Asia Pacific Competition Law Bulletin

Introduction

Welcome to the sixth edition of our bi-monthly Asia Pacific Competition Law Bulletin. We have now been publishing this bulletin for a year and hope that you continue to find it useful in keeping you up to date with the fast paced world of antitrust developments in the Asia Pacific region.

As with our previous editions, this bulletin has been prepared by our own teams and in collaboration with expert local law firms from around the region: Allens (Australia, New Zealand), Vinod Dhall in collaboration with TT&A (India), Mori Hamada & Matsumoto (Japan), Rahmat Lim & Partners (Malaysia), DFDL (Myanmar), Allen & Gledhill LLP (Singapore), Lee & Ko (South Korea), and Tsar & Tsai Law Firm (Taiwan).

There have been many significant developments since our last edition. Most notably, the Philippines has recently passed a sweeping new competition legislation, and additional guidelines are needed for the new regulators to begin enforcing the law. The new law provides for criminal sanctions for directors, employees, representatives and agents who willingly or knowingly violated the law. As reported in our April edition, Myanmar also recently introduced a new competition law and we have provided more detail in this edition about its scope.

Further, regulator guidelines make most of the headlines in this edition, with a public consultation on IP antitrust in Japan, additional protection for consumers in the e-commerce guidelines in South Korea and new guidelines on commitments published in Taiwan. In China, no less than six guidelines are currently being drafted by the NDRC, including the much-awaited and much-needed guidelines on the auto-sector, as well as a new set of rules for the interplay of IP and antitrust. In Hong Kong, the Competition Commission has recently published the final version of its guidelines and a date has also been set for the law to finally come into force, being 14 December of this year.

On the enforcement side, the ACCC in Australia has accepted undertakings from Cabcharge to allow competitors to process Cabcharge payment cards and the Japanese regulator has reduced a fine against Toys“R”Us for abuse of its superior bargaining position. In Malaysia, MyCC is proposing to fine five companies for price-fixing in the shipping logistics sector, while the CCS in Singapore has accepted commitments by Cordlife, a company suspected of abusing its dominant position in the cord blood bank market.

Finally, in the merger control space, new regulations in India which are designed to increase transparency, but which may delay merger filings and create uncertainty for businesses, have recently been introduced.

Australia

David Brewster, Kelly Roberts and Christopher O'Yang, Allens

ACCC accepts Cabcharge undertaking to allow rivals to process Cabcharge cards

On 29 June 2015, the Australian Competition and Consumer Commission (the "**ACCC**") accepted a court enforceable undertaking from Cabcharge to allow third party payment processors to process Cabcharge cards.

Cabcharge supplies taxis with electronic payment processing systems which process Cabcharge branded charge cards, vouchers and eTickets as well as bank-issued cards. Historically, Cabcharge has been the primary supplier of these electronic payment systems to Australian taxis.

In 2010, the Federal Court of Australia found that Cabcharge had engaged in a misuse of market power by, among other things, refusing to allow competing suppliers of electronic payment processing services to process Cabcharge branded products. An A$15 million (approx. US$11 million) penalty was imposed. The Federal Court also ordered that Cabcharge establish a 'Request Processing Policy' which is a set of criteria to use when assessing requests by third parties to process Cabcharge products.

After Cabcharge implemented the policy, the ACCC investigated complaints that Cabcharge had refused to deal with a third party's requests made in compliance with the policy, and that the policy was deliberately drafted to deter requests.

Cabcharge provided an undertaking to the ACCC, including obligations to:

- negotiate in good faith with third parties seeking access to the system that will allow them to process Cabcharge products;
- provide technological support to the third party; and
- provide access to third parties who have demonstrated they will be able to process Cabcharge cards satisfactorily.

The ACCC considers that the undertaking will increase competition in non-cash payments for taxi services in Australia.

ACCC commences high profile proceedings against alleged coal mining cartel

On 25 May 2015, the ACCC commenced proceedings against:

- Cascade Coal Pty Ltd ("**Cascade"**) and an associated company;
- two Cascade directors and one representative;
- Moses and Paul Obeid (the "**Obeids**"); and
- four companies associated with the Obeids (the "**Obeid Companies**"),

for alleged bid rigging in an Expression of Interest ("**EOI**") process for coal exploration licences.

