



Merger Remedies Guide - Sixth Edition

**China: unpacking the evolution of
antitrust enforcement and conditional
clearance decisions in merger reviews**

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Successfully remedying the potential anticompetitive effects of a merger can be more of an art than a science. Not only is every deal specific but every remedy contains an element of crystal ball-gazing; enforcers must look to the future and successfully predict outcomes. As such, practical guidance for both practitioners and regulators in navigating this challenging environment is critical.

Edited by Ronan P Harty, Nathan Kiratzis, Anna M Kozlowski and Benjamin J Hartman of Davis Polk & Wardwell, this sixth edition of the ***Merger Remedies Guide*** provides just such analysis. It examines remedies throughout their life cycle: through how remedies are structured and implemented, to how enforcers ensure compliance. Insights from four jurisdictions around the world supplement the global analysis to inform the reality of multi-jurisdictional deals. The Guide draws not only on the wisdom and expertise of distinguished practitioners from a range of jurisdictions, but also the perspective of former enforcers. It brings together unparalleled proficiency in the field and provides essential guidance for all competition professionals.

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China: unpacking the evolution of antitrust enforcement and conditional clearance decisions in merger reviews

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The year 2025 marks the 17th anniversary of the enactment of China's Anti-Monopoly Law (AML). Over the past 17 years, merger review has been front and centre for China's antitrust enforcement, in particular, those cases cleared with remedies as a result of their high-profile nature and often divergent outcomes from other jurisdictions. Since the enactment of the AML in 2008, there have been more than 6,000 cases notified and concluded by China's antitrust regulator, the State Administration for Market Regulation (SAMR) and its predecessor, the Anti-monopoly Bureau of the Ministry of Commerce (MOFCOM), of which 65 were cleared with conditions and only four received prohibitions.^[1] The AML was overhauled in 2022 (the Amended AML),^[2] which introduced significant changes to merger reviews, both procedurally and substantively. These changes have already been implemented in the review of recent remedy cases, for example, SAMR's use of the new stop-the-clock mechanism. This chapter examines the evolution and current status of China's conditional clearance decisions, with a spotlight on the unique characteristics of the SAMR review and remedy process.

OVERVIEW

Although SAMR is still a young regulator compared to its peers in other major jurisdictions, it has been increasingly active in merger control and has shown the world its ability to review and handle complicated transactions. The primary observations that arise from China's conditional approvals practice, which will be discussed in more detail in the following sections, are that:

- challenging deals can still be successfully guided through the review process, but require a carefully planned global merger review strategy;
- behavioural remedies are accepted as a flexible tool to address China-specific transaction concerns, which can often stem from state industrial policies designed to promote certain sectors of the economy;
- semiconductor adjacent deals with competitive sensitivities have received intense scrutiny, and complex deals in other technology industries have also received close examination; and
- lengthier reviews have been a hallmark of China's reviews for more than the past 10 years – however, this has become even more pronounced since 2018 for remedy cases, amid geopolitical uncertainties and SAMR's heavy caseload.

There have been eight transactions cleared with conditions by SAMR since 2023, as detailed in the following Table 1.

TABLE 1: SAMR CONDITIONAL APPROVALS SINCE 2023.

Case	Industry	Where SAMR identified competition concerns	Remedies in China	Outcome in other major jurisdictions (where filed)
<i>Synopsys/Ansys</i> (2025)	Semi - conductors	Horizontal overlaps in the optics software, photonics software and	Structural: divestment of Ansys' register - transfer - level power consumption	Cleared with structural remedies in US, EU and UK

		certain EDA software markets Neighbouring relationship for Ansys' EDA software business and Synopsys' EDA software and design IP businesses	analysis product business; divestment of Synopsys' optics and photonics software business Behavioural: continuing to honour customer contracts and supply on fair, reasonable and non-discriminatory (FRAND) terms; no bundling; continuing to support industry-standard formats; maintain interoperability; enter into interoperability agreements Duration: 10 years; lifted automatically	
<i>ANA/Nippon Cargo</i> (2025)	Transportation: aviation		Behavioural: continuing to honour customer contracts; no refusal of renewal request; provide services upon request; transfer flight slot to new entrant Duration: 10 years; lifted automatically	Cleared with behavioural remedies in Japan (to the best of our knowledge, the transaction was not filed in the US, EU or UK).
<i>Bunge/Viterra</i> (2025)	Agriculture	Horizontal overlap in	Behavioural: continuing to	

