CLIFFORD

CHANCE

ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE

April to June 2024

CONTENTS

ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: APRIL TO JUNE 2024

INTRODUCTION

In China, the past quarter has been filled with notable developments. On the merger control front, the State Administration for Market Regulation ("**SAMR**") conditionally approved JX Nippon's acquisition of Tatsuta after almost 17 months' review based on a rarely used theory of harm. SAMR also published the first gun-jumping penalty decision following the 2022 Anti-Monopoly Law ("**AML**") amendments. In addition, SAMR consulted to amend the simple case filing form and announcement form. The last quarter witnessed continuous legislative efforts to enhance antitrust enforcement: the Standing Committee of China's National People's Congress published its legislative plan for 2024, which includes reviewing the draft amendments to the Anti-Unfair Competition Law; SAMR officially promulgated the Interim Provisions against Unfair Competition on the Internet and consulted on horizontal merger review guidelines; the Anti-Monopoly and Anti-Unfair Competition Commission of the State Council released the revised guidelines on antitrust compliance; and the Supreme People's Court issued judicial interpretation on antitrust civil litigation. In the meantime, SAMR released its 2023 Antitrust Annual Report, summarising the antitrust enforcement work and achievements in China in 2023. At the enforcement level, SAMR issued a warning letter to Avanci, marking the first warning letter known to the public since the introduction of the "three notices and one letter" mechanism.

Outside China, the digital economy remained the focus of antitrust scrutiny across the region: Japan passed Bill for the Act on Promotion of Competition for Specified Smartphone Software, and approved Google's commitment plan regarding search engine and search advertising technologies; South Korea announced the implementation of revised merger guidelines in relation to the digital economy sector, and fined Coupang, its largest e-commerce business for abuse of dominance; Singapore issued Interim Measures Directions during the possible acquisition by Grab of Delivery Hero's business; India found anti-competitive practices of Amazon and Flipkart after a four-year investigation, and dismissed a complaint accusing Google of discriminatory treatment; Indonesia found Shopee to have unduly favoured its delivery services; and Pakistan launched a market study on the digital economy. Bid rigging also attracted high-level attention in the last quarter: South Korea imposed fines against bid-rigging in three cases last quarter, involving 31 furniture manufacturers, 6 affiliates of KH Group and 12 local semiconductor related equipment manufacturers; in Hong Kong, the first joint operation was conducted to neutralise a newly rising syndicate engaging in corruption and tender rigging in relation to building maintenance; and Singapore issued Proposed Infringement Decision against companies for bid-rigging tenders for interior fit-out construction services.

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

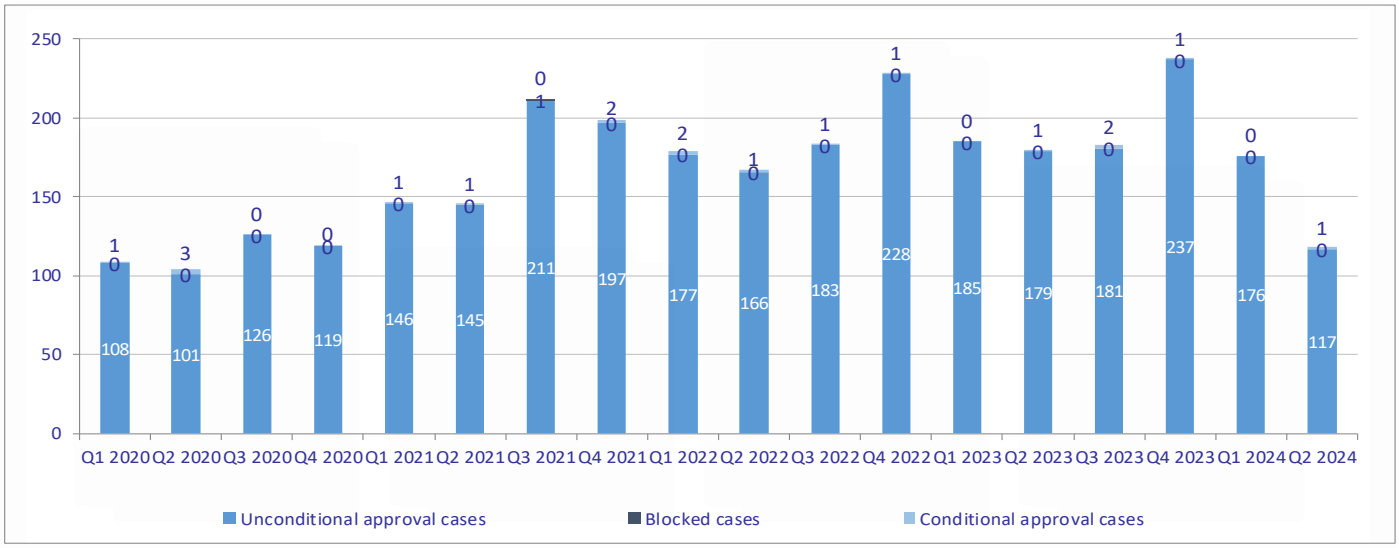
YONG BAI
Partner, Head of Antitrust,
Greater China

MERGER CONTROL

How many cases have there been?

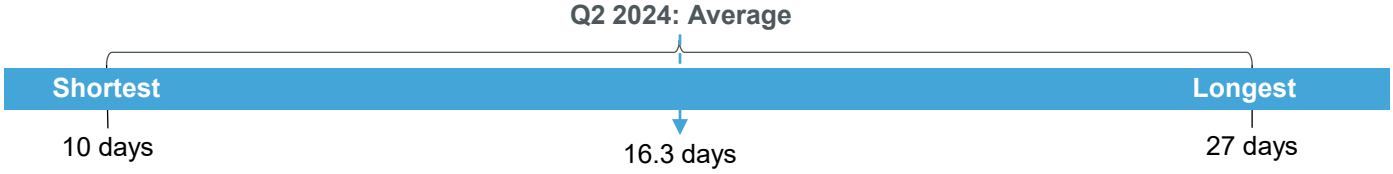
There were in total 118 merger decisions released in the second quarter of 2024, a significant decrease of 34% compared to the second quarter of 2023, with 117 cases unconditionally cleared and one case approved subject to conditions. 99 cases were notified under the simplified procedure, which represents 83.9% of the total cases reviewed in this quarter.

Merger control trends – Q1 2020 – Q2 2024



Simplified procedure: How quick is the review period?

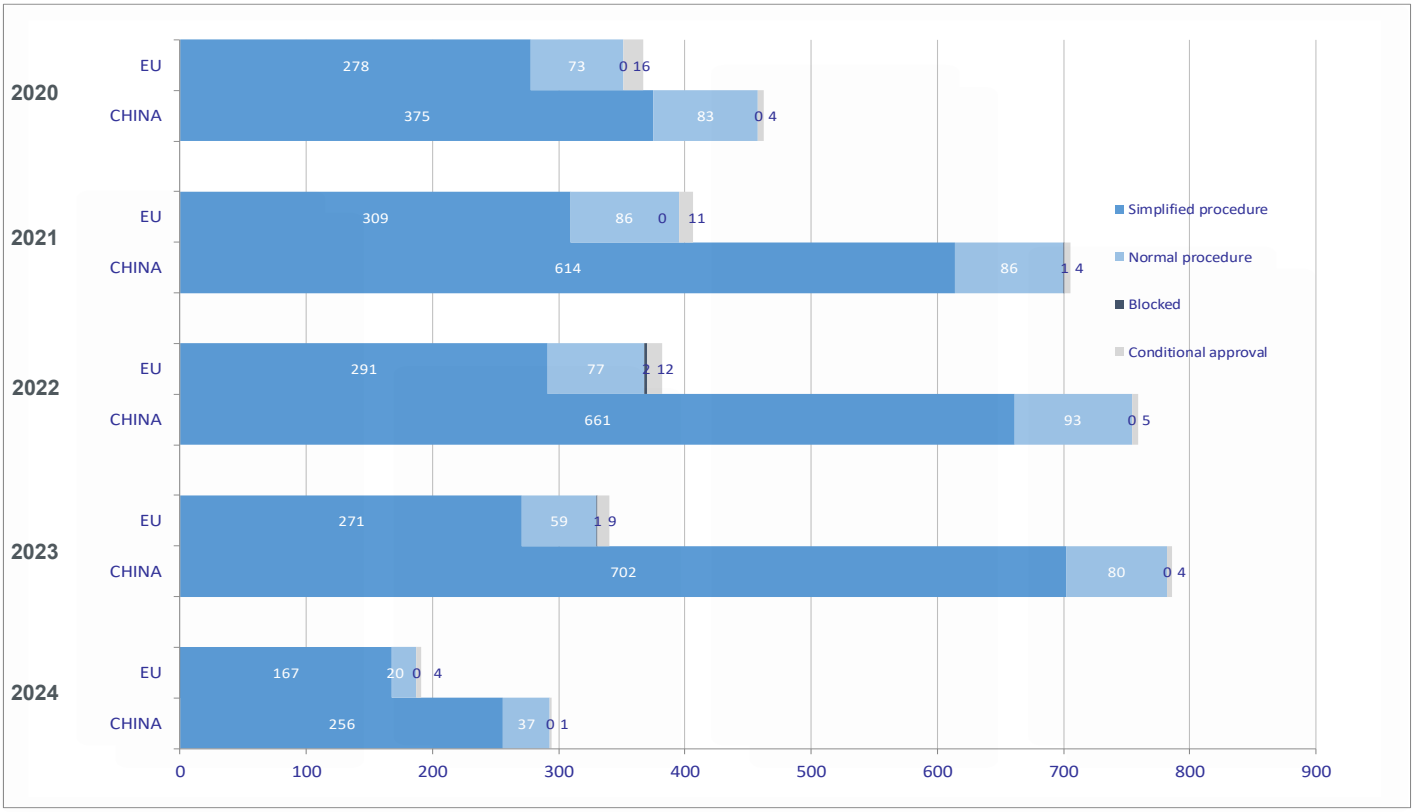
Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
Q1 2020	14 days	87.2%	1
Q2 2020	13.7 days	86.5%	0
Q3 2020	14.4 days	72.2%	3
Q4 2020	13.7 days	83.2%	1
Q1 2021	14.9 days	80.3%	3
Q2 2021	13.8 days	90.4%	0
Q3 2021	13.4 days	86.3%	3
Q4 2021	15.6 days	91.0%	3
Q1 2022	17.1 days	83.8%	1
Q2 2022	17.2 days	87.4%	2
Q3 2022	21.7 days	85.3%	2
Q4 2022	18.1 days	93.5%	2
Q1 2023	19.3 days	91.4%	4
Q2 2023	20.2 days	86.1%	6
Q3 2023	18.5 days	89.1%	2
Q4 2023	17.4 days	90.3%	5
Q1 2024	17.3 days	89.2%	3
Q2 2024	16.3 days	83.9%	0



