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REGIONAL COMPETITION BITES Q3 2023



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Overview

Dear Friends,

We are pleased to present our 3rd Regional Competition Bites for 2023.

The third quarter has seen important regulatory developments and enforcement action across Southeast Asia.

Mergers continue to take centre stage. In **Indonesia**, the Indonesia Competition Commission ("**ICC**") fined two foreign companies for filing merger notifications ranging from one to three business days late, and has demonstrated its willingness and ability to exercise its jurisdiction over foreign companies, rather than just through their local subsidiaries. In **Singapore**, the Competition & Consumer Commission of Singapore ("**CCCS**") has cleared two mergers, one in relation to electronic chemicals and the other in relation to liquified petroleum gas. Further, CCCS has moved its review of the proposed acquisition by Grab of Trans-cab (Singapore's third largest taxi operator) into a possible Phase II review if the parties are unable to address these concerns with commitments. Given the nature of this business, this proposed acquisition has gained strong public interest in Singapore, as consumers closely watch how the proposed acquisition may affect the price, quality and quantity of taxi services here. Meanwhile, in the **Philippines**, the Philippine Competition Commission ("**PCC**") has commenced Phase II reviews pertaining to the retail pharmaceutical market and the broadband services market. In **Thailand**, the Trade Competition Commission of Thailand ("**TCCT**") has published nearly 100 merger cases in 2022 and over 50 thus far in 2023. As merger control activity and regulatory scrutiny in the region increases, businesses should keep abreast of developments in this area to avoid violating competition laws when undertaking mergers and acquisitions.

Apart from mergers, there is a continued emphasis on tackling rising inflation and cost of living. In **Cambodia**, the Cambodia Competition Commission ("**CCC**") has issued a press release and new legislation relating to consumer protection in the real estate and housing market. This comes off the back of rising real estate prices in Cambodia. In the **Philippines**, PCC has partnered with the Department of Agriculture to crack down on cartels in the agriculture and foodstuff industries, including products such as onions, rice and sugar. Yet, it is not merely housing or commodities that regulators focus on. In **Malaysia**, the Malaysia Competition Commission ("**MyCC**") has raised its objections to an increase in conveyancing fees, whilst in **Thailand**, the TCCT has made regulation of the e-commerce sector its priority for 2024. The common denominator amongst regulators in the region is ensuring that anti-competitive conduct and unfair practices that could result in detriment to consumers are prevented.

Cambodia and **Vietnam** have also continued to expand their competition law regimes. The CCC expects to complete the drafting of all antitrust sub-regulations and guidelines by the end of the year. On the other hand, the Vietnam Competition Commission ("**VCC**") has now made a new competition case complaint form available to the public, whilst also VCC making detailed plans to implement the Law on Consumer Rights Protection. These developments bode well for the region as competition law and consumer protection capabilities are built up, and regulators are better positioned to collaborate and leverage one another's expertise.

Finally, regulators remain active in monitoring the market for competition law violations. Interestingly, the ICC has kept an eye on negative online campaigns relating to the presence of Bisphenol A in the bottled water market, stating that this could lead to anti-competitive effects. MyCC has also recently concluded an investigation (without finding any violation) into the prominent food delivery platform, Foodpanda, in relation to potential exclusivity arrangements that could harm participating merchants.

The Rajah & Tann Asia team remains engaged and up to date with the ever-evolving landscape of competition law in the region. Please reach out to us if you wish to further discuss these developments.

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Cambodia

Following the coming to effect of Cambodia's merger control framework in September 2023, the Cambodia Competition Commission ("**CCC**") has continued working towards finalising its antitrust regime. Meanwhile, the Ministry of Commerce ("**MOC**") has also remained active on the consumer protection front, issuing a press release addressing unfair practices in the real estate and housing market as Cambodia's property market continues its upward growth trajectory.

1. CCC expected to complete the drafting of all antitrust sub-regulations and guidelines by end-2023

The CCC, which was established last year, is expected to complete the drafting of all secondary regulations and guidelines by end-2023. The CCC spokesperson stated that the CCC aims to complete the drafting of any remaining sub-regulations by the end of the year. These sub-regulations include guidelines on merger review, the calculation of merger notification thresholds, as well as decisions on individual and collective exemptions and decisions on leniency policy.

*Regulations –
penalties*

2. Press Release on the implementation of consumer protection law and Prakas on unfair contractual clauses in real estate and housing

On 30 June 2023, the MOC issued Press Release No. 2241 on the Implementation of the Law on Consumer Protection and Prakas on Unfair Contract Clause in the Real Estate and Housing Sector ("**Press Release**"). The Press Release addressed various key aspects, including compliance with the Law on Consumer Protection, enforcement by the MOC and the filing of complaints.

