DFDL

ASEAN COMPETITION LAW

AN UPDATE

WELCOME

Welcome to the second ASEAN Path report on competition!

Since the last report in 2014, there has been significant activity within the ASEAN region, particularly from a legislative perspective. With the passing of the 2015 deadline for implementation of competition policy set out in the ASEAN Economic Community Blueprint, four of the five Member States without comprehensive competition laws enacted new competition laws in 2015. Implementing rules and regulations for these laws have either been promulgated (in the case of the Philippines) or are under consideration (in Brunei, Laos and Myanmar). Additionally, from a legislative perspective, amendments to legislation, rules and guidelines are being considered in a number of Member States with pre-existing competition laws (most notably, Indonesia and Thailand). A brief overview of the competition regime in each Member State is set out below.

While there have been relatively few material cases since the last ASEAN Path Report on competition law, some important decisions by regulatory authorities and appellate bodies are also noted in the Report.

We hope that this brief outline will provide some guidance on recent activities within ASEAN and welcome an opportunity to provide more detailed advice and guidance in any of the countries across DFDL's network.

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ASEAN PATH is a series of white papers prepared by DFDL's experts aiming to assess, in more depth, compelling issues arising from the regional economic integration under the auspices of the Association of Southeast Asian Nations ("ASEAN") Economic Community Blueprint. The articles are based on an in-depth legal analysis of the local and ASEAN legal framework from the perspective of a practitioner assisting foreign and ASEAN investors in their investments and operations throughout various ASEAN Member States. All articles are accessible on our website: www.dfdl.com.

ASEAN COMPETITION LAW

AN UPDATE

As part of the ASEAN Economic Community Blueprint, each ASEAN Member State agreed to implement competition policy by 2015. Prior to 2015, as set out in the table below, only 5 of the 10 Member States had enacted a comprehensive generally applicable competition law; however, in 2015, 4 additional Member States (Brunei, Laos, Myanmar and Philippines) enacted such competition laws. Cambodia, the sole Member State without an enacted law, has publicly stated that it expects to enact its general competition law in 2016. As of this update, none of these new laws has been fully implemented, so it is difficult to predict the effectiveness or full implications of the new competition regimes, but it is clear that the ASEAN competition law environment has changed substantially since the Snapshot of ASEAN Competition Law was originally published in mid-2014.

Table 1 : Enactment of Comprehensive Competition Law by Member State

MEMBER STATE	YEAR ENACTED
Brunei	2015
Cambodia	N/A
Indonesia	1999
Laos	2015
Malaysia	2010
Myanmar	2015
Philippines	2015
Singapore	2004
Thailand	1999 (replaced 1979 Anti-Monopolies Law)
Vietnam	2004

Below we provide an update on the current state of competition law development in each ASEAN Member State with a brief overview of the law and current activities based on publicly available (and largely English language) sources. Additional developments may have occurred which were not made generally available to the public, or in English language sources, as of writing and which, therefore, may not be addressed in this Report. In addition to the increased legislative activity, there have been a few significant cases in the last year as noted below; however most of the adjudicative activity has been restricted to a few Member States. Based on public releases and statements by relevant officials, it appears that substantial developments are still in process with new cases being investigated or determined by higher courts, statutory amendments and implementing rules and regulations in process.

Beyond what is happening at the individual Member State level, there are also efforts being made to promote broader initiatives at the ASEAN level which may have impact in the future. For example, at the recent ACN conference in Singapore, the Competition Commission of Singapore announced that it will lead efforts towards the development of an ASEAN Competition Policy and Law Programme with the goal of aligning competition policy and law among Member States. We look forward to more information being provided about these efforts. While it is perhaps premature to be focusing on a regional competition law or enforcement agency as some have recommended, enhanced regional co-operation, co-ordination and assistance would be a welcome development.

BRUNEI DARUSSALAM

The Brunei Competition Order, 2015 ("**BCO**") was issued on 6 January, 2015 and will be implemented by an order published in the Gazette. The regulatory agency created under the BCO is the Competition Commission ("**Commission**"). At the time of writing, it does not appear that the Commission has yet been appointed nor has the BCO been implemented.

The BCO prohibits anti-competitive agreements or concerted practices, although there are numerous exclusions including vertical agreements, conduct covered by individual or block exemptions and conduct which improves production, distribution or technical or economic progress in certain conditions.

The BCO also prohibits abuses of dominant positions with a non-exhaustive list of potentially prohibited conduct. A number of exclusions are provided in the BCO and it is not yet clear how dominance will be determined.

Mergers that lead to a substantial lessening or prevention of competition are prohibited under the BCO unless covered by one of stated exemptions. The BCO appears to contemplate both voluntary pre- and post-merger notifications; however, the BCO appears to limit the scope of mergers that may notify prior to closing.

