

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



**ANTITRUST IN CHINA AND
ACROSS THE REGION**

QUARTERLY UPDATE

July to September 2018

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ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: JULY TO SEPTEMBER 2018

Following Qualcomm's failure to secure Chinese approval for its bid for NXP despite a number of extensions to the review timetable, many feared that the deteriorating state of US-China relations would have a chilling impact on the merger review process. Whilst there is anecdotal evidence of a slowdown in the review of some cases, the statistics for the latest quarter actually show an increase in the number of cases being reviewed by China's new competition agency, SAMR (up over 20% on the same period last year) with most still being cleared under the simplified review process. Moreover, the intervention rate in China remains low with only two deals in the last quarter requiring remedies - Linde/Praxair, which also attracted remedies in a number of other jurisdictions including the EU, India and Brazil and Essilor/Luxottica, which had attracted detailed scrutiny elsewhere due to the complementary nature of the parties' products.

Also in China, last quarter saw the first ever fine imposed on individuals for obstructing an investigation. The case involved two employees of a car dealership business (one of whom was the inhouse counsel) who removed a USB stick whilst the officials were trying to retrieve documents from it and one of whom also verbally insulted the officials. The fines imposed were modest – RMB 20,000 (USD 3,000) in total. Coincidentally, last quarter also saw Hong Kong's Competition Commission bring its first case against individuals for their participation in an alleged price fixing cartel in relation to renovation works on a public housing estate. As well as seeking fines on the companies involved, the Commission is also seeking a financial penalty against two individuals and a director disqualification order against one of them. To complete the picture, individual employees were also fined in two cases decided this quarter in India.

Elsewhere in APAC, notable cases include the CCCS's decision to impose fines of SGD 13 million (USD 9.5 million) on Uber and Grab for completing an anti-competitive merger, the first fine of its kind in Singapore; Australia's ACCC instituting proceedings against Cryosite for taking steps to implement its merger with Cell Care prior to approval – another gun-jumping first in this voluntary filing jurisdiction; as well as failure to file or late notification fines issued in Indonesia and the Philippines. Finally, mixed fortunes in the technology sector - in Japan, the JFTC terminated an investigation into Apple after Apple agreed to drop certain restrictions in its agreements with mobile network operators, but in Korea, Google was reportedly raided by the KFTC in relation to an inquiry into allegations that Google pressured games developers to sell exclusively through the Google app store.

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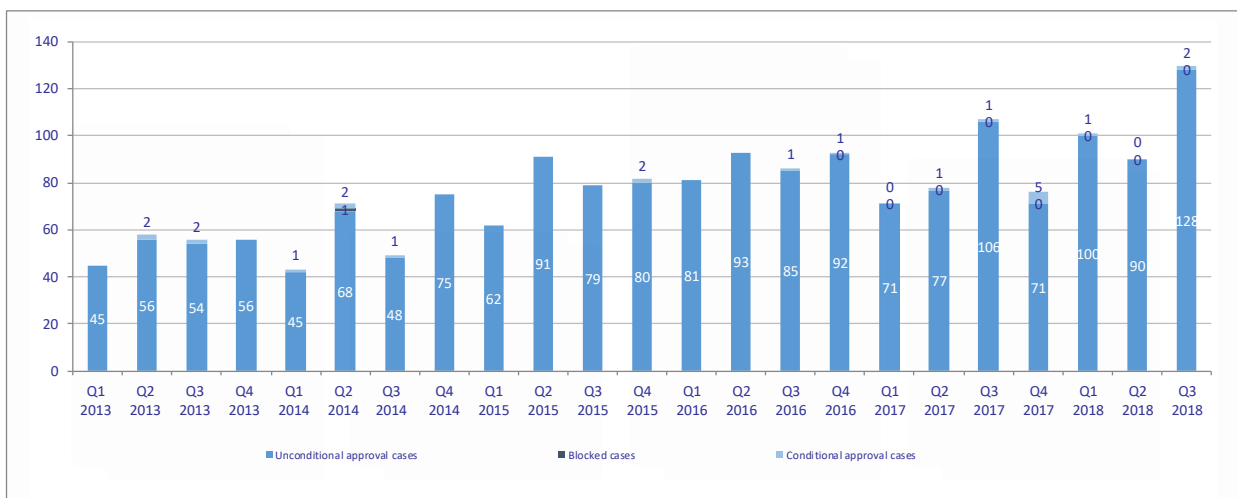


MERGER CONTROL

How many cases have there been?

SAMR issued 130 merger decisions in the third quarter of 2018, an increase of 21.5% compared to the third quarter of 2017, with 128 reviewed cases in this quarter unconditionally cleared and 2 cases conditionally approved. Further, around 100 cases were notified under the simplified procedure in this quarter, which represents 76.9% of the total reviewed cases. Notably, the average review time for cases notified under the simplified procedure has further dropped to only 16 days, the shortest since the fast track review system was launched in 2014.

