

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



ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE

October to December 2021

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ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: OCTOBER TO DECEMBER 2021

INTRODUCTION

The final quarter of 2021 marks an extremely constructive season in the antitrust arena in China, where antitrust scrutiny over digital platforms clearly remained unabated. On the enforcement side, Meituan, the largest online food delivery platform in China, became the third tech firm (after Alibaba and Sherpa's) to be fined for abuse of dominance by imposing exclusive dealing, also known as "choose one from two" in the Chinese context. The fine was RMB 3,442,439,866 (USD 540,677,523), accounting for 3% of Meituan's revenue in FY2020. Regarding merger control, 43 failure-to-file transactions made by Chinese tech companies and digital platforms, such as Alibaba, Baidu, JD.com, Didi and Meituan, were penalised by the Chinese antitrust authority ("**SAMR**") in the fourth quarter. In respect of policy support, SAMR set up the Competition Policy and Big Data Centre to conduct research on competition policies, particularly in response to antitrust issues posed by the platform economy. In addition, two sets of guidelines in relation to the classification of online platforms and implementation of obligations of online platforms were published by SAMR for consultation. Furthermore, a trade association, the China Association for Standardization, jointly with academic institutions and law firms, published a set of non-binding Draft Norms for Anti-Monopoly Compliance Management for Platform Undertakings, to facilitate digital platforms' full compliance with China's antitrust rules. Similarly, local antitrust authorities published antitrust compliance guidelines to assist platform players with establishing internal antitrust compliance systems.

In relation to the wider economy, there were two crucial antitrust developments in China, i.e., the establishment of the National Anti-Monopoly Bureau, and the publication of a consultation draft of the amended Anti-Monopoly Law ("**AML**"):

- The new bureau has replaced the previous bureau and marks an acceleration of administration level in the hierarchy of Chinese public agencies. Further, the new bureau is expected to increase manpower and is undergoing an internal revamp, whereby three new divisions (Competition Policy Co-ordination Division, Anti-Monopoly Enforcement Division I, and Anti-Monopoly Enforcement Division II) have been set up. Ms. Gan Lin (the vice minister of SAMR) is appointed as head of the new antitrust bureau in China.
- The draft amendments of AML introduced notable changes at multiple levels, including significantly harsher legal liabilities for breaching merger control as well as conduct rules, recognition of hub-and-spoke, a more flexible approach to vertical anti-competitive agreements, consideration of the impact of the digital economy, etc. The amended AML is expected to come into force in 2022.



ANTITRUST IN CHINA AND ACROSS THE REGION

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Apart from the above, notable antitrust updates in China included: SAMR clearing two high-profile transactions subject to behavioural conditions – Illinois Tool Works/MTS Systems; and SK Hynix Inc./NAND memory and storage business of Intel; three excessive pricing fines on Active Pharmaceutical Ingredients ("API") and in the natural gas sector; the Guidance on Overseas Antitrust Compliance was published by SAMR to guide Chinese companies with overseas operations in complying with overseas competition rules; the Antitrust Guidelines on API were published to echo the enforcement focus on API; and the Draft Measures on the Determination of Illegal Gains in Cases involving Administrative Penalty were also released for public comment.

Outside China, antitrust clampdown on tech firms continued across the region: South Korea published further draft amendments to the enforcement decree of the Telecommunications Business Act, which as reported previously is the first piece of law that prohibits app stores from obliging app developers to use in-app payment systems. In Japan, the investigation into app store issues in the gaming field remained ongoing. In Australia, Epic Games was permitted to continue its competition lawsuit against Apple, and a new parliamentary inquiry into Big Tech was launched. In New Zealand, the High Court granted declarations sought by the antitrust watchdog in relation to an online advertising cartel. In India, a severe decision was made against Amazon, according to which the merger control approval for Amazon/Future Coupons was revoked and a fine of INR 2 billion (USD 26.36 million) was imposed for Amazon's submission of inaccurate information. Regarding wider policy-making and legislative efforts, this quarter also saw: Australia's new Chairperson and new Commissioner of the competition authority are anticipated; the Amended Korean Fair Trade Law came into effect; Hong Kong published a policy on commitments; Singapore completed the review of its Guidelines on the Competition Act 2004; and Taiwan raised the maximum reward for whistle-blowers.

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SPECIAL REPORT: CHINA SIGNALS ENDURING ANTITRUST SCRUTINY

The last quarter of 2021 saw China reaffirm its commitments on antitrust scrutiny. On 16 November 2021, the Resolution on the Major Achievements and Historical Experience of the Communist Party of China ("**CPC**") over the Past Century recognises the historical significance of the efforts made to strengthen antitrust regulation to curtail disorganised capital expansion and emphasises the importance of continuous antitrust enforcement in China's future economic development. A similar message was released during the Central Economic Work Conference held later in December, when antitrust enforcement was listed as a key task in the country's economic agenda of the next year.

To facilitate the increasingly heightened antitrust enforcement, the Anti-Monopoly Bureau, which was under the SAMR, has been escalated to an upper level in the country's administrative hierarchy and now become the National Anti-Monopoly Bureau (official English name not released yet). The new bureau consists of three newly established divisions: (i) *Competition Policy Co-ordination Division*, which is tasked with promoting the implementation of competition policies and co-ordination of antitrust-related work; (ii) *Anti-Monopoly Enforcement Division I*, which is in charge of monopoly agreements, abuse of market dominance and abuse of intelligence property rights to eliminate and restrict competition; and (iii) *Anti-Monopoly Enforcement Division II*, which takes responsibility for merger control filings. The new bureau was officially launched by SAMR on 18 November 2021 and was released earlier in that week when Ms. Gan Lin (who is the vice minister of SAMR) was appointed as the head of the new antitrust bureau. This organisational revamp marks China's determination to expand antitrust enforcement manpower in order for further strengthened antitrust clampdown.

Furthermore, on 16 December 2021, the Competition Policy and Big Data Centre was established by SAMR to conduct research on competition policies and cutting-edge antitrust issues (particularly those related to the platform economy) and provide technological support to antitrust enforcement, market monitoring, collection of electronic evidence and big data analysis. The centre is expected to play a significant role in SAMR's future antitrust enforcement activities, in particular in relation to digital platforms.

Another notable antitrust development in the past quarter relates to antitrust legislation. On 23 October 2021, the National People's Congress of China published a consultation draft of the amended AML for public comments until 21 November 2021 ("**Draft Amended AML**"), with critical changes discussed in detail in [**Annex 1**](#) below. The amended AML is expected to come into force in the first half of 2022.



SPECIAL REPORT: CHINA'S ANTITRUST OVERSIGHT ON THE PLATFORM ECONOMY REMAINS ROBUST

China's antitrust passion on digital platforms remains high in the past quarter. On 19 October 2021, President Xi Jinping pointed out in a CPC learning session that China should take every opportunity to advance the country's digital economy, which carries strategic importance and is crucial in shaping the country's future competitive edge. President Xi also recognises that the ongoing antitrust clampdown is not intended to stifle the digital economy sector but to the contrary to ensure it has the healthy competition environment it needs to grow in a sustainable manner.

Meituan, the largest online food delivery platform in China, was fined for abuse of dominance through requiring customers to exclusively deal with Meituan, also known for "choose one from two" in the Chinese context. Based on SAMR's penalty decision published on 15 October 2021, Meituan (i) urged the restaurants to enter into exclusivity agreements with it – unco-operative restaurants could face higher commission rates (approximately 5-7% higher than the rates for co-operative restaurants) and delay or refusal for listing on the Meituan platform; and (ii) took various measures to ensure implementation of the exclusivity agreements, including conditioning sales staff's bonus on implementation of exclusive agreements and setting up a monitoring system based on big data, punishing non-compliant restaurants by requesting a punitive charge, lowering their rankings or even delisting them from the Meituan platform. The fine imposed by SAMR, which is RMB 3,442,439,866 (USD 540,677,523), accounts for 3% of Meituan's revenue in FY2020. After the Alibaba and the Sherpa's fines, the Meituan decision marks the third time China has imposed antitrust fines on "choose one from two" by Chinese digital platforms.

Regarding merger control, SAMR in the past quarter published 43 failure-to-file penalty decisions, and imposed RMB 500,000 (USD 78,400) on each of the infringing companies, which include tech companies and digital platforms such as Alibaba, Baidu, JD.com, Suning, Tencent, Didi and Meituan. It is reported that some of these failure-to-file transactions were proactively reported to SAMR by the infringing parties after internal checks, in an attempt to avoid higher fine levels which may be applicable after the amended AML becomes effective. More details on the 43 decisions are set out in **Annex 2** below.

The antitrust storm brought by administrative enforcement appears to have raised the public's overall awareness of antitrust. In November 2021, Hunan Eefung Software ("**Eefung**"), a data analysis company, brought a lawsuit before the Changsha Intermediate People's Court against Weibo, which runs China's largest microblogging platform. Eefung collects data obtained from platforms including Weibo and provides monitoring and analysis services for government authorities. Eefung alleged that Weibo had refused to grant Eefung access to Weibo's data and therefore had abused its dominant position in the Chinese microblogging market.



