

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



ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE

January to March 2023

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ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: JANUARY TO MARCH 2023

INTRODUCTION

The first quarter of 2023 saw relatively quiet merger enforcement by the Chinese antitrust authorities, without intervened mergers or gun-jumping decisions. Notably, the review period of four simple cases exceeded 30 days for various reasons but it is believed to be temporary and does not suggest a trend of general delay in simple cases' review timeframe in China. To streamline the merger review process and enhance efficiency in the long run, the central antitrust authority (SAMR) is building up a merger review database.

The most remarkable development last quarter was that SAMR finally published the long-awaited implementing provisions (Provisions) that will be effective from 15 April 2023, for enforcing the amended Anti-Monopoly Law (AML) which came into force in August 2022. Covering merger control, anti-competitive agreements, abuse of dominance, and abuse of administrative dominance, the Provisions further clarified critical topics such as control analysis, turnover calculation, the "stop-the-clock" mechanism, hub-and-spoke agreements, the definition of competitors, the scope of the leniency system's application, the assessment of specific abusive conduct, the identification of collective dominance, etc. Disappointingly, the 15% market share threshold (as proposed in the draft Provisions) for the safe harbour rule was dropped in the finalized Provisions. On the conduct side, the last quarter witnessed two excessive pricing cases against two pharmaceutical companies, a cartel decision relating to several local cruise firms, and another abuse of dominance decision in the gas supply sector. Furthermore, SAMR announced key enforcement figures for 2022 and outlined its enforcement priorities for 2023.

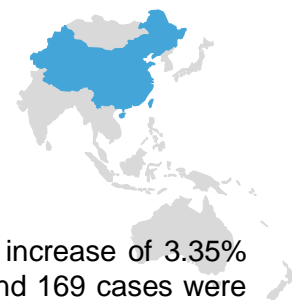
Outside China, scrutiny over the digital economy remained a focus of antitrust authorities in the region. South Korea announced new guidelines on abuse of dominance by online platforms and fined self-preferencing algorithm; Japan published market survey reports on mobile OS and app distribution markets and fintech-based services; Indonesia continued with its probe into Google's payment policy; in India, Google challenged the two penalty orders imposed by the Indian competition authority in 2022 while adapting its internal policies for better antitrust compliance; Australia and the Philippines both highlighted e-commerce/digital issues as their enforcement priorities for 2023. With respect to merger control, Indonesia and Cambodia were busy with introducing significant changes to their incumbent merger control regimes; in South Korea, the 2022 merger review records were released; and in India, merger review resumed after a pause of three months in the absence of a review quorum. On the conduct side - In Japan, advertising agencies and their officers and pharmaceutical wholesalers were targets of separate bid-rigging investigations; in Hong Kong, the model "Non-collusion Clauses" to be incorporated into the invitation-to-bid documents were enhanced and the first cartel case relating to the government subsidy scheme involving tender processes were taken to the Competition Tribunal. Separately, green society became under spotlight last quarter as South Korea fined German car manufacturers' collusion to avoid competition in developing clean emissions technology, and antitrust guidelines on achieving a green society were published in Japan.



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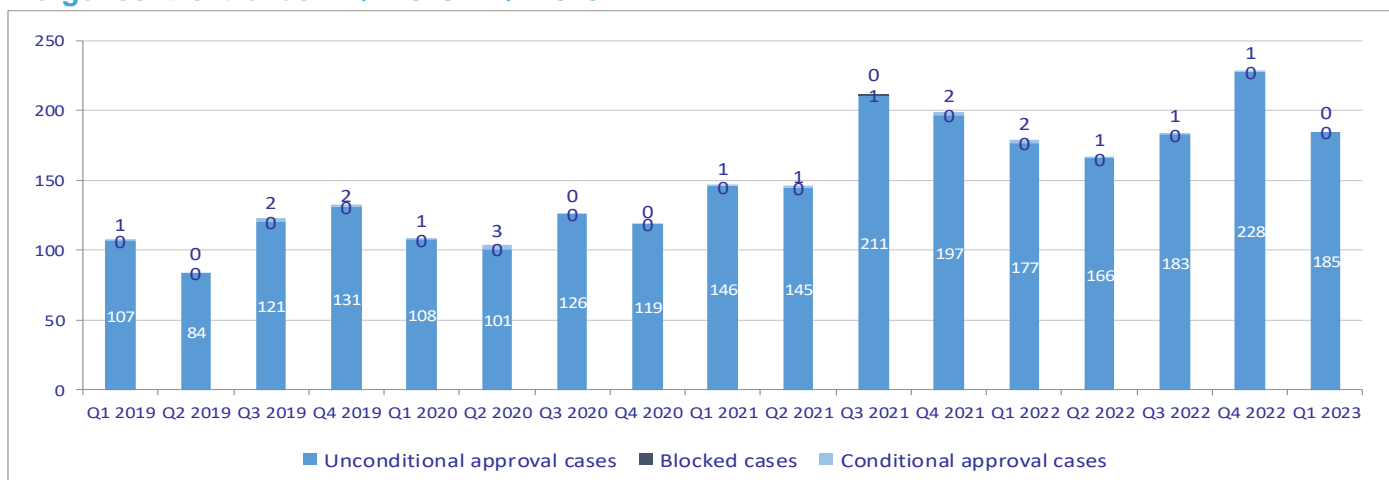


MERGER CONTROL

How many cases have there been?

There were in total 185 merger decisions released in the first quarter of 2023, an increase of 3.35% compared to the first quarter of 2022. All cases were cleared unconditionally. Around 169 cases were notified under the simplified procedure, which represents 91.35% of the total cases reviewed in this quarter.

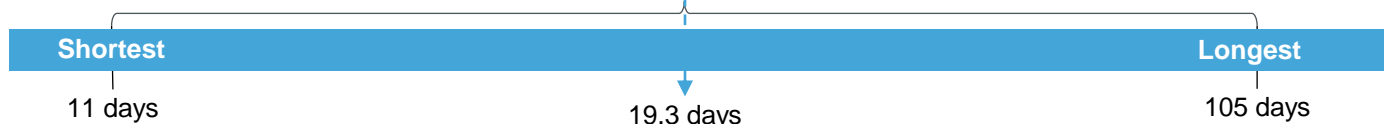
Merger control trends – Q1 2019 – Q1 2023



Simplified procedure: How quick is the review period?

Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
Q1 2019	16 days	77.8%	0
Q2 2019	17 days	85.7%	0
Q3 2019	19 days	78.9%	1
Q4 2019	14 days	81.2%	0
Q1 2020	14 days	87.2%	1
Q2 2020	13.7 days	86.5%	0
Q3 2020	14.4 days	72.2%	3
Q4 2020	13.7 days	83.2%	1
Q1 2021	14.9 days	80.3%	3
Q2 2021	13.8 days	90.4%	0
Q3 2021	13.4 days	86.3%	3
Q4 2021	15.6 days	91.0%	3
Q1 2022	17.1 days	83.8%	1
Q2 2022	17.2 days	87.4%	2
Q3 2022	21.7 days	85.3%	2
Q4 2022	18.1 days	93.5%	2
Q1 2023	19.3 days	91.4%	4

Q1 2023: Average

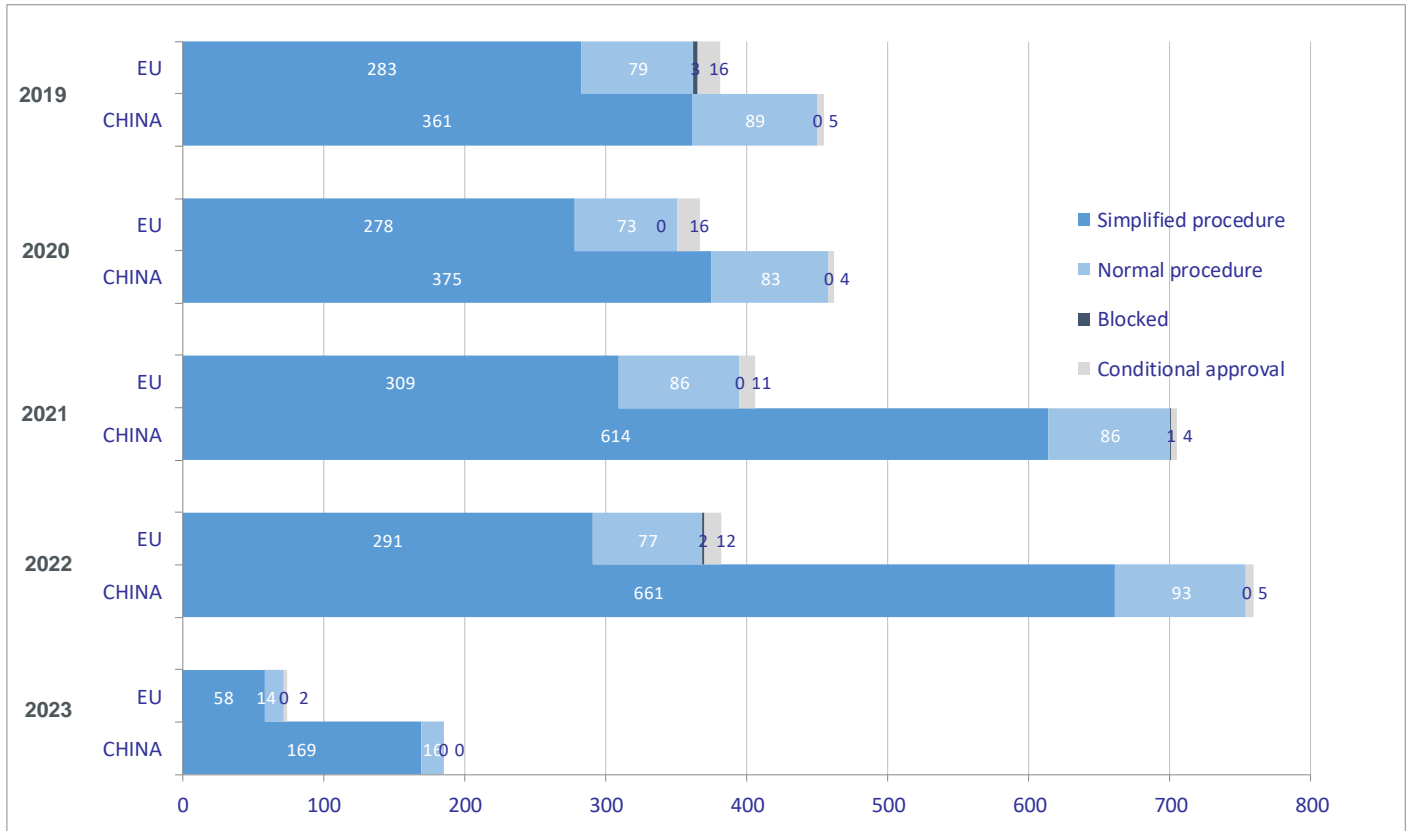




MERGER CONTROL

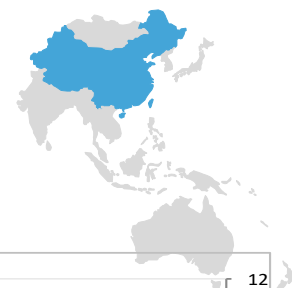
How does China compare internationally?

