutical due to their positive cooperation. This investigation follows a 2015 decision by the Chongqing branch of SAIC to fine Chongqing Qingyang Pharmaceutical for abuse of dominance, specifically refusal to supply allopurinol, the main ingredient for producing allopurinol tablets.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
Pharmaceuticals - Five pharmaceutical companies - NDRC	January 2016	Horizontal price fixing, market partitioning and bid rigging	3,995.4	118.3	1,686.9	5 and 8	NA

NDRC continues in its preparation of new rules and guidelines for antitrust investigations

In February, NDRC published its draft Guidelines for Commitments of Undertakings in Antitrust Cases (draft Commitments Guidelines). Under Article 45 of the Anti-Monopoly Law (AML), an undertaking subject to an investigation may offer commitments to remedy its potentially anticompetitive conduct, in return for which the authorities may terminate or suspend the investigation. The draft Commitment Guidelines provide guidance on the submission and review of commitments. Commitment proposals will not be accepted if the relevant anticompetitive behaviour has already been verified in an investigation, or if a case involves horizontal agreements. Additionally, the draft Commitments Guidelines specify that the implementation period for proposed commitments may range from 6 months to 3 years, with possible extensions of up to a maximum period of 5 years for significant and complex cases.

Also in February, NDRC published its draft Guidelines on the Application of the Leniency Program in Cases Involving Horizontal Monopoly Agreements (draft Leniency Guidelines) for public comment. Under the draft Leniency Guidelines, the authorities can grant leniency to up to 3 undertakings in one case, although wider application may be considered in more complicated cases with many undertakings involved. The first applicant can be exempted from, or granted at least an 80% reduction in, any penalty. The second applicant may enjoy a penalty reduction of 30% - 50%, while the third and following applicants can enjoy reductions of no more than 30%.

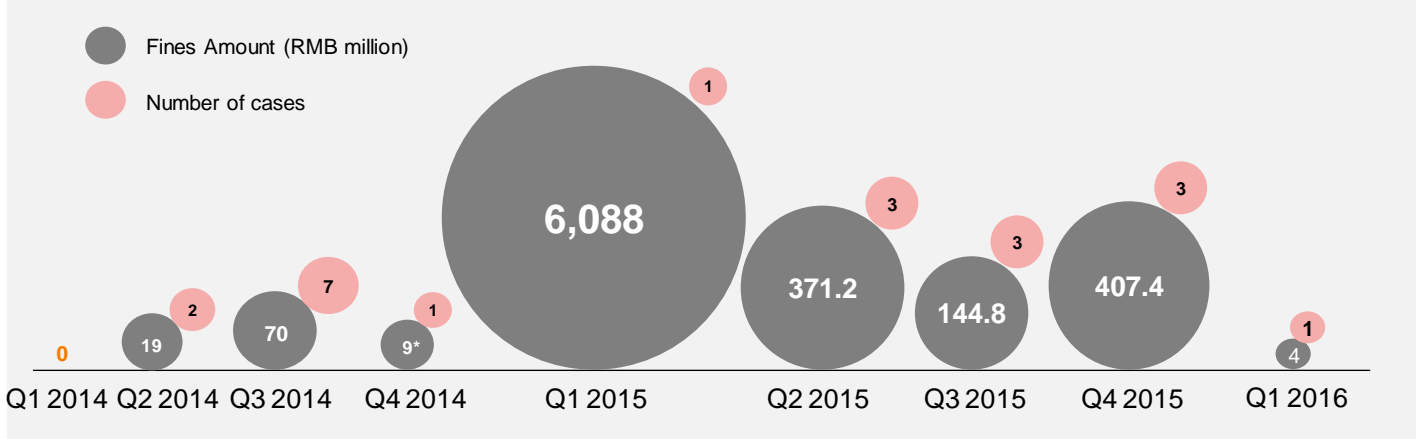
On 23 March 2016, NDRC released a draft of its Antitrust Guidelines on the Auto Industry (draft Auto Guidelines). The draft Auto Guidelines address a number of key antitrust issues in the automobile sales and after-sales markets, focussing on vertical agreements and abuse of dominance. In terms of vertical agreements, the main concerns are direct restrictions including contractually fixing a distributor's resale price or indirect restrictions including fixing a distributor's profit margin and discount rates, punishing distributors that refuse to use recommended prices by withdrawing rebates, refusals to supply or advance termination of agreements. The draft Auto Guidelines also provide certain exemptions for vertical restraints, including resale price maintenance, in circumstances involving the introduction of new energy vehicles, government procurement, when dealers are acting as agents and online sales. In terms of abuse of dominance, the draft Auto Guidelines provide that restricting spare parts suppliers from placing their trademark or logo on the spare parts may be considered an abuse of dominance.