		imported soybean trade, imported rapeseed trade, imported corn trade, imported wheat trade, imported barley trade, soybean oil trade, soybean meal trade, pea trade and sunflower meal trade	honour customer contracts; continuing to supply on FRAND terms; reporting global crop shortage to SAMR Duration: 5 years; termination upon application and approval	Cleared with structural remedies in EU
<i>JX Nippon/Tatsuta</i> (2024)	Electronics	Neighbouring relationship for JX Nippon's blackened rolled copper foil, JX Nippon's stainless steel stiffeners for FPCs, Tatsuta's EMI shielding films and Tatsuta's isotropic conductive films	Behavioural: no bundling; continuing to supply on FRAND terms; no reduction of compatibility. Duration: 8 years; lifted automatically	Cleared unconditionally in Japan (to the best of our knowledge, the transaction was not filed in the US, EU or UK)
<i>Broadcom/VMware</i> (2023)	Computer: software	Neighbouring relationship for Broadcom's fibre channel adapters, storage adapters, Ethernet network adapters and VMware's cloud virtualisation software	Behavioural: no tie-in sales; continuing interoperability; continuing existing practices; protecting confidential information Duration: 10 years; lifted automatically	Cleared in UK and US unconditionally; cleared with behavioural remedies in EU
<i>Simcere/Beijing Tobishi Pharma</i> (2023)	Pharmaceuticals	Horizontal overlap in batroxobin injection Vertical relationship in sales of	Structural: divest Simcere's batroxobin injection business Behavioural:	Not applicable (to the best of our knowledge, the transaction was not filed in the US, EU or UK)

		batroxobin API (upstream) and batroxobin injection (downstream)	terminating exclusive supply agreement; ensuring supply and assistance to the divestment purchaser; lowering prices; satisfying demand Duration: 6 years; termination upon application and approval	
<i>MaxLinear/Silicon Motion</i> ^[3] (2023)	Semi - conductors	No specific horizontal, vertical or conglomerate issues were specified in SAMR's decision The decision noted that the competition concerns were identified in third - party NAND flash memory master control chips, which is a product offered by the target Silicon Motion, but the decision did not mention any relationship between this product and any of MaxLinear's offerings	Behavioural: continuing to supply on FRAND terms; continuing to honour customer contracts; no substantial change of business model; maintenance of R&D; no addition of malicious codes Duration: 5 years; lifted automatically	Cleared in US unconditionally; ultimately terminated
<i>Wanhua Chemical/Yantai Juli</i> (2023)	Industrials	Vertical relationship in caustic soda (upstream)	Behavioural: no price increase, maintenance	Not applicable (to the best of our knowledge, the transaction

		and toluene diisocyanate (downstream)	and expansion of production in China; continuing to innovate; continuing to supply on FRAND terms; no tying/bundling or exclusivity arrangements Duration: 5 years; termination upon application and approval	was not filed in the US, EU or UK)
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NAVIGATING THE COMPLEX REMEDY PROCEDURE REQUIRES EARLY AND CAREFUL PLANNING

CHINA OFTEN CLOSELY SCRUTINISES TRANSACTIONS IN STRATEGICALLY IMPORTANT SECTORS BASED ON INDUSTRIAL POLICY

As illustrated in Table 1, above, most conditional clearance decisions in China have involved advanced technology (including more than 10 semiconductor cases as well as others concerning computers, telecommunications and other high-tech sectors). SAMR also focuses on industries closely related to people's livelihood (such as pharmaceuticals, automobiles and agriculture). While some of these cases were concluded with remedies in other jurisdictions, it is not uncommon for China to impose its own remedies above and beyond any 'global' commitments, and these China-specific remedies are often behavioural.^[4]

The AML instructs SAMR to specifically consider a transaction's 'impact to the development of state economy',^[5] in addition to weighing more traditional competition-focused factors such as market shares, market power, market concentration, market entry, innovation, consumer welfare and impact on other relevant undertakings. Further, Article 33(6) of the Amended AML contains a broad catch-all item that entitles SAMR to take into account 'other factors that affect market competition and that shall be taken into account as deemed by [SAMR]'. Items (5) and (6) under Article 33 in practice entitle SAMR to analyse industrial policy concerns during merger review, especially in cases involving industries that are of strategic importance to China. Indeed, the very first prohibition decision made by SAMR's predecessor (*Coca-Cola/Huiyuan* (2009)) was widely viewed as being influenced by industrial policy concerns (namely, the acquisition of a famous brand in China by a powerful Western enterprise) and 2023 public decision issued by SAMR (*MaxLinear/Silicon Motion* (2023)) appears on its face to have been decided solely based on non-competition considerations, as it lacks any persuasive detail articulating a cognisable competition concern in any relevant market.

