

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



# **ANTITRUST IN CHINA AND ACROSS THE REGION**

QUARTERLY UPDATE

April to June 2020

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# ANTITRUST IN CHINA AND ACROSS THE REGION

## QUARTERLY UPDATE: APRIL TO JUNE 2020

Last quarter saw a sharp pick up in merger activity in China – 104 cases approved, all but three of them unconditionally. Interestingly, in the three conditionally approved cases, it was not horizontal overlaps which prompted SAMR's concerns, but rather vertical or conglomerate issues and the remedies in each case contain a similar mix of requirements to offer FRAND terms; to maintain supplies of individual products and not to bundle sales of different products.

Antitrust enforcement was relatively muted in China last quarter, with four decisions issued, including one of around RMB 204 million (USD 29 million) on three distributors of active pharmaceutical ingredients for imposing excessive prices and unfair trading terms.

Outside China, last quarter saw a lot of activity in Hong Kong, including the Competition Tribunal imposing the first set of financial penalties under the Competition Ordinance; the Competition Commission imposing its first set of commitments on three online travel agencies in relation to price parity clauses; the establishment of a Memorandum of Understanding between the Competition Commission and the Securities and Futures Commission; and the appointment of Samuel Chan Ka-yan as the new chairperson of the Competition Commission. Other notable developments in APAC last quarter include the publication by the JFTC of new rules on a limited form of legal privilege in relation to antitrust investigations; the approval of a Digital Platform Bill by the Japanese Diet; approval by the KFTC of the merger of two domestic airlines on the basis of a failing firm defence; and in Australia, the ACCC lost an appeal against its attempt to block Pacific National's acquisition of the Acacia Ridge terminal in Brisbane.

### Contacts



**RICHARD BLEWETT**  
Partner

**T** +852 2826 3517  
**M** +852 92695829  
**E** richard.blewett@cliffordchance.com



**YONG BAI**  
Partner

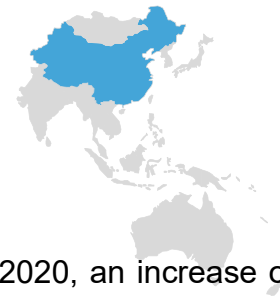
**T** +86 10 6535 2286  
**M** +86 13910850420  
**E** yong.bai@cliffordchance.com



**DAVE PODDAR**  
Partner

Head of Antitrust, Asia Pacific  
**T** +61 28922 8033  
**M** +61 422800415  
**E** dave.poddar@cliffordchance.com



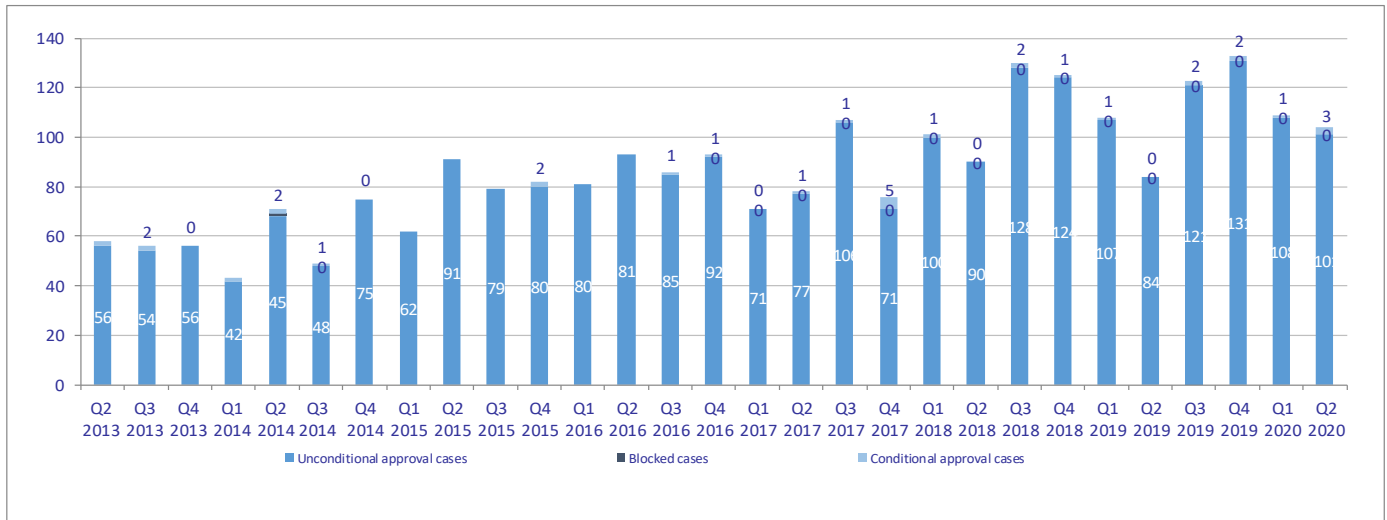


## MERGER CONTROL

How many cases have there been?

There were in total 104 merger decisions released in the second quarter of 2020, an increase of 23.81% compared to the second quarter of 2019, with 101 reviewed cases in this quarter unconditionally cleared and 3 cases conditionally approved. Around 90 cases were notified under the simplified procedure in this quarter, which represents 86.54% of the total reviewed cases.

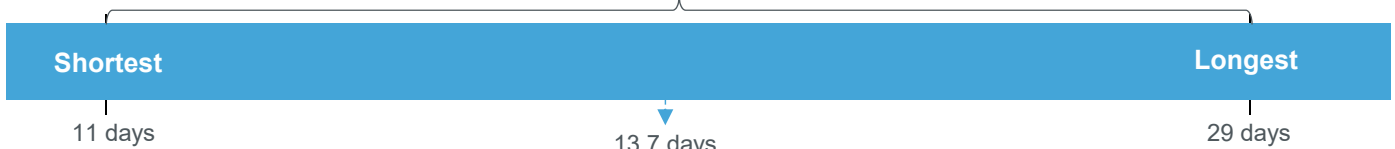
Merger control trends – Q2 2013 – Q2 2020



Simplified procedure: How quick is the review period?

Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
Q1 2016	27 days	74.1%	2
Q2 2016	26 days	82.8%	10
Q3 2016	25 days	75.6%	0
Q4 2016	25 days	77.4%	4
Q1 2017	25 days	81.7%	5
Q2 2017	23 days	66.7%	2
Q3 2017	20 days	82.2%	1
Q4 2017	21 days	76.3%	0
Q1 2018	19 days	92.1%	1
Q2 2018	18 days	81.1%	1
Q3 2018	16 days	76.9%	0
Q4 2018	17 days	80.0%	3
Q1 2019	16 days	77.8%	0
Q2 2019	17 days	85.7%	0
Q3 2019	19 days	78.9%	1
Q4 2019	14 days	81.2%	0
Q1 2020	14 days	87.16%	1
Q2 2020	13.7 days	86.54%	0

Q2 2020: Average



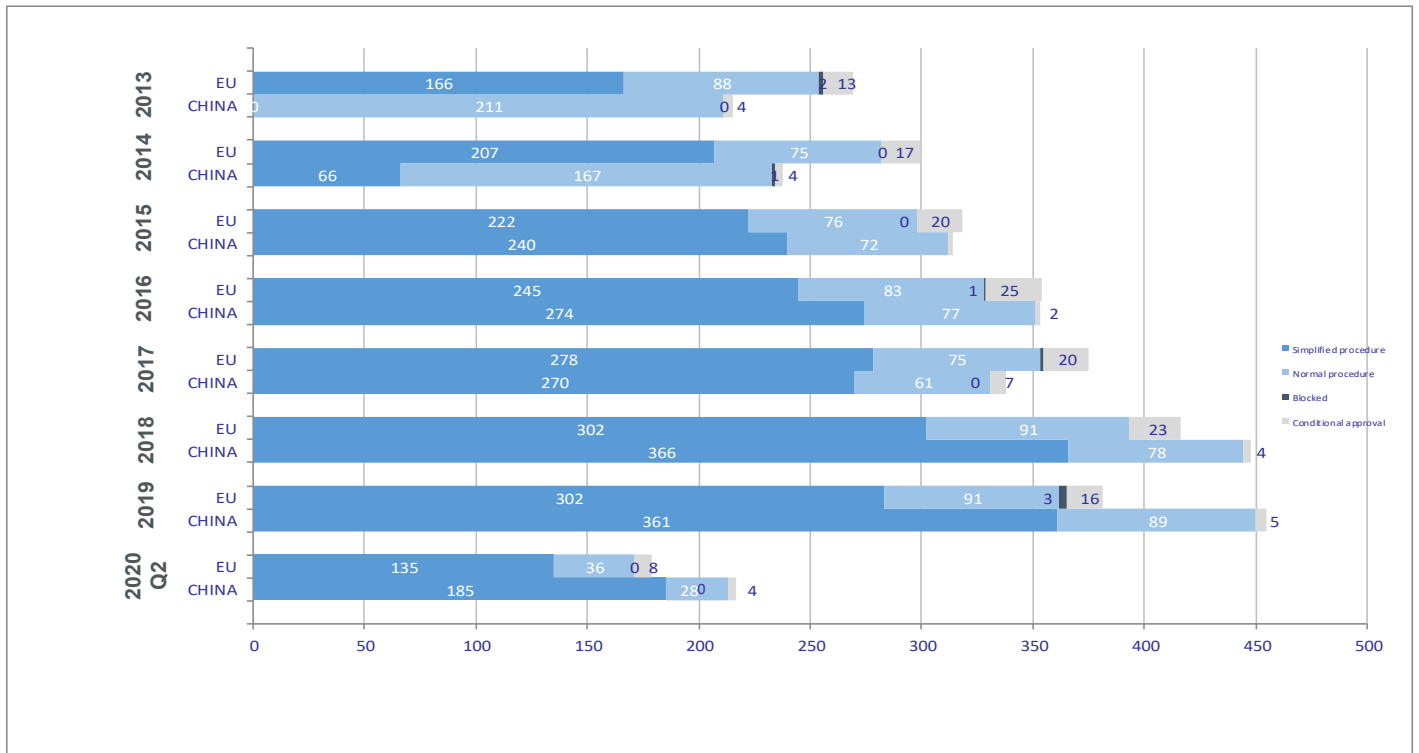




## MERGER CONTROL

How does China compare internationally?

### Comparison with EU – 2013 – 2020



### SAMR conditionally approves Infineon's proposed acquisition of Cypress

On 8 April 2020, the State Administration for Market Regulation ("**SAMR**") cleared Infineon Technologies ("**Infineon**")'s proposed acquisition of Cypress Semiconductor ("**Cypress**") subject to conditions. Infineon is a German semiconductor supplier and Cypress is a US supplier of microcontroller units ("**MCUs**"), analog integrated circuits, memory, etc. Post-transaction Cypress would become a wholly owned subsidiary of Infineon.

SAMR identified four horizontal overlaps in the markets for (i) automotive-grade MCUs, (ii) consumer MCUs, (iii) industrial MCUs, and (iv) power management chips. Besides, there were five sets of neighbouring markets assessed by SAMR, including (i) automotive-grade MCU and automotive-grade insulated gate bipolar transistor ("**IGBT**"), (ii) automotive-grade MCUs and automotive-grade NOR flashes, (iii) automotive-grade MCUs and automotive-grade wireless connection chips, (iv) automotive-grade MCUs and automotive-grade gate drivers and (v) the consumer wireless connection chips and security chips. Competition concerns were considered to likely arise in relation to three product markets, i.e. automotive-grade MCUs, automotive-grade IGBT and automotive-grade NOR flashes. Notably, the parties' activities overlap in relation to MCUs but not in relation to IGBT or NOR, which suggests that SAMR has established competition concerns arising from the identified neighbouring markets.



## MERGER CONTROL

SAMR considered the relevant geographic markets for all such products worldwide and in the meantime evaluated the impact on competition in China.

SAMR came to the view that (i) the parties have significant market power in neighbouring markets for automotive-grade IGBT (where Infineon has shares of 35%-40% and 55%-60% globally and in China) and for automotive-grade NOR flash (where Cypress has shares of 65%-70% and 30%-35% globally and in China); and (ii) given significant competition pressure the combined entity is to face in the automotive-grade MCU market, there would be incentives to leverage the parties' market power relating to IGBT and NOR flash – for example, through tying automotive-grade IGBT or automotive-grade NOR flash with automotive-grade MCUs, through developing an integrated single product combining automotive-grade MCU and automotive-grade IGBT, or automotive-grade MCU and automotive-grade NOR flash; or through reducing product interoperability between automotive-grade NOR flash and third-party MCUs.