Comparison with EU – 2019 – 2023



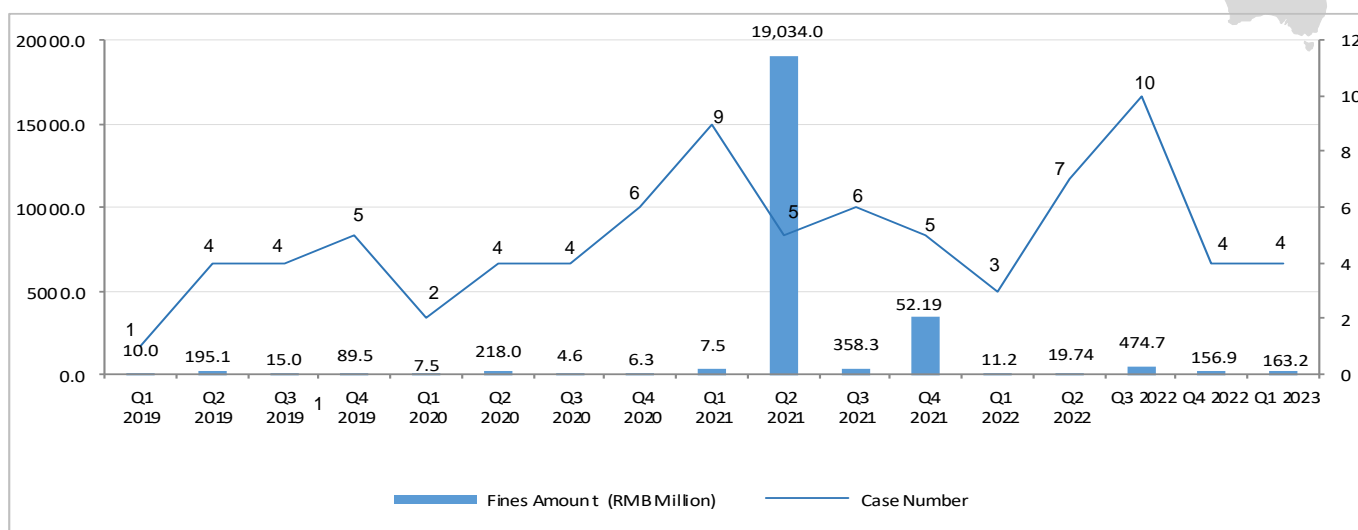
SAMR is building up a merger review database

State Administration for Market Regulation ("**SAMR**") is in the process of establishing a merger review database to streamline the merger review process and enhance efficiency in the long term. Given the presence of false and inaccurate data over SAMR's simplified procedure review, the Competition Policy and Big Data Centre ("**CPBDC**"), an organ within SAMR, was tasked with developing a merger review database to verify data submitted in notification materials and assess whether a case qualifies under the simplified procedure. Although establishing the database might take time in the short term, it is anticipated that SAMR would benefit from the database and improve the quality and efficiency of its merger control enforcement in the long term. Once the merger review database is in place, parties need to be more mindful about the consistency and accuracy of the information to be submitted to SAMR for merger control review, in particular taking into account the increased penalty (up to 1% of the previous revenue or up to RMB 5 million (USD 726,500) if no revenue) for providing false information under the amended Anti-Monopoly Law ("**AML**").



ANTITRUST INVESTIGATIONS

Enforcement trends – Q1 2019 to Q1 2023



Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency
Cruise service Anhui AMR	4 January 2023	Price fixing, market sharing	110	5	59	3%	Yes
Gas supply service Chongqing AMR	1 February 2023	Imposing unreasonable trading conditions	2,409	N/A	N/A	5%	N/A
Levocarnitine API Liaoning AMR	20 February 2023	Excessive pricing	133,004	N/A	N/A	2%	N/A
Carmustine injection Tianjin AMR	22 March 2023	Excessive pricing	27,721	N/A	N/A	2%	N/A

Anhui AMR fines seven cruise companies for price fixing and market sharing

On 4 January 2023, SAMR published a decision where the Anhui Administration for Market Regulation ("**Anhui AMR**") fined Taiping Lake Cruise Development Co., Ltd. ("**Taiping Lake Cruise**") and six other cruise companies for price fixing and market sharing. The seven cruise companies are cruise services providers on Taiping Lake in Huangshan City, Anhui Province. Anhui AMR found that on 22 September 2019, the seven companies entered into a joint operation agreement, pursuant to which they took turns to provide cruise services, fixed service prices and costs, and shared revenues and profits based on the proportion of vessels operated by each company. The joint operation lasted from 1 October 2019 to 4 December 2019, which appeared to have been interrupted by Anhui AMR's investigation launched in late November of the same year. Anhui AMR held that the above conduct violated Articles 13(1) and 13(3) of the former AML. Given Taiping Lake Cruise was the first to report the monopoly agreement and provided substantial evidence, the company received an 80% reduction to the fine imposed and illegal gains confiscated according to the leniency programme. The seven companies were each fined 3% of their 2018 revenue, amounting to RMB 109,974 (USD 16,199) in total, and the additional illegal gain of RMB 319,058 (USD 46,997) was also confiscated.



ANTITRUST INVESTIGATIONS

Chongqing AMR fines Yongkang Gas for imposing unreasonable trading conditions

On 1 February 2023, SAMR published a decision where the Chongqing Administration for Market Regulation ("**Chongqing AMR**") fined Yongkang Gas Company ("**Yongkang Gas**") for abuse of dominance through imposing unreasonable trading conditions. Yongkang Gas, as the exclusive gas supplier in 15 towns and sub-districts in Chongqing, holds a dominant position in the local market for supplying piped gas. Chongqing AMR found that since January 2018, Yongkang Gas had conditioned gas supply to new users on the purchase of gas stoves, alarms and insurance, which are separable from gas supply, and forced existing users to purchase gas stoves with the excuse of failed safety inspections. Chongqing AMR concluded that, in the absence of justification, Yongkang Gas' conduct constituted the imposition of unreasonable trading conditions in violation of Article 17(5) of the former AML. A fine of RMB 2,409,398.17 (USD 354,904) was imposed, representing 5% of Yongkang Gas' sales value in 2020.

SAMR fines two pharmaceutical companies for excessive pricing

This quarter, SAMR published two penalty decisions where Northeast Pharmaceutical Group Co., Ltd. ("**Northeast Pharm**") and Tianjin Jinyao Pharmaceutical Co., Ltd. ("**Jinyao Pharma**") were each fined for abuse of dominance through excessive pricing, violating Article 17(1) of the former AML:

- **Northeast Pharm** – Northeast Pharm is the manufacturer of a levocarnitine active pharmaceutical ingredient ("**API**"), an ingredient for producing levocarnitine preparations to treat complications resulting from long-term haemodialysis. Being the larger player of the only two companies in China supplying levocarnitine API, Northeast Pharm has a market share of more than 81.06% by volume and a share of more than 87.55% by value. Taking into account other factors such as high downstream reliance and significant market entry barriers, the Liaoning Administration for Market Regulation ("**Liaoning AMR**") determined that Northeast Pharm holds a dominant position in the Chinese market for levocarnitine API. In its finding of excessive pricing, Liaoning AMR examined Northeast Pharm's historic prices, its raw material prices and other competitor's prices, and in each case proved that the huge price hike carried out by Northeast Pharm occurred without justification. Liaoning AMR, therefore, imposed a fine of RMB 133,004,400 (USD 19 million) on Northeast Pharm, representing 2% of the company's 2018 sales revenue.
- **Jinyao Pharma** – Jinyao Pharma is the supplier of a carmustine injection which is used to treat certain types of tumours. Jinyao Pharma is the sole player in the Chinese carmustine injection market and is therefore considered to be dominant by the Tianjin Administration for Market Regulation ("**Tianjin AMR**"), also taking into account the high market entry barriers. Tianjin AMR found that in 2016, Jinyao Pharma first cut its sales volume by half compared to the previous two years, creating opportunities for price rises. Starting from 28 June 2017, Jinyao Pharma significantly increased the price of its carmustine injection and, as of September 2020 when the investigation started, the price was 7.5 times higher than the price in 2016, despite decreasing production costs since 2015. Tianjin AMR imposed a fine of RMB 27,721,311.36 (USD 4 million) on Jinyao Pharma, representing 2% of the company's 2019 sales revenue.



