Regional Competition

Competition Bites – South-East Asia & Beyond

Introduction

2018 is now into its second half and continues to see competition regulators active. The issues which come up for attention are not limited to those in ecommerce and cuts across multiple industries. Several of the Southeast Asian regulators have also grown more sophisticated and have been taking on more complex cases, handling difficult issues. The Grab-Uber merger is one such example, where Singapore has proposed imposing financial penalties alongside various commitments.

On another note, companies with businesses in Indonesia should be looking out for the newly appointed Commissioners of the KPPU, at a time where substantial changes to Indonesia competition laws are on the way. The Thai regulators are prepping the scene by issuing draft implementing regulations for the new Trade Competition Act which was introduced late last year. Vietnam has introduced rigorous amendments to their competition laws. All of these will impact on how companies do business.

Read on if you don't want to miss out on the latest developments in competition law around the globe.

ASEAN

SINGAPORE

CCCS Issues Provisional Decision to Block Merger between Wilhelmsen and Drew Marine

On 25 May 2018, the Competition and Consumer Commission of Singapore ("**CCCS**") issued a Statement of Decision (Provisional) ("**SDP**") to Wilhelmsen Maritime Services AS ("**WMS**") and Drew Marine's technical solutions, fire, safety and rescue businesses ("**DMTS**"), in relation to the proposed acquisition of sole control over DMTS by WMS ("**Proposed Transaction**"). According to the CCCS, the parties have a high combined market share in the market for the supply of marine water treatment chemicals (including ancillary materials and services) in Singapore ("**Relevant Market**"), and they are each other's closest competitors. The CCCS took the view that after the completion of the Proposed Transaction, competitive pressure from existing players in the Relevant Market will likely be insufficient, and any potential entry by competitors will not be timely and sufficient to offset the anti-competitive effects of the Proposed Transaction. As such, the CCCS provisionally found that the Proposed Transaction is likely to result in a substantial lessening of competition, which could lead to higher prices and/or a reduction in choice and quality of supply of marine water treatment chemicals in Singapore.

The CCCS will make a final decision after reviewing representations submitted by the parties. Before the CCCS issues its final decision, the parties may also offer commitments to address the potential competition concerns identified. Separately, the parties may also apply to the Minister for Trade and Industry for their transaction to be exempted on the ground of any public interest consideration. Note that so far, however, such exemption has never been granted.

CCCS Proposes to Impose Financial Penalties upon Grab and Uber Together with Various Remedies

On 5 July 2018, the CCCS issued a Proposed Infringement Decision ("**PID**") against Grab and Uber in respect of their completed merger. After a careful review, the CCCS has formed the view that, without the merger, Uber would not have left the Singapore market in the near to medium term and that the merger, therefore, removed competition between the two closest competitors for the provision of booked chauffeured point-to-point transport services platform services market in Singapore. The CCCS further assessed that there were insufficient competitive constraints to prevent Grab from raising fares for riders and lowering commission rates for drivers and/or lowering the quality of its services and reducing innovating its product offerings.

In addition to identifying various possible remedies to address the alleged substantial lessening of competition ("**SLC**") resulting from the merger, the CCCS has, for the first time since the merger regime was introduced in 2007, proposed to impose a financial penalty on both parties, the amount of which is, for now, confidential.

It is interesting to note that one reason for imposing a financial penalty is the CCCS's finding that the parties had anticipated the competition concerns arising from their transaction and yet implemented the merger. The CCCS further noted that Grab and Uber "had even provided for a mechanism to apportion eventual antitrust financial penalties".

The PID is an opportune reminder that, whilst there is no mandatory merger notification to the CCCS, it is nevertheless prohibited for parties to carry on a merger which would result in a SLC in any market in Singapore. The PID is also evidence that the risk of having remedies and financial penalties imposed where a SLC is found is a real one that should not be overlooked by merging parties.

MALAYSIA

Public Consultation on MYCC Guidelines on Intellectual Property Rights and Competition Law

On 9 April 2018, the Malaysia Competition Commission ("**MyCC**") launched a public consultation on its draft Guidelines on Intellectual Property Rights and Competition Law ("**Draft Guidelines**"). The Draft Guidelines are meant to provide greater clarity on the MyCC's approach towards competition issues relating to intellectual property ("**IP**") under the Competition Act 2010. Broadly, the Draft Guidelines discuss when IP agreements may be deemed anti-competitive by the MyCC and when the use of IP could amount to an abuse of dominance. For example, in the Draft Guidelines, the MyCC discussed

how vertical IP licensing agreements can give rise to competition concerns due to the use of provisions on territorial and field-of-use restrictions, exclusive dealing and grant-backs. The MyCC also considered that vertical arrangements can have a horizontal dimension e.g. an upstream IP owner can create a cartel at the downstream level by subjecting all its licensees to the same resale price maintenance condition.

