

The merger between Grab and Uber: Legal issues relating to merger control

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CONTENT

- ❑ Background
- ❑ Legal issues relating to merger control
- ❑ Grab-Uber merger as Cross-border merger
- ❑ Conclusions



1. Background

- ❑ Sharing economy based on accessing and reusing products to exploit redundant source presents huge possibilities for the new business models.
- ❑ Competition perspective: the technology-based firms always develop new and more flexible services meeting new customer demands.
- ❑ Internet connection and Smartphone based on global navigation systems leads to efficient ride-hailing and ride-sharing services.
- ❑ In the market of passenger transportation, the rivalries among operators and among business models providers are very strong.

1. Background (cont.)

- ❑ Grab – a Singapore-based technology company offers ride-hailing, ride sharing and logistics services in Singapore and neighboring countries such as Malaysia, Indonesia, Philippines, Vietnam, Thailand, Myanmar, and Cambodia.
- ❑ Uber also is a ride-sharing, taxi cab, food delivery, and transportation network company headquartered in San Francisco, California and operates worldwide.
- ❑ In the past (2016), Uber sold its business to Didi Chuxing, after facing aggressive competition in China market, in return for a 20% stake in Didi Chuxing.

1. Background (cont.)

- ❑ In Singapore, on 25th Mar. 2018, Uber announced to have agreed to sell its Southeast Asian operations to Grab.
- ❑ The merger between Grab and Uber drove there into to the serial shut down of Uber's operations which were former competitors of Grab in Southeast Asia.
- ❑ Grab also took over Uber's operations in Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.
- ❑ After that, Grab has been becoming a biggest ride-hailing, ride-sharing digital platform in pan-region

2. Legal issues relating to merger control

- ❑ M&A is typical phenomenon in market economy and important in today's economy. M&A also is the way to survive and succeed in a competitive global environment.
- ❑ The common concern: the post-merger may create Monopoly (also in ride-hailing transportation service market).
- ❑ The merger between Grab and Uber triggered questions in terms of control of anti-competitive merger.

The CCCS proposed fines on ride-hailing firms Grab and Uber, provisionally finding that their merger had reduced competition and suggested remedies such as the sale of their car-leasing businesses.

2. Legal issues relating to merger control (cont.)

Issue of the relevant market definition:

- ❑ Singapore *“54. (1) Subject to section 55, mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods or services are prohibited”.*
- ❑ Some countries control on the basis of turnover threshold, the other on that of combined market share.
- ❑ As of today, there is no common answer for Definition of the relevant market, but two points as follows:
 - ❑ *The first* is that the ride-hailing/ride-sharing is considered to belong to one specific relevant market.

2. Legal issues relating to merger control (cont.)

- ❑ Argument: only passengers owning and using Smartphone are Clients of the service provider
- ❑ They aim at benefits such as: point-to-point pick up and drop; improving allocation efficiency; matching the booking process quicker, easier and more effective; indicating prices obviously and correctly; managing the route and price better.
- ❑ They are willing to apply modern technologies to be able to take more advantages from the transportation service.

2. Legal issues relating to merger control (cont.)

- ❑ The second: Ride-hailing/ride-sharing services and traditional taxi *in the same relevant market* as they both belong to passenger transportation service in essence.
 - ❑ New service just brings passengers additional transportation choice.
 - ❑ The simultaneous operation of these new and traditional services helps the administration of transportation services be consistent, avoid tax escape, and make transportation service more efficiently.
 - ❑ If this second view is supported, the merger would not be problematic as Grab-Uber service just accounts for 15% of the ~~entire transportation market in South East Asia.~~

2. Legal issues relating to merger control (cont.)

- ❑ In Vietnam, *it would be “no problem” in terms of threshold of collective market share, when VCA presumed that ride-sharing services and traditional taxi are not in the same relevant market.*
- ❑ After releasing the conclusion of its preliminary investigation, the VCA is considering undertaking an official investigation. Since the launch of the initial investigation in mid-April, the VCA has worked with investigated parties to collect information on the relevant market.
- ❑ *According to the Ministry, the concentrated market share of parties accounts for 30 to 50 per cent without announcement to VCA before their acquisition.*
- ❑ (<http://vietnamnews.vn/economy/428122/grab-uber-deal-may-be-illegal-vca.html#KEPhqXFQPcxMOhZx.99>)

2. Legal issues relating to merger control (cont.)

- ❑ In EU, *Uber was categorized as a transportation service provider*, and thus subject to transportation regulations by the European Court of Justice (ECJ) (Case C-434/15). On 20th Dec. 2017, the ECJ has ruled that Uber is a transport services company, and required it to accept stricter regulation and licensing within the EU as a taxi operator.
- ❑ In Spain, *according to the Madrid Commercial Court No. 2, the BlaBlaCar was also considered as an electronic intermediary* (Decision no. 30/2017 dated 2nd February 2017).

(Owen Bowcott, *Uber to face stricter EU regulation after ECJ rules it is transport firm*, read more <https://www.theguardian.com/technology/2017/dec/20/uber-european-court-of-justice-ruling-barcelona-taxi-drivers-ecj-eu>)

2. Legal issues relating to merger control (cont.)

- In Philippines:

The regulatory scrutiny was applied to this case, but the ride-hailing firm won the approval *as the Philippine Competition Commission gave the deal the all-clear*, but a 'virtual monopolist' concern remains in the ride-hailing or ride-sharing services market.

3. Grab-Uber merger as Cross-border merger

- ❑ A merger can be considered to have a cross-border dimension if it involves firms established in more than one jurisdiction (*Maier Dabbah 2011*).
- ❑ Grab is a Singapore-based company offering ride-hailing, ride-sharing, and logistics services.
- ❑ Grab gains control over all Uber's assets and operations in Singapore, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Thailand and Vietnam.
- ❑ Merger between Grab and Uber occurred first in Singapore, then affected in several countries in Southeast Asia. Therefore, it can regard as a cross-border merger.

A cross-border merger



3. Grab-Uber merger as Cross-border merger

- ❑ In ASEAN, *six countries have competition law* containing provisions dealing with merger control (Indonesia, Singapore, Thailand, Vietnam, Philippine and Malaysia).
- ❑ *Huge differences exist between the countries* concerned in terms of their experience in the area of merger control.
- ❑ It would be no problem to scrutiny this merger because every country of region Grab and Uber had separate transaction for the merger.

3. Grab-Uber merger as Cross-border merger (cont.)

- ❑ Unlike a “common” cross border merger, the merger between Grab and Uber occurred first in Singapore, then their entities in other regional countries (subsidiary companies), merged each other automatically after their parent company had merged.
- ❑ *Although the transaction by subsidiary companies took place as independence activities, they conducted deal to comply the policy of Grab and Uber in Singapore.*

4. Conclusions

- ❑ *Sharing economy model* is a new concept in most countries in 21st Century. Development of this business model leading to ride-sharing and ride-hailing services and the regulatory challenges for the administration of these services and for competition authorities must be recognized clearly.
- ❑ *For Grab and Uber merger, definition of relevant market plays a crucial role.* Dilemma of *classifying* ride-sharing and ride-hailing services in either a specific relevant market or into general passenger transportation service is also must be recognized and resolved.

4. Conclusions

- ❑ In launching the investigation of possible infringements in terms of merger control, competition authorities would have to first *define the relevant market in ride-hailing and ride-sharing services*, which factors in all close substitutes on both the demand and supply sides.
- ❑ It is also necessary to *complete the current legal framework and enforce this effectively* in cross border merger in era of digital economy.

*Thank you
for your attention!*



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