OTHER NEWS

SAMR publishes the long-awaited implementing provisions for the amended AML

On 24 March 2023, the SAMR published the final version of four sets of crucial antitrust provisions, which are in place to ensure smooth implementation of the amended AML which was adopted on 24 June 2022 and came into force on 1 August 2022. The four sets of provisions address, respectively, merger control, anti-competitive agreements, abuse of dominance, and abuse of administrative dominance ("**Final Provisions**"). The draft version of these provisions was published for consultation ("**Consultation Draft**") on 27 June 2022, closely following the official publication of the amended AML. The Final Provisions will become effective from 15 April 2023, superseding the relevant interim provisions that currently apply. Highlights of the Final Provisions are set forth below:

- On **merger control**, key topics including control analysis, turnover calculation, factors for determining "implementation" of the transaction (i.e., gun-jumping), the "stop-the-clock" mechanism, and review of below-threshold transactions are further clarified;
- On **anti-competitive agreements**, the 15% market share threshold which was proposed in the Consultation Draft for the safe harbour rule is disappointingly dropped; more clarification is provided regarding hub-and-spoke agreements, the definition of competitors, and the scope of the leniency system's application and case establishment criteria in investigations; and soft measures to promote antitrust compliance are newly introduced;
- On **abuse of dominance**, the digital economy's rising impact is reflected, and more detailed guidance is provided for the assessment of specific abusive conduct and the identification of collective dominance.

The Final Provisions, on the one hand, offer better clarity for companies to comply with the amended AML and, on the other hand, offer normative guidance for SAMR to enforce the amended AML. The Final Provisions have also left some important questions, such as the specific market share threshold of the safe harbour applicable to vertical agreements, which remain to be answered in the follow-up implementing rules.

SAMR announces its work objectives for 2023

On 9 February 2023, SAMR published key enforcement figures for 2022 and outlined its enforcement priorities for 2023. In 2022, SAMR completed 187 conduct cases with a total penalty of RMB 784 million (USD 115.5 million) imposed; and SAMR reviewed 794 merger notifications and imposed fines on 32 failure-to-file transactions. In 2023, SAMR is expected to conduct more rigorous merger control reviews in crucial sectors and enhance antitrust enforcement in livelihood-related sectors. On legislation, SAMR is aiming to complete the draft Fair Competition Review Regulations. SAMR will strengthen antitrust supervision in areas such as the platform economy and intellectual property rights, and assess the market competition status in key industries.



South Korea

KFTC alleges a worker union for obstructing investigation

On 18 January 2023, the Korea Fair Trade Commission ("KFTC") reported to the prosecutor's office that the Korean Public Service and Transport Workers' Union had allegedly obstructed the KFTC's investigation by physically blocking entrances to the buildings of the union's offices on 2 December 2022, 5 December 2022 and 6 December 2022. The investigation was related to the union's alleged violation of Korean competition law by forcing its members to join an organized strike.

KFTC announces new guidelines on abuse of dominance by online platforms

On 12 January, the KFTC announced new guidelines regarding the abuse of dominance by online platforms, which provides how to define the market and how to assess online platforms' dominance.

KFTC fines Tesla for unfair advertisement and order cancellation policy

On 3 January 2023, KFTC imposed a KRW 2.8 billion (USD 2.11 million) surcharge and KRW 1 million (USD 755) fine on Tesla for an unfair advertisement regarding its car's driving range and charging performance and fuel cost savings, and its interruption of order cancellation such as imposing a penalty of KRW 100,000 on customers cancelling orders even in the case where customers have the right to cancel orders (a cooling off right) under Korean law.

KFTC fines German car manufacturers for colluding to curb emissions clean technology

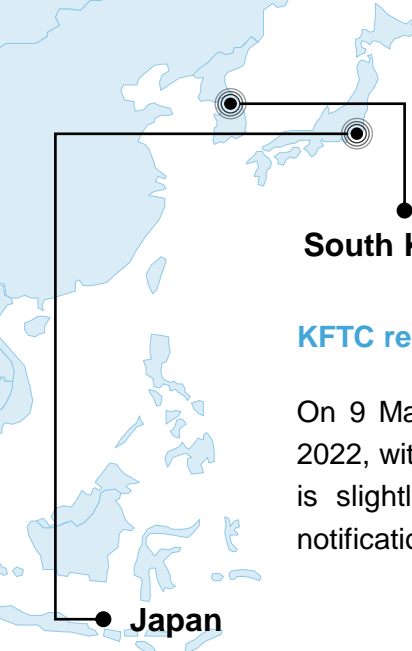
On 9 February 2023, the KFTC imposed a fine of KRW 42.3 billion (USD 31.9 million) on German car manufacturers for colluding to avoid competition in the development of clean emissions technology, selective catalyst reduction (SCR). The KFTC found that the four companies blocked the possibility to research and develop an enhanced technology that could have maximized nitrogen oxide (NOx) reduction.

KFTC fines Kakao Mobility for self-preferencing algorithm

On 14 February 2023, the KFTC imposed remedies and a fine of KRW 25.7 billion (USD 19.4 million) on Kakao Mobility for manipulating dispatching algorithms used for its app (Kakao T app) so that more calls would be assigned to its franchise taxis.