INDONESIA

Appointment of New KPPU Commissioners

On 23 April 2018, the House of Representatives officially appointed nine new KPPU Commissioners, effective from 2 May 2018 until 2023. Please see our previous Update for more information on the new KPPU Commissioners.

PHILIPPINES

PCC Raises Concerns over Grab-Uber Merger

On 22 May 2018, the Philippine Competition Commission ("**PCC**") issued a Statement of Concerns finding that the transaction between Grab and Uber has resulted in and is likely to continue to result in a substantial lessening of competition in the on-demand car-based private transportation online booking service through a mobile ride-hailing application in Metro Manila, its surrounding areas, and Cebu, for the following reasons:

(a) post-transaction, Grab will have 93% of vehicles registered under the Transportation Network Vehicle Service category, which creates or strengthens Grab's dominance in the relevant market;

(b) the transaction results in Grab being able to profitably increase its prices, because riders will not switch to other means of public transportation;

(c) barriers to entry are such that entry into the relevant market will not be sufficiently timely, likely, and significant, hence new entrants into the market are unlikely to exert sufficient competitive pressure on Grab; and

(d) the PCC found that post-transaction, prices of Grab rides had been increasing, while the quality of such service is decreasing, to the detriment of riders.

Regional Competition

THAILAND

OTCC Invites Public Comments on Draft Implementing Regulations under the New Trade Competition Act

On 24 May 2018, and following from the entry into force of the amended Trade Competition Act ("**TCA**") in Thailand in October 2017, the Office of Trade Competition Commission ("**OTCC**") published six draft implementing regulations, which clarifies how the OTCC will be enforcing the provisions under the TCA. The OTCC has invited the public to comment on the drafts, from 24 May 2018 to 22 June 2018. Please see our previous Update for more information on the TCA.

Rest of Asia Pacific

AUSTRALIA

ACCC Loses Appeal in Pfizer Misuse of Market Power Case

On 25 June 2018, the Australian Competition and Consumer Commission ("**ACCC**") sought special leave from the High Court to appeal against the decision of the Full Federal Court of Australia ("**Full Court**") issued on 25 May 2018, where it dismissed the ACCC's appeal against the trial judge's decision in relation to the alleged misuse of market power by Pfizer.

In 2012, in the months leading up to the expiration of its patent on best-selling cholesterol drug atorvastatin (marketed as "**Lipitor**"), Pfizer offered significant discounts and rebates accrued on previous sales of Lipitor to pharmacies. These offers were conditional upon the pharmacies' agreement to purchase a minimum quantity of Pfizer's generic atorvastatin and to restrict their supply of competing genetic atorvastatin products. The offers were also made before the patent expired, when other generic producers could not make competing offers to pharmacies to supply generic atorvastatin. For these reasons, the ACCC instituted proceedings against Pfizer in 2014, on the basis that it had misused its position as a patent holder of atorvastatin to prevent or deter competition from other suppliers selling generic atorvastatin products to pharmacies. The ACCC further alleged that Pfizer's conduct had the objective of substantially lessening competition in the market for atorvastatin.

The ACCC's application was dismissed by the trial judge in 2015, who held that Pfizer did not enjoy substantial market power at the time the offers were made, and that the ACCC had not established that Pfizer had the objective of substantially lessening competition in the market for atorvastatin. The ACCC subsequently appealed against the decision at first instance. Although the Full Court agreed with the ACCC that Pfizer had substantial market power, it dismissed the appeal on the ground that ACCC had not made out its case that Pfizer's conduct had the substantial purpose of making it difficult for the generics manufacturers to compete in the atorvastatin market post 18 May 2012 nor that it had the substantial purpose of substantially lessening competition in that market.

Regional Competition

ACCC Publishes Submissions from Digital Platforms Inquiry

On 3 May 2018, the ACCC published submissions received from various stakeholders during its digital platforms inquiry. The inquiry focused on the effects that digital platforms such as Facebook and Google had on competition in the media and advertising services markets (in particular in relation to the supply of news and journalistic content), and the implications for media content creators, advertisers and consumers.

