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C H A N C E



**ANTITRUST IN CHINA AND
ACROSS THE REGION**

QUARTERLY UPDATE

January to March 2017

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ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: JANUARY TO MARCH 2017

2017 has so far proved to be a relatively quiet period for the Chinese antitrust authorities, after a busy period at the end of 2016. The Ministry of Commerce (MOFCOM) has cleared 71 mergers unconditionally in this quarter and has not imposed remedy in or blocked any case.

On the enforcement side, the Shandong branch of the National Reform and Development Commission (NDRC) imposed a fine of RMB 120,000 (approx. USD 17,450) on a company for obstructing its investigation into alleged anticompetitive pricing practices. Although a relatively modest fine, this is the first time that a fine for such behaviour has been imposed in China. This once again demonstrates NDRC's continuous focus on the pharma sector. Local branches also focussed on the automotive and telecommunications sectors. The State Administration of Industry and Commerce has also been more active at the local level, focussing on pharma and telecommunications, as well as utilities. Further, the NDRC and SAIC workload has been focused on domestic companies.

In the wider Asia Pacific region, there have been a number of interesting developments. India's Competition Commission granted its first order for leniency, in a bid-rigging case. The scope of the target exemption from merger control filings has also been extended in India so that seller turnover is no longer taken into account. Bid-rigging has also been an area of focus elsewhere, with the Singapore Competition Commission proposing an infringement decision against a number of electrical engineering firms, and the Hong Kong Competition Commission (HKCC) bringing its first case to the Competition Tribunal against five information technology companies. While the HKCC has also been reflecting on its enforcement record to date, the South Korean and Australian authorities have been focussing on the year to come, with more criminal enforcement action anticipated in Australia.

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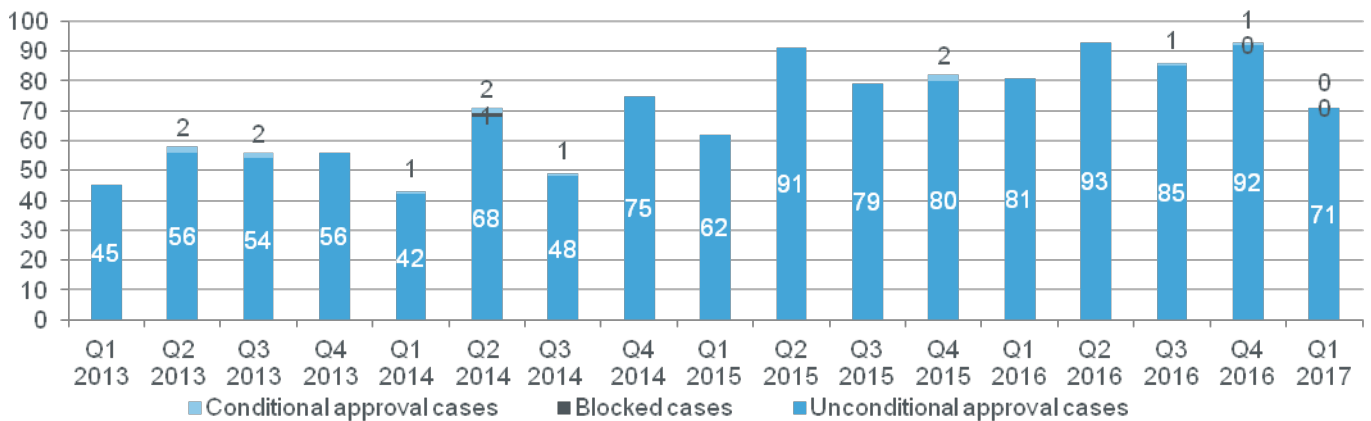


THE MINISTRY OF COMMERCE (MOFCOM)

How many cases have there been?

China's Ministry of Commerce (MOFCOM) issued 71 merger decisions in the first quarter of 2017, a decrease of 12.3% compared to the first quarter of 2016. More than 81.6% of these cases were notified under the simplified procedure. 71 cases were unconditionally cleared, while no case was conditionally approved.

