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ASEAN PATH

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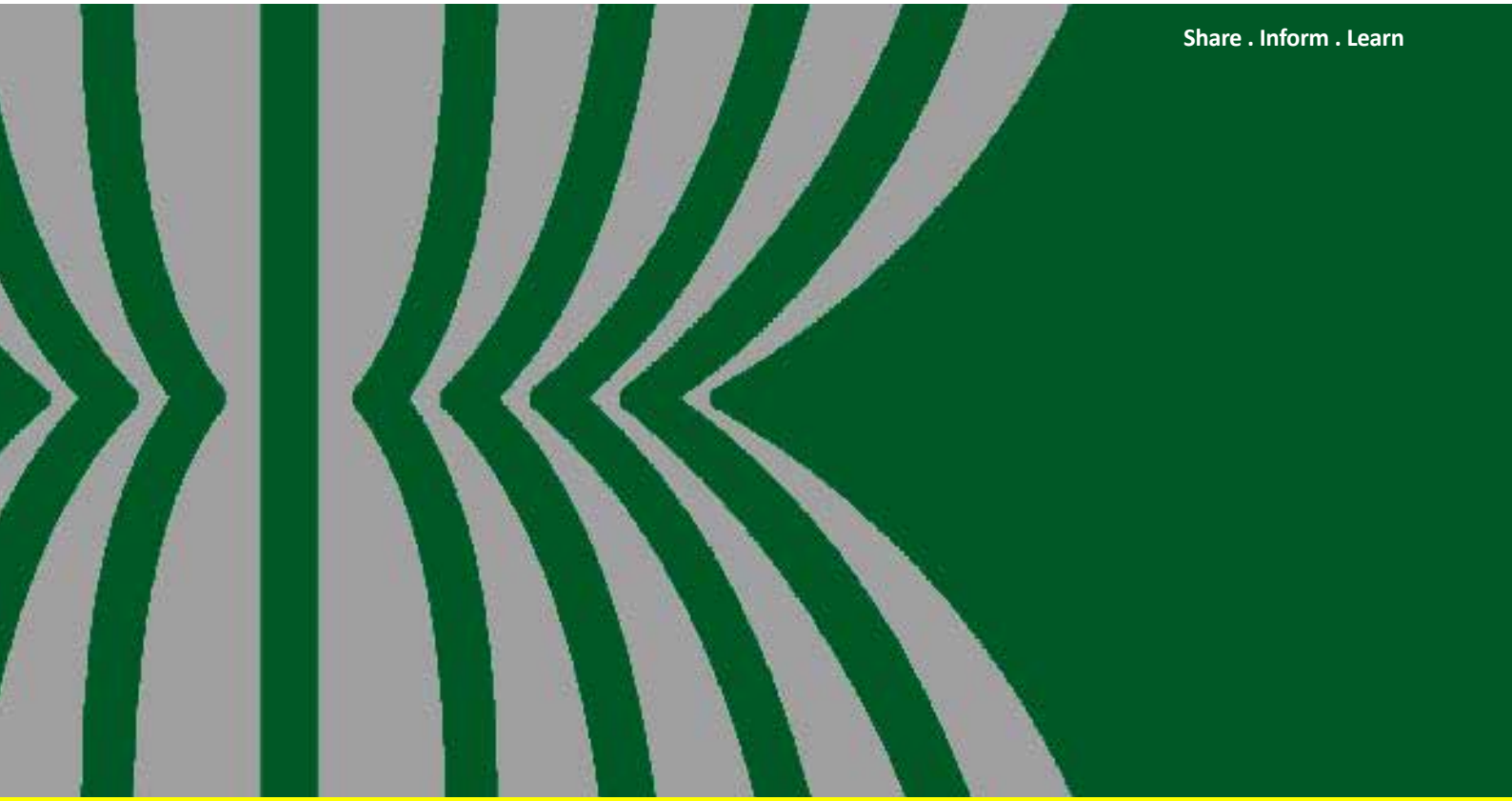

DFDL LEGAL & TAX

ASEAN COMPETITION LAW

A SHAPSHOT

BY DAVID FRUITMAN

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 will be accessible on our website: www.dfdl.com.

