

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 2023

CONTENTS

Introduction	3
Merger Control	4
Antitrust Investigations	8
Other Asia Pacific News in Brief	11
Regional Contacts	22



ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: JULY TO SEPTEMBER 2023

INTRODUCTION

1 August 2023 marks the 15th anniversary of China's Anti-Monopoly Law ("**AML**") since the AML formally came into force on 1 August 2008. Along with celebrating China's antitrust achievements over the past 15 years, this quarter continued to witness notable antitrust developments in China.

On the merger control front, the State Administration for Market Regulation ("**SAMR**") conditionally approved a below-threshold transaction for the first time, exercising its new power granted by the amended AML. SAMR's merger review was under the spotlight in two abandoned transactions involving US in the semiconductor sector, i.e., MaxLinear/Silicon Motion and Intel/Tower Semiconductor. SAMR conditionally approved MaxLinear/Silicon Motion but the deal was nonetheless terminated due to other reasons; Intel/Tower Semiconductor did not proceed due to the failure to receive SAMR's clearance by the extended long stop date. SAMR's local counterparts were busy with enhancing merger control awareness: Beijing launched an E-window risk warning mechanism on merger filings, merger compliance guidelines were issued by several provincial antitrust agencies, and the pilot programme of merger review delegation was reviewed for the first time based on track records of the five delegated provinces. On the conduct side, SAMR touched upon antitrust concerns in the labour market for the first time through examining a no-pouch agreement. In the meantime, China's Supreme People's Court published five typical antitrust litigation cases, including the first successful follow-on suit in China. SAMR and local counterparts have also published compliance guidelines to encourage antitrust awareness.

Outside China, Japan revised its "Guide to Fair Trade"; Taiwan proposed amendments to market definition rules; India consulted on the draft Combination Regulations 2023; and Australia commenced consultation on proposed unfair trading practices. Antitrust scrutiny over digital markets remain to be a focal point: Thailand was prepared to regulate digital platforms with new guidelines; Malaysia concluded an online food delivery investigation and is planning to undertake a digital market review; and India made progress in drafting the Digital Competition Law. Two jurisdictions stood out in relation to merger control intervention: Australia stepped in with block orders or conditions over several transactions; Cambodia effectuated its merger control regime with effective filing thresholds from 6 September 2023.



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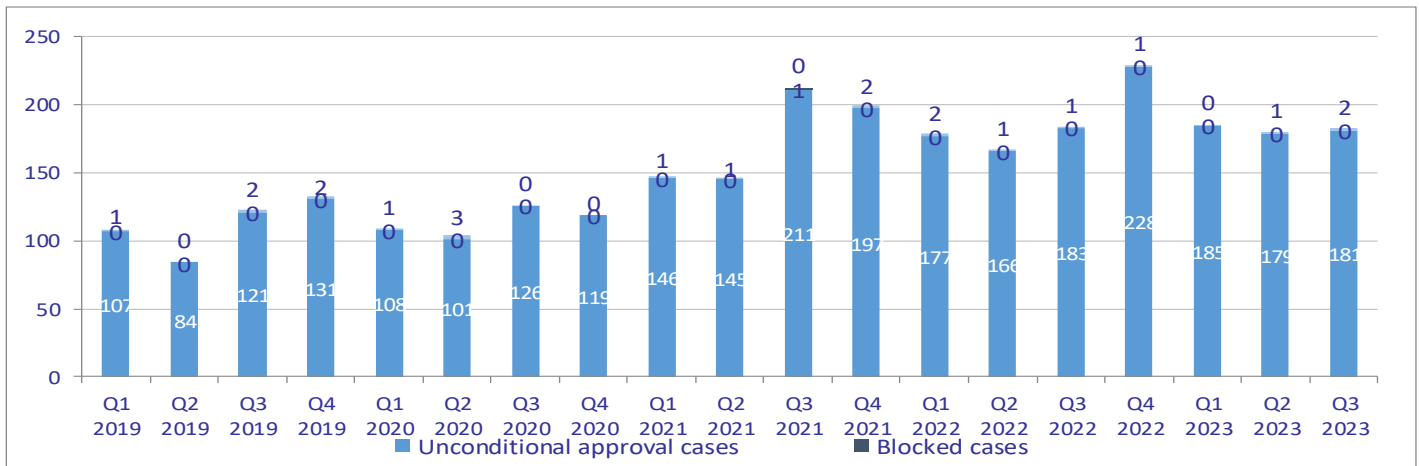


MERGER CONTROL

How many cases have there been?

There were in total 183 merger decisions released in the third quarter of 2023, the same as in the third quarter of 2022. 181 cases were cleared unconditionally and two cases were approved subject to conditions. 163 cases were notified under the simplified procedure, which represents 89.07% of the total cases reviewed in this quarter.

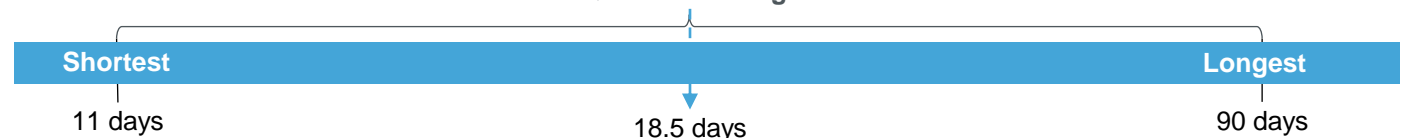
Merger control trends – Q1 2019 – Q3 2023



Simplified procedure: How quick is the review period?

Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
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	21.7 days	85.3%	2
Q4 2022	18.1 days	93.5%	2
Q1 2023	19.3 days	91.4%	4
Q2 2023	20.2 days	86.1%	6
Q3 2023	18.5 days	89.1%	2