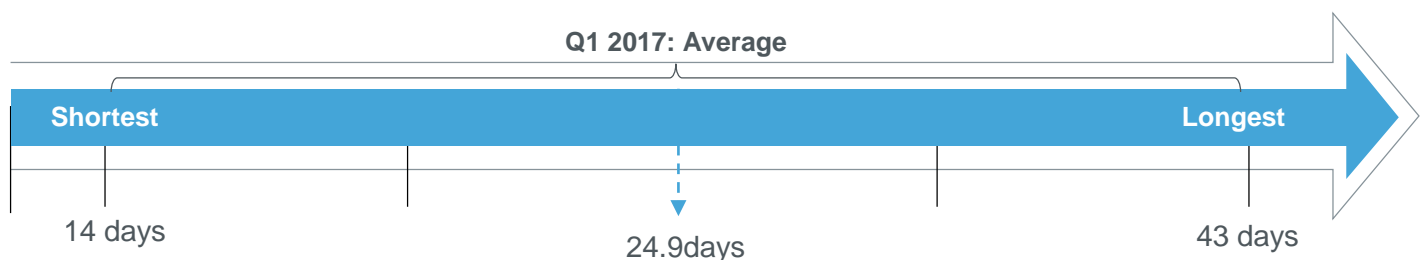
Merger control trends – Q1 2013 – Q1 2017



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
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
Q2 2016	26 days	82.8%	10
Q3 2016	25 days	75.6%	0
Q4 2016	25 days	77.4%	4
Q1 2017	25 days	81.7%	5

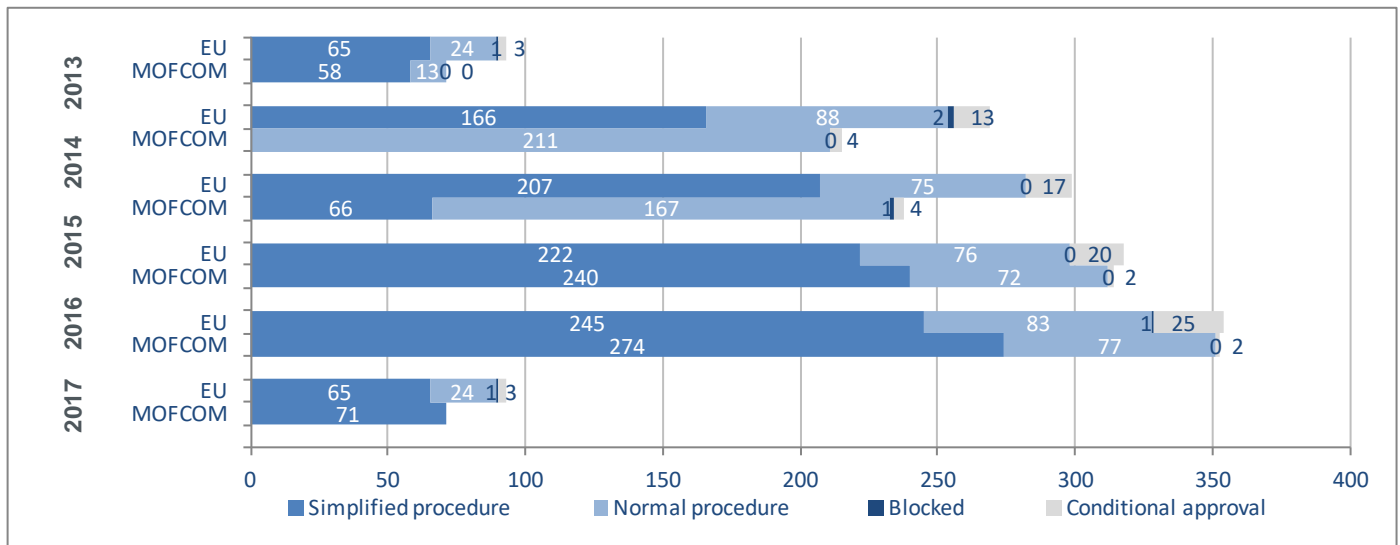




THE MINISTRY OF COMMERCE (MOFCOM)

How does China compare internationally?

