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Competition Bites – ASEAN & Beyond

Introduction

A Happy New Year to all, as we share the latest competition news from the region and beyond. 2016, although a difficult year which saw new limits being pushed, remained one where competition regulators have been very busy, as was the last quarter. We strongly advocate businesses remain apprised of the competition developments and legislative changes as we move into the new year, to avoid any competition issues in their business activities and dealings. This is particularly critical for companies with businesses across many countries.

Our update highlights as quick notes, a number of important competition-related legal and economic developments in ASEAN as well as key jurisdictions across the world that took place last quarter.

It is interesting to note that several of the featured updates involve anti-competitive conduct by trade associations. This serves as a timely reminder that the actions of associations, by their nature, are susceptible to having an adverse impact on competition. Accordingly, associations must exercise great caution when conducting their activities and ensure competition compliance.

For jurisdictions with a merger regime, competition authorities continue to be active in merger assessments and have in many instances, imposed behavioural or divestment conditions to alleviate potential competition concerns. Within the region, the Philippine Competition Commission has been actively involved in reviewing mergers and acquisitions in the last quarter, since the implementing rules and regulations came into force in June 2016.

Several jurisdictions are contemplating or have issued changes to their competition legislation and guidelines. In Singapore, the authority's revised competition guidelines came into effect on 1 December 2016.

ASEAN

SINGAPORE

CCS Accepts Voluntary Commitments and Clears Proposed Joint Venture between Deutsche Lufthansa and Singapore Airlines

On 12 December 2016, the Competition Commission of Singapore ("**CCS**") cleared the proposed joint venture between Singapore Airlines Limited and Deutsche Lufthansa AG, on the basis of commitments provided by the joint venture parties.

Singapore Airlines and Deutsche Lufthansa had notified CCS on 5 February 2016 of their intention to enter into a joint venture for the provision of scheduled air passenger services between certain European countries and Asian countries. However, CCS found that the proposed joint venture would raise competition concerns in respect of the

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Singapore-Frankfurt and Singapore-Zurich routes, as the parties were the only two airlines operating direct flights from Singapore for those specific routes, and their combined market share for the two routes exceeded 80%.

In order to address these competition concerns, Singapore Airlines and Deutsche Lufthansa voluntarily committed to: (a) maintaining seat capacity levels on the two routes; (b) increasing seat capacity on the two routes by a certain date; (c) carrying a minimum number of Singapore passengers on the two routes every year; and (d) appointing an independent auditor to monitor compliance with the aforementioned commitments. CCS took the view that these commitments would address the competition concerns on the two routes and allow the proposed joint venture to result in net economic benefits to Singapore.

CCS Seeks Public Feedback on Nissan Motor's Acquisition of Shares in Mitsubishi Motors

On 29 November 2016, Nissan Motors and Mitsubishi Motors notified CCS of a strategic alliance that they had entered into on 12 May 2016 by which Nissan Motors acquired a 34% shareholding in Mitsubishi Motors, thereby providing Nissan Motors with sole control over Mitsubishi Motors as defined under the Competition Act. The parties submitted that the transaction would not result in any anti-competitive effects as they compete globally with other automotive manufacturers in the markets for the supply of passenger vehicles and the supply of light commercial vehicles globally. It is interesting to note that the parties only notified CCS six months after entering into the transaction.

CCS opened the floor to the public to provide their feedback on the competitive impact of the transaction, and the public consultation has since closed on 16 December 2016. The decision is likely to follow shortly.

Revised CCS Guidelines Have Come Into Effect on 1 December 2016

On 1 November 2016, CCS issued its revised set of guidelines, with the objective of reflecting international best practices and providing greater clarity regarding its administration and enforcement of the Competition Act. These guidelines have since come into effect on 1 December 2016.

Of particular note is the introduction of the new Fast Track procedure, under which parties who admit liability for their infringement of the Competition Act will be eligible for a 10% reduction in financial penalties. For more information on this and the key changes to the CCS guidelines, please refer to our earlier update here.

INDONESIA

KPPU Commences Investigations Into Alleged Cartel Practices of XL Axiata and Indosat Ooredoo

Indonesia's Business Competition Supervisory Commission ("**KPPU**") commenced investigations on October 2016 into a joint venture named One Indonesia Synergy, which was established by telecommunications operators XL Axiata and Indosat Ooredoo. The joint venture company was reportedly established to maximise cost efficiency, as part of the parties' development of their 4G-LTE network. However, KPPU expressed concerns that the joint venture company might be used for possible cartel practices by facilitating coordinated practices and exchange of sensitive

information between the two operators. While the investigations continue, businesses are reminded that they must exercise extreme caution before entering into any joint venture with a competitor, including seeking the regulator's guidance or approval where relevant.

MALAYSIA

MyCC Investigates General Insurance Companies for Alleged Involvement in Anti-Competitive Agreements in the Automobile Repair Industry

The Malaysian Competition Commission ("**MyCC**") announced on 20 October 2016 that it has been investigating various general insurance companies for their alleged participation in anti-competitive agreements in the automobile repair industry in Malaysia, specifically in relation to trade discounts and labour rates paid to the automobile repair workshops. While further details have yet to be released to date, it is important to note that MyCC is also investigating the relevant general insurance trade association for its alleged involvement in these anti-competitive agreements. This serves as a timely reminder that trade associations are also subject to the competition framework in Malaysia.

MyCC Organising Malaysia Competition Conference 2017

MyCC is organising a competition conference titled "Malaysia Competition Conference 2017 – Competition Law: Breaking Norms, Managing Change" from 6 to 7 March 2017 at Sunway Resort Hotel & Spa, Petaling Jaya, Selangor. MyCC's objective of the conference is to gather internationally renowned competition professionals from enforcement agencies and academia to share their expertise on contemporary competition issues.