KFTC fines two bar associations for banning member lawyers' use of certain app

On 23 February 2023, the KFTC announced that they had imposed fines of KRW 2 billion (USD 1.5 million) in total on local bar associations (the Korean Bar Association (KBA) and the Seoul Bar Association (SBA)), as these two associations had banned their member lawyers from using a legal platform service app called LawTalk. The KFTC indicated that the use of LawTalk does not breach any rules applicable to lawyers, and that the prohibition by these two associations cannot be justified.



South Korea

KFTC releases its 2022 merger review records

On 9 March 2023, the KFTC announced that they reviewed 1,027 merger filing cases in 2022, with an aggregated value of KRW 32.5 trillion (USD 24.5 billion). The number of cases is slightly less than in 2021 (1,113 cases). There were 20 cases which violated the notification obligation where KRW 226 million (USD 170,600) fines were imposed in total.

JFTC publishes antitrust guidelines on achieving a green society

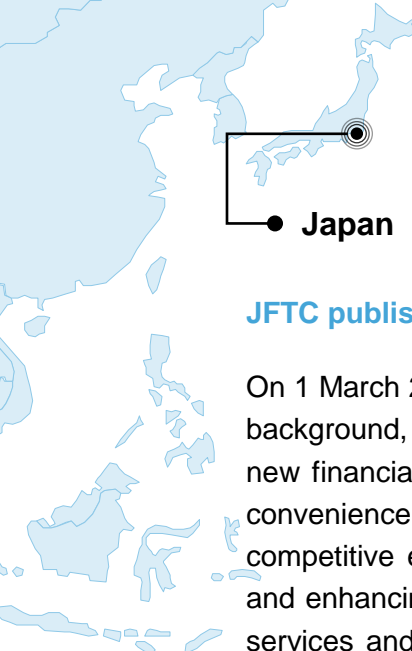
On 31 March 2023, the JFTC published guidelines on achieving a green society under the Antimonopoly Act ("**Guidelines**"). In line with Japan's goals regarding greenhouse gas emissions, the Guidelines aim to prevent anticompetitive conduct which deters achieving a green society, and to increase transparency and predictability in the application and enforcement of the Act for businesses working towards a green society. The Guidelines set out various examples of conduct which raise no competition law issues (such as the joint collection and use of the data necessary for activities aimed toward greenhouse gas reduction) and those that do raise competition law issues (such as restraints on technological development).

JFTC publishes market survey report on mobile OS and app distribution markets

On 10 February 2023, the JFTC published a report on its market survey on the mobile OS market and the app distribution market. The JFTC evaluated the competitive environment and concluded that, in the mobile OS market and the app distribution market, there is not enough competitive pressure on the mobile OS and app stores provided by Google and Apple, and it would be effective to create a healthy competitive environment in both markets through measures in line with competition policy such as increasing the scope for potential competitors to enter the market. In addition, the JFTC stated that, while it is desirable for Google and Apple to take such measures, it is effective to secure them by law to the extent necessary to ensure the effectiveness of these measures. The JFTC continues to work with the Government's Headquarters for Digital Market Competition ("**HDMC**"), which is responsible for developing rules and regulations for the digital market in Japan, to develop a competitive environment. On 14 February 2023, it was reported that the HDMC had initiated studies to formulate new rules for developing a competitive environment for the mobile OS market. Also, HDMC conducted a hearing in respect of Google on 29 March 2023 and of Apple on 4 April 2023.

JFTC publishes report on potential unfair low-cost selling of smartphones

On 24 February 2023, the JFTC published a report on its survey of low-cost sales of mobile phones in Japan. The JFTC concluded that, if a mobile network operator ("**MNO**") continuously sells smartphones to a distributor for significantly less than the cost of supply, which may make the business activities of operators selling smartphones exclusively to consumers without a telecommunications contract difficult, this may constitute unfair low-cost selling, and may cause problems under the Antimonopoly Act. The JFTC will strengthen its monitoring of transactions between MNOs and distributors, and will take strict action against MNOs if it finds any violation of the Antimonopoly Act.



JFTC publishes survey report on fintech-based services

On 1 March 2023, the JFTC published a report on its survey of fintech-based services. By way of background, services in the financial sector have traditionally been provided mainly by banks, but new financial services are now being provided by companies using fintech, thereby increasing convenience for users. Given such circumstances, the JFTC conducted the survey to improve the competitive environment in the field of fintech-based services, thereby encouraging innovation and enhancing user convenience. The report focused on online household account provisioning services and cashless payments using QR codes. Following the abolition of interbank fees by Zengin-Net (a system in Japan for online processing of domestic exchange transactions between financial institutions) in October 2021, most banks in Japan have been reducing their transfer fees, therefore the report assessed that efforts to promote cashless payments have made steady progress. The report calls on banks and relevant operators to continue to review and implement measures to promote competition in the fintech-based services sector.

JFTC files accusation against advertising agencies and their officers over alleged bid rigging conducts

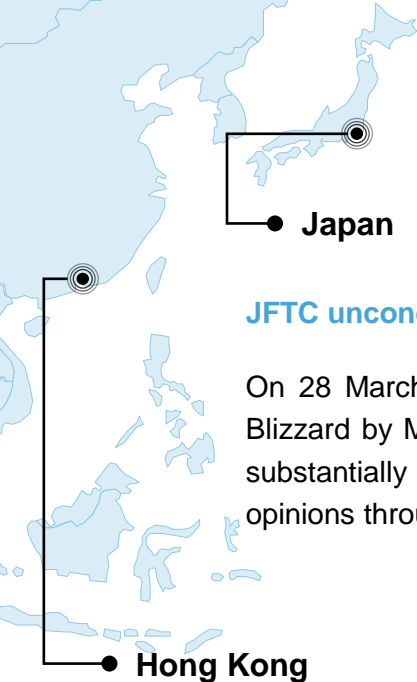
On 1 March 2023, the JFTC filed an accusation with the Prosecutor General against several Japanese companies including DENTSU group and HAKUHODO Inc. (major Japanese advertising agencies), their officers as well as the former officer of the Tokyo Organising Committee of the Olympic and Paralympic Games ("**Committee**"). The reason was the alleged coordinating of orders in a bidding process for planning work for the implementation of test events ordered by the Committee. On the same day, following the above filing, the Tokyo District Public Prosecutor's Office initiated the prosecution of the above companies and individuals.

