



**Asia-Pacific
Economic Cooperation**

**CTI 23-2014, APEC Seminar on Sharing Good Practices and
Experiences on Developing Franchise Regulations**

**Ho Chi Minh city, Viet Nam
June 03rd – 04th, 2015**

Summary Report

APEC Project: CTI 23/2014

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I. Introduction

On June 03rd and 04th, 2015, the *APEC Seminar on Sharing Good Practices and Experiences on Developing Franchise Regulations*, initiated by Viet Nam and co-sponsored by Indonesia and the Philippines, was held in Ho Chi Minh city, Viet Nam. Speakers and participants came from nine APEC member economies (Australia, Canada, Chile, Indonesia, Malaysia, New Zealand, the Philippines, Thailand, and Viet Nam). Most of the Seminar participants were from the public sector, academic institutions or the private sector relating to franchising.

The Seminar sought to exchange good practices and experience in developing and implementing franchise regulations in the APEC region. It aimed also at providing an opportunity of networking for policy-makers, regulators, officials and interested stakeholders in developing and implementing franchise regulations in APEC economies. Last but not least, the Seminar was expected to explore further co-operation activities to enhance the development of franchising sector in the APEC region.

II. Background

This project is in line with instructions of APEC Ministers in their Statement of 2013 (in Bali, Indonesia) which “recognized the critical contribution of services to global trade, and the importance of strong, open and competitive service sectors as drivers of economic activity, growth and job creation.” They also welcomed APEC’s work “to increase the transparency of services trade-related regulations as well as to identify good practices to facilitate service trade and investment and foster the development of open services markets.”

Second, this project also conforms to the following principles of the Osaka Action Agenda: (i) Transparency: each APEC economy will ensure transparency of its respective laws, regulations and administrative procedures which affect the flow of goods, services and capital among APEC economies in order to create and maintain an open and predictable trade and investment economies in the Asia-Pacific region; and (ii) Cooperation: Economic and technical cooperation contribution to liberalization and facilitation will be actively pursued.

Last but not least, the project is expected to contribute to trade and investment liberalization, economic integration and the fostering of cooperation by presenting franchising as a tool for accelerating regional integration and for opening opportunities for greater trade among APEC member economies.

Themes covered during the two-day event included: (i) *The Role of Franchising in Economic Development and an Overview of Franchising in APEC and Worldwide*; (ii) *The Role of the Law in the Development of Franchising and an Overview of Franchise Regulation in APEC and Worldwide*; (iii) *Regulatory Impact Assessment and Stakeholder/Public Consultation in Developing Franchise Regulation*; (iv) *Enforcement of Franchise Regulation*; and (v) *Case Studies of Developing Franchise Regulation in APEC Member Economies*.

III. Discussion

Outcomes

The *APEC Seminar on Sharing Good Practices and Experiences on Developing Franchise Regulations* included two days for presentations and discussions on franchising and the development and enforcement of franchise regulation in APEC and worldwide. The last session (recommendations for future activities) provided an opportunity to share what participants can take away from the Seminar as well as to suggest potential APEC capacity-building activities to most benefit APEC member economies. Overall, the Seminar achieved its main objectives as described in the project proposal. Moreover, all participants considered that it afforded many chances for valuable networking among representatives from the policy community, academics and private-sector actors from within and outside the APEC region.

Key Issues Discussed

Opening remarks

In her opening remarks, **Ms Pham Quynh Mai (Senior Official of Viet Nam to APEC and Deputy Director General, Multilateral Trade Policy Department, Ministry of Industry and Trade, Viet Nam)**, stressed the importance of the Seminar in the context that that franchise has created jobs for 21 million workers, contributing approximately 2.3 trillion US dollars. Ms Pham stated that according to a study of World Franchise Council, there are 1.100 franchise systems in Australia, and 460 in New Zealand. For several Asian economies, franchise had been developing at a high rate. China's young franchise industry had 4000 systems, and 2400 and 1475 systems recorded in Korea and Indonesia respectively. Statistics also showed that, in the Asia - Pacific region, roughly 1.5 million franchised stores are in operation.

For Vietnam, the franchise industry began its formation in the 1990s of last century, and has witnessed fast development in the past 10 years since this sector was formally recognized in the Viet Nam's Commercial Law 2005. Vietnam is one of nearly 40 economies around the world that have distinct legal systems to regulate franchise operations. So far, Vietnam had approximately 100 franchise systems in operation.

