April 2015


# Asia Pacific Competition Law Bulletin

## Introduction

Welcome to the fourth edition of our bi-monthly Asia Pacific Competition Law Bulletin.

As with our previous editions, this bulletin has been prepared by our own teams and in collaboration with expert local law firms from around the region: Allens (Australia, New Zealand, Vietnam), Vinod Dhall in collaboration with TT&A (India), Mori Hamada & Matsumoto (Japan), Rahmat Lim & Partners (Malaysia), Allen & Gledhill LLP (Singapore), Lee & Ko (South Korea) and Tsar & Tsai Law Firm (Taiwan).

The past two months have been busy for policy-makers and authorities alike, with strides being made towards the implementation of competition law in Hong Kong, with the release of revised guidelines and subsidiary legislation; an amendment to turnover thresholds for dominance and merger filings in Taiwan; and an amendment to Japan’s guidelines relating to distribution systems. New laws in New Zealand which prohibit unfair terms in standard form consumer contracts have also recently come into force and, in Myanmar, draft competition law has been approved.

In Singapore, the CCS has been rather active and its most recent decision to block a proposed merger (its second decision of this kind) demonstrates its growing confidence. The Chinese regulators are also flexing their muscles, issuing their largest fine to date (the second largest antitrust fine worldwide) of USD 975 million in the Qualcomm abuse of dominance case.

In India, the regulators have imposed a fine for failure to notify a merger, sending another strong signal that parties should consider the importance of notifying their transactions in India.

Another big story that will impact the region is the ACCC’s proposal to deny authorisation for Qantas Airways Limited and China Eastern Airlines Corporation Limited to enter into a joint coordination agreement in respect of their operations between Australia and China. This is likely to make headlines for months to come.

We hope that you continue to enjoy this publication and that it will be a valuable tool for you to keep up-to-date with the rapid developments and enforcement practices in APAC. We look forward to delivering more news in our next edition.


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| Australia | China | Hong Kong |
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| Myanmar | New Zealand | Singapore |
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## Australia

*Fiona Crosbie, Lisa Lucak and Amanda Richman, Allens*

**Australian competition regulator announces priorities for 2015**

In February 2015, the Australian Competition and Consumer Commission ("**ACCC**") Chairman Rod Sims launched the 2015 edition of the ACCC's Compliance and Enforcement Policy ("**Enforcement Policy**"). Continuing priorities include cartel conduct, anti-competitive agreements and practices, misuse of market power and product safety. New priorities include issues arising in the medical and health sector, government procurement, the online marketplace, highly concentrated sectors, compliance with industry codes of conduct and truth in advertising.

The Enforcement Policy outlines the ACCC's 2015 priority areas, both established and new, which are decided in response to existing and emerging issues regarding consumer welfare and the competitive process. The Enforcement Policy also lists a range of factors that the ACCC considers when deciding whether or not to take action.

The ACCC's four enduring priorities are cartel conduct, anti-competitive agreements and practices, misuse of market power and product safety due to the detriment caused to both consumers and competition.

A new priority for the ACCC is the medical and health sector. From a competition standpoint, the ACCC is focusing on allegations regarding attempts to limit access to products, patients, procedures or facilities. From a consumer standpoint, the ACCC has received allegations of unconscionable conduct and misleading and deceptive conduct by medical professionals.

The ACCC has also announced that it will be taking a tougher stance to protect small firms by ensuring compliance with industry codes of conduct, including its recently amended mandatory Franchising Code of Conduct.

The ACCC has prioritised online issues since 2011, and will focus on emerging systemic consumer issues in the online marketplace this year. One of these issues is significant delays by online businesses in addressing consumer complaints about either the product itself or delivery.

Other priority areas for the ACCC include issues affecting government procurement, highly concentrated sectors (e.g., fuel and supermarket sectors), truth in advertising, ensuring carbon tax repeal savings are passed through to consumers, scam disruption and protecting vulnerable consumers.

Related Links:

The ACCC's 2015 Compliance and Enforcement Policy is available here.

The ACCC Chairman's speech is available here.

