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C H A N C E



ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE

July to September 2017

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ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: JULY TO SEPTEMBER 2017

In China, MOFCOM's caseload continues to rise – 107 decisions in the last quarter, which is 24% up on the same quarter last year. MOFCOM also took its second conditional decision of 2017 - Brocade's acquisition of Broadcom, cleared with behavioural conditions that include putting in place a firewall, ensuring operability, continuing existing terms and agreeing not to engage in any tying or bundling. Separately, MOFCOM also imposed two more fines for failure to notify, in each case the fine was RMB 150,000 (approximately USD 23,000).

After a quiet start to the year, China's other enforcement agencies also showed signs of increased activity, with NDRC and its provincial agencies, imposing fines in three price fixing cases and one abuse of dominance case, as well as finding that two public agencies had abused their administrative power. All cases involved domestic entities and included fines totalling RMB 457 million (approximately USD 69 million) on 18 PVC manufacturers. This quarter also saw SAIC's competition bureau gain a new head as Yang Hongcan moved over from the Consumer Protection Bureau. One of his first tasks will be to assess a complaint lodged against Apple for abuse of dominance.

Outside China, there was continuing enforcement across the region, including Hong Kong's second case brought before Tribunal in respect of a price fixing and market sharing agreement in the context of a residential building renovation. New merger rules are expected in Vietnam and the Philippines and Australia has included an effects test in its market power provisions, so aligning its approach with jurisdictions such as the EU and Singapore.

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 422800415

E dave.poddar

@cliffordchance.com



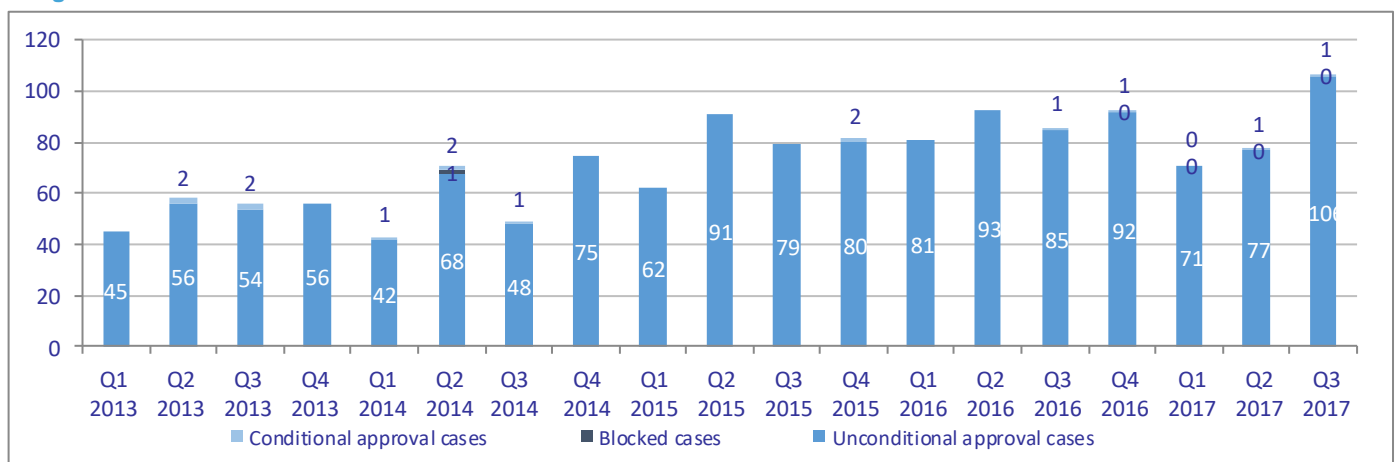


THE MINISTRY OF COMMERCE (MOFCOM)

How many cases have there been?

China's Ministry of Commerce (MOFCOM) issued 107 merger decisions in the third quarter of 2017, a increase of 24% compared to the third quarter of 2016. Around 88 of these cases were notified under the simplified procedure. 106 cases were unconditionally cleared, while 1 case was conditionally approved.