However, Ms Pham claimed that franchise had not yet developed to its full potential in the Asia - Pacific region, especially in the developing economies owing to the imbalance and lack of uniformity of the legal systems, governing this business type in the region. Although it was very difficult to obtain an one-size-fits-all model for all APEC economies to manage and regulate this business type of service, the

development and facilitation of franchise can be significantly enhanced through actively exchanging information and experience, sharing good practices in the process of building regulations; managing, regulating, and encouraging the development of franchise among APEC members, especially in the context of this type of business's fast growth in developing economies.

The Senior Official expressed hope that with the active participation of scholars, policy makers, representatives from organizations and businesses in the Asia Pacific region, the Seminar participants would be able to identify and to propose many useful and feasible initiatives, aiming to help build models and regulation systems for this area in the region

Seminar's sessions

Experts provided presentations on the following topics:

1/ During Session 1 on “*The Role of Franchising in Economic Development and an Overview of Franchising in APEC and Worldwide*”, **Mr Albert Kong (Chairman – CEO, Asia Wide Franchise Consultants Pte Ltd, Singapore)** gave a comprehensive presentation on franchising development in Asia and the role of franchising in an economy's commercial, economic and social development in a presentation titled “Franchising Trends, Opportunities and Challenges across ASEAN”. Mr Kong highlighted that franchising has metamorphosed into an international phenomenon and international franchising has expanded into over 110 economies. He emphasized that franchising is an effective channel and key growth driver for companies looking to venture into international markets with lower risks, instant visibility, pooling of resources, optimal use of expertise etc. After introducing franchising snapshot in ASEAN, Mr Kong went into details on franchising in ASEAN economies. Accordingly, he gave interesting examples: in Malaysia, Government involved in franchise by commissioning a big 4 accounting firm to procure a blue print, or tax relief for franchise fees paid etc; in the Philippines, there is Government's support through Small Business Guarantee and Finance Corporation and other forms of financial support; in Thailand, franchising accounted for 2 per cent of Thai GDP and 10.9 per cent of the retail sector. In conclusion, Mr Kong reiterated that those franchisors who treat a target territory with the most respect and who recognize the differences which exist and seek to understand them, are those who at the end of the day do best.

2/ During Session 2 on “*The Role of the Law in the Development of Franchising and an Overview of Franchise Regulation in APEC and Worldwide*”, there were two speakers: **Professor Andrew Terry (Chair of Discipline of Business Law, Professor of Business Regulation, University of Sydney, Australia)** and **Mr Pham Dinh Thuong (Deputy Director General, Legal Department, Ministry of Industry and Trade, Viet Nam)**.

- **Professor Andrew Terry** first explained the legal infrastructure of franchise sector, then justified for franchise specific regulation. Those justifications are: to avoid economic and social costs of business failure, protect legitimate

interests, fairness, standardization, orderly development, official recognition, education and encouragement etc. Moreover, Professor Terry provided detailed information on regulatory issues, regulatory challenges, primary regulatory strategies (comprised of registration, prior disclosure, conduct/relationship regulation). In terms of regulation of franchising internationally, there are: no regulation, code of ethics, voluntary self-regulation and mandatory franchise – specific laws. He then presented laws applicable to franchising, the regulated sectors internationally, the regulatory models, and the regulatory experience in Asia. Professor Terry observed that the growth of franchising will be accompanied by increasing emphasis on regulatory issues, so there is challenge to appropriately balance protection of franchisees while encouraging diversity and entrepreneurship. He concluded that the experience in Australia under the mandatory Franchising Code of Conduct provides comfort to those franchising sectors facing regulation that appropriate and balanced regulation can have a beneficial effect on the franchising sector and encourage its orderly development for the benefit of all stakeholders.

- **Mr Pham Dinh Thuong** made a presentation on “The Development of Franchise Sector in Viet Nam and the Role of Legal Infrastructure”. He highlighted that in 1996, franchising was first applied in Viet Nam by a coffee company. Until 2015, there are 190 franchising systems, with the majority of franchising in areas of restaurants, fashion store, convenient store, other retail store and education – training. Mr Pham stressed that the legal framework since 2006 contributed to franchise development in Viet Nam by introducing a new coming business sector, playing the role of guidelines for business, ensuring fair transactions in franchising and facilitating inbound franchise. He then provided participants with information on Vietnamese law and regulations on franchising activities, with concentration on master franchise, franchise agreement, information disclosure, franchise agreement, franchisor’s obligations and registration. In his summing up, Mr Pham added that easing of certain registration requirements and restrictions helped pushing franchising transactions.

3/ During Session 3 on “*Regulatory Impact Assessment and Stakeholder/Public Consultation in Developing Franchise Regulation*”, there were two speakers: **Associate Professor Gehan Gunasekara (Department of Commercial Law, University of Auckland, New Zealand)** and **Dr Pornchai Wisuttisak (Faculty of Law, Chiang Mai University, Thailand)**.