This case follows a 2013 finding of the NSW Independent Commission Against Corruption (the "**ICAC**") that the then NSW Minister for Primary Industries, Ian Macdonald and former Minister, Eddie Obeid, had engaged in corrupt conduct in the EOI process. As a result, the mining licences were cancelled in 2014.

Allegations

In 2009, the NSW Department of Trade and Investment commenced the EOI process for approvals relating to coal exploration licences in the Bylong Valley area. The ACCC alleges that

Cascade and the Obeid Companies were rival bidders in the tender process and that they engaged in bid rigging conduct. Specifically, it is alleged that the Obeid Companies agreed with Cascade that they would withdraw from the tender process in exchange for:

- a 25% interest in a coal joint venture; and
- the purchase of four properties in the area, linked to the Obeids, at a highly inflated price.

The Obeid Companies withdrew, and Cascade was ultimately awarded the exploration licences.

The ACCC also alleges that in 2010, the 25% interest in the joint venture was transferred to an investment company associated with the Obeids, and later sold to an entity controlled by a Cascade director. From the proceeds of this sale, A$30 million (approx. US$22 million) was allegedly paid into two trust funds and distributed among members of the Obeid family.

The ACCC is seeking declarations, penalties of up to A$10 million (approx. US$7.4 million) per contravention, costs and an order disqualifying the Obeids and Cascade directors from managing companies.

In 2014, the ACCC issued notices under section 155 of the Competition and Consumer Act 2010 requiring the Obeids to give evidence and produce documents as part of the ACCC's investigation of these matters. The Obeids unsuccessfully challenged these notices.

External link

Court decision rejecting the Obeids' challenge against the ACCC notices is available here.

China

Fay Zhou, Yuan Cheng and Xi Liao, Linklaters

NDRC drafts antitrust guidelines for automotive industry and other enforcement guidelines

As China's Anti-Monopoly Law (the "**AML**") turned seven on 1 August 2015, the National Development and Reform Commission (the "**NDRC**") is stepping up its efforts by drafting new rules, demonstrating the agency's desire to continue active enforcement and heralding a new era of antitrust enforcement.

The NDRC, which made headlines with high-profile penalties against Qualcomm and Mercedes-Benz in the first half of 2015, is currently taking the lead in drafting a total of six antitrust guidelines. These guidelines cover the following areas:

- auto sector;
- application of the AML in the intellectual property area;
- calculation of fines;
- exemptions of otherwise anti-competitive conduct;
- leniency; and
- suspension of investigations.

In particular, the auto sector guidelines, which are designed to address issues in relation to auto distribution, as well as spare parts sales and repair services, will be China's first ever sector specific antitrust guidelines. The guidelines are expected to clarify how the AML and related regulations, which prohibit anti-competitive agreements and abuses of dominance, should be applied in the auto sector.

The NDRC is well-placed to lead the drafting since it has accumulated significant enforcement experience as a result of a series of antitrust investigations and surveys into sales of vehicles and the auto parts industry over the past few years. The NDRC has appointed an academic think tank to work on the first draft of the guidelines and stakeholders (including original equipment manufacturers, auto parts suppliers, distribution and after-sales service providers, and industry associations) are invited to provide their thoughts and comments on the draft documents.

Recently, the NDRC also sent out a questionnaire to around twenty stakeholders to seek their opinion on certain issues relating to the auto sector. The NDRC officials envisaged that the auto guidelines will take references from other jurisdictions (e.g. the European Commission's Motor Vehicle Block Exemption) but also attend to the features of the Chinese market. The first draft of the auto antitrust guidelines is likely to be released for public consultation by the end of this year or early next year.

With respect to the IP antitrust guidelines, both price and non-price related antitrust offenses are regulated, even though the NDRC is only tasked with enforcing the AML against price related anti-competitive conduct. This contrasts with the IP antitrust guidelines published by the State Administration for Industry and Commerce (the "**SAIC**"), which only apply within the SAIC's own enforcement remit i.e. non-price related conduct. The NDRC's upcoming IP antitrust guidelines are believed to be compatible and complementary with the SAIC's departmental regulation.

