

Implications of Grab-Uber merger



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With the recently announced plans for Uber to merge with Grab, the private-car ride-hailing industry in Singapore and South-east Asia looks set to undergo a massive structural overhaul of tectonic proportions.

What is currently a duopoly in Singapore – assuming that Grab and Uber do not operate in the same market as taxi companies and other public transportation providers – will be transformed into a monopoly if the merger is allowed to proceed by the Competition Commission of Singapore.

It will take some time before the competition authority completes its evaluation of the economic effects that are likely to result from the merger, when Grab no longer has to face any competitive pressures from Uber.

The central legal question to be answered is whether the merger will result in a “substantial lessening of competition” in Singapore. If so, the merger will be prohibited unless the merged entity is prepared to give structural or behavioural commitments to the competition authority that satisfactorily mitigate the anti-competitive effects of the merger.

This proposed merger has significant law and policy implications at both the national and regional levels.

At the national level, not only will the merger have a direct impact on competition in the relevant markets for drivers and passengers, it will also have ramifications on a broader canvas of public policies relating to the public interest in promoting a car-lite society, creating space for disruptive e-commerce technologies, regulating the sharing economy and so forth.

At a regional level, the proposed merger will result in Uber retreating from multiple Asean member states simultaneously, allowing Grab to rapidly enlarge its market shares in all these jurisdictions overnight, if it can get approvals from the relevant national competition authorities.

The position is further complicated by the incredibly diverse merger control laws of the various Asean member states – from non-existent (such as in Malaysia and Myanmar), to voluntary pre-merger notification systems (in Singapore and Brunei), to mandatory pre-merger notification systems (in the Philippines and Vietnam) to hybrid pre-merger and post-merger notification systems (in Indonesia).

Regardless of the final decisions reached by the competition authorities, this opportunity to scrutinise the proposed Grab-Uber merger will be valuable in at least three aspects.

First, a decision will have to be taken as to whether these service providers compete in the same market as taxi operating companies.

If taxi operating companies and

other public transportation options are not regarded as effective substitutes for the transportation services provided by Uber and Grab, then the proposed merger is quite likely to be prohibited on the basis that it results in the elimination of Grab’s only real competitor from the market.

On the other hand, if the relevant market in Singapore is defined more broadly to include taxi operators, then an argument might be made that the proposed merger would actually be pro-competitive because it would create a merged entity capable of exerting a real competitive challenge against ComfortDelGro, which has been the dominant taxi company for a very long time.

The difficulty with this argument lies in the very different operating conditions that apply to taxi operators and private-car ride-hailing service providers, including the locations from which they can pick up their passengers, the types of vehicles they operate and how they are permitted to calculate their fares.

Second, how favourably the proposed merger is viewed by the competition authorities will send a clear signal about how they balance consumer welfare against other economic welfare considerations.

Monopolies are objectionable in and of themselves. What matters more is how that monopoly status is achieved.

Undertakings that achieve monopoly status through vigorous competition, innovation and

customer satisfaction have earned their success. Mergers, on the other hand, provide a shortcut for firms to achieve market dominance, without necessarily offering customers superior products or services.

While a merger will always result in a reduction in competition, simply because there will be one less competitor in the post-merger market, it may also produce cost-savings and other economic efficiencies that might benefit society in other ways.

The challenge for competition authorities when evaluating mergers is to explain how they arrive at their conclusion – whether the harms to competition, and consumer welfare, are outweighed by the economic benefits of the merger, or vice versa.

In the past, the Competition Commission of Singapore has taken the position that maximising consumer welfare, while important, was not its main objective as a competition authority. Instead, its focus has been on maximising total economic welfare in Singapore.

The Grab-Uber merger will certainly test the limits of this policy preference, particularly in the light of the recent addition of consumer protection functions to its portfolio of regulatory responsibilities.

Third, the potentially protracted process of Grab seeking approval for the proposed merger under multiple national merger control regimes across South-east Asia might provide impetus for convergence, or some form of regional harmonisation, between the competition law systems of the Asean member states.

The importance of developing an effective regional competition policy within the Asean Economic Community (AEC) is clearly articulated in the AEC Blueprint 2025, where Singapore and its neighbours have expressed a desire to “achieve greater harmonisation of competition policy and law in Asean by developing a regional strategy of convergence”.

There are numerous opportunities for regulatory innovation in this arena, where merger notification procedures can be streamlined across all territories where the merging parties have operations, such that regional mergers can be more efficiently evaluated by the different national competition authorities working in close cooperation with one another.

It is not surprising that the Grab-Uber merger announcement has captivated the public, especially as the two controversial market players have been each other’s fiercest rivals for some years.

With the ball now in the court of Asean’s national competition authorities, one suspects that whatever decision they reach – whether allowing the merger to proceed, blocking it or modifying it with conditions attached – will be equally controversial.

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