To address these competition concerns, SAMR imposed the following conditions with an overarching goal of preserving Chinese customers:

- **no tying** – no tie-in sales of automotive-grade IGBTs and automotive-grade MCUs or automotive-grade NOR flashes and automotive-grade MCUs in the Chinese market, no unreasonable terms in the sales of these products; no refusal to supply any of these products individually to Chinese customers;
- **guarantee of separate supply** – in the event that automotive-grade MCU and automotive-grade NOR flash or automotive-grade MCU and automotive-grade IGBT are integrated into a single product, ensure that there is still supply of each individual product to Chinese customers, and that Chinese customers will be free to choose between each individual product and the integrated product;
- **ensuring interoperability** – ensure that the automotive-grade NOR flash memory sold to Chinese customers complies with the commonly-accepted industry standards for interface, and allow third-party automotive-grade MCUs to be compatible with their flash devices; and
- **supply under FRAND terms** – continue to supply Chinese customers automotive-grade NOR flash, automotive-grade IGBT, and automotive-grade MCU products in compliance with FRAND.

It is also worth noting that this transaction was cleared without a pull-and-refile, which is commonly seen in cases where SAMR imposed conditions. This is remarkable considering the sensitivity around semiconductor industry and the COVID-19 circumstances. China nonetheless was the last jurisdiction where the transaction was cleared and the only jurisdiction where conditions were imposed. The transaction had been unconditionally cleared in the EU, the US, South Korea, Japan, Philippines and Taiwan.



## MERGER CONTROL

### SAMR conditionally approves the proposed acquisition of Mellanox by Nvidia

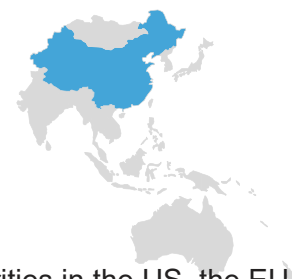
On 16 April 2020, SAMR cleared Nvidia Corporation ("**Nvidia**")'s proposed acquisition of Mellanox Technologies ("**Mellanox**") subject to conditions. Nvidia is a US supplier of graphics processors and Mellanox is a Israeli supplier of network interconnection products. Post-transaction, Mellanox would be wholly owned by Nvidia.

SAMR identified a vertical relationship between data centre servers (upstream) and ordinary ethernet adapters (downstream) and two sets of neighbouring markets in relation to (i) graphics processing unit ("**GPU**") accelerators and special network interconnection devices and (ii) GPU accelerators and high-speed ethernet adapters. No horizontal overlap was considered by SAMR. Competition concerns were considered to arise from three product markets for GPU accelerator, special network interconnection device and high-speed ethernet adapters, which are all neighbouring markets as identified by SAMR. SAMR considered the relevant geographic markets for all such products worldwide but also evaluated the impact on competition in China.

SAMR found, among others, that (i) the combined entity would have the ability to restrict or exclude competition in the GPU accelerator market (where Nvidia's global and Chinese shares are 90%-95% and 95%-100%); in the special network interconnection equipment market (where Mellanox's global and Chinese shares are 55%-60% and 80%-85%); and in the high-speed ethernet adapter market (where Mellanox's global and Chinese shares are 60%-65% and 65%-70%); (ii) with the swift development of digital economy and increasing demand of the three concerned products, the combined entity would have an incentive to eliminate or restrict competition in order to raise prices; (iii) given that combining the concerned products is crucial to the sound functioning of a server, the combined entity would be incentivised to engage in tie-in sales of the concerned products, to reduce product interoperability between its own products and third-parties' products, and to gain unfair competitive advantages through accessing sensitive information of competitors over hardware adaptation process.

To address these competition concerns, SAMR imposed the following conditions on the parties and the combined entity:

- **no tying** – when selling Nvidia GPU accelerators and Mellanox high-speed network interconnection devices in the Chinese market, they shall not engage in tie-in or bundled sales in any form or impose unreasonable trading terms; shall not impede or restrict customers from purchasing or using the relevant products individually; shall not discriminate against customers who purchase the relevant products individually;
- **supply under FRAND terms** – they shall continue to provide Nvidia GPU accelerators, Mellanox high-speed network interconnection devices, and the relevant software and accessories under FRAND terms in the Chinese market;
- **ensuring interoperability** – they shall continue to ensure interoperability between Nvidia GPU accelerators and third-party network interconnection devices, and between Mellanox high-speed interconnection devices and third-party accelerators;
- **open source** – they shall continue to keep their open source commitments regarding point-to-point communication software and collective communication software of Mellanox's high-speed network interconnection devices; and
- **information protection** – they shall take measures to protect information of third-party accelerators and network interconnection device manufacturers.



## MERGER CONTROL

Outside China, the transaction has been unconditionally approved by antitrust authorities in the US, the EU, Mexico and Israel. China is the only jurisdiction that imposed conditions on this transaction, which took China the longest to review and clear it compared to other jurisdictions.

### **SAMR conditionally approves ZF's proposed acquisition of WABCO**

On 15 May 2020, SAMR cleared ZF Friedrichshafen ("**ZF**")'s proposed acquisition of WABCO Holdings Inc ("**WABCO**") subject to conditions. ZF is a German supplier of components and systems for passenger and commercial vehicles and WABCO is a US company active in the automotive brake control system area. Following completion of the transaction, WABCO will be wholly owned by ZF.

While SAMR identified two horizontal overlaps, five vertical relationships and one set of neighbouring markets, competition concerns were considered to arise only in relation to the vertical relationship between the upstream automated manual transmission ("**AMT**") controllers market and the downstream AMT market. SAMR considered the relevant geographic markets for AMT controllers and AMTs worldwide but also evaluated the impact on competition in China.

SAMR concluded that the combined entity would have both the ability and the motive to implement anti-competitive input foreclosure. More specifically, WABCO was considered to have a dominant market position in the upstream AMT controller market, on the basis that it has a share of 70%-75% and 40%-45% globally and in China; it won most of tenders from major downstream customers; switching costs of customers appear to be high; and the barriers to entry are high in this market. In addition, the combined entity was considered to also have the motive to implement input foreclosure. It is worth noting that SAMR employed economic analysis which suggested that the combined entity would be more incentivized to engage in input foreclosure in the Chinese market than in the global market. Further, by foreclosing other downstream players access to AMT controllers, ZF's potential competitor in China would likely be squeezed out of the market.