The auto sector guidelines, the IP guidelines and the other documents currently being drafted by NDRC will provide long-awaited guidance for businesses and practitioners.

Hong Kong

Clara Ingen-Housz, Anna Mitchell and Knut Fournier, Linklaters

Hong Kong Competition Commission publishes final guidelines and the law is expected to come into force on 14 December

A commencement notice setting the date for the substantive provisions of the Hong Kong Competition Ordinance (the "**Ordinance**") to come into force on 14 December 2015 was published in the Hong Kong Gazette on 17 July 2015 (the "**Commencement Notice**"). This means that, unless the Hong Kong Legislative Council ("**LegCo**") passes a resolution to amend the date set out in the Commencement Notice, anti-competitive agreements and abuse of substantial market power will be prohibited as of 14 December 2015.

Shortly after the publication of the Commencement Notice, on 27 July 2015, the Hong Kong Competition Commission (the "**Commission**") published the final version of its guidelines providing detail on the Commission's interpretation of the Ordinance. The guidelines provide additional guidance for businesses and more flexibility for the Commission, paving the way for the Ordinance to come into force on 14 December this year.

Commencement Notice

The Commencement Notice was published alongside a series of other subsidiary legislation and notices on 17 July 2015, including:

- the Competition (Fees) Regulation, which sets out the fees to be charged for making various applications for decisions and exemptions under the Ordinance;
- the Competition Tribunal Rules (Commencement) Notice, which sets out the date on which the Competition Tribunal Rules will come into force;

- the Competition Tribunal Fees Rules (Commencement) Notice, which sets out the date on which the rules relating to the fees payable during proceedings before the Competition Tribunal will come into force;
- the Competition Tribunal Suitors' Funds Rules (Commencement) Notice, which sets out the date on which the rules relating to funds lodged in the Competition Tribunal by parties to proceedings before the Competition Tribunal will come into force; and
- the Rules of the High Court (Amendment) Rules 2015 (Commencement Notice), which sets out the date on which the rules which amend certain provisions of the High Court Rules will come into force.

The relevant provisions set out in the above additional regulation and commencement notices will also be brought into force on 14 December 2015.

The Commencement Notice and the Competition (Fees) Regulation will be presented to LegCo for negative vetting on 14 October 2015, after LegCo returns from its summer break. Not later than 28 days after these pieces of legislation are tabled at a LegCo meeting, LegCo may pass a resolution amending them or extend its vetting period. If no amendments are made during this process, the legislation will be effective in its entirety as of 14 December 2015.

The commencement notices relating to the Competition Tribunal will also be presented to LegCo for negative vetting after LegCo returns in October this year.

Guidelines

The final version of the guidelines are not materially different from the March 2015 revised draft version published by the Competition Commission, although there are some notable changes.

In particular, the Commission has now provided more detail around what constitutes a trade association and it has also clarified the factors it will take into account when analysing the effects of exclusive agreements. In addition, the guidelines provide examples of when pricing below cost, which is cited by the Commission as a conduct which may have the effect of harming competition, may not constitute an abuse of substantial market power. However the Commission has also notably deleted a reference to the fact that most conduct under the Second Conduct Rule will be analysed by reference to its anti-competitive effects. It is unclear whether this deletion signifies a policy change by the Commission in relation to how it will assess conduct falling under the Second Conduct Rule and the approach the Commission will adopt in practice remains to be seen.

The publication of the final guidelines clears one of the final hurdles to the full enforcement of the Ordinance on 14 December 2015. Prior to this date, the Commission is working on publishing policy papers on leniency and its enforcement priorities.

Related Links:

The Commission's guidelines can be found here.

Press release in relation to the Commencement Notice can be found here.

Linklaters client alert in relation to the Commencement Notice can be found here.

Linklaters client alert in relation to the final guidelines can be found here.

India

Vinod Dhall, in collaboration with TT&A

CCI amends merger control regulations

The Competition Commission of India (the "**CCI**") had amended its merger control regulations, extending the timeline for Phase I merger reviews and simplifying the merger notification process, among others. This follows a round of public consultation, which started in April 2015.