**ACCC proposes to deny authorisation of Qantas' coordination agreement with China Eastern**

The ACCC has proposed to deny authorisation for Qantas Airways Limited and China Eastern Airlines Corporation Limited to enter into a joint coordination agreement in respect of their operations between Australia and China. The agreement would see a coordination of flight schedules, an expansion of connecting services and destinations, new fare products and promotions, reciprocal frequent flyer programs, reciprocal inventory access and provision of information and terminal sharing in Shanghai between the two carriers.

The carriers fly daily between Sydney and Shanghai and are the only major airlines on this route. Together, Qantas and China Eastern account for more than 83% of the travel between Sydney and Shanghai.

The airlines argued that the coordination would allow them to more effectively and efficiently service the Australia-China market; allowing Qantas to align its product offering with Chinese demands and allowing China Eastern to enhance sales and its distribution capability in Australia.

While the ACCC acknowledged that there would be some benefits, such as improved connectivity for Qantas passengers travelling to China and a spread of departure times from Sydney to Shanghai, public detriment would also be likely. The ACCC considers that since Qantas and China Eastern are the major carriers on the Sydney-Shanghai route, coordination between the two has the potential to generate substantial competitive detriment.

In its draft determination, the ACCC considered that, on balance, any public benefits that would result from the coordination agreement would be limited and would be outweighed by the likely public detriment.

Related Link:

The ACCC is currently seeking submissions in relation to the draft determination. The draft determination is available here.

## China

*Fay Zhou, Xi Liao and Qiuying Zheng, Linklaters*

**NDRC issues decision in landmark case against Qualcomm and imposes record fine of RMB 6.088 billion**

On 10 February 2015, China's National Development and Reform Commission ("**NDRC**") announced that it had imposed a record fine of RMB 6.088 billion (approx. USD 975 million) on US technology giant Qualcomm for abusing its dominant position in different wireless communication standard essential patents ("**SEPs**"). In addition, the NDRC imposed a set of remedies relating to Qualcomm's patent licencing fees.

Following complaints from some competitors and industry associations in early November 2013, the NDRC carried out simultaneous dawn raids at Qualcomm's offices in Beijing and Shanghai, with up to 80 officials reportedly assigned to the matter. This demonstrates that the NDRC is willing to mobilise substantial resources to conduct a thorough assessment in a high-profile case.

Through the investigation, the NDRC concluded that Qualcomm holds a dominant position in the markets for SEPs licensing in relation to certain wireless communications and the baseband chip market. The NDRC further held that Qualcomm had charged licensees excessively high royalties, bundled SEPs and non-SEPs without justifications, and imposed unreasonable conditions in relation to the sales of baseband chips.

In addition to paying a record fine, Qualcomm is obliged to remove unreasonable conditions in the licensing agreement for selling baseband chips to Chinese customers, and is prohibited from requiring Chinese customers to enter into an unchallengeable licensing agreements as the prerequisite for supplying baseband chips to such customers.

The Qualcomm case clearly underpins the notion that Chinese antitrust enforcement continues to intensify, both in depth and breadth. This is expected to have some implications for technology companies operating in China:

- An "unfairly high licensing fee" may not only stem from the royalty amount itself but also as a combination of different factors, including licenses for expired patents or royalty-free cross-license requirements.
- The NDRC is likely to consider the bundling of SEPs and non-SEPs as an abuse of a dominant position, absent a plausible justification. While such an abuse may be justified in exceptional cases, the judgment of the Guangdong High Court in the "*Huawei v InterDigital*" (abuse of dominance) case has already shown that the relevant legal standard for such a justification is particularly high.
- A considerable degree of uncertainty will exist in relation to the determination of royalties which are in line with competition law requirements.

Related Link:

NDRC's penalty decision dated 10 February 2015 is available here.

## Hong Kong

***Clara Ingen-Housz, Anna Mitchell and Jacqueline Arena, Linklaters***

**Hong Kong Competition Commission publishes revised draft guidelines to Competition Ordinance**

Following publication of its draft guidelines on 9 October 2014 (see our previous Client Alert), the Hong Kong Competition Commission ("**HKCC**") published, on 30 March 2015, revised draft guidelines (the "**Revised Draft Guidelines**") to the Competition Ordinance (the "**Ordinance**"). The publication of the Revised Draft Guidelines follows a widespread public consultation initiated by the HKCC in October 2014.