To address these competition concerns, SAMR imposed the following conditions on the parties and the combined entity:

- **guarantee of supply** - they shall continue to supply AMT controllers or modules to existing clients under terms no less favourable than the existing terms in terms of price, quality, quantity, delivery time, technology level and after-sales services;
- **supply under FRAND terms** - they shall continue to supply Chinese clients with AMT controllers under FRAND terms; and
- **opportunities to develop AMT controllers** - they shall continue to provide Chinese clients with the opportunity to develop AMT controllers in accordance with FRAND principles.





## MERGER CONTROL

The conditions will be valid for six years and lifted automatically when the period ends. This reflects a relaxation in China in terms of the duration of behavioural conditions, which was first seen in the KLA-Tencor/Orbotech merger and Zhejiang Garden Bio-chemical High-tech/ Royal DSM JV last year. Notably, this transaction did not experience a pull-and-refile under the COVID-19 circumstances. Outside China, the transaction was cleared subject to conditions in the US and India and was unconditionally approved in the EU, Brazil, Japan, Russia, Serbia, South Africa, South Korea and Turkey.

### Two failure-to-file fines published

There are two failure-to-file decisions published by SAMR in the 2<sup>nd</sup> quarter of 2020. None of the decisions led to a finding of competition concerns.

- On 8 April 2020, it was published that Zall Development (BVI) Holding ("**Zall**") was fined RMB 300,000 (USD 42,731) for failing to notify its acquisition of Shenzhen Sinoagri E-Commerce ("**Sinoagri**"). On 28 October 2016, Zall entered into a share purchase agreement to acquire a 60.49% stake in Sinoagri by first acquiring a 50.6% stake and subsequently a 9.89% stake. On 28 June 2017 and 10 June 2019, the shareholding changes in relation to abovementioned two steps were registered without being notified to SAMR.
- On 15 June 2020, it was published that Guangdong Sanhe Building Materials Group ("**Sanhe**") and Guangdong Jianhua Concrete Pile ("**Jianhua**") were each fined RMB 600,000 (USD 85,461) for failing to notify their establishment of joint ventures. The JV agreements were signed on 23 October 2015 and 2 January 2017 and two JVs each obtained its business permit on 22 December 2015 and 27 February 2017. Both deals triggered the notification threshold but neither of Sanhe and Jianhua notified the JVs before the JVs obtained business licenses.

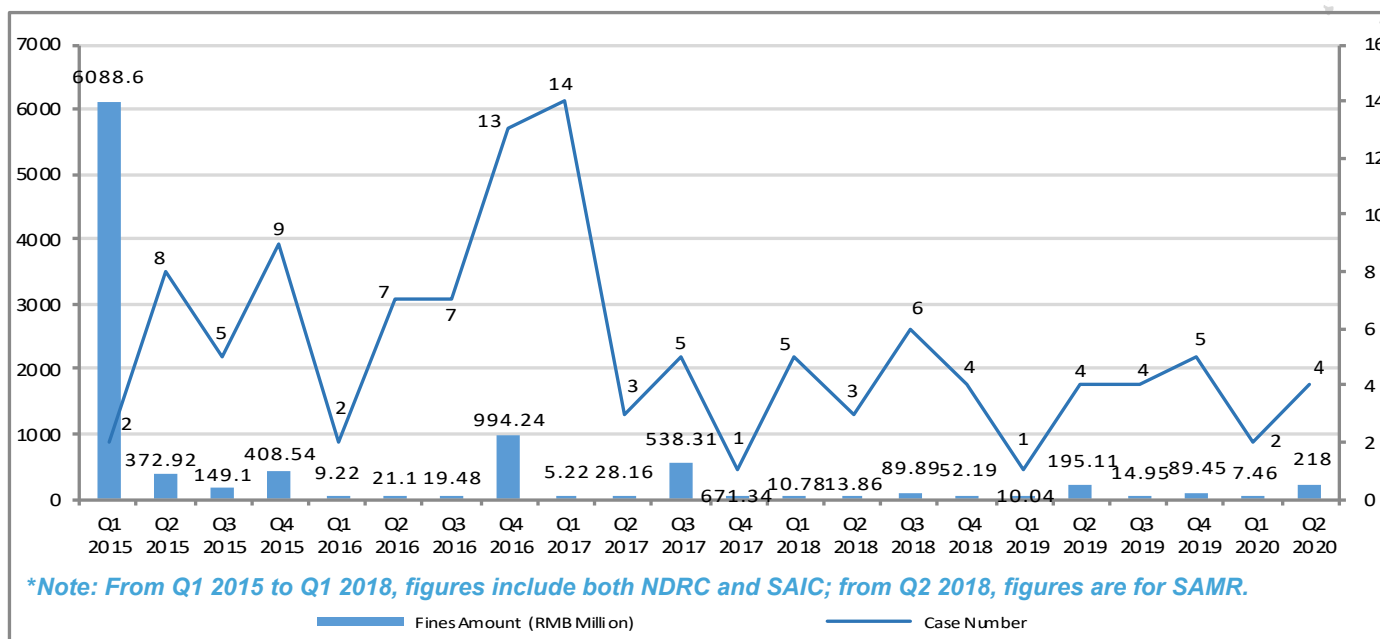
### SAMR lifts conditions imposed on Corun/Toyota/PEVE/Toyota JV case in 2014

On 24 April 2020, SAMR announced that it has lifted conditions imposed in 2014 in relation to the JV established by Hunan Corun New Energy ("**Corun**"), Toyota Motor (China) Investment ("**Toyota Motor**"), Primearth EV Energy ("**PEVE**"), Changshu Xin Zhong Yuan VC, and Toyota Tsusho. In 2014, SAMR's predecessor MOFCOM, out of concerns that the transaction would restrict competition in the markets for vehicle-use nickel-metal hydride batteries and hybrid power vehicles, cleared the transaction subject to conditions including that the JV's sales to third parties would follow FRAND terms and the JV would start selling to third parties within three years after commencing production. SAMR recently concluded that the competition conditions in the relevant markets have substantially changed, taking into account factors including (i) China's slow growth of domestic hybrid power vehicle market, (ii) the breakthrough in lithium battery technology resulting in the less use of nickel-metal hydride batteries in hybrid power vehicles, and (iii) Toyota Motor's dropping share in China's hybrid power vehicle market; and (iv) the shortage of purchase orders of the JV.