Where an infringement is found, the Commission can make orders to eliminate it and, where the infringement is determined to be intentional or negligent, order penalties of up to 10% of Brunei turnover for up to 3 years. The BCO contemplates a leniency program for potential infringements of the prohibitions against anti-competitive agreements or concerted behaviour.

The BCO also provides for imprisonment of up to 12 months and a fine for certain offences such as destroying or altering evidence or providing false information to the Commission. Where an offence is committed by corporation, certain individuals, such as directors, managers or officers, may also be charged with the offence and subject to the relevant penalty.

Appeals may be made to the Competition Appeal Tribunal.

There is a limited private right of action for damages once an infringement has been determined by the relevant entity.

When effective, the BCO will apply to conduct occurring outside Brunei if there is an anti-competitive impact in Brunei.

Recent Developments:

While the passing of the BCO is a significant step for Brunei's competition regime, there appears to be considerable work required in order to fully implement the legislation. Given the potential extra-territorial scope of the legislation and application to individuals, businesses with activities in Brunei should start to consider how the BCO may apply to their conduct in this Member State.

CAMBODIA

There is currently no general competition law in Cambodia. There have been a number of legislative drafts circulated over the last 10 years with the most recent public draft being Version 5.5 dated 7 March 2016.

While it is not clear how closely the enacted version of the law will reflect the most current draft, a few aspects may be of interest. The current draft contemplates extraterritorial application where there is competitive harm to the Cambodian economy and financial penalties and remedial orders in respect of substantive violations of the law. The draft also contemplates potential imprisonment for procedural offences such interfering with investigations, document destruction, etc. The draft states that it is unlawful for certain individuals to knowingly assist with prohibited behavior.

From a substantive perspective, the draft addresses both anti-competitive horizontal and vertical agreements as well as abuses of dominant positions, and business concentrations.

Recent Developments:

The Royal Government has publicly stated that it intends to have the general competition law enacted in 2016; however, it is not clear what the final form of this legislation will look like and therefore a more detailed review of the, to our knowledge, current draft is not provided here

INDONESIA

Since 1999, Indonesia has had a general competition law in the form of Law of the Republic of Indonesia No. 5 of 1999 Concerning the Ban on Monopolistic Practices and Unfair Business Competition which operates in conjunction with the Decree of the President of the Republic of Indonesia No. 75 of 1999 on the Komisi Pengawas Persaingan Usaha ("**KPPU**") (together, "**Competition Law**"). In addition, various procedural regulations and guidelines have been issued including:

- Regulation of the Supreme Court of the Republic of Indonesia No. 3 of 2005 regarding the Procedures for Filing Objections to the Decisions of KPPU;
- KPPU Regulation No. 1 of 2006 regarding the Procedures for Case Handling in KPPU;
- KPPU Regulation No. 2 of 2008 regarding the Authorities of the Commission Secretariat in Case Handling; and
- KPPU Regulation No. 1 of 2010 regarding Case Handling Procedures which replaced KPPU Regulation No. 1 of 2006 and No. 2 of 2008 for cases introduced as of 5 April 2010.

The Competition Law is enforced by the KPPU which is an independent state agency accountable to the President. The KPPU's members are appointed and dismissed by the President under the supervision of the Legislative Assembly.

The KPPU investigates potential infringements and may issue decisions. It also issues guidelines and provides advice and reports to the President and Legislative Assembly. Decisions of the KPPU are appealable to District Courts.

Numerous other Indonesian laws contain competition related provisions that were not superseded or repealed by the Competition Law. While some of these laws provide for private actions; there is currently no such provision under the Competition Law.

The Competition Law generally applies to any entity conducting business in Indonesia and addresses anti-competitive agreements and practices, abuse of dominance and anti-competitive mergers. With respect to the latter, the most recent merger regime implemented in 2010 contemplates mandatory post-merger notifications for mergers that exceed the stated thresholds and a voluntary pre-merger assessment regime.

The KPPU may issue a variety of civil penalties depending on the nature of the issue including declaring unlawful agreements void, forced restructuring of firms, issuing cease and desist orders and civil fines up to Rp 25 billion (approximately USD 1.9 million). In addition, the KPPU can refer certain matters to the police who may pursue sanctions through the criminal courts including fines up to Rp 100 billion (approximately, USD 7.5 million) or jail terms of up to 6 months. Under the merger regime, failure to submit a notification may be penalized by a fine of Rp 1 billion (approximately USD 75,000) per day up to a total of Rp 25 billion.

Recent Developments:

Significant amendments to the Competition Law are expected to be implemented in 2016. The amendments appear to focus on improving the efficiency of the regulator by substantially increasing potential fines, introducing mandatory pre-merger notification, implementing a leniency program, new forms of sanctions and permitting company searches by the KPPU.

