

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



ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE

October to December 2022

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ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: OCTOBER TO DECEMBER 2022

INTRODUCTION

The increasing COVID cases in the final quarter of 2022 clearly did not dampen the Chinese antitrust authorities' eagerness to strengthen antitrust scrutiny on all fronts. Regarding merger control, DuPont's proposed buyout of Rogers was aborted due to the parties' failure to obtain timely merger control clearance in China; and among the 229 approved transactions, Korean Air Line's acquisition of Asiana Airlines was approved subject to behavioural conditions. In addition, the new merger review delegation mechanism in China, which allows the central antitrust authority (SAMR) to delegate merger review of certain mergers under a simplified procedure to five provincial-level authorities, was officially proven as running efficiently. On the conduct side, the last quarter saw a horizontal agreement case which was coordinated by a trade association in the explosives sector, a resale price maintenance case against Straumann, and a remarkable abuse case against CNKI, the most renowned online knowledge database service provider in China. Another notable development was that the PRC Supreme Court made great efforts to provide judicial clarifications through publishing *Draft Provisions re. Antitrust Private Litigation* and announcing Ten Classic Antitrust Litigation Cases, both of which shed useful light upon controversial antitrust issues arising in practice. Separately, China in the last quarter also released for consultation *Draft Anti-Unfair Competition Law Amendments*, which is a valuable supplement to the Anti-Monopoly Law in China in promoting a healthy competitive process.

Outside China, to deal with antitrust challenges arising in the digital economy in a more effective manner: in Australia, new competition and consumer laws were recommended to regulate digital platforms in the Digital Platform Services Inquiry fifth interim report; South Korea set up a new division to take charge of online platform regulations; Taiwan released its final white paper for the digital economy; and the Philippines made efforts to address digital giants' antitrust issues as well. On the enforcement side, India fined Google twice in just one week for abusive conduct - in respect of Google's Android mobile device ecosystem and Google's Play Store policies - slapping an aggregate fine of some USD 275 million; and Taiwan launched an investigation against Apple for preventing users from using third-party payment methods.

With respect to the wider economy, merger control and antitrust enforcement both remained active across the region. In Australia, Telstra and TPG's regional network deal was not authorised by the local antitrust authority (ACCC), which separately commenced civil cartel proceedings against Qteq and its executive chairman, and BlueScope was found to have engaged in a cartel; Singapore cleared four merger cases and fined warehouse operators for price-fixing; Hong Kong accepted car distributors' commitments to remove car warranty restrictions, and fined an air-conditioning contractor based on co-operation terms; Taiwan penalized Taiwan Mobile for gun jumping; India penalised online hotel aggregators for vertical restraints and abuse; South Korea established a new division to specifically handle global M&A cases, and released new guidelines on notification of anti-competitive rebates; Japan launched a new survey for the news content distribution sector, and actively enforced against cartel in utility and advertising sectors.

In the final quarter of 2022, antitrust authorities across the region drew on past and recent experience and were busy with forming priorities for the year ahead. In the last quarter, Hong Kong and Singapore published their annual reports for 2022, and Indonesia and the Philippines released their antitrust priorities for 2023.



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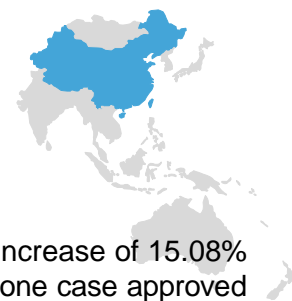
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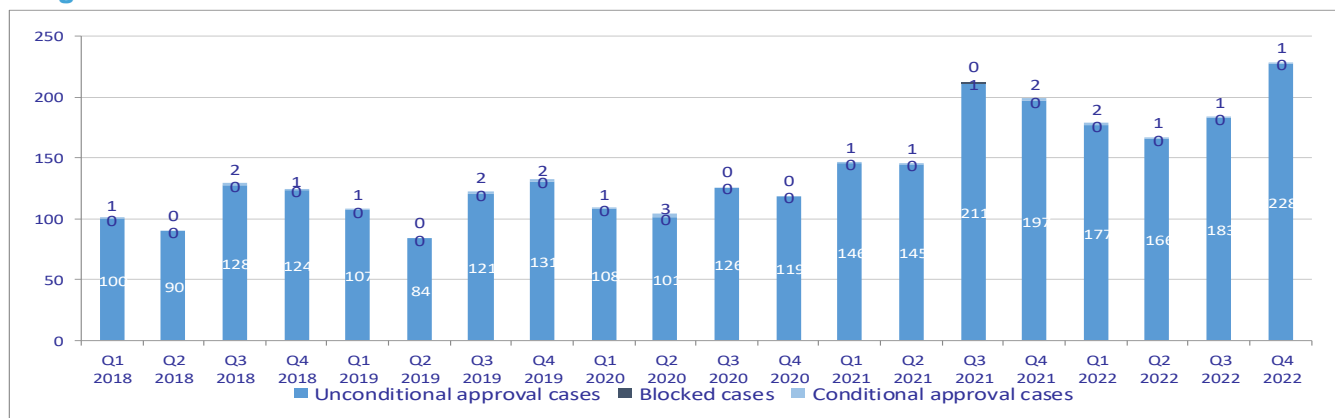


MERGER CONTROL

How many cases have there been?

There were in total 229 merger decisions released in the fourth quarter of 2022, an increase of 15.08% compared to the fourth quarter of 2021, with 228 cases unconditionally cleared and one case approved subject to conditions. Around 214 cases were notified under the simplified procedure, which represents 93.45% of the total cases reviewed in this quarter.

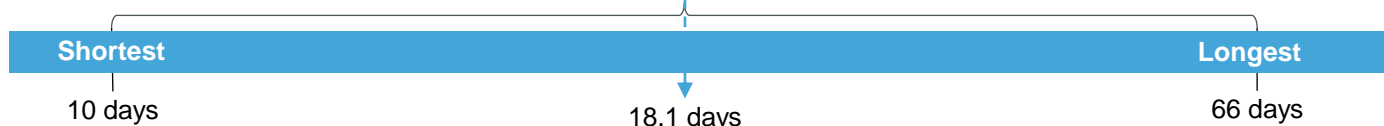
Merger control trends – Q1 2018 – Q4 2022



Simplified procedure: How quick is the review period?

Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
Q1 2018	19 days	92.1%	1
Q2 2018	18 days	81.1%	1
Q3 2018	16 days	76.9%	0
Q4 2018	17 days	80.0%	3
Q1 2019	16 days	77.8%	0
Q2 2019	17 days	85.7%	0
Q3 2019	19 days	78.9%	1
Q4 2019	14 days	81.2%	0
Q1 2020	14 days	87.2%	1
Q2 2020	13.7 days	86.5%	0
Q3 2020	14.4 days	72.2%	3
Q4 2020	13.7 days	83.2%	1
Q1 2021	14.9 days	80.3%	3
Q2 2021	13.8 days	90.4%	0
Q3 2021	13.4 days	86.3%	3
Q4 2021	15.6 days	91.0%	3
Q1 2022	17.1 days	83.8%	1
Q2 2022	17.2 days	87.4%	2
Q3 2022	21.7 days	85.3%	2
Q4 2022	18.1 days	93.5%	2