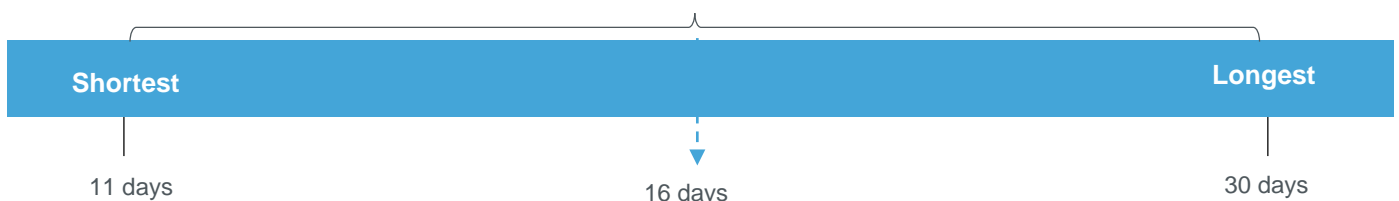
Merger control trends – Q1 2013 – Q3 2018



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	81.1%	1
Q3 2018	16 days	76.9%	0

Q3 2018: Average

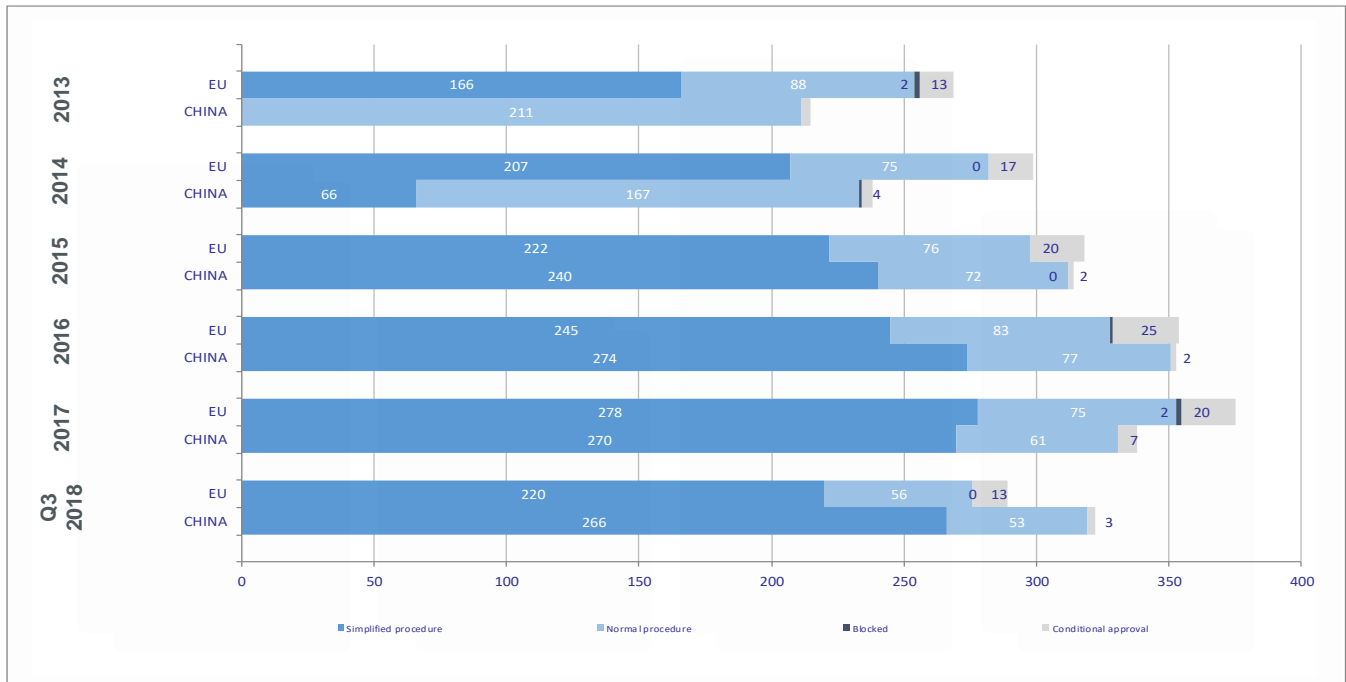




MERGER CONTROL

How does China compare internationally?