ASEAN COMPETITION LAW
A SHAPSHOT
BY DAVID FRUITMAN

Competition law is already here in ASEAN; however it is neither pervasive nor consistent in its implementation among Member States. While the ASEAN Economic Community ("AEC") Blueprint calls for Member States to implement competition policy by 2015, it is left open for Member States to determine how this will be achieved and what this will mean on a practical level.

Despite the AEC deadline being only about 18 months away, it is somewhat unclear what "competition policy" means. The ASEAN Regional Guidelines on Competition Policy define competition policy as "those governmental measures that directly affect the behaviour of enterprises and the structure of industry and markets." This is an extremely broad definition that could potentially include many laws of a far more general nature as well as numerous other legislative measures and policies. The Guidelines go on to state that competition policy can be broken down into two basic constituent elements:
1) a set of policies that promote competition and
2) legislation, judicial decisions and regulations aimed at controlling or prohibiting anti-competitive practices.

The website of the ASEAN Experts Group on Competition defines competition policy as follows:

"Competition policy can be broadly defined as a governmental policy that promotes or maintains the level of competition in markets, and includes governmental measures that directly affect the behaviour of enterprises and the structure of industry and markets. Competition policy basically covers:

a. Set of policies that promote competition in local and national markets, such as introducing an enhanced trade policy, eliminating restrictive trade practices, favouring market entry and exit, reducing unnecessary governmental interventions and putting greater reliance on market forces; and

b. Competition law which comprises of legislation, judicial decisions and regulations aimed at preventing anti-competitive business practices, abuse of dominance and anti-competitive mergers.

Competition policy helps to promote and protect the competitive process and provides a level-playing field for all market players. Fair and effective competition contributes to improvements in economic efficiency, economic growth and development, and consumer welfare. Competition policy complements other government policies such as trade policy, industrial policy and regulatory reform, and accommodates other economic and social objectives such as the promotion of technological advancement, promotion of industrial diversification and job creation"

Table 1 – Enactment of Comprehensive Competition Law by Member State

MEMBER STATE	YEAR ENACTED
Brunei	N/A
Cambodia	N/A
Indonesia	1999
Laos	N/A (2004 Decree not implemented)
Malaysia	2010
Myanmar	N/A - Competition is addressed in 1947 Constitution
Philippines	N/A - Competition is addressed in various legislation including Constitution
Singapore	2004
Thailand	1999 (replaced 1979 Anti-Monopolies Law)
Vietnam	2004

Given the above, it clear that competition policy may be construed quite broadly and therefore it is not clear what Member States will be required to implement in order to comply with their AEC obligations in respect of competition policy. However, on an informal basis it appears to us that ASEAN Member States have generally taken the implementation of a general comprehensive, as opposed to sector specific, competition law as the metric by which compliance with this obligation will be judged. To that end, there appears to be significant pressure (much of it self induced through various public announcements) on Member States to ensure that they have enacted such a competition law by the end of 2015.
As noted in Table 1 above, Indonesia, Malaysia, Singapore, Thailand and Vietnam have some form of general competition law already in place with most having enacted their legislation in the last 10 years. However the scope of enforcement and effectiveness among these Member States varies widely. Based on various public sources, 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 in those Member States based on publicly available (and largely English language) sources. Additional developments may have occurred which were not made generally available to the public as of writing.

BRUNEI DARUSSALAM

There is currently no general competition law in Brunei. For completeness, the Monopolies Act, Chapter 73 of the Laws of Brunei, has been on the books since 1932, although it appears not to have been implemented. This law prevents the establishment of certain kinds of monopoly - as set out in Schedule 1 of that law, without the consent of His Majesty.

While no general competition law exists, there is some degree of competition regulation in the telecommunications, energy, banking and finance sectors.

