



Antitrust in China and across the region

Quarterly Update: January to March 2015

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The first quarter of 2015 has again seen records broken in China. On the enforcement side, NDRC concluded its year long investigation into abuse of dominance by Qualcomm by imposing its largest ever fine of RMB 6.088 billion (USD 975 million). Following the appointment in March of a new Director General of NDRC's antitrust division, 2015 looks to be a decisive year in terms of shaping NDRC's approach over the coming years.

It has also been a busy start to the year for MOFCOM, having cleared 62 mergers – just one less than the number cleared by the European Commission over the same period. Over 60% of those cases cleared by MOFCOM were notified under the simplified procedure, which – except for a small handful of outliers - continues to see simple cases cleared within the 30 day phase I timetable.

2015 is also shaping up to be a year of reform across the APAC region, with Myanmar's competition law having been passed into law in February, procedural reforms coming into force in Japan and legislative proposals tabled in South Korea, Taiwan and Indonesia, among others. Interestingly, in a number of these jurisdictions, there are proposals to relax the approach to resale price maintenance. Last month also saw the publication of Australia's Harper Review, although it may be many months, or even years, before we see any major changes to the Australian system in response to the report's recommendations.

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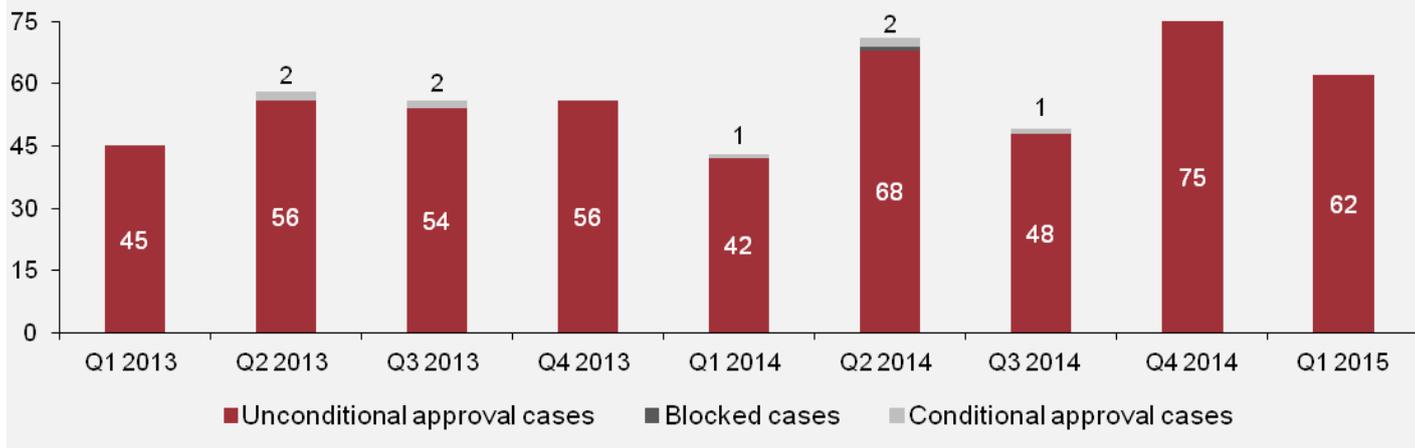


Merger Control

How many cases have there been?

China’s Ministry of Commerce (MOFCOM) issued 62 merger decisions in the first quarter of 2015, an increase of nearly 50% on the first quarter of 2014. All 62 were cleared without conditions. 43 of these cases were notified under the simplified procedure.

Merger control trends – 2013 / 2014 / Q1 2015



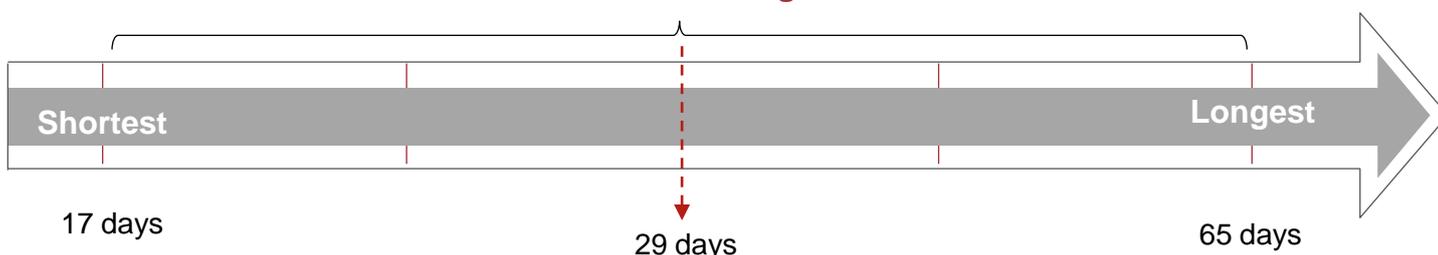
Simplified procedure: How quick is the review period?

