

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 2021

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ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: JULY TO SEPTEMBER 2021

The past quarter has witnessed China's unflinching efforts to step up antitrust scrutiny over the country's overall economy, with a particular focus on the platform economy. President Xi Jinping said in a state decision-making meeting in August that China has seen initial progress in reining in internet platforms to obey antitrust rules. This is also echoed in the Chinese antitrust authority (SAMR)'s 2020 annual report on antitrust enforcement (which was released in September). As part of the progress made, there were two more landmark antitrust decisions in the platform sector. The proposed merger of Huya and DouYu (the two largest videogame live-streaming players, both controlled by Tencent) was blocked by SAMR due to potential elimination of competition in the relevant market. This is the third blocked merger in China and the first time where a transaction between purely Chinese companies has been interrupted on antitrust grounds. In addition, the unreported acquisition of a majority stake in CMC by Tencent was fined for Tencent's failure-to-file, with remedies and extensive obligations also imposed by SAMR to restore competition. This marks the first case in China where the antitrust authority found anti-competitive effects in a failure-to-file investigation and took restorative measures. Apart from Tencent/CMC, another 22 transactions, made by affiliates of internet platforms such as Didi, Alibaba, Suning.com and Meituan, were also fined for failure-to-file by SAMR in the last quarter.

In the wider economy, antitrust passions in China are also high. Premier Li Keqiang mentioned in a meeting in July that China's antitrust enforcement will ensure that small and medium-sized enterprises in China are given more space to grow. In response to that calling, SAMR and its local counterparts completed six investigations – in the concrete, water, pharmaceutical and consumer goods sectors – where horizontal or vertical anti-competitive agreements and abuse of dominance were penalised. The total of fines amounted to RMB 358.3 million (USD 55.6 million), among which the largest, RMB 294.81 million (USD 45.63 million), was imposed on Bull (a Chinese electrical product supplier) for resale price maintenance. A remarkable development on the legislative side came during a meeting of the 13th National People's Congress Standing Committee where it was announced that draft amendments to the AML would be reviewed during its 31st session from 19 October to 23 October 2021. As reported previously, it is expected that the amended AML would come into force by the end of 2021.

ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: JULY TO SEPTEMBER 2021

Outside China, addressing antitrust challenges posed by prominent tech firms has become a shared priority. In Australia, a final report into the advertising technology sector found that Google's dominance in that sector lessens competition and harms consumers. It was also reported in Australia that Apple Pay's alleged anti-competitive restrictions would be investigated. Japan by comparison had good news for Apple, as Japan closed its investigation against Apple based on effective rectification measures. Nonetheless, dramatic antitrust actions were taken in South Korea, where the Telecommunications Business Act was amended to prohibit app stores from obliging app developers to use app store's own in-app payment processing systems. This is the first legislation in the world that imposes such measures on app stores. South Korea also completed its investigation against Google and handed it a fine of USD 177 million due to Google's abusive conduct vis-à-vis the Android operating system. In India, Amazon was found to have hidden key facts in a previous merger filing that was cleared in 2019, and in a separate matter judicial support was provided to the antitrust investigation into Amazon's proposed acquisition of Flipkart. Interestingly, digital food delivery platforms (in particular, Foodpanda) came under the antitrust radar in Malaysia, Taiwan and Pakistan during the past quarter.

Contacts



YONG BAI
Partner, Head of Antitrust,
Greater China

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





SPECIAL REPORT: CHINA'S BIG TECH CRACKDOWN CONTINUES WITH EMERGENCE OF MORE LANDMARK CASES

In this quarter, China's supreme leadership continued to signal the stepping up of antitrust scrutiny. In a July meeting focusing on China's economic situation, Premier Li Keqiang mentioned that China's antitrust enforcement will continue unabated, to ensure that small and medium-sized enterprises in China are given more space to grow. With respect to the platform economy, President Xi Jinping said in a state decision-making meeting that China has seen initial progress in curbing the disordered expansion of internet platforms by tightening antitrust supervision.

On the enforcement side, in July, the State Administration for Market Regulation ("**SAMR**") banned the proposed merger between the country's two largest videogame live-streaming companies, Huya Inc. ("**Huya**") and DouYu International Holdings Limited ("**DouYu**") – this is the third prohibition decision by China's antitrust regulator, as well as the first one targeting the platform economy. Two weeks after the release of the Huya/DouYu decision, the SAMR published another landmark decision, in relation to Tencent's acquisition of China Music Corporation ("**CMC**") (which was closed more than three years ago). This was the first time SAMR imposed restorative measures in failure-to-file cases. The above two important developments are covered in more detail in [**Annexes 1 and 2**](#) below.

Besides, 22 no-issue transactions were fined by the SAMR for failure to file in this quarter. In all cases the fine was RMB 500,000 (USD 77,500), the maximum penalty under the current regime. The concerned target companies involved many household names in China, including 58.com, Xiaohongshu, Sogou, Kingsoft and Mogu Inc. The tech firms behind the scene include, among others, Didi, Alibaba, Suning.com and Meituan. More details can be seen in [**Annex 3**](#) below.

Meanwhile, the Ministry of Industry and Information Technology ("**MIIT**") is working to tackle the long-existing issue of interoperability restriction which has caused great inconvenience to platform users (e.g. Tencent and Alibaba have blocked consumers from accessing each other's payment apps since 2013). On 9 September 2021, the MIIT held an administrative guidance meeting with major internet companies including Alibaba, Tencent, ByteDance, Xiaomi and many others to demand them to end interoperability restrictions on their respective platforms. These companies all pledged to do so.

It was also reported this September that Alibaba would receive another blow. Ant Group, a finance company affiliated to Alibaba, may need to spin off its leading payment app, Alipay, in accordance with the instruction from the Chinese government. Alipay's lending businesses, Huabei (offering consumer lending services) and Jiebei (offering small unsecured loans), may be migrated to form an independent app, whose user data is to be kept by a newly established credit scoring company which is to be majority-owned by Chinese state-owned enterprises.

In response to China's growing efforts to rein in tech companies by antitrust regulation, 33 high-tech companies, including, among others, Alibaba, Huawei, Baidu, ByteDance and JD.com, signed an Antitrust Self-discipline Convention at the China Internet Conference in mid-July. The tech companies committed to filing their notifiable future transactions and not engaging in anti-competitive conduct.



SPECIAL REPORT: CHINA'S BIG TECH CRACKDOWN CONTINUES WITH EMERGENCE OF MORE LANDMARK CASES

Annex 1: Huya/DouYu merger blocked

On 10 July 2021, the SAMR blocked the proposed merger of Huya and DouYu. Both companies are controlled by Tencent and engage in the videogame live-streaming sector in China.

The SAMR found that the proposed merger would restrict competition both in the downstream market for videogame live-streaming (where Huya and DouYu are active) and the upstream market for online game operation (where Tencent is active). The SAMR came to the view that the merger would significantly strengthen Tencent's market power in the downstream videogame live-streaming market, and that the merged entity would have abilities and incentives to implement a two-way vertical foreclosure in both the upstream online game market and the downstream videogame live-streaming market.

More specifically, the SAMR found that Huya and DouYu are currently the two largest videogame live-streaming platforms in China, and the merger would remove their respective closest competitor from the market, which would result in significant loss of competition. The combined entity would have a market share of over 70% by turnover (over 80% by number of active users and 60% by number of live streamers) in the downstream videogame live-streaming market. Moreover, entry barriers are high due to copyright, capital investment and streamer resources. As a result, post-merger customers and streamers may be unfairly exploited by the merged entity.

In addition, Tencent would have the **ability** to implement foreclosure strategies because (i) Tencent already has strong market power in the upstream online game market with a share of over 40%, and, as explained above, Tencent would gain a dominant position in the downstream videogame live-streaming market as a result of the merger; (ii) barriers to entry in the upstream online game market due to required capital investment, time costs and regulatory licences are also high. With respect to the **incentive**, the SAMR considered that (i) videogame copyrights licensed by upstream players are critical for the downstream videogame live-streaming market; (ii) customers of the upstream and downstream markets significantly overlap; and (iii) videogame live-streaming is an effective method to promote games. Accordingly, Tencent is likely to preclude customers of the merged entity's live-streaming platform from licensing from Tencent's competitors in the upstream online game market, which would block promotion channels of Tencent's competitors and eliminate competition in the online game market.

In light of the above, the SAMR was of the view that there could be no effective commitments, and therefore blocked the merger. This is the first blocked merger decision imposed on purely domestic Chinese companies, also the third blocked merger decision to date in China.



SPECIAL REPORT: CHINA'S BIG TECH CRACKDOWN CONTINUES WITH EMERGENCE OF MORE LANDMARK CASES

Annex 2: Tencent/CMC merger fined with remedies

On 24 July 2021, the SAMR fined Tencent for failing to notify its acquisition of a 61.64% equity interest in CMC. The transaction took place in 2016 and came under the SAMR's investigation in January 2021. The fine imposed on Tencent was RMB 500,000 (USD 77,500) (the maximum penalty under the Anti-Monopoly Law ("**AML**")), which is the same as that imposed on all the other digital platforms which have recently been fined by the SAMR for failure to file. What makes this decision stand out is that the SAMR has also imposed remedies on Tencent to restore competition in the relevant market. This marks the first failure-to-file decision in China where anti-competitive effects were identified and restorative remedies (in addition to fines) were imposed.

A. Relevant Market

Both Tencent and CMC are active in the market for online music streaming platforms in China. Therefore, the acquisition has led to a horizontal overlap in the market for online music streaming platforms. When defining the relevant product market, the SAMR has taken into account the features of the platform economy. Following the Antitrust Guidelines for Platform Economy ("**Platform Guidelines**"), the SAMR distinguished online music streaming platforms from webcasts, video-sharing platforms and live karaoke platforms, on the basis of differences in core functionality, application scenario, business model and market entry. The relevant geographic market was defined as China-wide, on the basis that music copyright licences are regulated and granted within the territory of China only, and, as a result, Chinese online music streaming platforms' activities are limited to China.

