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REGIONAL COMPETITION BITES Q2 2024



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Overview

Dear Friends,

We are pleased to present our 2nd Regional Competition Bites for 2024. The second quarter has seen extensive enforcement action, increased merger reviews across a larger number of countries and significant regulatory and policy developments across Southeast Asia.

Strong enforcement against anti-competitive practices and cartelistic conduct has been the highlight of this quarter. In **Indonesia**, bid-rigging concerns seemingly remain of priority with the Indonesia Competition Commission ("**ICC**") reviewing a number of cases. Note that in Indonesia, bid-rigging hits at the horizontal level as well as at the vertical level, given the way the laws are drafted. Additionally, the ICC has also continued to closely scrutinise seven national airlines who were previously investigated for price fixing, in light of increasing ticket prices. In **Singapore**, the Competition and Consumer Commission of Singapore ("**CCCS**") issued a proposed infringement decision against two interior fit-out service providers, Tarkus Interiors and Flex Connect, for the bid-rigging of tenders over 5 years. In **Malaysia**, the Malaysia Competition Commission ("**MyCC**") clamped down on bid-rigging in public tender exercises by the Public Works Department and the Department of Drainage and Irrigation, whilst also monitoring the fuel market for any signs of cartelistic conduct after the implementation of targeted diesel subsidies. In **Thailand**, the Trade Competition Commission of Thailand ("**TCCT**") continues to monitor a diverse range of industries which impact everyday consumers, including cinemas, supermarkets and the e-commerce sector. As competition authorities continue to enhance their detection capabilities and enforcement efforts, businesses should be conscientious in complying with competition laws when undertaking business activities.

On the merger front, M&A activities have picked up which means more merger notifications, and if not notified, possible call-ins or investigations against the non-notified mergers. In **Singapore**, CCCS cleared two mergers, one in relation to the airline industry and another in relation to the steel and construction industry, both of which are major industries in Singapore. In the **Philippines**, the Philippine Competition Commission ("**PCC**") initiated further reviews of two mergers, in relation to a joint venture in the telecommunications industry and an acquisition of a drugstore, areas which have a high impact on everyday consumers. In **Vietnam**, where merger notifications are easily triggered, the Vietnam Competition Commission ("**VCC**") issued a new economic concentration notification form in the second quarter of 2023 to seemingly simplify the information requests. The VCC is now assessing two separate mergers involving the Bunge group, which is predominantly active in the agricultural and farming sectors. As alluded to, merger control enforcement remains robust in the region, and businesses should keep abreast of developments in this area to avoid violating competition laws.

On the policy front, **Cambodia** has become a serious competition regulator to deal with. The Ministry of Commerce has published two sets of regulations, one in relation to obtaining exemptions for anti-competitive agreements and another in relation to procedures for leniency application. With more clarity on the latter, we expect higher enforcement activity ahead as applicants come forward on a first-come, first-served basis to secure markers. Separately, in **Vietnam**, the VCC has engaged extensively with various foreign competition authorities to enhance cooperation and its enforcement capabilities. In addition, Vietnam's consumer protection law is now in full force, with extensive provisions and guidelines detailing the rights of consumers and the responsibilities of businesses.

These developments bode well as the growth of competition law and consumer protection capabilities in the region show no sign of slowing, and regulators here are well-placed to collaborate and leverage one another's expertise. With robust competition law regimes throughout the region, we anticipate exciting opportunities ahead for businesses to invest and conduct business in the region.

The Rajah & Tann Asia team Competition & Antitrust Team remains committed to staying abreast of the dynamic landscape of competition law in the region and stands ready to assist. Please reach out to us if you wish to further discuss these developments.

The Rajah & Tann Competition & Antitrust and Trade Practice

Contact No: 65-6232 0111

Email: kala.anandarajah@rajahtann.com

Indonesia

The second quarter of 2024 has seen significant enforcement activity from the Indonesia Competition Commission ("**ICC**"). ICC has engaged in extensive investigations in the e-commerce industry, as well as continued to monitor various airlines in relation to their commitment to implement a change of behaviour following a finding of cartelistic conduct in 2019. Other notable activities by the ICC include investigations into various bid-rigging cases and improving cooperation with the local government in West Kalimantan to promote fair business competition and protect the interests of small businesses. There are also a number of other cases in various industries that are being reviewed at the moment that we have not gone into give our involvement in the matters. A media release by the ICC notes that 75% of ICC's decisions have been upheld by the Supreme Court, highlighting ICC's robust enforcement of competition law. Separately, an interesting point to highlight is how ICC seemingly reviews meta data or digital data to ascertain that parties had indeed used the same documents to prepare their tender and hence engaged in bid-rigging.

1. ICC monitors seven national airlines' compliance with its decision on airline ticket price cartel

Anti-competitive agreements – price fixing, monitoring and compliance

ICC summoned seven national airlines (PT Garuda Indonesia Tbk, PT Citilink Indonesia, PT Lion Air, PT Batik Air Indonesia, PT Wings Air Abadi, PT Sriwijaya Air, and PT NAM Air) in late April to early May this year to review their conduct. These seven national airlines were previously examined for airline ticket pricing in 2019 pursuant to ICC Decision No. 15/KPPU-I/2019 ("**Decision**").

Under the Decision, each airline was required to submit written reports to ICC for two years from 18 September 2023. The written reports had to include all policies affecting competition dynamics and ticket prices. In line with the monitoring process, ICC had also requested information regarding the recent phenomenon of increased airline ticket prices.

ICC expressed concerns regarding the airline ticket price increase around early to mid-April this year. ICC identified several potential contributing factors, including rising fuel costs, increased passenger demand, currency exchange rate fluctuations, growth in operational expenses, and the possibility of anti-competitive practices by airlines. During the meeting with the airlines, ICC clarified the implementation of the Decision, discussed trends in ticket price increases, and examined the sale of highest-priced sub-class tickets in the seven days before and after Eid. Additionally, ICC also requested travel agents to provide information on airline policies that impact competition dynamics, such as ticket prices, ticket sub-classes sold, flight frequencies, and related matters.