For more information on the programme and to register, please visit www.myccconference2017.com or email conference2017@mycc.gov.my.

PHILIPPINES

PCC Actively Involved in Review of Mergers and Acquisitions

In recent months, the Philippine Competition Commission ("**PCC**") has been actively involved in reviewing mergers and acquisitions, with four transactions being cleared by PCC in the month of November 2016 alone. While no acquisitions have been rejected by PCC to date, companies seeking to enter into a merger or acquisition in the Philippines should ensure that they comply with the obligation to notify the transaction to PCC, where it falls within the notification thresholds set out in the Philippine Competition Act and its Implementing Rules and Regulations.

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THAILAND

Proposed Amendments to Thailand's Trade Competition Act

We understand that the latest draft Competition Act was considered by the Committee of the National Legislative Assembly on 11 November 2016. The amendments are an overhaul of the existing Trade Competition Act enacted in 1999.

The latest draft contains several changes from the former versions, including the following:

(a) Dropping of the leniency programme wording;

(b) New wording on Pre-approval: Business operators can request the Trade Competition Commission ("**Commission**") to consider the case of dominant market operator or restrictive agreements in advance. The criteria of this shall be as prescribed by the Commission;

(c) Change in Merger Control: Criteria of the merger falling within the scope of this Section shall be as prescribed by the Commission. Business operators shall notify the Commission within seven days from the date of merging. The previous version required prior notification and the Commission could order or make some recommendations; and

(d) Substantial changes to the Restrictive Agreements language.

Our regional competition team will continue to monitor and keep you updated of further developments in this regard.

Rest of Asia Pacific

AUSTRALIA

Public Consultation on Overhaul of Australia Competition Law

On 5 September 2016, the Australian government issued for public consultation the draft proposed Competition and Consumer Amendment (Competition Policy Review) Bill 2016 (the "**CPR Bill**").

The genesis of the draft CPR Bill was the recommendations arising from a review of Australia's competition policy in March 2015 (the "**Harper Review**"). Among these recommendations was a call for the simplification of the existing competition law, which the Harper Review had found as being "*unnecessarily complex*".

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As noted by the Australian government in its accompanying press release, the changes proposed by the draft CPR Bill include:

(a) a broader definition of "competition" to include importation of products and services, to take into account the competition faced by domestic companies;

(b) the repealing of various prohibitions on price signalling and exclusionary provisions and enacting a prohibition against concerted practices;

(c) an amendment to the misuse of market power provisions;

(d) the confinement of the provisions relating to cartel behaviour to apply only to domestic trade or commerce, or to trade or commerce activities between Australia and an overseas destination; and

(e) the broadening of various exceptions for joint ventures and vertical trading restrictions where the business arrangements have a beneficial effect on competition in the market.

More legislative changes to further simplify the existing competition law are envisaged to follow in the future.

Australian Parliament Deliberates Over Misuse of Market Power Bill

The Competition and Consumer Amendment (Misuse of Market Power) Bill 2016 (the "**MMP Bill**") was introduced and read for the first time in the Australian Parliament on 1 December 2016, following a public consultation that was issued earlier this year (discussed further above). In this regard, the MMP Bill covers a limited portion of the earlier mentioned draft CPR Bill, namely, the provisions relating to the misuse of market power and specific telecommunications-related provisions.

The MMP Bill is intended to strengthen the prohibition on companies misusing their market power and better target anti-competitive unilateral conduct by companies with substantial market power by, *inter alia*:

(a) removing the requirement that the conduct must have one of three purposes as specified in the current law, in favour of a general requirement that the conduct must have the purpose, effect or likely effect of substantially lessening competition;

(b) removing the requirement that the conduct must have had taken advantage of substantial market power; and

(c) removing an express prohibition on specific forms of conduct (such as predatory pricing) in favour of a general provision capable of covering all forms of conduct.

Another point to note is that the MMP Bill removes the various provisions relating to anti-competitive behaviour specific to the telecommunications industry.

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It is expected that a report on the MMP Bill will be issued in February 2017. Companies should continue to follow these developments to ensure that they are ready to comply with the new provisions if and once the MMP Bill comes into force.

Australian High Court Finds Flight Centre Attempted Price Fixing with Airlines

On 14 December 2016, the Australian High Court issued a decision in favour of the Australian Competition and Consumer Commission (the "**ACCC**"), upholding its appeal against a decision by the court below and finding that a travel agency group, Flight Centre Travel Group Limited ("**Flight Centre**"), was attempting to engage in price fixing conduct and thereby violated provisions of the then Trade Practices Act (now the Competition and Consumer Act 2010).

The conduct in question involved Flight Centre attempting to prevent various airlines, such as Singapore Airlines, Malaysian Airlines and Emirates, from charging less for their international airline tickets as compared to prices which these airlines provided to Flight Centre and other travel agents by asking these airlines to cease "*direct sales to customers at discounted prices*".

In making its decision, the High Court held that Flight Centre and the airlines were in competition with each other for the supply of international airline tickets, notwithstanding that Flight Centre was acting as the agent of the airlines in selling the airline tickets. Whether an agent and a principal will be deemed competitors will depend on the facts. In light of this decision, businesses which utilise agents as part of its distribution network while also engaging in direct sales should be mindful that collaboration between principals and agents on matters such as price or customers may raise horizontal cartel concerns.

