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Outpacing change

Introduction

As we closed out the 2024 calendar year, competition law developments across key Asia Pacific jurisdictions canvassed a range of areas. These included: law reform and enforcement in connection with national merger regimes and merger clearance processes; enforcement efforts against anti-competitive cartels; and - consistent with trends observed throughout the year - legislative developments in connection with big tech and digital platforms.

In particular, the last quarter of 2024 saw:

- legislative reform and enforcement cases relating to big tech and digital platforms.
  - In **Australia**, the Australian Treasury is now moving to consult on a new framework for a new digital competition regime which features the possible designation of digital platforms that will be subject to specific competition law obligations.
  - The **Philippine** Competition Commission published a report on its market study into digital platforms demonstrating its intention to release bespoke laws and guidelines to govern competition in the digital economy.
  - In **Thailand**, the public hearing period for comments on the principles that will form the basis of Thailand's *Platform Economy Act* (**PEA**) ended. This will form the basis of laws for both user protection and fair competition obligations for digital platforms and related service providers.
  - The **Indonesian** Government has moved to ban large e-commerce platform Temu from Google and Apple app stores in Indonesia in a bid to prevent "unhealthy competition" and to protect small-medium enterprise in the e-commerce sector. This ban follows an earlier ban imposed by the Indonesian Government against TikTok's e-commerce platform operating in Indonesia.
  - The Competition and Consumer Commission of **Singapore (CCCS)** has cracked down on misleading advertising by leading food delivery platform, Delivery Hero.
- merger reform and merger enforcement action in **Australia** and **China**, respectively.
  - On 28 November 2024, the **Australian** Parliament passed the *Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024* which contains significant reforms to Australia's merger control regime. The new regime replaces the existing voluntary, informal clearance process with a mandatory and suspensory administrative regime.
  - **China's** State Administration for Market Regulation (**SAMR**) has released two guidelines in relation to Standard Essential Patents (**SEPs**) and horizontal mergers. These guidelines aim to aim to provide more clarity and guidance for in the competition analysis in merger review and the anti-competitive conduct in relation to SEPs.
- other notable enforcement actions – including a dawn raid by the CCCS on several "HairFun" salon outlets in **Singapore** for suspected unfair practices (ie, including the exploitation of elderly consumers); and various forms of cartel conduct enforcement in the **Philippines** and **Hong Kong** (ie, including in connection with public procurement tender processes).

As we begin 2025, the developments above provide a forecast of what to expect in the year to come. In 2025, businesses must remain vigilant about competition and consumer laws, and of the regulatory authorities empowered to enforce these laws.

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Australia

Australian Government proposes new Digital Competition Regime

On 2 December 2024, the Australian Treasury released a proposal paper outlining its preferred framework for a new digital competition regime aimed at promoting effective competition in digital platforms. The proposed regime is intended to address concerns surrounding the lack of effective competition in digital platform services which are not being mitigated by existing and traditional enforcement action under the *Competition and Consumer Act 2010*. These concerns were raised in the Australian Competition and Consumer Commission's (**ACCC**) fifth interim report in its Digital Platform Services Inquiry released in September 2022.

Under the proposed framework:

- the ACCC would conduct an investigation, and the relevant Minister would make the decision to designate a digital platform entity in respect of the specific digital platform services it supplies;
- designated platforms would be required to comply with broad and service-specific obligations to prevent anti-competitive conduct; and
- the ACCC would monitor compliance, gather information and seek monetary and non-monetary penalties for non-compliance (the monetary penalties could be up to AUD 50m (c. USD 31.7m), three times the value of the benefit obtained or 30% of the company's adjusted turnover).

The Australian Government is seeking feedback on the proposed general framework, scope of services, designation process, potential obligations, proposed enforcement mechanism and other implementation considerations. The Australian Treasury's proposal paper has identified app marketplace services and ad tech services as initial priority services for designation and is seeking feedback on whether social media should also be prioritised.

The proposed regime represents a significant shift in the regulatory landscape for digital platforms in Australia. Interested businesses should keep informed of any developments, assess the potential impact on their operations and consider participating in the consultation process to help shape the framework.