ICC will assess all the provided documents and data to determine the airlines' compliance with the Decision, and whether there are indications of unfair business practices among them following the airline ticket price increase. ICC may initiate an investigation into potential violations if the latter arises.

2. Bid-rigging in relation to the procurement of equipment for the National Research and Innovation Agency

Anti-competitive agreements – bid-rigging

On 20 May 2024, ICC commenced hearings against four reported parties in a case of bid-rigging relating to the procurement of various electron microscopes for advanced research in 2022 at the Deputy Work Unit for Research and Innovation Infrastructure, National Research and Innovation Agency (BRIN). The procurement had an estimated price of IDR 299,700,000,000 (approx. USD 18.5 million) on 8 April 2022.

The four reported parties include the tender participants and the procurement committee. The parties are: (i) PT Buana Prima Raya; (ii) PT Multi Teknindo Infotronika; (iii) the Working Group ("POKJA") and procurement committee who conducted the procurement; and (iv) the Commitment-Making Officer ("PPK") who authorised the procurement. It is significant to note that POKJA and PPK are reported parties even though they were not the tender participants, as bid-rigging cases in Indonesia extend to vertical collusion between the participants and the procurement committee, in addition to horizontal collusion between tender participants.

Following the procurement process, PT Buana Prima Raya won the tender with a bid value of IDR 299,200,347,930 (approx. USD 18.4 million). However, ICC found that the procurement process involved anti-competitive practices, such as false competition between the bidders, discriminatory practices, artificially increased bids, and facilitating PT Buana Prima Raya to win the bid. Such bid-rigging practices violated Article 22 of the Indonesian Competition Law (Law No. 5 of 1999) ("ICL").

ICC held two further hearings on 3 and 20 June 2024. The first hearing allowed the reported parties to submit their responses to the allegation report, while the second hearing was for the reported parties to review the case dossier. Given that bid-rigging is exempted from the change of behaviour mechanism, it is likely that this case will proceed to further examination involving the review of evidence, site inspections and the presentation of hearing outcomes by investigators and/or the reported parties.

Note further that in Indonesia, bid-rigging can be established not just between the parties responding to the tender call, but also against the party calling the tender, as was the case here.

3. Bid-rigging in Nusa Penida Class II Port Construction Projects

Anti-competitive agreements – bid-rigging

ICC previously initiated investigations into six reported parties over alleged violations of Article 22 of the ICL relating to bid-rigging, focusing on discriminatory tender requirements that limited participation in Nusa Penida Class II port construction projects in 2022. ICC's investigation found only four qualifying bids out of 19, with two from affiliated companies, alongside similarities in bidding documents and digital data among the accused parties.

The reported parties in this case include: (i) PT Sumber Bangun Sentosa; (ii) PT Pacific Multindo Permai; (iii) PT Pilar Atmoko Konstruksi; (iv) PT Tri Karya Utama Cendana; (v) the procurement committee; and (vi) the Commitment-Making Officer (PPK) at the Nusa Penida port management unit.

During the ICC hearing on 14 March 2024, the reported parties disputed the findings of the ICC investigator's allegation report. Pursuant to the ICC Regulations governing case handling procedures, a failure to acknowledge the allegation report will result in the case proceeding to the further examination phase. Conversely, if all reported parties acknowledge and accept the allegation report during the preliminary examination phase, ICC can expedite proceedings by

advancing directly to the Commission's panel deliberation stage through a fast examination procedure, without a further investigation.

Subsequently, ICC conducted hearings from April to June 2024, focusing on witness testimonies at its Jakarta and Surabaya offices. An on-site examination was also conducted at Banjar Nyuh port on 28 May 2024 for the ICC commissioners to understand the technical aspects of the Nusa Penida port construction.

4. PT Asputra Perkasa Makmur implements ICC's orders to improve partnership with Purebred Chicken Farmers in West Java

*Partnership
with MSMEs –
poultry sector*

ICC received a report alleging that PT Asputra Perkasa Makmur ("**PT ASPM**") had allegedly violated Article 35(2) of Law No. 20 of 2008 on Micro, Small, and Medium Enterprises ("**Law No. 20/2008**"). PT ASPM had unilaterally imposed arrangements relating to rights and obligations provisions, disproportionate sanction arrangements, pricing mechanisms, the quality of farming production facilities and profit-sharing formulas on Purebred Chicken Farmers across several districts in West Java Province, in relation to their purebred chicken breeding business agreement.

The ICC issued three written warnings ("**Written Warnings**") instructing PT ASPM to rectify the partnership agreement on the arrangements above, and to comply with all provisions in the partnership agreement based on partnership principles. Following the Written Warnings, ICC monitored PT ASPM's conduct and confirmed that PT ASPM had complied with the Written Warnings.

On 3 April 2024, ICC resolved the case by issuing the Decision on Case Termination Number 03/KPPU-K/2023 regarding Alleged Violations of Article 35(2) of Law No. 20/2008 concerning Broiler Chicken Partnership Implementation to PT ASPM. No sanctions were imposed on PT ASPM.

5. Improving cooperation between ICC and the local government of West Kalimantan regarding business competition and partnerships

*Partnership
with MSMEs –
policy*

Given ICC's priority of increasing supervision of partnerships between large corporations and Micro, Small, and Medium Enterprises ("**MSMEs**"), ICC continues to closely monitor the Business Competition Index ("**IPU**") in several provinces across Indonesia. A decrease in the IPU indicates to ICC that there is a need to increase supervision over the behaviour of business actors and harmonisation of policies issued by regional governments.

As the IPU in West Kalimantan has decreased from 5.02 in 2022 to 4.80 in 2023, on 20 May 2024, ICC announced its intention to enter into a formal cooperation with the West Kalimantan Provincial Government and establish a liaison office in the region. This would enable ICC to increase its supervision of competition and partnerships with MSMEs in West Kalimantan.