CHINA

Tetra Pak's Loyalty Rebates Called into Question by SIAC

On 16 November 2016, the Chinese competition regulator, the State Administration for Industry and Commerce ("**SAIC**"), released an administrative decision against Tetra Pak International and its PRC affiliates (collectively "**Tetra Pak**") for abuse of dominance. The SAIC found that from 2009 to 2013, Tetra Pak had abused its dominant position in various markets relating to aseptic carton by conducting tie-in sales, engaging in exclusive dealing and running loyalty rebates without any justification for such conduct. This was a landmark decision in which the SAIC held that a loyalty rebate fell within the scope of "other forms of abuse of a dominant market position" under Article 17 of the PRC's Anti-Monopoly Law. In particular, the SAIC found that Tetra Pak's retroactive accumulative volume discount and customised volume target discount had an anti-competitive loyalty inducing effect.

Having established that Tetra Pak was dominant in the relevant product markets and that it had abused its dominant position in those markets, the SAIC imposed a fine of RMB667.7 million (approximately SGD139.2 million) on Tetra Pak.

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Payment Encryption Device Suppliers Fined for Market Sharing Agreement

On 4 November 2016, the SAIC penalised three payment encryption device suppliers in the Anhui province for entering into a market sharing agreement, which is prohibited by Article 13 of the Anti-Monopoly Law. Notably, the market sharing arrangement in question was orchestrated by the People's Bank of China ("**PBOC**") in Anhui, a state financial regulatory authority. Nevertheless, the SAIC found that, during a PBOC-arranged meeting between Sunyard System Engineering Co Ltd, Sinosun Technology Co Ltd, Shanghai Haijiye Technology Co Ltd (collectively "**the Suppliers**") and 20 local banks on 7 December 2010, the participants had agreed to divide the 20 local banks into three groups, with each group being responsible for the distribution of payment encryption devices for one of the Suppliers at a fixed price. The PBOC subsequently issued two circulars which detailed the agreement reached during the said meeting, which had been put into effect by the Suppliers and the local banks. Despite the fact that the meeting where the market sharing agreement had been reached was sanctioned by a state authority, the SAIC found that the Suppliers had contravened the Anti-Monopoly Law, and accordingly imposed a fine totalling RMB30 million (approximately SGD6.3 million) on the involved parties and confiscating the gains which they had obtained as a result of the anti-competitive agreement.

HONG KONG

Hong Kong Competition Commission Issues Advice to Housing Authority on LPG Supply Arrangement

On 8 September 2016, the Hong Kong Competition Commission ("**HKCC**") issued an advisory bulletin to the Hong Kong Housing Authority ("**HKHA**") relating to its existing procurement practices for suppliers of liquefied petroleum gas ("**LPG**") to a number of public housing estates under its purview.

In the advisory bulletin, the HKCC noted that, *inter alia,* the HKHA did not conduct any competitive process before renewing its agreements with existing suppliers and that this *"*[reduced] *the possibility of obtaining better terms and services for the residents concerned*" as the existing suppliers had no incentive to offer better terms in the absence of competition or the likelihood that their agreements would not be renewed. The HKCC then went on to recommend that the HKHA adopt a competitive process, such as by conducting open tenders, to award future contracts for the supply of LPG, with the view of obtaining better terms for the residents living in the estates under its purview.

This instance highlights the HKCC's advisory role under the Competition Ordinance to advise the Hong Kong government on competition related issues, and to actively provide information on pro-competition practices that would generate a public benefit.

Professional Associations Made to Amend Codes of Conduct

On 28 November 2016, the HKCC published an advisory notice identifying certain clauses in the codes of conduct of the Hong Kong Institute of Architects ("**HKIA**") and the Hong Kong Institute of Planners ("**HKIP**") which raised competition issues and requesting that these be rectified. The offending clauses, which were binding on the members of the respective institutes, purportedly imposed restrictions on the institutes' members' autonomy to set

their own price or to choose their own customers. The HKCC noted that these restrictions would ostensibly eliminate price competition between members and was analogous to price fixing conduct.

One notable aspect of this case is that although the institutes themselves benefit from a statutory exemption under Hong Kong's Competition Ordinance, their members do not benefit from the exemption and are therefore capable of contravening the Competition Ordinance if they had complied with the institutes' codes of conduct. In light of this, the HKCC deemed it appropriate to draw the institutes' attention to such risks, and to require the institutes to take rectification actions by the end of January 2017.

INDIA

Compat Upholds CCI Penalties against Car Manufacturers

On 9 December 2016, India's Competition Appellate Tribunal ("**Compat**") issued its ruling rejecting the appeal lodged by the Indian arms of Ford, Nissan, and Toyota against a 2014 decision of the Competition Commission of India ("**CCI**"), upholding the CCI's decision that these car manufacturers (along with 11 other car manufacturers) were guilty of anti-competitive conduct in the auto spare parts and after-sales service markets. The CCI had previously found that the car manufacturers had abused their dominant position in the markets for spare parts and after-sales service of their respective brand of cars to unfairly restrict competition from independent third-party auto workshops. However, while Compat agreed with the CCI's findings regarding the appellants' anti-competitive conduct, the penalties imposed on the appellants were reduced from 2% of their total average annual turnover for 2008 – 2011 to 2% of their average annual turnover in the spare parts aftermarket for 2008 – 2011. Additionally, Compat also issued a number of directions aimed at eliminating the anti-competitive conduct in question, including directions for the appellants to eliminate all unfair contractual restrictions and to make public a greater amount of information relating to their automobiles and spare parts so that consumers would be able to make more informed choices.

SOUTH KOREA

Medical Associations Sanctioned for Unfair Conduct against Oriental Clinics

The Korean Fair Trade Commission ("**KFTC**") announced on 21 October 2016 that it would be imposing a collective penalty of ₩1.137 billion (approximately SGD1.36 million) against three professional medical associations, namely the Korean Medical Association, the National Union of Korean Medical Doctors, and the Korea Medical Clinic Association, for unfairly pressuring medical equipment companies and clinical laboratories into not dealing with practitioners of Oriental medicine.