MERGER CONTROL

How does China compare internationally?

Comparison with EU – 2020 – 2024



SAMR conditionally approves JX Nippon's acquisition of Tatsuta

On 11 June 2024, SAMR conditionally approved JX Nippon Mining & Metals' ("**JX Nippon**") proposed acquisition of Tatsuta Electric Wire and Cable Co., Ltd. ("**Tatsuta**") after almost 17 months' review. SAMR identified that JX Nippon's blackened rolled copper foils and stainless-steel stiffeners for flexible printed circuits could be considered to have adjacent relationships with Tatsuta's electromagnetic shielding films and isotropic conductive films, as all of the products concerned ("**Relevant Products**") are integral components for flexible printed circuits. Upon investigation, SAMR concluded that the transaction would eliminate and restrict competition in Chinese markets for the Relevant Products considering (i) **the parties' significant market shares and market power in each Relevant Product market**: JX Nippon and Tatsuta respectively rank No.1 in both global and Chinese markets for blackened rolled copper foils and isotropic conductive films; (ii) **the merged entity's potential incentive for tying/bundling practices**: based on economic analysis, the merged entity may be financially incentivised to leverage its market power in the blackened rolled copper foil market or the isotropic conductive film market to engage in tie-in sales with the rest of the Relevant Products, which will, on the one hand, increase the competitiveness of the tied products and on the other hand, entrench the competitively advantageous position of the tying products; and (iii) **potential anti-competitive effects**: should the merged entity engage in tying/bundling, it will reduce the choices of downstream customers. This is of particular concern given that the Relevant Products play a crucial role in the quality and performance of consumer electronics, and there are significant barriers

to entry for and a high level of dependence by downstream customers. It is quite rare for global antitrust regulators to intervene in a merger purely through adjacent relationships-based theories of harm, and in China, this represents the second time following SAMR's first attempt to utilize this theory in the AMD/Xilinx decision (2022). To address these competition concerns, SAMR imposed a series of eight-year-term behavioural remedies requiring the parties: (i) to refrain from tying/bundling, or imposing other unreasonable transaction conditions or contractual terms, and to refrain from employing any restrictive or discriminatory measures against customers who choose to purchase JX Nippon's or Tatsuta's products separately; (ii) to supply blackened rolled copper foils and isotropic conductive films to Chinese customers on fair, reasonable and non-discriminatory terms; and (iii) to maintain the current level of compatibility of blackened rolled copper foils and isotropic conductive films with third-party products. These restrictive conditions will be automatically lifted upon expiration of the eight-year period. The transaction also triggered a merger filing in Japan and the Japan Fair Trade Commission unconditionally cleared the transaction on 3 March 2023.

SAMR fines Highly and Haier for gun-jumping

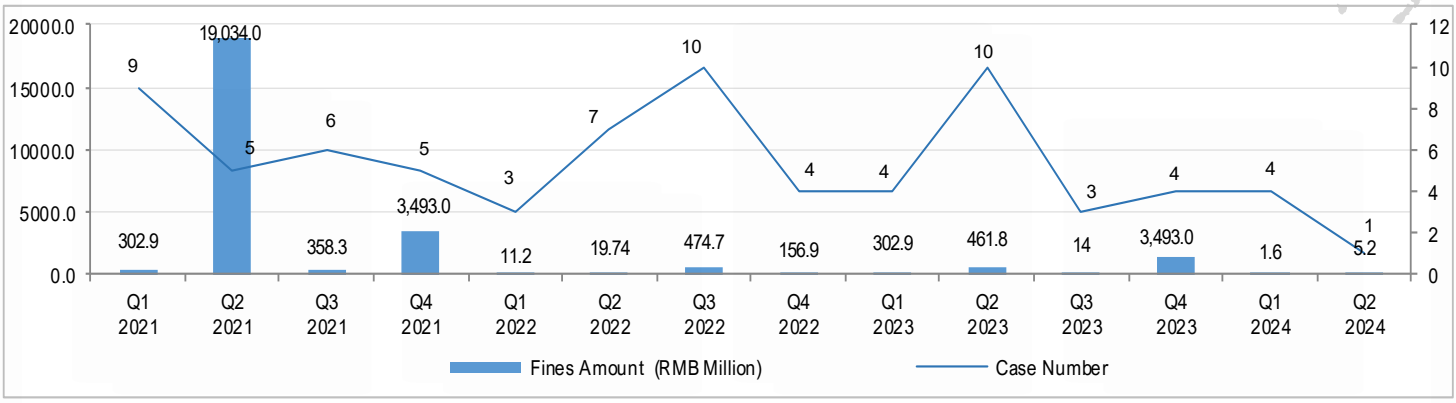
On 7 June 2024, SAMR published a penalty decision against Shanghai Highly (Group) Co., Ltd. ("**Highly**") and Qingdao Haier Air Conditioner Gen Corp. Ltd. ("**Haier**") for gun-jumping regarding their establishment of a new joint venture (the "**JV**"), with Highly holding 51% and Haier holding 49%. This is the first penalty decision following China's AML amendments published in 2022, according to which failure-to-notify and gun-jumping fines have been increased from a fixed amount (of up to RMB 500,000) to up to RMB 5 million or 10% of infringing parties' turnover in case of eliminating or restricting competition. In the Haier/Highly JV case, no competition issue was identified by the authority, and Highly and Haier were each fined RMB 1.5 million (approximately USD 207,106) for completing the JV incorporation before obtaining SAMR's antitrust clearance. Notably, this case is one of the few gun-jumping penalty decisions in China as the vast majority of fines were imposed on failure to notify cases. It is also worth noting that Highly is ultimately controlled by Shanghai Electric, a Chinese State Owned Enterprise. This indicates that SAMR has been treating all market players equally and without discrimination in its antitrust enforcement.

SAMR consults to amend the simple case filing form

On 8 April 2024, SAMR launched a public consultation on the proposed modifications to the notification form for simple cases (the "**Draft Form**"), aiming to further streamline the filing process and reduce notification costs for businesses. Its public consultation period ended on 22 April 2024. Overall, this is a welcome move to the benefit of SAMR, notifying parties, and legal advisors, although there are a few places that might either increase burden to notifying parties or call for clarifications. To be more specific, the information requirements for the transaction parties are simplified. In addition, although notifying parties are still required to delineate the relevant market and provide competition analysis, it is proposed that they are exempt from providing market share data in no-nexus cases. The Draft Form also stipulates that if the parties' relevant market share (combined market share in horizontal mergers and market shares at each supply chain level in vertical mergers) is less than 5%, and it is difficult to obtain market share data from any credible third party, competitors' data can be exempted, i.e., only the parties' data and the overall market size data are required. Furthermore, the Draft Form now makes it mandatory for newly established joint ventures to provide a reasonable estimate of their market shares for the upcoming three years since its operation, a requirement that was previously only suggested by case handlers on a case-by-case basis. Amendments to the announcement form was also under consultation. It remains unclear when SAMR will finalize the revisions and publish the revised filing form template for simplified-procedure cases.