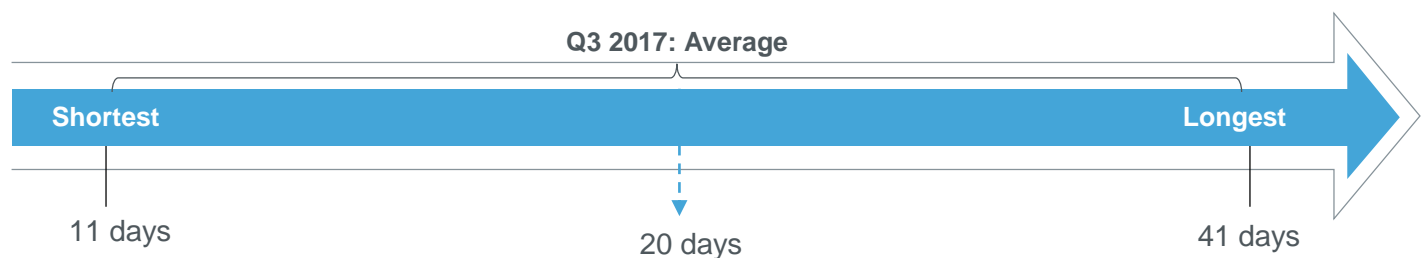
Merger control trends – Q1 2013 – Q3 2017



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
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
Q2 2017	23 days	66.7%	2
Q3 2017	20 days	82.2%	1

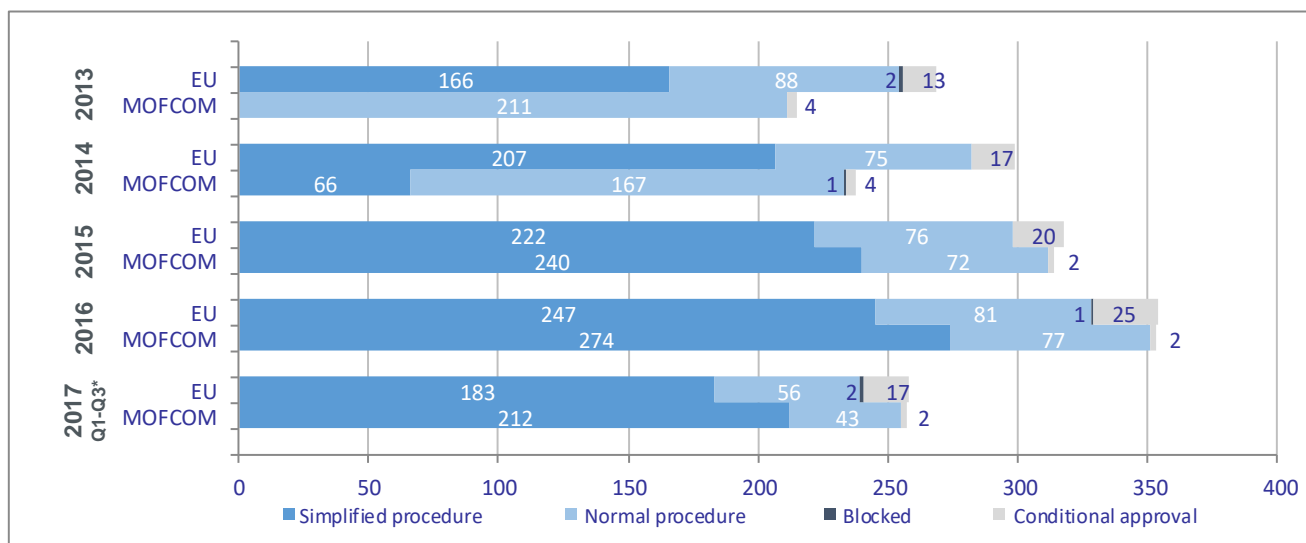




THE MINISTRY OF COMMERCE (MOFCOM)

How does China compare internationally?

Comparison with EU – 2013 – 2017



* The EU data is as of 31 August 2017.

MOFCOM publishes two more failure-to-file decisions

On 20 July 2017, MOFCOM published two new fines against failure-to-file transactions. These are the 16th and 17th penalty decision issued by MOFCOM. Both decisions relate to establishment of joint venture in China. One concerned two China based companies Wuhu Construction Investment and Chery New Energy Automotive Technology and Yaskawa Electric, a Japanese company, and the other concerned Maersk's Singapore-based affiliate and Binhai Port Investment. Given that the parties voluntarily admitted the breach and actively cooperated with the investigation, MOFCOM decided to impose each undertaking a fine of RMB 150,000.