The submissions included responses from Facebook Australia ("**Facebook**") and Google, who sought to address the ACCC's concerns about the limited number of online platforms. In particular, Google said that the "highly competitive online environment" translates into lower costs and barriers to entry for media content creators, as well as access to a larger, global audience. According to Google, consumers benefit from increased choice and access to a wider and more diverse range of news content online. Google's views were echoed by Facebook, which also asked the ACCC to consider using new economic tools when analysing digital platforms, as traditional tools may not accurately account for the complexities of multi-sided platforms. On the other hand, News Corporation Australia ("**News Corp**") was less optimistic about the competitive effects of digital platforms, opining that the substantial market power of certain digital platforms makes them "unavoidable trading partners" that forces publishers to accept competitively harmful terms of trade, standards and policies. The ACCC will issue a preliminary report on its findings by 3 December 2018, with a final report due by 3 June 2019.

CHINA

MOFCOM Approves Toshiba Chip Sale to the Bain Group

On 17 May 2018, the Ministry of Commerce ("**MOFCOM**") approved Toshiba's 2 trillion yen (approx. S$246 million) sale of its memory chip business ("**Toshiba Memory**") to a consortium led by Bain Capital, which includes South Korean chipmaker SK Hynix ("**Hynix**"), Apple Inc., Dell Technologies, Seagate Technology and Kingston Technology.

Toshiba Memory was put up for sale as Toshiba wanted to cover part of its losses from its ill-fated venture into nuclear energy and prevent a potential de-listing from the Japanese stock exchange. Although its financial difficulties have been allayed with a fresh injection of funds, Toshiba's creditors remained keen on the deal as it would give Toshiba the necessary resources to ensure that Toshiba Memory remains a market leader. However, the MOFCOM was reportedly concerned that Hynix may end up with a significant stake in Toshiba's chip business, which would lead to a further consolidation of power among the top players in the memory chips market. The deal has obtained antitrust clearance from competition authorities in other jurisdictions such as the European Union. Obtaining the MOFCOM's approval was the final and biggest hurdle to the sale of Toshiba Memory, which has now been completed.

Regional Competition

JAPAN

JFTC Closes Investigations Against Deutsche Bank and Merrill Lynch for Exchanging Information and Fixing the Price of U.S. Dollar Bonds issued by the European Investment Bank

On 29 March 2018, the Japan Fair Trade Commission ("**JFTC**") announced the conclusion of its investigations into Deutsche Bank Aktiengesellschaft ("**Deutsche Bank**") and Merrill Lynch International ("**Merrill Lynch**"). The JFTC also shared its findings that both banks had violated the Antimonopoly Act ("**AMA**").

The alleged anti-competitive conduct related to the Bank of Tokyo Mitsubishi UFJ's ("**BOTM**") intended purchase of newly-issued U.S. dollar-denominated bonds by the European Investment Bank ("**EIB**") and its concurrent sale of U.S. dollar-denominated bonds previously-issued by the EIB (collectively the "**Trade**") in 2012. The BOTM had approached three financial institutions, including Deutsche Bank and Merrill Lynch for quotes for the Trade. Deutsche Bank and Merrill Lynch then exchanged information and fixed prices for the purchase of the previously-issued bonds upon receiving the request. In particular, it was agreed that Merrill Lynch would show a larger spread concerning the previously-issued bonds than that provided by Deutsche Bank. As a result, Deutsche Bank won the Trade. The JFTC held that by designating a successful bidder and enabling the bidder to win the quote, Deutsche Bank and Merrill Lynch were guilty of an unreasonable restraint of trade in violation of the AMA.

Notably, this is the first incident where the JFTC has issued such a finding against foreign banks for anti-competitive acts committed outside Japan. The JFTC held that there was a violation of Japan's anti-monopoly laws because a Japanese bank, BOTM, was the purchaser of the bonds. The JFTC, however, stated that it would not be taking further action against the banks given that the infringement had ceased in 2012 and the five-year limitation period had expired.

INDIA

CCI Plans to Investigate Algorithmic Airline Ticket Pricing Models

On 12 May 2018, the Chairman of the Competition Commission of India ("**CCI**"), Mr. Devender Kumar Sikri, announced plans to launch an investigation into the potentially anti-competitive effects of algorithmic airline ticket pricing models. Citing collusion among digital players through self-learning algorithms as one of the biggest challenges faced by competition law enforcers, Mr Sikri stated that anti-competitive algorithmic collusion could be the cause of recent sharp fluctuations in the price of regional airline tickets, such as the prices for flights between Chandigarh and Delhi. Mr Sikri also commented that the CCI intends to set up a cyber lab to study such algorithmic pricing methods and their effects on competition. Mr Sikri emphasised that dominance in itself is not a competition concern even in data-driven markets, and that data rich companies can be an important source of innovation. He noted, however, that the practices of such data rich companies must be compliant with competition law.

