

RAJAH & TANN ASIA

LAWYERS WHO KNOW ASIA

REGIONAL COMPETITION REPORT 2023



RAJAH & TANN ASIA

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Overview

Dear Friends,

I recall stating that 2022 was an interesting year as the world emerged from the pandemic. We had hardly see hard core cartels being investigated, but we did see transactions happening. Lots of transactions. Hence, it was merger control reviews galore in 2022. 2023 was different. It had all the trappings of even more mergers and many an investigation. Yet, the year took an odd turn near the end.

Despite that, the year has shown that the Competition regulators in Southeast Asia are a force to be reckoned with, taking a front-seat in the region. Six of the 10 countries now have robust merger regimes with several of the regulators clearly matured enough to tackle difficult transaction reviews, take them into Phase 2 reviews and considering remedies to try and meet parties some way so as to be able to close the merger. Nine of the 10 countries have robust behavioural competition laws, and cartel and abuse investigations have increased in the various countries, where some regulators have not hesitated to penalise individuals directly.

An example of the former is the Trade Competition Commission of Thailand ("**TCCT**") which released a detailed 145-page summary decision explaining its decision to approve the Bangchak / Esso merger, which is the most lengthy and comprehensively reasoned merger decision to date.

An example of the latter is how the Indonesia Competition Commission ("**ICC**") dealt with cases of bid rigging of road tenders, and in one of them imposed a penalty on an individual for their involvement in the bid rigging. Another example of the latter, the Competition & Consumer Commission ("**CCCS**") in **Singapore** publishing news of dawn raids conducted in the building construction sector in November 2023, when it has traditionally always kept such confidential.

Another developing theme in the region is the focus on digital and e-commerce markets. Food delivery platforms have been investigated in multiple Southeast Asian countries, whilst large technology companies have faced scrutiny in at least two of the countries here, just to name a couple of areas. Importantly, regional regulators have been upskilling and preparing themselves for further cases in digital and e-commerce markets. We discuss this and more in this Report.

The RTA Competition & Antitrust Team continues to be at the forefront of competition law cases in the region being involved in practically all the major investigations and every major merger occurring directly or indirectly. Our Indonesia team acted in the blockbuster Gojek / GoTo merger while the Thailand team is currently involved in the precedent-setting True / DTAC merger. The Singapore team is involved in the tie up between SIA, Tata and Air India which consists of various moving parts. In Malaysia, we helped obtain sectoral clearance for Celcom / Digi merger and SIA Engineering / Pos Aviation.

The Team continues to be ranked as elite or in band 1 by various legal ranking journals including the reputed *Chambers*, *Global Competition Review* and *Who's Who Legal*. We have the largest number of partners ranked as leading band 1 lawyers in Southeast Asia, including from our Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam offices.

We do expect 2024 to be a year where competition issues will be ignored to businesses' peril. Take a step back, take stock as you move forward. We stand ready to assist as always. As 2024 gears up to celebrate the Lunar New Year, we wish you the Very Best for the Year.

The Rajah & Tann Competition & Antitrust and Trade Practice
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Our Achievements: Practice Accolades

Rajah & Tann Asia has been named as a leading Competition Practice across several different jurisdictions across South East Asia by all of the major legal ranking journals, including but not limited to:

Global Competition Review 100 (GCR100) 2024	Chambers Asia Pacific 2024	The Legal 500 Asia Pacific 2024
 <p>Elite Law Firms:</p> <p>Christopher & Lee Ong C&G Law Rajah & Tann Singapore R&T (Asia) Thailand</p>	 <p>Assegaf Hamzah & Partners: Band 1</p> <p>Rajah & Tann Singapore: Band 1</p> <p>Christopher & Lee Ong: Spotlight</p>	 <p>Assegaf Hamzah & Partners: Tier 1</p> <p>Christopher & Lee Ong: Tier 1</p> <p>Rajah & Tann Singapore: Tier 1</p> <p>C&G Law: Tier 1</p>
asialaw 2023-24	ALB Indonesia Law Awards 2023	In-house Community Firm of the Year 2022
 <p>Assegaf Hamzah & Partners: Outstanding</p> <p>Rajah & Tann Singapore: Outstanding</p> <p>Christopher & Lee Ong: Highly Recommended</p> <p>C&G Law: Highly Recommended</p>	 <p>Assegaf Hamzah & Partners: Winner (Antitrust and Competition Law Firm of the Year)</p>	 <p>Christopher & Lee Ong: Winner</p> <p>Rajah & Tann Singapore: Winner</p> <p>C&G Law: Winner</p>

