

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



ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE

July to September 2022

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ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: JULY TO SEPTEMBER 2022

INTRODUCTION

With the Amended Anti-Monopoly Law (AML) coming into force on 1 August 2022, China saw continuing efforts made to strengthen its overall antitrust enforcement in the past quarter. With respect to merger control, the central antitrust authority (the SAMR) officially announced the delegation of the merger control review power to five local antitrust authorities in Beijing, Shanghai, Guangdong, Chongqing and Shaanxi. This applies to simplified procedure cases when certain local nexus tests, e.g., parties' incorporation places and scope of relevant geographic markets, are met. In light of this background, officials at local antitrust authorities were reportedly seconded to the SAMR's merger control division to gain first-hand experience, which to some extent resulted in this quarter's relatively longer review period of simplified procedure cases compared to previous quarters. Nevertheless, the SAMR published a landmark decision to conditionally approve the proposed JV deal between Shanghai Airport and China Eastern Air Logistics, which marked China's first intervention with a transaction which involves purely Chinese companies. In addition, scrutiny over failure-to-file transactions in the digital economy remained a focus, with 25 transactions involving Chinese tech firms, such as Alibaba, Didi and Bilibili, fined in accordance with the previous AML. It remains to be seen how the SAMR in its future enforcement will implement the lifted penalty regime for failure-to-file cases as provided in the amended AML. Separately, on the conduct side, the SAMR and its local counterparts enforced against (i) five horizontal anti-competitive agreements across the cement, business credit evaluation, vehicle safety inspection and driver training service sectors; (ii) two resale price maintenance (RPM) cases, with one of them clarifying that a franchise model would not inherently exempt RPM; and (iii) three abuse of dominance cases, all related to exclusive dealing in public sectors, such as water and gas supply. Furthermore, it was announced that the SAMR had been recruiting to expand its antitrust manpower. On the private litigation front, an interesting development was that the Supreme Court shed useful light upon the approach to assessing collective market dominance in practice.

Outside China, competition authorities in the region remained dedicated to dealing with challenges arising from the digital economy, especially in relation to big tech firms. In Japan, the digital platform bill brought the digital advertising sector under its radar, survey results on an interim competition report for mobile ecosystem were published, and the first ruling on the algorithm's validity was made. In South Korea, Apple was investigated for alleged excessive commissions. In India, the Competition Amendment Bill specifically introduced changes to scrutinize big tech companies; and in Indonesia, an antitrust investigation was initiated against Google's app payment policy. In other industries, anti-competitive agreements, in particular cartel and RPM, were actively enforced across the region. In Australia, penalties for boycotting were imposed by the Federal Court on CFMEU and Hutchinson, and civil proceedings against ARM Architecture and its former managing director over alleged cartel were commenced. 28 shipping lines were fined for price fixing in Korea, and eight IT firms were fined for bid-rigging in Malaysia, which marked the first local bid-rigging decision made. In addition, Hong Kong resolved the first antitrust violation (a price-fixing agreement) based on settlement consent and saw the first RPM case brought before the Tribunal. On the legislation and policy making side, Australia was considering increasing penalties for certain anti-competitive behaviours; Hong Kong amended leniency policy for individuals to further facilitate the discovery of cartel; the interim chair of the competition authority in the Philippines outlined enforcement priorities for the second half of 2022, and South Korea appointed a new chairperson.



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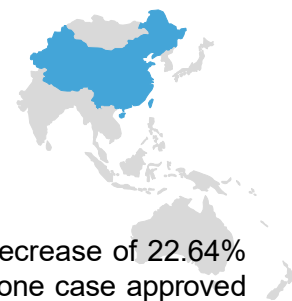
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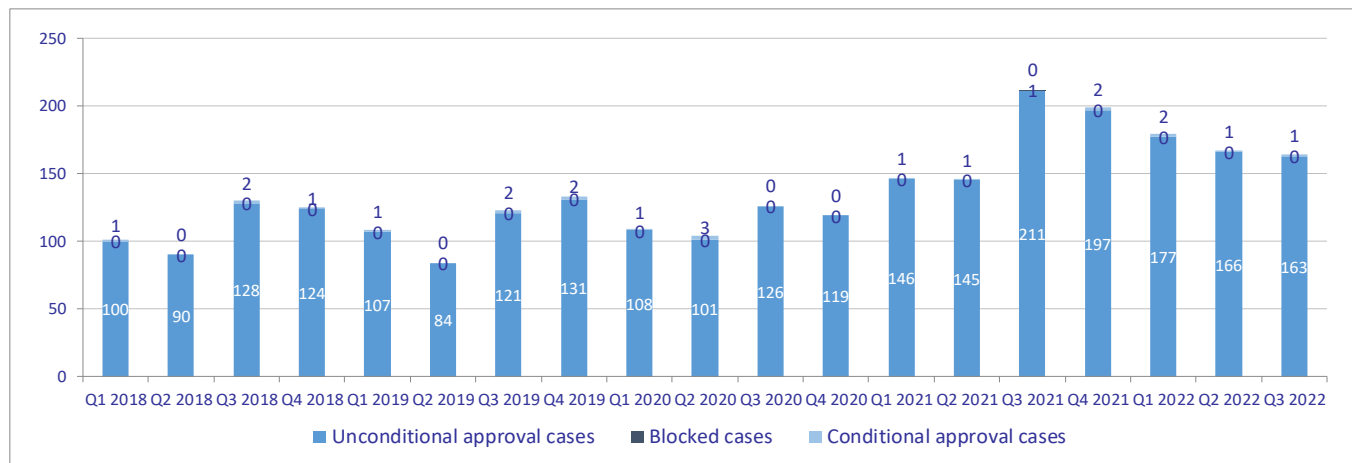


MERGER CONTROL

How many cases have there been?

There were in total 164 merger decisions released in the third quarter of 2022, a decrease of 22.64% compared to the third quarter of 2021, with 163 cases unconditionally cleared and one case approved subject to conditions. Around 122 cases were notified under the simplified procedure, which represents 74.39% of the total cases reviewed in this quarter.

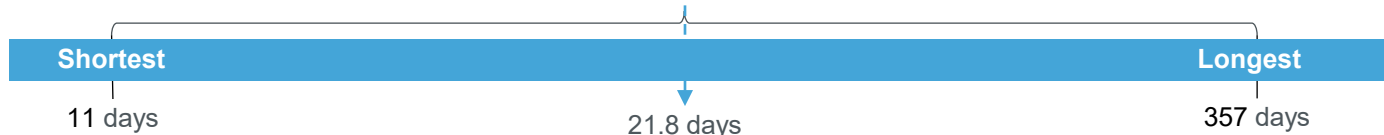
Merger control trends – Q1 2018 – Q3 2022



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
Q2 2022	17.2 days	87.4%	2
Q3 2022	21.8 days	74.4%	2

