CLIFFORD

CHANCE

ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE

April to June 2019

CONTENTS

Introduction 3

Merger Control 4

Antitrust Investigations 6

Other Asia Pacific news in brief 11

Regional contacts 17

ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: APRIL TO JUNE 2019

The impact of US-China relations on the merger review process continues to be a concern to many, although the statistics show a mixed picture. In terms of absolute numbers, last quarter saw the fourth consecutive fall in the number of cases in China – 84 deals, down from a high of 126 in Q3 2018 and lower than the same quarter last year. However, in terms of outcome, intervention remains the exception with all 84 cases last quarter cleared unconditionally, most of them under the simple case procedure.

On the enforcement side, the caseload is beginning to pick up with fines imposed on Chang'an Ford for RPM; Eastman for exclusive dealing; and in two smaller cases on local suppliers of concrete and vehicle inspection services for market sharing and price fixing respectively. In addition, two other firms, China Telecom and Ericsson announced they were currently under investigation by SAMR. In a separate development, SAMR published three new regulations – these are similar to the drafts published earlier this year, but an earlier proposal to create a safe harbour for some types of agreement has been dropped.

Outside mainland China, there have been significant developments in Hong Kong where the Competition Tribunal has backed the Commission in the first two cases brought under the Competition Ordinance and has confirmed that the higher criminal standard of proof applies. Both cases are now under appeal and the Commission has since brought its fourth case to the Tribunal and the third to concern renovation works on a public housing estate. In Japan, an amendment to the Antimonopoly Law was passed which would introduce a limited form of client-attorney privilege in Japan for the first time. Meanwhile, the JFTC has continued its focus on e-commerce with dawn raids of hotel booking sites and a paper on options regarding the regulation of platform operators. In Australia, the ACCC blocked the telecoms merger of fixed network operator TPG and mobile operator Vodafone and the Philippines introduced a fast track merger procedure, promising a 15 working day review period for less complex cases.

Contacts

RICHARD BLEWETT
Partner
Head of Antitrust, China
T +852 2826 3517
M +852 92695829
E richard.blewett@cliffordchance.com

YONG BAI
Partner
T +86 10 6535 2286
M +86 13910850420
E yong.bai@cliffordchance.com

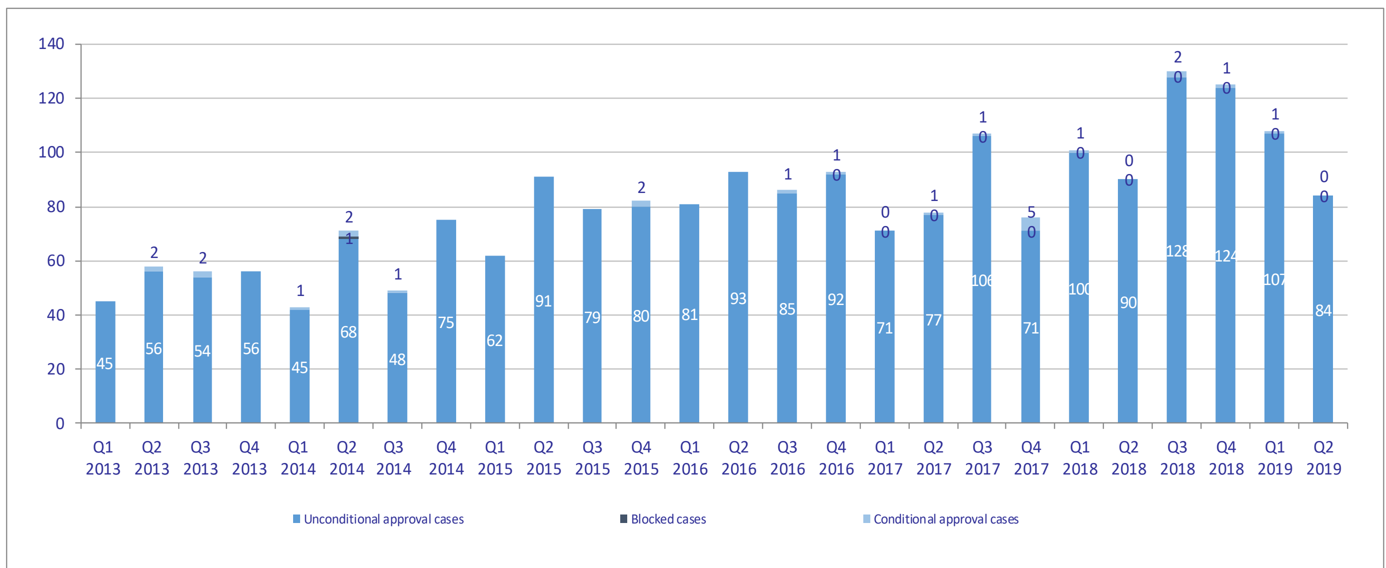
DAVE PODDAR
Partner
Head of Antitrust, Asia Pacific
T +61 28922 8033
M +61 422800415
E dave.poddar@cliffordchance.com

MERGER CONTROL

How many cases have there been?

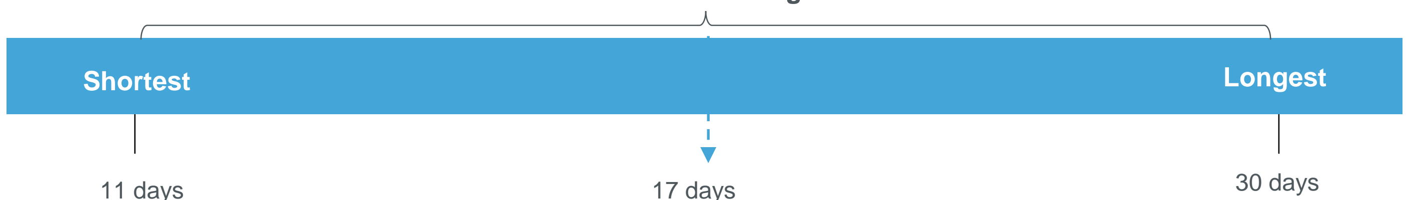
There were in total 84 merger decisions released in the second quarter of 2019, a decrease of 6.7% compared to the second quarter of 2018, and all the cases were unconditionally cleared. Around 72 cases were notified under the simplified procedure in this quarter, which represents 85.7% of the total reviewed cases.