All three associations had demanded that major clinical laboratories cease conducting blood tests for Oriental clinics. Additionally, the Korean Medical Association had also demanded on threat of boycott that GE Healthcare, a market leader in medical equipment, cease supplying ultrasound machines to Oriental clinics. As a result of such unfair pressure, Oriental clinics became unable to perform blood tests or ultrasound scans, which are important means of making Oriental medicine more standardised and objective, thus causing such Oriental clinics to become less competitive in the medical service market and reducing consumer choice.

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Further Fines Levied by KFTC against Cement Makers

Following from its decision earlier this year to impose a fine totalling ₩199.2 billion (approximately SGD238.9 million) on a cartel of six cement manufacturers for fixing the prices of cement, the KFTC issued a further decision on 4 October 2016 to impose an additional penalty of ₩57.3 billion (approximately SGD68.7 million) against three of the six cement manufacturers for price fixing and market share rigging in the dry mortar market. The three companies had held weekly meetings over a six-year period where they had agreed to coordinate increases in the price of dry mortar, as well as to fix each company's market share.

JAPAN

JFTC Clears Two Major Oil Deals

On 19 December 2016, the Japan Fair Trade Commission ("**JFTC**") published its approval of the merger between JX Holdings and TonenGeneral Sekiyu, as well as the acquisition of shares in Showa Shell Sekiyu by Idemitsu Kosan, thus paving the way for a major restructuring and consolidation of the Japanese oil and gas industry amid circumstances such as a shrinking population and eroding demand for gasoline and other petroleum products in Japan. The green light given by the JFTC was subject to the agreement of the involved parties to certain undisclosed conditions.

NEW ZEALAND

New Zealand Commerce Commission Grants Authorisation for the Commingling of Racing Betting

On 30 August 2016, the Commerce Commission announced its decision to authorise the New Zealand Racing Board (the "**NZRB**"), subject to certain restrictions, to commingle certain horse and greyhound racing betting pools with Tabcorp Wagering Manager Vic Pty Ltd ("**Tabcorp**"), one of the three major wagering operators in Australia.

Commingling of the racing betting pools refers to the practice whereby bettors are able to place bets on races held by any betting agencies within the commingling arrangement through a single betting agency. NZRB and Tabcorp had proposed entering into new arrangements to replace existing commingling arrangements.

In making its decision, the Commerce Commission found that the public benefits that would accrue from such an arrangement, such as the access to more betting pools, increased stability and larger dividends for bettors from New Zealand betting on races in Australia and the greater variety of races available to New Zealand bettors, outweighed its potential lessening of competition.

The Australian Competition and Consumer Commission has granted a similar authorisation to Tabcorp to enter into such commingling arrangements with foreign betting agencies, such as the NZRB.

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New Zealand Commerce Commission Clears Boehringer Ingelheim's Proposed Acquisition of Merial from Sanofi

On 14 September 2016, the Commerce Commission announced their decision to clear the proposed acquisition of Merial, which is the animal health division of Sanofi S.A., by Boehringer Ingelheim International GmbH. Both companies are global competitors in the pharmaceutical industry.

In its decision, the Commerce Commission held that the proposed transaction was not likely to result in the substantial lessening of competition in the New Zealand market for the relevant pharmaceutical products. In particular, the Commerce Commission found that where antibiotics and anaesthetics were concerned, the parties were *not close competitors*" in the market; for the remaining products such as anti-inflammatories and mineral supplements, the Commerce Commission found that the presence of "*a number of other well established suppliers*" would generate sufficient competition in the market even after the proposed transaction.

This transaction was also cleared by the European competition authority, subject to conditions.

Further Fines Issued for Real Estate Agencies Price Fixing Case

The Auckland High Court has meted out further fines on various real estate agencies for engaging in collusive behaviour and price fixing in the latest development to this proceeding which had commenced in December 2015. More information of the case can be found here.

With these latest orders, the collective amount of fines imposed by the New Zealand courts for the price fixing conduct now stands at NZD16.425 million (approximately SGD16.4 million). It is also understood that a few remaining real estate agencies and two individual defendants have chosen to continue their defence, with the next hearing scheduled for September 2017.

TAIWAN

Key Amendments Introduced to Taiwanese Merger Laws

The Taiwan Fair Trade Commission ("**TFTC**") has introduced a pair of notable amendments to the merger control provisions of Taiwanese competition law. The first amendment involved the introduction of an additional criterion to the merger notification thresholds, and is targeted at bringing deals involving MNCs which have significant global turnover as well as sales in Taiwan within the purview of the TFTC. Under the revised turnover thresholds, the TFTC will have to be notified of a merger which fulfils any of the following criteria:

(a) Where all of the parties to the merger have, in the preceding fiscal year, combined global sales in excess of NTD40 billion (approximately SGD1.8 billion) and each of at least two of the parties to the merger had sales in Taiwan exceeding NTD2 billion (approximately SGD89.8 million);

(b) For non-financial enterprises, where, in the preceding fiscal year, the Taiwan sales of one party exceeds NTD15 billion (approximately SGD674 million) and the Taiwan sales of another party exceeds NTD2 billion (approximately SGD89.8 million); or

(c) For financial enterprises, where, in the preceding fiscal year, the Taiwan sales of one party exceeds NTD30 billion (approximately SGD1.34 billion) and the Taiwan sales of another party exceeds NTD2 billion (approximately SGD89.8 million).

It is important to note that the revised turnover thresholds, which have been in effect since 2 December 2016, would apply to any merger closed after that date, including any deals that have been signed but not completed.

