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By Philip F. Monaghan, Lining Shan, Vivian Wang

O'Melveny & Myers

Edited by Elizabeth Xiao-Ru Wang & Kun Huang

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China's merger control regime is an increasingly important consideration for global M&A transactions. Indeed, the critical path for most complex global mergers leads through the offices of China's State Administration for Market Regulation ("SAMR") in the Xicheng District of Beijing. Not only do merging parties need to factor in China's comparatively protracted review timeline, but they also need to consider and be prepared to navigate some of the distinctive features of China's remedy practices at the deal planning stage.

This article reviews the six transactions conditionally cleared by SAMR between January 2021 and January 2022, drawing lessons from China's M&A procedures and priorities and their implications for merging parties.

Our key observations can be summarized as follows:

- While simple cases (approximately 80% of transactions notified to SAMR fall within this category) are reviewed on a timeline that is among the most efficient globally, China's review of complex cases remains protracted, especially where remedies prove necessary to unblock the regulatory process.
- For five of the six cases discussed in this article, SAMR took a year or more to review, settle, and clear the transactions. In *GlobalWafers /Siltronic*[2], timing considerations and the failure to anticipate them resulted in the deal falling through. Timing also played a role in Applied Materials' failed acquisition of Kokusai Electric Corporation.[3]
- The high-tech sector, in particular semiconductors, remains an enforcement focus for SAMR as China continues its tech rivalry with the U.S. and pursues self-sufficiency as its answer to the threat of de-coupling. Four of the six cases concern the semiconductor sector. China was the only jurisdiction to have imposed remedies in these cases although market conditions likely differed in the China context.
- While other regulators remain skeptical of conduct remedies, SAMR has a long history of deploying them to address vertical and conglomerate competition concerns. Interestingly, in two recent cases SAMR used conduct remedies also to address horizontal concerns (in *SK hynix/Intel*[4] and *ITW/MTS*[5]).
- There is a sense that substantively SAMR's wider policy concerns are now finding an echo in some of the New Brandeisian thinking we see emerging in global merger practice. And China's focus on the high-tech sector is not unique; regulators in other jurisdictions, including the U.S. and the EU, also closely scrutinize transactions involving cutting-edge technologies that are of great significance to consumer welfare, local industrial, trade and labor policies, and oftentimes national security.
- The very nature of high-tech in the context of a global supply chain still firmly rooted in China frequently implicates the jurisdiction in the multi-jurisdictional review of a proposed transaction. And as illustrated in *GlobalWafers / Siltronic*, coordinating the timeline and scope of review and remedy negotiations in China

[1] Philip Monaghan is a Partner in the Hong Kong office of O'Melveny & Myers LLP. Lining Shan is a Counsel in O'Melveny's Beijing office. Vivian Wang is an Associate in O'Melveny's Shanghai office. The views expressed are those of the authors and not necessarily those of O'Melveny or its clients.

[2] SAMR, "Notice of the State Administration for Market Regulation of the People's Republic of China on the Conditional Approval of the Proposed Acquisition of Siltronic AG by GlobalWafers Co. Ltd." [2022], available at https://www.samr.gov.cn/fldj/tzgg/ftjpz/202201/t20220121_339322.html.

[3] Applied Materials, "Applied Materials Announces Termination of Kokusai Electric Acquisition Agreement" [2021], available at https://www.appliedmaterials.com/company/news/press-releases/2021/03/applied-materials-announces-termination-of-kokusai-electric-acquisition-agreement.

[4] SAMR, "Notice of the State Administration for Market Regulation of the People's Republic of China on the Conditional Approval of the Proposed Acquisition of Certain Business of Intel Corporation by SK hynix Inc." [2021], available at https://www.samr.gov.cn/fldj/tzgg/ftjpz/202112/t20211222_338317.html.

[5] SAMR, "Notice of the State Administration for Market Regulation of the People's Republic of China on the Conditional Approval of the Proposed Acquisition of MTS Systems Corporation by Illinois Tool Works Inc." [2021], available at https://www.samr.gov.cn/fldj/tzgg/ftjpz/202111/t20211118_336984.html.

with reviews in other jurisdictions is essential to getting the transaction over the finish line.

We explore these issues and others in more detail below.

