

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



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

QUARTERLY UPDATE

July to September 2020

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# ANTITRUST IN CHINA AND ACROSS THE REGION

## QUARTERLY UPDATE: JULY TO SEPTEMBER 2020

The number of merger cases in China remained steady last quarter and similar to last year. All were unconditionally cleared, mostly under the simple review procedure. Also in line with recent trends, there were three failure to file cases published last quarter. Interestingly one of them concerned the establishment of a joint venture outside China which appears to have little or no nexus to China, making it the first failure to file penalty imposed in relation to an extraterritorial JV.

In terms of antitrust enforcement, last quarter saw four cases, three of which involved the supply of gas and one in relation to used cars. Other developments of note include a court decision confirming that under civil procedures RPM agreements are only prohibited under the AML where they have anti-competitive effect and the publication by SAMR of a series of guidelines covering the automotive industry; intellectual property; leniency; commitments and compliance programmes within China and for Chinese companies active overseas. The automotive guidelines contain indicative safe harbours and some useful guidance on issues such as territorial restrictions in distribution agreements that would arguably have wider implications.

Outside China, Singapore's CCCS concluded its market study into e-commerce platforms with proposals to update its guidelines in relation to market definition for multi-sided platforms; the assessment of abuse of dominance; and mergers involving digital platforms. In the Philippines, the Bayanihan law came into effect, temporarily raising the merger thresholds from PHP 2.4 billion to PHP 50 billion (approximately USD 1 billion) in order to stimulate recovery – the Philippine Competition Commission would be able to investigate un-notified transactions on its own initiative after one year. In Japan, the JFTC accepted commitments from Amazon in relation to a investigation into terms applied to vendors on Amazon's website and the Japanese cabinet approved a law which includes a reduction in antitrust fines based on cooperation.

Finally, in Australia, the ACCC released a draft code on negotiations between digital platforms and news businesses (aimed at curbing the market power of Google and Facebook) and moved ahead with its inquiry into mobile apps.

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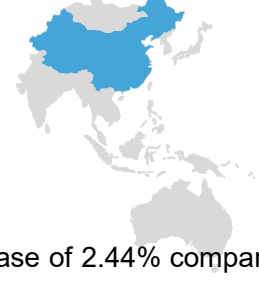


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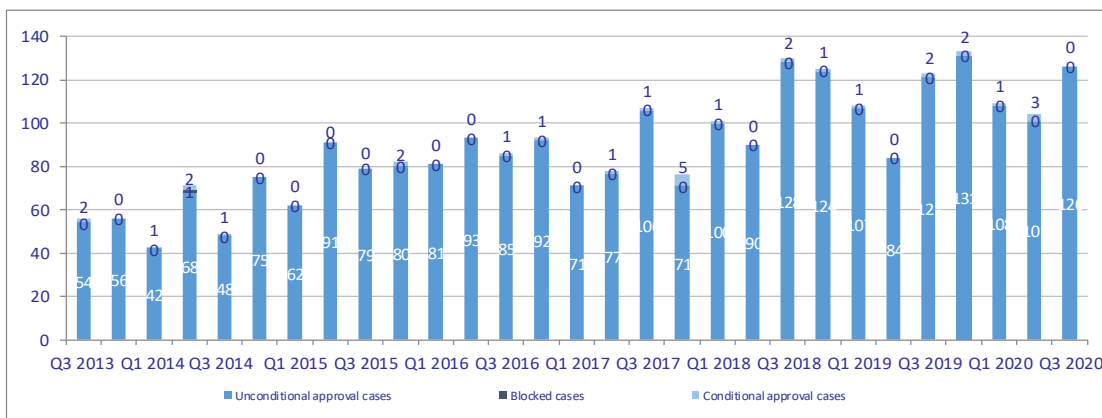


## MERGER CONTROL

How many cases have there been?

There were in total 126 merger decisions released in the third quarter of 2020, an increase of 2.44% compared to the third quarter of 2019, and all the cases were unconditionally cleared. Around 91 cases were notified under the simplified procedure in this quarter, which represents 72.2% of the total reviewed cases (the rate will increase to 81.3% if a series of cases between China Broadcasting Network Corporation Ltd. and local broadcasting network companies are counted as one – all such cases were filed under normal procedure).

### Merger control trends – Q3 2013 – Q3 2020

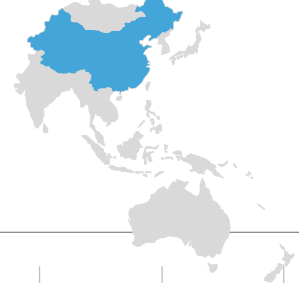


Simplified procedure: How quick is the review period?