The second amendment introduced by the TFTC was to amend its Guidelines on Extraterritorial Combinations (the "**Guidelines**"), which applies to mergers between enterprises which are incorporated outside Taiwan. Prior to this amendment, the Guidelines appeared to indicate that whether a merger between foreign entities would require notification to the TFTC would turn on whether the merger would have a "direct, substantial and reasonably foreseeable effect on Taiwan markets". However, the amended Guidelines now make clear that the abovementioned turnover thresholds would determine whether notification to the TFTC is required – the effect of the merger on domestic markets is merely one of the factors the TFTC would subsequently consider when evaluating the effects of the deal on domestic competition.

Europe

The European Commission Fines Altstoff Recycling Austria ("ARA") €6 million For Abuse of Dominance

ARA is the dominant supplier of waste management services for household packaging waste in Austria. On 20 September 2016, the European Commission ("**EC**") imposed a financial penalty of €6 million (approximately SGD9 million) on ARA for its refusal between 2008 and 2012 to allow its competitors access to the nationwide collection infrastructure it owned or controlled. The EC found that this infrastructure was essential for competition to take place and that it could not be duplicated. Hence, the refusal by ARA prevented new players from entering the market. In addition to the financial penalty, ARA has undertaken to divest the part of the household collection infrastructure that it owns.

EC Fines Four Asian Producers of Rechargeable Lithium-Ion Batteries €166 million

Further to a leniency application by Samsung SDI, the EC found, on 12 December 2016, that between 2004 and 2007, Samsung SDI, Sony, Panasonic and Sanyo agreed on temporary price increases when the price of a raw material increased and exchanged confidential commercial information, including on supply and demand previsions, future prices as well as their intentions with regards to certain tenders.

In addition to a reduction in the financial penalties imposed on the parties under the EC Leniency Programme, the parties benefitted from an additional 10% reduction to their fines as the parties admitted to their participation in the cartel and their liability thereof.

As noted above, CCS has introduced a Fast Track procedure under which parties who admit liability for their infringement of the Competition Act will be eligible for a 10% reduction in financial penalties. As in the EU, such reduction may add-up with any reduction obtained under CCS Leniency Programme.

EC Imposes a Fine of €485 million on Three Banks for Their Participation in the Euribor Cartel

On 7 December 2016, the EC fined Credit Agricole, HSBC and JPMorgan Chase €114.7 million (approximately SGD173 million), €33.6 million (approximately SGD50.7 million) and €337.2 million (approximately SGD508.5 million) respectively for their participation in anti-competitive practices in the euro derivatives market. According to the EC, "the participating traders of the banks were in regular contact through corporate chat-rooms or instant messaging services. The traders' aim was to distort the normal course of pricing components for euro interest rate derivatives. They did this by telling each other their desired or intended EURIBOR submissions and by exchanging sensitive information on their trading positions or on their trading or pricing strategies".

In December 2013, the four other banks implicated in the cartel - Barclays, Deutsche Bank, RBS and Société Générale - had reached a settlement with the EC and were then imposed an overall fine of €824.5 million (approximately SGD124.3 billion). It is interesting to note that the duration of the participation of each party in the cartel varied widely from one month for HSBC to 32 months for Deutsche Bank and Barclays.

EC Approves Seven Mergers Subject to Conditions

Over the last three months, the EC cleared five mergers subject to divestment commitments, and two subject to behavioural commitments. Divestments were offered to alleviate the competition concerns arising from mergers in the following industries: cardiovascular devices (Acquisition of St Jude Medical by Abbott Laboratories); animal health vaccines and pharmaceuticals (Acquisition of Sanofi's animal health business (Merial) by Boehringer Ingelheim); specialty alumina and in particular, white fused alumina (Acquisition of Alteo ARC and Alufin by Imerys); low power CO2 lasers (Acquisition of Rofin-Sinar by Coherent); and growing-up milk (Acquisition of WhiteWave by Danone).

An interesting point in the acquisition of St Jude Medical by Abbott Laboratories is the EC's concern that, post-merger, Abbott would lose any incentive to launch a new product which it had been developing, Vado, which, according to the EC, would have been a strong competitor to St Jude in the transseptal sheaths market. The EC's concern was put to rest after Abbott offered to divest its whole Vado business, including its shareholding in Kalila Medical, the company that developed Vado.

Of the two mergers cleared subject to behavioural commitments, the most visible one is no doubt the acquisition of LinkedIn by Microsoft. The EC investigation did not reveal much concern in relation to customer relationship management software solutions and to online advertising services. With regards to professional social network services, however, the EC feared that Microsoft "could use its strong position" in the markets for operating systems for personal computers and productivity software to "strengthen LinkedIn's position among professional social networks". The EC, therefore, cleared the merger subject to 5-year commitments by Microsoft, including:

(a) ensuring that PC manufacturers and distributors would be free not to install LinkedIn on Windows and allowing users to remove LinkedIn from Windows, should PC manufacturers and distributors decide to pre-install it;

(b) allowing competing professional social network service providers to maintain current levels of interoperability with Microsoft's Office suite of products through the so-called Office add-in program and Office application programming interfaces; and

(c) granting competing professional social network service providers access to "Microsoft Graph", a gateway for software developers. It is used to build applications and services that can, subject to user consent, access data (such as contact information, calendar information, emails, etc) stored in the Microsoft cloud. Software developers could use this data to drive subscribers and usage to their professional social networks.

EC Pushes Proposed Acquisition of Syngenta by ChemChina into a Phase II Review

On 28 October 2016, the EC announced it had opened an in-depth investigation into the proposed acquisition of Syngenta by ChemChina. Syngenta develops, manufactures and distributes crop protection products and seeds on a worldwide basis. ChemChina is active in the agrochemical sector both through China National Agrochemical Corporation and through Adama Agricultural Solutions ("**Adama**"), which, *inter alia*, manufactures and distributes off-patent formulated products for crop protection and sells active ingredients to other crop protection producers.