MOFCOM’s simplified procedure was introduced in April 2014 and has a non-binding target review period of 30 days for qualifying cases.

2014/2015	Average review period	Simplified procedure (%)	Cases exceeding 30 days
Q2 2014	19 days	1.4%	0
Q3 2014	26 days	44.9%	3
Q4*2014	28 days	58.7%	4
Q1** 2015	29 days	69.4%	11

* Includes one “outlier” case, filed under the simplified procedure, but which took over 60 days to clear
 ** Includes three “outlier” cases, filed under the simplified procedure but which took over 60 days to clear

Q1 2015: Average

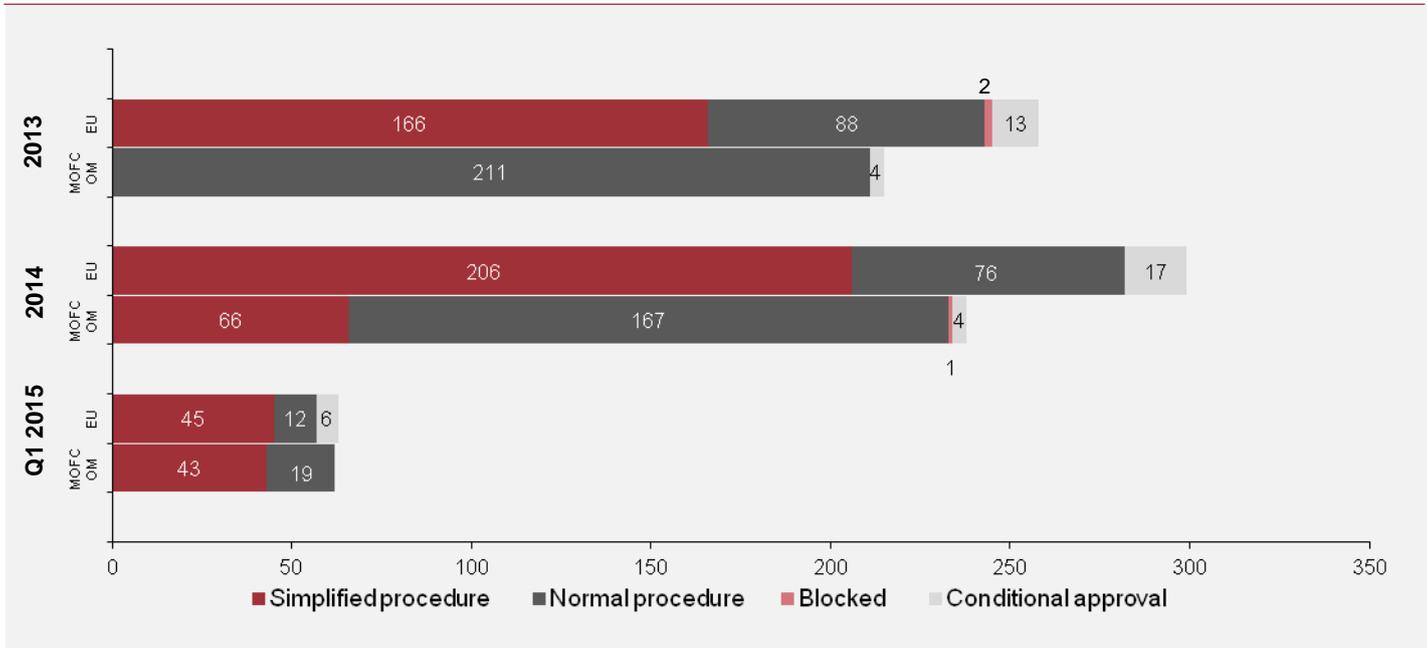




Merger Control (continued)

How does China compare internationally?

