

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



ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE

January to March 2022

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ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: JANUARY TO MARCH 2022

INTRODUCTION

As the old Chinese saying goes, "a year's plan starts to be made from spring". The first quarter of 2022 saw plans for the country made at different levels, and antitrust remained an essential part of all those plans, including the agenda of the 2022 National People's Congress, the 2021-2022 Annual Governmental Work Report and the State Council's plan to promote a modernised system of market regulation. Posing challenges to competition authorities in the EU and the US, the digital economy has also increasingly become a focus of the Chinese antitrust authority and its high stakes were reflected: (i) on the one hand in the new National Anti-Monopoly Bureau's organisational structure (where each of the three sub-bureaus created a standalone division to cover the digital economy); and (ii) on the other hand, in the unremitting clampdown on digital platforms' 13 failure-to-file transactions. Once again, the majority of the fined transactions involved minority investments, which can never be overlooked when it comes to Chinese merger control.

Also in the past quarter, China subjected two high-profile transactions (GlobalWafers' acquisition of Siltronic and Advanced Micro Devices' acquisition of Xilinx) to conditions. Notably, both of these transactions were approved without conditions in a number of other jurisdictions. As regards conduct enforcement, water supply, medical device and driving training services were the three sectors hardest hit by antitrust fines. On top of these, the past quarter saw an interesting private litigation case where a mediation agreement entered into to settle a patent dispute was eventually ruled by the Supreme Court to have constituted a cartel arrangement.

Outside China, the digital economy has borne the brunt of antitrust scrutiny: Japan nodded through Apple's revised App Store rules; South Korea's amended enforcement decree of the Telecommunications Business Act became effective and a set of guidelines for antitrust review in the platform sector were released; India investigated Google's AdTech for abuse of dominance; the Australian competition authority joined forces with other governmental agencies for better collaboration in regulating digital platforms; Taiwan released its draft White Paper on the digital economy for public comment; and Hong Kong investigated two online food delivery platforms (Foodpanda and Deliveroo) for their allegedly anti-competitive conduct.

Separately, on the policy side, it is noteworthy that Australia embarked on *ex post* merger review for historical non-opposed mergers and set antitrust compliance and enforcement priorities for the next two years; the Philippines' competition authority released its 2021 report; and in New Zealand, the ban on misuse of market power was reformed under new legislation.



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SPECIAL REPORT: ANTITRUST FORMS PART OF CHINA'S NATIONAL PLANS MADE THIS SPRING

As the old Chinese saying goes, "a year's plan starts to be made from spring". The first quarter of 2022 saw plans for the country made at different levels, and antitrust remained an essential part of all those plans. During the National People's Congress which was held in March 2022, "strengthening antitrust regulation" was on the agenda again, as stated in the Annual Governmental Work Report. "Antitrust" was also discussed in depth in another plan issued by the State Council in January 2022 for the purposes of promoting a modernised system of market regulation over China's 14th Five-Year Plan period (from 2021 to 2025). This plan stated that the Chinese government would remain committed to enhancing its antitrust regulation, and would closely scrutinise, among others, platform economy and tech innovation. As regards digital economy, the plan identified specific types of conduct which would be closely monitored, including the exclusive "choosing one from two" practice, big data or algorithm-supported discrimination, as well as unreasonable tying and bundling.

The heightened scrutiny of the digital economy has also been reflected in the new National Anti-Monopoly Bureau's organisational structure. As reported, the new bureau consists of three sub-bureaus (supervising merger control, conduct and competition policies), each of which comprise six to seven divisions. Notably, each of the three sub-bureaus created a standalone division earlier this year to deal with issues concerning the digital economy.

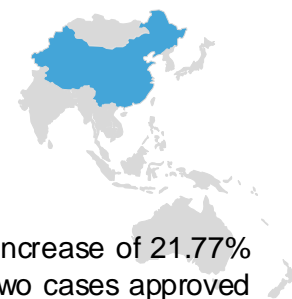
Regarding enforcement activities, 13 failure-to-file transactions made by platform companies were caught in the past quarter, with each fined RMB 500,000 (USD 78,450), the maximum penalty provided under China's Anti-monopoly Law ("**AML**"), but no competition concerns were found. Once again, the majority of the fined transactions involved minority investments, which can never be overlooked when it comes to Chinese merger control. More details about these transactions are provided below.

No.	Fined transactions (with fined party's name italicised)	Tech firms/online platforms
1	The establishment of a joint venture between <i>Tencent Holdings Limited</i> (" Tencent ") and <i>Henan Hexie Automobile Trading Co., Ltd.</i> in 2015	Tencent
2	The establishment of a joint venture between <i>Hangzhou Ali Venture Investment Co., Ltd.</i> , <i>Zhengzhou Xunjie Trading Co., Ltd.</i> , and <i>Guiyang Radio and Television Media Group Co., Ltd.</i> in 2015	Alibaba
3	The establishment of a joint venture between <i>Ningbo Gloria Health Investment Co., Ltd.</i> and <i>Jiangsu Jingdong Bangneng Investment Management Co., Ltd.</i> in 2016	JD.com



SPECIAL REPORT: ANTITRUST FORMS PART OF CHINA'S NATIONAL PLANS MADE THIS SPRING

No.	Fined transactions (with fined party's name italicised)	Tech firms/online platforms
4	The acquisition of a 10% stake in IngageApp Global by <i>Tencent</i> in 2016	Tencent
5	The acquisition of a 13.0208% stake in Beijing Mining Lamp Software System Co., Ltd. by <i>Tencent</i> in 2017	Tencent
6	The acquisition of a 12% stake in Beijing Youhu Technology Development Co., Ltd. by <i>Tencent</i> in 2018	Tencent
7	The establishment of a joint venture between <i>Alibaba (China) Network Technology Co., Ltd.</i> and <i>Guiyang Xingli Department Store Group Co., Ltd.</i> in 2018	Alibaba
8	The acquisition of a 15% stake in Yonghui Yunchuang Technology Co., Ltd. by <i>Tencent</i> in 2018	Tencent
9	The acquisition of a 15.5% stake in VERSA Inc. by <i>Tencent</i> in 2018	Tencent
10	The acquisition of a 15% stake in Beijing Niannian Share Technology Development Co., Ltd. by <i>Tencent</i> in 2019	Tencent
11	The acquisition of a 14.71% stake in VERSA Inc. by <i>Bilibili Inc.</i> in 2020	Bilibili
12	The establishment of a joint venture between <i>Hisense Transtech Co., Ltd.</i> and <i>Tencent</i> in 2020	Tencent
13	The acquisition of a 10% stake in Alcohol Bartender Co., Ltd. by <i>Tencent</i> in 2020	Tencent