I. Long Pole in the Tent

SAMR can spend the best part of a year reviewing a transaction leading to remedies. Formally, the Anti-Monopoly Law ("AML") provides for a three-phase review process, lasting up to 180 calendar days from the date of case initiation to the decision. However, before case initiation—during the pre-review of the parties' filing—there is no statutory timetable and SAMR has discretion as to when it considers the filing complete. This pre-review historically has taken 1-2 months for cases on the standard track (i.e. non-simple) but SAMR has recently extended pre-review out to 3 months for semiconductor cases; in effect front-loading the substantive review of those cases (a positive development). In addition, SAMR has developed a non-statutory 'pull-and-refile' mechanism where, at the end of Phase III (180 calendar days from case initiation), the parties apply for permission to withdraw their application before refiling. This resets the clock at zero to allow SAMR additional time to reach a decision on the case. For the six cases reviewed in this article, case intake (or pre-review) took 74 calendar days on average; *SK hynix/Intel* was the longest at 97 calendar days while *ITW/MTS* was the shortest at 41 calendar days. Five of the six cases reviewed required one pull-and-refile; *Cisco/Acacia*[6] required two.

As Table 1 shows, for the conditional deals reviewed by SAMR in 2021,[7] it took the parties on average 430 days to travel the path from signing to SAMR clearance, or 362 days on average from filing to clearance.

Table 1

Case	Sector	Agreement	From Agreement to SAMR Clearance	From SAMR Filing to Clearance
Cisco/Acacia	Semiconductors	July 9, 2019	555 days	451 days
Danfoss/Eaton[8]	Hydraulics	January 21, 2020	500 days	346 days
ITW/MTS	Industrial Manufacturing	January 19, 2021	303 days	252 days
SK hynix / Intel	Semiconductors	October 19, 2020	426 days	369 days
GlobalWafers/ Siltronic	Semiconductors	December 9, 2020	407 days	391 days
AMD / Xilinx[9]	Semiconductors	October 26, 2020	391 days	367 says

[6] SAMR, "Notice of the State Administration for Market Regulation of the People's Republic of China on the Conditional Approval of the Proposed Acquisition of Acacia Communications, Inc. ("Acacia") by Cisco System, Inc.'s" [2021], available at https://www.samr.gov.cn/fldj/tzgg/ftjpz/202101/t20210119_325338.html.

[7] Between January 2021 and January 2022, SAMR blocked one transaction - the merger between two largest Chinese game streamers - Huya and Douyu. see SAMR, "Notice of the State Administration for Market Regulation of the People's Republic of China on Blocking Proposed Merger between Huya Inc. and DouYu International Holdings Limited." [2021], available at https://www.samr.gov.cn/fldj/tzgg/ftjpz/202107/t20210708_332421.html.

[8] SAMR, "Notice of the State Administration for Market Regulation of the People's Republic of China on the Conditional Approval of the Proposed Acquisition of Certain Business of Eaton Corporation plc by Danfoss A/S" [2021], available at https://www.samr.gov.cn/fldj/tzgg/ftjpz/202106/t20210607_330289.html.

[9] SAMR, "Notice of the State Administration for Market Regulation of the People's Republic of China on the Conditional Approval of the Proposed Acquisition of Xilinx, Inc. by Advanced Micro Devices, Inc." [2021], available at https://www.samr.gov.cn/fldj/tzgg/ftjpz/202201/t20220127_339441.html.

Moreover, the fact that SAMR was in all of these cases bar one, the last competition regulatory port of call drives home the point that the China review is often *the* determinative review for the success of a global transaction—see also Table 2 below. In *GlobalWafers/Siltronic*, the lengthy SAMR timeline complicated things considerably for the parties as they found themselves with insufficient time to square off a German FDI review. In *AMD/ Xilinx*, the lengthy SAMR process required the parties to refile in the United States as their initial HSR filing expired (a common situation in the more complex deals). Generally, parties might expect a second look by the U.S. agencies to yield the same result as the first but there can be no guarantee of that if there is a change of administration in the U.S. in the interim. In *Cisco/Acacia*, the review timeline ended in litigation in Delaware over whether a condition precedent had been satisfied—the issue in dispute was whether SAMR had or had not cleared the transaction by the parties' drop-dead date.