Q3 2023: Average

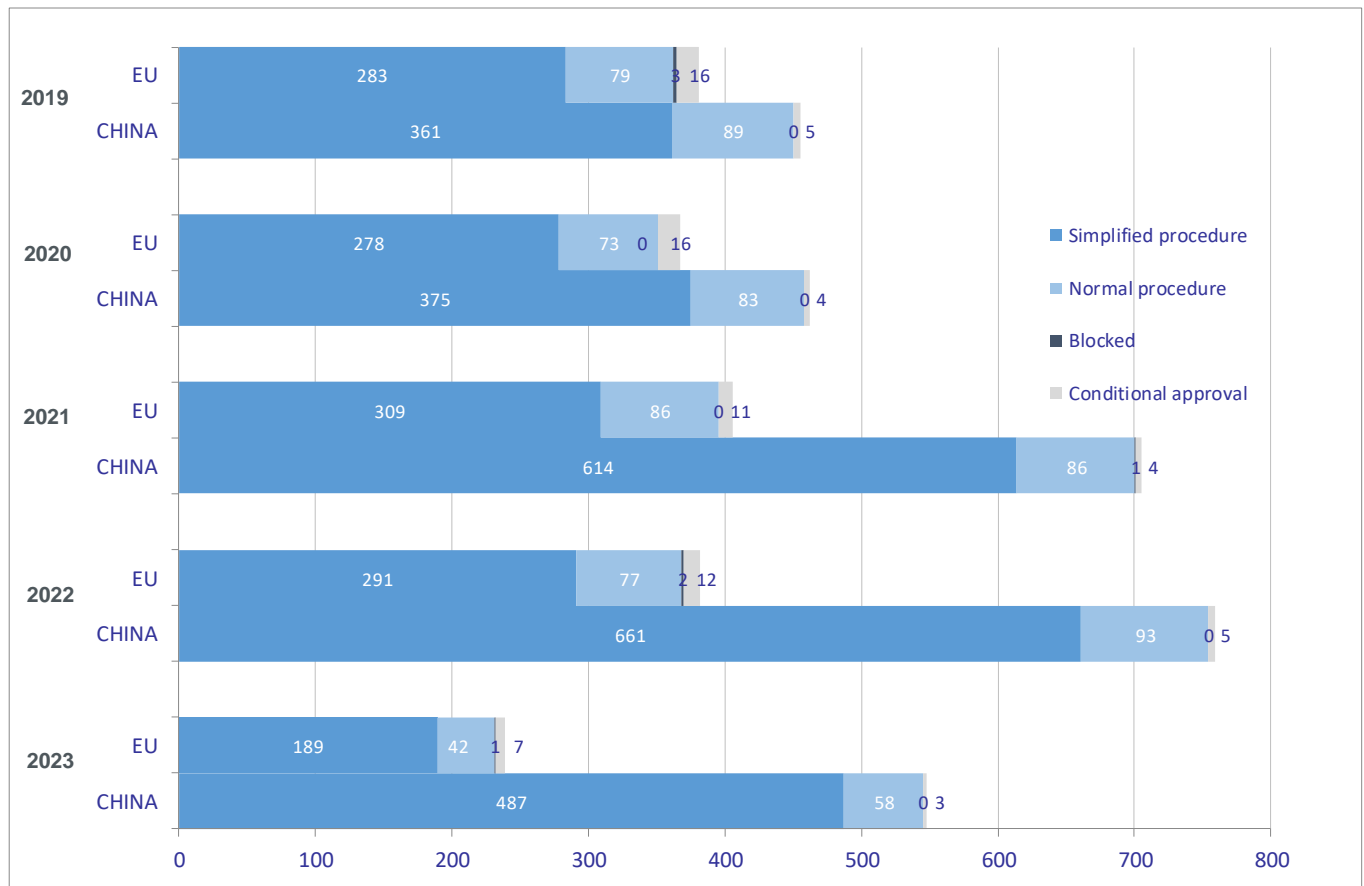




MERGER CONTROL

How does China compare internationally?

Comparison with EU – 2019 – 2023



SAMR conditionally approves a below-threshold transaction for the first time

On 22 September 2023, SAMR conditionally approved Simcere Pharmaceutical Co., Ltd. ("**Simcere**")'s proposed acquisition of Beijing Tobishi Pharmaceutical Co., Ltd. ("**Tobishi**"). The transaction was announced in June 2017 but has not been closed for several years due to protracted commercial disputes. Despite falling below the Chinese merger control thresholds, both parties voluntarily submitted the transaction to SAMR soon after the release of the amended AML, which empowers SAMR to call in below-threshold transactions. Simcere is the exclusive distributor of the Batroxobin API in China as a result of an exclusive supply agreement with the sole global manufacturer of the Batroxobin API, DSM, entered into in 2019. Tobishi, on the other hand, is China's only producer of the Batroxobin injection, the major downstream product of the Batroxobin API that primarily treats sudden hearing loss.

Competition concerns identified by SAMR mainly lie in that Simcere is the only supplier of the upstream Batroxobin API and Tobishi is the only supplier of the downstream Batroxobin injection. SAMR was concerned that the transaction could disincentivise Simcere from its planned entrance of the downstream injection market, and incentivise Simcere to engage in input foreclosure, in particular as Simcere was penalised by SAMR in 2021 due to its refusal to deal with Tobishi on the Batroxobin API from 2019 to 2020. To address these competition concerns, SAMR imposed six-year hybrid conditions requiring the parties to:



MERGER CONTROL

(i) terminate the exclusive supply agreement between Simcere and DSM in China; (ii) divest Simcere's research and development business associated with the Batroxobin injection within nine months from 22 September 2023, and ensure the supply of the Batroxobin API to the divestiture buyer (including necessary assistance to directly connect the buyer with DSM); (iii) lower the end price of Batroxobin injections by at least 20%; (iv) ensure adequate supply of Batroxobin injections commonly used in clinical practice; and (v) in the case of failing to timely terminate the DSM agreement or failing to timely complete the proposed divestiture (including the buyer failing to complete the research and development in time), lower the end price of Batroxobin injections by at least 50%. This decision marks SAMR's first attempt to impose conditions on below-threshold transactions that have or may have anti-competitive effects. The voluntary submission may have been driven by SAMR's increased antitrust scrutiny on Simcere and the parties' growing antitrust awareness.

SAMR conditionally approves MaxLinear's acquisition of Silicon Motion

On 26 July 2023, SAMR conditionally approved US chipmaker MaxLinear, Inc. ("**MaxLinear**")'s long-pending USD 3.8 billion acquisition of Taiwan-based Silicon Motion Technology Corporation ("**Silicon Motion**"). SAMR found competition concerns in China in the third-party NAND flash memory controller chip market ("**NAND chip market**") in light of Silicon Motion's above-50% market share and downstream customers' significant dependence on Silicon Motion. To address the concerns, SAMR imposed a number of remedies essentially requesting the parties to ensure the stable supply of NAND flash controller chips to Chinese customers. SAMR's review took more than 10 months since the parties' initial notification in September 2022, during which it is notable that SAMR exercised its new stop-the-clock power and suspended the clock for six months for remedy negotiations. Despite the limited overlaps arising from the transaction, SAMR's protracted review might have been impacted by geopolitical considerations. Apart from clearance received in the US, antitrust clearances from other jurisdictions including Taiwan, South Korea, and Singapore were also pending along with the SAMR clearance. Dramatically, a few hours following SAMR's decision, MaxLinear issued a merger termination notice, claiming that Silicon Motion had experienced a material adverse effect and multiple additional contractual failures. Silicon Motion later proceeded with arbitration before the Singapore International Arbitration Centre, claiming that MaxLinear's wilful and material contract breaches prevented the transaction from being completed by 7 August 2023. Since the whole transaction is gone, it is reasonable to assume that the parties would no longer be held to abide by SAMR's remedies.

Intel abandons its acquisition of Tower Semiconductor due to SAMR's delay in clearance

On 16 August 2023, Intel Corporation ("**Intel**") officially announced that it has mutually agreed with the Israel chip company Tower Semiconductor ("**Tower**") to terminate the USD 353 million agreement to acquire Tower, with a break-up fee of USD 353 million. The termination was attributed to the challenges in obtaining the necessary regulatory approvals by the extended long stop date (i.e., 15 August 2023). While Intel's press release did not explicitly name the regulator involved, the delay in SAMR's clearance proved to be a significant hurdle for the deal, ultimately leading to the abandonment. SAMR reportedly raised certain conditions to address industrial issues in the final round of remedy negotiations that the parties failed to meet. Similar to the NXP/Qualcomm deal, this transaction also went through a more than 18-month SAMR review. This example also to some extent reflects ramifications of the "Chip War".



