
Antitrust & Competition Practice

Guidance on notification procedures of economic concentration cases to the Ministry of Industry and Trade

On 14 May 2020, the Ministry of Industry and Trade (“**MOIT**”) published a guidance on notification procedures of economic concentration cases during the transitional period, because the new Vietnam Competition Commission has not been established yet (“**Guidance**”). This Guidance is based on the Law on Competition and Decree 35/2020/ND-CP detailing a number of Articles of the Law on Competition.

1. Application dossier to notify the economic concentration

An enterprise can send a notification application on economic concentration to MOIT through the MOIT’s public service online portal, through postal or direct submission. The application dossier shall include the following documents:¹

- (i) An official letter from the participating enterprises to the MOIT on notification of economic concentration (template TB-TKT issued with this Guidance);
- (ii) Attachments to the official letter include:
 - (1) Drafted contracts, memorandum of understanding or other form of agreements on the economic concentration of the participating enterprises;
 - (2) Certified copies of Enterprise Registration Certificates or equivalent incorporation documents of the participating enterprises;
 - (3) Audited financial statements of each participating enterprises in two consecutive years before the notification. If the enterprises are newly established, the financial statements will be from the time of establishment to the time of notification;
 - (4) The list of parent companies, subsidiaries, associate companies, branches, representative offices and other affiliated entities of the participating enterprises (if any);
 - (5) List of goods traded and/or services provided by the participating enterprises;

¹ Law on Competition, Article 34.

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- (6) Information on the market shares of the participating enterprises in the relevant market within two consecutive years before the notification;
- (7) Plans to remedy the restraint effect on competition of the economic concentration;
- (8) Assessment report on the positive effects of the economic concentration and measures to enhance such positive effects.

The enterprises will be held accountable for the accuracy and truthfulness of the provided information and documents.

2. Evaluation process of the economic concentration

Step 1: Acceptance of the application dossier

The MOIT will accept the application dossier and then forward it to the Vietnam Competition and Consumer Authority (“VCCA”) to evaluate.

Step 2: Check of the application dossier’s validity

The VCCA will check whether the dossier is full and valid within 07 days from receiving the application dossier. The VCCA will assess the following criteria: (i) The participating enterprises are within the scope of application of the Law on Competition; (ii) The economic concentration has the suitable form and falls under the case of notification of the Law on Competition; and (iii) the application dossier is full and valid as prescribed by Article 34 of the Law on Competition.

Step 3: Preliminary assessment

The preliminary assessment will take 30 days from the date of receiving a full and sufficient application dossier. The criteria for preliminary assessment are verification of the participating enterprises and their relationships; determination of form of economic concentration, relevant market, combined market share; and degree of economic concentration before and after the economic concentration.

At least 05 days before the thirty-day time limit ended, the VCCA will report to the MOIT. The VCCA will either propose to the MOIT to allow the economic concentration, or notify the participating enterprises that their case is subject to official assessment.

Step 4: Official assessment

The official assessment will take 90 days from the date of the preliminary assessment result, plus 60 days of extension for complicated cases. The official assessment will evaluate the

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restraint effect on competition and plans to reduce the restraint effects (if any); positive effect of the economic concentration and plans to enhance the positive effects (if any); combined assessment of both restraint and positive effects; and applicable conditions to the economic concentration.

At least 20 days before the ninety-day time limit ended, VCCA will report to the MOIT. The VCCA will either propose to the MOIT to clear, conditionally clear or prohibit the economic concentration. The VCCA will also make recommendations to the enterprise(s) post-economic concentration, in order to ensure the competitiveness of the relevant market.

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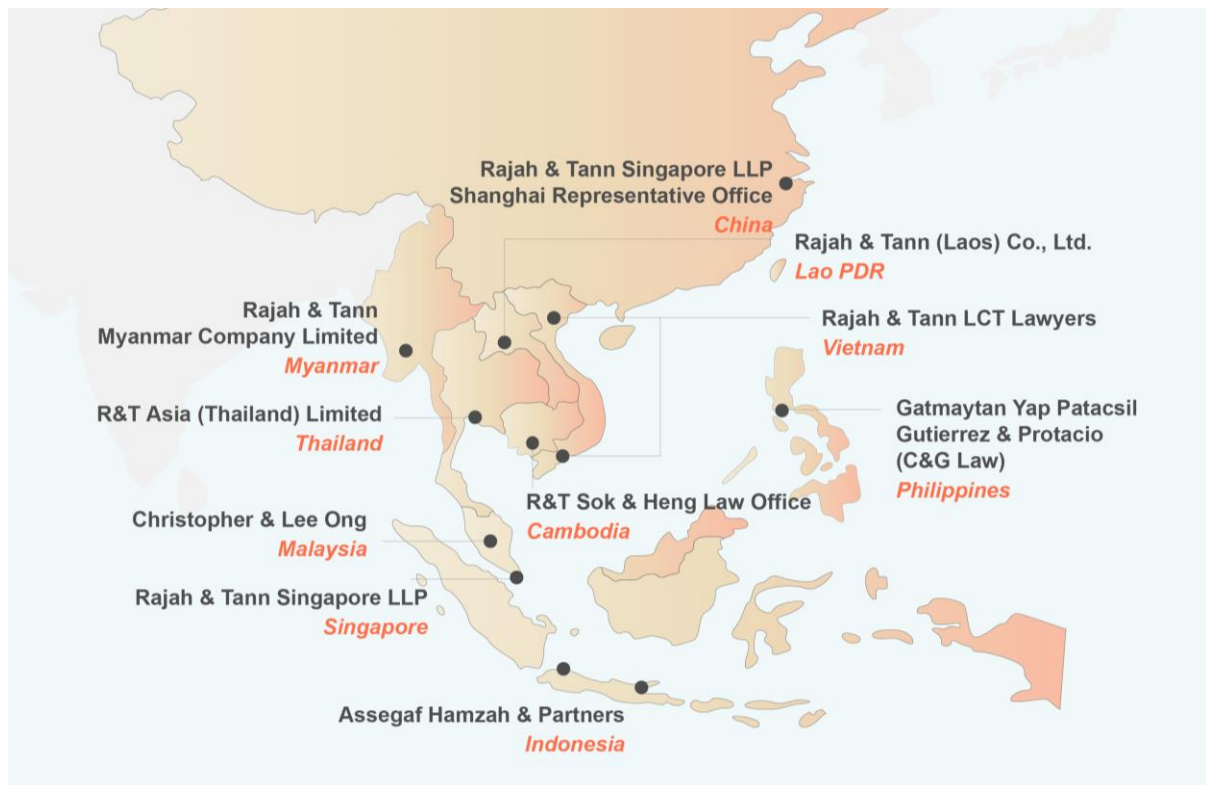
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