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REGIONAL COMPETITION BITES Q2 2023



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Cambodia	4
1. Introduction of pecuniary fines for offences under the Law on Competition	4
2. Pre-merger notification and registration procedures introduced	4
3. Post-merger notification procedures introduced	5
4. Advance Ruling Certificate Procedures Introduced	5
5. CCC's Delegation of Powers	5
Indonesia	6
1. Shopee found to comply with ICC's orders to improve driver-partner partnerships	6
2. ICC introduces Checklist of Competition Policies to Assist Government Departments	7
3. ICC Introduces New Guidelines on Bid-Rigging, Relevant Market Definition and Assessment of Negative Impact	7
4. Indonesia joins OECD Competition Committee	8
Singapore	8
1. Oki Electric acquisition of Yokogawa Electric's aviation equipment business	8
2. CCCS to launch public consultation on proposed sustainability collaboration guidance	9
Malaysia	9
1. Competition issues in the sugar industry	9
2. End of monopoly for 5G services	9
Philippines	10
1. PCC Issues Non-Horizontal Merger Review Guidelines	10
2. Draft Guidelines for the Motu Proprio Review of Mergers in Digital Markets	10
3. PCC imposes fine on Grab Philippines for failing to fully refund passengers	11
4. PCC does not plan to cap number of motorcycle taxis once regulation legalising motorcycles-for-hire is approved	11
5. PCC and Intellectual Property Office finalise MoU on overlapping mandates	11
Thailand	12
1. Issuance of warning against price-fixing on online shopping platforms	12
2. Fines imposed for late filing of merger notifications	12
3. Amendment to Trade Competition Act 2017 under discussion	13
4. Alleged unfair practices by franchisor of meat ball businesses	13
Vietnam	13
1. Establishment of the Vietnam Competition Commission and issue of economic concentration notification form	14
2. VCCA Annual Report on Merger Control 2022	14
3. Expanded consumer protection rights	14
4. Anti-Counterfeiting and Consumer Protection in E-commerce by 2025 Plan	15

Overview

Dear Friends,

We are pleased to present our 2nd Regional Competition Bites for 2023. We trust you found the 1st of interest and illuminating.

There have been various legislative and regulatory developments across Southeast Asia, with regulators introducing new legislation, regulations, and other relevant guidelines relating to competition law. As the key firm with offices in each of the countries in Southeast Asia, we share these Bites with our local insights as well.

Notably, there have been significant developments on the merger control front. In Cambodia, the Ministry of Commerce ("**MOC**") has enacted Prakas which mandates post-merger notification, while the Cambodia Competition Commission ("**CCC**") provides procedures for the issuance of advance ruling certificates, and delegates the power of the CCC to the Consumer Protection Competition and Fraud Repression Directorate-General ("**CCF**") for various activities (e.g., receiving an application for a business combination, receiving post-merger notifications, etc.). These are significant changes, with the likelihood of mergers which have an impact in Cambodia having to be notified as soon as September 2023. Still on mergers, the Philippines Competition Commission ("**PCC**") fined Grab for failing to fully refund its passengers and directed it to establish an alternative refund mechanism in breach of commitments provided in relation to its earlier merger with Uber – clearly the regulators do monitor whether commitments provided are being complied with. The Philippines has also issued non-horizontal merger review guidelines, with draft guidelines in progress for the *motu proprio* review of mergers in digital markets. For anyone who believes that merger control in the region is not to be taken seriously, it is to be noted that in Thailand, the Trade Competition Commission of Thailand ("**TCCT**") issued fines against real estate developers for the late filing of merger notifications. Certain notifiable mergers have to be lodged no later than seven days following closing.

Mergers aside, in Cambodia has now introduced fines for competition law violation. This will necessitate ensuring compliance with how businesses conduct their business. Separately, in Indonesia, the Indonesia Competition Commission ("**ICC**") introduced a series of new guidelines on bid-rigging, relevant market definition, and assessment of negative impact, as well as a Checklist of Competition policies for the government to ensure that its policies align with fair business competition principles. Vietnam is reviewing its draft Consumer Protection Law and has approved a plan that aims to strengthen anti-counterfeiting measures and protect consumers in online transactions.