Although the cooperation has yet to be formalised, ICC has been actively monitoring the market and improving public awareness by:

- (a) conducting an inspection over staple goods on 19 May 2024, where ICC discovered that 10 types of produce (e.g. rice, sugar, meat, onions and chilies) were above the highest retail price (HET) by 12% to 30%;

- (b) announcing its intention to introduce an inflation-controlling policy in West Kalimantan; and
- (c) assessing the need for regulation by the Plantation Office of West Kalimantan on the partnership with MSMEs, given that the region is dominated by the palm oil and mining industries.

Cambodia

The Cambodia Competition Commission ("**CCC**") is a regulator to be taken seriously in Southeast Asia as well, as it has grown considerably in its competition law enforcement. With increased enforcement, the Ministry of Commerce ("**MOC**") has published two significant guidelines known as decisions in this quarter, which set out further guidance on the scope of competition law exemption and the leniency regime for competition law violations. In particular, with greater clarity on leniency application procedures, there may be greater enforcement activity ahead as applicants come forward on a first-come, first-served basis.

1. Decision on exemptions under competition law

*Regulations –
exemptions*

On 2 April 2024, the MOC issued Decision No. 087 on the Requirements and Procedures of Exemptions under the Law on Competition ("**Decision No. 087**"). It sets out the requirements and procedures for requesting exemptions for an agreement or activity that may violate Articles 7, 8, 9 and 11 of the Law on Competition.

Decision No. 087 provides that any persons considering entering into agreements or engaging in activities that may violate Articles 7, 8, 9 and 11 of the Law on Competition but meet all the requirements stipulated under Article 12 of the Law on Competition may apply for an exemption from CCC.

Once an application is deemed complete, the Consumer Protection Competition and Fraud Repression Directorate-General ("**CCF**") will request for approval from CCC to publish the applicant's exemption request on its official website and social media with a certain period for comments from the public including third parties, the applicant's key competitors, customers, suppliers and any related persons. However, CCC will not disclose documents and information identified as confidential by the applicant unless it complies with Article 23 of the Law on Competition.

Following the above, if CCC intends to reject the application, CCC will first issue a preliminary decision stating its reasons for rejecting the proposed agreement or activity of an applicant. The applicant may then submit a defence statement in response within the deadline determined by CCC. CCC may in turn request the applicant to further elaborate and provide additional documents before issuing its final decision.

Upon completion of the aforementioned procedures, CCC will issue a final exemption decision within 30 working days. This timeline may be extended by up to 10 working days on reasonable

grounds, such as to confirm or reject the exemption request on the proposed agreement or activity. The granting of an exemption is subject to certain general and specific conditions as stipulated under Articles 11 and 12 of the Decision. Subject to confidentiality considerations, CCC will publish the decision on its official website and social media or through other means as determined by CCC.

The exemption decision is granted for a specific period of time and is renewable, modifiable and revocable.

2. Decision on leniency under competition law

*Regulations –
leniency
application*

On 3 May 2024, MOC issued a Decision on Requirements and Procedures on Leniency under the Law on Competition. The Decision sets out the requirements and procedures for CCC to grant leniency to a person who engaged in an unlawful horizontal agreement under Article 7 of the Law on Competition.

The leniency may be issued in the form of immunity from fines and sanctions, a reduction of fines (up to 50%) or immunity from sanctions.

To request for leniency, an applicant must follow these procedures:

- (a) Request CCC to identify the availability of a marker by confirming the genuine intention to confess and provide evidential documents and information of the unlawful horizontal agreement. A marker is a mark used as a preliminary basis for determining the order for a leniency request for unlawful horizontal agreement, subject to the subsequent submission of a successful leniency application;
- (b) Submit a marker application to CCC along with evidential documents and information of the unlawful horizontal agreement upon CCC's confirmation on the availability of the marker;
- (c) Submit a complete leniency application to CCC along with evidential documents and information on the unlawful horizontal agreement within 15 days following CCC's notice of the issuance of the marker. If the applicant fails to provide the evidential documents and information outlined in the application within the above deadline, the applicant shall, on reasonable grounds, request for an extension from CCC;
- (d) If the leniency application is complete, CCC will grant conditional leniency and issue a notice to the applicant confirming (i) conditional immunity from or reduction of fines and sanctions; and (ii) conditions or requirements to which the applicant must adhere in order to obtain the final leniency. In such a case, the applicant shall genuinely, expeditiously and fully cooperate with CCC during the preliminary examination of the unlawful horizontal agreement; and
- (e) After completing the preliminary examination, CCC will issue a conclusion; the competent court will make a final decision on leniency based on CCC's recommendation.

It should be noted that CCC will consider granting leniency only if a complete application for leniency is made with CCC with the relevant documents and information which are proof of an unlawful horizontal agreement, and an acknowledgement that the applicant is part of this unlawful agreement. The leniency applicant must also continue to cooperate with CCC after receiving

conditional leniency until CCC's issuance of the preliminary examination of the investigating officer and case submission to the competent court.

Under the leniency regime, CCC will maintain confidentiality of a leniency applicant along with the evidence provided unless the disclosure is required per Article 23 of the Law on Competition.

Singapore

Merger control remains a key priority for the Competition and Consumer Commission of Singapore ("CCCS") in the second quarter of 2024, even as we see a slow but steady increase in cartel investigations. CCCS has cleared ANA Holdings Inc.'s acquisition of Nippon Cargo Airlines Co., Ltd after a six-month review, and is reviewing Green Estee Pte. Ltd.'s proposed acquisition of shares in HG Metal Manufacturing Limited, which relates to the markets for various steel products in Singapore, an important market that is adjacent to the significant construction industry. On the cartel front, CCCS has issued a Proposed Infringement Decision against two interior fit-out construction services companies for engaging in bid-rigging. There is seemingly sustained scrutiny on the construction sector, following from previous dawn raids conducted by CCCS in this sector in Q4 2023. Apart from the above, CCCS continues to look out for unfair trade practices in the market, issuing warnings against Loft Home for fake 5-star reviews posted on its website.