Merger control trends – Q1 2013 – Q2 2019



Simplified procedure: How quick is the review period?

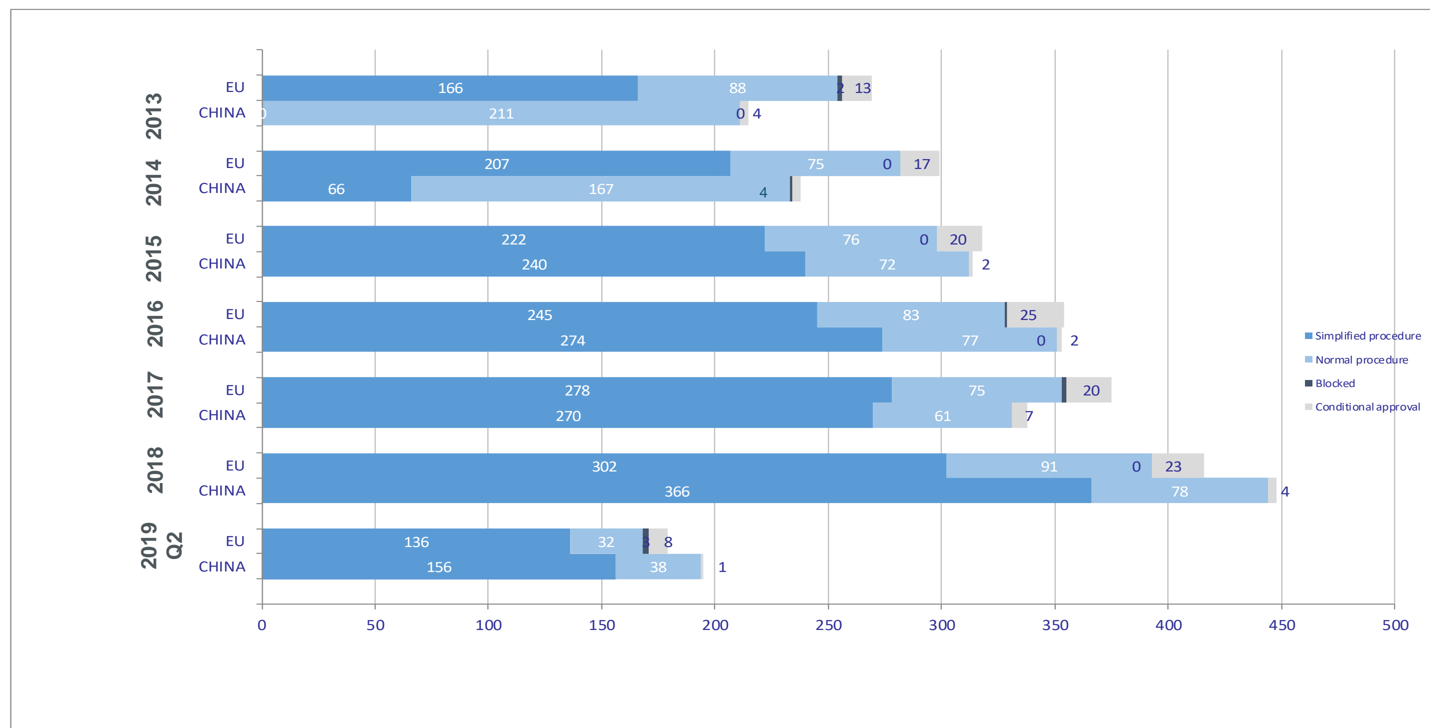
Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
Q1 2016	27 days	74.1%	2
Q2 2016	26 days	82.8%	10
Q3 2016	25 days	75.6%	0
Q4 2016	25 days	77.4%	4
Q1 2017	25 days	81.7%	5
Q2 2017	23 days	66.7%	2
Q3 2017	20 days	82.2%	1
Q4 2017	21 days	76.3%	0
Q1 2018	19 days	92.1%	1
Q2 2018	18 days	81.1%	1
Q3 2018	16 days	76.9%	0
Q4 2018	17 days	80.0%	3
Q1 2019	16 days	77.8%	0
Q2 2019	17 days	85.7%	0



MERGER CONTROL

How does China compare internationally?

Comparison with EU – 2013 – 2019



An old failure-to-file case uncovered by SAMR

On 28 April 2019, Praxair (China) Investment Co., Ltd. and Nanjing Refinery Co., Ltd. were each fined RMB 300,000 (USD 43,630) for failing to notify the establishment of a joint venture (the "**JV**") six years ago. The JV obtained its business license on 24 December 2013 without notifying the then merger control authority in China.

SAMR now publishes merger clearance decisions more frequently

In a change to its previous practice of issuing a list of unconditionally cleared mergers on a quarterly basis, SAMR is now publishing case lists on a weekly basis. This is a welcome development as it increases transparency in relation to SAMR's merger review work. Prohibition decisions and conditional clearance decisions are still expected to be announced at the time the decision is taken (or shortly thereafter) in line with previous practice.