# ANTITRUST INVESTIGATIONS

## Enforcement trends\* – Q1 2015 to Q2 2020



Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/Co-operation
<b>Injection-use calcium gluconate active pharmaceutical ingredients</b> SAMR	14 April 2020	Abuse of dominance	204,500	12,400	143,800	7%-10%	N/A
<b>Motor vehicle inspection</b> Guangdong AMR	14 May 2020	Price fixing	1,727	2	532	1%-3%	N/A
<b>Oil supply</b> Qinghai AMR	19 May 2020	Abuse of dominance	4,460	N/A	N/A	9%	N/A
<b>Concrete</b> Guangdong AMR	24 June 2020	Price-fixing	7,650	43	1,247	1%-2%	Yes

### SAMR fines three API distributors for abuse of dominance and obstructing investigation

On 14 April 2020, SAMR published its fines on Shandong Kanghui Pharmaceutical Co., Ltd ("**Kanghui**"), Weifang Puyunhui Pharmaceutical Co., Ltd ("**Puyunhui**") and Weifang Taiyangshen Pharmaceutical Co., Ltd ("**Taiyangshen**", together with Kanghui and Puyunhui, the "**Distributors**") for abusing their dominant positions in the market for injection-use calcium gluconate active pharmaceutical ingredients ("**APIs**"). It was found that Puyunhui and Taiyangshen were acting under the instructions of Kanghui and thus should be considered with Kanghui to be a single undertaking in the infringing conduct. With a combined market share of approx. 90% in the Chinese market for injection-use calcium gluconate APIs over the last couple of years, the Distributors as a whole were deemed



## ANTITRUST INVESTIGATIONS

to enjoy a dominant position in this market. More importantly, SAMR upon investigation found that the three entities are not independent of one another, which should therefore be regarded as a single undertaking in this infringement. More specifically, the Distributors sold injection-use calcium gluconate APIs at unfairly high prices and imposed unfair terms which, among other things, forced manufacturers to sell back final products only to them. SAMR concluded that the above conduct constituted abuse of dominance and infringed Articles 17(1) and 17(4) of the Anti-Monopoly Law (the "**AML**"). The aggregated fine imposed amounts to RMB 204.5 million (USD 29.1 million), representing 7%-10% of the Distributors' turnover in 2018. Apart from the fines, SAMR also confiscated illegal gains amounting to RMB 121 million (USD 17.2 million).

Notably, two of the Distributors with 14 employees were separately penalized by SAMR (with a fine of RMB 2.53 million (USD 0.4 million) in total) for obstructing the investigation through refusing to provide information and/or destroying evidence, etc.

### Guangdong AMR fines a motor vehicle inspection trade association and its members for price-fixing agreement

On 14 May 2020, SAMR published Guangdong Administration for Market Regulation ("**Guangdong AMR**")'s penalty decision on Huizhou Motor Vehicle Inspection Industry Association (the "**Association**") and its members for implementing price-fixing agreements. Guangdong AMR, following its investigation which was initiated in August 2018, found that the Association proposed to "prohibit price decreases in disguise" among its members by (i) requiring its members to follow a work plan to immediately remove all existing discounts, and refrain from providing future discounts or rebates to customers and (ii) requiring its members to strictly implement the work plan and refrain from engaging in "malicious competition" at the cost of the interests of the industry. The participating members of the Association uniformly increased their fees for small vehicles, medium and large buses as well as small, medium, and heavy trucks then in June 2018. The Association organized several meetings and online chat sessions in relation to the price increase. In light of above, Guangdong AMR concluded that the Association violated Articles 13 and 16 of the AML by organizing its members to reach and implement price-fixing agreements. Given the Association's leading role, a fine of RMB 400,000 (USD 56,974) was imposed on it by Guangdong AMR. The participating members of the Association were demanded to immediately cease their infringement, and each were imposed a fine amounting to 1%-3% of their total turnover in 2017.

### Qinghai AMR fines a local gas supplier for abuse of dominance and obstructing investigation

On 19 May 2020, SAMR published Qinghai Administration for Market Regulation ("**Qinghai AMR**")'s fines on Qinghai Minhe Chuanzhong Oil and Gas ("**the Company**") for abuse of dominance and obstructing investigation. From 2009 to 2018, the Company, as the only supplier of urban civil PNG, had a dominant position in that market in Minhe County. The Company was found by Qinghai AMR to have abused its dominant position by tying sales of gas with wall-mounted boilers, which were supplied by the Company's affiliated entity Minhe Gas Equipment Service Centre (the "**Centre**").



## ANTITRUST INVESTIGATIONS

More specifically, the Company demanded its customers to purchase their needed wall-mounted boilers from the Centre through entering into a contract alongside with the PNG purchase agreement. If customers failed to do the former, the Company would find excuses in order not to supply the PNG.

In light of the above, Qinghai AMR concluded that the Company violated Articles 17(4) and 17(5) of the AML by abusing its dominant market position through exclusivity and tying without justifications. A fine of RMB 4.46 million (USD 635,264), representing 9% of the Company's turnover in 2017 was imposed. It is also worth noting that the Company was separately fined RMB 700,000 (USD 99,705) due to its deliberate concealing relevant facts and destroying evidence.

### Guangdong AMR fines 19 concrete firms for price-fixing

On 24 June 2020, SAMR published a fine on 19 local concrete companies for price-fixing, which was imposed by Guangdong AMR. The relevant market was considered to be the premixed concrete market in Maoming City and Gaozhou City. Guangdong AMR found that the 19 concrete firms had held physical meetings and communicated on Wechat to reach and implement price-fixing agreement. Even though the price-raising conduct individually undertaken by the 19 firms does not follow the same pattern, Guangdong AMR deemed that it would not affect that the price-fixing agreement was implemented by these firms. On this basis, the 19 concrete firms were found to have violated Article 13 of the AML (which prohibits anti-competitive horizontal agreements) and a fine amounting to 1%-2% of each of their turnover in 2016 was imposed.