1. CCCS issues Proposed Infringement Decision against companies for bid-rigging tenders for interior fit-out construction services

Anti-competitive agreements – bid-rigging

On 23 May 2024, CCCS issued a Proposed Infringement Decision ("PID") against Tarkus Interiors Pte Ltd ("Tarkus") and Flex Connect Pte. Ltd. (formerly known as Facility Link Pte. Ltd.) ("FL") for engaging in bid-rigging conduct in the supply of interior fit-out construction services for non-residential properties in Singapore.

Tarkus and FL had colluded by bid-rigging tenders from August 2016 to August 2021. The affected tenders were procured for between SGD 150,000 (approx. USD 111,040) and SGD 7.7 million (approx. USD 5.7 million) in value and involved twelve properties, including offices, retail spaces and food and beverage establishments. In doing so, Tarkus and FL removed the competitive pressure between them to submit their best offers to customers, resulting in customers being unable to obtain offers that could provide the best value.

Tarkus and FL have six weeks from the receipt of the PID to make individual representations to CCCS, following which CCCS will consider the representations before making its final decision.

2. ANA Holdings Inc.'s proposed acquisition of Nippon Cargo Airlines Co., Ltd.

Merger – horizontal

On 24 May 2024, CCCS cleared the proposed acquisition by ANA Holdings Inc. ("ANA") of Nippon Cargo Airlines Co., Ltd ("NCA"), a wholly owned subsidiary of Nippon Yusen Kabushiki Kaisha.

CCCS determined that the relevant markets comprised the provision of direct and indirect air cargo transport services (i) from Singapore to Tokyo, and (ii) from Tokyo to Singapore.

CCCS found that the proposed acquisition was unlikely to lead to a substantial lessening of competition in the relevant markets as ANA and NCA were not each other's closest competitor, and there were other competitors in the relevant markets that provided suitable alternatives to customers. Further, whilst ANA and NCA were the only airlines operating freighters on a direct basis between Singapore and Tokyo at present, CCCS considered that there were viable alternative airlines operating freighters on indirect routings between Singapore and Tokyo that customers could switch to easily, in the event of any price increase or reduction of quality or capacity by the merged entity. Finally, the barriers to entry and expansion in the relevant markets were not high and competing airlines could easily add freighter aircraft operations when competitive opportunities arose.

3. Green Steel Pte. Ltd.'s proposed acquisition of shares in HG Metal Manufacturing Limited

*Merger
horizontal* –

On 6 June 2024, Green Steel Pte. Ltd. ("**Estee**l") and HG Metal Manufacturing Limited ("**HG Metal**") (collectively, the "**Parties**") notified the proposed acquisition by Esteeel of up to 29% of shares in HG Metal to CCCS. Esteeel's principal activity is in investment holding and the trading of iron ore and hot briquetted iron. In particular, Esteeel holds a majority interest in BRC Asia Limited ("**BRC**"), which is active in the markets for the prefabrication of steel reinforcement for use in concrete, trading of steel reinforcing bars and the manufacturing and sale of wire mesh fences. On the other hand, HG Metal and its subsidiaries are active in the markets for the trading of steel products and the manufacturing and supply of steel material to the construction industry. The Parties therefore submitted that BRC and HG Metal overlapped in the supply of various steel products in Singapore.

Despite the overlap between BRC and HG Metal, the Parties submitted that Esteeel and HG Metal do not offer any overlapping goods or services as Esteeel does not directly or indirectly control the activities of BRC (i.e. BRC operates independently in the relevant markets). Accordingly, the Parties submitted that the proposed acquisition would not give rise to any coordinated or non-coordinated effects in the relevant markets.

CCCS has invited interested parties to submit their views on the proposed acquisition, following which CCCS will consider all information before issuing a decision.

4. CCCS consults on renewing the Block Exemption Order for Liner Shipping Agreements for five years

*Block
Exemption
Order – liner
shipping
agreements*

On 27 May 2024, CCCS requested for public feedback on its proposed recommendation to renew the Competition (Block Exemption for Liner Shipping Agreements) Order (the "**LSA BEO**") for five years from 1 January 2025 to 31 December 2029. The LSA BEO currently exempts the following Liner Shipping Agreements ("**LSA**") from the prohibition against anti-competitive agreements under the Competition Act:

- (a) Vessel sharing agreements for liner shipping services ("**VSA**"); and
- (b) Price discussion agreements for feeder services ("**PDA**").

Following CCCS' review of market developments in the liner shipping industry, CCCS has proposed that VSAs and PDAs continue to be the subject of the LSA BEO.

Interestingly, CCCS is exploring the application of the LSA BEO to "inland carriage of goods". CCCS had received feedback from freight forwarders who indicated that there was an unlevel playing field between themselves and liners, as liners enjoyed competition law immunity with respect to "inland carriage of goods" which the freight forwarders did not. However, various liners have countered that they currently do not engage in operational cooperation or price discussion on any "inland carriage of goods" component of their liner shipping services.

In order for CCCS to ascertain whether the LSA BEO should apply specifically to "inland carriage of goods", CCCS has requested feedback on the current and impending usage of LSAs involving sea transport and "inland carriage of goods" occurring as part of "through transport", and the potential economic benefits and concerns that may arise from such LSAs.

5. CCCS issues warnings to Loft Home Furnishing Pte. Ltd. over fake customer reviews

*Consumer
protection –
unfair practices*

On 21 June 2024, CCCS issued a press release stating that it had issued warnings to Loft Home Furniture and Loft Industries Pte. Ltd. ("**Loft Home**") and its business owners.