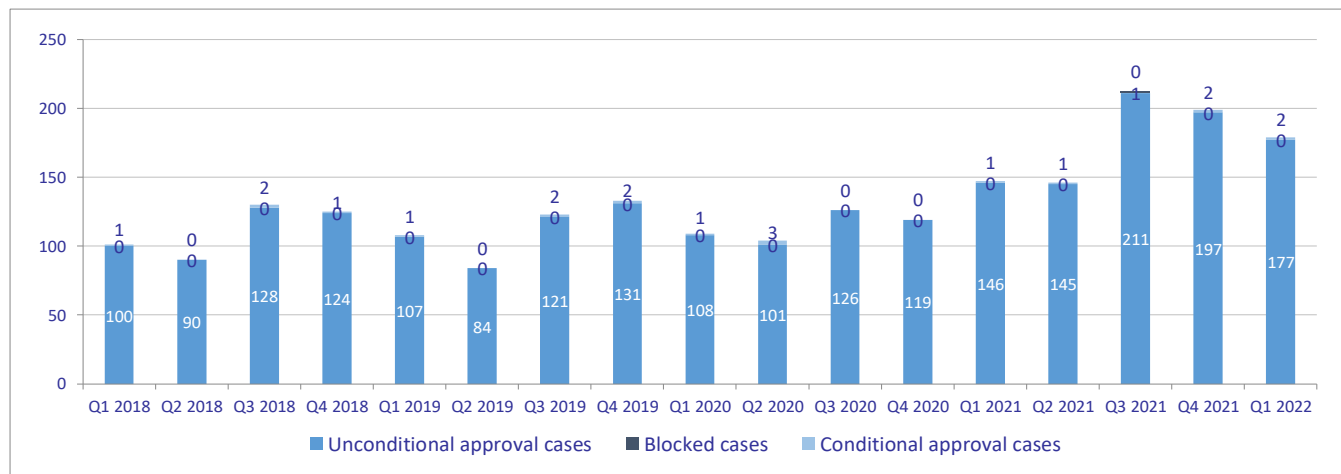


MERGER CONTROL

How many cases have there been?

There were in total 179 merger decisions released in the first quarter of 2022, an increase of 21.77% compared to the first quarter of 2021, with 177 cases unconditionally cleared and two cases approved subject to conditions. Around 150 cases were notified under the simplified procedure, which represents 83.8% of the total cases reviewed in this quarter.

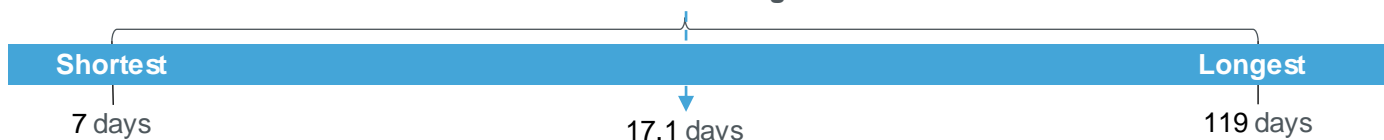
Merger control trends – Q1 2018 – Q1 2022



Simplified procedure: How quick is the review period?

Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
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	87.2%	1
Q2 2020	13.7 days	86.5%	0
Q3 2020	14.4 days	72.2%	3
Q4 2020	13.7 days	83.2%	1
Q1 2021	14.9 days	80.3%	3
Q2 2021	13.8 days	90.4%	0
Q3 2021	13.4 days	86.3%	3
Q4 2021	15.6 days	91.0%	3
Q1 2022	17.1 days	83.8%	1

