Regional Competition

Competition Bites – South-East Asia & Beyond

Introduction

Welcome to the October edition of Competition Bites, as we round up the competition law developments from around the world over the last quarter.

This has been a busy third quarter for the Singapore regulator, who issued its highest fine ever in relation to a domestic cartel and its first infringement decision against an implemented merger. Elsewhere in the world, we see other competition regulators pursuing enforcement action in online markets. This suggests that, as many have opined, existing competition law frameworks are sufficient to tackle competition law issues which are unique to online markets, and that competition law regulators are in fact sophisticated enough to spot such issues.

ASEAN

SINGAPORE

CCCS Imposes Directions on Grab and Uber to Restore Market Contestability and Penalties to Deter Anti-Competitive Mergers

On 24 September 2018, the Competition and Consumer Commission of Singapore ("**CCCS**") issued an infringement decision ("**ID**") against Grab Inc. ("**Grab**") and Uber Technologies, Inc. ("**Uber**") in relation to the sale of Uber's Southeast Asian business to Grab in exchange for a 27.5% stake in Grab. Earlier this year, the CCCS initiated its own investigations into the transaction, which had not been notified to the CCCS under the voluntary merger notification regime.

According to the CCCS, Grab had increased its prices after Uber, its closest competitor, left the Singapore market. In this regard, the CCCS found that Uber would not have left the market in the absence of the transaction with Grab, and would instead have continued operating in Singapore while exploring other strategic options. In addition, the CCCS found that potential competitors are unable to enter and compete effectively in the Singapore market due to exclusivity clauses imposed by Grab on its car rental partners, drivers and taxi companies, a situation which is exacerbated by the existence of network effects. The CCCS concluded that the Grab-Uber transaction has infringed Section 54 of the Competition Act as it substantially lessened competition in the ride-hailing platform market in Singapore.

As such, the CCCS imposed a total fine of over SGD 13 million on the parties for their infringing conduct. To remedy the situation, the CCCS also imposed the directions which, amongst others, required Grab

to remove all exclusivity arrangements with drivers and partner taxi fleets, as well as to maintain Grab's pre-merger pricing, pricing policies and product options.

This case underscores the importance of merger parties undertaking a thorough self-assessment on whether the merger could result in a substantial lessening of competition in Singapore, using the market share thresholds provided by the CCCS as a guide, notwithstanding the voluntary merger regime in Singapore. This would enable undertakings to determine whether notification is necessary and avoid the negative consequences of non-notification. For more information, please refer to our Client Update here.

CCCS Penalises Fresh Chicken Distributors for Price-fixing and Non-compete Agreements

On 12 September 2018, the CCCS issued an Infringement Decision against 13 fresh chicken distributors ("**Parties**"), all of which are members of the Poultry Merchants' Association, Singapore ("**PMA**"), for entering into anti-competitive agreements to fix prices and share customers in the market for the supply of fresh chicken products in Singapore. The CCCS commenced its investigations into this matter following information provided by an ex-employee of one of the parties under the CCCS reward scheme. The CCCS found that from at least September 2007 to August 2014, the Parties had engaged in discussions on prices, agreed on the amount and timing of price increases of certain fresh chicken products and agreed to not compete for each other's customers. According to the CCCS, the Parties' conduct restricted competition in the relevant market and is likely to have contributed to price increases of certain fresh chicken products in Singapore. The CCCS thus imposed a record high total fine of close to SGD 27 million on the Parties. The CCCS further directed the Parties to provide written undertakings to refrain from using the PMA or any other industry association as a platform to engage in anti-competitive activities.

CCCS Launches Public Consultations on Various Notified Mergers

In the last quarter, the CCCS launched public consultations on the following transactions which were notified to the CCCS under the merger regime in Singapore:

(a) On 11 September 2018, the CCCS consulted on the acquisition of Innovative Diagnostics Private Limited ("**Innovative**") and Quest Laboratories Pte Ltd ("**Quest**") by Pathology Asia Holdings Pte. Ltd. ("**PAH**"), through its subsidiaries and the intended integration of the businesses of Innovative and Quest, following a notification received from PAH on 7 September 2018. Both Innovative and Quest operate pathology laboratories in Singapore.;

(b) On 5 September 2018, the CCCS consulted on a joint notification by EQT Fund Management S.à r.l. ("**EQT**") and Widex Holding A/S ("**Widex Holding**") in relation to the creation of a full-function joint venture, where the activities of Sivantos Pte. Ltd. (Singapore) ("**Sivantos**") and Widex A/S ("**Widex**") (the respective subsidiaries of EQT and Widex Holding) and each of their subsidiaries will be combined under a new joint venture company. Both Sivantos and Widex manufacture and assemble hearing aids at various sites around the world. Sivantos supplies

traditional and body-worn hearing aids to third-party retailers, the government and private hospitals in Singapore, and provides the relevant after sales support. Widex retails traditional hearing aids directly, supplies traditional hearing aids to the government and private hospitals, and also provides after sales support.

(c) On 28 August 2018, the CCCS consulted on the proposed acquisition of USG Corporation ("**USG**") by Gebr. Knauf KG ("**Knauf**"), following a joint notification received from the parties on 28 August 2018. Knauf supplies gypsum boards (also known as plasterboards), metal profiles, modular and fixed suspended ceilings, and a minimal range of insulation products in Singapore. USG supplies gypsum boards, compounds, insulation products, substrates, metal profiles, cement boards and modular suspended ceilings in Singapore.

