

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



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

QUARTERLY UPDATE

October to December 2018

# CONTENTS

Introduction	3
Merger Control	4
Antitrust Investigations	7
Other Asia Pacific news in brief	11
Regional contacts	18



# ANTITRUST IN CHINA AND ACROSS THE REGION

## QUARTERLY UPDATE: OCTOBER TO DECEMBER 2018

The latest Chinese merger statistics do not suggest that the difficulties in the U.S-China trade relationship have led to a major slowdown in merger activity – 125 cases were reviewed and cleared in the last quarter of 2018, of which all but one (UTC/Rockwell) was cleared unconditionally. The UTC decision followed a lengthy review (nearly a year since its first attempt to file) and was issued a couple of months after the US imposed a narrower set of remedies. In other merger news, the State Administration for Market Regulation ("**SAMR**") imposed three more failure to file cases and confirmed that it was continuing to investigate Uber China and Didi Chuxing for failure to notify their 2016 merger.

Separately, SAMR also issued a notice authorizing its local counterparts to enforce antitrust rules within their administrative areas, including a discretion to open cases without prior central approval. This will be likely to result in a larger number of investigations than we have seen in the recent past, with a greater diversity in terms of the types of cases brought and the manner in which they are conducted.

Outside mainland China, both Australia and Japan issued preliminary reports into their respective inquiries into digital platforms; Singapore hosted the first meeting of the ASEAN Competition Enforcer's Network; Thailand finally implemented its merger control regime, which requires transactions resulting in a monopoly or market dominance to be notified pre-closing; the Philippines issued fines in two cases for various procedural infringements; a report by the Vietnamese Competition Authority found that the Uber/Grab merger should have been notified there; and in Hong Kong, the Competition Commission rejected an application for a decision that the Banking Code is exempt from the First Conduct Rule, but confirmed it had no current intention of pursuing any investigation in relation to the provisions of the Code.

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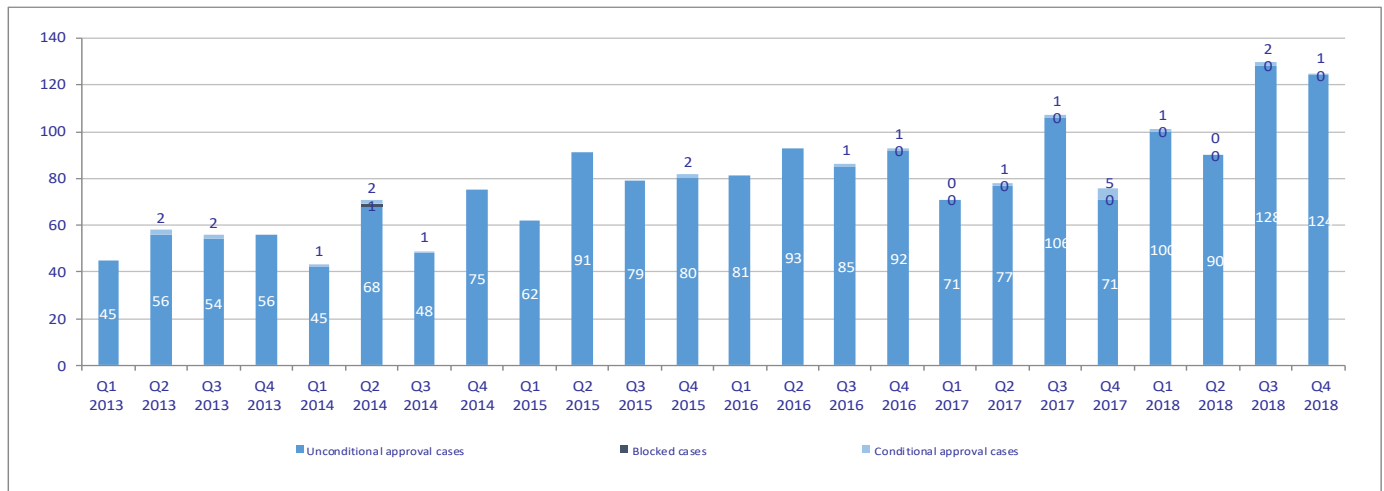


## MERGER CONTROL

How many cases have there been?

SAMR issued 125 merger decisions in the fourth quarter of 2018, a big increase of 64% compared to the fourth quarter of 2017, with 124 reviewed cases in this quarter unconditionally cleared and one case conditionally approved. Further, around 100 cases were notified under the simplified procedure in this quarter, which represents 80% of the total reviewed cases.

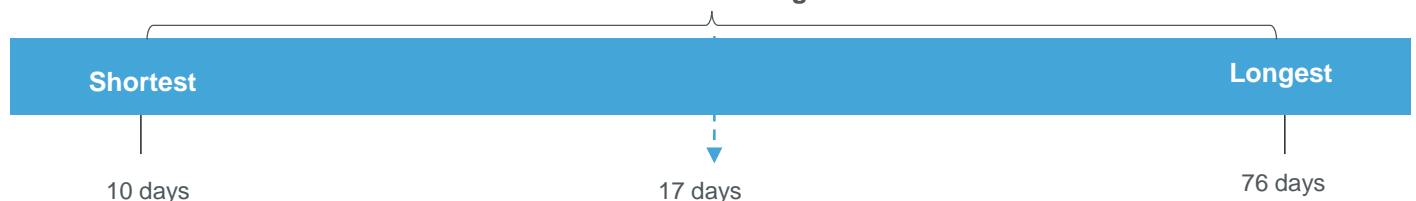
Merger control trends – Q1 2013 – Q4 2018