- The presentation of Associate Professor Gehan Gunasekara was titled “Stakeholder Consultation or Regulatory Capture? New Zealand’s 2008 Review”. In his presentation, Associate Professor Gunasekara provided a comprehensive presentation on nature and scope of 2008 Franchise Law Review, options in discussion document, nature of respondents, etc. In addition, he resolved questions of unique features in franchise contracts, definition of problems, magnitude of problems, preferred option, comments on submissions, information disclosure, benefits of alternative options etc. In conclusion,

Associate Professor Gunasekara observed, among other, that the process of the Review was flawed, a lack of franchisee-representative organizations in New Zealand. He raised two recommendations on permanent online discussion forum and greater use of the Internet for research and debate.

- **Dr Pornchai Wisuttisak** made a presentation on “The Thai Franchising: Regulatory and Commercial Environment under ASEAN”. He outlined his presentation into four parts: (i) Brief overview of Thai regulatory framework of franchise sectors, (ii) Thai franchise sector under ASEAN integrating market, (iii) Thai franchise regulatory and commercial environment under ASEAN, and (iv) conclusion. Dr Wisuttisak explained the lack of unified legislation for franchising in Thailand and the fact that franchising is still be kept under Thai civil law system under the liberty of control based on Thailand Civil and Commercial Code. To promote franchise businesses, since 2010, the Ministry of Commerce of Thailand proposed the draft Franchise Business Act to the Parliament. Dr Wisuttisak emphasized that Thai franchise sector expanded about 20 per cent annually and was predicted to growth further, with more than 400 franchisors (majority foreign-owned) and more than 10,000 franchisees. Last but not least, he summed up that: (i) With consideration to ASEAN integrating market, Thai franchisors or foreign franchisors based in Thailand are able to move forward in ASEAN market, and (ii) Comparing to the regulatory and commercial environment with other ASEAN economies, Thailand seems to have less preparation.

4/ During Session 4 on “*Enforcement of Franchise Regulation*”, there were two speakers: **Dr Michael Schaper (Deputy Chair of Australian Competition and Consumer Commission)** and **Dato Syed Kamarulzaman bin Zainol Khadki Shahabin (Perbhdaran National Berhan, Malaysia)**.

- **Dr Michael Schaper** shared information on “Franchise Regulation and Enforcement in Australia.” He divided his presentation into five parts: (i) *Background*, (ii) *Common Areas for Enforcement*, (iii) *How We Enforce the Law*, (iv) *Liaison and Education of Franchise Sector* and (v) *International Links with Other Regulators*. According to Dr Schaper, new version of the Franchising Code of Conduct – a mandatory code under the Competition and Consumer Act – was effective since 01 January 2015, binding on all industry participants, including overseas franchisors that had franchisees or master franchisees in Australia. Dr Schaper then gave a comprehensive presentation on key aspects of the Franchising Code of Conduct, misleading or deceptive conduct, false or misleading representations, enforcement activities, and raising awareness of the Code. In addition, Dr Schaper gave interesting enforcement examples of Taxsmart and Allphones. Last but not least, he highlighted the importance of information sharing among franchising regulators to improve regulatory certainty for franchise systems, alert other regulators to problem franchise systems, detect cases where franchisees are being damaged etc.
- **Dato Syed Kamarulzaman bin Zainol Khadki Shahabin** started his presentation by pointing out franchise growth and the role of franchise

development in Malaysia. In his opinion, there are three categories of laws regulating franchises: disclosure laws, registration laws and relationship laws. Furthermore, Dato Syed introduced the Enactment of Franchise Act 1998 in Malaysia (amended in 2012). What is more, the Franchise Registration and Regularization Program of Malaysia aim to ensure the registration of companies that yet to register as franchise and for companies that implement licensing to be registered as legitimate franchise system. Dato Syed also listed conflicts between franchisee and franchisor such as lack of support from franchisor, compliance with the system, fees, misrepresentation issues, communication problems, territorial issues etc. To conclude his presentation, Dato Syed suggested minimizing above conflicts by pre-emptive moves on clarity and transparency of franchise offering/ recruitments/ SOPs/ initial training, ethical recruitments, effective communication structure, clear on the rules and regulations, transparent and clarity on interdependency, etc.

5/ During Session 5 on “*Case Studies of Developing Franchise Regulation in APEC Member Economies*”, there were three speakers: **Mr Paul Jones (Barrister, Solicitor and Trade-mark Agent, Jones & Co., Canada)**, **Dr Nguyen Ba Binh (Vice Dean, Faculty of International Trade and Business Law, Ha Noi Law University, Viet Nam)** and **Professor Andrew Terry**.

