
CLIENT UPDATE FEBRUARY 2016

COMPETITION LAW

AirAsia and MAS Succeed in Appeal to CAT against MyCC's Decision

On 4 February 2016, the Malaysian Competition Appeal Tribunal (“CAT”) set aside the landmark Malaysia Competition Commission’s (“MyCC”) decision which had fined Malaysian Airline System Berhad (“MAS”) and AirAsia Berhad (“AirAsia”) RM10 million each for infringing the Competition Act 2010 for market sharing.

The 5-man tribunal was chaired by High Court Justice Hasnah Mohamed Hashim and other luminaries namely, former Chief judge of Malaya, Tan Sri Haidar Mohamed Noor, Tan Sri Datuk Dr Sulaiman Mahbob, Tan Sri Dr Lin See-Yan and Dr Wan Liza Md Amin.

The CAT unanimously determined that MAS and AirAsia did not infringe Section 4(2) of the Competition Act 2010 (which prohibits cartel activities including market sharing). No order as to costs was made by the CAT and the financial penalty imposed was ordered to be refunded to both MAS and AirAsia.

A decision of the CAT is final and binding on the parties to the appeal. It may, by leave of the High Court, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the decision.

As the written judgment of the CAT is not yet published, it is unclear what the CAT’s grounds were for setting aside MyCC’s decision.

As the aviation sector continues to face tremendous challenges globally, going forward, the Malaysian Aviation Commission Act 2015 (which has been passed in Parliament last year but not yet in force as at the date of this Client Update) will once it comes into force, take over the regulation of all economic matters relating to the Malaysian civil aviation industry including competition law matters. The Malaysian airlines industry would perhaps then be able to find it easier to justify to the Aviation Commission from an economic perspective, the benefits accruing to consumers of an agreement such as the one entered into on 9 August 2011, between MAS, AirAsia and AirAsia X Sdn Bhd which was found to be in violation of the Competition Act 2010 despite its expressed objective of cost savings and voluntarily terminated by the parties by early May 2012.

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ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community (“AEC”) in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

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