ANTITRUST INVESTIGATIONS

Enforcement trends – Q1 2021 to Q2 2024



Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency
Rock wool Xinjiang AMR	20 June 2024	output reduction and price fixing	5,205	3,153	157	1%-3%	Yes

Xinjiang AMR fines five rock wool companies for limiting production and fixing prices

On 20 June 2024, SAMR published a penalty decision where the Xinjiang Administration of Market Regulation ("**Xinjiang AMR**") fined five rock wool companies in Xinjiang for reaching and implementing a horizontal anticompetitive agreement. The parties, seeking to reduce competition among themselves and gain undue benefits, negotiated and signed agreements on 17 June and 8 July 2021, respectively, pursuant to which the parties agreed on output reduction and price fixing, and implemented such practices from 20 June 2021 to 20 September 2021. The parties also ensured the implementation of the agreements through a security deposit, dedicated supervision, monetary penalties, etc. After investigation, Xinjiang AMR concluded that the parties violated Article 13 of the former AML and imposed fines totalling RMB 5,205,541.76 (approximately USD 716,957), ranging from 1% to 3% of the 2020 sales value of the infringing parties. Notably, based on the effective leniency application from one of the infringing parties, Xinjiang AMR imposed only 1% of the party's sales value and made an additional 80% reduction on that basis.

OTHER NEWS

China continues to make legislative efforts to enhance antitrust enforcement

- On 3 April 2024, SAMR, the National Development and Reform Commission (the "**NDRC**"), and six other central departments jointly introduced the Provisions on Fair Competition Review in Fields of Tenders and Bids (the "**Provisions**"), which took effect on 1 May 2024. The Provisions outline the procedures for fair competition review in the tenders and bids process, with a focus on eliminating barriers in areas such as prequalification requirements, evaluation methods and bidding criteria. The Provisions also reaffirm that the making of policy measures relating to tenders and bids should be subject to a prior fair competition review, and existing policies should also be evaluated and aborted when necessary on a regular basis.

- On 6 May 2024, SAMR officially promulgated the Interim Provisions against Unfair Competition on the Internet (the "**Interim Provisions**"), which will come into force on 1 September 2024. The Interim Provisions list typical online unfair competition behaviours such as defamation by way of malicious comments and the illegal acquisition of data, strengthening the responsibility of online platforms and optimising the process and law enforcement activities by regulators. The Interim Provisions provide helpful clarification and guidance for regulating various acts and scenarios with respect to Internet-related unfair competition conduct.

- On 6 June 2024, the State Council promulgated the Regulations on Fair Competition Review (the "**Regulations**"), which will come into effect on 1 August 2024. The Regulations are aimed at coping with various practical issues arising during the implementation of the fair competition review system in China, such as covert discrimination against private businesses and local protectionism/unwarranted investment barriers. The Regulations specify that the target of the fair competition review is laws, administrative regulations, local laws and regulations, rules and regulations, normative documents and specific policies and measures. The Regulations also set out multiple requirements that policies and measures shall comply with so as to ensure that the fair competition review is effectively implemented.

China revises antitrust compliance guidelines

On 25 April 2024, the Anti-Monopoly and Anti-Unfair Competition Commission of the State Council released the revised guidelines on antitrust compliance, which provide further guidance on antitrust risks that may arise from specified business activities, such as pricing, communications with stakeholders in the same industry and cooperation with rivals, suppliers or customers. The revised guidelines also provide hypothetical examples to facilitate market players' understanding of technical antitrust issues. Furthermore, the revisions are considered to mirror developments in the Chinese antitrust regulations. The revised guidelines highlight that antitrust authorities in their investigation will take into account the presence and effectiveness of an investigated company's antitrust compliance management system. This suggests that an effective internal antitrust compliance system would likely play a crucial role in future antitrust investigations, and therefore those market players which do not have a sound antitrust compliance system yet should have one in place as early as possible.

OTHER NEWS

SAMR consults on horizontal merger review guidelines

On 17 June 2024, SAMR launched a consultation on the Draft Guidance on Review of Horizontal Concentrations of Undertakings (the "**Guidance**"), marking China's first antitrust guidelines targeting a specific form of merger. Its public consultation period ended on 6 July 2024. The Guidance outlines both procedural requirements and substantial review criteria guiding SAMR's review of horizontal mergers. It also provides illustrative examples to facilitate understanding. Among others, there are the following notable provisions: (i) on **market definition**, a breakthrough is that the Guidance proposes that in case of multiple possible market definitions, the exact market definition(s) can be left open. It is also clarified that the criteria of the so-called non-principal business (if a company's certain business only generates less than 5% of the company's total turnover, and the business' market share does not exceed 5% in the relevant market, there would be no need to define markets for such business); (ii) on **competition analysis**, the Guidance introduces new criteria for HHI calculation and brings the criteria closer to those applicable in the EU and the US; and (iii) the Guidance also introduces, for the first time, the possibility of assessing the impact of government subsidies during the review of the concentration of undertakings but provides no detailed implementing rules. With 87 articles in total, the Guidance reflects SAMR's efforts in standardising the assessment of horizontal mergers which accounted for approximately 53% of the total reviewed merger cases in 2023. Timing for publication of the final version is not set yet; nonetheless, the current draft will already play a constructive part in guiding market players' self-assessment and providing them with significantly more legal certainty in relation to SAMR's review of horizontal mergers.

China's Anti-Unfair Competition Law will be under review

On 8 May 2024, the Standing Committee of China's National People's Congress (the "**NPC**") published its legislative plan for 2024, which, among other particulars, includes reviewing the draft amendments to the Anti-Unfair Competition Law (the "**Draft AUCL Amendments**"). The Draft AUCL Amendments, published by SAMR in November 2022, re-introduced the controversial concept of "comparative advantages", which refers to competitive advantages based on technology, capital, user numbers, industry influence, etc. and was considered a threshold lower than "dominance" under the AML. Additionally, the Draft AUCL Amendments propose to regulate certain anticompetitive conduct (e.g., exclusive dealing, tying, sales restrictions, unfair trading terms). If adopted, the AUCL and AML will provide overlapping grounds for enforcing against these infringements. In terms of legal liabilities, the Draft AUCL Amendments generally propose to increase civil and administrative liabilities for breaches.

SAMR releases its 2023 Antitrust Annual Report

On 18 June 2024, SAMR published the 2023 Annual Report on China Antitrust Enforcement (the "**Report**"), summarising the antitrust enforcement work and achievements in China in 2023. Several key highlights of the Report include the following:

- **Merger control:** In 2023, 843 transactions were notified under the former lower merger control thresholds, with 797 reviewed with decisions. Among the 797 notified transactions, 11 were withdrawn, and four were cleared subject to conditions, with the remaining 782 unconditionally cleared. The intervention rate in 2023 was only approximately 0.5%. Sector-wise, most notifications come from the manufacturing industry, accounting for 37% of total filings.

OTHER NEWS

- **Antitrust investigations:** In 2023, SAMR and its local counterparts investigated 27 cases concerning anti-competitive agreements and/or abuse of market dominance, with a total fine and confiscation of RMB 2.163 billion (approximately USD 297.48 million). The main sectors of concern remained people's livelihood (such as pharma, public utilities and construction materials) and online platforms. SAMR also underlined the importance of *ex-ante* regulation, highlighting that it scheduled "regulatory talks" with three industry associations and 11 companies and provided compliance guidance to market players in various key industries in an attempt to prevent antitrust violation.

- **Legislation**: As the first full year following the enactment of the amended AML, 2023 witnessed SAMR's remarkable efforts and progress on the antitrust legislation front. In 2023, SAMR revised multiple rules and regulations, notably including the provisions on anti-competitive agreements, abuse of administrative power, abuse of intellectual property rights, merger review and merger thresholds amendments.

SAMR issues a warning letter to Avanci

On 27 June 2024, the Head of the Anti-Monopoly Enforcement Division I of SAMR met with representative(s) from patent pool Avanci and delivered a warning letter to caution Avanci of the antitrust risks in licensing the standard essential patents in its pool for automotive wireless communications. SAMR did not express specific concerns, but, reportedly, Avanci may be considered to have market power with respect to licensing auto-related standard essential patents, and its selective licensing business model may concern SAMR. SAMR urged Avanci to conduct a risk assessment for antitrust compliance and to take effective measures to address concerns. SAMR also stressed the importance of strengthening internal antitrust compliance programmes. Avanci appreciated SAMR's guidance. This is SAMR's first warning letter known to the public since the "three notices and one letter" mechanism, which introduced the soft enforcement approach of giving warning letters in December 2023. This approach is also considered an *ex-ante* tool to proactively intervene in anticompetitive practices.

