

Shifting tides of China's merger control regime: the role of national and industrial policy in merger reviews and remedy design

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Introduction

China's merger control regime has entered a transformative phase in recent years. The State Administration for Market Regulation (SAMR), the country's competition authority, has increasingly aligned its enforcement priorities with broader industrial policy goals, emphasising competitiveness, innovation and national strategic interests. This shift is evident not only in the types of cases under

scrutiny and the increasing sophistication of SAMR's merger filing reviews, but also in the nature of the remedies imposed.

Various occurrences in the past few years underscore this evolution. Notably, SAMR has begun 'calling in' or reviewing filed transactions that fall below the notification thresholds. Additionally, it has launched a rare investigation into post-clearance remedy compliance against NVIDIA with respect to its acquisition of Mellanox.¹

So, while SAMR unconditionally clears nearly all notified cases and conditional clearances remain rare,² these broader developments signal a more proactive and substantive approach to merger control reviews.

In this article, we provide an overview of recent developments in China's merger control regime, before taking a closer look at several cases in which SAMR has imposed behavioural remedies to explore how and why SAMR's approach increasingly diverges from other competition authorities around the world, such as the European Commission, United States Federal Trade Commission (FTC) and US Department of Justice (DoJ).

Overview of recent developments in China's merger control regime

Threshold reform and procedural efficiency

In 2024, SAMR implemented one of the most significant reforms to China's merger control regime since the Anti-Monopoly Law (AML) legislation was introduced by way of revising the notification thresholds for concentrations of undertakings. By increasing the level of the thresholds and making fewer transactions notifiable, this move signified a strategic effort to enhance procedural efficiency and focus enforcement resources on transactions with greater competitive significance.

Given that at least two transacting parties need to have significant turnover within China, these reforms were designed to ensure that regulatory scrutiny is concentrated on transactions with a meaningful nexus to the Chinese market and a potential for anti-competitive effects.

1 Xinhua News Agency, 'State Administration for Market Regulation Conducts Further Investigation in Relation to NVIDIA's Breach of the Anti-Monopoly Law' *Xinhua* (Beijing, 15 September 2025) www.xinhuanet.com/fortune/20250915/cb8e13362b7c41bb8bcb2ccb4d6d0365/c.html accessed 1 October 2025.

2 SAMR's *Annual Report on China's Anti-Monopoly Law Enforcement* (2024) reports that 729 merger filings were received during 2024 and 643 were formally accepted by SAMR. Of these, SAMR cleared 623 cases unconditionally.

The impact of these changes was immediate and measurable. The volume of merger filings has declined by approximately 15 per cent year-on-year.³ Over the same period, more than 90 per cent of accepted filings were processed under the simplified review procedure, and the average duration of formal reviews of all filings fell to 24.7 days from formal case acceptance to final decision.⁴

SAMR has also taken steps to consolidate and refresh its guidelines. In September 2023, SAMR released the *Anti-Monopoly Compliance Guidelines for Concentrations of Undertakings*,⁵ consolidating relevant provisions from the AML, the Notification Thresholds Regulation and the Regulation on Merger Review, and offering a comprehensive framework for transacting parties on the merger control process. This reflects the growing confidence of SAMR as an authority as it seeks to align itself with international best practices and provide greater clarity and certainty to businesses.

Heightened scrutiny in strategic sectors

SAMR's substantive review practices have evolved to reflect a more targeted and policy-driven approach. SAMR's latest annual report on its enforcement activities highlights a number of sectors deemed critical to China's national development strategy that will be subject to closer examination, including:⁶

- *semiconductors and software* with transactions involving chip design, electronic design automation (EDA) tools and data storage technologies due to their fundamental connection with digital infrastructure and national security;
- *pharmaceuticals and biotechnology*, where merger reviews increasingly involve considerations beyond traditional market concentration metrics, such as the impact on innovation pipelines and access to essential medicines; and
- *agribusiness and logistics*, where deals are evaluated for broader economic implications from the perspective of food security and supply chain resilience.