Q1 2022: Average

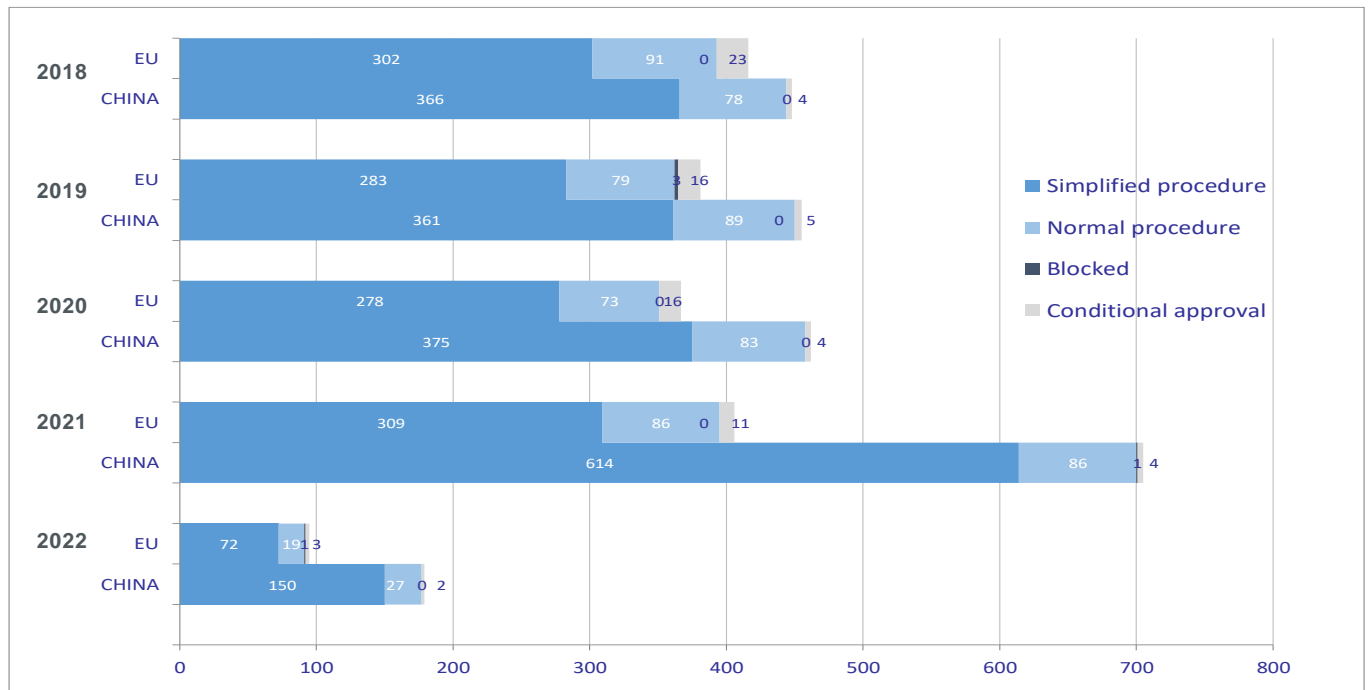




MERGER CONTROL

How does China compare internationally?

Comparison with EU – 2018 – 2022



SAMR conditionally approves GlobalWafers' acquisition of Siltronic

On 20 January 2022, the State Administration for Market Regulation ("**SAMR**") approved GlobalWafers Co., Ltd.'s ("**GlobalWafers**") acquisition of Siltronic AG ("**Siltronic**") subject to structural and behavioural conditions. GlobalWafers is a Taiwan-listed company engaged in wafer manufacturing, solar cells, modules, and related businesses. Siltronic is a German-listed company active in wafer manufacturing. Through the transaction, GlobalWafers would acquire sole control over Siltronic.

GlobalWafers and Siltronic's businesses overlap in wafer manufacturing, specifically with respect to (i) 6-inch and smaller wafers, (ii) 8-inch Czochralski wafers, (iii) 8-inch zone melting wafers, and (iv) 12-inch wafers. Wafers are the basic materials for manufacturing chips and other semiconductor products. SAMR considered the relevant geographic markets as worldwide and evaluated the transaction's impact on competition in China. SAMR held that the transaction would likely give rise to competition concerns in the market for 8-inch zone melting wafers, both worldwide and in China for the following reasons: (i) the combined entity would be the largest manufacturer in the world and the second largest in China, with a combined market share of 55-60% worldwide and 30-35% in China; and (ii) the post-transaction market would be prone to coordinated effects, given the reduced number of players. It would be easier for remaining competitors to coordinate prices when they were tempted to do that, since wafers are a necessary input for the semiconductor industry; and (iii) there are high entry barriers, such as capital, patent licensing, and technological R&D.



MERGER CONTROL

To address the competition concerns, SAMR imposed the following conditions on the combined entity: (i) divestiture of GlobalWafers' zone melting wafer business, which is carried out by Topsil GlobalWafers A/S, within six months; (ii) a requirement that the combined entity should continue to supply wafers to Chinese consumers and treat them non-discriminatorily; (iii) that it agree to renew contracts with Chinese customers without imposing less favourable terms; and (iv) training management and employees so that they are able to implement these commitments. The parties can apply to lift these behavioural conditions in five years. Outside mainland China, the transaction has been unconditionally approved in Germany, the United States, the United Kingdom, Austria, Taiwan, South Korea and Japan.

SAMR conditionally approves AMD's acquisition of Xilinx

On 27 January 2022, SAMR published its decision to clear Advanced Micro Devices, Inc.'s ("**AMD**") acquisition of Xilinx, Inc. ("**Xilinx**"), subject to behavioural conditions. AMD, a supplier of central processing units ("**CPU**") and graphics processing units ("**GPU**"), proposed to acquire all shares of a programmable gate array ("**FPGA**") supplier, Xilinx, through a share swap. Both companies are listed in the United States.

SAMR found that AMD and Xilinx have adjacent relations in respect of CPUs, GPU accelerators, and FPGA on the basis that the three products share the same customer base. CPUs, GPU accelerators and FPGAs together constitute the core components that affect the performance of data centre servers. SAMR considered the relevant geographic markets for the three products as worldwide, but also evaluated the transaction's impact on competition in China.

SAMR found that Xilinx is the strongest FPGA player, with a market share of 50-55% in the FPGA market, both globally and in China. Given that CPUs, GPU accelerators and FPGAs have the same customer groups and that the combined entity will be the only supplier that can provide all three products, the combined entity would be able to act anti-competitively through leveraging its strong market position in the FPGA market, e.g.: (i) **tying** the sale of CPUs and GPU accelerators to the sale of FPGAs; (ii) forcing customers to **exclusively purchase** CPUs and GPU accelerators from the combined entity; (iii) **refusing to supply** FPGAs to its CPU and GPU accelerator competitors, which would increase the R&D costs for the latter; and (iv) **reducing interoperability** between its FPGAs and rivals' CPUs and GPU accelerators, thereby reducing the competitiveness of competitors' CPUs and GPU accelerators. Further, the market entry barriers in the CPU, GPU accelerator and FPGA markets are too high for new entrants to emerge and compete effectively.

SAMR imposed the following conditions on the combined entity: (i) refraining from tying CPUs, GPU accelerators and FPGAs to sales, or from imposing other unreasonable conditions; (ii) that it would continue to supply Chinese customers; (iii) that it would maintain the availability and programmability of FPGAs; (iv) that it would continue to ensure interoperability between its products and third-party products,



MERGER CONTROL

and disclose the combined entity's interoperability upgrade information to relevant third-parties within 90 days of such upgrades; and (v) that it should keep relevant third-parties' information confidential. The combined entity can apply for removal of these conditions in six years' time. Outside mainland China, the transaction has been unconditionally approved by the European Commission and competition authorities in the United States, the United Kingdom, South Korea, Singapore, Turkey, Australia and Taiwan.