Comparison with EU – 2013 – 2018



Three transactions were intervened by SAMR

(i) Essilor/Luxottica - conditionally approved

On 25 July 2018, SAMR conditionally approved the merger between Essilor and Luxottica (together, the "Parties"). The Parties' activities mainly overlap in two areas – (a) the wholesale market for optical lenses, optical frames and sunglasses (China-wide); and (b) the retail market for glasses (city-wide), which is vertically linked to the above three wholesale markets. SAMR came to the view that the proposed merger would eliminate or restrict competition in the relevant Chinese markets, namely wholesale markets for mid-high-end optical lenses, low-end optical lenses, mid-high-end optical frames, low-end optical frames, and mid-high-end sunglasses, as well as the Chinese glasses retail market. The following commitments were made by the Parties: (i) not to conduct tie-in sales of glasses products without justification; (ii) to make the STARS programme (launched by Luxottica in 2017 to enhance its control over retail channels) available to Chinese glasses stores and to supply all frames and sunglasses products and offer necessary trademark licensing on fair, reasonable, and non-discriminatory terms; (iii) not to impose exclusivity terms on Chinese glasses stores or impose restrictions on selling rivals' products by improper means; (iv) to supply glasses and offer necessary trademark licensing on fair, reasonable, and non-discriminatory terms and not to discriminate; and (v) not to sell glasses at prices lower than costs without justification. Other than China, the proposed merger has been unconditionally approved by other antitrust authorities in more than 15 jurisdictions including the EU, the US, Brazil, Canada, Russia, etc. and approved subject to conditions in Turkey.



MERGER CONTROL

(ii) Qualcomm/NXP - timed out by SAMR's review

On 25 July 2018, Qualcomm Incorporated ("**Qualcomm**") announced the termination of its acquisition of NXP Semiconductors N.V. ("**NXP**") due to the failure to obtain approval from SAMR before the contractual deadline. SAMR had a number of competition concerns arising from the transaction relating to Qualcomm possibly bundling or changing the patent licensing model of NXP's intellectual property rights, but ultimately the review process was simply timed out, with no final decision issued. The USD 44 billion deal was entered into by the parties on 27 October 2016 and prior to being terminated it was unconditionally cleared by the antitrust authorities in the US, Japan, Mexico, Philippines, Russia and Taiwan, and was cleared subject to conditions in the EU and South Korea. On the following day of the termination announcement, Qualcomm had to pay a termination fee of USD 2 billion to NXP. The final stages of this deal took place against a backdrop of worsening China-US relations and a US ban on dealing with ZTE which many commentators attributed to the deal being delayed and ultimately abandoned.

(iii) Linde/Praxair - conditionally approved

On 30 September 2018, SAMR conditionally approved the merger between industrial gas companies Linde and Praxair (together, the "**Parties**"). The Parties have horizontal overlaps in 56 product markets, including those for onsite/pipeline atmospheric gas, 32 electronic specialty gases as well as air separation units and syngas manufacture units, etc. The Parties also have vertical relationships in eight sets of product markets, such as air separation units and onsite/pipeline atmospheric gas, syngas manufacturing units and onsite/pipeline syngas. The relevant geographic markets are defined as (i) China-wide for onsite/pipeline atmospheric gas and onsite/pipeline syngas; (ii) specific local area within a radius of the economically feasible transportation distance (in most of the case, 300 km) for each of the liquid oxygen, liquid nitrogen, liquid argon, bulk hydrogen, bulk carbon dioxide, liquid medical oxygen, bottled oxygen and bottled argon, bottled nitrogen, bottled hydrogen, bottled carbon dioxide and bottled medical oxygen; and (iii) worldwide for helium, krypton, neon, xenon, inert rare gas mixture, fluorine-containing rare gas mixture, brominated complex mixture, hydrogen chloride rare gas mixture, 32 electronic speciality gases, air separation units, and syngas manufacture units. SAMR came to the view that the proposed merger would eliminate or restrict competition in the following markets: (i) the global markets for helium, inert rare gas mixture, fluorine-containing rare gas mixture, and hydrogen chloride rare gas mixture; and (ii) the markets for liquid oxygen and liquid nitrogen in Guangdong Province. To alleviate the competition concerns, SAMR accepted the conditions from the Parties, including: (i) to divest helium assets with a total annual production volume of 90 million standard cubic meters; (ii) to transfer helium-related customer contracts involving assets with an annual production volume of 90 million standard cubic meters with customers' consent; (iii) to assist buyers in transporting the helium purchased under contract to China for processing and sale; (iv) to divest Linde's stakes in four joint ventures in the province of Guangdong; (v) to secure buyers for the assets to be divested within six months and complete the transfer of ownership subject to SAMR's approval; and (vi) to continue supplying the Chinese market with inert rare gas, fluorine-containing rare gas, and hydrogen chloride rare gas mixtures at reasonable prices and volumes in a timely and stable manner. Other than China, the proposed merger have also been unconditionally approved by other antitrust authorities in 9 jurisdictions including Russia, Canada, Mexico, etc, and cleared subject to conditions in the EU, India, South Korea and Brazil.