New Merger Reform Bill passes Australian Parliament

On 28 November 2024, the Australian Parliament passed the *Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024* (the **Bill**) which contains significant reforms to Australia's merger control regime. The new regime replaces the existing voluntary, informal clearance process with a mandatory and suspensory administrative regime. This new regime has been described by Treasurer Jim Chalmers as "*faster, stronger, simpler, more targeted and more transparent.*"

Under the new regime:

- a mandatory notification system will be established for certain acquisitions of shares and assets, with penalties for non-compliance. Broadly, acquisitions where the target has a material connection to Australia and that involve a change of control will need to be notified if they meet specific monetary thresholds.
- in order to block a transaction, the ACCC must be satisfied that the acquisition would have the effect or likely effect of substantially lessening competition in any market.
- the definition of a "substantial lessening of competition" will be broadened to include acquisitions that create, strengthen or entrench a substantial degree of market power.

The Bill allows the Treasurer to designate certain acquisitions as notifiable, even if they do not meet the generally applicable thresholds. Treasurer Jim Chalmers has suggested designating mandatory notification for mergers in the supermarket, liquor, fuel, oncology and radiology sectors as well as industries prone to serial acquisitions.

The new merger regime will commence on 1 January 2026, but will be available for voluntary filings from 1 July 2025. If applications for clearance under the current informal merger clearance process are not determined before 31 December 2025, they will need to be re-notified under the new merger clearance regime.

This new merger regime will be a major change for the Australian business community and for investors looking to grow their portfolios in Australia. Businesses should consider the potential impact of these reforms on their acquisition strategies, including by reviewing any transaction timelines and ensuring an appropriate conditions precedent is put in place for triggered filings in Australia.

China

SAMR releases new antitrust guidelines for Standard Essential Patents

On 8 November 2024, China's State Administration for Market Regulation (**SAMR**) issued its first guidelines for regulating the licensing of standard essential patents (**SEPs**), the Anti-Monopoly Guidelines of Standard Essential Patents (**SEP Guidelines**).

SEPs are patents that protect an invention that is essential to the implementation of technology standards. SEPs are integral to ensuring the interoperability, compatibility and safety of products produced by different manufacturers. The release of the SEP Guidelines is considered as a response to development of technology in the auto and tech industries in China.

The SEP Guidelines aim to provide clarity and guidance for standards-setting organisations, patent pool operators, SEP holders, and standards implementers. These guidelines set out specific factors that the SAMR will consider in determining whether an SEP holder has a dominant position, such as their ability to control the market, the reliance of the downstream market of SEPs and the difficulty for other patent holders to enter the market. The SEP Guidelines also introduce a set of "good practices" which encompass the timely and adequate disclosure of SEP information, a commitment to fair, reasonable, and non-discriminatory licensing terms (**FRAND Commitment**), and good faith negotiations. Relevant SEP holders are encouraged to comply with these "good practices".

Another key features of the SEP Guidelines, which is also the most notable change from the public consultation draft that was circulated in June 2023, is an emphasis on soft intervention tools, such as reminder letters and regulatory talks, which the SAMR can use to encourage parties to improve compliance and adopt corrective actions, rather than launching formal investigations or imposing sanctions.

The SEP Guidelines, including the practical approach to enforcement (through "soft intervention" mechanisms), are perhaps a reflection of the SAMR's desire to promote more flexible and efficient enforcement strategies in relation to the treatment of patents in the tech and auto industry. It remains to be seen, however, whether the SAMR will embrace these soft intervention measures.

SAMR publishes further details regarding its online merger-control system

On 11 November 2024, China's State Administration for Market Regulation (**SAMR**) released further details of its online merger control system which has been in operation since 2022.

The development means China is one of the first merger regimes to implement a fully digitalised merger-control regime which covers the entire merger control cycle - spanning the filing of notifications to the investigation of violations. Amongst the further details released:

- The system automatically assigns cases to review divisions based on industry and other factors, and encrypts the data transmission and storage to ensure security and confidentiality.
- The system allows for real-time data analytics and process traceability for case handling.
- It aims to improve the convenience and efficiency of merger control in China, as well as the consistency and transparency of the review process.
- It will be important to track whether the digitalisation of the merger control process can result in expedited review times, particularly for simple cases.

SAMR releases guidelines for horizontal-merger review

On December 20, 2024, the State Administration for Market Regulation (**SAMR**) released the Guidelines for the Review of Horizontal Mergers (**Horizontal Guidelines**).

These guidelines are the first specialized guidelines for merger review introduced by SAMR. The Horizontal Guidelines are formulated to regulate horizontal merger reviews and increase transparency of the review.

The Horizontal Guidelines have fine-tuned the approach to defining relevant markets, including intermediate products, differentiated products, specific products targeted at a specific customer group etc. The Horizontal Guidelines also clarify market share and HHI index thresholds for assessing whether a horizontal merger is anti-competitive. Other factors to be considered in the assessment include recognition of importance of supply chain security, clarification regarding key evidence for rebutting elimination and restriction of competition, etc.