(d) On 19 July 2018, the CCCS consulted on the proposed merger of Siemens Mobility Business ("**SMB**") and Alstom S.A. ("**Alstom**") ("**Proposed Transaction**"), following a joint notification received from the parties on 16 July 2018. SMB supplied rolling stock in Singapore, and is now active in urban signalling, maintenance equipment, provision of services related to the supply of communication systems, and traction power supply systems for rail electrification. Alstom supplies turnkey solutions, signalling, rolling stock and infrastructure for Singapore's metro lines, as well as after sale services and third rails for rail electrification purposes to rail operators in Singapore. According to the parties, they overlap in the supply of urban signalling in Singapore, but the CCCS notes that they could also potentially overlap in the supply of rolling stock, rail electrification systems and maintenance services in Singapore. The Proposed Transaction has raised concerns in Australia and is also being investigated by the European Commission.

CCCS Issues Guidance Note to Streamline its Review of Airline Alliance Agreements

On 5 September 2018, the CCCS issued the CCCS Guidance Note for Airline Alliance Agreements ("**Airline Guidance Note**") to provide guidance to airlines on the procedural and substantive matters relating to the CCCS's review of airline alliance agreements. Further details on the Airline Guidance Note can be found in our previous Update.

CCCS and Indonesia's KPPU Sign Memorandum of Understanding on Enforcement Cooperation of Competition Law

On 30 August 2018, the CCCS and the Commission for the Supervision of Business Competition ("**KPPU**") entered into a Memorandum of Understanding on Implementation of Competition Law ("**MOU**"), the purpose of which is to facilitate cooperation between the two regulators on competition law enforcement. This is a ground-breaking development as it is the first MOU relating to the enforcement of competition law concluded between the CCCS and another competition authority in Southeast Asia.

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CCCS Issues Proposed Infringement Decision against the Exchange of Commercially Sensitive Information between Hotels

On 2 August 2018, the CCCS issued a PID against the owners/operators of four hotels for engaging in the discussion and exchange of confidential, customer-specific, commercially sensitive information relating to the provision of hotel room accommodation in Singapore to corporate customers, in violation of Section 34 of the Competition Act. The CCCS found that the sales representatives of the hotels shared information such as non-public bid prices provided to corporate customers, as well as percentages of price reductions requested by customers and corresponding responses from each hotel sales representative during confidential price negotiations. According to the CCCS, the exchange of such commercially sensitive information reduced competition between the hotels on the prices and contract terms offered to corporate customers. The parties have six weeks from the receipt of the Proposed Infringement Decision to make representations to CCCS, after which the CCCS will issue its final decision.

CCCS Concludes Review of Maritime Products Merger After Parties Abandon Merger

On 30 July 2018, the CCCS announced that it has concluded its review of the proposed acquisition of sole control over Drew Marine's technical solutions, fire, safety and rescue businesses ("**DMTS**") by Wilhelmsen Maritime Services AS ("**WMS**") ("**Proposed Transaction**"), after the parties abandoned the Proposed Transaction and withdrew their merger review application to the CCCS. WMS and DMTS overlap in the supply of marine chemicals, marine gases and marine welding equipment. Earlier this year, on 25 May 2018, the CCCS had issued a provisional decision to the parties, finding that the Proposed Transaction was likely to result in a substantial lessening of competition in the market for the supply of marine water treatment chemicals (including ancillary materials and services) in Singapore, in violation of Section 54 of the Competition Act. Further details on the said decision can be found in our previous Update.

The withdrawal of the merger review application to the CCCS was made after the US District Court for the District of Columbia granted a preliminary injunction (on the application of the US Federal Trade Commission) against the Proposed Transaction.

MALAYSIA

MyCC Launches Investigations on Tyres and Beverage Companies Under Directions of MDTCA Minister

On 7 September 2018, the Malaysia Competition Commission ("**MyCC**") launched investigations on tyres and beverage companies in Malaysia for possible anti-competitive behaviours, under the directions of the Minister of Domestic Trade and Consumer Affairs. The Minister was informed that certain industry players had issued notices of price increases to customers in July and August 2018, prior to the implementation of the Sales and Services Tax in Malaysia on 1 September 2018. The Minister thus instructed the MyCC and the Enforcement Division of the Ministry of Domestic Trade and Consumer

Affairs ("**MDTCA**") to investigate the matter to determine whether such conduct raised concerns under the relevant laws that each of them was enforcing. The investigation by the MyCC concerns whether the parties had engaged in anti-competitive agreements. Acting on such directions, the MyCC and the Enforcement Division of the MDTCA conducted joint inspections on several tyres companies and their trade associations, as well as a beverage manufacturer which issued price revision notices to supermarkets in Malaysia.

MyCC Issues Proposed Infringement Decision against Dagang Net for Abuse of Dominance

On 12 July 2018, the MyCC issued a PID against Dagang Net Technologies Sdn Bhd ("**Dagang Net**") for abusing its position as a monopoly in the provision of trade facilitation services under the National Single Window for Trade Facilitation ("**NSW**"), a one stop electronic platform for all trade related matters in Malaysia. The NSW is developed, operated and managed by Dagang Net. The MyCC's investigations revealed that Dagang Net had abused its dominant position by refusing to supply new and/or additional electronic mailboxes to end users of the *Sistem Maklumat Kastam* (a customs operating system that handles customs related transactions in Malaysia) who used front-end software from providers who were not authorised business partners of Dagang Net. The MyCC also provisionally found that Dagang Net imposed exclusivity clauses on its business partners to prevent them from working with its competitors, thereby restricting competition in the market. The MyCC has proposed to impose a fine of MYR 17,397,695.30 (approx. SGD 5.74 million). Notably, Dagang Net's monopoly position was a result of a concession granted by the Malaysian government, and by taking action against Dagang Net, the MyCC is sending a strong message to the public that it is committed to addressing the problem of abuse by dominant firms in Malaysia.