While criminalization of cartels had been proposed, this appears to be have been left out of the current amendment package; although it has been reported that the amendments will criminalize non-compliance with KPPU decisions. Of particular relevancy for international businesses is the proposed expansion of enterprises covered by the Competition Law. While the Competition Law currently only covers entities established or conducting business in Indonesia, the proposed amendment will expand the scope of the law to incorporate foreign entities whose activities have an impact within Indonesia.

Recent Cases:

Cartels – April 22, 2016 - The KPPU determined that 32 feedlots and cattle importers were guilty of engaging in a cartel and issued fines of more than Rp107 billion (approximately USD 8 million) based on its conclusion that they had withheld cattle from the market. The decision is based on price increases in a defined greater Jakarta market for imported beef and, based on reports, appears to be very controversial. There are reports that the penalized entities will appeal the decision.

Cartels – 23 March 2016

According to a KPPU press release, a cartel between cable operators on fees and various market restrictions was facilitated by the Indonesian Regional Broadcasting Commission of Riau. The Commission itself asked the KPPU to review the agreement. While the KPPU determined that the agreement infringed the Competition Law, it suggested that the agreement be annulled, but did not penalize the parties on the basis that the agreement had not yet been implemented and that the Commission had voluntarily come forward to request the KPPU review the agreement.

Cartels – February 2016

The Supreme Court upheld the KPPU's decision against telecommunications companies in relation to a cartel agreement on minimum rates for text messages from 2004-2008. In May, 2015, the KPPU's decision was annulled by the Central Jakarta District Court, but the Supreme Court affirmed the KPPU's decision and imposed fines of Rp 4 billion to Rp 25 billion (approximately USD 300,000 to 1.9 million) on the five telecom companies.

LAOS

On 14 July 2015, the National Assembly of Lao People's Democratic Republic ("**Laos**") passed the Law on Business Competition (No. 60/NA) ("**Competition Law**"). The Competition Law states that it will come into force on issue of the Promulgating Decree and 15 days after publication in the Government Gazette. The Competition Law was published in the Government Gazette on 24 November 2015, and although no promulgating decree was issued, it appears to be legally effective despite the regulator not yet being appointed.

The Competition Law establishes the Competition Commission ("**Commission**") as the regulatory authority with investigative powers as well as adjudicative powers over administrative matters. For criminal violations, the Commission will refer matters to the Public Prosecutor.

The Competition Law appears to be restricted to domestic and foreign individuals, legal entities and organizations that operate businesses in Laos and from a substantive perspective encompasses:

- Unfair trading practices;
- Anti-Competitive Agreements;
- Abuses of dominant positions; and
- Mergers

With respect to the latter, the Competition Law appears to contemplate pre-merger notification of all mergers unless the parties are small or medium sized enterprises.

The Competition Law contemplates both administrative and criminal penalties; although it is not clear when each will be applied.

The Competition Law sets out a basic framework for the competition regime of Laos, but significant guidance and additional detail is required. Hopefully this will be provided in the implementing regulations and decisions and guidelines of the Commission.

Recent Developments:

As noted, the Competition Law appears to be in effect as of December, 2015 despite the lack of Promulgating Decree. Given that the Commission has not yet been appointed, it is not clear what implications this will have for businesses prior to the promulgation of implementing rules and regulations and appointment of the Commission.

MALAYSIA

Malaysia's Competition Act 2010 ("**MCA**") came into force on January 1, 2012. The Competition Commission ("**MyCC**") was established as a regulatory authority under the MCA. The MCA applies to any entities carrying on commercial activities relating to goods or services where such activities have an effect on competition in any market within Malaysia regardless of where the activity actually takes place.

The MCA addresses horizontal and vertical agreements which have the purpose or effect of significantly preventing, restricting or distorting competition as well as abuses of dominant position in any relevant market. The MCA provides a non-exhaustive list of acts which may be considered abusive. The MCA does not directly address merger activity.

The MCA provides for the MyCC to investigate and adjudicate conduct at issue and, among other penalties, may fine a party that infringes the substantive competition provisions up to 10% of the worldwide turnover of an enterprise over the period during which an infringement occurred. The MCA also contemplates a civil right of action for any person suffering loss or damage directly as a result of prohibited anti-competitive practices; regardless of whether that party dealt directly with the infringer.

The MCA does not apply to any commercial activity regulated under the legislation listed in its First Schedule. There are currently only two laws specified - the Communications and Multimedia Act 1998 and the Energy Commission Act 2001. There are a number of measures under both of these laws applying to competition regulation within their respective scope of authority.

Recent Developments:

We are not aware of any specific upcoming legislative developments.