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
Q3 2020	14.4 days	72.22%	3

#### Q3 2020: Average

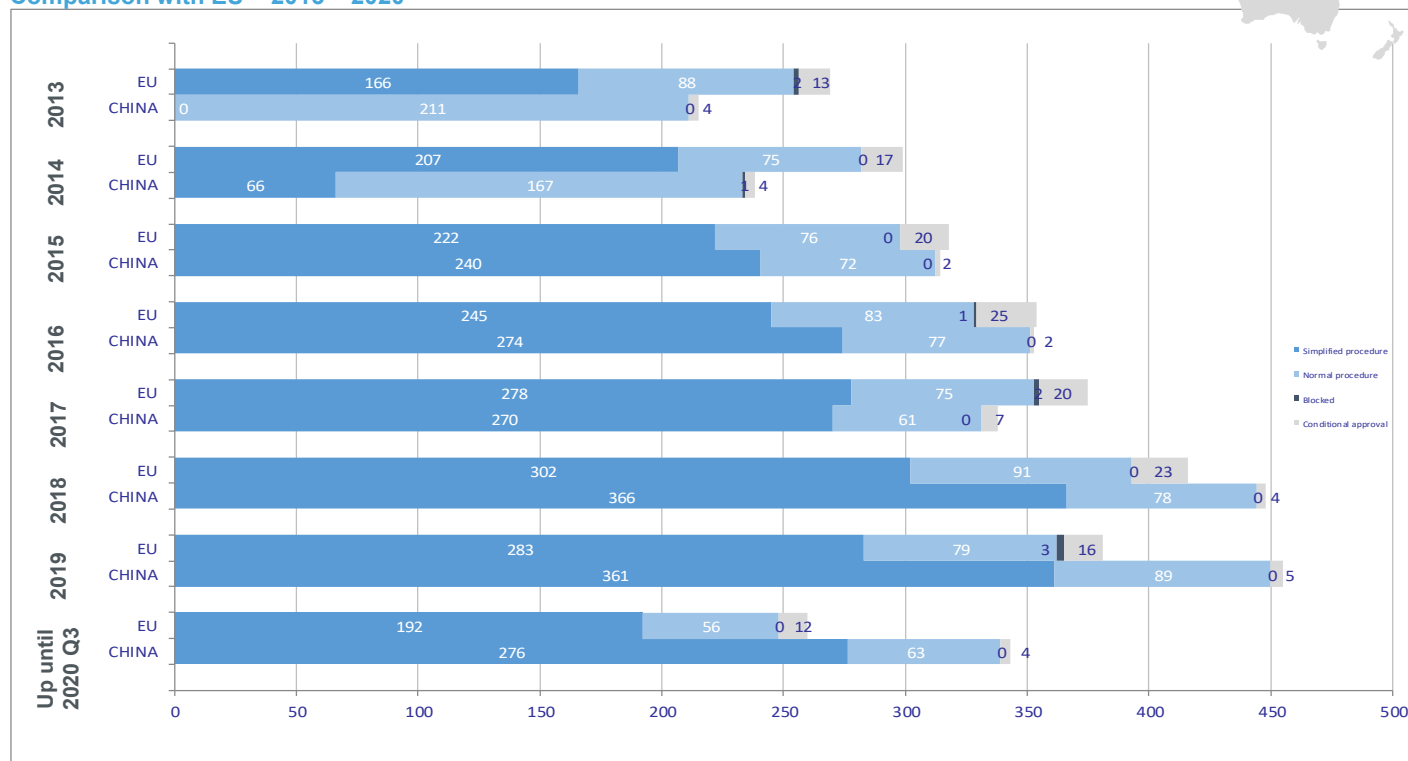




## MERGER CONTROL

How does China compare internationally?

Comparison with EU – 2013 – 2020



### Three failure-to-file fines published

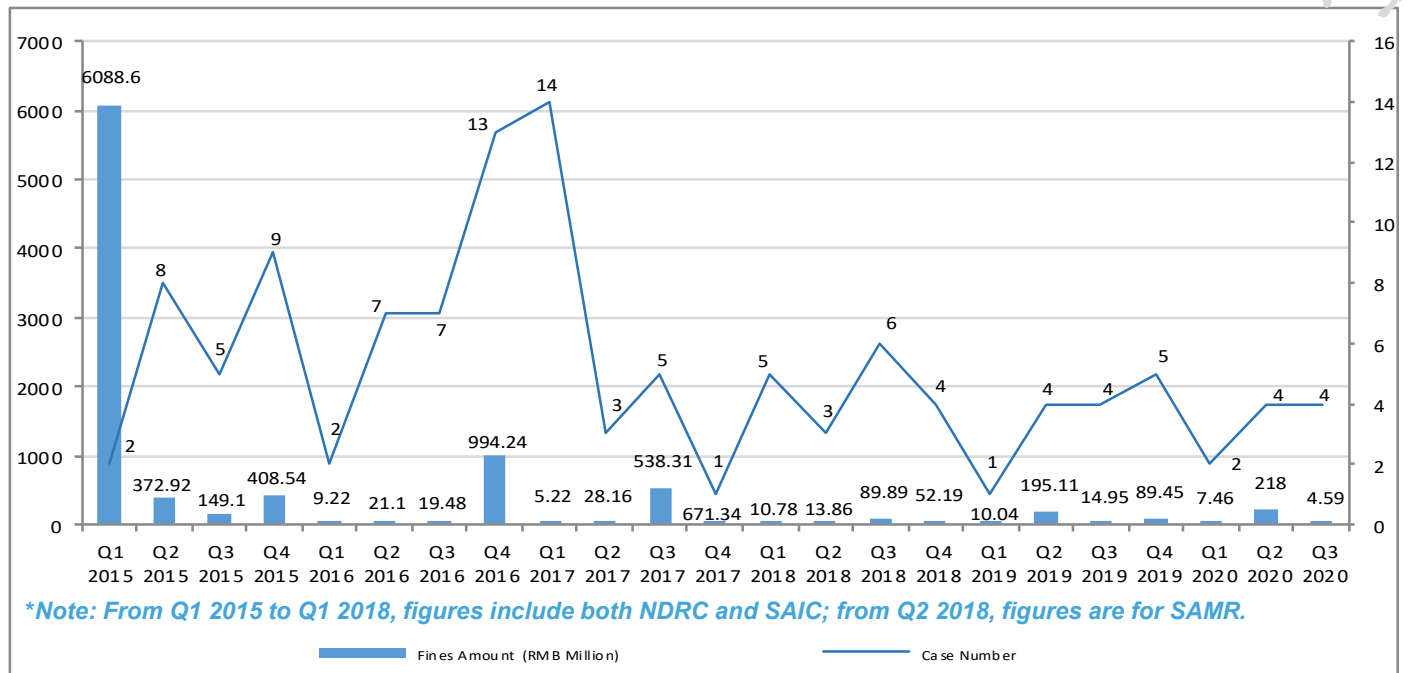
There are three failure-to-file decisions published by SAMR in the 3rd quarter of 2020. None of the decisions led to a finding of competition concerns.