*Consumer
protection –
unfair
contractual
terms*

On compliance, according to the Press Release, the MOC observed that some standard form contracts for sale-purchase transactions of immovable property in Cambodia included unfair contract clauses. Such clauses include:

- (a) Excluding or limiting the liabilities of the business operator on the guarantee of the services and/or goods, as provided for under the Cambodian Civil Code;
- (b) Granting the business operator the right to change the type, value, quantity, and quality of goods and/or services without obtaining the prior consent of the consumer;
- (c) Granting the business operator the right to change substantial clauses in the standard form contract without prior consent of or notice to the consumer; and
- (d) Granting the business operator the right to unilaterally and arbitrarily interpret or terminate the contract.

In the Press Release, the National Consumer Protection Committee ("**NCPC**") urged business operators in the real estate sector to comply with the Law on Consumer Protection promulgated by Royal Kram No. NS/RK/1119/016 dated 2 November 2019 and other relevant regulations, especially Prakas No. 0067 on Unfair Contract Clause dated 01 March 2022, which prohibits the use of unfair contract clauses in standard form contracts in order to protect consumer rights and promote fair competition.

On enforcement, the Press Release stated that the Investigating Officers of the Directorate-General of Consumer Protection, Competition and Fraud Repression ("**CCF**") of the MOC will take strict measures against those who are found to have violated the Law on Consumer Protection and other applicable regulations. The CCF is vested with the power of judicial police officers.

On the filing of complaints, the NCPC informed the public via the Press Release that aggrieved persons who face any injustice (e.g. where business operators receive excessive benefits through the use of unfair contract clauses in a standard form contract in the real estate and housing sector) can file a complaint with the CCF at the following address: St.18, Kdey Takoy Village, Sangkat Veal Sbov, Khan Chbar Ampov, Phnom Penh, Cambodia or contact the CCF at (+855) 23 231 856 or (+855) 92 830 856.

Indonesia

The third quarter of 2023 has seen significant activity from the Indonesia Competition Commission ("**ICC**") on all fronts. On anti-competitive agreements, the ICC has imposed administrative fines in relation to two bid-rigging cases, while it continues to investigate alleged cases of resale price maintenance and bid-rigging. On mergers, even as new merger regulations came into force earlier in 2023, the ICC has fined two different merger parties for submitting late notifications under the old regulations. The ICC has also focused its enforcement on the partnerships between major agricultural companies and Micro, Small, and/or Medium Enterprises ("**MSMEs**"), issuing various warnings and scrutinising the implementation of improvement proposals submitted by businesses. Beyond these, the ICC has also sought to improve consumer protection by monitoring online campaigns in the bottled water market and ensuring more payment options in tourist attractions.

1. Alleged resale price maintenance and exclusive dealing by PT Kobe Boga Utama relating to a distribution agreement

On 14 September 2023, the ICC held the first hearing on the alleged violations in relation to PT Kobe Boga Utama's ("**PT Kobe**") distribution agreement with its distributors. The distribution agreement allegedly violates Article 8, Articles 15(1) and (3) and Article 19(c) of the Indonesian Competition Law (Law No. 5 of 1999) ("**ICL**"), involving agreements on resale price maintenance, exclusive agreements, restrictive trade terms and restricting the circulation of goods and/or services. PT Kobe is an Indonesian company which produces seasoned flour.

Anti-competitive agreements – resale price maintenance, exclusive dealing, market allocation

The ICC concluded that the relevant markets in this case were the markets for seasoned flour, non-spiced flour and Boncabe (a chili flakes brand). The distribution agreement stipulated that the selling price of the products would be determined by PT Kobe, and distributors were not permitted to distribute products from other competitors and had to distribute only within a range of modern and traditional outlets in the distribution area provided by PT Kobe.

PT Kobe had previously admitted during investigations that the distribution agreement contained several provisions which may contradict the ICL and expressed its willingness to undertake a change of behaviour. The case proceeded further to the Preliminary Examination Session for 26 September 2023, where PT Kobe could either submit evidence to object to the allegations or accept all alleged violations and submit a request for a change of behaviour. However, to date, there have not been any further updates on the Preliminary Examination process of PT Kobe.

2. Bid rigging in relation to the development of electrical signaling systems for the Bogor-Cicurug Railway

On 15 August 2023, the ICC imposed a fine of IDR 10,973,000,000 (approx. USD 714,525) on PT Len Industri ("**Persero**") and PT Len Railway Systems ("**LRS**") for violating Article 22 of the ICL on bid rigging. Persero and LRS had participated in the tender as a Joint Operation ("**JO**") and won the tender valued at IDR 301,000,000,000 (approx. USD 19,600,118). Whilst the ICC found that there was no cooperation between the tender parties, the ICC held that there was no clarification from the Working Group regarding the low-priced offer submitted by the JO for the selection of the tender suppliers. These low-priced offers were unreasonable compared to the estimated prices for the goods and services provided. Further, the tender Commitment Making Officer had also failed to clarify the similarity of tender prices between Persero and LRS.