Regulators have also been active in monitoring the market and issuing fines and warnings against various parties. Malaysia has been monitoring competition issues in the sugar industry, such as hoarding, conditional sales, and refusal to supply, while the Philippines has announced that they do not plan to cap the number of motorcycle taxi operators in operation. In Thailand, the TCCT has also issued a warning letter to online shopping platform operators (e.g., Lazada and Shopee) to caution them about the risk of engaging in price fixing. On a related note, in Indonesia, Shopee was found to be compliant with the ICC's orders after revising their partnership agreements upon being investigated by the ICC.

In Singapore, sustainability remains a focus, and the regulator has just launched a public consultation on proposed guidance for evaluating environmental sustainability collaborations among competitors soon. This will be important going forward as the world works towards achieving its net-zero targets.

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

The Government of Cambodia has issued various new Prakas relating to competition law, which sets out applicable penalties for violating the Law on Competition and also introduces a post-merger notification regime. This follows Cambodia's recent establishment of its merger control framework, which will come into effect in Cambodia in September 2023.

1. Introduction of pecuniary fines for offences under the Law on Competition

On 28 March 2023, in line with the Law on Competition, the Ministry of Commerce ("**MOC**") and the Ministry of Economy and Finance issued the Inter-Ministerial Prakas No. 168 on Fine for Persons Violating the Law on Competition ("**Prakas No. 068**").

*Regulations -
penalties*

Prakas No. 068 focuses on fines for three types of offence under Articles 8, 9 and 11 the Law on Competition respectively:

- (a) Entering into vertical agreements;
- (b) Abusing a dominant market position; and
- (c) Undertaking business combinations that actually or potentially restrict or distort market competition.

Infringers that commit any of these offences may face fines ranging from 3% to 10% of their total turnover during the period of violation, limited to three years.

2. Pre-merger notification and registration procedures introduced

On 14 June 2023, the MOC issued Prakas No. 177 on the Requirements and Procedures for the Registration of Business Combinations subjecting to Pre-merger Notification ("**Prakas No. 177**"), which sets out requirements and procedures for the registration of business combinations which are subject to pre-merger notification requirement. This is pursuant to Article 12 of Sub-Decree No. 60 on Requirements and Procedures for Business Combinations ("**Sub-Degree No. 60**"), which requires at least one of the parties proposing to undertake a business combination that meets the pre-merger notification thresholds (as determined under Decision No. 095 on Determination on the Pre-notification of Business Combinations ("**Decision No. 095**")) to register the business combination with the Cambodia Competition Commission ("**CCC**").

*Mergers - New
Guidelines*

Under Prakas No. 177, for a business combination that meets the pre-merger notification threshold, at least one of the parties is required to register the business combination with the CCC within 30 working days following the substantive completion of such business combination.

For more details, please refer to our Legal Update [here](#).

3. Post-merger notification procedures introduced

On 14 June 2023, the MOC issued Prakas No. 178 on Procedures for Post-merger Notification for Business Combinations ("**Prakas No. 178**"), which sets out procedures for the post-merger notification for business combinations that meet the post-notification threshold. This is pursuant to Article 13 of Sub-Decree No. 60, which requires at least one of the parties of any business combination that does not trigger the pre-merger notification obligation to notify the CCC of the business combination after the substantive completion of such business combination.

*Mergers - New
Guidelines*

Prakas No. 178 requires parties to a business combination to conduct a post-merger notification to the CCC on a business combination which is equal to or exceed 50% of the notification threshold determined under Decision No. 095. Notifications must be made within 30 working days following the substantive completion of the business combination.

For more details, please refer to our Legal Update [here](#).

4. Advance Ruling Certificate Procedures introduced

On 14 June 2023, the MOC issued Prakas No. 179 on Formalities and Procedures for the Issuance of Advance Ruling Certificate ("**Prakas No. 179**"), which sets out formalities and procedures for the issuance of an advance ruling certificate ("**ARC**").

*Mergers - New
Guidelines*

If an advance ruling certificate is granted, the transaction will be granted immunity from being challenged by the CCC for one year based on the same information and documents submitted. It may be especially helpful and indeed recommended for transaction parties to utilize the ARC for greater regulatory certainty especially where: (a) a quick decision is needed as the information needed and review period for an ARC application is expected to be shorter than for the pre-merger notification review; (b) there is lack of certainty on whether the notification thresholds are crossed as the regulator will review ARC applications regardless of whether thresholds are crossed. Parties may request for an ARC by submitting an application to the CCC prior to the substantive completion of the business combination.