Our Achievements: Individual Accolades

The members of our Rajah & Tann Asia Competition & Antitrust and Trade team have also been individually recognised in various legal ranking journals, including but not limited to:

Chambers Asia Pacific 2024 – Competition / Antitrust	The Legal 500 Asia Pacific 2024 - Antitrust and Competition	Who's Who Legal – Global Leaders: 2023
 <p><i>Indonesia:</i> Rikrik Rizkiyana (Band 1) Farid Nasution (Band 1) Asep Ridwan (Band 1) Albert Boy Situmorang (Up and Coming)</p> <p><i>Singapore:</i> Kala Anandarajah (Band 1)</p> <p><i>Malaysia:</i> Yon See Ting (Band 2) Jane Guan (Band 3)</p> <p><i>Philippines:</i> Norma Margarita B Patacsil (Band 2 for Corporate/M&A including Competition)</p>	 <p><i>Indonesia:</i> Rikrik Rizkiyana (Leading Lawyer) Farid Nasution (Leading Lawyer) Asep Ridwan (Leading Lawyer) Vovo Iswanto (Key Lawyer)</p> <p><i>Malaysia:</i> Yon See Ting (Leading Lawyer) Jane Guan (Next Generation Lawyer)</p> <p><i>Philippines:</i> Andrea Katipunan (Key Lawyer)</p> <p><i>Singapore:</i> Kala Anandarajah (Leading Lawyer) Alvin Tan (Key Lawyer) Joshua Seet (Key Lawyer) Tanya Tang (Key Lawyer)</p>	 <p>Competition <i>Indonesia:</i> Rikrik Rizkiyana <i>Malaysia:</i> Yon See Ting <i>Philippines:</i> Norma Margarita B Patacsil <i>Singapore:</i> Kala Anandarajah <i>Thailand:</i> Melisa Uremovic</p> <p>Experts – Economics – Competition Economists <i>Singapore:</i> Tanya Tang</p>
Best Lawyers in Singapore 2024 Awards - Competition/ Antitrust	Who's Who Legal - Thought Leaders: 2024 - Competition	asialaw Profiles 2023-24 - Competition / Antitrust
 <p><i>Singapore:</i> Kala Anandarajah</p>	 <p><i>Singapore:</i> Kala Anandarajah (Competition)</p> <p>Tanya Tang (Competition – Economists)</p>	 <p><i>Singapore:</i> Kala Anandarajah (Elite Practitioner) Joshua Seet (Notable Practitioner)</p> <p><i>Indonesia:</i> Rikrik Rizkiyana (Notable Practitioner)</p> <p><i>Malaysia:</i> Yon See Ting (Distinguished Practitioner)</p>

Our Achievements: What Clients Talk About Us

“

Rajah & Tann constantly advises on complicated multi-jurisdictional filings and is able to provide effective and pragmatic advice to clients, tailored to the local regulatory regime.”

Chambers Asia-Pacific 2024

“

Assegaf Hamzah & Partners are well respected by the regulator and know the law very well. They are very responsive and collegial - an excellent firm overall.”

Chambers Asia-Pacific 2024

“

The competition practice of this firm is very strong. They work with various MNCs and are handling some of the most complex investigations as well mergers ongoing in the **Philippines**.”

The Legal 500 Asia Pacific 2024

“

The antitrust and competition practice of **Rajah & Tann Singapore LLP** attracted clients in their strategic way of practice against CCCS. Also, they can cover almost all Asian countries by connecting themselves with other offices of Rajah & Tann.”

The Legal 500 Asia Pacific 2024

“

Christopher & Lee Ong ably assists clients with competition regulatory investigations, as well as often advising on company collaborations in the Malaysian legal market. Also has experience advising on merger control in the aviation and telecoms sectors. Represents Malaysian and international conglomerates across sectors that include insurance, food and beverages, financial services and manufacturing.”