MERGER CONTROL

Six failure-to-file fines were published in China

- On 26 April 2018, Yunnan Metropolitan Real Estate Development was fined RMB 150,000 (USD 22,072) for its failure to notify the acquisition of stakes in eight companies. The acquisition was completed without notifying in China. Considering that the party voluntarily admitted the breach, the fine imposed was relatively light.
- On 26 April 2018, Tianjin Haiguang Advanced Technology Investment and Advanced Micro Devices, Inc. were each fined RMB 150,000 (USD 22,072) for their failure to notify the formation of two joint ventures (the "JVs") in 2016. The JVs commenced their operation with formal business licenses on 26 February 2016. The parties voluntarily reported their failure to file and therefore received relatively light fines.
- On 30 July 2018, Paper Excellence BV ("**PEBV**") was fined RMB 300,000 (USD 44,144) for the failure to notify its acquisition of Eldorado Brasil Celulose ("**Eldorado**"). The acquisition of 100% stake in Eldorado was contemplated to be implemented by three steps. By 15 February 2018, PEBV through its subsidiary had completed the first two steps with 49.41% stake in Eldorado acquired and thus constituted gun-jumping. The antitrust regulator opened the investigation on its own initiative on 28 March 2018.
- On 22 August 2018, Yunnan Metropolitan Construction Investment was fined RMB 300,000 (USD 44,144) for failing to notify its acquisition of 51% stake in Chengdu Global Century Exhibition & Travel. The acquisition was completed on 17 June 2016 without being notified. The antitrust regulator opened the investigation on its own initiative on 27 February 2018.
- On 30 August 2018, GEM (Wuhan) Urban Mining Resources Industrial Park Development was fined RMB 300,000 (USD 44,144) for failure to notify its acquisition of a 30% stake in GHM Auto Parts Remanufacturing. The acquisition was completed by way of altering public registration record on 20 December 2017 without being notified. The antitrust regulator opened the investigation on its own initiative on 12 March 2018.
- On 11 September 2018, Linde Material Handling Hong Kong Limited and Shanghai Huayi Energy Chemical were each fined RMB 300,000 (USD 44,144) for failure to notify their formation of a joint venture (the "**JV**"), over which they have joint control. The JV obtained business license in October 2012, and formally commenced operation from 2017 without being notified. The antitrust regulator opened the investigation on its own initiative on 20 December 2017.

Other news in this quarter includes:

- (i) the conditions imposed on the GE/Shenhua joint venture deal in 2011 were formally lifted by SAMR;**
- (ii) SAMR finalized the head count and organizational structure for the new Anti-Monopoly Bureau ("**AMB**")** – which will be led by director general ("**DG**") Mr. Wu Zhenguo and four deputy DGs, namely Mr. Xu Lefu, Mr. Zhang Guangyuan, Mr. Lu Wanli and Mr. Yang Wanshan. There are in total 10 divisions – three in charge of merger review, three responsible for anti-competitive conduct, and four working on more general aspects. The total number of officials assigned to the AMB is reported to be around 50, a smaller team than the combination of personnel working at the three antitrust agencies in China before consolidation.



ANTITRUST INVESTIGATIONS

Two state-owned branches in China were hit by a large fine for RPM

On 27 July 2018, SAMR announced an aggregate fine of RMB 84.06m (USD 12.37m) imposed by NDRC on two natural gas subsidiaries of PetroChina for resale price maintenance. The decisions were made by the former antitrust regulator NDRC which was in charge of enforcing price-related violations on 26 January 2018 before the agency consolidation. NDRC found that the two state-owned natural gas subsidiaries of PetroChina Group, together set the minimum resale price for compressed natural gas (CNG) sold to downstream CNG companies in Heilongjiang Province from 1 September 2016 onwards. In doing so, the two subsidiaries held meetings with 13 downstream CNG companies requesting the latter to set their resale prices for CNG no lower than RMB 2.25 per cubic meter and afterwards entered into sales agreement with such companies as well as issuing supplementary notice restating the above "rule". As a result of such restrictions, the downstream CNG companies applied the minimum resale price which was in general higher than the average price adopted by the companies prior to the restriction. In order to ensure the compliance of the downstream companies, the two subsidiaries threatened to reduce, restrict or even stop the supply of natural gas and closely monitored the actual resale prices of those companies. NDRC concluded that conducts of the two natural gas subsidiaries were in violation of Article 14 of the Anti-Monopoly Law ("**AML**") and harmed competition in the CNG market and infringed consumers' legitimate rights and interests. Notwithstanding that the two subsidiaries behaved in a cooperative manner during the investigation, a large fine was still imposed, accounting for 6% of their natural gas revenue in 2016. The penalties again demonstrate that state-owned entities are also subject to antitrust enforcement in China.

Individuals were fined for obstructing investigation in China for the first time

On 3 September 2018, Guangdong DRC fined two executives of Guangzhou Qingfeng Toyota Motor Sales Services a total of RMB 20,000 (USD 2,943) for obstructing an antitrust investigation. During an investigation launched by Guangdong DRC, the company's legal representative ordered the company's supervisor to unplug the USB flash disk from which the enforcement officials were retrieving evidence and to instruct other employees to shut down computers to disrupt the investigation. In addition, the legal representative also verbally insulted the officials. Neither individual provided relevant materials as required or signed the documents sent by the officials. Guangdong DRC found that such conduct amounted to an unlawful obstruction of an antitrust investigation under the AML and imposed fines of RMB 12,000 and RMB 8,000 respectively. This marks China's first fine upon individuals who obstructed antitrust investigations.