Cases in these sectors often receive a more thorough inspection during the review process than filings relating to other sectors. A recent example is the *Synopsys/Ansys* transaction involving the semiconductor sector, which was conditionally approved by SAMR after a 12-month review period.⁷

3 State Administration for Market Regulation, *Annual Report on China's Anti-Monopoly Law Enforcement* (2024) p 9 www.gov.cn/lianbo/bumen/202506/P020250607293554751833.pdf accessed 1 October 2025

4 *Ibid.*

5 State Administration for Market Regulation, *Antimonopoly Compliance Guidelines for Concentrations of Undertakings* (11 September 2023) www.samr.gov.cn/zw/zfxgk/fdzdgknr/fldj/art/2023/art_b463be894b4d40d487d8d099a4df60f5.html accessed 16 October 2025.

6 *Ibid.*, pp 40-49.

7 Announcement of the State Administration for Market Regulation on the Conditional Approval of the Anti-Monopoly Review of Synopsys Inc's Acquisition of Equity in Ansys Inc (14 July 2025) www.samr.gov.cn/fdes/tzgg/ftj/art/2025/art_3a7b235d312840b5b19c538a6773af5f.html accessed 1 October 2025.

Review of transactions falling below the notification thresholds

Synopsys/Ansys is also notable as the transaction did not meet the notification thresholds, but was called in for review by SAMR. We discuss the substance of SAMR's decision in further detail in the section titled 'Notable case studies of conditional clearances'.

The ability to call in transactions falling below the notification thresholds is a relatively new power for SAMR, first introduced in the AML reform in 2022, that signifies a significant shift to a more proactive approach in enforcement. Since its introduction, SAMR has already exercised its power to do so on a number of occasions and is expected to continue to exercise these powers more frequently in the future.

In another related development, the first judicial review against a merger control decision imposed by SAMR was brought in 2023 in relation to a transaction where SAMR imposed a conditional clearance, even though the transaction did not meet the notification thresholds. The challenge related to SAMR's conditional approval of Beijing Tobishi Pharmaceutical Co's acquisition by Simcere Pharmaceutical Group⁸ and centred on SAMR's authority to impose remedies in such circumstances. The Beijing Intellectual Property Court ultimately sided with SAMR, affirming the authority's broad discretion to impose conditions, even in cases falling below the notification thresholds.

Remedies designed around policy objectives

The integration of competition enforcement and broader industrial policies is also evident in the remedies imposed by SAMR in conditional clearances. For example, SAMR often utilises remedies such as commitments prohibiting the merged entity from engaging in exclusive dealing, tying or discriminatory licensing practices, to protect R&D functions domestically and preventing technology transfers that could undermine national competitiveness. This was evident in the case of SK Hynix's acquisition of Intel's NAND memory business, where SAMR required commitments to ensure fair access to critical technologies.⁹

On the other hand, in cases such as *Synopsys/Ansys*,¹⁰ SAMR can be seen to utilise a combination of structural and behavioural commitments that maintain

8 *Beijing Tobishi Pharmaceutical Co, Ltd v State Administration for Market Regulation* (2024) Jing 73 Xing Chu No 5180 (Beijing Intellectual Property Court, 30 December 2024).

9 Announcement of the State Administration for Market Regulation on the Conditional Approval of the Anti-Monopoly Review of SK Hynix Inc's Acquisition of Certain Business Units of Intel Corporation (22 December 2021) www.samr.gov.cn/fldes/tzgg/ftj/art/2023/art_f03608bf1b8042b78705f412e3948588.html accessed 1 October 2025.

10 See n 7 above.

continuity of supply in strategic markets. Similarly, remedies such as access obligations, imposed in cases such as *Bunge/Viterra*,¹¹ can be viewed as facilitating participation in relevant markets by domestic businesses (particularly small to medium-sized enterprises).

While the convergence of competition and industrial policy is not unique to China, SAMR's approach is notable in its explicit alignment with national strategic priorities. Indeed, in the *Synopsys/Ansys* decision,¹² SAMR explicitly refers to impacts on 'social public benefit' as one of its substantive concerns in a conditional clearance decision for the first time.