Q3 2022: Average

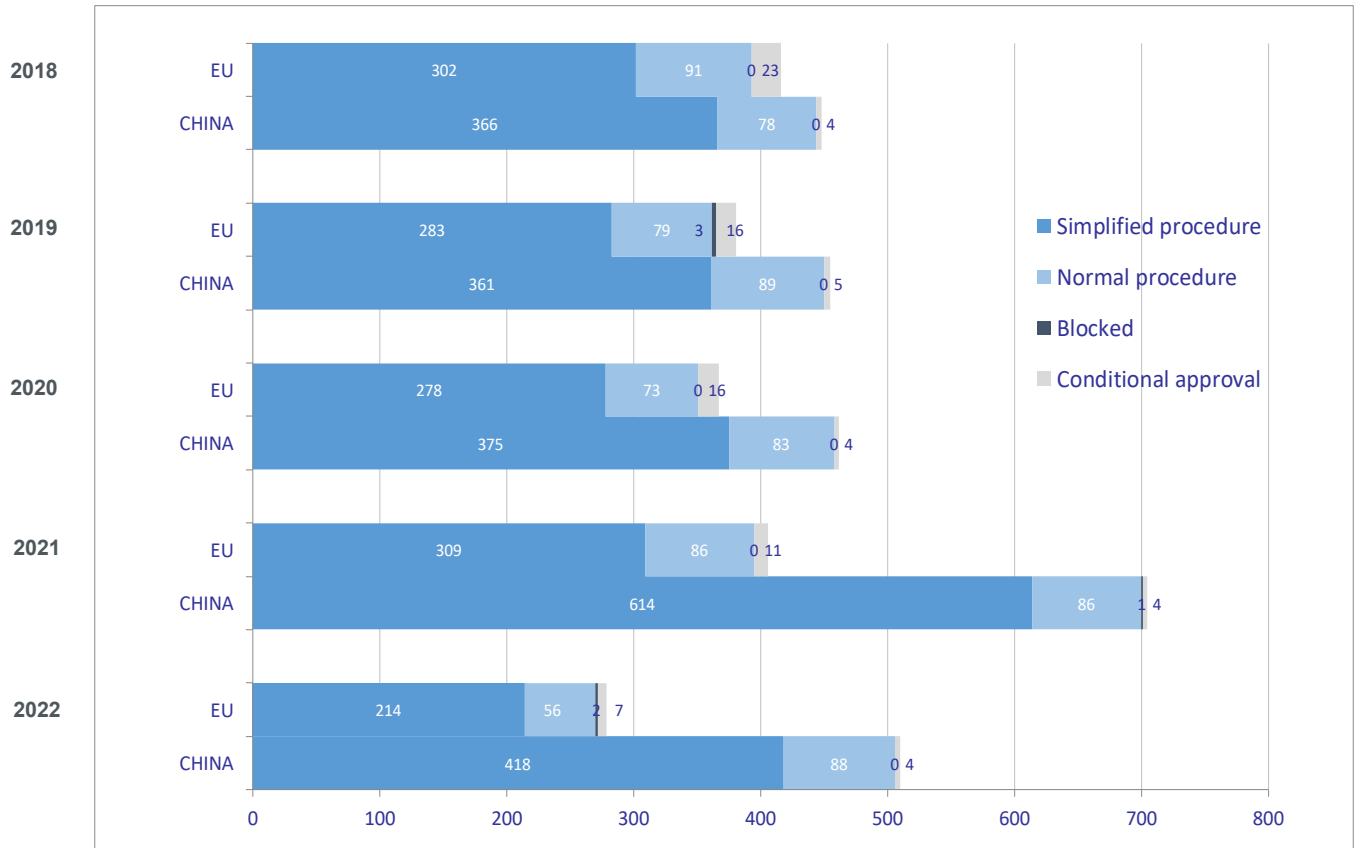




MERGER CONTROL

How does China compare internationally?

Comparison with EU – 2018 – 2022



The SAMR delegates review of certain merger control filings to some local counterparts

On 15 July 2022, the State Administration for Market Regulation ("**SAMR**") announced a three-year pilot program commencing 1 August 2022 to delegate merger control review of certain simplified procedure cases to five provincial level competition authorities ("**AMR**") in Beijing, Shanghai, Guangdong Province, Chongqing Province, and Shaanxi Province. A simple-procedure case can be delegated to one of these local authorities in presence of certain local nexus (such as incorporate cities of parties to a transaction, and scope of relevant geographic markets), but this is subject to the SAMR's discretion. Local authorities will review the delegated cases but final decisions will still be made by the SAMR. Given that local competition authorities are relatively inexperienced in relation to merger control, parties to a transaction which is to be delegated for local review may expect a prolonged review process.



MERGER CONTROL

The SAMR clears JV deal by Shanghai Airport and Eastern Air Logistics with behavioural conditions

On 14 September 2022, the SAMR conditionally approved the proposed establishment of a joint venture ("**JV**") between Shanghai Airport and China Eastern Air Logistics which is controlled by China Eastern Airlines Group ("**CEA**"). Shanghai Airport manages two international airports, i.e., Shanghai Pudong Airport ("**Pudong Airport**") and Shanghai Hongqiao Airport. Eastern Air Logistics is primarily engaged in air express transportation, integrated ground services, and integrated logistics services. The JV to be held by Shanghai Airport (51%) and Eastern Air Logistics (49%) will provide smart airport cargo terminal services at Pudong Airport.

The SAMR identified: (i) a horizontal overlap between the JV partners in the upstream market for providing cargo terminal services at Pudong Airport; and (ii) a vertical relationship between the JV partners' upstream cargo terminal services and CEA's downstream international/domestic air freight services at Pudong Airport. The SAMR held that the transaction would likely give rise to competition concerns on both the upstream and the downstream markets. At the upstream level, the JV will obtain a dominant position on the basis of the JV parties' high combined market share (+70%) on the cargo terminal services at Pudong Airport and this market's high market entry barriers. The SAMR was concerned as the JV might take advantage of its market dominance to reduce service quality or raise prices and the JV partners might use the JV as a conduit to coordinate their prices. At the downstream level, the SAMR was concerned that by leveraging the JV's dominance in the upstream cargo terminal service market, CEA would be able to strengthen its market power in the more profitable downstream air freight services market and result in customer foreclosure.

To address the above competition concerns, the SAMR required the JV partners to (i) keep separate their cargo terminal businesses at Pudong Airport; (ii) keep competing between themselves and vis-à-vis the JV; (iii) refrain from exchanging competitively sensitive information through the JV; (iv) keep performing their existing contracts and offer renewal option in no worse terms; (v) provide their cargo terminal services on FRAND terms, and (vi) invite the China Air Transport Association to conduct annual supervision. All conditions except for (iv) will last for at least eight years. This is China's first merger control remedy case which involves purely Chinese companies. The transaction did not seem to have triggered merger filings in other jurisdictions.

The SAMR publishes 28 failure-to-file decisions

On 10 July 2022, the SAMR published 28 failure-to-file decisions and imposed fines of up to RMB 500,000 (USD 72,537) on each of the respective infringing companies, which mainly included tech giants and digital platforms such as Alibaba, Didi, Bilibili and Sina, with three cases concerning healthcare, consumer goods and transportation sectors. Some of these failure-to-file transactions were proactively reported to the SAMR by the infringing parties after internal compliance checks. More details on these failure-to-file decisions are set out below.