Antitrust Investigations (continued)

The National Development and Reform Commission (NDRC)

Enforcement trends – Q1 2014 to Q1 2016



Other news

Qualcomm and Lenovo sign 3G/4G China patent licence agreement

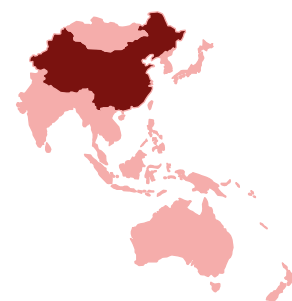
On 19 February 2016, Qualcomm and Lenovo signed a new 3G/4G patent licensing agreement for China. The new agreement grants Lenovo a royalty-bearing patent licence to develop, manufacture and sell 3G and 4G complete devices marketed under both Motorola and Lenovo brands. The agreement, notably the royalties payable by Lenovo to Qualcomm, is consistent with the terms of commitments accepted by NDRC as part of its antitrust settlement with Qualcomm in 2015, in which Qualcomm was fined RMB 6.088 billion (USD 975 million) for abusing its dominant position in relation to certain standard essential patents and chips by charging excessive patent royalties, bundling patent licenses and otherwise imposing unreasonable conditions.

NDRC signs MOU with Competition Bureau of Canada

On 1 February 2016, the Competition Bureau of Canada (CBC) and NDRC signed a memorandum of understanding (MOU) to strengthen cooperation between the two agencies in competition law enforcement and policy. This is the third cooperation memorandum between the CBC and Chinese antitrust authorities. In 2015, the CBC signed similar memorandums with MOFCOM and SAIC. Under the MOU, the CBC and NDRC will work together on competition law matters which are of mutual interest and exchange information on each other's enforcement and policy developments. Furthermore, the MOU contemplates that the two authorities may cooperate where they are investigating related matters.

Antitrust Investigations (continued)

The State Administration for Industry and Commerce (SAIC)