Shanghai Court dismisses a consumer's antitrust claim against Apple

On 29 May 2024, it was reported that the Shanghai Intellectual Property Court (the "**SIPC**") had issued the ruling on China's first consumer-initiated private lawsuit against the "**Apple Tax**" (i.e., the commission fee charged by Apple for in-app purchases on its App Store, typically 30% of the transaction amount). The lawsuit was filed in January 2021 by a Chinese consumer against Apple Inc. and Apple Computer Trading (Shanghai) Co., Ltd (together "**Apple**"). The plaintiff claimed that Apple had abused its dominant market position by engaging in excessive pricing (through the "Apple Tax"), tying and exclusive dealing (through the mandatory use of Apple Pay). While acknowledging Apple's dominance in the market for application trading platforms for iOS smart devices in the PRC, the SIPC ruled against the plaintiff's claims to eliminate the standard 30% commission on in-app purchases and to end the mandatory use of Apple Pay for these transactions. In its decision, the SIPC noted that it was difficult to determine the actual costs incurred by Apple in operating its platform, which made it difficult to assess whether the 30% fee was excessive. Furthermore, the SIPC found that Apple's restrictions on payment methods were justified by the need to protect data security and consumer interests. Therefore, the SIPC concluded that Apple had not abused its market dominance and had not eliminated or restricted competition in China. The plaintiff's attorney indicated that they would appeal to China's Supreme People's Court. Apple was reported to have appealed the SIPC's decision.

OTHER NEWS

SPC issues judicial interpretation on antitrust civil litigation

On 24 June 2024, the Supreme People's Court ("**SPC**") issued the *Interpretation on Several Issues Concerning the Application of Law in the Trial of Antitrust Civil Disputes* (the "**Interpretation**"), which came into effect on 1 July 2024. The Interpretation is built upon the previous judicial interpretation issued by the SPC in 2012 which only laid out the fundamental framework of antitrust civil lawsuits. Updates are made in the Interpretation to keep in tune with the amended AML and its accompanying rules and regulations. A few key highlights are shared below:

- **Horizontal anti-competitive agreements:** The Interpretation expressly introduces the concept of a "**single economic entity**" in the context of conduct rules and makes it clear that if undertakings are found to be part of a single economic entity (for instance, if one undertaking has control or decisive influence over other undertaking(s), or if undertakings are under the control or decisive influence of the same third party), they are not considered competitors and hence the agreements between them should not be assessed as horizontal agreements. Regardless of being tested in practice, this update echoes the general practices in major jurisdictions and may also serve as a helpful reference for administrative antitrust enforcement in the future.

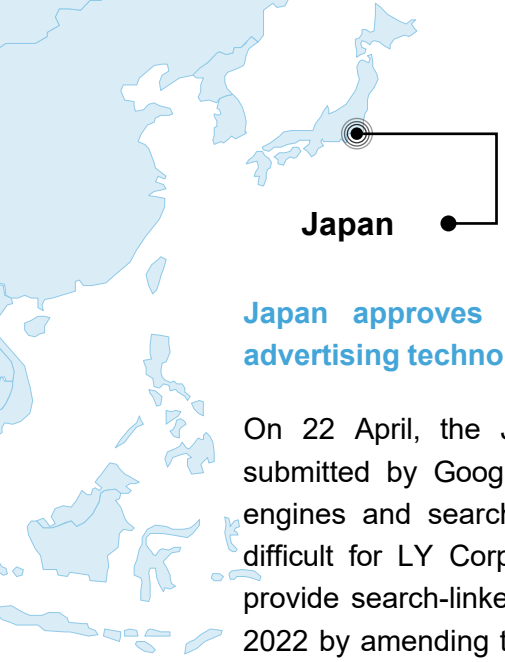
- **Vertical anti-competitive agreements:** The Interpretation once again clarifies the presumption of illegality for resale price maintenance ("**RPM**"), whereby the defendant will bear the burden of rebutting the presumed anti-competitive effects but leave the burden of proof for vertical non-price restraints untouched this time. Additionally, the Interpretation provides that agency agreements, under which agents do not bear any substantial commercial or operational risks, do not constitute RPM. This echoes SAMR's *Antitrust Guidelines on the Automobile Sector* but was first recognised in the context of antitrust litigation.

- **Abuse of dominance:** The Interpretation innovatively puts forward that an undertaking may be **preliminarily found to be dominant**, albeit rebuttable, if (A) for an extended period of time, (i) it is able to maintain its *price* apparently above the competitive level, or (ii) it does not suffer substantial customer loss despite a noticeable decline in product *quality*, or (iii) it has maintained a significantly higher *market share* than other markets players, AND (B) the relevant market clearly lacks competition, innovation and new entrants. This would, to a large extent, lessen plaintiffs' burden to prove dominance in the first place. Besides, the Interpretation provides clarifications on circumstances where defendants can rebut the presumption with justifications.

- **Follow-on civil litigation:** The Interpretation stipulates that the facts confirmed by antitrust authorities in an antitrust enforcement decision are in principle presumed to be true and can be relied upon, attaching high probative value to antitrust enforcement decisions in the context of antitrust civil litigation. This may pave the way for more follow-on antitrust civil litigations in China going forward.

- **Attention on IT and digital economy:** The Interpretation provides detailed provisions on antitrust issues arising from the IT and digital economy sectors, covering particularities in the relevant market definition, assessment of anti-competitive behaviours, impact of technical means, etc.

- **Relevance of economic analysis:** The Interpretation highlights the role and importance of economic analysis in the review of antitrust cases, in particular with respect to defining relevant markets, assessing exemptions and anti-competitive effects, determining market dominance and calculating losses.



Japan approves Google's commitment plan regarding search engine and search advertising technologies

On 22 April, the Japan Fair Trade Commission ("**JFTC**") approved the commitment plan submitted by Google LLC ("**Google**") in relation to the provision of technologies for search engines and search advertising. By way of background, it was alleged that Google made it difficult for LY Corporation (formerly known as Yahoo Japan Corporation, "**Yahoo Japan**") to provide search-linked ads to mobile devices from September 2015 at the latest through October 2022 by amending the Google Service Agreement and restricting the provision of technologies to Yahoo Japan which were necessary to provide search-linked ads to mobile devices.

Japan amends the "Green Guidelines"

On 24 April, the JFTC amended the "Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society under the Antimonopoly Act" (the "**Green Guidelines**"). As introduced in the last quarterly update, these amendments aim to clarify: (i) how certain joint activities such as information exchanges or reduction of manufacturing volume could be justified in certain cases, (ii) how to assess and evaluate the decarbonisation effects of companies' green initiatives and (iii) the market definitions of new environmentally friendly products and existing products.

Japan approves Bill for the Act on Promotion of Competition for Specified Smartphone Software

On 12 June, the Bill for the Act on Promotion of Competition for Specified Smartphone Software was approved and passed. This Act is an *ex-ante* regulation and sets out a prohibition on preventing alternative app stores, alternative in-app payment systems, anti-steering arrangements and alternative browser engines. Certain details such as exceptional measures to protect security, privacy and young people are expected to be covered in the upcoming guidelines to be prepared by the JFTC.

Japan penalises liquified petroleum gas cylinder valve manufacturers for price-fixing

On 27 June, the JFTC issued a cease-and-desist order and an administrative fine against manufacturers of valves for liquified petroleum gas cylinders who jointly agreed to raise sales prices. The total amount of the administrative fine was approximately JPY 0.8 billion, with the highest administrative fine against one participant (HAMAI INDUSTRIES LTD.) being JPY 0.4 billion.

South Korea fines 31 furniture manufacturers for bid-rigging

On 7 April, the Korea Fair Trade Commission ("**KFTC**") imposed a total fine of KRW 93.1 billion (approx. USD 69 million) on 31 furniture manufacturers for the alleged bid-rigging of participation in 738 tenders floated by 24 construction companies to procure built-in furniture between February 2012 and February 2022.

South Korea fines six affiliates of KH Group for bid-rigging

On 18 April, the KFTC imposed a total fine of KRW 51 billion (approx. USD 37 million) on six affiliates of KH Group for the alleged bid-rigging of participation in a tender floated by Gangwondo Development Corporation for the sale of Alpensia Resort in Pyeongchang.

South Korea announces effective date of revised merger guidelines in relation to the digital economy

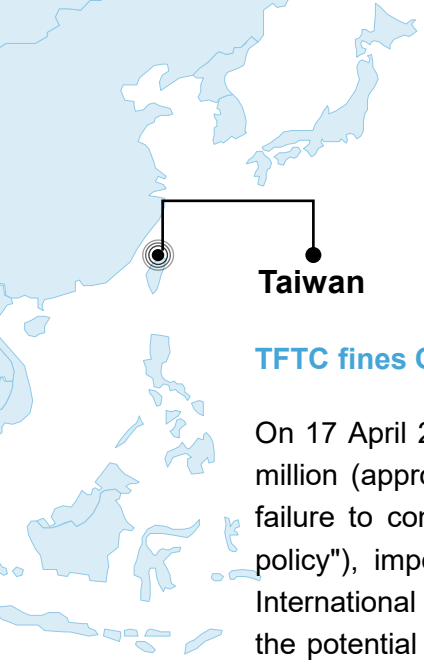
On 30 April, the KFTC announced the implementation of revised merger guidelines in relation to the digital economy sector effective from 1 May. The guidelines clarified the scope of a simplified review, the factors considered to define the relevant markets and network effects considered in relation to potential competition constraints.