Whilst the Revised Draft Guidelines do not differ significantly from the draft versions published last year, the HKCC has helpfully provided more examples and clarified its position on a number of points. However, in some instances, the HKCC's position may in fact result in increased legal uncertainty. In particular, the HKCC has:

- not fundamentally changed its position that resale price maintenance ("**RPM**") is harmful to competition, although it notes that the practice may not always have the "object" of harming competition. Rather, depending on the content of the agreement, its implementation and the "relevant context", an RPM arrangement may be assessed on the basis of its effects. It is not clear, however, from the Revised Draft Guidelines whether the default position will be that RPM will be an "object" or an "effect" restriction – an issue which will have important ramifications in terms of burden of proof;
- attempted to distinguish between legitimate commercial negotiations and anti-competitive exchanges of information, indicating that the exchange of future, individual intentions or plans with respect to price or quantity information will likely have the "object" of restricting competition, absent legitimate business reasons;
- expanded bid-rigging to include bid-rigging that is known to the person calling for the tender;
- expanded its guidance on numerous points under the First Conduct Rule, including joint ventures, joint tenders, joint selling arrangements, distributor/agency relationships, franchise arrangements and selective distribution systems;

- maintained its approach of not providing any indicative market share thresholds for the purpose of determining substantial market power;
- maintained its view that most conduct under the Second Conduct Rule will be assessed on the basis of its “effects” on competition, but provided additional examples as to when conduct may be seen as having the “object” of harming competition;
- upheld its position that warning notices will be published on the HKCC website; and
- declined to provide any indicative timeframes for carrying out investigations or assessing complaints.

The HKCC has invited comments from the public on the Revised Draft Guidelines by 20 April 2015 and it will consult with the Hong Kong Legislative Council (“**LegCo**”) on the Revised Draft Guidelines at the end of April 2015. Following such consultation, the HKCC will publish a final version of the guidelines, taking into consideration comments from LegCo and additional comments from the public. Although not binding as legislation, the final version of the guidelines will be influential in practice, clarifying the enforcement approach of the HKCC and assisting businesses in determining whether their conduct complies with the Ordinance.

Once the guidelines have been finalised, the Secretary for Commerce and Economic Development will announce the commencement date for the entry into force of the substantive provisions of the Ordinance, which is expected to be during the second half of 2015. The HKCC has announced that its policies on leniency and enforcement priorities will also be published before this commencement date.

Related Links:

Linklaters client alert on the revised guidelines can be found here.

The Revised Draft Guidelines can be found here.

The HKCC’s Guide to the Revised Draft Guidelines Issued under the Competition Ordinance can be found here.

The HKCC’s press release can be found here.

**Hong Kong publishes draft procedural rules for the newly established Competition Tribunal and regulations for calculation of turnover**

In February 2015, the Hong Kong Judiciary published its long-awaited draft procedural Competition Tribunal (“**Tribunal**”) rules. The proposed draft rules will govern the operation of the Competition Tribunal: the new tribunal established by the Competition Ordinance (“**Ordinance**”), which will hear and determine competition law cases. Further, regulations relating to the application and disapplication of the Ordinance to certain entities and the calculation of turnover for exclusions and penalties were published in the Hong Kong Gazette.

Pursuant to the Ordinance, the Tribunal is to decide on its own procedures and rules, in particular, the Chief Judge of the High Court is to make such rules after consulting with the President of the Tribunal. Following a consultation between the Judiciary, the Law Society of Hong Kong, the Hong Kong Bar Association, the Hong Kong Competition Commission (the “**HKCC**”) and the Communications Authority (which was not open to the general public), proposed subsidiary legislation on the draft rules of the Tribunal and this was submitted Hong Kong Legislative Council Panel on Administration of Justice and Legal Services (“**LegCo**”) on 16 February 2015 for consideration and review.

Shortly thereafter, regulations relating to the application and disapplication of the Ordinance to certain entities and the calculation of turnover for exclusions and penalties were published.

Three regulations were published, as follows:

- Competition (Application of Provisions) Regulation
- Competition (Disapplication of Provisions) Regulation
- Competition (Turnover) Regulation (the "**Turnover Regulation**")

We understand that all of these regulations will come into force following LegCo's scrutiny and after it has been through a negative vetting procedure. In its first meeting of review, some LegCo members expressed concerns over the accounting standards to be applied to the Turnover Regulation.