SPECIAL REPORT: CHINA'S ANTITRUST OVERSIGHT ON THE PLATFORM ECONOMY REMAINS ROBUST

SAMR also spared no effort in crafting additional antitrust rules to facilitate enforcement in the digital economy sector. On 29 October 2021, two sets of guidelines, namely the Guidelines for the Classification and Grading of Online Platforms and the Guidelines for the Implementation of Obligations of Online Platforms ("**Guidelines**") were published by SAMR for consultation. Pursuant to the Guidelines, online platforms will be classified into super platforms, large platforms, and small and medium-sized platforms according to the number of active users, business scope, estimated market value, and their ability to restrict merchants from directly contacting consumers. Platforms classified as super platforms or large platforms would be subject to stricter obligation, both in terms of compliance with antitrust rules and general fair treatment of third-party business partners who rely on the platforms for operation. The Guidelines seem to have to some extent modelled upon the gatekeeper regime under the draft Digital Markets Act which was released by the European Commission in 2021.

Another eye-catching move in the past quarter is that the China Association for Standardization, jointly with other academic institutions and law firms, drafted and published the Draft Norms for Anti-Monopoly Compliance Management for Platform Undertakings ("**Norms**"). The Norms are not mandatory but aimed to serve as a helpful guide for platforms to establish their antitrust compliance and risk management systems and to effectively minimise antitrust risks.

Furthermore, local authorities have also published antitrust compliance guidelines to assist platform players with establishing their internal antitrust compliance systems, with Beijing and Zhejiang provinces (which are home to many Chinese platforms, such as Alibaba, Baidu, JD.com, ByteDance, Didi and Meituan) being the two frontrunners.



SPECIAL REPORT

Annex 1 Major amendments in Draft Amended AML

1. Merger control

- **More harsh legal liabilities:** (i) Failure-to-notify: the maximum fine would be increased from the current RMB 500,000 (USD 78,400) to 10% of the notifying party's turnover in the last year, noting that (a) if the unreported transaction has no anti-competitive effects, the fine would be up to RMB 5 million (USD 784,000); and (b) if the violation is particularly serious (there is no further explanation on this, and in practice this may include, for example, if the unreported transaction has resulted in very serious consequences), the fine could be raised to two to five times the original amount (in theory, therefore, the fine to be imposed can be up to 50% of the notifying party's turnover in the past year); (ii) Provision of false information: the maximum fine would be increased for companies from the current RMB 1 million (USD 156,800) to 1% of past year's turnover, and for individuals from RMB 100,000 (USD 15,680) to RMB 500,000 (USD 78,400).
- **Below-threshold transactions under tighter scrutiny:** If evidence suggests that a transaction, which is below filing thresholds, has or may have anti-competitive effects, SAMR shall investigate such transactions. "Killer acquisitions" would therefore likely be caught in the future.
- **Key sectors of focus:** Sectors that concern livelihood, and other sectors in particular including finance, technology and media are considered to be the focus of merger control in China.
- **"Stop-the-clock" mechanism:** SAMR's review could be suspended if (i) parties fail to provide requested information; (ii) there are new circumstances or facts that would substantially impact the case under review; or (iii) proposed remedies require further assessment. The "stop-the-clock" mechanism would avoid the existing practice of "pull and refile" when statutory review limits expire in complex cases, but a potential downside is that this may cause uncertainty or delay in timeline in less complex cases.

2. Anti-competitive conduct

- **Effects-based approach to Resale Price Maintenance ("RPM"):** This is the first attempt to clarify under the law that RPM, in the absence of anti-competitive effects, would not be prohibited (although the undertakings concerned shall bear the burden of proof that the RPM concerned does not have anti-competitive effects). This would settle the long-standing inconsistency in the approach to RPM in civil proceedings and administrative enforcement.
- **"Hub-and-spoke" practice prohibited:** Organising or providing substantial help to reach monopoly agreements would be prohibited, and would be subject to the same penalties as for those companies that enter into such agreements. Hub-and-spoke practice is not covered in the current AML.



SPECIAL REPORT

Annex 1 Major amendments in Draft Amended AML

- "Safe harbour" available:** The Draft Amended AML is clearly seeking to provide a safe harbour for horizontal/vertical agreements without substantial harm. However, it remains unclear whether market share thresholds would exactly follow the existing antitrust guidelines for the IP and auto sectors, where share thresholds are 20% for certain horizontal agreements and 30% for certain vertical agreements. It also calls for clarification as to which agreements would be incapable of benefiting from the safe harbour (such as the so-called hardcore restrictions).
- Digital economy's impact reflected:** It is emphasised in the general clause at the beginning that abusing data and algorithms, technologies, capital advantage, and platform rules to eliminate or restrict competition is prohibited. Under the abuse of dominance chapter, a new paragraph is added to prohibit dominant undertakings from using data and algorithms, technology and platform rules to impose unreasonable restrictions on other undertakings. Previously, similar wording could only be found in the Platform Antitrust Guidelines (published in February), but it has now been escalated to the AML.
- Legal liabilities strengthened:** Changes are shown below:

Violations	Current AML	Draft Amended AML
Monopoly agreements concluded and implemented	1% – 10% of the turnover in the past year	1% – 10% of the turnover in the past year
Monopoly agreement concluded but not implemented	Up to RMB 500,000 (USD 78,400)	Up to RMB 3 million (USD 470,400)
Infringing party has no turnover in the past year	No rules	Up to RMB 5 million (USD 784,000)
Trade associations	Up to RMB 500,000 (USD 78,400)	Up to RMB 3 million (USD 470,400)
Individuals' liabilities	No rules	Legal representative, principal responsible person, and directly responsible person who shall be held personally liable: up to RMB 1 million (USD 156,800)
Obstruction of investigations	Individual: up to RMB 100,000 (USD 15,680)	Individual: up to RMB 500,000 (USD 78,400)
	Company: up to RMB 1 million (USD 156,800)	Company: up to 1% of the turnover in the past year



Annex 1 Major amendments in Draft Amended AML

3. Others

- **Criminal liabilities become possible:** The Draft Amended AML is attempting to criminalise certain anti-competitive conduct, which, however, would require the amendment of China's Criminal Law.
- **Public interest litigation introduced:** Prosecutors could initiate civil public interest litigation against undertakings that engage in anti-competitive conduct which harm social welfare.
- **Competition policy's fundamental role emphasised:** The Draft Amended AML emphasises the "fundamental role" of competition policy, indicating that China is further highlighting the importance of competition law and competition policy.



SPECIAL REPORT

Annex 2: Failure-to-file fines

No.	Fined transactions (with fined party's name <i>Italicised</i>)	Tech firms/online platforms involved
1	The acquisition of a 41% stake in Nanjing Greatbit Network Technology Co., Ltd. by <i>Beijing Baidu Netcom Science Co., Ltd.</i> and <i>Nanjing Wangdian Technology Co., Ltd.</i> in 2013	Baidu
2	The acquisition of a 32% stake in Yongyang Anfeng (Beijing) Technology Co., Ltd. by <i>Alibaba (China) Network Technology Co., Ltd.</i> and <i>Tencent Holdings Limited ("Tencent")</i> in 2014	Alibaba and Tencent
3	The acquisition of AutoNavi Holdings Limited by <i>Alibaba Investment Limited</i> in 2014	Alibaba
4	The acquisition of a 29.34% stake in Meizu Technology Corporation Limited by <i>Alibaba Investment Limited</i> in 2015	Alibaba
5	The establishment of a joint venture by <i>Beijing Jingdong Shangke Information Technology Co., Ltd.</i> and <i>iFlytek Co., Ltd.</i> in 2015	JD.com
6	The acquisition of a 15.56% stake in Shanghai SUNMI Technology Co., Ltd. by <i>Shanghai Hantao Information Consulting Co., Ltd.</i> in 2015	Meituan
7	The establishment of a joint venture by <i>Nanjing Suning.com Investment Co., Ltd.</i> and <i>Alibaba (China) Network Technology Co., Ltd.</i> in 2016	Suning.com and Alibaba
8	The acquisition of a 70% stake in Beijing Tengkang Huiyi Science and Technology Co., Ltd. by <i>Tencent</i> and <i>GAW Management Consulting (Shanghai) Co., Ltd.</i> in 2016	Tencent
9	The acquisition of a 10% stake in Nanjing Batian Trading Co., Ltd. by <i>Suning.com Group Co., Ltd.</i> in 2017	Suning.com
10	The acquisition of a 10% stake in China Medonline Inc. by <i>Tencent</i> in 2017	Tencent
11	The establishment of a joint venture by <i>China United Insurance Group Co., Ltd.</i> and <i>Shanghai Yunxin Venture Capital Co., Ltd.</i> in 2017.	Ant Group (a financial company affiliated to Alibaba)



