

**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 2019

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# ANTITRUST IN CHINA AND ACROSS THE REGION

## QUARTERLY UPDATE: JULY TO SEPTEMBER 2019

In China, this quarter saw the return of hold separate remedies as a condition to merger approval. Two deals were conditionally cleared on this basis, in each case requiring the buyer not to integrate the target business and including some commitment to supply Chinese customers in the interim. In one of these cases, the hold separate provisions will automatically expire after two years. The other case was notable as an example of a clearance (albeit conditional) of a merger between two US-based technology companies at a time when technology is at the forefront of the long running US-China trade dispute.

Technology and data remain a key priority elsewhere in APAC too. In Japan, the JFTC recently issued a report into data-driven alliances and draft guidelines on the misuse of data on digital platforms and has requested additional funding to establish a special unit to look at data-related issues. This echoes the conclusions of the ACCC's final report into digital platforms, published in July and containing recommendations to establish a specialist digital unit as well as to revise Australia's merger rules, adopt a protocol for mandatory notification by large digital platforms and allow Android users to freely choose search engines and internet browsers.

This quarter has also seen a larger than usual number of fines imposed, led by Japan where the JFTC issued its largest ever fine of JPY 39.9 billion (USD 380 million) on eight members of an asphalt cartel and a JPY 25.7 billion (USD 244 million) fine in relation to a cartel for beverage cans. In India, the Digital Communications Commission approved a provisional fine of INR 30.5 billion (USD 442 million) on two telecoms operators regarding interconnection with a new entrant and in Australia, shipping company Kawasaki Kisen Kaisha was fined AUD 34.5 million (USD 23.4 million) for engaging in a cartel to fix the prices of shipping vehicles into Australia.

Finally, this quarter saw change at the top in South Korea, where Ms Joh Sung-wook was appointed chairperson of the KFTC and in Singapore, where, following the expiry of Toh Han Li's term in office, Ms Sia Aik Kor has become the new chief executive of the CCCS.

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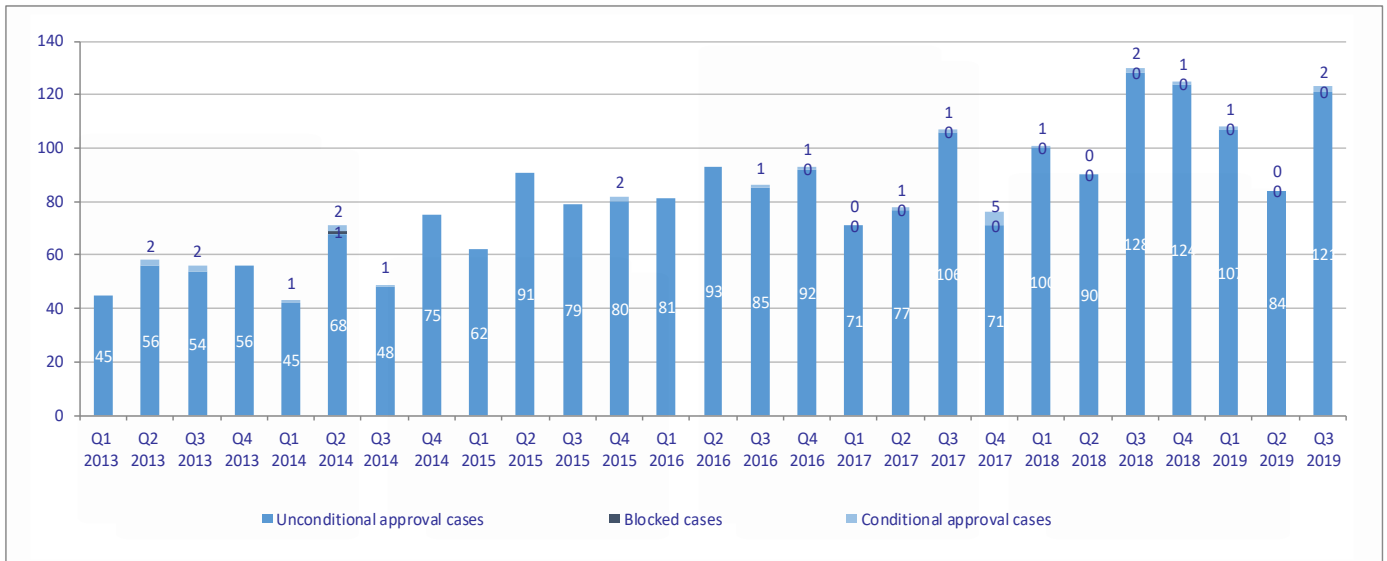


# MERGER CONTROL

How many cases have there been?

There were in total 123 merger decisions released in the third quarter of 2019, a decrease of 5% compared to the third quarter of 2018, with 121 reviewed cases in this quarter unconditionally cleared and 2 cases conditionally approved. Around 97 cases were notified under the simplified procedure in this quarter, which represents 78.9% of the total reviewed cases.