This will be the first investigation by the CCI into the use of algorithms in India's airline industry. It is expected to raise interesting questions such as how traditional ideas of "agreement" will be applied to the conduct in question. This is especially so given that the CCI has previously taken the view in Re. Domestic Airlines Reference Case No. 01/2011 relating to alleged price fixing by India's domestic airlines, that mere parallel conduct is insufficient to arrive at a finding of coordination amongst competitors.

CCI Publishes Third Decision Relating to Leniency

On 19 April 2018, the CCI published its third decision granting leniency to a cartel formed by three leading Indian zinc-carbon dry cell battery manufacturers - Eveready Industries India Ltd. ("**Eveready**"), Indo National Ltd. ("**Nippo**"), Panasonic Energy India Co. Ltd. ("**Panasonic**") and their association AIDCM (Association of Indian Dry Cell Manufacturers) (collectively, the "**Parties**"). The Parties were found to have colluded to fix the prices of zinc-carbon dry cell batteries in India through price coordination, market allocation and the limitation of production. The CCI however reduced the penalties imposed on Panasonic, Eveready and Nippo by 100%, 30% and 20% respectively in view of the Lesser Penalty Applications submitted by each of the parties. Although the CCI was of the view that the information provided by Eveready and Nippo did not result in significant value addition to the information provided by Panasonic, the CCI granted them a 30% and 20% reduction in penalties respectively in light of their continuous and expeditious cooperation during the course of investigations.

NEW ZEALAND

Amendments to New Zealand's Commerce Act

On 1 May 2018, the first reading of the amendments to New Zealand's Commerce Act ("**Amendment Bill**") was conducted in the House of Representatives. The amendments will enable New Zealand's competition regulator, the Commerce Commission ("**CC**"), to conduct market studies without needing to identify specific anti-competitive conduct. A market study may be conducted if either the CC or the Ministry of Business, Innovation and Employment deems such a study to be in the public interest. The CC may use its compulsory information-gathering powers in conducting market studies, and require businesses to supply relevant information, documents or evidence. The CC can also make recommendations in its market study report to include changes to legislation, and other government practices.

Under the Amendment Bill, the CC is also empowered to accept "enforceable undertakings" in non-merger cases. The undertaking would then be immediately enforceable as if it were a court decision. If the company concerned breaches any undertakings, the CC may apply to the High Court for an order directing compliance, payment of a fine based on the financial benefit of the breach, payment of compensation to anyone harmed by the breach, or any other consequential relief that the court thinks appropriate. The Amendment will now be referred to a select committee, which will hear public submissions on legislation, and decide if any changes should be made. In Singapore, similar changes

were made to the Competition Act and the Competition (Amendment) Act incorporating these changes came into force on 16 May 2018.

Europe

EUROPEAN UNION

EC Imposes Commitments on Gazprom to Address Potential Competition Concerns in the Supply of Gas to Eastern and Central European Countries

On 24 May 2018, the European Commission ("**EC**") announced that it had imposed binding commitments on Russian-based gas supplier, Gazprom, to ensure that it supplies a free flow of gas to Eastern and Central European countries at competitive prices. The EC had previously opened formal investigations in 2012 on potential abuse of dominance concerns, and issued a statement of objections to Gazprom in 2015 indicating the preliminary view that Gazprom had engaged in a plan to partition the gas market along national borders in Poland, Slovakia, Latvia, Lithuania, Hungary, Estonia, Bulgaria and the Czech Republic. Gazprom is currently the dominant gas supplier to these countries, and the EC was concerned that this strategy allowed Gazprom to charge higher prices in some countries.

The commitments now require Gazprom, amongst others, to remove contractual impediments that prevent customers from re-selling gas within these countries, and also impose controls on the prices that Gazprom can charge (e.g. by benchmarking prices with competitive Continental Western European gas markets). The EC has indicated that these commitments would be sufficient to address the potential competition concerns raised.

EC Carries Out Unannounced Inspections of Companies in the Metal Packing and the Distribution of Sports Media Rights Sector

The EC confirmed that it had conducted unannounced inspections at the premises of companies in the metal packing, and in the distribution of sports media rights sector, on 24 April 2018 and 10 April 2018 respectively. These inspections were carried out across several European Union Member States ("**Member States**"), and involved concerns around possible cartels and other restrictive business conduct. In respect of the metal packing sector companies, the EC will be taking over investigations from the German Competition Authority. The latter had initially started investigations in that sector and subsequently discovered that the suspected conduct could have extended to other Member States' markets outside Germany.