- On 6 July 2020, it was published that Taiwan Cement Corporation ("Taiwan Cement") and Ordu Yardimlasma Kurumu ("Ordu") were each fined RMB 300,000 (USD 43,892) for failing to notify their establishment of joint ventures. The JV agreement was signed on 25 October 2018 and the JV obtained its business license on 26 November 2018. Notably, the JV itself appears to have no nexus in China, and the filing obligation was triggered by the JV partners alone. This is China's first failure to file decision on an extra-territorial JV, which has no presence or sales in China.
- On 4 August 2020, it was published that Jiangxi Jimin Kexin Medical Industry Investment Co., Ltd. ("Jimin Kexin") was fined RMB 300,000 (USD 43,892) for failing to notify its acquisition of Nanjing Hengsheng Pharmaceutical Co., Ltd. ("Nanjing Hengsheng"). On 4 April 2019, Jimin Kexin entered into a share purchase agreement to acquire a 83.35% stake in Nanjing Hengsheng by first acquiring 100% of the equity interest in Tibet Derong Entrepreneurship Investment Co., Ltd. ("Tibet Derong") and then acquiring 40.27% of the equity interest in Nanjing Hengsheng through Tibet Derong. The shareholding changes mentioned above were registered on 28 June 2019 without being notified to SAMR.
- On 21 August 2020, it was published that Ordos Junzheng Energy Chemical Industry Co., Ltd. ("Junzheng Energy") was fined RMB 350,000 (USD 51,208) for failing to notify its acquisition of control over Zhonghua International Logistics Co., Ltd. ("Zhonghua Logistics"). On 6 December 2017, Junzheng Energy and two other companies acquired 100% of the equity interest in Zhonghua Logistics on the Shanghai United Assets and Equity Exchange. On 11 December 2017, the three buyer companies reached an agreement and Junzheng Energy acquired 40% of the equity interest in Zhonghua Logistics. On 22 April 2019, the shareholding changes were registered without being notified to SAMR.



## ANTITRUST INVESTIGATIONS

### Enforcement trends\* – Q1 2015 to Q3 2020



Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency/Co-operation
<b>Bottled liquefied gas supply</b> Hunan AMR	2 July 2020	Market dividing	1,758	0	1,758	3%	Yes
<b>Urban pipeline natural gas supply</b> Shanxi AMR	24 July 2020	Abuse of dominance	1,346	N/A	N/A	2%	N/A
<b>Urban pipeline natural gas supply</b> Shanxi AMR	27 July 2020	Abuse of dominance	1,288	N/A	N/A	2%	N/A
<b>Used vehicle trade</b> Hubei AMR	29 July 2020	Market dividing and price fixing	195	16	95	4%	N/A

### Hunan AMR fines two bottled liquefied gas suppliers for dividing sales market

On 2 July 2020, SAMR published Hunan Administration for Market Regulation ("Hunan AMR")'s penalty decision relating to Hunan Zhongmin Gas Co., Ltd. ("Hunan Zhongmin") and Huaihua Railway Economic Technology Development Co., Ltd. ("Huaihua Railway", together with Hunan Zhongmin, the "Companies")'s anticompetitive agreement to divide bottled liquefied gas (BLG) markets. Hunan AMR, following its investigation initiated in June 2019, found that in August 2010, under the lead of the Huaihua Housing and Development Bureau (the "Bureau"), Hunan Zhongmin took over the operation of local BLG integration project, which was previously operated by 74 individual retailers. Hunan Zhongmin further reached and implemented an agreement with Huaihua Railway to divide the BLG market in March 2013,



## ANTITRUST INVESTIGATIONS

with more in-depth cooperation and further division of sales areas in early 2018. In light of the above, Hunan AMR concluded that the Companies violated the Anti-monopoly Law (the “AML”) by reaching and implementing a horizontal monopoly agreement to divide the market. Hunan AMR demanded the Companies to immediately cease their infringing conduct and imposed a fine of RMB 1,758,101.68 (USD 262,610) on Hunan Zhongmin, accounting for 3% of its revenue in 2018. Considering that Huaihua Railway once requested the Bureau to restore its independent operation but was refused, and it voluntarily report the infringement to Hunan AMR with evidence of significant value, Hunan AMR has determined to exempt Huaihua Railway from fines.

