



PROCEEDINGS

2009 Mid-year Conference of the Asian Competition Forum

“Effects of Anti-competitive Activities in Small and Developing Economies”

May 26, 2009
Hanoi, Vietnam

Background

The Asian Competition Forum (ACF) was founded on the 11th of December 2005 by a group of academics in Law and Economics and experts in Competition Law in Asia Pacific region. This overall objective of the non-profit making organization is to promote economic competition through research and study of Law and Economics by means of teaching & training courses, conferences & seminars, publications and production of teaching materials.

The Asian Competition Forum (ACF) has been established with the following objectives:

- (a) To promote market-based solutions to economic problems through the enhancement of competition;
- (b) To conduct research into competition policy and law issues;
- (c) To propose the adoption of appropriate policy and legal strategies for the Asian regional and national markets;
- (d) To provide competition policy and legal education and training for government officials, professionals, academics and students through the use of conferences, seminars and other traditional as well as multimedia channels;
- (g) To create and provide dedicated competition teaching materials and courses involving a cross-disciplinary approach to include economics, law and public policy perspectives which might lead to academic awards or not; *inter alia*.

The 2009 mid-year conference of the Asian Competition Forum, organized on the 26th of May 2009 in Hanoi, Vietnam, was hosted by the Vietnamese Competition Council (VCC) in collaboration with the Consumer Unity and Trust Society, Hanoi Resource Centre (CUTS HRC). The theme of this conference was “Effects of Anti-competitive Activities in Small and Developing Economies”.

The conference was well-attended by government officials at ministerial level, international experts, scholars, representatives of embassies and development cooperation agencies, law firms, as well as the business community both from locals and overseas. A great number of press/media representatives also attended and delivered reports.



The Following is the detailed Proceedings of the conference.

Morning session

- **Opening speech by Prof. Dr. Le Danh Vinh – Vice Minister of Industry and Trade of Vietnam, President of VCC**

First and foremost, Dr. Vinh extended a warm welcome to all domestic and international participants. He started with some introduction about the Competition Law 2004 of Vietnam, which is being enforced by 2 national bodies which are Vietnam Competition Administration Department (VCAD) and Vietnam Competition Council (VCC). He also listed the wide spectrum of issues to be discussed in the conference as well as provided some general information about the ACF. He trusted the conference, with valuable knowledge from prominent experts, would be of great help to such relevant authorities of Vietnam as VCAD and VCC in enforcing the Law.

As a conclusion, he would also like to take the occasion to express his sincere thanks to ACF and CUTS HRC for valuable cooperation. Finally, he wished for the success of the conference.

- **Anticompetitive Agreements in Small and Developing Economies - Mr. Timothy Hughes, Attorney, Federal Trade Commission, USA**

Dr Timothy Hughes opined that small and developing countries present unique issues to those formulating competition policies and enforcing competition laws. His presentation mostly aimed at answering a question: does size matter for competition purposes and if so, how much? In his opinion, the size of the economy is not as important as the development level of a country in applying competition policies. Furthermore, a small product or geographic markets is a more significant factor for competition purposes than a small overall economy. And finally, he stressed that whether the market is small or large, the same standards should be used in examining conduct, including agreements among competitors.

- **International cartels and their effects on developing economies - Ms. Alice Pham, Director of CUTS Hanoi Resource Centre**

Ms. Pham gave a brief introduction about CUTS and its areas of operation as an introduction. With regard to international cartels, her presentation was limited to private international cartels only, with analysis from different aspects such as their sustainability, prevalence, secrecy, effects evaluation as well as effects measurement. Besides, she made further analysis and remarks with reference to some other research findings. Finally, she stated various



negative factors which result in developing countries' limited capacity to deal with international cartels.

➤ **Competition Law Enforcement by Developing Countries on International Cartels and Agreements – Prof. Toshiaki Takigawa, Kansai Law University, Japan**

Prof. Takigawa's presentation aimed to propose recommendations regarding competition law enforcement by developing countries against international cartels and agreements. He first looked into current situation of extraterritorial application of competition laws, and proposed a recommended application for developing countries. In relation to extraterritorial application, how to properly calculate and levy fines on foreign companies is the vitally important issue in competition law enforcement against international cartels. Taking the recent *Marine Hose* case in Japan as an example, he considered how best to levy fines on foreign companies. Next, this presentation took up technology transfer agreements, which are basically beneficial to developing countries but still need competition law application. Based on Japanese experiences, he recommended setting up IP licensing guideline neutrally applicable to domestic and foreign companies, and outline of recommended contents of such guideline is explained.

