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CHANCE

ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE

January to March 2024

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ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: JANUARY TO MARCH 2024

INTRODUCTION

The long-awaited amendments to the Chinese merger filing thresholds were finally published and came into formal effect on 26 January 2024. As the China-wide turnover thresholds doubled, with the individual test increased from RMB 400 million to RMB 800 million and the combined test increased from RMB 2 billion to RMB 4 billion, SAMR anticipated a 30% reduction in the number of merger filings in the coming year. A key question that calls for official clarification is whether the new thresholds apply to transactions which were signed before 26 January but not closed by then. Consultations with SAMR on a case-by-case basis would be recommended to mitigate uncertainties arising from this gap. A relatively bold attempt to include a new market value-based threshold to catch killer acquisitions did not succeed. Nonetheless, SAMR is still making tenacious efforts in this regard, with specific rules in the making, according to a SAMR press conference. On the conduct side, industry associations were apparently in the crosshairs: The State Council released the *Antitrust Guidelines for Industry Associations* to provide detailed guidance on specific types of horizontal infringements where industry associations' liabilities could be overlooked. At the enforcement level, another local car dealing industry association and its members were penalised for coordinating and implementing cartels, respectively. Within court rooms, China's Supreme Court overruled a first-instance judgment in favour of Hitachi Metals by broadening the product market definition with respect to patented sintered NdFeB magnets. Separately, the Intellectual Property Court in its 2023 annual report shed useful light upon the approach to assessing complex antitrust issues, such as tech-antitrust cases and hub-and-spoke agreements.

Outside China, antitrust authorities across the region were busy with merger control: in Taiwan, Dafu Media and Kbro were fined the maximum statutory penalties as these companies failed to comply with the remedies imposed on their merger in 2010; in South Korea, MegaStudy's proposed acquisition of ST Unitas was blocked, given the significant lessening of competition in the local cram schooling market; in the Philippines, merger filing thresholds were adjusted to reflect local GDP growth; in Singapore, a series of transactions among Air India, Singapore Airlines and Tata SIA Airlines was approved, subject to the parties' behavioural commitments; in Australia, the Australian Competition Tribunal authorised ANZ bank's proposed acquisition of Suncorp bank, overturning the earlier decision; and in India, a draft of new merger filing exemptions was published for consultation. In the digital sector, Google appeared to have become a common target: the Korean court upheld the antitrust fine on Google as it forced smartphone manufacturers to use the Android operating system; Indonesia made progress in the antitrust investigation against Google's in-app payment policies, and some Indian startups petitioned to stop Google from removing apps from the Google Play Store. Authorities were also mulling over better antitrust tools towards digital players, e.g., India proposed a Digital Competition Act to introduce *ex-ante* regulation. Other significant developments in this quarter include: Singapore rolled out a new foreign investment review regime, which is expected to come into force later this year; antitrust authorities in Hong Kong and Guangdong province co-published the *Competition Compliance Manual for Businesses in Guangdong and Hong Kong*; and Australia released the country's competition compliance and enforcement priorities for 2024/25, highlighting unfair contract terms, misleading ESG claims, digital economy, industries in focus, etc.

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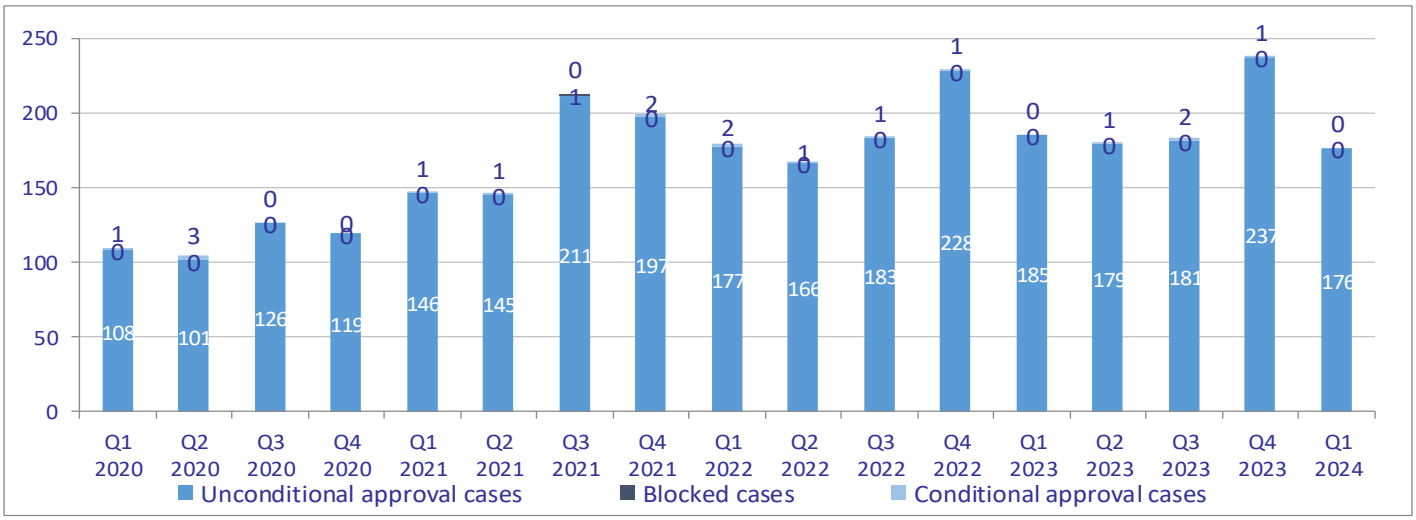
MERGER CONTROL

How many cases have there been?

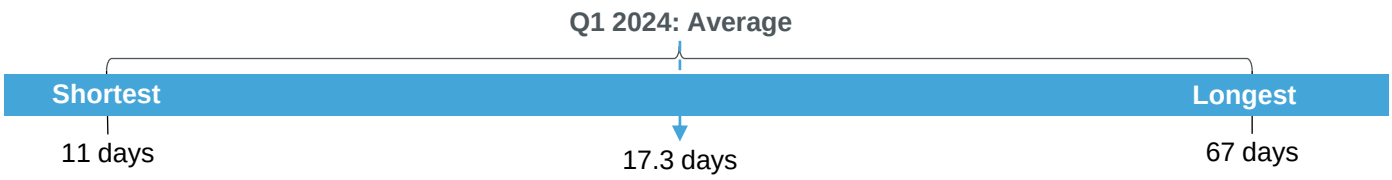
There were in total 176 merger decisions released in the first quarter of 2024, a decrease of 4.8% compared to the first quarter of 2023, with all the 176 cases unconditionally cleared. 157 cases were notified under the simplified procedure, which represents 89.2% of the total cases reviewed in this quarter.

Merger control trends – Q1 2020 – Q1 2024



Simplified procedure: How quick is the review period?

