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# **ANTITRUST IN CHINA AND ACROSS THE REGION**

QUARTERLY UPDATE

April to June 2018

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# ANTITRUST IN CHINA AND ACROSS THE REGION

## QUARTERLY UPDATE: APRIL TO JUNE 2018

This quarter saw China's new competition regulator, the State Administration for Market Regulation (“**SAMR**”) formally start work – it issued its first merger decision and launched its first dawn raids in May. Although key decisions on the new senior management have been delayed, the transition from the three legacy agencies to SAMR has been largely completed. In its first month of operation, SAMR has unconditionally cleared all cases, most under the simplified procedure.

Substantively, the most notable development has been SAMR's decision to conduct a dawn raid against DRAMeXchange's Shenzhen premises as part of its investigation into manufacturers of DRAM memory chips. This is a research unit of TrendForce, rather than a manufacturer, and so SAMR appears to have taken an unusual (but not unprecedented) step of broadening an investigation beyond the direct participants.

Outside China, a particularly noteworthy development occurred in Australia where the ACCC brought its second criminal cartel prosecution against a number of senior banking executives who are accused of offences relating to the placement of 80.8 million shares of ANZ. The core issue is whether an agreement between the underwriters of an institutional share placement in relation to the sale of unsubscribed shares constitutes criminal cartel conduct. The outcome of this case will be keenly watched elsewhere.

Elsewhere, the Hong Kong Competition Commission issued guidelines on the application of competition rules to employment issues; Singapore issued its first interim measures against the completed Uber/Grab merger; India issued a fine of INR 1 million (approx. USD 14,500) for failure to file; Japan released 2017 statistics showing a fall in fines imposed for competition-related offences to JPY 1.9 billion (approx. USD 17 million); and both Thailand and Vietnam took further steps towards the implementation of new competition regimes.

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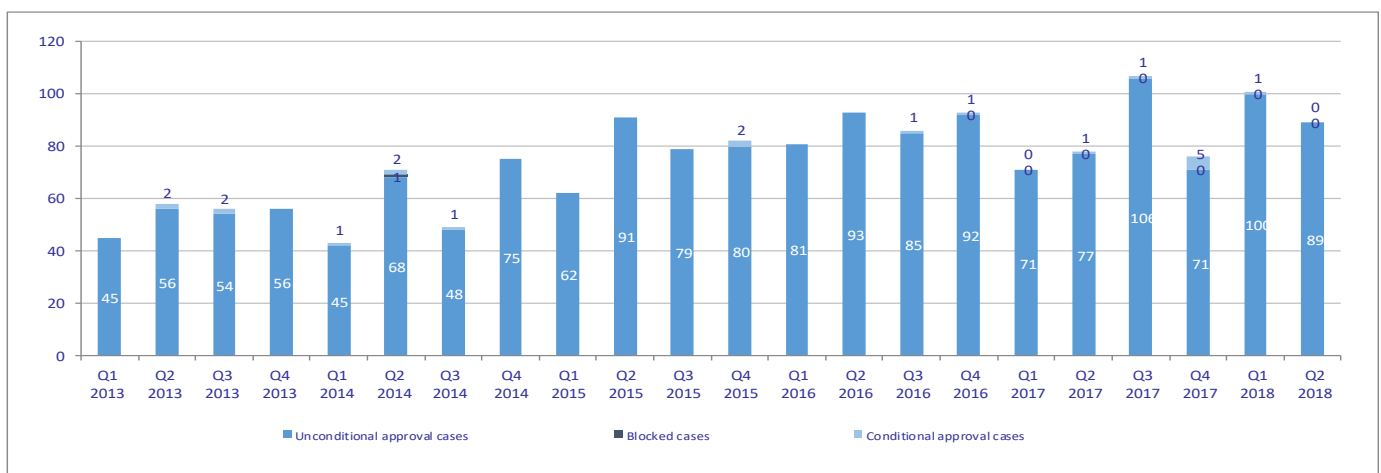


## MERGER CONTROL

How many cases have there been?