SAMR fines Munich Re for failing to file

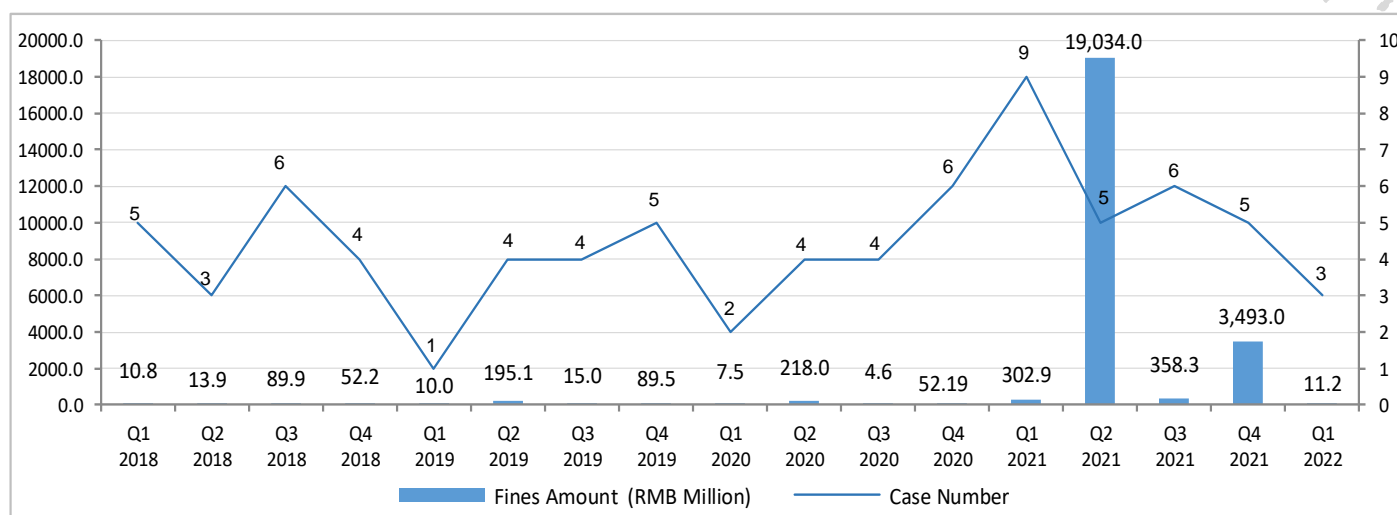
On 14 February 2022, SAMR published a penalty decision against the German insurer, Münchener Rückversicherungs-Gesellschaft Aktiengesellschaft in München ("**Munich Re**"), for failing to file its acquisition of a 15% interest (a controlling stake) in Covanta Europe Assets Limited ("**Target**"). The Target is a UK company primarily engaged in the waste-to-energy business in Ireland; no China nexus was found, based on publicly available resources. According to the decision, the China filing was triggered owing to Munich Re and Green Investment Group (a Macquarie-controlled infrastructure investor which retained its 10% stake in the Target). Whilst no competition issue was identified, Munich Re was nevertheless fined RMB 300,000 (USD 47,000) for failing to obtain Chinese antitrust clearance before closing the acquisition. This decision to impose a fine demonstrates, once again, that (i) failures to file no-nexus transactions are also on SAMR's radar, and (ii) minority investments should be treated with care as to whether they may amount to "control" within the meaning of Chinese merger rules.

In addition to the platform-related failure-to-file cases and the Munich Re fine above, SAMR also published three penalty decisions in this quarter: (i) the acquisition of a 45% stake in Guangri Company Limited by AGRE Asia Link Operating Platform Limited in 2017, where AGRE was fined RMB 400,000 (USD 62,920); (ii) the acquisition of a 50% stake in Weixun Company Limited by Apollo Asia Real Estate Management, LLC in 2018, where Apollo was fined RMB 400,000 (USD 62,920); and (iii) the acquisition of a 20% stake in Zhejiang Wisdom Puhua Financial Leasing Co., Ltd. by BNP Paribas Personal Finance SA in 2021, where BNP was fined RMB 300,000 (USD 47,190). No competition concerns were identified in any of the cases.



ANTITRUST INVESTIGATIONS

Enforcement trends* – Q1 2018 to Q1 2022



*Note: For 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
Water supply service Anhui AMR	10 February 2022	Exclusive dealing, imposing unreasonable conditions	1,628	N/A	N/A	4%	N/A
Medical device Beijing AMR	28 February 2022	Resale price maintenance	9,124	N/A	N/A	3%	N/A
Driving training service Yunnan AMR	18 March 2022	Price fixing	452	42	195	3%	N/A

Anhui AMR fines a water supplier for exclusive dealing and imposing unreasonable conditions

On 10 February 2022, SAMR published a penalty decision where the Anhui Administration for Market Regulation ("**Anhui AMR**") fined Fengyang Yimin Water Supply Co., Ltd. ("**Yimin**") for abuse of dominance. Yimin, the exclusive water supplier in Fengyang County, Anhui Province, dominates the market for water supply services in Fengyang. Anhui AMR found Yimin had abused its market dominance through: (i) **exclusive dealing** – from 2015 to 2021, Yimin required all real estate developers and construction companies to procure water supply equipment only from suppliers designated by Yimin, on penalty of Yimin refusing to supply water to their projects. Starting from 2018, Yimin also required construction companies to purchase only its own smart water meters, or Yimin would refuse to sign off on their projects; and (ii) **imposing unreasonable conditions** – from 2016, Yimin conditioned the supply of water to certain water users upon payment of deposits. Anhui AMR held that Yimin's conduct violated Articles 17(4) and 17(5) of the AML. It also ordered Yimin to refund all the deposits, confiscated illegal gains of RMB 141,415.97 (USD 22,414), and imposed a fine of RMB 1,627,702.77 (USD 257,990), amounting to 4% of Yimin's 2020 revenue.