The CCC shall issue an advance ruling certificate if there is no ground to reject or prohibit the business combination pursuant to Article 11 of the Law on Competition. If the CCC cannot issue the ARC, the CCC may issue a rejection letter to terminate the procedures for the issuance of ARC whilst clearly stating that the rejection of the issuance of the ARC does not indicate the rejection of the proposed business combination itself. Rather, the parties will continue with the normal notification process.

In the event that the ARC has been issued and the provided documents and information used for requesting such ARC are found incorrect or incomplete, the CCC has the power to issue a notice to suspend the ARC.

5. CCC's delegation of powers

On 14 June 2023, the CCC issued a Decision No. 180 on Delegation of Power of CCC on the Implementation of the Sub-Decree on Requirements and Procedure for Business Combinations ("**Decision No. 180**").

*Mergers - New
Guidelines*

Decision No. 180 sets out the delegation of power of the CCC to the Consumer Protection Competition and Fraud Repression Directorate-General to ensure the effective implementation of Sub-Decree No. 60 on Requirements and Procedure for Business Combinations as follows:

- (a) Receive application for business combination from the requesting party;
- (b) Issuance of notice to the notifying party on the completeness or incompleteness of required documents and information for business combination;
- (c) Issuance of notice to the notifying party of the business combination that may proceed to completion;
- (d) Issuance of notice to the notifying party on secondary review of the business combination;
- (e) Issuance of notice to the notifying party on extension of period for secondary review of the business combination;
- (f) Issuance of notice to the notifying party in accordance with the procedures on simplified notification and review of the business combination;
- (g) Receive application for the advance ruling certificate (ARC) for the business combination;
- (h) Registration of the business combination; and
- (i) Receive post-merger notification.

Indonesia

Indonesia has formally become a member of the Competition Committee of the Organisation for Economic Co-operation and Development ("OECD"). This increases the venues for Indonesia Competition Commission ("ICC") to access and utilize the OECD's data and/or information, as well as studies and activities to support the competition supervision process. The ICC has also introduced several new regulations on competition enforcement and a tool for other government agencies in Indonesia to ensure its policies are compliant from a competition perspective. Further, the ICC has emphasised its enforcement on the partnership between major companies with the Micro, Small, and/or Medium Enterprises ("MSMEs") by closely monitoring the implementation of the improvement proposal submitted by businesses.

1. Shopee found to comply with ICC's orders to improve driver-partner partnerships

ICC had received a report alleging that Shopee's partnership agreement violated Article 25 Paragraph 1 of Law No. 20 of 2008 on partnership with MSMEs, which prohibits a major business from owning and/or controlling MSMEs as its business partner in the implementation of partnership. After conducting examinations, ICC issued a warning letter with various orders. During the 14-day warning period, Shopee carried out partnership improvements that benefited 300,000 Shopeefood driver partners, including 920 former driver partners who were reactivated. Among the benefits are that the driver partners will receive transparent reasons for suspension or termination. Further, any violation points received by the driver partners would be removed after they have complied with the driver partners' code of ethics and terms of service for 60 days. Driver partners will also obtain access to information regarding the partner service terms, code of ethics and appeal procedures against sanctions imposed by Shopee.

**Partnership
with MSMEs –
Ride-hailing
sector**

Based on its 14-day monitoring period, the ICC concluded on 7 June 2023 that Shopee has revised its profit-sharing partnership scheme with its drivers/partners according to the ICC's order. This has led to the cessation of the case handling process.

2. ICC introduces checklist of competition policies to assist government departments

ICC has introduced a Checklist of Competition Policies ("**DPKPU**") as a tool for the government to ensure that its policies align with fair business competition principles. Government agencies can submit applications to the ICC for evaluation through the Business Competition Policy Assessment ("**AKPU**") and seek recommendations on their policies from a competition perspective. This process is outlined in Regulation No. 4 of 2023 on the Provision of Advice and Consideration on Government Policies that result in Monopolistic Practices and/or Unfair Business Competition ("**Regulation No. 4 of 2023**"), which was published on 31 March 2023.

*New Checklist
issued*

Regulation No. 4 of 2023 allows the ICC to provide recommendations and considerations based on requests from government agencies, public institutions, or on its own initiative.

Through Regulation No. 4 of 2023, once the ICC's recommendations and analysis are provided, monitoring will be conducted within 60 days from their acceptance by the relevant government agencies. If the ICC's recommendations and considerations are not implemented, the ICC can hold a hearing, publish the recommendations, or report such non-implementation to superiors of such government agencies.

