

## Potential regulatory harmonization across ASEAN

Regulatory agencies across ASEAN have agreed to develop guidelines to regulate the digital economy, pursuant to the first-ever meeting of the heads of competition regulators within the region, including Khun Sakon Varunyuwatana, chairperson of Thailand's Office of the Trade Commission (the "OTCC"). The guidelines will form part of the agenda at the ASEAN summit next year. This development follows on from our previous June 2021 newsletter, which set out the OTCC's concerns relating to the dominance of online platform businesses.

A key focus of the meeting, which will likely inform the substance of the guidelines, involved the recognition of the potentially harmful effects to small and medium sized enterprises ("SMEs") given the fast-paced growth of digital platforms, driven partly by the change in market structures as a result of COVID-19. We anticipate there will be a continued push by competition regulators – including in particular the OTCC – together with other regulatory agencies, to provide protection for SMEs through the oversight of digital platforms in the region and beyond, a development very much in line with global enforcement trends in this area.

## OTCC case on merger control

The OTCC has issued its latest decision relating to post-merger notifications. The transaction involved a Japanese company (the "acquirer") acquiring, by way of public tender offer, 31.68 per cent. of the voting shares in another Japanese company, listed on the Tokyo Stock Exchange and the Nagoya Stock Exchange (the "target"), taking the acquirer's total shareholding in the target to 34.74 per cent. The target owned a Thai subsidiary with revenue exceeding the THB 1 billion threshold. In addition, both the target and the acquirer also had revenue in excess of the THB 1 billion threshold.

The OTCC found that the transaction did not trigger the post-merger notification requirements, notwithstanding the revenue of the parties. The OTCC reasoned that "the acquisition of 34.74 per cent. shareholding in the target, whereby the transaction resulting in no change in the shareholding and directorship of the Thai subsidiary of the target, does not meet the 50 per cent. threshold" set out under the relevant guidelines. Accordingly, the parties did not have an obligation to notify this transaction.

We think the case introduces some uncertainty into the requirements for notifications, for foreign-to-foreign transactions as it is unclear whether the OTCC's decision that the transaction does not meet the change of control thresholds is due to:

- (i) at the acquirer and target level (the 34.74 per cent. shareholding acquisition), the OTCC's viewing that a company listed on a foreign stock exchange requires a 50 per cent. threshold (rather than a 25 per cent. threshold for companies listed on a Thai stock exchange); or
- (ii) at the Thai subsidiary level, the OTCC considering that the acquirer's indirect ownership of the Thai subsidiary of the target did not meet the 50 per cent. threshold,

We are currently in the process of clarifying these points with the OTCC. In any event, we understand the OTCC has been actively progressing with ironing out issues relating to the merger control filing process and will be issuing new guidelines next year to clarify these.

## OTCC additional amendment to regulations relating to franchises

The OTCC has released the third version of its notification relating to the operation of franchises (the "Notification re Franchises"). The amended version includes an addition to Section 4 of the Notification re Franchises, which imposes a general requirement on franchisors seeking to open new branches operated by the franchisor itself to provide franchisees with the nearest branch to the proposed new branch the right to operate the new branch; except for those franchisees who do not meet the minimum standards of operation.

The addition to Section 4 of the Notification re Franchises relates to franchisees with area development agreements, whereby the franchisee and franchisor agree on conditions to the opening of a certain number of branches within a given geographical area and timescale. The amended Notification re Franchises clarifies that franchisors need not offer the rights under Section 4 of the Notification re Franchises to franchisees subject to restrictions under area development agreements, even where such franchisee operates a branch in the nearest location to any proposed new branch – the franchisor may instead offer the right to any other franchisee it deems appropriate, provided there is a business, economic or marketing justification.



To read more about Thailand's merger control, please visit our website at [www.weerawongcp.com](http://www.weerawongcp.com).



For inquiries, please contact [chumpicha.v@weerawongcp.com](mailto:chumpicha.v@weerawongcp.com)

### Weerawong, Chinnavat & Partners Ltd.

22nd Floor, Mercury Tower, 540 Ploenchit Road, Lumpini, Pathumwan, Bangkok 10330, THAILAND  
Telephone +662 264 8000 | Direct Telephone Line +66 2264 8116 | Facsimile +662 657 2222

[www.weerawongcp.com](http://www.weerawongcp.com)