MERGER CONTROL

SAMR releases a report to review the pilot program on delegation of merger review to provincial AMRs

On 20 July 2023, SAMR released a summary assessment of the pilot program on the delegation of merger control review. Under the pilot program, which was put into practice on 1 August 2022, five local Administration for Market Regulation (“**AMR**”) in Beijing, Shanghai, Guangdong, Chongqing and Shaanxi have been entrusted to review certain simplified-procedure cases with local nexus, with a view to lessening the burden of review at central level. According to the release, since 1 August 2022, 287 cases have been delegated to local AMRs for review, accounting for 40.7% of the simple cases reviewed over that period. Among the delegated cases, pre-notification stage took 23.8 days on average and clearance took an average of additional 18.5 days. Beijing AMR and Shanghai AMR stood out with the shortest review timeline, i.e., 11 days for formal phase 1 review and 16 days also including pre-notification).

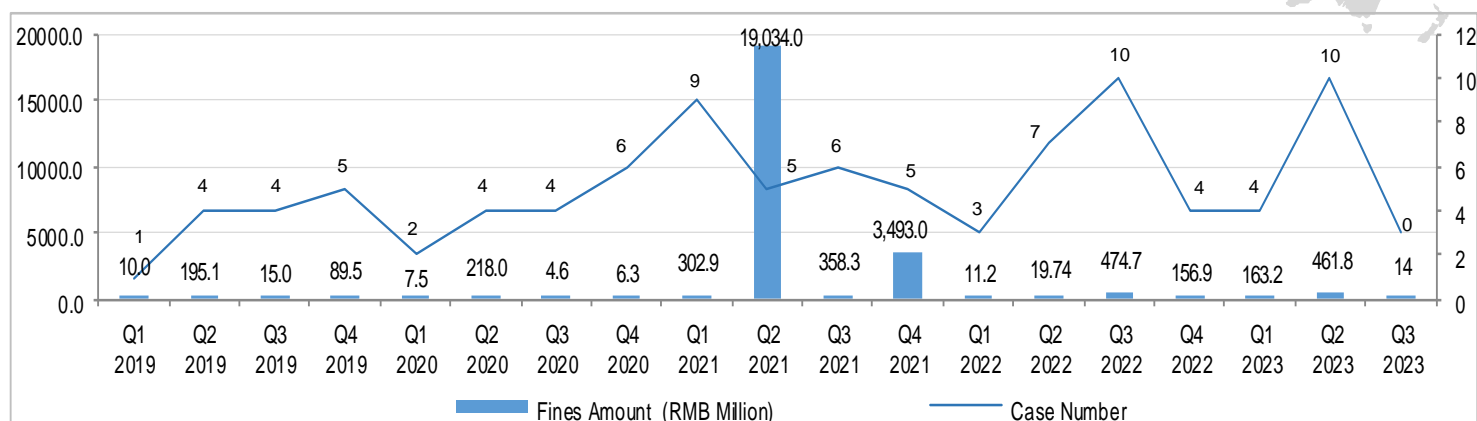
Beijing AMR implements E-window risk warning mechanism on merger filings

On 7 September 2023, Beijing Administration for Market Regulation (“**Beijing AMR**”), acting in its dual role of antitrust regulator and market regulator, announced the launch of an E-window risk warning mechanism on the electronic corporate registration system. The mechanism serves as a reminder for companies to promptly file a notifiable concentration, highlighting the potential legal consequences of non-compliance. When companies register the share transfer or establish a new joint venture via the e-system, which is a must step for transaction closing, they will encounter a pop-up webpage warning them to submit the necessary notification. By clicking on the provided policy hyperlink, companies can access more explicit guidelines for merger control filings. Additionally, Beijing AMR also published the *"Service Manual for Notification of Concentration of Undertakings in Beijing"* earlier this August, which provides detailed information on thresholds, procedures, and legal consequences associated with notifications to enhance the compliance awareness of market players.



ANTITRUST INVESTIGATIONS

Enforcement trends – Q1 2019 to Q3 2023



Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency
Bottled liquefied petroleum gas Jiangsu AMR	12 September 2023	Price fixing; Market sharing	8,273	39	3,841	2%	Yes
Go game ranking competitions Beijing AMR	12 September 2023	Price fixing	166	3	50	2%	Yes
Building material Guizhou AMR	12 September 2023	Price fixing; Market sharing	6,008	180	3,522	3%,4%,5%	No

SAMR releases 10 typical anti-monopoly enforcement cases concerning people's living quality

On 12 September 2023, SAMR published 10 typical anti-monopoly enforcement cases concerning people's livelihood sectors, including agriculture, energy, insurance, construction, etc., again demonstrating the regulator's commitment to promoting fair competition and protecting consumers from anti-competitive practices. Among other cases that have been reported in the previous briefings, the following four cases are worth noting:

- **Jiangsu AMR penalises 10 bottled LPG sellers for price fixing and market sharing:** on 12 September 2023, SAMR published a decision where the Jiangsu AMR fined 10 bottled liquefied petroleum gas ("LPG") sellers in Nanjing for price fixing and market sharing. From August 2018 to December 2020, the 10 companies entered into an anticompetitive agreement where they agreed to sell LPG products at uniform prices and avoid supplying to each other's clients. The companies also adopted self-regulatory guidelines, penalty measures and deposit and supervision schemes to ensure compliance. Found in violation of Article 13 (1) and Article 13 (3) of the former AML, the 10 companies were each fined 2% of their respective annual sales in 2020, amounting to RMB 8,273,488.08 (USD 1.15 million) in total.