### Other news

#### SAMR issues announcement on AML enforcement for COVID-19 control and resumption of work

On 4 April 2020, SAMR published the Announcement on Supporting Anti-monopoly Law Enforcement for Epidemic Prevention and Control and Resumption of Work and Production (the "**Announcement**"). Pursuant to the Announcement, SAMR and its provincial-level counterparts will endeavour to take the following actions in the present context of epidemic control and resumption of work: (i) accelerate merger review; (ii) grant legal exemptions to cooperation agreements that are reached to facilitate epidemic control and resumption of work; (iii) investigate and punish anti-competitive conduct, particularly related to supplies of face masks, drugs, medical devices, sanitizers and disinfectants, public utility services, etc.; (iv) strengthen policy support for fair competition review; (v) provide active guidance on antitrust compliance; and (vi) promptly respond to antitrust claims.



● **Hong Kong**

### **HKCC revises its leniency policy**

On 16 April 2020, the Hong Kong Competition Commission ("**HKCC**") published a revised Leniency Policy for Undertakings Engaged in Cartel Conduct. Major revisions include creating a distinction between applications for leniency depending on whether they are received before or after the Commission has opened an initial assessment or investigation of the conduct. A new Leniency Policy for Individuals Involved in Cartel Conduct was also introduced to allow individuals involved in cartel conduct, such as employees of a company, to seek leniency.

### **New Chairperson and Members of HKCC are appointed**

Effective from 1 May 2020, Mr Samuel Chan Ka-yan was appointed as the new Chairperson of HKCC, in place of HKCC's founding Chairperson Ms Anna Wu Hung-yuk. Further, Professor Vincent Lau Kin-nang, Mr Patrick Law Fu-yuen, Mr Jimmy Ng Wing-ka and Professor Anna Wong Wai-kwan were appointed as new Members of HKCC for a term of two years.

### **HKCC signs Memorandum of Understanding with the Securities and Futures Commission to strengthen cooperation and information exchange**

On 28 April 2020, HKCC signed a Memorandum of Understanding with the Securities and Futures Commission. This is the first MOU signed by the HKCC with a financial regulator and represents a milestone in adopting a joined-up approach in handling competition issues in the securities and futures industry. Its purpose is to provide a framework to promote cooperation and lawful exchange of information to allow the SFC and HKCC to more effectively perform their functions and exercise their powers.

### **The Competition Tribunal hands down its first judgment on pecuniary penalties**

On 29 April 2020, the Competition Tribunal handed down its first judgment imposing pecuniary penalties under the Competition Ordinance in Hong Kong. Total penalties of almost HK\$4 million (USD 520,000) were imposed on ten contractors for making and giving effect to a market sharing arrangement and a price fixing arrangement while providing decoration services to tenants at a public housing estate. The Competition Tribunal set out a four-step structured and methodological approach for the determination of pecuniary penalties, which is based very closely on the EU and UK approaches.

### **HKCC accepts commitments offered by online travel agents**

On 13 May 2020, HKCC announced that it accepted the commitments by three online travel agents ("**OTAs**"), which are channels through which hotels and other accommodation providers advertise and sell accommodation (namely, Booking.com, Expedia.com and Trip.com). The commitments aim to address the Commission's concerns around clauses in contracts between the OTAs and accommodation providers in Hong Kong that require accommodation providers to always give the OTA the same or better terms as those they offer in other sales channels, as regards room prices (wide price parity), room conditions (wide conditions parity) and / or room availability (room availability parity). The commitments provide, amongst other matters, that the parties will not, with respect to their existing or new agreements with accommodation providers, enforce or enter into wide price parity terms (in the case of Booking, Expedia and Trip) or wide conditions parity and room availability parity terms (in the case of Booking and Expedia).





## ● Hong Kong

### HKCC publishes recommended pecuniary penalty policy

On 22 June 2020, HKCC publishes a recommended pecuniary penalty policy which outlines the general principles and methodology that HKCC will employ when determining fine levels regarding infringing the First and the Second Conduct Rules of the Competition Ordinance. The policy currently sets out a four-step approach:

- a) The first step is to determine the base amount, by taking into account sales value of the relevant products in Hong Kong, seriousness and duration of the violation;
- b) The second step is to make adjustment to the base amount by considering, among others, aggravating factors and mitigating factors;
- c) The third step is to ensure the fine amount calculated after applying the above two steps does not exceed the statutory cap; and
- d) The fourth step is to apply cooperation rewards as a final adjustment in the case when an infringing undertaking fully cooperates with the HKCC.

Applied in association with the leniency and cooperation programs, the policy is anticipated to fill out the missing puzzle in the legal framework, with a view to providing clear guidance to undertakings as to the benefits of voluntarily reporting violations.

## ● Singapore

### CCCS concludes investigation into alleged anti-competitive conduct in the property valuation industry

On 9 April 2020, the Competition and Consumer Commission of Singapore ("**CCCS**") concluded its investigation into the alleged anti-competitive conduct by the Singapore Institute of Surveyors and Valuers ("**SISV**"), following steps taken by SISV. In the course of its investigation, CCCS found that SISV's byelaws contained provisions which could restrict price competition and facilitate market-sharing amongst its members. For example, there was a byelaw which prohibited SISV members from attempting to compete with one another on the basis of fees in order to secure instructions. SISV has since reviewed its byelaws and removed/amended the provisions which gave rise to competition concerns.

### CCCS fines contractors for bid rigging of quotations for Wildlife Reserves Singapore

On 4 June 2020, CCCS issued an infringement decision against three contractors, which were found to have participated in anti-competitive agreements to rig the bids for the provision of building, construction and maintenance services under Invitations To Quote and Invitations To Tender called by Wildlife Reserves Singapore. Shortly after CCCS conducted unannounced inspections at the contractors' places of business, all three parties applied for leniency under CCCS's leniency programme. The financial penalties imposed by CCCS on the three contractors were in the sum of S\$5,211 (USD 3,741), S\$7,148 (USD 5,133) and S\$19,739 (USD 14,174) respectively.



## South Korea

### **KFTC approves acquisition of Eastar Jet by Jeju Air citing failing-firm defense**

On 23 April 2020, the Korea Fair Trade Commission ("KFTC") approved the acquisition of majority of shares in Eastar Jet by Jeju Air by referring to the so-called failing firm defence, as the KFTC mentioned that Eastar Jet was an "unrecoverable company".