Recent Cases

*Cartels – 4 February, 2016, the Competition Appeal Tribunal ("**CAT**") overturned MyCC's decision against Malaysian Airline System Berhad and Air Asia Berhad. CAT ruled on substantive grounds that MyCC had not demonstrated that the agreement's object was anti-competitive, had not properly appreciated that the agreement was conditional on anti-trust compliance and that it had improperly determined that withdrawal of certain routes was caused by the agreement.*

Abuse of Dominance – 15, April 2016, MyCC issued a final decision in the Megasteel case determining that there had been no infringement contrary to its earlier Proposed Decision. The final decision revised the relevant market definition and, based on new evidence and analysis, found that there was no data supporting the allegations of Megasteel undercutting prices or margin squeeze.

Abuse of Dominance – 24 June 2016 MyCC issued a Final Decision against My E.G. Services Berhad in respect of its finding of an abuse of dominance in relation to selling of mandatory insurance policies related to foreign workers' permit renewals. MyCC imposed a penalty of RM 2.27 million (approximately USD 550,000).

Cartels – 12 February, 2015 MyCC found that 15 members of the Sibu Confectionary Bakery Association had entered into an illegal agreement to fix prices of confectionary and bakery goods. Total fines imposed on all parties were RM 247, 730 (approximately USD 61,000). We understand that matter has been appealed to the Competition Appeal Tribunal.

MYANMAR

On February 24, 2015, Myanmar enacted the Pyidaungsu Hluttaw Law No. 9 /2015 ("**Competition Law**"). The Competition Law will come into force 24 February, 2017 as recently determined in a notification issued by Myanmar's President.

The Competition Law establishes the Competition Commission ("**Commission**") as its regulatory authority with investigative powers and some adjudicative powers. If the Commission determines that conduct has infringed the Competition Law, it will forward the relevant materials to the Prosecutor for adjudication in the courts; however, the Commission has power to apply certain administrative penalties.

The Competition Law outlines a basic framework to address certain anti-competitive conduct such as:

- Unfair trading practices;
- Anti-Competitive Agreements;
- Abuses of dominant positions; and
- Mergers.

With respect to the latter, the Competition Law leaves most of the details of the merger regime to be determined by the Commission at a later date.

The Competition Law contemplates both administrative and criminal penalties; although it is not clear when each will be applied.

It is expected that significant guidance with respect to both substantive and procedural elements of the competition regime will be provided in the implementing rules and regulations as well as through decisions of the Commission.

Recent Developments:

On 2 December, 2015, President Thein Sein issued Notification No 69/2015 which states that the Competition Law will come into force on 24 February 2017.

PHILIPPINES

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The Philippine Congress passed Republic Act No. 10667 ("the **Philippine Competition Act**" or "**PCA**"), a comprehensive competition law of general application in July 2015. It was signed into law by President Benigno Aquino III on 21 July 2015 The PCA became effective 8 August 2015. The Commissioners of the Philippine Competition Commission ("**Commission**"), the regulatory agency created under the PCA, were sworn in on January 2016.

In February 2016, the Commission released transitory rules and guidelines that apply to mergers and acquisitions prior to the effectivity of the implementing rules and regulations ("**IRR"**) of the PCA. The transitory rules provide interim notification measures pending the IRR's effectivity and defined when reported transactions should be deemed approved. The IRR were published in 3 June 2016 and by operation of law became effective on 18 June 2016.

This PCA is generally enforceable against any person or entity engaged in any trade, industry and commerce in the Republic of the Philippines. The PCA also explicitly applies to international trade having direct, substantial and reasonably foreseeable effects in trade, industry, or commerce in the Philippines – including those that result from acts done outside the Philippines.

Anti-competitive agreements are prohibited under the PCA under a mixture of *per se* and rule of reason approaches. Abuses of dominance and mergers that lead to substantial lessening of competition are also prohibited.

The IRR expands on a number of issues set out in the PCA and replaces the interim notification procedures with a formal merger regime.

Under the IRR, parties to a transaction that exceed the notification thresholds must notify the Commission prior to executing the definitive agreements and cannot complete the transaction until the review period has expired. Transactions are deemed notifiable if the Philippines related gross revenues or assets of at least one of the relevant groups of companies exceeds 1 billion pesos and the value of the proposed transaction also exceeds 1 billion pesos. Where the proposed transaction involves acquisitions of voting shares or an interest in a non-corporate entity, the IRR also sets thresholds of ownership as part of the notification thresholds. An administrative fine of 1-5% of the value of the transaction may be imposed for failure to notify or closing before the expiry of the review period.

The Commission is empowered to prohibit the implementation of mergers and acquisitions which it believes will substantially prevent, restrict, or lessen competition in the relevant market.

In addition, the IRR sets out frameworks for determining key issues such as relevant markets, control and dominance and provides that the Commission shall publish share thresholds for the presumption of dominance in a relevant market.