EC Commences Phase II Investigation into Apple/Shazam Merger

On 23 April 2018, the EC commenced a Phase II investigation into Apple's purchase of Shazam. Apple, a US-based technology company, is involved in the sale and delivery of online digital content, and also provides video and music streaming services via Apple Music. Shazam is a UK based company involved

in developing and distributing music recognition applications, and refers users to digital music streaming and download services, including Apple Music and its competitors (e.g. Spotify, Deezer). Shazam is the leading mobile device application for music recognition in the European Economic Area, while Apple Music is the second largest music streaming service provider in Europe in the last three years.

The EC raised concerns that, post-transaction, Apple would gain commercially sensitive data about its competitor's customers, and could use this data to directly target these customers to encourage switching to Apple Music. The EC is also investigating whether the practice of stopping the Shazam application from making referrals to Apple Music's competitors post-transaction would harm these competitors.

The EC has until September 2018 to take a decision on the proposed merger.

EC Conditionally Approves BASF's Purchase of Bayer's Crop Science Business

On 30 April 2018, the EC conditionally approved BASF's purchase of parts of Bayer's crop science business. BASF is a German headquartered company involved in, amongst others, "chemical and biological crop protection, seed treatment, nutrient supply and plant stress". Bayer's sale of its crop science business was a condition imposed by the EC, for Bayer's acquisition of Monsanto to be approved (please see our previous Update for details of the Bayer/Monsanto merger). The EC's approval is conditional on BASF divesting a specific pipeline product, and a line of research into the development of non-selective herbicides, to address potential overlaps between BASF's existing business and the purchased crop science business.

UNITED KINGDOM

New UK Merger Jurisdictional Threshold Tests

On 11 June 2018, changes to the UK's merger jurisdictional threshold tests were made by the UK government. In particular, the threshold test for businesses in the computing hardware, military, quantum technology and dual-use sectors ("**Relevant Enterprise**") were amended to allow intervention when the target business's UK turnover is more than £1 million (approx. S$1.8 million). The requirement for a merger in these sectors to increase the parties' combined share of supply of the relevant goods or services before intervention is permitted, has also been removed.

Under the old rules, the Secretary of State could intervene in a merger giving rise to public interest concerns of national security, financial stability or media plurality, only when (i) the target company had a UK turnover of more than £70 million (approx. S$126 million); or (ii) where because of the merger, the merging parties' combined share of supply was, or increased an existing share of supply by, 25% or more. The amendments were made in recognition of the fact that small businesses in the UK play an increasingly important role in creating cutting edge technology products that affect national security. As the amended thresholds also apply to the jurisdiction of the Competition and Markets Authority ("**CMA**")

to review such a merger on competition grounds (as opposed to national security grounds), the CMA has also published a new set of guidelines to guide merging parties on the situations when they should notify their transactions to the CMA where it involves Relevant Enterprises.

CMA Finds that Media Intelligence Merger could Raise Competition Concerns

On 13 June 2018, the CMA announced its preliminary view that the merger of Nielsen and Ebiquity, which supply intelligence on international advertising to UK, raises competition concerns. The CMA's view is that while the parties - which are each other's closest competitor - face some competition from firms offering this service for digital advertising, no firm competes with Nielsen and Ebiquity for detailed intelligence across all UK media channels. On 25 June 2018, the merger was moved to a Phase 2 review.

CMA Clears Co-op/Nisa Merger and Reviews Sainsbury/ASDA Merger

On 23 April 2018, the CMA announced that it would clear Co-operative Group Ltd's ("**Co-op**") proposed acquisition of Nisa Retail Ltd ("**Nisa**"). Co-op is a retailer of groceries while Nisa is involved in groceries wholesaling. During the Phase I investigation, the CMA noted that the two are not direct competitors, and that non-Co-op stores that were supplied by Nisa would still have the ability to set their own prices. The CMA also noted that these stores could switch between different wholesalers. The CMA concluded that the merger would not likely lead to higher prices for end-consumers or stores.

Separately, in the supermarket space, the CMA confirmed on 18 May 2018 that it is currently reviewing the proposed merger between Sainsbury and ASDA. The review is currently at Phase 1 investigations.

CMA Disqualifies Directors Involved in Real Estate Cartel

On 10 April 2018, the CMA announced that it had obtained legally binding undertakings from two directors of a real estate company that was involved in a real estate cartel from serving as director or managing any UK company for a period of 3 and 3.5 years. Several directors were found to either have been actively involved in the cartel between real estate agents to fix minimum concession rates, or knew about the cartel but did not do anything to stop it. The CMA is in the process of assessing whether disqualifications should also be sought for the other directors involved. This is only the second time that the CMA has sought to disqualify directors for their company's breach of competition laws. The CMA had previously in May 2017 fined the companies involved in the cartel.