3. ICC introduces new Guidelines on bid-rigging, relevant market definition and assessment of negative impact

The ICC issued three new Guidelines which further the ICC's goal to use a data-driven and methods and a quantitative-based approach in enforcing competition law in Indonesia.

*New Guidelines
Issued*

The ICC Chairman Regulation No. 2 of 2023 on the Guidelines for Negative Impacts of Monopolistic Practices and Unfair Business Competition sets out the criteria, indicators, tests, and steps to measure and determine the negative impact of an antitrust violation. To assess negative impact, the ICC will apply a counterfactual assessment, using the "with and without" test. This test compares the level of market competition that would have existed in the absence of the violation against the level that exists with the violation. This assessment considers factors such as existing competition, potential competitive pressure (including barriers to entry), and countervailing buyer power. Prior to assessing the overall negative impact, the ICC would have undertaken a market assessment as well as reviewed the market positioning of the relevant businesses. If necessary, the ICC can seek external assistance of a competition and antitrust expert to enhance their assessment and aid in the calculation of the fines.

The ICC Chairman Regulation No. 3 of 2023 on the Guidelines for Prohibition of Conspiracy in Tenders ("**Bid Rigging Guidelines**") replaces a previous guideline issued in 2020. Amongst others, the Bid-Rigging Guidelines now clarify that "other parties" in bid-rigging cases can include anyone who has a relationship with the business actor involved, including non-business actors such as the tender committee in the bid or public officials involved in the bid. The Bid-Rigging Guidelines also identifies hybrid bid-rigging as a new category of bid-rigging, which involves a combination of both horizontal and vertical bid-rigging where anyone outside of the bidders or

tenderer can also be named as a reported party if it is involved in or acts as the mastermind of the bid-rigging.

The ICC Chairman Regulation No. 4 of 2023 on the Determination of Relevant Market ("**Relevant Market Guidelines**") replaces a similar guideline issued in 2009. The latest Relevant Market Guidelines explains how relevant markets can be defined in multi-sided markets, and sets out additional factors to assess when defining relevant markets in the digital economy, amongst others.

For further details, please refer to our Legal Update [here](#).

4. Indonesia joins OECD Competition Committee

On 15 June 2023, Indonesia officially joined the OECD Competition Committee. As a member of the OECD, the ICC is required to oversee the implementation of competition policy and law enforcement in Indonesia in line with the Recommendation of the Council of the OECD. In addition, the ICC has the right to gain to utilize data and or information in the OECD as well as various studies and activities that support the competition supervision process. Currently, the OECD and ICC are developing cooperation to develop pro-competition policies to maximize the benefits of the digital economy.

*Indonesia joins
the OECD
Competition
Committee*

Singapore

With sustainability being one of the forefront issues globally, it comes as no surprise that the Competition and Consumer Commission of Singapore ("**CCCS**") is looking closely at sustainability collaborations and how such collaborations will be assessed under competition laws. CCCS recently announced that it intends to launch a public consultation on a proposed guidance for evaluating environmental sustainability collaborations amongst competitors. The CCCS has also continued to review mergers, clearing Oki Electric's acquisition of Yokogawa Electric's aviation equipment business, with more mergers being notified to the CCCS in the second quarter of 2023.

1. Oki Electric acquisition of Yokogawa Electric's aviation equipment business

On 27 April 2023, the CCCS cleared the proposed acquisition by Oki Electric Co., Ltd. ("**Oki**") of the aviation equipment business of Yokogawa Electric Corporation ("**YE**"). The CCCS determined that the relevant markets comprise the upstream market for the global supply of multilayer rigid circuit boards ("**MRCBs**") and the downstream market for the global supply of flat panel displays for commercial aircraft cockpit systems ("**Flat Panel Displays**"). The CCCS found that the proposed acquisition was unlikely to lead to a substantial lessening of competition in the relevant markets as Oki was not a major supplier in the upstream market and did not supply competitors of YE's aviation equipment business in the downstream market, and MRCBs were generic products used in many other industries and the demand for MRCBs in the downstream market was unlikely to be large or significant enough for Oki to be considered a major customer of supplies of MRCB, amongst others.