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
Q4 2018	17 days	80.0%	3

Q4 2018: Average

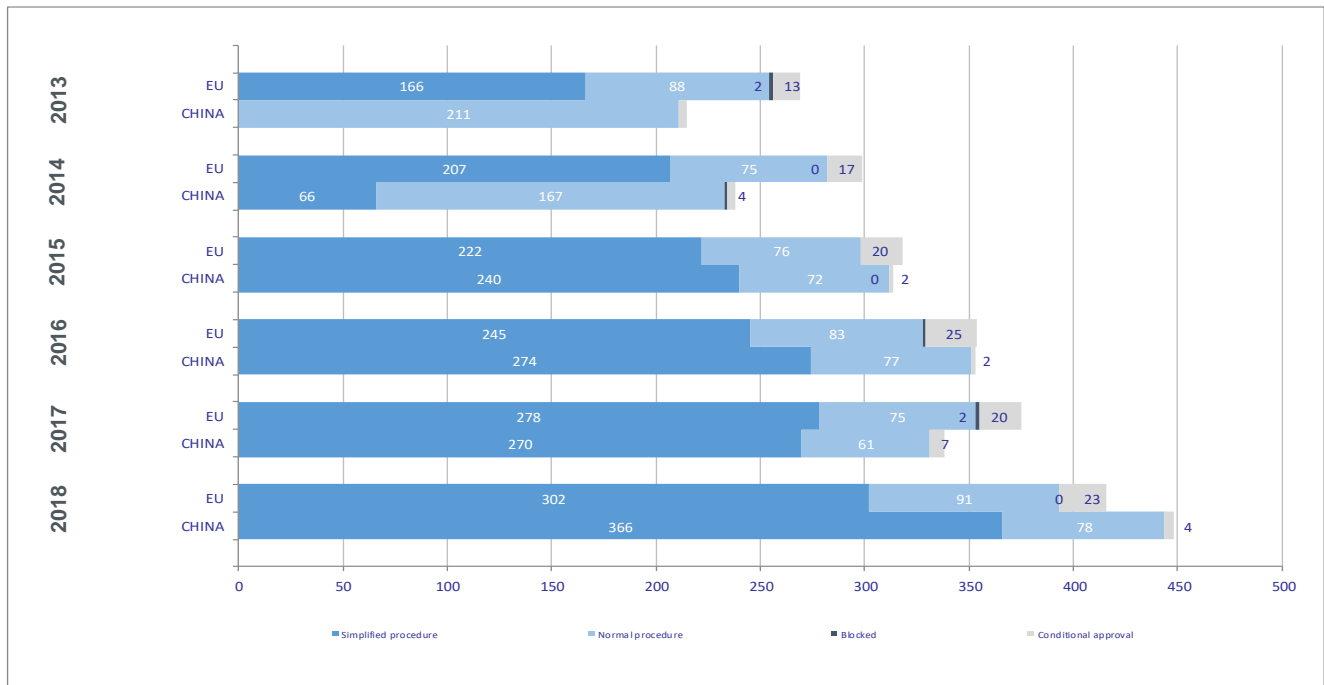




# MERGER CONTROL

How does China compare internationally?

## Comparison with EU – 2013 – 2018



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

Linde Gas (HK) was fined RMB 600,000 (USD 86,440) by SAMR this quarter for its failure to notify its formation of two joint ventures (Linde Dahua (Dalian) Gas and Guanggang Linde Gas (Shenzhen)), both of which met the Chinese merger filing thresholds. The two joint ventures commenced operations in 2012 without notifying the then competition authority in China, and as such violated the Chinese Anti-Monopoly Law ("**AML**"). SAMR launched investigations on its own initiative on 14 December 2017 and 18 April 2018 respectively. Irrespective of the fact these two transactions would not harm competition in China, fines were imposed on all the parties, including the joint venture partners (Dahua Group and Guangzhou Iron and Steel), each fined RMB 300,000 (USD 43,220).

On 21 November 2018, China Duty Free Group was fined RMB 300,000 (USD 43,220) for its failure to notify the acquisition of 51% shareholding in Sunrise Duty Free (China). The acquisition was completed on 14 March 2017 without having been notified to SAMR. SAMR launched the investigation on its own initiative on 14 March 2018.



## MERGER CONTROL

### SAMR conditionally approves UTC/Rockwell Collins

On 23 November 2018, SAMR conditionally approved the proposed acquisition of Rockwell Collins, Inc ("**RC**") by United Technologies Corporation ("**UTC**", together with RC, the "**Parties**") (the "**Transaction**"). SAMR assessed 21 relevant product markets, of which 12 were markets where the parties have horizontal overlaps and another 9 were areas where their products sit in adjacent markets. Each of these markets is global. To address the competition concerns, the Parties submitted and SAMR accepted the following commitments, including, among others:

- (I) **structural** - (i) divest RC's businesses of Trimmable Horizontal Stabiliser Actuator, Pilot Control System and SMR Technology and (ii) divest UTC's R&D projects of Oxygen System.
- (II) **behavioural** - (i) RC, UTC and the merged entity not to engage in bundled sales or impose unfair trading conditions in the provision of Nacelle, Auxiliary Flight Control Actuator ("**AFCA**"), Ice Detection System ("**IDS**"), Power Generation System ("**PGS**") and Fire Prevention System ("**FPS**") and Avionic and ensure inter-operationality, accessibility and compatibility of its Avionics; (ii) with respect to Nacelle, AFCA, IDS, PGS, FPS, Avionic, Air Data Sensor, Air Data Computer, Comprehensive Air Data System and A664 Terminal System, if applicable, RC, UTC and the merged entity not to materially change the business model and act fairly and reasonably in the negotiation of contract terms of these products; (iii) if applicable, to continuously perform the existing contracts and organizations under existing terms unless the contracting parties otherwise agree.

The above commitments are aimed at addressing competition concerns arising from both horizontal overlaps and adjacent relationships between the Parties' product offering. Outside China, the Transaction has been unconditionally cleared in 8 jurisdictions, namely Brazil, Philippines, Canada, Taiwan, South Africa, Turkey, Kenya and COMESA and cleared subject to narrower sets of conditions in the EU and the US.