The past quarter has also seen active enforcements against horizontal monopoly agreements in China:

- **2 river sand mining companies fined RMB 1,847,572 (USD 271,861)** - On 16 August 2018, Guangdong Development and Reform Commission ("**Guangdong DRC**") published two decisions in which it imposed a total fine of RMB 1,847,571.67 (USD 271,861) on two river sand mining companies for price-fixing. Guangdong DRC found that the two companies - Huizhou City Dongjiang River Sand Operation and Huizhou Huicheng District Xinrong River Sand Mining and Operation - entered into and implemented a price monopoly agreement to fix the price of river sand in Huizhou city in 2015. Guangdong DRC was of the view that the conduct adversely impacted competition in the river sand market in Huizhou. Given the two companies' cooperation and the absence of severe consequences, the fines imposed accounted for 1% of the concerned companies' respective revenue in the preceding year.



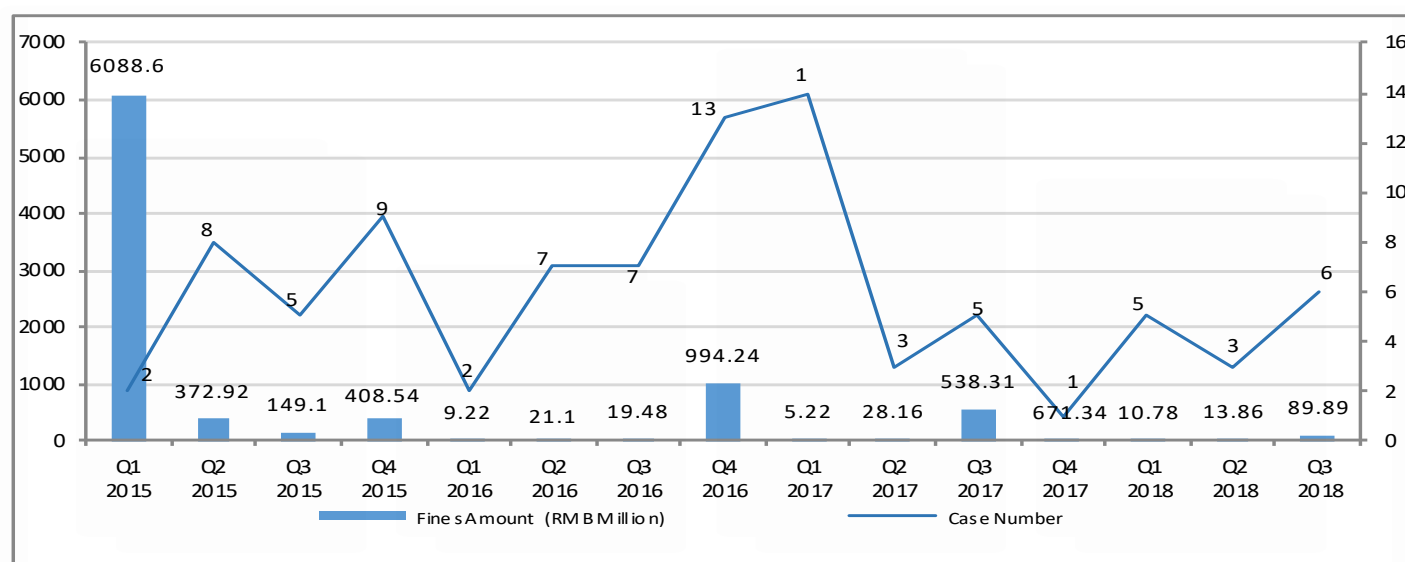
ANTITRUST INVESTIGATIONS

- **Two tally companies fined RMB 3,163,108 (USD 465,436)** - On 20 July 2018, SAMR published a decision in which it imposed a total fine of RMB 3,163,108 (USD 465,436) on two tally companies in Shenzhen, namely China United Tally Shenzhen and China Ocean Shipping Tally Shenzhen for market sharing and price fixing. Following an investigation in November 2017, SAMR found that the two tally companies reached and implemented an agreement aiming to divide sales and services areas for the tally market in the western area of the Shenzhen Port from May 2013 to August 2016. In doing so, the two companies completed client transfers by increasing the price for certain clients which drove such clients to the other party. In addition, one tally company directly transferred an amount of RMB 9,724,00 revenue of tally services to the other tally company. Further, SAMR found that since 2013, the two companies also exchanged pricing information through emails and worked together to gradually raise the services fees to RMB 12 per standard container. SAMR concluded that such conduct violated Article 13 of the AML. The fines accounted for 4% of the two companies' respective revenue in 2015.
- **11 driver training schools and a trade association fined RMB 642,504 (USD 94,541)** - On 19 July 2018, the Price Bureau of the Guangxi penalized a local driver training association and 11 driving training schools for price-fixing. Guangxi Price Bureau found that Beihai Motor Vehicle Driver Training Association (the "**Association**") led and organized the 11 schools to reach and implement an agreement to increase fees for C1 courses from 20 January 2017 onwards. The Association was also found to have organized regular meetings among the schools and communicated via WeChat group to set prices. Guangxi Price Bureau concluded that such conduct constituted a horizontal anti-monopoly agreement and led to anti-competitive effects in Beihai, which as a result violated Article 13 of the AML. The Association was fined RMB 250,000 for leading the price-fixing collusion and was fined for additional RMB 50,000 for refusing to cooperate during the antitrust investigation. The fines imposed on the various driving training schools accounted for 1%-4% of their revenues in 2016.
- **Zhongshan Gas Association fined RMB 150,000 (USD 22,072)** - On 16 August 2018, Guangdong DRC published a decision to impose a fine of RMB 150,000 (USD 22,072) upon Zhongshan Gas Association ("**ZGA**") for market sharing. ZGA was found to have allocated the downstream market for bottled gas stations in favour of the designated gas firms (which are upstream providers of gas to the gas stations) since October 2010. Guangdong DRC was of the view that ZGA's conduct violated Article 13 (which prohibits horizontal anti-competitive agreements) and Article 16 (which prohibits anti-competitive conduct of trade associations).

