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ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE

July to September 2024

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ANTITRUST IN CHINA AND ACROSS THE REGION

QUARTERLY UPDATE: JULY TO SEPTEMBER 2024

INTRODUCTION

In China, the last quarter continued to witness significant developments in various areas. On the merger control front, the State Administration for Market Regulation ("**SAMR**") released its updated notification form for simple cases and an updated announcement form, which took effect on 12 October 2024, marking its first major revision since the introduction of the simplified procedure in 2014. The updates aim to streamline the filing preparation process and increase the efficiency of the merger control process in China. In addition, SAMR launched a consultation on the draft rules concerning discretion benchmarks for imposing administrative penalties for merger-related violations of China's Anti-monopoly Law ("**AML**"). SAMR also published the second gun-jumping decision following the 2022 AML amendments. All these developments exhibit SAMR's unswerving efforts on the merger control front. With respect to enforcement in the area of conduct rules, the Shanghai Municipal Administration for Market Regulation fined Sumscope for monopolising financial data products, marking the first case of enforcement for abuse of market dominance in the data sector. In August, Alibaba completed its three-year compliance rectification programme under SAMR's supervision, which can be traced back to 2021 when SAMR imposed a record fine on Alibaba for its "choose one of two" anti-competitive conduct in the online retail market in China. In addition to such enforcements, SAMR also unveiled draft antitrust guidelines for the pharmaceutical sector and China's Supreme People's Court published four classic antitrust litigation cases.

Outside China, antitrust scrutiny across the digital sector remained rigorous across the Asia-Pacific region: Japan launched an online survey regarding the Smartphone Software Competition Promotion Act, and South Korea launched a survey of the AI market and announced plans to amend fair trade rules in the digital platform industry. India found Apple to have abused dominance in the Indian app store market, and its dismissal of imposing interim measures regarding Google's updated payments policy was challenged by broadcasters. Merger control-wise, a number of developments are worth staying tuned for: Australia published a draft Bill outlining the proposed merger notification thresholds underpinning the new mandatory and suspensory merger regime; the Philippines issued *Guidelines for Merger Remedies*; New Zealand issued a first-ever merger block based on buyer power concerns; Singapore conditionally approved Singapore Airlines and Garuda's proposed commercial co-operation; and India conditionally cleared the merger of domestic media assets of Reliance Industries and Walt Disney Company. Other notable developments include: Japan penalised Hakuhodo for bid rigging in relation to the Tokyo Olympic and Paralympic Games, and conducted on-site investigations of several companies for alleged abuse of dominance; Australia released the Aviation White Paper with a focus on incremental reforms to address market concentration in the aviation sector; and Hong Kong witnessed judgment in the first cartel case relating to a government subsidy scheme and the first criminal case relating to non-compliance with investigation powers.

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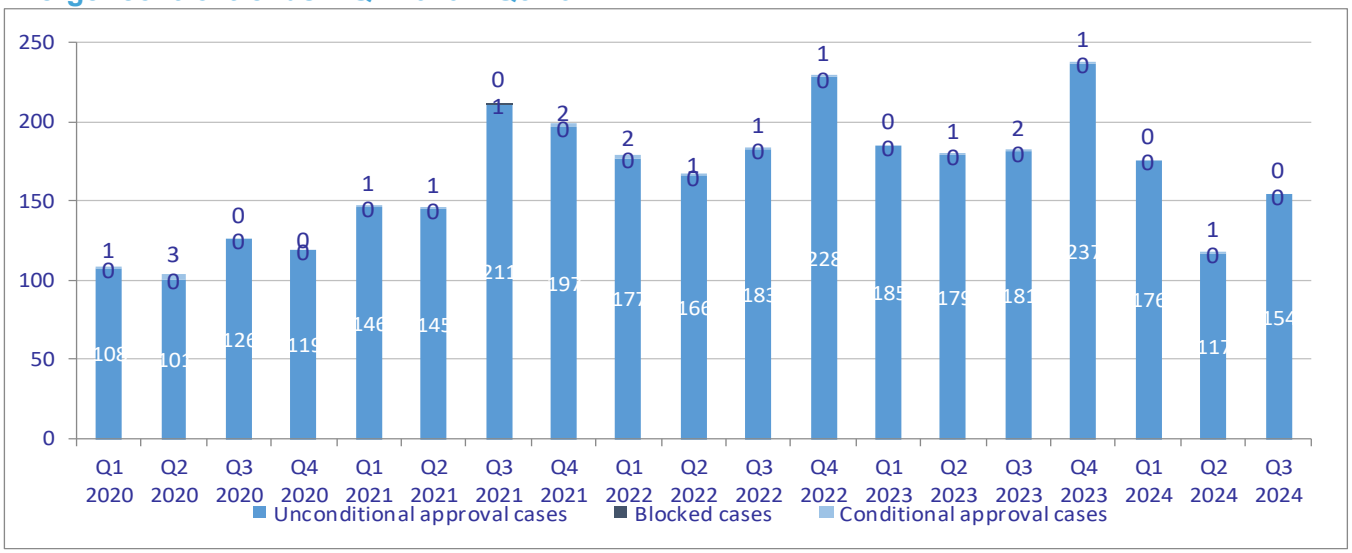
MERGER CONTROL

How many cases have there been?

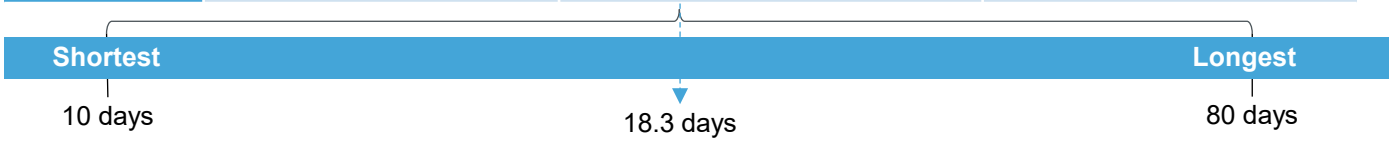
There were in total 154 merger decisions released in the third quarter of 2024, a significant decrease of 14.9% compared to the third quarter of 2023, with all the 154 cases unconditionally cleared. 142 cases were notified under the simplified procedure, which represents 92.2% of the total cases reviewed in this quarter.

Merger control trends – Q1 2020 – Q3 2024



Simplified procedure: How quick is the review period?

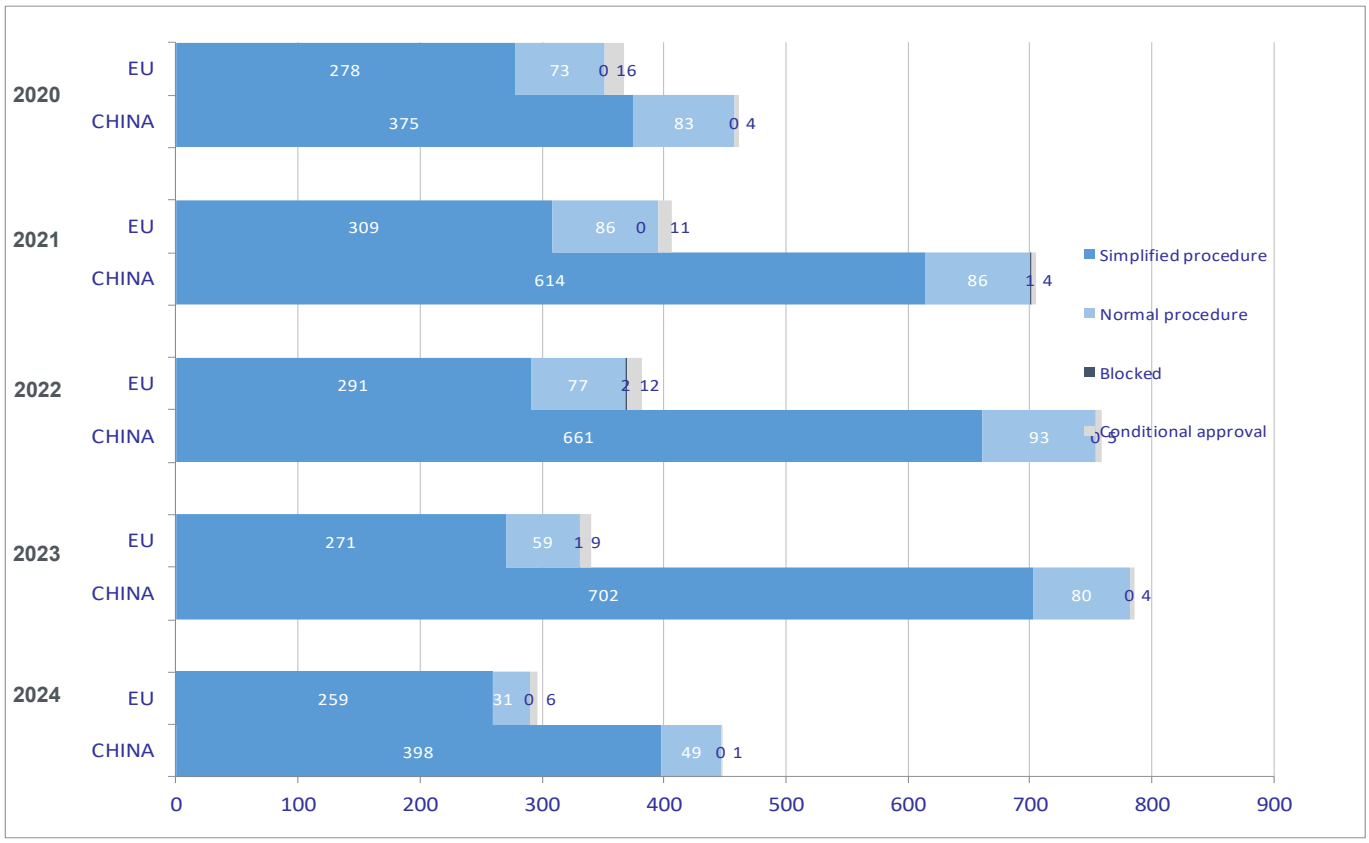
Quarter	Average review period	Simplified procedure (%)	Cases exceeding 30 days
Q1 2020	14 days	87.2%	1
Q2 2020	13.7 days	86.5%	0
Q3 2020	14.4 days	72.2%	3
Q4 2020	13.7 days	83.2%	1
Q1 2021	14.9 days	80.3%	3
Q2 2021	13.8 days	90.4%	0
Q3 2021	13.4 days	86.3%	3
Q4 2021	15.6 days	91.0%	3
Q1 2022	17.1 days	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
Q3 2024	18.3 days	92.2%	4