To this end, the HKCC has also been asked to provide guidance on the Turnover Regulation.

We understand that the second LegCo meeting on the Turnover Regulation was held on 27 March 2015.

## India

***Vinod Dhall, in collaboration with TT&A***

**COMPAT sets aside abuse of dominance finding against BCCI**

On 23 February 2015, the Competition Appellate Tribunal ("**COMPAT**") set aside an order of the Competition Commission of India ("**CCI**") imposing a penalty of approximately USD 8.5 million on the Board for Control of Cricket in India ("**BCCI**") for abuse of dominance.

The CCI had found that BCCI held a dominant position in the market for organisation of private professional cricket leagues/events in India and that it had abused its dominance by inserting a clause in its media rights agreement whereby BCCI bound itself to not organise, sanction, recognise, or support any professional Indian T20 cricket competition that competes with its own Indian Premier League.

BCCI argued that the order of the CCI ought to be set aside on grounds of natural justice because the findings of the Director General ("**DG**") related to the allegations made by the complainant which did not relate to the clause found to be abusive by the CCI. Further, the market definition proposed by the CCI was different from the one proposed by the DG.

The COMPAT, agreeing with the above arguments of BCCI, observed that the principles of natural justice required the CCI to provide notice to the concerned parties and invite their objections or suggestions in case it opined that further inquiry was required following receipt of the DG's report.

<u>Related Link:</u>

The full order can be accessed here.

**CCI imposes penalty on Zuari group and Deepak Fertilizers group for their failure to notify purchase of minority shareholdings**

The CCI has recently imposed penalties of approximately USD 479 million and USD 319 million on the Zuari Group and the Deepak Fertilizers Group respectively for failure to notify their purchases of shares in Mangalore Chemicals and Fertilizers ("**MCFL**"). The Zuari Group failed to inform the CCI about the 16.43% acquisition of shares in MCFL which was purchased between April to July

2013 in four tranches. Similarly, the Deepak Fertilizers Group failed to notify the CCI about their acquisition of 24.46% shares in MCFL in July 2013.

In rebutting the fines, the parties argued that the acquisitions were for less than 25% of the total shares, did not lead to control and were done solely as an investment thereby falling under the exemption for minority acquisitions provided for in the CCI's regulations. However, the CCI noted that the phrase 'solely as an investment' indicates 'passive investment' rather than a 'strategic investment'. Therefore, to qualify for exemption, an acquisition must not have been made with 'an intention of participating in the formulation, determination or direction of the basic business decisions of the target. Interestingly, the CCI observed that as per media reports, the Zuari Group and the Deepak Fertilizers Group have been involved in a takeover battle for MCFL since April 2013.

It was also noted that both Zuari Group and Deepak Fertilizers Group are engaged in similar businesses as MCFL. In an earlier order, the CCI had previously commented that an acquisition of shares or voting rights of less than 25% may raise competition concerns if there is a horizontal overlap or vertical relationship between the acquirer and the target and that such an acquisition could not be construed as being "done solely as an investment" and should therefore be notified to the CCI.

Related Links:

The full orders of the CCI can be accessed here and here.

## Japan

***Kenji Ito and Yusuke Takamiya, Mori Hamada & Matsumoto***

**The JFTC issues draft amendment to its guidelines on distribution systems**

On 30 March 2015, the Japan Fair Trade Commission ("**JFTC**") amended its guidelines on distribution systems (the "**New Guideline**").

The New Guideline focuses on vertical restraints such as resale price maintenance and non-price restrictions. The amendment is in response to criticism that the present guideline had a chilling effect on businesses because the criteria used for illegality of vertical restraints was not clear.

The JFTC explained that the New Guideline assists with interpretation of the rules on vertical restraints mainly on the following points:

- In addition to anti-competitive effects, the pro-competitive effects should be considered when the JFTC analyses the illegality of vertical restraints;
- inter-brand competition and intra-brand competition are to be considered as criteria for the illegality of the vertical restraints;
- surveys on a manufacturer's own distribution channels are permissible unless such surveys lead to resale price maintenance; and
- selective distribution is essentially permissible as long as it has reasonable grounds and non-discriminatory application.

