Unbundling Competition

Episode 4: Competition law in Southeast Asia – Vietnam

In this episode, Adelaide Luke, who is partner and Head of Competition Asia in the HSF Hong Kong office, and Justin Gisz, who is a partner and a competition specialist from Frasers Law Company in Ho Chi Minh City, discuss the new Law on Competition (the Law) and competition regulator in Vietnam.

As with Thailand, Indonesia and Singapore, discussed in our previous episodes, Vietnam was one of the first countries in Southeast Asia to introduce a competition law around two decades ago. However, for various reasons, this law was not well enforced, and there were only a small number enforcement or merger control decisions.

The new Law, which came into effect in 2019, aims at a more active enforcement of competition policy. The previous dual competition authorities will be merged into a single regulatory body, the National Competition Commission (NCC), with more robust and independent investigatory and adjudicative powers.

The new Law differs substantively from the old law in several key respects. One is the shift towards a more effects-based approach for assessing anti-competitive conduct. Apart from so-called “hardcore” conduct (such as cartel conduct), which remains “per se” illegal (and no longer subject to a 30% market share “safe harbour” as under the old law), NCC will now need to show that the conduct in question had an impact on competition in the relevant market. The new law provides a number of factors relevant in this assessment.

“Dominance” was a key focus of the old law. The new Law also sets a rebuttable presumption of dominance at the low threshold of 30% for a company, or 50% for collective dominance. On top of that, dominance is deemed to exist where a company has “substantial market power”, even if it is below the market share threshold.

On the merger control front, the new filing regime departs from the old regime, under which thresholds were based purely on market shares, making it difficult to know when filings were triggered. The new regime sets out three alternative thresholds, based on market share, turnover/asset value and transaction value, likely to lead to an increase in filings. Control will be a key element for assessing whether a transaction requires notification, though it is unclear if negative control such as veto rights can trigger a filing (and therefore whether 50:50 joint ventures will be notifiable).

As with the new law in Thailand, discussed in our first episode, the new Law in Vietnam does leave certain points unclear. However, such points will no doubt be resolved as the new NCC becomes more active.