LITHUANIA

LCC Fines Chamber of Notaries for Price Fixing

On 4 May 2018, the Lithuania Competition Council ("**LCC**") imposed a fine of EUR 88,400 (approx. SGD 137,000) on the Lithuania Chamber of Notaries ("**Chamber**") and additional fines on eight members of the Chamber's Presidium for collectively setting notary fees and agreeing on procedures for calculating

the fees. While notary fees in Lithuania are approved by government order, the LLC found that notaries could compete within this framework because the order only specified a range of fees. They could also independently choose how the fees were to be calculated. With the anti-competitive agreement, the LCC found that competition in the market for notarial services was, therefore, restricted.

The LCC has separately commenced investigation into whether the government-approved fixed and minimum notary fees itself restricts competition and infringes competition laws.

LUXEMBOURG

Luxembourg Competition Council Exempts Algorithm-Price Based Taxi Booking Platform from the Prohibition of Anti-Competitive Agreements on the Basis of Net Economic Benefit

On 7 June 2018, the Luxembourg Competition Council ("**LuCC**") issued an individual exemption to a taxi booking platform ("**Webtaxi**") that uses algorithms to set prices between competing taxi companies. Webtaxi allows customers to book taxis via an app, the internet, or by phone. When a booking is made, the participating affiliates' taxi closest to the customer will be allocated, and an algorithm calculated fare which is binding and non-negotiable will also be provided. The fares are based on predetermined factors e.g. traffic conditions, price per kilometre and the length of journey. The LuCC took the view that Webtaxi constituted a horizontal agreement to set prices amongst the various competing taxi companies that paid a monthly fee to use Webtaxi. Nonetheless, the LuCC granted Webtaxi an exemption from the prohibition against horizontal agreements as it considered that there were efficiencies to be gained in the form of shorter waiting times, fewer empty journeys, lower taxi fares etc. Webtaxi's price setting mechanism was necessary, and no viable alternatives were available, to achieve the same efficiencies. Further, not all relevant competition was eliminated as only 26% of all Luxembourg taxis used Webtaxi.

Other Jurisdictions

UNITED STATES

FTC Proposes Structural Remedies in Relation to Amneal/Impax Merger

On 27 April 2018, the US Federal Trade Commission ("**FTC**") proposed a settlement agreement to address the key competition concerns arising from the acquisition of an equity share in Impax Laboratories Inc. ("**Impax**") by Amneal Pharmaceuticals LLC ("**Amneal**"). Both companies are generic drug manufacturers in the US. In determining if the acquisition would lead to a substantial lessening of competition, the FTC undertook a nuanced market analysis by defining a separate market for each general drug manufactured by the parties. According to the FTC, the acquisition would likely harm current competition in three generic drug markets. In this regard, the FTC observed that entry barriers are high in these markets as it would take at least two years for a new competitor to enter the markets, taking into account the time taken for drug development and obtaining regulatory approval. Separately, the FTC also determined that the acquisition would likely harm future competition in another seven

generic drug markets. To address these competition concerns, the settlement agreement proposed that Impax divest its rights and assets relating to the ten generic drug products to three other companies.

DOJ Reaches Settlement in Relation to Investigation on No-Poach Agreements Entered into by Two Rail Equipment Suppliers

On 3 April 2018, the US Department of Justice ("**DOJ**") published a statement that it had reached a settlement prohibiting two rail equipment suppliers from maintaining no-poach agreements. According to the DOJ, the two companies, Knorr-Bremse AG ("**Knorr**") and Westinghouse Air Brake Technologies Corporation ("**Wabtec**") had entered into agreements not to solicit, recruit, hire without prior approval, or otherwise compete with one another for various skilled employees, including corporate executives, managers and engineers. The DOJ came to the conclusion that the agreements restricted competition for US rail industry workers as the agreements limited their access to better job opportunities and the opportunity to negotiate for better terms of employment. Under the settlement, the DOJ will not bring any civil or criminal actions against Knorr and Wabtec in relation to the no-poach agreements that they had disclosed to the DOJ.