This ability – or even mandate – to consider the impact of industrial policy during merger review thus very often results in divergent outcomes with other jurisdictions, as illustrated

in Table 1, above, given the fact that other major regulators do not openly include such considerations in their reviews.

However, SAMR will also often grant unconditional approvals in complex or high-profile cases that raise global issues but do not raise material competition or industrial policy problems in China. Recent examples of such unconditional approvals by SAMR include, for example, *Omnicom/Interpublic* (2025) *Microsoft/Activision Blizzard* (2023), *Aon/Willis Towers Watson* (2021)^[6] and *Konecranes/Cargotec* (2022).^[7] In each of these transactions, the competitive landscape in China was strikingly different from the global landscape. For example, the advertising industry in *Omnicom/Interpublic*, the gaming industry in *Microsoft/Activision Blizzard* and the insurance industry in *Aon/Willis Towers Watson* are all highly regulated in China for foreign investment, resulting in vastly different (and minimised) competitive and policy effects in China, while in *Konecranes/Cargotec*, which involved the sector for material handling and port equipment, SAMR acknowledged that China's strong national competitors provided a significant domestic competitive constraint that eliminated concerns.

LENGTHIER REVIEW FOR CONDITIONAL CASES

SAMR's review procedure consists of a Phase I review of 30 calendar days, a Phase II review of 90 days and a possible extension of Phase II by an additional 60 calendar days (sometimes informally referred to as 'Phase III'). As a practical matter, in complex cases, using the usual procedures, SAMR almost always requires the parties to consent to an extension to Phase III.^[8]

Examining the 41 conditional approvals from 2015 to 2025, SAMR's review of remedy cases took approximately 11.9 months on average from the parties' initial submission of the filing (which starts the completeness review) to the clearance date. However, the review period has generally grown longer over more recent years.

As set forth in Table 2, below, the average review time from 2018 to 2025 was approximately 13 months, an over 50 per cent increase over the average time of 8.7 months from 2013 to 2017.^[9] The two longest reviews have been *Korean Air/Asiana Airlines* (2023) and *ANA/Nippon Cargo Airlines* (2025), which took over 23 months and 22 months respectively. The next three longest reviews all took between 15 and 20 months (*Bunge/Viterra* (2025), *JX/Tatsuta* (2024) and *Novelis/Aleris* (2019)), all of which were longer than the lengthiest review between 2013 and 2018 in *Advanced Semiconductor Engineering/Siliconware Precision Industries* (2017)), which took 15 months. Indeed since 2018, no remedy case has been cleared in less than eight months.^[10]

TABLE 2: AVERAGE REVIEW TIME FOR REMEDY CASES IN CHINA, 2015–2025 TO DATE (SOURCE: SAMR'S WEBSITE[11]).

Year(s)	Average review time (Months)
2015	6.8
2016	5.3
2017	10.2
2013–2017	7.8
2018	13.8

2019	12.9
2020	9.5
2021	11.6
2022	14.2
2023	10.7
2024	10.8
2025 to date	18.1
2018–2025 to date	13
2015–2025 to date	11.9

Traditionally, if the review clock runs out and SAMR has not yet reached a conclusion, SAMR requires the parties to pull-and-refile, beginning again in Phase I, allowing the review period to extend beyond the statutory time frame of a Phase III review (sometimes well beyond). However, SAMR now has the ability to suspend the review clock when:

- the parties have not yet submitted documents or information required by SAMR, thereby preventing the review from moving forward;
- new facts have arisen such as to have a significant impact on the review; or
- proposed remedies need to be further evaluated and the parties have filed a request for suspension.^[12]

SAMR now uses both pull-and-refile and stop-the-clock to extend its review time. Over the past 10 years, nearly 82.9 per cent (34 of 41) of all conditional decisions were required to pull-and-refile or ordered to suspend the review clock, while four of those cases were required to pull-and-refile a second time during their review.^[13] Details are given in Table 3, below.

