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Outpacing change

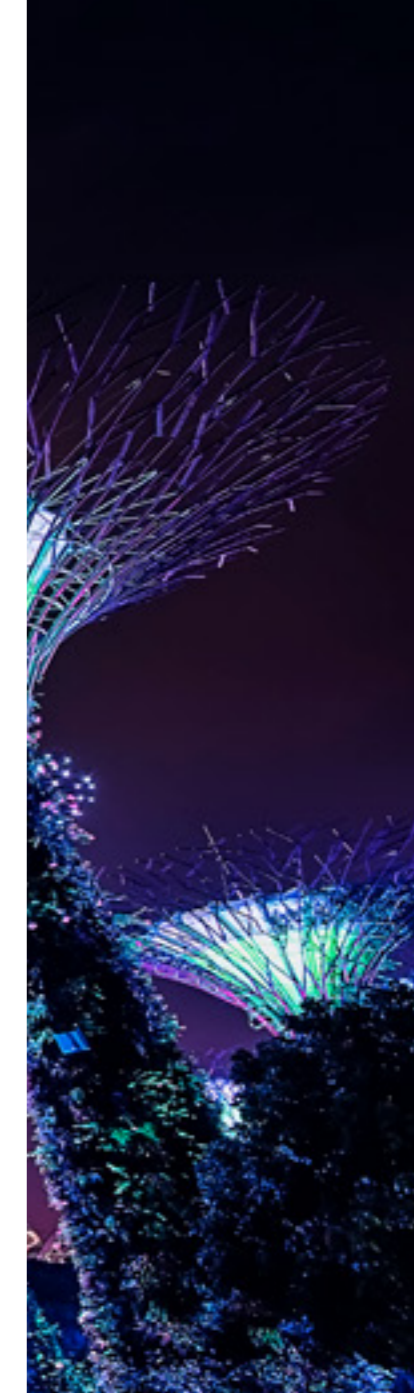


Introduction

The third quarter of 2024 has witnessed a series of significant enforcement actions throughout the Asia-Pacific region, highlighting the strong dedication of regulatory authorities to uphold fair competition and compliance with local laws.

In summary:

- in **China**, the Shanghai Municipal Administration for Market Regulation fined a data services company for abusing its dominant position by taking into account its ability to control and process data, marking China's first antitrust enforcement action involving data resources. Besides, the State Administration for Market Regulation published model cases using reminder letters as a soft tool to address antitrust risks, emphasizing the importance of proactive compliance management for business in China to navigate the evolving regulatory landscape.
- in **Hong Kong**, the Hong Kong Competition Commission announced its first criminal prosecution for non-compliance with its investigation powers in a recent cartel case, highlighting the severe consequences for businesses and individuals who obstruct investigations.
- in the **Philippines** and **Malaysia**, enforcement against cartels remains a critical focus. Businesses should continue to be vigilant against anti-competitive practices. On the merger front, the Philippine Competition Commission also recently fine-tuned its merger regime by publishing the Guidelines on Merger Remedies, detailing its approach to assess remedy proposals and address competition concerns in mergers.
- in **Singapore**, the Competition and Consumer Commission of Singapore (**CCCS**) granted conditional approval for the commercial cooperation between Singapore Airlines and Garuda Indonesia, demonstrating the importance of early engagement with the CCCS to expedite approval processes. The CCCS has also announced the first case against companies that were formed for the purposes of facilitating bid-rigging conduct and against an undertaking in his individual capacity.



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China

China's first abuse of dominance case involving data

On 6 September 2024, the Shanghai Municipal Administration for Market Regulation (**Shanghai AMR**) imposed a fine of CNY 4.5 million (c. USD 642,000) on Ningbo Sumscope Information Technology (**Ningbo Sumscope**) for abusing its dominant position in the China market for comprehensive data services for real-time voice brokerage trading of bond (**Relevant Market**) via its Qeubee platform.

This is China's first antitrust enforcement action involving data resources. Ningbo Sumscope's Qeubee platform is the leading provider in the Relevant Market. It captured 100% market shares due to exclusive data-sales agreements it had in place with a money-broker engaged in bond voice brokerage since April 2013. This resulted in financial information service providers being highly dependent on Ningbo Sumscope to access this data.

The Shanghai AMR found that Ningbo Sumscope had refused to grant the downstream financial information service providers access to the bond-trading data since 2021 without justifications. It also found that, from 2019, Ningbo Sumscope had imposed unreasonable trading conditions by setting minimum transaction amounts without reasonable causes, thereby raising barriers for access to the data and harming the competition in the Relevant Market.