South Korea fines 12 local semiconductor-related equipment manufacturers for bid-rigging

On 3 June, the KFTC imposed a total fine of KRW 10.46 billion (approx. USD 7.6 million) on 12 local semiconductor-related equipment manufacturers for the alleged bid-rigging of 334 tenders floated by Samsung SDS for a semiconductor monitoring and control system between 2015 and 2023.

South Korea fines Coupang for abuse of dominance

On 13 June, the KFTC imposed a KRW 140 billion (approx. USD 102 million) fine on Coupang, the largest e-commerce business in South Korea, which also sells own private-brand products, for alleged abuse of dominance from February 2019 by manipulating search ranking algorithms and by making employees write reviews and give high ratings for their own private-brand products in order to bolster sales of their private-brand products.

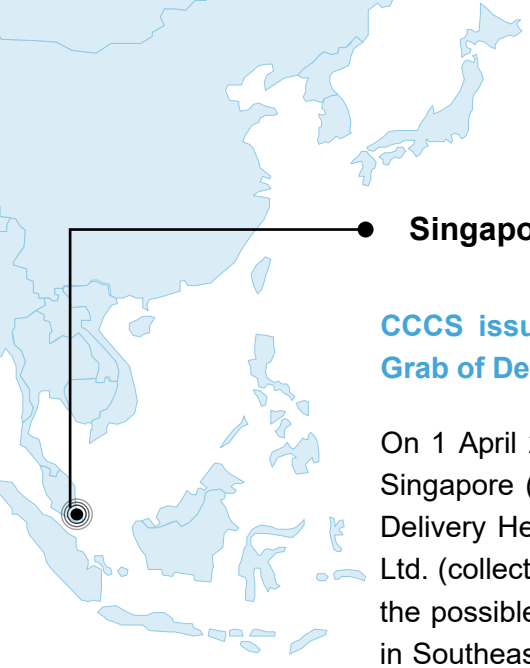


TFTC fines Chuan Lian for violating merger clearance conditions

On 17 April 2024, the Taiwan Fair Trade Commission (the "**TFTC**") imposed a fine of TWD 20 million (approximately USD 612,735) on retailer Chuan Lian Enterprise ("**Chuan Lian**") for its failure to comply with TFTC's conditions (i.e., the prohibition of the "most-favoured-customer policy"), imposed as part of the clearance decision of Chuan Lian's acquisition of RT-Mart International in 2022. Back in July 2022, the TFTC conditionally approved the transaction given the potential competition concerns about high combined market share, with risks of unilaterally increased prices and reduced promotions, etc. on the Taiwan markets for hypermarkets and supermarkets. One of the conditions imposed by the TFTC is not to adopt a "most-favoured-customer policy". Chuan Lian was found to have continued to demand, from suppliers, a certain level of discounts on top of the prices offered to other distribution channels. Additionally, Chuan Lian engaged in price negotiations with suppliers during promotional events, benchmarking against prices provided by suppliers to Chuan Lian's competing channels. Chuan Lian's non-compliance would potentially restrict competition at the retail level and prevent consumers from enjoying better prices.

TFTC blocks another merger in the steel industry

On 19 June 2024, the TFTC prohibited a proposed acquisition in the steel industry, i.e., Yieh United Steel Corporation and Yieh Phui Enterprise's acquisition of Tang Eng Iron Works. This is the second time that the TFTC has blocked the proposal, after rejecting it 15 years ago in 2009. The TFTC rejected the transaction based on concerns that the anticompetitive effects would outweigh any efficiency to be brought by the merger. Specifically, the TFTC found that the combined market share of the merged entity would exceed 50% in the stainless-steel sheet market. The TFTC particularly expressed concerns about potential price increases after the merger as Tang Eng Iron Works primarily served the local market at lower prices. The reduction of competitors may also make it harder for downstream customers to negotiate favourable terms with suppliers. Based on the above, the TFTC ultimately decided to block the deal again.



CCCS issues Interim Measures Directions during the possible acquisition by Grab of Delivery Hero's business in Singapore

On 1 April 2024, it was reported that the Competition and Consumer Commission of Singapore ("**CCCS**") had issued a set of Interim Measures Directions (the "**IMDs**") to Delivery Hero SE, Foodpanda GmbH (Germany) and Delivery Hero (Singapore) Pte. Ltd. (collectively, "**Delivery Hero**") as well as Grab Holdings Inc. ("**Grab**") in relation to the possible acquisition by Grab of the whole or part of the business of Delivery Hero in Southeast Asia, including Singapore ("Possible Transaction"). On 10 January 2024, CCCS commenced an investigation into whether the Possible Transaction would infringe section 54 of the Competition Act 2004 (the "**Act**"). At that time, CCCS had reason to suspect that the Possible Transaction might result in a substantial lessening of competition in the market for the supply of online food ordering and delivery ("**OFOD**") services in Singapore, which is characterised by few large players, high entry barriers and strong network effects. CCCS issued the IMDs to the parties in respect of their OFOD business entities in Singapore to prevent any action that may prejudice CCCS's investigations or its ability to direct any remedies under the Act should the need arise. The IMDs took effect from 2 February 2024 and ceased to be in effect from 23 February 2024 after CCCS was informed that the Possible Transaction had been abandoned. The IMDs issued by CCCS aimed to ensure that the market would remain open and contestable, including requiring the parties to refrain from sharing confidential information, to deal with each other at arm's length, not to take any action that would impair either party's ability to compete independently, etc.

CCCS issues Proposed Infringement Decision against companies for bid-rigging tenders for interior fit-out construction services

On 23 May 2024, CCCS issued a Proposed Infringement Decision ("**PID**") against two companies, namely Tarkus Interiors Pte Ltd and Flex Connect Pte. Ltd., for infringing section 34 of the Act. The companies engaged in bid-rigging conduct in the supply of interior fit-out construction services for non-residential properties in Singapore. The affected tenders were procured for between SGD 150,000 and SGD 7,700,000 in value and involved 12 properties, including offices, retail spaces and food and beverage establishments. The two companies provide interior fit-out construction services that can include the construction of interior partitions and mechanical, electrical and plumbing works and finishings. CCCS's investigations revealed that there were anti-competitive agreements and/or concerted practices between the companies to collude by bid-rigging tenders, which removed competitive pressure between them to submit their best offers to customers. As a result, customers suffered as they were unable to obtain offers that could provide the best value. The companies have six weeks from the receipt of the PID to make their individual representations. CCCS will consider the representations, as well as all available information and evidence, before making its final decision.

Singapore

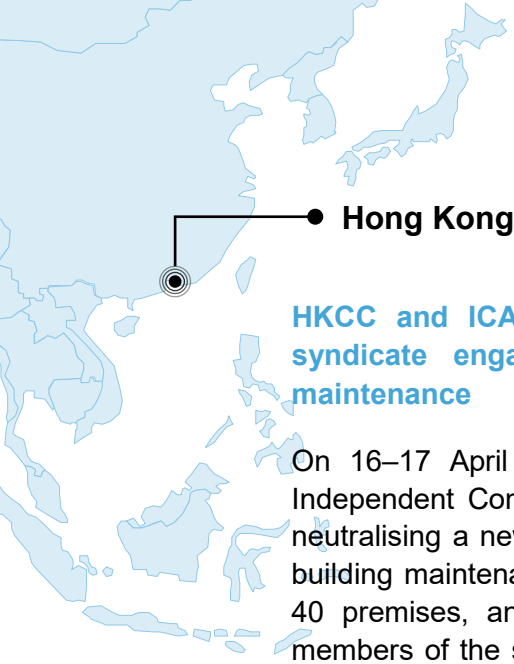
CCCS consults on renewing the Block Exemption Order for Liner Shipping Agreements for five years

From 27 May to 17 June 2024, CCCS sought public feedback on its proposed recommendation to renew the Competition (Block Exemption for Liner Shipping Agreements) Order (the "**Order**") for five years from 1 January 2025 to 31 December 2029, which CCCS has assessed will generate a net economic benefit for Singapore. Section 34 of the Act prohibits agreements, decisions and concerted practices that have the object or effect of preventing, restricting or distorting competition in Singapore. However, the current Order, which expires on 31 December 2024, exempts certain types of liner shipping agreements (i.e., vessel-sharing agreements for liner shipping services and price discussion agreements for feeder services) from section 34, subject to certain conditions and obligations. CCCS proposes to recommend that the Order be renewed by five years to provide legal certainty to the industry and to allow industry players to plan for the longer term. For liners, this provides continuity for them to carry on their commercial activities and creates a conducive environment as they plan their long-term investments. For customers, this creates more stability in the network of liners, which in turn offers more choices to support customers' needs.