TABLE 3: CONDITIONAL DECISIONS GOING THROUGH PULL-AND-REFILE, 2015–2025.

	Number of conditional approvals with pull - and - refile or stop - the - clock	Percentage of conditional approvals with pull - and - refile or stop - the - clock
2015	1	50%
2016	0	-
2017	5	71.4%
2015–2017	6	54.5%
2018	4	100%
2019	5	100%
2020	2	50%
2021	4	100%

2022	5	100%
2023	4	100%
2024	1	100%
2025 to date	3	100%
2018–2025 to date	28	93.3%
2015–2025 to date	34	82.9%

The option to stop the clock was introduced in 2022 and SAMR has paused the review clock in every conditional approval since its introduction. So far there have been no published decisions or guidelines explaining how the clock suspension tool should work with SAMR's delivery of competition concerns.

DESIGNING SUCCESSFUL REMEDIES IN CHINA

BEHAVIOURAL REMEDIES: A FLEXIBLE AND EFFECTIVE TOOL TO ADDRESS CHINA-SPECIFIC CONCERNS

Both SAMR and its predecessor MOFCOM have traditionally taken a flexible approach with regard to acceptance of behavioural remedies, which are often required as 'creative' solutions to resolve concerns raised by the local stakeholders for transactions in strategically important industries, such as semiconductors, advanced equipment manufacturing, aviation and aerospace, life sciences and agriculture. At present, 84.6 per cent (55 of 65) of China's conditional decisions have involved non-structural remedies, while only 15.4 per cent (10 of 65)^[14] have had purely structural remedies. By comparison, across a similar time frame, the US Department of Justice (DOJ) required divestitures in 95 per cent of its conditional merger decisions (2010–2021).^[15] Common non-structural remedies include:

- continuing to supply on FRAND terms: ensuring stable supply to customers on fair, reasonable, and non-discriminatory (FRAND) terms;
- pricing commitment: committing to sell products at reasonable prices, for example, not higher (or lower) than historical average prices;
- minimum supply volume: ensuring to supply at least at the same volume as the historical average or higher;
- no-tying or bundling: ensuring no bundling or tying of products to those where the parties have high market shares;
- maintenance of interoperability: ensuring continued interoperability of the relevant products with other products supplied by competitors;
- no exclusivity: ensuring no exclusivity clause imposed on customers, preventing them from purchasing from competitors;
- restriction on future deals: prohibition against acquisition by the combined entity of any stake (even minority shares) in any competitor active in the relevant markets;
- implementation of information firewalls: setting up firewalls to protect customers' or other third parties' confidential information; and
-

hold separate: requiring the merged entity to run the relevant businesses of the parties separately and independently without integration.

Since the enactment of the AML, the most commonly imposed behavioural remedy is the commitment to continue to supply on FRAND terms, which was imposed 31 times. This is followed by a pricing commitment (18 times) and a no-tying or bundling commitment (15 times). The other behavioural remedies as set forth above are also commonly deployed by SAMR.

As discussed above, SAMR's willingness to adopt behavioural remedies can be attributed to its mandate under the AML to not only protect fair market competition and consumer welfare, but also to protect the national economy (more specifically, to encourage innovation, enhance the efficiency of economic operations, protect social public interest and facilitate the healthy development of a socialistic market economy).^[16] Behavioural remedies provide flexibility to reconcile the (sometimes competing) viewpoints of various important Chinese stakeholders, and to align the interests of domestic stakeholders with international antitrust practice. SAMR's open attitude towards behavioural remedies is seen in contrast to the stance opposing conduct remedies in the US, UK and other jurisdictions such as Australia and Germany.^[17]

STRUCTURAL REMEDIES: A TRADITIONAL APPROACH LARGELY CONSISTENT WITH THAT OF OTHER MAJOR JURISDICTIONS

SAMR also accepts traditional structural remedies. Since 2023, SAMR has only required structural remedies in two transactions: *Synopsys/Ansys* (2025) (structural plus behavioural remedies) and *Simcere/Beijing Tobishi* (2023) (structural plus behavioural remedies). While some of the structural remedies ordered by the Chinese authority may appear China-specific, they often are a subset of a global divestiture adopted in other major jurisdictions and consistent with such global divestiture. Sometimes SAMR prefers to adopt more tailored language for structural remedies to show that such remedies can address the competition concerns specific to China. Examples of these cases include *Dow/DuPont* (2017), *Beckton Dickinson/Bard* (2017) and *Danfoss/Eaton* (2021). However, in *GlobalWafers/Siltronic* (2022), SAMR ordered divestiture of GlobalWafers' business for zone-melting wafers at the global level, even though all other reviewing regulators cleared the transaction unconditionally.