One key development of the Horizontal Guidelines is to assess the impact of domestic and foreign government subsidies received by the parties. If there is any evidence that these subsidies by state or local governments could harm competition, detailed information will need to be disclosed.

This is the first time where foreign subsidies have been taken into account in antitrust review and is considered as a response to the recent intense trade actions, especially from the EU. It remains to be seen how this clause will play out in practice.

Hong Kong

HKCC executes search warrants in government subsidy scheme case

On 13 November 2024, the Hong Kong Competition Commission (**HKCC**) undertook searches at six premises including the registered address of an IT service provider and the domestic residences of five individuals. These searches were undertaken as part of a probe into suspected anti-competitive conduct in relation to a government subsidy program. The HKCC also exercised its compulsory powers to request relevant parties to produce documents, information and provide testimonies.

The IT service provider and individuals are suspected of having engaged in bid-rigging, price-fixing, customer allocation and the exchange of competitively sensitive information in the course of providing quotes for logistics technology in applications for government under the "Pilot Subsidy Scheme for Third-party Logistics Service Providers."

The HKCC received a referral from the Hong Kong Productivity Council which pointed to suspicious features in certain applications made in relation to the government subsidy scheme.

This is an example of close cooperation between regulators in Hong Kong, and comes at a time when the HKCC continues its enforcement priority of combating anti-competitive conduct that aims to exploit public funding.

Hong Kong Commercial Cleaning Services admits cartel conduct, agrees penalties

On 9 December 2024, the Hong Kong Competition Commission (**HKCC**) announced that it had settled its cartel conduct proceedings against Hong Kong Commercial Cleaning Services Limited (**HKCCS**).

In 2021, the HKCC instituted proceedings before the Competition Tribunal against HKCCS and two of its directors, Ms. Chan Ming Chu and Mr. Cheng Yip Chiu. The allegation was that HKCCS engaged in cartel conduct for the supply of cleaning services. The HKCC argued that HKCCS and its competitor, Man Shun Hong Kong & Kln Cleaning Company Limited (**MS**), colluded with when bidding for contracts for cleaning services issued by the Hong Kong Housing Authority from May 2016 to August 2018.

HKCCS admitted to: (a) exchanging commercially sensitive information with the competitor; and (b) engaging in price-fixing activities. HKCCS agreed to pay a HKD 10.96 million penalty (c. USD 1.41 million). Further, HKCCS's directors Ms. Chan Ming Chu and Mr. Cheng Yip Chiu admitted liability for their involvement in the conduct. The HKCC is separately continuing its penalty claims against MS, and Mr. Cheng Hok Kuen following their admission of liability on 30 January 2024.

The HKCC has used this opportunity to reiterate the need to comply with Hong Kong's competition law regime and has encouraged parties who have contravened the Hong Kong Competition Ordinance to approach the HKCC for leniency. The HKCC is seeking to enforce its settlement order through an application for penalties and declarations with the Hong Kong Competition Tribunal. Amongst the penalties being sought include director disqualification orders and personal pecuniary penalties against HKCCS' directors of HKD 10,000 (c. USD 1,286). The outcome serves as a stark reminder to company directors about their legal responsibilities and the severe consequences of engaging in anti-competitive behaviour.

Indonesia

Indonesia moves to ban Chinese e-commerce platforms on the basis of "unhealthy competition"

On 9 October 2024, Indonesia's Government requested that tech giants Google and Apple block the Chinese e-commerce platform Temu from their application stores. This request follows Indonesia's ban on TikTok's e-commerce platform last year.

Temu connects consumers directly with factories in China, which allows it to offer competitively low prices on its products. Indonesia's communication minister, Budi Arie Setiadi stated, "*we're not here to protect e-commerce, but we protect small and medium enterprises*" and that Chinese e-commerce platforms' business models such as Temu's present "*unhealthy competition*".

In addition to blocking Temu, Indonesia's Government plans to prevent any potential investments by Temu in Indonesia's local e-commerce market. Indonesia's Government also plans to request a similar ban on Shein, another Chinese e-commerce platform.

Temu and Shein's rapid expansion and shake-up of the e-commerce market have attracted the focus of lawmakers globally. The Indonesian Government's proposed bans could signal some focus by Indonesia on Chinese-owned e-commerce platforms.

Philippines

Philippine Competition Commission publishes market study into digital platforms

On 7 October 2024, the Philippine Competition Commission (**PCC**) released a market study into digital platforms and online advertising. The study was conducted in an effort to analyse the country's competition policies and their effectiveness in digital markets.