### Investigation of Didi-Uber merger officially confirmed still ongoing

On 16 November 2018, Wu Zhenguo, Director General of SAMR's Anti-Monopoly Bureau, reported at a press conference that the antitrust investigation against the acquisition of Uber China by Didi Chuxing ("**Didi**") is still ongoing. The USD 35 billion merger of two major ride-hailing platforms was completed in August 2016 without notifying the then competition authority in China. Following complaints from third party(ies), an investigation was initiated by the authority. It was argued by Didi that the transaction did not meet the Chinese merger filing thresholds, and therefore Didi was not obliged to notify the transaction before consummating the transaction. Another factor widely believed to have affected the decision to not file was the uncertain status of VIE structures, which had been employed by Didi. According to Wu Zhenguo, ride-hailing services, as a new industry, has raised challenges regarding the enforcement of the existing competition rules. SAMR is in the process of assessing the impact of the transaction on competition and trying to strike the right balance between safeguarding consumer welfare and promoting innovation and economic efficiency. The statement of Wu Zhenguo is of interest as it is the first statement on the Didi/Uber investigation since responsibility for merger review was transferred from MOFCOM to SAMR. One of the possible implications of transferring capability to a new agency was the opportunity to revisit the treatment of VIE structures under China's merger rules.



## ANTITRUST INVESTIGATIONS

### 3 firework companies fined for market sharing

On 18 October 2018, SAMR announced an aggregate fine of RMB 114,006 (USD 16,432) imposed by the Administration for Industry and Commerce of Guangxi Zhuang Autonomous Region ("**Guangxi AIC**") against three Guangxi-based firework wholesalers for market sharing. The three companies (namely Qinzhou Fengshun, Qinzhou Feixing and Qinzhou Zhongtian) were the only three firework wholesalers in Qinnan District, Qinzhou City, Guangxi. Following an investigation in January 2015, Guangxi AIC found that the three companies reached and implemented an agreement to allocate the sales market of fireworks and firecrackers in Qinnan District. To ensure the implementation of the market sharing agreement, each of the three companies (i) required its customers to label their purchased products with the name of the supplier allocated to that territory, so that cross-territory sales would be traceable and (ii) deprived customers of their freedom to purchase outside the allocated territory when their additional demands could not be met by the allocated supplier. This was carried out in combination with the requirement that a given customer was only supplied with the volume corresponding to its upfront payment made to the supplier in the territory. In addition, a penalty mechanism was also in place in the event of deviation from the agreed market allocation. Guangxi AIC concluded that such conduct constituted an anti-competitive market sharing agreement and therefore which is expressly prohibited by Article 13(3) of the AML. The fine imposed accounted for 5% - 8% of each company's revenue in 2014.

### 3 engineering quality inspection firms fined for market sharing

On 13 November 2018, Henan Administration of Industry and Commerce ("**Henan AIC**") imposed a cumulative fine of RMB 707,996 (USD 101,759) on three Henan-based engineering quality inspection firms (Puyang Tongda, Henan Jianyuan and Henan Shengda) for market sharing. Following an in-depth probe which commenced in October 2017, Henan AIC found that the three firms entered into a cooperation agreement ("**Agreement**") to jointly set up a local engineering quality inspection service centre ("**Service Centre**") in March 2015. From then to September 2017, the three firms ceased independent customer-facing activities and instead jointly operated the Service Centre, where they only dealt with customers allocated to them in accordance with the Agreement. In addition, the three firms combined business management systems and agreed on unified fee charging and revenue sharing policies. The Henan AIC concluded that such conduct infringed Article 13(3) of the AML. The three firms were fined 6-7% of their revenues in 2016. The Henan AIC also confiscated illegal gains of RMB 350,377 (USD 50,359).

### 16 container yard operators received large fines for price-fixing

On 16 November 2018, Tianjin Development and Reform Commission ("**Tianjin DRC**") penalized 16 Tianjin-based container yard operators for price-fixing. Following an investigation launched against 27 local container yard operators in June 2018, Tianjin DRC found the 27 operators had colluded to fix prices through written proposals, physical gatherings, phone calls and e-mails since 2010. In particular, the operators entered into four separate proposals in December 2010, April 2011, March 2012 and December 2012 to fix the comprehensive charges and unloading fees. As a result of the collusion, the comprehensive charges and unloading fees increased 166% and 60%, respectively. Tianjin DRC came to the view that such conduct constituted price-fixing, which is a form of horizontal anti-competitive agreements expressly prohibited by Article 13 of the AML. Tianjin DRC imposed an aggregate fine of RMB 45.1 million (USD 6.5 million) against 16 operators and granted full immunity to the whistle-blower, Tianjin Penavico Logistics. It is not known why the remaining 10 operators were not fined.



## ANTITRUST INVESTIGATIONS

### 3 acetic acid API manufacturers fined for price-fixing

In December 2018, SAMR imposed an aggregate fine of RMB 6,251,600 (USD 907,450) on three acetic acid active pharmaceutical ingredients ("**API**") manufacturers, namely Chengdu Huayi, Sichuan Jinshan, and Taishan Xinning, for price-fixing. Acetic acid is an essential input for hemodialysis concentrates, which are used to treat kidney failure and uremia. The concerned companies are the only three manufacturers in the Chinese acetic acid market. SAMR found that from October 2017 to February 2018, the companies exchanged competitively sensitive information (output, sales volume, pricing, etc.) during an industry conference and other meetings. In addition, they also indirectly exchanged information via a third party (Jiangxi Jinhan), the nature of whose role was not published. Following the information exchange, the three companies reached an agreement to increase the sales price (to haemodialysis solution plants) of acetic acid API to RMB 28-28.5/kg and RMB 33/kg to drug manufacturers, representing an increase of approximately 201-255%. SAMR concluded that the price-fixing conduct significantly restricted market competition, increased the costs for downstream drug manufacturers and harmed the normal dialysis treatment of patients. The fines imposed accounted for an aggregate of 4% of each infringing company's revenue in 2017. Apart from fines, SAMR also confiscated illegal gains of RMB 6,582,200 (USD 955,438), making the penalty RMB 12,833,800 (USD 1,862,888) in total.