PHILIPPINES

PCC Approves AXA-XL Group Merger but Imposes Fine for Late Filing

On 4 September 2018, the Philippine Competition Commission ("**PCC**") imposed a fine on AXA S.A. ("**AXA**") and XL Group Ltd. ("**XL Group**") for failing to notify the PCC of the acquisition of XL Group by AXA within the prescribed notification period. This is notwithstanding the fact that the PCC had previously approved the said acquisition on 16 August 2018. Pursuant to the relevant procedural rules, parties to a merger which meets the relevant thresholds in the Philippines are required to notify the PCC of the merger within 30 days of executing a binding agreement on the merger. As such, the PCC imposed a fine of PHP 123,861.86 (approx. SGD 3,122) on AXA and XL Group for late notification. Undertakings which are seeking to enter into transactions in the Philippines that meet the relevant notification thresholds are reminded to notify their transactions to the PCC within the prescribed period to avoid any financial penalty, bearing in mind that the pre-merger notification regime in the Philippines is a mandatory one.

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PCC Nullifies Chelsea-TA Transaction and Approves Chelsea-2GO Transaction

On 3 July 2018, the PCC announced its decisions on two separate transactions entered into by the same company:

(a) The PCC nullified the acquisition of Trans-Asia Shipping Lines, Inc. ("**Trans-Asia**") by Chelsea Logistics Holdings Corporation ("**Chelsea**") pursuant to share sale agreements executed between the parties in 2016 ("**Chelsea-TA Transaction**"), for failing to notify the Chelsea-TA Transaction to the PCC under the compulsory merger notification regime in the Philippines. The PCC also imposed a fine of PHP 22,854,015.44 (approx. SGD 576,000) on the parties for non-notification; and

(b) The PCC approved the proposed acquisition of shares in KGLI-NM Holdings, Inc. ("**KGLI**") by Chelsea for the latter to gain a majority ownership of 52.98% of the shares in 2GO Group, Inc. ("**2GO**"), an indirect subsidiary of KGLI "**Chelsea-2GO Transaction**").

Chelsea, Trans-Asia and 2GO are all players in the shipping industry in the Philippines. The PCC's investigations showed that the acquisition of control over both 2GO and Trans-Asia by Chelsea would lead to a substantial lessening of competition affecting Roll-On/Roll-Off passenger shipping services (RoPax) in Cebu-Cagayan De Oro, Cagayan De Oro-Cebu, Cebu-Ozamis, Ozamis-Cebu, Cebu-Iligan and Iligan-Cebu routes; and cargo shipping services in the same areas plus the Cebu-Zamboanga route. According to the PCC, 2GO and Trans-Asia overlap or compete directly with each other in each of the said shipping routes. With the nullification of the Chelsea-TA transaction, the concerns raised by the PCC due to the significant overlaps in the activities of 2GO and Trans-Asia were no longer present. For this reason, the PCC approved the Chelsea-2GO Transaction.

In its decision dated 28 June 2018, the PCC ordered Trans-Asia to inform the PCC within 30 days from the execution of any agreement involving the sale of any of its shares following the nullification order. In a separate decision of the same date, the PCC directed Chelsea (and its parent company), in the event that it (or any of its related companies) re-enter into the Chelsea-TA Transaction, to notify the transaction to the PCC regardless of whether it meets the thresholds for merger notification in the Philippines.

VIETNAM

New Vietnam Competition Law to Take Effect in 2019

On 12 June 2018, the National Assembly of Vietnam passed the updated version of the Law on Competition ("**New Law**"). The New Law is expected to take effect on 1 July 2019, replacing the existing Law on Competition of 2004.

The key changes under the New Law compared with the existing law are as follows:

(a) The National Competition Commission ("**NCC**"), to be established though the consolidation of the existing competition authorities (i.e. the Vietnam Competition Council and the Vietnam Competition Authority), will be the new body in charge of administrating the New Law;

(b) The NCC is empowered to prohibit anti-competitive agreements and mergers which "*have or potentially have the effect of significantly restricting competition in the Vietnam market*" as opposed to the current test which is only based on market shares under the existing law. In addition, new merger notification thresholds will be used, based on the (i) total assets of the merger parties in Vietnam, (ii) total revenue of the parties in Vietnam, (iii) value of the transaction or (iv) combined market shares of the parties in the relevant market;

(c) Other than entities operating in Vietnam, the New Law will also apply to "*related domestic and foreign organisations, establishments and individuals*". While the New Law does not expressly provide for application to foreign companies, the wording appears to be wide enough to cover foreign companies, and is in line with the current approach taken by the competition authorities; and

(d) The New Law introduces new categories of anti-competitive agreements, i.e. agreements to not transact with other third parties, agreements to restrict consumer markets or sources of supply of goods and services to third parties and other agreements which restrict or potentially restrict competition.

Rest of Asia Pacific

AUSTRALIA

Air New Zealand Penalised By Federal Court of Australia for Participation in Global Air Cargo Cartel

On 27 June 2018, the Federal Court of Australia ordered Air New Zealand to pay fines amounting to AUD 15 million (approx. SGD 15 million) for giving effect to agreements with other international airlines to fix prices for insurance and security charges as well as fixing prices for fuel and insurance surcharges on air freight services from Singapore and Hong Kong respectively to other ports, including ports in Australia. The price-fixing agreements were agreed between various international airlines and were carried out from 2002 to 2007. Air New Zealand is the 14th airline to be penalised for participation in these agreements, bringing the total penalty amount in this matter to AUD 113.5 million (approx. SGD 113.5 million). The penalty hearing against PT Garuda Indonesia Ltd, which is the 15th airline to be penalised, was heard in June 2018 with judgment being reserved.

Criminal Charges Laid Against Trade Union and Branch Secretary for Cartel Conduct

The Construction, Forestry, Maritime, Mining and Energy Union ("**CFMMEU**") and its ACT branch secretary have been charged for attempting to induce suppliers of steel-fixing and scaffolding services to enter into cartel agreements or understanding to fixed prices and/or restrict supply of services between 2012 to 2013. The charges came after joint investigation by the Australian Competition &

Consumer Commission ("**ACCC**") and the Australian Federal Police. The penalties for offences under the Competition and Consumer Act 2010 may amount up to AUD 10 million (approximately SGD 10 million), 3 times the profit attributable to the offence or 10% of turnover. Individuals convicted may be imprisoned for up to 10 years.

