

Bird & Bird

*Competition Law in Asia Pacific:
Highlights from 2015 and what's
coming next in 2016*



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Regional overview

2015 has been an important year in the development of competition law across the Asia Pacific region. The introduction of competition law regimes in Hong Kong and the Philippines, and increasing enforcement activity in China and Malaysia, have been key features of 2015. Australia continues to be active in leading engagement between competition regulators, which can be expected to increase as more and more Asia Pacific countries adopt competition laws.

In this publication we take a look at some of the more

significant competition law events in 2015 and anticipate the likely course which competition law will take in a number of key jurisdictions throughout the region in 2016.



The region at a glance

Australia

Competition regulators in the Asia Pacific region are becoming ever more interconnected

In 2015, the continued growth and development of the economies of the Asia Pacific region saw a significant strengthening of ties between the region's competition regulators and laws. As the economies in the region become ever more interconnected, countries have embraced the opportunity to have their competition law, policies and enforcement mechanisms geared to reflect this new reality.

Australia's Competition and Consumer Commission (ACCC) has been at the forefront of this increased engagement. It has signed cooperation agreements with all three of China's competition agencies and has provided further operational and administrative support to the agencies of other nations in the region including Hong Kong, Malaysia, the Philippines and Singapore.

This has seen a significant growth in the knowledge, resources and enforcement capabilities of the region's competition regulators. This will have particularly important ramifications for businesses conducting cross-border operations as businesses are now, more likely than ever, to be facing enforcement initiatives on more than one front.

Competition laws levelling the playing field for innovators

Innovation is in, and any conduct that seeks to stifle it is out. 2015 has seen a renewed focus at both a political and business level on the importance of innovation and its role in fostering a competitive market place.

A number of recent cases demonstrate the ACCC has been particularly active in taking steps to protect the competitive process to ensure that incumbents and start-ups alike compete on the merits.

Exclusive dealing and maintaining an open market place have been the hot topics in 2015. Companies

that made the headlines include Visa, Cabcharge, Calvary, the big four Australian banks and iHail.

What's next for Australia in 2016

In March 2015 Ian Harper published the final Harper Review report, having been tasked by the Government to conduct a 'root and branch' review of Australia's competition laws. The report made sweeping recommendations to Australia's state and national competition laws. The Government provided its response to the final report in late November 2015, supporting many of the recommendations and indicating it will provide monetary support to states that take up some of the recommendations it supports.

Which ones ultimately find their way into legislative reform in 2016 will be the subject of much interest. In 2016 we are likely to see some of the less controversial recommendations find their way into amendments to the *Competition and Consumer Act (2010)*, while the debate is set to continue on others, such as the introduction of an effects based test to the misuse of market power provision.

Other reviews are set to kick off in 2016 in full earnest. This includes a review of the Australian Consumer Law and we will also see the release of the Productivity Commission's Report on the Intellectual Property Review that commenced in late 2015.

On the enforcement front, 2016 is also likely to see the ACCC file its first criminal cartel proceedings.

On the business front, the extension of the unfair contracts regime to B2B dealings in November 2016 will have important implications for small businesses.

China

China further strengthens its position as the dominant player in the Asia Pacific region

Although the Anti-monopoly Law (AML) only came into effect on 1 August 2008, China has quickly established itself as an important competition regime. China's enforcement of the AML in 2015 sets records for antitrust enforcement in the Asia

Pacific region. For example, Qualcomm was fined RMB 6.088 billion (approximately USD 975 million) for abuses of dominance in February by the National Development and Reform Commission (**NDRC**). This is the highest fine ever imposed by a competition authority in the Asia Pacific region.

MOFCOM's 2015 enforcement record of the AML

From the time the AML came into effect on 1 August 2008 until 30 September 2015, the Ministry of Commerce (**MOFCOM**) has received 1380 cases for review to determine whether there is an illegal concentration under China's competition laws. Of these, 1295 cases have been reviewed and 1222 cases have been completed. Two cases have been prohibited and 24 cases have been approved with conditions. The prohibition rate is about 0.16% and the conditional approval rate is 1.96%. Both rates are much lower than that in the EU.

In 2015, MOFCOM received more notifications than previous years. Until 30 September 2015, MOFCOM received 252 notifications which have all been registered. In 2015, no notification has been prohibited and there are only two conditional approvals.

After seven years of enforcement, MOFCOM sought to streamline its merger review process. It reformed its internal review process in order to improve its review efficiency.

MOFCOM has also strengthened its enforcement against illegal concentrations under the AML. Up until 30 October 2015, 52 cases had been investigated and decisions were made in 15 cases.

Antitrust investigations by NDRC and SAIC

NDRC was very active in 2015. It imposed fines of RMB 6.088 billion on Qualcomm for abusing its dominance, which is the highest fine imposed so far. It also fined Mercedes RMB 350 million for maintaining its resale prices of certain car models, which is the second highest penalty awarded to a single company in the history of Chinese competition law.

Both the National Development Reform Commission (**NDRC**) and the State Administration for Industry and Commerce (**SAIC**) are drafting guidance on abuses of intellectual property rights (**IPRs**). In April, the Measures on Abusing IPRs was adopted by the SAIC and came into effect on 1

August 2015. This is the first time that China has adopted detailed antitrust rules on IPRs.

What's next for China in 2016

The three competition enforcement agencies (MOFCOM, NDRC and SIAC) have significantly matured since competition law was introduced in China. There is no doubt these authorities will be more active than before in 2016. Key guidance will be issued by them. Among that guidance, guidelines on abuses of IPRs and guidelines on automotive sector can be expected to be adopted.

MOFCOM will amend its rules on notification and review. With the new rules and the change of MOFCOM's internal review system, we expect that the review period for normal cases will be reduced.

There is no doubt that there will be more antitrust investigations by the NDRC and SAIC. Heavy fines can be expected as well.

Hong Kong

Road to Hong Kong's new competition law

After years of deliberation, the Hong Kong Competition Ordinance finally comes into effect on 14 December 2015.

In preparation, the Hong Kong Competition Commission (**HKCC**) has published six sets of Guidelines which describe how it intends to interpret and apply the Ordinance. The HKCC has also published a Leniency Policy which provides immunity to the first undertaking that reports its engagement in cartel conduct to the HKCC. The HKCC also published an Enforcement Policy which describes how it intends to allocate its operational resources in the investigations of anti-competitive conduct.

The new Competition Ordinance

The Competition Ordinance prohibits anti-competitive conduct pursuant to three rules: the First Conduct Rule, the Second Conduct Rule and the Merger Rule.