Comparison with EU – 2013 – 2017



Other news

MOFCOM considers public disclosures of company information in merger filings

- MOFCOM is considering to disclose on its website companies' filing information in normal cases. MOFCOM's plan would be a significant step forward from its current level of public disclosure. At present MOFCOM only publicly announces simple, not normal, cases. For simple cases, the information on the identity of the companies, the relevant product and geographic market and the combined market shares is disclosed after case acceptance. MOFCOM intends to expand the scope of information disclosure to also cover normal cases.

MOFCOM AMB officials survey Chinese internet firms

- MOFCOM's Anti-Monopoly Bureau recently conducted a survey of Chinese internet companies in Hangzhou, home to leading companies such as Alibaba. According to news sources, MOFCOM's purpose was to better understand the sector in order to strengthen its economic analysis in merger reviews rather than to identify potential enforcement targets. This came shortly before unofficial reports that MOFCOM would not specifically review VIE structures as part of its merger review. VIE structures are commonly used in the internet industry and concerns over the legality of such structures had become an obstacle to some deals being notified.

China State Council publishes draft IPR antitrust guidelines for public comment

- On 23 March 2017, the Anti-Monopoly Commission (AMC) of China's State Council published a draft of its 'Guidelines on Prohibition of Abuses of Intellectual Property Rights' (IPR) (the Guidelines) for public comment. The consultation period runs from 23 March to 21 April. The current draft incorporates the versions drafted by the four central government departments: MOFCOM, the State Administration for Industry & Commerce, the National Development and Reform Commission and the State Intellectual Property Office. The Guidelines aim to fight counterfeiting and IPR infringements, ensure the implementation of China's IPR strategy, maintain market order and improve the business environment. The Guidelines require a better market supervision system supported by appropriate information technology and improvements to the law, regulations and standards.



THE NATIONAL DEVELOPMENT AND REFORM COMMISSION (NDRC)

Shandong Price Bureau fines pharmaceutical company for hindering investigation

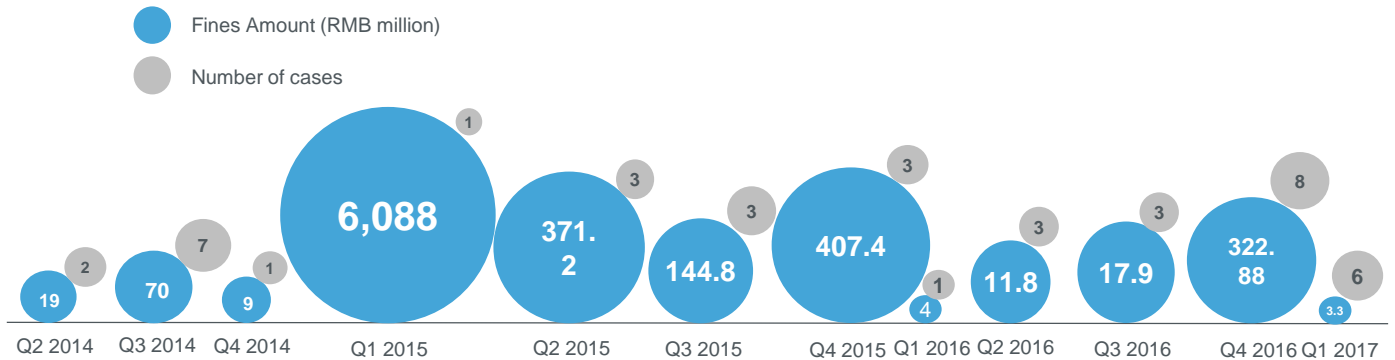
The Shandong Price Bureau (SPB), the local branch of the NDRC, has fined Weifang Longshunhe Pharmaceutical (Weifang Longshunhe) RMB 120,000 (approx. USD 17,450) for obstructing an antitrust investigation. The SPB and the NDRC's Price Supervision and Anti-monopoly Bureau (PSAMB) had launched a joint investigation into alleged anticompetitive pricing conduct. During the dawn raid, company employees threw away the enforcement officials' USB flash disk and secretly replaced it. The SPB found that such conduct amounted to the unlawful obstruction of an antitrust investigation under the Anti-Monopoly Law (AML) and warranted penalties. Zhang Handong, the Director-General of the PSAMB, said the authorities considered the employees' actions to be "unprecedented" and "extremely confrontational acts". This is the first time fines have been imposed for obstructing an antitrust investigation in China.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
Automotive – 18 vehicle inspection service providers Shanxi DRC	January 2017	Price fixing	1,319.9	N/A	N/A	3-8	N/A
Automotive – five vehicle inspection service providers Guizhou DRC	January 2017	Price fixing	276.9	N/A	N/A	1-6	N/A
Pharmaceuticals – Weifang Longshunhe Pharmaceutical Shandong Price Bureau	13 February 2017	Hindering antitrust probe	120	N/A	N/A	NA	N/A
Telecommunications – Jilin Jihua Group Information Network Technology Jilin Price Bureau	16 March 2017	Abuse of dominance - Imposing unreasonable trading terms	823.9	N/A	N/A	5	No
Telecommunications – Dandong branch of China Unicom Liaoning Price Bureau	16 March 2017	RPM and Abuse of dominance - Tying	671.6	N/A	N/A	1	Yes
Telecommunications – China Unicom's Changchun branch and Changchun FAW Communications Technology Co., Ltd Jilin Price Bureau	16 March 2017	Price fixing	27.9	N/A	N/A	5	No