B. Competition Concerns

The SAMR identified from this horizontal merger competition concerns arising from the following aspects. It is noted that the SAMR's analysis has specifically taken into account the platform economy's characteristics, as highlighted in the Platform Guidelines.

- **Market share** - At the time of the transaction, Tencent and CMC were the two largest players in online music streaming platforms in China, with a combined market share of over 80% by monthly active users or usage time, over 70% by sales revenue and over 80% by possession of core music copyrights (including exclusive music copyrights).
- **Concentration** - The SAMR considered Tencent and CMC to be close competitors based on customer switch ratio, according to which 73.6% of Tencent's users would switch to CMC if they are unsatisfied with Tencent's online music streaming services.
- **Markey Entry** - The SAMR found that the merged entity, given its significant market power in the downstream of music copyright licensing, had foreclosed a substantial part of music copyright resources. In addition, the excessive advance payments made by the merged entity to licensors further raised barriers to entry, as licensors would not have incentives to license to



SPECIAL REPORT: CHINA'S BIG TECH CRACKDOWN CONTINUES WITH EMERGENCE OF MORE LANDMARK CASES

other platforms. As a result, existing online music streaming platforms and new entrants had to rely on the merged entity's sub-licences to operate in this market. Besides, platform users became less incentivised to switch to other platforms due to abundant music available on the platform run by the merged entity. This further disadvantaged new players as they would have too little user data to pre-empt user preferences. Finally, market entries since 2017 have been inactive, which evidences the above analysis.

C. Remedies

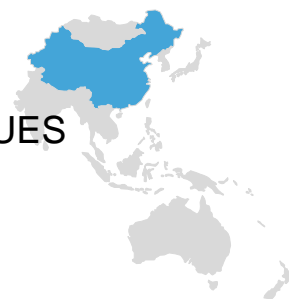
Apart from the RMB 500,000 (USD 77,500) fine, the SAMR also imposed the following remedies upon Tencent to restore competition:

- Tencent shall refrain from reaching exclusive copyright licensing agreements with upstream music copyright owners and cancel any such executed agreements within 30 days following the date of this decision, except for those exclusive arrangements with independent artists;
- Tencent shall limit the terms of its exclusive arrangements with independent artists to less than three years (and less than 30 days in the case of new releases);
- Tencent shall not ask upstream copyright owners for more favourable terms and shall cancel any such terms within 30 days following the date of this decision, unless there are legitimate justifications;
- Tencent shall refrain from raising rivals' costs by excessive offers/advance payments to upstream copyright owners, and shall base its fee quotes to upstream copyright owners on factors including actual utility, user payment, unit price, application scenario, term of licence, etc.

On top of the above measures, it is also worth noting that the SAMR imposed additional obligations which clearly went beyond the purpose of resolving the issues identified in the transaction in question. Specifically:

- The SAMR ordered Tencent and its affiliates to notify its future transactions where (i) the transactions meet the Chinese filing thresholds; or (ii) the thresholds are not met, but the transactions may eliminate or restrict competition.
- Further, when the transactions do not constitute concentrations (in which case Tencent and its affiliates should not participate in the operation or decision-making of target companies and should only enjoy the minority shareholders' protection rights as provided under the relevant laws), Tencent and its affiliates should report such transactions to the SAMR as part of its annual reports to the SAMR.

Tencent and its affiliates are also required to form rectification plans for the purposes of implementing the above measures within 10 days of the SAMR's decision. In the following three years, Tencent and its affiliates shall report compliance status to the SAMR annually, and the SAMR will retain the power to review (through monitoring trustees or otherwise) whether Tencent and its affiliates are in compliance.



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Annex 3: Failure-to-file fines

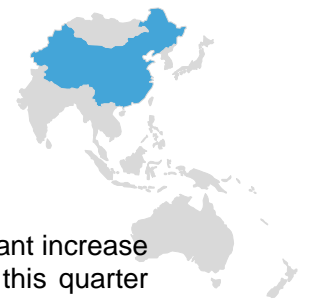
No.	Fined transactions (with fined party's name <i>Italicised</i>)	Tech firms/online platforms involved
1	The establishment of a joint venture by <i>Huidi (Tianjin) Commercial Service Co., Ltd. ("Huidi Tianjin")</i> and China FAW Group Corporation in 2018	Didi
2	The establishment of a joint venture by <i>Huidi Tianjin</i> and BAIC Mobility in 2018	Didi
3	The establishment of a joint venture by <i>Beijing Xiaoju Intelligent Automotive Technology Co., Ltd.</i> and <i>Beijing Electric Vehicle Co., Ltd.</i> in 2018	Didi
4	The establishment of a joint venture by <i>Huidi Tianjin</i> and TELD New Energy Co., Ltd. in 2018	Didi
5	The establishment of a joint venture by <i>Beijing Xiaoju New Energy Automobile Technology Co., Ltd.</i> , <i>Hainan Province Transport Investment Holding Company</i> , <i>Southern Power Grid Electric Vehicle Service Co., Ltd.</i> and <i>Hainan Power Grid Co., Ltd.</i> in 2019	Didi
6	The establishment of a joint venture (Zhejiang Dishu Automobile Service) by <i>Huidi Tianjin</i> and <i>Tibet Aotong Venture Capital Co., Ltd. ("Tibet Aotong")</i> in 2017	Didi
7	The establishment of a joint venture (Hangzhou Dishu Automobile Service) by <i>Huidi Tianjin</i> and <i>Tibet Aotong</i> in 2017	Didi
8	The establishment of a joint venture by <i>Beijing Chesheng Technology Co., Ltd.</i> and <i>SKIO Matrix Co., Ltd.</i> in 2018	Didi
9	The acquisition of a 50% stake in Tian Xian Pei (Shanghai) Technology Co., Ltd. by <i>Alibaba (China) Network Technology Co., Ltd. ("Alibaba Network")</i> in 2019	Alibaba
10	The establishment of a joint venture by <i>Hangzhou Alibaba Venture Capital Management Co., Ltd. ("Hangzhou Alibaba")</i> and <i>Shanghai Commercial Investment (Group) Co., Ltd.</i> in 2018	Alibaba
11	The acquisition of a 40% stake in Theland Xinyun (Shanghai) E-commerce Co., Ltd. by <i>Alibaba Network</i> in 2017	Alibaba
12	The acquisition of a 50% stake in Guangzhou Football Club Co., Ltd. by <i>Alibaba Network</i> in 2014	Alibaba



SPECIAL REPORT: CHINA'S BIG TECH CRACKDOWN CONTINUES WITH EMERGENCE OF MORE LANDMARK CASES

Annex 3: Failure-to-file fines

No.	Fined transactions (with fined party's name <i>italicised</i>)	Tech firms/online platforms involved
13	The acquisition of a 44% stake in Minmetals Development Ecommerce Co., Ltd. by <i>Hangzhou Alibaba</i> in 2016	Alibaba
14	The establishment of a joint venture by <i>Hangzhou Alibaba</i> and <i>Zhejiang Provincial Innovation and Development Investment Co., Ltd.</i> in 2016	Alibaba
15	The acquisition of a 32.4% stake in 58.COM INC. by <i>Tencent Mobility Limited</i> in 2020	Tencent
16	The acquisition of a 4.49% stake in Xingin International Holding Limited by <i>Tencent</i> in 2020	Tencent
17	The acquisition of a 36.5% stake in Sogou Inc by <i>Tencent</i> in 2013	Tencent
18	The acquisition of a 10% stake in Kingsoft Internet Security Software Holdings Limited by <i>Tencent</i> in 2011	Tencent
19	The acquisition of a 3.17% stake in Mogu Inc. by <i>Tencent</i> in 2016	Tencent
20	The establishment of a joint venture by <i>Suning.com</i> and <i>Bank of Nanjing</i> in 2014	Suning.com
21	The establishment of a joint venture by <i>Suning.com</i> and <i>Mitsubishi Heavy Industries, Ltd.</i> in 2011	Suning.com
22	The acquisition of a 20% stake in Acewill Information Technology (Beijing) Co., Ltd. by <i>Beijing Sankuai Technology Co., Ltd.</i> in 2015	Meituan

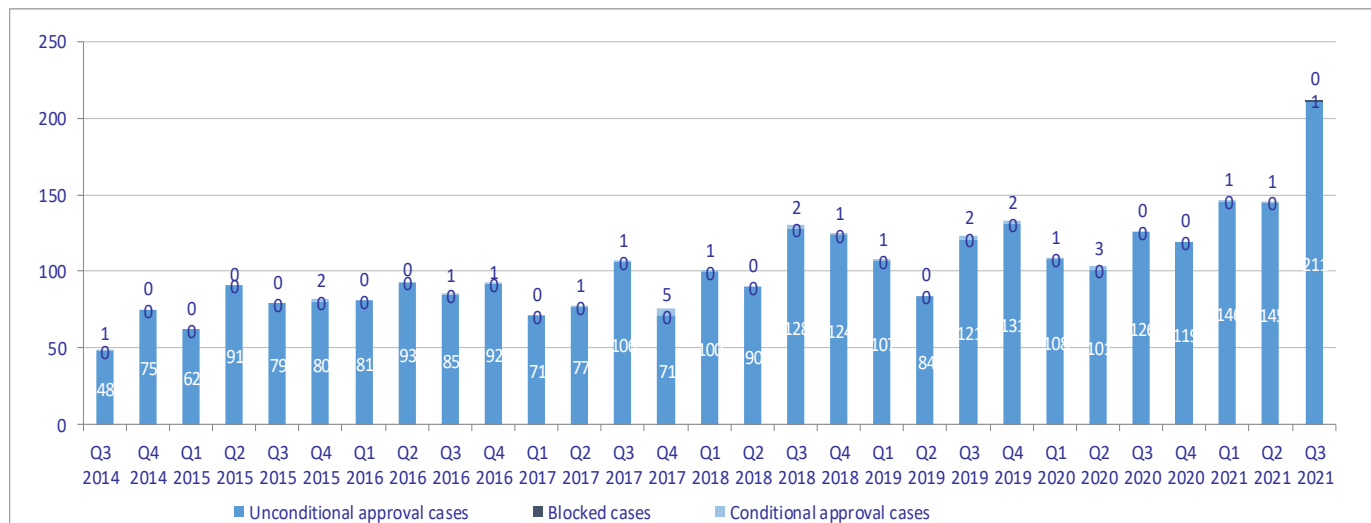


MERGER CONTROL

How many cases have there been?