The First Conduct Rule prohibits agreements, concerted practices and decisions of trade associations that have the object or effect of harming competition in Hong Kong.

The Second Conduct Rule prohibits an undertaking with substantial market power from abusing its market power to harm competition in Hong Kong.

The Merger Rule prohibits mergers that substantially lessen competition in Hong Kong. At this stage, the Merger Rule is limited to carrier licences issued under the Telecommunications Ordinance.

The Ordinance is enforced by the HKCC and the Competition Tribunal. The Commission will assume the dual functions of a promoter of competition and an investigatory body, while the Competition Tribunal is a court with primary jurisdiction to hear and adjudicate competition cases.

What's next for Hong Kong in 2016?

2016 will be the year of competition law for Hong Kong. Businesses, consumers, lawyers and the public are all waiting to see how the HKCC and the Competition Tribunal will enforce the Ordinance. The HKCC has publically stated that in the initial years, its resources will be focussed on encouraging compliance in the Hong Kong economy as a whole, without focussing on specific sectors. However, cases involving cartel conduct, exclusionary behaviour, or other agreements causing significant harm to competition will take priority in its investigations. Who knows? Hong Kong might very well hear its first competition law case in 2016.

Malaysia

MyCC actively enforces and proposes amendments to the competition law

The Malaysian Competition Commission (**MyCC**) remained active in their enforcement and advocacy programmes in 2015. It also launched a consultation on its proposed amendments on the *Competition Act 2010* and *Competition Commission Act 2010*.

Malaysian Airlines (MAS) and AirAsia appeal decision that the airlines engaged in cartel conduct

In 2015, Malaysia's Competition Appeal Tribunal heard its first appeal of a final decision in which the MyCC had imposed a financial penalty of RM 10 million (approx. USD 2.35 million) on each Malaysian Airlines System Berhad and AirAsia Berhad for entering into a market sharing agreement.

What's next for Malaysia in 2016?

The aviation industry in Malaysia is set for a re-haul and new aviation-specific laws are expected to come into force.

In 2105, the *Malaysian Aviation Commission Act 2015* was gazetted and will most likely come into force in 2016. The Act sets up an aviation commission to regulate economic matters relating to the civil aviation industry. Part VII of the Act, which deals with competition, applies to any commercial activity, agreement or merger affecting aviation services, both within and outside Malaysia provided it has an effect on competition on the aviation service market in Malaysia. Notably this new Act introduces a voluntary merger regime specific to the aviation industry – merger control is not a feature of the current the *Malaysian Competition Act 2010*.

Philippines

Philippines introduces its first competition law

In July this year we saw the Philippines introduce its first ever uniform competition law, the *Philippine Competition Act*.

The Philippines now also has a single independent quasi-judicial enforcement body tasked with enforcement of its competition laws, the Philippines Competition Commission (**PCC**). The PCC consists of a Chair and four commissioners, appointed by the President.

The Act provides a grace period of two years for businesses to ensure that their operations are in compliance with the Act. During this time, no penalties will be issued by the PCC.

The change coincides with the Philippines entry into the Association of South East Asian Nations (**ASEAN**) market integration, where member states have committed to introduce national competition policy and law by 2015 in order to cater for the substantial economic opportunities and growth in the region as a result of the ASEAN free trade agreements being penned as part of the integration.

What the Philippine Competition Act covers

The Act covers three main tenants of competition law: cartels and anticompetitive agreements, abuse

of dominance and mandatory controls for mergers over PHP 1 billion (approx. \$21 million USD).

With regard to cartels and anticompetitive agreements, the Act outright prohibits price-fixing and bid-rigging, while market sharing and output restrictions are only prohibited if they have the object or effect of substantially lessening competition. There is also a catch-all provision which prohibits any other type of agreement that has the object or effect of substantially preventing, restricting or lessening competition. Provision is made, however, for agreements that can be proven to have pro-competitive effects.

Entities holding at least 50% market share in the relevant market will be presumed to have a dominant market position. The Act prohibits these entities from engaging in conduct that would substantially prevent, restrict or lessen competition, and the Act sets out a prescriptive list of conduct that will be considered abuse.

Mergers will be prohibited where they substantially prevent, restrict or lessen competition in the relevant market or in the market for goods and services as may be determined by the PCC. Exemptions may be available for otherwise prohibited mergers, for example, where the efficiency gains brought about by the merger outweigh any anti-competitive effects, or where one of the parties to the merger is faced with actual or imminent financial failure.

What's next for the Philippines in 2016?

We are expecting further regulations and guidelines will be released by the PCC in 2016, offering some further guidance on the unique provisions of the Act.

Businesses should commence action to audit existing agreements they may have with entities in the Philippines to identify and remedy any potential infringements.

Singapore

The Competition Commission of Singapore celebrates its tenth anniversary in 2015

The Competition Commission of Singapore (CCS) has matured significantly since its first infringement decision against pest control operators back in 2008. Indeed, over the last ten years it has developed important precedents.

Another of its achievements during the last decade has been the success of its innovative competition law advocacy programmes, which were targeted to educate both the general public and businesses, using highly accessible channels including social media, films ads and comic books.

The Singapore government extends container liner shipping exemption for another 5 years

Singapore's Block Exemption on Liner Shipping Agreements was extended in November 2015, until the end of 2020.

The CCS recommended the extension, noting changes in the international regulatory environment, and that such anti-trust exemptions for liner shipping agreements generally remain the regulatory norm worldwide. It was also observed that a very large proportion of Singapore's container cargo through-put involves transshipment.

What's next for Singapore in 2016

The enforcement priorities of the CCS have begun to shift to larger and more complex cases, including international cartels.

Given the changing anti-trust environment, and as more jurisdictions introduce competition laws in the region, the CCA has proposed to streamline some of its regulations and guidelines. The CCS wants to ensure that its policies are in line with best practices in developed jurisdictions.

The region in depth

Australia

The ACCC is more interconnected with the region's competition regulators

Businesses active in the Asia Pacific region may start to see the impact of the ACCC's involvement in the development of competition laws in the region.

The ACCC has been actively providing ASEAN Member States with tailored training and mentoring to introduce and implement national competition laws and policies, but more importantly, has seen the ACCC sign several international cooperation agreements with many countries in the Asia Pacific region to promote the transfer of non-confidential information, knowledge and resources.

China

The ACCC has now signed cooperation agreements with all three of China's competition agencies: the Ministry of Commerce (in 2014), the National Development and Reform Commission (in 2015) and the State Administration for Industry and Commerce (in 2013).