MERGER CONTROL

How does China compare internationally?

Comparison with EU – 2020 – 2024



SAMR fines Maoming Urban Construction for gun-jumping

On 12 September 2024, SAMR published an administrative penalty against Maoming Urban and Rural Construction Investment and Development Group ("**Maoming Urban Construction**") for gun jumping regarding its acquisition of a 51% interest in Guangdong Zhongyuan Investment Co., Ltd. ("**Guangdong Zhongyuan**"). This is the second published gun-jumping decision under China's AML amendments, following SAMR's fine against Qingdao Haier Air Conditioner Gen Corp. Ltd and Shanghai Highly (Group) Co., Ltd. in June 2024. The Maoming Urban Construction case originated in 2023 when Maoming Urban Construction signed the transaction document to acquire a 51% interest in, and joint control over, the target on 12 December 2023, and notified the transaction to SAMR the following day. During the review period, it was discovered that Guangdong Zhongyuan had completed the registration of the equity transfer, pending receipt of the clearance decision, thereby constituting gun-jumping. Following an investigation, SAMR found that the transaction did not have the effect of excluding or restricting competition and imposed a fine of RMB 1.75 million (approximately USD 247,056) on Maoming Urban Construction, i.e., the party with the obligation to file.

MERGER CONTROL

SAMR releases an updated notification form for simple cases

On 14 September 2024, SAMR released an updated notification form for simple cases ("**New Form**"), marking the first major revision since the introduction of the simplified procedure in 2014. This update, effective as of 12 October 2024, aims to streamline the notification process for simple cases. The New Form attempts to ease the burden of information collection by dispensing with the requirements for certain corporate details, such as postal code and company history, main competitors' information, and non-confidential versions of the notification. In addition, the burden for producing market data/analysis is also alleviated to some extent: (i) for non-nexus cases involving offshore targets or extraterritorial joint ventures, it is officially clarified that the market share data and competitive analysis are no longer mandatory (as a matter of fact, under the New Form, competitive analysis is generally not required for simple cases, although SAMR may request it during the review process); and (ii) if the parties' shares are below 5% in each relevant market and obtaining widely recognized third-party data is difficult, main competitors' data is no longer required. However, a noteworthy update is that in greenfield joint venture cases, parties are now required to provide future market share estimates for a certain period after the commencement of operations (e.g., three years). We anticipate that the adoption of the New Form will further enhance the efficiency of simple case review in China.

SAMR releases draft Discretion Benchmarks for Imposing Administrative Penalties for Illegal Implementation of Concentrations

On 16 August 2024, SAMR launched a consultation draft of the rules on discretionary administrative penalties for illegal implementation of concentrations (e.g., failure-to-notify, gun-jumping and non-compliance with conditions) ("**Draft Discretion Benchmarks**"). The public consultation period ended on 14 September. To recap on the background, in 2022 the AML amendments increased the highest fine for illegal implementation of concentrations from RMB 500 thousand (approximately USD 70,412) to RMB 5 million (approximately USD 704,126) (if the concentration does not have the effect of eliminating or restricting competition, i.e., non-problematic cases), or up to 10% of the undertaking's turnover in the preceding year (if the concentration has the effect of eliminating or restricting competition, i.e., cases with competition concerns). However, the AML amendments do not provide specific guidance as to how the amounts of fines should be assessed. The Draft Discretion Benchmarks set out the steps for exercising discretion, with a view to aligning and unifying the exercise of discretionary powers and thereby increasing the transparency and predictability of antitrust enforcement. According to the Draft Discretion Benchmarks:

MERGER CONTROL

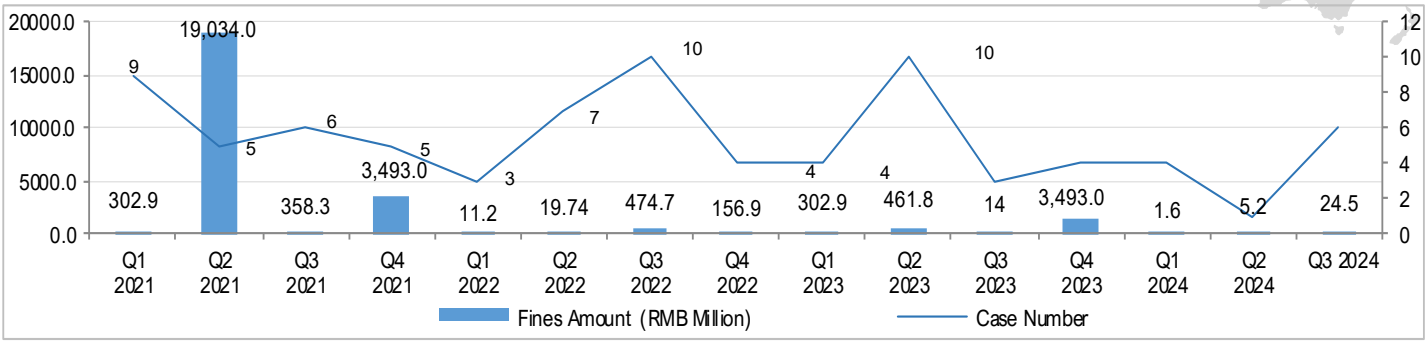
- For **non-problematic cases**, two steps are outlined for assessing the amount of the fine. As a first step, the amount of the initial fine is benchmarked at RMB 2.5 million (approximately USD 352,063). Then, in the case of mitigating factors (e.g., immediate cessation, being coerced or deceived, and voluntary reporting to SAMR), the amount of the initial fine will be lowered to RMB 1 million (approximately USD 140,825). In the case of aggravating factors (e.g., coercion and deception, multiple illegal implementations within a year, non-cooperation, and fraud or destruction of evidence), the amount of the initial fine will be increased to RMB 4 million (approximately USD 563,300). As a second step, the final amount of the fine will be further decreased or increased, taking into account the specifics and factors of the case, to arrive at the final amount. For this purpose, the Draft Discretion Benchmarks also enumerate a series of factors to be applied in such decreases or increases.

- For **cases with competition concerns**, the Draft Discretion Benchmarks provide that reference may be made to the above rules regarding non-problematic cases in ascertaining the amount of the fine, considering, in totality, the timing, duration and scope of any anti-competitive effect, consequences, etc. Notably, it is proposed that SAMR will directly impose the highest penalty of 10% if (i) the undertaking implements the concentration despite SAMR having identified and informed it of the competition concerns, (ii) the undertaking implements the concentration in violation of SAMR's decision to block the same, or (iii) other concentrations are implemented in a malicious manner, leading to anti-competitive effects.