ANTITRUST INVESTIGATIONS

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
Driver training association and 11 driver training companies Guangxi Price Bureau	19 July 2018	Price-fixing	652.5038	6.804	250	1-4%	Association and some driver training companies: No Other companies: Yes
Tally companies SAMR	20 July 2018	Market sharing and price-fixing	3,163.108	1,149.052	2,014.056	4%	No
Natural gas companies NDRC	27 July 2018	RPM	84,060	38,760	45,300	6%	Yes
Sand mining companies Guangdong DRC	16 August 2018	Price-fixing	1,847.57	293.10	1,554.47	1%	Yes
Gas association Guangdong DRC	16 August 2018	Market sharing	150	150	150	NA	Yes
Two executives of a car distributor Guangdong DRC	31 August 2018	Obstruction of investigation	20	8	12	NA	No

Enforcement trends* – Q1 2015 to Q3 2018



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

● India

CCI fines Geep Industries USD 1.4m for battery cartel

The CCI has imposed a penalty of INR 96.4m (USD 1.4m) on Geep Industries (“**Geep**”) for colluding to fix prices of zinc-carbon dry cell batteries. Penalties were also imposed on officials of Geep, based on 10% of their average income for the preceding three years. The CCI commenced its investigations based on information provided by Panasonic (which escaped penalties under the leniency provisions). The regulator found evidence showing the existence of a "bilateral ancillary cartel" between Geep and Panasonic in the market for institutional sales of dry cell batteries. In particular, the cartel conduct involved the two parties agreeing on the market price of the batteries sold by them, so as to maintain price parity in the market.

CCI fines Glenmark and others USD 6.8m for restricting supply of drugs

The CCI has imposed cumulative fines of INR 465.5m (USD 6.8m) on three pharmaceutical firms including Glenmark and four local chemist associations for restricting the supply of drugs. Officials from the pharmaceutical firms and the chemist associations were also fined. The conduct related to separate complaints alleging that the pharmaceutical firms and associations were requiring no-objection certificates (“**NoCs**”) prior to supplying medical products or appointing stockists, respectively. The CCI also found that Glenmark and the other pharmaceutical companies entered into anti-competitive agreements with the associations regarding NoCs.

CCI issues USD 2.8m fine on South Asia LPG Company for abuse of dominance

The CCI has imposed a penalty of INR 192.7m (USD 2.8m) on South Asia LPG Company (“**SALPG**”) for abuse of dominance in LPG terminalling services at Visakhapatnam Port. The CCI found that SALPG held a dominant position in the relevant market for "upstream terminalling services at Visakhapatnam Port", that access to SALPG's infrastructure was indispensable for offering terminalling services at the port, and that its restrictions, such as insisting on the mandatory use of its storage facility along with the blenders services and its decision to levy exorbitant bypass charges, priced out its rival and substantially reduced its rival's business volume. The penalty is 10% of SALPG's average annual turnover from the relevant market for the preceding three financial years, which is the maximum penalty that can be imposed under India's competition law.

● Vietnam

Vietnam's revised competition law scheduled to come into effect on 1 July 2019

Vietnam's amended competition law, which is scheduled to come into effect on 1 July 2019, will have the following characteristics:

- Expanded scope to include anti-competitive conduct occurring outside of the country that has an effect on competition in Vietnam;
- No exemptions or defences available with regard to abuse of dominance and monopoly conduct;
- A permanent body called the Competition Case Investigation Agency will be established to carry out investigations; and
- Introduction of a leniency program (subject to approval).



Taiwan

Qualcomm and TFTC settle USD 763m dispute

On 10 August, the Taiwan Fair Trade Commission (“**TFTC**”) reached a settlement with Qualcomm in connection to a TWD 23.4bn (USD 763m) fine imposed by the regulator in relation to Qualcomm abusing its dominant position in providing chips for wireless data connections in mobile phones. Qualcomm initially launched an appeal; however, this has now been replaced by the settlement terms whereby the parties agreed that the TWD 2.73bn (USD 93m) Qualcomm has already paid towards the penalty will be retained by the TFTC and no other amounts will be due. In addition, Qualcomm has agreed to a number of commitments, including upholding the non-discrimination principle when treating local handset manufactures and comparable handset manufacturers from other countries.

