Competition Law Update – Merger Control Related Developments in the Region

The Asia Pacific region has seen the number of notified and reviewed mergers between 2015 and 2020 increase by over 20%, followed by an increase of more than 15% in 2020 alone – when it recorded 1,924 notified mergers. This is not surprising given the new or revamped merger control regimes (often with mandatory filing requirements) that have come into force in the region in recent years. Yet more changes are on the horizon (please see for example, our update on Malaysia below).

We are seeing new types of filing thresholds proposed or introduced (please see for example, our update on India below) which would potentially widen the pool of transactions subject to mandatory filing requirements. Enforcement activity is also on an uptick, and even mergers which are primarily vertical (i.e., where parties have little or no overlapping products/services) have also been subject to increased scrutiny, particularly where digital platforms / major technology players transactions are involved.

Against this backdrop, this update provides a snapshot of some notable merger control related developments in Singapore and the region.

Singapore – Merger notifications remain at record levels

Continuing the trend in 2021, the number of mergers voluntarily notified to the Competition and Consumer Commission of Singapore ("**CCCS**") continues to grow. This increased caseload has not dampened the CCCS' appetite for subjecting mergers to enhanced scrutiny where it sees fit – there are currently five mergers pending clearance, two of which have been under review for six months or more. While the indicative period for the CCCS' Phase 1 review (following which mergers which clearly do not raise competition concerns are cleared) is 30 working days, the period from notification to a Phase 1 decision has, in most recent decisions, taken around three months, with one particular review (the Asiana Airlines acquisition by Korean Airlines) taking around six months. This is likely due to clock stoppages during the review process.

One aspect that appears to be a focus in many of the CCCS' decisions is the closeness of competition between the merging parties, i.e., whether they are perceived by customers as next best alternatives. Businesses exploring transaction with close rivals in the same industry should keep this in mind when conducting merger control risk assessments, and consider their customers' perception of their (and their targets') positions in the market. Third party feedback also continues to feature prominently in the CCCS' decisions, and to be an important factor in the CCCS' substantive review of mergers. Submissions put forth by merger parties would typically be accepted by the CCCS if they are supported by, or not generally inconsistent with, feedback received. Conversely, any adverse feedback received would need to be addressed robustly by the parties. Where there is likely to be little feedback from third parties, parties would be advised to ensure that the data they present has firm support for the CCCS to be able to verify the same.

Following a market study on e-commerce platforms concluded in September 2020, the CCCS highlighted potential competition concerns that could arise in the context of digital and multi-sided markets. In particular, it recognised that the assessment of mergers should consider the impact of merging parties who are important innovators even if they may not have a large market share, or they operate in different markets from the acquirer. The study also recognised that the importance of data for digital platforms may gradually increase over time with the use of artificial intelligence. These points were subsequently reflected in the CCCS' amended guidelines which were published at the end of 2021 (and which came into effect in February 2022). Moving forward, we expect the CCCS to continue to keep an eye on "killer acquisitions" in the digital space, the conglomerate nature of digital platforms and the role of data in mergers and acquisitions.

Malaysia – MyCC consults on proposed merger control regime

On 25 April 2022, the Malaysia Competition Commission ("**MyCC**") published a public consultation on, among other things, its proposal to introduce a merger control regime under Malaysia's Competition Act. Under the proposed regime, mergers and anticipated mergers which may cause a substantial lessening of competition within markets in Malaysia will be prohibited.

Under the proposed regime, mergers will be subject to a mandatory notification requirement if prescribed thresholds are crossed. However, mergers which do not cross these thresholds may still be scrutinised by the MyCC and hence there will also be a voluntary process under which such mergers may be notified to the MyCC for clearance.

The MyCC has indicated that the proposed amendments are expected to be passed by the Malaysian Parliament in October 2022, after which there will be a one-year transition period for businesses – in which case the regime would be projected to come into force around October 2023. At this time, the prescribed filing thresholds have yet to be determined or proposed.