The EC has taken the preliminary view that the merger could lead to a lessening of competition with respect to a number of crop protection products, taking into account the high combined market shares of the parties and the fact that Adama "may be an important generic competitor of Syngenta in many of these markets". In addition, the EC wants to review in greater detail the possibility that the merger will reduce access by other crop protection products' manufacturers to certain active ingredients, which are a key input to their products, and are currently sold by the parties.

FRANCE

French Competition Authority Imposes a Financial Penalty of €80 Million for Gun Jumping

On 8 November 2016, the French Competition Authority ("**FCA**") imposed a financial penalty of €80 million (approximately SGD120.7 million) on Altice and the SFR Group for implementing two mergers before the mergers were cleared by the FCA. It is the first time the FCA issued an infringement decision against companies for gun-jumping. As part of its investigation, the FCA carried out raids at the parties' offices.

First Merger: The acquisition by Altice of SFR was notified in June 2014 and cleared, subject to commitments, in October 2014. However, the FCA found that from May 2014 onwards, Altice had intervened in SFR's operational management, reviewing and approving strategic decisions including on SFR's pricing policy and on the renegotiation of a major mobile network sharing agreement with a third party telco operator. More generally, the FCA found that Altice and SFR exchanged strategic information, such as certain individualised data, SFR's recent commercial performance and its forecasts for the coming months, in preparation for the two groups' integration. The exchange of information involved the most senior executives of both groups.

Second Merger: The acquisition by Altice of OTL (a distributor of telecommunications services under the Virgin Mobile brand) was notified in September 2014 and cleared in November 2014. Whilst the clearance decision was pending, the parties exchanged strategic information through a weekly reporting by OTL to Altice of its economic performance. The FCA further highlighted a "premature assignment of management duties", with OTL's Managing Director starting on his new position prior to obtaining the FCA's approval and being involved in various new commercial projects of SFR.

French Competition Authority Fines Modelling Agencies and Their Professional Union

On 29 September 2016, the FCA imposed financial penalties ranging from €3,000 (approximately SGD4.5K) to €600,000 (approximately SGD904.6K) on 37 modelling agencies and their professional union, the SYNAM, for price-fixing. The FCA found that between 2000 and 2010, the SYNAM had prepared and circulated pricing schedules which fixed the prices of modelling services charged to the agencies' customers, taking into account the models' remuneration and the modelling agencies' margins. In addition and between 2009 and 2010, the 37 modelling agencies discussed at meetings increases in the prices set by the SYNAM as well as an undertaking not to distribute their own price schedules.

Modelling agencies seem to have been in the limelight this quarter, with the Italian and UK antitrust authorities also taking action and imposing fines for cartel conduct in this sector. Separately and in 2011, CCS had fined 11 modelling agencies over SGD360,000 for fixing the rates of modelling services in Singapore. The decision was upheld by the Competition Appeal Board, save for the penalties imposed which were slightly reduced.

ITALY

Italian Competition Authority Fines Modelling Agencies and Their Trade Association

On 11 November 2016, the Italian Competition Authority ("**AGCM**") went much further than Singapore and France competition authorities by imposing an overall financial penalty of €4.5 million (approximately SGD6.8 million) on 8 modelling agencies and their trade association for fixing the prices of their services between 2007 and 2015. The anti-competitive agreement involved fixing the model's base rate, the fees for ulterior use of the model's image as well as the modelling agencies' commission.

Italian Competition Authority Starts Investigation of Car Insurance Companies

On 7 December 2016, and further to on-site inspections at the premises of five car insurance companies (UnipolSai, Allianz, Generali, AXA and Amissima), the AGCM initiated proceedings against a dozen car insurance companies in a possible collusion over the prices of car insurance policies. Specifically, the AGCM was concerned that recent public statements by two major insurance companies in relation to the price level of car insurance policies may reflect an existing anti-competitive agreement between the insurance companies or aim at eliminating the dynamics of competition. In the course of November 2016, press articles had reported declarations by the General Director of Unipol Gruppo Finanziario that "after a phase of steady decrease, premium for car insurances will increase again", whilst the General Director of Generali reportedly stated that "in Italia, there has been extremely fierce

competition on prices, not initiated by Generali, which is now weaker or over even" and that "there will likely be some increase in prices, in Italia in particular, where we think that the price war will end soon if not already over".

UNITED KINGDOM

UK Competition and Markets Authority Fines Five Model Agencies and Their Trade Association a Total of £1,533,500 for Price-Fixing

On 16 December 2016, the Competition and Markets Authority ("**CMA**") concluded that five model agencies and their trade association, the Association of Model Agents ("**AMA**") had engaged into price-fixing between at least April 2013 and March 2015. According to the CMA, "the parties regularly and systematically exchanged information and discussed prices [for a wide range of modelling services] in the context of negotiations with particular customers. In some cases, the agencies agreed to fix minimum prices or agreed a common approach to pricing".

CMA Orders ICE to Sell Trayport to a New Owner

On 17 October 2016, the Competition Market Authority ("**CMA**") published its final decision on the completed acquisition by Intercontinental Exchange, Inc. (ICE) of Trayport, Inc. The acquisition, which was completed in December 2015, was called in for review by the CMA in January 2016 and was referred for a Phase 2 investigation on 3 May 2016.

ICE, a global operator of derivatives exchanges and clearinghouses, was the largest exchange active in European utilities trading. Trayport, a software provider, provided a trading platform underpinning over 85% of European utilities trading, and was the critical input through which all participants in European utilities interacted.