A key change brought about by the amendments is in relation to the timeline for Phase I merger reviews, which has been extended from 30 calendar days to 30 working days. Further, the CCI can stop the clock for an additional 15 working days during the Phase I to seek comments from third parties. The cumulative effect of these changes is that the Phase I review process could get extended to up to 9 weeks (63 calendar days), if not more; this is without including the time taken by parties to furnish additional information. These changes could result in a drastic increase in the duration of merger filings.

Further, to increase transparency in the review process, a non-confidential summary of every combination under review will now be published on the CCI's website, and stakeholders will be able to submit comments to the CCI. Unfortunately, this may also delay merger reviews.

In the case of an acquisition, filing is triggered upon the execution of a binding agreement, or other acquisition document. The CCI has clarified the 'trigger event' for a filing if a binding document has not been executed by limiting the scope of 'other documents' to a communication conveying an intention to acquire to any statutory authority. In such situation, the date of the communication will be treated as the trigger event for requiring a filing. In addition, the CCI has included an additional category of exempted combinations, whereby acquisitions by approved buyers of any divestment business does not require notification.

In relation to procedural aspects, the CCI has attempted to simplify the process of merger notification, for instance, by allowing any person duly authorised by the board of directors to sign the notice. The CCI has also revised the format for notifying a combination in Form I and has provided additional guidance to assist the notifying parties with regard to the information required.

Another significant change is that the CCI is now empowered to invalidate a notice at any time if it is not valid or is incomplete. This is likely to create uncertainty as the terms 'not valid' and 'not complete' are not defined anywhere. However, perhaps with a view to facilitate the parties in filing a complete notice, the CCI has separately expanded the scope of its pre-filing consultation process. Apart from assisting the parties in filing a complete and correct form, the officials of CCI will also help them identify any additional information that the CCI may require for its assessment. This may reduce the number of requests for additional information once the notice has been filed. Consistent with international best practices, the CCI has been offering an informal pre-filing consultation; however, as before, this process would continue to be informal and verbal.

Related Link:

The notification of the CCI relating to the amendment of the merger control regulations is available here.

Japan

Kenji Ito and Aruto Kagami, Mori Hamada & Matsumoto

JFTC imposes fine on Toys"R"us in abuse of superior bargaining position case

On 4 June 2015, the Japan Fair Trade Commission ("**JFTC**") imposed a US$1.8 million fine against the toys and children's product retail chain Toys"R"us for abuse of its superior bargaining position.

The JFTC had originally issued a cease and desist order and a JPY 369 million surcharge payment order (approx. US$3 million) against Toys"R"us on 13 December 2011, for abuse of superior bargaining position. According to the JFTC, Toys"R"us unjustly forced its suppliers in relatively inferior bargaining positions to: (i) accept product returns; and (ii) accept price reductions, even though there was no fault on the part of the suppliers.

Toys"R"us requested a hearing procedure on 10 February 2012 and the JFTC decided that no infringement could be found with respect to some of the suppliers. The TFTC reduced the amount of the surcharge payment order accordingly to JPY 222 million (approx. US$1.8 million). This is the first hearing decision to deal with a surcharge payment order since such orders were introduced in 2009 as a penalty for abuse of a superior bargaining position. The decision is also noteworthy from the viewpoint of JFTC making a downward adjustment to its own order.

The hearing procedure is now abolished under the revised Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade which took effect from April 2015. The Tokyo District Court will hear all appeals to cease and desist orders/surcharge payment orders going forward without JFTC's hearing procedure. The revised law does not apply to existing cases including the Toys"R"us case.

Related Links:

The JFTC press release relating to the fine on Toys"R"us is available here.

JFTC consults public on proposed amendments to its IP guidelines

On 8 July 2015, the JFTC solicited public comments to a partial amendment of its "Guidelines for the Use of Intellectual Property under the AMA", which deal with the interplay between standardisation and IP rights.

According to the JFTC, the amendment is proposed in response to an increase in the number of cases where standard-essential patent ("**SEP**") holders seek injunctive relief against the users of SEPs. The proposed amendment pertains to situations in which an SEP holder refuses to license the SEP to, or seeks an injunction against, a party who is "willing to take a license on fair, reasonable, and non-discriminatory terms" under the patent. A party will be deemed a "willing licensee" even when, after unsuccessful negotiations, the party shows its intention to determine the license conditions through a court or arbitration. The proposed amendment would consider refusals to license or petitions for injunctive relief as amounting either to (i) exclusionary conduct under the private monopolisation provisions of the AMA; or (ii) an impediment to fair competition under the unfair trade practices provisions of the AMA.