- **Mr Paul Jones** approached the issue in a presentation named “Franchise Regulation in North American: Structures and Initiatives”. According to Mr Jones, the US Federal Trade Commission (FTC) Franchise rule was issued in 1979 and FTA had found that “rampant fraud” existed in the franchise arena. However, by that time, 15 States had adopted their own rules for Franchise Disclosure Documents, and their rules were not the same as the FTC rule. Mr Jones reiterated that US State Regulations covered disclosure and relationship laws. In addition, FTC rules only covered disclosure issues and “earnings claims” or “financial performance claims” are not required to be disclosed. In Canada, Mr Paul stated that in 2002 the Uniform Law Conference of Canada used the Ontario law (Franchise Disclosure) to develop a model law for use in all other provinces than the provinces of Alberta and Ontario. Last but not least, Mr Paul raised a number of key regulatory initiatives in relationship laws, good faith, what should be disclosed, uniformity, public vs private enforcement etc.
- The presentation of **Dr Nguyen Ba Binh** was titled “An Assessment on Viet Nam’s Franchise Law”. Assessments were made on (i) the need for the introduction of Viet Nam’s franchise law, (ii) regulatory regime, (iii) definition, (iv) qualifications of franchisor and franchisee, (v) disclosure, (vi) franchise agreement, (vii) relationship/ conduct issues, (viii) registration and reporting, and (ix) foreign franchisors. Dr Nguyen affirmed on Viet Nam’s comprehensive regulatory regime in franchise, with legislation on registration, prior disclosure, and relationship obligations. On registration and reporting, Dr Nguyen provided information that Viet Nam was one of few economies imposing registration

requirements as well as only imposed a “light touch” registration system which was essentially a filing and recording process. Furthermore, Viet Nam was also one of the five registration states requiring an annual report. In terms of foreign franchisors, Viet Nam provided a quasi-unified regulatory regime for both foreign and domestic franchisors. In sum up, Dr Nguyen observed that although the Franchise law is broadly consistent with international practices, the governing Commercial Law seemed to provide some uncertainties.

- Professor Andrew Terry made a presentation on “Franchise Regulation in Australia: Design, Development, Impact and Assessment”. He first introduced regulation of Australia’s franchise sector, misleading conduct, unconscionable conduct, the Franchising Code of Conduct, the key regulatory reviews, Competition and Consumer (Industry Codes: Franchising) Regulation 2014 etc. According to Professor Terry, the Franchising Code of Conduct’s key elements were: mandatory prior disclosure, mandatory conduct regulation (particular relationship issues and general standard) and mandatory mediation. He then provided detailed information on prior disclosure, first page statement, advice and certification, conduct, dispute resolution, 2008 Opportunity Report, 2013 Review of Franchising Code of Conduct, a general duty of franchisors and franchisees to act in good faith etc. What is more, Professor Terry gave interesting examples on international precedents in China (2007 Commercial Franchise Regulation), Korea (Fair Franchise Transactions Act 2002), Italy (2004 Rules on the regulation of Franchising), Malaysia (Franchise Act 1998), Canada and the United States. He also explained on capital expenditure, marketing and advertising fees, end-of-term arrangements, end-of-term restraints, dispute resolution, pecuniary penalties and enforcement mechanisms. On the impact of the Franchising Code of Conduct, Professor Terry observed that: regulation imposed an initial and ongoing financial and administrative burden; initial impact on growth of franchising through exit and discouragement of inappropriate franchisors; encouragement to franchisees to enter the sector.

IV/ Conclusions and Recommendations

1/ The consensus view of the Seminar’s speakers, moderators and participants agreed that the project achieved its intended objectives. They considered the Seminar to have evaluated to be good for APEC to continue to share and discuss from the franchising laws/ regulation to practices in various APEC member economies. They also commented that it was interesting to learn about experiences in reviewing and assessing franchising regulations in other APEC economies. Participants also said that the Seminar had provided a great opportunity for networking with experts from within and outside APEC region.

2/ The Seminar’s participants suggested that future activities should be:

- Case studies of successful franchisees;

- Sharing experiences in 4 areas: (i) enforcement, (ii) mediation, (iii) education, advocacy, outreach, (iv) research;
- Hold future back-to-back meeting with Franchise Conference(s) in other economies (eg World Franchise, World Franchise Summit, Franchise expos);
- Set-up a mechanism/ tool where franchise regulators can talk/ discuss and share information;
- Facilitation of phone-calls among interested franchise regulatory agencies in APEC economies;
- Study/ Workshop on the role of franchising in SME development;
- Comparison among economies with franchising regulation and economies without franchising regulation;
- Best practices in franchising dispute resolution;
- Regulatory impact assessment in franchise;
- Good practices and experiences on developing direct selling regulations.