89 merger cases were reviewed in the second quarter of 2018. Following the consolidation of the three antitrust agencies in China into one, SAMR commenced reviewing merger filings in lieu of the former Ministry of Commerce ("**MOFCOM**") from May 2018. The number of merger decisions issued in this quarter increased by 14% compared to the second quarter of 2017, with all 89 reviewed cases in this quarter unconditionally cleared. Further, around 73 cases were notified under the simplified procedure in this quarter, which represents 82% of the total reviewed cases.

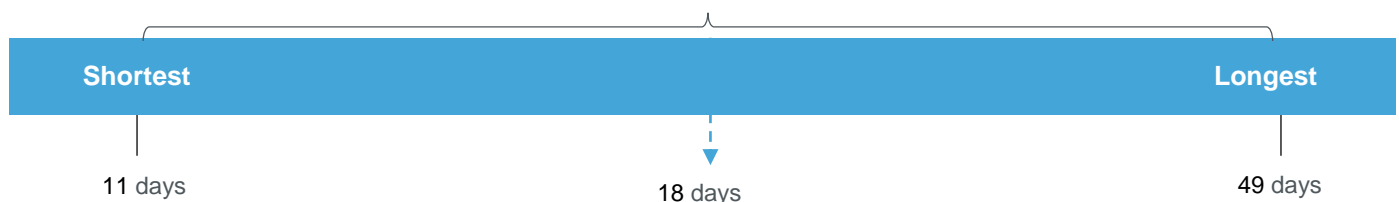
Merger control trends – Q1 2013 – Q2 2018



Simplified procedure: How quick is the review period?

Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
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
Q4 2017	21 days	76.3%	0
Q1 2018	19 days	92.1%	1
Q2 2018	18 days	82.0%	1