### **Shanxi AMR fines two local gas suppliers for abuse of dominance**

On 27 July 2020, SAMR published Shanxi Administration for Market Regulation (“Shanxi AMR”)’s penalty decision relating to Xinzhou Gas Co., Ltd. (“Xinzhou Gas”)’s abuse of dominance. Following a request order from SAMR, Shanxi AMR commenced its investigation against Xinzhou Gas in May 2019. Shanxi AMR found that Xinzhou Gas held a dominant position in the pipeline natural gas supply market in the urban area of Xinzhou and Xinfu District, on the basis that Xinzhou Gas was the exclusive pipeline natural gas supplier in the areas and other products such as liquefied natural gas and bottled gas are not substitutable for pipeline natural gas. Shanxi AMR further found that Xinzhou Gas restricted local real estate developers from contracting with other suppliers to install pipeline natural gas facilities and charged a fee significantly higher than the actual operational costs, and also prohibited local real estate developers from dealing with other suppliers of construction materials than Xinzhou Gas. Shanxi AMR found no justifiable grounds for the arrangements above and concluded that Xinzhou Gas’ conducts eliminated competition in the relevant market and harmed the interest of real estate developers and gas’ end users. In light of above, Shanxi AMR concluded that Xinzhou Gas violated Article 17(4) of the AML and Article 17(1) of the Interim Provisions on Prohibiting Abuse of Market Dominance (the “Interim Provisions”). Shanxi AMR demanded Xinzhou Gas to immediately cease its infringing conduct, confiscated RMB 1,128,400 (USD 168,551) in illicit gains from Xinzhou Gas, and imposed a fine of RMB 1,288,200 (USD 192,420) on Xinzhou Gas, accounting for 2% of its revenue in 2018.

Earlier on 24 July 2020, SAMR also published Shanxi AMR’s penalty decision relating to Shanxi Jianke Natural Gas Technology Corporation (“Shanxi Jianke”)’s infringing conduct on similar grounds and confiscated RMB 297,200 (USD 44,393) in illicit gains from Shanxi Jianke, and imposed a fine of RMB 1,345,800 (USD 201,024) on Shanxi Jianke, accounting for 2% of its revenue in 2018.

### **Hubei AMR fines three used vehicle trade market service providers for price-fixing and market-dividing agreement**

On 29 July 2020, SAMR published Hubei Administration for Market Regulation (“Hubei AMR”)’s penalty decision about Huanggang Lantian Used Car Trading Market Co., Ltd. (“Lantian”), Huanggang Aojie Used Car Trading Market Co., Ltd. (“Aojie”) and Huanggang Fada Used Car Trading Market Co., Ltd. (“Fada”, together with Lantian and Aojie, the “Traders”)’s anti-competitive agreement with respect to price-fixing and market-dividing. Hubei AMR, following its investigation which was initiated in July 2019, found that the Traders are the only three certified service providers in the used vehicle trade market in the city. Since the government ceased to control fee-charging for the used vehicle trading service in July 2015, the Traders have reached an agreement to divide the market and fix service fees from April 2016. In addition, the Traders have agreed to squeeze out new entrants. Particularly, in January 2019, the Traders colluded to lower the service fee from RMB 200-400 per unit to RMB 20 per unit to defeat a new market entrant. In light of the above, Hubei AMR concluded that the Traders violated Article 13(1) and 13(4) of the AML by fixing



## ANTITRUST INVESTIGATIONS

prices and dividing market. The Traders were required to immediately cease their infringing conduct and a total fine of RMB 195,175 (USD 29,153) was imposed on the Traders, equivalent to 4% of these companies' revenue in 2018.0

### Other news

#### Shanghai Higher People's Court dismisses antitrust appeal against Hankook Tire

On 30 July 2020, the Shanghai Higher People's Court (the "Higher Court") upheld a lower court's decision to dismiss an antitrust lawsuit against Shanghai Hankook Tire Sales Co., Ltd. ("Hankook") by Wuhan Hanyang Guangming Trading Co., Ltd. ("Guangming"), a distributor of Hankook. Guangming from January 2012 to June 2016 filed the case before the Shanghai Intellectual Property Court (the "IP Court"), alleging that Hankook engaged in anti-competitive vertical agreements and abuse of dominance. The IP Court dismissed such allegation and Guangming appealed to the Higher Court. The Higher Court found that (i) there was no evidence that could establish Hankook's dominant position in the relevant markets; (ii) the RPM agreements were not automatically prohibited under the AML. The Higher Court held that in the context of civil procedures RPM agreements would only be considered to infringe the AML if they are proved to have anti-competitive effects. Guangming failed to prove that the RPM agreements had a negative effect on competition and furthermore offered no proof that Hankook had ever implemented the RPM agreements. On that basis, the Higher Court decided to dismiss Guangming's claims and the decision was final. We note that the Higher Court's decision did not refer to Supreme Court's ruling in Yutai, which appeared to suggest a different interpretation about the approach to RPM in civil lawsuits. In Yutai, the Supreme Court clarified that in civil lawsuits anti-competitive effects is a necessary element to consider RPM because it serves as the basis to establish civil damages not because RPM is not illegal *per se*.

#### The Anti-monopoly Bureau of SAMR publishes four antitrust guidelines

On 6 August 2020, SAMR published four antitrust guidelines on (i) the automobile industry ("Auto Guideline"), (ii) intellectual property rights ("IPR Guideline"), (iii) leniency rules ("Leniency Guideline") and (iv) commitment rules ("Commitment Guideline"). The guidelines had been approved by the Anti-monopoly Commission of the State Council.