Anti-competitive practices – bid rigging

3. Bid rigging in relation to the procurement of work for the Taman Ismail Marzuki renovation tender

On 18 July 2023, the ICC imposed fines of IDR 16,800,000,000 (approx. USD 1,093,960) on PT Pembangunan Perumahan Tbk ("**PP**") and IDR 11,200,000,000 (approx. USD 729,306) on PT Jaya Construction Manggala Pratama Tbk ("**JAKON**") for engaging in bid rigging and violating Article 22 of the ICL on bid rigging. PP and JAKON had participated in the tender as a Joint Operation ("**KSO PP-JAKON**") and won the tender.

Anti-competitive practices – bid rigging

During the trial, the ICC found that the tender implementer, PT Jakarta Propertindo ("**Jakpro**"), had deliberately cancelled the initial tender and requested for a re-tender without providing a clear reason. The ICC held that Jakpro had subsequently made changes to the assessment criteria and procedure in the re-tender to facilitate PP-JAKON winning the tender. The ICC also imposed orders on Jakpro not to undertake any acts of conspiracy in determining future tender winners and to submit a Request for Proposal document to the ICC after every procurement process for a period of two years.

As of July 2023, JAKON, PP and Jakpro have filed a request for appeal to the commercial court.

4. Alleged tender conspiracy on road improvement works in Aceh provinces

On 21 August 2023, the ICC held a Preliminary Examination Panel Session in relation to the procurement of work for road improvement works in the Aceh province. The parties involved, PT Wanita Mandiri Perkasa, PT Tamiang Karya, PT Andesmont Province, PT Galih Medan Persada and the Aceh Province Working Group, had allegedly conspired in the procurement of construction work packages with an estimated value of IDR 223,199,715,670 (approx. USD 14,534,022). These included making adjustments to various procurement supports, interacting with other tender participants and the Aceh Province Working Group providing preferential treatment to tender winners.

Anti-competitive practices – bid rigging

5. Late merger notification in relation to the share acquisition of Dorel Finance US, Inc. by Pon Holdings B.V.

The ICC has issued Decision No. 12/KPPU-M/2023 on 21 September 2023 regarding the violation of Article 29 of the ICL on the late notification case involving the acquisition of Dorel Finance US, Inc. by Pon Holdings B.V. ("**Pon Holdings**").

Merger – delay in notification

During its investigation, the ICC held that the transaction fulfilled the criteria for mandatory notification. As the transaction occurred prior to the 2023 Merger Regulation, foreign-to-foreign transactions with only one party to the transaction having sales and/or assets in Indonesia had to be notified to the ICC ("**Single Nexus Doctrine**"). It should be noted that after the enactment of the 2023 Merger Regulation, the Single Nexus Doctrine is no longer applicable. A foreign-to-foreign transaction is now only notifiable when both parties to the transaction generate sales and/or possess assets in Indonesia ("**Double Nexus Doctrine**").

The ICC found that the transaction was legally effective on 4 January 2022. However, Pon Holdings only notified the transaction to the ICC on 1 April 2022. Due to COVID-19 circumstances at that time, the transaction was subject to the ICC's relaxation policy, which required notification no later than 60 working days from the effective date or by 31 March 2022 at the latest. Given this, the ICC concluded that the filing was one business day late. In its decision, the ICC stated that Pon Holdings also breached ICC's relaxation policy, which was an aggravating factor. Consequently, the ICC imposed an administrative fine of IDR 1.25 billion (approx. USD 79,799) on Pon Holdings, instead of the IDR 1,000,000,000 per day as stipulated in the regulation.

This decision sets another precedent where the ICC has exercised its jurisdiction over a foreign entity outside of Indonesia without liaising through its local subsidiary.

6. Late merger notification in relation to the acquisition of GCA 2016 Holding Limited by APF Holdings I, LP

The ICC has issued Decision No. 09/KPPU-M/2023 on 25 September 2023 regarding the violation of Article 29 of ICL on the late notification case involving the acquisition of GCA 2016 Holding Limited by APF Holdings I, LP ("**APF Holdings**").