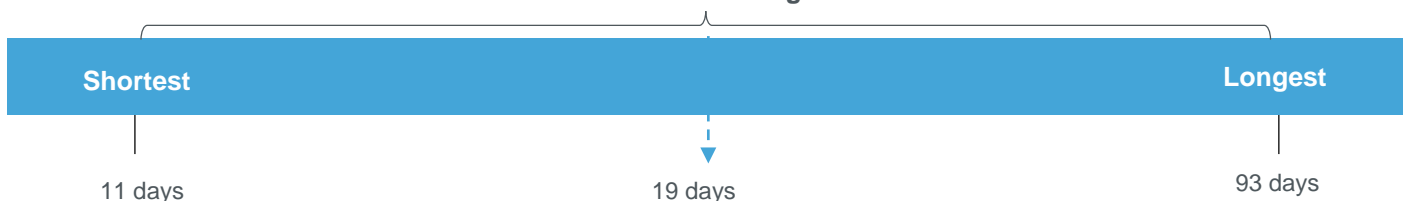
Merger control trends – Q1 2013 – Q3 2019



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
Q3 2019	19 days	78.9%	1

Q3 2019: Average

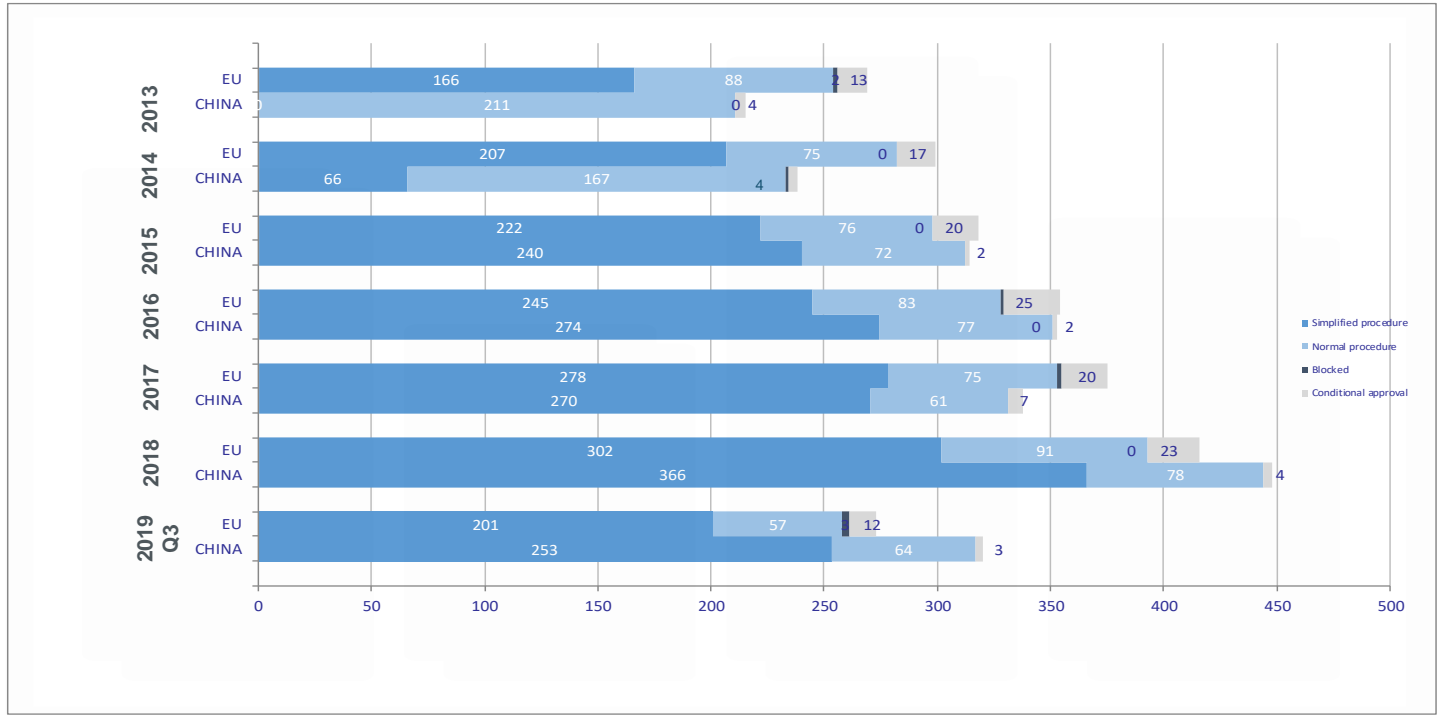




## MERGER CONTROL

How does China compare internationally?