Indonesia

KPPU finds Shopee to have unduly favoured its delivery services

On 28 May 2024, the Indonesia Competition Commission (the "**KPPU**") made allegations against Shopee, the local arm of Singapore-based e-commerce company Sea and the market leader in the Indonesian e-commerce sector, for violating anti-competition regulations. The KPPU claimed that Shopee delisted several delivery service providers it had previously used and trimmed the list to only two companies, one of which had a Shopee Indonesia executive on its board. This effectively directed customers to use specific delivery services, thereby limiting customers' options. The KPPU conducted a hearing on 28 May and initiated an investigation into Shopee Internasional Indonesia. The KPPU discovered that a Shopee director had also held a senior position in the company's delivery service arm since 2018. On this basis, the KPPU concluded that Shopee Internasional Indonesia had engaged in discriminatory practices in the selection of shipping service companies, favouring its own delivery services.



HKCC and ICAC conduct their first joint operation to neutralise a newly rising syndicate engaging in corruption and tender rigging in relation to building maintenance

On 16–17 April 2024, the Competition Commission of Hong Kong ("**HKCC**") and the Independent Commission Against Corruption ("**ICAC**") conducted their first joint operation, neutralising a newly rising syndicate engaging in corruption and tender rigging in relation to building maintenance. In the joint operation, HKCC and ICAC conducted searches at about 40 premises, and ICAC arrested 20 persons, including the mastermind and backbone members of the syndicate. The companies and individuals concerned were alleged to have engaged in corruption and anticompetitive activities, contravening Section 9 of the Prevention of Bribery Ordinance and the First Conduct Rule of the Competition Ordinance. They had allegedly manipulated the tendering exercises of building maintenance projects, exaggerated contracts sums, assisted associated contractors to obtain maintenance projects and consultancy contracts and manipulated project supervision and project payment release. The joint operation demonstrated HKCC's determination to cooperate with other agencies in cracking down on potential anti-competitive activities in sectors including building maintenance.

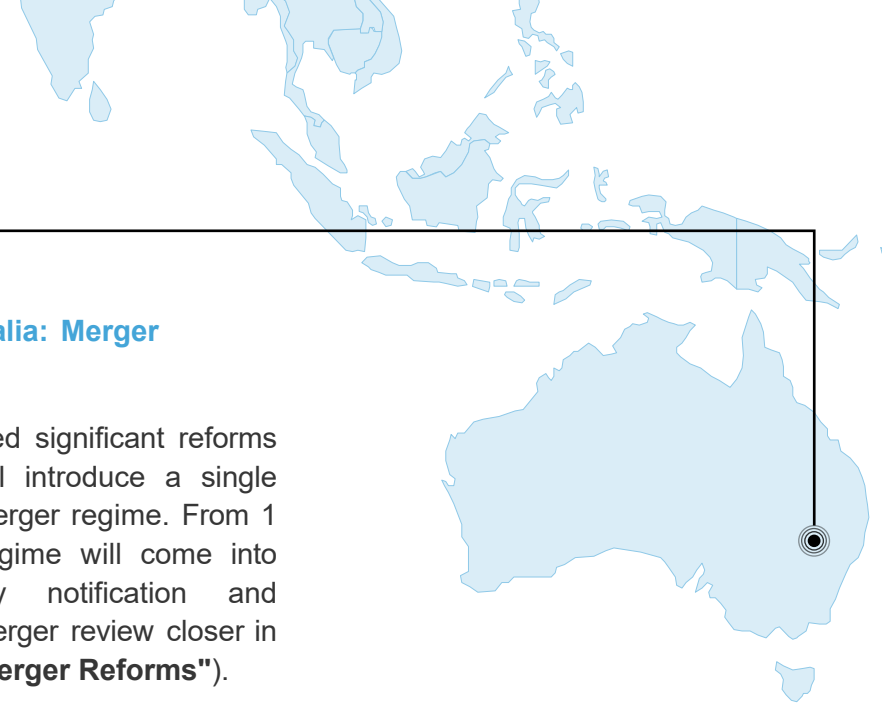
HKCC welcomes the appointment of Chairman and Members and announces the re-appointment of Chief Executive Officer

On 26 April 2024, HKCC welcomed the re-appointment of Mr Samuel Chan Ka-yan as Chairman of HKCC and the re-appointment of nine incumbent Members for a term of two years, effective from 1 May 2024. HKCC also welcomed the appointment of Mr Nicholas Chan Hiu-fung, Mr Calvin Chan Ka-wai, Mr Matthew Lam Kin-hong, Dr Billy Mak Sui-choi, Mr Webster Ng Kam-wah and Mr Symon Wong Yu-wing as new Members of the HKCC for the same term. In addition, the HKCC announced the re-appointment of Mr Rasul Butt as its Chief Executive Officer for a term of three years, effective from 3 May 2024. Mr Samuel Chan suggested that over the past few years, the HKCC has matured rapidly into a robust law enforcement agency and is confident that Mr Butt, together with his colleagues at the HKCC, will continue to fulfil the HKCC's mandate of safeguarding market competition in Hong Kong.

HKCC welcomes Tribunal's orders in first cartel case relating to government subsidy scheme

On 7 June 2024, HKCC welcomed the orders granted by the Competition Tribunal (the "**Tribunal**") in legal proceedings concerning cartel conduct when providing quotations for IT solutions in applications for government subsidies under the Distance Business Programme. The orders were granted based on the joint applications filed with the Tribunal by HKCC and four settling parties. The settling parties admitted liability for their involvement in the contravention by engaging in price-fixing, market-sharing, bid-rigging and/or sharing competitively sensitive information when providing quotations between May 2020 and September 2021. The Tribunal ordered the payment of the pecuniary penalties and HKCC's investigation costs and litigation costs, as well as disqualification of the director.

This case marked many "firsts", including: (i) the use of data-screening techniques to identify suspicious patterns that might be indicative of anti-competitive conduct; and (ii) successful collaboration with a public body which provided crucial information and data to HKCC for screening, which helped the Commission build a strong case against the relevant parties. HKCC also reiterates that any attempt to exploit public funding or government subsidy schemes through anti-competitive means will be confronted head-on.



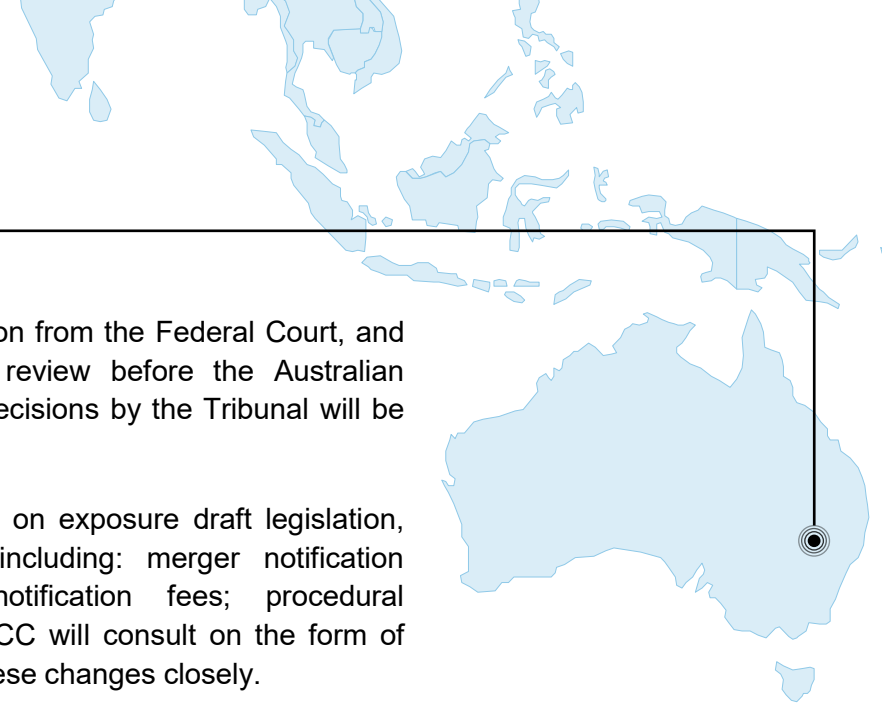
Australia

A new dawn for Merger Control in Australia: Merger reforms confirmed

• The Australian Government has announced significant reforms to Australia's merger control laws that will introduce a single mandatory and suspensory administrative merger regime. From 1 January 2026, this new merger control regime will come into force, replacing the current voluntary notification and authorisation process, bringing Australian merger review closer in line with other OECD and EU jurisdictions ("**Merger Reforms**").