SAMR'S REMEDY PROCEDURE DURING MERGER REVIEWS

Unlike in the EU and certain other jurisdictions, in China there is no statutory difference in terms of timeline as to whether competition concerns are raised during Phase I, II or III. Typically, the earliest time that concerns would be raised in practice is in Phase II, and more often in Phase III. For cases that do not entail China-specific concerns, SAMR usually prefers not to be the first mover and, instead, waits to see where other major jurisdictions are headed in their respective reviews. They commonly exchange review opinions with other regulators through waivers, although still very much make their own independent decisions.

For cases that are notified through the ordinary procedure, SAMR seeks local stakeholders' views on the transaction. This is a formal process that involves SAMR sending letters to the relevant stakeholders, including Chinese customers, suppliers, competitors (usually through consultation with trade associations) and important ministries, such as the Ministry of Industry and Information Technology and the National Development and

Reform Commission. Comments received form a critical element in SAMR's formulation of concerns.

Once SAMR has formed its concerns, it will convene a short state-of-play meeting to formally convey those concerns to the parties. SAMR does not typically suggest appropriate remedies, but instead identifies the issues to be resolved. The parties must formulate and deliver a proposal to SAMR to address those concerns. There is no formal timeline for delivery of a remedy proposal, but after this point SAMR typically will not be receptive to purely legal argumentation pushing back on the formal concerns. Unless SAMR actively pauses the review clock as discussed above, the clock continues to run while the parties prepare and negotiate remedy proposals with SAMR.

In practice, for high-profile cases with concerns already raised by the EC and the US DOJ or Federal Trade Commission, the parties may choose to proactively engage with SAMR to initiate remedy conversations, even before SAMR officially raises any concerns. There is no statutory guideline on how this process works, so it remains subject to SAMR's discretion as to whether it is ready to engage in such discussions. Either way, SAMR appreciates receiving regular updates on reviews in overseas jurisdictions.

PRE-APPROVAL: REMEDY NEGOTIATIONS AND MARKET TEST

Similar to the EU and other jurisdictions, upon receipt of a remedy proposal, SAMR will assess its effectiveness, viability and timeliness, and will inform the notifying party of its assessment outcome.^[18] Only after SAMR receives a proposal that it considers sufficient to effectively address the formal concerns will it put that proposal to a market test. Thus, parties can expect from one to several rounds of feedback from the case team and SAMR hierarchy prior to SAMR even being willing to test the proposed remedy with stakeholders. SAMR's Supervision and Enforcement Division (which will ultimately be responsible for checking and confirming compliance with the remedies) will also often give feedback as to the perceived workability of the parties' suggestions.

With respect to market testing, there is no statutory timeline on this process – in practice, each round of market testing typically takes two to three weeks, depending on how fast SAMR can gather feedback from the relevant stakeholders. Subject to the stakeholders' comments, there may be multiple rounds of market tests. During this process, SAMR plays more of a mediator role and will remain in regular contact with the parties to pass on any additional comments stakeholders have raised that still need to be addressed. Particular incidents, sanctions or legislation arising out of geopolitical tensions may cause temporary delays with or reactions from SAMR. For example, the China-US trade disputes of the past years, coupled with China's determination to achieve 'chip independence', have led to significant scrutiny of semiconductor and related deals that went through extended reviews, with some abandoned due to the failure to achieve China's approval by the drop-dead date.^[19] SAMR's official yearly antitrust enforcement reports disclosed that in 2024 two transactions were abandoned due to the failure to address SAMR's competition concerns.^[20]

Once SAMR confirms that all stakeholders are satisfied with a remedy proposal, SAMR starts its internal administrative process for case approval. Upon the finalisation of the substantive content, there may also be a few rounds of back and forth to refine or polish the wording of the commitments for accuracy. As this is an internal process, there is no statutory guidance on its length, which can vary from weeks to several months due to the geopolitical

headwinds, or the additional time required for the case team to gather all internal approvals required for the decision to be published.