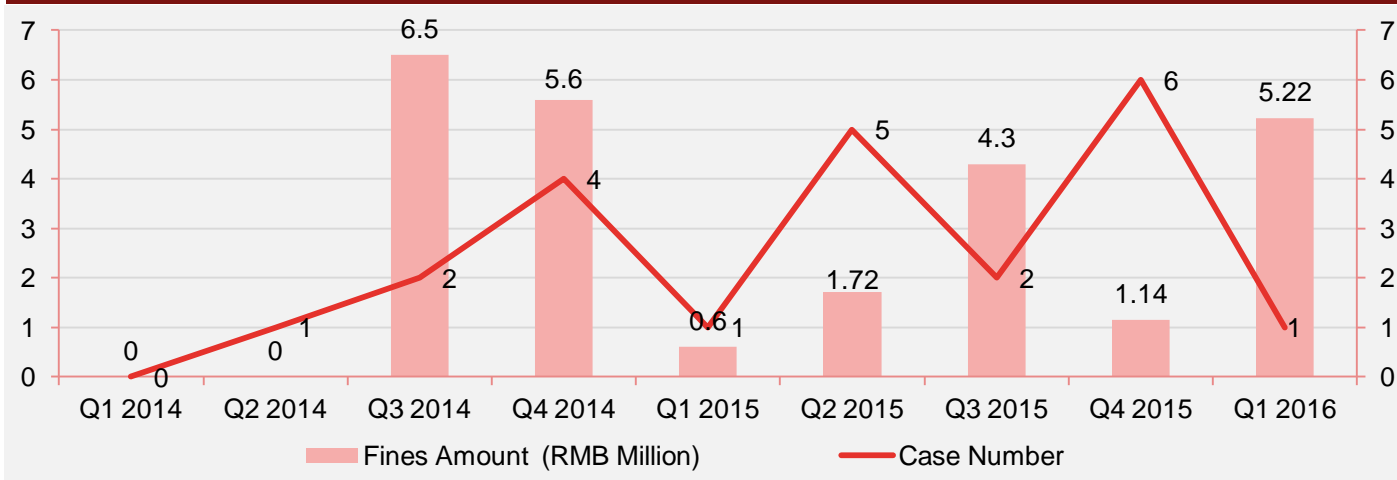


In February, the Jiangxi branch of SAIC (Jiangxi AIC) announced fines of RMB 5.22 million (USD 793,000) against the Jiangxi subsidiaries of 17 insurance firms including China Life, Taikang Life and Pingan Property Insurance. The Jiangxi AIC found that there had been a series of agreements between the 17 insurers signed in 2009 and 2012 to divide the local engineering construction and construction casualty insurance market in violation of Article 13 of the AML. The Jiangxi subsidiaries of China Life and Taikang Life, as the cartel leaders, were each fined 5% of their 2013 revenue in the construction casualty insurance market, and the remaining participants were each fined 3% of their 2013 revenue in that market. The investigation follows a recent decision in December 2015 by SAIC's Hubei branch fining 12 insurance companies for agreements on co-insurance for construction casualties in the city of Wuhan. A similar investigation into co-insurance agreements has reportedly been launched by the Chongqing AIC.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
Insurance - Jiangxi	February 2016*	Monopoly agreement – Market partitioning	5,218.6	5.934	2,092	3 and 5	NA

* The decision was made in December 2015 and published by SAIC in February 2016.

Enforcement trends – Q1 2014 to Q1 2016



Other news

SAIC releases seventh edition of draft guidelines on abuse of IPR

In February, SAIC published the seventh draft of its Antitrust Enforcement Guidelines on Abuses of Intellectual Property Rights. This latest draft took into account more than 800 comments from various public and private sources, including relevant governmental departments, provincial AICs, companies, lawyers and academics. Notably, the provision concerning the safe harbour from antitrust enforcement is retained and refined in the seventh edition of the Guidelines. The safe harbour provides certain boundaries within which companies may be exempt from being found to have entered into monopoly agreements, such as where the aggregate market share of competing undertakings does not exceed 20% in the relevant market. Additionally, the concept of “essential facility” has been retained in the seventh draft of the Guidelines. Under the draft Guidelines, IPRs that amount to essential facilities will automatically result in the right holders being deemed to possess a dominant position. Once SAIC finalises its Guidelines, it will submit them to the Anti-Monopoly Commission for consolidation with IPR related antitrust guidelines being drafted by MOFCOM, NDRC and SIPO.

Other Asia Pacific news in brief

India

In March, India's Ministry of Corporate Affairs published changes to the thresholds for mandatory merger control filings under India's Competition Act. The total value of assets and turnover based thresholds have been increased significantly and, importantly, the validity of the de minimis filing exemption has been extended for a further 5 years until 3 March 2021. The financial thresholds for the de minimis exemption have also been increased so that deals involving a target enterprise with Indian assets of less than INR 3.5 billion (USD 53 million) or Indian turnover of less than INR 10 billion (USD 150 million) may be exempt from the filing requirement. Additionally on 7 January 2016, the Competition Commission of India (CCI) published amendments to the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulation, 2011 (Combination Regulation). Under the amendments, the CCI has eased rules so that investors with more than a 25% shareholding in a company can now increase their shareholding up to 50% without prior notification to the CCI provided there is no acquisition of control. For acquisitions of stakes of less than 10%, the CCI no longer requires notification if the investor does not have any special voting rights, will not become a board member, own nomination rights or participate in the management of the company.

