Asia Pacific Competition Law Bulletin

Introduction

Welcome to the third edition of our bi-monthly Asia Pacific Competition Law Bulletin.

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, Vietnam), Vinod Dhall in collaboration with TT&A (India), Mori Hamada & Matsumoto (Japan), Rahmat Lim & Partners (Malaysia), Allen & Gledhill LLP (Singapore), Lee & Ko (South Korea) and Tsar & Tsai Law Firm (Taiwan).

The past two months have been busy for policy-makers, with the introduction of amendments to the legislation in Taiwan and continued enforcement across the region. In particular, there have been a number of “firsts” in multiple jurisdictions: in Australia, the ACCC published its final report which authorised its first application to engage in resale price maintenance; in China, MOFCOM imposed its first penalty for failing to comply with merger remedies, published its first penalty for failure to notify a transaction and removed a merger remedy for the first time. In Singapore, the CCS issued its first clearance on the basis of the alternative exit argument and in Vietnam, the Prime Minister issued the first ever merger control exemption. Moreover, in India, the CCI has imposed structural remedies (the first of its kind) while clearing a merger.

Further, the regulators and policy-makers have also been focussed on helping businesses understand the competition regime. The Hong Kong Competition Commission released a booklet geared at assisting SMEs with understanding the competition law, and in Japan, a report in relation to the investigation process, which suggested new guidelines should be implemented in relation to dawn raids and the way in which the JFTC conducts interviews and depositions was published.

The Taiwan Fair Trade Act underwent a long-awaited amendment which includes substantial changes to the legislation dealing with merger control, concerted actions, statute of limitations, penalties, remedies and the investigation mechanism.

In addition, both Malaysia and Singapore, have appointed new members to their respective competition commissions.

We hope that you continue to enjoy this publication and that it will be a valuable tool for you to keep up-to-date with the rapid developments and enforcement practices in APAC. We look forward to delivering more news in our next edition.

Australia

David Brewster, Laura Myer and Helen Anness, Allens

Minimum retail prices – a new approach in Australia?

On 5 December 2014, the Australian Competition and Consumer Commission ("**ACCC**") issued its final report and granted authorisation for Tooltechnic Systems, an importer and wholesaler of power tools, to set minimum resale prices for retailers for a period of four years. Authorisation was granted on condition that Tooltechnic provides ongoing information to the ACCC about its retail prices.

This is the first application by a business seeking to engage in resale price maintenance ("**RPM**") since the authorisation became available in 1995. While RPM is strictly prohibited under the Competition and Consumer Act 2010, the ACCC may authorise such conduct where the public benefits outweigh the detriments. The ACCC's positive decision could encourage more applicants to approach the ACCC for authorisation for RPM. The ACCC has, however, been careful to highlight the particular circumstances of the power tool case, noting highly differentiated products and the likelihood that retailers would offer better services to attract customers if minimum prices are imposed.

The RPM provisions are also being considered as part of the Harper Review. The Draft Report of the Harper Review, published in November 2014, recommends retaining a strict prohibition for RPM. It also recommends that a simple notification to the ACCC should be available as a short and less expensive approval process for RPM. The Final Report of the Harper Review is expected in March 2015.

<u>Related link:</u>

A copy of the ACCC's authorisation decision is available here.

ACCC initiates proceedings against electrical cable suppliers, individuals and industry group for alleged cartel and exclusionary conduct

Following an investigation into the alleged conduct involving low voltage electrical cables used in residential and commercial buildings, the ACCC filed proceedings against various electrical cable manufacturers (Olex Australia and Prysmian Power Cables & Systems Australia), electrical wholesalers (Australian Regional Wholesalers, Lawrence & Hanson Group and Rexel Electrical Supplies), six senior executives from various of the companies, and the Electrical Wholesalers Association Of Australia Limited ("**EWAA**").

The ACCC has alleged that during industry association meetings of the EWAA in 2011 the manufacturers and wholesalers entered into, and subsequently gave effect to, a cartel arrangement that restricted the manufacturers' supply of electrical cables directly to end-users; restricted the wholesalers' acquisition of electrical cables from other manufacturers; allocated contractors and other customers between the wholesalers; and controlled the price of services provided by the manufacturers. It is alleged that the conduct was aimed at reducing the instances of manufacturers directly supplying electrical cable to contractors and end-users.