The CNY 4.5 million fine (c. USD 642,000) is equivalent to 2% of Qeubee's 2022 sales. The fine was on the low end as the Shanghai AMR took into account the company's proactively cooperation and corrective measures, such as introducing new competitors and removing problematic trading conditions in March 2023.

This development demonstrates China's focus on competition concerns arising from the usage of data. The ability to control and process data is one of key factors to determine the dominance position, which is in line with the *Anti-Monopoly guidelines for the Platform Economy Online Platform Guidelines* published by the State Administration for Market Regulation (SAMR). Companies, especially data-driven businesses, are advised to establish and improve internal compliance mechanisms for data processing and usage to prevent any antitrust risks.

SAMR uses soft tools to tackle European automakers for antitrust risks

On 13 September 2024, China's State Administration for Market Regulation (**SAMR**) published the first batch of

model cases in the anti-monopoly special actions and law enforcement in the livelihood sector in 2024. In the announcement, SAMR stated that it had issued reminder letters to the Chinese branches of five foreign automakers regarding antitrust risks associated with their business practices in China.

SAMR's intervention follows complaints from numerous car dealers about unreasonable restrictions imposed by these automakers. The complaints alleged that the restrictions were unreasonable and had anti-competitive effects on the China automotive market, affecting downstream dealers and, ultimately, consumers.

In January 2024, SAMR delivered reminder letters to the automakers. Reminder letters have been introduced by SAMR in December 2023 as a soft tool to tackle anti-competitive conduct. This approach has the benefit of allowing the affected company to potentially avoid a protracted investigation and subsequent penalties.

The letters identified antitrust risks with the restrictions imposed and demanded robust compliance management, self-inspections, and corrective measures. The automakers responded by submitting rectification reports and proposing targeted corrective measures. On 23 July 2024, SAMR reviewed the progress of these rectifications and demanded effective corrective actions.

SAMR's use of soft tools (such as reminder letters and meetings) indicates a shift towards more flexible and efficient antitrust enforcement. Although this approach allows companies to address potential issues early, it also means that SAMR may act on suspicions of breaches rather than requiring concrete evidence. It highlights the importance of proactive compliance management. Continuous monitoring and adaptation of compliance programs are crucial to navigate the evolving regulatory landscape in China.

Malaysia

Malaysian court upholds competition commission decision against warehouse cartel

On 11 September 2024, the Shah Alam High Court dismissed a judicial review application filed against the Malaysian Competition Commission (**MyCC**).

MyCC issued an infringement decision in 2021 against seven warehouse operators following investigation of a price-fixing cartel related to the provision of long-length and heavy-lift import and export cargo services at Port Klang. MyCC concluded that there was illegal cartel activity between May 2017 and December 2019, constituting an infringement under

section 4 of the *Competition Act 2010*. Pecuniary penalties totalling MYR 1.043 million (c. USD 241,000) were imposed on the seven operators.

While two of the operators accepted the decision and paid the infringement notice, the remaining five operators appealed to the Competition Appeal Tribunal (CAT). In February 2023, the CAT dismissed the appeal. The five operators then sought south judicial review before the Shah Alam High Court.

The Court upheld the findings of CAT affirming that these operators had engaged in illegal price-fixing, dismissing their judicial review application. The Court also ruled that these five members of the cartel were not entitled to any form of relief.

The verdict is seen as a strong endorsement and vindication of the enforcement efforts by MyCC, and sends a clear message that cartels are under close scrutiny in Malaysia. It affirms MyCC's commitment to fight and act decisively against cartels. Companies should remain vigilant of potential cartel conduct in the business chain, and be aware of ongoing obligations under Malaysian law.

Philippines

Philippine Competition Commission issues guidelines for merger remedies

On 11 July 2024, the Philippine Competition Commission (**PCC**) published the [Guidelines on Merger Remedies \(Guidelines\)](#) which outline its approach to assessing remedy proposals by merging parties who seek to address any concerns that a transaction will result in a substantial prevention, restriction or lessening of competition (**SLC**).

The PCC identifies two broad types of remedies, behavioural and structural remedies. The Guidelines contain guidance on the design, selection and implementation of merger remedies and provide readily available parameters for the PCC and merging parties to assess in approaching merger remedies.

The approach adopted references, and is in line with, the approach set out in various international instruments, including remedies guides from the US Department of Justice Remedies Manual (2020), the International Competition Network Merger Group and the OECD. Remedies must address the harm identified during the merger review process, be effective and be proportionate, taking into account the risk profile, practicality and duration / timing.

