The inside track on competition law and regulatory change

Eye on ASEAN
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The ASEAN region is one of the world’s largest markets with over 650 million consumers. With the 10-member Association of Southeast Asian Nations committed to the introduction and enforcement of competition law in all member states, PaRR provides readers with unparalleled coverage of region’s antitrust evolution.

From more mature jurisdictions like Singapore and Indonesia to newcomers like the Philippines and Myanmar, PaRR provides readers with exclusive insight on policy developments, agency updates and enforcement actions.

This year has seen competition agencies from the region tackle a key emerging issue in the world of antitrust: how to regulate the digital economy. PaRR has provided exclusive insight into the how the Uber/Grab deal is being reviewed in Singapore, the Philippines and Vietnam, while shining a light on how regulators in the Lion City and Malaysia view developments in the online travel industry.

PaRR also covers the latest developments from countries such as Laos and Cambodia as they play catch up with their ASEAN neighbours, keeping readers aware of the twists and turns in the road as competition law comes into force. In addition, our correspondents attend conferences and hearings across Asia and the globe hearing firsthand from regulators as they discuss the most important issues of the day.

PaRR’s Asia team also keeps readers up to date with other regulatory developments in the areas of anti-corruption, cybersecurity, data privacy industries via our real time news aggregation and newsletters. We also track sector-specific changes across the region.

This special report highlights a selection of our exclusive stories on the region.

Please feel free to contact us to find out more.

Sincerely,

The PaRR team
ASEAN still mulling format of antitrust authority network

by Freny Patel and Luuk de Klein

The ASEAN Experts Group on Competition (AEGC) is mulling preliminary terms of reference to establish a competition enforcers’ network for the bloc, the chief executive of Singapore’s Competition Commission (CCS) and current AEGC chair has told PaRR.

Han Li Toh said it is unlikely that the body will take on a supranational enforcement role akin to the EU’s European Commission (EC), but that there is scope for ASEAN member states to work more closely on competition enforcement.

ASEAN’s Competition Action Plan includes a commitment to establish some form of enforcement network for the 10 countries, which the CCS hopes will foster closer cooperation, particularly in relation to cross-border enforcement.

Since not all ASEAN states currently enforce competition rules, Toh suggested it would be useful for those countries at a similar stage in antitrust development that are ready to cooperate to start the network. The remaining countries could be brought on board subsequently, he said. Singapore and Indonesia were the first among the ASEAN member states to introduce and enforce competition law. Although Thailand introduced the law in the 1999, enforcement there – as in Vietnam – has been limited. Malaysia introduced competition law in 2012 while the Philippines its own rules two years ago. Other member states such as Brunei, Laos, and Myanmar are yet to commence enforcement. Cambodia has yet to even pass the law.

Former AEGC chair Geronimo Sy, previously suggested that the member states would adopt a “cluster approach” since there is no appropriate “one-size fits all” solution, and competition law cannot be seen from a single country’s point of view.

The EC’s Directorate-General for Competition enforces antitrust rules at a transnational level, while national authorities are responsible for applying competition law in their jurisdictions. Together they form the European Competition Network (ECN), which serves as the European framework for cooperation and coordination.

The agencies allocate cases, exchange case information and can ask for each other’s assistance on dawn raids. The ECN also has a merger working group that works on best practice.

At two recent events in Europe, the head of the French competition authority, Isabelle de Silva, said that ASEAN competition authorities are looking at the ECN as a model. The AEGC still needs to deliberate and discuss how the network will be effected, as well as its composition, and it remains too early to comment on the modalities, Toh said.

Bundeskartellamt president and International Competition Network (ICN) chair Andreas Mundt told PaRR that “competition becomes more and more a guiding principle in Asia”, which is reflected in the growing number and activity of competition agencies in Asia and in the efforts to align competition law and policy among Asian countries, in particular through ASEAN.

“It also shows within the ICN,” Mundt said, adding that the ICN Agency Effectiveness Working Group worked with ASEAN on a workshop on the investigative process in Singapore in August 2017.

Meanwhile, the EC has launched a EUR 5m cooperation programme with Asian competition authorities – including those of ASEAN countries – to run for five years as of 3Q17, in light of which it will carry out technical cooperation activities. The EU agency has set a minimum target of workshops to be organised with ASEAN in the period 2018-2022.