The public consultation was concluded on 6 August 2015. JFTC will revise the draft taking into consideration feedback from public comments.

Related Link:

The JFTC press release relating to the proposed amendment to the Guidelines for the use of Intellectual Property under the AMA is available here.

Malaysia

Raymond Yong and Penny Wong, Rahmat Lim & Partners

MyCC issued proposed decision against container depot operators

On 19 June 2015, the Malaysia Competition Commission (the "**MyCC**") issued a proposed decision against four container depot operators - Ayza Industries / Ayza Logistics, ICS Depot Services, E.A.E. Depot & Freight Forwarding, and Prompt Dynamics - and an information technology service provider to the shipping and logistics industry in the Penang area, for engaging in price fixing activities.

The MyCC found that the container depot operators had increased the depot gate charges from RM5 (approx. US$1.29) to RM25 (approx. US$6.45) and they had offered a RM5 rebate to hauliers on the new charge. The container depot operators also entered into a price fixing agreement for the provision of empty container storage maintenance and handling services within a 5 to 15 km radius of the Penang Port.

Related Link:

A copy of MyCC's proposed decision against the container depot operators is available here.

Myanmar

David Fruitman, DFDL

Myanmar's new competition law

As reported in our April edition, Myanmar recently enacted its competition law (The Pyidaungsu Hluttaw Law No. 9 /2015) (the "**Competition Law**") on 24 February 2015. Although there is a statutory 90-day waiting period after its enactment within which the Myanmar government is to introduce rules and regulations to implement the Competition Law (the "**Rules**"), at the time of writing, the Myanmar government is still working on the Rules and there is no schedule set for the introduction of the Rules or the implementation of the Competition Law.

This article provides more detail about the substantive provisions of the Competition Law. The Competition Law provides for a regulatory body with investigative and adjudicative powers (the "**Commission**"), establishes a private cause of action, sets penalty levels and provides for a right of appeal and a leniency policy. Unfortunately, the Competition Law, while introducing the basic framework of a sophisticated competition regime, is unclear in many respects and significant detail is left to be decided by the Commission and the Rules.

The Commission

The Commission is expected to have significant influence on the implementation of the competition regime with responsibilities to establish the relevant thresholds for the merger and monopolisation prohibitions and the exemptions for small and medium-sized enterprises (SMEs), specific industries and for firms which admit their wrongdoing. The Commission may also:

- instruct businesses to reduce their market share when such market share harms competition; and
- limit a monopolising business's market share and prohibit its sales promotions.

It is hoped that additional guidance will be provided with respect to these potentially broad powers.

Anti-competitive agreements

Whilst unclear to some extent, section 13 of the Competition Law appears to address anti-competitive agreements. It prohibits a number of activities including fixing prices, agreeing to control or limit competition, engaging in behaviour that controls or limits a market and bid-rigging. Issues that would benefit from additional guidance include:

- whether section 13 applies only to agreements or also to unilateral or tacitly collusive conduct;
- whether both horizontal and vertical agreements are covered; and
- the Commission's standard of review (e.g. per se or rule of reason).

Section 14 exempts conduct that would otherwise be prohibited under section 13 on the basis that such conduct is for the benefit of consumers.

Prohibition on monopolisation

Section 15 addresses monopolisation of markets by prohibiting particular conduct by a business person. Such conduct includes:

- controlling prices of goods or services;
- limiting the availability of a good or service with the aim of controlling prices;
- reducing the availability of a good or service without appropriate reasons or lowering the quality of a good to reduce market demand;
- controlling or restricting the geographic market for sales to prevent entry and to control market share; and
- interfering in another business' operations in an unfair manner.

The monopolisation prohibition, as it currently stands, leaves much to be decided by the Commission. While the Competition Law suggests that an effects test will be applied in relation to certain prohibitions, it is unclear how such an effects test will be applied and whether a substantial lessening of competition will be required.