Singapore

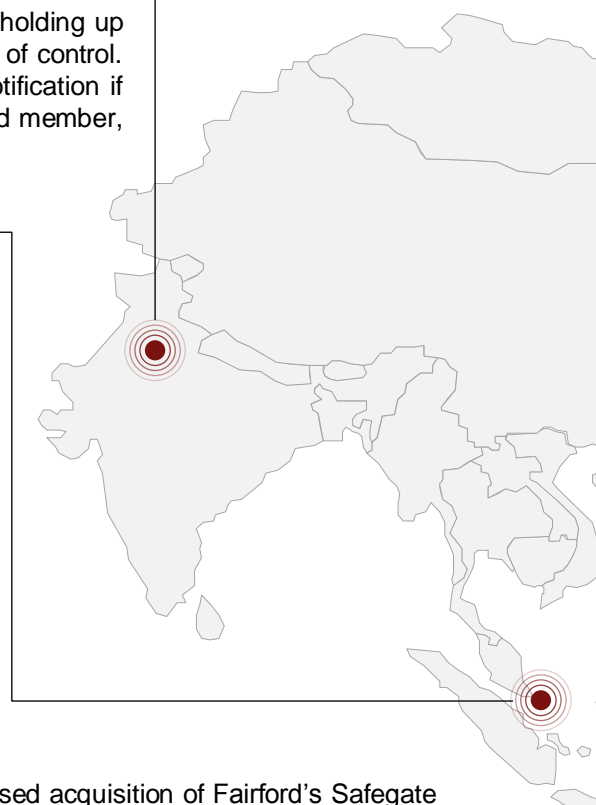
In March, the Competition Commission of Singapore (CCS) imposed total fines of SGD 909,302 (USD 666,407) on 10 financial advisers for putting pressure on their competitor, iFAST, to withdraw a discounted offer for life insurance products. In its decision, the CCS clarified that agreements between competitors to collectively pressurise a competitor to withdraw an offering can constitute anti-competitive conduct, and that once it has been established that an agreement is intended to prevent, restrict or distort competition, it is unnecessary for the CCS to show that the conduct has had any actual anti-competitive effect. It has been observed that this is an important step in showing that the CCS will treat non-hardcore competition infringements as 'object' infringements. Hardcore infringements typically refer to price fixing, market share, bid-rigging and output limitations. Additionally, the CCS decision is noteworthy because fines were calculated on a full year basis even though the anti-competitive conduct had only lasted a few days.

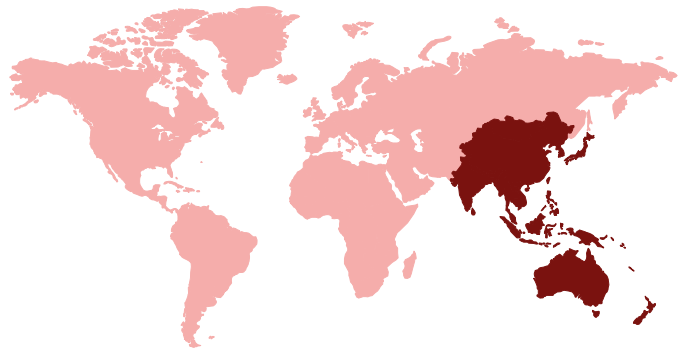
Separately, on 3 March 2016, the CCS approved ADB BVBA's (ADB) proposed acquisition of Fairford's Safegate International (Safegate) after accepting commitments to address the CCS's competition concerns. The CCS found that ADB and Safegate account for more than 80% of the supply of airfield lighting systems in Singapore and that they may be each other's closest competitor. Accordingly, ADB proposed behavioural commitments, including price maintenance for certain periods of time, maintaining supply for 10 years, a promise not to 'lock in' party contractors and suppliers in Singapore using exclusive agreements for four years after the merger's completion, ensuring that any existing contracts or agreements of relevance will continue in full force and effect, and the submission of independent audit reports to the CCS on a regular basis.

Australia

On 23 February 2016, Rod Sims, the chairperson of the Australian Competition and Consumer Commission, announced the ACCC's priorities for 2016. Key areas of focus will be on cartel conduct, anti-competitive conduct and practices and misuse of market power. Sector-wise, the health and medical sectors will continue to be priorities for 2016.