- The Auto Guideline is the first set of antitrust guidelines in China focusing on the automobile industry. It aims to provide guidance on, among others, the approach to product and geographical market definition in the automobile industry and application thresholds of "safe harbours". Notably, the Auto Guideline appears to be the first normative document in China which provides specific guidance on territorial/customer group restrictions in distribution agreements. Although many of the anti-trust issues addressed by the Auto Guideline are not unique to the auto industry, it is not clear to what extent the Auto Guidelines can be applied to other sectors.
- The Leniency Guideline clarifies leniency rules applicable to horizontal monopoly agreements, providing guidance to (i) the time for the leniency application, (ii) essential materials for the first leniency applicant and the subsequent applicants, (iii) conditions for leniency to be granted, (iv) the marking system for the first applicant and (v) the penalty exemption for the applicants.
- The Commitment Guideline sets out commitment rules for the benefit of the regulator and the undertakings which are under investigation. Such rules involve (i) the conduct scope of commitments, which excludes certain types of hardcore horizontal agreements, (ii) time for proposing and withdrawing commitments, (iii) types of commitment, (iv) factors in assessing the commitment, (v) form and contents of submitted commitments, (vi) public consultation and (vii) suspension, termination and resumption of investigation, depending on the status of the commitment.





## ANTITRUST INVESTIGATIONS

- The IPR Guideline is less prescriptive than the other three guidelines, and is aimed to provide a general framework on analysing antitrust problems related to IPRs. The IPR Guideline is the first set of antitrust guidelines in China specifically relating to IPRs.

### New chief of SAMR is appointed

Effective from 12 August 2020, Mr Zhang Gong was appointed as the new chief and the Party secretary of SAMR, in place of Mr Xiao Yaqing. Notably, Mr Zhang Gong was previously the China Communist Party secretary of Beijing Municipal Commission of Development and Reform from 2007 to 2015.

### AMRs in the Yangtze River Delta Region sign memorandum of cooperation.

On 26 August 2020, the Administration for Market Regulation of Anhui, Jiangsu, Shanghai and Zhejiang signed seven cooperation agreements and a memorandum of cooperation for the purposes of, among others, (i) joint development of technologies to assist market regulation, (ii) cooperation in antitrust law enforcement and (iii) cooperation in dealing with consumer complaint cloud platform. The move is considered to achieve more effective market regulation in the entire Yangtze River Delta Region.

### SAMR publishes guidelines on antitrust compliance

On 18 September 2020, SAMR published Guidelines on Antitrust Compliance of Undertakings ("Antitrust Compliance Guidelines") to provide guidance as to the establishment and implementation of internal antitrust compliance schemes on the part of undertakings. The Antitrust Compliance Guidelines recommend, among others, that undertakings (i) require the senior management to make compliance commitments, (ii) report to SAMR on the status regarding establishment and implementation of the compliance schemes, (iii) establish specific antitrust compliance departments, and (iv) take specific actions, including but not limited to, antitrust training sessions and reward versus punishment systems based on compliance. The Antitrust Compliance Guidelines came into effect on the date of its announcement.

In parallel, SAMR on the same day also released Draft Guidelines on Overseas Antitrust Compliance ("Draft Overseas Guidelines") for consultation until 30 September, in a view to assisting Chinese undertakings that carry out business activities overseas to defend antitrust risks outside China. Notably, the Draft Overseas Guidelines, compared to the abovementioned Antitrust Compliance Guidelines, give significantly more detailed guidance on potential antitrust risks that may arise overseas, covering anti-competitive agreements, abuse of dominance, merger control, antitrust litigation and disputes, as well as corresponding liabilities in case of infringement. Moreover, regarding the level of detail of the guidance provided, the Draft Overseas Guidelines set out comprehensive measures not only relating to broader subjects such as risk identification, evaluation and reporting, but also include very specific measures corresponding to each main type of antitrust risks. It can be clearly seen from the Draft that there is heightened awareness as to the importance of Chinese undertakings' compliance with overseas antitrust laws, especially against the backdrop that Chinese companies are gaining increasing attention in the global economy arena.



- Singapore

### CCCS proceeds to the second-phase review of LSE/Refinitiv

On 2 July 2020, the Competition and Consumer Commission of Singapore ("CCCS") announced that it closed the first-phase review of London Stock Exchange Group ("LSE")'s USD 27 billion proposed acquisition of Refinitiv Holdings ("Refinitiv") and decided to proceed to the second-phase review. Refinitiv's WM/Reuters foreign exchange benchmarks ("WM/R FX benchmarks") are spot and forward exchange rates that are considered critical inputs for index licensing and derivatives clearing services and there are no reasonable substitutes that rival providers of those services can switch to without incurring significant disruption and costs to their businesses. As post-transaction Refinitiv would be merged to LSE's subsidiaries, concerns arise as to whether the merged entity would continue to supply Refinitiv's WM/R FX benchmarks at fair, reasonable and non-discriminatory (FRAND) terms to rival providers in the market for the global supply of index licensing and derivatives clearing services to customers globally (including in Singapore). As the first-phase review did not provide CCCS with sufficient information on whether competitors are able to mitigate the risk of foreclosure and whether the concerns could be addressed through any existing regulations overseas on the global supply of the WM/R FX benchmarks, CCCS decided to take the second-phase in-depth review.

Earlier in June 2020, the European Commission also opened an in-depth investigation into the transaction, and the Australian Competition and Consumer Commission launched an informal probe.