These agreements allow for increased engagement between the two countries on matters of anti-competitive conduct, international cartel investigations and price supervision, subject to confidentiality and privacy restrictions under the laws of each of country.

They are considered crucial by the ACCC given the increased cross-border deals between Australia and China and the importance of the Chinese economy relative to Australia.

Hong Kong

Hong Kong's competition law commenced on 14 December 2015 and the ACCC has yet to sign a formal cooperation agreement with the HKCC.

Nevertheless, the relationship ties between the HKCC and the ACCC will no doubt be stronger than usual with three key staff members – Rose Webb,

Tim Lear and Derek Ritzmann – being recruited from the ACCC.

Malaysia

In 2012 the *Malaysian Competition Act 2010* came into force, along with the Competition Commission of Malaysia.

Although there is no formal cooperation agreement in place with the MyCC, the ACCC has taken a prominent role in the enforcement and development of Malaysia's competition policy, laws and practices by sending two expert secondees to the Commission in order to strengthen its capabilities and enforcement practices.

Philippines

The Philippine's competition law came into force in 2015.

The ACCC has been working closely with the Philippines, delivering investigation skills training courses to members of its competition agency, the Office for Competition, Department of Justice.

The ACCC has signed a MOU with the Philippines Department of Justice that aims to contribute to the effective enforcement of the competition laws in each country.

Singapore

The ACCC has yet to sign a formal cooperation agreement with the CCS. Nevertheless there is a good relationship between the two regulators and the ACCC has also seconded staff to the CCS. We may see a deeper form of cooperation between these two regulators on the horizon as the CCS has plans to step up enforcement in relation to larger and more complex cases, such as international cartels.

Economist appointment

In December 2015, the ACCC announced it had appointed a Chief Economist to focus essentially on competition economics. This appointment follows a recent trend by competition regulators and we are likely to see economics slowly playing a greater role in competition law enforcement across the region.

What do these developments mean for businesses?

The growth in cooperation between the various competition regulators in the Asia Pacific region signals a significant increase in their combined enforcement capabilities but also the potential for greater alignment in their approach to enforcement.

The developments in 2015 should serve as a timely reminder to businesses, particularly those involved in cross-border operations, that breaches of competition laws could mean you are facing enforcement action from one or more competition regulators, increasing your potential exposure to fines and damages as these regulators share information and learn from one another.

Competition laws being used to support the competitive process - paving the way for innovative companies to harness their full potential

Innovation is the buzz word being thrown around town whether you are active in politics, business or just conversing over the dinner table.

The recent political changes – namely the appointment of the latest Australian Prime Minister Malcolm Turnbull and his appointment of a

Minister for Industry, Innovation and Science as well as an Assistant Minister for Innovation – will only reinforce the importance that innovation plays and still has to play in the competitive landscape.

While some companies in particular, such as Uber and airbnb have become household brands, their success in reshaping the taxi and accommodation markets has not been without challenge. Many others firms are making similar inroads forcing entrenched firms to innovate or fail.

In 2015 the ACCC has been active in ensuring a level playing field, opening markets to innovative businesses seeking to challenge the status quo. The ACCC has been using the *Competition and Consumer Act (2010)* to hold entrenched players to account for conduct that stifles innovation, as the following examples from 2015 demonstrate.

Cabcharge undertakings

In June 2015, the ACCC accepted an enforceable undertaking from Cabcharge which put in place an access regime under which rival payment processors are able to process Cabcharge cards on their own in-taxi payment terminals.

The ACCC had investigated allegations that, subsequent to Federal Court orders obliging Cabcharge to establish a policy to assess requests from rivals to accept or process Cabcharge cards, Cabcharge had refused to deal with rivals making requests under the policy.

The undertaking addressed the ACCC's concerns and ensured rivals obtained acceptable access to the market.



Calvary undertakings

The ACCC brought proceedings against Calvary for engaging in exclusive dealing which was likely to have an anti-competitive effect in the market for the supply of day surgery services in an Australian country town. Calvary had adopted bylaws concerning the accreditation of medical practitioners that used Calvary medical facilities. It had the effect of deterring new entrants into the day surgery market because medical practitioners who wanted to establish a competing day surgery facility risked losing their accreditation to operate at Calvary facilities.

The ACCC accepted an undertaking from Calvary to delete the problematic clauses in the bylaws.

Visa fined \$18 million

The ACCC brought proceedings against Visa for engaging in anti-competitive exclusive dealing. Visa had imposed a moratorium on direct currency conversions services being used in conjunction with Visa cards. This prohibited the further expansion of rival DCC services on POS transactions on Visa's network. Visa lifted this moratorium six months later.

In September 2015, the Court ordered Visa pay a penalty of \$18 million.

Draft ACCC decision proposing not to authorise iHail

iHail, nicknamed the 'anti-Uber app', suffered a setback in October 2015 when the ACCC issued a draft decision proposing to not authorise the proposed app. The ACCC's main concern was that iHail, given its shareholders represented a significant proportion of taxis in Australia, would achieve a dominant position from launch that was not achieved through competition but through collaboration with other competitors. The new app provided no clear benefit that was sufficient to outweigh the competitive detriment.

While the matter is not yet closed – with iHail having proposed some amendments to the app to allay the ACCC's concerns and boost the benefits of the app – this matter demonstrates the ACCC is not prepared to support industry collaboration to overcome the threat of innovation where that collaboration does not also have clear public benefits.

The ACCC is due to issue its final decision in early 2016.

Investigation into banks closing Bitcoin accounts

In October 2015, the ACCC opened an investigation amid concerns that the banks were colluding to block emerging competitors by closing the accounts of bitcoin businesses. Media reports suggest that the banks had closed accounts and denied services to Bitcoin and digital currency operators all around the same time. This investigation is ongoing with the ACCC to announce the outcome of its review in early 2016.

Harper Review to encourage further innovation

The Harper Review identified a number of improvements that could be made to the current competition law and also suggested the removal of outdated and anti-competitive legislation.

Changes to the law that will allow more effective competition will further drive innovation. We are likely to see many more companies finding interesting new ways to get products and services to market that are cheaper or are of higher quality.

What's next for Australia in 2016?

Implementing recommendations from the Harper Review

It has been over 40 years since the introduction of the *Trade Practices Act 1974* and 20 years since there has been a 'root and branch' review of competition policy in Australia. The final report of a review led by Ian Harper (the **Harper Review**) was published in March 2015, and contained a number of sweeping recommendations to expose more sectors of the Australia economy to competition. It proposed various amendments to the *Competition and Consumer Act 2010*, but most controversially proposed introducing an effects test into the misuse of market power provision. It also proposed inserting a prohibition on concerted practices and as well as improving the merger assessment processes.