Public Review for Proposed Merger Between TPG Telecom and Vodafone Hutchison Australia

On 30 August 2018, following the announcement of a proposed merger between TPG Telecom ("**TPG**") and Vodafone Hutchison Australia ("**VHA**"), the ACCC commenced a public review of the proposed merger. TPG is one of the largest internet service providers in Australia with a substantial fixed-line subscriber base. VHA is Australia's third-largest mobile service operator. The combined entity will be called TPG Telecom with a combined revenue of AUD 6 billion (approx. SGD 6 billion) and is expected to create a more effective competitor to Telstra and Optus with an integrated fixed and mobile offering. In addition to the fixed-line and mobile service markets, the ACCC intends to also explore impacts in related markets such as spectrum acquisition, wholesale and mobile roaming services.

First Court Proceedings for Gun-Jumping Infringement

On 12 July 2018, the ACCC commenced proceedings in the Federal Court against Cryosite Limited ("**Cryosite**") for cartel conduct and gun-jumping infringement in relation to an asset sale agreement with Cell Care Australia Pty Ltd ("**Cell Care**"). The parties were the only private suppliers of cord blood and tissue banking services in Australia. Under the agreement, Cryosite was to sell its assets in cord blood and tissue banking business to Cell Care and Cryosite was to refer all customer inquiries to Cell Care before the acquisition was completed. The agreement raised competition concerns since it restricted Cryosite's supply of such services and effectively allocated potential customers to Cell Care. Further, the ACCC found that the agreement to allocate customers before the completion of the transaction amounted to gun jumping since it involved coordination between business rivals; parties to an acquisition or merger are required to remain independent until the completion of the deal.

CHINA

Essilor/Luxottica Merger Granted Conditional Clearance

On 25 July 2018, the State Administration for Market Regulation ("**SAMR**") issued a notice stating that the EUR 46.2 billion merger between eyewear maker Luxottica and lens maker Essilor would reduce competition in the eyewear market and issued a conditional clearance of the merger. The concerns of the SAMR stem from the fact that Essilor lenses were used in many of Luxottica's products. There are also horizontal overlaps since the parties were major players in the optical lens and frame market, often investing large amount of R&D funds into each other's product areas. The SAMR approved the merger on the conditions that the merged entity may not sell eyewear products at below market price without a justified reason and cannot refuse to supply its products to optical stores or impose unreasonable trading conditions on them. This marks the last hurdle in this merger which has been given antitrust clearances

in various jurisdictions including Singapore, the EU, US, Australia, India, Japan, New Zealand and Russia.

HONG KONG

Proceedings Against Public Housing Renovation Cartel

On 6 September 2018, the Hong Kong Competition Commission ("**HKCC**") commenced proceedings against three companies for allocating customers and coordinating prices for the provision of public housing renovation services. This is the second case in Hong Kong involving cartel conduct in in relation to public housing renovations since the Hong Kong Competition Ordinance ("**HKCO**") came into force in December 2015. Aside from declarations that the companies have infringed the Hong Kong Competition Ordinance, the HKCC is also seeking to have one of the company's directors disqualified for engaging in cartel conduct.

JAPAN

Apple Faces Investigations by JFTC for Multiple Breaches of Antitrust Rules

On 11 July 2018, the Japan Fair Trade Commission ("**JFTC**") commenced investigations against Apple, due to concerns that Apple may have breached antitrust rules in Japan by forcing mobile service providers, including NTT Docomo Inc, Softbank Group Corp and KDDI Corp, to offer subsidies for iPhones and sell iPhones at a discount while charging higher monthly fees. The JFTC said such obligations could have prevented the carriers from offering lower monthly charges. In response, Apple agreed to amend its agreements with the carriers to allow them to offer alternative plans with iPhones being sold at a non-discounted rate. The JFTC agreed to the proposition made by Apple on the condition that the carriers' promotion of the alternative plans will not be hindered.

Separately, on 16 August 2018, the JFTC commenced an investigation of Apple in relation to allegations that it has unfairly pressurised Yahoo Japan to pull back on the expansion of its Game Plus platform which allows users to stream games without downloading apps. The platform is said to offer looser restrictions on sales, fees and software updates and is a competitor of Apple's App Store.

JFTC Clears Merger of Leading Regional Banks After 2 Years

On 24 August 2018, the JFTC conditionally cleared the acquisition of shares in Eighteen Bank by Fukuoka Financial Group. The JFTC was first notified of the proposed transaction by the parties, the two largest banks in the province of Nagasaki, in 2016. The transaction was put on holding following the JFTC's concerns that it would create a monopoly in the province. The parties have since offered commitments, including to introduce a system to ensure interest rates can be checked by an independent monitor such that the merged entity cannot unduly raise interest rates. In view of the proposed commitments, the JFTC approved the transaction.

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INDIA

NCLAT Overturns CCI's Penalty on Hyundai

On 19 September 2018, the National Company Law Appellate Tribunal ("**NCLAT**") issued a decision setting aside an order of the Competition Commission of India ("**CCI**") against Hyundai India Limited ("**Hyundai**"). In June 2017, the CCI had imposed a penalty of Rs 870 million (approx. S$16.29 million) on Hyundai for imposing resale price maintenance by setting and implementing discount control and penalty mechanisms on its dealers, and "tie-in" agreements mandating that its dealers use recommended lubricants. The NCLAT said that the CCI's order against Hyundai was "not based on any specific evidence" and was "passed merely on the basis of opinion of Director General." The NCLAT held that the CCI is required to make an independent analysis of the evidence available on record. The NCLAT has also asked the CCI to refund the penalty amount, if any, Hyundai had deposited.