MERGER CONTROL

No.	Fined transactions (with fined party's name <i>Italicised</i>)	Tech firms/digital platforms involved
1.	The acquisition of a 31.1594% stake in Fengbang Financial Leasing (Shanghai) Co., Ltd. by <i>Vibrant Creek Limited</i> in 2018	Didi
2.	The acquisition of a 27% stake in Best Inc. by <i>Alibaba Investment Limited</i> in 2017	Alibaba
3.	The acquisition of a 68.86% stake in Shanghai Jiamian Information Technology Co., Ltd by <i>Beijing Weimeng Innovation Venture Capital Management</i> in 2020	Sina
4.	The establishment of a joint venture by <i>Dirun (Tianjin) Technology Co., Ltd.</i> and <i>Xiamen Financing Guarantee Co., Ltd.</i> in 2019	Didi
5.	The establishment of a joint venture by <i>Fuzhou Huiju New Energy Technology Co., Ltd.</i> and <i>Toowell Network Technology (Hangzhou) Co., Ltd.</i> in 2020	Didi
6.	The acquisition of a 15% stake in Beijing Qixin Technology Co., Ltd. by <i>Shanghai Huandian Information Technology Co., Ltd.</i> in 2020	Bilibili
7.	The acquisition of a 20% stake in Okaybuy (China) Holding Inc. by <i>Tencent Holdings Limited</i> in 2011	Tencent
8.	The acquisition of a 17.65% stake in Linklogis Digital Technology Group Co., Ltd. by <i>Tencent Holdings Limited</i> and <i>CITIC Capital Holdings</i> in 2016	Tencent
9.	The acquisition of a 10.3125% stake in QZing Technology (Beijing) Co., Ltd. by <i>Tencent Holdings Limited</i> in 2020	Tencent
10.	The acquisition of a 10% stake in DeepBlue Alpha Inc. by <i>Tencent Holdings Limited</i> in 2019	Tencent
11.	The acquisition of a 20.32% stake in Bale Interaction (Beijing) Cultural Media Co., Ltd. by <i>Hangzhou Ali Venture Investment Co., Ltd.</i> in 2014	Alibaba
12.	The establishment of a joint venture by <i>Ping An Healthcare and Technology Co., Ltd.</i> and <i>SoftBank Corp.</i> in 2019	N/A
13.	The acquisition of a 36.74% stake in Shanghai China Business News Media Co., Ltd. by <i>Hangzhou Ali Venture Investment Co., Ltd.</i> in 2015	Alibaba
14.	The acquisition of a 28% stake in Shanghai CloudCare Information Technology Co., Ltd. by <i>Alibaba (China) Network Technology Co., Ltd.</i> in 2016	Alibaba



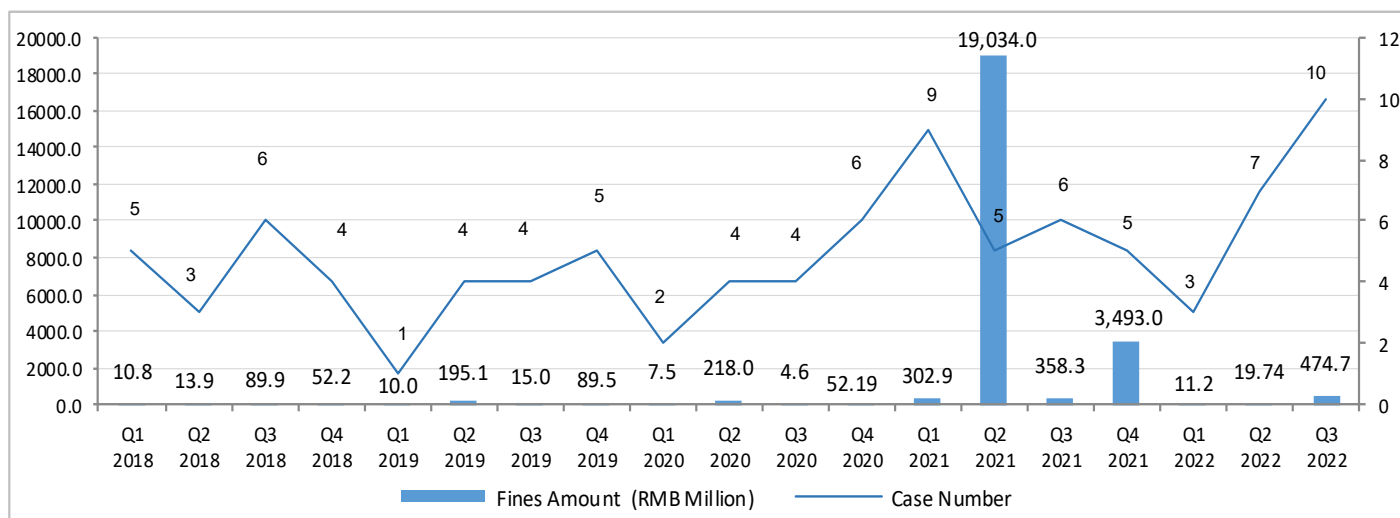
MERGER CONTROL

No.	Fined transactions (with fined party's name <i>Italicised</i>)	Tech firms/digital platforms involved
15.	The acquisition of a 12.3024% stake in Guangzhou Youcheyihou Information Technology Co., Ltd. by <i>Tencent Holdings Limited</i> in 2017	Tencent
16.	The acquisition of a 12.2627% stake in Shanghai Synyi Medical Technology Co., Ltd. by <i>Tencent Holdings Limited</i> in 2019	Tencent
17.	The acquisition of a 15% stake in Shenzhen Smart Manufacturing Software Development Co., Ltd. by <i>Tencent Holdings Limited</i> in 2019	Tencent
18.	The establishment of a joint venture by <i>Seif Investment (HK) Limited</i> and <i>eBeauty Venture (H.K.) Limited</i> in 2021	N/A
19.	The acquisition of a 15% stake in Hebei Zhumeng Culture Communication Co., Ltd. by <i>Tencent Holdings Limited</i> in 2017	Tencent
20.	The acquisition of a 100% stake in Youku Tudou Inc. by <i>Alibaba Investment Limited</i> in 2016	Alibaba, Youku
21.	The acquisition of a 7.32% stake in Chengdu L Square Culture Communication Co., Ltd. by <i>Shanghai Huandian Information Technology Co., Ltd.</i> in 2018	Bilibili, Tencent
22.	The acquisition of a 10% stake in Beijing Longhetianyu Film Culture Co., Ltd. by <i>Tencent Holdings Limited</i> in 2019	Tencent
23.	The acquisition of a 25% stake in Xiamen Ziyuzile Culture Media Co., Ltd by <i>Tencent Holdings Limited</i> in 2018	Tencent
24.	The acquisition of a 32% stake each in Hyundai Insurance (China) Co., Ltd by <i>Dirun (Tianjin) Technology Co., Ltd.</i> and <i>Legend Holdings Corporation</i> in 2020	Didi; Legend
25.	The acquisition of an 8% stake in Shanghai Foch Film and TV Culture Investment by <i>Shanghai Huandian Information Technology Co., Ltd.</i> in 2018	Bilibili; Tencent
26.	The acquisition of a 76.9% stake in Supercell Oy by <i>Tencent Holdings Limited</i> in 2016	Tencent
27.	The acquisition of a 12.5% stake in Beijing Beibanqiu International Culture Communication Co., Ltd. by <i>Tencent Holdings Limited</i> in 2018	Tencent
28.	The establishment of a joint venture by <i>Shanghai Shentong Metro Group Co., Ltd.</i> and <i>Bombardier Transportation Sweden</i> in 2012	N/A