Among other significant provisions of the PCA are a leniency program, provisions on the appeal of decisions of the Commission to the Court of Appeals and the explicit recognition of the right of a party suffering direct injury from a violation of the PCA to institute a separate and independent civil action.

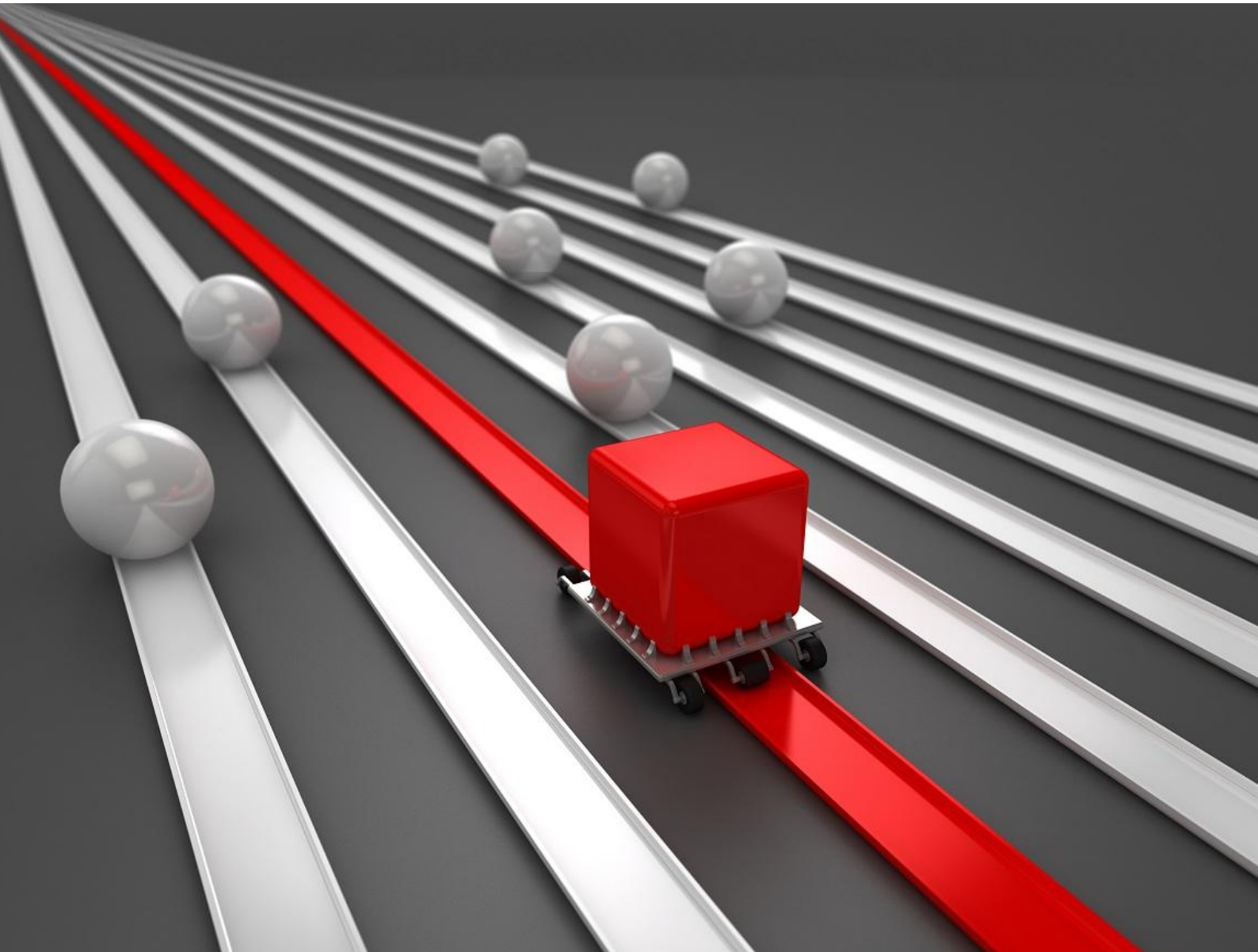
The Competition Act provides for a variety of administrative penalties including fines; however, it also appears that a mandatory imprisonment of 2 to 7 years as well as a criminal fine is to be imposed on entities engaged in an anti-competitive agreement. Where the party to such an agreement is a legal entity, the Competition Act states that officers, directors, or employees holding managerial positions, who are knowingly and willfully responsible for such violation, shall be imprisoned.