There were in total 212 merger decisions released in the third quarter of 2021, a significant increase of 45.2% compared to the third quarter of 2020, with all the 211 reviewed cases in this quarter unconditionally cleared. Around 183 cases were notified under the simplified procedure in this quarter, which represents 86.3% of the total reviewed cases.

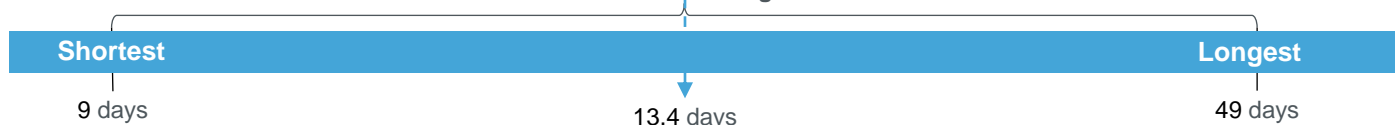
Merger control trends – Q3 2014 – Q3 2021



Simplified procedure: How quick is the review period?

Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
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
Q4 2019	14 days	81.2%	0
Q1 2020	14 days	87.16%	1
Q2 2020	13.7 days	86.54%	0
Q3 2020	14.4 days	72.22%	3
Q4 2020	13.7 days	83.19%	1
Q1 2021	14.9 days	80.27%	3
Q2 2021	13.8 days	90.41%	0
Q3 2021	13.4 days	86.32%	3

Q3 2021: Average

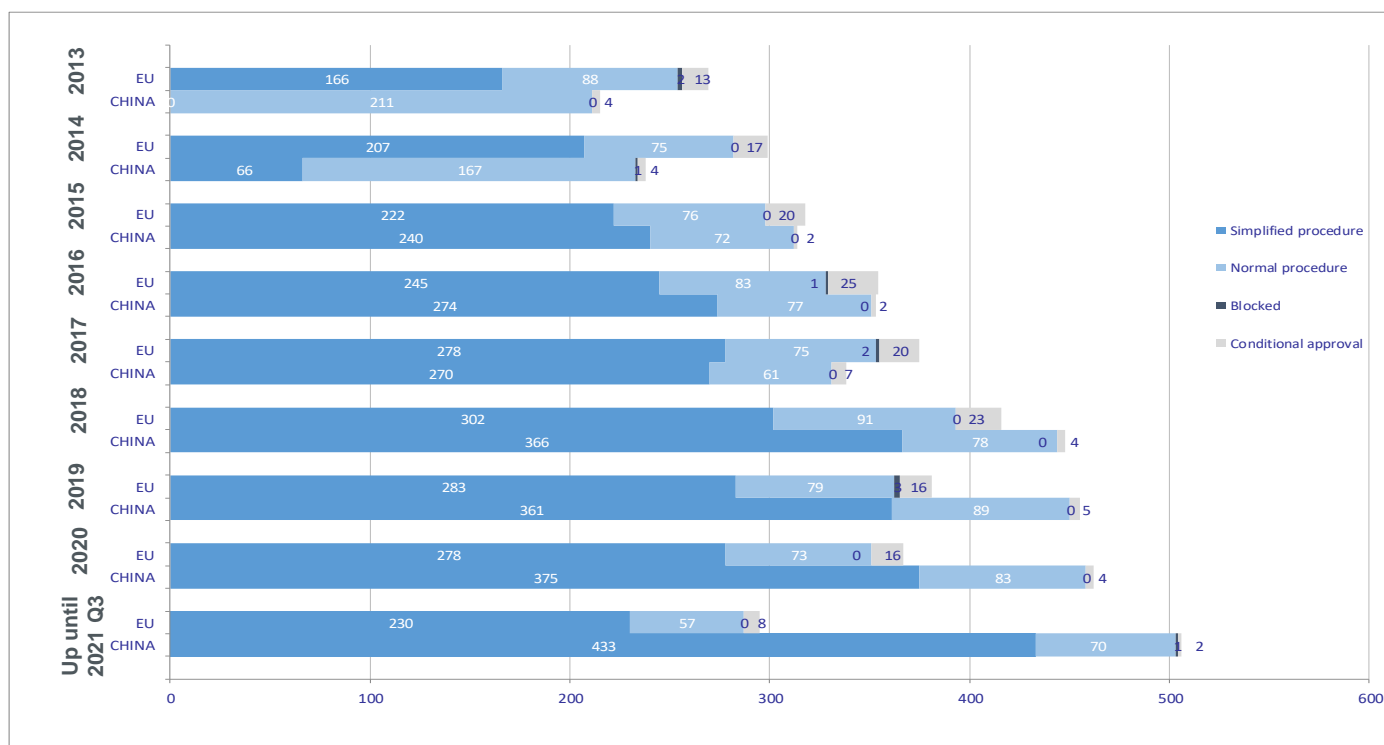




MERGER CONTROL AND OTHER NEWS IN CHINA

How does China compare internationally?

Comparison with EU – 2013 – 2021



Other failure-to-file fines in this quarter

In addition to the 23 failure-to-file cases covered in the special report above, in this quarter the SAMR also published its fines in respect of the following two transactions: (i) the acquisition by Cuilian (China) Fire-Fighting Equipment Manufacturing Co., Ltd. ("**Cuilian**") of a 60% stake in Shenyang Jietong Firetruck Co., Ltd. in 2019, where Cuilian was fined RMB 300,000 (USD 46,487); and (ii) the acquisition by China International Marine Containers (Group) Ltd. ("**CIMC**") of a 30% stake in China Fire Safety Enterprise Group Holdings Co., Ltd. in 2015, where CIMC was fined RMB 300,000 (USD 46,487). The SAMR did not find competition concerns in these two cases.

Other news

Amended AML likely to be released soon

On 28 September 2021, the Standing Committee of the 13th National People's Congress announced that it will review the draft amendments to the AML during its 31st session from 19 to 23 October 2021. This is responding to the calling that enhancing antitrust legislation is one of the country's regulatory priorities in 2021.



OTHER NEWS

SPC releases typical antitrust cases

On 27 September 2021, the Supreme People's Court ("**SPC**") held a press conference regarding judicial developments and published 10 typical cases. The SPC spokesperson said that from 2008 to 2020, China's courts at all levels have accepted a total of 897 antitrust cases, among which 844 cases have been concluded. In 2020, 107 antitrust cases were concluded, representing an increase of 16.8 times since 2008. The SPC noted that antitrust disputes on the internet sector have emerged more frequently in recent years. Three of the 10 typical cases released are related to antitrust laws:

- **Mr. Wu vs. Yongfu Water Supply Company** - Mr. Wu alleged that the Yongfu Water Supply Company abused its dominance, bundling water supply with the purchase of water meters. The Nanning Intermediate People's Court held that Yongfu Water Supply Company was dominant and abused its dominance by tie-in sales. The ruling clarified the standards for determining dominant market position and abuse of dominance in the public utilities sector.
- **Mr. Zhang vs. Sichuan Brick Association** - Mr. Zhang alleged that his company was forced to join the Sichuan Brick Association and reached an agreement to limit brick supply, and he has suffered loss from the reduction of supply. The SPC did not support Mr. Zhang's claim for damages, noting that Mr. Zhang actually voluntarily agreed to halt production and implemented the monopoly agreement. Accordingly, awarding damages to Mr. Zhang would amount to allowing recovery of monopoly profits from other participants of a monopoly agreement. The ruling clarified that in the antitrust context, the conduct for which a plaintiff seeks damages must be legitimate and lawful.
- **OPPO vs. Sisvel** - OPPO filed a lawsuit against Sisvel before the Guangzhou Intellectual Property Court and claimed that Sisvel abused its dominance by charging an excessive licensing fee for its standard-essential patents ("**SEP**"). Sisvel alleged that it had already sued OPPO in the UK to confirm the reasonableness of its licensing fee, and, to avoid overlapping jurisdiction over the same issues, only the UK court had jurisdiction over the case. In dismissing Sisvel's appeal, the SPC held that UK lawsuits could not deprive Chinese courts of jurisdiction since the parties' jural relationships, facts and grounds in the two cases were not exactly the same. The Chinese courts could claim jurisdiction also because the infringement lawsuits filed by Sisvel in the UK might directly, substantively and significantly eliminate or restrict OPPO's participation in market competition in China. This case clarified the jurisdiction rules over antitrust disputes in the context of SEP.