Q4 2022: Average

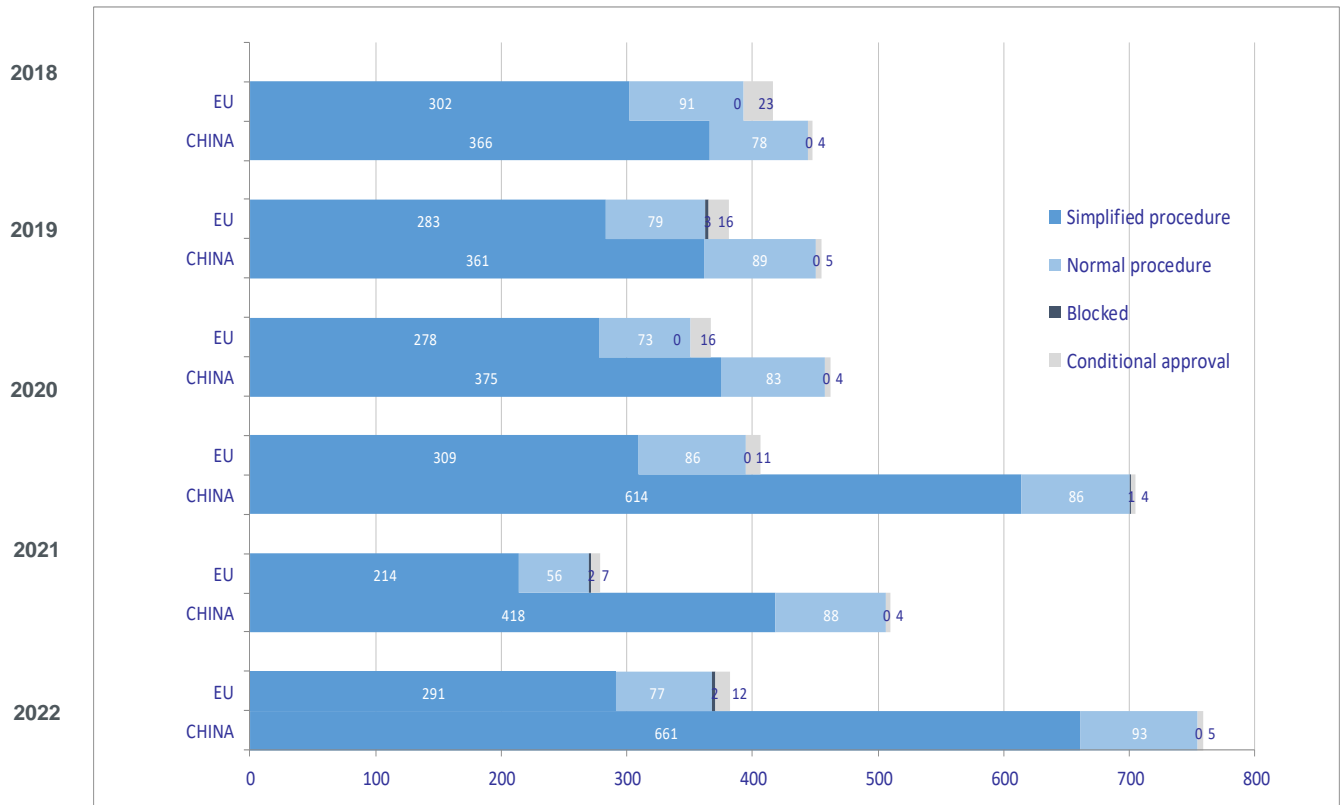




MERGER CONTROL

How does China compare internationally?

Comparison with EU – 2018 – 2022



SAMR conditionally approves Korean Air Line's acquisition of Asiana Airlines

On 26 December 2022, State Administration for Market Regulation ("**SAMR**") conditionally approved the proposed acquisition of a 63.9% stake (and sole control) in Asiana Airlines by Korean Air Lines after reviewing the transaction for nearly two years. Both the buyer and target are air passenger and cargo transport companies incorporated in South Korea. Potential competition concerns were identified to exist in 15 two-way international direct air routes between Korean cities and Chinese cities ("**15 routes**") where the parties' businesses overlap. The specific concerns are in relation to: (i) the parties' combined market shares in the 15 routes ranged from 45% to 100% and ranked no. 1 in 13 routes and no. 2 in the other two, therefore the transaction would further strengthen the merged entity's market power and raise the market concentration level; (ii) the merged entity would hold more than 50% of the flight slots at its hub airports, which could increase flight frequency, optimise take-off and landing arrangements, expand market coverage and increase passenger load factors; (iii) the transaction could eliminate competition between the merged entity's two closest competitors and result in Asiana Airlines' withdrawal from the Star Alliance, which would deprive passengers of relevant benefits; (iv) the reduction in the number of market players would make price coordination among competitors easier; and (v) new entrants would be unlikely to emerge in the short term due to high entry barriers with respect to investment, technical standards and policies.



MERGER CONTROL

To address these competition concerns, SAMR imposed the following remedial conditions on the parties: (i) upon requests from new entrants, to surrender certain flight slots and certain traffic rights in four routes; (ii) ensure a stable annual supply of flight frequency and seat numbers for two routes; (iii) renew air passenger transportation agreements; (iv) ensure ground services in Korean airports for Chinese airlines on FRAND terms and cooperation agreements with the frequent-flyer programmes of Chinese airlines; and (v) refrain from unfairly increasing prices of flight tickets and ground services, and refrain from engaging in price-related conduct to increase market shares. These conditions will automatically expire in 10 years. Outside Mainland China, this transaction has been unconditionally cleared in eight APAC jurisdictions and is subject to conditions in South Korea. Merger control clearances are still outstanding in the United States, the United Kingdom, the European Union and Japan.

China's new merger review delegation mechanism proven to be effective

According to an SAMR official at the merger review division, the new pilot mechanism to delegate merger control review from SAMR to five provincial-level local authorities has been running effectively. As reported previously, given the surge in merger control cases, SAMR launched a three-year pilot programme, commencing in August 2022, to delegate part of its merger review power to provincial-level counterparts in Beijing, Shanghai, Guangdong Province, Chongqing Province and Shaanxi Province. To date, the five local authorities have reviewed 92 cases, with the average review period (from announcement date to clearance date) being 19.14 days.

DuPont / Rogers deal aborted due to failure to obtain merger control clearance in China

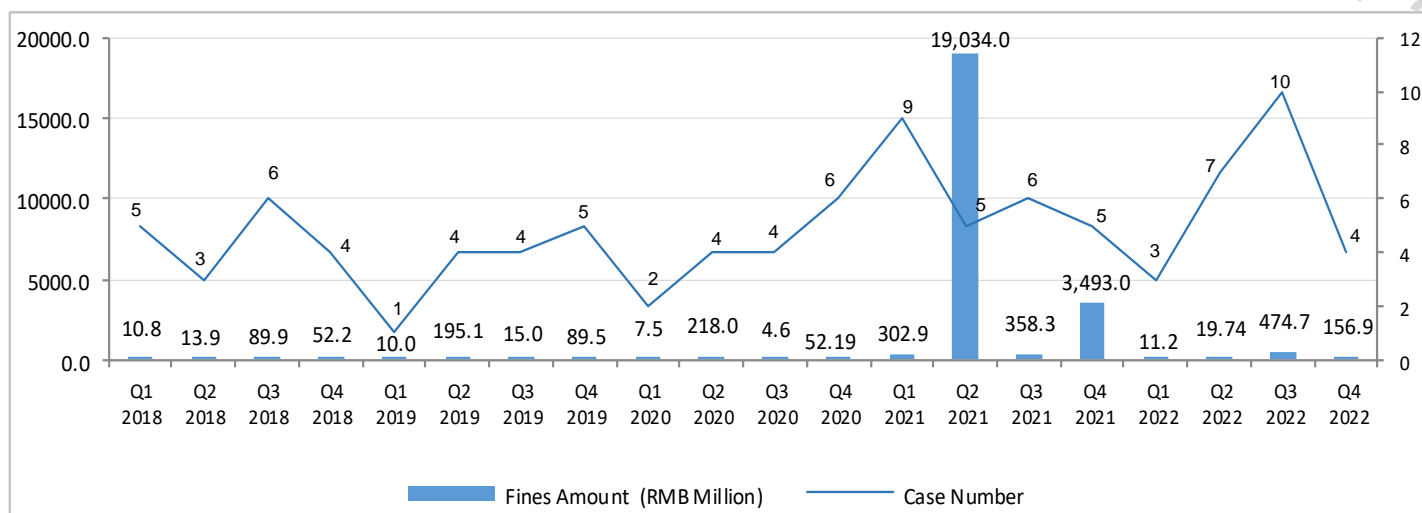
On 1 November 2022, DuPont terminated its USD 5.2 billion buyout of Rogers due to the failure to secure timely merger control clearance in China, and now faces a significant termination fee of USD 162.5 million. The deal was announced in November 2021, and aimed at closing by the second quarter of 2022. Other than in China, the parties have received all the other regulatory approvals required, in the US, Germany, Austria, Hungary, North Macedonia, the UK and South Korea. The merger review process in China, by contrast, has been moving slowly since the notification was formally accepted by SAMR in February 2022, and was refiled by DuPont in September 2022. There was no official clarification as to the possible reasons for the prolonged review process. It was widely speculated that industrial policy concerns and geopolitical considerations might have had a role to play.

Rogers has a substantial share (above 60%) of the global market for high-frequency, copper-clad laminate ("**CCL**"), which has been recognised by the Chinese government as a strategic input in relation to 5G, electric vehicles, aerospace and other important sectors. Furthermore, DuPont is active in the upstream polytetrafluoroethylene market, and has been supplying Chinese manufacturers of high-frequency CCL. Following the Qualcomm / NXP deal, which collapsed in 2018 due to the failure to receive timely clearance from SAMR, this is another abandoned transaction involving US companies. Notably, however, not all transactions with US elements have seen delays in the merger review process. On the contrary, many high-profile transactions, such as US-based MKS Instruments' acquisition of Atotech, and a Bain Capital-led consortium's acquisition of Hitachi Metals, were cleared in China without obstacles.