Q2 2018: Average

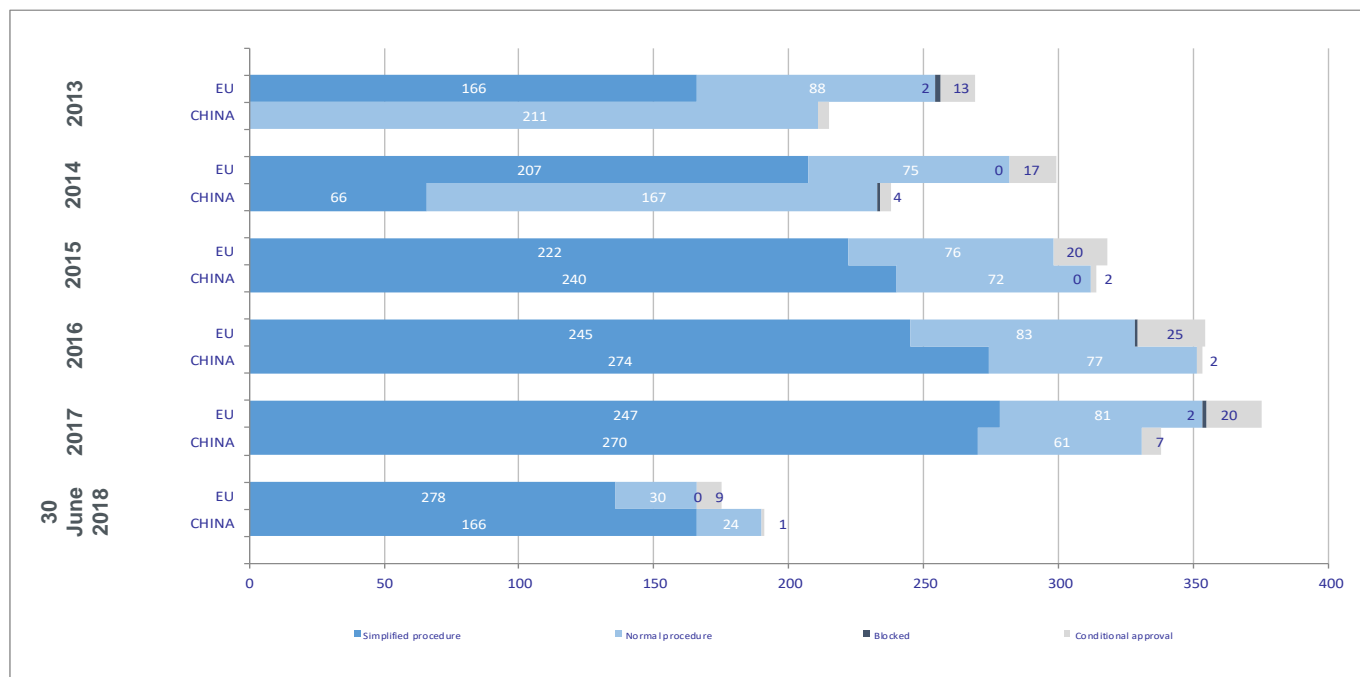




## MERGER CONTROL

How does China compare internationally?

Comparison with EU – 2013 – 2018



### SAMR formally commences its role in relation to merger control from May 2018

As a result of the consolidation of the three antitrust agencies in China, SAMR published its first clearance decision on 4 May 2018 in relation to a transaction that was originally before the former MOFCOM. Commencing 14 May 2018, notification documents have been submitted to SAMR (rather than MOFCOM).

### Two more failure-to-file cases fined

On 4 April 2018, China Merchants International Container Terminal (Qingdao) Co., Ltd. ("**CM Qingdao**") was fined RMB 400,000 (USD 63,682) by MOFCOM for its failure to notify the regulator in respect of the formation of two joint ventures ("**JVs**"), both of which satisfied the Chinese merger filing thresholds. The JVs commenced operations and obtained formal business licenses in 2009 and 2010, and as such violated the Chinese Anti-Monopoly Law ("**AML**"). The respective JV partners, namely Qingdao Port (Group) and Qingdao New Qianwan Container Terminal, were fined RMB 200,000 (USD 31,841), taking into account the cooperation by the parties during the investigation. Fines were imposed notwithstanding that MOFCOM held that the JVs would not lead to any anti-competitive effects in China.





## ANTITRUST INVESTIGATIONS

### SAMR conduct dawn raids against Micron, Samsung Electronics, SK Hynix and DRAmEXchange

On 31 May 2018, SAMR conducted dawn raids on US memory chip maker Micron Technology and its South Korean competitors Samsung Electronics and SK Hynix in their Beijing, Shanghai and Shenzhen offices. The investigation is likely to have been prompted by the recent price increase of dynamic random access memory (“**DRAM**”) and complaints from other market participants. The three companies collectively account for a significant proportion of DRAM sales in China, and face similar proceedings in other jurisdictions, such as the US and Brazil.

SAMR conducted a further dawn raid on DRAmEXchange’s Shenzhen office on 27 June 2018. It is suspected that this dawn raid was to obtain key data held by DRAmEXchange in respect of the market prices of components of semiconductors, including pricing of components and products sold by the three memory chip makers.

### 6 home-furnishing companies fined for boycotting

On 3 April 2018, Shandong Administration of Industry and Commerce (“**Shandong AIC**”) imposed a cumulative fine of RMB 600,000 (USD 95,430) on 6 home furnishing companies for entering into a collective boycott agreement. The fine was issued in response to the 6 companies jointly publishing a notice in January 2016 to their in-store vendors, restricting them from dealing with certain third-party furnishing suppliers. Shandong AIC found that the companies’ conduct constituted boycotting and restricting competition, and thereby formed a horizontal monopoly agreement, under Article 13(5) of the AML. The fine imposed was relatively light – RMB 100,000 (USD 15,905) on each company – as the companies did not actually carry out the contents of the notice.

### 13 accounting firms in Shandong fined for entering into revenue sharing agreement

On 7 May 2018, Shandong AIC published a decision in which it imposed a cumulative fine of RMB 413,526 (USD 64,662) on 13 accounting firms for entering into and carrying out agreements to pool their revenue and re-distribute it between them based on certain rules and criteria. As a result of the agreement, under-performing firms would not be incentivised to increase the quality of their service, ultimately harming the accounting market and end consumers. The conduct lasted from 2010 to 2013. Shandong AIC concluded that such conduct infringes the AML and imposed penalties amounting to 1% - 1.5% of the firms’ revenue in 2013.