By virtue of the forum in which the arrangement was made and the attendance of the senior executives at the meetings, it is alleged that the senior executives and EWAA aided, abetted and/or were knowingly concerned in the conduct.

Since the conduct was not clandestine, the ACCC determined that civil rather than criminal action was appropriate in the circumstances.

This proceeding demonstrates the ACCC's willingness to take action against industry associations or similar bodies which are suspected of facilitating anti-competitive conduct.

China

Fay Zhou, Linklaters

MOFCOM imposes first ever penalty for failing to comply with merger remedies, publishes first penalty decision for failure to notify a transaction and removes merger remedy for the first time

(1) Penalty for failing to comply with merger remedies

On 2 December 2014, the Ministry of Commerce of the People's Republic of China ("**MOFCOM**") announced its decision to fine Western Digital Corporation ("**Western Digital**") RMB 600,000 (approximately USD $97,000) for its failure to comply with remedies imposed in relation to Western Digital's acquisition of Hitachi's hard disk drive business. The fining decision came in the form of two separate MOFCOM decisions, both dated 2 December 2014.

MOFCOM approved in March 2012 the acquisition by Western Digital of the hard disk drive business of Viviti Technologies Ltd. ("**Viviti**"), formerly known as Hitachi Global Storage Technologies Ltd. ("**Hitachi**").

Such approval was subject to the divestiture of production assets and several behavioural remedies.

Of these remedies, the most significant and controversial was that MOFCOM ordered Western Digital to hold Hitachi separate for at least the next two years.

This hold separate remedy meant that, in practice, Hitachi's business would have to be operated as an independent competitor following completion of the transaction, in particular with regard to R&D, procurement, production and 2 sales. MOFCOM did, however, allow for cooperation between the entities in R&D if approval was sought.

In its penalty decisions, MOFCOM concluded, following investigations, that Western Digital breached the imposed remedies and conditions by:

(i) removing Viviti's development department and transferring personnel from that department to Western Digital without MOFCOM approval; and

(ii) transferring Viviti's US subsidiary to Western Digital and making it a wholly owned subsidiary of Western Digital, again, without MOFCOM approval.

Fines were imposed on Western Digital pursuant to MOFCOM's fining powers under articles 48 and 49 of the Antimonopoly Law (where the maximum fine for a given breach is RMB 500,000). Some commentators believe this fine was possibly too low and will not deter companies from non-compliance with remedies, the same could be said in relation to the failure to notify a transaction.

(2) First penalty decision for failure to notify a transaction

On the same day as the Western Digital fine, MOFCOM also announced a fine of RMB 300,000 (USD $48,000) on Unigroup for failure to notify its acquisition of RDA Microelectronics in accordance with the Antimonopoly Law.

This is the first penalty decision published by MOFCOM regarding failure to notify a notifiable transaction, although it is not thought that this is the first time MOFCOM has imposed fines for failure to notify.

(3) First waiver of merger remedy

MOFCOM has also, notably, agreed to remove a remedy imposed on the Google / Motorola merger after Google applied to MOFCOM at the start of December 2014 to remove the condition.

On 19 May 2012, MOFCOM imposed four remedies on the Google / Motorola merger. Two of the remedies were to be effective for 5 years after the clearance of the merger. One of these two remedies required that Google treat all original equipment manufacturers equally in android platform-related business after it bought Motorola. Moreover, the two remedies would be invalidated (automatically) if Google ceased to control Motorola Mobility.

Lenovo (a Chinese hardware manufacturer) acquired Motorola Mobility from Google last year and thus signed an agreement to obtain 100% of Motorola Mobility. On this basis, Google kept the telecommunications patent technologies of Motorola Mobility but would not be engaged in any business of manufacturing smartphones. Thus, MOFCOM accepted Google's application.

Both the Western Digital and Unigroup decisions demonstrate that MOFCOM has been flexing its muscles in all aspects of merger control enforcement recently: imposing sanctions on companies for failure to file; requiring sometimes onerous remedies as a condition to its approval; and now fining companies for failure to comply with conditions. It is also interesting to note that clearly, in selected cases, MOFCOM will waive conditions if companies are seen to be doing the right thing by the regulators.

Related links:

First ever penalty for failing to comply with merger remedies can be found here.

First penalty decision for failure to notify a transaction can be found here.