ANTITRUST INVESTIGATIONS

Enforcement trends* – Q1 2018 to Q4 2022



*Note: For Q1 2018, figures include both NDRC and SAIC; from Q2 2018, figures are for SAMR.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency
Civil explosives Zhejiang AMR	16 December 2022	Price fixing, RPM, sales and output restriction; collective boycott	34,600	400	18,810	2%	N/A
Online knowledge database service SAMR	26 December 2022	Exclusive dealing; excessive pricing	87,600	N/A	N/A	5%	N/A
Water supply service Guangxi AMR	29 December 2022	Exclusive dealing	312	N/A	N/A	3%	N/A
Dental implants Beijing AMR	30 December 2022	RPM	34,390	N/A	N/A	3%	N/A

Guangxi AMR fines Yongfu Water for exclusive dealing

On 29 December 2022, SAMR published a decision where the Guangxi Administration for Market Regulation ("**Guangxi AMR**") penalised Yongfu Water Supply Company ("**Yongfu Water**") for abuse of dominance through exclusive dealing. Yongfu Water, as the exclusive water supplier in Yongfu County, Guangxi Zhuang Autonomous Region, holds a dominant position in the local market for water supply services. Guangxi AMR found that since 2017, Yongfu Water had been requiring water users to entrust water supply infrastructure construction projects and the procurement of water supply devices only to itself. In case of non-compliance, Yongfu Water would refuse to supply water to the relevant users. Guangxi AMR concluded that, in the absence of justification, Yongfu Water's conduct constituted exclusive dealing and violated Article 17(4) of the former Anti-Monopoly Law ("**AML**"). A fine of RMB 312,011 (USD 44,805), amounting to 3% of Yongfu Water's sales value in 2020, was imposed.



ANTITRUST INVESTIGATIONS

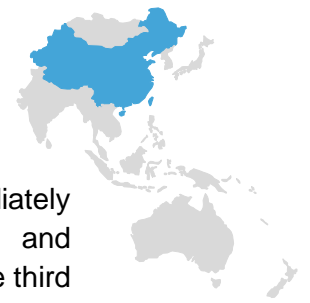
Zhejiang AMR penalises trade association-coordinated horizontal and vertical agreements among explosives producers

On 16 December 2022, SAMR published a penalty decision where Zhejiang Administration for Market Regulation ("**Zhejiang AMR**") fined the Zhejiang Civil Explosive Materials Trade Association (the "**Association**"), three explosives producers and their distributor for price fixing, sales and output restriction, collective boycotting and Resale Price Maintenance ("**RPM**"), pursuant to the former AML. The relevant background is that the civil explosives industry in China had been under price regulation of National Development and Reform Commission since 2015. The Association, since 2015, has been intervening in the operation of this industry through coordinating the three producers as well as their distributor to both raise prices/restrict output volume at the supply level and restrict resale prices at the distribution level. Further, the Association also led boycotting exercises against a sub-distributor for its not purchasing from the distributor concerned in this case. Zhejiang AMR held that the Association, together with the three producers and their distributor, entered into anti-competitive horizontal and vertical agreements and therefore violated Articles 13 and 14 of the former AML. The Association received a fine of RMB 400,000 (USD 57,360), whereas the three producers and their distributor were each fined 2% of their 2020 sales (RMB 34.2 million (USD 5 million)). Although the coordinators and facilitators' role in anti-competitive agreements is only expressly condemned in the amended AML in 2022 ("**Amended AML**"), this decision has reflected the Amended AML's intent, despite being made in accordance with the former AML.

SAMR fines the most renowned online knowledge database service provider in China, CNKI, for abuse of dominance through exclusive dealing and excessive pricing

On 26 December 2022, SAMR slapped a fine of RMB 87.6 million (USD 12.6 million) on China National Knowledge Infrastructure ("**CNKI**") for abuse of dominance through exclusive dealing and excessive pricing. CNKI is the most renowned Chinese academic platform, which primarily provides online knowledge database services as well as value-added services (e.g., plagiarism checking) to universities, institutions, public libraries and other users. CNKI was found to be dominant in the Chinese-language academic literature online database services market in China given its >50% market share, its possession of the largest number of high-quality journals, and its co-operation with more than 90% of Chinese universities. Notably, in evaluating CNKI's market dominance, SAMR expressly applied the Platform Antitrust Guidelines, pursuant to which CNKI was found to operate in a multi-sided market with significant network effects on the basis that when there are more participants on one side of the platform, more players on the other sides would be attracted to use the platform.

Upon investigation, SAMR found that CNKI abused its dominant position from 2014 to 2021 through: (i) **Exclusive dealing** – CNKI imposed exclusivity upon its customers, restricting them from publishing their academic work on CNKI's competing platforms. CNKI also took measures to ensure customers' compliance with its exclusivity requirements through rewards and penalties. (ii) **Excessive pricing** – SAMR was of the view that CNKI's pricing was unfairly high, representing an increase of more than 10% of CNKI's average annual fees. It is worth noting that the level of price hiking here appears lower than what has been seen in typical excessive pricing cases. SAMR imposed a fine amounting to 5% of the sales value in 2021 of the three companies that jointly operated CNKI. Notably, when determining the base amount of fines, SAMR did not drill down to CNKI entities' parent company, Tsinghua Tongfang.



ANTITRUST INVESTIGATIONS AND OTHER NEWS

Otherwise, the fine could have been at least 16 times higher. CNKI immediately announced rectification measures, including cancelling exclusivity agreements and lowering subscription fees by more than 30% within three years. This case marks the third high-profile abuse decision against the Chinese platform economy following SAMR's previous fines on Alibaba and Meituan for exclusive dealing.

Beijing AMR fines Swiss medical player Straumann for RPM

On 30 December 2022, SAMR published a penalty decision in which the Beijing Administration for Market Regulation ("**Beijing AMR**") fined Swiss dental company Straumann Group's China trading arm Straumann (Beijing) Medical Device Trading Co., Ltd. ("**Straumann**") for RPM. Straumann was found to have formulated recommended resale prices ("**RRP**") based on customer types and sales regions, and have required its distributors not to sell below the RRP set by Straumann. Straumann was also found to have fixed its distributors' resale prices to dental support organisations ("**DSO**") customers. In addition, Straumann took active measures to monitor distributors' resale prices and punish those distributors who failed to follow Straumann's RRP and/or Straumann's fixed resale prices. The punishment measures taken by Straumann included raising distributors' purchase prices from Straumann, reducing distributors' authorised sales regions, and cancelling distributors' qualification for receiving Straumann's assessment rating. Straumann's infringing conduct, as stated above, was found to have lasted from October 2015 to June 2021. Beijing AMR held that Straumann's conduct constituted RPM and therefore violated Articles 14(1) and 14(2) of the former AML. A fine amounting to 3% of Straumann's sales value in China in 2020, i.e., approx. RMB 34.39 million (approx. USD 5 million), was imposed by Beijing AMR. Although this decision was published after the Amended AML had been in force, the decision was made in accordance with the former AML given that the case was formally established and the infringing conduct ended before the Amended AML took effect.

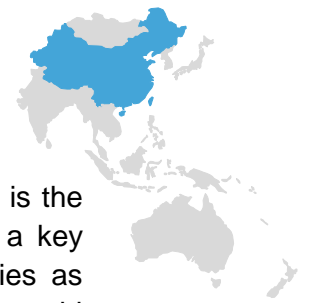
Other news

SAMR appoints Antitrust Director and announces future recruitment

According to SAMR's updated organisational structure, which was published on SAMR's official website on 14 October 2022, Mr. Xu Xinjian, the current Director-General of the Laws and Regulations Division of SAMR, has been concurrently appointed as the Antitrust Director of SAMR. Note that this is a new position within SAMR; the only other function which has a position of Director within SAMR is regarding food safety. This move, in combination of the establishment of National Anti-Monopoly Bureau (the "**Bureau**") in 2021, is considered to further enhance the critical status of antitrust in China. This new Antitrust Director position is responsible for overseeing the newly revamped Bureau and assisting the Bureau's head to strengthen China's antitrust enforcement. In addition, on 25 October 2022, SAMR also announced that it would recruit 11 officials in 2023 for the incumbent three antitrust divisions within the Bureau, so as to expand China's antitrust enforcement capacity.

China Supreme Court sheds useful light upon exclusive dealing in a recent antitrust ruling

On 3 November 2022, China's Supreme People's Court ("**SPC**") ruled partially in favour of the claimant, Weihai Hongfu Property ("**Hongfu**"), a real estate developer, which claimed that Weihai Water Affairs Group ("**Weihai Water**") had abused its dominant position. The dispute arose from a residential renovation project in July 2013 where Hongfu commissioned a third-party construction company (Jianfeng) to provide water supply and drainage engineering services. Weihai Water, which has certain industry administration duties as well as being the only local water supplier, later required Hongfu to reverse the work undertaken by Jianfeng and instead use Weihai Water's affiliates to redo the work.



ANTITRUST INVESTIGATIONS AND OTHER NEWS

The SPC found that Weihai Water had abused its market dominance (given that it is the only water supplier in Weihai City) through exclusive dealing practices. Notably, a key piece of evidence suggested that Weihai Water provided only its own subsidiaries as service providers without suggesting any third-party names. The SPC held that this would be construed to have implicitly imposed exclusivity, violating Article 22(4) of the Amended AML. The SPC also clarified that (i) the damages in the context of exclusive dealing would be the difference between actual expenses as a result of the exclusive dealing practices and reasonable transaction costs under normal competitive conditions; and (ii) the claimant shall bear the burden of proof. This ruling was selected as one of the SPC's Ten Classic Antitrust Cases.

