

# Group two

## Effective remedies & settlements

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## Indonesia

- Case study of Nestlé S.A. Acquisition of shares in Wyeth Holding Company Ltd - infant formula.
- Product is sold in Indonesia but involves offshore production entities.

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# Merger review process

- Consideration of market concentration
- What are the barriers to entry
- Possibility of anti competitive behavior
- Are there efficiency gains
- Is bankruptcy an issue

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# Outcome

- Two of the product markets may have competition impacts in terms of potential collusive behavior and a increase in market concentration.
- Merger allowed with some remedies...
- To address issues issues KPPU sought remedies to have parties report to KPPU volume and price every 6 months for 3 years.

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# Mexico

- Case study of Nestlé S.A. Acquisition of shares in Wyeth Holding Company Ltd - infant formula.
- Product is also manufactured in Mexico.

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Note that in this matter  
the competitors also  
manufacture the product.

- Three companies in structural market would be reduced to two. Nestlé would have got VERY substantial market share in production.
- Little import or local competition. View held was that if allowed to occur there would be a Large impact on competition.
- FCC did not authorize ... Parties appealed.

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## Following appeal - remedies imposed

- 10 yr exclusive contract requirement for Pfizer to contract license rights to a third party and
- 10 yr blackout.
- ..... Upshot - Aspen (new entrant) bought Pfizer.
- Market is to further develop.

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## Papua New Guinea

- Overview of PNG competition law
- Case study on domestic coastal shipping merger

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# Coastal shipping merger

- Proposed merger would mean a move from three companies to two in a very important national market.
- ICCC considered the result would likely be an SLC.
- Still before the courts.

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- Strategies of legal sector to interrupt regulators actions.
- Substantial national impacts if allowed to stand

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# Peru

- Overview of Peruvian competition law.
- Case study on attempted price fix on evaporated milk product.

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## Attempted price fix

- Industry association executive made public statements about the need to move to a specified price on a specified date for the product.
- Note, competitors did not follow advice.
- DFCC entered into agreement with association executive to cease conduct.
- Agreement included terms - Stopping conduct, he had to explain consequences to members, make media statements about the matter, assist DFCC.

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# Philippines

- Overview of law
- Sectoral approach with over 60 regulators.
- SEC responsible for mergers. Impact assessment undertaken by Office Of Competition. SEC only approve matters that OFC says will not violate laws.

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## Philippines competition law is emerging.....

- Currently under review.
- Does include both structural and behavioral remedies.
- Seeking input about pre merger review practices.

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# Russian Federation

- Overview over laws.
- Mechanisms to prevent violations - warnings & admonitions.
- Case study on regulation and control of oil and oil product.

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## Three phases of action

- 1st wave of violations included setting of monopolistically high prices, discriminatory conditions for buyers, unreasonably different prices for oil products.
- 2nd wave of violations included restriction of supply such that prices increased.
- 3rd phase,, Following merger, resulted in unreasonably high prices and discriminatory conditions at the wholesale level.

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# Remedies

- Companies agreed to violations.
- Taken action to eliminate violations.

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# Chinese Taipei

- Overview of merger review process
- Case study on a JV - TSM Platform
- Case Study on One Red

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# Case studies

- TSM - JV to operate a mobile payment service for transit services.
- Multiple providers seeking to offer new service.
- Remedies included a total of 11 structural and behavioral characteristics.

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# One red

- JV to develop technology for data storage.
- Only behavioral remedies

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# Thailand

- Overview of law
- Overview of processes and administration involved in considering competition matters.

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- Uses quantitative measures of market share for consideration of dominance and merger threshold assessments.
- Restrictive agreements are per se offenses
- Info on penalties, complaints and enforcement statistics.

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# United States

- Overview of remedies for offenses
- Discussion on structural remedies.
- Crown jewel provision

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# Remedies

- FTC considers behavioral remedies as undesirable in merger matters - requires monitoring, impossible to control may harm competition.
- Types of monetary penalties - disgorgement, restitution, treble damages civil and criminal fines.
- Case studies - Mylan, Hearst Corporation

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- Various forms of monetary relief are required to accomplish competitive outcome, deterrence, correcting conduct and punishment.
- Consequences need to be serious to deter.
- Compensating consumers shows they are stakeholders and enlists their help.

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## **Viet Nam**

- Overview of law
- Remedies and settlements are stipulated by regulation.
- Sanctions include fines, revocation of business registration or trading certificates, confiscation of means used for committing violations.
- Case study - car insurance.

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# Vietnam Insurance Association meeting

- While attending the association meeting in 2008, 19 insurers signed agreement not to discount premiums...
- Agreement included insurance offered for vessels, cargo and vehicle insurance.
- Companies fined, paid VCC costs and contract terms removed.

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- Mandatory pre merger notification can be useful.
- In assessing which merger matters to pursue, the use of a threshold test of market share is problematic depending on country specific issues.
- Structural and/or behavioral remedies may be considered in merger/acquisition matter to ensure competitive outcomes.
- Behavioral remedies are not risk free.
- Merger remedies applied in rapidly developing markets can't future proof competitive outcomes.
- Leniency policy for cartel<sup>28</sup> conduct is not always

## Main outcomes

- Strong deterrence message sent if penalties are significant and applicable to both companies and individuals.
- The administration of competition law is best centralized and undertaken by a single agency.