Key changes arising from the Merger Reforms include:

- A new mandatory and suspensory notification process triggered by transactions above a certain monetary (e.g. turnover, revenue) and supply/market share-based threshold. In determining whether a transaction meets the relevant threshold, all transactions by the merger parties within the previous three years will be aggregated.
- Greater ability for the ACCC to consider the effect of such past transactions in its competitive assessment, to more effectively target "creeping" acquisitions and aggressive "roll up" strategies.
- New requirements for parties to provide all information upfront and pay a filing fee, currently estimated to be between AUD 50,0000–100,000, with exemptions for small businesses.
- Modification of the "substantially lessening competition" (SLC) test to also examine whether a transaction "creates, strengthens or entrenches a position of substantial market power". This modification will also capture related agreements likely giving the ACCC a greater ability to factor in economic, rather than purely legal, principles.
- Replacement of the current s.50(3) merger factors with criteria focused on the conditions for competition and structure of relevant markets, as well as the market position of the businesses concerned and their economic and financial power.
- New indicative timelines for review consistent with international practice, including Phase 1 (15-30 business days) and Phase 2 (90 business days). Fast track determination process will be available if no concerns are identified by the ACCC after 15 business days. It is expected that the ACCC will determine the vast majority of mergers within the Phase 1 period. These time periods may be extended e.g., if remedies are offered by the merger parties or if requested information is not promptly provided.
- Changes to the application of the public benefits test currently applied to merger authorisations. The test will be maintained as a "second limb" for the ACCC's assessment of whether a merger should be allowed because it gives rise to net positive public benefits, if the ACCC otherwise disallows a merger on SLC grounds.
- Substantial new penalties for failing to notify a notifiable merger, or proceeding with the merger ahead of the ACCC's determination, or otherwise than in accordance with the ACCC's determination, these may apply to the entity concerned, executives or officers, and voiding of the transaction.



Australia

- Removal of the option to seek a declaration from the Federal Court, and appeal rights will be limited to merits review before the Australian Competition Tribunal. Judicial review of decisions by the Tribunal will be available in the Federal Court.

In 2024 Treasury will commence consulting on exposure draft legislation, with key issues yet to be determined including: merger notification thresholds; merger review timelines; notification fees; procedural safeguards; and penalties. In 2025, the ACCC will consult on the form of notification/filing form. We will be following these changes closely.

Australian Foreign investment review board (FIRB) policy focussed on a risk based approach

On 1 May 2024, Australian Treasurer Jim Chalmers announced reforms to streamline and strengthen the FIRB regime. The reforms will be primarily implemented via policy reform rather than legislative amendments – the updated Foreign Investment Policy reflects the proposed reforms. Key changes that will be introduced include:

- Faster approvals for 'low-risk' investments by compliant investors investing in non-sensitive sectors. Treasury will assess whether an application is 'low-risk' based on the profile of the investor, the target of their proposed investment and the structure of the transaction. While each investment will be considered on a case-by-case basis, some features that may benefit from a streamlined approval process include:
    - Investors with a track record of compliance with FIRB or passive investors who hold no control or influence over the investment (however, faster approval is unlikely if these investors are investing as part of a consortium with investors who do not meet this threshold);
    - an investment target in a non-sensitive sector; and
    - investments where the ownership structure is clear (including who will ultimately control the asset, land or entity on completion) and the transaction structure is uncomplicated.
- Increased scrutiny of 'high-risk' investments, particularly investments in critical or sensitive sectors of Australia's economy. Sensitive sectors include critical infrastructure, critical minerals, critical technology, as well as investments which involve holding or having access to sensitive data sets or being in close proximity to sensitive Australian government facilities.
- A new target for processing investment proposals to apply from 1 January 2025, being 50% of all applications processed within the 30-day statutory period. This should result in an improvement in the speed at which applications are processed from 1 July 2024 as Treasury works to meet that target.
- Increased timeline transparency, with Treasury communicating with investors when they can expect longer timeframes in the assessment of investment proposals.
- Refunds of application fees will be provided when fees for foreign investments that do not proceed where the investor was unsuccessful in a competitive bid process.

Australia

- Changes to the national interest test, including:
  - As part of the assessment of the national interest, FIRB will consider whether a proposed investment may result in an investor gaining control over market pricing and production of a good or service in Australia.
  - FIRB will consider proposals with certain tax characteristics deemed higher-risk through a sharper lens, including:
    - ✓ internal reorganisations or intragroup transactions as steps toward avoidance of Australian tax laws;
    - ✓ pre-sale structuring that present risks to tax revenue on disposal by private equity or other investors;
    - ✓ the use of related party financing arrangements to reduce Australian income tax or avoid withholding tax; and
    - ✓ facilitation of migration of assets to offshore related parties with effective low taxation.

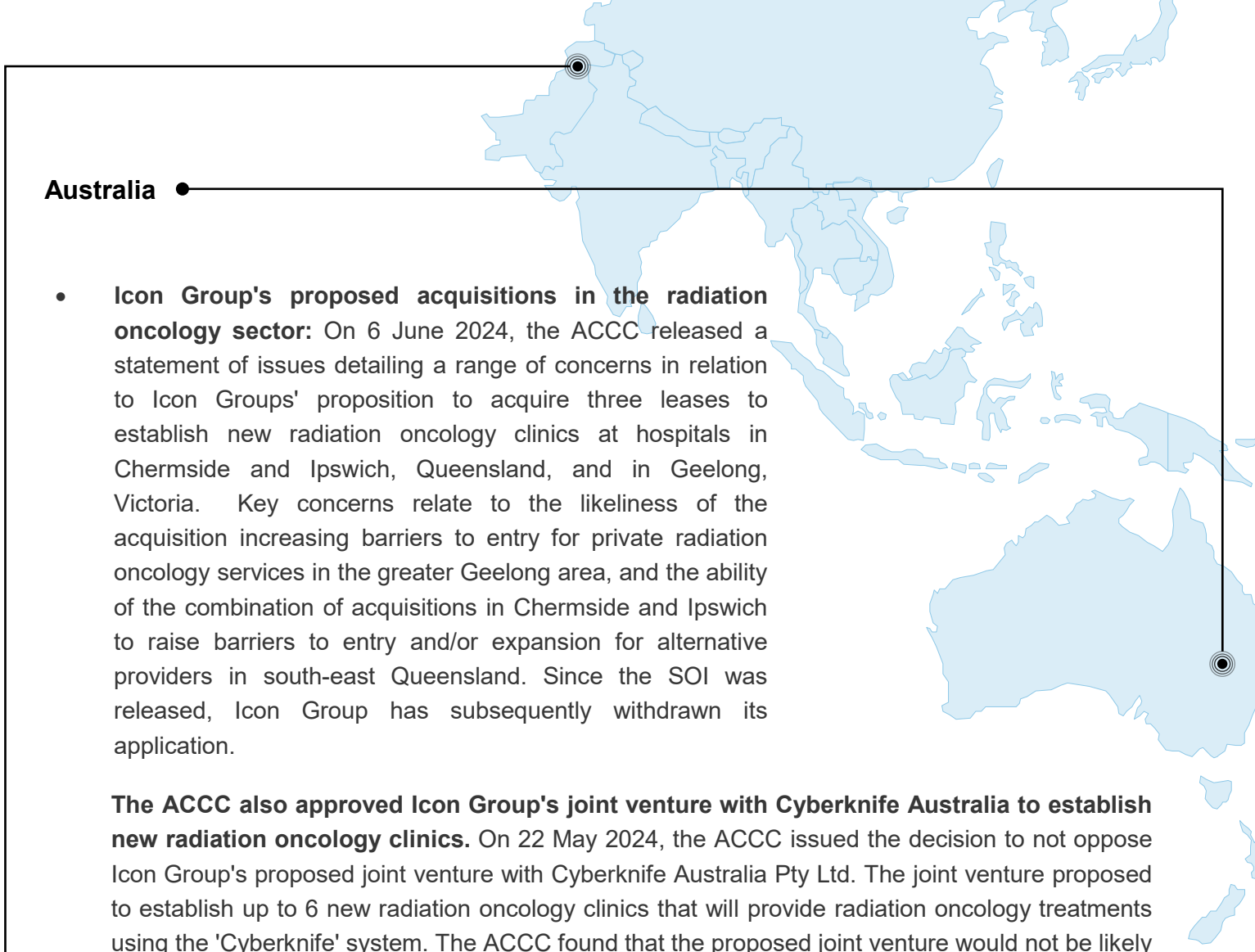
Currently FIRB approval is typically delayed pending completion of any ACCC assessment. Under the new FIRB regime, we anticipate that if a foreign investment does not meet the mandatory merger thresholds (which are still subject to consultation and yet to be set) FIRB will no longer be required to consult with the ACCC. This should increase the speed of FIRB's assessment for transactions that do not have competition implications.

The reform announcement has additionally emphasised the Government's dedication to attracting investment in key areas such as investments which help deliver net zero transformation, support the objectives of Australia's Critical Minerals Strategy and the development of critical technologies. Investments with these features are likely to be the beneficiary of more favourable consideration from FIRB.

Increased ACCC scrutiny of mergers and acquisitions in healthcare sector

The ACCC continues to carefully scrutinise mergers and acquisitions in the healthcare sector, releasing multiple statements of issues for a number of transactions notified in the past quarter:

- **Sigma's acquisition of Chemist Warehouse:** On 12 June 2024, the ACCC released the Statement of Issues ("**SOI**") in relation to its informal review of Sigma Healthcare Limited's proposed acquisition of Chemist Warehouse Group Holdings. The ACCC has identified a range of issues as potentially causing competition concerns, including: structural market change in the medium to long term that may raise barriers to entry and expansion, access to and use of Sigma-supplied independent pharmacies data (reducing retail pharmacy competition) and the potential foreclosure of rival suppliers. The application is still under consideration, with submissions recently closed on 27 June 2024.