Recent Cases

Prior to the effectivity of the IRR, San Miguel Corp announced the sale of its telecommunications business to Philippine Long Distance Telephone Co. and Globe Telecom, Inc., both of which are listed in the Philippine Stock Exchange. The value of the transaction exceeded the notification threshold under the PCA and under the interim notification procedures applicable to transactions of listed companies. Also prior to the implementation of the IRR, the parties to the acquisition submitted notices to the Commission under the interim notification rules. The Commission issued letters to the parties stating that the notices were deficient due to a lack of key information and, therefore, that the transaction should not be deemed approved. The parties have responded with the position that their notices were in full compliance. They averred that given that the only basis for not deeming the transaction approved under the interim rules was that the notices contained false information, the Commission has no ground to not consider the transaction approved. The Commission subsequently warned the parties of potential violations of the PCA and released a clarification on the interpretation of its interim notification rules.

Recent Developments

The IRR were published on 3 June 2016 and take effect 15 days from that date. The Commission has also published its merger notification forms and, in light of recent events, clarified the interpretation of its interim notification rules with regard to the determination of which reported transactions could be "deemed approved".



SINGAPORE

Singapore enacted its Competition Act ("**SCA**") in 2004. The SCA applies to any entity capable of carrying on commercial or economic activities related to goods or services with some exceptions provided in the legislation. The SCA prohibits:

- agreements, decisions and practices which prevent, restrict or distort competition ("**Section 34 Prohibitions**");
- abuses of dominant positions ("**Section 47 Prohibitions**"); and
- mergers that substantially lessen competition ("**Section 54 Prohibitions**").

The regulatory authority under the SCA is the Competition Commission ("**CCS**"), an independent statutory board established under the Ministry of Trade and Industry. The CCS has the power to investigate and adjudicate anti-competitive activities. Appeals may be made to the Competition Appeals Board and from there to the Court of Appeal.

There are currently six regulations in force under the SCA, namely:

1. Competition Regulations;
2. Competition (Notification) Regulations;
3. Competition (Transitional Provisions for Section 34 Prohibition) Regulations;
4. Competition (Fees) Regulations;
5. Competition (Composition of Offences) Regulations; and
6. Competition (Appeals) Regulations.

There are currently two orders in force under the SCA, namely:

1. Competition (Block Exemption for Liner Shipping Agreements) Order 2006 and Competition (Block Exemption for Liner Shipping Agreements) (Amendment) Order 2010; and
2. Competition (Financial Penalties) Order and Competition (Financial Penalties) (Amendment) Order 2010.

Recent Cases

Cartels – 17 March 2016 - the CCS imposed total fines of SGD 909,302 (approximately USD 666,000) on 10 financial advisers for an agreement to pressure a competitor to withdraw a discounted product. An unusual aspect of the decision is that the fines were calculated on the basis of a full year despite the conduct only being effected for a few days.

Mergers – 3 March 2016 - the CCS approved ADB BVBA's proposed acquisition of Fairford's Safegate International (Safegate) despite finding that the parties' combined market share exceeded 80%. The merger was approved on the basis of various behavioural remedies such as commitments to maintain prices, not to abuse exclusive contracts, etc.

Cartels – 8 March 2016 - the CCS issued a proposed infringement decision against 13 chicken distributors for price fixing and market sharing. The CCS determined that the parties to the impugned agreement had over 90% share of the relevant market.

Table 2 : Guidelines published by the CCS
CCS Guidelines on the Major Provisions
CCS Guidelines on the Section 34 Prohibition
CCS Guidelines on the Section 47 Prohibition
CCS Guidelines on the Substantive Assessment of Mergers
CCS Guidelines on Merger Procedures 2012
CCS Guidelines on Market Definition
CCS Guidelines on the Powers of Investigation
CCS Guidelines on Enforcement
CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity Cases 2009
CCS Guidelines on the Appropriate Amount of Penalty
CCS Guidelines on the Treatment of Intellectual Property Rights
CCS Guidelines on Competition Impact Assessment for Government Agencies

Recent Developments

The CCS will shortly conduct public consultations in relation to proposed changes to the CCS Guidelines on the Appropriate Amount of Penalty and on Enforcement. With respect to the former, the CCS proposes to change the year which will be the basis of the calculation of any financial penalties from the financial year proceeding the CCS decision to the financial year proceeding the termination of the infringing party's infringement. With respect to the latter guideline, the CCS is proposing to clarify that the proposed financial penalty will be set out in its proposed infringement decision in accordance with its current practice.

THAILAND

Thailand enacted the Trade Competition Act B.E. 2542 ("**TCA**") in 1999 to replace the Price Fixing and Anti-Monopolies Law of 1979. Pursuant to the TCA, the following ancillary documents have also been issued:

- Notice on dominant business operators (2007); and
- Guidelines on unfair trade practices in the wholesale/retail business (2003).

The TCA applies to any business operator which is defined as "a distributor, producer for distribution, orderer or importer into the Kingdom for distribution or purchaser for production or redistribution of goods or a service provider in the course of business" although there are some specified exclusions. The TCA addresses anti-competitive agreements, abuses of dominant positions and mergers as well as some forms of unfair trade practices.