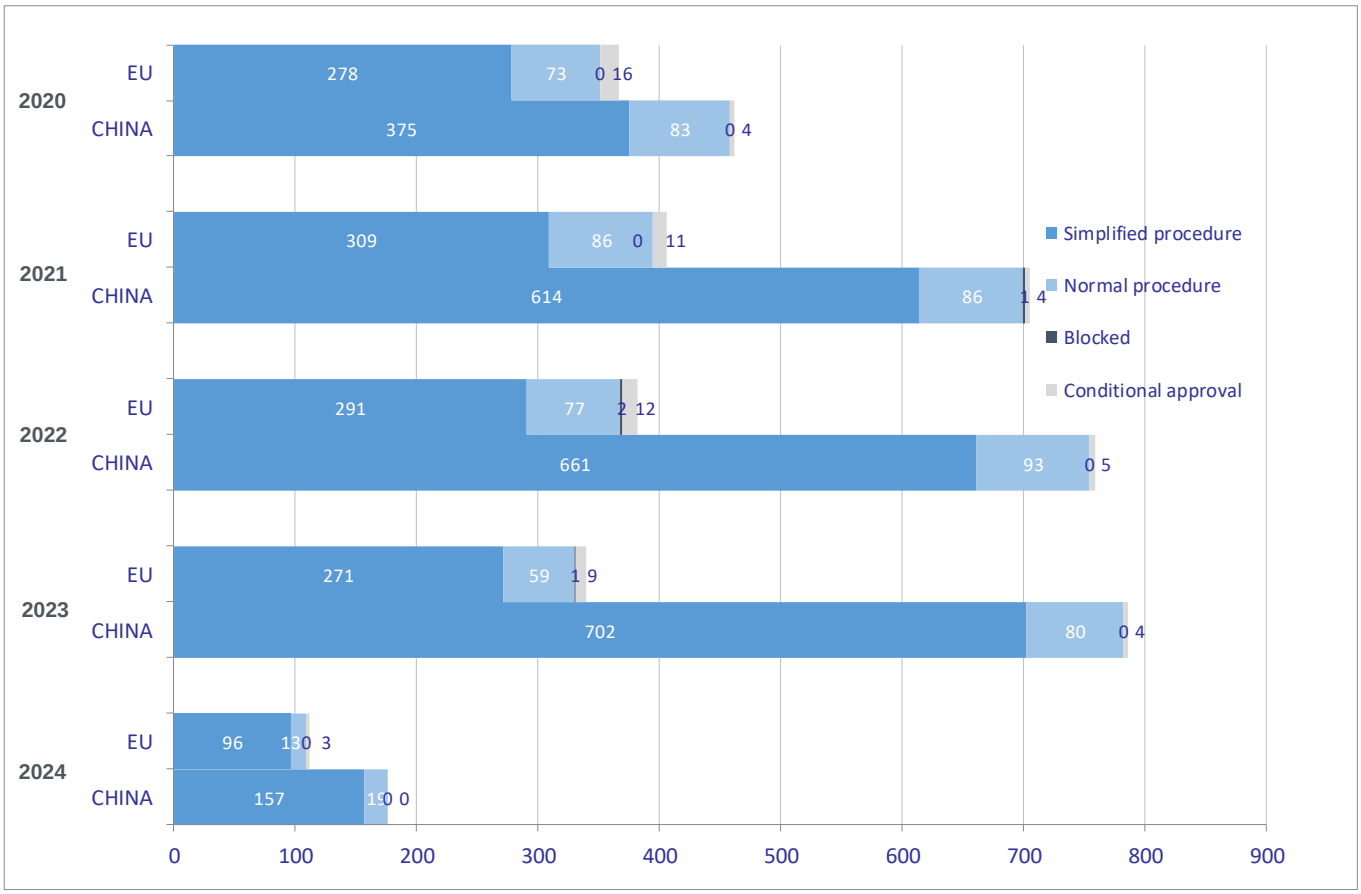
Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
Q1 2020	14 days	87.2%	1
Q2 2020	13.7 days	86.5%	0
Q3 2020	14.4 days	72.2%	3
Q4 2020	13.7 days	83.2%	1
Q1 2021	14.9 days	80.3%	3
Q2 2021	13.8 days	90.4%	0
Q3 2021	13.4 days	86.3%	3
Q4 2021	15.6 days	91.0%	3
Q1 2022	17.1 days	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
Q4 2023	17.4 days	90.3%	5
Q1 2024	17.3 days	89.2%	3



MERGER CONTROL

How does China compare internationally?

Comparison with EU – 2020 – 2024



China unveils new merger control filing thresholds

On 26 January 2024, China's State Council published the long-awaited amended merger filing thresholds (the "**Amended Thresholds for Notification**"). This was the first time that China has adjusted its jurisdictional merger filing thresholds since the adoption of the Anti-Monopoly Law (the "**AML**") in 2008. The new thresholds remain to be turnover-based but the respective turnover thresholds are now raised to catch transactions involving parties with more significant business impact in China. Notably, the bolder move in the June 2022 draft to introduce a new limb of filing threshold for reining in killer acquisitions was eventually dropped in the published version.

The combined worldwide turnover threshold has increased to RMB 12 billion (USD 1.70 billion) from the previously RMB 10 billion (USD 1.41 billion), with the combined China-wide turnover threshold increased to RMB 4 billion (USD 567.76 million) from the previously RMB 2 billion (USD 283.88 million). Further, the individual China-wide turnover threshold is now RMB 800 million (USD 113.53 million), previously being RMB 400 million (USD 56.77 million). SAMR anticipates a 30% reduction in the number of merger filings under the new filing thresholds.

The new thresholds took effect on the same day of its announcement, but it remains to be clarified whether the new thresholds would apply to transactions that were signed before 26 January 2024 but not closed by then.

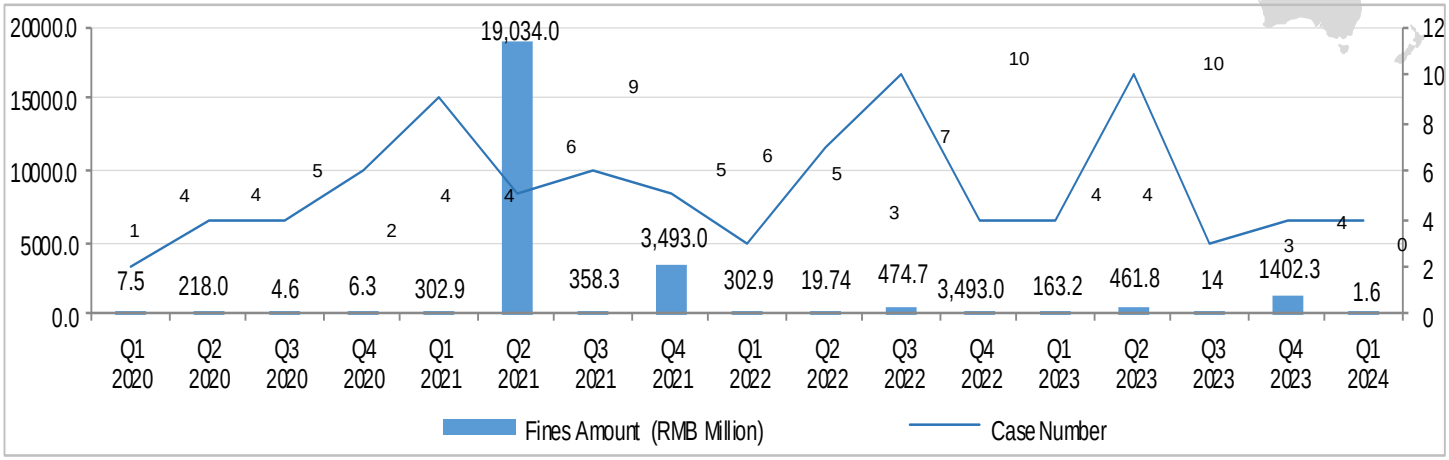
MERGER CONTROL

SAMR continues its efforts to scrutinize "killer acquisitions"

On 31 January 2024, SAMR announced at a press conference that it was formulating rules to enhance its oversight of "killer acquisitions" (i.e. acquisitions of mavericks or nascent competitors that do not meet the target-limb of filing thresholds). Previously in the earlier consultation draft of the Amended Thresholds for Notification, SAMR had attempted to introduce the following market value-based threshold to catch "killer acquisitions“: if the primary turnover-based threshold is not met, a mandatory filing will still be triggered if: (i) one party has more than RMB 100 billion (USD 14.19 billion) turnover in China in the previous financial year; and (ii) the other party (merging party or target) has (a) a market value or valuation of RMB 800 million (USD 113.53 million) or more and (b) with more than one third of its worldwide turnover generated from China in the previous financial year. However, this threshold was dropped in the final version of the Amended Thresholds for Notification, reportedly due to the difficulties to measure market value. Nevertheless, note that under the existing regime SAMR still has the power to review "killer acquisitions" through calling in below-threshold transactions.