Table 2

Case	Jurisdictions where Merger Review Required	Regulatory Clearance	Remedies
Cisco / Acacia	Austria	September 2, 2019	No
	United States	September 26, 2019 & again on September 22, 2020	No
	Germany	November 11, 2019	No
	China	**January 14, 2021**	**Yes**
Danfoss / Eaton[10]	Australia	October 15, 2020	No
	South Korea	January 31, 2021	No
	EU	March 18, 2021	Yes
	Brazil	May 12, 2021	Yes
	China	**June 4, 2021**	**Yes**
	Mexico	July 8, 2021	No
	United States	July 14, 2021	Yes
ITW / MTS	**China**	**November 18, 2021**	**Yes**
SK hynix / Intel	EU	May 20, 2021	No
	South Korea	April 21, 2021	No
	Taiwan	June 9, 2021	No
	Brazil	June 22, 2021	No
	UK	June 28, 2021	No
	Singapore	July 21, 2021	No
	China	**December 19, 2021**	**Yes**
GlobalWafers / Siltronic	Germany	February 9, 2021	No
	Austria	March 9, 2021	No

[10] For completeness, this transaction was also notified in Ukraine, Egypt, and Turkey.

Case	Jurisdictions where Merger Review Required	Regulatory Clearance	Remedies
	South Korea	May 27, 2021	No
	Taiwan	May 5, 2021	No
	Singapore	May 11, 2021	No
	U.S.	October 5, 2021	No
	Japan	November 4, 2021	No
	China	**January 20, 2022**	**Yes**
AMD / Xilinx	U.S.	January 11, 2021 & again on February 9, 2022	No
	South Korea	May 27, 2021	No
	UK	June 29, 2021	No
	Japan	June 30 2021	No
	EU	June 30, 2021	No
	Vietnam	July 16, 2021	No
	Singapore	August 30, 2021	No
	China	**January 21, 2022**	**Yes**

SAMR's comparatively long reviews can be explained in part by the extensive stakeholder outreach that SAMR conducts during its investigation of standard track cases. The outreach formally begins as soon as the case is initiated—although informal outreach now also occurs with select stakeholders during case intake for semiconductor mergers. During the stakeholder outreach, SAMR routinely consults industry regulators (relevant ministries such as the Ministry of Industry and Information Technology or MIIT for tech cases), Chinese trade associations implicated by the transaction, downstream Chinese customers of the merging parties and competitors. SAMR can be particularly attuned to the concerns of these stakeholders such that their concerns may complicate the review considerably.

Other factors contributing to the delay include staff shortages at SAMR's Anti-Monopoly Bureau ("AMB"). It is understood that the antitrust workforce at SAMR counted only 40-50 officials in 2021.[11] By comparison, the EU's DG Competition has approximately 15 times this number. SAMR is clearly doing an excellent job when one bears these resource constraints in mind. At the end of 2021, the AMB was elevated into a deputy ministerial-level office. In principle, this should translate into improved access to manpower, better budgetary resources and improvements in SAMR's review timeline. Even so, SAMR may remain the long pole in the tent for some time to come. And two recent cases amply demonstrate why parties need to think ahead.

On Friday, January 8, 2021—some 550 days after Cisco and Acacia had agreed to join forces, Acacia notified Cisco that it had elected to terminate their planned tie-up as the long stop date in their merger agreement had been reached. The same day, Cisco requested confirmation from the Delaware Court of Chancery that all conditions required to close—including SAMR's clearance decision—had been met; Cisco sought a court order obliging

[11] Sina Finance " Higher Ranking! The State Anti-Monopoly Bureau was inaugurated ; China's antitrust enforcement enters into a "new development phase" [2021]. available at https://finance.sina.com.cn/roll/2021-11-19/doc-iktzscyy6389523.shtml.

Acacia to close.[12] The Delaware Court of Chancery issued a temporary restraining order pausing the breakup.[13] The issue in dispute was whether an email dated January 7, 2021 from a staff member at SAMR allegedly advising that SAMR was clearing the transaction constituted the required regulatory approval under the merger agreement. The point was not required to be decided as the parties settled their differences on January 14, 2021, by agreeing to a revised purchase price of approximately USD 4.5 billion, a 66.6% increase over the original deal. Some days later, on January 19, 2021, SAMR posted its clearance decision on its website; the conditional decision was dated January 14, 2021.