Unfortunately, the thresholds to establish a dominant position were not established until 2007, before that time it was not possible for the Trade Competition Commission ("**TCC**"), the regulatory authority, to legally determine whether a business operation was dominant. No thresholds have yet been established for merger notification as of publication which effectively means that the merger control regime contemplated under the TCA has not yet been implemented.

The TCC will investigate an alleged infringement and, where it decides that the TCA has been violated, refer the matter to the Office of the Attorney-General for prosecution where it determines that criminal sanctions are warranted. The penalty for violations of the substantive provisions of the TCA are imprisonment for a term of not more than three years, and a maximum fine of THB 6 million (approximately USD 170,000). Repeat offenders are subject to double the punishment. In addition, the TCC may order administrative remedies including an order to cease, suspend or rectify offending behavior.

Recent Cases

There have been no cases prosecuted under the TCA. However, it appears that an investigation is underway arising from a complaint in relation to an anti-competitive agreement in the computer industry.

Recent Developments

Amendments to the TCA have been approved by Cabinet and are currently being considered by the Council of State. Amendments include:

- *Making state-owned enterprise subject to the TCA;*
- *Expressly permitting extraterritorial application of the TCA to conduct occurring outside Thailand which has an anticompetitive effect in Thailand;*
- *Including affiliates within the definition of a business operator;*
- *Expanding the definition of "market dominance" to incorporate market factors;*
- *Increasing potential fines;*
- *Removing pre-merger notification from the TCA but incorporating some form of reporting requirements; and*
- *Providing the power for the TCC to impose administrative penalties for failure to comply with an order.*

VIETNAM

Vietnam enacted its Competition Law No. 27/2004/QH11 ("**VCL**") in 2004 and quickly followed with five decrees and a circular that provide further guidance in the implementation of the VCL.

The implementing provisions are:

- Decree No.116/2005/ND-CP of 15 September 2005, setting forth detailed provisions for implementing a number of Articles of the Law;
- Decree No. 120/2005/ND-CP of 30 September 2005 on administrative offences in the field of competition;
- Decree No.110/2005/ND-CP of 24 August 2005 on management of multi-level sales of goods;
- Decree No. 06/2006/ND-CP of 9 January 2006 on the functions, tasks, power and organization structure of the Competition Administration Department ("**VCA**");
- Decree No. 05/ 2006/ND-CP of 6 January 2006 on the functions, tasks, powers, and organization structure of the Vietnam Competition Commission ("**VCC**"); and
- Circular No. 19/ 2005/TT-BTM of 8 November 2005 on guiding the implementation of a number of provisions prescribed in Decree No. 110/ 2005/ ND-CP.

The VCL applies to any business organizations and individuals as well as industry associations operating in Vietnam. It addresses agreements in restraint of competition, abuse of dominant or monopoly positions, mergers and unfair competition practices.

The regulatory authorities established under the VCL are the VCA and the VCC. The VCA investigates all potential violations and has decision making power with respect to unfair competition practices. The VCC is the adjudicator for restrictive competition practices such as anti-competitive agreements and abuses of market power. Decisions with respect to exemptions for prohibited economic concentrations are made either by the Minister of Trade or the Prime Minister depending on the nature of the exemption sought.

The Minister of Trade also determines whether an exemption should be granted with respect to prohibited agreements in restraint of trade.

There are sectoral regulators with some authority over economic concentrations including:

- Securities firms and fund management firms must receive the consent of the State Securities Commission;
- Credit enterprises such as commercial banks and Savings & Loans must receive the consent of the State Bank of Vietnam; and
- Telecommunications firms must receive the consent of the Telecommunications regulatory agency.

Recent Cases

The VCA has stated that it has completed its investigation into an alleged abuse of dominance by ABTours Company in relation to tours from Russia. According to its annual report, the VCA is finalizing its final report and case documents for submission to the Vietnam Competition Commission.