Hong Kong

Clara Ingen-Housz, Anna Mitchell and Jacqueline Arena, Linklaters

Hong Kong Competition Commission publishes compliance guidance for SMEs

On 30 December 2014, the Hong Kong Competition Commission ("**HKCC**") published a guidance booklet for small and medium sized enterprises ("**SMEs**"): "*The Competition Ordinance and SMEs – What is the Competition Ordinance about?*". The booklet helpfully lists out do's and don'ts of competition law compliance and it highlights that there is no harm to competition if SMEs act alone – irrespective of whether they sell items below cost, bundle two of their own products for sale together or refuse to supply someone. It also explains the HKCC's role generally and what SMEs should do if they are investigated.

Related link:

The SME Brochure can be found here.

India

Vinod Dhall, in collaboration with TT&A

CCI clears Sun/Ranbaxy merger with divestments

In a first of its kind, in an order dated 5 December 2014, the Competition Commission of India ("**CCI**") imposed structural remedies, while clearing the Sun Pharmaceutical-Ranbaxy merger. The CCI required the parties to divest certain business assets upfront, within six months, prior to the closing of the merger. In the event the parties fail to do so, the CCI will appoint a divestiture agency to effect the sale at no minimum price. According to media sources, the merger of these two generic giants would create the fifth largest generic drug maker globally.

The CCI defined the relevant market and found that the merger was likely to raise significant competition concerns in 7 molecules where the parties' combined market share was over 60% and there was limited existing competition in these markets. On this basis, the CCI cleared the merger subject to divestment of the parties' brands (without manufacturing facilities) in these 7 molecules.

Japan

Kenji Ito and Yusuke Takamiya, Mori Hamada & Matsumoto

Cabinet Orders on the recent AMA amendment

On 21 January 2015, the government announced that it will be implementing the amendment (the "**Amendment**") of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade.

The Amendment will come into force on 1 April 2015. It should also be noted that additional minor revisions to other relevant ordinances are also affected by the Amendment.

The two key takeaways from the Amendment are as follows:

(i) the Amendment abolishes the administrative appeal procedure within the Japan Fair Trade Commission ("**JFTC**"), which enables a company to appeal against a JFTC order directly to the Tokyo District Court; and

(ii) the Amendment introduces the new procedure in relation to an administrative order – it gives a company the opportunity to obtain access to certain evidence and present its opinion.

The Amendment is expected to significantly affect the practice of JFTC's administrative orders. Companies need to pay close attention to the development of the new practice under the Amendment.

A government advisory panel issued a report about the JFTC's administrative investigation process

On 24 December 2014, a report regarding the JFTC's administrative investigation process was issued by a government advisory panel.

The report recommended that the JFTC should establish guidelines regarding its investigation processes, covering the following issues.

1. When the JFTC conducts dawn raids, it should:

    (a) identify the nature and legal basis of the dawn raids;

    (b) allow an attorney to be in attendance at the dawn raids; and

    (c) allow copies to be made of the data deposited with the JFTC during the dawn raids.

2. When the JFTC conducts interviews and depositions of the relevant people, it should:

(a) identify the legal basis of the interview;

(b) explain the approximate length of the interview;

(c) allow the interviewee to contact his/her attorney during any breaks;

(d) explain the meaning of the deposition and give him/her a chance to make corrections; and

(e) establish an internal system by which complaints can be filed against an investigator's misconduct occurring during the course of an investigation.

It should be also noted that the report placed particular importance on future discussions for further improvements of the JFTC's administrative investigation processes. To further anticipate the future direction of the JFTC in relation to investigations, we should continue to follow further discussions and developments.

Malaysia

Raymond Yong and Kathleen Gooi, Rahmat Lim & Partners

New CEO for Malaysia Competition Commission appointed

Dr Mohd Khalid Abdul Samad was appointed as the new Chief Executive Officer of Malaysia Competition Commission, effective from 6 January 2015.

Dr Mohd Khalid Abdul Samad is the former Director of Consumerism Standards Division and Director of Co-operative Development Division in the Ministry of Domestic Trade, Cooperatives and Consumerisms. He has worked in various capacities at several ministries and government agencies, including Ministry of Finance, National Institute of Public Administration, Ministry of International Trade and Industry, Ministry of Information, Culture and Communications, and the Public Service Department.

Related link:

The media release can be found here.