China releases Draft Anti-Unfair Competition Law Amendments for consultation

On 22 November 2022, SAMR published the Draft Anti-Unfair Competition Law Amendments ("**AUCL Amendments**") for public comments until 22 December 2022. Compared with the amendments of 2017 and 2019, the AUCL Amendments focus on dealing with novel unfair competition arising from the emerging digital economy. In this regard, new provisions have been introduced to prohibit gaining illegitimate benefits through click farming; excluding or hindering access through technical means or platform rules; improperly obtaining, disclosing, using or transferring commercial data, etc. The AUCL Amendments revisited the concept of "comparative advantages" following an unsuccessful attempt in the 2017 amendments. The intention is to catch anti-competitive conduct of platforms whose market power does not amount to dominance, and therefore cannot be subject to the AML. Despite the good intention, the abstract definition of "comparative advantages" and the potential overlap of this notion with what amounts to abuse under the AML may lead to difficulties in practice. Another notable change in the AUCL Amendments is the intensified liabilities against illegal conduct. For example, the maximum fine for commercial bribery was raised from RMB 3 million (USD 436,500) to RMB 5 million (USD 727,500), and the application of punitive damages was expanded from the infringement of trade secrets to all types of serious violations.

China Supreme Court announces Ten Classic Antitrust Cases

On 17 November 2022, the SPC published Ten Classic Antitrust Cases, which summarised the SPC's judicial progress in relation to antitrust litigation and provided helpful guidance on how to interpret and apply the AML in contentious cases. There are three notable examples:

- **Drug patent reverse payment agreement:** in *AstraZeneca v. Jiangsu Aosaikang*, for the first time the SPC conducted a preliminary antitrust review of a "reverse payment agreement" in the pharmaceutical sector. Although there was no conclusion on this specific issue in this case, the SPC shed useful light on this point. For example, the SPC suggested that counterfactual analysis be conducted when assessing the competitive effects of a given reverse payment agreement.
- **Concerted practice:** in *Maoming Dianbai District Jianke Concrete v. Guangdong Administration for Market Regulation*, where a cartel decision was challenged, the SPC clarified that there were two factors to establish a presumption of concerted practices, i.e., parallel market behaviours and information exchange. Further, such presumptions could be rebutted by defendants on the basis of effective justification for their parallel market behaviours.



ANTITRUST INVESTIGATIONS AND OTHER NEWS

- **Hardcore anti-competitive agreements in a legal context:** in *Shanghai Huaming Power Equipment v. Wuhan Taipu Transformer Changer*, the SPC confirmed that the market sharing, output/sales restriction and price fixing agreement, which was agreed by the parties (who are competitors) for the purposes of settling IPR disputes should still be deemed to violate the AML. This case is important in the sense that it confirms that hardcore anti-competitive agreements cannot be justified despite of being agreed on to achieve legitimate purposes.

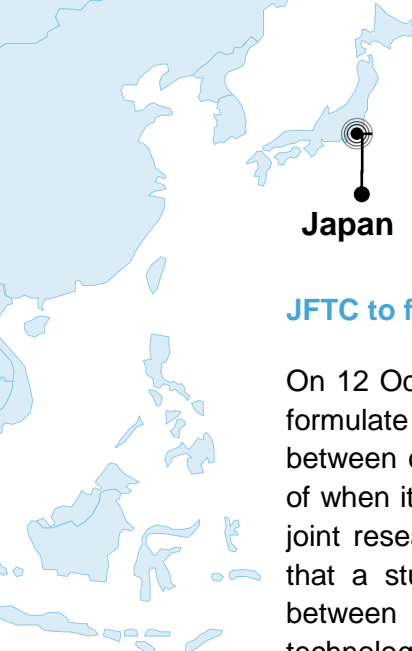
China Supreme Court publishes Draft Provisions re. Antitrust Private Litigation

On 18 November 2022, the SPC issued the Draft Provisions on Several Issues regarding the Application of Law in Antitrust Civil Litigation ("**Draft Provisions**") for public comments until 9 December 2022. The Draft Provisions have been expanded, from the 16 articles of the previous version to 52 articles, reflecting both the Amended AML and the Platform Antitrust Guidelines (which came into force in February 2021).

Remarkable changes in the Draft Provisions include, among others:

- **Introducing the "single economic entity" principle:** the Draft Provisions have expressly recognised the "single economic entity" principle, which originates from EU competition law, for the first time. The "single economic entity" notion is used to determine whether the parties concerned in a given case should be considered as separate undertakings or a single undertaking within the meaning of antitrust rules.
- **Refining the burden of proof for vertical anti-competitive agreements:** following the Amended AML's introduction of a relatively relaxed approach to RPM, the Draft Provisions further confirm this approach in judicial practice by clarifying the burden of proof. In RPM cases, defendants shall bear the burden of proving the absence of anti-competitive effects, whereas in non-price vertical cases, plaintiffs shall bear the burden of proving the presence of anti-competitive effects.
- **Addressing reverse payment and pay for delay agreements:** the Draft Provisions touched upon reverse payment and pay for delay agreements, which have been in spotlight and attracted antitrust scrutiny in other jurisdictions. This was also to reflect the SPC's ruling in the *AstraZeneca v. Jiangsu Aosaikang* case (see above) which was the first antitrust case on this subject in China.
- **Applying economic analysis:** the Draft Provisions refer to a number of economic terms, such as "average avoidable cost", "average variable cost", "as-efficient competitor", etc., to reflect the importance of applying economic rules in complicated antitrust cases.

Note, however, that although the Draft Provisions are pioneering in many aspects, they should be interpreted in the context of antitrust civil litigation. In this sense, the Draft Provisions have been criticised for being overly ambitious, seeming to play a role as "quasi-legislation".



Japan

JFTC to formulate guidelines on collaborations towards decarbonisation

On 12 October 2022, the Japan Fair Trade Commission ("**JFTC**") announced that it would formulate guidelines to set out principles under the Antimonopoly Act regarding collaboration between companies towards decarbonisation. The plan is to publish criteria and examples of when it would violate the Antimonopoly Act and when it would not in terms of conducting joint research and sharing equipment with competing companies. It was also announced that a study group would be set up to formulate such guidelines. While collaboration between companies is essential for the capital investment and development of new technologies aimed at decarbonisation, companies may be hesitant to work with competitors due to concerns that this may breach the Antimonopoly Act. The guidelines will provide examples of possible measures, for example, that competitors can exchange opinions and share information with each other if they do not share prices and supply volumes.

JFTC launches a new survey on news content distribution sector

On 16 November 2022, Wataru Kobayashi, Secretary-General of the JFTC ("**Secretary General**"), announced the launch of a new fact-finding survey on the digital sector, targeting the news content distribution sector. The Secretary General pointed out that there may be problems under the Antimonopoly Act with regard to the fees for the distribution of news content and the ranking of the news content on search websites, making it difficult to provide high quality news content or to provide news content itself. The Secretary General stated that the JFTC would conduct a questionnaire survey of approximately 300 content providers to ascertain the actual situation and proceed with an investigation into whether or not there was a violation of the Antimonopoly Act. The Secretary General stated that they recognise Yahoo News, Smart News, LineNews, Gnosy and Google News as among the most popular news platforms though the survey would not be limited to these platforms.

JFTC conducts dawn raids for alleged bid-rigging practices

On 25 November 2022, the JFTC and the Tokyo District Public Prosecutors Office ("**Prosecutors**") conducted a dawn raid of DENTSU INC., a major Japanese advertising agency, and CERESPO CO.,LTD., a Japanese event production company, for allegedly coordinating orders in a bidding process for planning work for the implementation of test events ordered by the Tokyo Organising Committee of the Olympic and Paralympic Games ("**Committee**"). In addition, a dawn raid was also conducted on the former deputy director of the Committee. Furthermore, by 29 November 2022, the JFTC and the Prosecutors had conducted dawn raids on several Japanese companies, including advertising agencies, event and programme production companies and sporting goods sales companies. The companies subject to the dawn raids in this case were eight of the nine companies that won the bidding process mentioned above.

Three international credit card brands publish the interchange fee rates

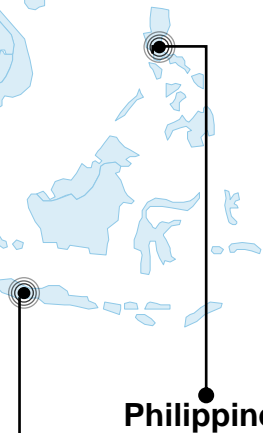
On 30 November 2022, three international credit card brands (i.e. MasterCard, Union Pay and Visa) published their interchange fee rates (i.e. rates of standard fees paid by a settlement company contracted by a store to another settlement company contracted by a user when payment is made by credit card) in Japan. By way of background, the JFTC and METI had each published a report on the standard interchange fee rates by April 2022 and stated that it would be appropriate for international brands that have set their own standard interchange fee rates to publish such rates. The three international credit card brands followed this publication and published their interchange fee rates.