### Comparison with EU – 2013 – 2019



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

Five more failure-to-file decisions were published by SAMR in this quarter. Most involved fairly recent cases and none of the decisions identified any underlying competition concerns. More details on these cases are set out below:

- On 3 July 2019, a Taiwan-based electronic component manufacturer Yageo was fined RMB 300,000 (USD 42,888) for failing to notify its acquisition of Taiwan-listed company Brightking Holdings through a public tender offer. Yageo launched its offer to acquire shares in Brightking Holdings on 4 May 2018 and by the end of August 2018, had acquired a stake of 87.12%, taking into account the exercise of convertible bonds.
- On 9 September 2019, Harbin Electric and General Electric (China) were each fined RMB 300,000 (USD 42,888) for failing to notify their formation of a joint venture, which obtained a business license on 25 October 2018.
- On 16 September 2019, Tianneng Battery was fined RMB 300,000 (USD 42,888) for failing to notify its acquisition of control in Hongda Power. The acquisition was completed by way of an update to the relevant public register in November 2018. The parties voluntarily report the facts and the failure to file to SAMR.





## MERGER CONTROL

- On 27 September 2019, a Hong Kong-based investment company China Action Development was fined RMB 300,000 (USD 42,888) for failing to notify the acquisition of 100% interest in Harbin Dili Fresh Agricultural Product Enterprise Management. The acquisition was completed on 30 March 2018 without being notified.
- On 27 September 2019, China Post Capital Management was fined RMB 400,000 (USD 57,184) for failing to notify its acquisition of control in Chengdu Wolaila Grid Information Technology. The acquisition was completed on 17 August 2017 without being notified.

### Two transactions were conditionally approved by SAMR

#### (i) Cargotec's acquisition of TTS

On 5 July 2019, SAMR conditionally approved the acquisition of the marine and offshore businesses of TTS Group ASA ("**TTS**") by Cargotec Oyj ("**Cargotec**", together with TTS, the "**Parties**") (the "**Transaction**"). The Parties have horizontal overlaps in eight product markets, including the provision of (i) hatch covers; (ii) roll-on equipment; (iii) cargo lifters; (iv) anchor winches for merchant ships; and (v) the after-sales services for these products. The relevant geographic markets are defined as (i) China-wide for hatch covers, roll-on equipment, cargo lifters and anchor winches for merchant ships; and (ii) worldwide for after-sales services. SAMR came to the view that the Transaction would eliminate or restrict competition in the China markets for (i) hatch covers; (ii) roll-on equipment for merchant ships; and (iii) cargo lifters (the "**relevant products**"). TTS and Cargotec are currently the largest two suppliers in the markets for hatch covers and roll-on equipment for merchant ships, and they are also two of the major suppliers in the market for cargo lifters. For each of the relevant products, the Parties' combined market share would be 50% to 60%, far exceeding the share of the second player. To alleviate the competition concerns, the Parties offered behavioural commitments, including:

- For a period of two years, the Parties committed to (i) holding separate their respective businesses regarding the relevant products (including production, sales, R&D, management, finance, staff, etc.) and continuing competing with each other as independent market players; and (ii) setting up firewalls between the Parties' commercial staff, to avoid exchanging competitively sensitive information.
- For a period of five years, Cargotec committed to (i) refraining from increasing prices of the relevant products in China; and (ii) not refusing, restricting or maliciously delaying the supply of the relevant products to Chinese customers without good cause.

Outside China, the transaction has been unconditionally cleared in Germany and South Korea. China came as the last jurisdiction where the clearance decision was made after a 345-day review including a "voluntary" pull and re-file as the legally prescribed review period had expired.



## MERGER CONTROL

Another notable aspect of this case is the hold-separate remedy, which includes a sunset clause, which will automatically cease to bind the Parties after two years from the date of the conditional approval decision. In previous decisions where hold-separate obligations were imposed, parties were required to apply for such obligations to be lifted, a process which could be cumbersome and time-consuming.

### (ii) II-VI's acquisition of Finisar

On 23 September 2019, SAMR conditionally approved the acquisition of Finisar Corporation ("**Finisar**") by II-VI Incorporated. The decision is notable as an example of an approval (albeit conditional) between two US-based technology firms at a time of heightened tension between the US and China. Although this deal had to be pulled and refiled to allow SAMR more time to conduct its review, it was cleared quickly (within one month) of the refile.

The parties have horizontal overlaps in the following four markets: (i) wavelength selective switches, (ii) data communication VCSELs, (iii) multi-channel amplifiers, and (iv) ROADM and vertical overlaps in the following three sets of markets: (i) optical filter, data communication VCSELs, and optical transceiver modules; (ii) microlens, cylindrical lens, and wavelength selective switches; and (iii) multi-channel amplifiers, wavelength selective switches, and ROADM. In addition, the parties are also active on the following sets of neighbouring markets: (i) optical filter and data communication VCSELs; (ii) multi-channel amplifiers and wavelength selective switches; (iii) multi-channel amplifiers and optical transceiver modules; and (iv) short-distance sensing VCSELs, flood illuminator VCSELs and dot projector VCSELs. The relevant geographic markets are defined as (i) worldwide for wavelength selective switches, data communication VCSELs, optical transceiver modules, optical filters, multi-channel amplifiers, ROADM, short-distance VCSELs, flood illuminator VCSELs, and dot projector VCSELs; and (ii) China-wide for microlens and cylindrical lenses.