Comparison with EU - 2013 / 2014 / Q1 2015



Other news

MOFCOM reviewing failure to file penalties

MOFCOM is reportedly considering reviewing its approach to the treatment of non-notified mergers, including possible exemptions from the imposition of a fine. This follows December's announcement of the first ever public fine for failure to notify (RMB 300,000) which drew comments on the low cost of non-compliance and calls for the maximum amount of such fine (currently RMB 500,000 – about USD 80,000) to be raised.

MOFCOM partially revokes Google commitments

In January 2015, in the first case of its kind, MOFCOM lifted a remedy condition imposed on Google as part of its 2012 acquisition of Motorola Mobility. The condition required Google's android business to treat all OEMs equally. This follows MOFCOM's clearance of Lenovo's takeover of Google's Motorola handset manufacturing business. The other conditions imposed in 2012 remain in place.

MOFCOM consults on hold separate remedies

Separately, but in a similar vein, MOFCOM has reportedly appointed an international economics consulting firm to analyse whether it can withdraw hold separate remedies imposed as a condition to clearing the Seagate/Samsung and Western Digital/Hitachi mergers in 2011/2012. A decision may be reached before the end of the year.



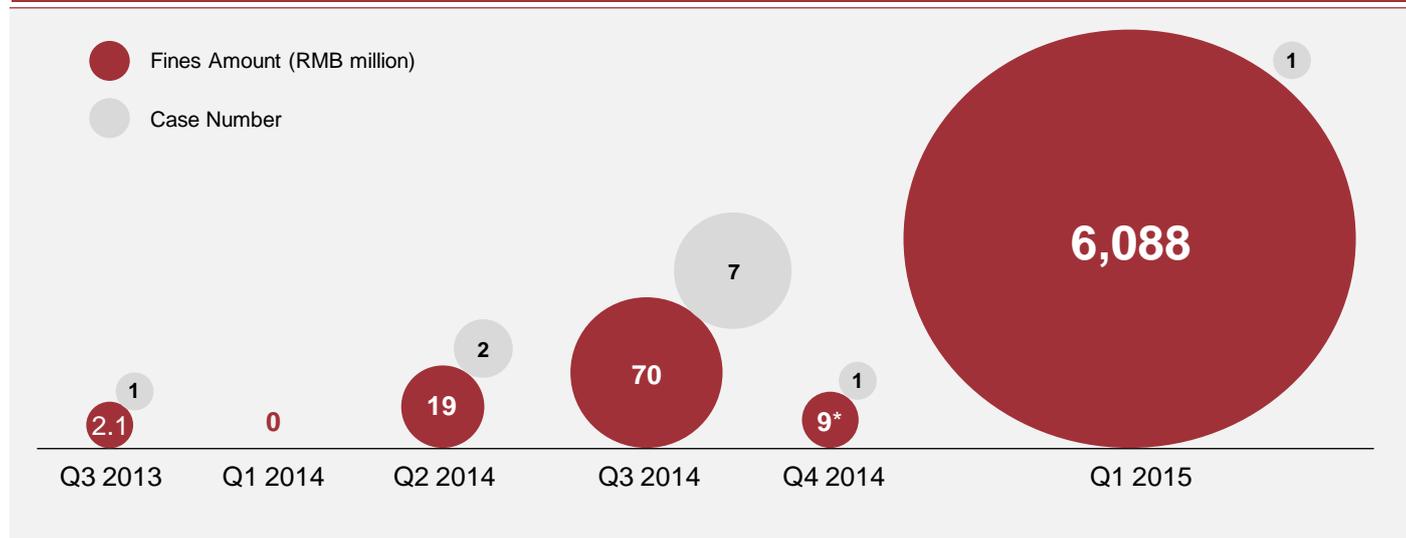
Antitrust Investigations

The National Development and Reform Commission (NDRC)

In January 2015, NDRC imposed its largest ever fine on Qualcomm (RMB 6 billion – about USD 975 million). Meanwhile, NDRC’s local counterpart in Jiangsu issued a much more modest fine in the car insurance sector, whilst the Shandong branch issued a public notice to the local department of transport requiring it to correct alleged abuse of its administrative powers in relation to vehicle monitoring platform services. NDRC also reported that, in March 2015 alone, its branches across the country issued total fines of RMB 242 million (around USD 39 million).