BRAZIL

CADE Approves Two Cease and Desist Agreements in Relation to Automotive Spare Parts Cartels

On 10 May 2018, the Administrative Council for Economic Defense ("**CADE**") announced that it had signed Cease and Desist Agreements with two companies with respect to two different investigations launched by the CADE on the automotive spare parts markets in Brazil. In the first investigation into the market for engine valves, valve guides and valve seats, the CADE uncovered that several competitors had divided the market among themselves. Furthermore, the competitors were sharing sensitive information on proposed price adjustments and aligned price increases. In the second investigation into the market for car wire harnesses and other electronic components for electric and hybrid vehicles, the CADE discovered that several competitors had engaged in price fixing and bid rigging. As part of the Cease and Desist Agreements, the two companies admitted that they had engaged in the respective cartels and agreed to cease all anti-competitive practices pursuant to the cartels. In addition, the two companies also paid the CADE a total of BRL 2.8 million (approx. SGD 1 million) pursuant to the Cease and Desist Agreements.

CADE Cracks Down on International Hard Disk Components Cartel

On 26 April 2018, the CADE announced that it had launched an investigation into an international cartel for suspension assemblies, a hard disk component used in computers. According to the CADE, the alleged cartel was longstanding and lasted between 2003 to at least May 2016. During this period, the investigated companies allegedly engaged in market-sharing, price-fixing and shared sensitive information such as proposed prices and production capacities. The five companies currently being

investigated in relation to the alleged cartel are Hutchinson Technology Inc., Magnecomp Precision Technology Public Co. Ltd., NHK Spring Co. Ltd., TDK Corporation and SAE Magnetics (H.K.) Ltd. In addition, 38 individuals connected to the five companies are also being investigated.

SOUTH AFRICA

MTV Networks Africa Enters into Settlement Agreement with CCSA

On 29 April 2018, the Competition Tribunal approved the settlement agreement entered into between the Competition Commission of South Africa ("**CCSA**") and MTV Networks Africa ("**MTV**") in relation to MTV's participation in a media advertising cartel involving 30 media companies in South Africa. According to the CCSA, the media companies were members of the Media Credit Co-ordinators ("**MCC**") which was instrumental in facilitating the cartel. Under the auspices of the MCC, the media companies agreed to offer similar discounts and payment terms to advertising agencies that placed advertisements with them. Notably, MCC accredited advertising agencies were given a higher discount than advertising agencies that were not accredited by the MCC. MTV is the sixth media company to enter into a settlement agreement with the CCSA in relation to this cartel and has agreed to provide bonus advertising space to qualifying small advertising agencies in addition to financial penalties.

Conclusion

We hope that the updates in this quarter has turned the heat up on your competition radar.

Please feel free to contact our lawyers if you wish to discuss any of the updates in greater detail.

Team Partners

Kala Anandarajah
Partner, Head (Singapore),
Competition & Antitrust and Trade
Rajah & Tann Singapore LLP

D (65) 6232 0111
F (65) 6428 2192
kala.anandarajah@rajahtann.com

Dominique Lombardi
Partner (Foreign Lawyer)
Competition & Antitrust and Trade
Rajah & Tann Singapore LLP

D (65) 6232 0104
F (65) 6428 2257
dominique.lombardi@rajahtann.com

Tanya Tang
Partner (Chief Economic and Policy Advisor)
Competition & Antitrust and Trade
Rajah & Tann Singapore LLP

D (65) 6232 0298
F (65) 6225 0747
tanya.tang@rajahtann.com

Kuok Yew Chen
Partner, Christopher & Lee Ong

D (603) 2273 1919
F (603) 2273 8310
yew.chen.kuok@christopherleeong.com

Yon See Ting
Partner, Christopher & Lee Ong

D (603) 2273 1919
F (603) 2273 8310
see.ting.yon@christopherleeong.com

Yogi Sudrajat Marsono
Partner, Assegaf Hamzah & Partners

D (62) 21 2555 7812
F (62) 21 2555 7899
yogi.marsono@ahp.co.id

Chandra M. Hamzah
Partner, Assegaf Hamzah & Partners

D (62) 21 2555 9999
F (62) 21 2555 7899
chandra.hamzah@ahp.co.id

Melisa Uremovic
Partner, R&T Asia (Thailand) Limited

D (66) 2656 1991
F (66) 2656 0833
melisa.u@rajahtann.com

Supawat Srirungruang
Partner, R&T Asia (Thailand) Limited

D (66) 2656 1991
F (66) 2656 0833
supawat.s@rajahtann.com

Vu Thi Que
Partner, Rajah & Tann LCT Lawyers

D (84) 28 3821 2382
F (84) 28 3520 8206
que.vu@rajahtannlct.com

Tran Xuan Chi Anh
Partner, Rajah & Tann LCT Lawyers

D (84) 28 3821 2382
F (84) 28 3520 8206
anh.tran@rajahtannlct.com

Norma Margarita B. Patacsil
Partner, Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