Annex 2: Failure-to-file fines

No.	Fined transactions (with fined party's name <i>Italicised</i>)	Tech firms/online platforms involved
12	The acquisition of a 25% stake in Zhuan Spirit Holdings Limited by <i>Tencent</i> in 2017	Tencent
13	The acquisition of a 62.5% stake in Sichuan Wowo Supermarket Chain Co., Ltd. by <i>Hangzhou BEST Network Technology Co., Ltd.</i> in 2017	BEST Inc. (a leading integrated smart supply chain and logistics solutions provider)
14	The acquisition of a 37.4% stake in Udian Network Technology (Shenzhen) Co., Ltd. by <i>Didi Commercial Services Co., Ltd.</i> in 2017	Didi
15	The establishment of a joint venture by <i>Alitrip Holding Co., Ltd.</i> and <i>Marriott International, Inc.</i> in 2017	Alibaba
16	The acquisition of Xiaodu Life Technology Limited by <i>Rajax Holding</i> in 2017	Ele.me
17	The establishment of a joint venture by <i>Fujian Baidu Borui Network Technology Co., Ltd.</i> and <i>China CITIC Bank Corporation Limited</i> in 2017	Baidu
18	The acquisition of a 27.1% stake in Souche Holdings Ltd. by <i>Alibaba Investment Limited</i> in 2017	Alibaba
19	The acquisition of a 11% stake in Beijing Paidian E-Commerce Co., Ltd. by <i>Tencent</i> in 2017	Tencent
20	The acquisition of a 12.5% stake in Beijing Yunji Technology Co., Ltd. by <i>Tencent</i> in 2017	Tencent
21	The acquisition of a 44.03% stake in Rajax Holdings by <i>Taobao China Holding Limited</i> in 2018	Alibaba



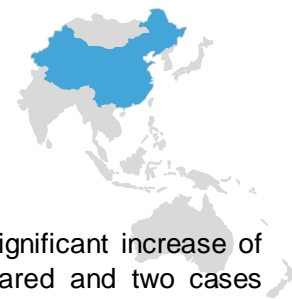
Annex 2: Failure-to-file fines

No.	Fined transactions (with fined party's name <i>Italicised</i>)	Tech firms/online platforms involved
22	The acquisition of a 10% stake in Shenyang MXNAVI Co., Ltd. by <i>Tencent</i> in 2018	Tencent
23	The acquisition of a 12% stake in Tianjin Wuba Financial Service Co., Ltd. by <i>Tencent</i> in 2018	Tencent
24	The establishment of a joint venture by <i>Wuba Co., Ltd.</i> and <i>Tospur Real Estate Consulting Co., Ltd.</i> in 2018	58 Group
25	The acquisition of a 11.58% stake in Chengdu Chaoyouai Technology Co., Ltd. by <i>Tencent</i> in 2018	Tencent
26	The acquisition of a 20% stake in Shenzhen Huishoubao Technology Co., Ltd. by <i>Alibaba (China) Network Technology Co., Ltd.</i> in 2018	Alibaba
27	The acquisition of a 25% stake in Guizhou Ensure Chain Pharmacy Co., Ltd. by <i>Alibaba Health Technology (China) Co., Ltd.</i> in 2018	Alibaba
28	The acquisition of a 11.53% stake in Beijing Yijiupi E-Commerce Co., Ltd. by <i>Tianjin Sankuai Technology Co., Ltd.</i> in 2018	Meituan
29	The Acquisition of a 15.04% stake in Shenzhen Yundong Chuangxiang Technology Co., Ltd. by <i>Beijing Liangzi Yuedong Technology Co., Ltd.</i> in 2019	ByteDance
30	The acquisition of a 28.57% stake in 1919 Wines & Spirits Platform Technology Co., Ltd. by <i>Alibaba (China) Network Technology Co., Ltd.</i> in 2019	Alibaba
31	The acquisition of a 21.21% stake in Beijing Eastern Jin Technology Co., Ltd. by <i>Tencent</i> in 2019	Tencent
32	The acquisition of a 15% stake in Shenzhen Shenjiazhuang Decoration Co., Ltd. by <i>Shanghai Ruijia Information Technology Co., Ltd.</i> in 2019	58 Group



Annex 2: Failure-to-file fines

No.	Fined transactions (with fined party's name <i>Italicised</i>)	Tech firms/online platforms involved
33	The acquisition of a 36% stake in Jinhua Rui'an Investment Management Co., Ltd. by <i>Beijing Weimeng Chuangke Investment Management Co., Ltd.</i> in 2019	Weibo
34	The acquisition of a 10.99% stake in Qingping Technology (Beijing) Co., Ltd. by <i>Beijing Sankuai Online Technology Co., Ltd.</i> in 2019	Meituan
35	The acquisition of a 13.33% stake in Chongqing Yipinhong Technology Co., Ltd. by <i>Tencent</i> in 2019	Tencent
36	The establishment of a joint venture by <i>Tencent</i> and <i>China Lounge Investment Limited</i> in 2019	Tencent
37	The acquisition of a 10% stake in Beijing Yijiupi E-Commerce Co., Ltd. by <i>Tencent</i> in 2019	Tencent
38	The establishment of a joint venture by <i>Beijing Xiaoju Intelligent Automotive Technology Co., Ltd.</i> and <i>BYD Automobile Industry Co., Ltd.</i> in 2019	Didi
39	The acquisition of a 55.1% stake in Kuayue-Express Group Co., Ltd. by <i>Suqian JD Bohai Enterprise Management Co., Ltd.</i> in 2020	JD.com
40	The acquisition of Suzhou Vipmro Information Technology Co., Ltd. by <i>Jiangsu Jucheng Space Technology Co., Ltd.</i> in 2020	JD.com
41	The acquisition of a 70.94% stake in Sun Art Retail Group Limited by <i>Taobao China Holding Limited</i> in 2020	Alibaba
42	The acquisition of a 20% stake in Chongqing Guangjiliang Enterprise Management Co., Ltd. by <i>Tianjin Ruiting Real Estate Brokerage Co., Ltd.</i> in 2020	58 Group
43	The establishment of a joint venture by <i>Baidu Online Network Technology (Beijing) Co., Ltd.</i> and <i>Zhejiang Geely Holding Group Co., Ltd.</i> in 2021	Baidu

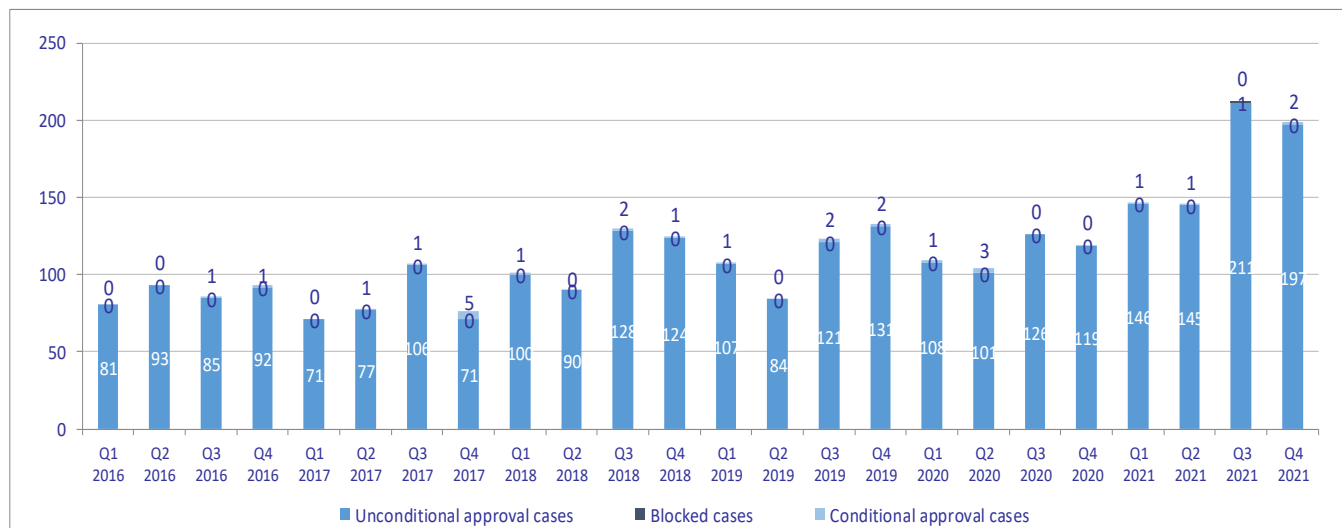


MERGER CONTROL

How many cases have there been?

There were in total 199 merger decisions released in the fourth quarter of 2021, a significant increase of 67.2% compared to the fourth quarter of 2020, with 197 cases unconditionally cleared and two cases approved subject to conditions. Around 181 cases were notified under the simplified procedure, which represents 90.95 % of the total cases reviewed in this quarter.