Separately, Prime Minister Malcolm Turnbull has announced his support for the adoption of an effects-based test for misuse of market power proposed in the Harper Review on Australia's competition law, as opposed to the current intent-based provisions. The proposed legislation, however, still needs to be voted on by Australia's parliament.





South Korea

In February, the Korean Fair Trade Commission (KFTC) released its 2016 official agenda highlighting the areas on which the KFTC will focus in the upcoming year. In relation to cartels, the KFTC intends to require companies to set up internal rules which would punish employees that engage in cartel behavior. In relation to merger control, the KFTC could conduct preliminary reviews of transactions through ex-officio reviews without a formal KFTC notification. Other areas of focus include intellectual property rights related abuses and inter-affiliate trading.

Additionally, the KFTC announced on 11 March 2016, its decision to impose significant fines totaling KRW 118.4 billion (USD 99.9 million) on 12 corrugated cardboard manufacturers for fixing the price of corrugated cardboard paper from 2009 – 2012.

Japan

On 15 March 2016, the European Commission and the Japan Fair Trade Commission agreed to strengthen antitrust cooperation between the two regulators by upgrading the existing EU/Japan Cooperation Agreement on Anticompetitive Activities, which was signed on 10 July 2003. The key feature of the upgraded agreement is that it allows the competition authorities to exchange evidence during investigations. For Japan, this follows a similar agreement reached last year with Australia to share information and coordinate certain enforcement activities between the two countries.

Hong Kong

Since the Competition Ordinance came into full force on 14 December 2015, the Hong Kong Competition Commission (HKCC) has continued to develop how it will enforce the Competition Ordinance in practice. In March, Anna Wu, the chairperson of the HKCC, stated that domestic infringement matters would have priority over international cartel cases. Ms. Wu noted that most of the complaints received thus far by the HKCC have concerned potential anti-competitive behavior in Hong Kong and that complaints have mostly been in relation to anti-competitive agreements, e.g. price fixing, output limitation, market sharing and bid-rigging.

Philippines

On 12 February 2016, the newly-formed Philippine Competition Commission (PCC) issued a circular setting out transitional rules for mergers and acquisitions that were, or are to be, executed or implemented after the circular came into effect, on 8 March 2016, but before the implementing rules and regulations (IRR) of the Philippine Competition Act come into effect. Parties to mergers and acquisitions valued at more than PHP 1 billion (USD 21 million) are required to notify the PCC of the details and terms of their agreements, but no approval or consent from the PCC will be necessary. In addition, on 16 February 2016, the PCC published a second circular providing special transitional rules on the notification of transactions where one of parties is a company listed on the Philippine Stock Exchange.

Beijing



Richard Blewett
Partner
T: +86 106535 2261
M: +86 13910554829
E: richard.blewett
@cliffordchance.com

Beijing



Bai Yong
Counsel
T: +86 106535 2286
M: +86 13910850420
E: yong.bai
@cliffordchance.com

Sydney



Dave Poddar
Partner, Head of Antitrust,
Asia Pacific
T: +61 28922 8033
M: +61 422800415
E: dave.poddar
@cliffordchance.com

Hong Kong



Emma Davies
Partner
T: +852 2825 8828
M: +86 13910849918
E: emma.davies
@cliffordchance.com

Seoul



Hyun Suk Kim
Partner
T: +82 2 6353 8118
M: +82 10 27959841
E: hyun.kim
@cliffordchance.com

Tokyo



Michelle Mizutani
Counsel
T: +81 35561 6646
M: +81 8013859813
E: michelle.mizutani
@cliffordchance.com

Bangkok



Angela Nobthai
Counsel
T: +66 2401 8828
M: +66 839892091
E: angela.nobthai
@cliffordchance.com

Singapore



Harpreet Singh
Partner
T: +65 6661 2028
E: harpreet.singh
@cliffordchance.com

Jakarta



Linda Widyati
Partner
T: +62 212988 8301
M: +62 8119459558
E: linda.widyati
@cliffordchance.com

Clifford Chance, 33/F, China World Office 1 No. 1 Jianguomenwai Dajie
Chaoyang District Beijing 100004 People's Republic Of China

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