POST-APPROVAL: REMEDY IMPLEMENTATION

Post-approval, a remedy case will be transferred to the Supervision and Law Enforcement Division for remedy implementation according to Section IV of the Provisions of Review of Concentration of Undertakings (2023) (the Provisions). During the remedy implementation period, the parties will be required to submit compliance reports to SAMR and the monitoring trustee, which are usually required either once a year or every six months as set forth in the approval decision. In addition, the parties will need to respond to any supplementary questions raised by the trustee. In many cases, SAMR or the trustee will also request site visits or make interview requests with the companies or their customers as additional measures for remedy supervision.

REMEDY LIFTING: THOROUGH EXAMINATION TO ENSURE FULL COMPLIANCE

Among the 27 conditional decisions cleared with behavioural remedies since 2018, 13 decisions (48.1 per cent) prescribed that the commitments would automatically expire at the end of the remedy period while 14 decisions (51.9 per cent) required the parties to apply for release.

The criteria and process for remedy lifting under automatic expiration and by application circumstances are different. Pursuant to the Provisions, remedies with automatic expiration will be lifted upon verification at the end of the remedy period that there has been no violation of the relevant decision throughout the entire remedy period. By contrast, 'lifted by application' remedies require a higher standard of proof, requiring the parties to demonstrate one of the following criteria:

- significant changes have happened to the parties;
- significant changes have occurred in the competition for the relevant markets;
- it has become unnecessary or impossible to implement certain conditions; or
- other relevant factors have led the remedy implementation to its sunset.^[21]

This is usually a much lengthier process as it requires SAMR to make a full assessment and deliberation of the competitive or commercial conditions that essentially override its previous conditional decision.

For example, in *Marubeni/Gavilon* (2013), its (provisional two-year) hold separate remedy was not lifted until 2023, on the basis that earlier in 2022 Marubeni had sold the relevant Gavilon grains and ingredients business to a third party, Viterro Limited, rendering the conditions moot.^[22] Thus, in fact it took 10 years rather than the original two proposed in the decision for the application for lifting to be successful.

By comparison, in *Wal-Mart/Yihaodian* (2012) (remedies lifted in 2016),^[23] MOFCOM found that, since 2014, the competitive landscape of the China market for value-added telecommunication services had changed significantly, with increasingly lower entry barriers, attracting a larger number of new competitors. The decision cited the Ministry of Industry and Information Technology's Announcement on Lifting Restrictions on Foreign Shareholdings in Online Data Processing and Transaction Processing Businesses (Business E-Commerce) (issued on 19 June 2015), which permitted foreign investors to hold an equity

percentage up to 100 per cent in the relevant industry – a policy that further promotes competition.

OTHER OBSERVATIONS FROM RECENT CONDITIONAL APPROVALS

MOST TRANSACTIONS APPROVED WITH CONDITIONS IN CHINA ARE FOREIGN-TO-FOREIGN TRANSACTIONS

The vast majority of conditional decisions (75 per cent (six of eight) since 2023 and 87.7 per cent (57 of 65) since 2008) only involve foreign (i.e., non-Chinese) companies as transaction parties. While some have questioned whether Chinese companies, especially state-owned enterprises, are de facto exempt from difficult merger reviews, SAMR has recently demonstrated in the *Shanghai Airport/Eastern Air Logistics JV* decision rendered in 2022, the *Wanhua Chemical/Yantai Yongli* decision issued in 2023 and the *Simcere/Beijing Tobishi* decision issued in 2023 that it will not shy away from rigorous reviews in dealing with domestic companies, even state-owned enterprises. Indeed, compared with the first five years of China's review regime – when Chinese companies were less diligent about filing transactions – over the past 12 years SAMR (and MOFCOM before it) has emphasised repeatedly that it expects all companies to comply with the AML, whether foreign or Chinese.

THEORIES OF HARM COVER BEHAVIOURAL, VERTICAL AND CONGLOMERATE CONCERNS

In the eight conditional approvals issued by SAMR since 2023, 37.5 per cent (three of eight) involved only horizontal concerns; 12.5 per cent (one of eight) involved only vertical concerns; 25 per cent (two of eight) involved only conglomerate concerns; 25 per cent (two of eight) involved only conglomerate concerns; 12.5 per cent (one of eight) involved both horizontal and conglomerate concerns; and 12.5 per cent (one of eight) where SAMR departed from conventional practice and did not specify vertical, horizontal or conglomerate concerns. In a break from long-established precedent, SAMR's 2023 decision *MaxLinear/Silicon Motion* did not specify any horizontal, vertical or conglomerate concerns but solely focused on one product offered by the target company without articulating a competitive theory of harm.