*Merger – delay
in notification*

During the investigation, the ICC held that the transaction fulfilled the criteria for mandatory notification. As the transaction occurred prior to the 2023 Merger Regulation, the Single Nexus Doctrine applied, and the transaction had to be notified to the ICC. The ICC found that the transaction was legally effective on 22 December 2021. However, APF Holdings only notified the transaction to the ICC on 23 March 2022. Due to COVID-19 circumstances at that time, the transaction was subject to the ICC's relaxation policy, which required notification no later than 60 working days from the effective date or by 18 March 2022 at the latest. Given this, the ICC held that the filing was three business days late. The ICC imposed an administrative fine of IDR 1.5 billion (approx. USD 95,759) on APF Holdings.

7. Bottled Negative online campaigns regarding reusable gallon packaging in the bottled water market

On 5 September 2023, the ICC issued a press release urging various parties to cease negative online campaigns in relation to the use of Bisphenol A in reusable gallon packaging in the market for bottled water. The ICC stated that such negative campaigns could be utilised as a marketing strategy to manipulate competition, which could harm consumers and benefit the business actors involved. Such a debate could shift competition in the market for bottled water to the type of packaging used, rather than on factors such as price or product quality.

*Anti-
competitive
practices –
online
campaigns*

The ICC has urged all parties involved to stop such negative online campaigns and to provide the government with the opportunity to take a stance regarding the potential dangers of packaging used for bottled drinking water. The ICC has also requested the public to report any business

actors who have undertaken anti-competitive actions, such as preventing consumers from obtaining bottled water.

8. PT Agri Eastborneo Kencana implements the ICC's orders to improve the plasma farmers partnership

The ICC received a report alleging that PT Agri Eastborneo Kencana's ("AEK") core plasma (palm oil) partnership with around 1,100 plasma farmers who are members of the Sedulang Palm Oil Farming Cooperative ("BTSS") violated Article 35 Paragraph 1 of Law No. 20 of 2008 on Micro, Small, and Medium Enterprises. AEK had controlled the business activities carried out by plasma farmers who were members of BTSS, resulting in losses for these plasma farmers. The ICC issued written warnings to AEK to implement various repair orders, which included the revocation of the clauses that allowed AEK to exert control over BTSS.

*Partnerships
with MSMEs –
agricultural
sector*

AEK carried out partnership improvements that eventually benefited around 1,100 plasma farmers in BTSS. Among the benefits are that these farmers would receive guidance and training as a knowledge transfer process and receive proceeds from the sales of plasma plantations. On 10 August 2023, the ICC discontinued its case against AEK.

9. PT Perkebunan Nusantara V implements the ICC's orders to improve plasma farmers partnership

The ICC received a report alleging that PT Perkebunan Nusantara V's ("PTPN V") core plasma (palm oil) partnership with the Sawit Makmur Cooperative ("Kopsa-M") violated Article 35 Paragraph 1 of Law No. 20 of 2008. PTPN V had controlled the implementation of the partnership agreement with Kopsa-M in relation to the development and management of palm oil plantations. The ICC issued written warnings to PTPN V to implement various repair orders, which included designating a single management to oversee various aspects of the plantation activities in coordination with Kopsa-M.

*Partnerships
with MSMEs –
agricultural
sector*

PTPN V carried out all partnership improvements within 120 days of receiving the written warnings, which eventually benefited 825 plasma farmers in Kopsa-M. On 26 July 2023, the ICC discontinued its case against PTPN V.

10. PT Aburahmi fined for violating plasma farmers partnership and not implementing ICC's orders

The ICC received a report alleging that PT Aburahmi's partnership with the Penukal Lestari Cooperative ("PLC") violated Article 35 Paragraph 1 of Law No. 20 of 2008. PLC had unilaterally made an addendum to the partnership agreement, which resulted in land composition changes, the costs of plantation development and management being borne by PLC and the transfer of all plantation management rights to PT Aburahmi. Whilst the ICC issued three written warnings to PT Aburahmi, PT Aburahmi only began to partially implement improvement orders after the third warning.

*Partnerships
with MSMEs –
agricultural
sector*

The ICC found PT Aburahmi guilty of violating Article 35 Paragraph 1 of Law No. 20 of 2008 and imposed a fine of IDR 2,500,000,000 (approx. USD 162,381). PT Aburahmi was also ordered to return the land to PLC.

11. Increasing payment options for tourist attractions in Jakarta

The ICC received complaints from the public that payment instruments used for entry to tourist attractions in Jakarta, such as the Jakarta Historical Museum, Ragunan Wildlife Park and the National Monument Area, were limited only to the Jakcard.

*Consumer
protection –
payment
instruments*

On 11 July 2023, the ICC held a Focus Group Discussion ("FGD") which was attended by various government bodies and PT Bank DKI. The FGD was held to exchange ideas and explore solutions to increase the diversity of payment options for consumers. At the FGD, the ICC received PT Bank DKI's commitment to immediately open alternative payment instruments for consumers.