New Zealand

David Brewster, Catherine Bembrick and Lisa Lucak, Allens

Commerce Commission files criminal proceedings against finance companies

The New Zealand Commerce Commission ("**NZCC**") is currently investigating Budget Loans and Evolution Finance for allegedly contravening the Fair Trading Act by misleading debtors in respect of, among other things:

- repossessing or threatening to repossess debtors' property when they did not have a right to repossess;
- adding interest and costs to loan balances after debtors' property had been repossessed and sold;
- telling debtors they were required to make loan payments at a higher rate than that set by the Court; and

- telling debtors that they had a shorter time to remedy a loan default before their goods were repossessed than they were allowed by law.

Both Budget Loans and Evolution Finance purchased old loan books against finance companies.

The proceedings follow the issuance in November 2013 of 'Stop Now' letters to the companies, in which the NZCC submitted it had evidence that the companies' actions contravened various provisions of the Fair Trading Act which prohibit misleading conduct and representations.

The NZCC has announced that all finance companies should be aware that the NZCC is paying close attention to their conduct. This is particularly relevant in circumstances where changes to New Zealand's consumer credit laws come into effect in 2015 and it is likely that compliance with these laws will be a focus of the NZCC this year.

Related link:

The NZCC's press release is available here.

Commerce Commission reaches settlement with two major New Zealand banks in interest rate swaps case

In August 2012, the NZCC commenced an investigation into ANZ Bank New Zealand Limited ("**ANZ**"), Westpac and ASB Bank Limited ("**ASB**") marketing and sale of swaps following media articles alleging that some banks had mis-sold swaps to rural customers.

In December 2013, the NZCC advised the three banks that it would commence proceedings alleging that they had contravened the prohibitions on misleading and deceptive conduct and the making of false and misleading representations contained in the Fair Trading Act 1986. However, prior to commencing proceedings, the NZCC reached a settlement with ANZ and ASB.

The terms of the ANZ settlement are as follows:

- ANZ will make in-court admissions that some of its conduct in selling the swaps to some customers was misleading. The NZCC will seek a High Court declaration that the conduct was misleading;
- ANZ will establish a payment fund of NZ$18.5m plus interest from which 178 customers receive payment; and
- ANZ will contribute NZ$500,000 to the NZCC's investigation costs.

The terms of the ASB settlement are similar to the ANZ settlement, except that ASB will not make court admissions (in the settlement agreement) and has agreed to a lower settlement amount – a NZ$2.7 million payment fund, NZ$250,000 donation to the Dairy Women's Network and NZ$250,000 contribution to the NZCC's costs. The NZCC stated that the lower settlement amount was due to narrower contravening conduct and a much smaller volume of complaints as compared to ANZ.

Settlement discussions with Westpac are continuing.

Singapore

Daren Shiau and Elsa Chen, Allen & Gledhill LLP

Changes to CCS board composition

On 26 December 2014, the Ministry of Trade and Industry of Singapore announced changes to the board composition of the Competition Commission of Singapore (the "**CCS**") with effect from 1 January 2015. The former Chairman of the CCS for the past 10 years, Mr Lam Chuan Leong, had stepped down and Mr Aubeck Kam has been appointed as the new Chairman. Mr Kam previously headed a sectoral regulator with extensive competition law powers and the Ministry of Communications and Information.

Two new board members with prosecutorial and sectoral regulatory backgrounds were also appointed:

- Ms Chionh Sze Chyi, Mavis, Chief Prosecutor, Attorney-General's Chambers; and
- Mr Tan Kok Kiong, Andrew, Chief Executive, Maritime and Port Authority of Singapore.

Related links:

The CCS media release on board changes with effect 1 January 2015 can be found here.

The media release by the Ministry of Trade and Industry of Singapore on board changes at the CCS can be found here.

CCS issues second global cartel decision on 11 air freight forwarders triggered by market inquiries

On 11 December 2014, the CCS announced that it had issued an Infringement Decision against 11 freight forwarders and their Singapore subsidiaries (collectively, the "**Parties**") for infringing Section 34 of the Competition Act, Chapter 50B of Singapore (the "**Act**") by collectively fixing certain fees and surcharges, and exchanging price and customer information in relation to the provision of air freight forwarding services for shipments from Japan to Singapore (the "**Conduct**"). Both the Japan and related Singapore companies were found to be jointly and severally liable for the infringement, acting as a single economic entity.

This marked the CCS' second international cartel case involving foreign-registered companies and their Singapore subsidiaries or affiliates, following the CCS' decision against a global cartel involving ball bearings manufacturers on 27 May 2014. Financial penalties were imposed on 10 out of the 11 freight forwarding companies, amounting to a total of S$7m (approximately US$5.8m), with the highest penalties amounting to S$2m (approximately US$1.7m) and S$2m approximately US$1.6m) respectively.