ANTITRUST INVESTIGATIONS

Eight concrete firms fined for sharing markets and restricting output

On 8 May 2019, Zhejiang Administration for Market Regulation ("**Zhejiang AMR**") imposed a cumulative fine of RMB 7,708,477 (USD 1.12 million) on eight concrete firms in Quzhou for market sharing and output restriction. Following an in-depth probe which commenced in December 2018, Zhejiang AMR found that in May 2018, the eight firms had entered into a market allocation agreement based on market share quotas for each participant. To ensure that the agreement was effectively implemented, the eight firms agreed to meet on a monthly basis to exchange information, put in place a mechanism of guarantee deposits and incentive and penalty polices. Monthly meetings were held in June, July and August 2018 to monitor compliance with the agreement and to determine penalties for non-compliance. Zhejiang AMR concluded that such conduct constituted a horizontal monopoly agreement through sharing markets and restricting output, and therefore infringed Article 13 of the Anti-Monopoly Law ("**AML**"). The fine imposed reflected the relatively minor effects of restricting and eliminating competition of the infringement given its limited duration and geographic coverage.

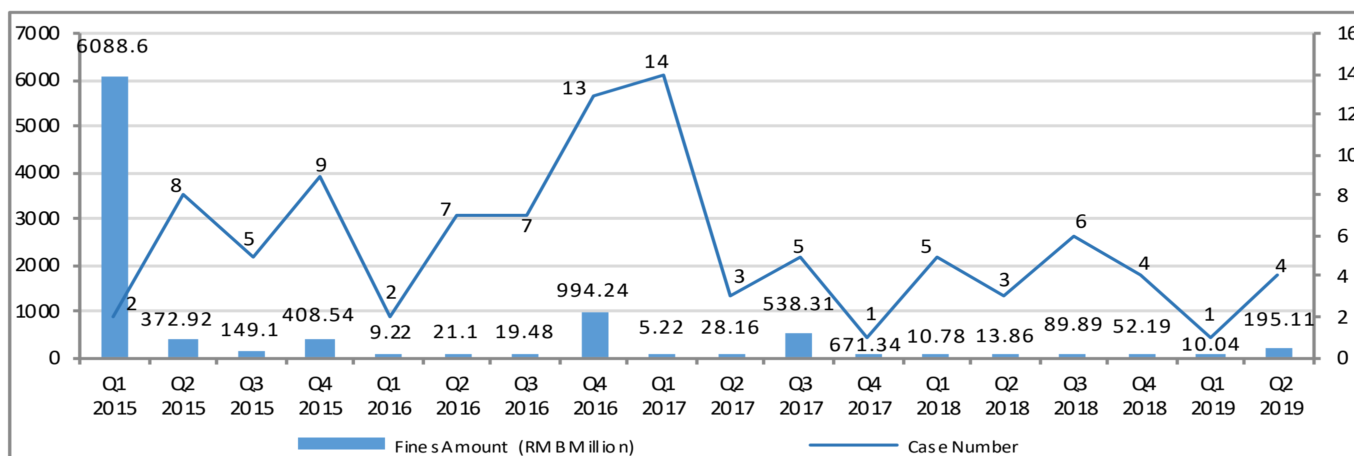
Eastman fined for abusing its dominant position by exclusive dealing

On 16 April 2019, Shanghai Administration for Market Regulation ("**Shanghai AMR**") imposed a fine of RMB 24.38 million (USD 3.6 million) on Eastman (China) Investment Management Co., Ltd ("**Eastman**") for abuse of dominance. Following an investigation commencing in August 2017, Shanghai AMR found that Eastman held a dominant position in the market for ester alcohol-12 coalescing agents in China, taking into account its high market share and other factors indicating its substantial market power and absence of sufficient competitive constraints on the market.

With respect to the abusive conduct, Shanghai AMR found that, from 2013 to 2016, Eastman imposed the following restrictive clauses in agreements with customers: (i) **direct minimum purchase** and **take-or-pay requirements**, pursuant to which customers need to purchase at least 60% or 80% of their actual annual demands of ester alcohol-12 coalescing agents from Eastman and need to pay for the minimum purchase amounts even if the purchase targets are not met; and (ii) **indirect minimum purchase requirement through the "most-favoured-nation (MFN)" clause and rebate policy**, which conditions the entitlement to preferable terms (MFN) and rebates on minimum purchase requirements. Shanghai AMR concluded that Eastman had abused its dominant position by unjustifiably imposing *de facto* exclusivity requirements which had anti-competitive foreclosure effects. Hence, Eastman was found to have infringed Article 17 of the AML. The fine imposed by Shanghai AMR accounts for 5% of Eastman's revenue in 2016.

ANTITRUST INVESTIGATIONS

Enforcement trends* – Q1 2015 to Q2 2019



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

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/ Co-operation
Car Inspection Hubei AMR	4 April 2019	Price fixing	225.1	104.1	121	5%	No
Chemical Shanghai AMR	29 April 2019	Abuse of dominance (exclusive dealing)	24,378.7	N/A	N/A	5%	Yes
Concrete Zhejiang AMR	23 May 2019	Market sharing and output restriction	7,708.5	869.4	1,613.2	1%	No
Auto SAMR	5 June 2019	RPM	162,800	N/A	N/A	4% (turnover in Chongqing)	Not known

Three vehicle safety inspection firms fined for price fixing

On 4 April 2019, SAMR announced an aggregate fine of RMB 225,095 (USD 33,525) imposed by Hubei Administration for Market Regulation ("**Hubei AMR**") against three Hubei-based vehicle safety inspection firms for price fixing. The three firms were the only three vehicle safety inspection companies in operation in Xianning, Hubei from January to September 2018. Following an investigation in November 2018, Hubei AMR found that the three firms had colluded to raise vehicle inspection fees. As a result, the inspection fees for each vehicle had been raised from RMB 300 to RMB 400 since May 2018. In addition, the three firms encouraged inspection companies in adjacent counties to follow in their steps and raise fees. Hubei AMR concluded that such conduct infringed Article 13(1) of the AML. The fines imposed was equal to 5% of the three firms' revenues in 2017 and an amount of RMB 969,100 (USD 144,426) was also confiscated as illegal gains.