Singapore

Merger control remains a key activity for the Competition and Consumer Commission of Singapore ("CCCS") in the third quarter of 2023. CCCS has cleared FUJIFILM Holdings America Corporation's acquisition of Entegris, Inc.'s electronic chemicals business, as well as City Energy's acquisition of Tan Soon Huah Gas Supply's liquified petroleum gas business. CCCS has also raised competition concerns in relation to Grab acquisition of Trans-cab, Singapore's third largest taxi operator, prompting a possible Phase II review if the parties are unable to address these concerns with commitments. The proposed acquisition has gained traction in the mainstream media and amongst the public, as consumers remain interested in how the proposed acquisition may affect the price, quality and quantity of street- and ride- hailing services by taxi and private-hire car drivers.

1. FUJIFILM Holdings America Corporation's acquisition of Entegris, Inc.'s electronic chemicals business

On 22 September 2023, CCCS cleared the proposed acquisition by FUJIFILM Holdings America Corporation of the electronic chemicals business of Entegris, Inc..

*Merger
horizontal –*

CCCS considered the possible relevant markets on a global and Singapore basis to be the supply of cleans, supply of commodity cleans and supply of each global overlapping high-priority performance chemicals (HPPC) molecules. CCCS ultimately left the exact definition of the relevant market open as the proposed acquisition was unlikely to lead to competition concerns under any possible market definition.

2. City Energy's acquisition of Tan Soon Huah Gas Supply's liquified petroleum gas business

On 2 August 2023, CCCS cleared the proposed acquisition by City Energy Pte. Ltd. ("City Energy") of the liquified petroleum gas ("LPG") business of Tan Soon Huah Gas Supply Pte. Ltd. ("TSH"). CCCS determined that the relevant markets comprised three separate markets for the retail of LPG and town gas to residential, commercial and industrial customers in Singapore.

*Merger
horizontal –*

CCCS found that the proposed acquisition was unlikely to lead to a substantial lessening of competition in the relevant markets as City Energy and TSH were not each other's closest competitor, and there were other LPG competitors of similar or larger size than TSH that would constrain the merged entity.

3. CCCS raises competition concerns on the proposed acquisition by Grab Rentals Pte. Ltd. of Trans-cab Holdings Ltd.

On July 16, 2023, CCCS completed its initial review of Grab Holdings Limited's proposed acquisition of Trans-cab Holdings Ltd. through its subsidiary, Grab Rentals Pte. Ltd. Despite the regulatory framework prohibiting exclusive arrangements for ride-hail operators, concerns have been raised about Grab's ownership of the Trans-cab fleet and its potential impact on drivers' use of rival platforms, which could hinder competition and expansion in the ride-hail industry. Therefore, CCCS will conduct a more comprehensive Phase II review unless the parties provide commitments to address these concerns.

*Merger –
horizontal*

GrabRentals offers rental cars for ride-hail services, while Grab operates across various sectors, including ride-hail services, through its mobile app in Singapore. Trans-cab is a licensed street-hail service provider with its own fleet of private-hire cars for rent to drivers for ride-hail services. It offers phone taxi booking services to passengers but only for the taxi fleet operated by Trans-cab. Both companies have overlapping services in private-hire car rentals and ride-hailing platforms in Singapore.

4. High Court dismisses appeals by Nail Palace

On 28 July 2023, the High Court dismissed the appeals by Nail Palace (BPP) Pte Ltd ("**NP BPP**") and Nail Palace (SM) Pte Ltd ("**NP SM**") against the orders granted by a District Court, in relation to unfair practices by NP BPP and NP SM involving the supply of anti-fungal treatment packages to consumers.

*Consumer
protection –
unfair practices*

This stemmed from legal proceedings brought by CCCS against NP BPP and NP SM on 17 December 2021 in the State Courts, which sought declarations and injunctions against NP BPP and NP SM for having engaged in unfair practices under the Consumer Protection (Fair Trading) Act 2003. These included making false or misleading representations to consumers concerning the need for an anti-fungal treatment package, and misleading consumers into taking lipsticks and lip balms on the basis that they were provided free-of-charge as part of the anti-fungal treatment package, when consumers were in fact charged for them.

A District Court had granted the orders sought against NP BPP and NP SM on 8 August 2022 and 2 September 2022. In addition, the District Court made accompanying orders requiring NP BPP and NP SM to, amongst others, publish details of the declarations and injunctions ordered against them in the major newspapers in Singapore ("**Publication Orders**") and inform and obtain the written acknowledgement of prospective customers of the declarations and injunctions ordered against NP BPP and NP SM before contracting with them ("**Consumer Notification & Consent Orders**"). NP BPP and NP SM then appealed to the High Court on 14 September 2022 against the Publication Orders and Consumer Notification & Consent Orders.

NP BPP and NP SM are required to comply with the orders with immediate effect.