The CCS became aware in 2011 that international freight forwarders may have been involved in anti-competitive activity that had an impact in Singapore, and made inquiries with freight forwarders in this regard. The CCS subsequently commenced its investigation in July 2012 pursuant to multiple leniency applications received following the inquiries. The CCS found that:

(a) the Conduct was carried out by both the Japan and related Singapore companies, acting as a single economic entity;

(b) the agreement and/or concerted practice reached between the Parties in Japan prevented, restricted or distorted competition within Singapore for the provision of air freight forwarding services from Japan to Singapore as, *inter alia*, the target of the Parties' agreement and/or concerted practice was shipments from Japan destined for overseas markets, including Singapore; and

(c) discussions on the fees and surcharges commenced in September 2002 and November 2004 respectively and ended on 12 November 2007.

Allen & Gledhill LLP represented the first-in-line leniency applicant in securing a 100 per cent. reduction in the financial penalty.

Related Links:

The CCS infringement decision can be found here.

First acquisition cleared by the CCS pursuant to alternative exit argument

On 28 November 2014, the CCS issued its first clearance on the basis of the alternative exit argument pertaining to the proposed acquisition (the "**Proposed Transaction**") of Tiger Airways Holdings Limited ("**Tigerair Holdings**") by Singapore Airlines Limited ("**SIA**") (collectively, the "**Parties**").

Pursuant to the Proposed Transaction, SIA will acquire new shares in Tigerair Holdings and convert all the perpetual convertible capital securities it holds in Tigerair Holdings into new shares in the capital of Tigerair Holdings. The increase in SIA's shareholding interest in Tigerair Holdings means that will become a subsidiary of SIA. Pursuant to an irrevocable undertaking entered into with Tigerair Holdings, SIA will also subscribe for a pro-rata entitlement of new shares in the capital of Tigerair Holdings ("**Rights Shares**") and subscribe for any excess Rights Shares, up to a certain aggregate value.

For the purposes of the merger assessment, the CCS determined that SIA and Tigerair Holdings compete in the markets for the supply of international air passenger transport services on:

(a) economy-class for full-service airlines; and

(b) all classes of seats for low-cost carriers on routes operated by both SIA and its subsidiaries and Tiger Airways Singapore Pte. Ltd., and which involve Singapore as part of an origin-destination pair.

On the above basis, the CCS assessed the impact of the Proposed Transaction on 41 passenger air transport routes.

The CCS agreed that relative to the scenario where Tigerair Holdings would have exited its operations in the absence of the Proposed Transaction. The Proposed Transaction would be less detrimental to competition in Singapore. If Tigerair Holdings was to exit the markets, this would have caused disruptions to passengers and to the connectivity of the Singapore air hub. Following its assessment, the CCS concluded, within the Phase 1 review, that the Proposed Transaction would not result in a substantial lessening of competition and therefore would not infringe Section 54 of the Competition Act, Chapter 50B of Singapore.

Allen & Gledhill LLP represented the Parties in relation to the competition clearance.

Related links:

The CCS Grounds of Decision for the proposed acquisition by Singapore Airlines Limited of Tiger Airways Holdings Limited can be found here.

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

South Korea

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

The KFTC focuses on the IP/IT industries

The Korea Fair Trade Commission ("**KFTC**") recently reported its annual plan to President Park of Korea. The plan covers all aspects of KFTC's activities for 2015. One of the areas the KFTC indicated it will focus on is the IP/IT sector, especially with regards to software licensing, the mobile industry and licensing of IP. The KFTC has indicated it will scrutinise the mobile industry, including the mobile operating system industry or social networking service for unfair trade practices. In addition, it announced it will carefully review and focus on the IT sector for abuse of dominance in software licensing or the licensing of IP which may include tying arrangements, standard essential patents ("**SEP**") abuse or de facto SEP abuse.

In line with its focus on IP/IT areas as well as other considerations, the KFTC has decided to extend the Memorandum of Understanding ("**MOU**") it has with the National Development and Reform Commission ("**NDRC**") of the People's Republic of China. The NDRC handles unfair trade practices in relation to pricing. The MOU between the two parties covers such areas as information sharing, opinions and cooperation, and enhanced enforcement power as well as providing for regular meetings to discuss policy considerations as well as continued cooperation.