ANTITRUST INVESTIGATIONS

Enforcement trends* – Q1 2018 to Q2 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
Concrete Fujian AMR	6 July 2022	Price fixing, market dividing	15,829	805	4,005	3%-4%	N/A
Cement Shaanxi AMR	9 July 2022	Price fixing	451,575	500	172,300	2%-3%	N/A
Water supply service Guizhou AMR	18 July 2022	Exclusive dealing	1,631	N/A	N/A	3%	N/A
Gas supply service Anhui AMR	19 July 2022	Exclusive dealing	3,154	N/A	N/A	2%	N/A
Business credit evaluation service Henan AMR	22 July 2022	Price fixing	526	0.4	36	1%	N/A
Medicine Hainan AMR	22 July 2022	RPM	200	N/A	N/A	N/A	N/A
English training service Beijing AMR	27 July 2022	RPM	942	N/A	N/A	3%	N/A
Vehicle license application service Guizhou AMR	12 August 2022	Exclusive dealing	348	N/A	N/A	4%	N/A
Vehicle safety inspection service Shanxi AMR	22 August 2022	Price fixing, market dividing	209	1	73	3%-5%	N/A
Driving training service Hunan AMR	2 September 2022	Price fixing	322	46	79	3.5%	N/A



ANTITRUST INVESTIGATIONS

Provincial AMRs actively enforce against price-fixing and market-sharing agreements

In the past quarter, the SAMR published the following decisions made by local AMRs to penalise price fixing and market sharing agreements:

- **Concrete firms** – The Fujian AMR fined seven concrete firms for price fixing and market sharing. Between May 2015 and September 2018, the concrete firms fixed prices for commercial concrete products and agreed to deliver the concrete only to designated customers. Penalties were put in place to ensure compliance. The Fujian AMR imposed an aggregate fine of approximately RMB 15.8 million (USD 2.36 million) on the concrete firms, equivalent to 3-4% of their respective sales in 2018.
- **Car safety inspection firms** – The Shanxi AMR fined seven car safety inspection firms for price fixing and market sharing. Between September 2020 and January 2021, the inspection firms agreed on a fixed price for safety inspection services for certain types of automobiles and allocated the revenues among the firms at a fixed percentage. The Shanxi AMR imposed an aggregate fine of RMB 208,500 (USD 30,553) on the seven inspection firms, amounting to 3-5% of their respective sales in 2020.
- **Driving schools** – The Hunan AMR fined five driving schools for price fixing. Between November 2018 and June 2019, the driving schools agreed on and implemented fixed driver training fees and driving licence examination fees. The Hunan AMR imposed total fines of RMB 321,778.1 (USD 46,585) on the driving schools, amounting to 3.5% of their respective sales in 2018.
- **The Shaanxi Province Cement Association ("Cement Association")** – Between July 2017 and March 2019, the Cement Association organised various meetings, gatherings, and online group chats, among its 13 member companies to discuss and agree on price hikes for certain cement products, and then for at least four times simultaneously increased prices. The Shaanxi AMR fined the 13 member companies an aggregate of RMB 451 million (USD 65 million), equivalent to 2-3% of their respective 2018 sales for price fixing, and fined the Cement Association RMB 500,000 (USD 72,130.06) for organising its members to enter into price-fixing agreements.
- **The Henan Credit Construction Promotion Committee ("Credit Committee")** – Between 2015 and August 2019, the Credit Committee organised its member firms to discuss and adopt various self-discipline agreements, according to which the latter coordinated and fixed service fee rates for business credit evaluation. The Henan AMR fined 30 member companies an aggregate of RMB 226,102.48 (USD 32,605.45), equivalent to 1% of their respective 2019 sales for price fixing and fined the Credit Committee RMB 300,000 (USD 43,261.95) for its organising role. The relatively light penalty reflects the fact that the Credit Committee and its member companies ceased their conduct before the investigation and cooperated during the investigation.



ANTITRUST INVESTIGATIONS

Two exclusive dealing investigations in the public utility sector are closed with fines

On 18 July and 19 July 2022, two penalty decisions made by the Guizhou AMR and the Anhui AMR to penalize local public utility service providers for exclusive dealing were published by the SAMR.

- **Guizhou Water Investments and Affairs Group Weining Co., Ltd. ("Weining Water")** – Weining Water is the exclusive supplier of public tap water in Weining County, Guizhou Province, thus enjoying inherent market dominance. Weining Water required real estate developers to exclusively contract with one of its subsidiaries to design, construct and install certain water supply facilities, where failure to do so would lead to water supply cut-off or other penalties. The Guizhou AMR imposed a fine of RMB 1,630,984.71 (USD 236,500.87) on Weining Water (equivalent to 3% of its 2020 sales) and confiscated illegal gains of RMB 674,978 (USD 97,875.15).
- **Wuhu Wanzhi Zhongran City Gas Development Co., Ltd. ("Wanzhi Gas")** is the exclusive supplier of pipeline gas in Wanzhi District, Wuhu City and thus enjoys market dominance. Between December 2004 and July 2021, Wanzhi Gas required developers of new residential complexes to solely engage Wanzhi Gas for the construction of gas infrastructure installation projects. The Anhui AMR imposed a fine of RMB 3,154,455.46 (USD 457,411.68) on Wanzhi Gas (equivalent to 2% of its 2020 sales) and confiscated illegal gains of RMB 5,736,265.12 (USD 831,786.88).

The Guizhou AMR fines a vehicle license provider for exclusive dealing

On 12 August 2022, the Guizhou AMR fined Guizhou Zhoufucheng Logistics Co., Ltd. ("**Zhoufucheng**") for exclusive dealing. Zhoufucheng is Didi's exclusive service provider for the application of online ride-hailing vehicle licenses on behalf of local drivers who intend to operate on Didi ("**Didi drivers**"). The Guizhou AMR found that Zhoufucheng had a dominant position in the local online ride-hailing licensing market and it abused its dominance by (i) requiring Didi drivers to purchase commercial vehicle insurance only from its designated insurance agents and salespersons; (ii) cooperating with salespersons from insurance companies to control purchase channels; and (iii) facilitating a trilateral agreement under which Zhoufucheng promised to have all commercial vehicle insurance purchased exclusively from an insurance company in three years. Non-compliant Didi drivers would be denied requests for applying for online ride-hailing licenses or paying for GPS data fees. The Guizhou AMR concluded that Zhoufucheng's conduct constituted exclusive dealing by requiring Didi drivers to only purchase commercial vehicle insurance from designated persons. As a result, the Guizhou AMR fined Zhoufucheng RMB 348,147.4 (USD 48,368), amounting to 4% of its 2020 sales, and confiscated illegal gains of RMB 1.5 million (USD 208,000).