ANTITRUST INVESTIGATIONS

- **Beijing AMR penalises Beijing Go Association and its members for price fixing:** on 12 September 2023, SAMR published a decision where the Beijing AMR fined the Beijing Go Association ("**Association**") and eight member associations, respectively, for coordinating and participating in price fixing. In August 2021, the Association organized a meeting among its members to set fee caps for prices charged for event and certificate services for Beijing's Go game amateur Dan/Kyu ranking competitions, following which the eight members all increased their charges to the fee caps. Found in violation of Article 16 of the former AML, the Association was fined RMB 50,000 (USD 6,945); and found in violation of Article 13 (1) of the former AML, the eight members were each fined 2% of their respective annual sales in 2021, amounting to RMB 5,116,000 (USD 16,114) in total.
- **Guizhou AMR penalises four building materials companies for price fixing and market sharing:** on 12 September 2023, SAMR published a decision where the Guizhou AMR fined four building materials companies for price fixing and market sharing. From November 2016 to December 2021, the four companies reached and implemented agreements to fix ready-mix concrete prices and divide the sales market by forming a joint production and operation scheme. Under this scheme, one of the four ceased production and entrusted plant operation to the other three who set up a joint account, uniformly managed sales contracts and distributed profits based on predetermined proportions during the joint operation period. Found in violation of Article 13 (1) and Article 13 (3) of the former AML, the four companies received an aggregate fine of approximately RMB 6,000,000 (USD 833,495), each amounting to 3%, 4% or 5% of their respective sales in 2021.
- **SAMR regulates no-poach agreement entered into by four hog breeders:** on 31 July 2023, SAMR summoned four hog breeders, i.e., Muyuan Food Co., Ltd., Wens Foodstuff Group Co., Ltd., Twin Group Co., Ltd., and CP Group Co., Ltd., that were found to have initiated and signed a no-poach agreement, advocating non-poaching and non-solicitation during an industrial forum on 20 June 2023. SAMR pointed out that this agreement goes against the spirit of the AML and ordered the four companies to rectify their actions and ensure compliance with antitrust rules. After the meeting with SAMR, the four companies issued a joint statement on the same day, stating that they would implement corrective measures and revoke the problematic no-poach agreement. While SAMR did not refer to the specific provisions in the AML that were violated or issue a penalty decision, SAMR's move marks the first time the Chinese antitrust regulator has expressed concerns about competition issues in the labour market. In the same press release, SAMR also announced its determination to closely monitor the competition landscape in the country's labour market. This finally echoes global antitrust regulators' increasing clampdown of no-poaching arrangements among competing firms.



OTHER NEWS

2023 marks the 15th anniversary of the AML

The year 2023 marks the 15th anniversary of China's AML. Having implemented antitrust law across the country for fifteen years, the Chinese antitrust agency has shaped itself into one of the major antitrust authorities in the world. Since the AML came into force in 2008, China has investigated 340 antitrust cases (against anti-competitive agreements and abuse of dominance) levied a total fine of over RMB 37.9 billion (approx. USD 5.22 billion). On the merger control front, China has reviewed more than 5,400 merger filings, with very low intervention rate: only three blocked transactions and 59 transactions approved subject to conditions. The past fifteen years has also witnessed several milestones of China's antitrust enforcement, such as institutional reforms of antitrust agencies, growing scrutiny over digital platforms, and the first categorical amendment of the AML. Regardless of with relatively late legislation and enforcement, China has clearly picked up its speed to protect national competition from being distorted by anti-competitive behaviours, and has made notable progress.

SAMR and local AMRs publish antitrust compliance guidelines

This quarter witnessed active legislative efforts of the Chinese antitrust regulators. Following the release of the consultation draft of the compliance guidance for merger control in June 2023, SAMR published the final guidance on 11 September 2023, aiming to encourage companies to build up their internal merger control compliance systems. In the meantime, local AMRs including Beijing AMR, Hunan AMR, Hainan AMR, Shanxi AMR and Shaanxi AMR also released their municipal/provincial antitrust compliance guidelines. Some of these guidelines focus on merger control, public utility companies and construction materials area respectively, whereas others cover a much broader range of topics with specific attention focused on several local key sectors, for example, public utility, platform, API, construction materials, automobile, insurance, energy, etc. Innovatively, the Beijing guidelines exerts extra care to small and medium-sized enterprises (SMEs).

China Supreme Court announces five classic antitrust litigation cases

On 14 September 2023, China's Supreme People's Court ("**SPC**") published five classic antitrust cases together with five classic anti-unfair competition cases for the year 2023, shedding useful light on how to interpret and apply the AML in contentious cases. Among the five cases, three concern abusive behaviour, and the other two each concern horizontal and vertical agreements, covering sectors like pharmaceuticals, funeral services, automobile distribution, construction materials, etc. There are two notable examples:

- **First successful follow-on suit:** in *Miao Chong (an individual) v. SAIC-GM*, the SPC overturned the lower court's dismissal of an individual's follow-on suit against SAIC-GM and one of its dealers as a result of their resale price maintenance ("**RPM**") agreement. The SPC held that plaintiffs generally do not bear the burden of proof in an antitrust infringement if such an infringement was affirmed in an effective and final administrative penalty decision. The SPC further laid out that parties to an RPM agreement shall be deemed as joint tortfeasors in private actions, and the amount of the damages should be determined based on the differences between the competitive price and the non-competitive minimum resale price stipulated by the relevant RPM agreement.
- **Abuse of dominance in the API sector:** in *Hefei Industrial Pharmaceutical Institute v. Yangtze River Pharmaceutical Group*, the SPC confirmed the necessity to examine the indirect competitive constraints from the downstream market on an "intermediate input" (e.g., API) when evaluating the market power of the API producer. In addition, the case involves the SPC's effective use of the economic tool in analysing excessive pricing and its careful balance of foreclosure effects of exclusive dealing practice and legitimate exercise of intellectual property rights.



● Japan

Japan revises "Guide to Fair Trade"

On 12 September, it was reported that the Life Insurance Association of Japan had revised its "Guide to Fair Trade" – voluntary guidelines established in 1996. By way of background, on 19 June it was reported that the JFSA had issued a reporting and collection order against four major Japanese insurance companies for allegedly colluding in setting fire insurance premiums for companies. The revised guidelines clearly state that the Japanese Antimonopoly Act applies to joint insurance contracts for companies, and that determining minimum insurance premiums through discussions with other companies in the same industry would constitute a cartel.

Japan announces plan for future compliance efforts in response to an electricity cartel

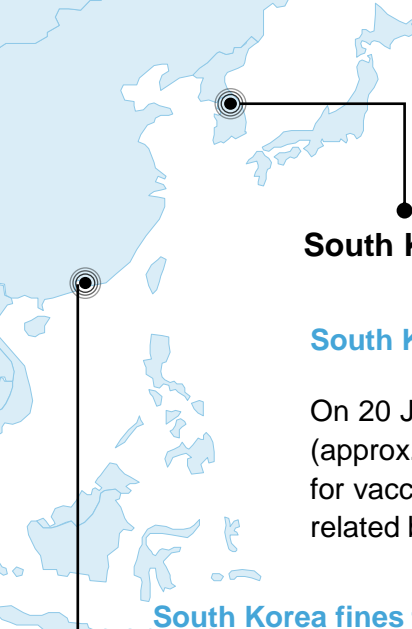
On 13 September, the Federation of Electric Power Companies of Japan (the "**FEPC**"), comprising 10 Japanese electricity companies, announced its plan for future compliance efforts in response to a surcharge payment order issued by the JFTC in March 2023 against a cartel involving some of those Japanese electricity companies. The FEPC found certain information exchanges were made regarding electricity retail activities, and emphasised that it is important to raise awareness about antitrust regulations on information exchanges.

Japan publishes a market study report on news content distribution

On 21 September, the JFTC published a market study report on news content distribution by news portal operators and internet search operators which show news on their search result pages. The JFTC concluded that news portal operators should be encouraged to disclose data about the grounds for licence fee levels and licence fee calculation methods, so that news media operators can review the appropriateness of licence fee levels and negotiate effectively with news portal operators, and internet search operators should take into account the copyright of news articles in licence fee negotiations, and that preference for their own news content in internet search results could be regarded as a breach of Japanese antitrust law.