Significant competition concerns were identified by SAMR in the market for wavelength selector switches, where the transaction would reduce the number of players from three to two, with the combined market share of the parties reaching 95%. To address the competition concerns, the parties committed to holding their businesses separate and continuing to compete; setting up firewalls to avoid exchanging competitively sensitive information; and continuing supplying wavelength selector switches on fair and reasonable terms without discriminating between customers.

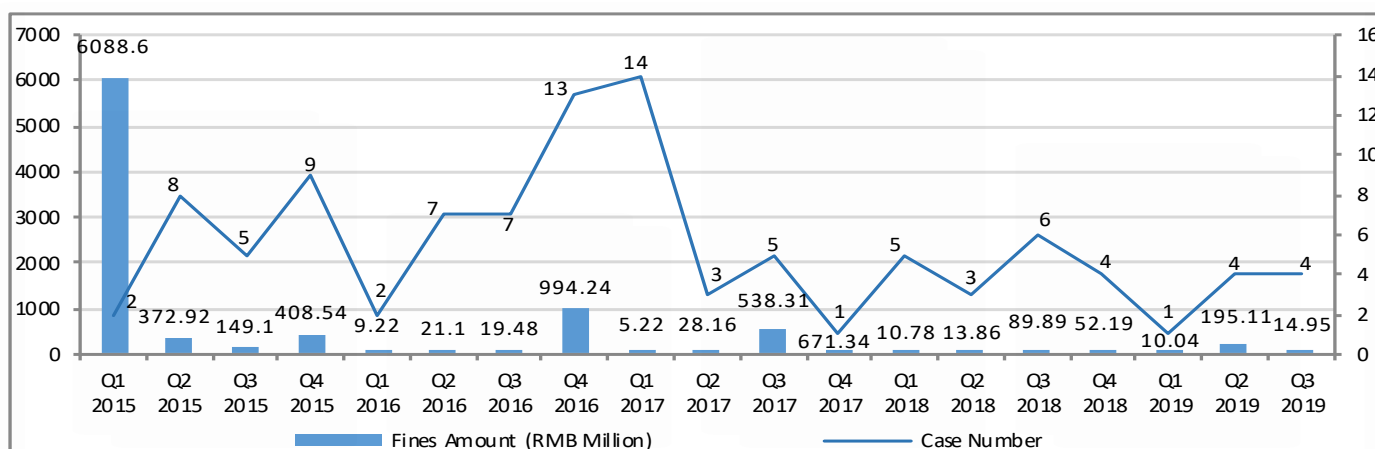
Although SAMR did not agree to a sunset clause similar to that applied in the Cargotec/TTS (see above), the outcome of resolving the case through hold-separate remedies is notable against the backdrop of the US-China trade dispute.

Other than China, the proposed merger has been unconditionally approved by other antitrust authorities in the US, Germany, Mexico and Romania.



# ANTITRUST INVESTIGATIONS

Enforcement trends\* – Q1 2015 to Q3 2019



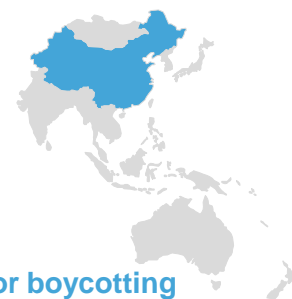
\*Note: From Q1 2015 to Q1 2018, figures include both NDRC and SAIC; from Q2 2018, figures are for SAMR.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/Co-operation
<b>Utilities</b> Tianjin AMR	12 July 2019	Abuse of dominance (imposing unreasonable trading conditions)	7,438.6	N/A	N/A	3%	Yes
<b>Catering</b> Inner Mongolia AMR	20 August 2019	Collective boycotting	650	30	210	3%	Yes
<b>Construction Materials</b> Chongqing AMR	21 August 2019	Price fixing and output restriction	1,938.5	10.6	834.0	5%	Yes
<b>Concrete</b> Shaanxi AMR	30 August 2019	Price fixing	4,922.9	21.9	977.8	1%	Yes