- It is also proposed that SAMR **will not impose administrative penalties** but, rather, will provide education to an undertaking in two situations: (i) first-time offenders voluntarily report to SAMR and take measures to restore the pre-concentration status; or (ii) illegal implementation is proved to be caused by unforeseeable, unavoidable and insurmountable objective circumstances, where prudent assessment had been fulfilled.

ANTITRUST INVESTIGATIONS

Enforcement trends – Q1 2020 to Q3 2024

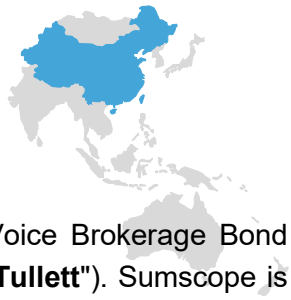


Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turnover	Leniency
Financial data Shanghai AMR	6 September 2024	Abuse of dominance through refusal to deal	4,532.782	N/A	N/A	2%	No
Vehicle inspection Hunan AMR	9 August 2024	Coordinating price increase	2,328.320	100.459	319.757	3%,6%	Yes
Gas pipeline installation Hainan AMR	2 August 2024	Abuse of dominance through exclusive dealing	7,128.391	N/A	N/A	1%	Yes
Water supply Sichuan AMR	2 August 2024	Abuse of dominance through exclusive dealing	1,188.229	N/A	N/A	1%	Yes
Gas pipeline installation Shanxi AMR	2 August 2024	Abuse of dominance through exclusive dealing	8,599.467	N/A	N/A	1%	Yes
Liquefied petroleum gas Anhui AMR	12 September 2024	Coordinating cartel	750.868	28.856	156.029	1%	Yes

Shanghai AMR fines Sumscope for monopolising financial data products

On 6 September 2024, Shanghai Municipal Administration for Market Regulation ("**Shanghai AMR**") released a decision imposing a fine of 2% of the annual turnover of Ningbo Sumscope Information Technology Co., Ltd. ("**Sumscope**") for its refusal to resell certain financial data to potential competitors and unfair trading practices.

The Chinese financial data vendor processes and integrates real-time bond trading data generated in the course of voice brokerage ("**Voice Brokerage Bond Data**") of the six authorised money brokers in China and offers full datasets encapsulating real-time voice broking information in relation to the bond market in China ("**Voice Brokerage Bond Datasets**"). Shanghai AMR found that the Voice Brokerage Bond Data of each of the six authorised money brokers in China are unsubstitutable, essential inputs to Voice Brokerage Bond Datasets, constituting a standalone upstream relevant product market.



ANTITRUST INVESTIGATIONS

Sumscope is the exclusive distributor (hence the dominant market entity) of the Voice Brokerage Bond Data of one of the authorised money brokers, Tullett Prebon SITICO (China) Ltd. ("**Tullett**"). Sumscope is therefore recognized as the bottleneck in the provision of Voice Brokerage Bond Datasets. Sumscope has been refusing to engage in bona fide negotiation with other financial data vendors for sales of Tullett's Voice Brokerage Bond Data, thereby maintaining its position as the sole provider of Voice Brokerage Bond Datasets in China. Shanghai AMR considers that there is no free-rider concern here and underscores Sumscope's admission of the intent to preclude potential entry to the market for Voice Brokerage Bond Datasets. Shanghai AMR identified that Sumscope also holds market dominance in the market of Voice Brokerage Bond Datasets for specific bond types, and penalised Sumscope for bundling Voice Brokerage Bond Datasets for different types of bonds by imposing a minimum purchase amount.

Accordingly, Sumscope was ordered to cease its unlawful activities and was fined 2% of its 2022 turnover, amounting to RMB 4,532,782.90 (approximately USD 639,450). This is the first abuse of dominance case in China in the data sector, marking a significant milestone in antitrust enforcement and compliance within China's digital economy.

Local AMRs penalise three public utility suppliers for abuse of market dominance

On 2 August 2024, SAMR published three decisions in which local AMRs penalised three public utility suppliers, respectively, for abuse of market dominance through exclusive dealing:

- Hainan Kunlun Ganghua Gas Co., Ltd. ("**Ganghua Gas**"), as the exclusive gas pipeline installation company in the Administrative District of Qionghai City, holds a dominant position in the local pipeline gas supply market. Upon investigation, the Hainan Administration for Market Regulation ("**Hainan AMR**") found that, starting in 2014, Ganghua Gas required new residential area developers to exclusively purchase their pipeline gas installation services. In addition, Ganghua Gas also required the employment of designated construction enterprises and designated product brands. Hainan AMR imposed a fine of RMB 1,762,891.1 (approximately USD 244,628.36) (1% of Ganghua Gas' sales in 2017) and confiscated illegal gains of RMB 5,365,500 (approximately USD 744,546).

- Jianyang Haitian Water Affairs Co., Ltd. ("**Haitian Water**") is the exclusive water supply company in certain urban areas of Jianyang City, holding a dominant position in the urban public tap water supply market in its served areas. Upon investigation, the Sichuan Administration for Market Regulation ("**Sichuan AMR**") found that Haitian Water required downstream users to only purchase water metering devices and installation services it provided, and further restricted downstream users' freedom to choose secondary water supply facility manufacturers other than those designated by Haitian Water. Sichuan AMR imposed a fine of RMB 1,188,229.63 (approximately USD 166,474.67) on Haitian Water (1% of its sales in 2020).

- Datong Huarun Gas Co., Ltd. ("**Huarun Gas**") holds a dominant position in the local pipeline gas supply market in certain urban areas of Datong City and related counties. The Shanxi Administration for Market Regulation ("**Shanxi AMR**") found that from January 2019 to July 2021, Huarun Gas mandated that residential area developers, certain industrial and commercial users and households must use the pipeline installation services provided by Huarun Gas, which constituted exclusive dealing. Shanxi AMR imposed a fine of RMB 8,599,467.17 (approximately USD 1,204,812.15) on Huarun Gas (1% of its sales in 2020).

ANTITRUST INVESTIGATIONS

Anhui AMR penalises LPG undertakings for co-ordinating cartel

On 12 September 2024, SAMR published a decision whereby the Anhui Administration for Market Regulation ("**Anhui AMR**") fined nine out of 10 liquefied petroleum gas ("LPG") undertakings for market sharing and price fixing agreements (the tenth LPG undertaking's operator died before the decision was published). Upon investigation, Anhui AMR found that, on 15 September 2018, the 10 LPG undertakings signed a partnership agreement, collectively investing in Anhui Juyuan Gas Trading Co., Ltd. ("**Juyuan Company**"), to harmonise the market sales price and distribute the gross profit from sales. At the end of 2019, these undertakings began uniformly to deliver purchase funds and sales revenue to Juyuan Company for co-ordinated arrangement, whereby Juyuan Company would, in turn, distribute gross profits to the undertakings in an agreed proportion, which continued until August 2021. In addition, from November 2018 to May 2019, the LPG undertakings, under the organisation of Juyuan Company's legal representative, Li Bao, agreed to negotiate and publish the unified sales prices via WeChat; however, such prices were not followed in reality (i.e., the price-fixing was not implemented). Anhui AMR found that the LPG undertakings had violated Article 13(1) and 13(3) of the previous AML and the nine surviving LPG undertakings were fined a total of RMB 750,868.29 (approximately USD 105,688), amounting to 1% of their respective sales in 2020.

Hunan AMR penalises 13 vehicle inspection companies for coordinating price increase

On 9 August 2024, SAMR published a decision where the Hunan Administration for Market Regulation ("**Hunan AMR**") fined 13 vehicle inspection agencies for reaching and implementing a cartel that drove up the service price. After investigation, Hunan AMR found that in 2021, the 13 vehicle inspection companies participated in a meeting where they verbally agreed to raise the fees of vehicle inspection and examination services, and the companies subsequently communicated through phone calls, WeChat, etc. to implement the price increase. Notably, they devised a staggered increase plan whereby each vehicle inspection company would increase their service fees to different levels on different dates from March to May 2021. Hunan AMR concluded that the 13 vehicle inspection companies violated Article 13(1) of the former AML and Article 7(1) of the former Interim Provisions on Prohibiting Monopoly Agreements for reaching and implementing the cartel that led to price hikes. Therefore, Hunan AMR imposed an aggregate penalty of RMB 2,328,320.22 (approximately USD 325,871.63) on the 13 companies, including fines that amounted to 3% of the companies' respective sales in 2021, along with confiscated illegal gains. One company, for which illegal gains could not be determined, was fined 6% of its 2021 sales.