OTHER NEWS

SAMR's 2020 Annual Report on China Anti-Monopoly Enforcement

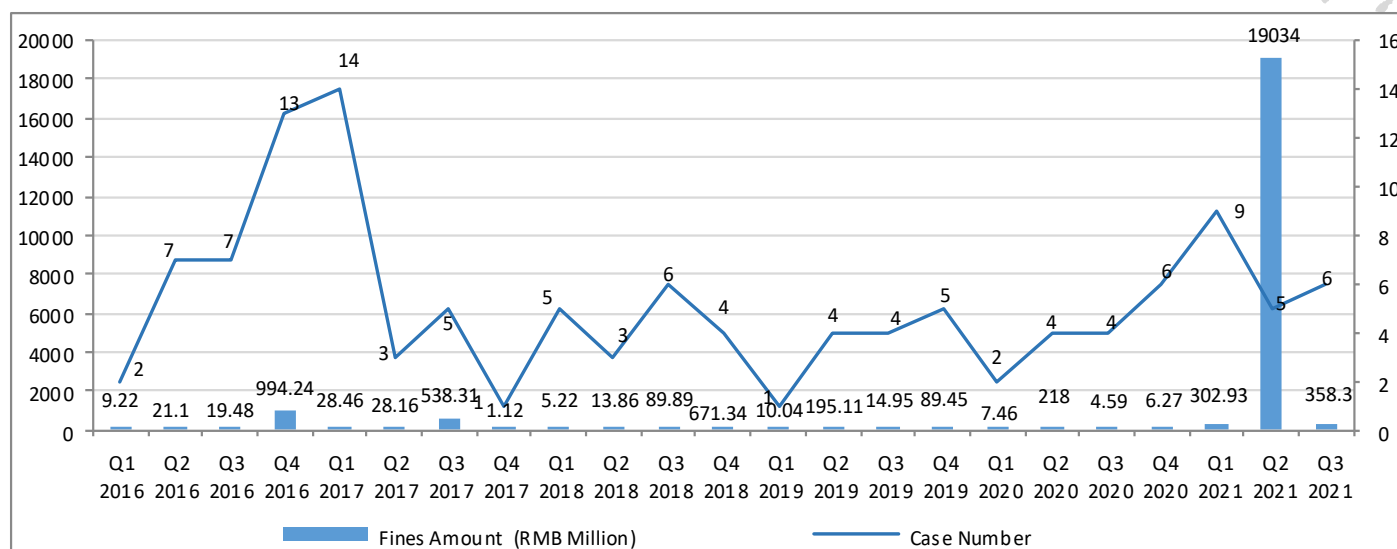
On 3 September 2021, the SAMR published the Annual Report on China Anti-Monopoly Enforcement (2020) ("**Report**"). The Report summarises the SAMR's antitrust enforcement with respect to anti-competitive agreements, abuse of dominance, merger control, failure to file and administrative monopoly in sectors including internet, public utility, pharmaceutical, semiconductor, automobile, construction materials, transportation, petrochemical and steel. Key highlights of the Report include the following:

- **Merger Control** - Both the numbers of notified transactions and cleared cases in 2020 reached a new peak. Despite an increasing caseload, the SAMR continued to improve merger review efficiency, e.g. the period between submission and case acceptance averaged 17.8 calendar days in 2020, 27% quicker than in 2019. The Report also noted a substantial year-to-year 29% increase of notified concentrations between domestic undertakings in 2020.
- **Antitrust Investigations** - Enforcement against anti-competitive agreements remained active in 2020, focusing on sectors including construction materials, used cars, driving training, fuel gas, tourism, computers and insurance. Among the 18 initiated investigations on abuse of dominance in 2020, eight are in the active pharmaceutical ingredients ("**API**") sector and five in public utilities, showing the SAMR's continuous focus on the two sectors. It is also apparent that the platform economy has become the SAMR's new enforcement focus.
- **Legislation** - The SAMR has invested considerable resources in amending the AML and submitted a revised draft for the State Council's review in December 2020. According to the Report, the SAMR will facilitate the adoption of the AML amendments, furnishment of the antitrust guidelines on the API sector and draft guidelines on exemption from anti-competitive agreements. The Report also indicated several key issues which are of interest to the SAMR, such as non-price-related vertical agreements, reform on filing thresholds, "stop-the-clock" mechanisms in merger review, and increase of fines for failure to file, among others.



ANTITRUST INVESTIGATIONS

Enforcement trends* – Q1 2015 to Q3 2021



*Note: From Q1 2016 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
Concrete supply Chongqing AMR	15 July 2021	Price fixing, market dividing	23,129	10,980	12,149	5%	N/A
Medicinal camphor API Jiangsu AMR	16 July 2021	Price fixing	9,762	799	6,055	1%-5%	N/A
Concrete supply Jiangxi AMR	19 August 2021	Price fixing, output restriction, market dividing, collective boycotting	28,093	64	6,747	8%	N/A
Public tap water supply Shaanxi AMR	30 August 2021	Abuse of dominance	162	N/A	N/A	2%	N/A
Aviation kerosene and refueling services Yunnan AMR	31 August 2021	Abuse of dominance	2,345	N/A	N/A	1%	N/A
Electrical products Zhejiang AMR	27 September 2021	RPM	294,810	N/A	N/A	3%	N/A

Chongqing AMR fines two local concrete firms for price-fixing and market allocation

On 15 July 2021, the SAMR published a penalty decision where the Chongqing Administration for Market Regulation ("**Chongqing AMR**") fined Chongqing Jiangdu Construction Materials Co., Ltd. ("**Jiangdu**") and Chongqing Jiandian Concrete Co., Ltd. ("**Jiandian**") for reaching and implementing agreements to fix prices and allocate sales. Jiangdu and Jiandian were the only two players in the market for the production and sale of premixed concrete in Fengdu County, Chongqing City. From April 2014 to March 2019, the two firms



ANTITRUST INVESTIGATIONS

engaged in the following anticompetitive conduct: (i) **price-fixing**: the firms fixed the minimum prices for concrete products and the relevant fees for transportation and concrete filling service; (ii) **market allocation**: the companies divided sales by region to ensure that each firm only sold to its designated areas; each of them conducted daily checks on the GPS devices installed on trucks of the other. The two firms were found to have distorted fair competition by price-fixing and market allocation in violation of Articles 13(1) and 13(3) of the AML. The Chongqing AMR imposed fines of RMB 23,128,822.57 (USD 3.58 million) in aggregate (amounting to 5% of the two companies' respective annual sales in 2018).

Jiangsu AMR fines three camphor API manufacturers for price fixing and market allocation

On 16 July 2021, the SAMR published a penalty decision where the Jiangsu Administration for Market Regulation ("**Jiangsu AMR**") fined three camphor API manufacturers for price fixing and market allocation. The firms, Wuzhou Huangpu Chemical Pharmaceutical ("**Huangpu**"), Suzhou Youhe Science and Technology ("**Youhe**"), and Jiangsu Jiafu Pharmaceutical ("**Jiafu**"), are the only three manufacturers of medicinal camphor API in China. The Jiangsu AMR found that the three manufacturers were engaged in two types of anti-competitive conduct: (i) **price-fixing**: Youhe was forced to halt camphor production and entrusted Huangpu to produce industrial camphor for it by entering into a camphor processing agreement and a supplementary agreement. According to the supplementary agreement, certain processing arrangements need to be revised if the average sales price of camphor fall below RMB 200,000 (USD 30,980) per ton, which effectively conditioned the operation of the processing agreements upon the minimum sales price and fixing the camphor price above the agreed level. Moreover, the three firms agreed to maintain prices and avoid a price war through various price negotiations via physical or online contacts. They further traded with downstream enterprises with the coordinated price, depriving such downstream companies of the rights of free bargaining; and (ii) **market allocation**: in the supplementary agreement between Youhe and Huangpu, Youhe agreed to help Huangpu increase its market share to a certain level, or otherwise Youhe shall pay a higher processing fee or the processing contract would be terminated. Following the agreements, Youhe directed its customers to Huangpu. As a result, Huangpu's market share was enlarged by obtaining Youhe's customer base. The Jiangsu AMR concluded that the above conduct violated Articles 13(1) and 13(3) of the AML, imposing a total fine of RMB 8,962,691.57 (USD 1,388,321) on Huangpu and Youhe (amounting to 5% and 3% of their respective revenues in 2018) and a fine of RMB 799,281.28 (USD 123,809) on Jiafu (1% of its revenues in 2018), considering the minor nature of Jiafu's conduct. The Jiangsu AMR also confiscated illicit gains of RMB 7,122,251.47 (USD 1.10 million) of the third parties.



ANTITRUST INVESTIGATIONS

Jiangxi AMR penalises a concrete trade association and its eight members for horizontal monopoly agreements

On 19 August 2021, the SAMR published a penalty decision where the Jiangxi Administration for Market Regulation ("**Jiangxi AMR**") fined Fengcheng City Premixed Concrete Association ("**Association**") and its eight member firms ("**member firms**") for price fixing, output restriction, market allocation and collective boycott.

The Association was started by six of the firms in September 2013, with the other two joining later. Through the Association, the member firms engaged in anti-competitive conduct in the premixed concrete sales market in Fengcheng City, Jiangxi Province, including: (i) **price-fixing** – the member firms coordinated multiple price hikes following instructions from the Association in the form of price notices; (ii) **output restriction** – led by the Association, the member firms agreed to limit their production capacity in accordance with pre-determined monthly production volumes, with extra profits gained from excessive production re-distributed by the Association among the member firms; (iii) **market allocation** – a sales centre was established by the Association to collectively undertake projects on behalf of all member firms, following which the Association allocated the projects among the members; moreover, in accordance with the notice issued by the Association, the member firms agreed to only procure raw materials from designated stone yards; and (iv) **collective boycott** – the member firms conspired to jointly refuse to deal with the construction companies which did not procure exclusively from the firms.

The Jiangxi AMR concluded that the above conduct violated Articles 13(1), 13(2), 13(3) and 13(5) of the AML. The Jiangxi AMR slapped fines and confiscated illegal gains of RMB 285,027,938.83 (USD 44.00 million) in aggregate. Six of the member firms were fined 8% of their respective revenues in 2018 and the other two 3%. Two mitigated fines were issued because one of the firms was forced to participate at the beginning, while the other participated late and the time frame for its breach was comparatively short. Separately, the Jiangxi AMR also held that the Association has breached Article 16 of the AML, fined the Association RMB 50,000 (USD 7,714.50) and proposed that the Fengcheng Civil Affairs Bureau revoke the Association's registration. The decision marks a new record in terms of the quantum of penalty in the building materials industry.