➤ **Domestic Monopolistic Practices in Developing Economies - Prof. Ningrum Sirait, University of North Sumatra, Indonesia**

In the first place, Prof. Sirait reasoned that some firms acquired a dominant position because of protection and political ties to the government and their long-lasting existence. Then she regard monopolist in economies in transition from different perspective, especially in countries which have enacted Antimonopoly Laws as opposed to those which do not have any competition law or policy, quoting the experiences in Indonesia as an example. She also stressed the importance of the Antimonopoly Law but added that the effective enforcement of the law is vital. She also observed that after significant changes in the ownership of State Owned Companies or local monopolies, some prefer to maintain national champions even taken into account their negative impact on efficiency. Finally, she suggested structural remedies through divestiture to introduce competition in specific industry sectors.

➤ **Domestic Monopolistic Practices in Developing Economies - Prof. Mark WILLIAMS, Solicitor, Consultant Solicitor, Honorary Legal Adviser, Hong Kong Polytechnic University, Hong Kong**

Overall, there are five parts in his presentation. After a brief introduction, he gave an overview into different industrial policies and national champions with examples from Asian countries such as Japan, Korea, China. He then listed some common abuses of market power by monopolies, which fall into 2 categories: pricing abuses and non-price abuses. With regard to regulation or competition, he drew attention to the most relevant issues such as utility and

non-utility sectors, regulation of ‘natural monopolies’, extent of the monopoly franchise, types of regulation – prices, service requirements, quality of service, national coverage, limits on scope of business, public or private ownership, regulation transforming into competition, danger of regulatory capture and creating viable competitive markets. In the final part, institutions and enforcement in these countries were also mentioned. In conclusion, he made some recommendations which can work for better policy implementation in developing economies.

Afternoon session

➤ Transnational Mergers and Acquisition: Practical Issues for Small Economies – Dr. Andrew Simpson, Director of Regulatory Affairs, PACNET

In his presentation, three themes were discussed. The first is that trans-national mergers are of concern to an agency really for their local consequences: Will local customers be worse off? That’s why normal merger analysis is needed. The second is that inter-agency cooperation has certain benefits both for agencies in terms of access to info held overseas, sharing analysis and for parties in terms of reduced transaction costs. The third is that international coordination is evolving extraterritoriality towards “soft law” coordination. Bi-lateral agreements are taking place between agencies, for mutual assistance. For better analysis, a number of relevant cases were also presented in his presentation.

➤ The Effects of Foreign Acquisitions of Domestic Firms: An Economic Analysis – Prof. Lin Ping, Head of Department of Economics, Lingnan University, PRC

From the standard economic analysis of merger, which is the Williamson trade-off, Prof. Lin presented the various social benefits and social costs of a merger. In summary, foreign acquisitions of domestic firms may generate greater efficiencies (synergy effect, technology transfer/spillover effects), thereby more likely benefiting domestic consumers. However, the gains to the merging parties may not be part of domestic welfare. To conclude, he observed that competition policy and industrial policy should be conducted separately, as it seems much difficult to harmonize the two.

➤ Comments on the Prohibition by MOFCOM on the Acquisition of Huiyuan by Coca Cola Prof. Wang Xiaoye - Director of Economic Law Department, Institute of Law, China Academy of Social Sciences, PRC

Her presentation focused on the MOFCOM’s *Notice* [2009] No. 22 released by the Antimonopoly Bureau of MOFCOM to prohibit the proposed acquisition of the Huiyuan Fruit Juice Company Ltd. by Coca-Cola pursuant to the Antimonopoly Law (AML) of China. This decision represents the first time that MOFCOM has outright prohibited a reported transaction and demonstrates that Chinese AML has also real teeth. Despite the remaining flaws, this decision should be deemed as correct, because it was mainly out of the



consideration to protect competition and consumer choice. With this case, she expressed hope that the state-owned enterprises, in particular the large ones, be equally treated as private or foreign investors in the context of Chinese Antimonopoly Law.

- **Cooperation in Asia and JFTC – JICA Project in Vietnam – Ms Kumiko Tanaka, Chief advisor of the JICA Project VCA-JFTC, Japanese permanent advisor for VCAD**

She first stated how the Competition Law has been introduced and implemented in Asia. Then she highlighted technical assistance by JFTC in countries in many ways such as: Assistance to more practical matters for accumulating and diversifying the cases, assistance for real enforcement of the law, assistance to basic matters. The assistance will depend on the specific situations in each country. She also introduced the on-going project “Capacity Building for Enforcement of Competition Law and Implementation of Competition Policy in Vietnam”, which is undertaken by JFTC in cooperation with VCAD in Vietnam.

- **Closing address: Prof. Mark WILLIAMS, Solicitor, Consultant Solicitor, Honorary Legal Adviser, The Hong Kong Polytechnic University**

At the end of the workshop, Professor Mark Williams gave special thanks to CUTS and VCAD for helpful cooperation in organizing the event. He also congratulated the success of the workshop and give heartfelt thanks to the very attentive and contributive audience.