Notable case studies of conditional clearances imposed by SAMR

A notable feature of SAMR's enforcement practices is a willingness to impose behavioural remedies, with a particular emphasis on commitments relating to the stability of supply for Chinese customers.

An analysis of SAMR's conditional approvals imposed since the inception of the merger control regime in 2018 to the end of 2024 indicated that 24 out of 26 conditional approvals granted by SAMR involved behavioural remedies and over 90 per cent of these cases included supply guarantees as a relevant condition.¹³ This focus on supply highlights the importance of pursuing economic and industrial policy objectives in SAMR's enforcement, rather than purely competition concerns. This is evidenced in the cases below which, in particular, highlight the authority's increasing emphasis on supply chain security, fair access and support for innovation within key sectors as driving factors within the merger control framework.

*MaxLinear/Silicon Motion*¹⁴

In July 2023, SAMR conditionally approved MaxLinear Inc's acquisition of Silicon Motion Technology Corporation, a leading supplier of NAND flash controllers and solid-state drive (SSD) solutions. The transaction was part of MaxLinear's strategy to expand its presence in data storage and connectivity solutions.

11 Announcement of the State Administration for Market Regulation on the Conditional Approval of the Anti-Monopoly Review of Bunge Global Limited's Acquisition of Equity in Viterra Limited (16 June 2025) www.samr.gov.cn/fldes/tzgg/ftj/art/2025/art_0c6700f56f174bee8fd90dc8ecb6ffcc.html accessed 1 October 2025.

12 See n 7 above.

13 D Fan, 'SAMR Includes Supply Guarantees in 92 per cent of Behavioural Remedies' (Analytics, 2025) <https://app.parr-global.com/intelligence/view/intelcms-nn4dnr> accessed 1 October 2025.

14 Announcement of the State Administration for Market Regulation on the Conditional Approval of the Anti-Monopoly Review of MaxLinear's Acquisition of Equity in Silicon Motion (26 July 2023) www.samr.gov.cn/fldes/tzgg/ftj/art/2023/art_a685ac0dd85647b3898dff75f68fa2c4.html accessed 1 October 2025.

Given Silicon Motion's significant market share in China, and the high concentration levels of the NAND flash controller market, SAMR identified significant competition concerns. In particular, Silicon Motion held a 50–55 per cent market share, and enjoyed significant technological and financial advantages in a market characterised by high barriers to entry and limited existing competition. SAMR also found that downstream SSD manufacturers were heavily reliant on Silicon Motion's products, with limited alternatives.

SAMR imposed forward-looking behavioural remedies on the parties:¹⁵

- supply continuity: the merged business was required to continue supplying NAND flash controllers to Chinese customers on FRAND terms;
- R&D preservation: certain specified R&D operations of Silicon Motion were to be maintained;
- local support: certain on-site engineering teams were to be maintained to ensure continued support for Chinese customers; and
- cybersecurity assurance: NAND flash controller chips sold in China must not contain any malicious code.

A closer consideration of these remedies reveals that SAMR's considerations are not purely based on competition law principles. For example, the requirement of the parties to maintain local R&D capabilities and ensure the continued provision of local customer support are more closely linked with broader industrial and security objectives than competition law concerns, and reflects SAMR's wide range of policy objectives when enforcing its merger control regime.

*Broadcom/VMware*¹⁶

In November 2023, SAMR conditionally approved Broadcom Inc's acquisition of VMware Inc, a transaction valued at approximately \$61bn. The merger, one of the largest in the technology sector in recent years, attracted regulatory scrutiny across multiple jurisdictions, including the US, European Union, United Kingdom and China.

Broadcom, a global semiconductor and infrastructure software company, sought to expand its enterprise software portfolio by integrating VMware's virtualisation and cloud infrastructure solutions. Given VMware's substantial footprint in China, SAMR conducted a detailed review of the transaction's potential impact on competition and innovation.

15 *Ibid.*

16 Announcement of the State Administration for Market Regulation on the Conditional Approval of the Anti-Monopoly Review of Broadcom's Acquisition of Equity in VMware (21 November 2023) www.samr.gov.cn/fldes/tzgg/ftj/art/2023/art_cae805a5e37d489ea929af8a4a369f6b.html accessed 1 October 2025.