In October 2023, CCCS commenced investigations against Loft Home Furnishing Pte. Ltd. after receiving complaints from customers, who alleged that 5-star reviews containing their initials were posted on the Loft Home website without their knowledge. These reviews contained strong recommendations on the quality of the purchased furniture and actual photographs of the furniture displayed in the customers' homes. CCCS found that Loft Home was responsible for posting the fake 5-star reviews, which constituted an unfair trade practice that could deceive or mislead customers.

Following CCCS's investigation, Loft Home gave undertakings to CCCS that it would, amongst others, stop posting fake reviews, set up a feedback channel for customers to report fake Loft Home reviews and remove reviews which have been verified to be fake. CCCS subsequently accepted the undertakings and issued warnings to Loft Home and its business owners.

Malaysia

The Malaysia Competition Commission's ("MyCC") efforts are focused on pursuing various domestic cartels, including cartels relating to public tender exercises in Malaysia. In relation to fuel, an everyday good, MyCC has also emphasised its intention to monitor the market closely and to take strict enforcement against any cartelistic practices. These investigations are clearly centred on protecting consumer interest and ensuring fair competition in the market. On the policy front, the amendment bill to the Competition Act 2010 is reportedly targeted to be tabled at Parliament by the end of 2024.

1. MyCC issues proposed decision against eight contractors for bid rigging in government tenders

Anti-competitive agreements – bid-rigging

On 16 April 2024, MyCC issued a proposed decision against eight enterprises for infringing section 4 of the Competition Act 2010 by engaging in bid rigging in 2019 in respect of two tenders by the Public Works Department (JKR) and one tender by the Department of Drainage and Irrigation (JPS). The three tenders are worth approximately RM473 million and relate to the provision of services for road construction works and flood mitigation systems. The proposed decision was duly served on all the eight enterprises on 22 April 2024.

The eight enterprises have been provisionally found in MyCC's investigation to have colluded in bid rigging through information sharing and coordination in the participation of the above-mentioned tenders. The enterprises concerned have been notified of the proposed penalties and have been accorded the opportunity to submit their respective written representations within 30 days after receiving the proposed decision. Thereafter, the enterprises will have an additional opportunity to make their respective oral representations before MyCC at a later date. MyCC will only issue its final decision after considering representations made by the enterprises against evidence gathered from MyCC's investigation.

2. MyCC pledges market monitoring and strict enforcement after implementation of targeted fuel subsidies in Peninsular Malaysia

Anti-competitive agreements – cartelistic practices

Following the implementation of targeted diesel subsidies in Peninsular Malaysia effective 10 June 2024, MyCC has pledged its commitment to ensuring competitive market practices. In this regard, MyCC is working closely with the Ministry of Domestic Trade and Cost of Living (KPDN) and the Ministry of Finance (MOF) to access crucial data which allows it to detect and respond to any signs of market distortion, including cartel activities, and will continue to monitor the market. MyCC further reiterated that it will take strict action against any company found engaging in cartel behaviour or price collusion and has dedicated significant resources to enforce the Competition Act 2010.

Philippines

The Philippines Competition Commission ("**PCC**") continues to focus on reviewing mergers that are likely to have high impact on consumers, having initiated two Phase 2 reviews in this quarter. The first relates to a proposed joint venture between three tower companies which are active in the market for the supply of towers for telecommunication and network purposes. The second relates to Ayala Pharma Ventures' proposed acquisition of shares in Joleco Resources, both of which operate drugstores Philippines. On the policy front, PCC has also participated actively in both regional and international conferences with competition authorities from other jurisdictions and has been a key driver for cooperation and collaboration between competition authorities within the ASEAN region.

1. PCC initiates in-depth review of proposed joint venture between PTCI Holdings, Connect Infrastructure and Meralco Industrial Engineering Services Corporation *Merger - horizontal*

On 11 June 2024, PCC initiated a Phase 2 review of the proposed joint venture between PTCI Holdings Pte. Ltd. ("**PTCI**"), Connect Infrastructure (Philippines) Pte. Limited ("**CIP**") and Meralco Industrial Engineering Services Corporation ("**MIESCOR**"). PTCI owns Phil-Tower Consortium, Inc. ("**PTCI-PH**") while CIP and MIESCOR jointly control MIESCOR Infrastructure Development Corp. ("**MIDC**"), both of which are independent tower companies. Under the proposed joint venture, the joint venture company, Pylon Holdings, Corp. ("**Pylon**"), will hold 100% of shares in PTCI-PH and MIDC.

In the parties' notification to PCC, they submitted that Pylon would be able to offer mobile network operators a broader network coverage of towers. However, after the initial Phase 1 review, PCC directed the Mergers and Acquisitions Office ("**MAO**") to initiate a Phase 2 review of the transaction due to limited information to fully assess the impact of the proposed joint venture on competition. The Phase 2 review will entail, amongst others, examining the duration and terms of contracts between independent tower companies and mobile network operators, assessing the barriers of entry for competitors in the market for tower leasing and determining whether the transaction would result in conglomerate effects.

2. PCC initiates in-depth review of Ayala Pharma Ventures' proposed acquisition of shares in Joleco Resources *Merger – horizontal*

On 23 April 2024, PCC initiated a Phase 2 review of the proposed acquisition by Ayala Pharma Ventures ("**Ayala**") of 49% of shares in Joleco Resources ("**Joleco**"). Ayala operates Generika Drugstore while Joleco operates St. Joseph Drugstore, a Northern Luzon drugstore chain.

In the initial Phase 1 review, MAO raised potential competition concerns in the markets for the retail sale of pharmaceutical and non-pharmaceutical products across 28 localities in Northern Luzon. These localities span the Ilocos Region and Cordillera Administrative Region. Given the above, MAO recommended a Phase 2 review to conduct a more detailed and extensive

assessment on whether the proposed acquisition would lead to a substantial lessening of competition in the relevant markets.