### 4 tugboat companies fined for price-fixing

On 11 June 2018, SAMR imposed a fine of RMB 12.86 million (USD 2 million) on four Shenzhen tugboat companies for price-fixing. Following an investigation which commenced in November 2017, SAMR found that, since 2010 or potentially even earlier, the four companies held meetings to maintain general pricing patterns and to follow a consistent negotiation strategy with other competitors. SAMR concluded that the four companies breached the AML by fixing the price and restricting competition in the tugboat market in Shenzhen. In determining the fine, SAMR took into account the following mitigating factors: (i) the coordination was in respect of general pricing trends rather than specific prices charged; and (ii) charges to tugboats only account for a small portion of total port fees and thus the effects on competition were limited. The four tugboat companies, Yantian Tugboat, Alliance Tugboat, Chiwan Tugboat, and Dachan Bay Tugboat, were fined RMB 5,753,549, RMB 3,967,237, RMB 2,447,201, and RMB 689,651, respectively, equivalent to 4% of their revenue in the relevant year.

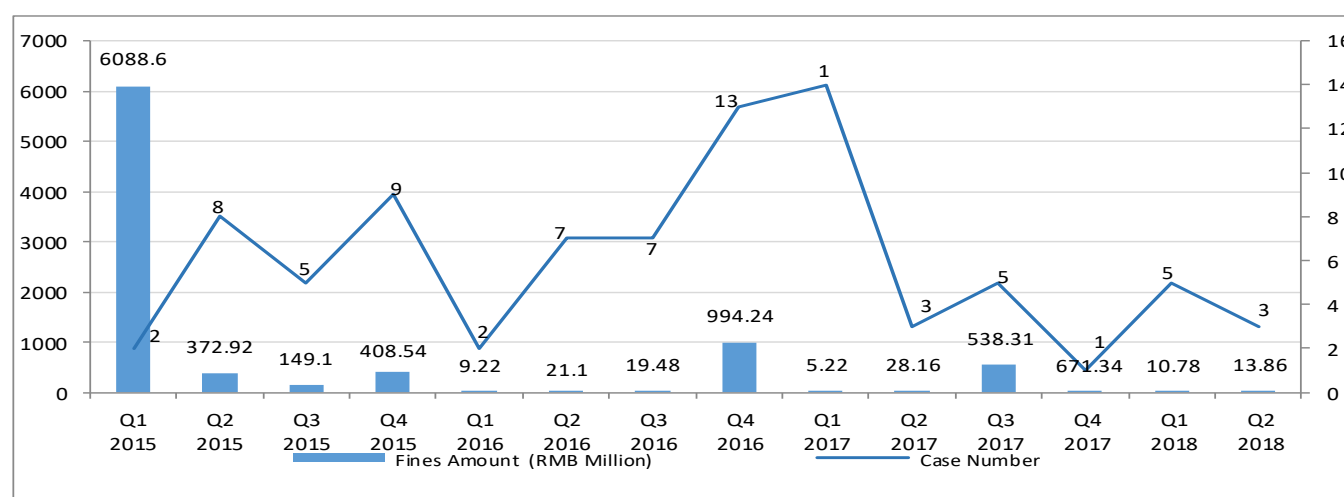
### Vehicle inspection firms fined RMB 1 million

On 4 May 2018, it was reported that Dalian Price Bureau in Liaoning province will impose a fine of RMB 1 million (USD 157,200) on Zhongsen Detai Motor-Vehicle Inspection and Zhongsen Detai Qianwei Auto Services for allegedly colluding to raise service fees. The alleged collusion is said to have involved 19 market players and resulted in a price hike lasting for 6 months from 28 August 2017.

## ANTITRUST INVESTIGATIONS

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
<b>Home-furnishings firms</b> Shandong AIC	3 April 2018	Collective boycott	600	100	100	N/A	Yes
<b>Accounting services</b> Shandong AIC	5 June 2018	Revenue sharing	413.526	6.125	60.466	1%-1.5%	Yes
<b>Shenzhen tugboat companies</b> SAMR	25 June 2018	Price fixing	12,857.638	689.651	5,753.549	4%	No

## Enforcement trends\* – Q1 2015 to Q2 2018



\*Note: From Q1 2015 to Q1 2018, figures include both NDRC and SAIC; from Q2 2018, figures are for SAMR.