While a different set of circumstances played out in *GlobalWafers/Siltronic,* they are equally dramatic. On December 9, 2020, Taiwan-based GlobalWafers and Germany-based silicon wafer producer Siltronic entered into an agreement, under which GlobalWafers initiated a voluntary public tender offer to acquire Siltronic.[14] The proposed takeover was conditioned on obtaining merger control approvals in Germany, Austria, Japan, Taiwan, the U.S., China, Singapore, and the UK, while foreign investment clearance was needed in the U.S., the UK, and Germany. SAMR conditionally cleared the transaction on January 20, 2022, eleven days ahead of the January 31 long-stop date. SAMR's decision required GlobalWafers to divest its zone melting wafer business located in Denmark and to supply wafers to Chinese customers on *fair, reasonable and non-discriminatory* ("FRAND") terms. On January 26, 2022, GlobalWafers provided Germany's Federal Ministry for Economic Affairs and Climate Action ("BMWK") with a copy of SAMR's decision.[15] On January 31, 2022, the BMWK announced that it had been unable to complete all the necessary steps before the parties' long-stop date—in particular, its review of SAMR's conditional merger clearance[16] which it considered "indispensable for the [BMWK's] examination" of the transaction.[17] The deal ultimately collapsed.

The facts of *GlobalWafers/Siltronic* are instructive. Not that long ago, merging parties' primary regulatory concern in global transactions would have been the coordination of timelines and potential remedies between competition authorities. However, with the adoption of the EU's new FDI screening framework (the Foreign Direct Investment Screening Regulation) in March 2019, individual EU Member States have significantly enhanced their FDI mechanisms. This is part of a global trend toward increased FDI reviews which has added to the complexity of executing cross-border transactions in sensitive sectors. Parties now need to assess how FDI can be accommodated with merger review timelines that are already pushing them up to and beyond their envisioned transaction deadlines.

The most significant determinant of a lengthy review in the SAMR process turns obviously enough on whether SAMR identifies competition concerns. A further important determinant is whether SAMR has a sectoral or industrial policy interest in the transaction. When these two factors combine—as they did for four out of the six conditional clearances issued by SAMR between January 2021 and January 2022—a long review is inevitable. From this perspective, it may be unsurprising that the rulings in *Cisco/Acacia, SK hynix/ Intel, GlobalWafers/Siltronic* and *AMD/Xilinx*—all semiconductor cases—took longer than the two

[12] Cisco "Press Release: Cisco Provides Update on Acacia Acquisition " [2021], available at https://newsroom.cisco.com/c/r/newsroom/en/us/a/y2021/m01/cisco-completes-acacia-acquisition.html.

[13] Acacia Communications Files Counterclaim Against Cisco, available at https://www.globenewswire.com/en/news-release/2021/01/11/2156644/0/en/Acacia-Communications-Files-Counterclaim-Against-Cisco.html.

[14] Siltronic Ag: Globalwafers Announces The Launch Of A Voluntary Tender Offer Based On A Business Combination Agreement With Siltronic [2020], available at Siltronic AG: GlobalWafers announces the launch of a voluntary tender offer based on a business combination agreement with Siltronic – Siltronic / perfect silicon solutions.

[15] Determination by the Higher Administrative Court of Berlin-Brandenburg, available at https://gesetze.berlin.de/bsbe/document/JURE220022305.

[16] Bywire, "GlobalWafers' Siltronic deal fails as German govt approval misses deadline" [2022], available at https://bywire.news/articles/globalwafers-siltronic-deal-fails-as-german-govt-approval-misses-deadline; Nikkei Asia, "Taiwan's GlobalWafers fails in bid to buy German peer Siltronic " [2022], available at https://asia.nikkei.com/Business/Tech/Semiconductors/Taiwan-s-GlobalWafers-fails-in-bid-to-buy-German-peer-Siltronic.

[17] Determination by the Higher Administrative Court of Berlin-Brandenburg, available at https://gesetze.berlin.de/bsbe/document/JURE220022305.

non-tech cases, *Danfoss/Eaton* and *ITW/MTS*. As has been noted, semiconductors are "a core element to many everyday technologies, including AI, computers, automobiles, and more"; "semiconductors are [also] an essential general-purpose driver in the U.S.-China tech competition".[18] Against this backdrop, China has made developing its domestic semiconductor manufacturing capability a national priority[19]—it is highly reliant on semiconductor imports (imported semiconductors account for 85% of domestic demand[20]) at a time when the U.S. is pursuing a policy of restricting China's access to these and other high-tech inputs. As a result, semiconductor deals are subject to a particularly careful review by SAMR. As shown in Table 2 above, SAMR was not only the last authority to conclude its review of the four semiconductor cases listed (*Cisco/Acacia, SK hynix/Intel, GlobalWafers/Siltronic* and *AMD/Xilinx*) but also the only authority to have sought remedies in these transactions—although conditions on the China market will have been determinative here.