Japan publishes a market study report on electric vehicle charging services

On 13 July, the JFTC published a market study report on electric vehicle (EV) charging services on expressways. The JFTC found that about 98.7% of the EV chargers currently installed at expressway service areas and parking areas were installed by the same company (e-Mobility Power Co., Inc.) and concluded that it would be desirable for expressway companies to have several companies to choose from to install EV chargers, and that the entry of new EV charger installers should be promoted in the future.



South Korea

South Korea penalises bid-rigging in vaccine industry

On 20 July, the Korea Fair Trade Commission ("**KFTC**") imposed fines of KRW 40.9 billion (approx. USD 32 million) in total for the alleged bid-rigging of 170 public procurement bids for vaccine orders between February 2013 and October 2019 among a total of 32 vaccine-related business operators, including 25 pharmaceutical wholesalers.

South Korea fines the Korea Music Copyright Association for abusing superior position

On 26 July, the KFTC imposed a KRW 340 million (USD 0.26 million) fine on the Korea Music Copyright Association, which managed 67.5% of the copyrighted music in South Korea as of 2021, for abuse of superior position by charging excessive broadcasting royalties to 59 broadcasters, threatening that their use of music would be restricted unless they accepted such excessive royalties.

South Korea fines Broadcom for abusing superior position

On 21 September, the KFTC imposed a KRW 19.1 billion (USD 14 million) fine on Broadcom for abuse of superior position as Samsung Electronics was allegedly forced to enter into a long-term agreement to procure a significant amount of smartphone parts (USD 760 million annually) and compensate for any shortfall. On 25 September, Broadcom appealed the case to the Seoul High Court.

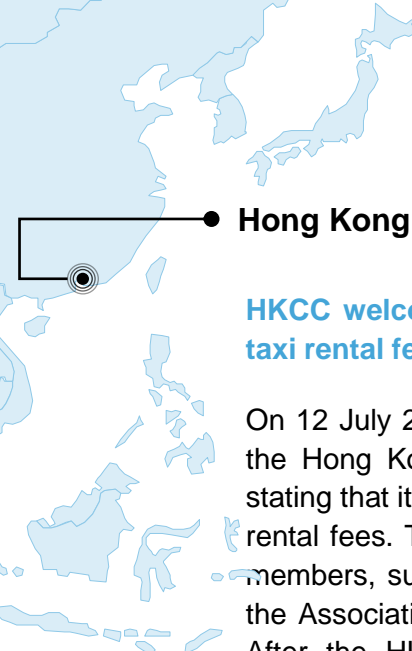
South Korea fines Kakao Entertainment for abusing superior position

On 24 September, the KFTC imposed a KRW 540 million (USD 0.4 million) fine on Kakao Entertainment for abuse of superior position, for restricting 28 writers, who had won novel-writing contests organised by Kakao Entertainment, from using their original content for secondary works. The KFTC indicated that the comprehensive transfer of secondary creation rights was in violation of not only antitrust law but also copyright laws.

Hong Kong

HKCC conducts a surprise visit to New Territories (Shatin) Forensic Medicine Centre

On 15 August 2023, the HKCC conducted a surprise visit to the New Territories (Shatin) Forensic Medicine Centre ("**Forensic Medicine Centre**"). The HKCC had received intelligence earlier alleging that funeral service practitioners engaged in market sharing by coordinating their solicitation of customers at the Forensic Medicine Centre, in contravention of the First Conduct Rule. The HKCC therefore paid a surprise visit to the Forensic Medicine Centre, with the aim of getting more information from the funeral service practitioners on-site and the staff members working at the Forensic Medicine Centre. The case is still under investigation and, in the meantime, the HKCC will maintain close contact with relevant departments and welcome information from the general public.



Hong Kong

HKCC welcomes rectification by Hong Kong Taxi and Public Light Bus Association on taxi rental fee recommendations

On 12 July 2023, the HKCC announced that it welcomed the issuance of an internal notice by the Hong Kong Taxi and Public Light Bus Association (the "**Association**") to its members, stating that it will rectify its previous practice of providing members with recommendations on taxi rental fees. The Association, from time to time, issued non-binding fee recommendations to its members, suggesting adjustments in taxi rental fees. It was also noted that members adopted the Association's recommendations on some occasions and made corresponding adjustments. After the HKCC met with representatives of the Association to express its concern, the Association responded swiftly and issued on 12 July 2023 an internal notice to its members, informing them that the Association will stop providing recommendations on taxi rental fees, and will instead switch to issuing consolidated quarterly data on past taxi rental fees in anonymised format for its members' reference. The Association also reminded its members that they should not coordinate the rental fees they charge to avoid contravention of the Competition Ordinance. The HKCC welcomes such rectification and encourages all trade associations to proactively review their practices and to make changes where needed to ensure full compliance.

HKCC concludes its probe into a proposed joint business agreement

On 7 September 2023, it was announced that the HKCC has decided to close its investigation into a proposed joint business agreement between two airlines, namely Cathay Pacific Airways Limited and Malaysia Airlines Berhad (collectively, the "**Parties**"), after the Parties notified the HKCC that they had decided not to proceed with the proposed agreement. The Parties previously proposed to enter into a metal-neutral joint business agreement in respect of all scheduled air passenger services between Hong Kong and Malaysia operated by the Parties (the "**Proposed JBA**"), which essentially involved revenue and cost sharing between the airlines on a given route regardless of which airline is operating the actual flight. In 2022, following media reports, the HKCC approached the Parties for information and initiated an investigation. The HKCC's preliminary assessment indicated that the markets for air passenger services between Hong Kong and Malaysia are highly concentrated, with the Parties having significant market shares and being each other's closest competitor. The potential elimination of competition between the Parties, coupled with the fact that there appear to be barriers to market entry and expansion, made the HKCC concerned that the Proposed JBA would affect passengers travelling between Hong Kong and Malaysia. In late July 2023, the Parties notified the HKCC that they would no longer proceed with the Proposed JBA, and, therefore, the HKCC decided to close the investigation. It is not specified why the Parties have decided not to proceed with the Proposed JBA.