ANTITRUST INVESTIGATIONS

Enforcement trends – Q1 2020 to Q1 2024



Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency
Car dealing Henan AMR	12 January 2024	Coordinating and participating in price fixing and market sharing	988.669	3	300.082	3%, 2%	Yes
Brick manufacturing Yunnan AMR	24 January 2024	Price fixing	686.3	21.11	190.428	3%	Yes
Water supply Guangxi AMR	10 January 2024	Abuse of market dominance by imposing unreasonable trading conditions	187.455	N/A	N/A	2%	Yes
Pharmaceutical Shanghai AMR	20 March 2024	Abuse of dominance through excessive pricing	1,560,000	N/A	N/A	4%	No

Henan AMR penalises a car dealing industry association and its members for coordinating cartel

On 12 January 2024, SAMR published a decision where the Henan Administration for Market Regulation ("**Henan AMR**") fined Jiaozuo Used Car Dealers' Association (the "**Association**") and 18 member companies, respectively, for coordinating and participating in price fixing and market sharing. Upon investigation, Henan AMR found that from September 2020 to December 2021, these companies, under the coordination of the Association, conspired to standardise their service fees for used car transaction services. They agreed on a calculation method to determine each company's monthly sales and divided the sales market by implementing a system to compensate lower earners with funds from higher earners and by controlling the issuance of invoices. To ensure the implementation of this arrangement, the Association took measures to monitor compliance with the agreed prices and the actual issuance of invoices, including collecting deposits, conducting on-site inspections, checking tax documents, etc. Henan AMR concluded that the Association violated Article 21 of the AML for coordinating its members to engage in anti-competitive conduct and fined the Association RMB 300,000 (USD 42,553.19). The 18 member companies were found to have violated Article 17 (1) and 17 (3) of the AML for price fixing and market sharing and were fined a total of RMB 688,669.41 (USD 97,683.60), representing 2% or 3% of their respective sales in 2021, or an amount of RMB 3,000 (USD 425.53) for companies with no sales in 2021.

ANTITRUST INVESTIGATIONS

Yunnan AMR penalises 11 brick manufacturers for price fixing

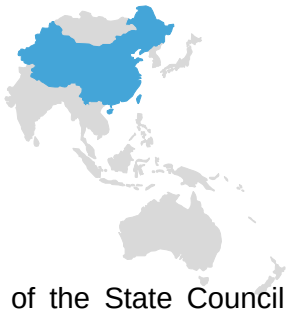
On 24 January 2024, SAMR published a decision where the Yunnan Administration for Market Regulation ("**Yunnan AMR**") fined 11 brick manufacturers for price fixing. Upon investigation, Yunnan AMR found that from 2018 to 2019, the 11 brick manufacturers, coordinated by the Yanshan Brick Manufacturers' Association (the "**Brick Association**"), participated in several meetings where they agreed to set the minimum sales price of their brick products and adopted various measures to ensure compliance with the agreed price (e.g. imposing a fine on those who sold below the agreed price, etc.). Yunnan AMR concluded that the 11 brick manufacturers violated Article 13 (1) of the former AML for price fixing, and fined the 11 brick manufacturers an aggregate amount of RMB 686,300 (USD 97,347.52), each amounting to 3% of their respective sales in 2019. The Brick Association was not penalised as it had been dissolved in September 2019.

Guangxi AMR penalises a water supplier for abuse of market dominance by imposing unreasonable trading conditions

On 10 January 2024, it was reported that the Guangxi Administration for Market Regulation ("**Guangxi AMR**") fined Nanning City Shanglin County Sanli Liuxian Tap Water Co., Ltd. ("**Liuxian Water**") for abusing its market-dominant position by imposing unreasonable trading conditions. Liuxian Water, as the exclusive water supplier in the Sanli Town of Shanglin County of Nanning City, holds a dominant position in the local water supply market. Upon investigation, Guangxi AMR found that from August 2008 to March 2023, Liuxian Water required that its water service customers subscribe to a minimum of 8 cubic metres of water, irrespective of their actual usage. If customers did not agree to this condition, Liuxian Water would refuse their request for water supply service. Guangxi AMR concluded that Liuxian Water violated Article 22(5) of the AML for abusing its market dominance by imposing unreasonable trading conditions, and imposed a combined fine of RMB 187,454.98 (USD 26,589.36) on Liuxian Water. This sum included both a punitive fine (the equivalent of 2% of Liuxian Water's 2022 sales) and confiscated illegal gains. Recognising Liuxian Water's cooperation efforts and active attitude to rectify its conduct, the Guangxi AMR reduced the amount of penalty.

Shanghai AMR penalises a pharmaceutical company for abuse of dominance through excessive pricing

On 20 March 2024, SAMR published a decision where the Shanghai Administration for Market Regulation ("**Shanghai AMR**") fined Jiangxi Xiangyu Pharmaceutical Co., Ltd. ("**Xiangyu Pharmaceutical**") for abusing its market-dominant position through charging an excessively high price for the active pharmaceutical ingredients ("**APIs**") of iodised oil, a key ingredient of iodised oil injections for the treatment of liver cancer. Upon investigation, Shanghai AMR found that Xiangyu Pharmaceutical has a dominant position in the market for the sale of iodised oil APIs in China. Xiangyu Pharmaceutical entered into a supply agreement with the only iodised oil APIs manufacturer in China and received the majority output from the latter from June 2016 to March 2020. For more than three years, Xiangyu Pharmaceutical's market share in the distribution market of iodised oil APIs was above 80%, resulting in a high level of downstream dependence. In determining excessive pricing, Shanghai AMR assessed various factors, including the procurement costs and the prices of iodised oil APIs sold by a competing operator, which all suggest Xiangyu Pharmaceutical had been charging excessively high prices without justification. The conduct ultimately harmed consumers'/patients' interests and violated Article 17(1) of the former AML, leading to a fine of RMB 1.56 billion (USD 221.28 million), which is equivalent to 4% of Xiangyu Pharmaceutical's sales value in 2019.



OTHER NEWS

China publishes antitrust guidelines for industry associations

On 12 January 2024, the Anti-Monopoly and Anti-unfair Competition Commission of the State Council released the *Antitrust Guidelines for Industry Associations* to warn industry associations against coordinating or facilitating anti-competitive conduct. For each of the typical horizontal and vertical violation under antitrust law, the guidelines provide specific guidance notes as to which type of industry associations' activities are prohibited. Further, the guidelines set out specific circumstances under which industry associations in practice may coordinate their members to reach or implement anti-competitive agreements, respectively. Notably, the guidelines highlight the following high-risk activities of industry associations: (i) facilitating exchange/discussion of competitively sensitive information; (ii) publishing indicative prices (such as guidance prices, benchmark prices, price calculation formula) or false/exaggerated cost trends, supply and demand conditions, etc. to coordinate pricing behaviours of competing players. In addition, the guidelines also provide compliance guidance for industry associations to mitigate risks. This reflects the Chinese antitrust authority's efforts and experience in enforcing against industry associations' antitrust infringements in the past decade.