The study highlights the need for more robust domestic powers to address competition concerns in digital markets. The study includes three recommendations for the PCC, namely to:

- utilise bilateral and regional agreements to build relationships with other jurisdictions which have more developed competition law regimes;
- advocate for the inclusion of discrete competition laws concerning the digital economy; and
- release a set of guidelines for digital market investigations to strengthen the *Philippine Competition Act*.

The PCC also noted that regulators in other jurisdictions, such as in Australia, the United States and Europe, were targeting big tech companies in their competition law enforcement activities. In the report, the PCC commented that developing countries, such as the Philippines, hoped to replicate such enforcement activities in their own jurisdictions.

The continued focus on the activities of big tech and digital platforms continues globally, including across smaller and developing economies.

PCC accepts PHP 1.5 million anti-competitive conduct settlement

On 9 October 2024, the Philippine Competition Commission (**PCC**) accepted a PHP 1,547,079 (c. USD 26,437) settlement proposal from the Philippine Association of Legitimate Service Contractors (**PALSCON**) concerning suspected anticompetitive conduct.

In 2021, the PCC commenced an investigation on PALSCON, along with its competitors for market-sharing. Since then, PALSCON has been engaging in settlement discussions with the PCC. In addition to the settlement amount, the PCC accepted the following undertakings from PALSCON:

- the attendance of PALSCON directors and senior officers to a PCC competition law seminar;
- the appointment of a competition law compliance officer;
- a statement from PALSCON outlining and admitting to anti-competitive conduct, to be published on PALSCON's website for two years; and
- a revision of PALSCON's code of ethics to include a statement outlining their commitment to not engage in anti-competitive conduct.

This enforcement action and suite of undertakings above signal the PCC's determination in ensuring that offending businesses put in place measures to ensure that breaches of competition law are minimised going forward.

Singapore

CCCS Warns Foodpanda Over Misleading "Free Delivery" Claims

On 20 November 2024, the Competition and Consumer Commission of Singapore (**CCCS**) issued a warning to food delivery platform Delivery Hero (Singapore) Pte. Ltd. (more commonly known as **Foodpanda**) for a misleading advertisement about its "Pandapro" subscription service (the **Advertisement**).

The Advertisement promoted "Unlimited Free Delivery on All Restaurants" for the subscription service and ran from 1 July to 30 September 2024 (the **Advertising Period**). This was displayed across multiple platforms including Foodpanda's Instagram page, its in-app marketing, billboards and signage at public areas such as bus stops.

Following a complaint about the Advertisement, the CCCS commenced an investigation in August 2024. The CCCS considered that, without any qualifiers, the Advertisement could mislead consumers into thinking that Pandapro subscribers would enjoy free delivery on all restaurants available on Foodpanda.

In fact, in respect of food delivery fees, Pandapro subscribers only received a $3 discount for all restaurants, or a discount of up to $6 for selected restaurants. The CCCS found that over 40% of food delivery transactions made by Pandapro subscribers on all restaurants over the Advertising Period required a residual delivery fee to be paid after the discounts were applied.

Following the investigation, Foodpanda agreed to:

- provide a full refund of subscription fees to customers who subscribed to Pandapro during the Advertising Period;
- provide clarification to customers who had subscribed to Pandapro during the Advertising Period and the public on the terms of the Pandapro subscription; and
- review its existing and future marketing materials for the

Pandapro subscription service to ensure compliance with Singapore's fair trading laws.

Businesses should be careful when using absolute terms like "free". Any explicit representation must clearly and unambiguously reflect what is offered to consumers, as consumers will reasonably expect that something that is "free" means nothing will be charged. Consistent with the CCCS's Guidelines on Price Transparency published in 2020, the CCCS stated that any qualifier, exclusion and incidental cost must be stated prominently together with the "$0" or "free" claim – a generic disclaimer such as "terms and conditions apply" is not usually sufficient.

CCCS dawn raid of HairFun Salons

On 2 October 2024, the Competition and Consumer Commission of Singapore (**CCCS**) conducted unannounced visits (otherwise known as "dawn raids") at three "HairFun" salons (**HairFun Salons**) for suspected unfair trade practices.

The unannounced visits follow complaints previously received by the Consumers Association of Singapore (**CASE**). The complaints related to practices such as the targeting and exploitation of elderly consumers, concealing payment amounts during NETS transactions, charging significantly higher prices without prior agreement, and billing consumers for unwanted treatments or packages without their clear consent. According to CASE, 34 complaints were received between 1 December 2022 and 22 April 2024.