THE NATIONAL DEVELOPMENT AND REFORM COMMISSION (NDRC)

Enforcement trends – Q2 2014 to Q1 2017



Other news

NDRC suspends container shipping probe

On 1 March 2017, the NDRC announced that 11 shipping companies had agreed to voluntarily lower their terminal handling charges as a remedy to allegedly contravening the AML. This unofficially concluded the NDRC's probe into China COSCO Shipping, Maersk Lines, Mediterranean Shipping, CMA-CGM, American Presidential Lines, Hapag-Lloyd, Evergreen Marine, Hyundai Merchant Marine, NYK Line, Mitsui O.S.K. Lines and Sinotrans. Following complaints from the China Shippers' Association, in November 2015 the NDRC launched its investigation into the shipping companies' voluntary discussion agreements, terminal handling charges, freight prices and costs. There will now be a monitoring period to observe whether the parties have amended their conduct and the NDRC may still re-launch the investigation in the future.

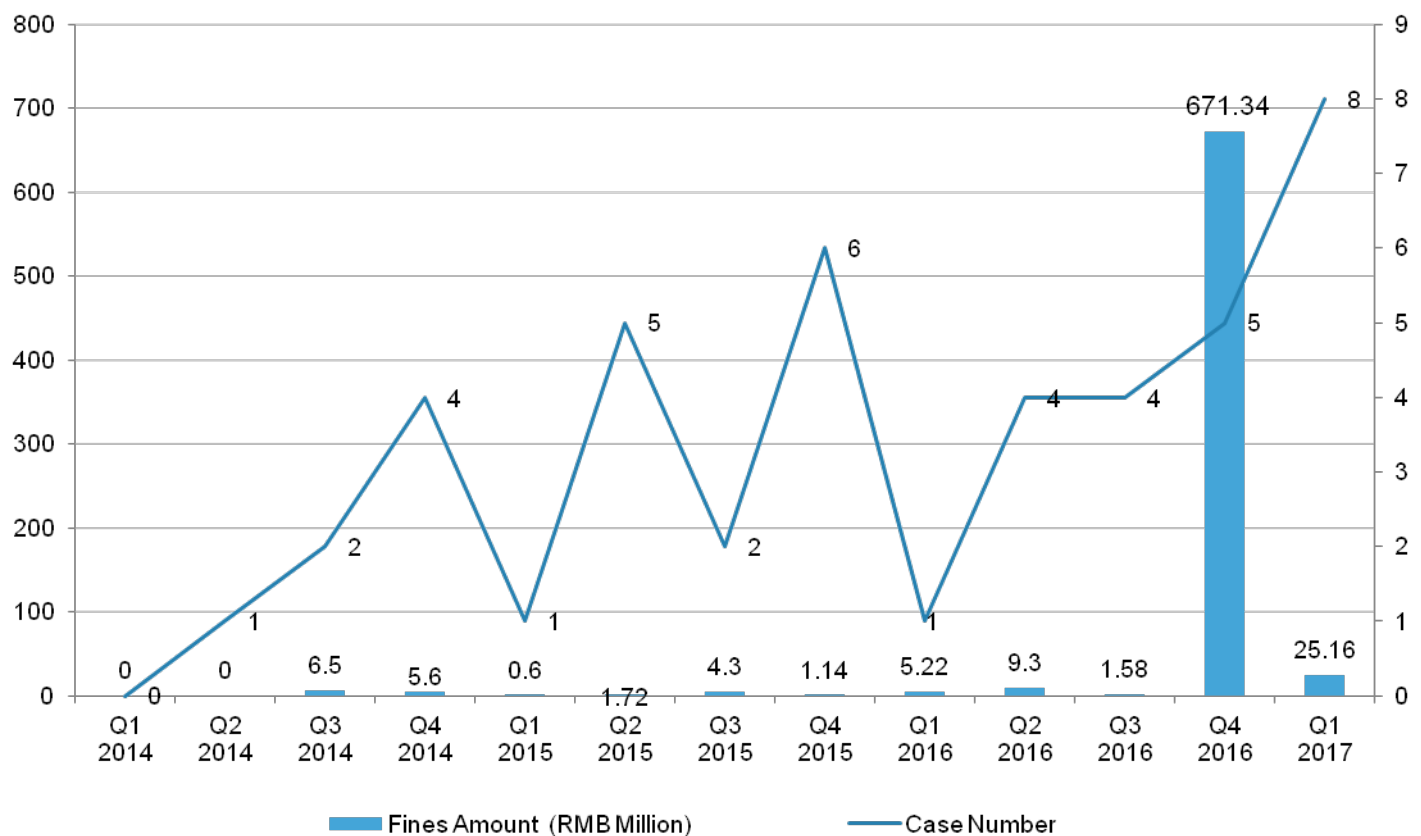


THE STATE ADMINISTRATION FOR INDUSTRY AND COMMERCE (SAIC)

SAIC targeting the pharmaceutical and medical devices sectors

China's antitrust regulators continue to examine the pharmaceutical and medical devices sectors. Following the recent NDRC investigations into the medical device industry (see *Quarterly Update: October to December 2016*), the SAIC is also focussing on the sector. In January 2017, the SAIC provided the forum for the China Association for Medical Devices Industry and Renmin University to host a seminar on competition in the medical device industry, attended by 10 major international and domestic medical device companies. In addition, on 11 January 2017, the SAIC published the decision by the Hubei Administration for Industry and Commerce fining drug distributor Wuhan Xinxing Jingying Pharma (Xinxing) for abusing its dominance on the market for the active pharmaceutical ingredient methyl salicylate by raising prices and imposing unfair terms and conditions on counterparties. The RMB 2,209,221 (approx. USD 321,250) fine represents 3% of Xinxing's sales from methyl salicylate in 2015.

Enforcement trends – Q1 2014 to Q1 2017





THE STATE ADMINISTRATION FOR INDUSTRY AND COMMERCE (SAIC)