OTHER NEWS

Alibaba completes its three-year compliance rectification programme under SAMR's supervision

On 30 August 2024, SAMR announced that Alibaba Group Holding Limited ("**Alibaba**") has completed its three-year regulatory rectification programme and gave full recognition to its compliance efforts. In April 2021, SAMR imposed a record fine of RMB 18.228 billion (USD 2.8 billion) on Alibaba for its "choose one of two" anti-competitive conduct in the online retail market in China, marking China's first antitrust enforcement in the digital platform sector. SAMR issued a stand-alone "Administrative Guidebook" and required Alibaba to cease illegal activities, conduct a comprehensive self-review and submit compliance reports for three consecutive years. Following its assessment, SAMR came to the view that Alibaba has ceased the "choose one of two" practice in full, strictly regulated its business operations, assumed its role as a platform operator, improved its compliance management systems, and enhanced its service quality, bringing improvements and benefits to the online retail market landscape, fair competition, market growth, and a dynamic and robust platform economy and business environment in general. SAMR has indicated its commitment to providing continuing guidance for Alibaba in the future. In response to the above, Alibaba stated that it takes this opportunity as a new starting point for development, and will further promote the healthy development of platform economy premised upon innovation, compliant operations and technology, ultimately creating value for society at large.

China Supreme Court announces four classic antitrust litigation cases

On 11 September 2024, China's Supreme People's Court ("**SPC**") published four classic antitrust cases together with four classic anti-unfair competition cases, shedding light on the interpretation and application of the AML in contentious cases. Among the four antitrust cases, three concern abusive behaviour and the fourth concerns horizontal agreement, covering sectors such as catering, digital television, residential natural gas, vegetable wholesale, etc. The highlights are as follows:

- **Horizontal agreements and determination of compensation:** In *Yunnan Yiherun Rice Noodle Co., Ltd. v. Yunnan Runhuo Food Co., Ltd. and others (2023)*, the SPC overturned the lower court's dismissal of the plaintiff's suit and identified the behaviour of price-fixing and joint boycotting in this particular case. Of particular note was that, despite the plaintiff not being able to provide evidence of losses, the SPC confirmed the existence of monopolistic practices and, taking into account the monopolists' subjective malice, the duration of their actions, and the impact on the plaintiff, awarded compensation of RMB 1.1 million (approximately USD 155,710.32), with joint and several liability for the seven defendants. This approach, albeit not based on Articles 44 and 45 of the Interpretation on Several Issues Concerning the Application of Law in the Trial of Antitrust Civil Disputes, appears consistent with such newly issued Articles, in terms of how to determine damages when the exact amount is hard to calibrate.
- **Burden of proof and compensation in follow-on lawsuits:** In Haidong Huaze Gas Appliance Trading Co., Ltd. Minhe Branch v. Qinghai Minhe Chuanzhong Oil and Gas Co., Ltd., the SPC confirmed that, in follow-on lawsuits, plaintiffs do not need to adduce evidence separately if the alleged antitrust infringement had been affirmed in an effective and final administrative penalty decision, unless defendants can provide evidence to the contrary. Additionally, in awarding compensation, the SPC considered the actual damages and the loss of profits.

OTHER NEWS

- **Tie-in sales and refusal to deal:** In Tiexi Chemical Textile Video Maintenance Station v. China Broadcasting Liaoning Network Co., Ltd. Anshan Branch (2023), the defendant required the plaintiff to use only the set-top box provided by the defendant without justifiable reason and refused to renew the contract upon expiration. The SPC determined that the relevant product market in this case should be the cable digital TV scrambling service market in Anshan City, Liaoning Province, where the defendant holds a dominant market position as the sole player. The SPC ruled that the defendant's requirement for the plaintiff to use exclusively its set-top box constituted a tie-in sale. However, due to changes in the circumstances (e.g., the market in question no longer exists, and there is effectively no point in renewing the contract), the SPC considered that the defendant's failure to renew the contract does not constitute a refusal to trade.
- **Arbitration agreement and antitrust civil disputes:** In Tan (an individual) v. Changsha Mawangdui Agricultural Products Co., Ltd., the SPC held that although the contract stipulates that disputes arising out of its performance shall be resolved by arbitration, the disputes at issue extend beyond the contractual rights and obligations and also involve determination as to whether there is a dominant market position, whether such dominance has been abused, and whether the alleged monopolistic behaviour affects fair market competition, consumer interests, and the public interest. Consequently, the SPC decided that the existence of an arbitration agreement does not preclude people's courts from entertaining the case.

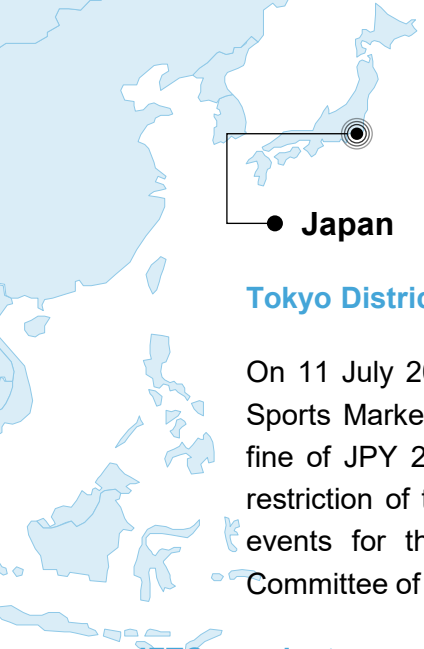
SAMR unveils draft Antitrust Guidelines in the Pharmaceutical Sector

On 9 August 2024, SAMR unveiled the Antitrust Guidelines in the Pharmaceutical Sector (Draft for Comments) (the **"Draft Pharmaceutical Guidelines"**) and solicited public comments until 23 August 2024. Antitrust compliance in the pharmaceutical sector has long been a focus in China. Early in 2021, the former Anti-Monopoly Commission of the State Council promulgated the Antitrust Guidelines on Active Pharmaceutical Ingredients. Now, the Draft Pharmaceutical Guidelines aim to further expand the coverage to the full range of pharmaceutical products, including traditional Chinese medicines, chemical medicines and biological products, in addition to active pharmaceutical ingredients. Key highlights of the Draft Pharmaceutical Guidelines include:

- Firstly, for the first time, it clarified the factors to be considered in assessing whether a **reverse payment agreement** is anti-competitive, including (i) whether the amount of the reverse payment apparently and unjustifiably exceeds the prospected litigation cost; (ii) the likelihood of patent invalidation for the generic drug in question; and (iii) whether the agreement materially prolongs the patentee's market exclusivity or delays the market entry of a generic drug.
- Secondly, the Draft Pharmaceutical Guidelines for the first time specify the **exemptions** relating to **resale price maintenance** in the pharma sector, which include (i) agency sales, i.e., where one undertaking commissions another to act as an agent for the sales and sets the selling price or other transaction conditions; (ii) centralised procurement, i.e., where the pharmaceutical undertaking conducts bidding and bargaining under the centralised procurement process, and its transaction counterparty follows the agreed price to sell the pharmaceuticals to end-user medical institutions; and (iii) where the pharmaceutical undertaking is responsible for selling, promoting, pricing, etc. of the pharmaceutical products while its transaction counterparty only provides auxiliary services such as importation, distribution, collection, invoicing, etc.

OTHER NEWS

- Thirdly, the Draft Pharmaceutical Guidelines reawaken attention on new business models, stressing that pharmaceutical network trading platforms shall **not abuse data and algorithms, platform rules**, etc. to engage in monopolistic practices. Article 17 of the Draft Pharmaceutical Guidelines flags the risks that platform operators should refrain from providing substantial assistance to anti-competitive conducts in the pharma sector, such as playing a decisive or leading role in the conclusion or implementation of anti-competitive agreements, or providing necessary support, creating key facilitating conditions or providing other important assistance by way of offering price monitoring services or other data and algorithm services.
- Fourthly, the Draft Pharmaceutical Guidelines for the first time touch upon **product hopping**. It is proposed that it may constitute an abuse of market dominance, if a dominant pharmaceutical patentee obtains a new pharmaceutical patent right by redesigning an existing patented technical configuration and takes measures such as stopping sales or buying back to achieve product hopping (i.e., converting the original patented pharmaceutical product to a new patented pharmaceutical product), thereby hindering generic enterprises from effectively competing.
- On the **merger control** front, the Draft Pharmaceutical Guidelines note that (i) although M&A transactions in the pharmaceutical sector may involve start-up enterprises and do not meet the turnover filing thresholds, a filing may be needed if the transaction could raise competition concerns; (ii) a pharmaceutical undertaking may be able to effectively acquire control or decisive influence over another by virtue of transactions related to the intellectual property rights, in which case a merger filing may be required. The Draft Pharmaceutical Guidelines also list a number of specific factors that are relevant to the merger review of transactions in the pharma sector.