3. PCC's post-pandemic enforcement strategies

*Policy
enforcement
strategies* –

On 9 May 2024, PCC participated in a panel session at the American Bar Association 72nd Antitrust Law Spring Meeting. At the panel session, the Enforcement Office Director of PCC, Christian B. De Los Santos, shared that PCC has been prioritising high-impact cases and encouraging the use of non-adversarial remedies such as show cause orders and voluntary commitments.

To keep pace with market developments, PCC has also issued the Guidelines for the Motu Proprio Review of Mergers and Acquisitions in Digital Markets and the Guidelines for Non-horizontal Merger Review. For more details on these guidelines, please refer to our Q2 2023 Comp Bites [here](#).

Finally, to foster cooperation and coordination with other ASEAN Member States, PCC is jointly working on the development of a Merger Information Sharing Portal with competition authorities around the region.

Thailand

The Trade Competition Commission of Thailand ("**TCCT**") has become an active regulator both in mergers as well as in investigations. On investigations, TCCT has been actively monitoring various industries which impact everyday consumers, including cinemas, e-commerce, religious goods, steel pins, pig farming, supermarkets, and aluminum and stainless steel products. In particular, TCCT has focused on investigating and taking enforcement action against businesses that abuse their market power or engage in unfair business practices. The intent really is, as with most other countries, to ensure consumer interests are protected and fair competition remains.

1. Abuse of market power in the cinema industry

*Abuse of
dominance –
cinema
industry*

On 30 May 2024, TCCT published a decision relating to an abuse of market power by a cinema business operator. The operator, possessing a market share in Thailand exceeding 10%, unfairly leveraged its market power to deduct fees for movie ticket sales through online channels and ticketing kiosks from the agreed revenue share, without obtaining consent from the film producers or distributors whose films were being screened in cinemas. These deductions were neither documented in writing nor communicated in advance and cannot be considered standard business practice.

Consequently, TCCT determined that the operator's actions constituted an abuse of market power as the deduction of fees for movie ticket sales through online channels and ticketing kiosks caused harm to other business operators. This constituted a violation of Section 57 of the Trade

Competition Act 2017. The operator's business manager was also found liable under Section 84 of the Trade Competition Act 2017 for initiating the fee deductions.

2. Alleged unfairly low pricing of good or services by an e-commerce retail store

Abuse of dominance – e-commerce retail industry

On 30 May 2024, TCCT published a decision regarding allegations of unfairly low pricing by a consumer goods retailer on an e-commerce platform. The claimant, who also operates a consumer goods retail business on an e-commerce platform, claimed that the respondent had unfairly lowered the prices of its products, specifically, boxed milk.

Upon review of the respondent's financial statements and other facts, TCCT discovered that the respondent had declared lower package volumes and weights than the actual figures, thereby reducing its shipping costs. Despite this, TCCT concluded that the respondent's pricing did not constitute an unfair trade practice under Section 57(1) of the Trade Competition Act 2017, as the respondent's selling price was not below cost. With the claimant being unable to adduce evidence of economic harm suffered by it (i.e. reduced revenue or sales volume), the case was dismissed.

3. Unfair practice relating to termination of a religious goods distribution contract

Unfair trade practices – religious goods

On 20 May 2024, TCCT published a decision relating to the unfair termination of a contract to sell monk supplies (Sanghaphan) by a retail business operator.

The claimants, who sold their monk supplies in the department store operated by the respondents, a retail business, alleged that their consignment contracts were unfairly terminated. The manager of the retail business terminated the contract with the claimants at a business meeting without providing a reason. Subsequently, the manager sent a termination letter, citing a policy change as the result. Upon investigation, it was revealed that the termination was due to personal conflicts between the claimant's managing partner and the director of the retail business. TCCT found that the termination of the contract for such a reason is not acceptable from a business, economic, or marketing standpoint.

TCCT further provided that the refusal to deal, which would be a violation, includes refusing to trade with one's own partners, not just refusing to allow other businesses to become partners with the business that is refusing. Additionally, the termination of the contract had caused damage to the claimants by resulting in a total loss of income from their business operations, as the claimants sold their products exclusively in the department store of the respondents. Even though the complainants later attempted to sell their products to other retail stores, it was merely an effort to keep their business going and did not mean that they did not suffer damage from the termination of the contract by the respondents.

Accordingly, TCCT held that the termination of the consignment contract constituted the imposition of conditions which limited the business operations of the claimants. This amounted to an unfair practice under Section 57(3) of the Trade Competition Act 2017. The manager and director of the retail business who directed the violation were also found liable for offences under Section 84 of the Trade Competition Act 2017.

4. Alleged unfair refusal to order Corocon Pin

*Unfair trade
 practices –
 Corocon Pins*

On 6 June 2024, TCCT published a decision concerning allegations of unfair refusal to order Corocon Pins (steel used as wheel cores), by an aluminium and stainless-steel manufacturer and distributor.

The claimant manufactures Corocon Pins. The respondent company holds significant bargaining power over the claimant as more than 30% of the claimant's revenue comes from sales to the respondent. On this note, the respondent decided to discontinue purchases from the claimant and chose an alternative supplier offering lower prices and superior vendor evaluations to streamline production costs.

TCCT determined that the respondent's decision to change suppliers was based on legitimate business considerations. Consequently, the Commission concluded that the respondent's conduct did not constitute an unfair trade practice which violates Section 57 of the Trade Competition Act 2017.

5. Alleged unfair trade practices by pig farmers

*Unfair trade
 practices – pig
 breeding
 industry*

On 11 April 2024, TCCT published a decision relating to alleged unfair trade practices by a group of major pig farming companies.

The claimant alleged that a group of major pig farming companies excessively expanded pig farming beyond market demand and imported frozen pork, illegally selling them at prices below the cost of production.

TCCT concluded that the behaviour is one beyond the authority and jurisdiction of TCCT under the Trade Competition Act 2017.