Hong Kong

HKCC targets individuals in third cartel case

On 6 September 2018, the Competition Commission of Hong Kong (“**HKCC**”) commenced proceedings in the Competition Tribunal (“**Tribunal**”) against three construction companies and two individuals for engaging in cartel conduct by allocating customers and coordinated pricing in relation to the provision of renovation services at a public housing estate. This is the second case in which the HKCC has brought an enforcement action against a cartel targeting residents of public housing and the first time it has brought direct enforcement action against individuals who were involved in the conduct. The HKCC is asking the Tribunal to impose penalties against the two individuals allegedly involved and to issue a director disqualification order against one of them.

New Zealand

NZCC announces 2018-19 priorities

The New Zealand Commerce Commission (“**NZCC**”) has identified six particular areas of focus for the next 12 months: retail telecommunications; responsible lending; online retail; motor vehicle sales; non-notified mergers; and electricity distributors' service quality. In addition, there are a number of areas the NZCC will always regard as a priority – these include cases that involve potential or actual significant harm to consumers, such as cartels and other anticompetitive conduct, product safety and construction cases.

A map of Southeast Asia is shown on the left side of the page. Two callout lines originate from the map: one from the Indonesian archipelago pointing to the 'Indonesia' section, and another from the Philippine archipelago pointing to the 'Philippines' section.

● Indonesia

KPPU fines companies for late merger notifications

In the past quarter, Indonesia's Commission for the Supervision of Business Competition (“KPPU”) has fined the following three companies for late merger notifications:

- Darma Henwa for its acquisition of Cipta Multi Prima (50 working days late) – fine of IDR 3.75bn (USD 251,694);
- Japfa Comfeed for its acquisition of Multi Makanan Permai (310 working days late) – fine of IDR 3.75bn (USD 251,694) (noting that Japfa Comfeed notified the transaction to the Financial Services Authority in Indonesia and the Indonesian and Singaporean stock exchanges);
- PT Profesional Telekomunikasi Indonesia for its acquisition of iforte Solusi Infotek (79 working day late) – fine of IDR 1.1bn (USD 74,219).

Proposed changes to Indonesian's competition law in final stages

According to a member of Indonesia's House of Representatives, discussions on the proposed amendments to the country's competition law are in their final stages. The proposed amendments include the removal of a ceiling on administrative fines for antitrust violations, presently set at IDR 25bn (USD 1.87m) and up to 30% of cartel-related turnover. They also allow for the introduction of a leniency policy; the adoption of a pre-closing merger notification system; and the elevation of the authority's status to that of a full-fledged government body.

● Philippines

Transaction nullified by PCC for failure-to-file

The Philippine Competition Commission (“PCC”) has nullified Chelsea Logistics' December 2016 acquisition of Trans-Asia Shipping Lines and imposed a PHP 22.8m (USD 426,244) fine for its failure to notify the regulator. The nullification of the Trans-Asia deal also led to the PCC's conditional clearance of a related transaction: Chelsea Logistics' acquisition of KGLI-NM, which in turn controls 2Go (the PCC's investigation initially found that control of both 2Go and Trans-Asia by Chelsea would lead to a substantial lessening of competition affecting roll-on/roll-off passenger shipping services and cargo shipping services in certain areas in the Philippines). In two separate decisions, the PCC ordered Trans-Asia to inform the regulator: (a) within 30 days from the execution of any merger agreement involving any of its shares after the nullification order; and (b) if Chelsea Logistics' parent entity, Udenna, or any of its subsidiaries/affiliates, pursue the purchase or re-execute the voided Trans-Asia deal (regardless of whether it is notifiable under the mandatory notification regime of the Philippine Competition Act).

PCC issues guidelines on notifications of JVs

The Mergers and Acquisitions Office of the PCC has issued guidelines on the notification of JVs. Notably, the parties will need to notify should the annual gross sales in or from the Philippines, or the value of the assets in the Philippines of the ultimate parent of at least one of the acquiring or acquired entities, including that of all entities that the ultimate parent entity controls, directly or indirectly, exceeds PHP 5bn (USD 93m). In addition to the size, for a JV to be subject to compulsory notification, the aggregate value of the JV partners' assets that will be combined in the Philippines or contributed into the proposed JV should exceed PHP 2bn (approximately USD 37m) or the gross revenues generated in the Philippines by assets to be combined in the Philippines or contributed into the proposed JV should exceed PHP 2bn.



● Singapore

CCCS issues fine of USD 9.5m for Uber/Grab merger

On 24 September 2018, the Competition and Consumer Commission of Singapore (“**CCCS**”) issued a fine of S\$13 million (USD9.5 million) against Grab and Uber in relation to the sale of Uber's Southeast Asian business to Grab, with the CCCS finding that Grab has increased prices post-transaction (e.g. via a decrease in the amount and frequency of rider promotions and driver incentives) and that potential competitors are hampered by exclusive arrangements and cannot scale to compete effectively against Grab. Along with financial penalties, the CCCS also issued directions to the parties to lessen the impact of the transaction on drivers and riders, and to open up the market and level the playing field for new entrants.