Japan

Tokyo District Court penalises Hakuhodo for alleged unreasonable restriction of trade

On 11 July 2024, the Tokyo District Court sentenced the former president of HAKUHODO DY Sports Marketing Inc. to 18 months' imprisonment (suspended for three years) and imposed a fine of JPY 2 billion on HAKUHODO Inc. for violation of the Antimonopoly Act (unreasonable restriction of trade). This related to bid rigging over a contract to delegate the planning of test events for the Tokyo Olympic and Paralympic Games ordered by the Tokyo Organising Committee of the Olympic and Paralympic Games.

JFTC conducts on-site investigation of Visa Worldwide Japan for forcing use of their credit reference system

On 17 July 2024, the Japan Fair Trade Commission ("**JFTC**") conducted an on-site investigation of Visa Worldwide Japan, a Japanese subsidiary of the U.S. company Visa Inc., for purported violation of the Antimonopoly Act (unfair trade practices). It was alleged that Visa Worldwide Japan had informed companies issuing credit cards in Japan that Visa Worldwide Japan would increase interchange fees between companies if they did not use the credit reference system provided by Visa Worldwide Japan.

JFTC issues a cease-and-desist order against ASP Japan G.K. for obligating use of their own antiseptics

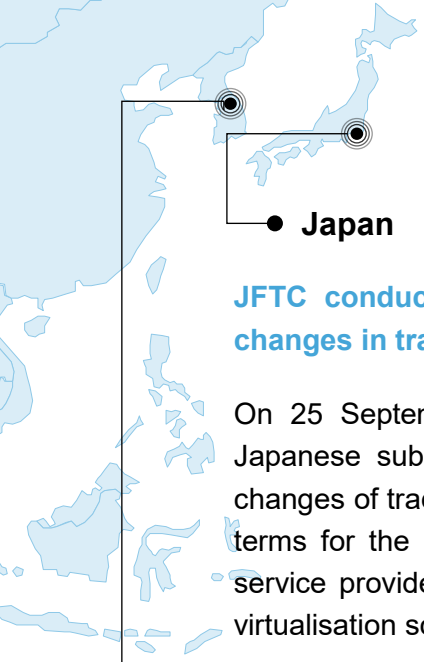
On 26 July 2024, the JFTC issued a cease-and-desist order against ASP Japan G.K., a seller of medical devices and medicines. ASP Japan G.K. had forced medical institutions to purchase their antiseptic for their endoscope-cleaning devices by attaching a barcode reader to these devices so that competitors' antiseptics could not be used.

JFTC conducts on-site investigation of Harley-Davidson Japan for alleged abuse of superior bargaining position against motorcycle dealers

On 30 July 2024, the JFTC conducted an on-site investigation of Harley-Davidson Japan, a Japanese subsidiary of the U.S. motorcycle giant Harley-Davidson, for alleged abuse of a superior bargaining position. It was alleged that Harley-Davidson Japan had unilaterally imposed excessive sales targets on motorcycles and motorcycle parts dealers and forced them to sell old models by shipping them without the consent of dealers, threatening not to renew contracts if dealers did not accept.

JFTC launches survey and organised working group on Smartphone Software Competition Promotion Act

On 31 July 2024, the JFTC launched an online survey regarding the Smartphone Software Competition Promotion Act and is currently collecting responses. On 25 September, the JFTC announced that they would hold a working group to promote competition concerning smartphone software and discuss guidelines in relation to the Smartphone Software Competition Promotion Act.



Japan

JFTC conducts on-site investigation of VMWare K.K. for alleged tying and imposing changes in trade terms

On 25 September 2024, the JFTC conducted an on-site investigation of VMWare K.K., a Japanese subsidiary of the U.S. software company Broadcom, for alleged tying and forcing changes of trade terms. It was alleged that VMWare K.K. had unilaterally changed its contractual terms for the sale of virtualisation software and provision of its licences to cloud computing-service providers and that this had forced companies to buy unnecessary software along with virtualisation software as a package.

South Korea

KFTC launches AI sector survey

On 1 August 2024, the Korea Fair Trade Commission ("**KFTC**") launched a survey of the AI market, issuing a request for information to 50 major domestic and international companies that develop and sell AI-based products and services. The KFTC indicated that various competition concerns may arise in the AI sector, such as a handful of powerful companies coming to hold a majority market share and potential entry barriers arising due to a lack of access to key resources for AI development. The KFTC will explore approaches to competition policy for the AI market and publish an AI policy report by the end of 2024 in order to enhance predictability for market participants in the AI sector.

Coupang appeals KFTC's decision on abuse of dominance by alleged manipulation of algorithms

On 5 September 2024, Coupang, the largest e-commerce business in South Korea, which also sells its own private-brand products, appealed to the Seoul High Court, challenging the KRW 162.8 billion (USD 123 million) fine imposed on it by the KFTC. As indicated in our Q2 2024 report, the KFTC fined Coupang KRW 140 billion (approx. USD 106 million) on 13 June for alleged abuse of dominance by manipulating search ranking algorithms and by making employees write reviews and give high ratings of the company's own private-brand products in order to bolster sales of its products, and the KFTC imposed an additional fine of KRW 22.8 billion (USD 17 million) when Coupang failed to cease such conduct.

KFTC looks to amend fair trade rules in digital platform industry

On 9 September 2024, the KFTC announced plans to amend fair trade rules to enhance competition within the online platform industry by amending the Monopoly Regulation and Fair Trade Act. Key measures include prohibiting anticompetitive practices such as self-preferencing, tying, restriction of multi-homing and most-favoured nation treatment. The KFTC will closely scrutinise platform companies with significant market influence, specifically those with over 60% market share and 10 million or more users, or sectors where fewer than three entities collectively hold over 85% market share, each with 20 million or more users. To support the startup ecosystem, companies with annual sales under KRW 4 trillion will be exempt. Affected service sectors include intermediaries, search engines, video services, social networks, operating systems and advertising. Additionally, the maximum administrative fine for abuse of market dominance by a platform operator will be increased from 6% to 8% of relevant turnover.

HKCC welcomes judgment in first cartel case relating to government subsidy scheme

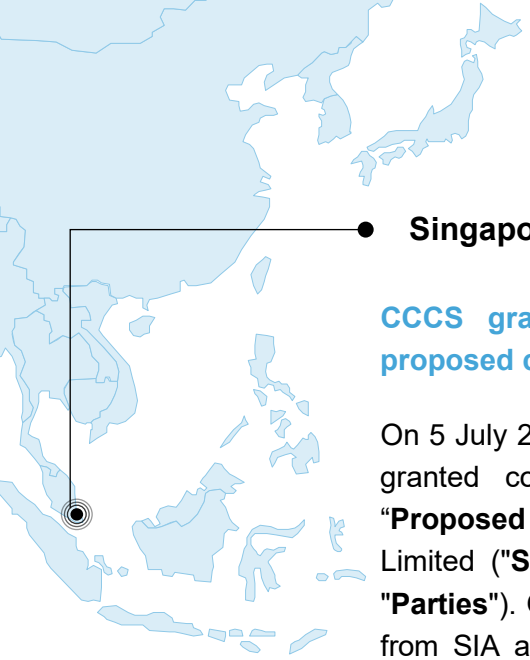
On 31 July 2024, the Competition Commission of Hong Kong ("**HKCC**") welcomed the judgment handed down by the Competition Tribunal ("**Tribunal**") regarding the legal proceedings involving cartel conduct when providing quotations for IT solutions in applications for government subsidy under the Distance Business Programme. The judgment includes, for the first time, the granting of reliefs by the Tribunal under Rule 76 of the Competition Tribunal Rules, Cap 619D as a result of the respondents failing to file a response. Two of the respondents failed to file a response in the proceedings. On this basis, the HKCC applied to the Tribunal and the Tribunal ordered the two respondents to pay pecuniary penalties. The judgment drives home the message that while an undertaking or individual facing enforcement proceedings commenced by the HKCC before the Tribunal has the choice of settling the proceedings or defending themselves in a contested manner, ignoring the proceedings should never be an option.

HKCC and ICAC conduct second joint operation against bid rigging and corruption over building maintenance

On 21–22 August 2024, the HKCC and the Independent Commission Against Corruption ("**ICAC**") conducted a joint operation, following the two agencies' first collaborative action in mid-April against a newly rising syndicate engaging in bid rigging and corruption. In the joint operation, search warrants were executed by the HKCC and the ICAC to conduct searches at around 20 premises, including the offices of various project contractors and consultancies, as well as residences of the individuals concerned. The companies and individuals concerned were alleged to have engaged in anti-competitive activities and solicited and accepted bribes in order to manipulate the tendering exercises of building maintenance projects. They were also alleged to have exaggerated contract sums and assisted associated contractors in securing contracts of maintenance projects. The series of joint operations conducted by the HKCC and the ICAC demonstrates the determination of the two agencies in safeguarding a clean and level playing field for the building maintenance industry.