6. Abuse of dominance by a supermarket retailer by unilaterally changing credit terms and imposing fees

*Abuse of
 dominance –
 supermarket
 industry*

On 20 May 2024, TCCT published a decision relating to unfair trade practices by a supermarket.

The claimant is a manufacturer of shampoo who relies on selling its products through the respondent's supermarket, which accounts for over 50% of its annual revenue.

TCCT determined that the respondent unilaterally altered commercial credit terms by extending the payment due date for product prices from the original 60 days to 67 days and expediting expense recovery terms by 30 days. This led to cash flow issues by the claimant.

The respondent also unilaterally imposed fees relating to distribution costs and the costs for renovating new branches, without the claimant's consent. The respondent did not provide a criteria or explanation for fees charged in writing or prior to such collection of fees. Further, the respondent cancelled the claimant's orders in July 2021 without providing prior notice or explanation, or offering an opportunity for negotiation.

In view of the above, TCCT held that the claimant had abused its market power and contravened Section 57(2) and (3) of the Trade Competition Act 2017. The manager of the claimant was also

held accountable for an offence under Section 84 of the Trade Competition Act 2017 for orchestrating the unfair practices by the claimant.

7. Alleged unfair reduction in order volume of cutting tools in the aluminium and stainless-steel industry

Unfair trade practices – aluminium and stainless-steel industry

On 21 June 2024, TCCT issued a decision regarding allegations of an unfair reduction in cutting tool orders by a manufacturer of aluminium and stainless-steel products.

The claimant, a cutting tools supplier, had entered into an agreement with the respondent for the procurement of cutting tools for the respondent. Upon contract expiration, the respondent significantly reduced its order volume from the claimant, resulting in a decrease in the claimant's revenue.

TCCT determined that the respondent's reduction in order volume was a cost-cutting measure justified by economic and marketing considerations. The respondent opted to purchase cutting tools directly from suppliers rather than through the claimant to reduce costs. As such, the respondent was not found liable for unfair practices under Section 57 of the Trade Competition Act 2017.

Vietnam

As with Singapore, amongst others, the Vietnam Competition Commission ("VCC") remains active in its review of economic concentrations. Vietnam is one country where many continue to have difficulties ascertaining whether notification will be required. Experience and the approach of VCC suggests that VCC takes a strict approach and notification is recommended in borderline cases. Still on mergers, VCC issued a new economic concentration (or merger) notification form in Q2 2023, which calls for more information to be shared. Key mergers being reviewed by VCC include those in the agriculture and farming industries. On the consumer protection front, the Law on Protection of Consumers' Rights officially came into effect on 1 July 2024 and is expected to significantly bolster consumer protection rights.

1. Economic concentration between Bunge Alimentos S.A. and CJ Selecta S.A.

Merger – horizontal

VCC is currently assessing the Economic Concentration Notification Dossier for the proposed merger between Bunge Alimentos S.A. ("**Bunge**") and CJ Selecta S.A. ("**Selecta**").

Bunge is active in the export of oilseed products, non-seed animal feed ingredients, vegetable oils and lecithin to Vietnam. Bunge also has various affiliated companies in Vietnam, including a subsidiary (Baria Joint Stock Company of Services for Import Export AGRO-Forestry Products and Fertilizers) specialising in forestry products and fertilisers, and an affiliated company (Vietnam

Agribusiness Limited) active in the farming industry. On the other hand, Selecta is active in the export of concentrated soy protein products to Vietnam.

2. Economic concentration between Bunge Global SA and Viterra Limited

*Merger
horizontal* —

VCC is also concurrently assessing the Economic Concentration Notification Dossier for the proposed merger between Bunge Global S.A. ("**Bunge**") and Viterra Limited ("**Viterra**").

In this regard, Viterra overlaps directly with the business activities of Bunge. Viterra similarly exports food grain products, non-grain animal feed ingredients, cotton and sugar to Vietnam.

3. Expanded consumer protection rights

*Legislation
consumer
protection* —

The Law on Protection of Consumers' Rights ("**CPL**") came into effect on 1 July 2024. The CPL has extensive provisions which clearly outline, amongst others, the principles and policies for consumer protection, the rights and obligations of consumers and the responsibilities of business undertakings towards consumers. For more details on the key points of the CPL, please refer to our Q2 2023 Comp Bites [here](#).

To augment the CPL, the government had previously issued Decree No. 55/2024/ND-CP ("**Decree**") on 16 May 2024 to provide guidance on the CPL. The Decree likewise came into effect on 1 July 2024 and is intended to enhance consumer protection and regulate diverse commercial environments in Vietnam.

4. Collaboration between VCC and foreign competition authorities

*Policy
collaboration* —

VCC has organised and conducted a wide range of activities and conferences in this quarter. For instance, on 10 June 2024, VCC jointly organised a conference on skills in investigating and handling competition cases in the digital economy with the Australian Competition and Consumer Commission in Hanoi. On 12 June 2024, VCC also held a conference in Ho Chi Minh to propagate and disseminate competition law, trade defence and other relevant regulations to rice export traders.

On the policy front, on 2 July 2024, VCC and the Korean Fair Trade Commission signed a Memorandum of Understanding on cooperation in the field of competition and consumer protection.

VCC has taken active steps to organise and conduct various activities, with the intent of enhancing public knowledge of competition laws and the case handling procedures relating to competition law cases. In doing so, VCC anticipates that competition law in Vietnam will be more robustly enforced.