● Hong Kong

HKCC signs MoU with Guangdong AMR to enhance cooperation

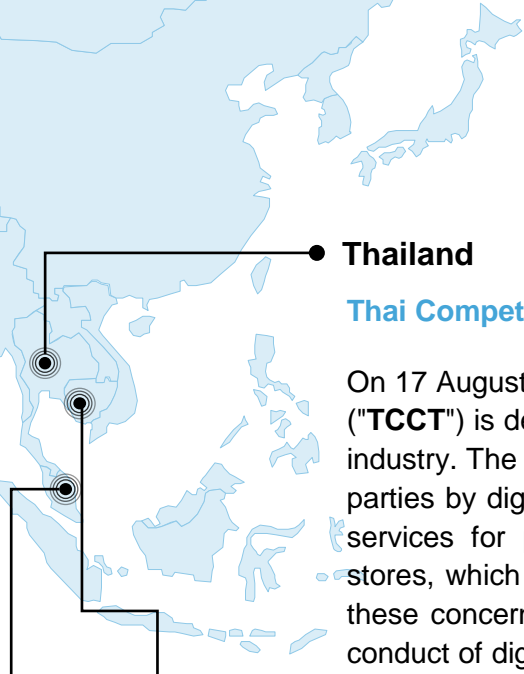
On 19 July 2023, the HKCC signed a Memorandum of Understanding ("**MoU**") with Guangdong AMR to strengthen cooperation between the two authorities in the advancement of competition policy and law in the Guangdong-Hong Kong-Macao Greater Bay Area (the "**Greater Bay Area**"). Under the terms of the MoU, the HKCC and Guangdong AMR will hold regular meetings alternating between Guangdong and Hong Kong. The two authorities will share and discuss key developments regarding competition policy, legislation and enforcement in each other's jurisdiction, as well as collaborate in activities related to competition advocacy to increase awareness of competition policy and law among businesses, government agencies and the general public in the Greater Bay Area. The MoU also provides a platform for the HKCC and Guangdong AMR to engage in technical cooperation to enhance capacity building, including staff training. Contact points will be in place to coordinate the implementation of the MoU.

TFTC proposes amendments to market definition rules

On 12 July 2023, the Taiwan Fair Trade Commission ("**TFTC**") initiated a public consultation on the proposed amendments to the *Principles of the Fair Trade Commission Regarding the Definition of Relevant Markets*. The consultation period ended on 10 August 2023. The proposed amendments mainly address key issues of determining relevant product and geographic markets in the context of the digital economy. The notable proposed revisions include the introduction of definitions for multi-sided markets ("**MSMs**") and indirect network effects, as well as factors to be considered when assessing transaction relationships involving multiple parties and indirect network effects within MSMs. Furthermore, refinements to the hypothetical monopolist test in the context of new business models of MSMs are provided.

TFTC fines Taiwan Mobile and Chunghwa Telecom for engaging in concerted practices

On 14 September 2023, the TFTC announced a penalty decision against Taiwan Mobile and Chunghwa Telecom for engaging in concerted practices. The telecommunication service market in Taiwan is oligopolistic in nature and characterized by high homogeneity, making price a crucial factor in competition. From October 2018 onwards, the two companies colluded to withdraw discounts and raise prices. Their competitor, namely Far EasTone, followed the suit, which caused significant disturbance in the telecommunication service market in Taiwan. The TFTC concluded that the concerted action of Chunghwa Telecom and Taiwan Mobile jeopardised competition and fined Chunghwa Telecom and Taiwan Mobile TWD 40 million (USD 1.24 million) and TWD 36 million (USD 1.11 million), respectively.



● Thailand

Thai Competition Authority will regulate digital platforms with new guidelines

On 17 August 2023, it was reported that the Trade Competition Commission of Thailand ("**TCCT**") is developing guidelines to address unfair trade practices in the digital platform industry. The TCCT has received complaints about unfair conditions imposed on trading parties by digital platform companies, such as requiring vendors to use specific courier services for product delivery and engaging in preferential agreements with certain stores, which may potentially limit vendor choices and restrict competition. To address these concerns, the TCCT recognised the need for specific guidelines to regulate the conduct of digital platform companies and ensure fair competition. The TCCT is seeking feedback from stakeholders on the preliminary draft of the guidelines. This echoes the global trend of increasing antitrust scrutiny over digital platforms over recent years.

● Cambodia

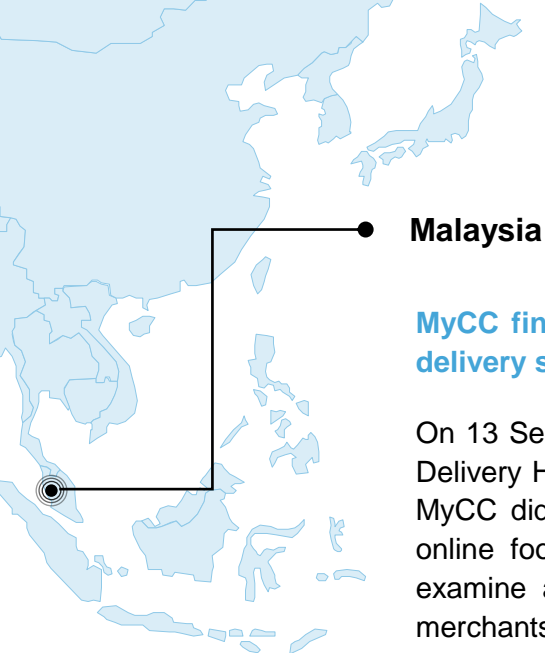
New merger control regime enters into effect in Cambodia

On 6 September 2023, Cambodia's new merger control regime entered into force with the Competition Commission of Cambodia ("**CCC**") entrusted to oversee and implement this regulatory framework. The regime establishes both pre-merger and post-merger notification requirements, applying different thresholds for different industries and potentially catching no-nexus transactions. The thresholds are based on the Cambodian assets or turnovers of the parties or the transaction value. As a rule of thumb, transactions will be subject to pre-closing filing obligations if any of the parties involved meet local asset thresholds of KHR 270 billion (USD 65 million) or turnover thresholds of KHR 120 billion (USD 29 million) within Cambodia, or if the transaction value exceeds KHR 41 billion (USD 10 million) (the transaction value threshold applies only to the Cambodian component of the transaction, not the global transaction value). In addition to the general rules, sector-specific thresholds also exist when it comes to insurance or securities companies, banks, or financial institutions. Additionally, even if a deal falls short of the pre-merger notification threshold but reaches at least 50% of that threshold, it remains subject to post-merger notification. Filing obligations will apply to transactions that have not closed before 6 September 2023, even if agreed before then. According to a government official of the CCC, they have been endeavouring to promote the new merger control regime and foster compliance with these regulations. Meanwhile, the CCC remains open to engaging with businesses and raising awareness of the new regulatory framework.

● Malaysia

MyCC will undertake a digital market review

On 26 July 2023, an official of the Malaysia Competition Commission ("**MyCC**"), indicated during the annual East Asia Conference on Competition Law and Policy in Bangkok that the MyCC was prepared to conduct a market review on the digital economy, one of the MyCC's upcoming key projects, to promote fair competition and address any potential competition concerns within the digital sector. The purpose of the digital market review is to assess the competition landscape within the digital economy in Malaysia, which will likely involve examining the activities of digital platforms, assessing market concentration, evaluating consumer welfare, and identifying any anti-competitive practices or barriers to entry.