ANTITRUST INVESTIGATIONS AND OTHER NEWS

Beijing AMR fines medical device supplier Geistlich for RPM

On 28 February 2022, SAMR published Beijing Administration for Market Regulation's ("**Beijing AMR**") penalty against Geistlich Trading (Beijing) Co., Ltd. ("**Geistlich**") for resale price maintenance ("**RPM**"). Geistlich is the Chinese subsidiary of Swiss Geistlich Pharma AG, a supplier of bone filling materials and absorbable biofilm used in dental implants. Upon investigation, Beijing AMR found that, from 2008 to 2018, Geistlich stipulated in its distribution agreements that distributors' resale prices should not be lower than Geistlich's recommended resale prices. Further, Geistlich frequently sent reminders via WeChat messages and gave oral warnings to prevent non-compliance with its restricted resale prices. Moreover, Geistlich took measures to ensure the implementation of RPM, such as formulating distributor management rules, establishing an incentive/penalty mechanism, monitoring resale prices, etc. Beijing AMR concluded that Geistlich violated Article 14(2) of the AML, and fined it RMB 9,123,598 (USD 1,446,090), amounting to 3% of the company's sales value in 2020.

Yunnan AMR fines four driving schools for price fixing

On 18 March 2022, SAMR published a penalty decision where Yunnan Administration for Market Regulation ("**Yunnan AMR**") fined four driving schools in Dayao County, Yunnan Province for price fixing. Yunnan AMR found that, after four rounds of negotiation, four driving schools had reached a "self-discipline agreement" on 30 July 2020, in which they set minimum training fees for driving lessons. Although this price-fixing agreement was implemented for around three months, Yunnan AMR concluded that the four driving schools had violated Article 13(1) of the AML. Considering that the four driving schools rectified the illegal conduct promptly and were cooperative during the investigation, Yunnan AMR imposed fines of 3% of their respective revenue in 2020, a total fine amounting to RMB 452,212.42 (USD 71,000).

Other news

Russia and China strengthen antitrust co-operation

On 4 February 2022, the president of Russia, Vladimir Putin, and the president of China, Xi Jinping, executed a Co-operation Agreement on Anti-monopoly Enforcement and Competition Policy between Russia and China, amongst other agreements, to enhance co-operation in respect of information exchange concerning antitrust cases and co-ordination over antitrust enforcement. SAMR expects the signed agreement to play a crucial role in further strengthening strategic co-operation between Russia and China in antitrust enforcement.

Private actions in China

Notable private antitrust litigations in this quarter include:

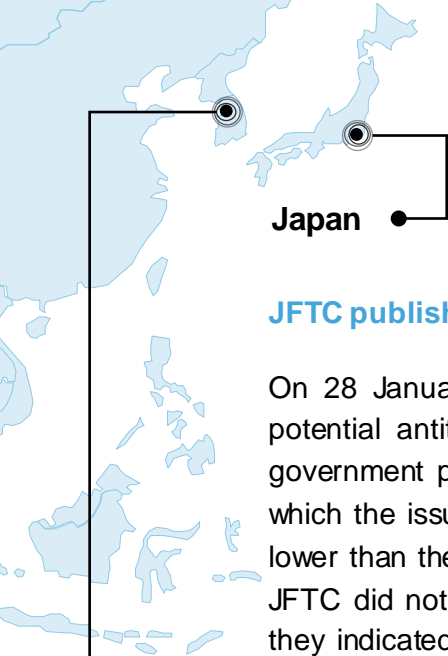
- **Huaming/Taipu:** On 22 February 2022, the Supreme Court in China ruled that the contractor manufacturing agreement entered into by two companies (Huaming and Taipu) for the purposes of mediating their patent disputes constituted a cartel and violated the AML. Notable aspects of this case



OTHER NEWS

include: (i) whether the fact that the contractor manufacturing agreement was entered into to resolve patent disputes necessarily justifies the content of the agreement; and (ii) whether the fact that Huaming and Taipu are vertically connected in the context of a contractor manufacturing agreement necessarily means that they should not be considered as competitors. The Supreme Court gave negative answers to both of these questions by clarifying that: (i) irrespective of whether there was a justifiable purpose, the agreement had clearly gone beyond what is required to resolve patent disputes, and, in substance, is unrelated to the protection of IP rights. With typical cartel arrangements, such as output restriction, market division and price fixing, the contractor agreement between Huaming and Taipu is a horizontal monopoly agreement, which is prohibited by the AML; (ii) whether the two companies are competitors should be based on their current as well as potential business activities, as opposed to how they are positioned in a particular agreement. The fact that they are vertically connected in the concerned contractor agreement does not change the fact that the two companies are active on the same product market (i.e., tap changers) in China. Hence, the Supreme Court held that Huaming and Taipu, as competitors, entered into a horizontal monopoly agreement in violation of Article 13 of the AML.

- **Shenghua/Hainan AMR:** In late January 2022, the Supreme Court ruled against the fire-protection company Hainan Shenghua Engineering's ("**Shenghua**") appeal against Hainan Administration for Market Regulation ("**Hainan AMR**") for the latter's price-fixing penalty decision. In a decision in January 2021, Hainan AMR fined 21 fire-protection companies, including Shenghua, 1% of their total revenues of 2018 for price-fixing. Shenghua then claimed before the Hainan Intermediate Court that the fine should have been based on revenue generated from the relevant products only, as opposed to Shenghua's total revenue, which was supported by the court. Hainan AMR subsequently appealed the ruling to the Supreme Court. The Supreme Court in its final decision concurred with Hainan AMR's original decision and confirmed that the base fine amount in antitrust cases should be an infringing party's total revenue in order to maximise the antitrust fine's deterrent effects. Following the Supreme Court's ruling, on 9 February 2022 the Hainan Free Trade Port Intellectual Property Court dismissed a lawsuit brought by 12 penalised companies in the same Hainan AMR penalty, which challenged the fine amount on a similar basis.