HKCC issues statement on first criminal case relating to non-compliance with its investigation powers

On 29 August 2024, the HKCC issued a statement in response to the first criminal prosecution for non-compliance with its investigation powers. In the investigation of a suspected price-fixing cartel among cleaning service companies, the HKCC executed search warrants at the offices of the companies involved. During the course of the operation, an individual had tried to delete documents and information that are relevant to the HKCC's investigation from a number of computers. The HKCC has subsequently referred the case to the Police for criminal investigation. The individual involved was charged with disposal and concealment of documents, in contravention of Section 53 (1)(a) of the Competition Ordinance ("**Ordinance**"). Under Section 53 of the Ordinance, any person, having been required to produce a document under the HKCC's investigation powers, who destroys, falsifies or conceals such document shall be liable to a fine of up to HKD 1,000,000 and to imprisonment for up to two years on conviction. This marks the first case in which a person was subject to criminal prosecution for non-compliance with the HKCC's investigation powers.



Singapore

CCCS grants conditional approval for Singapore Airlines and Garuda's proposed commercial cooperation

On 5 July 2024, the Competition and Consumer Commission of Singapore ("**CCCS**") granted conditional approval of the Proposed Commercial Cooperation (the "**Proposed Cooperation**") after accepting commitments from Singapore Airlines Limited ("**SIA**") and Garuda Indonesia (Persero) Tbk ("**Garuda**") (collectively, the "**Parties**"). On 19 February 2024, the CCCS accepted a joint application for decision from SIA and Garuda as to whether the Proposed Cooperation between SIA and Garuda for the provision of scheduled air passenger transport services between Singapore and Indonesia would infringe section 34 of the Competition Act 2004 (the "**Act**"). The CCCS determined that, while there are some claimed benefits arising from the Proposed Cooperation, its overall assessment was that these claimed benefits are insufficient to outweigh the competition concerns. The CCCS also found that price and capacity coordination between the Parties arising from the Proposed Cooperation could significantly restrict competition on the affected routes. To address the CCCS' competition concerns, the Parties voluntarily provided a set of commitments pertaining to scheduled international air passenger transport services on the routes concerned, namely, maintaining seat capacity on an aggregated basis at stipulated levels that existed prior to the Proposed Cooperation, appointing an independent auditor to monitor compliance with the capacity commitments, and providing a report to the CCCS on an annual basis.

CCCS issues Proposed Infringement Decision for bid-rigging conduct in procurement of vulnerability management software licences and services

On 2 August 2024, the CCCS issued a Proposed Infringement Decision against Rei Securite Pte. Ltd. ("**Rei**") and Soh Chee Keong ("**Soh**") (collectively, the "**Parties**") for infringing section 34 of the Act. The companies engaged in bid-rigging conduct relating to three invitations to quote ("**ITQs**") called by Ngee Ann Polytechnic ("**NP**") between January 2021 and November 2022 for the procurement of licences for vulnerability management software and related support services. The value of the affected ITQs was between SGD 63,000 and SGD 65,000. Investigations revealed that Soh had entered into agreements and/or concerted practices with Rei. The CCCS found that the cover bids facilitated by Soh, as part of the anti-competitive agreements and/or concerted practices, undermined the competitive process intended for the affected ITQs. This prevented NP from obtaining bids that could provide the best value from the ITQ process, thereby undermining the intended competitive process. The Parties have the opportunity to provide their individual responses regarding the proposed infringements against them. The CCCS will consider the representations, as well as all available information and evidence, before making its final decision.

Australia

Australia publishes draft Bill proposing merger reform

On 10 October 2024, the Australian government introduced the Merger Reform Bill (**Bill**) following a months-long consultation on an earlier Exposure Draft Bill.

The Merger Reform Bill contains material changes to the merger review process the Australian Treasury initially outlined in the first Exposure Draft Bill released on 24 July 2024, reflecting stakeholder feedback. The key aspects of the proposal are as follows:

1. **Unified Process**: A single mandatory merger clearance regime will replace the existing informal merger review and the merger authorisation processes, effective 1 January 2026. Transactions meeting notification thresholds must be notified to the Australian Competition and Consumer Commission ("**ACCC**"), with penalties for non-compliance.

2. **Notification Thresholds**: Although market share thresholds were proposed in the Exposure Draft Bill, these have been removed from the Bill. Instead, transactions must be notified if the target has a "material connection" to Australia and meets specific tests based on turnover and transaction value. Although yet to be formalised in subordinate legislation, Treasury has indicated these will be as follows:

    a. Australian turnover of the merging entities is above A$200 million, and either the business or assets being acquired has Australian turnover of more than A$50 million or global transaction value above A$250 million.

    b. a large business with Australian turnover of more than A$500 million buying a smaller business or assets with Australian turnover above A$10 million.

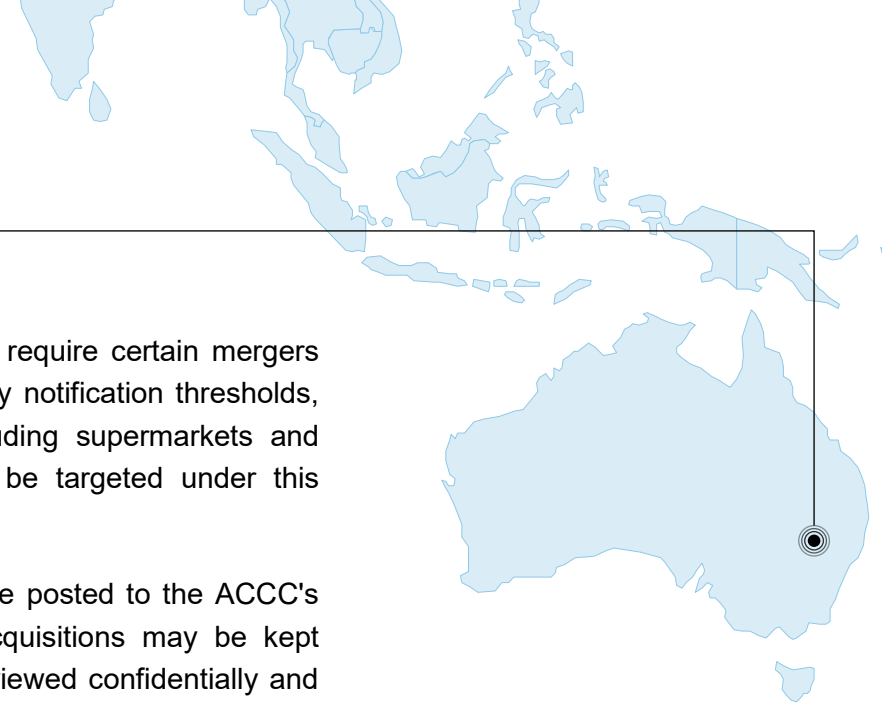
3. **Serial Acquisitions**: To address "creeping" or serial acquisitions, there will be a three-year cumulative threshold test: all mergers by businesses with a combined Australian turnover of more than A$200 million where the cumulative Australian turnover from acquisitions of businesses undertaking **the same or substitutable goods or services** over a three-year period is at least A$50 million (A$10 million if a very large business is involved). The circumstances in which cumulative effect may be taken into account include:

    a. where the earlier acquisition is put into effect during the 3 years ending on the effective notification date of the notification of the current acquisition; and

    b. the parties to the earlier acquisition include a party to the current acquisition a related bodies corporate of a party; and

    c. involve the supply or acquisition of the same goods or services, or that are substitutable for, or otherwise competitive with, each other, as the current acquisition.

4. **Control Test**: Only acquisitions resulting in change of control need notification. The definition of "control" aligns with the *Corporations Act 2010* (Cth), focusing on the "practical influence" or capacity to determine the financial and operating policies of a body corporate.



Australia

5. **Targeted Thresholds:** The Minister can require certain mergers to be notified irrespective of the monetary notification thresholds, especially in concentrated sectors, including supermarkets and fuel. The precise industries that may be targeted under this provision are yet to be announced.