Malaysia

MyCC finds Delivery Hero lacking dominance in the Malaysian online food delivery service market

On 13 September 2023, the MyCC announced its decision on the online platform Delivery Hero, concluding the investigation which was launched in July 2021. The MyCC did not find Delivery Hero to be dominant in the Malaysian intermediary online food ordering and delivery services market. The investigation aimed to examine an exclusivity clause included in Delivery Hero's agreements with its merchants that financially incentivizes merchants to exclusively deal with Delivery Hero. Upon examining evidence and facts, the MyCC concluded that Delivery Hero faced effective competition and constraints from both existing competitors and potential entrants in the relevant market, and there was insufficient proof to establish Delivery Hero's dominance. Consequently, the MyCC did not further examine the potential anticompetitive impact arising from Delivery Hero's exclusivity clauses.

India

CCI consults on the draft Combination Regulations 2023

On 5 September 2023, the Competition Commission of India ("**CCI**") launched a public consultation on the Draft CCI (Combinations) Regulations 2023 ("**Draft Regulations**"), to adapt them to the new merger control regime provided under the Indian Competition (Amendment) Act 2023 which came into force on 11 April 2023. The public consultation period of the Draft Regulations ended on 25 September 2023. The Draft Regulations, inter alia, provide for the form of notice for the proposed combination, the exercise of rights in cases of open offers and acquisitions on stock exchanges, the procedure for modifications to the proposed combination, etc. Specifically, in response to the newly introduced deal value threshold that is subject to the target having "substantial business operations" in India, the Draft Regulations propose three criteria to be considered by the CCI in determining the concept of "substantial business operations": the number of users / subscribers / customers (or visitors) in India; the gross merchandise value in India; and the Indian turnover.

India makes progress on Digital Competition Law

On 21 July 2023, Mrs. Ravneet Kaur, chair of the CCI, indicated that India was at a "very advanced" stage in finalising its view on the Digital Competition Law that took inspiration from the EU's Digital Markets Act, without providing a specific timeline. As part of its efforts to enhance internal capabilities, the CCI has established a digital markets and data unit, which will serve as an interdisciplinary centre of expertise for digital markets. At the panel discussion entitled "Enforcement in the digital sector", Mrs. Kaur joined the deliberations on the advantages and disadvantages of ex-ante regulation and ex-post enforcement for digital markets. She emphasised the need for ex-ante regulations in digital markets because some global tech firms differentiated Indian users compared to those in other jurisdictions, particularly in terms of consumer rights and data assessment. She also suggested that the basic principles in the ex-ante regulations could foster better transparency of the digital companies, and potentially reduce the need for extensive ex-post enforcement measures.



India ●

CCI steps up enforcement against gun-jumping

The third quarter of 2023 saw that the CCI intensified its enforcement against failure to notify. Details of the cases are as follows:

- 1) On 7 August 2023, Massachusetts Mutual Life Insurance Company ("**MassMutual**"), a US-based insurer, was fined INR 500,000 (USD 6,026) for implementing its acquisition of approximately 16% stake in Invesco without notification. MassMutual had attempted to argue for the application of de minimis exemption but ultimately failed for incorrect calculation of the turnover generated by Invesco's Indian subsidiaries.
- 2) On 9 August 2023, Axis Bank Limited, the third largest private sector bank in India, was fined INR 4 million (USD 48,126) for implementing its acquisition of a 9.91% stake in CSC e-Governance Services India without notification.
- 3) On 11 August 2023, Cummins Inc., a US-based manufacturer of diesel and alternative fuel engines and generators, was fined INR 1 million (USD 12,050) for implementing its acquisition of sole control of American auto parts maker Meritor. The acquisition was completed on 3 August 2022 before notifying the CCI on 2 November 2022 after the parties uncovered a calculation mistake in turnover.
- 4) On 22 August 2023, NTPC Limited, an Indian central public sector undertaking formerly known as National Thermal Power Corporation, was fined INR 4 million (USD 48,409) for implementing its acquisition of a 35.47% stake in Ratnagiri Gas & Power (RGP), which increased NTPC's total shareholding to 60.98%. Although NTPC Limited did not obtain any additional control conferring rights and the transaction did not lead to a change of control, the transaction is still notifiable under the Indian merger control regime given that NTPC's shareholding in RGP after the deal exceeded 50%.
- 5) On 23 August 2023, Bharti Airtel, an Indian multinational telecommunications services company based in New Delhi, was fined INR 10 million (USD 0.12 million) for implementing its acquisition of a 20% stake in Bharti Telemedia without notification.

A light blue map showing the continent of Australia and parts of Southeast Asia. A black dot is located on the eastern coast of Australia, with a thin black line extending from it to the left, ending at a black dot next to the word 'Australia'.

Australia ●

Overview of ACCC's Q3 2023 Merger Vigilance

The Australian Competition and Consumer Commission ("**ACCC**") was particularly active in the merger review space in Q3 2023. It opposed Transurban Group's proposed acquisition of Horizon Roads Pty Ltd, it denied merger authorisation for ANZ's proposed acquisition of Suncorp Bank, and it issued statements of issues ("**SOI**") outlining concerns and potential competition issues in respect of three transactions in the health, agriculture and grocery sectors.

Transurban Group proposed acquisition of Horizon Roads Pty Ltd

On 21 September 2023, the ACCC announced its decision to oppose the proposed acquisition of a majority interest in Horizon Roads Pty Ltd by Transurban Group (the incumbent operator of toll roads across the East Coast of Australia) after concluding that the transaction would be likely to substantially lessen competition ("**SLC**") for future toll road concessions in the state of Victoria.

Horizon Roads operates the EastLink toll road in Melbourne and is the only other private sector toll road operator in Australia. The ACCC was concerned that the proposed acquisition would entrench Transurban's position in Victoria and would prevent the entry of a rival operator which could compete closely for future toll road concessions in the state. Specifically, the ACCC was concerned that the transaction would further entrench Transurban's scale and in-house traffic modelling capabilities and access to traffic data that would provide Transurban with a material advantage over rival bidders for future toll road concessions (which would likely be greater for greenfield opportunities).

The ACCC concluded that if Transurban did not acquire Horizon Roads, it would likely be acquired by a potential long-term rival and would provide a platform with the capabilities needed to compete against Transurban more strongly for other toll road concessions in the future. The Parties have not yet determined if they will seek declaratory relief in the Federal Court of Australia that the transaction does not SLC.

ANZ proposed acquisition of Suncorp Bank

On 4 August 2023, the ACCC decided not deny merger authorisation for ANZ Banking Group to acquire Suncorp Group's banking arm as it was not satisfied in all the circumstances that the proposed acquisition would not be likely to SLC in the markets for home loans, the supply of SME banking services to customers in Queensland and the supply of agribusiness banking products to customers in Queensland, or that the likely public benefits would outweigh the likely public detriments. The ANZ/Suncorp decision is the first significant opposition to a banking sector merger since the ACCC's National Australia Bank/AXA decision (under the informal clearance process) in 2010.

The ACCC's competition analysis focused on two counterfactual scenarios for Suncorp, including continuation of status quo or an alternative merger between Suncorp and Bendigo and Adelaide Bank (another mid-tier banking institution). The ACCC determined that a Suncorp/Bendigo merger would likely create a larger second-tier bank that would be "*better placed to grow its market share through increased competition and trigger a stronger competitive response from the major banks*".