Shaanxi AMR fines a local water supplier for imposing unreasonable trading conditions

On 30 August 2021, the SAMR published the Shaanxi Administration for Market Regulation ("**Shaanxi AMR**")'s penalty decision on Shaanxi Water Affair Group Jingyang County Water Supply Co., Ltd. ("**Jingyang Water**") for abuse of dominance by imposing unreasonable trading conditions. Jingyang Water was the only public tap water supplier in Jingyang County and thus dominated the market.



ANTITRUST INVESTIGATIONS

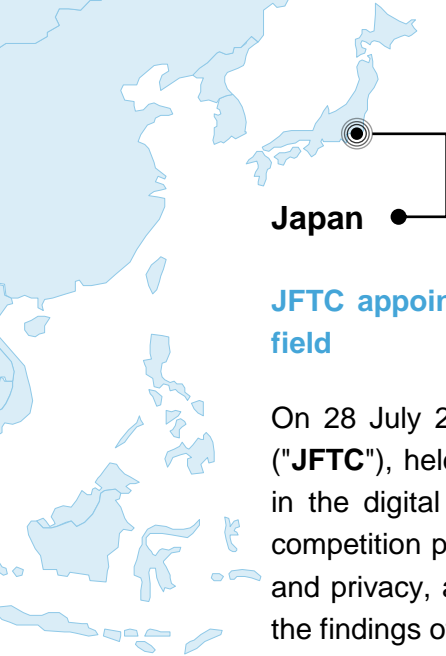
During the process of water meter retrofitting for residents in Jingyang, the local government has granted subsidies to Jingyang Water to compensate for its costs on the retrofitting service, so that no additional expenses should be charged to local residents. Despite the policy, Jingyang Water still dispatched written notices and charged residents fees and related installation costs for the new water meters. The Shaanxi AMR concluded that Jingyang Water abused its market dominance by imposing unreasonable trading conditions, which violated Article 17(5) of the AML. The Shaanxi AMR imposed a fine of RMB 162,454.08 (USD 25,166) (amounting to 2% of its annual sales in 2017) and confiscated illicit gains of RMB 28,352.16 (USD 4,393).

Yunnan AMR fines CNAF Yunnan Branch for imposing unreasonable trading conditions

On 31 August 2021, the SAMR published the decision of the Yunnan Administration for Market Regulation ("**Yunnan AMR**") to impose a penalty on the Yunnan Branch of China National Aviation Fuel Co., Ltd. ("**CNAF Yunnan Branch**") for abuse of dominance by imposing unreasonable trading conditions. CNAF Yunnan Branch was the sole player in the market for supply of aviation kerosene and refuelling services in Yunnan Province and local airline companies could only purchase such services from it – CNAF Yunnan Branch thus dominated the market. CNAF Yunnan Branch was found to have charged certain road transportation fees on airline companies while during such road transportation the ownership of the products still rests with CNAF Yunnan Branch. The Yunnan AMR considered that such conduct constituted the imposition of unreasonable trading conditions and thereby violated Article 17(5) of the AML. In light of CNAF Yunnan Branch's cooperation in the investigation and its contribution to the civil aviation industry during the COVID-19 pandemic, the Yunnan AMR imposed a relatively light fine of RMB 2,344,586.76 (USD 363,305) (amounting to 1% of its annual sales in 2018) and confiscated illicit gains of RMB 10,181,774.02 (USD 1.58 million).

Zhejiang AMR fines Bull for RPM

On 27 September 2021, the SAMR published the Zhejiang Administration for Market Regulation ("**Zhejiang AMR**")'s penalty on Bull Group ("**Bull**") for resale price maintenance ("**RPM**"). Bull is a listed Chinese company engaged in the manufacture and distribution of electrical products with around 3,000 distributors nationwide. Upon investigation, the SAMR found that from 2014-2020, Bull engaged in RPM by (i) entering into **distribution agreements** which require distributors to strictly comply with Bull's pricing policies; (ii) issuing **price policies** which require distributors to sell at "guide prices" and to fix discount levels; (iii) requiring distributors to sign **commitment letters**, where distributors undertook that they would follow Bull's pricing policies. Bull also established an internal supervisory body and entrusted third parties to monitor its distributors' compliance of the pricing policies and put in place a punishment mechanism (including monetary penalties and reduced rebates). The Zhejiang AMR held that Bull's RPM practices violated Articles 14(1) and 14(2) of the AML and imposed a fine of RMB 294.81 million (USD 45.63 million) on Bull, amounting to 3% of its annual sales in 2020.



JFTC appoints Special Digital Advisors to promote competition policy in the digital field

On 28 July 2021, Mr. Sugahisa, Secretary-General of the Japan Fair Trade Commission ("JFTC"), held a regular press conference and announced that four experts who specialise in the digital field had been appointed as "Special Digital Advisors" in order to promote competition policy in the digital field. They specialise in 5G, AI, digital advertising, digital ID and privacy, and will participate in the JFTC's market surveys and study groups to analyse the findings of studies and advise on trends in the digital marketplace.

JFTC closes its investigation against Apple

On 2 September 2021, the JFTC announced that it has decided to close its investigation against Apple in relation to Apple's conduct on "reader" apps, after the JFTC confirmed that the appropriate measures have been taken by Apple. The details of the decision are as follows:

- The JFTC distinguishes between normal apps and "reader apps". Reader apps mean apps which are used not to sell their digital contents but mainly to listen, read and watch digital content which users have bought through websites, etc.
- Apple proposed that it would allow developers to include within reader apps a single in-app link to external websites to induce consumers to make purchases other than using in-app purchase ("IAP"), and will revise the App Store Review Guidelines.
- If users buy digital content within apps, users still need to use Apple's IAP. However, app developers will not be prohibited from changing non-reader apps to reader apps or starting distributing reader apps.
- The JFTC decided to close the investigation after confirming the above measures (i.e. allowing app developers to include an in-app link within reader apps and revising the App Store Review Guidelines) have been taken. According to Apple's press release of 1 September 2021, the changes will be effective in early 2022.
- In addition to the above IAP issues, the JFTC indicated that many developers pointed out that the App Store Review Guidelines include ambiguous articles and the reasons for rejection are unclear. For such issues, Apple proposed working on clarifying the App Store Review Guidelines and improving the transparency of app review, and reporting the status of such clarification/improvement to the JFTC once a year for three years.



South Korea

KFTC fines concrete pile manufacturers for price and supply fixing

On 26 July 2021, the Korea Fair Trade Commission ("**KFTC**") imposed a total fine of KRW 102 billion (USD 88 million) on 23 manufacturers of pre-tensioned spun high strength concrete piles ("**PHC Piles**") for fixing prices and the supply of PHC Piles between 2008 and 2017. The companies involved in the collusion had a share in the concrete pile market in South Korea exceeding 90%.

KFTC fines Dolby for abusing patent rights

On 13 August 2021, the KFTC imposed a fine of KRW 270 million (USD 0.23 million) on Dolby Laboratories ("**Dolby**") for suspending the approval process for SEP for Kaon Media, and forcing Kaon Media to agree to a royalty audit result which was advantageous for Dolby.

KFTC fines Coupang for dictating supplier prices

On 19 August 2021, the KFTC imposed a fine of KRW 3.29 billion (USD 2.8 million) on Coupang, a Korean online mall operator, for requiring suppliers to increase the sales price of their products on Coupang's competitors' online malls, and for forcing suppliers to buy advertisements on Coupang's website.

Amended Telecommunications Business Act imposes restrictions on app market operators

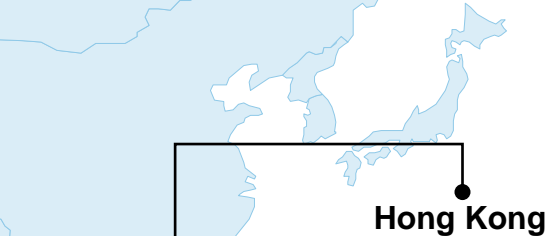
On 31 August 2021, the Korean National Assembly passed a bill amending South Korea's Telecommunications Business Act. The amendment would, among others, prevent app stores from requiring the use of a specific payment processing system such as an app store's own in-app payment solution. Compliance with the amendment would be overseen by the Korea Communication Commission. Conduct that is within the scope of the amendment may also be subject to investigation by the KFTC. This is the first case in the world where app store operators have been prohibited from imposing the obligation on app developers to use app store operators' own payment processing system.

KFTC receives more filings in the first half of 2021 compared to the last year

On 6 September 2021, the KFTC announced that the KFTC had received 489 filings in the first half of 2021, which was up by 65 from the same period last year. Among those, 67 filings were made by foreign companies.

KFTC fines Google for hampering mobile OS market competition

On 14 September 2021, the KFTC announced that it had imposed a fine of KRW 207.4 billion (USD 177 million) on Google regarding its Android mobile phone operating system ("**OS**"). The KFTC indicated that Google forced mobile manufacturers such as Samsung not to release devices using a modified version of the OS, the so-called "Android forks", and as a result Google blocked the emergence of Android forks and thereby strengthened Google's position in the mobile OS market. The KFTC started the investigation on this matter back in 2016.



Hong Kong

HKCC addresses competition concerns over admission criteria and procedures of trade association

On 29 July 2021, the Competition Commission ("**HKCC**") has published an advisory bulletin regarding certain admission criteria and procedures of trade, sporting, professional and industry associations/bodies. HKCC noted that the decisions of trade associations, in particular the admission criteria and admission procedures, could give rise to competition concerns. As set out in the First Conduct Rule Guideline, rules for admission should be (i) transparent, (ii) proportionate, (iii) non-discriminatory, (iv) based on objective standards, and (v) subject to appeal in the event of a refusal to admit a party to membership. The HKCC encourages trade associations to actively review their admission criteria and procedures and to make changes where needed in accordance with the guidance provided in the advisory bulletin.