For example, in telecommunications, the Authority for Info-communications Technology Industry of Brunei Darussalam ("AITI") regulates certain competition issues for its licensees under the Telecommunications Order 2001 which generally applies to telecommunications services and/or infrastructure providers. Licences granted under this law include a prohibition against anti-competitive behaviour. As well, AITI is specifically entrusted to "promote and maintain fair and efficient market conduct and effective competition between persons engaged in commercial activities connected with telecommunication technology in Brunei Darussalam". More specifically, AITI has the power to give directions to licensees to ensure fair and efficient market conduct.

In the oil and gas sector, the Energy Department of the Prime Minister's Office has authority to regulate sector participants including with respect to certain competition law issues and a similar power is held by the Monetary Authority of Brunei Darussalam with respect to the banking, finance and insurance sectors.

Recent Developments:
Brunei appears to have started the process towards a general competition law in 2011 with the support of the Prime Minister's Office and various other government entities. We have been informed that a draft has been prepared, that multiple consultations with stakeholders have taken place and technical assistance from international experts has been provided. We are further informed that the draft Competition Law has been forwarded for consultation at the Ministerial level. It also appears that a separate competition code of practice will be implemented by AITI to cover telecommunications licensees and broadcasters.

CAMBODIA

As with Brunei, there is currently no general competition law in Cambodia. There have been a number of drafts circulated over the last 10 years with the most recent public draft circulated late in 2013 with the support of the Asian Development Bank. This most recent draft addresses cartels and abuses of dominant positions, but leaves merger regulation to be implemented by regulation at some point in the future.

Recent Developments:
While the Royal Government has publicly stated that it intends to have a general competition law passed by the end of 2015, it is not clear what the final form of this legislation will look like and therefore a comprehensive 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 together with the Decree of the President of the Republic of Indonesia No. 75 of 1999 on the Komisi Pengawas Persaingan Usaha ("KPPU").
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 meant to be 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.

There are also numerous competition related provisions in other laws that were not superseded or repealed by Law No 5 and which are therefore still in effect. In some of those laws, there are provisions for private actions; although there is currently no such provision under the Law No 5.

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 was implemented in 2010 and 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. 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 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 per day up to a total of Rp 25 billion.

Recent Cases:

Mergers - March 11, 2014 - Conditional Clearance of proposed acquisition of Axis Telecom Indonesia by XL Axiata - both are mobile telecommunication operators in Indonesia. XL must submit a report to KPPU of market developments, products and their tariffs every three months for the next three years; and remain committed to being the forerunner in providing competitive tariffs for communication services. It should be noted that the Ministry of Communications and Information Technology had previously approved the transaction, but required the merged entity to release several blocks of 2100MHz mobile frequency spectrum.

Mergers - April 7, 2014, the KPPU fined Dunia Pangan, a local food manufacturer, Rp 1 billion (approximately USD 86,000) for not submitting a notification with respect to its acquisition of Sukses Abadi Karya Inti within the statutory deadline.

Mergers – April 8, 2014, the KPPU fined a local manufacturer of palm oil, Muara Bungo Plantation, Rp 1.24 billion (approximately USD 107,000) for delaying its notification of its acquisition of Tandan Abadi Mandiri by almost 2.5 months.

Bid-Rigging - April 23, 2014, the KPPU determined that four medical equipment businesses had colluded with the purchasing department of a hospital to permit excessive prices on purchases causing a loss to the government of approximately Rp 3 billion. The four businesses were fined and were prohibited from participating in any medical equipment procurement in Indonesia for 2 years.

Cartels - March 17, 2014, the KPPU fined a number of freight forwarders operating out of Belawan Port in relation to an agreement amongst in relation to rates for certain containers. Fines were imposed of between Rp 22m (approximately USD 1,900) to Rp 463,020,000 (approximately USD 40,020) on the parties to the agreement.