The Beijing AMR fines an English-language training institution for RPM

On 27 July 2022, a penalty decision made by the Beijing AMR to fine Beijing Kairui Alliance Education Technology ("**Kairui**") for resale price maintenance ("**RPM**") was published by the SAMR. As the exclusive licensee of Sesame Street English in China, Kairui provides after-school English training for children through 455 authorised franchisees across China. The investigation revealed that Kairui engaged in RPM practices between 2014 and 2021, specifically by: (i) requiring franchisees to only sell courses at fixed prices set by Kairui and notifying franchisees via emails about the different fixed prices in different regions; (ii) formulating and issuing various price control rules – for those non-compliant



ANTITRUST INVESTIGATIONS AND OTHER NEWS

franchisees, Kairui imposed pecuniary penalties, required termination of business, or revoked authorisation. Notably, the Beijing AMR dismissed Kairui's exemption claim made under Article 15(7) of the previous Anti-Monopoly Law ("**AML**") and ruled that (i) RPM is not a justified practice or an essential element in the franchising model under existing laws, regulations, or department rules; and (ii) Kairui failed to prove that the RPM agreements would not severely restrict competition and would enable consumers to share the benefits. Considering the above, the Beijing AMR concluded that Kairui's RPM conduct harmed both inter-brand and intra-brand competition and jeopardised end consumers' welfare. Kairui was imposed a fine of RMB 942,386.47 (USD 139,231), amounting to 3% of its 2020 sales.

The Hainan AMR fines Eshun Pharmaceutical for RPM

On 22 July 2022, a penalty decision made by the Hainan AMR to penalize Hainan Eshun Pharmaceutical ("**Eshun Pharmaceutical**") for RPM was published by the SAMR. Eshun Pharmaceutical was the exclusive producer of Lianzhi pills, a type of anti-inflammatory Chinese patent medicine. Between 2019 and 2020, Eshun Pharmaceutical reached RPM agreements with some distributors. Specifically, the three template contracts prepared by Eshun Pharmaceutical all contained provisions that set out resale prices of Lianzhi pills and required the distributors not to sell below the prescribed prices, not to sell outside their designated region and not to sell online. The above requirements were accompanied by a series of punitive measures, such as suspension of supply or pecuniary penalties. The investigation revealed that the above RPM agreements had been reached but had never been implemented. Nonetheless, the Hainan AMR found the RPM agreements to be anti-competitive in that they deprived distributors of their independent pricing power and harmed competition to the detriment of consumers. The Hainan AMR took note of Eshun Pharmaceutical's proactive cooperation and rectification measures and imposed a relatively light fine of RMB 200,000 (USD 29,563), also taking into account that the agreements were reached but not implemented.

Other news

China calls for central SoEs to raise antitrust compliance awareness

On 1 August 2022, the State-owned Assets Supervision and Administration Commission of the State Council issued a notice to all central government-owned enterprises ("**central SoEs**") to digest the amended AML and hold at least one training session for all employees by the end of 2022. Furthermore, the State Council required all central SoEs to formulate detailed rules or special guidelines for the purposes of antitrust compliance. A Chinese government official said that the government must put forward stricter requirements on central SoEs' antitrust compliance to respond to the increasingly rigid domestic and overseas antitrust regulatory environment.

SAMR intends to increase its antitrust manpower

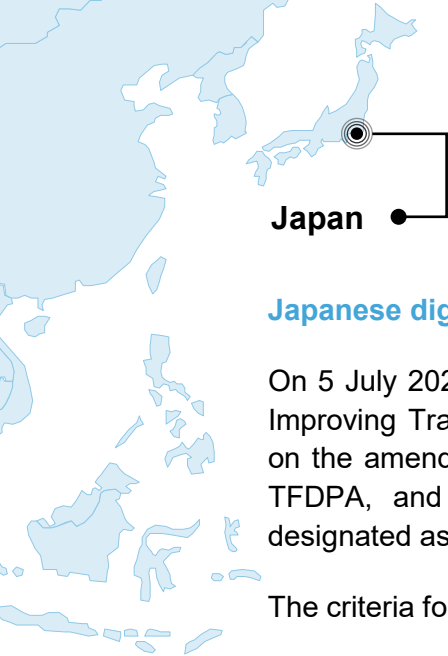
China announced in the past quarter its plan to boost SAMR's antitrust manpower. The proposal reveals a plan to hire 17 junior officers who share diversified background. Candidates are reported to come from government or other public bodies, law firms, financial institutions and homegrown tech firms such as JD Technology and Suning.com.



OTHER NEWS

China's SPC provides clarification for how to assess collective market dominance

On 14 September 2022, the Supreme People's Court ("**SPC**") of China published a verdict in relation to a private litigation against China Mobile (China's leading telecom operator) to shed useful light upon how to assess collective dominance. Although China Mobile, in itself, does not have a market share so high (e.g., 50% or above) as to indicate dominance, it can gain collective dominance when the other two major telecom operators (China Telecom and China Union) are taken into account. According to Article 19 of the previous AML (Article 24 of the amended AML), collective market dominance of three companies may be presumed if their combined share accounts for 75% or more. As China Mobile, China Telecom, and China Unicom are the only three telecom carriers in Luoyang City, they satisfy the 75% share test as provided in the AML. Moreover, the SPC looked beyond the market share indicator when assessing collective dominance. The SPC further considered whether there were concerted behaviours among the three players, in particular whether they adopted similar practices to impose unfair conditions on users. It was found that the three players adopted similar anti-competitive template contracts which contain restrictive provisions. On that basis, the SPC confirmed the existence of collective market dominance. Although China Mobile won the proceedings due to a lack of evidence on the appellant's side, this verdict provides useful guidance for the assessment of collective market dominance.



Japanese digital platform bill brings the digital advertising sector into its radar

On 5 July 2022, the Japanese Cabinet decided to amend the Cabinet Order on the Act on Improving Transparency and Fairness of Specified Digital Platforms (the "TFDPA"). Based on the amendment, the digital advertising sector was added to the regulatory scope of the TFDPA, and large digital platform operators in the digital advertising sector will be designated as regulated parties.

The criteria for designation as a regulated party are as follows:

(i) Operators of media-integrated advertising digital platforms (i.e. types of platforms that place advertisements of advertisers determined mainly through an auction system on their own search services, portal sites, social networking sites, etc.) whose turnover in Japan is JPY 100 billion (USD 688 million) or more. Google, Meta and Yahoo Japan were designated in this category.

(ii) Operators of intermediary-type advertising digital platforms (i.e. types of platforms that mediate between advertisers and website operators (publishers), mainly through an auction system) whose turnover in Japan is JPY 50 billion (USD 344 million) or more. Google was designated in this category.

Japan publishes survey results on its interim competition report for mobile ecosystem

On 5 August 2022, the Government's Headquarters for Digital Market Competition ("HDMC"), which is responsible for developing rules and regulations for the digital market in Japan, published the results of public comments on its Interim Report on the Mobile Ecosystems Market Survey. It received 113 comments, including those from Apple and Google. The HDMC will continue the assessment, including holding hearings with market players.