### Three abuse investigations suspended/terminated

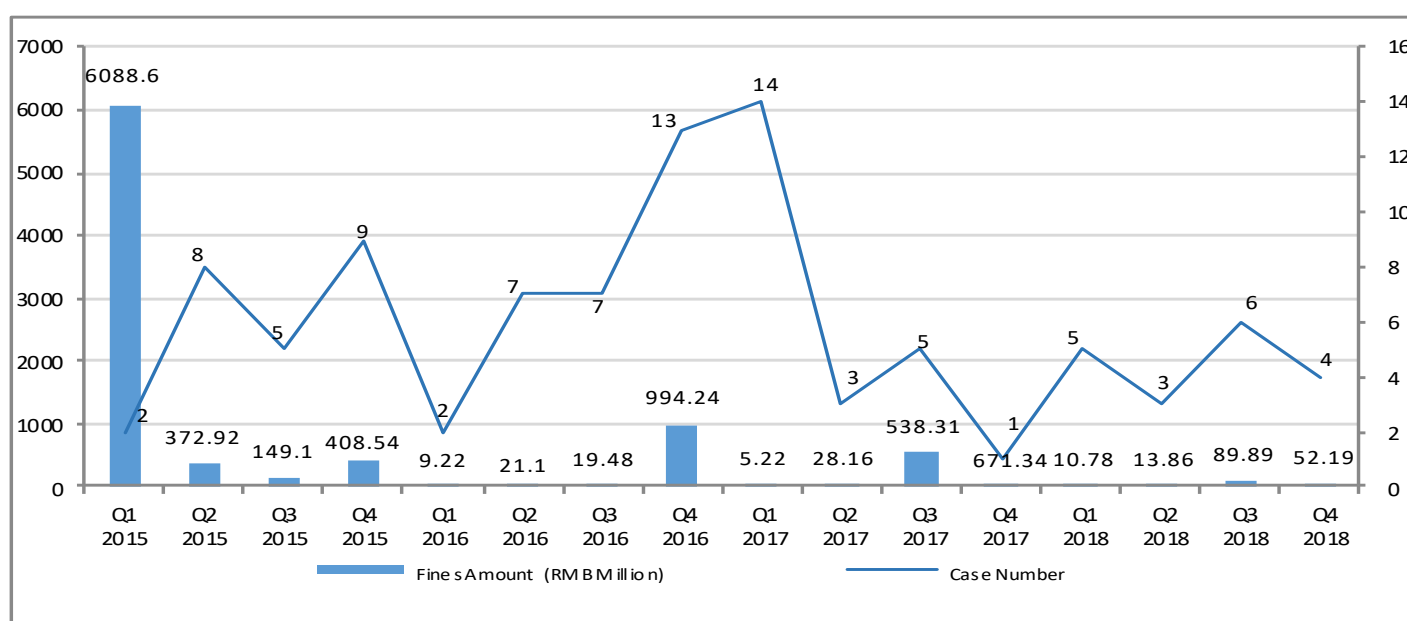
- On 3 December 2018, Jiangsu Administration for Market Regulation ("**Jiangsu AMR**") terminated its investigation against the alleged abusive conduct of State Grid Jiangsu Electric Power's Lishui branch. The investigation started in September 2017. Jiangsu AMR found that State Grid imposed unreasonable trading conditions by requesting its users to make upfront payments in exchange for a stable electricity supply. To mitigate the identified competition concerns, State Grid proposed a remedy package and fully implemented them within the required timeframe. As such, the investigation did not lead to a finding of infringement or fine.
- On 15 November 2018, Hubei Administration for Industry and Commerce ("**Hubei AIC**") suspended its investigation against the alleged abusive conduct of Hubei Lianxing, a supplier of explosive equipment in Hubei. The company was found to have imposed exclusive terms upon its upstream and downstream trading partners. Hubei AIC suspended the investigation, which has lasted for five years, taking into account the proposed corrective measures, including the amendment of internal documents and redrafting of contracts with upstream and downstream trading partners.
- On 12 October 2018, SAMR published a termination decision made by Inner Mongolia Administration for Industry and Commerce ("**Inner Mongolia AIC**") earlier this year. In July 2016, Inner Mongolia AIC launched the investigation against the Inner Mongolia Branch of Agricultural Bank of China for allegedly bundling insurance products with loans granted to farmers. Together with other corrective measures, the company promised to cease the bundling practice.



## ANTITRUST INVESTIGATIONS

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
<b>Fireworks</b> Guangxi AIC	18 October 2018	Market sharing	114.01	22.59	51.5	5% - 8%	N/A
<b>Construction</b> Henan AIC	13 November 2018	Market sharing	708	74.75	414.25	6% - 7%	N/A
<b>Container yard</b> Tianjin DRC	27 November 2018	Price-fixing	45,114.71	47.13	12,196.30	2% - 5%	Yes
<b>Pharmaceuticals</b> SAMR	24 December 2018	Price-fixing	6,251.6	1,427.7	2,763.4	4%	Yes

### Enforcement trends\* – Q1 2015 to Q4 2018



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

### Other news

#### Local consolidation of antitrust agencies expected to complete soon

Following the completion of the agency consolidation at central level in September 2018, the consolidation at local level formally kicked off in Hainan on 29 September 2018. As of end of this quarter, it was reported that 34 provinces, autonomous regions and municipalities directly under the central government had completed the local consolidation by setting up the provincial-level agencies responsible for the administration for market regulation. The local level consolidation throughout the country is expected to be fully completed by the end of March 2019.

## ANTITRUST INVESTIGATIONS

### Other news (continued)

#### SAMR published Notice on the Authorisation of Antitrust Law Enforcement

On 3 January 2019, SAMR published the Notice on the Authorisation of Antitrust Law Enforcement ("**Notice**") dated on 28 December 2018, authorizing its local counterparts to enforce antitrust rules within their administrative areas. According to the Notice, SAMR is responsible for the overall antitrust law enforcement in Mainland China, directly enforces or authorises its provincial-level counterparts to enforce cases involving cross-provincial anti-competitive conducts, complicated antitrust cases or cases having a significant national impact, and other cases that SAMR deems necessary to claim jurisdiction. SAMR's provincial-level counterparts shall have jurisdiction over cases within their administrative areas. During an investigation, SAMR may delegate relevant investigation work to provincial-level agencies; provincial-level agencies may delegate relevant investigation work to their peer agencies in other provinces or lower-level local agencies. According to the Notice, SAMR and its local counterparts shall actively carry out antitrust enforcement work, unify the legal standards applied in the investigation, and endeavour to improve the information disclosure of the law enforcement. Further, provincial-level agencies are required to cultivate their own team of antitrust enforcement specialists, and to continuously improve the antitrust enforcement capability. The key implications of the Notice are as follows:

- It will significantly increase the overall resources applied to antitrust enforcement in China and will therefore be likely to result in a larger number of investigations than we have seen in the recent past, with a greater diversity in terms of the types of cases brought and the manner in which they are conducted.
- The general authorisation regime will give local agencies a greater degree of discretion in conducting and prioritising investigations. To compare with SAMR's predecessors, NDRC and SAIC – although NDRC also operated on the basis of a general authorisation, SAIC did not, meaning only the central authority had the discretion to open cases. Under the new Notice, although local agencies are required to inform SAMR before they issue any substantive decisions (such as on liability or penalty), they do not require prior authorisation or approval to open an investigation.
- There may also be some variation in the conduct of investigations between the different agencies, despite measures seeking to promote a unified and consistent approach. There are already differences in the levels of experience between local agencies - for example, some agencies in the larger provinces such as Jiangsu or Guangdong already have experience in handling complex antitrust cases, whereas others in smaller provinces do not, but this may be exacerbated under the Notice which allows the provincial-level authorities to delegate enforcement to more localised agencies.
- SAMR retains jurisdiction to enforce China's antitrust rules at both national and provincial level and can be expected to lead on cases which are complex or have a significant national impact. However, as SAMR's resources are limited at only 40-50 officials, it is likely that over the next few years, an increasing amount of China's antitrust enforcement will be conducted by provincial level agencies.

## ● Hong Kong

### HKCC finds Code of Banking Practice not excluded from First Conduct Rule

In a decision published on 19 October 2018, the Hong Kong Competition Commission (the "**HKCC**") held that the Code of Banking Practice (the "**Code**") was not excluded from the application of the First Conduct Rule of the Hong Kong Competition Ordinance (the "**First Conduct Rule**"). The Code is a non-statutory industry code of practice jointly issued by the Hong Kong Association of Banks and the DTC Association, and is related to the provision of services to private individuals by authorized institutions under the Banking Ordinance (Cap. 155) ("**Authorized Institutions**"). Certain provisions of the Code are concerned with the imposition and specific level of fees, interest rates and charges set by the Authorized Institutions, which could possibly lead to uncertainty as to their status under the First Conduct Rule. In order to obtain legal certainty, the Authorized Institutions sought a decision on the inapplicability of the First Conduct Rule to the Code in December 2017. After considering all the representations and submissions it had received, the HKCC found that the Code was not a legal requirement imposed "by" or "under" the Banking Ordinance within the meaning of "exclusion" under the First Conduct Rule. However, the HKCC did not reach a conclusion on whether the giving of effect to the Code has the object or effect of harming competition under the First Conduct Rule and confirmed that it currently had no intention to pursue further investigative or enforcement action with respect to the present version of the Code, recognizing that the Code might benefit customers by promoting good banking practices.

### HKCC releases 2017-18 annual report

In its annual report released on 7 November 2018, the HKCC reported it had received 789 complaints and enquiries in the past financial year (1 April 2017-31 March 2018), with 36 cases escalated to the "initial assessment" phase and some subsequently proceeded to the "investigation phase". The other key highlights include:

- With respect to the First Conduct Rule (which prohibits anti-competitive agreements), cartel-related allegations accounted for approximately 32% of all enquiries and complaints received, covering real estate and property management, IT, and machinery and equipment sectors. With respect to the Second Conduct Rule (which prohibits abuse of substantial market power), exclusive dealing and tying and bundling were the primary issues complained;
- The HKCC commenced two proceedings before the Competition Tribunal (it has since commenced a third). One was against five technology companies allegedly engaged in bid-rigging and the other targeted 10 construction and engineering companies allegedly engaged in market-sharing and price-fixing;
- The HKCC published template "non-collusion clauses", which can be used in tender documents. The other work-in-progress of the HKCC includes measures to enhance cooperation in investigations and guidance on fine calculation.



## ● Japan

### JFTC closes its investigation against Airbnb

On 10 October 2018, the Japan Fair Trade Commission (the "**JFTC**") announced that it had closed its investigation against Airbnb relating to Airbnb's suspected restrictions on its trading partners (intermediaries). Intermediaries handle the listing of private lodging services on behalf of house owners, and Airbnb required such intermediaries not to use other private lodging services platforms. After commencement of the investigation, Airbnb proposed to the JFTC that it would waive its rights to enforce such restrictions on trading partners, and the JFTC decided to close the investigation.

### Obayashi and Shimizu fined for bid-rigging in Japan

On 23 October 2018, the Tokyo District Court fined Obayashi Corporation JPY 200 million (USD 1.8 million) and Shimizu Corporation JPY 180 million (USD 1.6 million) for bid-rigging on construction projects of magnetic levitation train stations. The court proceedings for two other contractors, Taisei Corporation and Kajima Corporation, are still ongoing.

### JFTC issues digital platform interim report

The JFTC, together with the Ministry of Economy, Trade and Industry (the "**METI**") and the Ministry of Internal Affairs and Communications (the "**MIC**"), issued an interim report on issues surrounding digital platform operators on 12 December 2018, after holding public consultations and hearing sessions with digital platform operators such as Rakuten, Yahoo! Japan, Facebook and Apple. The interim report raised various issues regarding digital platforms and big data, for example whether to introduce new regulatory laws applicable to platform operators, whether to establish a new professional organisation which will support enforcement and policymaking by the government, how to assess mergers whereby platform operators acquire potential competitors, and how to apply antitrust law regarding the relationship between platform operators and consumers who provide valuable data to platform operators. Further to the interim report, on 18 December 2018, the JFTC, METI and MIC issued basic principles for the introduction of rules on platform operation businesses, the contents of which are in line with the above interim report.

## ● South Korea

### KFTC announces proposed amendments to the Merger Review Guidelines

On 12 November 2018, the Korea Fair Trade Commission (the "**KFTC**") announced proposed amendments to the Merger Review Guidelines, in order to provide guidelines for reviewing mergers involving big data and innovation markets, in relation to market definition, market concentration, innovation inhibiting effect and anti-competitiveness.