In relation to the advisory bulletin, the HKCC announced on 23 September 2021 that it is looking into the matters regarding the decision of Volleyball Association of Hong Kong to exclude its five members from the status of "Full Membership" and seeking information from the relevant parties.

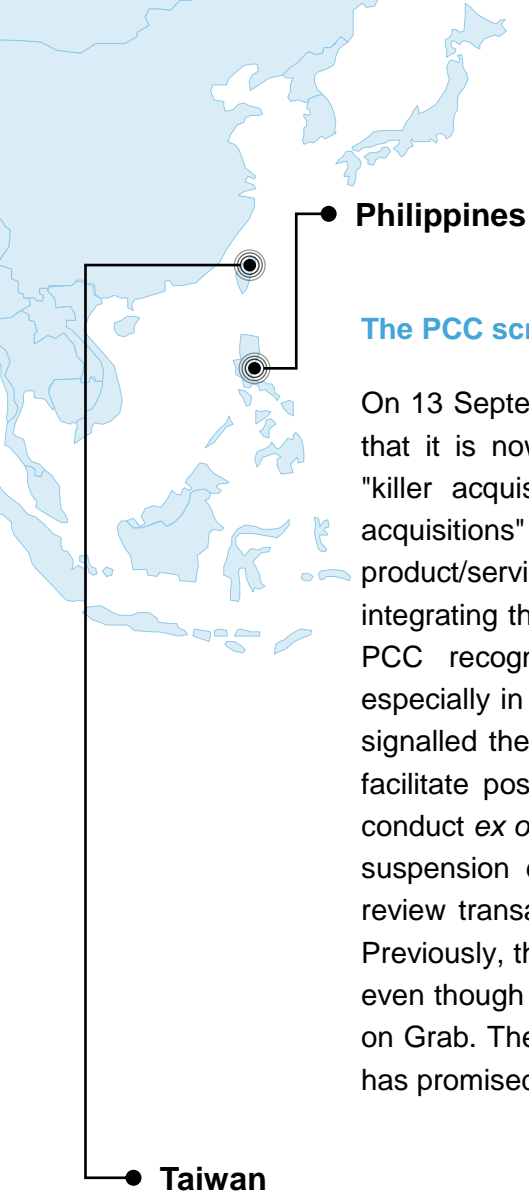
HKCC consults on the review of the Block Exemption Order

On 5 August 2021, HKCC announced the commencement of an initial consultation regarding its review of the Competition (Block Exemption for Vessel Sharing Agreements) Order 2017 ("**Block Exemption Order**"). The Block Exemption Order made in 2017 provides a block exemption to vessel sharing agreements, i.e. agreements between shipping lines on certain operational arrangements (which include consortia, slot exchange agreements, joint service agreements and alliance). Interested parties have been invited to submit their views by 4 November 2021, addressing the HKCC on matters including market developments, effectiveness of the Block Exemption Order and market share limit. The HKCC will make a decision on the future of the Block Exemption Order prior to 8 August 2022.

Malaysia

MyCC probes into food delivery platforms

On 26 July 2021, the Malaysia Competition Commission ("**MyCC**") issued a statement to launch an inquiry into the country's food delivery companies relating to competition concerns. The inquiry was in response to public complaints on issues such as (i) exorbitant commissions; (ii) high food prices; and (iii) the platforms' treatment of platform users, vendors and riders who deliver the foods. The CEO of the MyCC said the MyCC is now considering possible solutions and may invoke enforcement powers in the future. No specific platform was identified in the MyCC statement.



Philippines

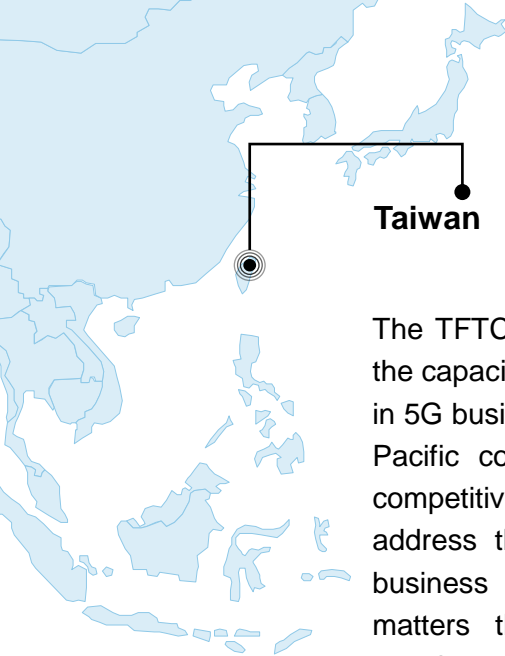
The PCC scrutinises anticompetitive deals involving digital platforms

On 13 September 2021, the Philippine Competition Commission ("**PCC**") announced that it is now scrutinising transactions involving digital platforms, in particular the "killer acquisitions" in food delivery and transportation service platforms. "Killer acquisitions" is a term often used to describe a company's acquisition of a product/service in development that would compete with its own, then terminating or integrating the newly acquired product, with the effect of preventing competition. The PCC recognises the potential anti-competitive effects of "killer acquisitions", especially in the context of the COVID-19 pandemic. The PCC's announcement also signalled the reboot of its *ex officio* merger review after a one-year moratorium – to facilitate post-pandemic economic recovery, the PCC had suspended its power to conduct *ex officio* merger investigation for one year since 15 September 2020. As the suspension expired on 14 September 2021, the PCC now reclaims its power to review transactions it considers anticompetitive regardless of the transaction value. Previously, the PCC reviewed ride-hailing platform Grab's acquisition of Uber in 2019, even though the transaction did not meet the filing threshold, and imposed conditions on Grab. The PCC anticipates increasing acquisitions in the digital marketplace, and has promised to keep an eye on transactions in this sector.

Taiwan

TFTC conditionally approves 5G network sharing between Asia Pacific and Far EasTone

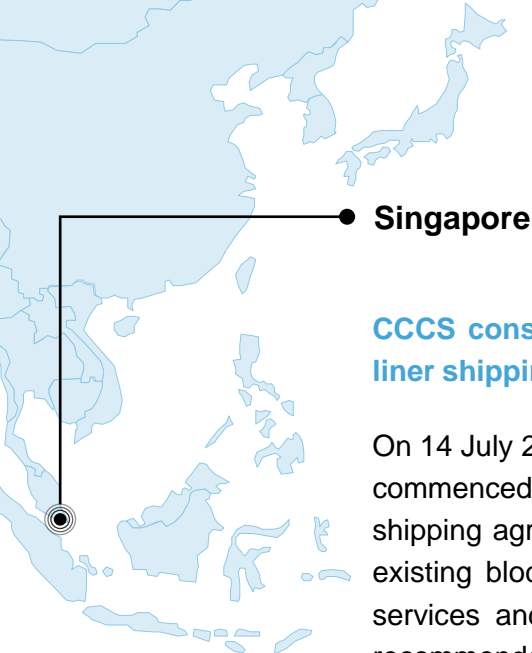
On 4 August 2021, the Taiwan Fair Trade Commission ("**TFTC**") conditionally approved Asia Pacific Telecom ("**Asia Pacific**")'s proposed acquisition of a substantial part of the assets of Far EasTone Telecommunications ("**Far EasTone**"). Asia Pacific and Far EasTone are among the five telecommunication service providers in Taiwan. With regard to 5G bandwidth on the 3.5GHz frequency band, Far EasTone is considered to have 30% of the market share while Asia Pacific does not yet have capacities in this area. The transaction involves (i) Asia Pacific's acquisition of two-ninths of use rights of Far EasTone's 5G bandwidth on the 3.5GHz frequency band, which allows Far EasTone to share its 5G network capacity with Asia Pacific and enables Asia Pacific to compete in the 5G telecommunication services market in Taiwan; and (ii) Far EasTone's acquisition of an 11.58% stake in Asia Pacific, which accompanies Far EasTone's right to appoint a director to Asia Pacific's board.



The TFTC held that the proposed transaction could be anti-competitive because (i) the capacity sharing may lead to exchange of information between the two companies in 5G business operations; (ii) Far EasTone's involvement in the management of Asia Pacific could result in concerted practice; and (iii) there would be hardly any competitive pressure from new entrants given the high entry barriers in the sector. To address these concerns, the TFTC ordered the parties (i) not to conduct joint business operations, research or information exchange in relation to operational matters through the shared 5G capacity, acquired shareholding or director appointment; and (ii) to send minutes of each shareholders' meeting and board meeting of Asia Pacific to the TFTC for five consecutive years.

TFTC fines Foodpanda for imposing trading restrictions

On 17 September 2021, the TFTC announced that it had fined Foodpanda for imposing unreasonable trading restrictions. Foodpanda and UberEats are the two largest food delivery platforms in Taiwan and are considered to have significant market power. The TFTC found the following conduct anti-competitive: (i) Foodpanda required restaurants on its platform to offer the same prices for customers ordering via its platform and those ordering at the restaurants – given the price parity restriction, even if Foodpanda lifted its commissions, the price on its platform would not be higher than that in the restaurants, so Foodpanda App users would not switch to dine-in facilities, giving Foodpanda the incentive and the capability to increase its commission; and (ii) Foodpanda forced restaurants to accept its "in-restaurant pickup" function which allows customers to place orders via the Foodpanda App and subsequently pick up the meals at the restaurants. At the same time, Foodpanda offered attractive discounts for customers using this function. Given that the customers who use the "in-restaurant pickup" function are often those who would also physically place orders at the restaurants, Foodpanda's conduct effectively motivates such customers to switch from placing orders at the restaurants (where Foodpanda cannot charge commissions) to placing orders via the Foodpanda App (where Foodpanda charges commissions). The TFTC found that Foodpanda's conduct violated Article 20(5) of the Fair Trade Act for imposing unreasonable restrictions on trading counterparties' business activities. The TFTC fined Foodpanda NTD 2 million (USD 72,200) and ordered it to cease the conduct immediately. Meanwhile, the TFTC noted that Foodpanda and UberEats encouraged restaurants to reach an exclusive agreement with them by offering discounts on commissions. The TFTC has not yet identified any anticompetitive issue concerning this arrangement, but it warned that with the food delivery market being increasingly concentrated, exclusivity restrictions may be considered anti-competitive in the future.