An important feature of the Guidelines was the inclusion of remedy guidelines in digital markets. The Guidelines outline the specific market features of digital markets which may warrant specific remedies such as divestment, firewall provisions, research and development commitments, access provisions, and mandatory licensing provisions. These

remedies have all been imposed by various competition authorities in other jurisdictions and illustrate the synergies in global competition law enforcement.

The Guidelines provide insight into how the PCC evaluates commitments and remedies suggested by merging parties. Businesses should utilize the Guidelines from the outset to ensure a smooth and timely merger review process, ultimately leading to a favourable outcome.

Philippine Competition Commission institutes proceedings against vegetable traders for cartel conduct

On 5 September 2024, the Philippine Competition Commission (**PCC**) announced that its Enforcement Office had charged a group of vegetable traders for entering into anti-competitive agreements for the supply of onions in the Philippines between 2019 to 2023. This followed from the PCC's first dawn raid on September 2023.

In a Statement of Objections filed with the PCC on 9 July 2024, the Enforcement Office alleged that 12 vegetable traders (**Traders**) violated sections 14(b)(2) and 14(c) of the *Republic Act No. 10667 (the Philippine Competition Act (PCA))* by:

- allocating the supply of imported onions by assigning among themselves important clearances and dividing among themselves the volume of onions allowed to be imported; and
- exchanging competitively sensitive information such as price, supplier, customer, volume, shipping, distribution, and storage information.

Various individuals were also named in the complaint.

The PCC will hear the case in the exercise of its power as a quasi-judicial body. If the Traders are found to have contravened the PCA, they may be fined a minimum of PHP 110 million (c. USD 2 million). As the violation involves a basic necessity, the PCA provides that the fine may be tripled. The PCC Enforcement Office has recommended a PHP ~2.4 billion (c. USD 42.7 million) penalty, which would be a record penalty if awarded.

The PCC has a power to conduct dawn raids under the *Rules on Administration Search and Inspection* issued in 2019. Since its first dawn raid against the alleged onion cartel in September 2023, the PCC has established new investigation stations, including a digital forensic laboratory. This serves as an important reminder of the PCC's active approach to cartels, and increased monitoring of anti-competitive conduct.

Hong Kong

The Hong Kong Competition Commission is Cleaning up Criminal Activity

On 29 August 2024, the Hong Kong Competition Commission (**HKCC**) announced its first criminal prosecution for non-compliance with its investigation powers.

The HKCC was investigating a suspected price-fixing cartel among cleaning service companies. As part of that investigation, the HKCC executed search warrants at the offices of the companies it suspected were involved. During the course of the operation, an individual tried to delete documents and information that was relevant to the HKCC's investigation from a number of computers. The HKCC subsequently referred the case to the police for criminal investigation.

The individual was charged with one count of disposal and concealment of documents, the maximum penalty for which is a fine of HKD 1 million (c. USD 128,236) and imprisonment for up to two years.

This case is the first of its kind in Hong Kong, but there are more expected in light of the growing push for enforcement of regulatory authorities' powers. The HKCC reiterated that it will remain steadfast in its commitment to perform its functions, investigate possible contraventions and adopt appropriate follow up actions where contraventions have been identified.

Since launching its campaign in January 2021 to combat price fixing cartels, price fixing cartels remains one of the HKCC's enforcement priorities. This case demonstrates the HKCC's continued focus on price fixing cartels.

Singapore

CCCS conditionally approves airlines cooperation

On 5 July 2024, the Competition and Consumer Commission of Singapore (**CCCS**) granted conditional approval of the proposed commercial cooperation of Singapore Airlines Limited (**Singapore Airlines**) and Garuda Indonesia (Persero) Tbk (**Garuda**) for the provision of scheduled air passenger transport services between Singapore and Indonesia (**Proposed Cooperation**).

The process for conditional approval took 137 days from the date of the CCCS' acceptance of the joint application for decision. The process involved:

- the parties' submission of a joint application for decision on 19 February 2024;
- public consultations conducted by the CCCS from 14 to

27 March 2024 on the proposed Commercial Cooperation Framework Agreement, setting out the parties' intention to cooperate on, amongst other things, scheduling, pricing, sales and marketing in respect of their services between Singapore and Indonesia;

- voluntary commitments provided by the parties on 27 June 2024 in response to the CCCS' concerns (**Proposed Commitments**) which included maintaining seat capacity on an aggregated basis on the SIN-CGK vv and SIN-SUB vv route at stipulated levels, and the appointment of an independent auditor to monitor compliance;
- market testing conducted by the CCCS from 13 to 26 June 2024, where most relevant stakeholders did not raise any concerns with the Proposed Commitments; and
- the CCCS' approval of the Proposed Cooperation on 5 July 2024, subject to the parties' adherence to the Proposed Commitments.