Australia

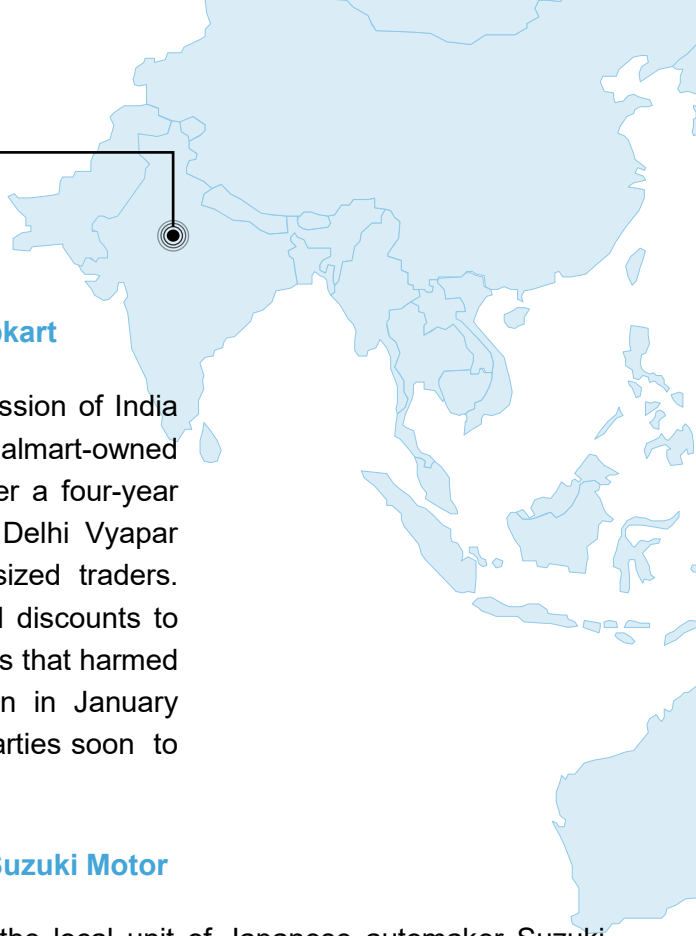
- **Icon Group's proposed acquisitions in the radiation oncology sector:** On 6 June 2024, the ACCC released a statement of issues detailing a range of concerns in relation to Icon Groups' proposition to acquire three leases to establish new radiation oncology clinics at hospitals in Chermside and Ipswich, Queensland, and in Geelong, Victoria. Key concerns relate to the likeliness of the acquisition increasing barriers to entry for private radiation oncology services in the greater Geelong area, and the ability of the combination of acquisitions in Chermside and Ipswich to raise barriers to entry and/or expansion for alternative providers in south-east Queensland. Since the SOI was released, Icon Group has subsequently withdrawn its application.

  The ACCC also approved Icon Group's joint venture with Cyberknife Australia to establish new radiation oncology clinics. On 22 May 2024, the ACCC issued the decision to not oppose Icon Group's proposed joint venture with Cyberknife Australia Pty Ltd. The joint venture proposed to establish up to 6 new radiation oncology clinics that will provide radiation oncology treatments using the 'Cyberknife' system. The ACCC found that the proposed joint venture would not be likely to substantially lessen competition in any relevant markets, with reasons including that the parties did not generally compete for the same patients. The ACCC further considered that Cyberknife's technology would not be made available in new locations as rapidly without the transaction.

Pakistan

CCP launches a market study on digital economy

On 5 April 2024, the Competition Commission of Pakistan (the "**CCP**") announced that it had launched a research project entitled "Competition Assessment of Digital Markets and Digital Services in Pakistan" to understand the impact of digital markets on competition, economic growth and employment for the purpose of providing policy recommendations to help Pakistan align with international regulatory practices. The project will explore the dominance of major digital platforms, the strategic use of data and the role of algorithms, which have raised significant competition concerns. The CCP is considering measures, such as enhancing consumer data portability, promoting open standards, and encouraging data sharing among competitors, to boost competition and benefit consumers in Pakistan's evolving digital marketplace. Upon completion of the project, the CCP plans to draft legislation to regulate digital markets to promote healthy competition and address the challenges of digital transformation.



India

CCI finds anti-competitive practices of Amazon and Flipkart

In May 2024, it was reported that the Competition Commission of India (the "**CCI**") had found e-commerce giants Amazon and Walmart-owned Flipkart to have engaged in anti-competitive practices after a four-year investigation, which was prompted by a complaint from Delhi Vyapar Mahasangh, acting for a group of small and medium-sized traders. Amazon and Flipkart were accused of offering substantial discounts to preferred customers and entering into exclusive partnerships that harmed competition. The CCI officially launched the investigation in January 2020. The CCI will share its investigation report with the parties soon to disclose more details about this investigation.

CCI dismisses abuse of dominance complaint against Suzuki Motor

On 6 May 2024, the CCI dismissed a complaint against the local unit of Japanese automaker Suzuki Motor over alleged abuse of dominance. Maruti Suzuki India faced allegations from an individual complainant regarding abuse of dominant position and unfair and unethical pricing practices related to the "Jimny" sports utility vehicles (SUVs), which also amounted to an unfair trade practice. The complainant claimed that Maruti Suzuki introduced a special edition "Thunder" model of the Jimny in India, offering it at a discounted price with additional accessories and an extended warranty, five months after the initial launch of the original SUVs. This resulted in dissatisfaction among initial buyers of the Jimny, who felt deceived and experienced a decrease in the resale value of their vehicles. After reviewing the case, the CCI found that Maruti Suzuki did not possess a dominant market position that would allow it to operate independently of competitive forces or consumers, specifically in the SUV segment of passenger vehicles. The CCI examined the complaints made by the individual complainant and concluded that there were no apparent competition issues or concerns arising from the facts and allegations presented.

CCI dismisses a complaint claiming Google abuses market dominance

On 24 June 2024, the CCI dismissed a complaint that accused Google of discriminatory treatment. The complaint alleged that Google gave the app Truecaller favourable exclusive access to share users' private contact information while prohibiting other apps from doing so. Google refuted the claim, stating that the Google Play Store explicitly prohibited unauthorised disclosure of users' non-public contacts and its commercial deals with Truecaller did not contain any exclusivity arrangements related to sharing non-public contact information. Additionally, Google pointed out that Truecaller's privacy policies required user consent to access their contact data and that Truecaller did not collect or share such information. In its assessment, the CCI acknowledged Google's dominant position in the market for app stores for the Android smart mobile operating system in India. However, the CCI found that the complaint was based on a version of the Truecaller app that was not available on the Google Play Store. The CCI hence concluded that the complainant had failed to substantiate the allegations or present proof to evidence that Google had favoured Truecaller or acted in a discriminatory manner.

CLIFFORD
CHANCE

REGIONAL CONTACTS

Beijing

Yong Bai
Partner, Head of Antitrust, Greater China
T +86 106535 2286
M +86 13910850420
E yong.bai@cliffordchance.com

Zibo Liu
Counsel
T +86 106535 4925
M +86 13910555340
E zibo.liu@cliffordchance.com

Michael Yan
Senior Associate
T +86 106535 2243
M +86 13910554604
E michael.yan@cliffordchance.com

Tokyo

Masafumi Shikakura
Partner, Head of Antitrust, Japan
T +81 (0)3 6632 6323
M +81 (0)80 1385 9808
E masafumi.shikakura@cliffordchance.com

Machiko Ishii
Qualified Lawyer
T +81 (0)3 6632 6415
M +81 (0)80 2087 7893
E machiko.ishii@cliffordchance.com

Hong Kong

Dayu Man
Foreign Legal Consultant
T +852 2826 2362
M +852 52092989
E dayu.man@cliffordchance.com

Sydney

Elizabeth Richmond
Partner
T +61 29947 8011
M +61 401149901
E elizabeth.richmond@cliffordchance.com

Mark Grime
Counsel
T +61 28922 8072
M +61 434426556
E mark.grime@cliffordchance.com

Angel Fu
Senior Associate
T +61 28922 8089
M +61 403341798
E angel.fu@cliffordchance.com

Sam Frouhar
Associate
T +61 28922 8053
M +61 413425066
E sam.frouhar@cliffordchance.com

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

Any advice above relating to the PRC is based on our experience as international counsel representing clients in business activities in the PRC and should not be construed as constituting a legal opinion on the application of PRC law. As is the case for all international law firms with offices in the PRC, whilst we are authorised to provide information concerning the effect of the Chinese legal environment, we are not permitted to engage in Chinese legal affairs. Our employees who have PRC legal professional qualification certificates are currently not PRC practising lawyers. This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com