The Legal 500 Asia Pacific 2022

ANTI-COMPETITIVE CONDUCT



*Anti-competitive agreements were a dominant theme for the various regulators in Southeast Asia. The nature of the reviews has been primarily domestic, and yet not all were small investigations. For example, in **Malaysia**, the Malaysia Competition Commission ("**MyCC**") meted out a record MYR 415m (approx. USD 90m) fine in a price-fixing cartel amongst poultry feed millers. Additionally, in a show of seriousness in enforcement, in **Indonesia**, the Indonesia Competition Commission ("**KPPU**") fined an individual for involvement in bid rigging. As a reflection of the focus on investigations, the Competition & Consumer Commission ("**CCCS**") in **Singapore** published news of dawn raids conducted in the building construction sector in November 2023. The trends here are not unique to Southeast Asia and do mirror international approaches as well. It goes without saying that businesses do*

need to ensure they are on top of how they go to market.

CARTEL ENFORCEMENT IN SOUTH-EAST ASIA INCREASES WITH BOLDER POSITIONS TAKEN BY REGULATORS

Anti-competitive agreements were a dominant theme for regulators globally. In the European Union, regulators commenced more than 60 dawn raids in 2023. The South-east Asian region was no exception, as competition authorities here increasingly crack down on cartelistic behaviour. Going into the new year, we expect competition authorities to intensify their cartel enforcement efforts identifying the existence of anti-competitive agreements through market intelligence or leniency applications.

In **Indonesia**, the Indonesia Competition Commission ("**KPPU**") investigated various allegations of bid rigging in relation to road improvement works in both the Bogor district and Aceh province. On 8 December 2023, the KPPU found that Lai Bui Min (an entrepreneur), PT Lambok Ulina, and PT Tureloto Battu Indah had conspired to procure road improvement work packages in the Bogor district by adjusting offer documents, which violated Article 22 of the Indonesian Competition Law.

Ultimately, the KPPU fined Lai Bui Min IDR 1,500,000,000 (approx. USD 96,584) for his role as the initiator, intermediary, and access provider for the collusion between PT Lampok Ulina and PT Tureloto Battu Indah. ***This is a rare instance of the KPPU imposing administrative fines on an individual.*** Separately, PT Lambok Ulina and PT Tureloto Battu Indah were also prohibited from participating in tenders for goods and/or services held by the Indonesian State Revenue and Expenditure Budget and Regional Revenue and Expenditure Budget for one year in all regions of Indonesia. Prohibition orders such as this are more painful than paying a fine as it thwarts business growth.

Similarly, on 5 December 2023, the KPPU found that PT Wanita Mandiri Perkasa, PT Tamiang Karya, PT Andestmont Sakti and PT Galih Medan Persada had conspired to procure a road improvement work package in the Aceh province by coordinating offer documents, which violated Article 22 of the Indonesian Competition Law. The KPPU therefore imposed a total fine of IDR 5,400,000,000 (approx. USD 347,551) on the parties involved.

Separately, the KPPU also issued a determination to terminate a case in relation to PT Kobe Boga Utama's distribution agreements with its distributors. PT Kobe Boga Utama was initially alleged to have violated Articles 8, 15(1), 15(3) and 19(c) of the Indonesian Competition Law, in relation to agreements on resale price maintenance, exclusive agreements, restrictive trade terms and restricting the circulation of goods and/or services. However, PT Kobe Boga Utama signed a Change of Behaviour Integrity Pact on 10 October 2023 during the Examination Stage and implemented various behavioural changes, including the cancellation of distribution agreements and/or Memorandum of Understandings with distributors that violated the Indonesian Competition Law. ***Notably, the Change of Behaviour procedure is relatively new, and only came into force on 31 March 2023. Reported parties are now effectively able to end investigations early by proposing a change of behaviour at the investigation stage without admitting guilt.*** For further information, please refer to our Q1 2023 Regional Competition Bites [here](#).

Finally, the KPPU continues to be active in monitoring commodity prices, especially during festive and year-end periods. The KPPU issued a press release on 22 December 2023, stating that there was no need for intervention despite price fluctuations during this period, which were caused by factors such as the El Niño climate pattern that led to crop failure. The KPPU's monitoring of strategic commodity prices forms part of its supervisory role to ensure that businesses do not use annual celebrations, particularly during the relevant period, to carry out cartels or monopolistic practices.