ANTITRUST INVESTIGATIONS

Chang’an Ford receives a large fine for resale price maintenance

On 5 June 2019, SAMR announced that a fine of RMB 162.8 million (USD 23.56 million) had been imposed on Chang’an Ford Automobile Co., Ltd. ("**Chang’an Ford**", a JV between Chang’an Automobile and Ford) for resale price maintenance ("**RPM**"). According to the announcement, SAMR found that Chang’an Ford had been seeking to impose minimum resale prices on its dealers in Chongqing since 2013 by implementing price lists, entering into "price self-discipline" agreements, and fixing the dealers' minimum prices both at automobile exhibitions and on online platforms. Such conduct was considered to have harmed inter-brand and intra-brand competition. SAMR concluded that the conduct of Chang’an Ford infringed Article 14 of the AML (which prohibits RPM) and imposed a fine equivalent to 4% of Chang’an Ford's sales in Chongqing in the preceding year. It remains unclear as to whether the "4%" applies to Chang’an Ford's total sales or merely the sales of the models affected by the RPM as the detailed penalty decision has not been published yet.

Two telecoms players investigated for abusive conduct:

- **China Mobile**

On 29 April 2019, China Mobile Limited ("**China Mobile**"), which is listed in Hong Kong (stock code: 0941), filed an announcement with the Hong Kong Stock Exchange ("**HKSE**") to disclose that it is under an antitrust investigation by SAMR regarding alleged abuse of dominance. Specifically, the investigation concerns the sales of customized 4G+ handsets by four provincial-level subsidiaries ("**Subsidiaries**"). The Subsidiaries have allegedly subsidised their respective distributors and imposed sales targets on handset manufacturers in order to maximize sales. The nature of the infringement was not disclosed, but given the concentrated nature of the Chinese telecoms market, the alleged conduct if established would be likely to constitute an abuse of dominance and contravene Article 17 of the AML. This HKSE announcement echoes a previous report from an unconfirmed source that China Mobile was subject to an antitrust investigation in China which would lead to a big fine in 2019. It is not indicated in the HKSE announcement as to when the investigation will be concluded, but is a sign that Chinese state-owned enterprises are also exposed to antitrust risks under the AML.

- **Ericsson**

In April 2019, Ericsson publicly confirmed that its Beijing office was raided by SAMR and that its patent licensing business was subject to an ongoing investigation by SAMR. The investigation was initiated by a complaint filed by a group of Chinese handset manufacturers in January 2019. The complaint claims that Ericsson has abused its dominant position by charging excessive loyalties when licensing its SEPs in relation to 3G and 4G. SAMR is reportedly examining whether Ericsson has treated its customers in China in a discriminatory manner when licensing 3G/4G-related SEPs, in particular whether unreasonably high loyalties have been imposed on Chinese handset manufacturers.

ANTITRUST INVESTIGATIONS

China's approach to RPM clarified by the Supreme Court

On 24 June 2019, the ruling of Supreme People's Court of P.R. China ("**Supreme Court**") regarding the landmark RPM case "Hainan Yutai" went public. The ruling is dated 18 December 2018. The Supreme Court in its ruling has dismissed Yutai's retrial application and clarified some key issues as to how to enforce the RPM rules within the meaning of the AML.

In 2017, Yutai was fined by Hainan Price Bureau for RPM and then brought an appeal before Haikou Intermediate Court ("**Intermediate Court**"). Intermediate Court supported Yutai's claim on the grounds that Yutai's agreement with its distributors did not have any '*effects* of eliminating or restricting competition' and therefore did not constitute a vertical monopolistic agreement prohibited by Article 14 of the AML.

Hainan Price Bureau appealed this decision before Hainan High Court ("**High Court**"). High Court rejected Intermediate Court's decision and held that the 'eliminates or restricts competition' criterion does not need to be taken account of in finding RPM in *administrative enforcement*. Further, High Court distinguished the approach to RPM in administrative enforcement (as stated above) and that in *civil litigation*, where the existence of *actual effects* of eliminating or restricting competition is necessary to establish an RPM allegation. Yutai further appealed before the Supreme Court.

The Supreme Court clarified the following: (i) The finding of a monopolistic agreement (irrespective of horizontal or vertical) must be established on the basis that such agreement *eliminates or restricts competition* and thus this criterion is relevant in the assessment of RPM; (ii) Generally, RPM in and of itself constitutes a monopolistic agreement and thus satisfies the criterion of "eliminating or restricting competition". It is on this basis that in *administrative enforcement* there is no need to separately prove whether RPM actually eliminates or restricts competition; (iii) By contrast, in civil litigation, the approach to RPM is different in that *actual effects* of eliminating or restricting competition have to be proved to serve as the basis for damages claims; and (iv) Regarding Article 46 of the AML which distinguishes 'implemented agreements' from 'agreements that are reached but not implemented', it was clarified by the Supreme Court that it is the potential to eliminate or restrict competition that justifies sanctioning agreements that are not actually implemented.

In the Yutai case, although the distribution agreement that contained RPM clauses were not implemented by Yutai, the Supreme Court held that given its potential to eliminate or restrict competition, Yutai had infringed Article 14 of the AML and Hainan Price Bureau's penalty decision was upheld.

ANTITRUST INVESTIGATIONS

Other news

Three antitrust regulations finalized - The three antitrust regulations with respect to anti-competitive agreements, abuse of dominance and abuse of administrative power, draft versions of which were released in January, have been finalised. They were published by SAMR on 1 July 2019 and will come into effect on 1 September 2019. Each of the three regulations empowers provincial AMRs to handle investigations and launches a system of filing, reporting and supervising to unify enforcement standards of authorities at provincial levels. Further, detailed procedural guidance on complaints, investigations, publication, etc. are provided in the three regulations. Other notable aspects of the regulations on anti-competitive agreements and abusive conduct are summarized as follows:

The regulation on anti-competitive agreements: (i) provides detailed guidance on the specific forms of each type of (a) anti-competitive agreements explicitly prohibited under Articles 13 and 14 of the AML; as well as on the specific factors that need to be taken into account when identifying "other types of anti-competitive agreements" within the meaning of the catch-all clauses under Articles 13 and 14 of the AML; (ii) clarifies that investigations re horizontal anti-competitive agreements relating to fixing price, restricting output or allocating market shall not be suspended; (iii) provides specific guidance on the factors to be considered in applying the legal exemption under Article 15 of the AML; (iv) sets out detailed rules on leniency procedure, pursuant to which the first, second and third leniency applicants (that offer crucial evidence) are entitled to a fine reduction of 80-100%, 30-50% and 20-30%, respectively. Another noteworthy aspect is that the safe harbour clause (exempting certain agreements below a market share threshold) which appeared the draft version is not retained in the finalized version.