### 16 ready-mix concrete manufacturers fined for price-fixing by KFTC

On 12 December 2018, the KFTC imposed KRW 783m (USD 694,000) in cumulative fines on 16 ready-mix concrete manufacturers for price-fixing. The manufacturers agreed to raise prices between April 2016 and March 2017, leading to a 3.15%-3.47% increase in price during the period.

### KFTC enforcement against breaches of filing requirements

On 20 December 2018, the KFTC announced that it has imposed KRW 2.33 billion (USD 2.06 million) in cumulative fines on 139 affiliates of 35 conglomerates for 194 instances of filing violations, which appear to relate to failure-to-file cases and misleading disclosures in the filing documents. The KFTC indicated that many companies divided intragroup trades into small amounts to avoid regulatory filings.



● **Taiwan**

### **TFTC dismisses allegations over Qualcomm settlement**

In a statement issued on 9 October 2018, the Taiwan Fair Trade Commission (the "**TFTC**") dismissed allegations that its recent settlement with Qualcomm was politically driven and in breach of the Administrative Procedure Act (the "**APA**"). Following its settlement with Qualcomm in relation to the record fine TWD 23.4 billion (USD 763 million) imposed on Qualcomm, the TFTC was challenged by three members of Taiwan's highest supervisory body in terms of its impartiality and independence. The TFTC asserted that it was an autonomous agency and not affiliated to any political party. In particular, the TFTC noted that its settlement with Qualcomm had been overseen by a judge at the administrative litigation stage in accordance with Article 219 of the Administrative Litigation Act (the "**ALA**"), rather than the APA, and the settlement decision was approved at a commission meeting by a majority vote. According to Article 219 of the ALA, an administrative court should attempt to a reconciliation between parties irrespective of the ongoing trial, provided that the parties have the right and the disposition does not contradict public interest.

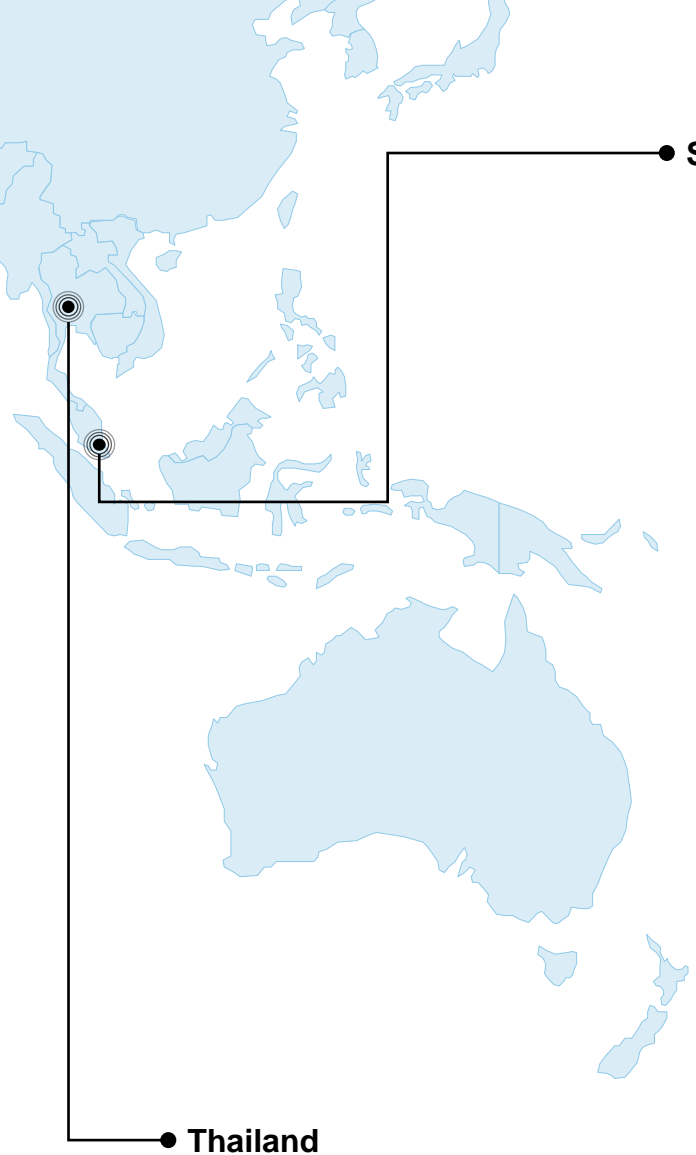
### **TFTC blocks Uni-President's 3<sup>rd</sup> attempt at an acquisition of Wei Lih**

On 30 October 2018, the TFTC for the third time blocked the acquisition of Uni-President Enterprises ("**Uni-President**") of a majority stake in Wei Lih Food Industrial ("**Wei Lih**"). Uni-President is the largest food production company in Taiwan, whereas Wei Lih is Taiwan's second-largest instant noodle manufacturer. Noting the two companies' combined market share of 60% and consumers' strong loyalty to instant noodle brands, the TFTC was concerned that the transaction may result in price hikes and reduce the competition in the manufacturing and sale of instant noodles. Previously Uni-President and Wei Lih had attempted to strike the deal in 2008 and 2010 but the TFTC stymied both attempts and expressed similar concerns. The companies had appealed the 2010 decision to the Supreme Administrative Court of Taiwan and the court upheld the TFTC's decision. Appealing this decision to the Taipei High Administrative Court remains an option to the parties.

● **Vietnam**

### **VCA finds Uber/Grab merger likely to have met notification requirements in Vietnam**

On 18 November 2018, the Vietnam Competition Authority (the "**VCA**") reported that the merger between Grab and Uber did in fact meet the notification requirement in Vietnam. Following an investigation initiated on 18 May 2018, the VCA concluded that the combined share of Grab and Uber in Vietnam was over 50%, crossing the 30% merger filing threshold. Grab announced its merger with Uber on 26 March 2018, and the parties chose not to file the transaction in Vietnam on the basis that the combined market share in Vietnam was below 30%. The VCA has sent its investigation report to the Competition Council, which will decide on the merits of the case within 30 days following receipt.