In **Singapore**, the Competition and Consumer Commission of Singapore ("**CCCS**") conducted unannounced inspections or simply dawn raids in November 2023 at the premises of various businesses active in the market for the provision of building construction services in Singapore. ***What is unusual about these unannounced inspections is that CCCS made it public through a press release. CCCS does not typically publish news of its unannounced inspections.*** We postulate that this was their way to remind all that they take cartelistic behaviours strictly and a clear signal that CCCS intends to ramp up its enforcement efforts in 2024.

In relation to bid rigging, the Competition Appeal Board ("**CAB**") issued its decision on 3 October 2023, dismissing the appeal by CU Water Services Pte. Ltd against the maximum financial penalty of SGD 308,680 (approx. USD 232,225) imposed by CCCS in 2020. CU Water had previously engaged in the bid-rigging of tenders for the provision of maintenance services for swimming pools and other water features. CAB held that the maximum financial penalty imposed by CCCS was just and proportionate, given that CU Water had committed 521 instances of bid-rigging over 10 years.

We note that often parties subjected to fines seek to appeal the matter, and typically on the penalties that have been imposed. It is important to note that the principles on how penalties are applied are fairly robust in Singapore. That is not to say that there is no discretion. In appealing, it is critical to show that the percentages applied or discretion exercised as the formula was applied was inappropriate. To this end, a point that comes from this case is that CAB held that CU Water had failed to demonstrate that the legal principle used by CCCS when calculating the penalty were flawed. Neither did CU Water establish that CCCS had made errors

which would have materially changed the outcome on penalty determination.

In **Malaysia**, the Malaysia Competition Commission ("MyCC") issued a record MYR 415,000,000 (approx. USD 89,372,284) fine on 11 December 2023 against five poultry feed millers for the formation of a price fixing cartel. The poultry feed millers had entered into agreements and/or concerted practices over two-and-a-half years with the purpose of fixing the increase in quantum of poultry feed prices, which infringed Section 4 of the Competition Act. In addition, the parties were directed to cease participation in the poultry feed cartel, to report to MyCC monthly on the increase and decrease of poultry feed prices, and to implement or enhance their competition compliance programs. This followed the discontinuance of subsidies and price ceilings, which were initially introduced to curtail soaring poultry prices. MyCC had earlier reaffirmed its commitment to continue active monitoring of chicken industry activities for signs of anti-competitive behaviour, which included close collaboration between the MyCC, the Ministry of Domestic Trade and Cost of Living and the Ministry of Agriculture and Food Security. ***Our Malaysian team is involved in this matter.***

On bid rigging, MyCC issued a Proposed Decision on 19 December 2023 against seven companies for alleged bid rigging conduct in tenders floated by the Ministry of Defence. The companies had allegedly colluded in bid submissions, exchanged information, and facilitated subcontracting as a form of kickback.

On the procedural front, the MyCC's appeal against the Federal Court of Malaysia's decision in the long running MAS-AirAsia case was denied. The Federal Court of Malaysia had ruled on 9 February 2022 that MyCC was restricted from applying for judicial review against a decision adverse to it by the Malaysian Competition Appeal Tribunal ("CAT") in MAS-AirAsia. MyCC subsequently appealed to the Federal Court of Malaysia again, seeking a review of the Court's previous decision. The Federal Court of Malaysia denied leave to MyCC on the basis that there was no merit in MyCC's application and therefore failed to meet the threshold required for the application to be allowed. MyCC was ordered to pay MYR 50,000 (approx. USD. 10,768) in costs each to MAS and AirAsia.

REGULATORY AND REGULATOR CHANGES WILL LEAD TO GREATER ENFORCEMENT

Vietnam too will finally see increased cartel investigations. New regulations (Circular 40/2023/TT-BCT) on the organisation and operation of the Vietnam Competition Commission ("VCC") in anti-competitive cases will come into effect from 15 February 2024. The regulations will govern case handling, complaint resolution, administrative proceedings participation and other related activities. The changes are significant as the VCC, now as the sole competition regulator, can now more effectively and speedily manage investigations. Indeed, procedurally, aggressive processes and timelines have been introduced. For example, the Chairman of the VCC must issue a decision to establish a council to handle anti-competitive cases within 15 days of receiving the investigation report, investigation conclusions and anti-competitive case files. Within 60 days from the date of receipt of the investigation report, the Council for handling the anti-competitive decision must make a decision on whether to suspend the resolution of case or make a decision on the case. Following the introduction of these new regulations, the VCC is likely to be more active in its investigations and enforcement actions

In **Indonesia**, the President of the Republic of Indonesia officially inaugurated nine new KPPU commissioners on 18 January 2024 after their approval by the House of Representatives. Change always means increased vigour, which we will definitely see. Indeed, various matters under investigations currently are seeing escalations in reviews. Separately, following the inauguration, the KPPU announced its focus on the food and digital markets, as well as the gas, electricity, mining, and construction sectors, over the next 100 business days. These sectors have the lowest National Business Competition Index score or are below the five-year average.