The JFTC closed its public comment on the New Guideline on 6 March 2015. We believe it would be beneficial for businesses to monitor the New Guideline if they have distribution channels in Japan, as it will have a substantial impact on the JFTC's enforcement of vertical restraints.

**The JFTC conducts a dawn raid on an outdoor products manufacturer for suspected resale price maintenance**

On 17 March 2015, the JFTC conducted dawn raids on the Japanese subsidiary of major outdoor products manufacturer Coleman Japan Co,. Ltd. ("**Coleman**") for suspected resale price maintenance ("**RPM**").

In Japan, RPM is strictly prohibited by the Anti-monopoly Act. Nevertheless, manufacturers are generally allowed to set suggested retail prices unless the suggested retail price is imposed on the retail stores under pressure or fear of sanctions.

According to media reports, the JFTC suspects that (i) Coleman instructed retail stores to maintain the suggested retail price, and has imposed sanctions on stores that do not comply, and (ii) as a result, the prices of the products distributed by Coleman (e.g. mountain tents, outdoor chairs and sleeping bags) are much higher than they should be.

With respect to RPM, the JFTC conducted dawn raids on Adidas Japan K.K. in 2011 and this investigation is the first RPM investigation in the four years since that 2011 investigation.

We recommend that companies or anti-trust lawyers with some connection to Japan pay close attention to the outcome of the investigation in order to better understand the JFTC's current interpretation and application of the rules on vertical restraints.

## Malaysia

*Raymond Yong and Kathleen Gooi, Rahmat Lim & Partners*

**MyCC issued final decision against confectionery and bakery products producers**

The Malaysia Competition Commission ("**MyCC**") has issued its final decision against confectionery and bakery products producers. The MyCC imposed a total fine of RM247,730 (approx. USD66,680) on 14 members of the Sibu Confectionery and Bakery Association (the "**SCBA**") for agreeing to increase the prices of confectionery and bakery products by 10% to 15% in the Sibu area. This price increase was agreed at an annual general meeting held by the SCBA (the "**AGM**"), with their agreement being publicised and reported in several major newspapers.

Some of the enterprises who attended the AGM argued that they did not agree with the decision made in the AGM, or that they increased their prices independently despite their attendance. This was rejected by the MyCC, as the mere presence of a company at a meeting which decides on an anti-competitive agreement can implicate the company as party to the agreement. Notably, the MyCC did, however, reduce the financial penalties for companies that did not carry out the price increase.

Related Link:

A copy of the final decision is available here.

## Myanmar

*Clara Ingen-Housz, Anna Mitchell and Jacqueline Arena, Linklaters*

**Myanmar confirms approval of competition law**

On 24 February 2015, the government of Myanmar confirmed that the country's competition law has been approved. As we understand, there is now a 90-day waiting period, during which the Union Parliament will draft rules and regulations for the implementation of the law.

The Competition Commission will enforce the law, however, other details about the make-up of the agency are yet to be determined.

The introduction of a nation-wide competition policy by 2015 is a prerequisite for the ASEAN Member States in fulfilment of the goals of the 2007 ASEAN Economic Blueprint. We understand that many countries in the region are undertaking similar steps to Myanmar in order to meet the ASEAN requirement.

## New Zealand

*Fiona Crosbie and Rosannah Healy, Allens*

**New Zealand regime on Unfair Contracts Terms now in force**

New Zealand laws prohibiting unfair terms in standard form consumer contracts came into force on 17 March 2015. There is no grace period for businesses to adapt to the new laws and the New Zealand Commerce Commission ("**NZCC**") has stated that it will be focusing on industries such as telecommunications, rental cars, fitness, airlines, online trading and loan contracts provided by finance lenders.

The *Fair Trading Act 1986* (NZ) has been amended to incorporate new provisions which prohibit unfair terms in standard form consumer contracts. The new provisions apply to standard form consumer contracts entered into on, or after, 17 March 2015, as well as existing contracts that are renewed or varied after that date.

Like the Australian unfair contracts regime, the provisions provide that a term will be unfair if it:

(a) would cause a 'significant imbalance' in the parties' rights and obligations;

(b) is not reasonably necessary to protect the legitimate interests of the party advantaged by it; and

(c) would cause detriment (financial or otherwise) to a party if relied on.