SAMR consults on the draft amendment to antitrust compliance guidelines for undertakings

On 21 March 2024, SAMR launched a consultation on the proposed amendments to the Guidelines on Anti-monopoly Compliance for Undertakings (the "**Draft Compliance Guidelines**"), aiming to strengthen awareness of, and improve the capabilities of businesses in, antitrust compliance. Its public consultation period ended on 3 April 2024. The Draft Compliance Guidelines has incorporated recent developments in the AML and related regulations, also providing case studies by way of examples. Moreover, Draft Compliance Guidelines stipulates that antitrust authorities in their investigation will take into account the presence and effectiveness of an investigated company’s antitrust compliance management system. This suggests that effective internal antitrust compliance system could possibly lead to mitigated penalties. Subject to the final text of the guidelines, there is a reason to believe that companies would be further encouraged to roll out effective antitrust compliance rules for their business operations in China.

China's Supreme Court reverses a first-instance judgment against Hitachi Metals

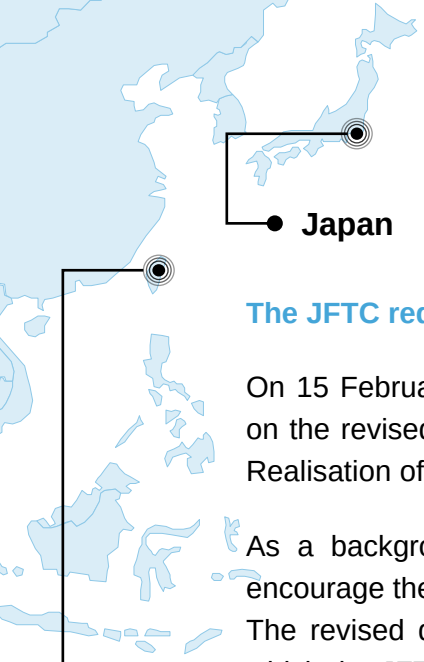
On 21 February 2024, China's Supreme Court ("**SPC**") overturned a first-instance judgment of the Ningbo Intermediate People's Court ("**Ningbo Court**") which supported four magnet companies’ claim that Hitachi Metals violated antitrust rules due to refusal-to-license. In April 2021, based on a narrowly defined product market of Hitachi Metals' patented sintered NdFeB magnets (“**Relevant Magnets**”), the Ningbo Court found that Hitachi Metals had a dominant position given its 100% market share; and that Hitachi Metals' refusal to license the Relevant Magnets to the plaintiffs constituted abusive conduct in violation of the Chinese antitrust law. The SPC nonetheless took the view that Relevant Magnets were not technically essential, and broaden the relevant product market by including both patented and closely substitutable non-patented sintered NdFeB material production technologies based on demand-side substitutability. On that basis, the SPC concluded that Hitachi Metals did not hold a dominant position and there was no ground for abuse of dominance, overturning Ningbo Court’s first-instance judgment and dismissing all claims brought by the plaintiffs.

OTHER NEWS

Chinese IP Court’s annual report sheds light upon antitrust enforcements

On 23 February 2024, the Intellectual Property Court ("**IPC**") of the SPC released its annual report for 2023. During the year, the IPC dealt with 66 antitrust cases and successfully concluded 19 of them. The IPC also released a digest of key decisions from 2023, shedding light on its approach to complex antitrust issues in price-fixing, hub-and-spoke and new tech cases, etc. Notable developments include:

- Confirming that price-fixing behaviours include not only setting minimum prices or explicitly fixing specific prices, but also formulating price ranges, calculation methods and/or standards that indirectly control prices.
- Explaining what constitutes a "hub-and-spoke" agreement and its inherent nature as a *de facto* horizontal anti-competitive agreement between the "rim" companies and confirming the potential liability of the "hub" company in its role as a facilitator.
- Setting out the criteria for defining a tech-related market in an IP-antitrust lawsuit and the factors to consider an upstream tech player's market power.



Japan

The JFTC requested public comments on the revised Green Guidelines

On 15 February 2024, the Japan Fair Trade Commission ("**JFTC**") requested public comments on the revised draft of the "Guidelines Concerning the Activities of Enterprises, etc. Toward the Realisation of a Green Society under the Antimonopoly Act" (the so-called "**Green Guidelines**").

As a background, on 31 March 2023, the JFTC issued the Green Guidelines in order to encourage the efforts of enterprises and trade associations for the realisation of carbon neutrality. The revised draft of the Green Guidelines is based on the consultations from the companies which the JFTC handled after the issuance of the Green Guidelines. The revisions aim to clarify: (i) how certain joint activities such as information exchanges or a reduction of manufacturing volume could be justified in certain cases; (ii) how to assess and evaluate the decarbonisation effects of companies' green initiatives; and (iii) market definition relating to new environmentally friendly products and existing products.

On the same day (15 February 2024), the JFTC publicised a consultation case relating to joint activities by five petrochemical companies aiming to achieve carbon neutrality at a petrochemical complex called the Shunan Complex. In this case, the companies intend to jointly carry out (i) the installation and use of joint power generation equipment, (ii) joint purchase of ammonia and raw materials for bio basic chemicals, (iii) planned disposal of power generation equipment owned by each company and (iv) exchange of information necessary for considering the feasibility of implementing the initiatives, in order to achieve carbon neutrality at the Shunan Complex by 2050. The JFTC concluded that the joint activities contemplated in this case do not pose any problem under the Antimonopoly Act as they will not cause a substantial restraint of competition and they aim to achieve carbon neutrality.

The JFTC warns Nissan Motor for unilaterally reducing payments to subcontractors

On 7 March 2024, the JFTC issued a warning to Nissan Motor for unilateral reductions of payments to more than 30 subcontractors between January 2021 and April 2023. The total reduction amount was over JPY 3 billion (USD 20 million).

Taiwan

TFTC fines Dafu Media and Kbro for violating conditions to the merger clearance

On 15 January 2024, the Taiwan Fair Trade Commission (the "**TFTC**") imposed a hefty fine of TWD 100 million (USD 3.2 million) on Dafu Media and Kbro for their failure to comply with TFTC's conditions subject to which their merger was cleared in 2010. Kbro and its affiliates cooperated with other cable TV systems and channel agents without TFTC's prior approval, which violated one of the behavioural conditions imposed by TFTC. Due to the vertical relationships between cable TV systems and channel agents, the violation was considered by TFTC to have led to more substantial market power of Kbro and potential foreclosure in cable TV market and channel agent market. Consequently, the TFTC imposed the maximum statutory penalties (TWD 50 million (USD 1.6 million)) under the Fair Trade Act on Dafu and Kbro, respectively.

South Korea

Korean court upholds KFTC's decision to fine Google for abuse of dominance

On 24 January 2024, the Seoul High Court upheld the KFTC's decision to fine Google for forcing smartphone manufacturers to use its Android mobile phone operating system.

By way of background, in September 2021, the KFTC imposed provisional fines of KRW 207.4 billion (USD 177 million) on Google for its abuse of dominance, as Google forced smartphone manufacturers not to use the modified version of Android, called Android forks.

The KFTC launches investigation into food companies over sugar-related price fixing

On 19 March 2024, the KFTC conducted dawn raids on food processing and food manufacturing companies for alleged price fixing regarding sugar. The KFTC announced that it would strengthen its monitoring of collusions in the food, clothing and shelter industries this year.