Japan

JFTC to impose fines on major Japanese utilities for engaging in a cartel

On 1 December 2022, three major Japanese electric power companies – the Chugoku Electric Power Company, Incorporated, Chubu Electric Power Co., Inc. and Kyushu Electric Power Co., Inc. – announced that they had received a draft order from the JFTC for payment of surcharges for engaging in a cartel restricting suppliers over the sale of special high-voltage electricity to large facilities and high-voltage electricity to small and medium-sized buildings. The total amount of the surcharge is expected to be approximately JPY 100 billion (USD 77 million), which would be the highest amount ever imposed on one case in Japan since the surcharge system was introduced in Japan in 1977. It is expected that the Kansai Electric Power Company, Incorporated will avoid administrative penalties due to the leniency.



Philippines

PCC makes efforts to tackle antitrust challenges arising from digital economy

In October 2022, the Philippine Competition Commission ("**PCC**") solicited public comments on its draft guidelines re non-horizontal mergers, which may have direct, substantial and reasonably foreseeable effects on competition in the Philippines. These draft guidelines are particularly crucial for digital markets, where anti-competitive conglomerate effects are emerging.

In addition, the PCC is conducting two market studies – on e-commerce and relevant digital platforms – in the Philippines. Furthermore, like competition authorities in many other jurisdictions, the PCC is considering adapting antitrust rules and introducing new regulatory tools in response to the emerging challenges (e.g., self-preferencing) in digital markets.

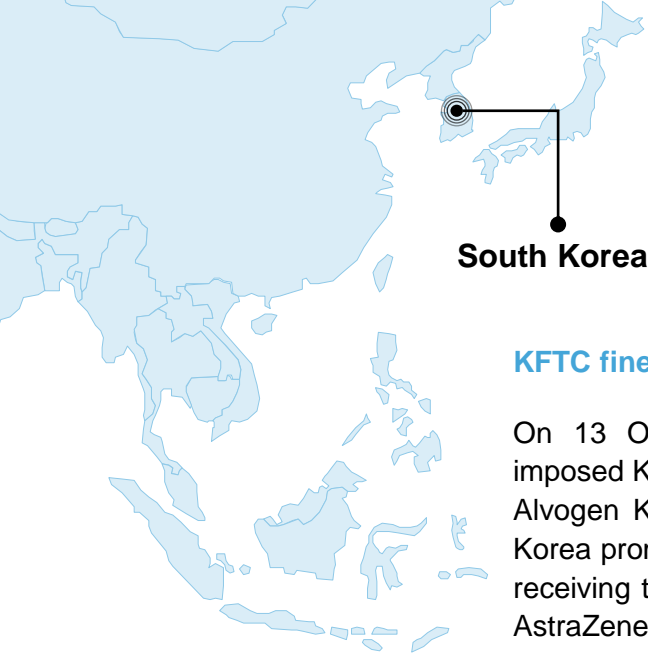
PCC identifies priority sectors for antitrust enforcement in 2023-2024

On 9 December 2022, the PCC announced that the following sectors: (i) e-commerce; (ii) health and pharmaceuticals; (iii) food and agriculture; (iv) energy and electricity; (v) insurance; (vi) construction; (vii) water; and (viii) telecommunications, will remain on its antitrust enforcement radar for the next two years. Given the importance of these sectors to the Philippines' post-pandemic economic recovery, the PCC is expected to step up its enforcement actions in these areas in the near future.

Indonesia

KPPU outlines its antitrust priorities in 2023

In early December, the Indonesia Competition Commission ("**KPPU**") outlined its priorities for 2023. Priority sectors include, among others, staple foods, construction, and the digital economy. The KPPU also has a particular aim to strengthen antitrust supervision in partnership with small- and medium-sized enterprises. A new digital system will be set up by the KPPU to enhance antitrust enforcement in both conduct issues and merger control. It is noteworthy that, in 2022, the KPPU witnessed a significant increase of 28.7% in merger notifications, with the real estate sector providing the most filings. In addition, the KPPU also imposed a total amount of IDR 27 billion (USD 2.7 million) in pecuniary penalties in 15 cases involving bid-rigging, gun-jumping, abuse of dominance.



South Korea

KFTC fines pharmaceutical companies for blocking drug entry

On 13 October 2022, the Korea Fair Trade Commission ("KFTC") imposed KRW 2.65 billion (USD 2 million) fine in total on AstraZeneca and Alvogen Korea for blocking the market entry of generic drugs. Alvogen Korea promised not to produce and release the generic drugs in return for receiving the exclusive rights for distributing three anti-cancer drugs from AstraZeneca.

KFTC releases new guidelines on notification of illegal rebate cases

On 20 October 2022, the KFTC published new guidelines in the pharmaceutical sector, by which the KFTC is required to notify illegal rebate cases to the relevant government offices within 30 days of processing the case.

KFTC to formulate regulations targeting digital platforms

On 21 October 2022, the KFTC announced that they would prepare and revise regulations to address the issues regarding digital platforms, such as the rules on the market definitions and unlawful conduct categories relating to digital platforms.

KFTC sets up a new division responsible for online platform regulations

On 1 December 2022, the KFTC established a new division within the KFTC's anti-monopoly bureau to handle the online platform regulations, in order to act against antitrust violations in the digital platform sector.

Three insurance companies were accused of big-rigging

On 22 December 2022, the Seoul Central District Prosecutors Office indicted three insurance companies (Samsung F&M Insurance, Hanwha General Insurance and Meritz F&M Insurance) for bid-rigging regarding property insurance services for Korea Land & Housing Corporation.

KFTC to establish a new division on global M&A cases

On 27 December, the KFTC announced that they would establish a new Global M&A Division with the KFTC. The new division will have seven officials, and handle the global M&A cases, coordinating with other competition authorities. Currently, the KFTC's M&A division has eight officials reviewing more than 1,000 cases every year, and this new division is expected to strengthen the KFTC's capability to review global transactions.



India ●

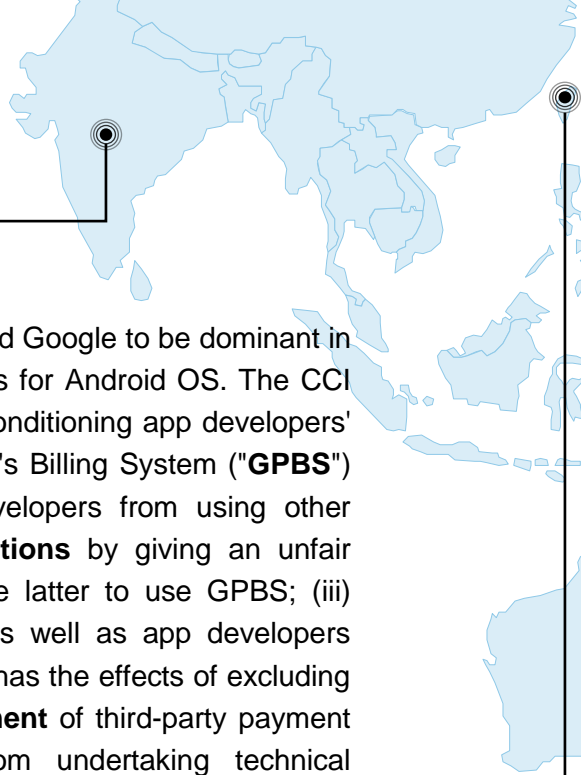
CCI penalises online hotel aggregators for abusive conduct and anti-competitive vertical restraints

On 19 October 2022, the Competition Commission of India ("CCI") penalised MakeMyTrip Golbibo ("MMT-Go", an online travel agency) for abusing its dominant position and entering into an anti-competitive arrangement with Oravel Stays ("OYO", a franchisee service provider which markets budget hotels by co-branding with them and is listed on MMT-Go's platform). The CCI concluded that: (i) MMT-Go abused its dominant position in the market for online intermediation services for hotel booking in India through price/room parity clauses, deep discounts and inter-se exclusivity conditions; and (ii) MMT-Go entered into an exclusionary agreement with OYO to delist OYO's two closest competitors from MMT-Go's platform. Such an agreement was itself in the nature of refusal to deal and foreclosing competitors in both hotel booking and franchisee service markets. The CCI fined MMT-Go INR 2.2 billion (USD 27 million) and OYO INR 1.7 billion (USD 21 million). The CCI also ordered MMT-Go to implement broad behavioural remedies. This is one of the first cases in which the CCI has dealt with competition concerns arising from online platform markets. The order was later appealed by both OYO and MMT-Go to the competition tribunal, which then granted a stay on the parties' pecuniary penalty in December 2022.