Japan

JFTC publishes report on IPO pricing survey

On 28 January 2022, the Japan Fair Trade Commission ("**JFTC**") published a report on potential antitrust law issues on pricing of initial public offerings ("**IPOs**"). The Japanese government pointed out in June 2021 that there have been some cases where the price at which the issuers initially sell their shares to the public ("**offering price**") in the IPOs is much lower than the prices that were initially quoted in the market following the IPOs. Although the JFTC did not find actual breaches of the Japanese Anti-Monopoly Act through their survey, they indicated potential antitrust issues relating to IPOs, such as the announcement of a low offering price without enough explanation to issuers, interference with competing lead managers' appointments, and information exchange of underwriting fees.

JFTC fines three pharmaceutical wholesalers for bid rigging

On 30 March 2022, the JFTC issued cease-and-desist orders and imposed JPY 423 million (USD 3.4 million) fines in total against three pharmaceutical wholesalers, Alfresa, Toho Pharmaceutical and Suzuken, which are major pharmaceutical wholesalers in Japan, regarding alleged bid-rigging relating to pharmaceutical products. The JFTC found that the participants had conspired and agreed to decide on prospective bidders and to bid at prices allowing those successful bidders to win comprehensive pharmaceutical procurement contracts for 57 hospitals. Prior to that, on 9 December 2020, the JFTC filed a criminal complaint with the prosecutor general against these three companies regarding the above-mentioned acts.

Apple has changed App Store rules, as agreed with JFTC

On 31 March 2022, Apple announced that it has updated its App Store rules and that it has implemented measures to allow a link to an external website owned or maintained by app developers, so that users can create or manage their accounts outside of the app. Prior to that, on 2 September 2021, the JFTC announced that it had decided to close its investigation against Apple in relation to Apple's conduct on "reader" apps after the JFTC confirmed that appropriate measures had been taken by Apple (i.e., allowing app developers to include an in-app link within reader apps and revising the App Store Review Guidelines).

South Korea

KFTC announces guidelines for antitrust review in platform sector

On 6 January 2022, the Korea Fair Trade Commission ("**KFTC**") established guidelines on anti-competitive conduct in the platform sector, indicating its approaches to key factors of the regulations, such as market definition, assessment of market dominance, assessment of anti-competitive effects, and major types of anti-competitive conduct.



South Korea

KFTC conditionally approves Korean Air's acquisition of Asian Airlines

On 22 February 2022, the KFTC announced that it had conditionally approved the proposed acquisition of Asiana Airlines (the second largest airline in South Korea) by Korean Air (the largest airline in South Korea). The KFTC identified that there were significant anti-competitive concerns regarding 26 out of 65 international routes and 14 out of 22 domestic routes in which the parties' businesses overlap. The parties will need to comply with certain remedies, over a period of the next 10 years, including that the parties must release slots at domestic airports and traffic rights to new entrants or existing airlines, if requested.

Amended enforcement decree of the Telecommunications Business Act comes into force

On 8 March 2022, the Korea Communications Commission announced the revision of the enforcement decree of the Telecommunications Business Act, which provides that fines of up to 2% of revenue may be imposed on app store operators if they force app developers to use the app store operator's own in-app payment system. The revision became effective on 15 March 2022.

Taiwan

TFTC releases draft White Paper on digital economy for public comments

On 3 March 2022, the Taiwan Fair Trade Commission ("**TFTC**") published its draft White Paper on Competition Policy in the Digital Economy for public comments. Drafted since March 2021, the paper reflects on the decisional practice of other competition authorities, as well as the TFTC's own experience in the digital economy field. With a view to outlining the antitrust challenges posed by the rising digital economy, the paper touches upon: (i) challenges with respect to market definition and assessment of market power; (ii) platform operators' practices, such as self-preferencing, tying, predatory pricing, price discrimination, most-favoured-nation clauses, resale price maintenance and restrictions on online sales; (iii) the interplay between competition law and data privacy, false advertising, etc.; and (iv) algorithm-facilitated collusion. Once it has had the chance to consider public comments, the TFTC will expect to release an advanced version of the paper to provide more clarity for market players in the digital economy.

Indonesia

KPPU appoints new chairman

On 3 February 2022, the newly appointed chairman of the Indonesia Competition Commission ("**KPPU**"), Ukay Karyadi, began his tenure. Ukay Karyadi graduated from the Faculty of Economics, University of Lampung with a bachelor's degree in economics, and the University of Indonesia with a master's degree specialising in business competition economics. He served as the vice chairman of KPPU from 2018 to 2020. He fills the vacancy left by the previous KPPU chairman, Kodrat Wibowo, who died on 5 November 2021.



Hong Kong

HKCC and Hong Kong police jointly raid premises for bid-rigging

On 18 January 2022, the Hong Kong Competition Commission ("**HKCC**") announced that it had conducted a joint operation with the Organised Crime and Triad Bureau of the Hong Kong Police to search a property management company. The company was allegedly engaged in bid-rigging in a tender for an industrial building maintenance project in Tuen Mun, which infringes the First Conduct Rule of the Competition Ordinance. During the joint operation, four persons (including senior officers) were arrested for their alleged involvement in potential criminal activities. HKCC is also conducting premises searches for contractors participating in the tender, with assistance from the police. The investigation remains ongoing.

HKCC probes two online food delivery platforms for anticompetitive conduct

On 27 January 2022, HKCC announced that it had initiated investigations into two online food delivery platforms – Foodpanda and Deliveroo – for potential anticompetitive conduct. HKCC is focusing on three areas of possible misconduct: (i) **exclusivity** – whether Foodpanda and Deliveroo required restaurants to exclusively transact with them, or imposed terms to the effect of discouraging restaurants from dealing with other food delivery platforms; (ii) **price parity** – whether Foodpanda and Deliveroo compelled restaurants to set prices on their platforms not higher than menu prices or as listed on other platforms; and whether it was justifiable for Foodpanda and Deliveroo to unilaterally adjust restaurants' prices to the same effect; and (iii) **tie-in** – whether Foodpanda and Deliveroo forced restaurants to also purchase their food collection or other services. HKCC is concerned that such conduct may lessen competition in the online food delivery market, and hinder the market entry or expansion of new and smaller online food delivery platforms. HKCC is now seeking comments from the public, including restaurants, industry associations and consumers.