CMA held that ICE's rival venues (and to a lesser extent, clearinghouses) were dependent on the Trayport platform to compete effectively with ICE in European utilities asset classes, given the lack of suitable alternatives. The acquisition hence gave ICE the ability, and the incentive, to direct Trayport's strategy to benefit ICE to the detriment of its rivals, resulting in a substantial lessening of competition in the supply of trade execution services and trade clearing services to energy traders in the UK. As such, CMA concluded that a full divestiture of Trayport was the only effective remedy, and ordered that ICE sell Trayport to a new owner to be approved by CMA.

CMA Clamps Down on Excessive and Unfair Pricing in the Pharmaceutical Industry

In recent months, CMA has come down hard on the pharmaceutical sector, with two decisions recently being issued, and three other investigations still ongoing.

On 7 December 2016, CMA imposed a record fine of £84.2 million (approximately SGD149.4 million) on Pfizer and a fine of £5.2 million (approximately SGD9.2 million) on Flynn Pharma. It found that Pfizer and Flynn Pharma were respectively dominant in the markets for the manufacture and supply of phenytoin sodium capsules, an anti-epilepsy drug. CMA held that the parties had abused their dominant position by charging excessive and unfair prices for phenytoin sodium capsules in the UK since 2012 after the drug became a generic drug. There was also no alternative available, as epilepsy patients already taking phenytoin sodium capsules could not be switched to other

products due to potential health consequences arising. CMA has since ordered Pfizer and Flynn to reduce their prices.

Similarly, on 16 December 2016, CMA issued a statement of objections, alleging that Actavis UK had abused its dominant position by charging excessive and unfair prices for hydrocortisone tablets in the UK. CMA found that Actavis UK had significantly increased the prices of hydrocortisone tablets, compared to the branded version of the drug (which was subject to price regulation), and that NHS had no choice but to continue purchasing the tablets. Do note that this is merely a provisional finding, and the investigations are still ongoing.

First Director Disqualified for Infringement of Competition Law

On 30 November 2016, CMA secured the disqualification of an individual, Daniel Aston, from being a director of any UK company for five years. Daniel Aston was the managing director of Trod Ltd, a company that had infringed competition law. This is the first time that this power has been exercised. CMA highlighted that it had sought this disqualification as Daniel Aston personally contributed to the breach of competition law, rendering him unfit to be a company director for a specified period. This is a real concern that directors in businesses, particularly those with cross-border operations, need to be acutely aware of. Simply under the general director duties, they could be caught criminally or civilly and be subjected to disqualification requirements. To date, many a director has faced prosecution in the United States, Korea and elsewhere.

Other Jurisdictions

UNITED STATES

FTC Imposes Divestment Conditions on Abbott Laboratories' Acquisition of St Jude Medical

On 27 December 2016, the US Federal Trade Commission ("**FTC**") gave its approval for Abbott Laboratories' proposed acquisition of St Jude Medical, on the condition that Abbott would divest two medical devices used in cardiovascular procedures to resolve FTC concerns that the transaction would stifle competition. Abbott has agreed to sell St Jude's vascular closure device and Abbott's steerable sheath to Japan-based Terumo Corp.

The FTC has also required Abbott to notify the FTC if it intends to acquire lesion-assessing ablation catheter assets from Advanced Cardiac Therapeutics ("**ACT**"). Currently, only St. Jude and one other company provide lesion-assessing ablation catheters in the United States. Abbott and ACT have formed a partnership to develop these catheters. If Abbott were to acquire lesion-assessing ablation catheter assets from ACT after its acquisition of St Jude, this could significantly reduce competition in this other market.

As noted above, the approval of this transaction in Europe was also subjected to divestiture commitments.

Regional Competition

Guidance for Human Resource Professionals Issued by Justice Department and Federal Trade Commission

On 20 October 2016, the antitrust division of the Justice Department and the FTC jointly issued a guidance for human resource professionals on how the antitrust laws apply to the employment arena. This follows from a number of cases in the United States where major technology companies were found to have entered into anti-poaching agreements, i.e. agreements not to hire each other's employees. This is an interesting development and is one that all businesses will need to be fully apprised of moving forward. Our client update on this guidance can be found here. We have also conducted private seminars for clients as requested, and would be happy to discuss this with you.

CANADA

Competition Commission signs Collaboration Agreement with Hong Kong Competition Commission

On 2 December 2016, the Competition Commission of Canada announced that it had entered into a Memorandum of Understanding with the Hong Kong Competition Commission where both regulators agreed to share information on enforcement and other experiences. Businesses should note that such agreements between competition regulators are fairly common, and that even in the absence of formal agreements, exchanges between competition regulators do occur. More importantly, such exchanges generally tend to result in coordinated investigations globally. Given this, it is pertinent that businesses, particularly those with multi-jurisdictional presence, audit their operations regularly to ensure that any concerns from an antitrust perspective are addressed before a regulator comes knocking.

LATIN AMERICA

Updates to Brazil Competition Regime

The last quarter of 2016 proved to be a fairly busy time for Brazil's competition regulator, the Administrative Council for Economic Defense ("**CADE**"), with a number of updates to the merger regime in Brazil. On 6 September 2016, the CADE passed a resolution which provides a 30-day deadline for the authority's assessment of fast-track mergers (i.e. mergers that are less complex from a competition perspective).

In addition, on 26 September 2016, the CADE published the English version of its Guideline for the Analysis of Previous Consummation of Merger Transactions. This document serves as guide to merging companies as to the types of acts between merging entities that will be viewed as the consummation of a merger before the CADE reaches a final decision (i.e. gun jumping), a practice which is forbidden under the Brazilian Competition Law. Examples of these include the exchange of competitively-sensitive information, the transfer of assets and clauses which provide for non-reimbursable advanced payment. This guide is intended to, *inter alia*, promote legal certainty and mitigate merger transaction costs for merging parties.