## A state-owned water supplier in Tianjin fined for abuse of dominance

On 12 July 2019, SAMR announced that a fine of RMB 7.4 million (USD 1.1 million) had been imposed by Tianjin Administration for Market Regulation ("**Tianjin AMR**") on Tianjin Water Supply Group (the "**Company**") for abuse of dominance. The Company is a state-owned enterprise and is the only water supplier in a certain district of Tianjin. Following an investigation commencing in November 2017, Tianjin AMR found that the Company, with a 100% market share in the district concerned, controls the local water supply market. Barriers to entry are high and the Company is an unavoidable trading partner for local consumers. On that basis, the Company was found to hold a dominant position. Furthermore, the investigation also revealed that the Company required real estate developers to purchase secondary water supply facilities from a designated supplier or face being cut off from the water supply. Tianjin AMR considered the above conduct to have infringed Article 17 (5) of China's Anti-Monopoly Law (**AML**), which prohibits the imposition of unreasonable trading conditions by dominant players. The fine imposed accounts for 3% of the Company's revenue in 2016. This is SAMR's first enforcement decision in the public utilities sector.





## ANTITRUST INVESTIGATIONS

### A catering trade association in Inner Mongolia with four of its members fined for boycotting

On 31 July 2019, Inner Mongolia Administration for Market Regulation ("**Inner Mongolia AMR**") fined a local catering trade association and four of its members for taking part in a collective boycott. Inner Mongolia AMR found that Bairin Left Banner Catering Industry Chamber of Commerce (the "**Chamber**") organized and facilitated collusive conduct between local catering companies (members of the Chamber) and certain local suppliers of food ingredients ("**Designated Suppliers**") from 2014 to 2017. As part of the conduct, the Chamber prohibited its members from sourcing food ingredients from suppliers other than Designated Suppliers and Designated Suppliers were prohibited from selling to other catering companies at a price lower than that offered to the members of the Chamber. To monitor compliance, the Chamber put in place guarantee deposits and penalty mechanisms. Inner Mongolia AMR concluded that such conduct constituted a horizontal anti-competitive agreement which violated Article 13(5) of the AML. The Chamber was fined RMB 200,000 (USD 28,333.4) given its leading role and four key members of the Chamber were each given a fine equal to 3% of their sales in the preceding year.

### Six baked brick firms and three individuals fined for fixing price and restricting output

On 9 August 2019, Chongqing Administration for Market Regulation ("**Chongqing AMR**") imposed an aggregate fine of RMB 1.94 million (USD 274,511) on six baked brick firms and three sole traders for price fixing and output restriction. The investigation was initiated in July 2018 following complaints from a local construction association. Chongqing AMR found that the undertakings had colluded to fix prices and restrict output in the baked brick market in Yunyang County from March 2014 to December 2017. More specifically, the undertakings had agreed to sell at a fixed price and to restrict the total supply of baked bricks to the local market by compensating companies that agreed to cease operation. Such conduct was found by Chongqing AMR to have infringed Articles 13(1) and 13(2) of the AML. The fine imposed amounts to 5% of the infringing undertakings' revenues in 2017. Chongqing AMR also confiscated illegal gains of RMB 1,668,000 (USD 236,797) from two of the sole traders involved.

### Ten premixed concrete firms fined for price-fixing

On 9 August 2019, Shaanxi Administration for Market Regulation ("**Shaanxi AMR**") announced an antitrust penalty on ten Yan'an-based premixed concrete firms for horizontal price fixing. Following an investigation commencing in September 2018, Shaanxi AMR found that during a meeting, the ten firms had colluded to raise the price of premixed concrete in Baota District of Yan'an. As a result, the price of premixed concrete in Baota District increased significantly and the supply of premixed concrete to local construction companies that could not afford the higher price was cut off. Shaanxi AMR concluded that such conduct infringed Article 13(1) of the AML and imposed a fine equal to 1% of the firms' revenues in 2017.

## ANTITRUST INVESTIGATIONS

### Tencent Music under investigation for allegedly engaging in non-price vertical restraints

SAMR is reported to be looking into the licensing agreements between Tencent Music and music labels including Universal Music Group, Sony Music Entertainment, Warner Music Group, etc. SAMR is reportedly scrutinizing the case under Article 14 of the AML (which prohibits vertical monopoly agreements) rather than Article 17 of the AML (which prohibits abuse of dominance). Interested third parties, including Apple, Baidu, Huawei, Xiaomi and ByteDance appear to have been consulted by SAMR. If this investigation results in any enforcement action, it would be SAMR's first case against non-price vertical agreements and would also signal an intention by SAMR to investigate potential antitrust issues in the Chinese technology sector.

### SAMR's Microsoft investigation proceeds to an advanced stage

On 1 August 2019, Microsoft stated in its annual report that SAMR has reached a preliminary view on Microsoft's alleged violations of the AML. This disclosure marks a significant development of an investigation which has reportedly lasted for five years. The initial investigation focused on whether Microsoft engaged in tie-in sales of its Windows PC operating system and its Office Products and reportedly expanded to cover Microsoft's growing cloud business since SAMR took over the case. It was recently reported that SAMR's investigation might be concluded soon.