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turn over	Leniency/ Co-operation
Car insurance – Jiangsu Price Bureau	January 2015	Price fixing	c.9,000	NA	NA	1	Y
Qualcomm – NDRC	February 2015	Abuse of dominance	6,088,000	NA	NA	8	Y

Enforcement trends – Q4 2013 to Q1 2015



* The fine of RMB 9 million was reported to the public in January 2015 but imposed by the Jiangsu Price Bureau in 2014.

Qualcomm

NDRC found that Qualcomm had abused its dominant position in certain 3G/4G technology and chip markets by charging excessive prices, bundling patent licences and imposing unreasonable conditions. At nearly USD 1 billion, the Qualcomm fine was a step change in the level of fine imposed in China (over 20 times the next largest). NDRC also imposed a number of conditions, including a cap on royalty fees and requirements to offer 3G and 4G licences separately from other patents and fair consideration for any cross-licences. However, Qualcomm can continue to charge royalty fees based on the selling price of the device (rather than the price of the chip inside it).



Antitrust Investigations (continued)

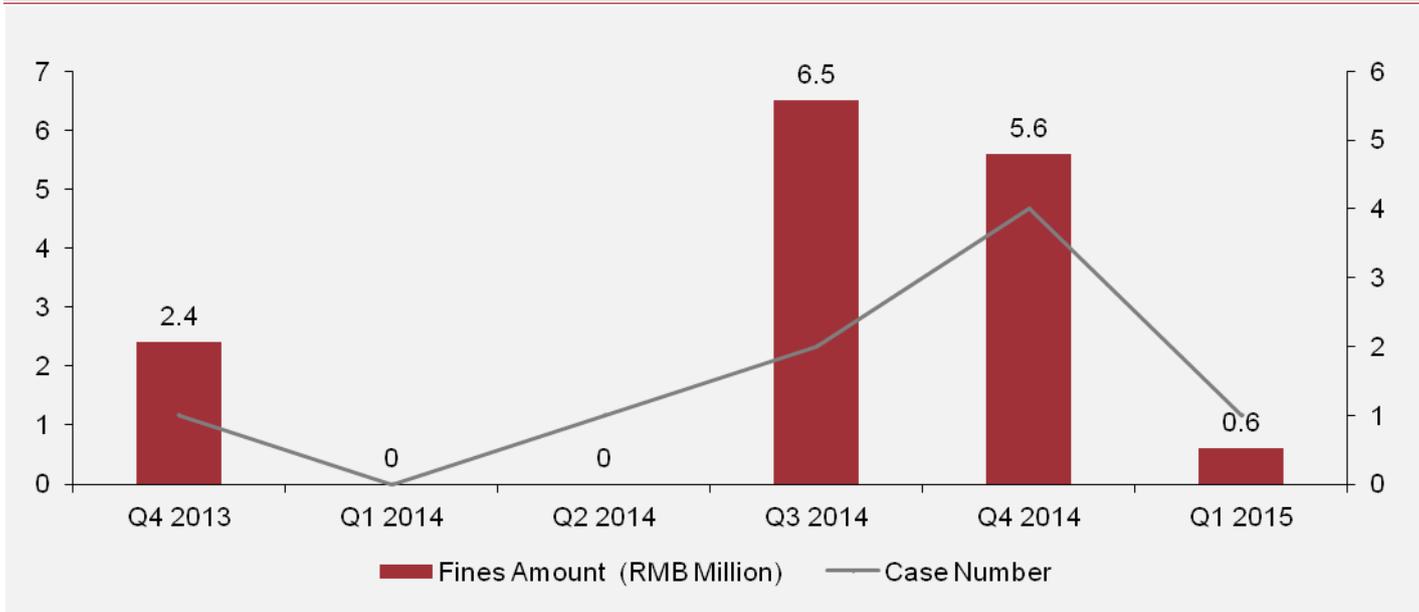
The State Administration for Industry and Commerce (SAIC)

The SAIC is responsible for the investigation and sanctioning of non price-related anticompetitive behaviour in China. Local counterparts of SAIC are taking increasing enforcement activity against small and medium-sized enterprises in their respective administrative regions, while the SAIC is focusing its investigative activities on large international corporations.