During this process, the parties clarified that the Proposed Cooperation will not extend to include their respective low-cost carriers – Scoot and Citilink.

Singapore Airlines previously received approval with conditions from the CCCS to cooperate with Malaysia Airlines in 2022. However in contrast that process took 923 days from the time of the joint application for decision, to approval from the CCCS. The difference in approval timelines highlights the importance of engaging with the CCCS early and prior to entering into agreements.

CCCS takes first enforcement action against companies formed to facilitate bid-rigging

On 5 September 2024, the Competition and Consumer Commission of Singapore (**CCCS**) imposed financial penalties against companies formed for the purpose of facilitating bid-rigging conduct for the first time.

The bid-rigging occurred during invitations to quote (**ITQ**) issued by Ngee Ann Polytechnic (**NP**) to renew licensing for its vulnerability management software (**VMS**) used in the management of its student systems (such as for enrolment, assessments and graduation).

The bid-rigging involved the following parties:

- Rei Securite Pte. Ltd. (**Rei**), a company whose business activity and revenue was almost entirely derived from the NP ITQs. Rei's sole director and shareholder is Cheong Lai Ping Karen (**Karen**).
- An individual, Soh Chee Keong (**Soh**) who was contracted and paid by Rei to provide support services to NP in

respect of the VMS licence that Rei was contracted to provide since Rei was first engaged by NP.

- QBTT Pte Ltd (**QBTT**), a company incorporated on 28 September 2020 whose sole direct and shareholder was Soh. QBTT had no business activity and revenue.
- Contabilita Pte Ltd (**Contabilita**), a company incorporated on 23 October 2020 whose sole director and shareholder was Rei's bookkeeper. Contabilita had no business activity and revenue.

The bid-rigging commenced after NP's indication that it needed at least three budgetary quotes on 20 October 2020. Soh facilitated the process by providing quote through QBTT, and suggested getting Rei's accountant to provide the other quote via Contabilita. The quotes from QBTT and Contabilita were priced to ensure that Rei's bid would be the lowest. Soh was paid subcontracting fees subsequently. This arrangement occurred across three ITQs.

In its decision on 5 September 2024, the CCCS found the conduct amounted to cover-bidding, which deprived NP of any genuine competition in respect of the NP ITQs, and precluded any chance of NP obtaining more competitive bids (for example, by re-calling the NP ITQs should Rei be the only bidder, or if NP received less than three bids). Further, the CCCS considered that given NP's request for three quotes, Soh and Rei knew or ought to have known that the purpose of the NP ITQs was to ensure that NP obtained a cost-effective and competitive price for the VMS licence through competition from the NP ITQs. Rei received a financial penalty of SGD 6,237 (c. USD 4,794), and Soh received a financial penalty of SGD 2,550 (c. USD 1,922).

Bid-rigging is a *per se* violation, and the [CCCS Guidelines](#) state that bid-rigging will always be regarded to have an appreciable adverse effect on competition. Businesses should keep in mind that submitting independent bids is an essential feature of the tendering process, and that bids submitted as a result of collusion or co-operation between competing suppliers will be regarded by their very nature as restricting of competition.

Thailand

Thailand signals focus on fair competition for small entrepreneurs

On 15 July 2024, Yanyong Puangraj, the then Adviser to the Deputy Prime Minister, signalled the Thai government's focus on fair competition for small entrepreneurs, in a keynote speech at a symposium of the Trade Competition Commission of Thailand (**TCCT**).

In the [last edition of the Competition Law Quarterly](#), we reported that Thailand's *Competition Act BE 2560 (2017)* is undergoing extensive review through a five-year plan to align competition policy with Thailand's business goals and enforcement priorities. In that context, Mr Puangraj's speech noted the Thai government's focus on enabling Thai entrepreneurs to compete globally, given their importance in driving economic development.

The competitive tension between established foreign businesses and small local entrepreneurs is illustrated by the entry of the Chinese e-commerce giant, Temu, into the Thai market in July 2024. Thailand is the third Southeast Asian market that Temu has entered into, after the Philippines and Malaysia. In August 2024, the secretary-general of the TCCT was reported as stating that the TCCT would consider whether Temu's importation of low-cost products violate Thailand's anti-dumping or competition laws.

For established foreign businesses, it will be worth monitoring what approach the Thai government takes to enabling its desired competitive conditions for small local entrepreneurs.



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