### **KFTC establishes a task force to draft guidelines for digital platforms**

On 25 May 2020, the KFTC announced that it had established a task force to draft the guidelines for the digital platforms. The task force is scheduled to have monthly meetings until November 2020 to discuss the competition issues relating to digital platforms, and it has planned to prepare the guidelines and regulations for online platforms by next year.

### **KFTC proposes to create a regulatory framework for online platforms**

On 25 June 2020, the KFTC announced that it will create a regulatory framework to monitor online platform intermediaries, focusing on (i) business activities between digital platforms and contracted merchants, (ii) online platforms' responsibilities regarding customers protection, and (iii) a supervisory manual for online platforms.

### **KFTC initiates a consent decree process regarding Apple's alleged abuse of dominance**

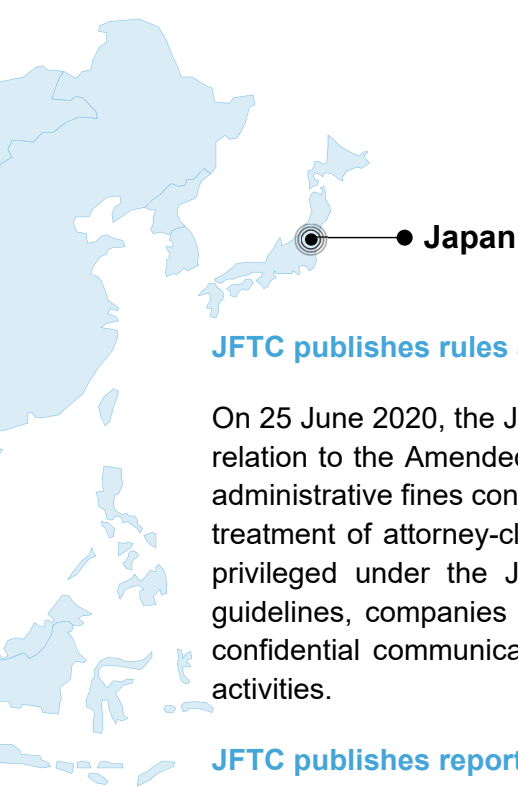
On 26 June 2020, the KFTC initiated a consent decree process regarding Apple's alleged abuse of dominance against telecommunication companies, including forcing them to bear the marketing and free repair services costs. The KFTC will gather feedback from various parties regarding the proposed consent decree.

## Indonesia

### **KPPU fines two companies for late filing post-closing**

Two gun-jumping fines were published by Indonesia Competition Commission ("KPPU") in this quarter, neither of which led to a finding of competition concerns:

- On 7 April 2020, Matahari Pontianak Indah Mall was fined IDR 1 billion (USD 71,462) for late notification of its acquisition of Gita Adhitiya Graha. The transaction was completed on 23 October 2017 and was required to be notified to KPPU no later than 4 December 2017. However, the parties did not submit a filing until 22 August 2019.
- On 7 April 2020, PLN Batubara was fined IDR 1 billion for late notification of its acquisition of Jambi Prima Coal. The transaction was completed on 4 December 2018 and was required to be notified to the KPPU no later than 17 January 2019. However, the parties did not submit a filing until 6 May 2019.



### **JFTC publishes rules and guidelines in relation to the Amended Antitrust Law**

On 25 June 2020, the Japan Fair Trade Commission ("**JFTC**") publicized the rules and guidelines in relation to the Amended Antitrust Law to be enacted in 2020, with regards to: (i) the calculation of administrative fines considering the companies' cooperation to the JFTC's investigations, and (ii) the treatment of attorney-client confidential communications. Attorney-client communications were not privileged under the Japanese Antitrust Law in the past, however, under the new rules and guidelines, companies may request that the JFTC not share with their investigation team certain confidential communications between the company and their lawyers in relation to alleged cartel activities.

### **JFTC publishes report regarding financial services using Fintech**

On 21 April 2020, the JFTC publicized a fact-finding report regarding financial services using Fintech. The report focuses on the issues such as the rejection by banks of the API connection to the household account app operators.

### **JFTC publishes an interim report on digital advertising**

On 28 April 2020, the JFTC published an interim report on digital advertising. The report is based on the JFTC's survey conducted from January 2020. Based on the interim report, the JFTC had hearings of 30 ad tech market players and 5 digital platform operators and sent questionnaires to the companies (317 responses) and to the consumers (2,000 people). The report provides an overview of the ad tech markets and the interim results of their survey. The JFTC will continue with the survey on digital advertising to analyse the competition law issues in the digital advertising sector.

### **The National Diet of Japan enacts Digital Platform Bill**

The National Diet of Japan enacted the Digital Platform Bill on 27 May 2020. Certain digital platform providers (only limited to large e-commerce operators and app store operators) will be subject to various obligations such as disclosure of the terms and conditions of trading, and the submission of reports to the government on a regular basis regarding their trading positions.

### **Headquarters for Digital Market Competition publishes report on digital advertising market competition analysis**

The Headquarters for Digital Market Competition published an interim report on their analysis of competition in the digital advertising market as well as their mid-term vision regarding the digital market competition on 16 June 2020. The interim report addressed multiple issues such as the suggestion that the platform operators accept the access by third parties and open API, the default setting for users to have the option as to how their data is used by the platform operators, opaqueness of usage of data by the platform operators, self-preference, access restrictions, unilateral rule changes by the platform operators and transparency for users regarding data collection by the platform operators. The Headquarters for Digital Market Competition plans to prepare a final report in winter 2020.

## India ●

### CCI's enforcement activities in tech sector

This quarter has seen that the Competition Commission of India ("CCI") was actively targeting potential anti-competitive conduct in the tech sector in India. It was reported that the CCI had been investigating Google for alleged abuse of dominance in relation to Android operating system through giving advantages to Google Pay over rivals' apps. This investigation is still underway. CCI was also reported to have been investigating WhatsApp for alleged abuse of dominance through tying its messaging app with its digital payment services for sale to more than 400 million Indian consumers. The case is still at its initial stage.