The Australian Government's response to the Harper Review's report was published on 24 November 2015. It is expected that the non-controversial Harper Review recommendations, many of which concern matters that fall under state responsibility such as planning and zoning, retail trading hours and water regulation will be the subject of proposed legislative change in 2016.

In terms of amending the *Competition and Consumer Act*, we are likely to see changes that simplify terms and prohibitions as well as

substantive changes. Such changes include amending the definition of 'competition', the joint venture defence to cartel conduct and subjecting third line forcing to a substantial lessening of competition test as opposed to a per se test. Some prohibitions are likely to be removed such as the prohibition against exclusionary provisions and the price signalling laws. Reforms are also likely to see the introduction of a notification process for resale price maintenance and more flexibility for the collective bargaining process allowing it to be more widely used. The introduction of an effects test to the misuse of market power provision elicited extensive debate and will be the subject of a more in-depth review.

Australian Consumer Law Review

2016 will see a review of the Australian Consumer Law with a final report expected in 2017. In particular, media reports in late 2015 suggest that the ACCC will be pressing for increased fines for breaches of the ACL that are in line with the maximum fines that can be imposed on cartels and breaches of other forms of anti-competitive conduct.

Intellectual Property Review

The Productivity Commission is undertaking a 12 month enquiry into Australia's intellectual property system with a final report expected in August 2016. It is considering whether the current arrangements provide an appropriate balance between access to ideas and products and encouraging innovation, investment and the production of creative works.

The IP review will consider the Harper Review's recommendations to repeal the IP specific exceptions in the *Competition and Consumer Act (2010)* and to remove restrictions on parallel imports.

Unfair contracts regime extended to business-to-business dealings

The unfair contracts regime has been extended to B2B dealings. The unfair contracts regime will apply to business dealings where one of the businesses employs less than 20 people and the contract is worth up to \$300k in a single year or \$1 million if the contract runs for more than a year.

Businesses are encouraged to review their standard form contracts used for dealings with other businesses in preparation of the new law commencing in November 2016.

First criminal cartel

The ACCC has foreshadowed that it is likely to file its first criminal cartel proceedings in the first half of 2016.

New Agriculture Enforcement and Engagement Unit and Agriculture Commissioner

As a result of the Agricultural Competitiveness White Paper, the ACCC has additional funding to create an 'Agriculture Enforcement and Engagement Unit' and to appoint a specific Agriculture Commissioner. It will receive further additional funding to run a two-year pilot program to provide farmers with knowledge and materials on cooperatives, collective bargaining and innovative business models.

China

MOFCOM's 2015 enforcement record of the AML

Two conditional approvals

Although MOFCOM has received more notifications in 2015 than in previous years, there were only two approvals of concentrations (mergers) that were subject to conditions.

Nokia / Alcatel-Lucent

On 19 October 2015, MOFCOM approved Nokia's proposed acquisition of French rival Alcatel-Lucent with conditions, almost completing the EUR 15.6 billion (approx. USD 17.6 billion) deal's antitrust process. It was MOFCOM's first conditional clearance in 2015.

Nokia has made a series of commitments in respect of telecommunications standard essential patents (**SEPs**) owned by it, namely:

- Nokia undertakes that, under the premise of equality, if the licensee acts in good faith, it will give up seeking an SEP injunction to prevent the implementation of standards with FRAND commitments;
- When transferring a SEP to a third party in the future, Nokia has the obligation to promptly notify the details of the patent transfer to its existing Chinese licensees and any other Chinese enterprise that is in active licensing negotiation therewith. What is more important, Nokia undertakes that if the transfer of some SEPs to a third party has any significant impact on the value of Nokia SEP portfolios that have been licensed or will be licensed to Chinese licensees, the existing Chinese licensees (including potential licensees) have the right to renegotiate and determine the royalty rates;
- Nokia will ensure that it will transfer corresponding FRAND obligations to the new owners upon transfer of a SEP in the future; and
- Nokia accepts the supervision from MOFCOM in respect of the performance of its commitments and report to MOFCOM regarding the performance progress.

NXP / Freescale

On 25 November 2015, MOFCOM conditionally approved NXP Semiconductors N.V. (**NXP**)

acquisition of Freescale Semiconductor, Ltd. (**Freescale**). NXP and Freescale had announced the USD 40 billion merger in March 2015. This transaction was also conditionally approved by competition authorities in the EU and the USA. In fact, China was the last major holdout preventing the finalisation of the deal. Under the conditions, NXP must sell its RF Power transistors business to JAC Capital before it can proceed with the acquisition. This decision makes this transaction the first divestiture case in 2015.

Sanctions on failure to notify and gun-jumping

On 29 September 2015, MOFCOM announced four decisions to fine companies for prematurely implementing their respective transactions without receiving prior approvals from MOFCOM. So far, MOFCOM has investigated 52 alleged non-compliance cases, of which 31 were concluded with no fines and sanctions were imposed in 15 cases.

Among the four decisions announced by MOFCOM, Fosun/ErYe and Fujian Electronics and Information/CHINO-E are the first gun-jumping cases published by MOFCOM. In both Fosun/ErYe and Fujian Electronics and Information/CHINO-E, the acquirers proactively notified MOFCOM or engaged in the pre-consultation with MOFCOM, but were later found to have completed the transactions in part before obtaining the agency's approval (which is colloquially referred to as "jumping the gun"). MOFCOM considered that the premature acquisitions of a partial stake in a target (in both cases being a 35% stake) amounted to a change of control.

MOFCOM's internal and procedural changes

From 16 September 2015, MOFCOM has adopted a number of changes for merger review mechanisms and procedures which includes the abolition of the Consultation Division. MOFCOM's Consultation Division (which was previously in charge of pre-filing consultation and pre-review before substantial review by the Legal Division or the Economic Division) has become one of the three divisions responsible for merger reviews. All three MOFCOM Divisions will now be responsible for both the pre-review before case initiation and the actual substantive review of the cases, with each division specialising on certain industries/sectors. Such reform brings MOFCOM's internal review system consistent to that in the EU. Such reform has removed the internal inconsistency between the Consultation Division and the other two divisions.

Antitrust investigations by the NDRC and SAIC

Both the NDRC and SAIC were more active in 2015 than in previous years. In February 2015, the NDRC published its decision against Qualcomm for abuse of dominance and fined Qualcomm nearly USD 1 billion - the highest fines imposed on a single company since the AML came into effect.