Five Pharmaceutical wholesalers fined for bid rigging

On 24 March 2023, the JFTC issued a cease and desist order and a surcharges payment order to five Japanese pharmaceutical wholesalers for allegedly coordinating orders in a bidding process for medical products for hospitals. The total amount of the surcharges was over JPY 600 million (USD 4.51 million).

JFTC slashes record fine on three major electric power companies for sales market partitioning

On 30 March 2023, the JFTC issued a cease and desist order and a surcharges payment order to three major Japanese electric power companies – the Chugoku Electric Power Company, Incorporated, Chubu Electric Power Co., Inc. and Kyushu Electric Power Co., Inc. – and some of their group companies. The reasons for these orders were for engaging in a cartel restricting suppliers in the sale of special high-voltage electricity to large facilities and high-voltage electricity to companies. The total amount of the surcharges was JPY 101 billion (USD 760 million), which is the highest amount ever imposed in one case in Japan since the surcharge system was introduced in Japan in 1977. The Kansai Electric Power Company, Incorporated avoided administrative penalties due to the granting of leniency.



JFTC unconditionally clears Microsoft's acquisition of Activision Blizzard

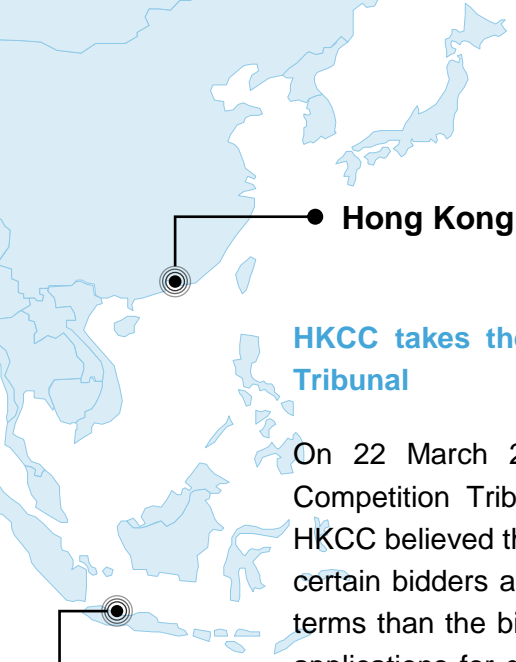
On 28 March 2023, the JFTC gave merger control clearance on the acquisition of Activision Blizzard by Microsoft, as the JFTC concluded that the transaction would be unlikely to result in substantially restraining competition in any relevant market. The JFTC previously sought outside opinions through the public comment procedure in June and July 2022.

HKCC issues a statement regarding estate agencies' internal memos on commission for first-hand property transactions

On 6 January 2023, in response to media reports about four real estate agencies' internal memos regarding commission for first-hand property transactions, the Competition Commission of Hong Kong ("**HKCC**") announced that it was aware that four real estate agencies, within a short period of time, each issued internal memos directing their respective agents to observe a minimum net commission of 2% in first-hand property transactions starting 1 January 2023. The HKCC held that effective competition was key to delivering benefits for consumers, particularly in sectors such as the property market which affected many people in Hong Kong. The HKCC also mentioned that over the past two years, real estate and property management has been one of the top three sectors with the most complaints. The HKCC has therefore been looking into the matter, including reaching out to the relevant parties and taking all necessary actions, with a view to assessing whether the conduct may give rise to competition concerns.

HKCC enhances the model "Non-collusion Clauses"

On 17 January 2023, the HKCC published a revised set of model "Non-collusion Clauses" for procurers to incorporate into their invitation-to-bid documents and contracts. The newly added clauses require bidders to disclose information on their beneficial ownership which, in turn, will provide procurers with greater clarity as to the competitiveness of the procurement process. Such revision was prompted by the HKCC's experience in its investigative work, where the HKCC has seen instances in which a number of businesses have submitted what appear to be independent bids but which in fact have been coordinated due to the existence of a common beneficial owner. The HKCC said that since its launch in 2017, the model "Non-collusion Clauses" have been widely used, and have helped in safeguarding the procurement process. The HKCC believes that by further requiring bidders to disclose beneficial ownership, procurers would be provided with a crucial piece of information when assessing the potential competitiveness of the procurement process.



● **Hong Kong**

HKCC takes the first cartel case relating to government subsidy scheme to the Tribunal

On 22 March 2023, the HKCC announced that it commenced proceedings in the Competition Tribunal ("**Tribunal**") against four undertakings and three individuals. The HKCC believed that the four undertakings engaged in practices including cover bidding (i.e., certain bidders agree to submit bids with higher prices or less attractive (or unacceptable) terms than the bid of the designated winner) when providing quotations for IT solutions in applications for government subsidies under the Distance Business Programme ("**D-Biz**"). On this basis, the HKCC said it had reasonable cause to believe that such conduct amounted to serious anti-competitive conduct in the form of price-fixing, market-sharing, bid-rigging and/or sharing competitively sensitive information, in contravention of the First Conduct Rule of the Ordinance. The HKCC sought remedies before the Tribunal including, among others, a declaration of contravention, pecuniary penalties and director disqualification. Notably, this case was referred to the HKCC in June 2020 by the Hong Kong Productivity Council, who suspected that its D-Biz-related procurement process may have been targeted by anti-competitive conduct. Further, upon careful analysis of the data, the HKCC identified a range of unusual bidding features that warranted the initiation of a formal investigation. The HKCC has also found evidence suggesting certain criminal offences including forgery and the provision of false or misleading documents or information. These matters have been referred to the police for criminal investigation. This case again showcased the HKCC's commitment and collaborative efforts with other departments to safeguard tender processes that involve public funding.

● **Indonesia**

KPPU continues its probe into Google's payment policy

The Indonesia Competition Commission ("**KPPU**") is continuing its investigation into Google over allegations of abuse of dominance, conditional sales and discriminatory practices in distributing digital apps. The KPPU initiated the investigation in September 2022 upon receiving complaints about Google's acts of mandatorily compelling app developers to use its proprietary payment system and charging them an excessive service rate. During its probe, the KPPU has (i) spoken with approximately 50 to 60 people from a range of industries such as edutech, banking, fintech, game developers and video-on-demand providers, as well as regulatory bodies; and (ii) requested internal documents from Google, especially contracts that are suspected of placing other industry players at a disadvantage. While it remains uncertain if the KPPU will impose penalties on Google like other APAC competition authorities (e.g., the CCI of India), with a market share of 93% in Indonesia, the company is expected to voluntarily modify its fee structure.