Taiwan

Matt Liu and Sonia Chen, Tsar & Tsai Law Firm

Substantial Amendment to the Taiwan Fair Trade Law

On 22 January 2015, the long-awaited amendment to the Taiwan Fair Trade Act ("**TFTA**") was passed by the Taiwan legislative council. Substantial changes were made to the provisions of, among others, merger control, concerted actions, statute of limitations, penalties, remedies, and the investigation mechanism. The amendment is considered as the most important reform of Taiwan competition law in the last 20 years.

The major amendments to the TFTA are as follows:

1. Merger control:

   In respect of merger control, it is specified that a natural person or a party holding a controlling interest in another enterprise shall be deemed as an enterprise within the meaning of the relevant merger control provisions. Moreover, in calculating the shares acquired and the turnover threshold, the shares held by or the turnover of a merging enterprise's affiliates shall also be included. The Taiwan Fair Trade Commission ("**TFTC**") is also authorised to promulgate different turnover thresholds for different industries.

2. Concerted actions:

   A provision establishing a presumption of "meeting of the minds" between parties engaging in concerted actions based on such factors as market conditions, characteristics of goods or services, cost and profit considerations, economic rationale is to be added to the TFTA. In addition, the amendment also adds "any other joint action necessary for fostering industrial development, technical innovation, or management efficiency" as a catch-all ground for parties to apply for the TFTC's approval for engaging in a concerted action.

3. Investigations:

   During an investigation, the TFTC may suspend an investigation if the investigated enterprise undertakes to adopt specific measures to cease and correct the allegedly illegal action within a given period of time. The TFTC may terminate its investigation if such corrective measures are implemented. The TFTC shall resume its investigation if such measures are not implemented, the facts underlying the suspension decision have a material change, or the suspension decision is made based on incomplete or false information provided by the investigated enterprise.

4. Statute of limitations:

   The statute of limitations for the TFTC to impose penalties is also extended from three years to five years in respect of illegal mergers, abuse of monopolistic power, concerted actions, and restrictions of competition. As for penalties, the relevant caps for penalties for each type of illegal action under the TFTA are adjusted or raised.

5. Appeal procedures:

   The administrative appeal procedure has been abolished with respect to appealing a TFTC decision. A party who is not satisfied with a TFTC decision may resort to the Court directly without having to file for administrative appeal with the Administrative Appeal Committee of the Executive Yuan.

Lastly, it is worth noting that the legislative council did not pass the draft provision which confers upon the TFTC the power to conduct dawn raid (i.e. search and seizure).

As noted above, these amendments are a significant development for competition law in Taiwan and should be duly noted going forward.

Vietnam

Linh Bui, Allens

Vietnam issued first ever merger control exemption

On 22 December 2014, the Prime Minister of Vietnam granted an exemption for the merger of the two largest card unions in Vietnam, being Vietnam National Financial Switching Joint Stock Co. ("**Banknetvn**") and Smartlink Card Services Joint Stock Company ("**Smartlink**"). This merger marks the first milestone in the process of unifying three card unions on the market into one single system of Banknetvn.

The exemption by the Prime Minister is the first ever exemption in Vietnam granted under the Law on Competition for a prohibited economic concentration. Under the law, an economic concentration in the form of consolidation, merger, acquisition or joint venture where the parties have a combined market share of 30% or more in the relevant market must be notified to the Vietnam Competition Authority ("**VCA**"). The economic concentration will be prohibited if the combined market share of the parties exceeds 50%, unless an exemption is granted. A transaction can be exempted if a participating party is at risk of being dissolved or becoming bankrupt; or the transaction has the effect of '*promotion of export or contribution to socio-economic development and/or to technical and technological progress*'.

The merger of Banknetvn and Smartlink falls into the latter category of exemption cases. According to the regulator's assessment, the merger will help banks save resources and costs in investment in infrastructure and will promote non-cash payments in Vietnam. The Prime Minister's exemption will be in effect for five years and will be automatically extended for a further five years if no violation occurs. At the end of each five-year period, Banknetvn to report to the VCA on the implementation of the exemption conditions as granted in the decision on exemption.

The merger of Banknetvn and Smartlink is a part of the Vietnam Government's plan to establish a central card switching center. After this merger, Banknetvn will be the only card union on the Vietnamese market with 25% stake held by the State Bank of Vietnam.