II. Doubling Down on Behavioral Commitments

SAMR has always been more receptive to behavioral remedies than its counterparts in other jurisdictions. And, over the years, SAMR has developed an ever-expanding toolbox of conduct remedies which includes:

- Commitments to supply products on fair, reasonable, and non-discriminatory ("FRAND") terms. These usually encompass a requirement to abide by all existing agreements and to renew contracts at terms no less favorable than pre-transaction levels; commitments not to degrade commercial terms; a commitment not to engage in discriminatory treatment in terms of price, quality, delivery and after-sales services. In principle, the FRAND commitment serves to lock in the pre-transaction position including pricing terms.
- Prohibitions on refusing, restricting, or delaying supplies; prohibitions against bundling or the imposition of other unreasonable commercial terms.
- Interoperability commitments for third-party products.
- Information firewalls to protect third-party competitively sensitive information.
- A commitment to continue to invest in R&D activities at pre-transaction levels.
- A commitment to training staff in remedy implementation and compliance.

Behavioral remedies such as these are seen as convenient and flexible tools that allow SAMR to address its China-specific concerns in global transactions while also being amenable to industrial policy objectives. As a rule, SAMR uses behavior remedies to address vertical or conglomerate concerns. This approach is often more appealing to the parties if the alternative is a divestiture that would gut the deal—several other authorities (the UK, Germany and the U.S. notably) will generally insist on the clean break that a divestiture affords when faced with a non-horizontal harm to competition. With horizontal concerns, SAMR has traditionally pursued a structural solution (a divesture or hold-separate) albeit one often coupled with conduct remedies.

The table below summarizes SAMR's theories of harm and remedies for each of the conditional cases it reviewed between January 2021 and January 2022.

[18] The Great Tech Rivalry: China vs the U.S., available at https://www.belfercenter.org/sites/default/files/GreatTechRivalry_ChinavsUS_211207.pdf.

[19] Outlook Weekly, "Competition at the top of the Manufacturing Tower" [2021], available at http://lw.xinhuanet.com/2021-04/12/c_139874412.htm.

[20] China's Dual Circulation Strategy is a Step towards Sustainable Trade, available at https://www.wita.org/blogs/chinas-sustainable-trade/.

Table 3

Case	Theory of Harm	Remedy
Cisco / Acacia	**Vertical: Input foreclosure** • Acacia's coherent Digital Signal Processors (DSP) (upstream) ○ Acacia with a 45-50% global share and a 40-45% China share • Cisco's optical transmission systems (downstream)	**Behavioral** • FRAND supply of coherent DSP to manufacturers headquartered in China • No bundling • Duration: 5 five years
Danfoss / Eaton	**Horizontal** • Parties' combined share of 50-55% in the Chinese market for orbital motors	**Structural** • Divestiture of the orbital motor business of Danfoss Power
ITW / MTS	**Horizontal** • Parties' combined share of 65-70% in the Chinese market for high-end Electro-Hydraulic Servo Material Test Equipment	**Behavioral** • FRAND supply of high-end Electro-Hydraulic Servo Material Test Equipment to customers headquartered in China ○ Commitment not to raise prices above average prices for a 24-month period prior to the clearance • Duration: Initial term 5 years; may then apply to SAMR for removal
SK hynix / Intel	**Horizontal** • Parties' combined share of 30-35% globally and 55-60% in China in the market for SATA Enterprise-class SSDs • Parties' combined share of 40-45% globally and 50-55% in China in the	**Behavioral** • Pricing commitment, commitment to expand production, prohibition of exclusive dealing and bundling concerning the supply of PCIe and SATA enterprise-class SSDs in China • Parties to assist third party entry into PCIe and SATA