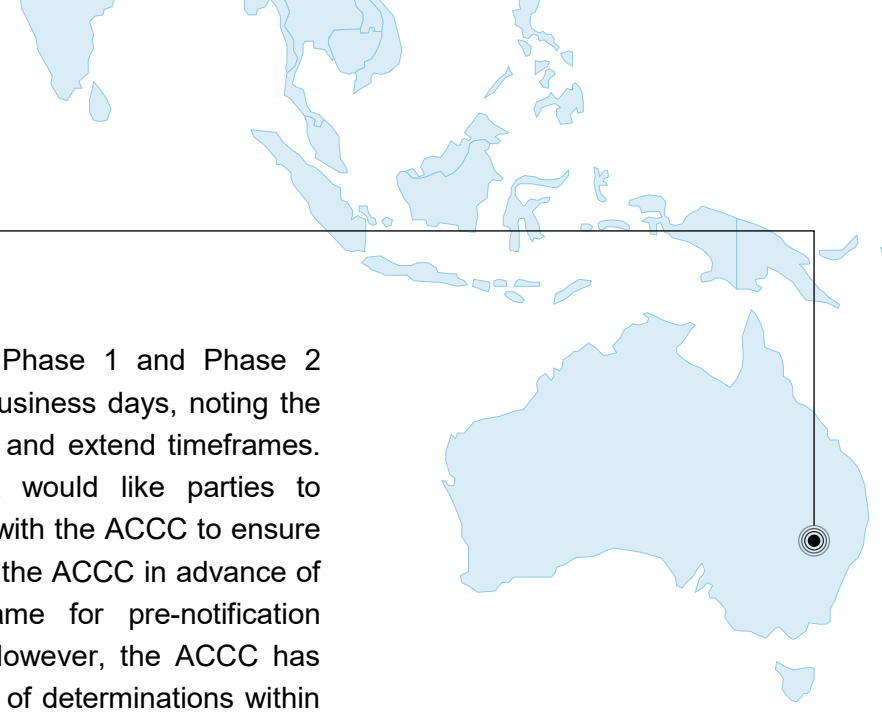
6. **Confidentiality:** While notifications will be posted to the ACCC's website (as currently occurs) certain acquisitions may be kept confidential. Hostile takeovers can be reviewed confidentially and only listed on the public merger register after 17 business days. Where the ACCC decides to cease considering such an application no information will be published on the register.

7. **Notification Waiver:** A waiver process will be available for acquisitions unlikely to substantially lessen competition (e.g., acquisitions that have minimal competitive overlap or no vertical integration). The requirements for a notification waiver application are yet to be released.

8. **Substantive Test Changes:** The substantive competition test will be amended, although the amendment will be limited in its application to merger control (the Exposure Draft Bill had proposed that a change be universally made to the *Competition and Consumer Act 2010 (Cth))* **(CCA)**. The change proposed is that the acquisition "may have the effect or be likely to have the effect of substantially lessening competition in a market **if the acquisition would, in all the circumstances, have the effect, or be likely to have the effect, of creating, strengthening or entrenching a substantial degree of power in the market"**. This is an expanded test which links a substantial lessening of competition with the entrenchment of market power. However, unlike the Exposure Draft Bill, the Bill does not automatically deem entrenchment to have occurred. The Explanatory Memorandum notes that the amended test is not intended to substantively amend the test but emphasises the importance of considering the competitive structure of the market in the overall assessment.

9. **Net public benefit:** Even where a transaction may have the likely effect of substantially lessening competition in any market, the ACCC may approve an acquisition that would have that likely effect if the ACCC is satisfied that it would be likely to result in a public benefit that outweighs any competitive detriment. That preserves the status quo of the test, i.e., there is no need for the benefit to "substantially" outweigh any detriment as proposed in the Exposure Draft Bill.

10. **Goodwill exemption:** Presently the CCA contains an exemption for restrictive covenants included in a business sale contract where the restriction is solely to protect the goodwill of a business and is for the benefit of the acquirer (e.g., non-compete clauses). The ACCC will be able to declare this exemption does not apply if the duration or geographic scope of the restriction is broader than necessary for that purpose. Even if no such declaration is issued, the ACCC may, at a later date, also commence court action with respect to such clauses targeting them as anti-competitive agreements within the meaning of Part IV of the CCA.



Australia

11. **Review Timelines:** The timeframe for Phase 1 and Phase 2 review periods will be up to 30 and 90 business days, noting the ACCC has the ability to "stop the clock" and extend timeframes. The ACCC has also indicated that it would like parties to participate in pre-notification discussions with the ACCC to ensure that all relevant information is provided to the ACCC in advance of the start of the clock. The timeframe for pre-notification discussions has not been mandated. However, the ACCC has stated its expectation that will make 80% of determinations within 15 – 20 business days.

12. **Tribunal Review:** The Tribunal can undertake a limited merits review to affirm, set aside or vary ACCC decisions. The Tribunal is empowered to request additional information if needed for its assessment.

13. **Fees:** Filing fees, although not yet mandated, they are indicatively proposed at a range from AUD 50,000 to AUD 100,000, with some exceptions for small businesses. The ACCC will not commence its review until payment has been made. The Tribunal will also be permitted to charge fees on behalf of the Commonwealth.

14. **Timing:** The new regime starts on 1 January 2026. Voluntary notification may now commence on 1 July 2025, with the informal regime available until 31 December 2025.

The ACCC is conscious that it will require an increase in capacity in order to ensure the new regime operates smoothly. It will also need to commit greater resources to monitoring and surveillance for non-compliance with notification requirements.

While the Bill still leaves some areas uncertain pending implementation of further legislative instruments and guidelines, the Bill is a notable improvement on the Exposure Draft Bill released in July 2024. Further consultation on what will be required to notify the ACCC of a transaction, and the form that that may take, will occur in 2025.

Australia

ACCC commences separate legal proceedings against the two largest supermarket retailers in Australia for misleading pricing discounting claims

On 23 September 2024, the ACCC initiated legal proceedings against Woolworths and Coles, the two largest supermarket chains in Australia, over allegations of misleading discount pricing practices. The ACCC claims that both retailers engaged in deceptive conduct by advertising price reductions under their respective “Prices Dropped” and “Down Down” campaigns, despite the fact that pricing had either increased shortly before the promotions or had been maintained at a lower price than the advertised discount price for extended periods.

Specifically, the ACCC alleges that the "Prices Dropped" and "Down Down" claims were not genuine discounts and could mislead consumers into believing they were purchasing goods at a reduced price when that was not the case. These claims, the ACCC asserts, were part of widespread promotional strategies by Woolworths and Coles, and the misleading information was promoted across a wide variety of products, including essential grocery items. The ACCC's action underscores its focus on protecting consumers from misleading and deceptive conduct, particularly in the context of everyday shopping where consumers rely heavily on price claims.

The consequences of this case are significant because penalties for misleading pricing conduct now align with those for competition law offences. Under the Australian Consumer Law (**ACL**), each instance where a consumer purchased a product based on the misleading price claim constitutes a separate breach, potentially leading to substantial financial penalties and potentially follow on class actions.

In cases involving widespread consumer harm, the court may take into account the course of conduct when determining the severity of penalties. If Woolworths or Coles can demonstrate that the misleading pricing was not part of an intentional or sustained strategy, the financial penalties may be more limited.

Australia releases the Aviation White Paper: a focus on incremental reforms in Australia's aviation sector

On 26 August 2024, the Federal Government released its long-awaited Aviation White Paper: Towards 2050 ("**White Paper**"), outlining a strategic vision for the future of Australia’s aviation industry. The White Paper offers a series of incremental changes aimed at addressing market concentration and improving the consumer experience. Much of the content echoes existing policies, but several key developments will shape the regulatory landscape.

Australia

On antitrust aspect, the White Paper acknowledges concerns over market concentration, with Qantas Group controlling 61.8% of the domestic market and Virgin Australia holding 31.3%. While the Government stops short of aggressive regulatory intervention, it emphasises the need for reforms to alleviate the dominance of these carriers. Measures such as the reformation of slot management at Sydney Airport are intended to open the door for new entrants, foster competition and address anticompetitive slot misuse. Draft legislation on slot reform is expected to be introduced to parliament later this year. The White Paper also discusses consumer protection measures and aeronautical pricing and transparency

While the White Paper signals progress, its incremental nature leaves some stakeholders questioning whether it is enough to address the deeply concentrated market. The ACCC will continue its quarterly monitoring of domestic airlines, with the potential for further regulatory scrutiny through the Productivity Commission.

New Zealand

NZCC issues first-ever merger block based on buyer power concerns

On 1 October 2024, New Zealand's Commerce Commission ("**NZCC**") blocked a merger between the country's largest supermarket operator, Foodstuffs North Island Limited ("**Foodstuffs North Island**") and Foodstuff South Island Limited ("**Foodstuffs South Island**") due to monopsony concerns.