MOFCOM conditionally approves proposed acquisition of Brocade by Broadcom

On 22 August 2017, MOFCOM announced that it had conditionally approved the proposed acquisition of Brocade by Broadcom, which was notified to MOFCOM on 13 January 2017. The relevant product markets concerned in this merger filing were (i) ASICs for fibre channel switches; (ii) standard products for Ethernet switches; (iii) fibre channel switches; (iv) Ethernet switches; and (v) fibre channel adapters. The relevant geographic market for all these products is worldwide. In its competition assessment for fibre channel switch market, MOFCOM's primary concern was that Broadcom might misuse confidential information of third-party fibre channel switch suppliers. In terms of the fibre channel adapter market, MOFCOM was concerned that (i) the proposed transaction would reduce interoperability between fibre channel adapters and switches; (ii) Broadcom would misuse confidential information furnished by third-party fibre channel adapters; and (iii) Broadcom would engage in product bundling or tying sales.

Conditions imposed by MOFCOM include: (i) establishment of fire wall to protect confidential information on third party fibre channel adapter products and third-party fibre channel switch products; (ii) ensuring interoperability between Broadcom's own switch products and third-party adapters; and (iii) continuance of existing terms for Broadcom's switch products and a commitment not to engage in any form of tying or bundling sales.

MOFCOM solicits public comments on its draft amendments to the Review Measures for Concentration of Undertakings

On 8 September 2017, MOFCOM officially launched public consultation on the draft amendments to the *Review Measures for Concentration of Undertakings*. The consultation will run until 9 October 2017. The draft amendments have introduced the following key aspects with a view to refining the merger review process: (i) recognizing the establishment of green-field joint venture as a type of concentration; (ii) defining the concept of "control"; (iii) setting out the calculation methods of turnover; and (iv) clarifying the scope of "concerned undertakings" in a given concentration.

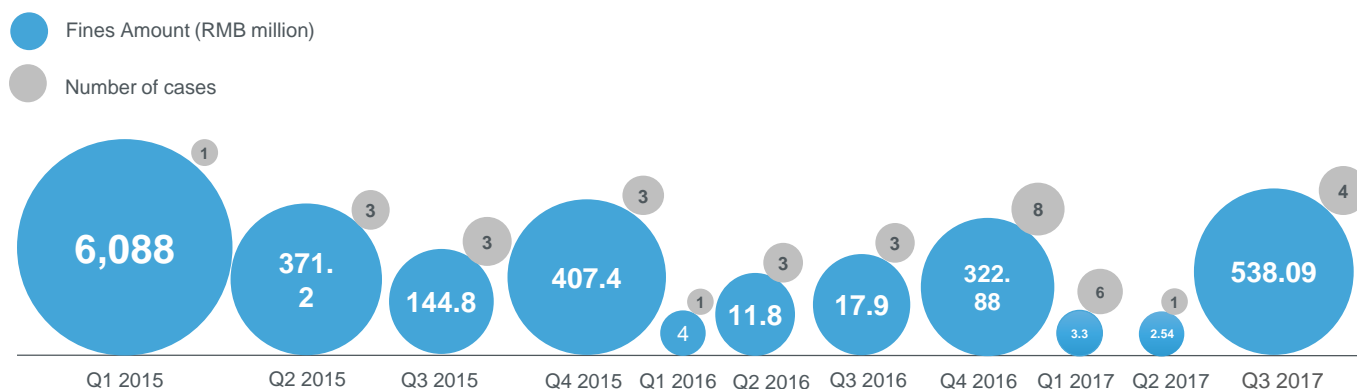


THE NATIONAL DEVELOPMENT AND REFORM COMMISSION (NDRC)

NDRC had a busier quarter, with four infringement decisions being published with fines totaling RMB 538 million (approx. USD 81 million), including a decision fining 18 PVC manufacturers a total of RMB 457 million (approx. USD 69 million) for price collusion conducted through Wechat group discussions. In addition, two provincial price authorities issued decisions on abuse of administrative monopoly against Yunnan Diqing Autonomous Prefecture Government for prohibiting salt imports and Guangxi Road Transport Authority for excluding use of non-designated time recording system.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
Paper Manufacturing Zhejiang Price Bureau	10 July 2017	Price-fixing	7,780	N/A	N/A	1%	N/A
Pharma NDRC	28 July 2017	Abuse of Dominance	444	289.5	154.4	2%	N/A
Electric Generation Shanxi DRC	3 August 2017	Price-fixing	72,880	N/A	N/A	1%	N/A
PVC NDRC	27 September 2017	Price-fixing	457,000	N/A	N/A	1% - 2%	N/A