In April, Mercedes-Benz was fined RMB 350 million (approx. USD 54.8 million) by the local counterpart of NDRC in Jiangsu province for maintaining the resale price of E- and S-class cars as well as of some spare parts. This is the second highest fine imposed on a single company by Chinese antitrust authorities. Some Mercedes-Benz dealers in Jiangsu were also fined a combined RMB 7.9 million (approx. USD 1.33 million) for price fixing.

In September, the local NDRC at Guangdong province fined the joint venture between Nissan Motor Corp and Dongfeng Motor Corp RMB 123 million (approx. USD19 million) for resale price maintenance. They also imposed a combined fine of RMB 19 million (approx. USD 3 million) on Dongfeng Nissan's 17 authorized dealers in Guangzhou.

The NDRC is currently drafting seven guidelines including those relating to IPRs and the automotive sector. In 2015, the NDRC and its provincial counterparts have closed 55 investigations including into BMW and Nissan. One of the big improvements that the NDRC has made with

respect to transparency is that all NDRC's antitrust case decisions will be published within seven working days once the decision is made.

The Measures on Abusing IPRs, which was adopted by the SAIC, came into effect on 1 August 2015. This is the first time that China has adopted detailed antitrust rules on IPRs. The adoption of the Measures on Abusing IPRs also triggered the NDRC and SAIC drafting guidelines on abuses of IPRs.

What's next for China in 2016?

Since the AML is still relatively young, the authorities will be even more active in 2016. 2016 will be the year for guidelines since several guidelines are planned to be published. Among them, the guidelines on abuses of IPRs and guidelines on automotive sector can be expected to be adopted. The former will have impact on the enforcement of IPRs, while the latter will have impact on the existing distribution models of automotive and reshape the aftersales market.

MOFCOM will publish their amended rules on notification and review. With the new rules and the change of MOFCOM's internal review system, we expect that the review period for normal cases will be reduced.

There will be more antitrust investigations by the NDRC and the SAIC in sectors such as automotive, telecommunications, e-commerce and pharmaceuticals. Heavy fines can be expected for any breaches.



Hong Kong

The road to Hong Kong's new competition law

After years of deliberation, the Hong Kong Competition Ordinance was passed by the Legislative Council on 14 June 2012.

The Ordinance is being phased in stages, with parts relating to the setting up of the HKCC and the Competition Tribunal coming into effect first.

On 17 July 2015, a commencement notice was published in the Gazette for the Ordinance to come into full effect on 14 December 2015.

In preparation, the HKCC, after several rounds of consultation, published six sets of Guidelines which describe how it intends to interpret and apply the Ordinance. The HKCC has also published a Leniency Policy which allows undertakings to seek immunity from prosecution if they report their engagement in cartel conduct to the HKCC. A month prior to the Ordinance coming into force, the HKCC published an Enforcement Policy which indicates that in 2016 the HKCC will focus on serious breaches of the Ordinance, namely cartel conduct, breaches that cause serious harm and abuses of substantial market power involving exclusionary conduct.

The new Competition Ordinance

The general framework of the competition law resembles that of the UK and the EU.

The Ordinance prohibits anti-competitive conduct pursuant to three rules: the First Conduct Rule, the Second Conduct Rule and the Merger Rule.

The First Conduct Rule prohibits agreements, concerted practices and decisions of trade associations that have the object or effect of harming competition in Hong Kong. Price fixing, market sharing, output restriction, and bid rigging are regarded as serious anti-competitive conduct under this rule. The HKCC has also indicated that resale price maintenance may also be treated as serious anti-competitive conduct in some circumstances.

Under the Second Conduct Rule, an undertaking that has a substantial degree of market power in a market is prohibited from engaging in conduct that has the object or effect of harming competition in

Hong Kong. The rule covers exploitative abuses, such as excessive pricing, and exclusionary abuses, which include predatory pricing, tying and bundling, and exclusive dealing. The HKCC is most likely to focus its attention on abuses that involve exclusionary conduct.

The Merger Rule prohibits mergers that have, or are likely to have the effect of substantially lessening competition in Hong Kong. At this stage, the Merger Rule is limited to carrier licences issued under the Telecommunications Ordinance.

Competition enforcement in Hong Kong follows a prosecutorial approach. The HKCC will assume the dual functions of a promoter of competition and an investigatory body.

The Competition Tribunal is a specialist court established under the Ordinance with all the powers, rights and privileges of the Court of First Instance. It has primary jurisdiction to hear and adjudicate competition cases brought by the HKCC or by private parties. The Competition Tribunal has the power to impose fines for breaches of the Ordinance.

What's next for Hong Kong in 2016

The year of 2016 will be the year of competition law for Hong Kong.

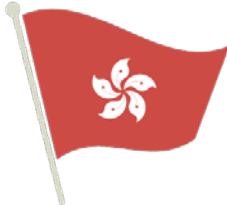
Businesses, consumers, lawyers and the public are all waiting to see how the HKCC and the Competition Tribunal will enforce the Ordinance.

A month before the Ordinance was due to come into effect, the HKCC published its Enforcement Policy which describes how it intends to prioritise the use of the HKCC's operational resources to investigate potential anti-competitive conduct. The HKCC indicated that in the initial years, its resources will be focussed on encouraging compliance in the Hong Kong economy as a whole, without focussing on specific sectors. However, studies and inquiries have actually commenced on oil pricing, the electricity market and other practices. It is yet to be seen how aggressive the HKCC will be in investigating and prosecuting anti-competitive conduct.

In the Enforcement Policy, the HKCC also indicated that cases involving cartel conduct, exclusionary behaviour, or other agreements causing significant

harm to competition will take priority in its investigations.

Who knows? Hong Kong might very well hear its first competition law case in 2016.



Malaysia

The course taken by the Malaysian Competition Commission in 2015

At the start of 2015, the Minister of Domestic Trade, Co-Operatives and Consumerism, Dato' Sri Hasan Bin Malek, declared that the MyCC would focus on the following areas: small to medium enterprises, pharmaceuticals, professional bodies and bid rigging.

The MyCC investigated a number of cases in 2015 and we will take you through some of the major enforcement activities in 2015.

Confectionary and bakery producers engage in price-fixing

The MyCC issued a final decision in relation to a price fixing agreement between 24 confection and bakery product producers. A total financial penalty of RM 247, 730 (approx. USD 59,000) was imposed on fifteen infringing enterprises.