### Three automakers reportedly targeted by SAMR for alleged collusion re emission technology

SAMR has reportedly recently sent enquiries to BMW, Daimler and Porsche in relation to the three automakers' alleged collusion regarding emission technology. This would echo the European Commission ("EC")'s probe into the same conduct by BMW, Daimler and VW (Volkswagen, Audi, Porsche) which was commenced in September 2018. Compared with EC, which issued a Statement of Objections in April 2019, identifying potential concerns regarding collusive conduct in specific technologies, SAMR is still in its preliminary stage in this case. BMW confirmed that it has been approached by SAMR, but there is currently no evidence suggesting that SAMR has proceeded to a formal investigation.



## ● Japan

### **JFTC warns against anti-competitive conduct in data-driven alliances**

On 10 July 2019, the Japan Fair Trade Commission ("JFTC") published a report about various issues concerning the Antimonopoly Act and its regulation of business alliances, in light of recent developments in the digital economy. The report summarises legal issues across seven categories of business alliance. The report highlights specific actions with regards to data-linked business alliances, indicating that improper enclosure of data can be problematic under the Antimonopoly Act.

### **JFTC raids two drug manufacturers over hypertension drug sale**

On 23 July 2019, the JFTC conducted on-site inspections of Nippon Chemiphar and Torii Pharmaceutical Co., Ltd. as these drug manufacturers were suspected of operating a price cartel over the sale of a drug used to treat hypertension.

### **JFTC penalized two baby products manufacturers for RPM**

In July 2019, the JFTC issued two cease and desist orders against baby products manufacturers, Aprica Children's Products G.K. and Combi Co., Ltd. Aprica forced retailers to sell their products at recommended retail prices and sanctioned retailers by blocking supplies if they did not follow their recommended retail price, and Combi supplied their products only to retailers who agreed to sell them at recommended retail prices, effectively forcing retailers to sell their products at such prices.

### **JFTC issues record fines in asphalt cartel**

On 30 July 2019, the JFTC issued cease and desist orders and imposed administrative fines totalling JPY 39.9 billion (approx. USD 380 million) against 8 Japanese road paving companies regarding a cartel relating to asphalt for road paving. The fine is a record for the JFTC for a single case.

### **JFTC consults on draft guidelines to prevent data misuse by digital platforms**

On 29 August 2019, the JFTC started a public hearing process regarding the Guidelines Concerning Abuse of a Superior Bargaining Position under the Antimonopoly Act on Transactions between Digital Platformer Operators and Consumers that provide Personal Information. The draft guidelines state that the abuse of a superior bargaining position may be applicable to conduct against individuals, and provides examples of unjustifiable acquisition and use of personal information which could be an abuse of a superior bargaining position, such as the use of personal information without the consent of consumers and beyond the scope necessary to achieve the purpose for which the information was supplied.

### **JFTC announces budget request for FY2020 and plans to establish a new unit**

On 30 August 2019, the JFTC's budget request for FY 2020 was published. The JFTC will establish a Digital Economy Office (tentative name) and has requested the addition of 17 people in relation to digital platforms out of a total addition of 29 people.



## ● Japan

### JFTC publishes FY18 annual report

On 20 September 2019, the JFTC published its annual report. According to the annual report for FY2018, the JFTC issued 8 cease and desist orders and imposed administrative fines totalling approximately JPY 261.1 million (approximately USD 2.4 million) during the year. The number of cease and desist orders and the amount of administrative fines were much lower than in recent years. However, this does not mean that the JFTC is currently less active, as in this quarter the JFTC has already imposed fines totalling JPY 65.6 billion (in the paving and manufacturing cases above).

### JFTC fines can manufacturers for bid-rigging

On 26 September 2019, the JFTC issued cease and desist orders and administrative fines totalling approximately JPY25.7 billion (approx. USD 244 million) against 4 manufacturers who supply certain types of cans for beverages, regarding the prohibition of unfair trade restrictions.

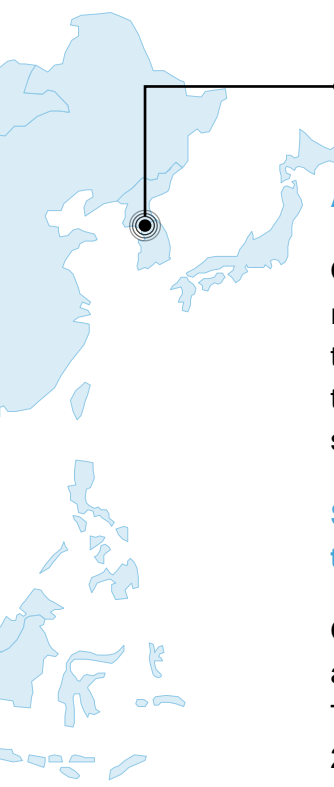
## ● Hong Kong

### HKCC takes renovation cartel case to Competition Tribunal

On 3 July 2019, Hong Kong Competition Commission ("**HKCC**") commenced proceedings in the Competition Tribunal ("**Tribunal**") against six decoration contractors and three individuals. The Commission alleges that the decoration contractors engaged in cartel conduct, whereby they allocated customers and coordinated pricing in relation to the provision of renovation services at a public housing estate. This is the third market sharing and price fixing case that the Commission has filed over the past two years in relation to renovation services provided at public housing estates.

