Competition Distortions Dossier

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1. Uber Selling its Southeast Asia Unit to Grab in Exchange for Stake


https://www.cnbc.com

Uber is preparing to sell its Southeast Asia business to Singapore's Grab taxi in exchange for a sizable stake in the company, according to sources with knowledge of the matter. The move would mimic Uber's strategy in China, where the company sold its ride-hailing operation to major Chinese ride-sharing Didi for 20 percent ownership, and Russia, where the company merged its local business with Yandex's ride-hailing business for a 37 percent stake. The objective would be to help Uber reel in its costs in preparation for an initial public offering (IPO) as soon as next year.

A tie-up with Grab would also play into SoftBank's efforts to exert greater control over the global ride-sharing market. In January 2018, the Japanese tech conglomerate bought about a 15 percent stake in Uber, mostly buying shares from existing investors. SoftBank also owns shares in Grab, Didi, India's Ola and Brazil's 99, and has publicly expressed interest in Lyft, Uber's main rival in US.

https://www.cnbc.com/2018/02/16/uber-preparing-to-sell-southeast-asia-unit-to-grab.html

Food for Thought

This is not the first time Uber made such moves. In 2016, Uber sold its China business to domestic rival Didi Chuxing and withdrew from the Chinese market, conceding market dominance to the domestic service provider. There was a stir in public opinion about this movement then because Uber had just entered into this largest market in Asia for two years.

Although they did not have much concern about antitrust rules, it was not surprising that only Chinese applications could run in China. But this time, when Uber decides to withdraw from the Southeast Asia market to cede market dominance to and become a shareholder of Grab, customers and drivers are both worried that this acquisition will reduce competition, resulting in higher fares and fewer promotional incentives.

Competition authorities from many countries in Southeast Asia are also showing their concerns about this cross-border merger between Uber and Grab. Singapore and Vietnam launched investigations, while the Philippines summoned the two companies for questioning, and Malaysia put both parties on notice. The regulators are asking whether the deal will likely lead to higher prices, fewer choices for consumers, poor service, or data privacy infractions. It is easy to see that these competition authorities were quite passive before this case went official. They only asked Uber and Grab to report about the deal when it had been reported widely in media. Both Uber and Grab might face sanctions in the coming days with high fines since there

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are some indications that the deal is breaching the requirements for pre-merger notification to competition authorities.

According to the Competition Law 2004 of Vietnam, if the combined market shares of the merging parties account for more than 50 percent on the relevant market, the deal will be prohibited. The biggest challenge at the moment is to determine which companies are in the same relevant market with Uber and Grab for calculating market shares, when the debates over their business model is still not yet resolved. If they are considered as taxi businesses, the product markets will be expanded and Uber and Grab's combined market shares might not be high enough to trigger merger control. If they are not considered as taxi companies, but providers of ride-hailing applications, the current regulatory approach which is to build a common legal framework for taxi companies and the likes of Uber and Grab will turn out to be wrong.

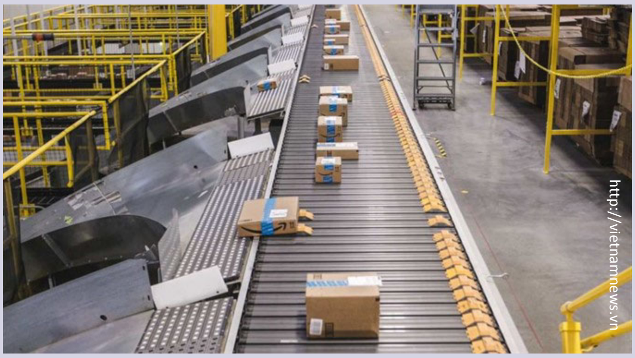
Not just Vietnam, but the other competition authorities in Southeast Asia might also face the same difficulties in finding a solution for this cross-border deal due to the business model of Uber and Grab. The Competition and Consumer Commission of Singapore (CCCS), for example, defined the relevant market in this case to be one of the "chauffeured personal point-to-point transport passenger and booking services in Singapore". The case will be historic because it is the first time that competition authorities in Southeast Asia have to deal with businesses in the Digital Economy.

Last but not least, the issue of user data transfer between Grab and Uber needs to be considered and clarified as well. Grab should be required to tell regulators what they will do with users' information. Singapore's proposed measures would preclude Grab and Uber from swapping confidential information for now. In the meantime, the National Privacy Commission of the Phlippines said Grab has assured that there will be no sharing of any user data with Uber.

2. Amazon to Enter Vietnam

The world's leading E-commerce player, Amazon, is planning to enter the Vietnamese market, announced the Vietnam E-commerce Association (VECOM).

Amazon is expected to support Vietnamese enterprises in exporting online through the platform. Accordingly, Amazon will kick off a cooperation programme to support Vietnamese small and medium-sized enterprises to sell and export goods through its ecosystem at the Vietnam Online Business Forum 2018.