Shipping providers engaged in exclusive dealing

The MyCC accepted undertakings from Giga Shipping Sdn Bhd and Nexus Mega Carriers Sdn Bhd for anticompetitive exclusive agreements entered into between the two enterprises with vehicle manufacturers, distributors and retailers. Giga Shipping Sdn Bhd and Nexus Mega Carriers Sdn Bhd are major providers of logistic and shipment services by sea for motor vehicles from ports in Peninsular Malaysia to ports in East Malaysia.

Trade bodies and associations asked to dismantle fee scales

The MyCC issued letters to four professional bodies requesting their scale of fees be dismantled as it is of the view fees scales fixed by professional bodies are contrary to Section 4 of the *Competition Act 2010* which deals with prohibited horizontal and vertical agreements. The four professional bodies included the Malaysian Institute of Arbitrators, Malaysian Institute of Architects, Malaysian Dental Association and Institute of Landscape Architects Malaysia.

The MyCC also issued a warning to the Nursery and Nanny Association for the collective fixing of fees scales. The MyCC ordered the Association and its members to dismantle their fixed scale fees with immediate effect.

Container depot operators and an IT service provider alleged to have engaged in price-fixing and concerted practices

A proposed decision was issued against four container depot operators and an information technology service provider in the shipping and logistic industry for engaging in price fixing and concerted practices.

A provider of E-Government services alleged to have abused its dominant position

A proposed decision was issued against My E.G. Services Bhd (**MyEG**) for abusing its dominant position in the provision and management of online Foreign Workers Permit Renewal applications. It is alleged to have applied different conditions to equivalent transactions with other trading parties which harmed competition. MyCC proposed a financial penalty of RM 307,200 (approx. USD 72,000). MyCC also proposed an additional penalty of RM 15,000 (approx. USD 3,500) for each day MyEG did not comply with remedial actions which required MyEG to take positive action to ensure an efficient gateway for all insurance companies to sell the mandatory insurances.

Advocacy by the MyCC

In 2015 the MyCC conducted various advocacy programmes with business and consumer associations and sector-specific industry associations to increase awareness, and importance of, the *Competition Act 2010* and to encourage the business community to comply with Malaysian competition laws.

In July 2015, a Member of the Commission, Prof Dato' Dr. Sothi Rachagan, chaired the Roundtable on the Review of the Implementation of the UN Set of Principles on Competition Policy as well as the UNCTAD's Model Law on Competition which was held in Geneva.

Proposed amendments to the Competition Act and Competition Commission Act

On 8 July 2015, the MyCC launched a public consultation on proposed amendments to the *Competition Act* and *Competition Commission Act*. Under Article 16 of the *Competition Commission Act*, the MyCC is empowered to make recommendations on reforms to relevant competition legislation. One of the proposed amendments it sought was to extend MyCC's investigation powers to compel production of information or documents both in connection with

the conduct of market studies and suspected instances of infringement.

Malaysian Airline System Bhd and AirAsia Bhd

On 31 March 2014, the MyCC issued a final decision against Malaysian Airlines System Berhad (**MAS**), AirAsia and AirAsia X Berhad (**AirAsia**) for infringing Section 4(2)(b) of the *Competition Act 2010* – a horizontal agreement having the object to share market. This final decision found that a collaboration agreement dated 9 August 2011 (the **Agreement**), with the stated aim of sharpening the focus on core competencies, delivering better products and choice for customers and to explore the potential of several synergies that would result in cost-savings for the parties, amounted to market sharing. Despite the Agreement being contingent upon obtaining all necessary and desirable antitrust approvals from the relevant authorities, MyCC took the view that the Agreement has, as its object, the sharing of markets in the air transport services sector in Malaysia.

A RM 10 million (approx. USD 2.4 million) financial penalty was imposed on both AirAsia and MAS. MyCC took the view that AirAsia X Berhad and AirAsia formed a single economic entity hence no separate financial penalty was imposed on AirAsia X Berhad. Both MAS and AirAsia have appealed against MyCC's final decision to the Competition Appeal Tribunal (**CAT**).

In its final decision, MyCC took the view that the Agreement resulted in an outcome whereby Firefly withdrew from four routes from Kuala Lumpur to East Malaysia, leaving AirAsia as the sole low cost carrier for these four routes. However, the counsel for MyCC's abandoned this argument before the CAT. The counsel for MAS provided evidence that Firefly withdrew from these four routes based on an independent decision made by MAS due to Firefly's huge financial losses. It was also submitted by counsel that MAS took over these four routes from Firefly and hence competition remained between MAS and AirAsia for these four routes.

During the appeal, counsel for MAS and AirAsia have also submitted on various procedural fairness issues, including MyCC's refusal to provide access to their investigation files which was tantamount to a denial of the parties' rights to defend and for failing to address the parties' defences in its final decision.

These appeals are currently pending the CAT delivering its decision by this year.

Malaysian Aviation Commission Act 2015 introduces merger regulation in the aviation industry

The *Aviation Commission Act 2015* has introduced aviation-specific competition laws specific to the industry. In particular it has introduced a merger regime specific to the aviation industry – merger control is not currently a feature of the *Competition Act 2010*.

The Malaysian aviation industry is currently under the purview of the Department of Civil Aviation (**DCA**), an agency established under the Ministry of Transport to provide a safe, efficient and orderly growth of air transportation and to regulate aviation activities in Malaysia. The DCA, amongst others, is also tasked to encourage the development of airways, airport and air navigation facilities and services which are in compliance to standards and recommended practices of the International Civil Aviation Organisation.

This has been the position ever since the DCA was formed pursuant to the *Civil Aviation Act 1969* - hence it has come as a surprise to many when the *Malaysian Aviation Commission Bill 2015* (the **Bill**) was tabled for its first reading at the Malaysian House of Representatives on 6 April 2015 by Datuk Seri Abdul Wahid Omar, a Minister from the Prime Minister's Department.

The Bill was subsequently passed by the House of Representatives on 8 April 2015 after less than three hours of debate and was subsequently passed in the Senate.

The *Malaysian Aviation Commission Act 2015* sets up the country's first Aviation Commission to regulate economic matters relating to the civil aviation industry.

The idea behind the Aviation Commission was first mooted during the unveiling of Khazanah Nasional Berhad's RM 6 billion 12-point recovery plan in August last year for the ailing MAS, which has since been privatised.

The Aviation Commission's purview includes connectivity improvements, both globally and locally, to promote economic ties such as integration, growth, investment and tourism.