It is understood that the technical cooperation is not targeted at ECN modelling for the ASEAN enforcer’s network, however.
Uber’s asset sale to Grab raises concerns with ASEAN antitrust agencies

by Freny Patel and James Konstantin Galvez

At least three antitrust authorities among the ASEAN member states will investigate the proposed sale of Uber Technologies Inc’s Southeast Asian assets to rival Grab, the antitrust officials in Singapore, the Philippines and Vietnam told PaRR.

Uber and Grab on Monday (26 March) jointly announced that they had reached an agreement whereby Uber would combine its Southeast Asian businesses with Grab for a 27.5% stake in the combined company. Uber’s chief executive officer, Dara Khosrowshahi, in an email to the staff, said that the US headquartered e-hailing firm’s USD 700m investment would translate into a stake worth “several billion dollars” as well as “strategic ownership” in an important global region.

Uber’s ridesharing operations are spread across Singapore, Malaysia, Indonesia, the Philippines, Thailand, Vietnam, Cambodia and Myanmar. The merging parties have yet to notify antitrust agencies.

Both Arsenio M. Balisacan, chairman of the Philippine antitrust agency and commissioner Johannes Benjamin Bernabe told PaRR that the parties will have to notify the Philippine Competition Commission (PCC) within 30 days of signing the definitive agreement if they meet the new merger thresholds. The revised thresholds effective 20 March, have been set at PHP 2bn in terms of the size of the transaction and PHP 5bn in terms of the size of the party.

Prior to today’s announcement, Bernabe said in an interview with PaRR that while the size of assets or revenues arising from operations in the Philippines was not clear, antitrust concerns would arise considering that two dominant players in the ride sharing space were merging and would create a monopoly. That would be tackled in the merits of the merger review, he said. “What we are looking [at] now is that if they have sufficient assets or revenues to reach the notification in the first place,” he pointed out.

While it is not known whether the deal qualifies to be notified in the Philippines, Bernabe said that assuming it does, then the increasing market concentration will be part of the consideration in the review because two major players are joining hands.

A key concern will be whether ride sharing services like Uber and Grab should constitute a distinct market from the rest of the public transport sector, Bernabe told PaRR. He further said that the agency would note that as the Philippines’ Land Transportation Franchising and Regulatory Board (LTFRB) is drafting rules for ride sharing services, there could be other potential or prospective competitors, depending on the cost of entry into the market. “While there are two dominant players now, how hard will it be for a third player to enter the market,” he pointed out.

There are many considerations and issues that need to be addressed, Bernabe said. It would be wrong to assume that while there would be a reduction in terms of the dominant players from two to one, the commission would automatically say “no” to the deal, he told PaRR. “It is not simply black and white. There are many factors that we have to consider,” he added.

The Uber/Grab deal will need to be notified in Singapore, considering that Uber owns sizable assets in the member state in the form of 10,000 cars, given the high cost of owning vehicles, said an agency official. Chief executive officer at the Competition Commission of Singapore (CCS), Han Li Toh, told PaRR that the agency is aware of news reports of a potential sale of Uber’s Southeast Asian operations to Grab. CCS has a voluntary notification regime where parties may notify their merger situation to the agency to apply for a decision as to whether the merger situation infringes, or will infringe, section 54 of the Competition Act (Cap. 50B), which prohibits mergers that may be expected to result in a substantial lessening of competition, he said.

In the event CCS finds that a merger will substantially lessen competition, it can require the merger to be dissolved or modified and can impose financial penalties, Toh said.

Concerns have been expressed by various consumer groups in Malaysia that Grab’s acquisition of Uber’s Southeast Asian operations would create a monopoly in the local ride hailing market. Since Malaysia does not have merger control provision under its Competition Act 2010, merging parties need not notify the Malaysian Competition Commission (MyCC).

Two Singapore based antitrust lawyers told PaRR that perhaps aggrieved parties could file with other antitrust agencies in Asean, at least to put forth their views on the deal. They felt that in such situations where a deal would have an impact across member states, the antitrust agencies should coordinate their efforts.