The NZCC was not satisfied that the proposed merger would not have the effect of substantially lessening competition in multiple acquisition and retail markets. The NZCC was concerned that:

- The proposed merger would reduce the number of major buyers of grocery products in New Zealand from three to two, reducing the number of buyers and creating the largest acquirer of grocery products in New Zealand which:
    - would result in the merged entity having greater buyer power than Foodstuffs North Island and Foodstuffs South Island each do individually, causing harm to the competitive process; and
    - could make price coordination between the merged entity and Woolworths NZ more likely, complete or sustainable.
- The merged entity would likely be able to extract lower prices from suppliers and/or otherwise adversely impact suppliers in the relevant markets.
- The consolidation would lead to reduced investment and innovation by suppliers, meaning reduced consumer choice and/or quality of grocery products.
- There was a real chance that the merged entity's buyer power would make it harder for other grocery retailers to compete and grow, potentially depriving consumers of a more competitive grocery industry in the future.

The grocery sector in New Zealand has recently been in a regulatory spotlight. Importantly, the first Annual Grocery Report published on 4 September 2024 ("**Report**") paints a "concerning picture", with the New Zealand grocery sector riddled with "red flags" and showing no "meaningful" competition a year since the introduction of new grocery laws. Notably, the Report shows growing retail margins for all three major supermarkets as well as continued high levels of profitability and ongoing dominance of the sector by retailers Foodstuffs North Island, Foodstuffs South Island and Woolworths NZ.

India

Broadcasters appeal CCI's dismissal of imposing interim measures regarding Google's updated payments policy

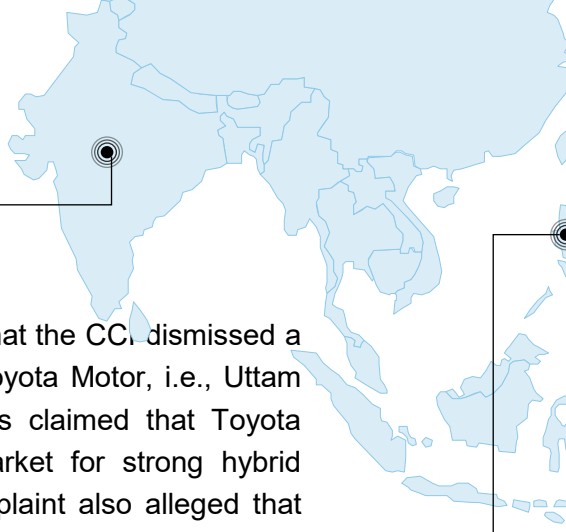
On 5 July 2024, the Indian Broadcasting and Digital Foundation ("**IBDF**"), in an appeal filed at the National Company Law Appellate Tribunal, challenged the Competition Commission of India's ("**CCI**") decision not to impose interim restrictions on Google's updated payments policy. In the appeal, the IBDF requested the tribunal to prohibit Google from imposing fees on app downloads or in-app purchases. According to IBDF, Google collects a fee of USD 25 when app developers list their apps on the Play Store. In addition, IBDG argued that although app developers choose to use a different payment method other than the Google Play Store Billing System, Google nevertheless levies transaction fees ranging from 11% to 26%. The matter relates to a recent CCI investigation in which the CCI probed Google for abuse of dominance in relation to the same, which allegedly distorts the downstream app markets and unfairly favours Google's apps. During the investigation, IBDF and others filed petitions for interim reliefs on Google's payments policy, which were dismissed by CCI in March 2024.

CCI finds Apple abused its dominance in the domestic app store market

In July 2024, it was reported that the CCI had found that Apple engaged in "abusive conduct and practices" by abusing its dominant position in the market for app stores on its iOS operating system. The CCI opened an investigation in December 2021 in response to a non-profit organisation's complaint that Apple has conducted restrictive practices, including compelling app developers to use its exclusive in-app purchase mechanism while banning other options, enforcing unilateral and discriminatory contracts on iOS app developers, and demanding exorbitant in-app commissions. Apple rebutted in its submissions to the CCI that its market share in India is negligible in comparison to the dominance of Google's Android OS. It also contended that its in-app payment system allowed the company to develop and maintain the safety of its app store. Nevertheless, the CCI noted that since app stores are platform-specific, the only shop that iOS consumers have access to is Apple's app shop. It further stated that customers, payment processors, and app developers are all adversely impacted by Apple's payment policy. It is reported that CCI officials are still reviewing the report and will hear from all parties before reaching a final decision, which could impose either fines or directives to alter business practices.

CCI conditionally clears the merger of domestic media assets of Reliance Industries and Walt Disney Company

On 28 August 2024, the CCI announced that it had given conditional approval for the proposed USD 8.5 billion merger between the domestic media assets of Reliance Industries ("**RIL**") and the US-based entertainment and mass media giant the Walt Disney Company ("**Disney**"), subject to the compliance of voluntary modifications, which are aimed at preventing monopolistic practices and maintaining market dynamics, particularly for their cricketing business. The planned combination involves RIL, Viacom18 Media Private Limited, Digital18 Media Limited, Star India Private Limited and Star Television Productions Limited. The CCI commenced its review of the merger filing in May 2024. The filing indicated that the proposed transaction intended to merge the entertainment divisions, together with certain other identified businesses, of RIL-supported Viacom18 and Disney's wholly owned subsidiary Star India. Star India will transform into a joint venture co-owned by RIL, Viacom18, and existing Disney subsidiaries post-transaction.



India

CCI dismisses a complaint against the local unit of Toyota Motor

According to a regulatory order dated 12 July 2024, it was revealed that the CCI dismissed a complaint filed against the local units of the Japanese automaker Toyota Motor, i.e., Uttam Toyota (an authorised dealer) and Toyota Kirloskar Motors. It was claimed that Toyota Kirloskar Motors abused its dominant position in the relevant market for strong hybrid passenger vehicles in India by charging excessive prices. The complaint also alleged that Toyota Kirloskar Motors implemented an arbitrary "pick and choose" policy for car deliveries, demanded premiums for early delivery, imposed resale price maintenance ("**RPM**"), and compelled customers to purchase accessories. After the hearing, the CCI concluded that the case seemed to boil down to differences between the complaints and the companies and does not appear to have any anti-competitive implications or concerns on the market. The CCI stated that the complaint has failed to substantiate whether these prices were discriminatory or unreasonable; neither has the complaint provided adequate evidence to support the claims concerning RPM.

Philippine

PCC issues Guidelines for Merger Remedies

On 11 July 2024, the Philippine Competition Commission ("**PCC**") announced that it has promulgated the Guidelines on Merger Remedies (the "**Guidelines**"), delineating its approach for assessing proposals from merging parties intended to address competition concerns arising from M&A transactions. The PCC disclosed that the Guidelines were approved by the PCC on 9 May 2024, aiming to furnish guidance on the formulation, selection, and implementation of merger remedies. The PCC recognises that the Guidelines are not a "one-size-fits-all" solution to all M&A transactions, and each transaction warrants a case-by-case analysis. Among other things, the Guidelines specifically touch upon the remedies that may be relevant in transactions within digital markets, such as firewalls and mandatory licensing, to tackle data access issues. Furthermore, the Guidelines also highlight that the PCC can collaborate with competition and regulatory institutions in other jurisdictions if the transaction is concurrently under review in other antitrust jurisdiction(s).

PCC Enforcement Office initiates cartel action against onion traders

On 5 September 2024, the PCC Enforcement Office (the investigative and prosecutorial arm of the PCC) announced that it had initiated legal action against a group of onion traders for cartel conduct concerning the supply of imported onions in the Philippines. According to a Statement of Objections ("**SO**") submitted to the PCC on 9 July, a group of onion traders were accused of (i) allocating the supply of imported onions by apportioning Sanitary and Phytosanitary Import Clearances ("**SPSICs**") among themselves and dividing the permitted import volume of onions amongst each other, and (ii) conspiring to reduce competition by sharing sensitive business information, including pricing, suppliers, customers, volume, shipping, distribution, and storage details. The Enforcement Office claimed that the above conduct of the traders significantly lessened competition, resulting in distorted supply and artificial price increases. Upon receiving the SO submitted by the Enforcement Office, the PCC will adjudicate the case in its capacity as a quasi-judicial body. Due to the duration of the collusive agreement and the inclusion of a fundamental commodity, the Enforcement Office proposed a total fine of around PHP 2.4 billion (USD 42.74 million) in this case.

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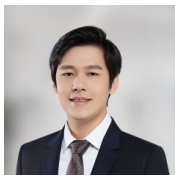

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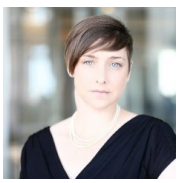

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