Malaysia

The Malaysia Competition Commission ("**MyCC**") has continued to ensure fair competition and protect consumer interests. In the food delivery platform market, MyCC investigated and dismissed an alleged abuse of dominance by Foodpanda, in relation to the imposition of an exclusivity clause in agreements between Foodpanda and its merchants. In the legal services market, MyCC raised its objections to the Malaysian Bar Council's decision to increase conveyancing fees. Malaysia's sectoral regulators such as the Malaysian Communications and Multimedia Commission ("**MCMC**") and the Malaysian Aviation Commission ("**MAVCOM**") remain active as well. MyCC has entered into a Memorandum of Understanding with MCMC to enhance collaboration, whilst MAVCOM objected to the proposed joint business between Malaysia Airlines and Cathay Pacific Airways.

1. MyCC finds that Foodpanda did not abuse dominance

On 13 September 2023, MyCC issued its decision dated 11 September 2023 relating to an abuse of dominance investigation into Delivery Hero (Malaysia) ("**Foodpanda**") and found that Foodpanda did not infringe Section 10 of the Competition Act 2010. The alleged conduct of concern was the imposition of an exclusivity clause in the agreements between Foodpanda and its merchants in an arrangement known as the "preferred partnership category". MyCC had concerns that the conduct could harm competition by disincitevising merchants from partnering with other food delivery platforms, thereby resulting in the distortion of the process of competition in Malaysia.

Abuse of dominance – food delivery platform

Based on the assessment of the evidence and the facts, MyCC found that there was insufficient evidence to support a finding that Foodpanda is a dominant player in the relevant market (intermediary online platform market that matches customers, merchants and delivery partners for the provisions of food ordering and delivery services in Malaysia). As such, MyCC held that there was no abuse of dominance by Foodpanda.

2. Malaysian Aviation Commission ends assessment of joint business application by Malaysia Airlines and Cathay Pacific Airways

On 15 September 2023, MAVCOM ended its assessment of the individual exemption application for the proposed joint business ("**JB**") between Malaysia Airlines and Cathay Pacific Airways. The parties had previously submitted an application to MAVCOM pursuant to Section 51 of the Malaysian Aviation Commission Act 2015 on 11 May 2022 and proposed a "metal neutral" JB in respect of all scheduled air passenger services between Malaysia and Hong Kong operated by Malaysia Airlines and Cathay Pacific Airways. This entails deep cooperation between airlines, including revenue and cost sharing, pricing coordination, network planning, schedule coordination, service and product coordination, and joint sales and marketing.

Merger – aviation industry, joint business

MAVCOM found that the JB would lead to significant reduction of competition in the Kuala Lumpur-Hong Kong market as parties will be jointly dominant in the market. As the parties are each other's closest competitors, the JB could potentially lead to negative effects to consumers in the form of increased prices or reduced service levels. The benefits of the JB thus did not outweigh the detrimental effects of the JB on competition. MAVCOM and the parties were not able to come to an agreement on undertakings that would adequately address the commission's concerns. As

such, the parties made a notification to MAVCOM of their decision not to proceed with the JB. MAVCOM thus ended its assessment of the application and closed the matter.

3. MyCC says move to increase conveyancing fees raise concerns

On 17 July 2023, MyCC expressed its concerns over the recent increase of conveyancing fees by the Solicitors' Costs Committee under the newly enacted Solicitors' Remuneration (Amendment) Order 2023. While MyCC acknowledged that the amendment order fell outside the ambit of the Competition Act 2010, it took the view that the imposition of fixed conveyancing fees by the Bar Council was contradicted the spirit of competition, especially given that litigation fees in Malaysia were not subject to fixed rates. MyCC urged the Bar Council to reconsider or delay the implementation and continue engaging in discussions with MyCC. MyCC also encouraged undertakings to strive for creativity and innovation in promoting market efficiency, rather than relying on fixed scale fees.

In response, the Bar Council defended the increase of scale fees chargeable for non-contentious matters under the Solicitors' Remuneration Order 2023 which took effect on 15 July 2023, and disagreed with the views set out MyCC. The Bar Council stated that it had to ensure the integrity of lawyers and protect the ecosystem for lawyers in non-contentious transactional matters, such that consumers would not be short-changed by the professional advice they receive. The Bar Council further stated that there was a public interest aspect to the scale fee structure, as it would protect against overcharging by lawyers, which is prohibited in Malaysia. The Bar Council reiterated that it would continue to provide quality legal advice to consumers, and push back against those who maximise profits at the expense of consumers and lawyers.