## New Zealand ●

### Nelson pharmacy fined AUD344,000 and director AUD50,000 for price-fixing

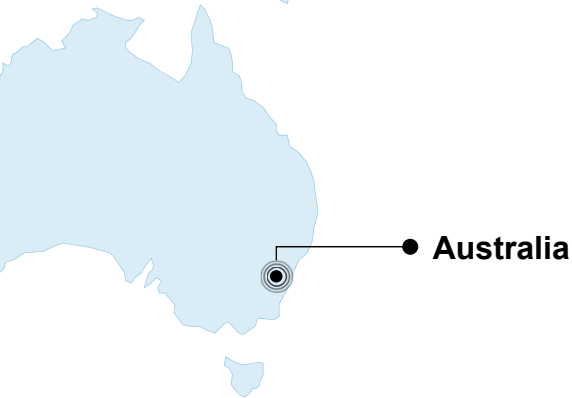
The Wellington High Court has ordered Prices Pharmacy 2011 Limited ("**Prices Pharmacy**") and a director of the company to pay fines of \$344,000 (USD 225,159) and \$50,000 (USD 32,727) respectively, after they admitted to engaging in price-fixing. The Court found that Prices Pharmacy and its directors facilitated a price-fixing arrangement with competing Nelson pharmacies in May 2016. In most cases, the arrangement resulted in consumers paying \$6, instead of \$5, for their prescription items. The arrangement arose from a Nelson region pharmacy owners' meeting in April 2016 which was attended by 10 pharmacy owners. It stopped in June 2016 when pharmacy owners received additional taxpayer funding from the Nelson Marlborough District Health Board.

## Australia ●

### Authorisations granted to companies to coordinate for COVID-19 purposes

The Australian Competition and Consumer Commission ("**ACCC**") has granted a large number of authorisations for businesses and essential services in the past few months as a result of the COVID-19 pandemic. Some examples include granting:

- Interim authorisation to shopping centre owners and managers to discuss and implement rent relief measures for small to medium shopping centre tenants facing hardship;
- Interim authorisation to shopping centre owners and managers to discuss and implement rent relief measures for small to medium shopping centre tenants facing hardship;
- Conditional interim authorisation for medicine manufacturers to work together to support the continued supply of essential medicines;
- Interim authorisation to the Australian Energy Market Operator Ltd to allow gas and electricity industry participants to cooperate on measures to ensure secure and reliable energy supply and integrity of wholesale markets;
- Interim authorisation to oil companies to discuss and put in place measures so fuel supplies remain available;
- Authorisation to hospitals to cooperate with their state health agencies, public hospitals and each other, as they prepare for and respond to the COVID-19 pandemic;
- Conditional interim authorisation to private health insurers to coordinate on providing financial relief to policy holders and broadening insurance coverage;
- Interim authorisation allowing life insurers to coordinate to ensure frontline healthcare workers are not excluded from coverage due to potential or actual exposure to COVID-19; and
- Interim authorisation allowing mining associations to work together to manage critical services and supplies.



### Full Federal Court dismisses ACCC appeal on Pacific National/Aurizon case

On 6 May 2020, the Full Court of the Federal Court dismissed the appeal brought by the ACCC to stop Pacific National's acquisition of the Acacia Ridge Terminal in Brisbane from Aurizon. The ACCC had appealed the 2019 judgment of the Federal Court which held that the acquisition would not be likely to substantially lessen competition due to an undertaking that Pacific National had offered the Court on the last day of the hearing.

The Full Court found there was insufficient evidence to establish that the acquisition was likely to result in a substantial lessening of competition (even without the undertaking offered by Pacific National), and dismissed the ACCC's appeal. The ACCC has sought special leave to appeal to the High Court. If the ACCC is granted special leave to appeal, this would be the first time the High Court has considered Australia's merger laws.

### Google's purchase of Fitbit raises preliminary competition concerns

The ACCC has expressed preliminary concerns with Google's proposed acquisition of Fitbit, a company that makes wearable devices and collects health information from consumers, including users' daily step counts, heart rate and sleep data. The ACCC is concerned that Google's access to consumer health data may raise entry barriers, further entrench its dominant position and adversely affect competition in several digital advertising and health markets. Another key issue the ACCC is concerned about is whether Google is likely to favour its own wearables devices over competitors when supplying important related services such as WearOS, Google Maps, Google Play Store or Android smartphone interoperability.

Feedback on the ACCC's Statement of Issues is due by 10 July 2020, with the ACCC's final decision to be announced by 13 August 2020.

### Norwegian-based global shipping company pleads guilty to criminal cartel conduct

On 18 June 2020, Norwegian-based global shipping company Wallenius Wilhelmsen Ocean AS ("**WVO**") entered into a guilty plea in the Federal Court to criminal cartel conduct. On 23 August 2019 the Commonwealth Director of Public Prosecutions charged WVO with cartel conduct regarding the transportation of vehicles, including cars, trucks and buses, to Australia between June 2011 and July 2012.

This cartel has been investigated and prosecuted in a number of other jurisdictions, including the United States, and this is the third guilty plea in Australia in relation to this cartel. On 18 July 2016, Nippon Yusen Kabushiki Kaisha pleaded guilty to criminal cartel conduct and was convicted and fined \$25 million on 3 August 2017. Kawasaki Kisen Kaisha Ltd pleaded guilty to criminal cartel conduct on 5 April 2018 and was convicted and fined \$34.5 million (USD 24.1 million) on 2 August 2019. The case has been adjourned for sentencing at a later date.



**Hong Kong**



**Richard Blewett**

Partner

**T** +852 2826 3517

**M** +852 92695829

**E** richard.blewett  
@cliffordchance.com

**Beijing**



**Yong Bai**

Partner

**T** +86 106535 2286

**M** +86 13910850420

**E** yong.bai  
@cliffordchance.com

**Sydney**



**Dave Poddar**

Partner, Head of Antitrust,  
Asia Pacific

**T** +61 28922 8033

**M** +61 422800415

**E** dave.poddar  
@cliffordchance.com

**Tokyo**



**Masafumi Shikakura**

Counsel

**T** +81 (0)3 6632 6323

**M** +81 (0)80 1385 9808

**E** masafumi.shikakura  
@cliffordchance.com

Clifford Chance, 33/F, China World Office 1, No. 1 Jianguomenwai Dajie,  
Chaoyang District, Beijing 100004, People's Republic Of China

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