Cartels - March 20, 2014 - After an investigation that lasted about a year, 19 businesses were fined for cartel practices in relation to pricing of imported garlic. Fines varied from Rp 11 million (approximately USD 950) and Rp 921 million (approximately USD 79,500). Government officials were also found to have violated the competition law in regards to these practices.

Recent Developments:
Based on public comments and reports, overall the KPPU is considered an effective and active agency with regular reports of investigations and sanctions. However, amendments are in the works in relation to the merger notification regime (with a plan to move to mandatory pre-merger and expend the types of transactions covered), cartel investigations (introduction of leniency program and obstruction sanctions) and an expansion of the scope of authority of the KPPU among other matters. The KPPU also recently amended its merger guidelines which, among other things, clarified the notification obligations in relation to offshore transactions.

LAOS

Laos is generally considered to have no general comprehensive competition law; however, there is currently a "bare-bones" Decree 15/PMO (4/2/2004) on Trade Competition which was passed, but remains unimplemented. The Decree applies to all sales of goods and services in business activities and prohibits certain activities that lead to monopolies (which are defined as unilateral or joint dominance), mergers that substantially reduce or limit competition or eliminate competitors, intentional actions to eliminate competitors (such as dumping) and a wide variety of activities that may be considered unfair trade practices (such as price fixing, market allocation, etc.).

The Decree provides for a notice to be issued by the regulator to an infringing business to rectify its behaviour. The Decree also contemplates either a temporary or indefinite suspension of the business as well as other sanctions according to the law and compensation to business entities that have suffered losses as a result of an offence.

The Trade Competition Commission, the enforcing agency contemplated by the Decree has not yet been established.

While we have not been informed of any examples of this happening, it appears that certain sectoral regulators have a general power to issue, or request the Prime Minster to issue, orders against certain disruptive conduct within their sectoral jurisdiction. It has been posited that this potentially includes anti-competitive behaviours.

Recent Developments:
The Division on Consumer Protection and Competition under the Ministry of Industry and Commerce has been established and a draft competition law is being prepared to replace the Decree with technical assistance from international experts. We have been informed that the new law is expected to be implemented before the expiry of 2015.

MALAYSIA

Malaysia's Competition Act 2010 (the "MCA") came into force on January 1, 2012. The Competition Commission (the "MyCC") was also established as a regulatory authority under the Competition Commission Act 2010. 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. Private actions are also contemplated expressly as the MCA provides for 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 Cases
Cartels - March 31, 2014, the MyCC fined each of Malaysian Airline System Berhad ("MAS") and AirAsia Berhad Rm 10,000,000 (approximately USD 3,119,000) based on an agreement between them to share air transportation services in Malaysia. Essentially, the agreement called for a share swap between two of the shareholders of the parties and that MAS would be only a full service carrier, while AirAsia would be a low cost carrier.

Cartels - February 20, 2014, MyCC issued a proposed decision against 26 ice manufacturers for agreeing to fix the price of edible tube ice and block ice in Kuala Lumpur, Selangor and Putrajaya. Fines imposed ranged from Rm 1,200 (approximately USD 375) to Rm 106,000 (approximately USD 33,075).

Cartels - May 21, 2013, MyCC accepted undertakings by the Pan-Malaysia Lorry Owners Association (PMLOA) to issue and publish an apology statement in major newspapers, in lieu of fines, in respect of an agreement to fix prices in respect of transportation charges.

Abuse of Dominance - November 1, 2013, MyCC fined Megasteel Sdn Bhd Rm 4.5 million (approximately USD 1.4 million) in respect of an abuse of its dominant position in Hot Rolled Coil ("HRC") by means of a margin squeeze to its downstream Cold Rolled Coil ("CRC") competitors. Essentially, MyCC found that Megasteel kept the prices of its CRC unreasonably low in relation to the cost at which it supplied HRC, a required input, to its CRC competitors.

Recent Developments:
We are not aware of any specific upcoming legislative developments.