Merger control trends – Q1 2016 – Q4 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
Q4 2021	15.6 days	90.95%	3

Q4 2021: Average

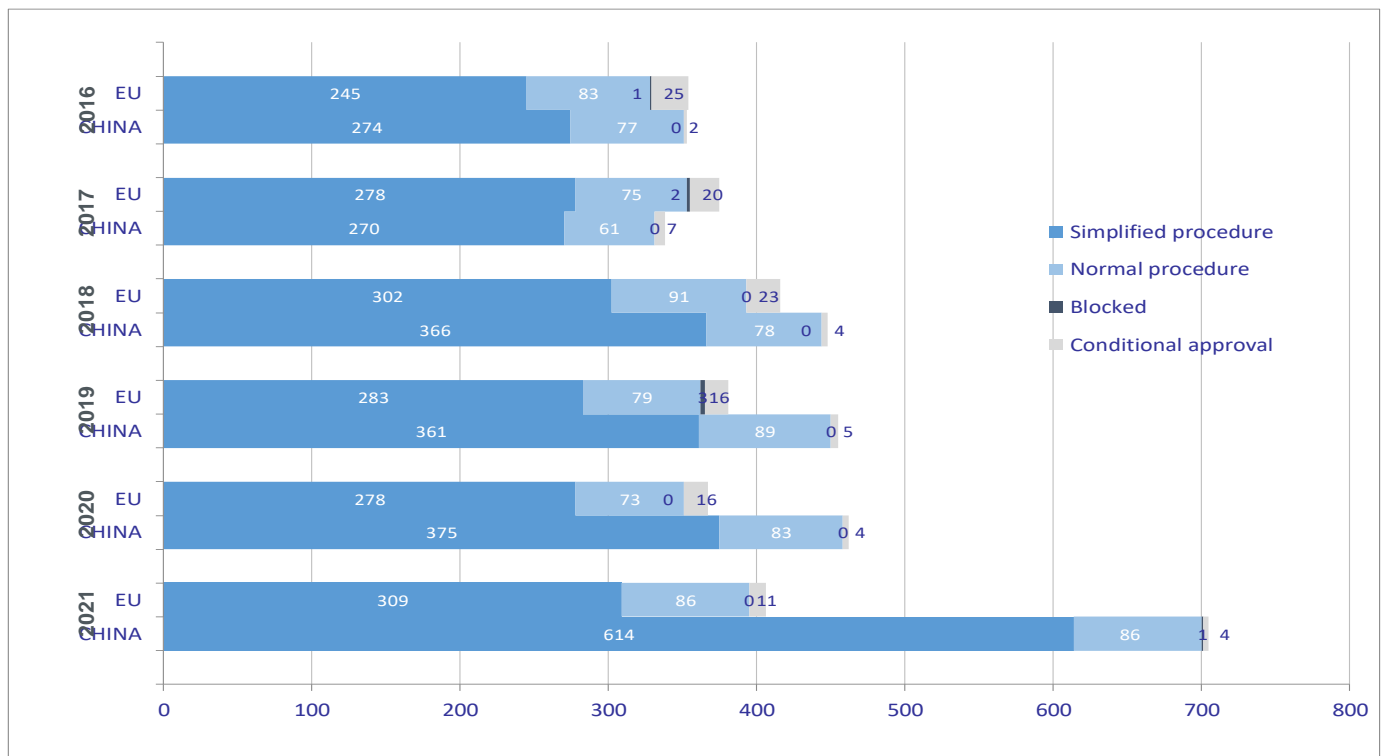




MERGER CONTROL AND OTHER NEWS IN CHINA

How does China compare internationally?

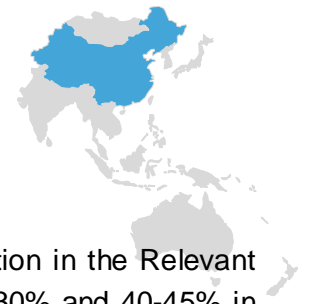
Comparison with EU – 2016 – 2021



SAMR conditionally approves ITW's acquisition of MTS

On 18 November 2021, SAMR cleared the acquisition by Illinois Tool Works Inc. ("**ITW**") of MTS Systems Corporation ("**MTS**") subject to behavioural conditions. ITW is a listed US company active in the manufacture of test and measuring equipment, among others. MTS is also a US company engaging in test and simulation businesses. Through the transaction, ITW would acquire all the issued outstanding shares of MTS and obtain sole control over MTS.

ITW and MTS's businesses overlap in four areas, i.e., the worldwide markets for (i) ground vehicle durability testing equipment, (ii) static material testing equipment, (iii) electromechanical material testing equipment, and (iv) the China market for high-end electrohydraulic servo material testing equipment. SAMR found that competition concerns would only arise in the China market for high-end electrohydraulic servo material testing equipment, which is used to provide high-strength fracture and performance tests on materials ("**Relevant Market**").



MERGER CONTROL AND OTHER NEWS IN CHINA

SAMR concluded that the transaction would likely eliminate or restrict the competition in the Relevant Market for the following reasons: (i) ITW and MTS respectively have shares of 25-30% and 40-45% in the Relevant Market, and therefore the combined entity would have a share of 65-70% and dominate the Relevant Market; (ii) ITW and MTS are not only the two largest players but also the closest competitors in the Relevant Market, which was clear from the fact that ITW and MTS were the two players who most frequently participated in the same bids – ITW appeared in 79.8% of MTS's historical bids. Moreover, the diversion ratios demonstrate that more than 40% of MTS's lost sales would be captured by ITW, showing how closely the two compete against each other; (iii) the Gross Upward Pricing Pressure Index ("**GUPPI**") is 21.7%. GUPPI is an economic index measuring a company's incentive to raise prices post merger and normally indicates competition concerns if it goes beyond 10%. Moreover, customers face high switching costs and therefore has no countervailing power in case of price increase.

To address the competition concerns, SAMR imposed the following conditions on the parties and the combined entity: (i) continuing to perform all existing contracts with Chinese customers; (ii) continuing to maintain service quality for Chinese customers; (iii) maintaining product prices no higher than the average price for the same products sold by the parties in the past two years, unless the price increase is due to inflation or price increases of main raw materials; and (iv) refraining from refusing, restricting or delaying the supply to Chinese customers, imposing any unreasonable trading conditions, or lowering service quality in any aspect. The parties can apply for removal of the conditions in five years. Based on publicly available information, the transaction was only filed in China and, with SAMR's conditional approval, ITW completed its acquisition of MTS on 1 December 2021.

SAMR conditionally approves SK Hynix's acquisition of Intel's NAND memory and storage business

On 22 December 2021, SAMR cleared SK Hynix Inc. ("**SK Hynix**")'s acquisition of the Not And ("**NAND**") memory and storage business of Intel Corporation ("**Intel**") subject to behavioural conditions. SK Hynix is a listed South Korean company engaged in memory, solid-state disk ("**SSD**"), and imaging sensor businesses. Intel is a leading global semiconductor company. Through the transaction, SK Hynix would acquire the entire NAND memory and storage business of Intel.

SAMR found that SK Hynix and the target business have horizontal overlaps in relation to (i) the consumer-class SSD, (ii) the peripheral component interconnect express ("**PCIe**") enterprise-class SSD, (iii) the serial advanced technology attachment ("**SATA**") enterprise-class SSD, and (iv) the NAND flash memory. SAMR considered the relevant geographic markets as worldwide but also evaluated the transaction's impact on competition in China. SAMR held that the transaction would likely give rise to competition concerns in PCIe enterprise-class SSD and SATA enterprise-class SSD markets (both worldwide and in China) ("**Relevant Markets**").



MERGER CONTROL AND OTHER NEWS IN CHINA

SAMR concluded that the transaction would have the effect of eliminating or restricting the competition in the Relevant Markets given that: (i) the parties' combined market share in the SATA enterprise-class SSD market is 30-35% globally and 55-60% in China; their combined market share in the PCIe enterprise-class SSD is 40%-45% globally and 50-55% in China. The transaction would lead to a higher degree of market concentration; (ii) the number of major players in the Relevant Markets would be further reduced after the transaction (from four to three in the SATA enterprise-class SSD market; from three to two in the PCIe enterprise-class SSD market), which may prompt collusive behaviours; (iii) the high barriers to market entry (such as strict requirements for product quality and stability, considerable upfront investment, customer recognition, among others) have prevented new entrants from entering into the Relevant Markets in the short term.

To address the competition concerns, SAMR imposed the following conditions on the combined entity: (i) maintaining product prices no higher than the average price of the same products sold by the parties in the past two years, unless the price increase is due to inflation or price increases of main raw materials; (ii) continuing to expand the quantity of production of PCIe and SATA enterprise-class SSDs; (iii) continuing to supply all products in China; (iv) refraining from exclusive dealing or tying/bundling when supplying products in China; (v) assisting an independent new player in entering the PCIe and SATA enterprise-class SSD markets; and (vi) refraining from entering into any written or verbal agreement, or engage in any concerted practices with major competitors in China in terms of price, output or sales volume. The parties can apply for removal of the conditions in five years. Outside mainland China, the transaction was unconditionally cleared in the EU, UK, Singapore, Taiwan and South Korea.