A third antitrust official with a leading Asean antitrust agency said that there is no harmony among the antitrust agencies in the region, as each member state has its own set of merger rules and regulations. Malaysia does not have
Uber’s asset sale to Grab raises concerns with ASEAN antitrust agencies (continued)

by Freny Patel and James Konstantin Galvez

merger control and Indonesia follows a post-merger notification regime, while some of the new antitrust agencies have yet to commence operations, he pointed out. “Hence it is not easy to coordinate though the deal does impact the Asean region,” he said.

Even if one of the antitrust agencies were to block the Uber/Grab deal, it would be up to the parties to decide whether it would opt to hold separate or call off the deal, the official said. Uber did not respond to repeated emails sent.

Meanwhile Uber’s chief executive officer, Dara Khosrowshahi, in an email to the staff on the proposed merger with Grab in Southeast Asia said that despite this being the third deal – from China to Russia and now Southeast Asia -- consolidation is not Uber’s strategy. He went on to explain that one of the potential dangers of Uber’s global strategy has been it “taking on too many battles across too many fronts and with too many competitors”.

The proposed sale of Uber’s Southeast Asian assets to regional rival Grab, would help the US headquartered ride hailing firm focus and compete in the core markets where it operates, while at the same time hold “valuable and growing equity stakes in a number of big and important markets where we don’t”, said Khosrowshahi. Going forward, Uber’s M&A strategy will focus on organic growth, he added.
Other stories

Contact Jay Chu at jay.chu@acuris.com or +852 2158 9758 to get access to the full stories.

Fledgling competition agencies benefit from ties with police, overseas counterparts – Antitrust in Asia

It is critical for newly formed competition agencies to cooperate with local law enforcement and regulatory counterparts abroad to learn from their experience, panelists said at a forum on antitrust in Singapore yesterday (4 July).

Indonesian competition body wants to increase investigation time for cartel cases

The Indonesian competition authority, the Komisi Pengawas Persaingan Usaha (KPPU), has proposed to reform its competition law procedures, to provide an extended investigation timeframe to facilitate cartel investigations, said a source familiar with the matter.

Philippines authority to expedite review of international mergers

The Philippine Competition Commission (PCC) plans to expedite global merger reviews where the nexus to the Philippines is slight and the bulk of turnover involves exports, said its chairman Arsenio Balisacan.

Laos antitrust agency set up subject to clearance from PM office, source says

The establishment of an antitrust agency in Laos is on hold as Prime Minister Thongloun Sisoulith has asked for additional information on the need for competition law and enforcement, a government source told PaRR.

Malaysian aviation regulator study downplays fare caps

A recently completed study by the Malaysian Aviation Commission (Mavcom) of price caps has emphasized the positive effects of deregulation in reducing airfares and increasing competition in other economies.

Myanmar’s commerce ministry not appropriate channel for competition complaints, official says

The Myanmar government has received two competition-related complaints from the business sector but the country has yet to designate a body to accept such complaints, Lin Zaw Han, deputy director of the competition policy division under the ministry’s department of trade told PaRR.

Singapore focuses on critical infrastructure with new cybersecurity law—analysis

Singapore’s new cybersecurity law, passed in February 2018, adopts a relatively light touch in keeping with its business-friendly ethos as it emphasizes critical internet infrastructure and protecting essential services in the Asian banking center.

Vietnam’s anticipated low merger thresholds could burden regulator, merging parties – lawyers say

The Vietnam government is likely to announce low notifiable transactions thresholds in the region of USD 20m, putting pressure on the National Competition Commission as well as merging parties, three antitrust lawyers told PaRR.
PaRR delivers global intelligence, analysis and data on competition law, anti-corruption enforcement, cybersecurity, data privacy, and sector-specific regulatory change. We are the only news service to cover the competition landscape from a truly cross-border perspective. From an enforcement action in China that signals the US and the EU will follow suit, to how a merger can flounder due to unforeseen opposition from a competition agency in Asia, PaRR connects the dots.

PaRR is an Acuris company

Asia Pacific
16/F, Grand Millennium Plaza
181 Queen's Road Central
Hong Kong

Jay Chu
+852 2158 9758
Jay.Chu@acuris.com