### Singapore issues findings in a market study on e-commerce platforms

On 10 September 2020, the CCCS published its findings following a market study of e-commerce platforms and proposed to update its competition guidelines on that basis. The CCCS found, among others, that (i) consumers compare both price and non-price factors when choosing e-commerce platforms, (ii) e-payment services is not essential for the success of an e-commerce platform; (iii) lack of data is not a critical barrier to entry for e-commerce platforms. The CCCS further recommended the following updates to its competition guidelines: **(i) market definition of multi-sided platforms.** Regarding market definition approach, CCCS would take into account multiple factors, including the relationship between different sides, the presence of externalities and the pricing structure; **(ii) assessment of abuse of dominance.** The CCCS explained that when assessing dominance for cases involving digital platforms, it would place less emphasis on market shares and give more weight to additional factors such as barriers to entry, network effects and control or ownership of data. Additionally, the CCCS may adopt different theories of harm and consider practices such as personalised pricing, exclusive dealing, tying and bundling and self-preferencing to be harmful to competition; and **(iii) mergers involving digital platforms:** the CCCS would assess the effects on competition or innovation in order to prevent "killer acquisitions", where large platforms acquire start-up firms to pre-emptively obtain competition edges in new competition fields which might stifle new comers or innovation in general.



● **Singapore**

### CCCS issues Covid-19 Guidance Note on Collaboration between Competitors

On 20 July 2020, CCCS issued a guidance note to provide more clarity on collaboration between competitors in relation to the supply of essential goods or services (the "Covid-19 Guidance Note"). Pursuant to the Covid-19 Guidance Note, for a temporary period, CCCS will assume that collaboration that sustains or improves the supply of essential goods or services in Singapore, which are limited in scope and time and do not involve price-fixing, bid-rigging, market-sharing or output limitation, are likely to generate net economic benefits and thus, unlikely to infringe the Competition Act of Singapore. The Covid-19 Guidance Note applies to collaboration which took place from 1 February 2020 and expire by 31 July 2021 and CCCS will generally not investigate such collaborating conduct. For conduct that end after such period, the CCCS will make assessment based on the criteria applicable to normal circumstances.

● **Hong Kong**

### The Competition Tribunal approves its first cartel settlement

On 17 July 2020, the Hong Kong's Competition Tribunal (the "Competition Tribunal") approved a settlement between the HKCC, two construction companies and an individual. In September 2018, HKCC commenced its proceedings against three companies, Goldfield N&W Construction Company ("Goldfield"), Kam Kwong Engineering Company ("Kam Kwong") and Pacific View Engineering ("Pacific View") and two individuals, Chan Kam Shui (director of Kam Kwong) and Lam Po Wong (employee of Pacific View). HKCC found that between 16 June 2017 and 7 November 2017, the three companies agreed to allocate potential customers and exchanged and coordinated the contents of the offered standard decoration package when acting as decoration contractors. Goldfield, Kam Kong and Chan Kam Shui admitted the illegal conduct and applied to HKCC for disposal of the hearing by consent under Hong Kong's Competition Ordinance. A Carecraft Procedure was then adopted, where the agreed facts and the agreed period of director disqualification were submitted to the tribunal for determination. This marks the first case where HKCC pursued claims against individual and also the first cartel settlement approved by the Competition Tribunal.

● **India**

### Amazon faces multiple antitrust complaints in India

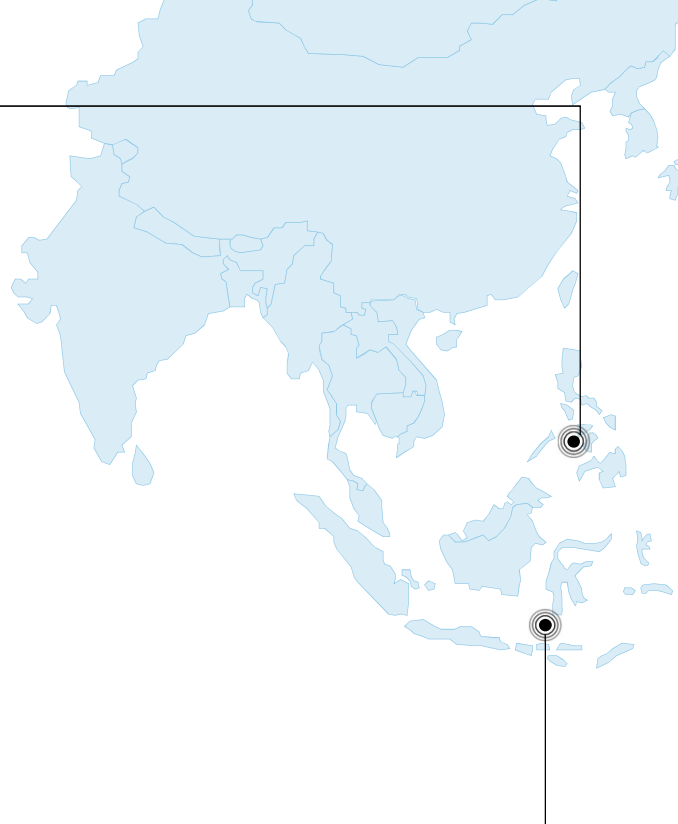
On 10 August 2020, the All India Online Vendors Association ("AIOVA") filed a complaint to the Competition Commission of India ("CCI"), alleging that Amazon India engaged in unfair competition by giving favourable treatment to certain retailers to facilitate discounts. According to the complaint, Amazon India has been (i) buying products in bulk and then selling them to certain vendors at a loss, so that such vendors may offer the products at steep discounts, and (ii) charging lower marketplace fees to selected vendors. AIOVA claims that such arrangements have driven some vendors out of the market. The CCI is currently reviewing the complaint.

On 11 September 2020, the CCI dismissed an abuse of dominance complaint against Amazon. Lifestyle Equities, a Dutch fashion retailer, filed the complaint, alleging that Amazon abused its dominance in the online fashion retail market by giving its own labels and preferred sellers higher search ranking and positive customer reviews, to the disadvantage of other sellers. However, the CCI held that Amazon did not hold a dominant position in the market and dismissed the complaint.