SAMR identified risks in several markets, including non-public cloud virtualisation software and various hardware adapter segments. To mitigate these concerns, SAMR imposed a series of behavioural remedies:

- anti-tying obligations: Broadcom and VMware were prohibited from engaging in tie-in sales or imposing unreasonable trading conditions when selling their respective products in China;
- interoperability obligations: the parties were required to maintain compatibility between VMware's software and third-party hardware products, and Broadcom's fibre channel adapter certification team was mandated to continue developing, certifying and releasing drivers to ensure interoperability with third-party server virtualisation software; and
- confidentiality safeguards: measures were required to protect sensitive information of third-party hardware manufacturers, including confidentiality agreements, data segregation and personnel separation.

The case underscores SAMR's tendency to impose behavioural remedies in complex technology mergers, where structural divestitures may be impractical. By focusing on conduct and access obligations, SAMR aims to preserve competition and prevent the emergence of closed ecosystems that, in its view, risk stifling innovation and harming consumer welfare.

*ANA Holdings/Nippon Cargo Airlines*¹⁷

In June 2025, SAMR conditionally approved ANA Holdings Inc's acquisition of Nippon Cargo Airlines Co, Ltd (NCA), a specialised cargo airline previously owned by NYK Line. The impact of the transaction was to consolidate ANA's air cargo operations and expand its logistics footprint across Asia.

SAMR conducted a detailed assessment of the merger's impact on the China–Japan air cargo corridor, focusing on route-level competition, capacity allocation and pricing behaviour. Specific concerns that were raised included the direct horizontal overlap between ANA and NCA on cargo routes between China and Japan, the significant barriers to entry in the market on both regulatory and operational fronts, and the dependence of China's manufacturing sector on air freight for export sales.

To address these concerns, SAMR imposed a combination of behavioural and structural remedies:¹⁸

17 Announcement of the State Administration for Market Regulation on the Conditional Approval of the Anti-Monopoly Review of ANA Holdings Inc's acquisition of equity in Nippon Cargo Airlines Co, Ltd (1 July 2025) www.samr.gov.cn/fldes/tzgg/ftj/art/2025/art_d7752467113c49d1b41168db859e1a67.html accessed 1 October 2025.

18 *Ibid.*

- slot transfer obligations: up to seven weekly all-cargo flight slot pairs on the Shanghai Pudong–Narita route were to be transferred to the first eligible new entrant under specified conditions;
- ground handling continuity: ANA was required to maintain existing cargo ground handling agreements for scheduled China–Japan routes at the Tokyo Narita and Osaka Kansai airports; and
- access for new entrants: ANA was prohibited from unreasonably refusing renewal requests and was required to provide services to new entrants on fair terms.

This case highlights SAMR’s growing sensitivity to supply chain dynamics and cross-border trade competitiveness, especially in relation to trade infrastructure. The authority’s intervention reflects a broader policy goal of safeguarding trade infrastructure from excessive concentration and ensuring continued access for Chinese exporters.

*Synopsys/Ansys*¹⁹

In July 2025, SAMR conditionally approved the acquisition of Ansys Inc by Synopsys Inc, two US-based firms operating in the EDA and simulation software sectors.

Synopsys is a global leader in EDA tools used in integrated circuit design, verification and testing, while Ansys specialises in engineering simulation software, including thermal, mechanical and electromagnetic modelling. The merger aimed to create a platform combining design and simulation capabilities, potentially enhancing innovation and efficiency in chip development.

SAMR identified competition concerns in several overlapping and adjacent markets, including optical and photonics software, specific EDA tools and semiconductor intellectual property (‘design IP’). These concerns were amplified by China’s strategic focus on developing indigenous semiconductor capabilities and reducing reliance on foreign technology.