Indonesia

KPPU updates the Indonesian merger filing rules

The KPPU recently issued the KPPU Regulation No. 3 of 2023 ("**New Regulation**"), entering into force on 31 March 2023, which introduced significant changes to the Indonesian merger control regime. Notable changes of the New Regulation include: (i) clarifying that when assessing whether a transaction is required to be notified in Indonesia, the calculation of the relevant asset threshold is limited to assets of the relevant parties located within the territory of Indonesia, rather than the global assets as previously interpreted; (ii) making clear that an offshore transaction is notifiable only if both acquiring group and acquired group have a local nexus in Indonesia; (iii) requiring additional supporting documents to be submitted along with the notification form, such as the financial statements of the relevant parties' all subsidiaries with business or turnover in Indonesia, which were previously only required on an ad-hoc basis; (iv) adopting an online filing system and requesting the KPPU to check the completeness of the filing within three days of submission; (v) reducing the statutory review timeline from 150 business days to 90 business days; and (vi) enabling the KPPU to annul its decisions *ex post facto* upon a finding of inaccurate submission. A filing now needs to be submitted at least 3 business days before the expiry of the 30-business day period. In addition to the New Regulation, Indonesia released another regulation that imposes an obligation to pay filing fees for notifications submitted to the KPPU. The filing fee is calculated on the following basis: 0.004% of either the Indonesian asset value or the Indonesian turnover value of the acquirer and the target on a combined, consolidated basis, whichever is lower, subject to a maximum of IDR 150 million (USD 10,061).

Philippines

PCC's new chairperson announces new directions in competition enforcement

On 13 January 2023, Michael Aguinaldo, former chairman of the Commission on Audit in the Philippines, took the oath as the new chairman of the Philippine Competition Commission ("**PCC**"). His term will expire in January 2030. Mr. Aguinaldo immediately announced the two priorities of his new office – raising public awareness of antitrust law and addressing the PCC's problems "from the grassroots level". The new office led by Mr. Aguinaldo holds a distinct view on competition law and enforcement, which may lead to more uncertainty in the PCC's codification project. Due to significant disagreements within the PCC, the former chairman and commissioners of the PCC failed to complete the codification project for relevant antitrust rules within the targeted timeframe. Separately, the new office identified eight sectors, which are prone to antitrust issues due to high market concentration levels, as high priorities for enforcement in 2023, including e-commerce, health and pharmaceuticals, food and agriculture, energy and electricity, insurance, construction, water and telecommunications. Also notably, the new office recently received the PCC's first leniency application since the leniency programme became effective in January 2019.



Cambodia ●

Cambodia refines merger control rules

On 6 March 2023, Cambodia issued Sub-Decree No. 60 on Requirements and Procedures for Business Combinations ("**Sub-Decree**"). According to the Sub-Decree, mergers that reach certain thresholds must be notified to the Competition Commission of Cambodia ("**CCC**") and obtain clearance before closing. The thresholds will be determined by the CCC in the future and will be based on the parties' Cambodian turnover, Cambodian asset value and transaction value. In addition to the pre-closing notification obligation, the parties are also required to register the transaction status with the CCC within 30 days post-closing. The review of the notification is divided into two phases – a 30-working-day phase I review (on top of a 7-working-day completeness review) and a 120-working-day phase II review. Intra-group transactions are notifiable if meeting the thresholds, but only under a simplified process, which requires less information to be provided. The Sub-Decree is an important addition to the Cambodian merger control regime, which is not yet in effect, although some key issues remain to be resolved. More detailed rules, e.g., on the thresholds and penalties, are expected in the next year.

Malaysia ●

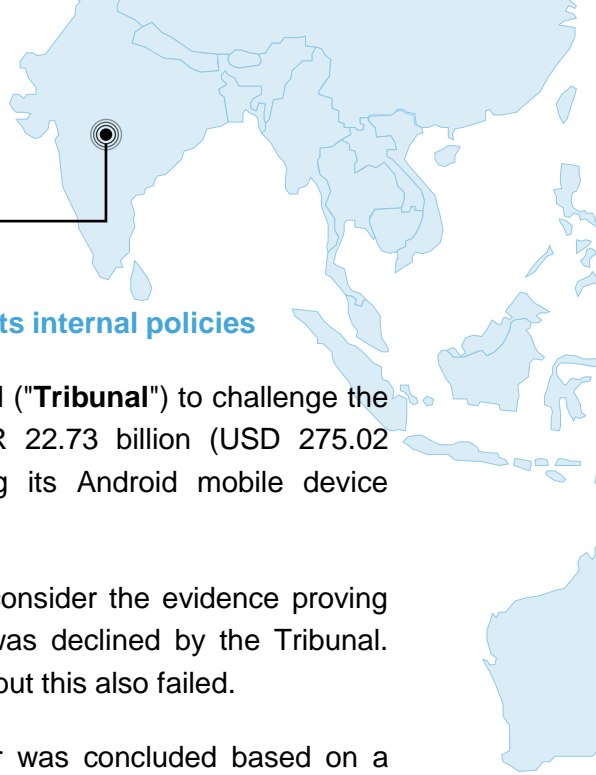
Malaysian competition authority urged to correct cartel in food and agriculture sectors

On 12 January 2023, the Malaysian Ministry of Domestic Trade and Cost of Living urged the Malaysian Competition Commission ("**MyCC**") to intensify its efforts to eradicate cartel practices in the food and agriculture sectors. In response to this, the MyCC will, on the one hand, provide corrective recommendations and will, on the other hand, reform the merger control regime in order to closely scrutinise mergers that are used to camouflage cartel arrangements.

Taiwan ●

TFTC fines concrete companies for market sharing

On 18 February 2023, the Taiwan Fair Trade Commission ("**TFTC**") announced a decision penalising 18 ready-mixed concrete companies for market sharing. The TFTC found that since November 2017, 18 ready-mixed concrete companies had discussed how to allocate the sales market of ready-mixed concrete in Taoyuan City. They exchanged commercially sensitive information such as supply quantities, prices and fee quotes during meetings to avoid price-cutting and competing for customers, and monitored the sales of one another. The TFTC concluded that the 18 companies had engaged in concerted actions prohibited by the Fair Trade Act, and imposed a total fine of TWD 213.1million (USD 7 million) on the 18 companies.