The regulation on abuse of dominance: (i) provides detailed guidance on what constitutes a dominant position, with particular recognition of dominance in internet related markets and intellectual property; (ii) for each type of abusive conduct under Article 17 of the AML, provides guidance on the specific factors to be considered when identifying an abuse, with a particular focus on what constitutes reasonable grounds that can justify potentially abusive conduct and how to analyse certain types of abuse such as excessive or predatory prices.

SAMR is considering changing basis for calculating antitrust fines - On 22 May 2019, WU Zhenguo, Director-General of SAMR's Anti-Monopoly Bureau, remarked in an interview that SAMR would consider calculating fines based on a given undertaking's total sales as opposed to the sales of relevant products going forward. If implemented, this would mark a material change from the Chinese antitrust authority's previous fining practice (which has been to calculate fines based only on the turnover of the products concerned in an infringement) and would increase the AML's deterrent effects. Although Article 16 of the AML sets the maximum fine for a breach of the AML as 10% of turnover, it does not provide further details, so giving SAMR some discretion on how to calculate the maximum fine.

SAMR has its new chief appointed – In May 2019, it was announced that Mr. XIAO Yaqing, who was the Director and Deputy Party Secretary of the State-owned Assets Supervision and Administration Commission, will replace ZHANG Mao as head of SAMR.

Hong Kong

HKCC publishes Cooperation and Settlement Policy

On 29 April 2019, the Hong Kong Competition Commission ("**HKCC**") published the Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct (the "**Policy**"). Under the Policy, where undertakings engaged in cartels choose to cooperate with HKCC, the HKCC will recommend a discount of up to 50% on any pecuniary penalty. In addition, the Policy provides for a Leniency Plus programme - in the event that an undertaking cooperating with the HKCC in relation to its participation in one cartel enters into a leniency agreement with the HKCC in respect of a second cartel, the HKCC will apply an additional discount of up to 10% of the recommended pecuniary penalty for the first cartel.

The Competition Tribunal hands down its first two judgements

On 17 May 2019, the Competition Tribunal (the "**Tribunal**") handed down its judgements in the city's first two cases under the Competition Ordinance (Cap. 619) ("**Ordinance**"). The judgments do not address the issues of penalties or costs (which will be dealt with subsequently).

The first case concerns a tender issued by the YWCA relating to the installation of a Nutanix server system. Nutanix assisted BT to obtain dummy bids from other IT companies, so as to satisfy YWCA's procurement policy which required a minimum of five bids for a tender. As a result, three other companies each submitted a bid with substantially higher bid prices than BT's. Adopting a criminal standard of proof, the Tribunal found that all respondents (with the exception of one) acted in contravention of the First Conduct Rule under the Ordinance.

The second case concerns decoration works undertaken in a public housing estate. Ten companies, which were decoration contractors approved by the Hong Kong Housing Authority, allocated among themselves designated floors in the buildings and jointly produced a flyer setting out the package prices offered. The Tribunal found that the conduct of the respondents consisted of the allocation of the market for the supply of services and price-fixing, and accordingly they acted in contravention of the First Conduct Rule, notwithstanding the respondents' arguments that this conduct was justifiable on efficiency grounds.

Japan

JFTC publishes guidelines regarding restrictions on the transfer of professional athletes

On 17 June 2019, the Japan Fair Trade Commission ("**JFTC**") published guidelines regarding restrictions on the transfer of professional athletes in the sports industry. The guidelines made it clear that it should be in principle a breach of the Anti-Monopoly Law for competing sports clubs to jointly agree to restrict the transfer of athletes between them. However, such restriction may also have a pro-competitive effect, i.e., giving a sports club an incentive to train up athletes by ensuring it an opportunity to recover the costs of training them. Therefore, the guidelines provide that whether a restriction on the transfer of an athlete is lawful or not should be determined by considering both the pro-competitive effects and anti-competitive effects which could be caused by such restriction.

JFTC's continued focus on platform operators

On 10 April 2019, the JFTC conducted a dawn raid on Rakuten Travel, Expedia and Booking.com on suspicion of imposing on hotels an agreement including a most-favourite nation clause.

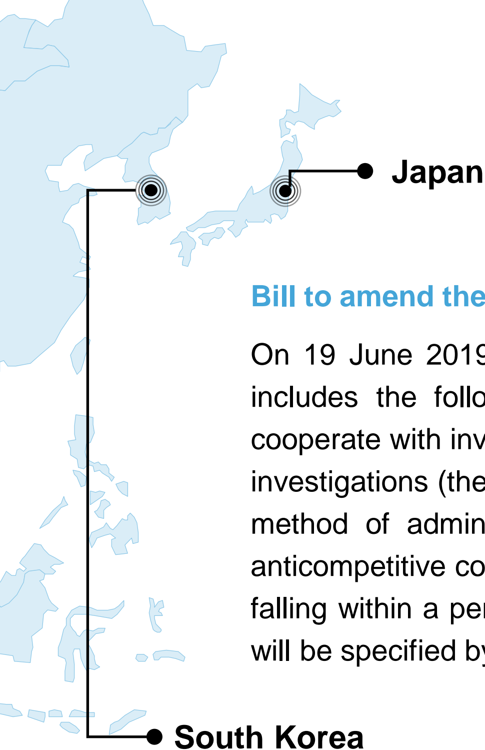
On 21 May 2019, the JFTC released a paper examining its options regarding regulations against platform operators. According to the paper, the JFTC is considering actively enforcing the Ant-Monopoly Law against anti-competitive conduct by platform operators as well as establishing new guidelines regarding certain disclosure obligations to be imposed on platform operators.