HORIZONTAL CONCERNS

Most of SAMR's competition concerns stem from horizontal overlaps between the transaction parties. In its review of these cases, SAMR typically pays close attention to the parties' combined market shares, market share increments, market concentration (Herfindahl-Hirschman Index or HHI) and additional economic analysis. In reviewing high-profile transactions, SAMR often engages external economists to assist it with economic analysis. Remedies required by the Chinese authority in transactions with horizontal concerns include both structural and behavioural remedies.

For example, in *Bunge/Viterra* (2025), SAMR observed that the parties have the highest combined market shares in the relevant product markets of imported soybean trade, imported rapeseed trade and imported wheat trade. SAMR also noted relatively high post-transaction HHIs and relatively significant HHI increment in these three product markets. As a result, SAMR imposed behavioural remedies, which may be seen as addressing industrial policy concerns in the domestic industry, given China's high demand for and reliance on imported soy beans, rapeseed and wheat.

In the most recent conditional decision case *Synopsys/Ansys* (2025), SAMR noted horizontal overlaps between the parties in the optics software, photonics software and certain EDA

software markets. SAMR noted the parties' high combined shares in the optics software market (65–70 per cent both globally and in China), photonics software market (65–70 per cent both globally and in China) and register-transfer level power consumption analysis software market (70–75 per cent globally and 35–40 per cent in China). SAMR also observed the high HHIs pre- and post-transaction both globally and in China, and the high technical barriers and significant R&D investment in the EDA industry. As a result, SAMR imposed both structural and behavioural remedies.

VERTICAL CONCERNS

SAMR focuses primarily on input foreclosure in conditional decisions involving vertical concerns, but also sometimes examines customer foreclosure. For example, in *Cisco/Acacia* (2021), SAMR considered Acacia's position in the upstream market for coherent DSPs and the heavy reliance by downstream customers. Also, in *Shanghai Airport/Eastern Air Logistics JV* (2022), SAMR held that the combined entity may make use of its dominant position in the upstream market for airport cargo terminal services at Shanghai Pudong Airport to foreclose Eastern Air's competitors downstream. In *II-VI/Coherent* (2022), SAMR identified (1) the effect of input foreclosure on the downstream markets for high-power and low-power CO₂ lasers based on the market power II-VI enjoyed in the upstream optics markets; and (2) the effect of customer foreclosure on the upstream market for glass-based optics for excimer lasers based on a finding of Coherent's dominant position in the downstream excimer laser market. In *Simcere/Beijing Tobishi* (2023), SAMR found Tobishi as the only producer in the downstream market for batroxobin injection in China with a 100 per cent share, and the combined entity may exclude and restrict competition in the market for batroxobin injection in China by engaging in input foreclosure. The conditions imposed by SAMR in this type of vertical case usually include the commitment to continue the supply and execution of existing customer contracts, among other things.

CONGLOMERATE CONCERNS

Cases where the parties do not have horizontal overlaps or vertical relationships can still be reviewed closely in China for conglomerate effects. SAMR adopts a broader definition of conglomerate effects: any two products that can eventually be used in the same final product (however remotely) can theoretically be seen by SAMR as neighbouring to each other.

In the most recent conditional clearance decision, *Synopsys/Ansys* (2025), SAMR took the view that Ansys' EDA software business and Synopsys' EDA software and Design IP businesses face a common customer base and have neighbouring relationships. SAMR stressed EDA software and design IP for different functions play distinct but highly complementary roles in the chip design and manufacturing process and identified neighboring markets that involved 36 functions. Similarly, in *Broadcom/VMware* (2023) and *JX/Tatsuta* (2023), SAMR took the view that the relevant products faced the same customer groups and thus were neighbouring to each other in each review.

The conditions imposed by SAMR are also typically seen in other conglomerate cases, including (most notably) the no-tying or bundling commitment and the maintenance of interoperability commitment. The most notable example is *United Technologies/Rockwell Collins* (2018), where such remedies were imposed on a wide range of 10 products sold to China. In *Synopsys/Ansys* (2025), SAMR imposed commitments of no-tying or bundling, the support of industry-standard formats, and the maintenance interoperability.