● Singapore

CCCS consults on proposed recommendations for block exemption order for liner shipping agreement

On 14 July 2021, the Competition and Consumer Commission of Singapore ("**CCCS**") commenced consultation on the proposed extension of the block exemption for liner shipping agreement for three years from 1 January 2022 to 31 December 2024. The existing block exemption covers both vessel sharing agreements for liner shipping services and price discussions agreements for feeder service (i.e. discussions of recommended surcharges by feeders charged to their main line customers to improve their position in commercial negotiations with main line customers). The CCCS will make recommendation to the Minister for Trade and Industry after it has considered the written submissions received.

CCCS consults on scope of mitigating factors in its penalty guideline

On 16 July 2021, the CCCS commenced consultation on the proposed changes to its Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016. The CCCS intends to provide greater clarity on the circumstances in which an undertaking's role in a section 34 infringement may be deserving of a mitigating discount in the calculation of financial penalties. Specifically, it is proposed that an example will be provided to illustrate when "substantially limited involvement" by an undertaking would amount to a mitigating factor; a new paragraph will be introduced to clarify the CCCS's policy position on the treatment of undertakings that did not play a leader, instigator or pro-action participant role in an infringement.

CCCS consults on guidance note for business collaborations

On 30 July 2021, the CCCS commenced consultation on a proposed business collaboration guidance note to clarify its positions on six common types of business collaborations, namely (i) information sharing; (ii) joint production; (iii) joint commercialisation; (iv) joint purchasing; (v) joint research & development and (vi) standardisation. The guidance note will provide details on the conditions under which the six types of collaborations would not give rise to competition concerns and elaborate on some factors that the CCCS would use in its assessment such as the nature and extent of the collaborations, collaborating parties as well as market shares.

Pakistan

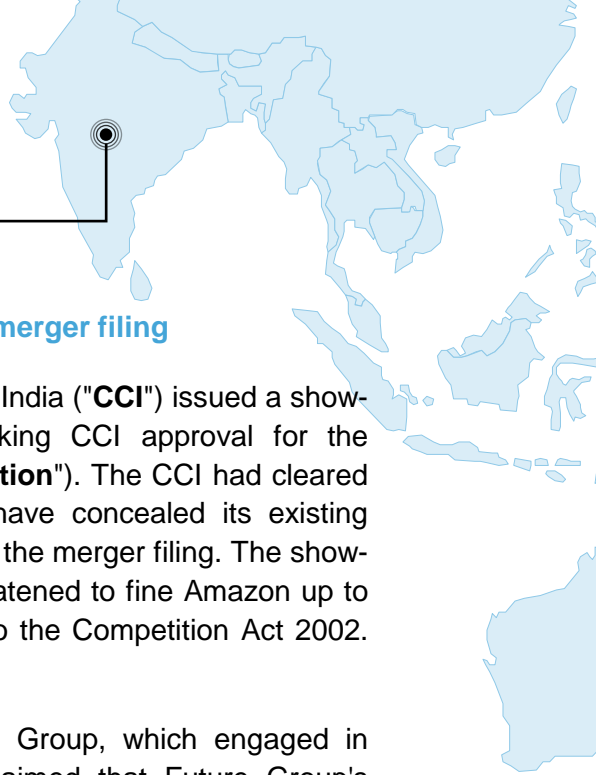


Pakistan launches its first abuse probe into digital platform

On 7 July 2021, the Competition Commission of Pakistan ("**CCP**") announced that it has launched an investigation against Foodpanda for alleged abuse of dominance. This is the CCP's first abuse probe into a digital platform. The investigation was initiated upon complaints from Cheetay Logistics Pakistan (Foodpanda's competitor) and the All Pakistan Restaurant Association. The CCP found that Foodpanda may have a dominant position in the market of online food delivery platforms and its following conduct may be anti-competitive: (i) Foodpanda was accused of charging exploitative commissions during the COVID-19 pandemic; (ii) Foodpanda offered fidelity rebates to restaurants with the effect of excluding its business rivals; and (iii) Foodpanda engaged in discriminatory practices by charging commissions differently among restaurants and multinational food chains. The CCP will also review the competition effects of the three-year exemption which it previously granted to Foodpanda in April 2019. The exemption concerns Foodpanda's agreements with restaurants which conferred loyalty rebates to those restaurants who exclusively use Foodpanda's online service for one year. The CCP had endorsed such agreements as it deemed that the restaurants would gain material benefits and did not raise any objection. The CCP has finished consultation with the concerned stakeholders and is deliberating the matter.

CCP slaps a record fine for cartel activity

On 13 August 2021, the CCP imposed a record fine on the Pakistan Sugar Mills Association ("**PSMA**") and its 81 members for cartel activity. The anti-competitive conduct identified by the CCP is as follows: (i) from 2012 to 2020, the PSMA and its Punjab-based member mills coordinated sales, stock and production volume; (ii) from 2012 to 2020, the PSMA and certain member mills collectively pre-determined export quantities; and (iii) in 2010 and 2019, the PSMA interfered in the Utility Stores Corporation's sugar supply tenders to fix the tender quantities amongst the PSMA's member mills. The CCP held that the conduct had harmed the competition in the sugar market. Considering the PSMA's leading role in the cartel, the CCP fined the PSMA PKR 300 million (USD 1.8 million), the maximum penalty under the relevant laws. For the member sugar mills involved, the CCP issued fines equalling 5% to 7% of their respective turnover. Collectively, the penalties added up to PKR 44 billion (USD 268 million), being in aggregate the highest fine ever imposed by the CCP.



India ●

CCI issues show-cause notice to Amazon for hiding facts in a merger filing

On 22 July 2021, it is reported that the Competition Commission of India ("**CCI**") issued a show-cause notice against Amazon for concealing facts when seeking CCI approval for the acquisition of 49% of Future Coupons ("**Future Coupons Acquisition**"). The CCI had cleared the acquisition in 2019, and now believes that Amazon may have concealed its existing strategic interest in Future Retail (an affiliate of Future Coupons) in the merger filing. The show-cause notice asked Amazon to respond to the allegation and threatened to fine Amazon up to INR 10 million (USD 135,700) for material omissions according to the Competition Act 2002. Amazon said that it would fully cooperate.

Notably, the probe was initiated upon a complaint from Future Group, which engaged in ongoing litigation with Amazon. In that proceeding, Amazon claimed that Future Group's decision to sell its retail and wholesale business unit to Reliance Retail Ventures, Amazon's major rival, breached a non-compete clause which forms part of the Future Coupons Acquisition.

India Supreme Court clears the final judicial hurdle of the CCI's probe into Amazon/Flipkart

On 9 August 2021, the Supreme Court of India dismissed the appeals of Amazon and Flipkart, paving the way for the CCI to proceed with its investigation of the two companies. Since February 2020, Amazon/Flipkart and the CCI have been entangled in a legal fight on whether the CCI could legally initiate an investigation into Amazon/Flipkart. On 23 July 2021, the Karnataka High Court allowed the CCI to resume its investigation, which decision was then appealed by Amazon/Flipkart to the Supreme Court of India. By dismissing the appeal, the Supreme Court of India ended the judicial challenges to this high-profile probe. The court noted that leading market players such as Amazon and Flipkart should volunteer for such investigations and granted the firms four weeks to file their response to the CCI.

CCI announces the second-ever RPM fine against Maruti

On 23 August 2021, the CCI fined Maruti Suzuki ("**Maruti**"), a leading passenger vehicle manufacturer in India, for RPM. Following an anonymous complaint, the CCI initiated an investigation in 2019 and found that, since August 2012, Maruti imposed a discount control policy on its dealers across the country to prevent them from giving discounts beyond a certain level, and even sent fake shoppers to the dealerships to monitor compliance with the policy. For those failing to comply with the policy, Maruti imposed pecuniary penalties and threatened to discontinue supply, and at the same time dispatched a warning notice to Maruti's other dealerships. The CCI held that Maruti's conduct breached Section 3(4)(e) of the Competition Act 2002 that prohibits RPM. Considering that the Indian automobile industry is undergoing post-pandemic recovery, the CCI fined Maruti only INR 2 billion (USD 27 million) without specifying the calculation basis.

A light blue map showing Australia, New Zealand, and parts of Southeast Asia and the Pacific. A black dot is located on the eastern coast of Australia, with a horizontal line extending to the left towards the word 'Australia'.

Australia

ACCC's Digital Advertising Services Inquiry Final Report finds Google's dominance in ad tech supply chain lessens competition and harms consumers

On 28 September 2021, the Australian Competition and Consumer Commission ("**ACCC**") published its final report into the advertising technology ("**ad tech**") sector ("**Report**"). Of particular focus in the Report are the agency services facilitating the transactions for selling and buying advertising space on websites or apps for ads displayed to consumers. The Report finds Google has a dominant position in key parts of the ad tech supply trade. It is estimated that in 2020 more than 90% of ads traded passed through at least one Google service. The Report also finds Google has leveraged its position to preference its own services. Google's access to data and exclusive inventory, as well as the vertical integration across its ad tech services, are identified as key contributing factors to its dominance. Google's acquisitions of YouTube (2006), DoubleClick (2007) and AdMob (2008) are also highlighted as entrenching Google's dominant position in the ad tech sector.