Certain contract terms are excluded from the regime, including terms that define the main subject of the contract, terms that set the upfront price payable or terms that are required or expressly permitted by any other enactment. In addition, the laws will have limited application to insurance contracts.

Key points to note about the new provisions are as follows:

- the regime adopts a broad definition of 'consumer' contracts, focusing on the nature of the goods and services and whether they are of a kind 'ordinarily' acquired for private use, rather than focusing on who is purchasing them. This means that businesses acquiring goods or services will be protected by the new regime if the relevant good or service is ordinarily acquired for personal, domestic or household use;
- the provisions presume that a challenged term will not be reasonably necessary for the protection of the legitimate interests of the party 'advantaged' by the term, unless that party can prove otherwise. The party 'advantaged' by the term will need to be able to produce

evidence to the court to demonstrate reasonable necessity, such as evidence relating to business costs, operations, business structure and risks and methods of mitigating risks;

- in determining whether a term is unfair, the court cannot consider a term in isolation and needs to consider the term in the context of the 'contract as a whole'; and
- the NZCC has indicated in its guidelines that it is more likely to consider terms that allow unilateral variation to be fair if the consumer is given notice of any changes and where there is a right to cancel the contract without penalty where the changes made are materially detrimental.

## Singapore

***Daren Shiau and Elsa Chen, Allen & Gledhill LLP***

**Second-ever decision by the CCS to block a merger**

On 11 March 2015, the Competition Commission of Singapore (the "**CCS**") provisionally blocked the proposed acquisition by Parkway Holdings Ltd ("**Parkway**") of RadLink-Asia Pte Limited ("**RadLink**") from Fortis Healthcare Singapore Pte. Limited ("**Fortis**") (collectively, the "**Parties**") (the "**Proposed Acquisition**").

On 15 October 2014, the CCS received a joint notification from the Parties for a decision on whether the Proposed Acquisition may infringe Section 54 of the Competition Act, Chapter 50B of Singapore, which prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition ("**SLC**") within any market in Singapore. The Phase 1 review of the Proposed Acquisition was completed on 26 November 2014, and in view of potential competition concerns, the CCS proceeded to a Phase 2 review on 10 December 2014.

In arriving at its provisional decision to block the Proposed Acquisition, the CCS made the following provisional findings:

- post-merger, Parkway would become the only commercial supplier of radiopharmaceuticals in Singapore, through its 33% shareholding of Positron Tracers Pte Ltd and the acquisition of 100% of RadLink. The CCS' market inquiries indicated that no potential new entrant would enter the market in the next two to three years to compete with the merged entity;
- in the provision of radiology and imaging services for private outpatients in Singapore, evidence suggests that Parkway and RadLink are each other's closest competitors pre-merger. The entry barriers in the market are moderate to high and the bargaining power of customers is weak. Further, the CCS noted that post-merger, the merged entity would have substantial market share; and
- a SLC is also likely to arise from the vertical integration of the Parties' operations between the upstream market for the supply of radiopharmaceuticals and the downstream market for the provision of radiology and imaging services. The CCS' market inquiries indicated that the merged entity would be able to restrict competition in the market for radiology and imaging services by controlling the supply, the prices and/or the range of radiopharmaceuticals available to its downstream competitors.

This marked the second merger in which the CCS issued a provisional statement of decision to block a proposed transaction.

<u>Related Link:</u>

The CCS media release on the proposed acquisition of RadLink-Asia Pte Limited and its subsidiaries by Parkway Holdings Ltd, through its wholly-owned subsidiary, Medi-Rad Associates Ltd. can be found here.

## South Korea

***Yong Seok Ahn and Bryan E. Hopkins, Lee & Ko***

**KFTC issues third decision in auto parts cartel case**

On 27 March 2015, the Korean Fair Trade Commission ("**KFTC**") issued its third decision in the international auto parts cartel matter. Its decision covers three products: (i) exhaust gas temperature sensors ("**EGTS**"); (ii) ignition coils; and (iii) spark plugs. In its decision, the KFTC fined Japanese and Korean companies a total of 3.5 billion Korean won (approx. USD3million).