To address these risks, SAMR required the divestiture of Synopsys’s optical and photonic device simulation business and Ansys’s power analysis software operations. In addition, SAMR also imposed a set of behavioural remedies, including:

- non-discriminatory access: the parties were prohibited from terminating or refusing to renew existing contracts with Chinese customers and were required to supply key EDA products on fair, reasonable and non-discriminatory (FRAND) terms;
- anti-tying obligations: the merged entity was barred from engaging in tie-in sales or bundling practices that could restrict customer choice or distort competition;

¹⁹ See n 7 above.

- interoperability commitments: the parties were required to maintain existing interoperability agreements and enter into new ones on request from third-party EDA providers, supported by Chinese customers; and
- support for industry standards: continued support for standard formats used in relevant EDA products was mandated.

As mentioned above, one notable aspect of this decision is that SAMR explicitly refers to potential impacts on 'social public benefit' as one of its substantive concerns for the first time in a merger control decision. When discussing the potential anti-competitive impact of the transaction, SAMR notes that any tying and bundling practices could lead to further foreclosure of the technological ecosystem, negatively impacting innovation on the market and foreclosing the market from new entrants, which would harm 'social public benefit'.²⁰

This case highlights the divergence in SAMR's approach with a number of other authorities around the world. While a number of authorities around the world, such as the European Commission, required the same structural divestments to be made, SAMR is the only authority to require behavioural remedies of this nature. By combining structural and behavioural remedies, SAMR not only aims to address competition issues arising from the combination of overlapping activities, but also focuses on ensuring continued access to critical infrastructure for Chinese market players.

Comparisons with other regimes

SAMR's approach of favouring behavioural remedies contrasts with the approach taken by certain other competition authorities, such as the European Commission, FTC and DoJ.

In a study of the implementation and effectiveness of merger remedies published by the European Commission in 2005,²¹ it was concluded that structural remedies were generally more effective in restoring competition in the market: they are permanent, alter the market structure and are easier for the European Commission to monitor and enforce. On the other hand, behavioural remedies were found to be less effective and more complex to implement, monitor and enforce.

²⁰ *Ibid.*

²¹ Paolo Buccirossi, Lorenzo Ciari, Tomaso Duso, Sven-Olof Fridolfsson, Giancarlo Spagnolo and Cristiana Vitale, 'Ex-post Review of Merger Control Decisions: A Study for the European Commission' (European Commission, 2006) https://competition-policy.ec.europa.eu/system/files/2021-04/ex-post_review_merger_decisions_2006_study.pdf accessed 1 October 2025.

As a result, in the European Commission's 2008 Remedies Notice,²² the European Commission states that commitments that are structural in nature 'are, as a rule, preferably from the point of view of the Merger Regulation's objective'.²³ In particular, 'divestiture commitments are the best way to eliminate competition concerns resulting from horizontal overlaps, and may also be the best means of resolving problems resulting from vertical or conglomerate concerns'.²⁴ Other types of structural remedies may also be sufficient to resolve concerns 'if those remedies are equivalent to divestitures in their effects'.²⁵ Behavioural remedies, by contrast, 'may be acceptable only exceptionally in very specific circumstances'.²⁶

Similarly, in the US, the FTC and DoJ have historically maintained a strong preference for structural remedies. In a statement made in May 2025 in relation to the FTC's clearance of the Synopsys/Ansys transaction,²⁷ FTC Chair Andrew Ferguson emphasised that behavioural remedies remain 'disfavored',²⁸ and the FTC should usually accept only a structural remedy that 'involves the sale of a standalone or discrete business'.²⁹

The divergence in remedy preferences between the different authorities reflects differing legal traditions, enforcement philosophies and policy priorities. The EU and US authorities prioritise structural remedies for their clarity, permanence and efficiency, and consider behavioural commitments to be less reliable and more burdensome. SAMR, by contrast, appears to favour the greater versatility and flexibility of behavioural remedies to address not only competition concerns, but also other policy objectives.

Conclusions

China's merger control regime has entered a new phase of development, marked by a deliberate convergence of competition law enforcement with broader industrial policy and innovation imperatives.

SAMR's enforcement demonstrates increasing regulatory sophistication and assertiveness, particularly in its handling of transactions within sectors deemed

22 European Commission, Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (2008/C 267/01).

23 *Ibid*, para 15.