## Focus on price-fixing in the pharmaceutical sector in China

On 28 April 2018, Zeng Yixin, deputy head of the National Health Commission, noted that there will be a focus on price-fixing and other unlawful conduct in the pharmaceutical sector with the goal of lowering drug prices. In particular, the following three key measures came into effect on 1 May 2018: (a) no tariff to be imposed on imported drugs; (b) China will implement a centralized negotiation and procurement process for anti-cancer drugs that are covered by the national public expense medical insurance scheme (whereby a tailored tender process will be used where the tender involves more than 3 manufacturers and a uniform nationwide pricing scheme will be implemented where there are fewer than 3 manufacturers); and (c) China will commence negotiations to ensure that consumers have market access to anti-cancer drugs that are not covered by the national public expense medical insurance scheme.

## SAMR publishes 10 cases involving abuse of administrative power since 2017

On 25 June 2018, SAMR published 10 decisions in relation to the abuse of administrative power. These cases concerned conduct at the local level and were investigated by SAIC's local counterparts (including in Hunan, Shandong, Heilongjiang, Ningxia, Jiangsu, Liaoning, etc.). The cases were published with a view to raising public awareness of abuses of administrative power and violations of competition law, and the enforcement of the Fair Competition Review System.



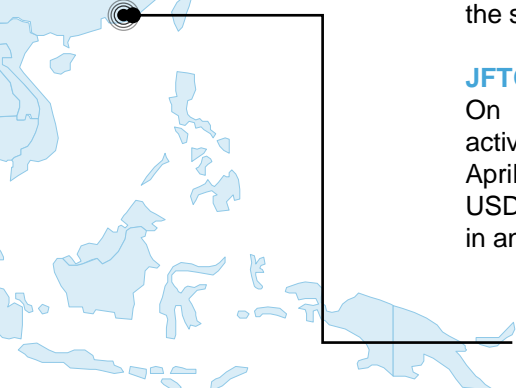
## Japan

### JFTC conducts dawn raids against alleged anti-competitive conduct

On 18 April 2018, the Japan Fair Trade Commission ("**JFTC**") conducted a dawn-raid against Combi Corporation and Aprica Children's Products for alleged resale price maintenance. The two parties, which manufacture strollers and child seats, allegedly contacted their distributors requiring them to increase the resale prices with an implied threat that they would otherwise stop selling to the distributors. Combi and Aprica have a combined market share of around 70% in the stroller market.

### JFTC publishes enforcement statistics for 2017

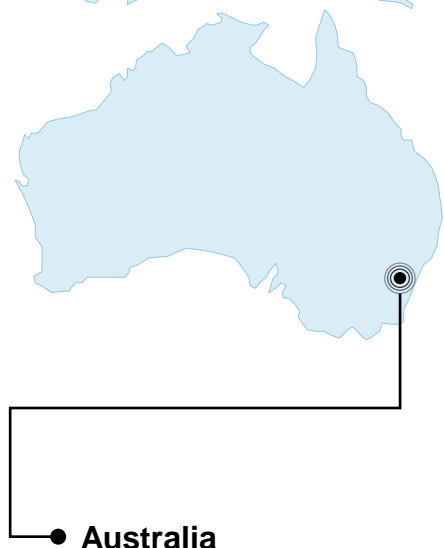
On 23 May 2018, the JFTC published statistics regarding their enforcement activities during the 2017 fiscal year. The statistics showed that in the period from April 2017 to March 2018, the JFTC imposed total fines of JPY 1.9 billion (approx. USD 17 million) on 32 companies. This is the lowest amount imposed by the JFTC in any given fiscal year since 2006.