The KFTC has been proactive in investigating international cartel cases, such as the automotive parts cartel. This is the third in a series of decisions issued by the KFTC that relates to the international automotive parts cartel cases. The KFTC released its first decision in 2013 which covered instrument panels and windshield wipers. It issued its second decision last year which covered bearings.

The KFTC is still actively investigating companies for automotive parts cartel violations, and thus, we can expect further decisions in this area. This trend aligns with the KFTC's aggressive stance against international cartels that affect the Korean market.

**KFTC reshuffles non-standing commissioners**

This year the KFTC is reshuffling the non standing commissioners that sit on the Commission. The KFTC is comprised of nine individuals: (i) a chairman; (ii) vice chairman; (iii) three standing commissioners; and (iv) four non standing commissioners. The non standing commissioners are being replaced following the end of their three year term.

## Taiwan

***Matt Liu and Sonia Chen, Tsar & Tsai Law Firm***

**Taiwan Fair Trade Commission amends turnover thresholds for dominance and merger filings and promulgates guidelines on market definition**

Following the newly amended Taiwan Fair Trade Act ("**TFTA**") in February, the Taiwan Fair Trade Commission ("**TFTC**") amended the turnover thresholds for dominance and merger filing and promulgated guidelines on market definition ("**Guidelines**").

In respect of dominance (i.e. "monopolistic enterprise" in the TFTA), the turnover threshold was increased from NT$1 billion (approx. USD32 million) to NT$2 billion (approx. USD64 million) in the previous fiscal year. After such amendment, if an enterprise whose market share in the relevant market does not reach one tenth of the market or whose turnover does not exceed NT$2 billion (approx. USD64 million) in the previous fiscal year, the enterprise will not be deemed as having a dominant position.

In regards to merger filings, the local turnover threshold was raised to NT$15 billion (approx. USD479 million) and NT$2 billion (approx. USD64 million) for non-financial institutions and NT$30 billion (approx. USD958 million) and NT$2 billion (approx. USD64 million) for financial institutions.

The TFTC also made it clear that if a merger involves both non-financial institutions and financial institutions, the threshold for non-financial institutions would apply.

According to the Guidelines, in order to determine the relevant market, the TFTC will mainly consider the demand-side substitutability and the supply-side substitutability depending on the characteristics of particular goods or services. The term “relevant market” will be defined in both its product and geographic dimensions; yet timing may also be considered. In addition, the TFTC explained that, where appropriate, the CCC code (Customs Import Tariff and Import and Export Commodity Classification) and an opinion of a competent authority of a particular industry may also be a reference point.

## Vietnam

*Linh Bui, Carolyn Oddie and Linh Nguyen, Allens*

**Vietnamese State authorities are subject to more stringent anti-trust compliance scrutiny**

While the competition law of Vietnam does not clearly state that it applies to State authorities, it contains a general prohibition on State authorities from discriminating between enterprises and forcing organisations and individuals to purchase or sell goods or services with an enterprise appointed by such State authority.

Recently, several State authorities have been challenged as violating this prohibition for issuing instructions to their subordinates and staff to give priority in using a specific product or brand.

In one instance, a local authority in a central province of Vietnam issued an official letter encouraging the local population and businesses to give priority to local beer and bottled water manufactured in that province. Local restaurants and hotels had to sign undertakings with the relevant local authority committing to use local beer and bottled water and to gradually reduce and ultimately suspend their use of other brands manufactured elsewhere.

In another instance, a central ministry issued an official letter ordering its staff to use Vietjet Air, one of the low cost carriers in Vietnam, when flying for business purposes. This order sparked criticism as a potential breach of the competition law. Following this criticism, the ministry re-issued the order and replaced the reference to Vietjet Air with a general reference to ‘low cost carriers’.

In both cases, relevant State authorities argued that they did not force anyone to use the designated goods and services. The relevant official letters were issued pursuant to the general State policy of promoting the use of Vietnamese goods.

No formal investigations have been initiated in respect of the above cases. However, they raise a concern over the need for an amendment to the competition law to clearly specify that the law applies to State authorities. The Vietnam Competition Authority is working on the draft amendments to the competition law to reflect a more mature state of the competition enforcement practice in Vietnam, however, the amendments are not expected to be issued in the near future.