CCI Proposes Amendments to Combination Regulations

The CCI has proposed amendments to the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Combination Regulations**"), which govern the merger notification process.

Amongst the proposed amendments is a change to the exemption to notifications for acquisitions made "*solely as an investment*". As part of the proposed amendments, the exemption will no longer apply to only acquisitions for less than 10% shareholding. However, the acquired company must not be in the same sector as the acquirer. In addition, private equity firms must also notify the CCI if they are acquiring more than 5% shareholding in a company which is in a sector where they already have an investment.

Sony Pictures Network India and Star India Investigated for Price Discrimination

On 27 July 2018, following a complaint filed by Noida Software Technology Park, a distributor of TV channels, the CCI has referred Sony Pictures Network India and Star India to its investigative branch. The CCI's preliminary investigations showed that the parties were dominant in the market and had abused their dominance by paying favoured distributors for carrying their channels and placing them in prominent positions. The parties also entered into agreements with distributors which required the distributors to buy less popular channels along with popular ones. While the parties sought to argue they have a combined market share of less than 20%, the CCI observed that the parties are leading broadcasters which own premium content such as broadcasting rights to most major sporting events and that no distributor could operate in the market for the distribution of television channels without offering channels owned by the parties. Accordingly, the CCI concluded that the parties were dominant in the market.

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SOUTH KOREA

Bid-Rigging Warning Reversed by KFTC on Appeal

On 5 July 2018, South Korea's Fair Trade Commission ("**KFTC**") allowed an appeal by two construction companies to lift warnings issued for alleged bid-rigging on government contracts between 2014 to 2016. The companies argued that the Monopoly Regulation and Fair Trading Act only prohibits agreements that unreasonably restrained competition. The KFTC allowed the appeal and reasoned that the alleged collusive conduct did not have an anti-competitive effect because the companies placed bids that failed to even meet the price floor for the government contracts and it was difficult to conclude whether the parties' agreement had threatened to restrict competition in these bids. This decision could pave the way for appeals against the agency's cartel decisions that lack substantial evidence of anticompetitive effect.

eBay Files Complaint Against Korean Search Engine for Abuse of Dominance

On 26 July 2018, the KFTC commenced an investigation on South Korean search engine, Naver, which accounts for about 80% of the country's search engine market for an alleged abuse of dominance. This was following a complaint by the Korean subsidiary of eBay which alleged that Naver had abuse its dominance by giving priority to ecommerce websites utilising its own digital payment system in its search results. In response, Naver claimed that the use of Naver Pay was not a factor in its search algorithm.

TAIWAN

TFTC Revokes Fine on Qualcomm

On 6 August 2018, the Taiwan Fair Trade Commission ("**TFTC**") revoked most of the TWD 23.4 billion fine (approximately SGD 1.05 billion) imposed on Qualcomm in October 2017 for abusing its market dominance. Qualcomm was fined after it was found to be licensing its standard-essential patents for mobile phone chips on exclusionary terms, including exclusive rebates to some manufacturers. While Qualcomm's appeal against the decision was pending, it reached a settlement with the TFTC. Qualcomm made several commitments as part of the settlement, including:

(a) Offering its competitors patent licences on fair, reasonable and non-discriminatory terms prior to litigation;

(b) Renegotiating its patent-licensing agreements with mobile phone manufacturers in good faith; and

(c) Imposing conditions on Taiwanese mobile phone manufacturers for granting of patent licenses that are comparable to those imposed on non-Taiwanese manufactures.

In addition, the original prohibition on Qualcomm's collection of royalty fee has been lifted following the revocation of the decision.

Europe

EUROPEAN UNION

EC Unconditionally Clears Apple's Acquisition of Music Recognition App Shazam

On 6 September 2018, the European Commission ("**EC**") unconditionally cleared Apple's acquisition of music recognition app Shazam. The EC was initially concerned with issues arising from the combination of Shazam's strong market position in the music recognition apps market and Apple's market position in the music streaming services market. However, the EC said that its initial concerns were unfounded, as Apple would not be able to foreclose rivals in the digital music streaming market, such as Spotify, by accessing commercially sensitive information about their customers or by restricting access to the Shazam app. Further, the EC's investigation concluded that Apple and Shazam mainly offer complementary services and do not compete. Finally, the EC also noted that the merger decision does not release the companies from respecting all relevant data protection laws.

EC Conditionally Approves CK Hutchison's Acquisition of Italian Joint Venture Wind Tre

On 3 September 2018, the EC conditionally approved CK Hutchison's ("**Hutchison**") EUR 2.45 billion (approx. SGD 3.92 billion) deal to acquire Veon's 50% share in Italian joint venture Wind Tre, after Hutchison offered concessions. Wind Tre was created in 2016 from the combination of the operations of VimpelCom's (now VEON) subsidiary WIND with those of Hutchison's subsidiary H3G, respectively the third- and fourth-largest operators in the Italian retail mobile market. The EC said the deal was conditional on Hutchison taking full responsibility for the continuation of the structural remedies agreed in 2016. Those remedies included divesting mobile spectrum and base stations for phone masts to Iliad, which was the EC's approved purchaser. The companies also agreed to let Iliad use their networks until it had built up its own infrastructure.

EC Conditionally Clears Praxair/Linde Merger

On 20 August 2018, the EC conditionally cleared the merger of industrial gas supply companies Praxair Inc. ("**Praxair**") and Linde AG ("**Linde**"), subject to major divestments to fully remove the companies' market overlap in Europe. Praxair and Linde are two of the world's four largest gas suppliers. According to the EC, without the remedies, the merged company would have become the new market leader in several European Union ("**EU**") gas markets, with a combined market value of more than EUR 66 billion (approx. SGD 103 billion). The EC said that it was concerned that the deal as proposed would have caused a substantial lessening of competition in the markets for industrial, medical and specialty gases, as well as for the global sourcing and national resale of helium.