Merger control

While the Competition Law contemplates a merger regime, the details of such a regime is to be decided by the Rules and the Commission. Sections 31 and 32 of the Competition law prohibit mergers where:

- the merger is intended to lead to excessive domination of the market;
- the merger will reduce competition in a market with few competitors; or
- the resulting market share exceeds the thresholds as prescribed by the Commission.

Section 33 provides for exemptions for SMEs, bankruptcy and where a merger promotes exports or the development of technology, systems or innovation.

Unfair trade practices

The Competition Law also prohibits various forms of unfair trade practices including misleading customers, damaging reputations, unfair advertisements and promotions and any other conduct prescribed by the Commission. Additional guidance in relation to the interpretation and application of these provisions will hopefully be forthcoming.

While the foundation of Myanmar's competition regime is established in the Competition Law, significant guidance and elaboration are required. Given the time and consideration that the

Myanmar government is affording to the Rules, it is hoped that the Rules will, when enacted, add substance and clarity to the Competition Law and set an effective basis for the Competition Law's implementation.

New Zealand

David Brewster and Christopher O'Yang, Allens

Commerce Commission reports on the state of competition in the New Zealand dairy industry

On 12 June 2015, the Commerce Commission released a consultation paper in relation to its review of the state of competition in the New Zealand dairy industry. The review is required under the Dairy Industry Restructuring Act 2001 (the "**Act**") which authorised the amalgamation of New Zealand's largest dairy co-operatives, New Zealand Co-Operative Diary Company Ltd and Kiwi Co-Operative Dairies Ltd, into Fonterra Co-Operative Group Limited.

Among other things, the Act established a regime which regulated the activities of Fonterra in order to ensure that New Zealand markets for dairy goods and services are contestable. The regime includes regulations to ensure that independent processors are able to obtain raw milk from farmers who are members of the Fonterra Co-Operative Group and that farmers are free to enter and withdraw from the Fonterra Co-Operative Group.

As the regime was intended to be transitional in nature, the Act requires the Minister of Primary Industry to request a report on the state of competition in the New Zealand dairy industry when certain market share thresholds are met or, if they are not met, by 1 June 2015, as soon as practicable after that date.

The objective of the review is to ascertain:

- the state of competition in the New Zealand dairy industry;
- whether the market share thresholds should be reset; and
- the options for a transition pathway to deregulation.

The Commerce Commission is obliged by the Terms of Reference to consult, at least once, with New Zealand dairy farmers through representative groups such as DairyNZ, Federated Farmers, Fonterra and independent dairy processors.

The Commerce Commission is due to issue a draft report on 6 November 2015 and a final report on 29 February 2016.

Related links

The Commerce Commission press release on the dairy competition review can be found here.

Philippines

Clara Ingen-Housz, Anna Mitchell and Knut Fournier, Linklaters

The Philippines passes Competition Act and joins club of ASEAN countries with a cross-sector competition law

After nearly 25 years of discussion, the Philippines finally adopted a cross-sector competition law at the end of last month. The Philippine Competition Act entered into force at the beginning of July.

The FCC now has 120 days to consult the relevant industries and sub-sectors, to prepare the necessary implementing rules and regulations for the Competition Act to be enforced.

The central point of the Competition Act is the creation of the Philippine Fair Competition Commission (the "**FCC**"), an independent quasi-judicial body attached to the Office of the President, but which is independent from the Office of the President's supervision and control. The FCC comprises of a Chairperson and four Commissioners who have 10 years of professional experience in the field of economics, law, finance, commerce or engineering.

The FCC will conduct inquiries, investigate, and hear and decide on cases involving any violation of the Competition Act and other existing competition laws on its own volition, upon a complaint from an interested party, or upon referral by a regulatory agency, and begin the appropriate civil or criminal proceedings. The Competition Act applies to all entities, natural or judicial, foreign or local, incorporated or unincorporated and engaged directly or indirectly in any economic activity. This includes entities owned or controlled by the government.

The new Competition Act prohibits anti-competitive agreements, abuses of dominance, and anti-competitive mergers.

The Act does not apply to vertical agreements, being agreements between firms not competing on the same market. These agreements can, however, still fall under the prohibition of abuse of dominance.