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
Electricity Shandong AIC*	4 January 2017	Abuse of dominance	N/A	N/A	N/A	N/A	Yes
Fireworks Henan AIC	7 February 2017	Anti-competitive agreement – Market sharing	1,521.1	185.5	771	1 - 2	Yes
Urban Public Water Supply Jiangsu AIC	7 February 2017	Abuse of dominance – Imposing unreasonable trading conditions	21,429.4	N/A	N/A	7	No
Pharmaceuticals Hubei AIC	10 February 2017	Abuse of dominance – Raising prices and imposing unfair terms and conditions	2,209.2	N/A	N/A	3	Yes
Telecommunications Ningxia AIC	16 February 2017	Abuse of dominance – Tying	N/A	N/A	N/A	N/A	Yes
Telecommunications Ningxia AIC	16 February 2017	Abuse of dominance – Tying	N/A	N/A	N/A	N/A	Yes
Telecommunications Ningxia AIC	16 February 2017	Abuse of dominance – Tying	N/A	N/A	N/A	N/A	Yes
Liquefied Petroleum Gas Inner Mongolia AIC*	28 March 2017	Abuse of dominance – Raising prices	N/A	N/A	N/A	N/A	Yes

* Both decisions were issued in Q4 2016 and published in Q1 2017

OTHER ASIA PACIFIC NEWS IN BRIEF

Hong Kong

HKCC takes IT server bid-rigging case to the Competition Tribunal

On 23 March 2017, the Competition Commission of Hong Kong (the HKCC) took its first case to the Competition Tribunal since the entry into force of the Competition Ordinance in 2015. The HKCC alleges that five information technology companies colluded in submitting fake bids in a tender run by the Hong Kong Young Women's Christian Association in contravention of the First Conduct Rule of the Competition Ordinance. The Commission is demanding financial penalties and a declaration of contravention from each company involved.

HKCC reflects on enforcement record since the commencement of Hong Kong's competition law

The HKCC announced that, as at the end of February 2017, the HKCC has received and processed more than 2,000 complaints and enquiries since the entry into force of the Competition Ordinance in 2015, of which around 50% related to the First Conduct Rule prohibiting anticompetitive agreements. Of the 130 complaints escalated for further assessment, 13% proceeded to an 'in-depth investigation stage.' The HKCC noted that "[t]hese numbers are reflective of the increasing public awareness of the Ordinance and the issues handled by the Commission were highly relevant to Hong Kong people's daily lives."

India

Competition Commission of India's first Order granting leniency

On 19 January 2017, the Competition Commission of India (CCI) published its first leniency order in a cartel case, 8 years after the establishment of the leniency regime. The CCI imposed penalties on Pyramid Electronics (Pyramid), R. Kanwar Electricals and Western Electric and Trading Company for bid-rigging in four tenders by Indian Railways and Bharat Earth Movers Limited for the supply of electrical equipment. Pyramid filed a leniency application under Section 46 of the Competition Act 2002, admitting to bid-rigging and providing detailed information on the cartel. Pyramid and the employee involved in the cartel received a 75% penalty reduction rather than a 100% reduction because the CCI had prior knowledge of the cartel from the Central Bureau of Investigation.

Government of India extends scope of target exemption in merger control filings

On 29 March 2017, the Government of India released a notice extending the scope of the target exemption applicable when assessing whether a merger filing is required in India. The exemption has been amended so that: (i) it now applies to all forms of transactions, not just acquisitions; and (ii) the turnover of the seller is no longer taken into account for any transactions (it was previously taken into account for certain asset deals and SPV hive-downs). Otherwise the exemption thresholds remain the same. The revised exemption will be applicable for five years.

Singapore

Singapore brings cartel charges against engineering firms

On 21 March 2017, the Competition Commission of Singapore (CCS) issued a proposed infringement decision to several electrical engineering firms for allegedly engaging in bid-rigging on two occasions. On the first occasion, three Singaporean firms – HPH, Peak Top and the Cyclect Group – allegedly colluded on a bid to provide full scale electrical engineering services to F1 for its annual Grand Prix event between 2015 and 2017. Cyclect Group had drawn up and provided pricing schedules and final bid amounts to HPH and Peak Top. The latter two allegedly used this information in their bids for the F1 tender, which Cyclect ultimately won with the lowest bid. On the second occasion, the Cyclect Group and HPH allegedly colluded on a 2015 asset-tagging tender by GEMS World Academy, an international school. Asset-tagging services involve generating barcodes on labels and tracking assets such as computers or furniture.