*Merger –
vertical*

2. CCCS to launch public consultation on proposed sustainability collaboration guidance

During the 17th Annual Competition Mid-Year Conference in Singapore on 8 June 2023, the CCCS Chairman Max Loh announced that the CCCS intends to launch a public consultation on a proposed guidance on evaluating environmental sustainability collaborations amongst competitors. The proposed guidance will likely build on the existing Business Collaboration Guidance Note and will provide examples of agreements and conduct that are unlikely to raise competition concerns, as well as identify areas that may attract antitrust concerns. The proposed guidance will also outline how the CCCS will evaluate sustainability benefits. For further details, please refer to our Legal Update [here](#).

*New guidelines
- sustainability*

Malaysia

The Malaysia Competition Commission ("**MyCC**") has been particularly concerned recently about issues in the sugar industry, such as hoarding, conditional sales, and refusal to supply, and has been closely monitoring these practices to take appropriate action. There have also been various other developments involving competition law, including the Malaysian government ending its monopolistic approach for 5G services in the country. As a whole, these developments emphasize Malaysia's commitment to ensuring fair competition and protecting consumer interests.

1. Competition issues in the sugar industry

On 7 June 2023, the MyCC issued a press release stating that it is working with the Ministry of Domestic Trade and Cost of Living to tackle competition issues relating to the supply and sale of sugar in the market. This includes behaviour such as hoarding (i.e., restricting or controlling market access and outlets for supply and sale of sugar), conditional sales (i.e., tying and bundling), and refusal to supply by certain market players. Hoarding, conditional sales, and refusal to supply may result in an infringement of the Competition Act 2010 and the MyCC can impose penalties of up to 10% of the player's worldwide turnover.

*Anti-competitive
conduct –
Sugar industry*

2. End of monopoly for 5G services

Sometime in May 2023, it was announced that the Malaysian government decided to adopt a dual network model for the rollout of 5G services in the country, which will put an end to its previous plans to have a single state-run network owned by state-owned agency, Digital Nasional Berhad ("**DNB**"). This move aims to address concerns about pricing and competition, and to dismantle monopolies.

*Telecommunications
Policy*

Under the new plan, a second entity will be allowed to enter the market for the provision of 5G services after the DNB achieves 80% coverage in populated areas. This is to take into account the sustainability of the telecommunications industry ecosystem in Malaysia while mitigating industry concern over pricing, transparency and monopoly. It is projected that the DNB will achieve 80% coverage by the end of 2023. While the Malaysian Communications and Multimedia Commission (the regulator for competition in the communications and multimedia industry in Malaysia) has not commented on this development, it will be interesting to see how competition in the market for 5G services is affected by this policy change.

Philippines

The Philippine Competition Commission ("**PCC**") has issued Non-Horizontal Merger Review Guidelines and draft guidelines for the *motu proprio* review of digital mergers and is currently finalising a memorandum of understanding to foster cooperation with the Philippine Intellectual Property Office. The PCC is also focusing on enforcement action relating to breach of commitments, having recently fined Grab Philippines for its non-compliance. This emphasises the importance of making commitments to regulators which are not overly burdensome and such that parties can avoid non-compliance.

1. PCC issues Non-Horizontal Merger Review Guidelines

On 18 May 2023, the PCC issued its Non-Horizontal Merger Review Guidelines, which covers vertical and conglomerate mergers. These guidelines build on the PCC's Merger Review Guidelines issued on 9 October 2018 and the experience of the PCC over the past years. This follows from the public consultation on the guidelines that closed in October 2022. Please see our further comments on the draft guidelines in our ASEAN Competition Report [here](#).

**Mergers - New
Guidelines**

The final guidelines streamline the draft guidelines and includes specific examples to better illustrate various theories of harm and other concepts. It also includes new guidance, for example, in noting that the analytical framework for vertical mergers may also be used for diagonal mergers, or that an important factor in determining harm from conglomerate mergers is whether potential competition is eliminated in a market where there are other means of entry that may be less harmful to competition (e.g., investments on product development).

2. Draft Guidelines for the *Motu Proprio* Review of Mergers in Digital Markets

In early May 2023, the PCC circulated for comments, input, and suggestions to the public its draft Guidelines for the *Motu Proprio* Review of Mergers and Acquisitions in Digital Markets ("**Draft Guidelines**"). A *motu proprio* review allows the PCC to investigate any transaction that it believes is likely to substantially lessen competition in the market, even if the transaction does not meet the thresholds for compulsory notification. The Draft Guidelines aim to provide greater certainty by identifying the factors that would cause the PCC to trigger *motu proprio* review of digital mergers.