Firms can apply for an exemption from the Competition Act under the rule of forbearance, or for a "binding order" whereby the FCC confirms that a certain act or conduct complies with the Competition Act. Such an application should be filed with the FCC, which will then decide whether the applicant is exempt from competition rules.

Violation of the Act may incur fines of 5 to 10% of the entities' turnover of the previous year and the FCC also has the power to make orders for temporary price controls, injunctions and orders for the disgorgement of excess profits. To put an end to anti-competitive practices, the FCC may impose structural or behavioural remedies.

In addition, the new legislation allows the FCC to impose criminal sanctions, whereby parties to an anti-competitive agreement could be subject to between 5 and 10 years in imprisonment, and a fine of up to 10% of the turnover or the assets of the violator, whichever is greater. The Competition Act provides that when the entity involved is a company, its officers, shareholders, directors, employees, representatives and agents in the Philippines will be held liable if they are knowingly and wilfully responsible for the violation. However, the final sanction cannot be adjudicated by the FCC and must be imposed by the Regional Trial Court. Decisions of the FCC can be appealed at the Court of Appeals.

Under the Competition Act, the FCC will develop a leniency programme such that immunity or fine reductions can be granted in exchange for the voluntary disclosure of information on cartels.

Finally, fines imposed by the FCC or by the courts are automatically tripled if the anti-competitive practice concerns prime commodities such as rice, corn, sugar, chicken, pork, beef, fish or vegetables.

Related Links

The Philippine Competition Act can be found here.

Linklaters article on the above developments in the Philippines can be found here.

Singapore

Daren Shiau and Elsa Chen, Allen & Gledhill LLP

CCS' investigations trigger voluntary removal of exclusive arrangements in cord blood bank industry

On 17 June 2015, the Competition Commission of Singapore (the "**CCS**") issued a media statement that further to its investigation into the exclusive agreements of Cordlife Group Limited ("**Cordlife**") with baby fair organisers and hospitals, Cordlife has provided the CCS with voluntary commitments, including the removal of the existing exclusive arrangements that were the subject of the investigation.

In June 2014, the CCS commenced an investigation into Cordlife in relation to its exclusive agreements with baby fair organisers and hospitals that potentially have the effect of limiting competition from other providers of cord blood bank services in Singapore. Such exclusive agreements could have infringed section 47 of the Competition Act, which prohibits the abuse of a dominant position.

Apart from the removal of the exclusive agreements, Cordlife agreed to ensure that it will not participate in such exclusive arrangements with any baby fair or private maternity hospital in Singapore going forward. Cordlife is required to provide the CCS with a confirmation that the affected baby fair organisers and hospitals have been informed of the change in Cordlife's practices.

While the CCS ceased its investigation, it highlighted that it will continue to closely monitor market practices in the cord blood bank industry. The CCS also reserves the right to reopen its investigation into Cordlife should Cordlife breach any of its commitments.

This is the third publicised investigation finalised by the CCS pursuant to voluntary undertakings offered by the investigated parties.

Related Links

The CCS press release on the above can be found here.

The Allen & Gledhill LLP legal bulletin on the above can be found here.

Chairman of CCS reinforces focus on cross-border conduct and technology markets

On 23 July 2015, Aubeck Kam, Chairman of the CCS, reinforced that the external focus of the CCS' mission moving forward involves the complex market structures and business conduct arising from technological changes. The remarks were made at the CCS' 10th year anniversary commemorative dinner on 23 July 2015.

Mr Kam highlighted in his speech that the CCS is seeing more cross-border business conduct, which may have anti-competitive effects on Singaporean markets, including international cartels. Toh Han Li, Chief Executive of the CCS similarly stated in media interviews on 7 May 2015 that Singapore needs to look at greater cross-border co-operation with antitrust agencies, given continued action against international cartels. The CCS issued its first two infringement decisions against international cartels in 2014, where record financial penalties were imposed by the CCS against the infringing parties.

The CCS' focus on technology markets was first announced by Mr Toh in a media interview on 28 April 2015. Mr Toh highlighted that the CCS is undertaking a study of the e-commerce market in Singapore to evaluate the benefits, drawbacks and key issues that the CCS should focus on from

a competition policy and legal perspective. Mr Toh stated that "the digital economy created unique competition issues such as network effects and two-sided platforms, which the [CCS] encountered in its evaluation of the JobStreet-SEEK merger".