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EC Fines Four Consumer Electronics Manufacturers for Fixing Online Resale Prices

On 24 July 2018, in four separate decisions, the EC imposed fines totalling over EUR 111 million (approx. SGD 177 million) on consumer electronics manufacturers Asus, Denon & Marantz, Philips and Pioneer for imposing fixed or minimum resale prices ("**RPM**") on their online retailers. The EC said that the manufacturers restricted the ability of their online retailers to set their own retail prices for widely used consumer electronics products such as kitchen appliances, notebooks and hi-fi products and that the price interventions limited effective price competition between retailers and led to higher prices with an immediate effect on consumers. The EC also noted the use of sophisticated monitoring tools which allowed the companies to effectively track resale price setting in the distribution network and to intervene swiftly in case of price decreases.

UNITED KINGDOM

Competition Appeal Tribunal Holds that Online Sales Ban is an Object Restriction

On 7 September 2018, the UK's Competition Appeal Tribunal ("**CAT**") handed down a provisional judgment ruling that golf club maker Ping's ban on selling its golf clubs online is a by-object restriction on competition. However, it reduced the fine on Ping by GBP 200,000 (approx. SGD 359,000). In August 2017, the UK's Competition and Markets Authority ("**CMA**") imposed a GBP 1.45 million (approx. SGD 2.60 million) fine for stopping two online retailers from selling its golf clubs online. The CAT agreed with the CMA that the ban presents a sufficient degree of harm to competition to constitute an object restriction, notwithstanding Ping's legitimate aim.

UK's Royal Mail to Appeal Against Record Fine from Regulator

On 16 August 2018, Royal Mail Group ("**Royal Mail**") said it will appeal against a GBP 50 million (approx. SGD 87 million) fine imposed by the country's communications regulator, Ofcom, for abusing its dominant position in the market for delivery of business letters. After a four-year investigation, Ofcom concluded that Royal Mail had abused its dominance by penalising wholesale customers seeking to deliver bulk mail door to door, leaving any company that wanted to deliver bulk mail no choice but to use Royal Mail's services to complete a large proportion of those deliveries. Royal Mail then introduced price increases in 2014 so that its competitor would be forced to pay more to deliver letters through Royal Mail in certain parts of the country. Royal Mail said it will challenge the ruling.

DENMARK

Danish Competition Council Rules that Teller has Abused its Dominance

On 29 August 2018, Denmark's Competition and Consumer Authority ("**CCA**") ruled that payment card acquirer Teller had abused its dominant position between 2012 and 2016 by using rebates conditional on exclusivity and exclusivity provisions in contracts with some of its largest customers. Until 2016,

Teller was a subsidiary of the Nets Group. In December 2017, Teller merged with Nets Denmark A/S and was renamed as Nets. Teller was in the relevant period the largest acquirer of international payment cards in Denmark and was dominant on the Danish market for merchant acquiring services and mobile payment solutions for POS payments. The CCA said that Nets had not provided any evidence to justify the alleged unlawful discounts. The CCA has also decided to submit the case to the Danish State Prosecutor for Serious Economic and International Crime.

FRANCE

FCA Punishes Fnac/Darty for Slow Divestments

On 27 July 2018, the French Competition Authority ("**FCA**") fined electronics retailer Fnac Darty EUR 20 million (approx. SGD 31 million) for failing to complete the divestment of six retail outlets on time, in the agency's first-ever financial penalty for a breach of structural commitments. In July 2016, the antitrust agency granted Fnac approval to buy Darty for EUR 900 million (approx. SGD 1,418 million), on the condition that it divests several Darty retail outlets. The authority said that Fnac Darty had proposed inadequate buyers for two stores, and failed to submit a potential buyer for a third store.

FCA Imposes Fines on 11 Wholesale Veterinarian Medication Distributors

On 26 July 2018, the FCA imposed a fine on 11 wholesale distributors of veterinary medicinal products and their professional association of EUR 16 million (approx. SGD 25.6 million) for colluding in the supply of veterinary medicines to France's public authorities. The decision took the form of a settlement as the distributors did not challenge the facts, which meant that the parties received discounts to their fines in exchange for their cooperation during the investigation. The nevertheless high fine amounts reflect the FCA's position that the practices were clear and serious violations of the competition rules, and that the cartelists had taken advantage of an emergency situation when there was a rapid spread of bluetongue disease in France, and had misled the public authority purchaser, thereby compromising the proper use of public funds.

GERMANY

Germany Fines Newspaper Publisher Dumont Mediengruppe and Sanctions Its Lawyer

On 4 September 2018, Germany's Federal Cartel Office ("**BKA**") imposed a fine of EUR 16 million (approx. SGD 25.62 million) on newspaper publisher DuMont Mediengruppe ("**DuMont**") for agreeing to divide markets with rival publication Bonner General-Anzeiger Group ("**Bonner General-Anzeiger**"), while also sanctioning a lawyer in Switzerland who helped facilitate the conspiracy. The BKA said the companies agreed to withdraw the circulation of their newspapers from different areas of the Bonn region in Germany between 2000 to 2016 to eliminate competition, and that the Swiss lawyer helped to facilitate the illegal agreements to help cover up the collusion. The BKA launched its probe after raiding

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DuMont's head office and that of the lawyer in December 2017. Those searches followed a leniency application by Bonner General-Anzeiger.