## Philippines

### New exemption rules roller out to rescue economy under COVID-19

On 11 September 2020, the president of the Philippines signed into law Bayanihan to Recover as One Act of the Philippines (the "Act"), aiming to accelerate the recovery of the Philippines' economy from COVID-19. Under the Act, acquisitions with transaction value below PHP 50 billion (USD 1.03 billion) are (i) exempt from compulsory notification for two years; and (ii) exempt from the Philippine Competition Commission (the "PCC")'s review *motu proprio* for one year. Note however that the PCC may still *motu proprio* review such transactions after the lapse of one year and even block transactions that would substantially eliminate or restrict competition. The Act shall take effect immediately upon its official publication.



## Indonesia

### KPPU fines Grab for vertical integration and discriminatory practices

On 2 July 2020, Indonesia Competition Commission ("KPPU") fines Grab Indonesia ("Grab"), a Singapore-based ride-hailing company, IDR 22.5 billion (USD 1,514,100) for giving preferential treatment to its business partner Teknologi Pengangkutan Indonesia ("TPI") and IDR 7.5 billion (USD 504,700) for vertical integration that could lead to unfair business competition. TPI is a car rental company that partnered with Grab to offer various long-term car lease programmes. According to KPPU, Grab relies on two different groups of driver-partners (i.e., the independent drivers registered directly with Grab and drivers supplied by TPI) but has treated them differently by giving TPI drivers more orders than those independent drivers. In addition, KPPU found that the cooperation agreement between Grab and TPI aimed at controlling the provision of special technology-based rental service transportation applications in Indonesia, and has resulted in a decline of the percentage of Grab's independent partners and the decrease in the number of orders to non-TPI partner drivers. Grab has announced that it will appeal on the ground of unfair hearing process.

### KPPU investigates Honda for its exclusivity arrangement

On 14 July 2020, KPPU submitted an investigation report before its internal decision-making council alleging PT Astra Honda Motor ("Honda") violated Indonesia's competition law by entering into exclusivity arrangement. For every purchase of a motorcycle by a consumer, Honda typically provides guarantees which are only valid to the extent that the consumers carry out maintenance (including replacing lubricants, etc.) at the authorised service stations. KPPU claims that under the provisions of the exclusivity agreements, the authorised service stations (i) could only sell lubricant products belonging to Honda, (ii) are forbidden from distributing products that violate Honda's copyrights, both for the motorcycles and spare parts, and (iii) are forbidden from carrying out tests on spare parts using products other than those specified by Honda. In exchange, Honda would subsidise the cost of the initial minimum equipment that all authorised service stations must own. Besides, Honda would only provide discounts for motorcycle parts, lubricants and human resources training to authorised service stations that promote and use genuine Honda parts and comply with Honda's standards and published prices. A second preliminary hearing has been set on 30 July 2020, which allows Honda to respond to the above allegations from KPPU.

## New Zealand ●

### Hamilton real estate agencies to pay NZD 4 million for price fixing

The Auckland High Court has ordered Hamilton-based Lodge Real Estate Limited (“Lodge”) and Monarch Real Estate Limited (“Monarch”) to pay NZD 2.1 million (USD 1.39 million) and NZD 1.9 million (USD 1.26 million), respectively, for engaging in price-fixing in breach of the Commerce Act. The High Court found that Lodge and Monarch coordinated a planned regional response to a 2013 increase in Trade Me’s pricing for real estate listings. Under the so-called “vendor funding” model, Lodge and Monarch (and other Hamilton real estate agencies) would no longer meet the costs of Trade Me property listings for their vendors, as had been the previous practice. Instead, the default position would be that the seller of the property or their agent would pay.

The High Court’s penalty judgment brings an end to proceedings the Commerce Commission first filed in December 2015 against 13 national and regional real estate agencies and three individuals for agreeing to pass on the costs of Trade Me’s pricing change for real estate listings to vendors. The final total of penalties imposed in this case is just under NZD 23 million (USD 15.22 million).

## Australia ●

### ACCC releases draft mandatory code to govern negotiations between digital platforms and news businesses

On 31 July 2020, the Australian Competition and Consumer Commission (“ACCC”) released the draft mandatory code governing negotiations between digital platforms (initially Google and Facebook) and news business. The draft code is aimed at addressing acute bargaining power imbalances between Australian news businesses and Google and Facebook to ensure that news businesses are able to quickly secure fair payment for news content. Under the draft code, news businesses can collectively bargain with Google and Facebook, and negotiations on payment for content can proceed to mediation and then binding “final offer” arbitration. Further consultation on the draft mandatory code closed on 28 August 2020, and the ACCC is currently considering the submissions as part of finalising recommendations to provide to the Treasurer.

### ACCC to examine mobile app markets

As part of its five-year inquiry into the supply of digital platform services in Australia, the ACCC will be examining the experiences of Australian consumers, app developers and suppliers in a further report scrutinising mobile app stores. Issues to be examined include the use and sharing of data by apps, the extent of competition between Google and Apple’s app stores, and whether more pricing transparency is needed in Australia’s mobile apps market. The report into mobile app markets will be handed down in March 2021.