The KFTC blocks MegaStudy's proposed acquisition of ST Unitas

On 21 March 2024, the KFTC announced that it had blocked MegaStudy's proposed acquisition of 95.8% of the shares in ST Unitas. Both of them are leading education companies in South Korea, and there was a concern that the proposed acquisition may cause competition concerns in the cram school market.

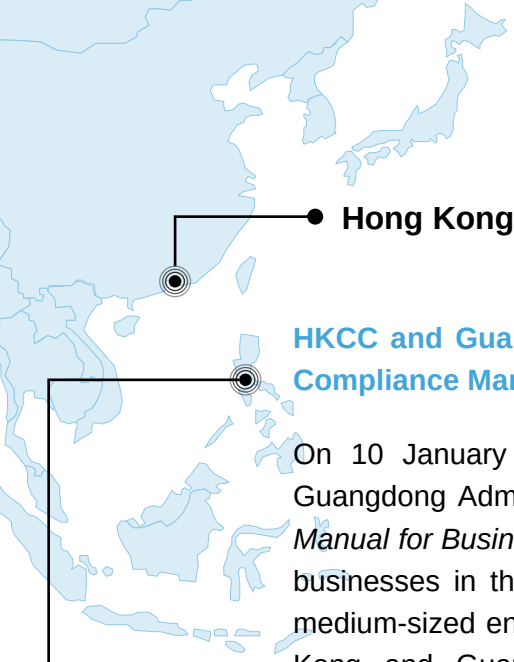
Indonesia

Indonesia makes progress in the Google payment antitrust investigation

On 6 February 2024, the newly appointed Chairman of the Indonesian Competition Commission (the "**ICC**") announced that it found evidence suggesting that app developers were forced by Google to use its payment system. Google was alleged to have charged app developers a commission fee of 15% to 30% for purchases on the Google Play Store. The investigation began in September 2022 and developed into the in-depth investigation stage from November 2023 when Google failed to timely implement its proposed behavioural commitments. Google nonetheless claimed that the commitments, if implemented, would jeopardize security in using Google Play Store's apps. In the meanwhile, the ICC Chairman seems to be promoting the creation of a digital competition law in order to rein in anti-competitive conduct arising from the digital economy more effectively.

Indonesia investigates Shopee’s alleged self-preferencing behaviours

On 19 February 2024, it was reported that the KPPU is investigating the alleged anti-competitive practices of Shopee, a prominent online platform which is headquartered in Singapore and has become very popular in Indonesia. Shopee was alleged to have been restricting its customers from using alternative delivery methods other than Shopee Xpress, Shopee’s own delivery company. Customers as a result would be deprived of the opportunities to purchase at Shopee with lower delivery prices. The KPPU highlighted that Shopee Xpress had unduly benefited from Shopee’s self-preferencing conduct, as reflected by a significant revenue increase of Shopee Xpress. As the investigation progresses, Shopee might be facing a trial further down the line and may be imposed substantial fines subject to the outcome of this investigation.



Hong Kong

HKCC and Guangdong Administration for Market Regulation co-publish Competition Compliance Manual for Businesses in Guangdong and Hong Kong

On 10 January 2024, the Competition Commission of Hong Kong (the "**HKCC**") and Guangdong Administration for Market Regulation co-published the *Competition Compliance Manual for Businesses in Guangdong and Hong Kong* (the "**Manual**"). The Manual will assist businesses in the Guangdong-Hong Kong-Macao Greater Bay Area, especially small and medium-sized enterprises, to gain an understanding of the competition law regimes in Hong Kong and Guangdong, take corresponding measures to enhance their internal risk assessments and strengthen their ability to comply with the law. Apart from explaining the key elements of the relevant laws, their enforcement mechanisms and consequences of contraventions, the Manual also features competition law case studies from both jurisdictions and provides recommendations to businesses to facilitate their compliance strategies.

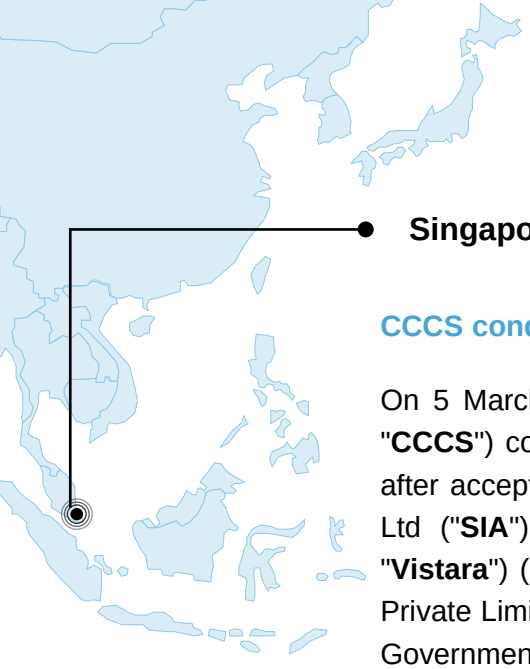
HKCC conducts search regarding funeral service case

On 17 January 2024, the HKCC executed search warrants at 13 premises, including a number of funeral service companies and an office of a trade association in Hung Hom, Tuen Mun and Yuen Long. The companies, the trade association and other funeral service practitioners are suspected of having engaged in anti-competitive conduct, including price fixing when providing funeral services, in contravention of the First Conduct Rule. The HKCC received intelligence earlier alleging that funeral service practitioners engaged in anti-competitive conduct including market sharing by coordinating their solicitation of customers at the New Territories (Shatin) Forensic Medicine Centre (the reprovisioned Fu Shan Public Mortuary). The HKCC therefore gathered and analysed information relating to the case, and conducted a surprise visit to the Forensic Medicine Centre with assistance from the police in August 2023. After the operation, the HKCC analysed the information in detail and found that, apart from the allegations mentioned above, a trade association and certain funeral service companies and practitioners are also suspected of having engaged in anti-competitive conduct including price fixing. The HKCC therefore initiated another case to pursue the matter further and was satisfied that there was "reasonable cause to suspect" a contravention and hence decided to escalate the case to the investigation phase.

Philippine

The Philippines adjusts merger control filing thresholds

On 1 March 2024, the Philippine Competition Commission ("**PCC**") announced its revised merger filing thresholds, which formally took effect on the same day. Under the revised thresholds, a mandatory filing will be triggered if the following two tests are both satisfied: (i) the size of party ("**SOP**"), i.e. the value of the assets or revenues of a relevant party in the Philippines, exceeds PHP 7.8 billion (USD 138 million), increased from the previous SOP threshold of PHP 7 billion (USD 124 million); and (ii) the size of transaction ("**SOT**") exceeds PHP 3.2 billion (USD 57 million), increased from the previous SOT threshold of PHP 2.9 billion (USD 51 million). These adjustments reflect the country's nominal GDP growth of 10.3% in 2023. It is worth noting that according to the PCC, the revised thresholds will only apply to new filings (irrespective of underlying transactions being signed before or after 1 March 2024) and will not retroactively affect filings which were already submitted before 1 March 2024.