Enforcement trends – Q3 2014 to Q3 2017



NDRC publishes industry association price behaviour guidance

On 25 July 2017, NDRC published the Guidance on Pricing Behaviours of Trade Associations (Guidance), primarily aiming at preventing trade associations from distorting fair competition. The Guidance identified pro-competitive and anti-competitive behavior. Under the Guidance, pro-competitive behavior includes reporting anti-competitive practices to the relevant authorities and assisting association members to comply with price supervision and antitrust enforcement, whilst anti-competitive behaviour includes organizing market players to reach anti-competitive agreements, exchanging price information, imposing limitation on cost composition and price rate as well as releasing price guidance etc. Notably, trade associations which repeatedly commit price breaches are more likely to be blacklisted by price supervision departments and subject to penalties collectively with undertakings.



THE STATE ADMINISTRATION FOR INDUSTRY AND COMMERCE (SAIC)

SAIC appoints former head of CPB YANG Hongcan as the new Director General of its antitrust bureau

It was reported that SAIC had appointed the former head of Consumer Protection Bureau (CPB) YANG Hongcan as the new Director General of the Antitrust and Anti-unfair Competition Enforcement Bureau. Although the appointment was not formally announced, YANG Hongcan's appearance as Director General in the China Competition Policy Forum confirmed his new position. During his 5-year tenure in CPB, YANG Hongcan took lead in the amendment of the Consumer Protection Law and played a significant role in strengthening responsibility of e-commerce platforms especially in the case of customer frauds.

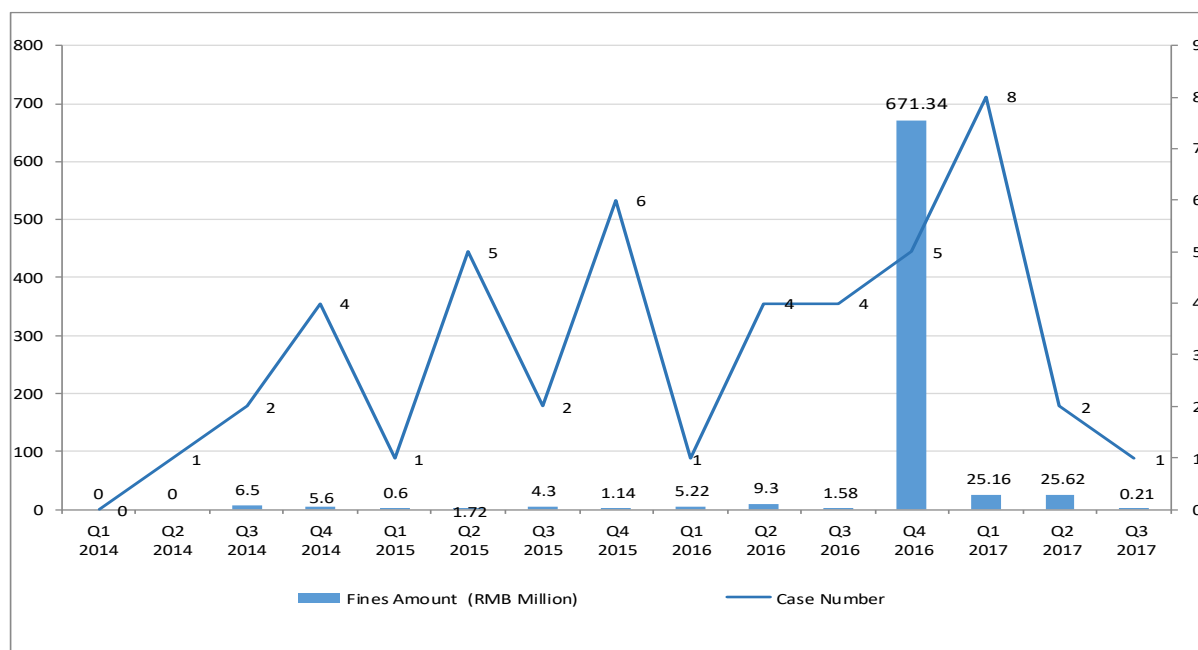
Sichuan AIC penalizes Sichuan Jiuyuan Yinhai Changhui Software Limited for its abuse of dominance

On 21 August 2017, SAIC announced that Sichuan AIC had fined Sichuan Jiuyuan Yinhai Changhui Software Limited (Yinhai) RMB 209,601 and disgorgement of RMB 394,730 for its abuse of dominance. Authorized by SAIC, Sichuan AIC commenced a probe into Yinhai on 15 September 2016. Sichuan AIC found that (i) Yinhai enjoyed a dominant position in the relevant market – supplying medical insurance payment software in Guangyuan where Yinhai had 100% market shares; (ii) Yinhai provided medical insurance payment software installation services only to selected pharmacies and medical institutions which bought encrypted keyboards and card readers supplied by Yinhai; and (iii) Yinhai's practices constituted abuse of dominance i.e. tying without justifications and thereby violated Article 17 of AML.