**Mergers - New
Guidelines**

The Draft Guidelines provide a non-exclusive list of indicators. If two or more of these indicators are present, they will be considered red flags that may prompt a *motu proprio* review. The indicators include:

- (a) Transactions involving a gatekeeper;
- (b) Transactions involving companies with data-centric operations;
- (c) Transactions that might significantly reinforce network effects;
- (d) Transactions involving parties considered innovators;
- (e) Conglomerate transactions involving digital players;
- (f) Transaction of parties involved in subsequent acquisitions;
- (g) Transactions involving parties under investigation;
- (h) Transactions with a value close to notification thresholds; and

- (i) Transactions involving parties with a significant share of the supply of a good or service.

The Draft Guidelines encourage merging parties to consult the PCC if they identify that several of the indicators are present in their transaction. During the consultation, the parties may present evidence and information to justify that their transaction would not pose a risk for competition or agree on a voluntary notification of their transaction.

3. PCC imposes fine on Grab Philippines for failing to fully refund passengers

On 15 May 2023, the PCC announced that it had imposed an additional PHP 9 million (approx. USD 160,763) fine on Grab Philippines. This penalty comes on top of previous fines totalling PHP 63.7 million (approx. USD 1.4 million) that Grab had incurred since its merger with Uber in 2018.

*Penalties –
Non-
Compliance*

The additional fine consists of two parts: first, a PHP 6 million (approx. USD 107,187) fine for violating refund orders issued by the PCC in response to Grab's breach of voluntary commitments made during the Grab-Uber merger; second, a PHP 3 million (approx. USD 53,590) fine for providing inaccurate and misleading information in compliance reports submitted by Grab regarding the refund orders.

In addition to the fine, the PCC has instructed Grab to establish an Alternative Refund Mechanism. This mechanism will enable passengers to claim outstanding refunds. Failure to comply with this directive may result in Grab being required to transfer the remaining refund amount to the PCC for remittance to the National Treasury.

4. PCC does not plan to cap number of motorcycle taxis once regulation legalising motorcycles-for-hire is approved

On 25 May 2023, the PCC opposed imposing a limit on the number of motorcycle taxis operating in the country, should Congress pass a proposal to regulate and legalise motorcycles-for-hire.

*Promoting
Competition*

The PCC has expressed that allowing more players in the growing motorcycle taxi industry would benefit consumers. Currently, Angkas, Move It, and Joyride are the only motorcycle companies operating under a pilot program. However, the possible entry of Grab Philippines into the motorcycle taxi industry has raised concerns about capping the number of operators. The PCC's stance is likely based on this concern and indicates its interest in encouraging growth and competition in the domestic motorcycle taxi market.

5. PCC and Intellectual Property Office finalise MoU on overlapping mandates

The PCC and the Intellectual Property Office ("IPOP HL") are in the final stages of preparing a memorandum of understanding ("MoU") to facilitate collaborative capacity building between the two agencies. The purpose of the MoU is to address overlapping responsibilities and streamline procedures concerning the review of mergers and acquisitions.

*MoU – PCC and
Intellectual
Property Office*

Specifically, the MoU aims to promote cooperation between the PCC and the IPOP HL in handling competition-related matters involving intellectual property, ensuring consistency in their approaches to dealing with anticompetitive practices and preventing market abuses by dominant players.

For instance, at present, the assessment of competition-restrictive clauses in technology transfer agreements ("TTAs") falls exclusively within the jurisdiction of the IPOP HL under the Philippine IP Code. No subsequent laws have explicitly granted the PCC authority in this area. The planned MoU between the PCC and the IPOP HL will not only cover TTAs but also address other concerns that impact the working relationship between the two agencies.

Thailand

The Trade Competition Commission of Thailand ("TCCT") continues to be an active regulator that undertakes investigations in relation to merger control and price fixing. This is particularly in relation to online shopping platform operators, which TCCT has issued a warning against price-fixing to, and in the real estate industry, where fines have been imposed against developers for waiting to notify TCCT. Businesses involved in these sectors should note the competition concerns which TCCT has highlighted, and ensure compliance with TCCT's guidance. TCCT is also discussing an amendment to the Trade Competition Act 2017 ("Act"), which aims to align the Act with international standards, increase the efficiency of law enforcement, and address practical concerns with the current law.

1. Issuance of warning against price-fixing on online shopping platforms

On 12 April 2023, the TCCT issued a warning letter to online shopping platform operators such as Lazada and Shopee, to caution them about the risk of engaging in price fixing and noted that they were monitoring their situation. The TCCT noted that simultaneously hiking commission fees for any product sold on online platforms could potentially amount to collusive pricing and may violate the Trade Competition Act of 2017.