One of the main objectives of the Act is to encourage effective competition which allows Malaysian carriers to maintain their ability to compete effectively in a sustainable, profitable, efficient and fair manner. Part VII of the Act, which deals with competition, applies to any commercial activity, agreement or merger affecting aviation services, both within and outside Malaysia provided it has an effect on competition on the aviation service market in Malaysia. This Part does not apply to any commercial activity, agreement or merger specified in the Third Schedule and the following has been carved out from 'commercial activity':

- any activity, directly or indirectly, in the exercise of governmental authority;
- any activity conducted based on the principle of solidarity; and
- any purchase of aviation services not for the purposes of offering aviation services as part of an economic activity

Part VII of the Act largely mirrors the *Competition Act 2010* in terms of the prohibition against anti-competitive agreements, abuse of dominant position, the criteria to determine relief of liability for anti-competitive agreements, the provision of granting individual and block exemptions, leniency regime and the rights for a private action. The Aviation Commission, similar to MyCC, may impose a financial penalty of up to ten percent of the enterprise's worldwide turnover over the infringement period.

Most importantly, it introduces a voluntary merger regime and prohibits mergers between enterprises which result, or is expected to result, in a substantial lessening of competition in any aviation service market. There are provisions for voluntary notification of an anticipated merger or a merger which has taken place together with an application for a decision by the Commission as to whether the anticipated merger or a merger which has taken place may be a prohibited merger. An appeal of the Commission's decision is to be made to the High Court of Malaysia, unlike the position under *Competition Act 2010* whereby an appeal of MyCC's decision is made to the Competition Appeal Tribunal.



Philippines

Philippines introduces its first competition law in 2015

2015 saw a landmark in competition policy in the Philippines with the signing of the *Philippines Competition Act 2015* by President Aquino. The Act is the country's first uniform competition law, and has been welcomed by the Filipino community against a background of numerous failed legislative proposals to bring competition matters under one authoritative national body.

The driving force behind the change is the Philippines' involvement in the ASEAN market integration due to take place in December 2015. Under the ASEAN Economic Community Blueprint, member states have committed to introducing national competition policy and law by 2015 in order to foster a culture of fair business for enhanced long-term economic benefits in the region.

The ASEAN free trade agreement is expected to give rise to substantial economic opportunities and growth for member states. As such, strong competition policy is required to support increased regional and international investment. It is also hoped that stronger and comprehensive competition laws will give rise to better quality and increased accessibility to goods and services for consumers, the reduction or elimination of monopolistic markets and increased innovation in the country.

Prior to the introduction of the Act, the Philippines did not have a comprehensive competition law regime, but there were general laws dealing with competition. These were set out primarily in the 1987 Philippine Constitution which provided basic government policies on competition, and complemented by the Revised Penal Code which imposed criminal sanctions on persons or entities engaged in anti-competitive practices. There are also a number of sector specific industry laws which contain pro-competitive elements, for example the *Corporation Code of the Philippines (1980)*, the *Consumer Act of the Philippines (1992)* and the *Price Act (1992)*.

The industry specific approach, in addition to the number and diversity of laws, meant that competition was not being dealt with equally across all sectors of the economy leading to inefficiencies,

inconsistencies and conflicting policies by different agencies and a general lack of expertise in addressing competition issues.

The Act attempts to take a 'quality over quantity' approach, implementing a single national and uniform competition law across all sectors of the economy. Under the Act, a single independent quasi-judicial body, the Philippines Competition Commission is designated as the country's first competition authority. The PCC consists of a Chair and four commissioners appointed by the President, and are responsible for enforcing the provisions of the Act.

The Act provides a grace period of two years for businesses to assess their strategies, approaches, contractual arrangements and transactions to ensure compliance with the Act. The PCC will not issue any penalties during this time.

What the Philippines Competition Act Covers

The Act covers three main tenants of competition law: cartels and anticompetitive agreements, abuse of dominance and merger control.

Anti-competitive agreements

The need for a clear prohibition on anti-competitive agreements between competitors in the Philippines was clearly demonstrated in June 2014, where consumers and government officials expressed serious concerns about the price of garlic which had shot up by 74% in a one year period, a 100% increase on average prices. A resulting investigation uncovered that, due to a shortcoming in importation laws, a single body was able to take control of 75% of all garlic imports in the country. There was also suspicion that officials had been colluding with the cartel leader and accepting bribes in exchange for plant quarantine clearances.

However, the conduct of the individuals in the garlic cartel was not specifically prohibited due to the lack of any comprehensive competition law. The omission meant that they were instead charged with graft and corruption. Aquino commented at the time, *"there is at present no specific law prohibiting this. If there are no rules against something, then what they're doing isn't illegal, even though it may be everywhere else in the world"*.

The Act outright prohibits price-fixing and bid-rigging, while market sharing and output restrictions are only prohibited if they have the object or effect of substantially lessening competition. There is also a catch-all provision which prohibits any other type of agreement that has the object or effect of substantially preventing, restricting or lessening competition.

Agreement is defined broadly and is likely to capture a wide breadth of agreements with an anticompetitive purpose or effect. An 'agreement' includes *"any type or form of contract, arrangement, understanding, collective recommendation, or concerted action, whether formal or informal, explicit or tacit, written or oral"*.

Provision is made for agreements that can be proven to have pro-competitive effects, either by improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits. However, there is still some risk of overreach in broadness of the provisions, and particularly as it also still unclear whether the PCC will be required to provide a market analysis of the actual effect of the agreements that are alleged to have an anti-competitive effect.

These issues will hopefully be addressed in guidelines or regulations released by the PCC in due course.

Abuse of dominant position

The Act prohibits entities with a dominant position from engaging in conduct that would substantially prevent, restrict or lessen competition.

The Act provides a rebuttable presumption of dominant market position if the entity holds at least 50% market share in the relevant market.

Whether or not an entity has a dominant position will depend on a number of factors including market share, its ability to unilaterally set prices or restrict supply, barriers to entry, access to other sources of inputs and countervailing power.

The Act prescriptively sets out a list of conduct that will be considered abuse; however it is unclear whether or not it is exhaustive. Additionally, some unique provisions are made permitting "socialised pricing for the less fortunate sector of the economy" - the interpretation and application of which will

most likely be dependent on guidance from the PCC or judiciary.

Mergers and Acquisitions

Merger control in the Philippines is mandatory where the total value exceeds PHP 1 billion (approx. USD \$21 million). Merger parties must not complete the transaction until 30 days after the notice has been provided to the PCC, which the PCC can extend to 90 days if it requires further information. If the PCC does not issue a decision before the notification period expires, the transaction will be deemed approved and may be completed by the parties.