D (632) 894 0377
F (632) 552 1978
nmbpatacsil@cagatlaw.com

Min Thein
Partner, Rajah & Tann NK Legal Myanmar Company Limited

D (959) 7304 0763
F (951) 9665 537
min.thein@rajahtann.com

Heng Chhay
Managing Partner, R&T Sok & Heng Law Office

D (855) 23 963 112/113
F (855) 23 963 116
heng.chhay@rajahtann.com

For more information on issues arising in specific countries, please contact the relevant lawyers above. For issues arising in a country not listed above, please feel free to contact our Singapore lawyers in the first instance or email competitionlaw@rajahtann.com.
Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*
Rajah & Tann Singapore LLP
T +65 6535 3600
F +65 6225 9630
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*
R&T Sok & Heng Law Office
T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*
Rajah & Tann Singapore LLP
Shanghai Representative Office
T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*
Assegaf Hamzah & Partners

Jakarta Office
T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office
T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*
Rajah & Tann (Laos) Sole Co., Ltd.
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*
Christopher & Lee Ong
T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN NK LEGAL | *Myanmar*
Rajah & Tann NK Legal Myanmar Company Limited
T +95 9 73040763 / +95 1 657902 / +95 1 657903
F +95 1 9665537
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*
Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)
T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977
F +632 552 1978
www.cagatlaw.com

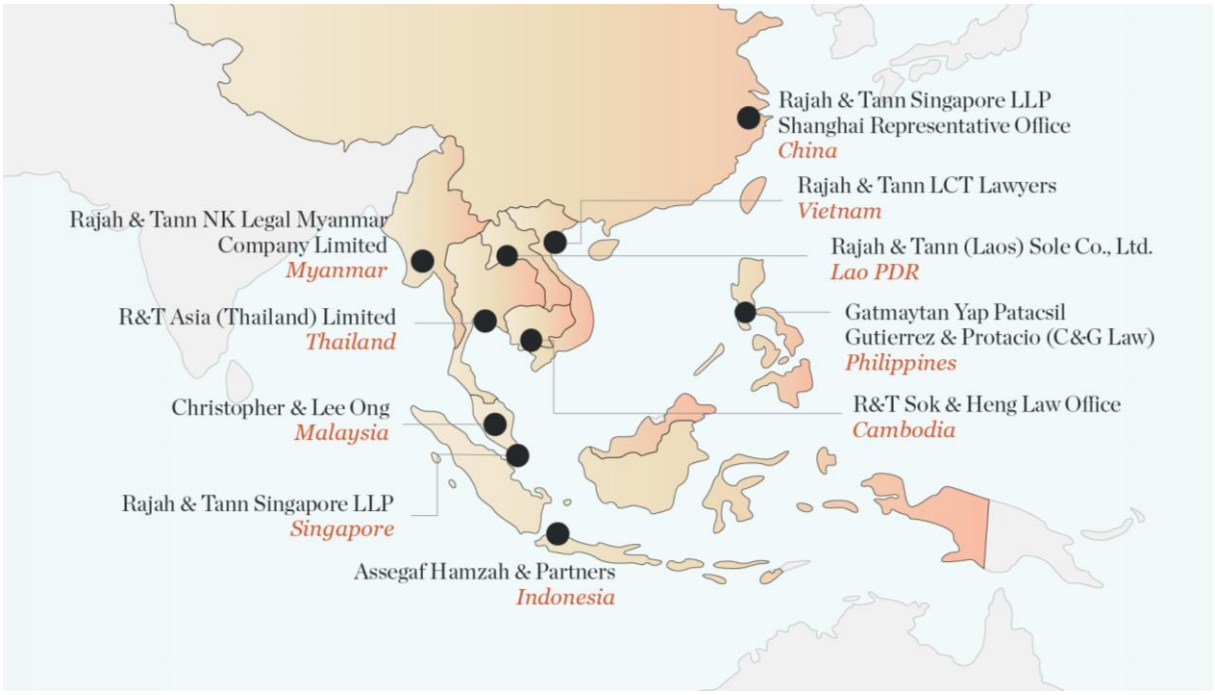
RAJAH & TANN | *Thailand*
R&T Asia (Thailand) Limited
T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*
Rajah & Tann LCT Lawyers

Ho Chi Minh City Office
T +84 28 3821 2382 / +84 8 3821 2673
F +84 28 3520 8206

Hanoi Office
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Our Regional Presence



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