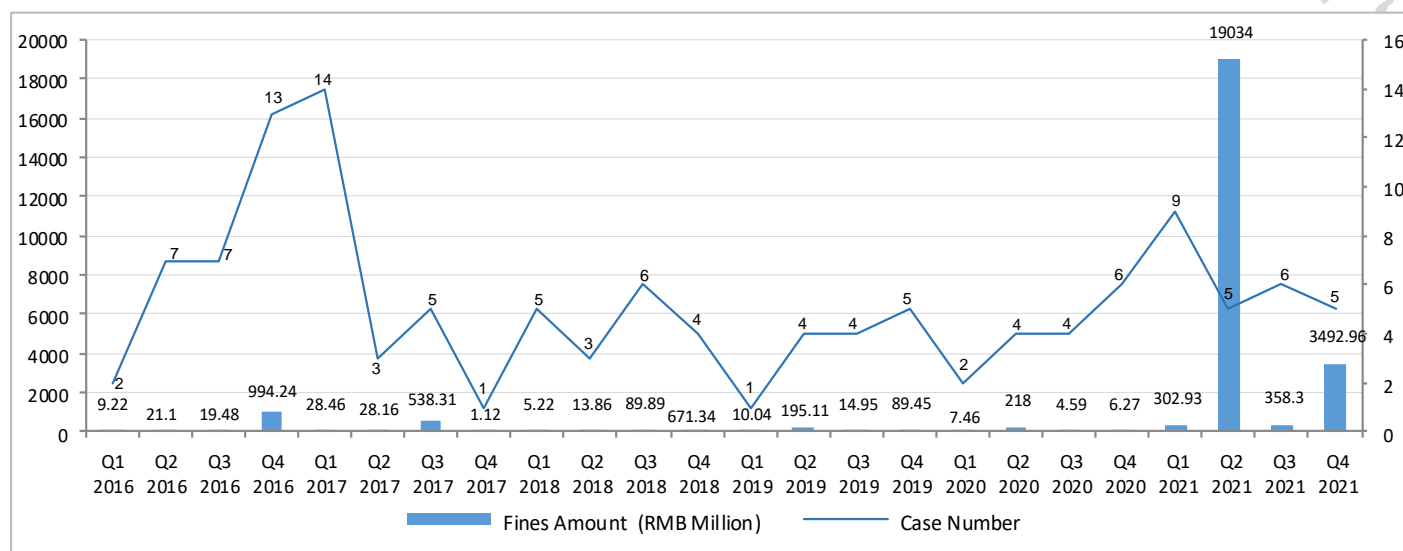
Other failure-to-file fines in this quarter

In addition to the 43 failure-to-file cases reported in the special report above, on 30 December 2021, SAMR also published two penalty decisions in relation to the following transactions: (i) the acquisition by Longfor Jiayue Property Service Co., Ltd. ("**Longfor Jiayue**") of Yida Property Service Company Limited in 2021, where Longfor Jiayue was fined RMB 300,000 (USD 47,070); and (ii) the acquisition by Sanhua Holding Group of Ningbo Fu'erda Intelligent Technology Co., Ltd. and Shanghai Fuyulong Auto Tech.Co., Ltd. in 2018, where Sanhua Holding Group was fined RMB 300,000 (USD 47,070). The SAMR did not find competition concerns in these two cases.



ANTITRUST INVESTIGATIONS

Enforcement trends* – Q1 2016 to Q4 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
Online food delivery platform SAMR	15 October 2021	Exclusive dealing	3,442,440	N/A	N/A	3%	N/A
Phenol API Henan AMR	29 October 2021	Excessive pricing	9,397	N/A	N/A	1%	N/A
Piped natural gas service Jiangsu AMR	18 November 2021	Excessive pricing, exclusive dealing, imposing unreasonable conditions	34,856	N/A	N/A	2%	N/A
Pralidoxime chloride API Shanghai AMR	18 November 2021	Excessive pricing, imposing unreasonable conditions	4,037	N/A	N/A	4%	N/A
Logistics service Zhejiang AMR	18 November 2021	Price fixing, market dividing	2,229	146	1,749	1%-2%	Yes

Henan AMR fines API supplier Xinxianfeng for excessive pricing

On 29 October 2021, the SAMR published a penalty decision where the Henan Administration for Market Regulation ("**Henan AMR**") fined Shangqiu Xinxianfeng Pharmaceutical Co., Ltd. ("**Xinxianfeng**") for abuse of dominance by excessive pricing. Henan AMR found that Chongqing Southwest No.2 Pharmaceutical Factory Co., Ltd. ("**No.2 Factory**") was the sole manufacturer of the phenol API in China. Phenol is an ingredient mainly used for making disinfectants and skin ointments. Xinxianfeng obtained the exclusive sales right for phenol API from No.2 Factory in February 2014. Although, starting from 2015, No.2 Factory also sold part of its phenol API output to another company, Xinxianfeng's market share remained at over 80%. Xinxianfeng was thus found dominant in the market for the sales of phenol API in China.



ANTITRUST INVESTIGATIONS

After obtaining the exclusive sales right from No.2 Factory in 2014, Xinxianfeng started to increase the price of phenol API. Henan AMR found that in 2014, Xinxianfeng priced phenol API at RMB 1,000-1,300 (USD 157-204) per kilogram, while the cost was only RMB 260 (USD 41) per kilogram. From 2015 to March 2017, Xinxianfeng further raised the price to RMB 2,572 to 6,072 (USD 404 to 953) per kilogram. The Henan AMR therefore concluded that such conduct constituted excessive pricing and violated Article 17(1) of the AML. Given that Xinxianfeng actively co-operated in the investigation and organised antitrust training sessions to ensure future compliance, Henan AMR imposed a fine equivalent to only 1% of its 2016 sales, which is RMB 9,396,610.83 (USD 1,475,181), and confiscated illegal gains of RMB 1,651,770.21 (USD 259,312).

Jiangsu AMR fines Yixing Towngas for multiple forms of abusive conduct

On 18 November 2021, the SAMR published a penalty decision where the Jiangsu Administration for Market Regulation ("**Jiangsu AMR**") fined Yixing Towngas Co., Ltd. ("**Yixing Towngas**") for abuse of dominance. Yixing Towngas, as the sole operator for piped natural gas ("**PNG**") in Yixing City, Jiangsu Province, dominates the market for PNG supply and pipeline equipment installation services in Yixing.

Jiangsu AMR found Yixing Towngas abused its market dominance through engaging in the following conduct: (i) **excessive pricing**: Yixing Towngas was engaged to upgrade Yixing's gas pipeline network (including gas meters) to allow for larger gas flows for residential households. Before July 2015, Yixing Towngas charged each household a service fee RMB 200 (USD 31), but between July 2015 and March 2017, Yixing Towngas significantly increased the fee to RMB 2,000 to 5,000 (USD 314 to 786) per household, although its costs remained unchanged. Moreover, Yixing Towngas also charged non-residential users an unfairly high price for gas pipeline installation projects, around RMB 1,145,976 (USD 180,123) higher than what is considered reasonable by a third-party appraisal agency commissioned by Jiangsu AMR; (ii) **exclusive dealing**: the service agreements between Yixing Towngas and its non-residential users from 2015 to 2018 explicitly stated that Yixing Towngas shall be the exclusive gas supplier to the users, otherwise the users would have to pay back all the discounted supply fees that Yixing Towngas previously offered but still maintain the purchase amount from Yixing Towngas; and (iii) **imposing unreasonable trading conditions**: Yixing Towngas included a mandatory prepayment clause in its agreement with non-residential users, pursuant to which those users have to pay gas supply fees within an advance period specified by Yixing Towngas. Failure to do so would lead to overdue payments. Jiangsu AMR considered this clause to deprive the users of their legitimate right to independently choose the time of payment, and the penalty constituted an unreasonable trading condition upon users.

Jiangsu AMR concluded that such conduct violated Article 17(1), Article 17(4) and Article 17(5) of the AML. The Jiangsu AMR confiscated illegal gains of RMB 5,585,780 (USD 876,725) and imposed a fine of RMB 34,856,440 (USD 5,470,951) on Yixing Towngas, amounting to 2% of its 2018 sales.

Shanghai AMR fines API supplier NingWei for excessive pricing and imposing unreasonable conditions

On 18 November 2021, the SAMR published a penalty decision where the Shanghai Administration for Market Regulation ("**Shanghai AMR**") fined Nanjing NingWei Medicine Co., Ltd. ("**NingWei**") for abuse of dominance. NingWei had entered into an exclusive distribution agreement with New Hualian, the sole manufacturer of pralidoxime chloride API (an ingredient for an injection used to treat poisoning caused by pesticides) in China, pursuant to which NingWei obtained the exclusive sales right and therefore had 100% of the sales market for pralidoxime chloride API.



ANTITRUST INVESTIGATIONS

The Shanghai AMR found two modes of conduct by NingWei to be anti-competitive: (i) **excessive pricing**: Shanghai Xudong Haipu Pharmaceutical Co., Ltd. ("**Xudong Haipu**") is a customer of NingWei and procured pralidoxime chloride API from NingWei in 2018 and 2019. Shanghai AMR found that NingWei sold the pralidoxime chloride API to Xudong Haipu at an unfairly high price, which was five to 10 times higher than the cost and 26 to 52 times higher than the historical price in 2014; (ii) **imposing unreasonable trading conditions**: in the supply agreement reached between NingWei and Xudong Haipu, NingWei required Xudong Haipu to pay for certain technical service fees each year, and set an annual minimum procurement amount for Xudong Haipu – non-compliance would lead to contractual breach and oblige Xudong Haipu to pay NingWei RMB 10 million (USD 1,570,000) in damages. Shanghai AMR found that NingWei had never provided any substantial technical services to Xudong Haipu, nor was the minimum procurement amount placed by NingWei adapted or adjusted to Xudong Haipu's actual demand. Therefore, these two clauses constituted unreasonable trading conditions. NingWei was found to contravene Article 17(1) and Article 17(5) of the AML. Shanghai AMR imposed a fine of RMB 4,036,538.44 (USD 633,560) on NingWei, which accounts for 4% of its 2019 sales, and confiscated illegal gains of RMB 2,547,169.81 (USD 399,794).