SAIC urged to investigate Apple for its alleged abuse of dominance

On 8 August 2017, Beijing Dare and Sure Law Firm (Dare and Sure) formally submitted complaints against Apple for its alleged abuse of dominance. Dare and Sure was representing 31 application developers and alleged that Apple had abused its dominant market position by (i) refusing to trade by removing applications from Apple Store without justification; (ii) discriminating Chinese applications; (iii) tying by forcing customers to use Apple Pay to purchase applications in Apple Store; and (iv) implementing excessive prices by charging a 30% commission fee on electric service providers for in-app purchase. On 18 September 2017, Apple announced that it would no longer consider end users' presenting of monetary gifts in an application as in-app purchase, partly addressing the last of these concerns. To date, SAIC has not opened a formal investigation.

Enforcement trends – Q1 2014 to Q3 2017



Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
Payment Software Sichuan AIC	3 August 2017	Abuse of dominance – Tie-in	209.6	N/A	N/A	7%	NA

OTHER ASIA PACIFIC NEWS IN BRIEF

Hong Kong

HKCC submits a second case to Competition Tribunal on price-fixing and market-sharing

On 14 August 2017, HKCC formally instituted proceedings against 10 interior decorating and renovation firms for alleged price-fixing and market-sharing agreements. HKCC held that (i) the defendants agreed to divide up various floors and estate buildings in their work of public housing estates and not to actively compete for work outside the scope of their assigned areas; and (ii) the defendants committed price-fixing practices by offering package deals for various layouts in renovation in joint promotional flyers. This is the second case submitted to Competition Tribunal by HKCC, the first case concerns bid-rigging in procurement, which is scheduled to be heard by the Competition Tribunal in June 2018.

India

CCI conditionally nods the proposed merger between DuPont and Dow Chemical

On 8 June 2017, Competition Commission of India (CCI) conditionally approved the proposed merger between DuPont and Dow Chemical, which was notified to CCI on 19 May 2016. In its competition assessment, CCI found that there were overlaps between parties' products relating to crop protection, research and development of crop protection products, seeds, speciality chemicals and material sciences. CCI ordered a package of remedies, including obligation not to commercialize or sell DuPont's fungicide (Flusilazole AI) in India and obligation to withdraw registration and cancellation of trademark of Flusilazole AI. Moreover, CCI also proposed to transfer Dow's MAH grafted polyethylene business to an independent third party. The final sales agreements and proposed buyer are subject to CCI's approval. Notably, the proposed merger has obtained merger control approvals in a range of jurisdictions e.g. China, European Union, Mexico, Canada and South Korea etc.

Singapore

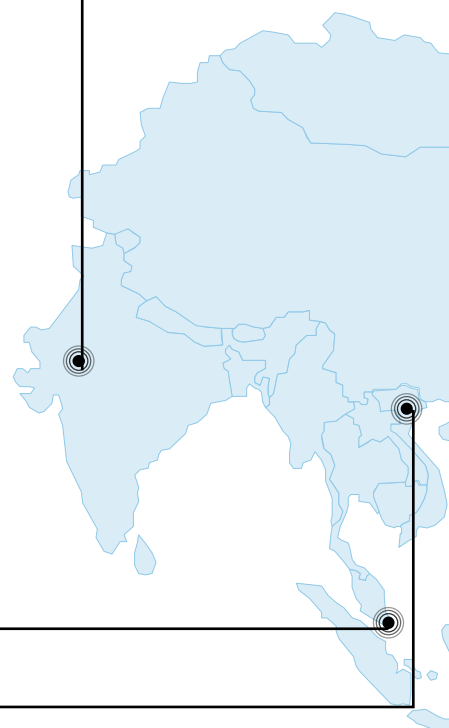
CCS is considering to issue supplementary PID on poultry cartel

Competition Commission of Singapore (CCS) is considering to issue supplementary proposed infringement decision (PID) against 13 fresh chicken distributors as new information comes into light following the initial PID issued on 8 March 2016. The initial and supplementary PIDs were both issued for the allegations of price-fixing and market manipulation. By virtue of due process, parties will be authorized to make further representation to CCS upon the new information and findings. CCS is currently in the processing of conducting further investigations.