RELOOKING MAXIMUM RESALE PRICES IN THAILAND

In **Thailand**, pricing arrangements are generally prohibited under the Thailand Competition Act ("TCA"), save for recommended prices. In mid-October 2023, the Trade Competition Commission of Thailand's ("TCCT") addressed the legality of maximum resale prices in a

decision involving a price ceiling arrangement between an airport operator and business operators. In this case, the parties were granted concessions to sell food within the airport. The contract between the parties disallowed business operators from selling food exceeding 20% of the price set by a leading mall or hotel in the same province, so as to establish a price ceiling to prevent business operators from setting food prices too high for consumers. However, business operators retained the autonomy to set their own prices, provided that the prices were below the price ceiling specified in the contract.

The TCCT held that the arrangement did not eliminate competition or amount to price-fixing practices prohibited under Section 55(1) of the TCA concerning non-hardcore cartelistic practices. Significantly, this decision clarifies that maximum resale prices are permissible under the TCA, though pricing arrangements must still be assessed on a case-by-case basis.

ABUSE OF DOMINANCE



Abuse of dominance investigations remain important even as the number of investigations seem fewer. This could be because of increased engagement with potentially dominant players and seeking to have them change their behaviours rather than to investigate and penalise them. Yet, regulators in each of the Southeast Asian countries continue to be alert as regards how dominant players behave. Traditional concerns over exclusivities, growth rebates, foreclosure and tying remain of grave concerns, and are seen playing out time and again. Over 2023, we did see these issues reviewed and needed to be dealt with. On the flip, as part of compliance, larger companies tend to review and ensure compliance to avoid the investigation as well. The question is are all businesses readily aware and alert.

DOMINANT COMPANIES REMINDED TO REMAIN VIGILANT

In **Malaysia**, on 18 December 2023, the Competition Appeal Tribunal ("**CAT**") dismissed Dagang Net Technologies Sdn Bhd's ("**Dagang Net**") appeal against MyCC's Final Decision against Dagang Net for abuse of dominance ("**Dagang Net Decision**"). MyCC had fined Dagang Net MYR 10,300,000 (approx. USD 2,218,155) for infringing Section 10(1) of the Competition Act by engaging in exclusive dealing agreements with software providers of the National Single Window, a customs electronic ecosystem.

On appeal, **the CAT held that the imposition of exclusivity clauses was a deliberate and planned act to contractually tie up all software service providers with Dagang Net**, especially after the government's appointment of a potential competitor, Edaran Trade, as another service provider of the new uCustoms system. There was no reasonable commercial justification for imposing the exclusivity clauses. The CAT further dismissed Dagang Net's appeal on the penalty.

MERGER CONTROL



Whilst M&A transactions are seemingly down from its heights in 2021 and 2022, there continue to be deals being reviewed and entered into. It follows that merger control remains an important area of review for competition regulators. The key thing about Southeast Asia is that merger control is now in six of the 10 countries, with a seventh likely to follow within a matter of months. Each of these regulators with merger control have slightly different approaches as to how they approach and handle transactions; yet all are aggressive and seek to review transactions. They are active, and do not hesitate to formally or informally reach out with queries. Cambodia, which saw its merger regime kick into force in September 2023, is one such jurisdiction where the Cambodian Competition Commission ("CCC"), is reviewing several transactions and has also

reached out where notifications have not been made. The RTA team has been directly or indirectly involved in a significant number of these mergers across the region. Another trend is the desire to have remedies included, and with that monitoring trustees appointed. This is an added costs that merging parties will need to be alert to. All said, business involved in transactions will need to review their mergers carefully and assess whether there is a need to notify in the various Southeast Asian jurisdictions as a failure to notify can have severe implications. It is no longer a geography to be ignored.