MYANMAR

While no comprehensive competition law regime has been implemented in Myanmar, competition law was addressed in the 1947 Constitution which provided that "private monopolist organizations, such as cartels, syndicates and trusts formed for the purpose of dictating prices or for monopolizing the market or otherwise calculated to injure the interests of the national economy, are forbidden." It is our understanding that, while this provision has not been implemented in practice, it has also not been repealed by succeeding constitutional documents.

Recent Developments:
Currently, the Ministry of Commerce has circulated a draft comprehensive Competition Law. We understand the draft was submitted to Parliament in 2013. In addition, the Competition Policy Working Committee has been formed with the Deputy Minister of Ministry of Commerce as Chair and is otherwise composed of senior government officials.

PHILIPPINES

There is no comprehensive competition law of general application in the Philippines. Instead there is a sectoral and issue based approach with over 30 laws addressing competition-related practices. The main sources of competition law are as follows:

1. The 1987 Constitution;
2. The Act to Prohibit Monopolies and Combinations in Restraint of Trade (Act No. 3247);
3. The Revised Penal Code (Act No. 3815), as amended;
4. The New Civil Code (Republic Act No. 386);
5. Amending the Law Prescribing the Duties and Qualifications of Legal Staff in the Office of the Secretary of Justice (Republic Act No. 4152); and
6. Executive Order No. 45, series of 2011, Designating the Department of Justice as the Competition Authority ("EO No. 45").

Other important laws include: the Price Act, the Consumer Act, Copyright Law, etc. These laws cover a broad range of conduct and apply to various entities. As a whole, the relevant legislation addresses conduct such as monopolization, combinations in restraint of trade, price manipulation and unfair trade practices. There does not appear to be any specific legislation expressly dealing with abuse of dominant positions.

Under EO No. 45, the Department of Justice ("DOJ") has been designated as the competition authority of the Philippines and, in that regard, established the Office for Competition ("OFC"). However there are also numerous sectoral regulators under the current legislation.

Under EO No. 45, the DOJ/OFC has responsibility to:

1. Investigate all cases involving violations of competition laws and prosecute violators to prevent, restrain and punish monopolization, cartels and combinations in restraint of trade;
2. Enforce competition policies and laws to protect consumers from abusive, fraudulent, or harmful corrupt business practices;
3. Supervise competition in markets by ensuring that prohibitions and requirements of competition laws are adhered to, and to this end, call on other government agencies and/or entities for submission of reports and provision for assistance;
4. Monitor and implement measures to promote transparency and accountability in markets;
5. Prepare, publish and disseminate studies and reports on competition to inform and guide the industry and consumers; and
6. Promote international cooperation and strengthen Philippine trade relations with other countries, economies, and institutions in trade agreements.

Recent Developments

In early 2013, the DOJ issued Department Circular No. 011, the Guidelines Governing the Implementation of Executive Order No.45, series of 2011 which became effective March 1, 2013. The Guidelines set out procedures for handling investigation of competition offences by the OFC.

We understand that draft comprehensive legislation is currently undergoing bicameral consultations.

SINGAPORE

Singapore enacted its Competition Act (the "SCA") in 2004 with a staggered implementation of the various provisions. 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 (the "Section 34 Prohibitions");
- abuses of dominant positions (the "Section 47 Prohibitions"); and
- mergers that substantially lessen competition (the"Section 54 Prohibitions").

The Section 34 Prohibitions and Section 47 Prohibitions took effect on January 1, 2006 and the Section 54 Prohibitions took effect on July 1, 2007.

The regulatory authority is the Competition Commission ("CCS"), an independent statutory board established under the Ministry of Trade and Industry by the SCA. 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 - April 1, 2014, the CCS issued a Proposed Infringement Decision against 11 freight forwarding companies and their Singapore subsidiaries/affiliates in relation to its finding that they collectively fixed certain fees and surcharges, and exchanged price and customer information in relation to the provision of air freight forwarding services for shipments from Japan to Singapore.