## Hong Kong

### HKCC published Advisory Bulletin regarding certain employment practices

On 9 April 2018, the Hong Kong Competition Commission ("**HKCC**") issued an advisory bulletin ("**Bulletin**") to raise awareness of the potential risks under the Competition Ordinance (Cap 619) ("**CO**") relating to anti-competitive practices in the hiring of employees and the setting of employment terms and conditions. The Bulletin advises that businesses that reach an agreement between themselves on any aspect of employee compensation are fixing the price of labour, just as businesses that reach an agreement in relation to the solicitation or hiring of each other's employees are engaging in market sharing by allocating sources of supply. To ensure compliance with the CO, companies should independently determine the policies they intend to adopt regarding any employment terms and conditions, in particular with respect to employee compensation and how companies solicit or recruit/hire employees.



## Australia

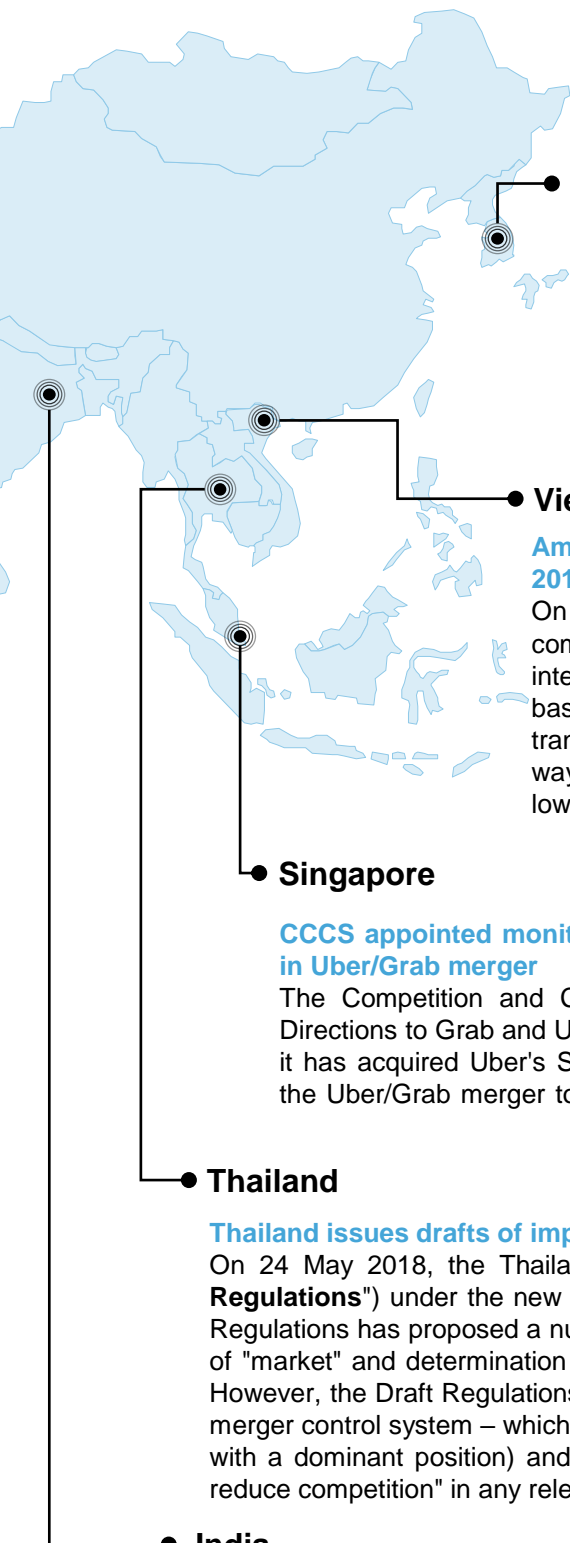
### Australia witnesses second criminal cartel prosecution

Citigroup, Deutsche Bank, The Australia and New Zealand Banking Group Limited ("**ANZ**") and a number of senior executives have been charged with criminal cartel offences following an investigation by the Australian Competition and Consumer Commission ("**ACCC**"). The charges relate to a placement of 80.8 million shares which was underwritten by Deutsche Bank, Citigroup and JP Morgan, as part of a bid by ANZ to raise capital to meet regulatory requirements, with the cartel allegations being that the joint underwriters reached an understanding with respect to the disposal of the 25 million shares they took up as part of the institutional placing, which was less than 1% of ANZ's outstanding ordinary shares. ANZ and each of the responsible individuals are alleged to have been knowingly concerned in some or all of the alleged conduct. This is the second criminal cartel prosecution to be brought in Australia.