The PCC has flexibility under the Act to introduce additional notification requirements that may be applicable to specific or all sectors.

If the merger or acquisition raises serious competition issues the PCC may prohibit the agreement, request the parties to modify the agreement or seek legally enforceable undertakings.

Possible exemptions are made for mergers that may bring about efficiency gains which outweigh the anti-competitive effects, or where a party to the merger is faced with actual or imminent financial failure.

An administrative fine of 1% to 5% of the value of the transaction applies to parties that do not notify or complete the merger before it has been cleared.

Penalties

The Act allows the PCC to impose administrative penalties of PHP 100 million (approx. USD \$2.2 million) on entities for first offences, and PHP 250 million (approx. USD \$5.5 million) on entities for second offences for anti-competitive agreements, abuses of dominant position or engaging in a prohibited merger or acquisition. Fines can be tripled if the violation involves the trade or movement of basic necessities and prime commodities, which are defined in the *Price Act (1992)*.

Serious breaches of the anti-competitive agreement provisions of the Act may also attract criminal penalties. Courts will have the ability to impose 2-7 years jail time, and a fine of between PHP 50 million (approx. USD 1.1 million) and a maximum financial penalty of PHP 250 million (\$5.5 million) on responsible directors and officers.

The PCC is yet to establish a leniency policy to grant immunity for breaches of the anti-competitive agreement provisions. The policy must provide for immunity against third party damages actions and criminal prosecutions.

What's next for the Philippines in 2016?

Now that the foundation has been set, the next stage of competition law development in the Philippines is in the hands of the PCC, particularly in clarifying how businesses should comply with the requirements of the Act.

We expect that the regulator will release regulations and guidelines in 2016, which will hopefully shed light on some of the more unique provisions of the Act.

For now, businesses including international companies dealing with companies and consumers in the Philippines should take advantage of the two-year transition period to ensure their affairs are in order and have appropriate competition compliance training in place. Businesses should look out for PCC guidance as it is released on how the Act may be enforced.



Singapore

The Competition Commission of Singapore celebrates its tenth anniversary in 2015

The CCS has matured significantly since its first infringement decision against pest control operators back in 2008. Indeed, over the last ten years it has developed important precedent in the form of cartel infringement decisions, section 34 negative clearance decisions, and an abuse of dominance infringement decision.

Singapore has a voluntary merger control regime and the CCS has reviewed a high number of filings made in relation to multi-jurisdictional mergers. Well illustrating its pro-business approach, most clearances are decided within the Phase I 30 day period, and to date no merger has so far been prohibited (but some applications have been withdrawn after the CCS has provisionally prohibited the merger).

Another of the CCS' achievements during the last decade has been the success of its innovative competition law advocacy programmes, which were targeted to educate both the general public and businesses, using highly accessible channels including social media, films ads and comic books.

2015 Developments

The competition agency strives to facilitate the government on policy matters, while enforcing the law to ensure that Singapore remains to be a competitive economy.

2015 saw the CCS receive seven merger applications, four of which have been cleared to date. One application related to a health services merger which was ultimately abandoned after the CCS provisionally prohibited the deal: it had found the merged entity would be the only supplier of radiopharmaceuticals in Singapore, with no viable competitor likely to enter the market for two to three years.

Also of note in the past year was the CCS's action against exclusivity requirements imposed on retail outlets by Asia Pacific Breweries, makers of the famous Singapore brand Tiger Beer. This followed from complaints that the outlet-exclusivity practice prevented retail outlets from selling draught beers from competing suppliers and restricted the choices

of draught beers available to retailers and consumers.

In line with its objective to educate, in December 2015 the CCS organised a public event to discuss opportunities and challenges in the e-commerce field in Singapore, a popular topic with competition authorities across the globe at this time.

The Singapore government extends container liner shipping exemption for another 5 years

Singapore's Block Exemption on Liner Shipping Agreements was extended in November 2015, until the end of 2020. It was initially introduced in 2006, and had previously been extended for 5 years in 2010.

The CCS recommended the extension to the Minister for Trade and Industry following a summer consultation on the subject. In arriving at its decision, the CCS noted changes in the international regulatory environment, and that such anti-trust exemptions for liner shipping agreements generally remain the regulatory norm worldwide. It also considered the fact that Singapore is not a major port of origin or destination, and as such a very large proportion of Singapore's container cargo through-put involves transshipment.

As a result, the CCS assessed that liner shipping agreements meeting the relevant Block Exemption criteria continue to meet the 'net economic benefit' criteria and qualify for exemption from the prohibition against anti-competitive agreements. This was on the basis that the connectivity of liner shipping services available in Singapore generates considerable benefits to Singapore, including providing a higher degree of connectivity and choice for Singapore's importers and exporters. Indeed, it was noted that agreements between liners to share vessel space increases the utilisation of space, enables more frequent services, and may enhance competition with larger liners.

The only submission made during the consultation which opposed the extension came from the Singapore National Shipper's Council, which represents shippers. It highlighted the fact that the shipping industry is no different to other industries, and that such protection can be removed in practice. Indeed, examples are provided including that the EU removed such a similar container lining

exemption in 2008, and similar developments are currently being discussed in Australia and New Zealand. In addition, it is a very topical issue in Hong Kong in light of the new competition law that came into force on 14 December 2015.

Consequently, while this extension in Singapore applies for the next 5 years, it does not guarantee the same will occur in 2020.

which would reduce the burden on companies by shortening investigations and lowering fines by 10%, in exchange for an acknowledgement of liability and co-operation with the investigation.

What's next for Singapore in 2016?

The CCS chairman changed from Chuan Leong Lam to Aubeck Kam Tse Tsuen in 2015, and with this, the agency proclaims a new mission and vision from 'championing competition for growth and choice' to 'making markets work well'.

The enforcement priorities of the CCS have also began to shift to larger and more complex cases, including international cartels. Previously, cartels involving multinational companies with significant operations in Singapore had not been investigated by the CCS as part of bigger global cartel investigations. This is now changing, with announcements that the CCS is prepared to impose fines on international cartel members, which is indeed a welcome development for consumers given Singapore's dependence on imports.

The CCS also wants to ensure that its policies are in line with the best practices in developed jurisdictions, and has proposed to streamline some of its regulations and guidelines, given the changing anti-trust environment, and as more jurisdictions introduce competition law.

This includes the recent consultation on the introduction of a fast-track leniency procedure,



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