NON-COMPETITION CONCERNS

As discussed above, the AML empowers SAMR to consider non-competition concerns when reviewing a transaction. In recent conditional approvals, industrial policy concerns may be playing an increasingly important role, although it is difficult to discern this strictly from the text of the decisions, as SAMR prefers to ground all of its decisions (with the recent exception of *MaxLinear/Silicon Motion* (2023)) in the language of traditional competition concerns. Nevertheless, some textual clues can still be identified. In *MaxLinear/Silicon Motion* (2023), the decision failed to identify any horizontal overlap, vertical relationship or conglomerate relationship with the buyer's offerings. The 'competition' concerns discussed in the decision are de facto industrial policy concerns focused on Chinese customers' worries about supply security, and indeed even include a novel condition on the parties not to add malicious codes in the design of the products sold to China, which seems untethered from any traditional competitive analysis.

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ENDNOTES

^[1] Before 2018, the merger review function was undertaken by the Anti-Monopoly Bureau at MOFCOM, which was transferred to SAMR amid ministerial reorganisation.

^[2] The term 'AML' hereinafter may also refer to the amended version in 2022, as the context requires.

^[3] Notwithstanding SAMR's clearance decision, MaxLinear nonetheless announced its termination of the transaction. See <https://investors.maxlinear.com/press-releases/detail/509/maxlinear-provide-s-update-on-proposed-acquisition-of>.

^[4] China may also adjust the wording of the global divestiture offered in other jurisdictions so that it will look China-specific to address China-specific concerns.

^[5] Article 33(5), Amended AML.

^[6] The transaction was abandoned amid concerns raised in the United States.

^[7] The transaction was abandoned after it was blocked in the United Kingdom.

^[8] Articles 30 and 31, Amended AML.

^[9] In January 2024, the filing thresholds in China were increased. Most notably, the individual China turnover threshold was increased from 400 million yuan to 800 million yuan. This development has freed SAMR to some extent from the heavy caseload, as fewer transactions would meet the new thresholds. However, this development does not help to shorten the review time needed in China for remedy cases. And SAMR will call in a below threshold transaction and impose remedies on it if the regulator believes that the transaction may give rise to competition or industrial policy concerns.

^[10] *Infineon/Cypress* (2020), *Illinois Tool Works Inc./MTS Systems Corporation* (2021) and *Wanhua Chemical Group/Yantai Juli Fine Chemical* (2023) were all cleared in approximately eight months.

^[11] Cases prior to 2018 are published by MOFCOM, who handled merger reviews in China before the agency reorganisation.

^[12] Article 32, Amended AML.

^[13] *Praxair/Linde* (2018), *Novelis/Aleris* (2019), *Cisco/Acacia* (2021) and *Korean Air Lines/Asiana Airlines* (2023).

^[14] The conditions in relation to PEVE in the *Panasonic/Sanyo* (2009) decision are classified by this chapter as a structural remedy, as they essentially required Panasonic to give up its control rights in PEVE (its joint venture with Toyota).

^[15] Klein and Fan, '71 per cent of Chinese divestment remedies same as other regulators' (PaRR Analytics, 8 December 2021).

^[16] Article 1, Amended AML.

^[17] Foster and Lau, In Praise of SAMR's Behavioral Remedies: Preventing Over-Deterrence in Global Merger Control (*CPI Antitrust Chronicle*, March 2023).

^[18] Article 39 of the Provisions of Review of Concentration of Undertakings (2023).

^[19] For example, *AMAT/Kokusai* was abandoned in 2021 as SAMR did not clear the deal after 20 months. <https://ir.appliedmaterials.com/news-releases/news-release-details/applied-materials-announces-update-kokusai-electric-acquisition>.

^[20] China Antitrust Enforcement Annual Report (2024), p. 8, available at <https://www.gov.cn/lianbo/bumen/202506/P020250607293554751833.pdf>.

^[21] Articles 54 and 55 of the Provisions.

^[22] See SAMR's decision to lift the *Marubeni/Gavilon* remedy in 2023 here: https://www.samr.gov.cn/fldes/tzgg/ftj/art/2023/art_489e3947def64fa6a49a495452eeabff.html.

^[23] See MOFCOM's decision to partially lift the *Wal-Mart/Yihaodian* remedy in 2016 here: <http://fldj.mofcom.gov.cn/article/ztxx/201606/20160601335200.shtml>.

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