**Warning –
Price fixing**

This warning follows a discussion between the TCCT and the online shopping platforms during March 2023. During this discussion, Lazada and Shopee had explained their rationale for doubling their commission fees to 2% and subsequently raising them further to 3.21%-4.28% in March based on product categories. This was allegedly independently planned in advance as part of their marketing strategies.

The review by TCCT is a reflection of the scrutiny that regulators are paying to e-commerce which include online platforms. The scrutiny extends across various types of issues, with commission imposition an easy one to review despite the highly transparent environment.

2. Fines imposed for late filing of merger notifications

On 4 April 2023, the TCCT published a series of decisions regarding late filing of merger notifications.

**Penalty –
failure to file**

After conducting investigations, the TCCT has fined real estate developers in four cases for failing to submit merger notifications within the required statutory timeframe of seven days after closing. The fines were imposed on both the companies and the responsible managers overseeing the transactions. In one case, the company was fined approximately THB 1.4 million (approx. USD 40,000), and the responsible manager was fined THB 1.3 million (approx. USD 37,000). In the other three cases, the companies were fined THB 700,000 (approx. USD 20,000), and the responsible managers were fined THB 600,000 (approx. USD 17,000).

All of the cases had involved share acquisitions, with the acquirer purchasing shares in a target company which held the property, and had met the merger notification thresholds under the Trade Competition Act 2017. The TCCT had decided that these transactions constituted mergers and should have been notified within seven days of closing. This was so even in one of the cases where the target company had not generated any revenue in the previous year.

3. Amendment to Trade Competition Act 2017 under discussion

It is rumoured that an amendment to the Act and its subordinate regulations may be forthcoming as early as late 2023. The amendment aims to align the Act with international standards, increase the efficiency of enforcement, and address practical issues surrounding the current law. However, given the recent change in government following the Thai elections, the amendment may be delayed.

*Legislation –
Amendment to
Trade
Competition
Act 2017*

Additionally, on 22 March 2023, the TCCT organised a meeting with competition law specialists from various countries, including Singapore and Hong Kong, to exchange knowledge and discuss competition law and enforcement in the Asia Pacific region. The objective was not only to gain insight into competition law, but also to study the amendment of Thailand's competition law in response to the evolving economy and future trade.

4. Alleged unfair practices by franchisor of meatball businesses

On 26 April 2023, TCCT published a decision relating to alleged unfair practices by a franchisor of meatball businesses.

*Unfair practice
– meatball
businesses*

In September 2021, the claimant bought a franchise (Kor. Fish Balls) from the respondent. Later, on 18 February 2022, a new meatball shop was set up nearby, just 30 metres away (Nor. Fish Balls) by another franchise business of the respondent. This resulted in a decrease in the income of both franchisees.

The TCCT examined the facts and evidence and found that the respondent operated as a franchisor of Kor. Fish Ball and Nor. Fish Ball. Both franchises have similar business models, products, cost prices and target customers. As such, granting the franchise rights to Nor. Fish Ball in the area close to the claimant amounted to an unfair practice.

However, given that the claimant relocated its business in March 2022, the claimant was no longer affected by the franchisee of Nor. Fish Balls at the time of the decision. As the claimant was not able to prove that damage was caused by the respondent, the respondent was not held liable for an unfair practice under section 57 of the Act.

Vietnam

The long-awaited Vietnam Competition Commission ("**VCC**") was finally established on 1 April 2023. The VCC is now the single authority responsible for overseeing competition matters in Vietnam. With the consolidation of investigative and enforcement functions within the VCC, enforcement of Vietnam's competition law will increase. In addition, consumer protection rights will be expanded by the new consumer protection laws which have just been approved on 20 June 2023. Vietnamese authorities have also focused on combating counterfeiting and protect intellectual property rights in the e-commerce sector, to foster a more transparent and secure online marketplace.

1. Establishment of the Vietnam Competition Commission and issue of economic concentration notification form

On 1 April 2023, Decree 03/2023/ND-CP came into effect, establishing the VCC as the new and sole authority responsible for investigating anti-competitive agreements, managing economic concentrations, and ensuring consumer protection, amongst others. The VCC replaces the previous Vietnam Competition and Consumer Authority ("**VCCA**").