Taiwan

Taiwan antitrust authority fines NEXGEN for resale price maintenance

On 9 March 2017, the Taiwan Fair Trade Commission (TFTC) announced fines of TWD 500,000 (approx. USD 16,100) against NEXGEN Mediatech Inc. (NEXGEN) for implementing resale price maintenance. NEXGEN, a domestic appliance manufacturer, sold products through both its sales channels and distributors. The TFTC found that NEXGEN had refused to supply goods to some distributors for disobeying resale prices set by NEXGEN. Accordingly, the TFTC found that NEXGEN had reduced competition, without sufficient justification, by depriving distributors of the ability to determine resale prices based on the competitive landscape and their operating strategy.



● South Korea

Korean antitrust authority announces 2017 enforcement plan

On 5 January 2017, the Korea Fair Trade Commission (KFTC) released its 2017 enforcement plan. Its priorities include promoting competition in certain "knowledge-based" industries, such as monitoring the abuse of dominance in the semiconductor, telecommunications and media industries, and heightening enforcement against anti-competitive behaviour in the pharmaceutical and medical devices industries and against unfair trade practices by mobile device manufacturers. In terms of merger control, the KFTC plans to more aggressively review transactions which could establish or strengthen a monopoly or oligopoly. Furthermore, the KFTC plans to more closely monitor unreported mergers or failure to comply with behavioural remedies. The KFTC also indicated that it would focus on cartels in sectors affecting the daily lives of consumers, such as medical services, and in industries such as electronic parts, auto parts and transportation services.

● Japan

Japanese antitrust regulator fines emergency digital radio equipment cartel members

On 2 February 2017, the Japan Fair Trade Commission (JFTC) imposed penalties of JPY 6.4 billion (approx. USD 56.3 million) and a cease and desist order on companies manufacturing digital radio equipment used by firefighters in emergencies. The JFTC found that the companies had restricted competition by coordinating bids for tenders by fire departments. All five companies – NEC, Oki Electric Industry, Japan Radio, Hitachi Kokusai Electric (HKE) and Fujitsu – received the cease and desist order. HKE received full immunity for blowing the whistle and the other four companies were fined.

Japanese antitrust regulator warns Deutsche Securities over bond-rigging

The JFTC issued a warning against Deutsche Securities over a potential infringement of Japan's Antimonopoly Act (AMA). Deutsche Securities allegedly discussed yields and other factors with another foreign securities firm when mediating market transactions on European government bonds. The other firm avoided a warning because it had taken preventive measures. The JFTC issues a warning when it has insufficient evidence of an actual infringement of the AMA.

● Australia

ACCC to refer two additional criminal cartel cases this year

Rod Sims, the chairman of the Australian Competition and Consumer Commission (ACCC), has stated that ACCC will refer another two criminal cases for prosecution in 2017. The ACCC currently has 10 or 11 criminal cartel investigations underway. In December 2016, the Australian High Court's decision in *ACCC v. Flight Centre* also broadened the scope of cartel laws by capturing conduct that may generate customer benefits and efficiencies without having due regard to its purpose, effect and/or benefits. The decision also adopted a new approach to agency arrangements (and possibly also MFN-type arrangements), which could prompt businesses to reassess restrictions in agency relationships to ensure compliance with cartel laws (see our briefing *The High Court's Flight Centre Decision signals some turbulence ahead for distributors, agents and online platforms*, January 2017).

ACCC ready to litigate rather than accept low settlements

Rod Sims recently stated that the ACCC is ready to litigate civil competition cases in instances where firms under investigation refuse to accept appropriate penalties. The ACCC will seek penalties which better reflect the size of the business being investigated and the detriment caused by the unlawful conduct. Although Australia's 2009 competition legislation allows for higher penalties, in practice antitrust fines are much lower in Australia compared to the US, EU or Japan. The ACCC's position reflects recent decisions by the Federal Court of Australia on penalties where it has either increased fines or noted that fines should have been higher (see our briefing *A new frontier: Going where the ACCC has not gone before – an overview of recent developments in Australian competition and consumer law*, February 2017).

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