

Competition & Antitrust and Trade

## Key Merger Control Developments in Southeast Asia in Q4 2022

We highlight below some key merger control developments in the Southeast Asia region, notably in the Philippines, Thailand and Singapore.

### A. PCC Releases Draft Non-Horizontal Merger Guidelines

1. On 28 September 2022, the Philippine Competition Commission ("**PCC**") released its draft Non-Horizontal Merger Guidelines ("**Guidelines**"). While the Guidelines largely follow established principles for assessing vertical and conglomerate mergers, they also contain certain more novel observations tied to family companies:
  - (a) Conglomerate mergers have been linked to conglomerate family businesses, and a theory of harm has been enunciated based on this. The Guidelines note that in family conglomerates, central control can be exercised across all the family entities, and this could result in possible predatory subsidisation of entities in the conglomerate that may drive competitors out of business. This may create a reputation for toughness to discourage potential players from entering the market or competing head-to-head with the conglomerate. As such, when conglomerate family businesses acquire new targets as conglomerate mergers, these transactions would be more closely scrutinised.
  - (b) The exercise of family links as a determinant of control has been emphasised multiple times in various parts of the Guidelines.
  - (c) The possibility of cross-subsidisation, namely, where the post-transaction conglomerate uses profits in one market to subsidise operations in another market, has been expressly recognised as potentially being restrictive of competition.
2. The release of the Guidelines suggests that PCC will more closely examine theories of harm arising from vertical and conglomerate mergers going forward, and especially in family businesses. Transaction parties should keep abreast of the ongoing consultation discussions and remain mindful of transactions that could raise vertical and conglomerate issues in the Philippines.

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**B. NBTC Grants Conditional Approval for True/DTAC Merger**

1. On 20 October 2022, the National Broadcasting and Telecommunications Commission ("**NBTC**") cleared the USD 8.6 billion merger between True Corporation ("**True**") and Total Access Communication ("**DTAC**"). The merger is a three-to-two transaction: True and DTAC reportedly hold 34% and 21% market shares respectively (based on mobile subscribers), and the merged entity will become the largest player, overtaking the present market leader Advanced Info Service Pcl with 44% market share. The merger is subject to various conditions, including:
  - (a) **Pricing Conditions:** The merged entity will be required to introduce price ceilings and controls and reduce service prices by 12% within 90 days of the merger.
  - (b) **Business Information:** The merged entity will be required to submit details on the cost of running the business to NBTC and allow independent verification of the cost structure and service fees employed for at least five years after the merger.
  - (c) **Separate Branding and Mobile Business:** The merged entity will be required to maintain True and DTAC as separate brands for the first three years after the merger. Further, the mobile business arms of True, True Move H Universal Communication ("**TUC**"), and the mobile service unit of DTAC, dtac TriNet ("**DTN**"), are not allowed to merge for the first three years.
  - (d) **Capacity Allotments:** The merged entity will be required to ensure that TUC and DTN allot up to 20% of their mobile network capacities for rental to mobile virtual network operators.
2. On 26 October 2022, the Thailand Consumers Council requested the House Anti-Corruption Committee to investigate the NBTC board for alleged violation of provisions against malfeasance in office.
3. This case is likely to generate further scrutiny given the size of the transaction and the sensitivity of the sector in question. The conditions imposed is also informative for the kinds of remedies that may be necessary to clear a difficult merger.

**C. CCCS Clears Proposed Acquisition by ContiTech Global Holding Netherlands B.V. of Trelleborg AB's Printing Solutions Business**

1. On 27 October 2022, the Competition and Consumer Commission of Singapore ("**CCCS**") cleared ContiTech Global Holding Netherlands B.V.'s proposed acquisition of Printing Solutions Sweden Holding AB from Trelleborg AB.

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2. While the parties submitted that they overlapped in flat-back/fabric printing blankets and self-adhesive printing blankets, CCCS nonetheless examined the wider market of offset printing blankets as a whole. The relevant markets assessed were:
  - (a) The market for global manufacturing and supply to Singapore and worldwide of offset printing blankets as a whole; and
  - (b) The market for overlapping types of offset printing blankets in Singapore – specifically focusing on flat-backed/fabric printing blankets.
3. Although the merged entity would be the largest player globally in the manufacturing and supply of flat-backed/fabric printing blanket, CCCS considered that the transaction was unlikely to give rise to competition concerns because there were sufficient competitive alternatives, switching was easy, and there was sufficient spare capacity amongst competitors to constrain the merged entity.