The ACCC has expressed its concern that the lack of competition in ad tech has likely led to higher fees, higher costs for publishers and advertisers, is likely to reduce the quality and/or quantity of online content and has ultimately resulted in consumers paying more for advertised goods in Australia. The ACCC has indicated it is considering specific allegations against Google under existing Australian competition laws but has also acknowledged that new regulatory solutions are needed to address Google's dominance, particularly to prevent anticompetitive self-preferencing and to manage conflict of interest issues. Google's current ability to act on behalf of both the advertiser and the publisher on a single transaction, operating the ad exchange between those two parties, is an example of Google's harmful behaviour the ACCC has taken issue with. Proposed rules and powers to be introduced in response to the Report's recommendations continue to be assessed as part of the ACCC's broader Digital Platform Services Inquiry's Interim Report due in September 2022.

ACCC is to investigate Apple Pay restrictions

The ACCC has communicated it is investigating the Apple Pay practices and impact on competition of Apple. An iPhone near-field communication ("**NFC**") chip focused inquiry led by the ACCC would follow the European Commission's own NFC investigation, commenced in June 2020. The ACCC's investigation would also follow concerns expressed by the CEO of Australia's largest bank (by market capitalisation), the Commonwealth Bank of Australia ("**CBA**"), to a Parliamentary Joint Committee on Corporations and Financial Services ("**Committee**") (Mobile and Digital Wallet Inquiry) heard earlier this year. CBA has stated that regulatory intervention is needed to reintroduce competitive tension in

Australia

the digital wallet market. Over the past few years, CBA has also voiced the need for "fair access" to the iPhone NFC chip and has previously sought authorisation from the ACCC to collectively bargain with Apple, along with other major Australian banks. The Reserve Bank of Australia's Head of Payments told the Committee that "there certainly are potential competition issues in respect of access to the NFC", also indicating that the Reserve Bank has been monitoring this issue over a number of years, including developments in Europe. By way of submission to the Committee, Apple has argued that Apple Pay wallet is pro-competitive as it allows users to toggle between different digital cards (mirroring selection from a physical wallet) while bank apps would lock-in users to the bank's products only. The ACCC confirmed to the Committee that "payments" were carved out of its Digital Platforms Inquiry's terms of reference and therefore the ACCC had not yet conducted significant review of the NFC issue as part of that Inquiry. The ACCC has also indicated that it is yet to consider whether there are separate markets for payments with respect to digital and physical wallets, as well as those offering different mechanisms to pay (such as QR codes). An official timetable for the ACCC's investigation into Apple Pay has not yet been released.

ACCC proposes changes to Australian antitrust merger review

Presently, merger review in Australia is voluntary and generally non-suspensory. Competition and Consumer Act 2010 prohibits the acquisition of assets or shares "with the effect or likely effect of substantially lessening competition in a market in Australia". In numerous recent statements, the ACCC's current Chair has questioned "whether Australia's merger control regime remains fit for purpose". This statement may be viewed in the context of another statement from the Chair that the ACCC has not "won outright in a contested merger case" in the past two decades. In August 2021, in his opening speech at the Law Council of Australia's Competition and Consumer Workshop with the Annual Address, the ACCC's Chair highlighted the following areas of Australia's merger laws as in need of particular attention: the clearance process, the legal test and merger factors guiding interpretation of that test, the need for recognition that acquisitions of rivals by firms with substantial market power are more likely to cause harm, as well as the need for specific changes with respect to large digital platforms. More specifically, the ACCC's Chair put forth the following proposed changes to Australia's merger law and the ACCC's methodology for merger reviews:

A light blue map of Australia and surrounding regions, including parts of Asia and the Pacific. A black dot is located on the eastern coast of Australia, with a line extending from it to the left towards the word 'Australia'.

Australia

- **Mandatory merger review**

Unlike other jurisdictions, in Australia there is no revenue threshold above which parties must notify a transaction to the ACCC. Regardless, parties are encouraged by the ACCC to submit a notification if the combined post-merger market share exceeds 20%. The ACCC is also known to investigate transactions that are not notified. A single mandatory and suspensory merger notification and review process is proposed to replace the current informal and formal clearance systems. This would mean that parties to all mergers meeting certain thresholds (not yet specified) would be required to notify their transaction to the ACCC and that completion would be prohibited until receiving ACCC clearance. This would bring Australia into greater alignment with United States and European practice. The ACCC is also seeking a "call-in" power allowing it to review certain mergers (up to several years after closing) if below certain thresholds and there is a reason to believe potential competition issues.

- **Increased scrutiny of entities with substantial market power**

A presumption is also proposed that transactions where a party to the merger possesses "substantial market power" would be deemed to substantially lessen competition, and therefore be prohibited, if that transaction "is likely to entrench, materially increase or materially extend" that substantial market power. On what basis "substantial market power" would be established or how this additional test may work in practice is not yet indicated. Nor is it made clear whether the merging parties would have the opportunity to rebut such a presumption. The focus of this proposed presumption appears similar to that of the United States' Federal Trade Commission ("**FTC**") and the Department of Justice's Antitrust Division ("**DOJ**") in that mergers in highly concentrated U.S. markets are presumed to be likely to enhance market power.

- **Definition for "likely"**

"Likely" has widely been accepted as meaning "a real chance or possibility" since the 2011 court decision of ACCC v Metcash Trading Limited. It is proposed that a new legislative (rather than existing case law, precedent based) definition be introduced to lower the "likely" standard to "a possibility that is not remote".

- **Introduction of additional merger factors to counter "killer acquisitions"**

Two new merger factors are proposed, being that the ACCC must consider the following when analysing the unlawfulness of a transaction: (i) the likelihood that the transaction will result in a potential competitor exiting the market; and (ii) the nature and significance of assets being acquiring (focussing on data and technology). These factors were proposed in 2019 in the ACCC's Digital Platforms Inquiry Final Report and can be considered against recent particular attention given to "killer acquisitions" in the technology and finance sectors in Australia.



Australia

- **Considering other agreements**

Currently, the ACCC under existing guidance must consider a marketplace's competitiveness both with and without the transaction, including analysis of the "counterfactual", which involves a comparison of what is likely to happen in the absence of the proposed transaction. A proposed change is to permit the ACCC to consider other agreements between the parties in its assessment to prevent parties from taking steps to change the counterfactual or take advantage of any anti-overlap provisions (i.e. exceptions to the cartel regime) currently available under Australian antitrust law.

- **Large digital platforms**

Special rules for acquisitions involving a large digital platform are also proposed. "Large digital platform" and applicable thresholds remain to be defined and outlined. More guidance is expected in the ACCC's forthcoming reports (throughout 2022-2025) as part of its ongoing Digital Platform Services Inquiry. In terms of the anticipated timing of such changes, the ACCC's Chair has acknowledged that no change is likely at least before Australia's next federal election (on or before 21 May 2022). Specific legislative change also remains yet to be proposed.

Collective bargaining between Google, Facebook and Australian media

The passing of legislation enacting the Treasury Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021 ("**Code**") by Australian Parliament on 25 February 2021 has provided an incentive for major digital platforms to start paying media organisations for the news content displayed on their platforms. The Code arose from one of the recommendations made by the ACCC's Digital Platforms Inquiry 2019 Final Report to address imbalance between digital platforms and Australian news businesses. The Code allows news media businesses to bargain individually or collectively with "designated" digital platforms for payment of the inclusion of those media business' news on the platforms' services. Deals outside of the Code and "standard offers" are also to be available to platforms and news media businesses. Despite the Code not yet coming into effect due to no platforms being "designated" to date by the Treasurer, the ACCC has considered the granting of authorisation to two Australian news businesses to bargain with Facebook and Google:

- **Country Press Australia ("CPA")** was granted interim authorisation to bargain on behalf of its members on 29 April 2021. Authorisation was then granted by the ACCC on 5 August 2021 for a period of 10 years. CPA is an industry body representing over 80 news publishers providing local and independent news across over 150 regional Australian titles.

Australia

- **Commercial Radio Australia ("CRA")** will be authorised (for 10 years) to collectively negotiate on behalf of all its members (other than stations operated by Nine Entertainment Co) under a draft determination issued by the ACCC on 10 September 2021. CRA is a radio industry association representing over 250 member stations providing commercial radio broadcasting and audio content to Australian communities via radio and online platforms.

ACCC authorisation provides statutory protection from court action for conduct that might otherwise raise concerns under the Competition and Consumer Act 2010. Generally, authorisation may be granted when the ACCC is satisfied that the likely benefit from the conduct outweighs the likely public detriment. Without authorisation, the CPA and CRA arrangements referred to above would risk breaching competition laws until "designation" of platforms occurs. Designation will automatically allow for collective bargaining by news media businesses in Australia.

Beijing



Yong Bai

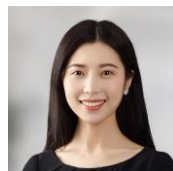
Partner, Head of Antitrust,
Greater China

T +86 106535 2286

M +86 13910850420

E yong.bai
@cliffordchance.com

Beijing



Zibo Liu

Senior Associate

T +86 106535 4925

M +86 13910555340

E zibo.liu
@cliffordchance.com

Sydney



Dave Poddar

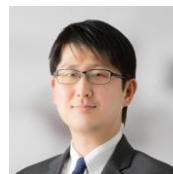
Partner, Head of Antitrust,
Asia Pacific

T +61 28922 8033

M +61 422800415

E dave.poddar
@cliffordchance.com

Tokyo



Masafumi Shikakura

Counsel, Head of Antitrust,
Japan

T +81 (0)3 6632 6323

M +81 (0)80 1385 9808

E masafumi.shikakura
@cliffordchance.com

Hong Kong



Helen Wang

Consultant

T +852 2826 3524

M +852 6293 5998

E helen.wang
@cliffordchance.com

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

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