Zhejiang AMR fines three logistics firms for price fixing and market allocation

On 18 November 2021, the SAMR published a penalty decision where the Zhejiang Administration for Market Regulation ("**Zhejiang AMR**") fined three logistics firms for price fixing and market allocation.

On 17 June 2017, NYK Automotive Logistics (China) Co., Ltd. ("**NYK China**"), Ningbo Landun Zhiyu International Logistics Co., Ltd. ("**Landun Zhiyu**"), and Tianmen City Sanbang Logistics Co., Ltd. ("**Sanbang**") participated in the final bid for commercial vehicles logistics projects held by an automobile company ("**Projects**"). The three bidders were required to quote via an electronic bidding portal, where they had no visibility of each other's quotes. The bidders were forbidden from communicating with each other, but NYK China, through WeChat and mobile phones, communicated with Landun Zhiyu multiple times and reached an agreement that Landun Zhiyu stopped bidding, and in return NYK China would allocate two out of three logistics routes to Landun Zhiyu after NYK China won the Projects. Meanwhile, Landun Zhiyu and Sanbang separately agreed to relay their bidding information to NYK China. Consequently, NYK China won the Project with the lowest possible bidding price.

Zhejiang AMR held that the three companies had reached a monopoly agreement for bid rigging. Particularly, the three companies engaged in price fixing by only allowing NYK China to quote for the Projects and by allocating the Projects businesses by geographic areas, contravening Article 13(1) and Article 13(3) of the AML. It is worth noting that on 29 September 2017, NYK China proactively reported its illicit conduct to the relevant authority and applied for leniency. Given the above, despite NYK China's leading role in the monopoly agreement, the Zhejiang AMR imposed a fine on NYK China amounting to 2% of its 2017 sales and reduced the penalty by 90%. NYK China ultimately received a fine of RMB 1,749,214.50 (USD 274,330). The Zhejiang AMR fined Landun Zhiyu RMB 334,115.79 (USD 52,400), and Sanbang RMB 145,951.56 (USD 22,890), which accounts for 1% of their respective 2017 sales.



OTHER NEWS

[SAMR publishes Overseas Antitrust Compliance Guidance](#)

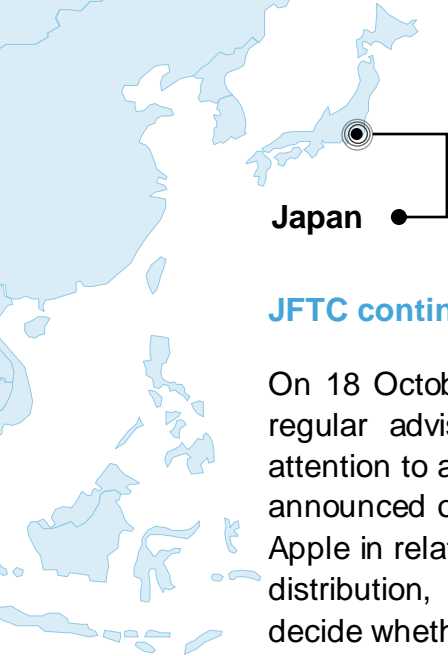
On 15 November 2021, SAMR published the Guidance on Overseas Antitrust Compliance ("**Overseas Compliance Guidance**"). A consultation draft was released in September 2020. Compared with the consultation draft, only part of the wording is adapted, but the key provisions and structure remain largely unchanged. Notably, the final Overseas Compliance Guidance has removed the references to individual jurisdictions which appeared in the consultation draft. The final version has also identified the matters for which companies are highly encouraged to conduct antitrust risk assessment: major transactions, supply and purchase agreements, and overseas antitrust investigation or litigation. The Overseas Compliance Guidance is meant to serve as a guide for Chinese companies that have overseas operations to strengthen their compliance with foreign antitrust rules.

[API Antitrust Guidelines are published in China](#)

On 18 November 2021, more than one year after the release of the consultation draft, Anti-Monopoly Commission of the State Council of China formally published the Antitrust Guidelines on Active Pharmaceutical Ingredients ("**API Guidelines**"). Compared with the consultation draft, the final version has made the following notable changes: (i) **definition of relevant markets**: while the consultation draft stated that a single type of API is generally considered a separate product market, the final version clarifies that different types of APIs may also belong to the same market, if they are substitutable; (ii) **monopoly agreements**: the final version adds that the following may be considered monopoly agreements: agreements between competitors to not produce or sell APIs in exchange for compensation, territorial and customer restrictions, hub-and-spoke agreements; (iii) **concerted practice**: the final version clarifies that concerted conduct may be determined based on direct evidence or, when direct evidence is difficult to obtain, on consistent indirect evidence; (iv) **determination of collective dominance**: the final version includes factors for determining collective dominance undertakings: market structure, degree of homogeneity of the concerned products and degree of co-ordination between the concerned undertakings. The API Guidelines show China's unremitting focus on the API sector and will guide future antitrust enforcement in the sector.

[SAMR publishes draft Measures on the Determination of Illegal Gains](#)

On 6 December 2021, SAMR published the draft Measures on the Determination of Illegal Gains in Cases involving Administrative Penalty by Administrations for Market Regulation ("**Draft Measures on Illegal Gains**") for public comment. In the Draft Measures on Illegal Gains, SAMR clarifies the concept of illegal gains and its calculation methods; and lists the circumstances where expenses should be deducted when calculating illegal gains. Further, the draft specifies alternatives when it is difficult to calculate illegal gains accurately. The Draft Measures on Illegal Gains aims to offer a unified standard on calculating illegal gains to correct local competent authorities' inconsistent approach to calculating illegal gains in practice.

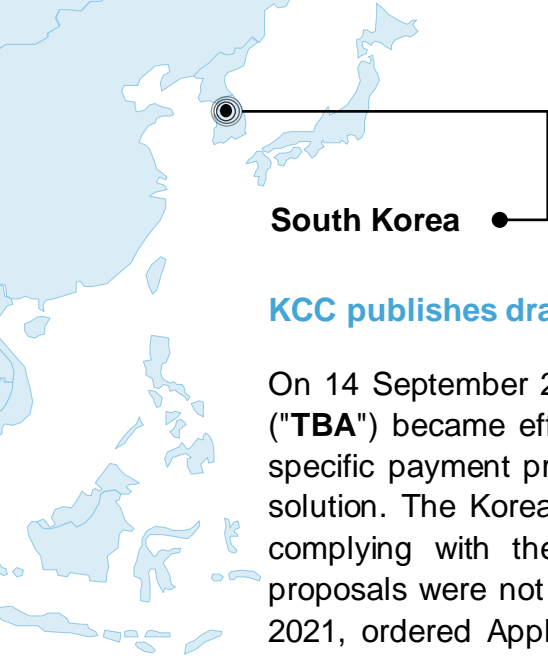


JFTC continues to investigate app store issues in the gaming field

On 18 October 2021, the Japan Fair Trade Commission ("**JFTC**") indicated at a regular advisory panel meeting that the JFTC would continue to pay close attention to and investigate the gaming field regarding app store issues. The JFTC announced on 2 September 2021 that it would be closing its investigation against Apple in relation to Apple's conduct concerning "reader" apps (i.e., regarding music distribution, e-book distribution and video distribution), but the JFTC has yet to decide whether there is any issue concerning games.

JFTC is to close investigation upon Rakuten's implementations of commitments

On 6 December 2021, the JFTC announced that they would be closing its investigation against Rakuten Group, Inc. ("**Rakuten**") after confirming that Rakuten implements remedial action in the future. The JFTC had been investigating Rakuten as to whether it was abusing its superior bargaining position as, in early 2020, Rakuten attempted to introduce a policy requiring vendors on Rakuten's e-commerce site to provide free shipping services for purchase orders exceeding approximately JPY 4,000 (USD 35). Although Rakuten eventually decided not to introduce such a policy, the JFTC found that Rakuten had indicated to vendors that Rakuten would treat them disadvantageously if they did not voluntarily introduce such free shipping services. Rakuten proposed to the JFTC that it would take remedial action to avoid the above-mentioned treatment of their vendors, and JFTC confirmed that the Anti-Monopoly Act issues would be resolved based on such proposal.



KCC publishes draft amendments to the enforcement decree of TBA

On 14 September 2021, the amendment of the Telecommunications Business Act ("**TBA**") became effective, which prevents app stores from requiring the use of a specific payment processing system, such as an app store's own in-app payment solution. The Korea Communications Commission ("**KCC**") received proposals for complying with the amended TBA; however, the KCC determined that such proposals were not in line with the intent of the amended TBA and, on 25 October 2021, ordered Apple and Google to resubmit plans compliant with the amended TBA. Further, on 17 November 2021, the KCC published a draft of amendments to the enforcement decree of the TBA, which detailed the types of prohibited acts that enforce certain payment methods. For example, mobile content providers should be able to freely choose payment methods, and they would be considered forced to use a certain payment method if there are disadvantages to choosing another payment method.