Separately though, on 11 April 2019, the JFTC announced that it had stopped investigating Amazon Japan regarding Amazon Japan's suspected abuse of superior bargaining position by revising the Amazon Point Policy whereby a customer is granted Amazon points corresponding to 1% of the purchase price of goods sold to such customer and the merchant who sold such goods is forced to bear the costs associated with such Amazon points. The JFTC suspended the investigation as Amazon Japan voluntarily revised the Policy to allow merchants to decide whether Amazon points should be granted for the goods sold by them.

JFTC fines a generic pharma firm

On 4 June 2019, the JFTC issued a cease and desist order to and imposed an administrative fine of JPY1.37 million on KOA ISEI Co., LTD. for the reason that KOA ISEI and Nippon Chemiphar Co., Ltd substantially restrained competition in the market of selling generic drugs of lanthanum carbonate hydrate orally-disintegrating tablets used as hyperphosphatemia treatment.

This followed a separate case in May when the JFTC conducted a dawn raid on NICHIIGAKKAN CO., LTD. and two other competitors on suspicion of attempted repeated bid rigging regarding their medical administration outsourcing business.



Japan

Bill to amend the Japanese Anti-Monopoly Law is passed

On 19 June 2019, a bill for an Amended Anti-Monopoly Law was passed by the Diet. It includes the following changes: (i) the scope of leniency is expanded to parties who cooperate with investigations by the JFTC, (ii) attorney-client privilege is established in cartel investigations (the details of which will be provided in the guidelines), and (iii) the calculation method of administrative fines is renewed to align it with the degree of materiality of anticompetitive conduct. The effective date of the Amended Anti-Monopoly Law will be a day falling within a period not exceeding 1 year and a half from the date of promulgation, which will be specified by a cabinet order.

South Korea

Supreme Court dismisses KFTC's fine on Mercedes Benz

On 1 April 2019, the Supreme Court of Korea upheld the decision by the Seoul Appellate Court, which dismissed antitrust fines by the Korea Fair Trade Commission ("**KFTC**") for alleged fixing of labour costs for car repair, between Mercedes Benz and eight local dealers.

KFTC and SAMR sign an MOU

On 23 May 2019, the KFTC and SAMR announced that they had signed a memorandum of understanding to increase cooperation and coordination on competition law enforcement in South Korea and China, including annual meetings, workshops and information sharing.

Google and other tech companies requested by KFTC to revise terms

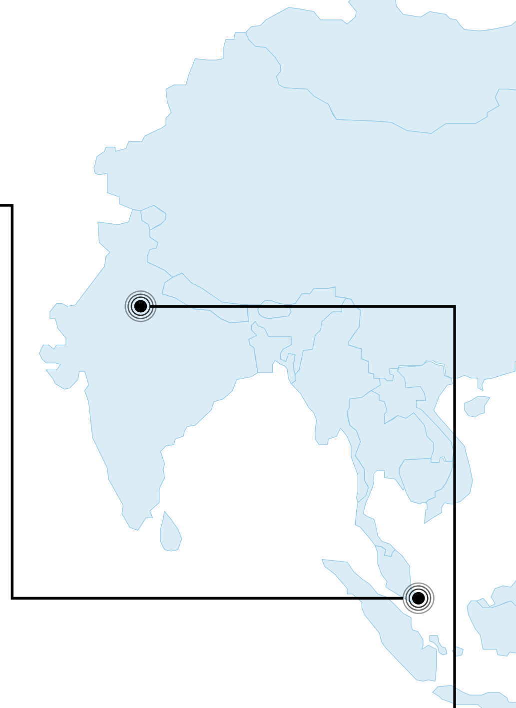
On 14 March 2019, the KFTC requested Google, Facebook, Naver and Kakao to revise their terms of services due to alleged copyright infringement and privacy violation. The KFTC announced on 30 May 2019 that Google decided to voluntarily revise its terms of services to bring them in line with the KFTC's recommendations. Under the revised terms of services, Google will inform users of changes to its terms of service in advance and seek users' consent when they collect users' private information. Facebook, Naver and Kakao have also revised their terms of service in accordance with the KFTC's request.

KFTC dawn raids telecommunications companies

On 25 June 2019, the KFTC conducted dawn raids on telecommunications companies SK Telecom, KT and LG Uplus for alleged abuse of dominance by unduly high sales targets and management interference in telecoms retailers.

E-commerce operator accused for abuse of dominance

In June 2019, Wemakeprice, a South Korean online shopping mall operator, submitted a complaint to the KFTC to investigate Coupang, a rival e-commerce operator, for alleged abuse of dominance. Wemakeprice claimed that Coupang interfered with their promotional schemes and forced suppliers to bear the costs.



Singapore

CCCS concludes investigations into the supply of lift spare parts for maintenance

On 28 May 2019, the Competition and Consumer Commission of Singapore ("**CCCS**") announced that it has accepted the voluntary commitments submitted by two suppliers of spare parts for lift maintenance, and accordingly concluded its investigation into the matter. The voluntary commitments provide that the two suppliers will undertake to sell lift spare parts to purchasers on a fair, reasonable and discriminatory basis, subject to certain terms and conditions. The CCCS considers that the voluntary commitments addressed the competition concerns that third-party lift maintenance contractors may be prevented from effectively competing for contracts to maintain lifts of a particular brand if lift companies refuse to supply essential spare parts of that brand.