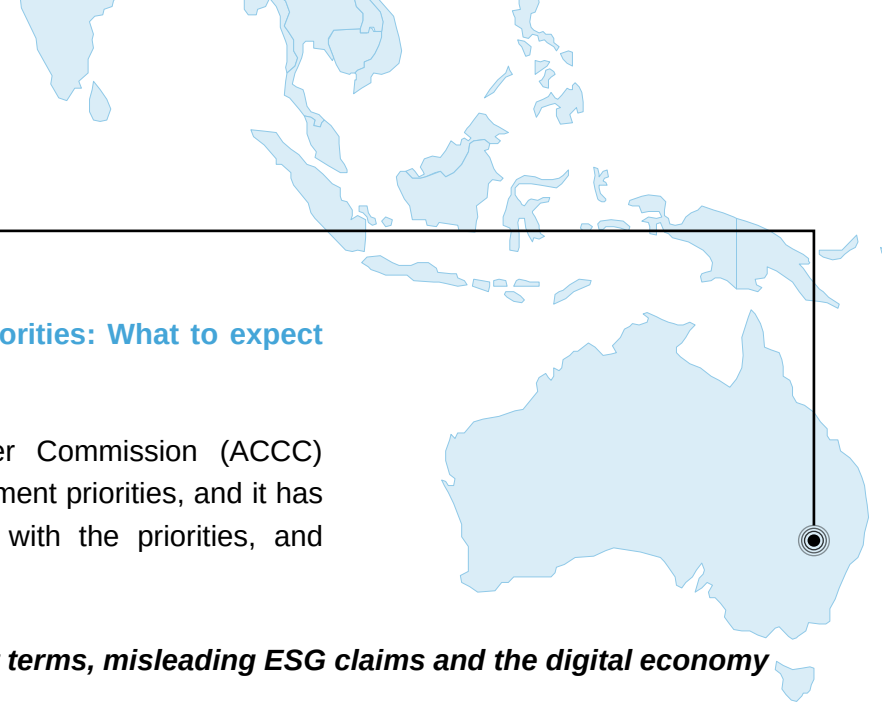


CCCS conditionally approves SIA, Air India and Vistara Airline Transactions

On 5 March 2024, the Competition and Consumer Commission of Singapore (the "**CCCS**") conditionally approved three transactions (collectively, the "**Transactions**") after accepting commitments from Air India Limited ("**Air India**"), Singapore Airlines Ltd ("**SIA**") and Tata SIA Airlines Ltd (which operates under the brand name "**Vistara**") (collectively, the "**Parties**"). The approved transactions include: (i) Talace Private Limited ("**Talace**")'s acquisition of Air India's shares and voting rights from the Government of India, along with the purchase of Air India's 100% stake in Air India Express Limited and 50% stake in Air India SATS Airport Services Private Limited; (ii) the merger of each of Talace and Vistara into Air India, with Air India as the surviving integrated entity, and SIA's acquisition of 25.1% of the enlarged equity capital of Air India; and (iii) the proposed commercial cooperation between SIA and the integrated entity. The CCCS identified competition concerns, especially as the Parties possess the majority of the market share for carriers offering direct flights between Delhi, Mumbai, Chennai and Tiruchirapalli on the Indian side and Singapore on the other. The CCCS also found that the price and capacity coordination between the Parties arising from the confluence of the Transactions would significantly restrict competition on the affected routes. To address the CCCS's competition concerns, the Parties proposed commitments pertaining to scheduled air passenger transport services on the routes concerned; namely, maintaining capacity on the said flights at pre-COVID levels, appointing independent auditors to monitor compliance with capacity commitments, and submitting annual as well as interim reports.

Singapore passes the Significant Investments Review Act 2024 to regulate investments in critical entities

The Significant Investments Review Act 2024 (the "**Act**") was first passed by the Parliament of Singapore on 9 January 2024, assented to by the President on 6 February 2024 and published in the Government Gazette on 14 February 2024. The Act is likely to come into effect in the next few months, but the commencement date has yet to be published. Entities regarded as critical to Singapore's national security interests may be designated and subject to approval requirements for changes in ownership, control and key personnel, and other related restrictions. The Act does not expressly define the term "national security", although it was clarified in the Singapore Parliament that "national security" is intended to broadly cover areas critical to Singapore's sovereignty and security, including its economic security and resilience, and the continued delivery of essential services. Under the Act, the Singapore Government also has "calling-in" powers within a two-year period following any transaction, and may take targeted actions directed at any entity that has acted against Singapore's national security interests. For more details, please refer to our blog post on this topic.



Australia

ACCC's Compliance and Enforcement Priorities: What to expect in 2024-25

The Australian Competition and Consumer Commission (ACCC) recently released its compliance and enforcement priorities, and it has already started enforcement action in line with the priorities, and signalled there is more to come.

The ACCC doubles down on unfair contract terms, misleading ESG claims and the digital economy

In early March 2024, Gina Cass-Gottlieb, the Chairperson of the ACCC announced the 2024-25 Compliance and Enforcement Priorities for the ACCC (**the 2024/25 Priorities**). The 2024/25 Priorities are focused on the economic challenges of net zero transition, cost of living pressures, and the challenges of digital transformation.

The 2024/25 Priorities continue the ACCC's recent trend of prioritising consumer protection matters and pursuing contraventions of the Australian Consumer Law (**ACL**), seemingly in preference to competition concerns. Key compliance and enforcement priorities relating to business practices include:

- Unfair contract terms in consumer and small business contracts.
- Consumer, product safety, fair trading and competition concerns in relation to environmental claims and sustainability.
- Consumer and fair trading issues in the digital economy, with a focus on misleading or deceptive advertising within influencer marketing, online reviews, in-app purchases and price comparison websites.
- Improving industry compliance with consumer guarantees, with a focus on consumer electronics, and also targeting misconduct by retailers in connection with delivery timeframes.

For the second year in a row, unfair contract terms, product safety, fair trading and competition concerns in relation to sustainability and environmental claims have been listed as priorities. Unsurprisingly, the repetition of these priorities follows recent legislative changes and new guidance materials:

- In November 2023, amendments were made to the ACL to introduce penalties for proposing or making an unfair contract term, or purporting to apply or rely on an unfair contract term in relation to small business or consumer contracts. Unfair contract terms are now subject to substantively the same penalty regime as substantive antitrust contraventions such as a misuse of market power (i.e., abuse of dominance).
- In December 2023, the ACCC released their guidance Making environmental claims: A guide for business.

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We anticipate the enforcement focus on these areas will look towards implementing market practices that adhere with the recent guidance.

In line with the 2024/25 Priorities, the ACCC commenced enforcement proceedings against Mosaic Brands (the owner of brands such as Noni B, Rivers, Millers and Rockmans) for failing to deliver hundreds of thousands of products within the advertised delivery timeframes. The ACCC allege that Mosaic Brands' various relevant businesses offered delivery within 2 to 17 days, however in over 26% of orders, the orders took in excess of 20 days to just leave Mosaic Brands' warehouses.

Industries in focus

Each year enforcement priorities include industry and sector focus areas. For the 2024/25 Priorities, the ACCC will focus on the digital economy, aviation sector, NDIS providers, supermarkets, and telecommunication, electricity, gas and financial services. The key compliance and enforcement priorities impacting these industries and sectors are:

- Competition, consumer, fair trading and pricing concerns in the supermarket sector, with a focus on food and groceries.
- Promoting competition in essential services with a focus on telecommunications, electricity, gas and financial services.
- Misleading pricing and claims in relation to essential services, with a particular focus on energy and telecommunications.
- Competition and consumer issues in the aviation sector.
- Improving compliance by NDIS providers with their obligations under ACL.

Cost of living pressure has been a key driver behind the enforcement focus on providers of essential services, and the encouragement of competition for telecommunication, electricity, gas and financial services. These priorities follow ACCC inquiries into the relevant sectors, notably:

On 25 January 2024, a 12-month price inquiry commenced into Australia's Supermarket sector examining pricing practices of supermarkets and the relationship between wholesale and retail prices. As part of the inquiry, the ACCC will consider practices including the use of 'specials' and 'was/now pricing' and non-price aspects of competition including the impact of loyalty programs and discounts for future purchases.