KFTC fines mobile payment platforms for collusion

On 17 November 2021, the Korea Fair Trade Commission ("**KFTC**") imposed a fine of KRW 16.9 billion (USD 14.3 million) in total on four mobile payment platform operators because they jointly decided to charge customers excessive delinquency fees.

Amended Korean Fair Trade Law comes into effect

On 30 December 2021, the amendment of the Korean Fair Trade Law became effective. The amended law includes: (i) the increase of fines (for cartel cases, the maximum amount of fines is increased from 10% to 20% of the relevant sales revenue; for abuse of dominance cases, from 3% to 6%; and for unfair business conduct, from 2% to 4%); (ii) information exchange is added to the definition of cartel; and (iii) new merger filing thresholds based on transaction value are introduced. A merger filing in South Korea will now be required if (a) the transaction value exceeds KRW 600 billion (USD 500 million) and (b) the target company or its affiliates are active in the South Korean market at a substantial level (including those cases where the target has sold or provided products or services to at least 1 million people per month in the South Korean market during the immediately preceding three years, or where the target has either leased research and development facilities or used R&D personnel in South Korea and had an annual R&D budget of at least KRW 30 billion (USD 25 million) for the South Korean market during the immediately preceding three years).



Hong Kong

HKCC publishes policy on commitments

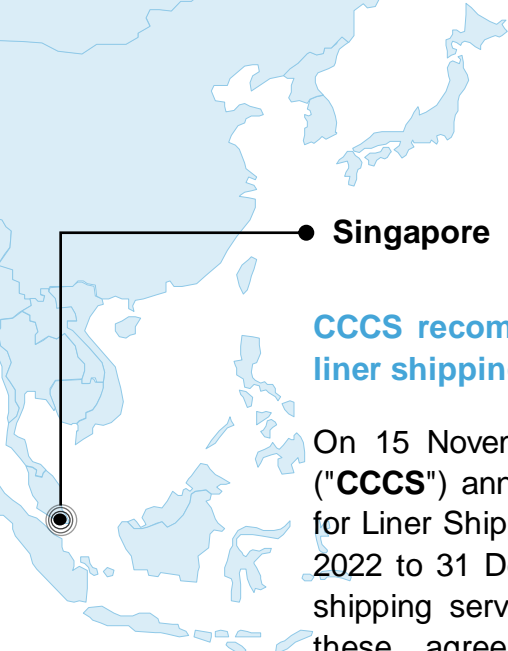
On 10 November 2021, Competition Commission ("**HKCC**") published a policy on commitments under section 60 of the Competition Ordinance ("**Commitment Policy**"), setting out the HKCC's practice and procedure in respect of such commitments. The Commitment Policy (i) clarifies the various factors to be considered by HKCC when deciding whether such commitment is an appropriate remedy and whether a proposed commitment is appropriate; (ii) illustrates the key steps in the commitment process; (iii) clarifies that the HKCC will usually be willing to accept a commitment which does not contain an admission of a contravention, but it will generally not accept statements seeking to minimise the seriousness of the conduct; and (iv) provides a template commitment.

HKCC fully resolves a case under the Cooperation Policy

On 25 November 2021, HKCC announced that it has agreed to enter into cooperation agreements with three undertakings, which resulted in the submission of joint applications to the Competition Tribunal seeking orders to allow the proceedings to be disposed of by consent. This marks the first case to be fully resolved under the Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct ("**Cooperation Policy**"). The subject undertakings participated in cartel conduct regarding the sale of inserters (i.e. a machine that inserts letters and other correspondence into envelopes for mass mailing) in Hong Kong. After the HKCC commenced its investigation, the subject undertakings began cooperating with the HKCC pursuant to the Cooperation Policy. After applying a cooperation discount, pecuniary penalties in the sums ranging from HKD 808,000 (USD 103,666) and HKD 3.37 million (USD 432,000) were imposed on each of the three undertakings respectively.

HKCC commences proceedings against cleaning service cartel

On 12 December 2021, HKCC commenced proceedings against two companies and three individuals. It is HKCC's case that over a two-year period the two companies exchanged commercially sensitive information in relation to 17 tenders submitted to the Housing Authority for the procurement of cleaning services for public housing estates and other building under House Authority's management. HKCC noted in its announcement that during the course of HKCC's execution of a search warrant at one of companies' office, certain individuals had tried to delete relevant electronic evidence and the HKCC has referred this obstruction of its investigation powers to the Police for criminal investigation.



● **Singapore**

CCCS recommends three-year extension of the block exemption order for liner shipping agreement

On 15 November 2021, Competition and Consumer Commission of Singapore ("**CCCS**") announced its recommendation that the Competition (Block Exemption for Liner Shipping Agreements) Order be extended for three years from 1 January 2022 to 31 December 2024, in respect of (i) vessel sharing agreements for liner shipping services; and (ii) price discussion agreements for feeder services, as these agreements generate net economic benefits for Singapore. The recommendation was made after a public consultation process in July to August 2021.

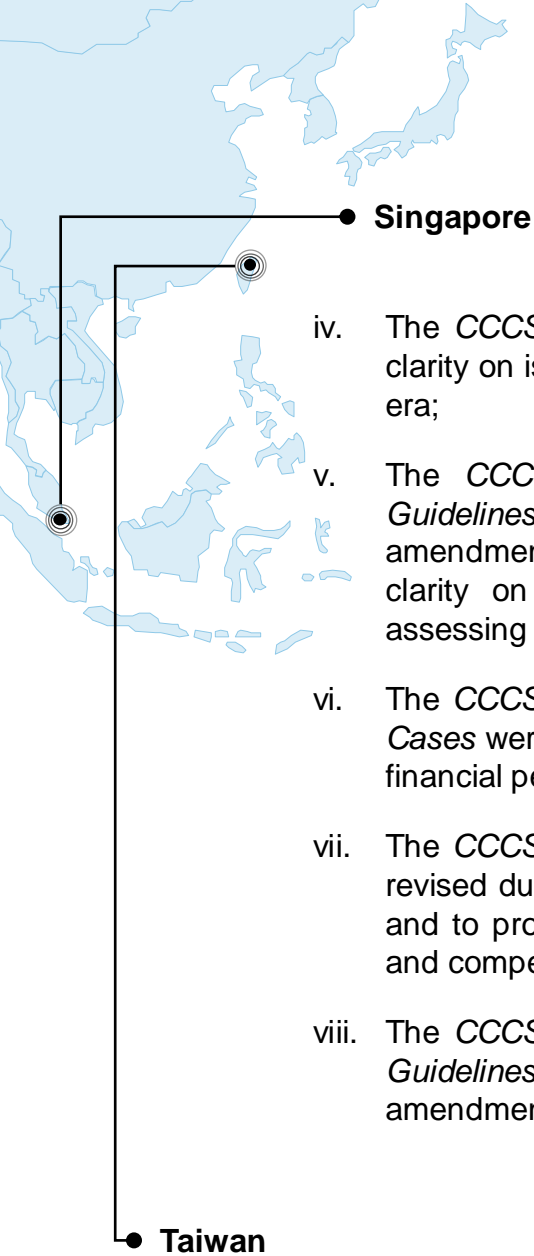
CCCS issues Guidance Note on Business Collaboration

On 28 December 2021, CCCS issued the Guidance Note on Business Collaboration ("**Guidance Note**") that aims to clarify CCCS's position on seven common types of business collaborations, and to provide supplementary guidance on how CCCS will generally assess whether such collaborations comply with section 34 of the Competition Act 2004 ("**Act**"). The seven common types of business collaborations covered in the Guidance Note are (i) information sharing; (ii) joint production; (iii) joint commercialisation; (iv) joint purchasing; (v) joint research & development; (vi) standards development; and (vii) standard terms and conditions in contracts.

CCCS completes the review of its Guidelines on the Act

On 31 December 2021, CCCS published nine revised Guidelines on the Act, which will become effective from 1 February 2022. To highlight some of the changes made:

- i. The *CCCS Guidelines on the Section 47 Prohibition Guidelines* were revised to provide greater clarity on issues relating to the assessment of market power and types of potentially abusive conduct in the digital era;
- ii. The *CCCS Guidelines on Substantive Assessment of Mergers* were revised to better guide businesses, consumers, and competition practitioners on issues relating to CCCS's assessment of mergers, such as that for conglomerate mergers and the relevance of proprietary rights and data as barriers to entry or expansion;
- iii. The *CCCS Guidelines on Merger Procedures* were revised to enhance and clarify the process of notifying mergers to CCCS, and provide clarity on CCCS's practices in relation to notification of mergers;



● **Singapore**

- iv. The *CCCS Guidelines on Market Definition* were revised to provide greater clarity on issues related to market definition that may be relevant in the digital era;
- v. The *CCCS Guidelines on Enforcement* were renamed as the *CCCS Guidelines on Directions and Remedies* to give effect to legislative amendments to the Act relating to commitments and remedies and to provide clarity on CCCS's practices on substantive and procedural matters in assessing commitments and remedies;
- vi. The *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases* were revised to clarify the list of mitigating factors in the calculation of financial penalties in a section 34 infringement;
- vii. The *CCCS Guidelines on the Treatment of Intellectual Property Rights* were revised due to the changes in the intellectual property rights legal landscape, and to provide greater clarity on the interface between intellectual property and competition law; and
- viii. The *CCCS Guidelines on the Major Competition Provisions* and the *CCCS Guidelines on the Section 34 Prohibition* were revised to make consequential amendments to reflect the same changes to the other guidelines above.