4. MyCC and MCMC strengthen collaboration with MOU signing

On 3 August 2023, MyCC and MCMC signed a Memorandum of Understanding ("MoU") to further strengthen the working relationship between both regulators. MyCC and MCMC have consistently worked together to safeguard competition in the market. For example, they jointly addressed exclusivity arrangements between telecommunications service providers and property developers or joint management bodies in high rise residential buildings, following complaints received from the public. They also collaborated to address competition issues related to e-commerce platforms and delivery partners.

Anti-competitive agreements – collaboration between agencies

The MoU establishes a framework for collaborative efforts between MyCC and MCMC, which include strengthening alliances, advocacy activities, capacity building and co-operating on joint investigations and enforcement actions, as well as providing mutual assistance in relation to their respective functions, benefitting both regulators. The signing of the MoU demonstrates the Malaysian government's commitment to enhancing the effectiveness of economic policies and protecting consumer interests through competition policies and enforcement.

Philippines

As food inflation remains a pressing issue in the Philippines, the Philippine Competition Commission ("**PCC**") has partnered with the Department of Agriculture to crack down on cartels in the agriculture and foodstuff industries. The PCC has also initiated investigations into the rice and sugar industries, which follows previous investigations commenced into the onion industry in November 2022. This indicates the PCC's sustained emphasis on addressing inflation and the increasing cost of living. On mergers, the PCC has commenced two Phase II reviews pertaining to the retail pharmaceutical market and the broadband services market.

1. Philippine agriculture ministry partners with PCC to pursue cartels

The Department of Agriculture ("**DA**") is collaborating with the PCC through a data sharing agreement to conduct a more thorough investigation into alleged cartels in the agriculture sectors. The DA and the PCC are actively cooperating with the Department of Justice and Anti-Money Laundering Council to access and audit bank accounts attached to agro-businesses and establish financial connections between suspected cartelists. In addition to the onion industry which the PCC has been investigating since November 2022, the PCC is now looking into the industries relating to other food stuff such as rice and sugar.

Cartels – agriculture and foodstuff industries

2. PCC commences Phase II review of drugstore acquisition

The PCC commenced a Phase II review of Robinsons Retail Holdings' ("**RRHI**") completed acquisition of Rose Pharmacy on 13 September 2023. South Star Drug, the acquiring entity, is a retail chain of drugstores operating nationwide, with the majority of its branches in the National Capital Region and Bicol. Its parent, RRHI, also operates TGP Pharma, a generics-focused, franchise-based pharmaceutical retailer with branches across the Philippines. Rose Pharmacy is a retail chain of drugstores, which was wholly owned by Mulgrave Corporation. It primarily operates in Visayas and Mindanao.

Merger – phase 2 review

The PCC had previously commenced a motu proprio review of the parties on 21 February 2023. After the assessment concluded, the PCC's Merger and Acquisitions Office recommended detailed and extensive assessment of whether the transaction has led to a substantial lessening of competition, particularly in the retail pharmaceutical market in at least 103 localities, especially for the geographic markets in Luzon where Rose Pharmacy has potentially exited as a result of the deal.

3. PCC commences Phase II review of proposed acquisition by PLDT of Sky Cable Corporation

The PCC commenced a Phase II review of the proposed acquisition by PLDT of Sky Cable Corporation ("**Sky Cable**") on 14 September 2023. On 16 March 2023, PLDT entered into an agreement with Sky Vision, ABS-CBN and Lopez to acquire a 100% stake in Sky Cable for PHP 6.75 billion (approx. USD 123 million). PLDT operates in the fixed line, wireless, and broadband markets. It offers a diverse range of telecommunications and digital services across its extensive fiber optic backbone, and wireless and fixed line networks. Sky Cable is the pay television ("**pay TV**") and broadband arm of ABS-CBN, under Lopez. It offers broadband services, as well as pay TV and cable services. It also offers enterprise cable broadband services.

*Merger – phase
2 review*

After the Phase I review, the Mergers and Acquisitions Office recommended to proceed to a Phase II review in order to conduct a more detailed and extensive assessment of whether the proposed acquisition will lead to a substantial lessening of competition, particularly in the markets for distribution of fixed broadband services and distribution of pay TV services nationwide.

Thailand

The Trade Competition Commission of Thailand ("**TCCT**") has continued to actively monitor Thailand's e-commerce sector. Following from Q2 2023, in which the TCCT issued a warning against price fixing to e-commerce platform operators, TCCT has recently stated that regulation of Thailand's e-commerce sector will remain a priority in 2024. Businesses involved in the e-commerce sector should ensure close compliance with TCCT's current guidance and anticipate new guidance on the e-commerce sector in early 2024. On merger control, TCCT continues to keep a close eye on potential monopolies and unfair trade practices. Yet, not all larger mergers necessarily restrict free and fair trade in Thailand – R&T Asia (Thailand) has most recently obtained a favourable court judgment affirming the lawfulness of the CP / Tesco merger.