In December 2023, the final report of the Retail Deposits Inquiry was released. The Report found that retail deposit customer competition was often selective and opaque, and that strategic pricing strategies lead to greater complexity for consumers, and for some, poorer outcomes.

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The additional focus on misleading pricing and claims in relation to essential services follows the ACCC commencement of proceedings against Energy Australia in September 2023 for allegedly failing to communicate price information in a simple and standardised way when notifying customers of impending price changes.

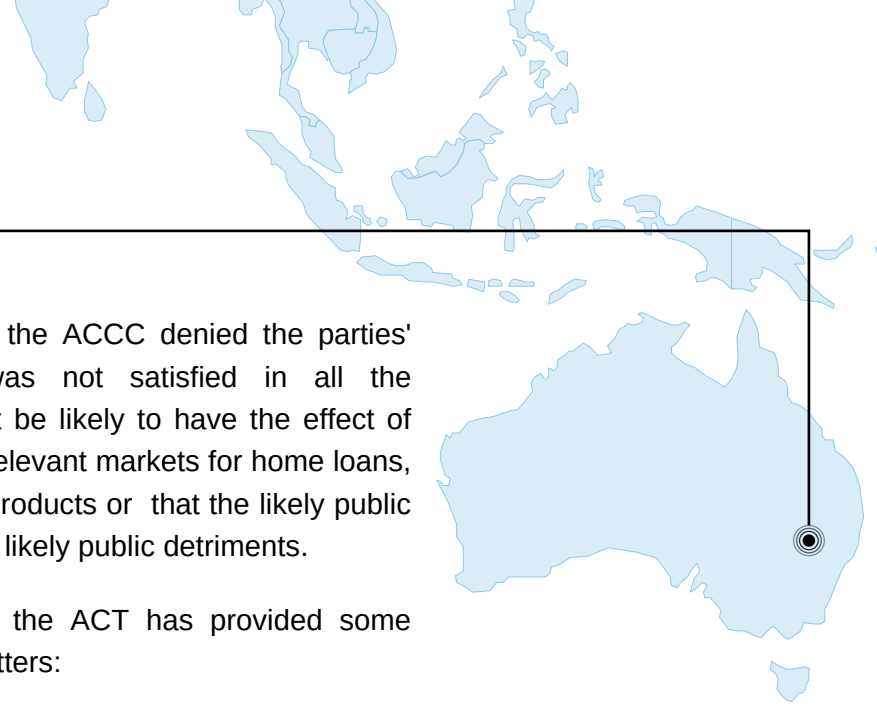
The Aviation sector focus follows high levels of consumer complaints, the ACCC's findings in the Domestic Airline Competition in Australia report and recent enforcement action commenced by the ACCC. The Report found that while revenue per passenger in December 2023 has decreased since December 2022, cancellations and delays are still above long-term industry averages. In August 2023, the ACCC commenced enforcement action against Qantas for allegedly engaging in false, misleading or deceptive conduct for advertising tickets for over 8,000 flights that it had cancelled but not removed from sale.

Compliance with the ACL by NDIS providers is a new compliance and enforcement priority, and the ACCC announced the commitment of resources to identify and act on consumer law matters arising from the conduct of NDIS providers. This enforcement priority follows other recommendations and commitments made by the Federal Government after the Independent Review of the NDIS and the announcement in December 2023 that the ACCC will be chairing a joint taskforce with the National Disability Insurance Agency and NDIS Quality and Safeguards Commission.

Enforcement priorities on retail practices such as delivery times, misleading and deceptive advertising in online reviews, in-app purchases and price-comparison providers, indicate a focus towards online retailers and ecommerce providers. The ACCC's priority comes in context of the market shift towards the digital economy and an increased proportion of problematic transactions being online commerce based. The ACCC has previously proposed mandatory obligations for digital platforms to address issues such as fake reviews and in November 2023 flagged an important need for regulatory reform in their seventh interim report for the Digital Platform Services Inquiry. The ACCC has separately stated that the video game industry will be of focus for in-app purchases, something that private actions brought by Epic Games against Apple and Google have highlighted to the ACCC.

Australian Competition Tribunal authorises ANZ bank's proposed acquisition of Suncorp bank

On 20 February 2024, for the first time under Australia's current merger authorization regime, the Australian Competition Tribunal (**ACT**) has overturned the decision of the Australian Competition and Consumer Commission (**ACCC**) and allowed ANZ to proceed to acquire Suncorp Bank paving the way for Australia's largest banking acquisition in recent times.



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For the reasons set out in our last update, the ACCC denied the parties' merger authorisation application as it was not satisfied in all the circumstances that the transaction would not be likely to have the effect of substantially lessening competition (**SLC**) in relevant markets for home loans, banking services, and agribusiness banking products or that the likely public benefits of the transaction would outweigh the likely public detriments.

In setting aside the ACCC's determination, the ACT has provided some helpful guidance in respect of a number of matters:

Application of coordinated effects theories of harm

The ACT did not consider that the transaction would meaningfully impact the likelihood of coordination or tacit collusion between the major banks in Australia. The ACCC's economic analysis going to the likelihood of such harm occurring focused on markets with particular characteristics and was not viewed as compelling or reflective of the markets in question.

Although the ACT acknowledged the ACCC's concerns, it ultimately adopted a more realistic assessment of prevailing dynamics and concluded that conditions for coordination have reduced in recent times and would likely decrease further due to the presence of mavericks such as Macquarie Bank and the increasing use of mortgage brokers (both of which were found to have led to increased competition and an increased ability for consumers to switch).

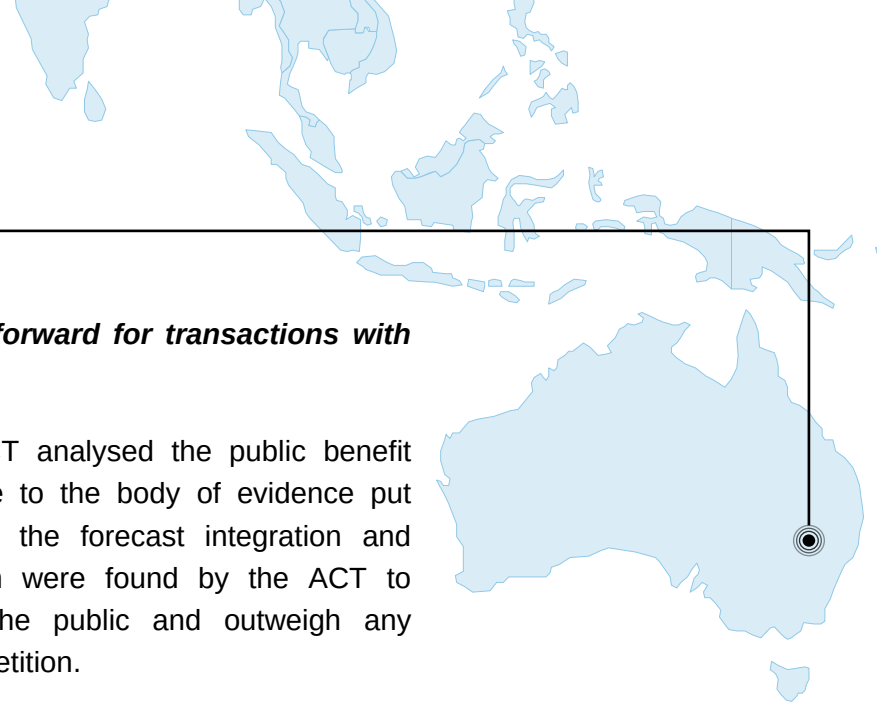
The small resulting increase in ANZ's market share of ~2-3% in the national home loan market was also found to be unlikely to meaningfully impact the likelihood of coordination between major banks. Any potential risk of coordination was viewed by the ACT as being outweighed by the fact that neither of the merger parties are close competitors nor have particularly unique offerings.