HKCC investigates restrictive warranty terms in the aftersales market of passenger cars

On 3 March 2022, HKCC announced that it had initiated an investigation into the allegedly restrictive warranty terms in distribution agreements of passenger car manufacturers. These agreements appear to have required car owners to exclusively use car dealers' own, or designated, aftersales services by conditioning the availability of the car warranty on the exclusivity requirement. As a result, fearing the loss of warranty, car owners have been deprived of the freedom to turn to third-party car repair workshops, which have thus been put at a disadvantageous position compared to car dealers. Hence, competition in the aftersales market may be lessened, to the detriment of end consumers. HKCC has finished soliciting public opinion and is still in the process of its investigation.

Pakistan

A light blue map of South and Southeast Asia is shown in the top right corner. A black line with a dot at the end points from the word 'Pakistan' to a small circle on the map of Pakistan. Another black line with a dot at the end points from the word 'Philippines' to a small circle on the map of the Philippines. A large black rectangular box is drawn around the text area, with its top-left corner near the Pakistan callout and its bottom-right corner near the Philippines callout.

Haier fined in Pakistan for RPM

On 11 March 2022, the Competition Commission of Pakistan ("**CCP**") published a decision to impose antitrust fines on two suppliers of home appliances, namely the Chinese brand, Haier, and the Turkish brand, DEL Electronics ("**DEL**"), for resale price maintenance ("**RPM**"). CCP commenced the investigation in December 2017 and found that Haier and DEL had restricted distributors from selling below certain price levels through pricing circulars and policies. Further, penalties would be imposed on distributors in case of non-compliance with the fixed resale price levels. CCP therefore concluded that Haier and DEL had violated the Competition Act of Pakistan, which prohibits RPM. Notably, DEL received a lighter fine (PKR 100 million (USD 510,000), less than 1% of its local turnover), given its cooperation during the investigation, compared to Haier. Despite that it was the first time that Haier had infringed competition rules in Pakistan, Haier was fined PKR 1 billion (USD 5.1 million), accounting for around 3% of its 2020-2021 local turnover. This, again, demonstrates the importance of complying with competition rules as well as acting in a cooperative manner in case of investigation.

Philippines

PCC releases 2021 Report and recommences *motu proprio* review

On 10 January 2022, the Philippine Competition Commission ("**PCC**") published its 2021 Year-end Report, which summarises its intended initiatives in 2022. The key priorities include, among others: (i) drafting guidelines on review of non-horizontal mergers; (ii) ramping up enforcement in key sectors, including e-commerce, health and pharmaceuticals, food and agriculture, energy and electricity, insurance, construction, water, and telecommunications; and (iii) developing screening tools to enhance its ability to detect bid-rigging in public procurement.

The report also highlights that PCC will investigate transactions which previously were not notifiable due to exemption (which formed part of the post-COVID recovery measures) but have negatively impacted competition. More specifically, the exemption rule – which came into effect in September 2020 – has exempted transactions valued at below PHP 50 billion (USD 1 billion) from mandatory notification for two years. The rule also restricted PCC from exercising its power of *motu proprio* review for one year, which elapsed in September 2021. An official of PCC revealed on 3 February 2022 that PCC is closely monitoring suspicious transactions. In addition, according to an internal monitoring report, at least two transactions involving distribution and industrial sectors, respectively, are likely to be subject to PCC's *motu proprio* review due to a possible lessening of competition in the Philippines.



India ●

CCI investigates Google for abuse of dominance re. online news advertisements

On 7 January 2022, the Competition Commission of India ("CCI") initiated an investigation into Google for abuse of dominance related to online news advertisements. The Digital News Publishers Association ("DNPA"), registered by Indian digital news publishers, filed a complaint with CCI alleging that Google had abused its dominance to hinder Indian news publishers' abilities to optimise their advertisement revenue. A significant portion of news publishers' revenue comes from digital advertisements attached to content on publishers' websites. As more than 50% of the traffic to news websites is routed through Google, Google has become news publishers' indispensable business partner in the digital ads space. DNPA's primary claims are with respect to: (i) **Excessive commission rates**: The contractual terms on revenue sharing are unilaterally set by Google, according to which 49% of news publishers' revenue attributed to digital ads would go to Google. The excessive commission rates have left news publishers with fewer funds to invest in new content, affecting their ability to live up to their mission to uphold freedom of expression; and (ii) **No compensation for zero-click searches**: News publishers claim that they should be compensated when traffic is distracted by snippets that are displayed by Google as if they were search results. The presence of snippets increases zero-click searches, with the result being that news publishers' content is not read at all, thus leading to decreased revenue. CCI is of the *prima facie* view that Google has significant market power in the relevant ad-tech area and is likely to have abused its dominant position in violation of the Indian Competition Act. On that basis, CCI was obliged to open a full-fledged investigation. In late March, CCI also received a similar complaint from the Indian Newspaper Society ("INS") concerning Google's unfair and untransparent revenue allocation, and has decided to pursue INS's complaint in an ongoing investigation.

CCI approves Amazon's acquisition of Cloudtail despite complaint from CAIT

On 9 March 2022, CCI cleared Amazon's controversial acquisition of Cloudtail, an India retailer, active both online and offline. Pre-transaction, Amazon had held 24% interest in Cloudtail. In December 2021, Amazon announced that it would acquire all the outstanding shares of Cloudtail subject to regulatory approvals, including merger clearance from CCI. On 14 January 2022, the Confederation of All India Traders ("CAIT"), an organisation representing the Indian trading community, complained to CCI, saying that this transaction should be blocked. CAIT alleged that: (i) the acquisition would give rise to conflict of interests, given that Cloudtail is currently the largest retailer on Amazon's marketplace; and (ii) the acquisition could potentially enable Amazon to circumvent some of the ongoing CCI investigations into Amazon's discriminatory treatment in favour of some retailers, including Cloudtail. Although CCI has approved this transaction, it did not disclose its substantive assessment, including on the complaint made by CAIT.