India ●

Google challenges CCI's two penalty orders while improving its internal policies

Google filed before the National Company Law Appellate Tribunal ("**Tribunal**") to challenge the Competition Commission of India's ("**CCI**") antitrust fines (INR 22.73 billion (USD 275.02 million)) imposed against Google's abusive conduct regarding its Android mobile device ecosystem and Play Store policies in October 2022.

In the Android decision, Google claimed that the CCI failed to consider the evidence proving Android's pro-competitive effects on the Indian market, which was declined by the Tribunal. Google further filed an appeal before the Supreme Court of India, but this also failed.

In the Play Store decision, Google argued that the CCI's order was concluded based on a defective and one-sided probe as evidenced by the arbitrary exclusion of certain key stakeholders, imposition of leading questions, unfair selection of certain evidence, denial of the need to assess anticompetitive harm, untenable issuance of the fine, etc. The Tribunal will conduct a hearing in late April 2023.

Meanwhile, Google is introducing changes to its internal policies in India to comply with the CCI's directives. These changes mainly include: (i) allowing OEMs to pre-install non-Google applications on devices; (ii) allowing Indian users to choose non-Google apps as default search engines; (iii) updating Android compatibility to support the development of non-compatible or forked variants; and (iv) allowing developers to offer users the option to select billing systems other than Google Play's in-app payment system.

CCI resumes merger review which was paused for three months

On 9 February 2023, the CCI approved six notifications, signalling the authority's resuming of its merger control review after a three-month pause since October 2022. The CCI was short of the three-member quorum that is required under Indian law to clear merger notifications due to the retirement of its former chairperson in October 2022. This had led to significant delay in many CCI merger notifications. Recently, the Ministry of Corporate Affairs and the Attorney General of India allowed the CCI to invoke the "doctrine of necessity" to disregard its lack of a quorum and resume merger review. Another anticipated change in relation to the Indian merger control regime is that the overall review timeline granted to the CCI is proposed to be shortened from 210 to 150 calendar days in the proposed amendments to the Competition Act.

Australia



ACCC 2023-2024 compliance and enforcement priorities

On 7 March 2023, the Australian Competition and Consumer Commission's ("ACCC") Chair, Gina Cass-Gotlieb unveiled the ACCC's compliance and enforcement priorities for 2023-2024. These priorities reflect the key issues impacting the Australian economy, consumers and business in a post-pandemic Australia, which include cost of living pressures, the pricing of essential services, the integrity of environmental and sustainability claims, and losses to sustained to scams. Ms Cass-Gotlieb noted that the ACCC's active enforcement efforts in 2022 led to penalties of more than AUD 200 million (USD 133 million), and vowed to maintain that level of enforcement going forward in 2023.

The full list of 2023-2024 compliance and enforcement priorities includes:

1. Consumer and fair trading issues arising from the pricing and selling of essential services, with a focus on energy and telecommunications.
2. Consumer, product safety, fair trading and competition concerns in relation to environmental claims and sustainability.
3. Promoting competition and investigating allegations of anti-competitive conduct in the financial services sector, with a focus on payment services.
4. Competition and pricing issues in gas markets, including compliance with the price cap order and other legal obligations for wholesale gas markets.
5. Exclusive arrangements by firms with market power that impact competition.
6. Scam detection and disruption, supporting the implementation of the National Anti-Scam Centre.
7. Competition and consumer issues in global and domestic supply chains, with a focus on transport and logistics.
8. Consumer and fair trading issues relating to manipulative or deceptive advertising and marketing practices in the digital economy.
9. Competition and consumer issues relating to digital platforms.
10. Empowering consumers and improving industry compliance with consumer guarantees, with a focus on high value goods including motor vehicles and caravans.
11. Unfair contract terms in consumer and small business contracts.
12. Ensuring that small businesses receive the protections of the competition and consumer laws and small business industry codes of conduct, including in agriculture and franchising.
13. Consumer product safety issues for young children, with a focus on compliance, enforcement and education initiatives.



Australia

These compliance and enforcement priorities noted above are in addition to the ACCC's enduring priorities, which include: (i) cartel and other anti-competitive conduct; (ii) product safety; (iii) vulnerable consumers; and (iv) conduct impacting First Nations Australians.

ACCC's Australian domestic air passenger transport services monitoring to end in June 2023

The Australian Federal Government's announcement to discontinue funding the ACCC's domestic airline monitoring program after June 2023 reveals mixed feelings in aviation industry in Australia. In June 2020, the ACCC was directed by the former Treasurer, to review domestic airline behaviour to ensure healthy competition in the industry and provide quarterly monitoring reports to inform Government policy. In addition to prices, costs, profits and market shares of the major domestic airlines, the ACCC also analysed and reported on other issues affecting domestic passengers, such as: flight delays, baggage handling and call centre waiting times. Although the ACCC will deliver its final Report before the end of June 2023, the Bureau of Infrastructure, Transport and Regional Economics will continue to publish a monthly domestic airfare index. However, Australian Airports Association said that the airline monitoring should continue "given the cost of airfares and the profitability of airlines".

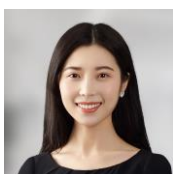
ACCC issues statement of preliminary views regarding ANZ's proposed acquisition of Suncorp Bank

On 4 April 2023, the ACCC released a statement of preliminary views on ANZ Banking Group's ("**ANZ**") proposed acquisition of Suncorp Group's banking arm. The ACCC's preliminary view is that the information currently before it is insufficient to substantiate the nature, likelihood and extent of the claimed public benefits, including ANZ's estimates of future synergies that will be achieved and claims regarding public commitments to investment in Queensland or improvements in prudential stability arising from the transaction. The ACCC has invited submissions on the issues discussed in the statement of preliminary views by 18 April 2023.

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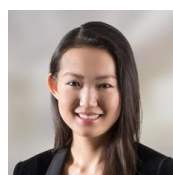


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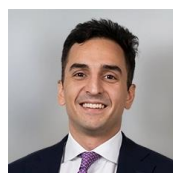
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