Our Achievements: Practice Accolades

Rajah & Tann Asia has been named as a leading Competition Practice across several different jurisdictions across South East Asia by all of the major legal ranking journals, including but not limited to:

| | | |
|--|--|--|
| <p>Global Competition Review 100 (GCR100) 2024</p>  <p>Elite Law Firms:</p> <p>Christopher & Lee Ong C&G Law Rajah & Tann Singapore R&T (Asia) Thailand</p> | <p>Chambers Asia Pacific 2024</p>  <p>Assegaf Hamzah & Partners: Band 1</p> <p>Rajah & Tann Singapore: Band 1</p> <p>Christopher & Lee Ong: Spotlight</p> | <p>The Legal 500 Asia Pacific 2024</p>  <p>Assegaf Hamzah & Partners: Tier 1</p> <p>Christopher & Lee Ong: Tier 1</p> <p>Rajah & Tann Singapore: Tier 1</p> <p>C&G Law: Tier 1</p> |
| <p>asialaw 2023-24</p>  <p>Assegaf Hamzah & Partners: Outstanding</p> <p>Rajah & Tann Singapore: Outstanding</p> <p>Christopher & Lee Ong: Highly Recommended</p> <p>C&G Law: Highly Recommended</p> | <p>ALB Indonesia Law Awards 2023</p>  <p>Assegaf Hamzah & Partners: Winner (Antitrust and Competition Law Firm of the Year)</p> | <p>In-house Community Firm of the Year 2022</p>  <p>Christopher & Lee Ong: Winner</p> <p>Rajah & Tann Singapore: Winner</p> <p>C&G Law: Winner</p> |

Our Achievements: Individual Accolades

The members of our Rajah & Tann Asia Competition & Antitrust and Trade team have also been individually recognised in various legal ranking journals, including but not limited to:

| Chambers Asia Pacific 2023 – Competition / Antitrust | The Legal 500 Asia Pacific 2024 – Antitrust and Competition | Who's Who Legal – Global Leaders: 2023 |
|--|--|--|
|  <p><i>Indonesia:</i> Rikrik Rizkiyana (Band 1) Farid Nasution (Band 1) Asep Ridwan (Band 1) Albert Boy Situmorang (Band 1)</p> <p><i>Singapore:</i> Kala Anandarajah (Band 1)</p> <p><i>Malaysia:</i> Yon See Ting (Band 2) Jane Guan (Band 3)</p> <p><i>Philippines:</i> Norma Margarita B Patacsil (Band 2 for Corporate/M&A including Competition)</p> |  <p><i>Indonesia:</i> Rikrik Rizkiyana (Leading Lawyer) Farid Nasution (Leading Lawyer) Asep Ridwan (Leading Lawyer) Vovo Iswanto (Key Lawyer)</p> <p><i>Malaysia:</i> Yon See Ting (Leading Lawyer) Jane Guan (Next Generation Lawyer)</p> <p><i>Philippines:</i> Andrea Katipunan (Key Lawyer)</p> <p><i>Singapore:</i> Kala Anandarajah (Leading Lawyer) Alvin Tan (Key Lawyer) Joshua Seet (Key Lawyer) Tanya Tang (Key Lawyer)</p> |  <p>Competition <i>Indonesia:</i> Rikrik Rizkiyana <i>Malaysia:</i> Yon See Ting <i>Philippines:</i> Norma Margarita B Patacsil <i>Singapore:</i> Kala Anandarajah <i>Thailand:</i> Melisa Uremovic</p> <p>Experts – Economics – Competition Economists <i>Sinapore:</i> Tanya Tang</p> |
| Best Lawyers in Singapore 2024 Awards - Competition/ Antitrust | The Legal 500 Asia Pacific 2022 - Antitrust and Competition | asialaw Profiles 2023-24 - Competition / Antitrust |
|  <p><i>Singapore:</i> Kala Anandarajah</p> |  <p><i>Indonesia:</i> Farid Nasution <i>Malaysia:</i> Yon See Ting <i>Singapore:</i> Kala Anandarajah</p> |  <p><i>Singapore:</i> Kala Anandarajah (Elite Practitioner) Joshua Seet (Notable Practitioner) <i>Indonesia:</i> Rikrik Rizkiyana (Notable Practitioner) <i>Malaysia:</i> Yon See Ting (Distinguished Practitioner)</p> |

Our Regional Contacts

RAJAH & TANN | *Singapore*

Kala Anandarajah

D +65 6232 0111

E kala.anandarajah@rajahtann.com

Tanya Tang

D +65 6232 0298

E tanya.tang@rajahtann.com

Alvin Tan

D +65 6232 0904

E alvin.tan@rajahtann.com

Joshua Seet

D +65 6232 0104

E joshua.seet@rajahtann.com

RAJAH & TANN SOK & HENG | *Cambodia*

Heng Chhay

D +855 23 963 112 / 113

E heng.chhay@rajahtann.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Linda Qiao

D +86 21 6120 8801

E linda.qiao@rajahtann.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

HMBC Rikrik Rizkiyana

D +62 21 2555 7800

E rikrik.rizkiyana@ahp.id

Vovo Iswanto

D +62 21 2555 9938

E vovo.iswanto@ahp.co.id

Farid Nasution

D +62 21 2555 7812

E farid.nasution@ahp.co.id

RAJAH & TANN | *Lao PDR*

Khanti Syackhaphom

D +856 21 454 239

E khanti.syackhaphom@rajahtann.com

CHRISTOPHER & LEE ONG | *Malaysia*

Yon See Ting

D +60 3 2273 1919

E see.ting.yon@christopherleeong.com

Jane Guan

D +60 3 2267 2694

E jane.guan@christopherleeong.com

RAJAH & TANN | *Myanmar*

Min Thein

D +959 7304 0763

E min.thein@rajahtann.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Norma Margarita B. Patacsil

D +632 8894 0377 to 79/ +632 8894 4931 to 32 /

+632 552 1977

E nmbpatacsil@cagatlaw.com

Andrea E. Katipunan

D +632 8894 0377 to 79/ +632 8894 4931 to 32 /

+632 552 1977

E andrea.katipunan@cagatlaw.com

RAJAH & TANN | *Thailand*

Melisa Uremovic

D +66 2 656 1991

E melisa.u@rajahtann.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Que Vu

D +84 28 3821 2382

E que.vu@rajahtannlct.com

Duy Cao

D +84 24 3267 6127

E duy.cao@rajahtannlct.com

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