Japan makes the first judicial decision on algorithm's validity

On 16 June 2022, the Tokyo District Court made a decision on a lawsuit filed by a restaurant chain against the operator of the website of Kakaku.com, claiming damages of approximately JPY 640 million (USD 4.4 million) and other compensation on the grounds that the restaurant chain had suffered damage as a result of Kakaku.com's breach of the Anti-Monopoly Act. The court found that Kakaku.com's conduct constituted an abuse of a superior bargaining position, which is prohibited by the Anti-Monopoly Act, and approved the restaurant chain's claim, ordering Kakaku.com to pay JPY 38.4 million (USD 264,000) in damages.

Kakaku.com had been using an "algorithm" as its own standard for determining rating scores and displaying the ranking of each restaurant on its website, but in May 2019 it changed its standard to uniformly deduct points from chain restaurants' ratings. The restaurant chain claimed that this change in criteria resulted in a drop in evaluation points and a decrease of more than 5,000 customers per month visiting the restaurant via the website run by Kakaku.com. The court decided that the change in the algorithm was unfair, and caused an unexpected disadvantage to the restaurant chain, and therefore constituted an abuse of a superior bargaining position. The court decision is seen as the first judicial decision in which the validity of an algorithm was disputed, and may have an impact on the method of assessment by site operators.



Japan

MasterCard, Union Pay and Visa will publish standard interchange fee rates in Japan

On 14 September 2022, the JFTC and the Ministry of Economy, Trade and Industry ("**METI**") announced that by the end of November 2022 the three international credit card brands (i.e. MasterCard, Union Pay and Visa) will publish their standard interchange fee rates (i.e. rates of standard fees paid by a settlement company contracted by a store to another settlement company contracted by a user when payment is made by credit card). The JFTC and the METI had each published a report on the standard interchange fee rates in March and April 2022 and stated that it would be appropriate for international brands that have set their own standard interchange fee rates to publish such rates.

In addition, the JFTC and the METI announced that they consider that, from the perspective of ensuring fair competitive conditions between international brands in the credit card issuance market and increasing the transparency of the credit card market as a whole, it is desirable for international brands to publish the average rate of issuer fees. They intend to take steps towards the publication of the average rate of issuer fees for international brands.

● **Philippines**

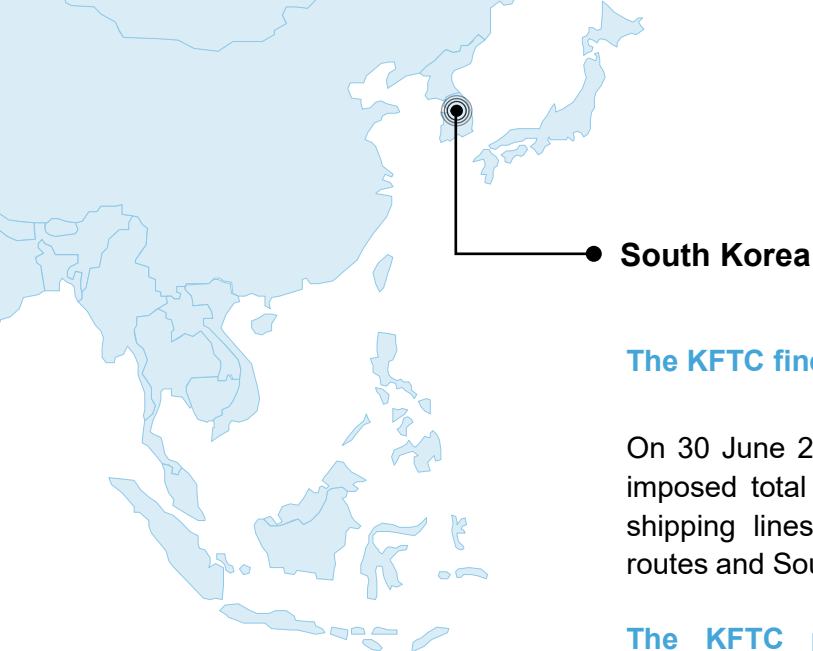
The PCC's interim chair outlines 2022 second-half enforcement priorities

On 6 July 2022, the Philippine Competition Commission ("**PCC**") formally announced that Johannes Bernabe would take over the reins as interim chair. Before his appointment, Bernabe worked intensively on international trade policy and was the lead adviser in introducing the Philippine Competition Act. After taking office, Bernabe outlined the following enforcement priorities in the second half of 2022 and aimed to move more expeditiously on the enforcement front before handing over to the new permanent chair in January 2023: (i) to rule on four pending cases arising from investigations by the enforcement arm with reasonable haste; (ii) to resolve six cartels or abuse of dominance probes, and to conclude all investigations that have been ongoing for at least two years concerning shipping, energy, drinking water supply and other sectors; (iii) to initiate two *motu proprio* unnotified or anticompetitive merger cases; and (iv) to codify all PCC rules and procedures based on the PCC's experience over the past years and to roll out the national competition policy in the public sector.

● **Indonesia**

The KPPU launches probe into Google's app payment policy

On 15 September 2022, the Indonesia Competition Commission ("**KPPU**") officially commenced an investigation against Google's potential abusive conduct. The KPPU through preliminary research found that Google Play Store is the largest application distribution platform in Indonesia with a market share of 93%. The research also revealed that Google may have abused its market dominance primarily through: (i) requiring app developers to use Google's payment system, namely Google Pay Billing ("**GPB**"), for purchase of in-app products, failure to use which would lead to sanctions; and (ii) charging app developers an excessively high service rate of 15-30% for the digital content sold by using GPB. Based on these preliminary findings, the KPPU decided to initiate a full-fledged investigation against Google in the next 60 days. If Google is found to have violated competition laws in Indonesia, the KPPU might impose a penalty of up to 50% of Google's net profits earned in the relevant markets in Indonesia.



The KFTC fines 28 shipping lines for price fixing

On 30 June 2022, the Korea Fair Trade Commission ("**KFTC**") imposed total fines of KRW 80 billion (USD 56 million) on 28 shipping lines for fixing freight rates for South Korea–Japan routes and South Korea–China routes, over 17 years.

The KFTC penalises Siemens Korea for passing on maintenance costs to agencies

On 25 July 2022, the KFTC issued a corrective order and imposed a KRW 480 million (USD 0.35 million) fine on Siemens Korea for unilaterally passing on maintenance software fees for medical devices, such as MRIs, CTs and X-rays, to its agencies, without any pre-discussion.

The KFTC approves Broadcom's consent decree proposal due to its alleged abusive conduct

On 5 August 2022, Broadcom submitted a consent decree proposal to the KFTC regarding alleged abusive conduct whereby Broadcom required mobile phone manufacturers to sign long-term contracts for the supply of chips. On 7 September 2022, the KFTC announced that the consent decree submitted by Broadcom was approved.