IRELAND

Ireland Conditionally Approves Uniphar's Acquisition of SISK Healthcare

On 18 August 2018, Ireland's Competition and Consumer Protection Commission ("**CCPC**") conditionally cleared Uniphar's acquisition of SISK Healthcare ("**SISK**"), provided that behavioural commitments are complied with for the next five years. Under this deal, Uniphar paid approximately EUR 65 million (approx. SGD 104 million) in cash for SISK, and agreed to give SISK's current owners a 15% stake in the merged company. In June 2018, the CCPC started a Phase II review into the deal, concerned that Uniphar's access to third-party invoices could influence SISK's business decisions. The commitments provide that Uniphar must take all reasonable steps and use all reasonable endeavours to ensure confidentiality between the two companies, including the appointment of a compliance officer to ensure the confidentiality protocol is followed.

POLAND

Poland Investigates Individuals for First Time

On 29 June 2018, Poland's Office of Competition and Consumer Protection launched a formal investigation into alleged market division by 16 companies that run fitness clubs. In addition, 6 managers of the companies are being investigated for their role in the alleged conduct. The authority's spokesperson said that it is the first time the enforcer has investigated individuals for competition law infringements, since liability of managers for market collusions was introduced in Poland in 2015. The individuals can face maximum fines of up to EUR 400,000 (approx. SGD 626,523). Benefit Systems, the country's largest sports and leisure package provider which owns most of the chains implicated in the conduct, said it disagrees with the allegations, and will present its position on the case to the Polish enforcer within the given time limits.

SWEDEN

Swedish Court Orders Booking.com to Amend Swedish Price Parity Clauses

On 20 July 2018, Stockholm's Patent and Markets Court ruled that Booking.com's price-parity clauses, which prevented hotels from charging lower prices on their own websites than those listed on the hotel booking platform, have infringed EU competition law. The court said that Booking.com had abused its dominance in the online travel agency and online hotel booking market by retaining narrow price parity clauses in its contracts with hotels, which restricted competition in the market.

Booking.com has already been penalised in several EU countries. In 2015, France, Sweden and Italy accepted commitments from the company to abolish its wide price parity clause in favour of the narrower

clause. However, Germany's competition authority rejected Booking.com's commitments and maintained that the narrow price parity clause is also an infringement of EU competition law. In January 2016, it ordered the website to remove all price parity clauses.

SPAIN

Spain Investigates Railway Cartel

On 5 September 2018, Spain's National Commission of Markets and Competition ("**CNMC**") commenced investigations against eight companies and four of their executives for alleged bid-rigging involving contracts to provide a variety of services protecting Spain's railways. The CNMC said that the alleged anti-competitive practices took place across a wide range of contracts, from signalling and safety to maintenance and traffic management. At the same time, regulators in Brussels are in the midst of a separate in-depth investigation into whether a tie-up between two companies being investigated for alleged bid-rigging – France's Alstom and Germany's Siemens – could distort competition.

Spanish Companies Fined for Sham Collective Bargaining Agreement

On 1 August 2018, Spain's CNMC imposed a combined fine of EUR 3.4 million (approx. SGD 5.33 million) on five stevedoring companies and five trade unions for restricting competition through a conspiracy that was disguised as a collective bargaining agreement. The stevedoring companies and trade associations concluded two separate agreements in 2010 and 2013 ensuring that the companies only used dockworkers that were employed by the Port Management Company of Vigo to load and unload ships at that city's port. The CNMC noted that the agreement prevented the companies from using labourers not employed by the port management company to unload unregistered cars and that this service is outside the purview of stevedoring and therefore also distorted competition in the wider manual labour market.

Spain's CNMC Imposes Fines on IT Cartel

On 26 July 2018, Spain's CNMC imposed a fine of EUR 29.9 million (approx. SGD 46.85 million) on 11 information technology companies – including IBM and Accenture – for rigging bids for computer services procured by the country's tax, social security and public-sector employment agencies. The CNMC said that the companies shared commercially sensitive information and colluded to divide among themselves the public computer services market from 2005. The companies created temporary joint ventures for certain bids, which they dissolved after completing the work. They also subcontracted work to preferred rivals, which agreed not to participate in the bidding process, and pre-negotiated bids.

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TURKEY

Turkey Probes Google's Alleged Online Search Abuse

On 3 August 2018, the Turkish Competition Board launched an investigation into Google for alleged abuse of dominance in the markets for comparison shopping services and general search, following in the footsteps of the EC. The Competition Board said the results of its preliminary inquiry were "significant and sufficient" enough to initiate a full investigation. It said the probe shares "common points" with the EC's *Google Shopping* case last year, where the EC imposed a fine of EUR 2.4 billion (approx. SGD 3.76 billion) on Google for promoting its own shopping comparison services in search results ahead of its rivals. The Competition Board has six months from August 2018 to complete its full investigation but has the option to extend the probe by another six months. Meanwhile, Turkey has already commenced a separate investigation into Google last year for its restrictions on Android device makers.

Other Jurisdictions

UNITED STATES

Visa, Mastercard and Banks Reach Settlement Over Card-Swipe Fees

On 18 September 2018, Visa Inc ("**Visa**"), Mastercard Inc ("**Mastercard**"), and a number of banks reached a US 6.2 billion (approx. SGD 8.68 billion) settlement on a 13-year old anti-trust lawsuit brought by merchants in relation to the fees that they pay when they accept card payments from customers. The merchants had alleged that Visa and Mastercard conspired to fix these fees. It was alleged that the merchants had no alternative but to pay the swipe fees and that they had been restricted from putting consumers on alternative modes of payment. The matter had reached a settlement in 2012 but was overturned on appeal. The latest settlement, which involves a bigger sum than the 2012 settlement, is subject to approval by the court.

Comcast Not in Violation of Antitrust Laws by Refusing to Deal with Viacom

On 16 August 2018, the federal district court in Chicago held that Comcast Corporation ("**Comcast**"), which is the world's largest broadcast and cable television provider, did not violate any law in its refusal to offer a competitor access to its advertising infrastructure. The complainant, Viamedia, Inc, ("**Viamedia**") which is an independent third-party spot cable advertising representative, represents independent cable operators in competition with Comcast in relation to spot cable advertising sales. Viacom had alleged that Comcast had used its position of monopoly over the advertising infrastructure to selectively exclude independent third-party sales representatives like Viacom from the advertising market. In making its decision, the court held that there was no evidence that Comcast was involved in tying arrangements and that Comcast had no duty to deal favourably with Viacom, if at all.