*Establishment
of Vietnam
Competition
Commission*

Le Trieu Dung, formerly the director of the Trade Remedies Authority of Vietnam, has been appointed as the chair of the VCC, bringing his experience from the Ministry of Industry and Trade, which previously oversaw the VCCA's functions. The VCC consists of 15 members and includes an investigative arm, units for handling behavioral matters, and a competition supervisory board.

With the consolidation of investigative and enforcement functions within the VCC, it is expected that enforcement of Vietnam's competition law will become more robust, enabling quicker case resolution. Additionally, the VCC plans to expand its merger control team, potentially leading to faster case review timelines. The establishment of the VCC is also likely to improve coordination and exchange between the VCC and specialised regulatory agencies in Vietnam, resulting in greater efficiency in Vietnamese merger control.

Separately, on 19 May 2023, Decision No. 28/QD-CT was issued and sets out the new economic concentration notification form and instructions on the process of receiving and appraising economic concentration notice dossiers.

2. VCCA Annual Report on Merger Control 2022

In June 2023, the VCCA published the Annual Report on Merger Control 2022 which records the status of merger and acquisition ("**M&A**") transactions and the merger filings statistics in Vietnam. It shows that M&A activities have been conducted more cautiously due to geo-political concerns worldwide and inflation affecting cross-border transactions. M&A activities slowed down somewhat in 2022 after a spike in 2021. In the first 10 months of 2022, the total transaction value reached \$5.7 billion, down 35.3% over the same period, while the number of transactions decreased significantly compared to the previous two years. Yet, the number of merger filings are large. In 2022, 154 merger filings were submitted, of which 131 cases were cleared after Phase 1, 12 cases were returned, two cases were withdrawn and seven are on-going in 2023.

*Annual Report
on Merger
Control*

3. Expanded consumer protection rights

The National Assembly reviewed the latest draft of the Consumer Protection Law ("**Draft CPL**") and approved it on 20 June 2023.

*Legislation –
Consumer
Protection*

Although the latest version of the official CPL has not yet been published (which will take effect from 1 July 2024), there are several key points of the Draft CPL as follows:

- (a) **Expanded scope:** The Draft CPL broadens the application of the law to include social organizations protecting consumers' interests. It also extends to both domestic and foreign entities engaged in consumer protection activities.

- (b) **Product recall:** Traders are required to carry out recalls when their goods are found to be defective and notify relevant authorities before and after a recall. Businesses which cause consumer harm together are jointly liable for compensation. Such traders are also required to publicly announce the defective goods and the recall of such goods at least five consecutive daily newspaper or on radio, television or telegraph in the locality where such defected goods are circulated. Note that product recalls are typically handled separately as a trade matter in most jurisdictions.
- (c) **Consumer information protection:** The Draft CPL introduces provisions to safeguard consumer information. Traders collecting and using consumer information must establish and publicly announce mechanisms for data protection. Consent from consumers is required for the collection and use of their information, and mechanisms for opt-in consent and destruction of their information are required.
- (d) **Protection of vulnerable consumers (e.g., elderly, children, ethnic minorities, etc.):** The Draft CPL introduces the concept of "vulnerable consumers" and outlines the responsibilities of traders in protecting their interests. Traders must prioritise the handling of legal claims from vulnerable consumers, avoid discrimination, and establish internal procedures for handling their complaints.
- (e) **Others:** The Draft CPL includes regulations on transactions in cyberspace, additional regulations on direct sales, dispute resolution methods, responsibilities of relevant parties during dispute settlement, and procedures for mediation and civil cases related to consumer protection.

With updated and more specific regulations, the Draft CPL is expected to protect consumers' interests more effectively.

4. Anti-counterfeiting and consumer protection in e-commerce by 2025 Plan

On 29 March 2023, the Vietnamese government approved an Anti-Counterfeiting and Consumer Protection in e-commerce by 2025 Plan ("**Plan**"). The Plan aims to strengthen anti-counterfeiting measures and protect consumers in online transactions. It includes enhancing policies and laws related to inspection, product quality, and labeling in e-commerce, improving national standards and technical regulations, promoting the use of codes and barcodes for product traceability, establishing a centralized database system for anti-counterfeiting efforts, and training officials in e-commerce and consumer protection. The Plan reflects efforts by Vietnamese authorities to combat counterfeiting and protect intellectual property rights in the e-commerce sector, with the aim of fostering a more transparent and secure online marketplace.

**E-commerce –
Consumer
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