## ● Singapore

### Singapore holds the first meeting for the new competition network of ASEAN

The Association of South-East Asian Nations ("ASEAN") Expert Group on Competition has established the ASEAN Competition Enforcers' Network ("ACEN") to promote cooperation in antitrust cases by facilitating information exchange and mutual understanding, and to serve as a platform to handle transnational cases. The first meeting of the ACEN was held on 9 October 2018, where a series of initiatives were launched, including, among others, **(i)** the Virtual ASEAN Competition Research Centre, which hosts a repository of research articles and researcher profiles for the reference of competition authorities; **(ii)** the Regional Cooperation Framework, which serves as a set of cooperation guidelines for ASEAN member states; **(iii)** ASEAN Competition Compliance Toolkit, which provides business with information on competition laws such as how to implement an internal compliance program; and **(iv)** two competition studies, which will examine the impact of current regulatory frameworks and state-owned enterprises in the logistics sector. Separately, on 30<sup>th</sup> and 31<sup>st</sup> October, antitrust officials and construction industry regulators from ASEAN member states also conducted a workshop to boost enforcement in the construction sector.

## ● Thailand

### Thailand implements its merger control regime

On 28 December 2018, implementing regulations were published in the Royal Thai Government Gazette in relation to the Trade Competition Act, which became effective on 4 October 2017 (the "**Implementing Regulations**"). Thailand has now adopted a dual merger filing system, according to which **(1)** transactions resulting in a "monopoly" or "market dominance" shall obtain approval from the Trade and Competition Commission (the "**TCC**") prior to implementation (pre-merger filing) and **(2)** transactions that "materially reduce competition" should file with the TCC within 7 days of implementation (post-merger filing). In relation to the pre-merger filing, the Implementing Regulations clarify the following aspects both with respect to substance and procedure: **(i)** business operators with "market dominance" refers to (a) any single business operator having a market share of 50% or more and a turnover of at least THB 1 billion (approximately USD 31 million), or (b) any of the top three business operators having a combined market share of 75% or more and each having a turnover of at least THB 1 billion (excluding any business operator with a market share of lower than 10%); **(ii)** the TCC in principle is required complete its review within 90 days but when necessary can extend the timeline by more than 15 days; and **(iii)** transactions that have been approved by shareholder meetings or executive committees or where definitive documents have been executed before effective date of the Implementing Regulations (namely 29 December 2018) are exempt from the application of the pre-merger filing. The Implementing Regulations also provide rules concerning the collection of evidence during an investigation, the determination of "control" in different types of mergers, filing materials, penalties, etc. The Implementing Regulations, which formally came into effect on 29 December 2018, mark the effective entry into force of Thailand's merger control regime.



## ● Philippines

### PCC fines Grab and Uber for merger violations

In a ruling published on 11 October 2018, the Philippines Competition Commission (the "**PCC**") issued a fine of PHP 12 million (approximately USD 222,563) on the ride-hailing platform Grab and another fine of PHP 4 million (approximately USD 74,190) on its former rival Uber for gun-jumping. In April, shortly after the parties filed the merger, the PCC issued seven interim measures which ordered Uber to maintain operations separate from Grab in the Philippines during the PCC's review. However, prior to receiving the PCC's clearance in August, Grab and Uber failed to keep their operations separate, which amounted to multiple breaches of two of the PCC's interim measures. Despite Uber's exit from the Philippine market, the PCC's fine was also addressed to Uber.

### PCC fines MacGlobal and MSSA for late notification

On 14 November 2018, the PCC imposed a fine of PHP 526,219.5 (approximately USD 10,011) on Macsteel Global ("**MacGlobal**") and MSSA Investments ("**MSSA**") for failure to file. The deal relates to MSSA's sale of 50% stake in Macsteel International to its joint venture partner MacGlobal. The transaction was signed on 5 July 2018 and the parties notified it to the PCC fifty days later on 24 August 2018 after two earlier attempts to file were rejected by the PCC on procedural grounds. The parties argued that the delay was caused by technical reasons and did not give rise to any prejudice to the PCC or any third party. Nonetheless, the PCC disagreed on the grounds that good faith and lack of prejudice could not serve as valid defenses against late notification. Furthermore, the PCC found that the parties had consulted Philippines-based counsel prior to signing and thus could not claim ignorance of the procedural requirements. Despite the fact that the transaction was unconditionally approved by the PCC, a fine was imposed on the parties for late notification.

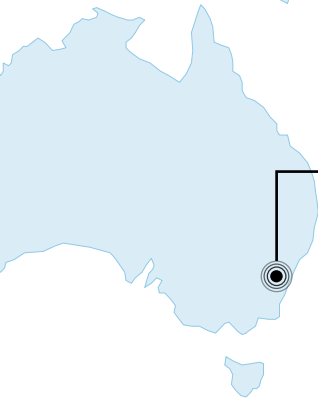
## ● Indonesia

### Further amendments to the Indonesia's competition law expected

Discussions on the proposed amendments to Indonesia's competition law continued this quarter. As part of the proposed amendments, lawmakers have set the ceiling on administrative fines for cartel at 25% of cartel-related turnover, lower than the initially proposed 30%. The current ceiling is IDR 25 billion (USD 1.87 million), which has been criticized given short of deterrent effect to cartel. Another notable change is that Indonesia's Commission for the Supervision of Business Competition (the "**KPPU**") will be granted extraterritoriality its enforcement jurisdiction.

### Supreme Court upholds KPPU's 2016 beef cartel penalties

On 12 December 2018, Indonesia's Supreme Court upheld KPPU's decision which imposed an aggregate fine of IDR 106 billion (USD 7.26 million) on 32 Indonesian cattle importer and beef feedlot companies in a beef cartel case. On 24 April 2016, KPPU penalized the above companies for forming a cartel with the aim of manipulating local beef prices and restricting beef imports and distribution. The collusion caused the local beef price to rise in the Greater Jakarta area in the period between 2013 and August 2015, harming Indonesian consumers. The fines were affirmed by the Central Jakarta District Court on 1 August 2017, following which 29 companies appealed the decision to the Supreme Court. The decision of the Supreme Court is final and binding on all 32 companies involved.