Prosecutors' Office investigates Naver for exclusive dealing

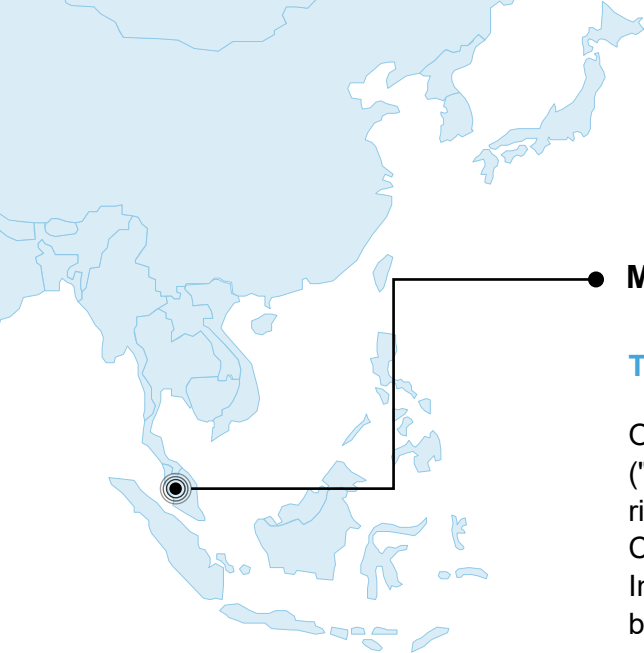
On 13 August 2022, it was reported that Naver, a South Korean search engine operator, was raided by the Prosecutors' Office for alleged abuse of dominance whereby Naver required real-estate content providers not to share information with third parties, including its competitor Kakao. The KFTC had previously filed a criminal complaint to the Prosecutors' Office in November 2021 in relation to this case.

The KFTC investigates Apple Korea for excessive commissions

On 1 September 2022, it was reported that the Korea Mobile Game Association had filed a complaint to the KFTC, claiming that Apple Korea overcharges in-app payment commissions, as Apple applied 33% commission instead of 30%. On 26 September 2022, it was reported that the KFTC conducted an on-site investigation of Apple Korea for alleged abuse of dominance.

The KFTC appoints new chairperson

On 16 September 2022, Han Ki-Jeong, a commercial law professor at Seoul National University, was appointed as the new chairperson of the KFTC.



● Malaysia

The MyCC fines eight IT firms in its first bid-rigging decision

On 5 July 2022, the Malaysian Competition Commission ("**MyCC**") penalised eight Malaysian companies for colluding to rig four IT-related tenders held by the National Academy of Arts, Culture and Heritage ("**ASWARA**") between 2015 and 2016. Initiated in 2017, the MyCC's investigation revealed the following bid-rigging cartels:

- (i) in a public bid held by the ASWARA in 2016, Tuah Packet prepared and submitted bidding documents on behalf of one of its competitors, Caliber, with whom it agreed to assign subcontracting work from the winning bidder to the losing one;
- (ii) in the same tender, Novatis Resources prepared and submitted bidding documents for another three competitors to gain the upper hand; and
- (iii) in three other ASWARA contracts in 2015, Tuah Packet formed a cartel with two other companies by agreeing on and implementing the same name-sharing practice to tender with competitors' names.

Despite losing some contracts, the infringing companies are nonetheless held liable for forming and implementing cartels on multiple occasions and thus violating the Competition Act 2010. The MyCC imposed a total fine of MYR 1.5 million (USD 350,000) on the eight companies, marking its first-ever decision on bid rigging since 2016 when the MyCC announced bid rigging to be its enforcement priority.

Malaysia's tribunal overturns a cartel decision made by MyCC in the insurance sector

On 2 September 2022, the Malaysian Competition Appeal Tribunal ("**CAT**") set aside one of the MyCC's 2020 decisions in which the MyCC found 22 insurance companies ("**insurers**") guilty of price fixing. In response to disputes arising from certain auto repairer workshops and insurance companies on spare parts pricing, the insurer trade association (PIAM) and the repair workshops trade association (FAWOAM) met and agreed to a proposal to set a maximum of 25% discount for spare parts and set a minimum labour rate of MYR 30 (USD 6.5) per hour. Following that, PIAM issued a circular to its members, stating that most of the members in a survey voted for the abovementioned agreed proposal ("**Circular**"). The MyCC later concluded that the Circular constituted a price-fixing agreement among competing insurers and imposed a fine of MYR 130 million (USD 31.2 million). Upon appeal, the CAT maintained that the Circular was not an agreement but a unilateral announcement reflecting PIAM's survey results as well as the negotiation results between the insurers' and workshops' respective trade associations. On that basis, the CAT ruled that the Circular would not qualify as a price-fixing agreement. Furthermore, the CAT found that the workshops retained the discretion to give discounts for spare parts and charge higher labour rates if they wish, on which basis there were neither anti-competitive objects nor anti-competitive effects. In light of the above, the CAT set aside the MyCC's decision.



Hong Kong

Hong Kong resolves the first antitrust violation based on settlement consent

On 14 July 2022, the Competition Tribunal ("**Tribunal**") granted proceedings on price-fixing in the travel service sector to be resolved by consent between the Competition Commission ("**HKCC**") and the infringing companies. In February 2021, the HKCC found that Gray Line and another travel service provider in Hong Kong agreed to fix tourist spots and transportation tickets' prices at certain hotels, which facilitated the two service providers' exchange of their pricing information. The HKCC concluded that the travel service providers and the hotels violated the First Conduct Rule of the Competition Ordinance by entering into or facilitating anti-competitive price-fixing agreement. Gray Line and InterContinental Grand Stanford ("**ICGS**", a hotel group concerned) agreed to cooperate with the HKCC by ceasing anti-competitive conduct and complying with Cooperation Policy. On that basis, the HKCC agreed to enter into cooperation agreements with them and sought the Tribunal's approval to have the proceedings settled. The following has been agreed in the settlement agreement: (i) a fine of HKD 5.8 million (USD 0.7 million) was imposed on Gray Line and ICGS , and (ii) the managing director of Gray Line was disqualified directorship for three years. This is the first case that the HKCC has resolved an antitrust enforcement action by way of settlement consent in accordance with the Cooperation Policy.

The HKCC brings the first RPM case to Tribunal

On 15 September 2022, the HKCC commenced proceedings before the Tribunal against Tien Chu, a supplier of monosodium glutamate ("**MSG**") powder, a type of seasoning, for RPM conduct. The HKCC found that Tien Chu set minimum resale prices for its MSG product and required its two local distributors to comply with the minimum pricing from 2008 to 2017. Penalties were put in place to ensure compliance. The HKCC offered to close this case by issuing an infringement notice to impose specific requirements upon Tien Chu, which however declined to satisfy those requirements. The HKCC therefore is seeking the Tribunal to: (i) declare that Tien Chu has contravened the First Conduct Rule; (ii) impose a pecuniary penalty and prohibit Tien Chu from infringing the Competition Ordinance through orders; and (iii) require Tien Chu to adopt an effective compliance programme.

The HKCC amends leniency policy for individuals

On 8 September 2022, the HKCC published the amended *Leniency Policy for Individuals Involved in Cartel Conduct*. Major amendments include:

- (i) Leniency applications made before the HKCC commences investigation are distinguished from those made after investigations are initiated. Further, leniency is available for the individual who either (a) first discloses his/her involvement in a cartel agreement which the HKCC has **not** investigated, or (b) provides substantial assistance to the HKCC's existing investigation and subsequent enforcement action; and
- (ii) Leniency is granted to the individual who first reports a cartel to the HKCC, even if leniency has already been granted to an undertaking in the same case.

The HKCC expects these amendments to provide greater incentives for individuals to come forward and voluntarily report cartel agreements.