CCCS fines 13 chicken suppliers record USD 19.6m for price collusion

The CCCS has issued an Infringement Decision against 13 fresh chicken distributors for engaging in agreements to coordinate the amount and timing of price increases and agreeing not to compete for each other's customers in the market for the supply of fresh chicken products in Singapore. The large size of the industry (chicken is the most consumed meat in Singapore), the high market shares of the concerned parties (more than 90%), the seriousness and the long duration (of about seven years) of the cartel conduct contributed to the CCCS imposing the highest total financial penalty – SGD 26,948,639 (USD 19.6m) – in a single case to date.

Proposed infringement decision against four hotels for exchanging commercially sensitive information

The CCCS has issued a proposed infringement decision against four hotels – Capri by Fraser Changi City Singapore, Village Hotel Changi, Village Hotel Katong, and Crowne Plaza Changi Airport Hotel – for entering into agreements and/or concerted practices to discuss and exchange commercially sensitive information in connection with the provision of hotel room accommodation to corporate customers. The information shared between the sales representatives of competing hotels included non-public bid prices in response to corporate customer requests, as well as percentages of price reduction that customers asked for and the corresponding responses by each hotel sales representative during confidential price negotiations. The CCCS will make its final decision after the hotels have made their representations to the CCCS.



- **Australia**

ACCC initiates first "gun jumping" case against Cryosite

On 12 July 2018, the Australian Competition and Consumer Commission (“**ACCC**”) announced that it instituted proceedings against Cryosite Limited (“**Cryosite**”) for alleged "gun jumping" in relation to their asset sale agreement with Cell Care Australia Pty Ltd (“**Cell Care**”). The asset sale agreement required Cryosite to refer all customer enquiries to Cell Care after the agreement was signed but before the acquisition was completed. The ACCC alleges this amounts to cartel conduct because it restricted or limited Cryosite's supply of cord blood and tissue banking services and allocated potential customers from Cryosite to Cell Care. In particular, the ACCC alleges that Cryosite "jumped the gun" by implementing parts of the agreement before completion and before they had a letter of no objection from the ACCC.

Maximum consumer law penalties increased to align with competition breaches

As of 1 September 2018, the maximum civil financial penalties in relation to certain provisions under the Australian Consumer Law (“**ACL**”) have been increased in line with penalties under the competition law. This means that penalties for certain contraventions of the ACL will be increased from:

- For companies: from \$1.1 million to the greater of: (a) \$10 million; (b) three times the value of the benefit received; or (c) if the benefit cannot be calculated, 10% of the annual turnover of the company and related bodies corporate in connection with Australia in the preceding 12 months; and
- For individuals: from \$220,000 to \$500,000.

ACCC to further increase enforcement work

On 3 August 2018, ACCC Chair Rod Sims announced that the ACCC will further increase its enforcement action, expand its work on data, algorithms and digital platforms, and increase the use of its powers to gather evidence in complex merger investigations in the coming year. In particular, the ACCC will push for stronger sanctions and penalties (particularly in light of the increased maximum penalties under the ACL) and will rely more on their increased powers to obtain information, documents and evidence for mergers where the ACCC's concerns warrant increased evidence gathering to be used for possible litigation.



● **South Korea**

- On 25 August, it was reported that the Korea Fair Trade Commission had conducted an on-site investigation of Google Korea, for allegedly pressuring local game developers and distributors to sell their games solely through the Google app store.
- On 13 September, the chairman of the Korea Fair Trade Commission, said at a forum that South Korea is set to introduce class actions.
- On 9 August, the Supreme Court dismissed Hanwha Corporation's appeal against a KRW 51bn (USD 45m) antitrust fine related to price fixing, and stated that the KFTC's decision to reject Hanwha's leniency application was fair, as the KFTC already had sufficient evidence at that time.

● **Japan**

- On 11 July, the JFTC announced that it had closed its investigation against Apple relating to Apple's suspected restrictions on mobile network operators in Japan regarding order volume, iPhone fee plans, handling of used iPhones and subsidies to iPhone users, on the basis that Apple agreed to amend its agreements.
- On 24 August, the JFTC gave merger clearance to the proposed acquisition of The Eighteenth Bank, Ltd. by Fukuoka Financial Group, Ltd, subject to the remedies that the parties will transfer certain loans to third-party banks. This case was filed in June 2016 and the review process was extraordinarily long, mainly because the parties could not propose remedies satisfying the JFTC.
- On 12 July, the JFTC issued cease and desist orders and surcharge payment orders to the distributors of uniforms ordered by All Nippon Airways Co., Ltd (ANA). The total amount of the surcharge to be paid is JPY 31.86 million (approx. USD 300,000).

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