As one of the last jurisdictions in the region which has yet to enact a merger control regime, these proposals, if enacted, would bring Malaysia's competition laws in line with other jurisdictions in the region. It also means that businesses conducting mergers and acquisitions involving parties with operations in Malaysia will need to add it to the list of jurisdictions where it is necessary to review whether merger control filing requirements are triggered.

Philippines – Merger filing thresholds to be restored to pre-Covid levels

In 2020, against the backdrop of the Covid-19 pandemic, the Bayanihan to Recover as One Act was enacted in the Philippines, which, among other things, raised the merger filing thresholds in the Philippines significantly. For example, the size of transaction threshold was raised by more than 20 times from PHP 2.4 billion to PHP 50 billion.

This temporarily increased threshold meant that far fewer transactions were notifiable in the Philippines in the last two years. However, this is set to change with the expiry of the two-year effective period of the relevant legislation, which means that the size of transaction threshold has reverted to its pre-Covid level, with a slight adjustment upwards to PHP 2.5 billion.

With the PHP 50 billion size of transaction threshold becoming a thing of the past, the number of transactions that are notifiable in the Philippines will increase sharply. As the merger filing process in the Philippines does entail meeting informational requirements that are fairly detailed and comprehensive, businesses should keep this in mind when engaging in transactions involving a party with a significant presence in the Philippines.

India – Proposed amendments to introduce deal value filing thresholds / accelerated review timelines

On 5 August 2022, the Government of India presented the Competition (Amendment) Bill, 2022 ("**Bill**") to the Indian Parliament, which included several changes to its merger control regime, notably the introduction of transaction values thresholds and accelerated review timelines.

New transaction value thresholds

A key amendment proposed under the Bill introduces a new INR 2,000 crore (approximately US$ 250 million) transaction value threshold for merger notifications. This means that a notification is mandatory if the transaction value exceeds the threshold and a party has substantial operations in India, regardless of the quantum of the target's assets or turnover in India. The change was proposed to cover transactions in the digital space, where targets may have low asset values / turnovers, even though transaction values may be substantial.

This proposal could bring about some uncertainty in terms of the scope of transactions which are caught by this new threshold, in particular, the circumstances under which a party would be considered to have "substantial" operations in India. Businesses engaging in transactions that are caught by this threshold (when it comes into force) should keep a close watch on any further guidance to be issued by the competition authority and seek advice well in advance.

Accelerated review timelines

The Bill also proposes sharply reducing the time period for the Competition Commission of India to form its initial opinion on the competition impact of a merger, from 30 working days to 20 working days. In addition to this, the Bill proposes shortening the maximum review period from 210 days to 150 days.

While these proposed shortened review periods are welcome at first sight, the jury is still out on whether actual clearance timeframes (i.e., from submission to clearance, including periods before commencement of the review clock and any subsequent stoppages for requests for information) will be reduced as well.

ASEAN – commits to Information-Sharing Portal on Merger Reviews

Following the mid-term review of the ASEAN Competition Action Plan (2016-2025) by the ASEAN Expert Group on Competition ("**AEGC**") in 2020, the AEGC proposed the development of an ASEAN Information-Sharing Portal for sharing information on merger cases, to further develop and enhance regional cooperation between authorities in the region.

The portal is targeted to be established by 2023 and the competition authorities of the various ASEAN member states are currently developing guidelines that will cover the types of information to be shared as well as the manner under which such information will be exchanged.

The scope of the portal's coverage (in terms of the information that can be shared as well as the manner in which it may be accessed) remains to be seen and it will be interesting to see how the CCCS (and other authorities in the region) deal with existing confidentiality obligations imposed under national laws. One thing is certain – businesses can expect greater coordination among authorities in the region where they review transactions which impact markets in multiple ASEAN jurisdictions, and this makes it even more critical for parties to be able to develop and put across a consistent message in filings across multiple jurisdictions.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:

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