Australia



Penalties for breaches of Australian competition legislation are on the rise

On 28 September 2022, the Australian Federal Government introduced the Treasury Laws Amendment (More Competition, Better Prices) Bill 2022 ("**Bill**") into Parliament as part of its "Better Competition" election commitment to strengthen Australia's competition laws by increasing penalties for anti-competitive conduct.

The Bill seeks to amend the Competition and Consumer Act 2010 (Cth) ("**CCA**") by increasing the maximum penalty for contraventions of certain types of anti-competitive behaviour to what the Government considers is sufficiently high to deter anti-competitive activity and is not just a "cost of doing business". For companies, the proposed maximum penalty of a relevant contravention will be the greater of: (i) AUD 50 million (USD 32 million) (up from AUD 10 million); (ii) three times the value of the benefit obtained (if the court can determine the value of the benefit); or (iii) 30% of the corporation's adjusted turnover during the breach turnover period (up from 10% of annual turnover of preceding 12 months). For individuals, the proposed maximum penalty of a relevant contravention would be AUD 2.5 million (USD 1.6 million) (up from AUD 500,000).

The ACCC commences civil proceedings against ARM practice and former managing director over alleged cartel conduct

On 30 September 2022, the Australian Competition and Consumer Commission ("**ACCC**") commenced civil cartel proceedings in the Federal Court of Australia against ARM Architecture ("**ARM**") and its former managing director Anthony John Allen ("**Mr Allen**") for alleged contraventions of Australian cartel provisions. In 2018, Charles Darwin University ("**CDU**") announced plans for a new AUD 250 million (USD 160 million) education centre in the heart of the Darwin CBD via a two-phase tender process. In May 2019, ARM was awarded the contract for principal design and consultant services under the first phase of the project after its successful tender. On 24 September 2020, CDU released an open tender for the second phase of the project for architectural services. On the evening the tender was released, Mr Allen (on behalf of ARM) emailed representatives of eight other architecture firms requesting they not submit a tender for the second phase of the project. On 29 September 2020, Mr Allen sent a follow up email to the remaining six firms which had not yet responded to the email, noting that positive responses were received from two of the firms and that ARM "would greatly appreciate a short note from you to let us know your intentions either way". Later that day, Mr Allen sent an email to the eight firms retracting his earlier request. ARM's tender for the second phase of the project was disqualified. According to its court filing, the ACCC alleges that the two emails Mr Allen sent on behalf of ARM constituted either an attempt to make arrangements or arrive at understandings containing a cartel provision (bid rigging in this case), or alternatively that it constituted an attempt to induce each firm into making arrangements or arrive at understandings with ARM containing a cartel provision. The ACCC continues to take a proactive approach to addressing cartel conduct following the recent introduction of its outreach programme which aims to assist public sector officials in identifying and managing cartel risks in the procurement process.

Australia



Penalties for boycott conduct imposed by Federal Court of Australia on CFMEU and Hutchinson

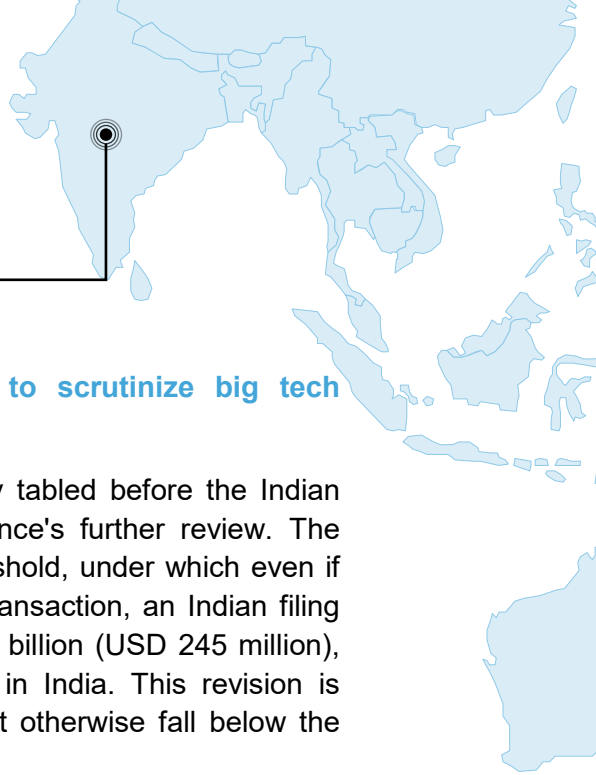
On 30 August 2022, the Federal Court of Australia ordered the Construction, Forestry, Maritime, Mining and Energy Union ("CFMEU") and J Hutchinson Pty Ltd ("Hutchinson") to pay penalties of AUD 750,000 (USD 480,000) and AUD 600,000 (USD 383,000) respectively for boycott conduct in breach of competition laws, in proceedings which were brought by the ACCC in December 2020. The penalty imposed on the CFMEU was the maximum penalty that could be imposed for the CFMEU's contravening conduct in this case.

Substantive Proceedings

The imposition of these strict penalties come following the Federal Court's findings in February 2022 that the CFMEU and Hutchinson had entered into an agreement which hindered the acquisition of goods or services from a supplier (boycott conduct), namely by boycotting a waterproofing subcontractor at a building site, ensuring the subcontractor could no longer perform the work. In engaging in such conduct, the court had found that Hutchinson contravened sections 45E and 45EA of the CCA which prohibit boycott conduct. The CFMEU was found to have been knowingly concerned in Hutchinson's contravention, and also found to have induced Hutchinson's contraventions by threatening or implying that there would be conflict with, or industrial action if Hutchinson did not stop using, the particular subcontractor.

Penalties Imposed

In its penalties judgment on 30 August 2022, the Federal Court noted that the boycott provisions are directed at situations in which a person capitulates to avoid loss or damage as a result of threatened industrial action by a person or organisation in the CFMEU's position, and that as such they have an important role in protecting the competitive process in sectors in which large employee organisations operate. As such, the Federal Court emphasised the importance of deterrence when imposing its penalties, and held that it was apparent from its analysis that no lesser penalty than the maximum penalty of AUD 750,000 (USD 480,000) would be an effective deterrent against future contraventions of the kind by the CFMEU (or other organisations in similar positions). In the case of Hutchinson, the Federal Court determined that a penalty of AUD 600,000 (USD 383,000) was appropriate (AUD 300,000 (USD 191,000) for making the arrangement containing a boycott provision, and AUD 300,000 (USD 191,000) for giving effect to the arrangement containing the boycott provision).



India ●

Indian Competition Amendment Bill introduces changes to scrutinize big tech companies

On 5 August 2022, the Competition Amendment Bill was finally tabled before the Indian Parliament for the Parliamentary Standing Committee on Finance's further review. The Competition Amendment Bill introduces a new merger filing threshold, under which even if the turnover and asset thresholds are not met by parties to a transaction, an Indian filing could still be triggered if the transaction's value exceeds INR 20 billion (USD 245 million), provided that the target has "substantial business operations" in India. This revision is expected to capture large digital firms' acquisitions, which might otherwise fall below the current filing thresholds in India.

Furthermore, the Competition Commission of India is planning to introduce an *ex-ante* regulation in order to address competition concerns deriving from digital platforms in a more effective manner.

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