Regional Competition

New Competition Law for Argentina

On 30 August 2016, Argentina's competition authority published for consultation a draft of its new competition law. The noteworthy changes in this draft include the imposition of higher sanctions for infringements, the proposed establishment of a leniency program and the introduction of a pre-merger notification regime. In addition to these changes, the draft also provides for the creation of a new independent antitrust enforcement authority. According to publicly available reports, the draft is ultimately aimed at bringing Argentina's competition regime in line with international practices.

Note that in relation to the merger regime, Argentina has one of the strictest regimes and could require notifications in relation to mergers which remotely touch Argentina. Hence, careful consideration is necessary.

Pharmaceutical Companies Fined for Anti-Competitive Practices

On 25 October 2016, the Peruvian competition authority, the National Institute for the Defense of Competition and Protection of Intellectual Property announced that it had imposed a total of US$2.6 million (approximately SGD3.8 million) in fines on five pharmacy chains for fixing the price of medicine and dietary supplements. In addition to the fines, the authority also mandated that the pharmacy chains put in place antitrust training programs. This continues the trend of focus on pharmaceutical products by antitrust authorities worldwide.

Maximum Fine Imposed by Mexico Authority on Re-offenders

Mexico's Federal Economic Competition Commission imposed a fine on 45.2 million pesos (approximately SGD3.1 million) on three ferry companies and three individuals for engaging in price fixing and market segmentation from September 2013 to November 2015. Under Mexican competition law, the maximum administrative fine the authority can impose for cartel conduct is up to 10% of total income. However, the authority can impose double that maximum amount on recidivists, and order divestments. In this case, the authority had imposed double the usual maximum fines on two individuals whom it accused of being recidivists. On this, it is important to note that repeated infringements are similarly viewed unfavourably by CCS, and is one of the aggravating factors that CCS takes into account when deciding on the amount of financial penalty to impose for an infringement.

Conclusion

We hope that the snap-shot of cases here highlight areas to ensure your businesses are in compliance with competition law and if not, to allow you to take rectification steps.

We will be organising a client seminar in early February 2017 to discuss these and other key competition developments in the region – and their implications to businesses. More information and registration details will be provided shortly.

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Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

ASEAN Economic Community Portal

The launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at http://www.businessinasean.com.

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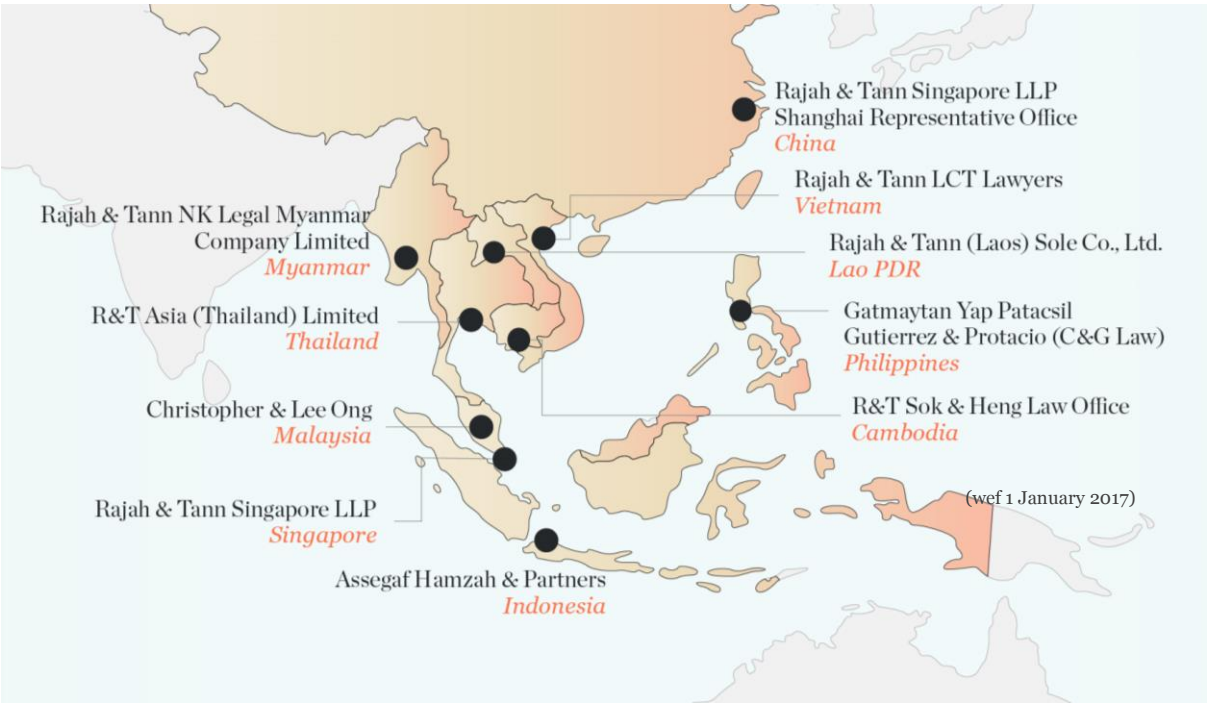

Christopher & Lee Ong is a full service Malaysian law firm with offices in Kuala Lumpur. It is strategically positioned to service clients in a range of contentious and non-contentious practice areas. The partners of Christopher & Lee Ong, who are Malaysian-qualified, have accumulated considerable experience over the years in the Malaysian market. They have a profound understanding of the local business culture and the legal system and are able to provide clients with an insightful and dynamic brand of legal advice.

Christopher & Lee Ong is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines (wef 1 January 2017), Thailand and Vietnam. Our Asian network also includes regional desks focused on Japan and South Asia.