### Competition Tribunal considered procedures for accepting a guilty plea

In one of the renovation cartel cases recently commenced by the HKCC, two of the contractors and one individual indicated that they are prepared to admit liability. At the hearing before the Tribunal on 12 September 2019, Judge Harris decided that the case of these parties cannot be adjourned without an official hearing and set a date in February 2020 to consider the Consent Summons filed by the parties pleading guilty and the Commission. It was suggested that the parties could adopt the 'carecraft procedure' commonly used as part of a settlement mechanism with the Securities and Futures Commission. Under such procedure, the court will determine the appropriate outcome on the basis of a Carecraft Schedule, which contains the agreed facts in relation to the regulator's allegations against the party and where appropriate, the agreed period of disqualification.



## ● South Korea

### Apple Korea offers corrective measures over alleged abuse of dominance

On 4 July 2019, Apple Korea filed an application to implement voluntary actions to resolve the antitrust concerns of the Korea Fair Trade Commission ("**KFTC**") in relation to Apple Korea's alleged abuse of its position by forcing mobile carriers in South Korea to bear advertising and repair costs. The KFTC had been investigating Apple Korea since 2016.

### South Korea tightens rules for cross-border M&A involving national core technology

On 13 August 2019, South Korea's Ministry of Trade, Industry and Energy announced amendments to the Act on Prevention of Divulgence and Protection of Industrial Technology, which are expected to take effect six months after approval, in February 2020. After the amendments take effect, foreign companies will have to notify the government in advance when they want to merge with or acquire Korean companies with national core technologies. Previously, the scope of regulations was limited to national core technologies developed with government assistance.

### KFTC releases 2019 H1 report on merger control

In August 2019, the KFTC released its half-year report on merger control activities for 2019. In the first half of 2019, the KFTC reviewed 349 mergers, with the aggregated transaction value amounting to KRW 201.9 trillion (approx. USD 167.8 billion). Both the number of cases and the transaction value reflect an increase compared to the first half of 2018.

### KFTC's new head announces ongoing priorities

The new competition chief nominee, Joh Sung-wook, indicated that her two biggest priorities would be reducing data monopolies and enforcing better protections for customer information. She was elected as the new competition chief in September 2019 and is the first female competition chief of the KFTC.





## Singapore ●

### CCCS consults on the application by Emirates to vary its undertaking

In 2013, the Competition and Consumer Commission of Singapore ("CCCS") approved the alliance between Qantas and Emirates, allowing them to coordinate various aspects of their flight services such as pricing, scheduling, marketing, planning, operating capacity and airport facilities; the two airlines offered to provide capacity commitments on their overlapping flight routes, including the Singapore-Brisbane route. Emirates is now seeking to be fully released from the Singapore-Brisbane route, arguing that it has suffered substantial losses on this route due to overcapacity, declining revenues and rising costs. Public consultation is open from 13 to 24 September 2019 for interested parties to provide feedback on an application by Emirates.

### Toh Han Li bows out as CEO of CCCS

Toh Han Li, Chief Executive of the CCCS since October 2013, stood down on 30 September 2019 following the expiry of his term. He will be succeeded by Ms Sia Aik Kor, formerly Deputy Chief Counsel at the Attorney-General's Chambers.

## New Zealand ●

### NZCC announces its 2019–2020 enforcement priorities

On 25 July 2019, Anna Rawlings, the newly-appointed Chair of the New Zealand Commerce Commission ("NZCC"), announced the focus areas of the NZCC for the next year, including:

- **Enduring priorities** such as credit issues, product safety, merger clearances and authorisations and the NZCC's functions in critical infrastructure industries like energy and telecommunications;
- **Eight focus areas** including educating traders about potential cartel conduct and completing its first market study into the retail fuel sector since the authorization of market study powers last December as well as other consumer and credit priorities; and
- **Legislative changes** from proposals affecting almost all of the legislation that the NZCC is enforcing, including the preparation for cartel criminalisation scheduled in 2021.



## ● Australia

### ACCC releases its final report of the Digital Platforms Inquiry

On 26 July 2019, the Australian Competition and Consumer Commission ("**ACCC**") published the final report of its Digital Platforms Inquiry which was launched in 2017. There are 23 recommendations made in the report, covering competition, consumer protection, media regulation and data privacy. Specifically, the ACCC identified competition issues including, inter alia, (i) the distortion of market players' abilities to compete on their merits in advertising, media and a range of other markets that are intertwined with digital platforms, and (ii) in cases of large digital platforms' acquisitions of start-ups, the potential removal of future competitive threats and granting digital platforms wider access to personal data.