MATURING MERGER CONTROL REGIMES IN SOUTH-EAST ASIA

A number of the Southeast Asian countries, including Indonesia, Singapore, Philippines and Vietnam have merger control regimes which may fairly be said to be

maturing. They are regulators who have been reviewing mergers for some years now. Whilst officers may have changed from time to time, that change is only a reflection of how aggressive or otherwise the regulators would be. It has not impacted on the fact that the regulators do expect notifications to be made where thresholds are crossed.

We would say that gone are the days when we can simply say ignore a country as it is highly unlikely that they will get wind of your transaction and call it in. Note the regulators do travel as well and participate in international conventions. They do want to ensure that they have a seat at the table, which means the need to be seen to be enforcing.

Of course, this means that they have to ensure that they have their process honed to a "T". Here there remains room for improvement. All said, our observations are that each of the competition regulators in Southeast Asia do take merger control very seriously and do wish to have a bite at the cherry.

UNDOUBTED ENFORCEMENT ACTION WHERE NO NOTIFICATIONS MADE

In **Indonesia**, on 4 December 2023, the KPPU imposed an administrative fine of IDR 1,000,000,000 (approx. USD 64,357) fine on Nippo Corporation for its late notification in acquiring 51% of PT Kadi Indonesia Manufaktur's shares. The KPPU held that the transaction fulfilled the criteria for a post-closing mandatory notification, as Nippo Corporation became the majority shareholder in PT Kadi Indonesia Manufaktur (i.e. change in control). The transaction had also exceeded the IDR 2,500,000,000,000 combined asset value threshold requiring mandatory notification. However, Nippo Corporation's notification was filed 35 business days late.

EASY MERGERS CLEARED

In **Thailand**, from October to December 2023, TCCT published 13 decisions on its website relating to merger notifications cleared under Section 51 of the TCA. The mergers relate to the following industries:

- petroleum industry;

- banking and financial services industry;
- private hospital industry;
- folded cardboard and corrugated box industry;
- pharmaceuticals and medical products industry;
- hard disk motor and pivot parts industry; and
- insurance industry.

The TCCT has also taken steps to establish itself as a prominent competition regulator in the ASEAN region. Following the approval and implementation of the merger between Bangchak Corporation Public Company Limited ("**Bangchak**") and Esso (Thailand) Public Company Limited ("**Esso**") in mid-July 2023, the TCCT took a significant step towards transparency by publishing a detailed 145-page summary on its website, which outlines the TCCT's reasoning and considerations for approving the merger. Notably, previous summaries published by TCCT were considerably shorter. For comparison, the CP / Tesco merger summary had 25 pages. The length of the TCCT's summary for the Bangchak / Esso merger aligns with the longer and more detailed decisions published by the European Commission, and underscores the TCCT's commitment to transparency and international standards. As the TCCT rapidly establishes itself as a prominent competition regulator in the ASEAN region, there is anticipation for more comprehensive decision summaries. This will be a valuable resource for business operators involved in or contemplating mergers and acquisitions, as well as practitioners in the field.

Additionally, the TCCT continues to place emphasis on merger control. On 10 October 2023, the TCCT pledged to tighten its regulation and oversight of merger and acquisition activities as businesses continue to expand, which can potentially lead to monopolistic and unfair practices. The total value of merger and acquisition deals from 2019 to 2023 reached THB 4.27 trillion baht (approx. USD 119.3 billion) and is expected to continue increasing. Concurrently, the TCCT highlighted its intent to enhance trade laws and practices and develop proactive competition oversight by defining prohibited behaviour and sharing information about competition law to promote a competitive business environment. This proactive approach aims to cultivate a competitive market environment, empowering Small and Medium-

sized Enterprises ("**SMEs**") to compete more effectively. This strategic move addresses historical challenges where SMEs have been disadvantaged or encountered barriers posed by larger enterprises.

In **Singapore**, on 5 December 2023, CCCS cleared the proposed acquisition by iNova Pharmaceuticals (Singapore) Pte. Limited ("**iNova**") of Mundipharma's consumer healthcare business in various countries, including Singapore. CCCS determined that the relevant market was the market for the supply of throat preparation products to customers in Singapore. CCCS found that the proposed acquisition was unlikely to lead to a substantial lessening of competition in the relevant markets as there were multiple suppliers of throat preparation products that compete closely with the merged entity. Customers were also able to switch easily between suppliers and had some degree of countervailing buyer power.