CCI fines Google twice for abusive conduct in just one week

In October 2022, the CCI released two penalty decisions against Google for its abusive conduct regarding Google's Android mobile device ecosystem and Google's Play Store policies, slapping two hefty fines of INR 13.37 billion (USD 161.64 million) and INR 9.36 billion (USD 113.38 million) on Google, respectively.

- **The Android decision** (21 October 2022) – The CCI found Google to be dominant in five Indian markets: (i) licensable OSs for smart mobile devices; (ii) app store for Android smart mobile OS; (iii) general web search services; (iv) non OS-specific mobile web browsers; and (v) online video hosting platform ("OVHP"). The CCI concluded that Google (i) **imposed unfair conditions** on original equipment manufacturers ("OEMs") to pre-install an entire suite of Google's proprietary apps and services in mobiles with no option to uninstall the same; (ii) **restricted OEMs' development of Android forks** by making pre-installation of Google's proprietary apps (particularly the Play Store) conditional upon signing of agreements that required OEMs to use Google's version of Android; (iii) **imposed exclusivity** by requiring the OEMs to set Google Search as the default search engine and conditioning the share of advertisement revenues on OEMs' commitment to not pre-installing any competing general search apps; and (iv) through **tie-in arrangements** (i.e., tying Play Store with other Google apps, such as Google Search, Chrome and YouTube), thereby leveraging its dominant position in the app store market for Android OS. The CCI ordered Google to, inter alia, refrain from: forcing OEMs to pre-install a portfolio of Google apps; denying developers' Android forks or requiring OEMs not to sell devices based on Android forks; and offering any incentives to OEMs to maintain exclusive use of Google Search.



India ●

- **The Play Store decision** (25 October 2022) – The CCI found Google to be dominant in the Indian markets for licensable mobile OS and app stores for Android OS. The CCI concluded that Google (i) **imposed unfair conditions** by conditioning app developers' access to Play Store on the mandatory use of Google Play's Billing System ("**GPBS**") for paid apps and in-app purchases, restricting app developers from using other payment instruments; (ii) **imposed discriminatory conditions** by giving an unfair advantage to Google's YouTube through not requiring the latter to use GPBS; (iii) **denied market access for** other payment aggregators as well as app developers through the exclusive imposition of GPBS, which inherently has the effects of excluding Google's competitors; and (iv) **limited technical development** of third-party payment aggregators/app developers who were discouraged from undertaking technical innovation. The CCI ordered Google to, inter alia, allow app developers to use third-party billing processing services, refrain from discriminating against apps using other payment processing services, and cease imposing on app developers any conditions that are discriminatory, unfair, unreasonable or disproportionate.

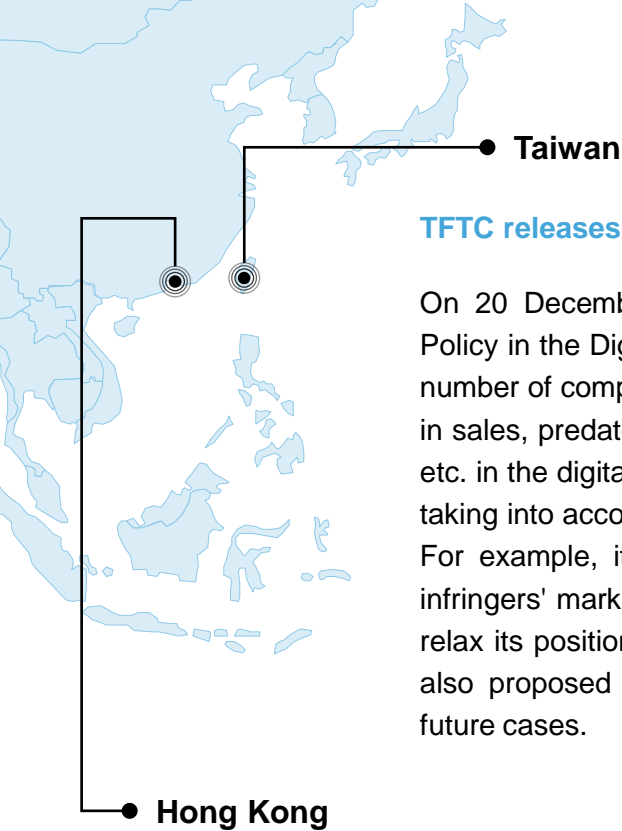
Taiwan ●

TFTC launches an investigation against Apple for alleged exclusive practices

On 17 November 2022, the Taiwan Fair Trade Commission ("**TFTC**") confirmed the initiation of an investigation against Apple. The investigation was driven by app developers' complaints that Apple and Google restricted them from using third-party payment methods. While the complaints targeted both Google and Apple, TFTC only launched an investigation against Apple as its preliminary findings suggested that Google's Android system would be relatively open with third-party payment platforms. During its investigation, the TFTC will assess whether (i) Apple enjoys a dominant position; (ii) the alleged exclusive practices exist and the degree of such exclusive arrangements; (iii) the alleged conduct has foreclosed competition; and (iv) there are any justifiable reasons. If the conduct is considered to amount to exclusive dealing and therefore violates competition law, Apple would likely face a fine ranging from TWD 100,000 (USD 3,214) to TWD 50 million (USD 1.6 million).

TFTC fines Taiwan Mobile for gun jumping

On 14 December 2022, the TFTC published a decision concerning a fine in relation to Taiwan Mobile's gun-jumping. On 26 November 2021, Taiwan Mobile closed its acquisition of more than one-third of equity interests with control rights in Prosperous Living. This transaction was notifiable as Taiwan Mobile had met the Taiwanese filing threshold, given its above 25% market share in the online shopping market in Taiwan in 2020. Apart from online shopping, the transaction also concerned the Taiwanese markets for telecommunications and food supplements. Taiwan Mobile filed with the TFTC in June 2022 (i.e., after completion), violating Article 11(1) of the Fair Trade Act. Considering that the transaction's overall economic benefits would outweigh its potential harm to competition, the TFTC took relatively light measures through a fine of TWD 500,000 (USD 16,387) on Taiwan Mobile. Note also that this is not the first time that Taiwan Mobile has jumped the gun – previously for example, in February 2020, Taiwan Mobile was fined for failure to file its acquisition of Bebe Poshe International, which was completed in July 2018.

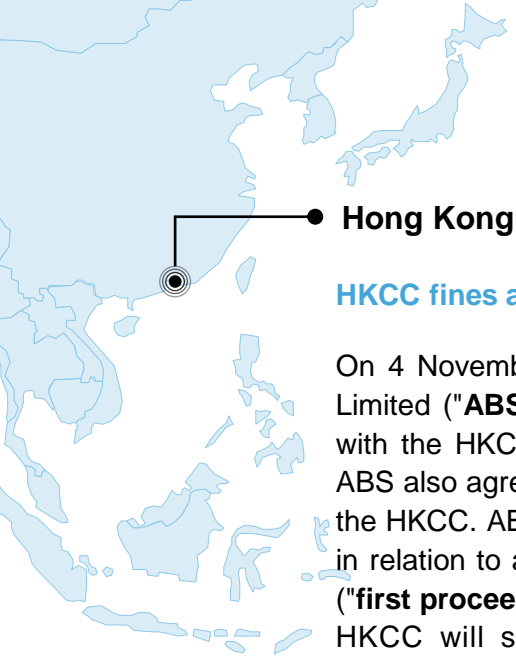


TFTC releases the final white paper re digital economy

On 20 December 2022, the TFTC released the White Paper on Competition Policy in the Digital Economy (the "**White Paper**"). The White Paper singled out a number of competition issues in relation to market definition, self-preferencing, tie-in sales, predatory pricing, price discrimination and most favoured nation clauses, etc. in the digital economy. The White Paper gave recommendations to the TFTC, taking into account the agency's needs both in the short term and in the long term. For example, it was recommended in the White Paper that the TFTC rein in infringers' market power in RPM cases in the short term and consider whether to relax its position in relation to vertical conduct in the long term. The White Paper also proposed introducing technical tools to improve enforcement efficiency in future cases.

HKCC accepts car distributors' commitments to remove car warranty restrictions

On 10 October 2022, the Competition Commission of Hong Kong ("**HKCC**"), following consultation, accepted the commitments offered by seven car distributors. The commitments followed an investigation by the HKCC, which revealed that seven car distributors had imposed warranty restrictions requiring maintenance and/or repair services to be carried out at authorised repair centres, regardless of whether the maintenance or repair was covered by the warranty; customers not following this requirement would be at risk of having their warranties invalidated. The HKCC was concerned that these restrictions might limit the ability of independent car repair workshops to compete with authorised repair centres, reduce car owners' choice of service, and ultimately lead to higher prices for maintenance and repair services. In response to the investigation, the seven distributors offered commitments (i) not to enforce the existing warranty restrictions, (ii) not to include such restrictions in new warranties, and (iii) to make corresponding amendments to their warranty documentation and to communicate the changes to existing customers. The acceptance of these commitments will result in the complete removal of these warranty restrictions, thus addressing the HKCC's concerns.