In the light of the above, the ACCC makes recommendations with respect to: (i) revising merger rules to explicitly require consideration of the effect of potential competition and to recognise the importance of personal data; (ii) setting out a notification protocol agreed by large digital platforms, who would therefore inform the ACCC about potentially anti-competitive acquisitions; (iii) an agreement according to which Google would allow Android users in Australia to freely choose their search engines and internet browsers; and (iv) the establishment of a specialist branch to deal with digital platforms-related issues to proactively monitor and investigate potentially anti-competitive conduct in this field. The Australian government will respond to the proposed recommendations in ACCC's report by end of 2019, which currently is under public consultation due on 24 October 2019.

### Australia imposes a record fine of AUD34.5 million against K-Line

On 2 August 2019, the Australian Federal Court ("**AFC**") imposed a fine of AUD 34.5 million upon Kawasaki Kisen Kaisha ("**K-Line**"), a Japanese shipping company, for engaging in shipping cartel. This is the largest antitrust fine imposed in Australia on a single infringer. AFC found that K-Line engaged in a long-lasting cartel with five other shipping companies to fix prices of shipping cars, trucks, and buses from overseas to Australia from February 1997. Criminal cartel charges were first laid against another cartel participant Nippon Yusen Kabushiki Kaisha, who was fined AUD 25 million (approx. USD 19.82 million) in August 2017. As the second target, K-Line pleaded guilty on 5 April 2018 following the extensive criminal investigation by the ACCC. The fine amount of AUD 34.5 million (approx. USD 23.4 million) has reflected a reduction of 28% considering K-Line's early guilty plea and the level of assistance and cooperation, absent which the fine was originally set to be AUD 48 million. Shortly after this fine, charges were laid against another Norwegian-based cartel participant Wallenius Wilhelmsen Ocean on 23 August 2019. The ACCC's investigation into other alleged cartel participants is ongoing.

## India



### Hefty antitrust fines imposed in the communications networks market in India

On 24 July 2019, India's Digital Communications Commission ("**DCC**") has approved the Indian telecoms regulator (TRAI)'s proposed fines of INR 30.5 billion (USD 442 million) on Vodafone Idea and Bharti Airtel, for engaging in cartel and abusive conduct. The investigation was prompted by a complaint made by the new entrant Reliance Jio. The communications networks market in India is highly concentrated, with previously three active operators and currently only two (Vodafone Idea and Bharti Airtel) following a merger. The two operators were found to have colluded to breach license terms and deny points of interconnection which enable users to make calls to customers using a different company's network. Such collusion resulted in dropped calls made on the network of Reliance Jio and ultimately harmed consumer interests. DCC's decision will be reviewed by the Department of Telecommunications before it becomes final.

### CCI formally probes Intel for its alleged abuse of dominance

Following complaints made by a local trader of IT products, the CCI formally launched an investigation into Intel on 9 August 2019 for alleged abuse of dominance. The CCI is of the preliminary view that Intel is dominant in the Indian markets for boxed micro-processors in desktop PCs and laptop PCs based on its high market share, customers' dependence and lack of bargaining power, high entry barriers, etc. It is alleged that Intel has imposed unfair and discriminatory terms in its 2016 revised local warranty policy, according to which warranties were only offered to Intel's boxed micro-processors sold by its authorised distributors and purchased in India. The CCI holds that the India-focused warranty policy may give rise to the following anti-competitive concerns: (i) a ban on parallel imports and resale of Intel's boxed micro-processors in India; (ii) fewer choices of Indian consumers; and (iii) increased prices by Intel's Indian authorised distributors in the absence of competition from parallel importers and other resellers. An investigation report by the CCI will be available within 150 days following the investigation date.

### The Supreme Court of India orders predatory pricing probe into Uber

On 3 September 2019, the Supreme Court of India dismissed an appeal by Uber against a tribunal order probing Uber's alleged predatory pricing. This dispute originated in 2015 when a local radio taxi operator Meru Travel Solutions ("**Meru**") complained to the CCI that Uber had abused its dominant position by intentionally pricing rides lower than costs to drive out competitors. The CCI dismissed Meru's complaint on the grounds that Uber did not appear to be dominant in the Indian ride-hailing market. Meru then appealed before the Competition Appellate Tribunal ("**CAT**") which ordered the CCI to conduct an investigation into Uber. Since Uber's challenge of the CAT's order before the Supreme Court has failed, in the following six months Uber will be investigated by the CCI with respect to the market structure and the allegations re abuse of dominance against Uber.

**Hong Kong**



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