Case	Theory of Harm	Remedy
	market for PCIe Enterprise-class SSDs	enterprise-class SSD markets • FRAND supply terms for all products in China and prohibition of horizontal collusion • Duration: Initial term 5 years; may then apply to SAMR for removal
GlobalWafers / Siltronic	**Horizontal** • Parties' combined share of 55-60% globally and 30-35% in China in the market for 8-inch zone melting wafers	**Hybrid** • Divestiture of zone melting wafer business of Topsil GlobalWafers A/S • FRAND supply of wafers to customers headquartered in China and customers not headquartered in China but that mainly do business in China • Duration: Initial term 5 years; may then apply to SAMR for removal
AMD / Xilinx	**Conglomerate** • AMD's CPUs and GPUs Accelerators • Xilinx' FPGAs ○ Xilinx with a global share of 50-55% and a China share of 50-55%	**Behavioral** • FRAND supply of CPU and GPU Accelerators and FPGA in China including a prohibition against bundling, interoperability guarantee and protection of third party information • Duration: Initial term 6 years; may then apply to SAMR for removal

SAMR's penchant for behavioral remedies is readily apparent in Table 3. It imposed behavioral remedies in five of the six cases listed. While behavioral remedies to address vertical concerns (*Cisco/Acacia*) and conglomerate issues (*AMD/Xilinx*) are consistent with SAMR (and previously MOFCOM) precedent (there are some international precedents), it is notable that SAMR also pursued behavioral remedies in two horizontal cases (*ITW/MTS* and *SK hynix/Intel*) in a departure from past practice.[21] While in many global transactions the parties will need to agree to a divestiture to assuage the concerns

[21] SAMR and its predecessor, Ministry of Commerce (MOFCOM), rarely addressed horizontal concerns with behavioral remedies before 2021. One exception is MOFCOM's conditional clearance of the acquisition of the printer business of Samsung Co., Ltd. by HP Inc. in October 2017. See SAMR, "Notice of the Ministry of Commerce No. 58 of 2017 on the Conditional Approval of Certain Business of Samsung Co., Ltd. by HP Inc." [2017], available at http://fldj.mofcom.gov.cn/article/ztxx/201710/20171002654063.shtml.

of regulators elsewhere, these two cases imply that SAMR is open to foregoing a divestiture or hold separate in the right case.

In *ITW/MTS* and *SK hynix/Intel*, in addition to FRAND supply terms, SAMR sought price controls for the overlapping products where it had identified competition concerns: Electro-Hydraulic Servo Material Test Equipment in *ITW/ MTS* and SATA and PCIe enterprise-class SSDs in *SK hynix / Intel*. For as long as the restrictive conditions remain in effect, the parties are prohibited from increasing the price of the products beyond a pre-transaction average although an allowance is made for inflation and/or increases in costs of raw material. As regards *SK hynix/Intel* specifically, SAMR also appears to have imposed some interesting elements including: commitments to increase production volumes; a commitment to assist third-party market entry; a commitment to supply all other products of the merged entity on FRAND terms; a commitment not to collude with competitors in China on price, sales and production volumes (this particular remedy appears intended to address a risk of coordinated effects that SAMR identified for PCIe and SATA enterprise-class SSDs although it applies to all products of the merged entity).

In two cases, the products subject to FRAND supply commitments exceeded the product markets where SAMR identified competition concerns. In *GlobalWafers/Siltronic*, in addition to a divesture of overlapping products, SAMR appears to have sought a FRAND commitment covering all wafer products of the parties (not just 8-inch zone melting wafers which were the subject of a competition concern). And as mentioned above, in *SK hynix/Intel,* the FRAND obligation was applied to all products of the merged entity sold in the China market.

The scope of the remedy beneficiaries in these cases is also worthy of note. Before the *SK hynix/Intel* decision, SAMR seemed unconcerned if the remedy was limited to customers of the parties *headquartered* in China (i.e. overseas corporations were excluded from taking the benefit of the remedies). With the *SK hynix/Intel* and *AMD/Xilinx* decisions, SAMR has required the parties to apply their behavioral commitments for the benefit of all customers making purchases in China.

III. Conclusion

Parties to complex global deals should be fully aware of the challenges posed by the Chinese merger control regime and seek to factor these into their planning and documentation strategies—lengthy review timelines if commitments prove necessary, the possibility of a remedy where other jurisdictions might wave the transaction through (in particular for high-tech transactions), complications, or remedies driven industrial policy considerations, and a regulator keenly attuned to the positions of industry stakeholders. There may be different ways of managing these challenges, but the filing in China will always need prioritizing and careful tactical planning. And while China's review will often throw up surprises that make timing difficult to gauge with precision, the remedies themselves and the likelihood of a remedy can be quite easily predicted if the parties are willing to make a frank assessment of their position in the relevant markets ahead of making their move. '*Forewarned is forearmed*' is as good a motto as any in this context.