DIGITAL AND E-COMMERCE



Digital markets remain an area of keen interest in Southeast Asia as it does across the world. As many grapple with the likes of the Digital Markets Act and dealing with gatekeeper issues, Regulators in the region have also continued the trend of focusing on digital markets. Following Singapore’s 2022 amendments to its guidelines to take into account digital markets issues and the Philippines’ recent rollout of guidelines for mergers in digital markets, Indonesia and Thailand are now considering adopting laws and guidelines for this sector. This follows robust enforcement in the digital space, including ongoing investigations in Indonesia

as well as prior action against Grab in multiple Southeast Asian countries.

DEVELOPMENTS IN DIGITAL MARKETS

Developments in the digital and e-commerce space in other major jurisdictions such as the US and EU have clearly had an impact on regional competition laws. Yet, the Regulators have not simply adopted approaches taken elsewhere. Instead, these are carefully reviewed and adapted as appropriate for the individual countries in Southeast Asia. This does mean that careful reviews are always necessary for businesses involved in this space. In **Indonesia**, the ICC reportedly intended to launch a preliminary probe into the logistics sector following allegations of anti-competitive conduct by large, foreign-owned players, including e-commerce platforms and their logistics partners.

Foreign-owned companies are increasingly dominating Indonesia's logistics sector, with market data indicating that a few large foreign-owned companies account for roughly 70% of the sector.

The KPPU Chairman and the Minister of Cooperatives and SMEs discussed on 6 October 2023 the importance of a digital markets law to level the playing field for Indonesian SMEs. Without adequate regulations, the anti-competitive behaviour of industry players would lead to a concentrated, inefficient market. This would hinder access to equal business opportunities for business actors in the digital market.

The need for regulation of big data and digital markets, as well as the flow of goods, was considered. The Minister of Cooperatives and SMEs invited the KPPU Chairman to collaborate in reviewing such policies.

In the **Philippines**, on 24 October 2023, the PCC published the Guidelines for the *Motu Proprio* Review of Mergers and Acquisitions in Digital Markets to guide companies on potential competition issues and provide greater transparency on how the PCC reviews transactions in digital markets.

For details, please refer to our Q2 2023 Comp Bites [here](#).

In **Thailand**, on October 9, 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.

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.

MONITORING ACTIONS WITH A POSSIBLE VIEW TO ENFORCEMENT

2023 as a whole has seen a number of inquiries into the digital world. One such inquiry involved MyCC reviewing the food delivery industry in Malaysia. The KPPU separately has been particularly active in reviewing potential platforms as well as MNCs operating in the digital space.

COMPETITION LAW INTER-PLAYS WITH OTHER AREAS OF LAWS, REGS AND REGULATORS



With evolving businesses practices and creation of new areas of the laws, we see increased cooperation between competition regulators and other agencies. Additionally, given how competition law is reviewed generically but also by certain sector focussed regulators, cooperation between the generic competition regulator and the sectoral regulator is important. Hence, the fact that this is publicly being done is welcomed.

Separately, as competition law become pervasive in all business activities, it is clear that it cannot be reviewed in isolation, but must be undertaken holistically. One important area in this regard is managing consumer protection, even if not all competition regulators are responsible for consumer protection regulations. The two are so intertwined with consumer welfare playing

a big role in competition reviews, be it in investigations or in mergers.

INTER-SECTORAL CO-OPERATION BE IT WITH REGULATORS OR WITH BUSINESS COMMUNITIES

In **Indonesia**, on 10 November 2023, the KPPU signed a Memorandum of Understanding ("**MOU**") with the Indonesian Chamber of Commerce and Industry ("**Kadin Indonesia**"), thus renewing their previous cooperation in 2015. The cooperation encourages collaboration between the KPPU and Kadin Indonesia in policy advocacy, increasing business actors' compliance with business competition law, promoting fair business competition and providing education and training in business competition and partnership supervision. It also allows the KPPU to better anticipate instances of unfair business competition.

Separately, the KPPU received a report alleging that PT Perdana Intisawit Perkasa ("**PT PISP**") controlled the business activities of plasma farmers, who were members of the Sawit Bunga Idaman Cooperative ("**Kospa Bunda**"), in violation of Article 35 Paragraph 1 of Law No. 20 of 2008. The KPPU issued various correction orders to PT PISP, including the provision of technical guidance and training to Kospa Bunda, inspections of plasma plantations and reporting requirements.