Recent Developments

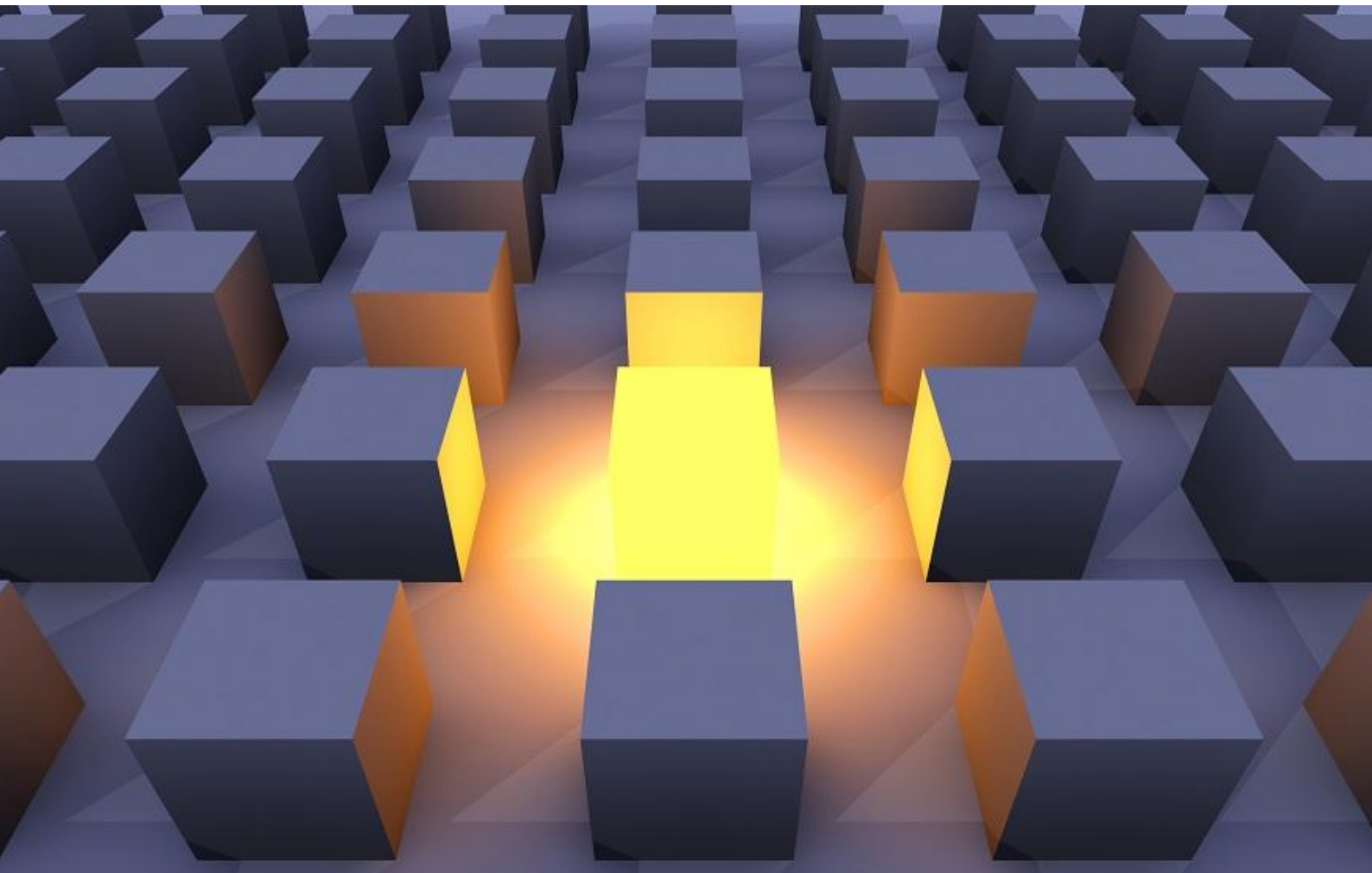
*Penal Code No. 100/2015/QH13 dated 27 November 2015, ("**Penal Code**") was to take effect on July 1, 2016 but, as of writing, the National Assembly has announced that it will vote shortly to delay the implementation of the Penal Code. The current version of the Penal Code will criminalize certain ante agreements where such conduct results in illicit profits of VDN 500 million to 3 billion (approximately USD 22,000 to 134,000) or losses to others of VND 1 billion to 5 billion (approximately USD 45,000 to 224,000).*

Potential penalties for engaging in such conduct include fines from VND 200 million (approximately USD 9,000) to 1 billion, non-custodial reform for up to 2 years or imprisonment from 3 months to 2 years. The range of fines and imprisonment is increased where certain aggravating circumstances are involved.

The Penal Code also addresses bid-rigging by imposing prison terms of up to 20 years, being prohibited from certain occupations for up to 5 years and confiscation of property on individuals. The Penal Code does not appear to address bid-rigging by legal entities.

CONCLUSION

There has been significant competition activity across ASEAN over the last two years. While there have been relatively few cases being brought across the region over this period, there have been significant legislative developments with four new competition laws enacted and most Member States presently considering rules, regulations or even amendments to their respective competition laws. While it is difficult to predict how the Member States' competition laws will be implemented or how aggressively or effectively they will be enforced, it seems clear that businesses can no longer ignore competition law compliance. Based on public announcements and information made available by relevant officials, it is reasonable to expect further legislative developments will be implemented in the foreseeable future and it is likely that merger review or at least notification will quickly be put into play in a number of Member States. Of particular interest to businesses, is the expansion of Members States that will be applying their competition laws to foreign entities and conduct that have effects within their national economies including some Member States with criminal penalties for certain infringing conduct.



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