### ACCC enters into new cooperation agreement to coordinate on cross-border investigations

Competition agencies from Australia, the US, the UK, Canada and New Zealand signed a new cooperation agreement on 2 September 2020 to share intelligence, case theories and investigative techniques to better coordinate investigations across international borders. The Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities is a memorandum of understanding that will improve coordinated and pro-active informal cooperation and assistance between all the parties. The framework includes a template “Model Agreement” that the agencies can use to establish cooperation arrangements focused on investigative assistance such as the provision of mutual assistance, sharing of confidential information, executing searches and seizures and cross-border evidence gathering.



● **Japan**

### **New Chairman of JFTC is appointed**

On 16 September 2020, Mr Kazuyuki Furuya, the former Assistant Chief Cabinet Secretary, assumed the role of Chairman of the Japan Fair Trade Commission ("JFTC") as the successor to Kazuyuki Sugimoto, who resigned on 12 September. On 17 September, Mr Furuya held an inaugural press conference and stated that the JFTC would monitor concerns over the oligopolisation of the digital market by giant IT companies and respond strictly to any breaches of the Antitrust Law. He also stated that, in order to ensure a competitive environment, as competition authority, the JFTC would positively contribute to regulatory reform, which has been given important status by the Cabinet of Prime Minister Yoshihide Suga established on 16 September, especially regarding mobile phones.

### **JFTC accepts Amazon's commitment plan**

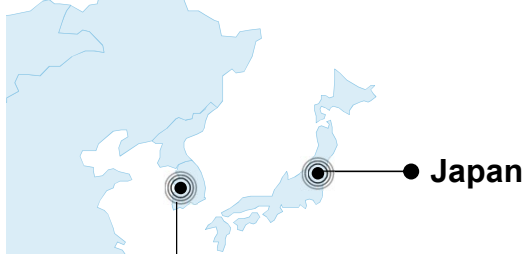
The JFTC has been investigating Amazon Japan since May 2016 as to whether they are breaching the Antitrust Law by (i) requiring vendors selling products on Amazon's website to pay "support money" for the purpose of obtaining the necessary resources for discount sales or raising profitability, and by (ii) returning goods to such vendors which Amazon unilaterally judged to be excess inventories. On 10 September, the JFTC announced that they accepted Amazon Japan's commitment plan that included the establishment of an internal system to suspend the above-mentioned actions and to prevent the recurrence of such actions, as well as the refunding of approximately JPY 2 billion to approximately 1400 vendors.

### **JFTC publicizes market survey report on convenience stores**

On 2 September 2020, the JFTC publicized a market survey report of transactions between the headquarters of convenience stores and their franchise stores. The report indicated that there were multiple antitrust issues such as coercion regarding the quantity of purchases, and the JFTC requested each headquarters to conduct voluntary inspections and improvements and report the results. In response to this, on 14 September, the "Convenience Store Franchise Union", a voluntary organization made up of the owners of convenience store franchise stores, submitted a request to eight convenience store headquarters and the Japan Franchise Chain Association, an industry association, for improvements regarding the enforcement of 24-hour operations and other issues.

### **JFTC conditionally approves LINE Corporation / Z-Holdings Corporation integration**

On 4 August 2020, the JFTC announced that they had approved the integration of LINE Corporation, a major SNS company, and Z-Holdings Corporation, the parent company of Yahoo Japan Corporation. The JFTC voiced concerns regarding the business of "code payments", a kind of cashless payment method, in businesses in which the two companies compete. However, the JFTC approved remedies whereby the two companies would report on the competitive situation of the business and the utilization of data for three years after the integration.



### Japan Cabinet approves detailed rules and guidelines regarding Amended Antitrust Law

On 28 August 2020, the Cabinet approved detailed rules and guidelines in relation to the Amended Antitrust Law which would introduce the deduction of fines depending on the companies' cooperation in the JFTC's investigation. Also it was decided that the Amended Antitrust Law shall come into force on 25 December 2020.

### South Korea

#### KFTC investigates Google's in-app payment policy

On 20 August 2020, it was reported that the Korea Start-up Forum, which is an association comprising around 1,500 start-up companies, requested the Korea Fair Trade Commission ("KFTC") to investigate in-app payment commission by Apple and Google. It was further reported on 8 October 2020 that the KFTC Chairperson, Joh Sung-wook, said that the KFTC was investigating Google's in-app payment policy.

#### KFTC announces draft guidelines for digital platform operators

On 28 September 2020, the KFTC announced a draft of guidelines for digital platform operators. The draft guidelines provide that digital platform operators must sign contracts with vendors on key matters in advance, notify them of changes of contract terms in advance, and notify them of restrictions and suspensions of services in advance.

#### KFTC's information and communications technology team releases its first penalty decision

On 4 September 2020, the KFTC announced that it had imposed a fine of KRW 1 billion (USD 850,000) on Naver, a search engine provider in South Korea, for imposing exclusivity obligations on real estate information providers. This was the first enforcement case for the KFTC's information and communications technology team since its launch in November 2019.

#### KFTC collects opinions on Apple's proposal on consent resolution

On 24 August 2020, the KFTC started to collect opinions on Apple's proposal on consent resolution regarding the KFTC's investigation of alleged abuse of its market position by imposing advertising and repair service costs on mobile carriers. The KFTC initiated a consent decree process regarding Apple's alleged abuse of dominance against telecommunications companies in June 2020.

#### KFTC announces its 2019 merger review trends

On 25 August 2020, the KFTC announced its 2019 merger review trends. The KFTC reviewed 766 cases in 2019, which was up by 64 from 2018, and the total transaction value was KRW 448.4 trillion (approximately USD 377 billion) in 2019, which was down by KRW 38.2 trillion (USD 32 billion) from 2018.

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