## ● Australia

### High Court of Australia refuses to hear Yazaki's appeal re the record cartel fine

On 19 October 2018, the High Court of Australia ("**High Court**") announced that it had refused to hear the appeal from the Japanese car part manufacturer Yazaki in relation to the record fine AUD 46 million (approximately USD 32.4 million) fine for participating in cartel conduct. In 2017, the Federal Court imposed a fine of AUD 9.5 million (approximately USD 6.7 million) on Yazaki for entering into and implementing agreements with competitors on the supply of wire harnesses to manufacture the Toyota Camry. After the Australian Competition and Consumer Commission (the "**ACCC**") lodged an appeal claiming the original penalty was insufficient in May 2018, the Full Court of the Federal Court ("**Full Court**") increased the fine by 384% to AUD 46 million, making it the highest total penalty ever imposed under the Competition and Consumer Act 2010 in Australia. Notably, the initial judgement identified two continuous courses of violation while the Full Court found five violations, each should have been fined separately. The High Court's refusal to take the appeal from Yazaki marks the end of the litigation.

### ACCC releases its preliminary report on the digital platforms inquiry

The ACCC published its preliminary report on the digital platforms inquiry on 10 December 2018. The ACCC reached the view that Google and Facebook both have substantial market power in markets such as online search, search and display advertising, social media and news referral and that key digital platforms, like Google and Facebook, have both the ability and incentive to favour related businesses or those businesses with which they may have an existing commercial relationship. Furthermore, the ACCC is also concerned with the large amount and variety of data which digital platforms collect on Australian consumers, which goes beyond the data which users actively provide when using the digital platform.

Some of the preliminary recommendations contained in the report are as follows:

- Proposals aimed at addressing Google and Facebook's market power and promoting increased consumer choice, including a proposal that would prevent Google's internet browser from being installed as a default browser on mobile devices, computers and tablets and Google's search engine from being installed as a default search engine on internet browsers.
- That a new or existing regulatory authority be given the task of investigating, monitoring and reporting on how large digital platforms rank and display advertisements and news content.
- That large digital platforms provide the ACCC with advance notice of any acquisitions in Australia.

### Overview of ACCC's activity in 2017-18FY

The ACCC secured nearly AUD 170 million (approximately USD 120 million) in penalties for breaches of competition and consumer law in the 2017-18FY, according to its latest annual report. Other highlights in the past year include:

- An increased push by the ACCC to secure higher penalties, as demonstrated by the record AUD 46 million (approximately USD 32.4 million) penalty in the Yazaki cartel case, and penalties of around AUD 10 million (approximately USD 7.1 million) each against Telstra, Ford and Apple for consumer protection issues.
- In respect of mergers, the ACCC assessed 281 mergers: 90% were pre-assessed without the need for a public review. The remaining 10%, some 29 merger matters, underwent a public or confidential review, with 17 unconditionally unopposed.



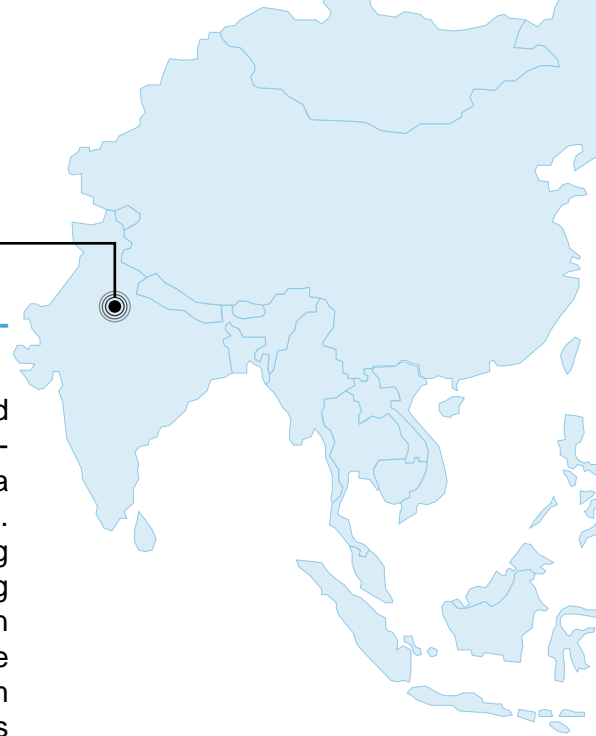
## India

### CCI raids AB InBev, Carlsberg and UB over alleged price-fixing

The Competition Commission of India (the "CCI") was reported to have raided the Indian offices of three brewers – Anheuser-Busch InBev ("AB InBev"), Denmark-based Carlsberg, and a local brewer United Breweries ("UB") – for alleged price-fixing. The CCI reportedly had been conducting its probe after receiving a leniency application from one of the three firms disclosing details of the price-fixing. While rules vary across regions in India, it is usually the state governments that decide beer price by adding taxes, excise duties, and retail profit to the minimum ex-brewery rates provided by the manufacturers. The companies allegedly manipulated the ex-brewery rates. If the allegations are proved to be correct, the three companies could face fines of up to 10% of their annual revenue or three times the profit for each year of the cartel conduct, whichever is higher, under India's Competition Act 2002.

### CCI unconditionally approves Siemens/Alstom merger

On 1 November 2018, the CCI published its decision to approve the proposed merger of Siemens' rail mobility business with Alstom. In India, both parties compete in tenders for the manufacture and supply of (i) signaling solutions, including signaling systems that provide safety controls on mainline and urban rail networks; (ii) rail electrification, including power supply and contact line systems for urban and mainline railways; and (iii) rolling stock, which encompass intercity and regional trains (for mainline railways) and metros (for urban railways). The CCI left open the exact scope of the product and geographic markets and found that (i) with regard to signaling solutions, the parties have very negligible overlaps in the supply of mainline signaling products, noting that Alstom, as a relatively new player in the Indian market, did not generate significant sales in India in the past five years. Besides the fact that the parties' combined market shares based on order intake value in mainline signaling and urban signaling segments are below 30%, the CCI also considered the strong presence of other major players in both segments and the players' winning records in the past biddings; (ii) in relation to rail electrification, the parties have negligible overlapping bids and low combined shares in both mainline and urban rail electrification segments; (iii) in relation to rolling stock, the parties have zero or limited overlapping biddings and order intakes, and face significant competition restraints from their competitors. In the light of the above, the CCI unconditionally cleared the proposed transaction.



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