A light blue map of Australia and Southeast Asia is positioned in the top right corner. A black dot is located on the western coast of Australia, with a horizontal line extending to the left towards the word 'Australia'. Another black dot is located on the eastern coast of Australia, with a vertical line extending upwards to the horizontal line.

Australia

The ACCC considered two main theories of harm in its assessment:

- **Coordinated effects:** the ACCC was concerned that the merger would "close the gap" in the market share for home loans between ANZ and the other Big Four banks, since the merger would result in ANZ becoming the third-largest bank in Australia; and
- **Horizontal unilateral effects:** the ACCC was concerned that the removal of Suncorp as a competitor to ANZ would have a real chance of resulting in a SLC in the local/regional markets for agribusiness banking and small and medium (SME) banking.

On 25 August, ANZ and Suncorp notified the ACCC that they have applied for review of the ACCC's decision by the Australian Competition Tribunal ("**ACT**"). On 8 September 2023, Parties lodged their Concise Statement of Facts with the ACT.

Australian Clinical Labs Limited – Healius Limited (Pathology services)

On 20 July 2023, the ACCC published a SOI outlining significant preliminary competition concerns with Australian Clinical Labs Limited's ("**ACL**") unsolicited all-scrip reverse takeover offer of Healius Limited ("**Healius**").

The ACCC noted that ACL and Healius compete closely with one another and both supply pathology services to the community, private and public hospitals, and veterinary clinics.

The ACCC's primary concern relates to the combination of two of the top three providers of community pathology services in Australia (Sonic being the third), which would result in the combined ACL and Healius becoming the largest provider in every state and territory in which they both operate. The ACCC noted the merged entity would have the ability to increase prices and/or reduce service quality. The ACCC was also particularly concerned with the risk of coordinated conduct in the form of increased private billing for pathology services (ie. a decrease in bulk billing) between the merged entity and Sonic, which post-transaction would control over 75% of all Approved Collection Centres (ACC) in every Australian state and territory (except Tasmania where ACL does not operate).

Coles – Fresh milk processing facilities from Saputo Dairy Australia (Milk processing facilities)

On 20 July 2023, the ACCC published a SOI outlining its preliminary competition concerns with Coles' proposed acquisition of two Saputo milk plants. If the transaction proceeded, it would be the first time a supermarket in Australia owns and operates its own milk processing facilities.

The ACCC is closely considering whether the acquisition would give Coles the ability to influence the market in a way that is currently not possible via its current position as a retailer of dairy products and purchaser of raw milk. The ACCC's preliminary view is that the proposed acquisition may lead to Saputo exiting market/s for the acquisition of raw milk in NSW thereby resulting in a SLC for the acquisition of raw milk in relevant markets. Concerns have also been raised that the proposed transaction will remove the longer term incentive for Saputo to continue to acquire raw milk in in relevant market and that this will reduce the number of buyers dairy farmers are able to negotiate with for the sale of their raw milk and will provide Coles the incentive and ability to foreclose or frustrate competitors at various levels of the dairy supply chain.

A light blue map showing the outlines of Australia and the surrounding Southeast Asian countries. A black dot is placed on the western coast of Australia, with a horizontal line extending to the left towards the word 'Australia'. Another black dot is placed on the southern coast of Australia, with a vertical line extending upwards towards the word 'Australia'.

Australia

Endeavour Group – Rye Hotel (Hotel and bottle shop operation)

On 21 September 2023, the ACCC published a SOI outlining its preliminary competition concerns with Endeavour Limited's proposed acquisition of Rye Hotel in Victoria. The Rye Hotel includes a hotel and adjoining independent drive-through liquor store operating under the 'Thirsty Camel' brand. Endeavour operates BWS Rye, the other major liquor store in the local area.

The ACCC is concerned that the proposed acquisition would likely SLC in the supply of takeaway liquor in the local area surrounding the Rye Hotel because the proposed acquisition will remove local competition between the Rye Hotel Thirsty Camel and Endeavour's BWS Rye store, which are likely each other's closest competitors, result in a significant increase in market concentration in the local area that is already concentrated, and will likely to remove an effective competitor with a differentiated offer available to customers in Rye.

Record \$57.5 million penalty for BlueScope's attempted price fixing

On 29 August 2023, Steel manufacturer BlueScope Steel was ordered to pay a \$57.5 million penalty for attempting to induce the price fixing of flat steel products supplied in Australia. The penalty ordered by the Federal Court is the highest penalty ever imposed for cartel conduct in Australia.

The Court also imposed a \$500,000 penalty on BlueScope's former general manager, Jason Ellis, which by Court order cannot be recovered from an insurance company.

On 22 September 2022, Bluescope filed a Notice of Appeal in respect of the penalty and other remedies imposed against it by the Federal Court on 29 August 2023. Bluescope has not appealed the findings that it engaged in cartel conduct.

Consultation on proposed unfair trading practices legislation in Australia has commenced

On 31 August 2023, the Australian government released a consultation paper on possible reforms to more effectively regulate "unfair trading practices". According to the consultation paper, unfair trading practices are particular types of commercial conduct which are not covered by existing provisions of Australia's Competition and Consumer Act 2010 (Cth) ("**CCA**"), but nevertheless can result in significant harm to consumers (and small businesses).

The consultation paper provides some examples of potentially unfair trading practices (which are not currently prohibited), including:

- Inducing consumer consent or agreement to data collection through concealed data practices.
- All or nothing 'clickwrap' consents that result in harmful and excessive tracking, collection and use of data, without providing consumers with meaningful control of the collection and use of their data.
- Using opaque data driven targeting or other interface design strategies to undermine consumer autonomy.
- Providing ineffective and/or complex disclosures of key information when obtaining consent or agreement to enter into contracts.

A light blue map showing the region of Southeast Asia and Australia. A black line starts from a dot next to the word 'Australia', extends horizontally to the right, and then turns vertically downwards to end at a target symbol (a circle with concentric rings) located on the eastern coast of Australia.

Australia

Four policy options have been put forward for as part of the consultation:

- **Option 1** – Status quo (no change).
- **Option 2** – Amend statutory unconscionable conduct.
- **Option 3** – Introduce a general prohibition on unfair trading practices.
- **Option 4** – Introduce a combination of general and specific prohibitions on unfair trading practices.

The ACCC has been advocating for an unfair trading practices prohibition to be introduced into the CCA since 2019, and considers that the introduction of an unfair trading practices prohibition would set an improved standard for business behaviour.

Interested parties are invited to make submissions to the Department of Treasury by 29 November 2023.

Beijing



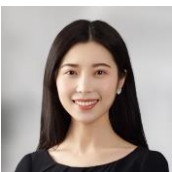
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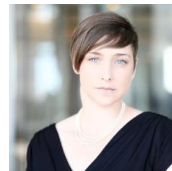
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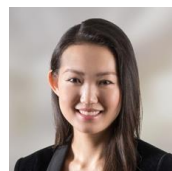
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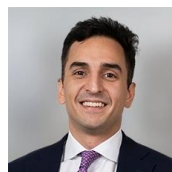
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