1. TCCT unveils 2024 plan to regulate e-commerce, strengthen oversight and implement legal revisions

On 9 October 2023, TCCT unveiled its 2024 plan at the "TCCT: New Era of Free and Fair" conference focusing on regulating Thailand's rapidly growing e-commerce, e-service and e-logistics sectors, which are collectively valued at THB 100 billion (approx. USD 2.76 billion). TCCT aims to ensure equitable competition by supervising market structures and addressing unfair trade practices in this sector. To achieve this, TCCT is actively studying global models, notably in the EU, to formulate guidelines expected in early 2024. These guidelines will address issues such as competition restrictions and unfair trade practices in the digital market.

TCCT – e-commerce, mergers and acquisitions

Additionally, TCCT plans to strengthen supervision to prevent potential monopolies or unfair trade practices resulting from mergers and acquisitions, valued at THB 4.27 trillion (approx. USD 117.9 billion). To support SMEs amidst the competitive landscape, TCCT also intends to revise laws, increase efficiency, and adopt an ex-ante approach to prevent unfair trade practices. TCCT is

presently overhauling regulations and guidelines across multiple areas to align with the evolving landscape of business operations.

2. Successful litigation in favour of the CP / Tesco merger

Partner **Supawat Srirungruang** and Senior Associates **Benjarong Roongmaneekul** and **Itthiwut Saengratanadej** of R&T Asia (Thailand) acted as lead counsel for C.P. Retail Development Co., Ltd. and Lotus's Stores (Thailand) Company Limited (formerly known as Tesco Stores (Thailand) Company Limited) in Administrative Court proceedings relating to their US\$10.6 billion merger in Thailand.

**Merger –
successful
litigation**

38 plaintiffs had filed a lawsuit alleging that the Disputed Order of TCCT in approving the merger between the two retail giants was unlawful, issued in bad faith and failed to ensure free and fair trade among businesses.

On 24 May 2021, the Central Administrative Court dismissed the plaintiffs' request to stay the execution of the Disputed Order and permitted operations of the merged business to continue, stating that there were no reasonable grounds indicating that the Disputed Order was unlawful. The Court then rendered a judgement on 8 September 2023, affirming the lawfulness of the Disputed Order in all aspects, dismissing the case, and bringing the litigation process to a close.

Vietnam

The recently established Vietnam Competition Commission ("**VCC**") has made further advancements in finalising its competition law regime. With the issuance of a competition case complaint form, aggrieved organisations and individuals can now file complaints in relation to anti-competitive behaviour, unfair competition and non-compliance with merger regulations. This is expected to increase the degree of enforcement undertaken by the VCC as more errant conduct is brought to the VCC's attention. The VCC also intends to implement a detailed plan to promulgate the Law on Consumer Rights Protection at all levels throughout Vietnam, which would result in greater overall protection for consumers against unfair practices.

1. Issue of competition case complaint form

On 5 July 2023, the Chairman of the VCC issued Decision No. 60/QD-CT, which sets out the new competition case complaint forms. These application forms include:

- (a) Form M01 for complaints in relation to anti-competitive cases;
- (b) Form M02 for complaints in relation to unfair competition cases; and
- (c) Form M03 for complaints in relation to violation of regulations on economic concentrations.

**Legislation –
competition
case complaint
form**

Aggrieved organisations and individuals can now file complaints with the VCC, where their legitimate rights and interests have been violated due to anti-competitive or unfair practices.

2. Plan to implement the Law on Consumer Rights Protection

On 31 August 2023, Deputy Prime Minister Tran Hong Ha signed Decision No. 1012/QD-TTg, which sets out the plan to implement the Law on Consumer Rights Protection. The National Assembly had previously approved the latest draft of the Law on Consumer Rights Protection on 20 June 2023.

*Legislation –
consumer
protection*

The plan aims to implement the following key steps:

- (a) Developing and compiling documents, as well as organising conferences, to allow officials and civil servants to understand the Law on Consumer Rights Protection;
- (b) Disseminating content of the Law on Consumer Rights Protection through mass media;
- (c) Organising a review of legal documents, directives and guidance documents of ministries, branches and localities to ensure consistency at all levels with the Law on Consumer Rights Protection;
- (d) Developing and promulgating legal documents detailing the implementation on the Law on Consumer Rights Protection;
- (e) Developing and implementing national projects and programs on protecting consumer rights; and
- (f) Developing and promulgating regulations to coordinate the protection of consumer rights between state agencies in provinces.

The execution of the plan will be designated to central-level and provincial-level state authorities, including the Ministry of Industry and Trade, the provincial Department of Industry and Trade and the provincial and local-level People's Committee.

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