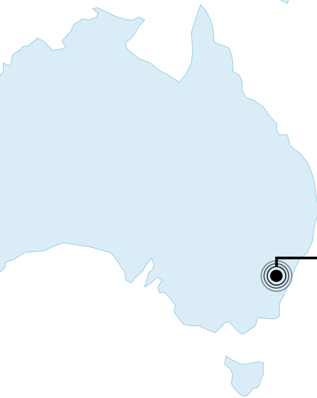
Public consultation in relation to private clinical laboratories merger

On 21 June 2019, CCCS launched a public consultation on the commitments proposed by Pathology Asia Holding Pte. Ltd. ("**PAH**") in relation to PAH's acquisition of two private clinical laboratories. The consultation follows CCCS' in-depth Phase 2 review in November 2018, which revealed that the two laboratories to be acquired by PAH are generally perceived by customers as the closest competitors for the provision of in-vitro diagnostic ("**IVD**") tests. To address the competition concerns, PAH submitted commitments relating to (i) providing access to third-party IVD testing services; (ii) not to include exclusivity obligation in agreements with customers; (iii) allowing customers to terminate contracts without cause; and (iv) maintaining price in relation to the services offered to private hospitals which do not manage or operate their in-house laboratories and health screening companies.

India

CCI formally probes Google for its alleged abuse of dominance in the mobile O/S market

In May 2019, the Competition Commission of India ("**CCI**") opened a formal investigation against Google's alleged abuse of dominance in the market for mobile operating system in India, where Google Android has a share of approx. 98%. The investigation commenced in July 2018 following complaints, which claimed that Google had been abusing its dominance to foreclose competitors. CCI has reportedly issued RFIs to mobile device makers, including Karbonn, Lava, Samsung and Xiaomi, to seek details on their agreements with Google, with a particular focus on whether Google imposed restrictions on the use of Google's mobile apps and services, royalties charged by Google for Android O/S and other mobile services, etc. The investigation is reported to follow the same approach as that was taken by the European Commission, which imposed a record fine of EUR 4.34 billion on Google in July 2018. Previously in February 2018, CCI fined Google INR 1.36 billion (USD 19.54 million) for abusing its dominance in India's online search and advertising market.



Australia

Garuda ordered to pay AUD$19m (USD$13.2m) for price fixing

On 30 May 2019, the Federal Court of Australia has ordered PT Garuda Indonesia Ltd ("**Garuda**") to pay penalties of AUD$19m (USD$13.2m) for colluding on fees and surcharges for air freight services. The penalties follow the Australian Competition and Consumer Commission's ("**ACCC**") court action against a global air cargo cartel, which has so far resulted in penalties of AUD$132.5m (USD$92.2m) against 14 airlines, including Air New Zealand, Qantas, Singapore Airlines and Cathay Pacific.

The Federal Court found that between 2003 and 2006, Garuda made and gave effect to agreements that fixed the price of security and fuel surcharges, as well as a customs fee from Indonesia. It was ordered to pay AUD$15m (USD$10.4m). A further AUD$4m (USD$2.8m) was ordered for the imposition and level of insurance and fuel surcharges from Hong Kong.