### ACCC imposes a record fine of AUD\$46 million against Yazaki

The Full Federal Court ordered the Japanese company Yazaki Corporation to pay an increased fine of AUD\$46 million for cartel conduct, following an appeal by the ACCC in light of the original fine of AUD\$9.5million. The ACCC claimed that the original penalty was insufficient to adequately deter Yazaki and other businesses from engaging in cartel conduct in the future. The ACCC suggested that a penalty of between AUD\$42-55 million would be of appropriate deterrent value, taking into account the serious nature of Yazaki's infringement and the scale of its global operations. This is the highest penalty ever handed down under Australia's competition regime.





## ● South Korea

### KFTC puts in place new rules dealing with digital evidence

On 3 April 2018, the Korea Fair Trade Commission ("**KFTC**") published Regulations on the Collection, Analysis and Management of Digital Evidence and guidelines in respect of the KFTC's forensic review procedures. The KFTC also established a Digital Investigation and Analysis Division ("**Division**") in September 2017 and it is expected that the Division will become increasingly active in the near future.

## ● Vietnam

### Amendments to Vietnam's competition law set to take effect from 1 July 2019

On 12 June 2018, Vietnam's National Assembly passed amendments to its competition law, which is set to take effect from 1 July 2019. Of particular interest is the possibility of the filing threshold changing from a market share-based threshold to one also based on total assets, total revenue and/or transaction value. The final thresholds will be decided by the government by way of legislation or guidance, although early reports are suggesting a relatively low value of around USD 20 million.

## ● Singapore

### CCCS appointed monitoring trustee to monitor compliance with interim measures directions in Uber/Grab merger

The Competition and Consumer Commission of Singapore ("**CCCS**") issued Interim Measures Directions to Grab and Uber on 13 April 2018, following Grab's announcement on 26 March 2018 that it has acquired Uber's Southeast Asian business. The CCCS has subsequently provisionally found the Uber/Grab merger to be anti-competitive and a final decision is expected in the coming weeks.

## ● Thailand

### Thailand issues drafts of implementing regulations to the new Trade Competition Act

On 24 May 2018, the Thailand competition regulator issued drafts of implementing regulations ("**Draft Regulations**") under the new Trade Competition Act, which came into effect on 5 October 2017. The Draft Regulations has proposed a number of potential amendments, including, among others, cartel rule, definition of "market" and determination of the nature of a contractual relationship with an entity outside of Thailand. However, the Draft Regulations are silent on the merger control thresholds in relation to Thailand's new dual merger control system – which involves both a pre-merger (for mergers that create a monopoly or a business with a dominant position) and post-merger approval process (for any consolidation which may "materially reduce competition" in any relevant market).

## ● India

### Indian regulator fines company for failure to notify deal

The Competition Commission of India ("**CCI**") has imposed a fine of INR 1 million (approx. USD 14,500) on Intellect Design Arena ("**IDAL**") for its failure to notify its 2014 acquisition of Polaris Financial Technology's product business. IDAL submitted that it was exempt from seeking CCI approval as the target's turnover attributable to the Middle East and India was INR 5.7bn, which was below the stipulated threshold. However, the CCI noted that the term "turnover" in the competition law included the "value of sale of goods or services", and not only the revenues as reported for a particular geographic segment by a company. Therefore, the actual turnover amounted to INR 18.5bn, which exceeded the exemption thresholds applicable at that time, the CCI said. IDAL further argued that in order for the CCI to impose a penalty, the competition law required it to conclude an inquiry within a year of the acquisition. However, the CCI said the stipulated timeframe was only for competition assessment of a deal, and not on the aspect of initiating proceedings under Section 43A of the Act, which concerns the imposition of penalty for non-filing of a notifiable combination.

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