Cartels - May 27, 2014, the CCS issued an infringement decision against four Japanese ball bearing manufacturers and their Singapore subsidiaries in relation to its finding that these manufacturers had engaged in anti-competitive agreements and unlawful exchange of information in respect to the price and sale of ball and roller bearings sold to aftermarket customers in Singapore. Fines ranged from SgD 455,652 (approximately USD 363,000) to SgD 7,564,950 (approximately USD 6,027,000). This case involved the highest individual and total fines imposed by the CCS to date and involved the CCS's leniency policy which resulted in one party having its fine reduced to nothing. Also noteworthy is that this case involved an international cartel.

Bid-Rigging - March 28, 2013, the CCS imposed fines against 12 motor vehicle traders for agreeing to suppress bids at public auctions of motor vehicles over a period of three years from January, 2008 to March, 2011. Fines assessed ranged from SgD 8,000 (approximately USD 6,386) to SgD 50,733 (approximately USD 40,500).

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 Filing Notifications for Guidance or Decision with respect to the Section 34 Prohibition and Section 47 Prohibition
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

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 under the TCA 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 if it feels 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. 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 behaviour.

There are some sectoral regulators with competition authority including the National Broadcasting and Telecommunications Commission in relation to the broadcasting and telecommunications sectors.

Recent Cases

There have been no cases prosecuted under the TCA.

Recent Developments

To our knowledge, the TCA is currently being reviewed in respect of:

- *scope of the TCA;*
- *criteria for market domination; and*
- *merger thresholds.*

VIETNAM

Vietnam enacted its Competition Law No. 27/2004/QH11 ("VCL") in 2004 and was 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;
- Decree No. 05/ 2006/ND-CP of 6 January 2006 on the functions, tasks, powers, and organization structure of the 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 organisations 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 Vietnam Competition Authority ("VCA") and the Vietnam Competition Council ("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 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 no sectoral regulators with comprehensive competition jurisdiction within their respective sectors, but there are some with 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 conducted a number of investigations in relation to restrictive trade practices in 2013, but we are not aware of any restrictive competition cases heard by the VCC since the start of 2013 other than the VCA reporting that it submitted its pupil insurance cartel investigation to the VCC for adjudication. The VCA reported that the VCC suspended the case, but the reasons for this and any next steps were not disclosed.

Recent Developments

The VCA has made efforts with respect to legislative reform including draft decrees on breaches and multi-level sales. We understand that both have been submitted for consultation and consideration. The former is of particular importance as the VCA has temporarily suspended enforcement in regards to unfair competition practices due to a gap in the current legislation and the draft decree will remedy this issue.

In addition, subsequent to a Review Report on the VCL issued in late 2012, we understand that the VCA has been working on amendments to the VCL and the relevant decrees in a number of substantive areas.

CONCLUSION

As the AEC deadline approaches, we expect to see an increasing pace of activity among Member States, particularly those which have not currently implemented comprehensive competition laws. However, even with the Member States which already have such a law in place, we can observe varying degrees of implementation as well as different approaches to the structure and processes of competition law and policy in those countries. Each Member State faces a unique blend of political, legal, cultural and economic challenges, among others, which makes predictions of what competition law and policy will look like post AEC implementation difficult to assess. Moreover, we anticipate that it will be some time before there is effective enforcement across the region given that competition regimes that are just coming into force can be expected to focus on education, advocacy and capacity building for some time and some of the already existing regimes will be looking to improve the efficacy of their competition law and policy through legislative and procedural reforms. However with greater regional cooperation under the auspices of the AEC, it can also be expected that there will be greater levels of information and resource sharing including development of best practices and instruments to improve official and unofficial cooperation amongst competition authorities.

REFERENCES:

1- source: AECB – Art 41

2- source: See http://www.aseancompetition.org/about/competition-policy

3- source: Authority for Info-communications Technology Industry of Brunei Darussalam Order, 2001, Section 6(1) (c).

4- source: Telecommunications Order, 2001, Section 27(1) (c).

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