Before Amazon, Lazada entered Vietnam and dominated some one third of the country's online shopping market. Later, Alibaba paid US$1bn to buy stakes at Lazada to enter the Southeast Asian market, including Vietnam.

http://vietnamnews.vn/economy/423938/amazon-to-enter-viet-nam.html#Clw5eLazKmzRLcVo.97

Food for Thought

In fact, the cooperation between the Vietnam E-commerce Association (VECOM) and Amazon has taken place since the end of 2017 in which VECOM played a supporting role, helping Amazon to learn more about the Vietnamese market in preparation for the official entry. Currently, Amazon is the biggest E-commerce corporation and online retailer in the world with half a million employees. In 2017, the revenue of Amazon reached nealy US$178bn. Amazon's involvement with the two-step strategy comprising: cross-border exports and the imports of goods from Vietnam – is thus much expected to contribute to promoting the E-commerce sector of the country.

According to VECOM, the growth rate of Vietnam's E-commerce sector in 2017 is over 25 percent and can be maintained in the 2018-2020 period, with online revenue expected to reach US$10bn by 2020. The growth rates of some specific sectors are also extremely good. For online retailers, the revenue growth rate in 2017 is 35 percent, according to data collected from thousands of E-commerce websites.

An indirect survey of logistic companies also showed that the revenue growth rate of logistic service is from 62 percent to 200 percent per annum. In the field of payment, in 2017, the number of online transactions using domestic card increased by 50 percent compared to 2016, while the value of transaction increased by 75 percent, according to *information from the National Payment Corporation of Vietnam. Regarding online marketing, some affiliate marketing companies have shown growth rates from 100 percent to 200 percent in 2017.*

Vietnam is the second market Amazon entered in Southeast Asia after Singapore. Entering both markets within a relatively short period of time, Amazon seems to be having big plans with this region. E-commerce sales in the region look promising, according to a recent research study by Google and the investment firm Temasek Holdings, which predicted sales in Southeast Asia to grow 32 percent annually from US$5.5bn in 2015 to US$88bn in 2025, making up 6 percent of total retail sales.

However, in entering the Vietnam market, Amazon will face cut-throat competiton from Alibaba and JD.com. Currently, in Vietnam, Lazada, which is owned up to 83 percent of capital by Alibaba, is controlling about 30 percent of the E-commerce market. Meanwhile, JD.com has also shown interest in this market by investing about US$50mn in Tiki – an online enterprise in Vietnam. In addition, book and ebook (like Kindle) businesses, which are amongt the biggest strengths of Amazon, might be in trouble in Vietnam as the government excercises very tight censorship and control over the content and the distribution network.

In addition to specialised shopping websites, shopping through social networks, such as Facebook, Zalo, etc. is also very popular amongst consumers in Vietnam. This business model is often on a small scale, but the quantity is quite large, and more importantly, the cost is negligible, since the tax authority has not been able to regulate it. As a result, competition might be skewed, as low costs lead to lower product prices, so this model of 'social media sales' is still very much welcomed by consumers. In the meanwhile, well-known shopping websites, which have to invest heavily in human resources and operating systems, are facing a lot of difficulties from the cost burdens.

It is easy to see that market entry into Vietnam by big corporations is a good signal for domestic enterprises and consumers in Vietnam. The market will have more suppliers, domestic enterprises will have chance to get access to the global economy and competition will be healthier, as a result. Consumers will have more choices, with more products being imported from other countries. So for the time being, the doors are wide open.

3. Vietnam's State Cable TV under Scrutiny for Removal of Foreign Channels

VTVCab removed 23 popular foreign channels and replaced them with 12 new ones without proper notice. Vietnam's competition and consumer protection watchdog has asked the State-owned cable television service provider VTVCab to report on the removal of 23 foreign channels from

its service since the start of April 2018. The request was made after the agency received complaints from local subscribers denouncing the service provider of making the move without proper notice.

The channels being removed include popular ones, such as HBO, Star Movie, CineMAX, RED, AXN, WarnerTV, Discovery, Animal Planet, National Geographic, Fox Sports, Cartoon Network, Disney Channel, CNN, and BBC News. They were replaced by 12 brand new channels including Movie 1, Hollywood Classics, FOX, Planer Earth, History, Baby TV, Cartoon Kids and Happy Kids, many of which had never been known in Vietnam.

https://tuoitrenews.vn/news/business/20180404/vietnams-state-cable-tv-under-scrutiny-for-removal-of-foreign-channels/44934.html