Australia

ACCC's *ex post* merger review for 2017-2019 non-opposed mergers

A report with findings from reviews of six non-opposed mergers occurring between 2017 and 2019 was released by the Australian Competition and Consumer Commission ("**ACCC**") on 25 February 2022. The ACCC indicated that the purpose of the review was to examine how certain mergers "played out over time" to test whether the assumptions, evidence and economic theories the ACCC based its decisions on were sound. The mergers detailed in the report are: (i) Caltex's acquisition of Milemaker (*retail supply of petrol*); (ii) Emergent Cold's acquisition of AB Oxford Cold Storage Company (*supply of third party cold storage*); (iii) Winc's acquisition OfficeMax (*supply of traditional office products*); (iv) Propel Funeral Partners' acquisition of Gregson & Weight Funeral Directors (*supply of funeral directing services; cremation services*); (v) Landmark's acquisition of Ruralco (*agricultural products and services*); and (vi) Complete Office's Supplies' acquisition of Lyreco (*supply of traditional office products*). The ACCC noted "mixed" findings and that in some cases it was now aware it did not receive complete information during its reviews because merger parties and other stakeholders "appeared to distort or omit critical information relevant to the ACCC's analysis". The ACCC has indicated it would implement changes based on the findings of the *ex post* review, including with respect to how it assess economic arguments put to it going forward. Any further findings of interest from other reviews of past merger decisions, that continue to be reviewed by the ACCC, are also likely to be published.

ACCC's 2022-2023 compliance and enforcement priorities

On 3 March 2022, at the annual Committee for Economic Development Australia address, the ACCC's 2022-2023 compliance and enforcement priorities were announced. Most notably, the ACCC identified its priorities as: (i) manipulative or deceptive advertising in the digital economy; (ii) environmental and sustainability claims (including related to carbon neutrality, consumer goods, manufacturing and the energy sector); and (iii) disruptions to global and domestic supply chains.



Australia

Digital platform regulation developments in Australia

Recent developments in Australia in respect of digital platform regulation include:

- On 1 April 2022, the Australian government (Treasury, in consultation with the ACCC, Department of Infrastructure, Transport, Regional Development and Communications, and the Australian Communications and Media Authority) announced that it will commence a review into the operation of the News Media and Digital Platforms Mandatory Bargaining Code. A consultation paper has been released and the deadline for submissions is 6 May 2022.
- A Digital Platform Regulators Forum ("**DP-REG**") has been formed between the ACCC, the Australian Communications and Media Authority, the Office of eSafety Commissioner and the Office of the Australian Information Commissioner. According to DP-REG's terms of reference, DP-REG is to serve as an avenue for Australian regulators to share information about and collaborate on activities relating to the regulation of digital platforms.

The ACCC began examining digital platforms in 2017. For the purposes of DP-REG the term "digital platforms" includes (but is not limited to): internet search engines, digital content aggregators, social media services, private messaging services, media referral services and electronic marketplaces.

Federal Court fines Peters Ice Cream for exclusive dealing

Australasian Food Group (trading as "**Peters Ice Cream**") has been ordered by the Federal Court of Australia to pay AUD 12 million (USD 9 million) in penalty for its anticompetitive conduct in distributing ice creams sold in convenience stores and petrol stations. Peters Ice Cream was also ordered to establish a compliance program (for a 3-year period) and contribute to the ACCC's legal costs. Peters Ice Cream had acquired distribution services from PFD Food Services ("**PFD**") on the condition that PFD would not sell or distribute the products of competitors in certain Australian geographic areas without Peters Ice Cream's written consent. PFD is Australia's largest distributor of single serve ice creams, with an ability to reach more than 90% of Australia's suburbs. Peters Ice Cream admitted to its offending conduct and that if PFD had not been restricted from distributing other manufacturers' ice cream products, it was likely that one or more potential competitors would have entered or expanded in the relevant markets. In doing so, it admitted it had engaged in exclusive dealing conduct that had the likely effect of substantially lessening competition in the supply of single serve ice creams. The ACCC has indicated that in 2022-2023, it is targeting exclusive arrangements by firms with market power that impact competition.



● New Zealand

New Zealand's prohibition against misuse of market power reformed under new legislation

On 30 March 2022, New Zealand's Minister of Commerce and Consumer Affairs announced the passing of the Commerce Amendment Bill ("**Bill**") by New Zealand's Parliament. The Bill amends New Zealand's Commerce Act 1986 with the intention to strengthen the prohibition against misuse of market power (section 36). It was also announced that the Bill's reforms will align New Zealand's anti-monopolisation prohibition with the equivalent prohibition

under Australian law. The Bill also (i) broadens the definition of cartel behaviour to include land covenants in light of recommendations arising from the Commerce Commission's market study of the grocery retail sector; (ii) increases the monetary penalty that courts can impose (NZD 10 million, nearly USD 7 million) on mergers or acquisitions held to be unfair, such as influencing a market in the favour of larger businesses; and (iii) asserts intellectual property rights are not to be treated any differently under competition law compared to other forms of property.

A New Zealand media firm's unique approach in discussing news delivery terms with Google

A New Zealand media firm "NZME" announced in March 2022 that it signed a letter of intent with Google to outline terms for news content delivery. A 90-day negotiation period is to follow to finalise key terms of proposed supply of NZME's news content to Google's News Showcase and other news products. NZME also announced it was in discussions with Facebook parent Meta Platforms for various digital projects for 2023. NZME's approach in directly engaging with big tech digital platforms differs from New Zealand's News Publishers Association which sought approval to collectively bargain with Meta Platforms and Alphabet Inc for fair payments for the publishers' news displayed on Google and Facebook sites.

Beijing



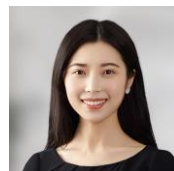
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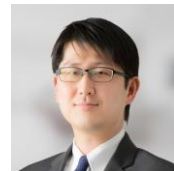
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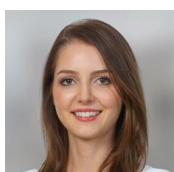
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