Although the counterfactual(s) put forward by the ACCC were considered to be likely (although far from certain), they were not determinative as no SLC was found.

Evaluative approach to the merger authorization 'satisfaction' / 'competition' test

Although the ACT's initial summary of reasons adopted a more standard evaluative approach to the issue of competitive effects in framing the critical issue as being whether the transaction was likely to SLC, the full decision adopts the same evaluative approach of the ACCC and section 90(7)(a) of the CCA.

The ACT did, however, indicate that in some cases it may be satisfied that it can make a negative finding that it is not satisfied the conduct would be likely to substantially lessen competition where it may have insufficient evidence to make a positive finding that it was satisfied the conduct would not be likely to substantially lessen competition. This potentially leaves the door open for the ACT to adopt a more traditional SLC test in the context of its merger authorisation review function.



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Public benefits continue to provide way forward for transactions with competition concerns

Although no SLC was established, the ACT analysed the public benefit claims advanced by the merger partes due to the body of evidence put forward. In weighing the public benefits, the forecast integration and productive efficiencies from the transaction were found by the ACT to constitute real and tangible benefits to the public and outweigh any detriments arising from any reduction in competition.

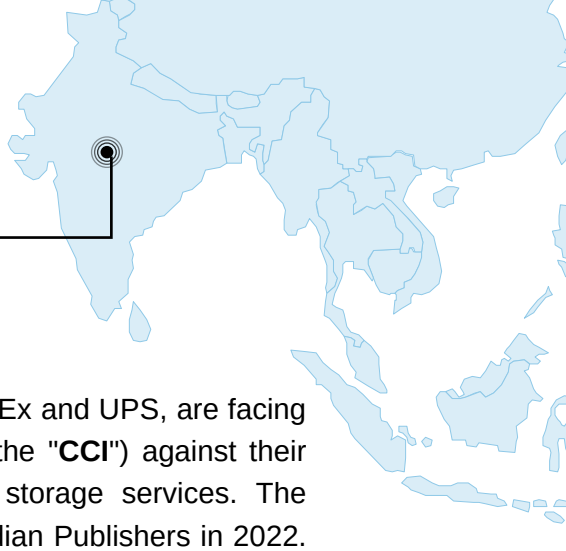
This approach and reasoning is consistent with a number of other recent ACCC merger authorization decisions whereby the associated public benefits provided a way for merger parties to overcome competition concerns that were identified and ultimately provided grounds for the ACCC to approve the transactions in question (Armaguard/Prosegur and Brookfield/Origin).

However, parties should continue to expect both the ACCC and ACT to apply rigor when assessing public benefit claims with a number of other benefits claimed by ANZ and Suncorp being viewed by the ACT as neither "public benefits" or sufficiently specific to the transaction.

Conclusion: It's a wrap

The ACCC has indicated that it will not apply for judicial review of the ACT's decision. However, it is possible that the ACCC may point to this outcome as support for its calls to reform Australia's merger test(s) to broaden its ability to oppose transactions that enhance a firm's market power.

In the meantime, the parties able to proceed with the transaction and the decision will join the small number of other recent ACCC merger authorization determinations and ACT decisions that form part of the relevant jurisprudence for this alternative to the informal ACCC merger clearance process.



India

India probes three international logistics giants' alleged cartel

It was reported that three international logistics companies, DHL, FedEx and UPS, are facing an antitrust investigation by the Competition Commission of India (the "**CCI**") against their alleged collusion on discounts and tariffs of airport courier and storage services. The investigation was prompted by a complaint from the Federation of Indian Publishers in 2022. CCI is currently examining loaded email correspondences that would allegedly reveal price-fixing activities, e.g., exchanging volume, rate and discount-related information of their respective airport courier and storage services. The three players are not new to antitrust enforcers as they were found to have breached antitrust rules through price-fixing and market-sharing by the European Commission as well as antitrust authorities in Turkey and Spain, suggesting that their alleged cartel conduct occurred on a global scale.

Indian startups request the CCI to stop Google from removing apps from the Google Play Store

In March 2024, Google removed more than 100 Indian apps from the Google Play Store for the app developers' failure to pay Google service fees when using non-Google payment systems. This prompted an alliance of Indian startups to request the CCI to step in. Google historically required customers to use Google's own payment system for in-app purchases, and charged app developers a 15-30% commission fee for all app developers until the CCI in 2022 ordered Google to permit the use of alternative payment systems without imposing punitive measures. Google then revised its payment policy through reducing its commission fees to 11%-26% for those app developers using alternative payment systems. Many Indian app developers claimed that Google's revised policy failed to improve the situation to any extent. The CCI has been reviewing Google's revised policy since last May, but the review was interrupted twice due to a lack of quorum following the resignation of two CCI commissioners.

India proposes new exemptions from mandatory filing obligation for consultation

On 18 March 2024, the Indian Ministry of Corporate Affairs launched a consultation on a set of draft rules to exempt certain M&A transactions from mandatory merger control filings in Indian. The draft rules propose to exempt some types of transactions, including (i) intra-group transactions that do not change the control structure within a group; (ii) acquisitions of less than 25% non-controlling shares or voting rights; and (iii) for existing shareholders with +25% stake, acquisitions of additional shares that do not bring the total shares of over 50% (without control rights) of the target; (iv) for existing shareholders with +50% stake, acquisition of additional shares without resulting in a change of control of the target. Once adopted, the rules will not only reduce the merger review burden of the CCI, but also significantly alleviate transaction parties' filing obligations.

India

India proposes a Digital Competition Act with ex-ante measures

On 12 March 2024, the Committee on Digital Competition Law released a comprehensive report to introduce a new Digital Competition Act ("**Draft DCA**"), the Indian version of the EU's Digital Markets Act ("**DMA**"), and promote *ex-ante* regulation of digital economy in India. The Draft DCA would empower the CCI to proactively monitor large tech companies' conduct and designate them as Systemically Significant Digital Enterprises ("**SSDEs**") when certain conditions are met. This represents a similar approach to "gatekeepers" under the DMA. The designation of SSDEs under the Draft DCA would be based on a combination of quantitative metrics (e.g., turnover and user base) and qualitative factors (e.g., their influence on the digital market). In addition, the CCI could also extend its regulatory oversight to a digital conglomerate's affiliated entities under the Draft DCA. Non-compliance with the Draft DCA could lead to a fine of up to 10% of an infringer's group-level global turnover.

Bangladesh

Bangladesh requires Foodpanda to remove exclusivity clauses

On 2 January 2024, the Chairman of the Bangladesh Competition Commission (the "**BCC**") fined Foodpanda BDT 10 million (USD 9,084) for abusing its market dominance by imposing exclusivity obligations on restaurants. The BCC also ordered Foodpanda to terminate such exclusivity arrangements. The investigation began in 2020 following a local restaurant's complaint that Foodpanda imposed exclusivity clauses. BCC considered Foodpanda as a dominant player in the local food delivery market. Notably, Foodpanda's exclusivity requirements and other allegedly anti-competitive conduct was previously scrutinized by antitrust authorities in Hong Kong, Taiwan, Pakistan and Malaysia.

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