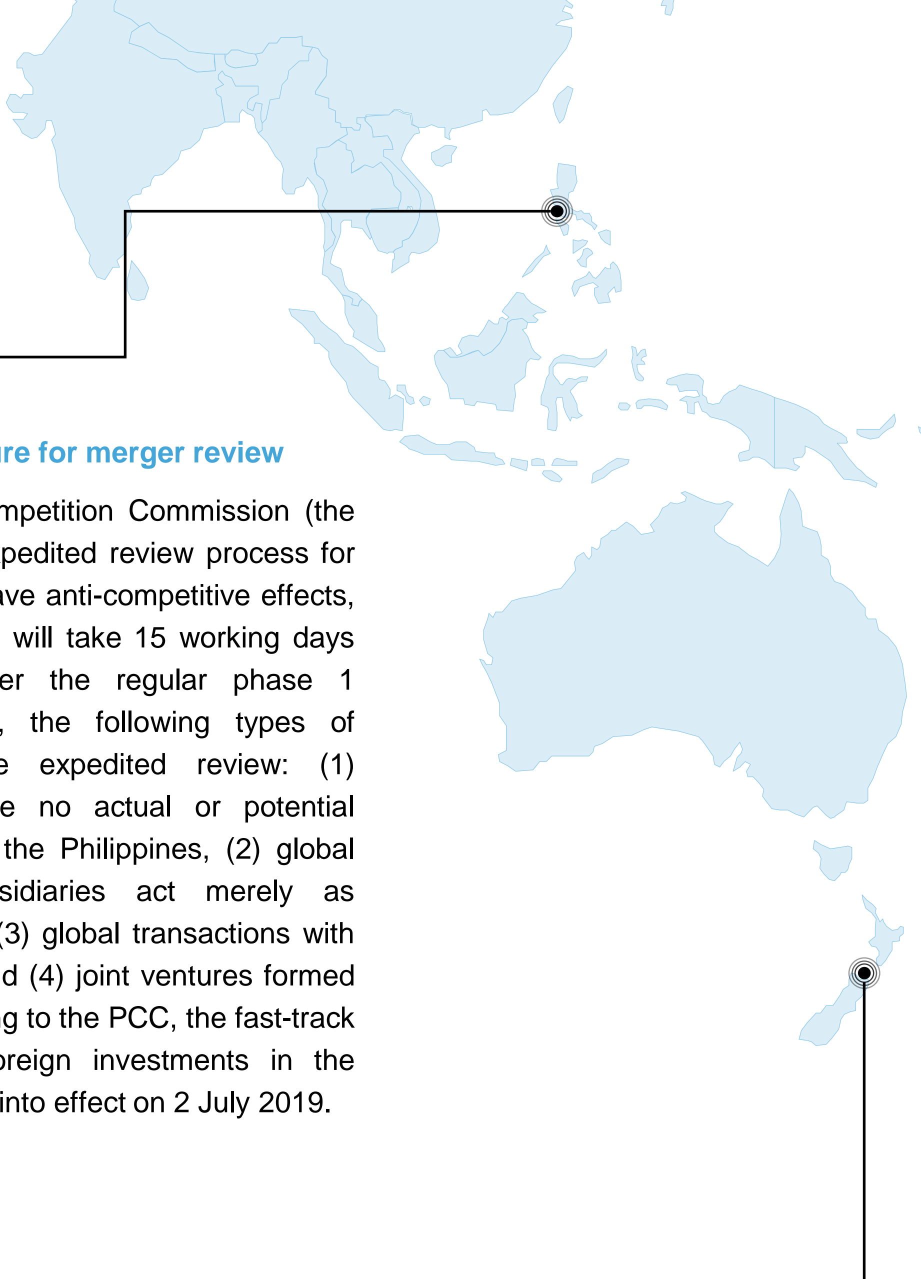
ACCC opposes TPG-Vodafone merger

On 8 May 2019, the ACCC issued its decision to oppose the proposed merger between TPG Telecom Limited ("**TPG**") and Vodafone Hutchison Australia Pty Ltd ("**Vodafone**") on the basis that the proposed merger will reduce competition and contestability in the market for: (a) fixed broadband services; and (b) supply of mobile services. Australia already has a very concentrated mobile services market, with the three network operators, Telstra, Optus and Vodafone, having over 87 per cent share. Similarly, the fixed broadband market is concentrated, with Telstra, TPG and Optus having approximately 85 per cent share. In particular, the ACCC noted that the proposed merger would preclude TPG entering as the fourth mobile network operator in Australia. Industry incumbents have also referred to TPG as a formidable potential competitor in mobile and market commentary has supported the view that prices would fall with TPG's entry as a new mobile network operator, delivering substantial benefits to consumers.

ACCC reviews first merger authorisation application

The ACCC has started to assess an application lodged by AP Eagers Limited for authorisation to acquire Automotive Holdings Group Limited as of 1 May 2019. AP Eagers and AHG are the two largest automotive retailers in Australia. AP Eagers and AHG both supply new and used cars, trucks and buses, as well as associated products and services such as car repair and servicing, authorised car parts, insurance and finance.

This is the first merger authorisation considered by the ACCC since reforms in 2017 restored the ACCC's ability to consider applications for merger authorisations. Under the new process, the application comes to the ACCC first rather than the Australian Competition Tribunal, and the ACCC may grant authorisation for a proposed merger if it is satisfied the merger is not likely to substantially lessen competition, or where the public benefits outweigh the detriments to the public (including where the proposed merger does lessen competition).



Philippines

PCC introduces a fast-track procedure for merger review

On 18 June 2019, the Philippine Competition Commission (the "**PCC**") published new rules for an expedited review process for transactions which are less likely to have anti-competitive effects, whereby the expedited merger review will take 15 working days instead of 30 calendar days under the regular phase 1 assessment. Under the new rules, the following types of transactions would qualify for the expedited review: (1) transactions where the parties have no actual or potential horizontal or vertical relationships in the Philippines, (2) global transactions where Philippine subsidiaries act merely as assemblers or export manufacturers, (3) global transactions with limited presence in the Philippines, and (4) joint ventures formed purely for real estate projects. According to the PCC, the fast-track review is aimed for encouraging foreign investments in the Philippines. This new procedure came into effect on 2 July 2019.

New Zealand

Milfos to pay NZD$825,000 (approx. USD$550,000) in price-fixing case

GEA Milfos International Limited ("**Milfos**") has been ordered to pay a penalty of NZD$825,000 (approx. USD$550,000) in the Auckland High Court after admitting it engaged in price-fixing with competitor Dairy Automation Limited ("**DAL**") between at least October 2012 and September 2014. It has also agreed to pay the New Zealand Commerce Commission ("**NZCC**") NZD$100,000 (approx. USD$66,000) in costs.

Milfos and DAL provided technology solutions for dairy farmers and discussed the possibility of Milfos becoming the exclusive retailer of DAL's milk sensor products. This arrangement was never entered into. However, in the course of those discussions, Milfos and DAL agreed to use a shared pricing spreadsheet for customer quotes, thereby fixing prices for the milk sensor products. The Court noted that the fact that the conduct was in anticipation of a legitimate exclusive supply arrangement was not a defence.

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

REGIONAL CONTACTS

Hong Kong

Richard Blewett
Partner, Head of Antitrust, China
T +852 2826 3517
M +852 92695829
E richard.blewett@cliffordchance.com

Beijing

Yong Bai
Partner
T +86 106535 2286
M +86 13910850420
E yong.bai@cliffordchance.com

Sydney

Dave Poddar
Partner, Head of Antitrust, Asia Pacific
T +61 28922 8033
M +61 422800415
E dave.poddar@cliffordchance.com

Tokyo

Masafumi Shikakura
Counsel
T +81 (0)3 6632 6323
M +81 (0)80 1385 9808
E masafumi.shikakura@cliffordchance.com

Clifford Chance, 33/F, China World Office 1, No. 1 Jianguomenwai Dajie, Chaoyang District, Beijing 100004, People's Republic Of China

© Clifford Chance 2019

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

Any advice above relating to the PRC is based on our experience as international counsel representing clients in business activities in the PRC and should not be construed as constituting a legal opinion on the application of PRC law. As is the case for all international law firms with offices in the PRC, whilst we are authorised to provide information concerning the effect of the Chinese legal environment, we are not permitted to engage in Chinese legal affairs. Our employees who have PRC legal professional qualification certificates are currently not PRC practising lawyers. Clifford Chance is the copyright owner of the above content which is only provided for perusal and use by our clients. Should the content be forwarded or reproduced, please acknowledge that this is the work of Clifford Chance. The above content is for general reference only and may not necessarily discuss all related topics or cover every aspect of the topic concerned. The above content is not prepared for the purpose of providing legal or other advice. Clifford Chance disclaims any responsibility for any consequence arising from any action as a result of reliance upon the above content. Should you wish to know more about the topic concerned, please feel free to contact us