Hong Kong

HKCC fines an air-conditioning contractor based on cooperation terms

On 4 November 2022, the HKCC announced that ATAL Building Services Engineering Limited ("**ABS**") had agreed to admit liability and entered into a cooperation agreement with the HKCC under the Cooperation and Settlement Policy. Two senior engineers of ABS also agreed to admit liability and entered into separate co-operation agreements with the HKCC. ABS has been a respondent in the proceedings commenced on 16 June 2022 in relation to alleged cartel conduct in the supply of air-conditioning works in Hong Kong ("**first proceedings**") as well as in further proceedings regarding a related subject that the HKCC will shortly commence in the Competition Tribunal ("**Tribunal**") ("**second proceedings**"). The above will result in the submission of joint applications to the Tribunal seeking orders including (i) declarations of ABS's contravention, (ii) payment of a pecuniary penalty of HKD 150 million (USD 19 million), and (iii) recovery of the

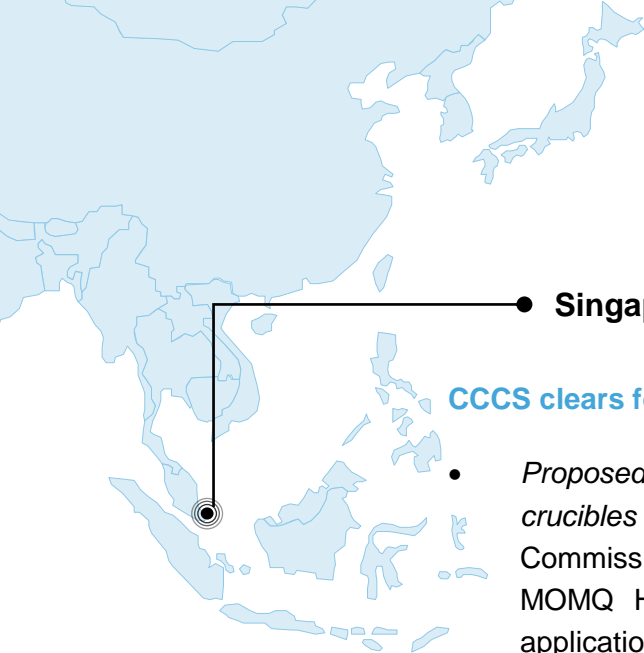
HKCC's costs. Further, based on the co-operation agreements, ABS, its parent company Analogue Holdings Limited ("**AHL**") and the two senior engineers are required to provide full assistance to the HKCC in relation to the first and second proceedings, and enhance competition compliance measures. The HKCC will exercise its discretion to seek an adjournment of proceedings against AHL in the first proceedings. Legal proceedings against the remaining respondents in the first proceedings are ongoing; the second proceedings will commence soon.

HKCC publishes Annual Report 2021/2022

On 23 November 2022, the HKCC published its Annual Report 2021/2022, providing an overview of its work and achievements during the reporting year 1 April 2021 to 31 March 2022. According to the Annual Report, during that reporting year, the HKCC received and processed 235 complaints, escalating 17 cases to the Initial Assessment phase, and commenced investigations in six cases. The reporting year also saw a number of "firsts" in the HKCC's enforcement work, including the first joint operation with the Hong Kong Police, and the first time the HKCC openly invited information from the public for the investigations it conducted. The HKCC said that both new enforcement strategies had brought welcome results.

HKCC actively enforces against fish market anti-competitive practices

In this quarter, the HKCC enforced action against the anti-competitive practices at the Aberdeen Wholesale Fish Market ("**Fish Market**"). On 27 November 2022, the HKCC, together with the Hong Kong Police and several government departments, conducted a joint operation early in the morning at the Fish Market. The dawn raid followed a complaint alleging that wholesalers at the Fish Market engaged in price-fixing in the sale of fish products. After the joint operation, the HKCC analysed all relevant information in detail, and was satisfied that there is "reasonable cause to suspect" a contravention of a competition rule. The HKCC therefore decided to escalate the case to the investigation phase. On 20 December 2022, assisted by the Hong Kong Police, the HKCC, exercising its compulsory powers, executed search warrants during the morning at a number of premises, including a fishing vessel, at the Fish Market, for alleged anti-competitive conduct including price-fixing, output limitation and group boycott. In addition to searching premises, it also requested relevant parties to produce documents and information and attend the HKCC to provide information relating to the case.



● **Singapore**

● **CCCS clears four cases in this quarter**

- *Proposed Acquisition by MOMQ Holding Company of CoorsTek KK.'s crucibles business:* On 18 October 2022, the Competition and Consumer Commission of Singapore ("**CCCS**") cleared the proposed acquisition by MOMQ Holding Company of CoorsTek KK.'s crucibles business. The application was received on 26 August 2022. The CCCS considered that the relevant market for its assessment is the global supply of quartz crucibles used in the production of 300mm silicon wafers. It concluded that the transaction is unlikely to lead to a substantial lessening of competition ("**SLC**") in Singapore.
- *Proposed Acquisition by ContiTech Global Holding Netherlands B.V. of Trelleborg AB's Printing Solutions Business:* On 27 October 2022, the CCCS cleared the proposed acquisition by ContiTech Global Holdings Netherlands B.V. of 100% of the total issued shares in Printing Solutions Sweden Holding AB from Trelleborg AB. The application was received on 17 June 2022. The CCCS's assessment was based on the markets for the global manufacturing and supply to Singapore and worldwide of (a) offset printing blankets as a whole, and (b) the specific overlapping types of offset printing blankets in Singapore (i.e. flat-backed/fabric printing blankets and self-adhesive printing blankets), with a focus on the flat-backed/fabric printing blanket market. The CCCS concluded that the transaction is unlikely to give rise to an SLC in Singapore.
- *Proposed Acquisition by Sembcorp Marine Limited of Keppel Offshore & Marine Limited:* On 2 November 2022, the CCCS cleared the proposed acquisition by Sembcorp Marine Limited of 100% of Keppel Offshore & Marine Limited. The notification was received on 29 July 2022. The CCCS considered in its assessment the markets for (a) the global supply of Commercial Vessels, and (b) the regional supply of ship repair services, based on trade routes. It concluded that the transaction is unlikely to lead to an SLC in Singapore.
- *Merger of Self-Storage Companies:* On 14 November 2022, the CCCS cleared the proposed acquisition by StorHub Venture Pte. Ltd. of the Mandarin Self Storage Target Companies. The application was received on 14 March 2022. The CCCS assessed the competition impact on the market for the supply of self-storage services, excluding wine and mobile-storage services, both nationwide and within smaller catchment areas of certain self-storage facilities operated by the parties, and concluded that the transaction is unlikely to lead to an SLC in Singapore.



● Singapore

CCCS releases its Annual Report 2021/2022

In October 2022, the CCCS published its 2021/2022 Annual Report. According to the Annual Report, in FY2021, the CCCS received a total of 11 merger notifications, the highest number for several years, involving marine drilling equipment suppliers, airlines, manufacturers of aerospace control systems, suppliers of clinical trial services, and players in the semiconductor industry. Competition concerns were raised in a merger involving financial services providers London Stock Exchange Group and Refinitiv Holdings. Following an in-depth review, the CCCS cleared the merger after accepting a set of commitments. Two merger notifications were ultimately withdrawn and the mergers terminated, after concerns were raised by competition authorities in other jurisdictions. The CCCS indicated that it will continue to monitor developments in the market and may probe an unnotified merger if there are reasonable grounds for suspecting that the merger results in an SLC in the market. The CCCS also highlighted its proposed efforts in the coming year in the aviation and funeral services sectors, as well as attention to digital markets, sustainability, logistics, renovation, and beauty and wellness.

CCCS penalises warehouse operators for price-fixing

On 17 November 2022, the CCCS issued an Infringement Decision against four warehouse operators for price-fixing and imposed a total financial penalty of SGD 2,799,138 (USD 2.04 million). Following a complaint received from the public, the CCCS commenced investigations and subsequently conducted unannounced inspections simultaneously at the warehouse operators' places of business at Keppel Distripark on 19 November 2019. It was found that the parties engaged in price-fixing by imposing in a coordinated manner an additional charge known as the "FTZ Surcharge" for warehousing services at Keppel Distripark. The parties knew that independently imposing the FTZ Surcharge could cause their customers to switch warehousing service providers, especially if their competitors did not impose such a charge. The exchange between the parties of their respective intentions to impose the FTZ Surcharge not only reduced their own uncertainty in deciding whether to impose the FTZ Surcharge but also enhanced their negotiating positions in respect of their own customers. Additionally, it is worth noting that Penanshin, one of the operators, applied for leniency applicant; it provided useful evidence and co-operated with the CCCS, and its financial penalty was significantly reduced after the CCCS applied a leniency discount.