Food for Thought

This is not the first time VTVCab showed disregard for their customers. A few months ago, when football fans were watching the final stages of the European football tournament, VTVCab released a statement announcing that they would stop *broadcasting the UEFA Champions League (UCL – C1) and the UEFA Europa League (UEL – C3) due to copyright infringement by broadcasters and organisations in Vietnam. According to VTVCab, the company which holds the broadcasting rights of the UEL and the UCL has stopped providing signals and requested VTVCab to stop transmitting, broadcasting, advertising and distributing news about these tournaments.*

In addition, in June 2017, VTVCab suddently stopped broadcasting a series of channels, such as NGC and FoxSport 2 on analog cable TV in Hanoi without informing its subcribers. The reason was that they wanted to change and strengthen the broadcasting of quality domestic television channels. These actions of VTVCab made its subcribers feel that their rights are not respected. The warranty of broadcasting rights is the responsibility of VTVCab. When these channels were removed, subcribers' interests were undoubtedly harmed since they could no longer watch their favourite channels. Meanwhile, VTVCab refuses to accept any responsibility for its actions and does not intend to compensate or reduce charges to subscribers.

According to the Decision No. 02/2012/QD-TTg of January 13, 2012 promulgating the list of essential goods and services for which standardised contract forms and general transaction conditions must be registered, paid television services provided by VTVCab is one such service sector in which business organisations and individuals shall have to register their standardised contract forms and general transaction conditions with the relevant State agencies before signing contracts with their subcribers.

VTVCab has henceforth registered their standardised contract forms with the Vietnam Competition and Consumer Authority (VCCA). Pursuant to Article 6, Paragraph 6.5 of this standardised contract form, VTVCab can only change the number of channels and channels in each service package after posting on their website and notifying their subcribers by one of the two ways: (1) sending direct text message to the mobile number of their subcribers (if their subcribers want to be notified by text messages); or (2) sending notice to their subscribers at their registered addresses.

Besides, according to Article 5, Paragraph 5.4 of this standardised contract form, if subcribers no longer have the demand or disagree when VTVCab change the number of channels and channels in the service package, they have right to unilaterally terminate the contract. Moreover, subscribers also have right to complain to VTVCab for settlement within five working days from the day VTVCab receives the complaint in accordance with Article 6, Clause 6.12 of the standardised contract form.

In accordance with these provisions, subscribers could now choose to terminate their contracts with VTVCab and receive a refund of the remaining value of the contracts, should they wish to do so, said the VCCA. In addition, VTVCab might be subject to other sanctions and is obliged to make public corrections, in accordance with the Law on the Protection of Consumer Interests 2010 of Vietnam.

4. Vietnam Plans to Increase Environment Tax on Petroleum Products

Vietnam is looking to increase an environmental protection duty imposed on fuel products from the current level of VND3,000 to VND4,000 per litre, according to a proposed amendment of the Environment Protection Law. If approved, the increase will be applied from July 01, 2018.

Explaining the hike, the Ministry of Finance (MoF) said it would add VND15.7tn (approximately US$690mn) to the State Budget, offsetting a shortfall caused by a fuel import tax cut. Vietnam is said to have collected VND42.4tn in revenue from environmental taxes in 2016, increasing by nearly 57 percent from 2015. During the same period, spending on environmental protection reached just VND12.3tn, accounting for 29 percent of the tax revenue.

https://e.vnexpress.net/news/business/vietnam-plans-to-increase-environment-tax-on-petroleum-products-3714579.html

Food for Thought

According to the MoF, the proposed tax hike would help to improve awareness on environmental protection, contribute to limiting the consumption of polluting products and services, and offset decreasing collections from import tariff, which is going to be eliminated under several newly signed Free Trade Agreements. The proposal was also expected to prevent smuggling as petroleum prices in Vietnam are currently considered as being significantly lower than other countries in the region.

However, the proposal has been quite critically received by business and consumers alike. Since petroleum is an important input for the transportation, agriculture and seafood sectors, such a tax hike would undoubtedly lead to price increases of many products and services, affecting not only the consumers, but also other enterprises and the economy, as a whole. Most Vietnamese are using at least one type or another of fuel-related vehicles, this might mean they must spend triple the budget on transportation alone.

Many experts are calling for a comprehensive and objective assessment of the impact of an environment tax increase for fuels on the economy and social welfare. Regulatory Impact Assessment (RIA) is mandatory under the Law on the Promulgation of Legal Normative Documents 2015 of Vietnam. Accordingly, a RIA report on the impacts of policies introduced in a draft law or ordinance must be posted on the portal of the National Assembly, or that of the Government, for at least 30 days.

In addition to collect the opinions from those directly affected by the proposed policies as well as relevant agencies and organisations, it is compulsory for the proposing agency to receive and consider opinions from the MoF, the Ministry of Home Affairs, the Ministry of Foreign Affairs and the Ministry of Justice. The contents put up for public comments must be relevant to each target group and focus on important policies directly affecting the business community and the public.

Your views and comments are welcome at: *hanoi@cuts.org*

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