Vietnam

VCA may remove market share threshold for M&A notification.

It is reported that the Vietnam Competition Authority (VCA) may remove the market share threshold for merger filings. The current law stipulates that a merger or acquisition needs to be notified to the VCA if the combined market share of the parties exceeds 30%. It was said that the new threshold might be based on total combined assets or revenue of the merged entities, or the value of the transaction. The amended competition law is expected to be enacted in May 2018.



A map showing the geographical locations of the legal updates. It includes South Korea, the Philippines, and Australia. Lines connect the text blocks to their respective locations on the map.

● South Korea

KFTC imposes fines in multiple sectors for bid rigging and other misconducts

In the conveyor belt industry, the Korean Fair Trade Commission (KFTC) has imposed fines of KRW 37.8 billion (approx. USD 34 million) on four conveyor belt companies for pre-arranging bidding prices and increasing prices of conveyor belts sold at their outlets. In the concrete industry, three hot-mix asphalt concrete associations and three ready-mix concrete associations were penalized for collusive tendering. Bid-rigging were also found in the telecoms industry - two local makers of telecoms equipment, namely Korea Hydro and Nuclear Power, were fined KRW 58 million (approx. USD 51,105). In the shipping industry, the KFTC imposed fines of KRW 43 billion (approx. USD 37.8 million) on nine global auto-shipping companies for colluding in auctions arranged by carmakers, diving up marine routes to avoid competition and fixed car-carrier rates to share certain routes. In the fabric manufacturing sector, the US fabric maker GORE was fined KRW 3.67 billion (approx. USD 3.3 million) for preventing outerwear and shoe makers using its fabric from selling their finished products at large stores between March 2009 and December 2012 without clarifying so in their contracts.

● Philippines

PCC will finalize the revised M&A rules

On 13 September 2017, the PCC Commissioner Johannes Bernabe said the agency would finalize its revised M&A rules later this year. The main change is likely to be that M&A parties can file for approval within 30 days of executing an agreement, provided that they do not make attempts to consummate the transaction, such as appointing directors or signing deeds of sales for shares. As of 8 August 2017, 114 merger notifications have been submitted to the PCC worth approximately PHP 2 trillion (approx. USD 39.6 billion), 95 of which have so far been cleared.

● Australia

AFC imposes two fines, one of them being the second-highest ever imposed in Australia

The Australian Federal Court (AFC) has imposed two fines in the third quarter of 2017. The first fine, AUD 3.5 million (approx. USD 2.79 million), was imposed against Prysmian Cavi E Sistemi (Prysmian) for engaging in a cartel. Prysmian agreed with other cable manufacturers and suppliers to "allocate" the tender to Prysmian and provided pricing guidance to its competitors. The second fine was imposed against Nippon Yusen Kabushiki Kaisha (NYK) for its criminal cartel. Notably, the fine on NYK of AUD 25 million (approx. USD 19.82 million) is the second-highest ever imposed under the Competition and Consumer Act 2010 (CCA) in Australia. The penalty was calculated on the basis of 10% of NYK's annual turnover in connection with Australia in the 12 months prior to the commencement of the offence. The AFC's judgement also marks the first successful prosecution under the criminal cartel provision of the CCA.

CCA's misuse of market power provision is amended to include an effects test

On 15 August 2017, Australia's government legislated an amendment to the Section 46 of the CCA (i.e. the misuse of market power provision) to include an effects test in enforcement. The amended Section will prohibit a corporation from engaging in any conduct with purpose, effects or likely effects of substantially lessening the competition in the market in which it directly or indirectly participates. Further amendments to reform the CCA are currently before the House of Representatives, including replacing the never-used price-signalling provision with a general prohibition on concerted actions with the purpose or effect of substantially lessening competition, and reforming the merger review process.

Beijing



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

Beijing



Yong Bai
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 6902 8008
M +82 10 27959841
E hyun.kim@cliffordchance.com

Tokyo



Michelle Mizutani
Counsel
T +81 3 6632 6646
M +81 8013859813
E michelle.mizutani@cliffordchance.com

Singapore



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