## D. Active Merger Review in Singapore

1. In Singapore, CCCS has been actively reviewing merger filings, and opened public consultations on three proposed transactions in November 2022. These include the:
  - (a) Proposed acquisition of GfK SE by AI PAVE Dutchco I B.V., which involves the market for the supply of customised market research services in Singapore;
  - (b) Proposed acquisition of the aviation equipment business of Yokogawa Electric Corporation by Oki Electric Co., Ltd., whose Singapore subsidiary supplies printers and spare parts for distributors in Singapore and Southeast Asia. The filing parties submitted that they do not offer any overlapping goods and services; and
  - (c) Proposed acquisition of Promontoria Holding 243 B.V., which indirectly owns 100% of the shares in WFS Global Holdings S.A.S. ("**WFS**"), by SATS Ltd. ("**SATS**"), through its indirectly wholly-owned subsidiary, SATS International SAS. The filing parties submitted that there is no horizontal overlap of material significance between SATS and WFS, but provided their responses in respect of the provision of premium passenger services at Changi Airport.
2. CCCS has also cleared multiple filings that have involved transactions of a global nature. These include the acquisition of Printing Solutions Sweden Holding AB by Contitech, the acquisition of CMC Materials, Inc. by Entegris, Inc., the acquisition of CoorsTek KK by MOMQ Holding Company, the acquisition of Meggitt PLC by Parker-Hannifin Corporation, and the combination of Sembcorp Marine Limited and Keppel Offshore & Marine Limited. In these transactions, the notifying parties had submitted that the relevant market was global.

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3. Although Singapore's merger regime is technically "voluntary", CCCS takes the view that transactions should be filed if Singapore's market share merger notification thresholds are crossed or very close to being crossed. Thus, it is important to assess whether a proposed transaction triggers the thresholds, given CCCS's activeness in reviewing mergers.

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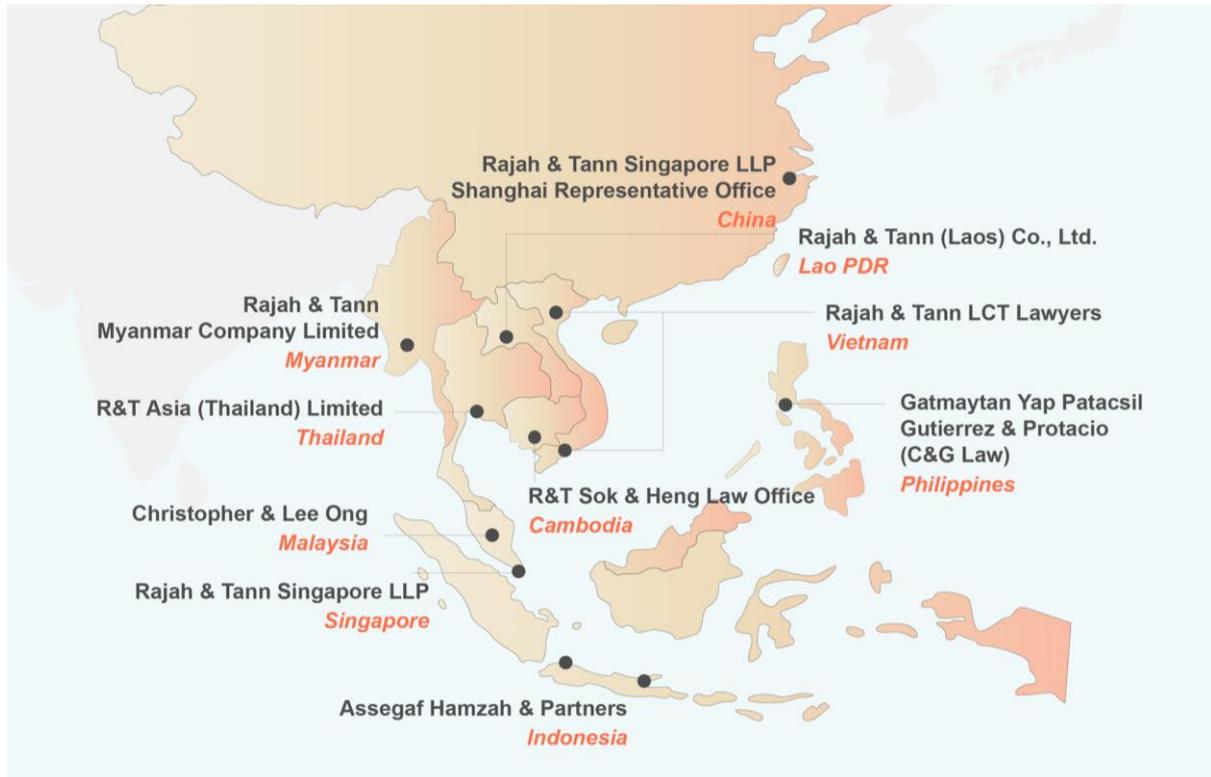
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