Related Links

The CCS' media release on its new mission and can be found here.

South Korea

Yong Seok Ahn and Bryan E. Hopkins, Lee & Ko

Changes to the KFTC's Unfair Trade Practices Guidelines

The Korea Fair Trade Commission (the "**KFTC**") has revised its unfair trade practices guidelines to protect consumers with regards to e-commerce transactions. The guidelines take effect as of 20 August 2015 and cover several new types of e-Commerce transactions.

The guidelines include recommended practices in the field of (i) social commerce transactions and (ii) price comparison websites. The revisions are quite detailed in nature:

Social commerce websites

The guidelines relating to social commerce websites (websites that offer discounts for goods or services once a certain number of people opt in to buy) have been revised to include the requirement that a product or service advertised on the website must clearly set out the previous price that the product or service was traded at. The guidelines also provide that the site operators must ensure that the service providers do not discriminate between ordinary customers and customers using coupons.

Price comparison websites

The guidelines have been revised to cover price comparison websites. The guidelines provide that in the case of price comparison sites, prices must be compared under the same conditions using the same criteria. Such price comparison sites must compare prices that include option items prices, delivery and installation costs.

The guidelines also include examples of violations especially with regards to cancellation policies. The guidelines prohibit e-commerce companies from requesting unreasonable return costs (except for delivery costs) in the case of a cancellation of an order. False comments made on price comparison websites such as "best" or "recommended" without disclosing the fact that such comments form part of an advertisement are also prohibited. The guidelines cover the aforementioned areas in detail and relevant terms and conditions of sale are subject to KFTC scrutiny. It is recommended, therefore, that foreign companies seek legal advice prior to selling online to Korean consumers.

Taiwan

Matt Liu and Ben Cheng, Tsar & Tsai Law Firm

Taiwan Fair Trade Commission promulgates the guidelines on suspending investigations

Following the substantial amendment to the Taiwan Fair Trade Act in February 2015, the Taiwan Fair Trade Commission (the "**TFTC**") has recently promulgated guidelines on suspending investigations, which came into effect on 2 July 2015.

The guidelines, which set-out the conditions for the TFTC to accept commitments from the parties and close an investigation, stipulate four types of cases that are not eligible for suspension: (1) the alleged conduct seriously affects the competition order; (2) there is no apparent difficulty for the TFTC to investigate the illegal facts and evidence, or the available facts and evidence are sufficient for the TFTC to determine whether the alleged conduct violates the Taiwan Fair Trade Act; (3) an application for immunity or leniency by one of the parties has been accepted by the TFTC; and (4) the case involves passing off. The suspension of investigation is applicable to cases involving concerted action only where all participating companies propose commitments.

To apply for a suspension, the company must submit a written application to the TFTC providing the specific contents of the proposed commitments, an explanation of why the proposed commitments are sufficient to eliminate the illegality of the conduct, the duration of the proposed commitments, the specific measures assisting the TFTC to oversee the implementation of the proposed commitments, and other matters relating to the proposed commitments.

Also, the guidelines specify the following factors (among others) that the TFTC will consider when deciding whether or not to suspend the investigation: (1) the disadvantages caused to market competition; (2) the commitments' ability to restore or enhance market competition; (3) the likelihood of the implementation of the commitments; (4) the availability of administrative resources; (5) the TFTC's cost for overseeing the implementation of the commitments; and (6) the advantages and disadvantages for TFTC to adopt other administrative measures. The TFTC will notify the investigated company and the complainant of its decision to suspend the investigation. If the TFTC decides not to suspend the investigation, it will provide an explanation in its decision on the investigation.

Furthermore, the guidelines specify that the delay for implementing the commitments cannot exceed 6 months in principle, but may be extended when necessary. The TFTC may resume its investigation if (1) the company fails to implement its commitments; (2) there is a material change of the facts underlying the suspension decision; or (3) the suspension decision is made based on incomplete or false information provided by the company. After the expiration of the suspension period, the TFTC will decide whether to terminate or resume the investigation, and will notify its decision to the investigated company and to the complainant.