In the last quarter, a fine of RMB 0.6 million was imposed by SAIC's local counterpart in Hainan. Separately, in January 2015 SAIC formally closed its investigation of Shankai Sports Development Co., Ltd. for allegedly abusing its dominant position by bundling 2014 World Cup tickets (for which it was exclusive sales agent) with local accommodation, transport and tourism services in Brazil. No fine was imposed as SAIC was satisfied with remedies offered earlier by Shankai, which included publicising its ticketing policy, offering refunds to customers who did not want bundled services and offering ticket only options.

Case	Date announced	Issue	Total fine (RMB '000)	Minimum (RMB '000)	Maximum (RMB '000)	% of Turn over	Leniency/ Co-operation
Water supply - Hainan	January 2015	Abuse of dominance – Imposing unreasonable trading conditions	631.72	NA	NA	2	N

Enforcement trends – Q4 2013 to Q1 2015



Other Asia Pacific news in brief

India

In the first case of its kind, the Indian Competition Appellate Tribunal (CAT) revoked an order and set aside a fine imposed by the Competition Commission of India (CCI). The CCI had imposed a penalty of INR 522.4 million (approximately USD 8.4 million) on the Board of Control for Cricket in India (BCCI) for abusing its dominant position as a *de facto* regulatory body. The CAT found that the CCI had relied on sources with no evidentiary value and had not allowed BCCI the right to defend itself. The decision may be an indication of things to come in ongoing appeals by companies against orders of the CCI in the auto parts and cement sectors.

Myanmar

Myanmar enacted its national competition law in February. The new law allows for the creation of a regulatory body with investigative and judicial powers, and includes provisions covering anticompetitive agreements, abuse of dominance and merger control, as well as unfair trade practices. All ASEAN member states have to have competition laws in force by 2015.

Singapore

This quarter saw two developments in Singapore merger control. The Competition Commission of Singapore (CCS) cleared its first merger on the basis of a "failing firm" defence. Singapore Airlines successfully argued that in the absence of the acquisition, Tiger Airlines would exit the market due to its failed overseas expansion and mounting losses over recent years.

Separately, the CCS issued a rare decision to block, albeit provisionally at this stage, the proposed acquisition of RadLink by Parkway Holdings Ltd. The CCS raised concerns in relation to the supply of radiopharmaceuticals and the provision of radiology and imaging services in Singapore, finding that the merger would result in Parkway being the only supplier of radiopharmaceuticals in Singapore.



South Korea

Amendments to South Korea's antitrust laws are being considered that would allow for minimum resale price maintenance (RPM). Currently the law prohibits RPM without exception. However, in two cases in 2010 and 2011, the Supreme Court in South Korea reviewed RPM allegations on the basis of "rule of reason". Further discussion of the proposed amendments is tentatively scheduled for a parliamentary session in April 2015.

Taiwan

A series of amendments to Taiwan's Fair Trade Act were passed in January. Notable changes include the inclusion of a "presumption of mutual understanding" which is intended to significantly reduce the Taiwanese authority's burden of proof in cartel investigations. The amendments also introduce a "rule of reason" test in vertical cases (including in relation to resale price maintenance) and an extension of the maximum length of the merger review period from 60 to 90 days.

Indonesia

Indonesia's Commission for the Supervision of Business Competition (KPPU) in January ordered six tyre manufacturers to pay fines totaling IDR 150 billion (USD 11.7 million) for allegedly conspiring to control production and distribution in order to maintain prices, with the highest fine going to a single company being IDR 25 billion (USD 1.9 million). This fine is large by Indonesian standards and has prompted intervention by the Minister for Industry, concerned about the impact on a key export industry.

Australia

On 31 March, the Australian Government released the Competition Policy Review Panel's Final Report on the so called "Root and Branch" review of Australia's competition legislation. The Report recommends reform of the existing unilateral conduct laws by introducing an effects test, i.e. prohibiting conduct with the purpose, or which would be likely to have the effect, of substantially lessening competition. In terms of cartel laws, a new concept of "concerted practice" is introduced, together with a recommendation to simplify the laws relating to joint ventures. Third parties have until 26 May 2015 to lodge submissions on the Report to the Assistant Treasurer.

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* Linda Widyati & Partners in association with Clifford Chance.