Australia

Digital Platform Services Inquiry fifth interim report – ACCC recommends new competition and consumer laws to regulate digital platforms

On 11 November 2022, the Australian Competition and Consumer Commission ("**ACCC**") released its fifth interim report ("**Report**") as part of the Digital Platform Services Inquiry. The ACCC has been considering the competition and consumer impacts of digital platforms since 2017 across 3 separate inquiries (Digital Platforms Inquiry, Digital Advertising Services Inquiry and the Digital Platform Services Inquiry).

In this Report, the ACCC noted that while Australia has robust competition and consumer laws capable of addressing many forms of harmful conduct across the economy, they are not well-suited to addressing the range and scale of consumer and competition harms identified in digital platform markets. The ACCC recommended a range of new ex-ante measures to address these concerns, including the introduction of:

- economy-wide consumer measures, including to:
 - introduce a standalone "unfair trading practices" prohibition to fill a perceived gap in Australian consumer law (a recommendation the ACCC has suggested since 2021);
 - strengthen the existing unfair contract term laws, including by enabling penalties to be imposed for breaches (the Australian government has enacted many of the ACCC's recommendations with respect to unfair contract terms in November 2022, which will take effect in November 2023);
- digital platform-specific consumer measures to prevent and remove scams, harmful apps and fake reviews, including dispute resolution processes, including to:
 - provide user-friendly processes for reporting scams, harmful apps, and fake reviews, and to respond to such reports;
 - reduce the risk of scams by verifying certain business users such as advertisers, app developers and merchants;
 - publish review verification processes to provide important information to readers of online reviews to help them assess the reliability of reviews on the platform;
 - report on scams, harmful apps and fake reviews on their services, and the measures taken to address them;
 - ensure consumers and small businesses can access appropriate dispute resolution, by setting minimum standards for internal dispute resolution processes, to be supplemented by the establishment of a new digital platform ombuds scheme with the ability to make binding decisions on digital platforms.



Australia

- Mandatory service-specific codes of conduct for designated digital platforms to address competition harms (which would only apply to digital platforms which meet the designated criteria), to address anti-competitive conduct, barriers to entry and unfair treatment of business users. The ACCC suggests these service-specific codes of conduct could include targeted obligations to:
 - prevent anti-competitive self-preferencing, tying and exclusive pre-installation arrangements;
 - address data advantages;
 - ensure fair treatment of business users;
 - prohibit conduct that frustrates customer switching;
 - improve hardware, software and systems interoperability; and
 - improve transparency (especially with respect to ad tech and the app review processes of app stores).

The Australian government is considering the ACCC's recommendations and will consult publicly with stakeholders to ensure Australia has the right regulations in place to be a leading digital economy. These changes would add to the recent significant changes made to the unfair contract terms laws, the increase in penalties for competition contraventions, and the commitment to establish a new National Anti-Scam Centre.

Telstra and TPG regional network deal not authorised by the ACCC

On 21 December 2022, the ACCC decided not to authorise the proposed regional mobile network arrangements between Telstra Corporation Limited ("**Telstra**") and TPG Telecom Limited ("**TPG**"). The parties had applied for formal merger authorisation on 23 May 2022, seeking authorisation for agreements (which was a deemed acquisition for the purposes of Australian law) to facilitate TPG providing Telstra with the use of its radiofrequency spectrum and Telstra supplying TPG with mobile network services in certain regional and urban fringe areas of Australia (an area in which approximately 17% of the Australian population resides) ("**Regional Coverage Zone**"). The ACCC received more than 170 submissions, 40 witness statements and expert reports: totalling more than 11,000 pages of material.

Under the formal merger authorisation process, the ACCC must not grant an authorisation unless it is satisfied in all the circumstances that the transaction would either:

- not have the effect, or be likely to have the effect, of substantially lessening competition; or
- result, or be likely to result, in a benefit to the public that would outweigh the detriment to the public that would result, or be likely to result, from the conduct.

Australia



The ACCC was unable to be satisfied under any of the above tests and therefore could not make a determination to grant authorisation to the transaction. The ACCC concluded (among other things):

- that any benefits for regional Australia arising from the proposed transaction would be unlikely to endure and that, in the longer-term, there are likely to be effects to the detriment of all mobile users, including those in the Regional Coverage Zone;
- that the proposed transaction was unlikely to materially improve Telstra's ability to serve regional Australia and would be likely to reduce the incentive for mobile network operators to invest in improving their service and coverage in the Regional Coverage Zone as a result of reduced competitive rivalry in the roll-out of mobile network infrastructure;
- that the proposed transaction was likely to entrench Telstra's position as the largest supplier of mobile services in Australia (it already has the greatest network coverage, the most spectrum, the highest market share, and earns the highest revenue per subscriber);
- in the short term, TPG customers would get access to a portion of the Telstra network, with TPG's coverage increasing from 96% to 98.8% of the Australian population. However, any increased competition this was likely to create would be likely to erode over time;

Bluescope and former general manager found to have engaged in cartel conduct by Federal Court of Australia

On 9 December 2022, the Federal Court of Australia found that Bluescope Steel Limited ("**BlueScope**") and its former general manager of sales and marketing, Mr Jason Ellis, engaged in cartel conduct in relation to the supply of flat steel products in Australia. The Court found that for a 10 month period between September 2013 and June 2014, BlueScope and Mr Ellis attempted to induce 8 Australian steel distributors, and 1 overseas manufacturer (Yieh Phui), to enter agreements to fix and/or raise the level of pricing for flat steel products supplied in Australia.

Specifically, the ACCC alleged that Mr Ellis had devised a strategy known as the 'recommended resale price strategy' to increase the value to BlueScope and its distributors of sales of flat steel products. The strategy was for BlueScope to publish a RRP which was to be used by BlueScope, BlueScope's distributors (including to distributors who were not reselling BlueScope products but were selling imported products in competition with distributors who were reselling BlueScope products) and import traders as a benchmark for raising their prices for the supply of flat steel products in Australia. The ACCC had also alleged that Mr Ellis devised a strategy for addressing competition from overseas steel manufacturers, being to restrict the volume of imported steel coming into Australia and to persuade overseas steel manufacturers to increase the price at which they sold flat steel products to Australian import traders. This strategy also involved threatening and making anti-dumping applications against overseas steel manufacturers unless the price at which they sold flat steel products in Australia increased.

Australia



The penalties hearing has been set down for 3 April 2023. In addition to the penalties sought by the ACCC against both BlueScope and Mr Ellis, the ACCC is also seeking an order disqualifying Mr Ellis from managing corporations for a period to be determined by the Court. This comes after Mr Ellis pleaded guilty to 2 counts of inciting the obstruction of a Commonwealth official as a result of his conduct in encouraging two other BlueScope employees to give false information and evidence to the ACCC during the investigation phase of the cartel conduct. Mr Ellis was convicted and sentenced to 8 months imprisonment but was immediately released on a recognizance in December 2020.

ACCC commences civil cartel proceedings against Qteq and its executive chairman

On 8 December 2022, the ACCC commenced civil cartel proceedings in the Federal Court of Australia against mining equipment and technology services company Qteq Pty Ltd ("**Qteq**") and its CEO Simon Ashton. Qteq is a Queensland-based company which provides mining equipment and technology services to support the upstream oil and gas industry (which involves discovering and extracting raw materials from reservoirs beneath the surface of the earth). Oil and gas producers acquire equipment and services from third party suppliers for the purposes of upstream activities. The ACCC alleges that between April 2017 and June 2019, Qteq made 7 attempts (6 of which Mr Ashton was allegedly involved in) to enter into, or to induce a competitor to enter into, a contract, arrangement, or understanding containing a cartel provision, including provisions which had the purpose of not supplying particular services to large oil and gas companies, to share markets and to rig a tender. Specifically, the ACCC alleges that if any of the attempts had been successful, they would have resulted in Qteq entering into collusive agreements with up to 4 current or likely competitors and would have caused QGC Pty Ltd, a joint-business operated by Shell Plc and Qteq's largest customer, Santos and other oil and gas producers to pay higher prices, and/or to receive lower quality services.

Qteq is facing a maximum penalty for each cartel offence of the greater of the following:

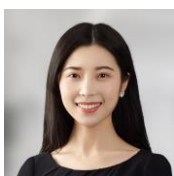
- AUD 10 million (USD 6.89 million),
- 3 times the total benefits that have been obtained and are reasonably attributable to the commission of the offence, or
- if the total value of the benefits cannot be determined, 10% of the corporation's annual turnover connected with Australia.

Mr Ashton's maximum penalty for each cartel offence is AUD 500,000 (USD 345,000).

Beijing



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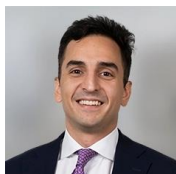


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