CASE had warned the operator of the HairFun Salons against such practices and invited them to sign a Voluntary Compliance Agreement to cease the practices and refund affected consumers. When the management of the HairFun Salons failed to respond, the matter was referred to the CCCS for investigation. The CCCS indicated it will continue with its investigations and consider the evidence gathered to determine whether to take enforcement action.

This announcement demonstrates the CCCS's continued preparedness to investigate unfair trading practices, including through surprise unannounced visits.

Taiwan

Taiwan Fair Trade Commission reduces cartel fine imposed on Nichicon HK

On 6 December 2024, the Taiwan Fair Trade Commission (**TFTC**) announced that it had reduced the cartel fine imposed in 2015 on capacitor distributor Nichicon (Hong Kong) Ltd. (**Nichicon HK**) from TWD 111.3 million (c. USD 3.42 million) to a small fraction of this fine, ie, TWD 18 million (c. USD 553,459).

In December 2015, Nichicon HK was fined by the TFTC for participating in meetings to exchange sensitive competitive information with Japanese aluminium capacitor manufacturers (such as prices, quantities and production capacities) and for reaching agreements that restricted competition. The conduct contravened Article 14, Paragraph 1 of the *Fair Trade Act* (ie, which prohibits anticompetitive agreements between competitors). The fine was part of the cumulative penalties handed down to 10 capacitor producers for engaging in cartel conduct between 2005 and 2014.

In response, Nichicon HK filed an administrative lawsuit in response to the TFTC's decision, which was dismissed by the Taipei High Administrative Court in 2016. Nichicon HK then subsequently appealed to the Supreme Administrative Court (SAC). In 2022, the SAC overturned the TFTC's decision as to penalty, including because it determined that the TFTC needed to reinvestigate whether the case involved "serious violations" as is necessary for the determination of penalties under the *Regulations for Calculation of Administrative Fines for Serious Violations of Article 10 and Article 14 of the Fair Trade Act* in Taiwan.".

In 2023 (ie, as a result of the SAC decision), the TFTC announced that it would revise the penalty amount imposed on Nichicon HK. The TFTC based its recalculation of the fine on the Supreme Administrative Court's ruling that the calculation should use the sales amount of aluminium capacitors imported into Taiwan rather than the amount of aluminium electrolytic capacitors Nichicon HK indirectly sold to two mainland units of an unidentified Taiwanese firm. In calculating the revised penalty, the TFTC also considered factors including the impact of the conduct on the domestic aluminium capacitor market, the duration of the contravention and Nichicon HK's scale, revenue and illegal gains.

This decision highlights the fact that penalty calculation methods are highly complex and technical.

Thailand

Thailand progresses development of the Platform Economy Act

On 15 December 2024 the public hearing period for comments on the principles that will form the basis of Thailand's Platform Economy Act (PEA) ended.

For background, in January 2024, an unofficial draft PEA had been made available to relevant stakeholders by the Trade Competition Commission of Thailand (TCCT). The principles that have been released for comment will inform a draft PEA which will be released to the public.

The draft principles proposed state:

- the PEA would create both user protection and fair competition obligations for digital platforms and related service providers;
- the PEA is likely to be broader than the European Union's Digital Markets Act 2022, by regulating illegal content in addition to governing the market power of "gatekeeping platforms."

Pursuant to the draft PEA, "gatekeeping platforms" are likely to be defined as major digital platforms that control access to significant market segments — for example: online market places, social media platforms, and search engines. Such platforms are likely to be considered as those:

- able to set terms that affect a wide range of consumers and business; as well as
- having substantial influence over market conditions.

Further criteria are expected to be set to determine which digital platforms are gatekeeping platforms, having regard to factors such as market share, user base, and control over data. Gatekeeping platforms would then be subject to certain obligations intended to maintain fair competition, which could include: obligations to maintain transparent business practices, ensure non-discriminatory access to platform services, and ensure the fairness of contract terms with counterparties. Certain practices may also be prohibited under the PEA, such as self-preferencing (whereby gatekeeping platforms prioritise their own services over competitors), or restrictive agreements limiting market entry of other businesses.

The Council of State will now evaluate comments and develop the final draft PEA.

Digital platforms should watch this space, particularly since the PEA is likely to replace other existing obligations and laws (such as the *Royal Decree on the Operation of Digital Platform Service Businesses that are subject to Prior Notification B.E. 2565 (2022)* and relevant provisions under the *Electronic Transactions Act B.E. 2544 (2001)* as amended).

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