24 *Ibid*, para 17.

25 *Ibid*.

26 *Ibid*.

27 US Fair Trade Commission, Statement of Chairman Andrew N Ferguson, Joined by Commissioner Melissa Holyoak and Commissioner Mark R Meador In the Matter of Synopsys, Inc/Ansys, Inc Matter Number 2410059 (28 May 2025) www.ftc.gov/system/files/ftc_gov/pdf/synopsys-ansys-ferguson-statement-joined-by-holyoak-meador.pdf accessed 1 October 2025.

28 *Ibid*, p 7.

29 *Ibid*.

strategically significant to national development or critical to the domestic economy. Recent enforcement practice also reflects a clear shift away from a purely market-structure-based analysis of competition concerns toward a more holistic approach that incorporates considerations such as supply chain resilience, technological autonomy and social public benefits.

SAMR's consistent preference for behavioural commitments over structural divestitures provide it with an adaptable method to address the specific dynamics of the relevant markets. Behavioural remedies that ensure continuity of supply, preserve interoperability and protect domestic stakeholders have allowed SAMR to pursue its broader policy objectives more effectively than ordering divestitures.

These developments have also been coupled with greater post-clearance monitoring and oversight. In 2024, SAMR launched a rare post-clearance investigation against NVIDIA in relation to infringement of conditions imposed during clearance.³⁰ While the specific nature of the suspected violation has not been published, tensions arising out of NVIDIA's compliance with tightening US export controls have been identified as a possible concern.³¹

We can also see SAMR's increasing assertiveness in its willingness to exercise its ex officio powers to review transactions falling below formal notification thresholds. This new power provides SAMR with greater regulatory flexibility and ensures that potentially anti-competitive mergers do not escape scrutiny due to technical limitations.

Taken together, these developments reflect a bolder and more sophisticated SAMR that maintains its own distinctive features, with its focus on industrial policy objectives. For transacting parties, SAMR's increasingly forceful enforcement presents both challenges and opportunities. While SAMR's active oversight demands careful planning and robust compliance mechanisms, its willingness to engage with parties and tailor remedies to market realities offers a degree of flexibility not always present in other jurisdictions.

Interestingly, the European Commission may be heading in a similar direction in the future, as demonstrated in its recent public consultation regarding upcoming changes to its merger guidelines. For example, in the European Commission's paper on *Competitiveness and Resilience* published in the context of this public consultation, the European Commission notes 'in recent years, resilience has been a concern of particular relevance in the areas of security and defence, as well as other critical industries (eg, chips manufacturing), critical inputs (eg, certain

30 See n 1 above.

31 Coco Feng, Wency Chen and Zhou Xin, 'Tech War: China Finds US Chip Giant Nvidia Violated Anti-Monopoly Law' *South China Morning Post* (Hong Kong, 15 September 2025) www.scmp.com/tech/tech-war/article/3325595/tech-war-china-finds-us-chip-giant-nvidia-violated-anti-monopoly-law accessed 1 October 2025.

raw materials) and critical infrastructure (eg, broadband submarine cables) [...] Merger control can take resilience into consideration as long as it is relevant for competition on the markets concerned'.³² Some of the questions that the European Commission has consulted on include 'How should the Commission take into account the negative effects of a merger on competitors', suppliers' or business customers' resilience when assessing its impact on competition?' and 'How can the revised Guidelines contribute to the security of supply and resilience of the EU economy against outside shocks and dependency on third country input?',³³ reflecting considerations similar to those expressed in SAMR's reviews of merger cases. Whether the European Commission will take a more explicit stance towards these issues remains to be seen when its revised merger guidelines are published following the consultation.

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³² European Commission, Review of the Merger Guidelines: In Depth Consultation paper 'Topic A: Competitiveness and resilience' May 2025, paras 22–23 https://competition-policy.ec.europa.eu/document/download/c491dea5-2cf5-4b63-8933-b8f5ae5c3554_en?filename=Topic_A_Competitiveness_and_resilience.pdf accessed 5 November 2025.

³³ *Ibid.*