● **Taiwan**

Taiwan raises maximum reward for whistle-blowers

On 17 November 2021, the Taiwan Fair Trade Commission ("**TFTC**") announced that the Regulation on Payment of Rewards for Reporting of Illegal Concerted Actions has been amended to significantly raise the reward granted to individuals for reporting illegal concerted conduct. According to the amendments, the maximum reward was increased from NTD 50 million (USD 1.795 million) to NTD 100 million (USD 3.59 million). If the reported conduct is proved to be an anti-competitive concerted action (e.g., cartel), the whistle-blowers are rewarded based on the value of the provided evidence, even if mitigating factors eventually lead to no penalty on the parties concerned. TFTC has established an Antitrust Fund to pay for such whistle-blowing rewards, which is sourced from pecuniary penalties imposed on companies violating the Fair Trade Act.



India ●

CCI revokes approval for Amazon/Future Coupons and fines Amazon INR 2 billion for submission of inaccurate information

On 17 December 2021, the Competition Commission of India ("**CCI**") suspended the clearance it provided in 2019 for Amazon's acquisition of Future Coupons ("**Future Coupons Acquisition**"), following CCI's recent review of accusations that Amazon had misrepresented itself in its 2019 submissions to CCI.

Through this transaction, Amazon acquired a 49% interest in Future Coupons, which in turn held a 9.82% interest in Future Retail, a listed Indian retailer with a nationwide footprint. In its 2019 submissions to CCI, Amazon emphasised that the purpose of the acquisition was to obtain for Amazon a financial return therefrom given that Future Coupons has a unique business model and strong growth potential. However, upon scrutinising Amazon's internal documents, CCI found Amazon had dissimulated its position, in that Amazon had envisaged becoming the single largest shareholder of Future Retail as early as May 2018, and intended to acquire interests in Future Retail through the Future Coupons Acquisition. This was supported by email correspondence between Amazon India's head of legal and Amazon's general counsel, which showed that Amazon had planned to indirectly acquire an interest in Future Retail by the Future Coupons Acquisition. CCI thus concluded that Amazon had misrepresented its true motive for the acquisition, thereby violating the Competition Act 2002. CCI imposed a fine of INR 2 billion (USD 26.36 million) on Amazon for misrepresentation, and ordered Amazon to resubmit the true, correct and complete information within 60 days. The 2019 decision on the Future Coupons Acquisition is to remain in abeyance until the CCI reviews the deal afresh.



Australia

Epic Games can continue Australian competition lawsuit against Apple

Epic Games can continue its lawsuit under Australian laws alleging Apple's anti-competitive and unconscionable conduct in requiring use of Apple's App Store to distribute apps to iOS device users and Apple's payment processing to facilitate in-app purchases.

In December 2021, Australia's High Court dismissed Apple's application for special leave to appeal an earlier Full Federal Court decision which had confirmed the dispute involved "serious issues of public policy" and had potential far reaching implications for Australian consumers.

Apple sought to have the Australian proceeding stayed because of a clause in its license agreement with Epic which required disputes be litigated in California. The Full Federal Court considered this exclusive jurisdiction clause to "offend the public policy of Australia", particularly in relation to restrictive trade practices claims (Part IV of the Competition and Consumer Act 2010 (Cth)) which were held as properly heard in Australia.

The High Court concluded Apple's application did not raise a question of law of general importance and that the case was not sufficiently arguable. The High Court's decision followed judgment received in Epic Games' proceedings against Apple in the United States.

Following the High Court's decision, the Federal Court substantive proceedings between Apple and Epic (NSD1236/2020) re-commence and are currently timetabled for six weeks commencing November 2022.

Australia launches new parliamentary inquiry into Big Tech

The Australian government on 1 December 2021 announced a new parliamentary inquiry to examine the practices of big technology companies and if new legislation is required.

It has been announced that the panel undertaking the inquiry is to examine material on social media platforms and dangers posed to the well-being of Australians, and opportunity for responses from organizations and individuals (including the technology companies to be examined) will be provided. Findings are due to be reported by 15 February 2022.



Australia

First individual pleads guilty under Australia's criminal cartel laws

A former export manager of pharmaceutical ingredients company Alkaloids of Australia Pty Ltd ("**Alkaloids**") has plead guilty to three counts of price fixing – the first guilty plea by an individual to criminal cartel conduct in Australia. A further seven offences were also admitted by the individual who faces a maximum penalty of up to 10 years imprisonment, a AUD 444,000 (USD 0.32 million) fine, or both.

A month later, the company also plead guilty to three charges and admitted a further seven offences of price fixing, big rigging and market allocation cartel arrangements. The company may be subject to a maximum fine for each criminal cartel charge of \$10 million, three times the total benefits attributable to the alleged offence, or 10% of the company's annual Australian turnover.

The charges related to an investigation by the Australian Competition and Consumer Commission ("**ACCC**") that continued over a period of almost ten years from July 2009, which is when Australia's criminal cartel laws came into force. The matter was then referred to the Commonwealth Director of Public Prosecutions ("**CDPP**").

The CDPP alleged Alkaloids and overseas suppliers had agreed to fix prices, restrict supply, allocate customers and/or rig bids for the supply of a particular compound to international manufacturers of generic medication.

ACCC does not oppose Amazon's acquisition of MGM

In December 2021, the month following ACCC's commencement of an informal review of Amazon's proposed acquisition of Metro-Goldwyn-Mayer Studios Inc. ("**MGM**"), the ACCC concluded the transaction was unlikely to substantially lessen competition in any market in Australia.

MGM produces audio visual content which it distributes and licenses to exhibitors, including cinemas and streaming platforms. The ACCC's investigation focused on whether Amazon would be likely to withhold or worsen the terms for other exhibitors to access MGM's content to favour Amazon's Prime Video. Several suppliers of high-quality audio visual content were considered to remain available to cinema and streaming exhibitors post-acquisition. It was also acknowledged streaming platforms in Australia would continue to be able to produce or fund their own content.

The ACCC has indicated that the competitive effects of acquisitions by large digital platforms with a presence in multiple markets continues to be a key concern for Australian regulators and that it will continue to closely review similar acquisitions.



Australia

Australia is to introduce changes on National Access Regime

Part IIIA of the Competition and Consumer Act 2010 (Cth) is a legal regime to facilitate third party access to certain services that are provided by means of significant infrastructure facilities. It is also referred to as the "National Access Regime". It is not limited to particular industries, but services that may be covered by the National Access Regime include railway, airports, port terminals or sewage pipes.

Of relevance to the National Access Regime, the Treasury is consulting on a draft Bill to remove merits review by the Australian Competition Tribunal of Ministerial decisions to declare, not to declare, or not to revoke a declaration of an infrastructure service.

Based on the current draft of the Bill, merits review by the Competition Tribunal will remain available for other decisions including ACCC arbitrations.

Other features of the draft Bill include:

- limits on new applications for declaration, or recommendations to revoke a declaration, if there has been a previous declaration or revocation for that infrastructure service;
- subsequent applications may only be made after 10 years or a material change of circumstances; and
- termination of arbitration proceedings and determinations for infrastructure that is no longer declared (such as where the declaration expires or is revoked).

ACCC expects new Chairperson and new Commissioner

On 17 December 2021, Ms. Gina Cass-Gottlieb was officially appointed as the next chair of the ACCC, commencing 21 March 2022. She was appointed a Member of the Reserve Bank of Australia Payment Systems Board in 2013 and a Member of the Financial Regulator Assessment Authority in 2021. Ms. Cass-Gottlieb will be the first female ACCC Chairperson.

On 29 November 2021, Ms. Liza Carver was appointed as an ACCC Commissioner, commencing 1 March 2022. She is a former Commissioner of the Australian Energy Markets Commission and former Associate Commissioner of the ACCC.



New Zealand

New Zealand High Court grants declarations sought by NZCC in relation to online advertising cartel conduct

In December 2021, New Zealand's High Court granted declarations sought by New Zealand's Commerce Commission ("**NZCC**") against Moola, an online consumer finance company providing high-cost short term loans.

The NZCC alleged Moola entered into and gave effect to agreements breaching the cartel provisions of New Zealand's Commerce Act 1986 by:

- reaching agreements with other consumer credit or loan providers to not bid on each other's brand names on Google Ads; and
- to 'negatively match' certain keywords so that their advertisements would not show when those keywords were used.

The NZCC's position was that such conduct meant consumers searching for a consumer credit provider on Google may not see ads for other loan providers, reducing consumer ability to make informed choices in selecting a loan provider.

Moola co-operated with the NZCC's investigations. Moola accepted that it had contravened the Act and agreed to court declarations.

The decision follows the introduction of new laws coming into effect making being part of a commercial cartel a criminal offence, punishable with up to 7 years' imprisonment.

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