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CANADA

Supreme Court of Canada Dismisses TREB's Application for Leave to Appeal Finding of Abuseof Dominance

On 23 August 2018, the Supreme Court of Canada ("**SCC**") dismissed the Toronto Real Estate Board's ("**TREB**") application for leave to appeal a Federal Court of Appeal ("**FCA**") decision, which involved allegations that TREB's practices constituted an abuse of dominant position. TREB, which is a trade association comprising real estate agents, had restricted real estate brokers' and consumers' access to historical listing and selling property prices via online portals. In 2016, the Competition Tribunal held that TREB abused its dominant position, as the restrictions were meant to address concerns that online portals providing such information could lead to greater competition among its members, amongst other reasons. TREB had appealed the decision with FCA without success and thus applied for leave to appeal to the SCC. TREB has now 60 days to comply with the Competition Tribunal's order.

Competition Bureau Issues Publication on Competition in the Online Eyewear Industry

On 26 July 2018, the Competition Bureau issued a publication in relation to competition in the online eyewear industry, named 'Bringing Competition into Focus'. In the publication, the Competition Bureau addresses ongoing litigation and regulations governing the dispensing of prescription eyewear that may restrict purchase of the same over the Internet. In a recent case, self-regulatory bodies for optometrists and opticians had successfully challenged whether dispensing prescription eyeglasses online by an entity based in British Columbia are permitted under Ontario's laws. The court found that such dispensing shall take place only with the proper involvement of a licensed optometrist or optician. The publication sets out recommendations against potential regulatory barriers in respect of online sales of prescription eyewear to protect the interests of consumers.

SOUTH AFRICA

Revised Competition Bill Tabled Before Parliament

On 11 July 2018, a revised Competition Bill was tabled before Parliament. The revised Competition Bill proposes, amongst others, amendments to strengthen the penalty regime of the Competition Act, expand protection against abuse of dominance for customers involved in commercial transactions by replacing references to "consumers" to "customers", lower the burden of proof to establish that price discrimination is likely to have the effect of "substantially preventing or lessening competition" and repeal provisions that deal with complex monopolies. The revised Competition Bill was tabled following the completion of the public consultation in relation to the Competition Amendment Bill 2017 in the first quarter of 2018.

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Conclusion

We hope that you enjoyed this edition of our Competition Bites, and please stay tuned for more updates in future.

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
Deputy Managing 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 7304 0763 / +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
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

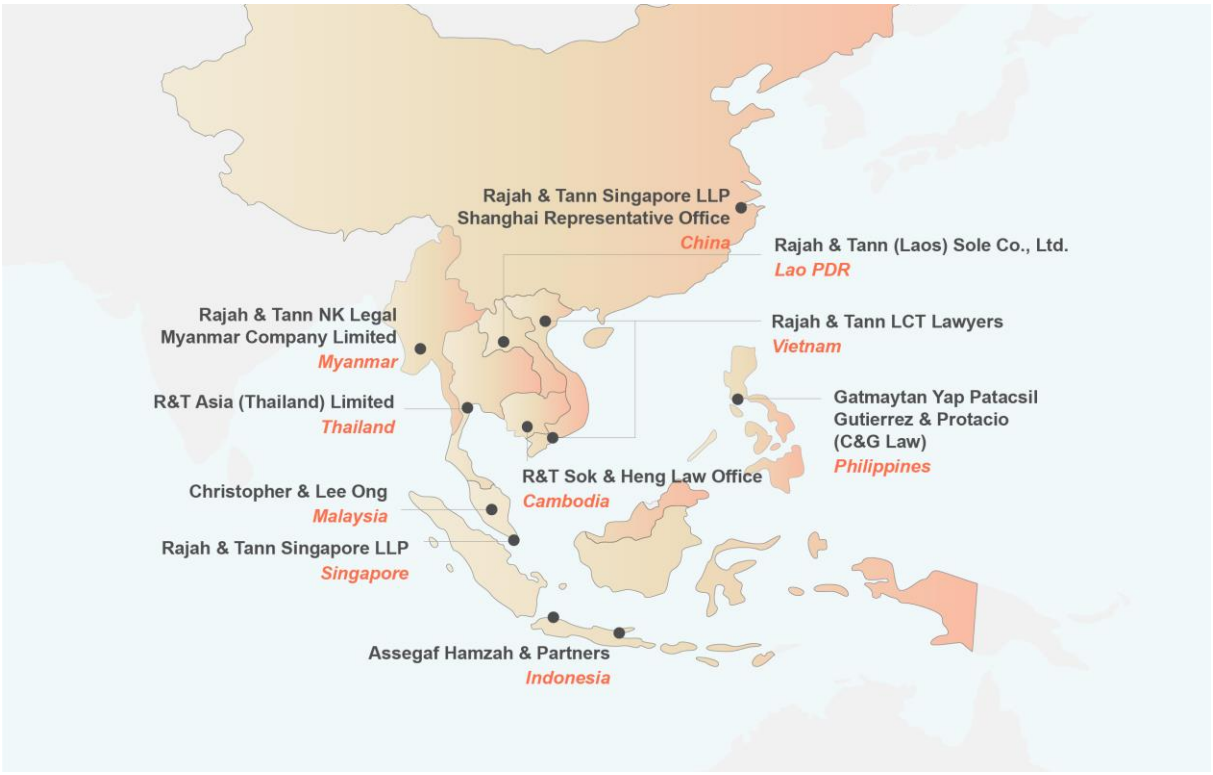
RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office
T +84 28 3821 2382 / +84 28 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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