The improvements benefited around 830 plasma farmers who gained increased skills and knowledge, as well as greater information transparency regarding management of the plasma oil palm plantation. Following PT PISP's implementation of the KPPU's correction orders, the KPPU discontinued its case on 11 October 2023.

In the **Philippines**, the PCC met with the National Economic Development Authority ("**NEDA**") in October 2023 to discuss the implementation of the National Competition Policy in the telecommunications sector. The project aims to enhance the capabilities of the Department of Information and Communications Technology ("**DICT**") and the National Telecommunications Commission ("**NTC**") in conducting

Competition Impact Assessments ("**CIAs**") for sector-specific policies and regulations. CIAs are crucial for assessing the potential competitive impact of policies and facilitating the identification of regulations that impede competition. In addition, the project also establishes a mechanism for the DICT and NTC to consult with NEDA and the PCC in drafting and reviewing competition-related policies and regulations.

In **Myanmar**, the MCC held its third meeting of the year in September 2023 to review and propose amendments to existing competition law. On 28 December 2023, MCC considered at its fourth meeting of the year further plans for the effective implementation of the Myanmar Competition Law, as well as complaint handling procedures. The MCC also discussed its cooperation with the Russian Competition Authority.

Meanwhile, under the guidance of the Ministry of Commerce, the Department of Trade has been implementing Human Resource Development Plan in relation to the Myanmar Competition Law. Thus, on 23-24 October 2023, MCC conducted a class designed for young officers and those of other ranks, to expand the public's knowledge of competition law.

INTERPLAY BETWEEN COMPETITION AND CONSUMER PROTECTION AND THE RISE OF SUSTAINABILITY CONCERNS

In **Singapore**, on 17 November 2023, CCCS issued its findings for a market study into the funeral services industry. The market study assessed the competition landscape of the funeral services industry, the ability of consumers to make informed decisions in their purchase of funeral products and **whether there were competition and consumer protection issues present**. CCCS found that there were ample choices of funeral service providers ("**FSPs**") for consumers, and that there was no evidence of anti-competitive conduct in the industry. However, CCCS noted that consumers did not have a good gauge of how much funeral products cost. To help consumers make informed decisions on funeral products, CCCS has developed an "A.S.K. a FSP checklist" to guide consumers in asking the necessary questions when consulting with an FSP.

On 16 November 2023, CCCS issued its findings following a study on greenwashing on e-commerce websites in Singapore. CCCS also announced that it is currently developing a set of guidelines to provide greater clarity to suppliers on environmental claims that could amount to unfair practices under the Consumer Protection (Fair Trading) Act ("**CPFTA**"). In relation to vague environmental claims, CCCS found that claims such as "environmentally friendly" and "sustainable" were vague and prone to exaggeration, as compared to the actual environmental benefits of the products. CCCS has advised suppliers to be specific in their environmental claims, by presenting supporting information clearly and ensuring that the claims can be substantiated with credible evidence. In relation to confusing technical jargon, CCCS found that the use of such words could confuse or mislead consumers on the environmental benefit of the products involved. CCCS has advised suppliers to use language that is easier for consumers to understand and to explain the meaning of technical terms used.

Separately, on 15 December 2023, the Advertising Standards Authority of Singapore deemed some of the claims made in an air conditioner advertisement by electronics retailer PRISM+ to constitute greenwashing. PRISM+ had represented its air conditioner as being able to "save the Earth", without providing any further information to substantiate these claims.

UNFAIR PRACTICES WHICH RESULT IN CONSUMER PROTECTION VIOLATIONS

On 23 November 2023, Natural Salon ("**NS**") provided an undertaking to CCCS that it would, amongst others, stop engaging in unfair practices under the CPFTA, ensure that all relevant information for consumers is listed clearly on advertising materials and implement an internal compliance policy for compliance with the CPFTA.

The undertaking follows an investigation by CCCS into various unfair practices by NS, including demanding payment for the supply of unsolicited packages and services, falsely representing the price of a haircut as being a "new opening special" when NS had already been open for eight months and charging substantially higher prices than the estimates provided to consumers.

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