shoppers should be seen by the industry not as a deviation from its ethos of maintaining inaccessibility but as an opportunity to inculcate loyalty into a new group of consumers. This should be supplemented with detailed analyses of market trends. Preliminary studies have shown that, in Southeast Asia, younger consumers have been affected less severely by the COVID-19 crisis than their middle-aged counterparts. Not allocating adequate resources to serve their needs just because they have traditionally accounted for a smaller proportion of the revenue stream would therefore be a misstep. Instead, by offering a greater variety of goods tailored to their preferences by utilising the underlying notion of 'aspirational utility', the industry stands a good chance of creating a new, permanent consumer base in the future. Developing practical and durable goods – as exemplified by some brands that have forayed into production of reusable face masks (Burberry), exercise equipment (Louis Vuitton) and electronic gadgets (Mont Blanc) – is a brilliant move towards diversification.

Pro-social behaviour

The literature on behavioural economics is replete with studies that highlight the idea of possessions being an expression of their owner's extended self. With the 'new normal' forcing most individuals to stay indoors and unintentionally making them reflect on 'what really matters', materialism is bound to take a hit. It is therefore important for the luxury sector to depart from its typical 'wants over needs' narrative and, instead, communicate to the buyers what it stands for. A host of new studies have shown that, in addition to the combination of willingness and ability to pay, luxury consumers now assign a lot of weightage to their preferred brands' manufacturing processes, treatment of employees, commitment to saving the environment, charitable endeavours, *inter alia*. As shoppers begin to trickle out of their homes after months of isolation to satiate their 'pent up demand' for luxury escapism, the industry must make greater effort to convince them of, say, the craftsmanship of the artists it employs, its resolve to create a truly inclusive work environment and the genuineness of its pro-social behaviour. In the early days of the COVID crisis, many big-name fashion companies had turned their production lines, usually meant for handbags and apparel, to manufacture personal protective equipment and hand sanitisers – a gesture that will undoubtedly add to their scintillating brand value.

Digital engagement

'Experiential satisfaction' has been the essence of the luxury sector. Consequently, enhancing the operations of brick and mortar stores has been the principal focus of most high-end brands. For years, digital marketing and sales channels were implicitly labelled as weak instruments – to the extent that most brands did not even list the prices of their offerings on the official websites; in order to obtain this key piece of information, consumers were expected to call the nearest outlet. Things are much different now. The pandemic has forced the industry to elevate e-commerce sales to the same stature as outlet purchases. Luxury firms are finally adopting digital engagement to not just showcase goods and services and relay their desirability, but also receive immediate customer feedback. A growing number of firms in the region have been livestreaming fashion events, offering virtual consultations and adopting digital prototyping to unveil novel products. As social distancing measures are here to stay for at least the next several months, further digital amplification can certainly help cushion the impact of the crisis.

While these measures alone cannot restore the luxury industry's immunity overnight, they can help mitigate some of the challenges brought upon by the current crisis and prepare a new, sustainable *modus operandi* for a post-COVID scenario.

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A thorny dispute over land and profits. Durian plantations in Raub, Malaysia

Cassey Lee

Above: Durian night market, Kota Kinabalu, Sabah. Image John Tewell on Flickr, Creative Commons license.

Prickly, creamy and pungent, durian *(Durio zibethinus)* is regarded by many in Southeast Asia to be the king of fruits. In fact, durian's commercial value has risen in recent years, especially since it became popular in China. In 2019 alone, China imported some US$1.7 billion worth of durians. Although Thailand dominates supply in this market, the Malaysian government aspires to increase the country's market share to well beyond the current ten per cent. Two factors are likely to increase Malaysia's durian exports to China in the future. First, Malaysia secured the rights to export frozen whole durians to China in August 2018. Second, there is increasing demand for Malaysia's premium durian, especially for a variety known as 'Musang King'.

Though the Covid-19 pandemic has adversely affected the demand for durians in China in 2020, the long-term constraint is likely to come from the supply-side rather than the demand side. Not only is there a long gestation period for durian trees (more than five years), the Musang King variety only thrives in specific geographical areas in Malaysia. One of these areas is the district of Raub, located in the state of Pahang. As the durian industry booms, durian plantation lands in Raub have become the loci of contestations among various parties. This is because many of the one thousand affected farmers have been cultivating durian on land that is state-owned.

The most recent struggle over land for durian cultivation in Raub can be traced back to March 2020, when the Pahang state government's agency for agriculture development, Perbadanan Kemajuan Pertanian Negeri Pahang (PKPP) signed agreements with a private company, the Royal Pahang Durian Group (RPD), to form joint ventures to develop a durian processing centre and to legalise durian farming on encroached state lands.

On 24 June 2020, the Pahang government awarded a 30+30 year lease and the right to use over 5,357 acres of land in Raub to the joint ventures. A month later, the affected durian farmers in Raub were given the ultimatum of accepting a sub-lease of 10+10 years with the joint venture company or risk being evicted for illegal land occupation. The proposed sub-lease contract requires each farmer to pay a levy of RM6,000 (US$1,473) per acre and to sell their Grade A Musang King to the joint ventures at a fixed price of RM30 (US$7.40) per kg for two years starting from 2021. Not surprisingly, the ultimatum and proposal were met with stiff resistance by the durian farmers who felt that the state had colluded with a private company to unfairly extract their hard-earned profits. The state and the private company have not previously invested any time and resources in the farmers' ventures and yet, by way of fiat, intend to extract rent from them. The case has since gone to the courts with the farmers seeking a judicial review on two matters – the state government's order to vacate their lands and its decision to award the lease and the right to use to the joint venture company. A temporary reprieve was obtained by the farmers when the court ordered the state authorities to cease all enforcement and eviction measures against the durian farmers until the judicial review would be decided in December 2020.

At first glance, the case appears straightforward from a legal perspective. The implementation of land registration under British rule had abolished the practice of 'adverse possession', which was recognised under customary law. In adverse possession, an occupant of 'waste land' [*tanah mati*] has the right to cultivate the land provided a proportion of the produce is remitted to the rightful owner (the state). Thus, under the current legal system, the affected durian farmers have illegally occupied state-owned lands and have no legal recourse whatsoever. This would put the farmer at a disadvantage when bargaining for a more favourable lease term.

Under the Federal Constitution, land-related matters are dealt with under state jurisdiction. It would perhaps be less controversial if the entire 30+30 year lease is given to PKPP because the land does in fact belong to the state. PKPP can then provide a sub-lease to each durian farmer. Why should another private company (RDP) be a beneficiary of the lease? As a state-owned agency, PKPP should have sufficient resources to develop the industry including financing the proposed durian processing plant. As part of a sub-lease agreement with farmers, the PKPP could also assist them in obtaining the Malaysian Good Agricultural Practices (MyGAP) certification, which is required by China for durian imports. After all, it is the role of the government to assist the private sector to overcome such non-tariff barriers. If the state government does not have the expertise nor the human resources to provide direct technical assistance to farmers on matters relating to MyGAP, it could encourage private provision of such services.

One potential complication is the involvement of the Pahang Royal Family as a shareholder in the private company RPD. The Sultan of Pahang is the de facto head of the state government. Some legal scholars and practitioners have argued that state lands 'belong' to the Sultan as a sovereign entity. This is debatable because changes in state land legislations require the approval of the state legislative body, implying that the 'state' is in fact distinct from the sovereign entity – just as the Federal legislative body (Parliament) is separate from the executive body and the king. Norms may, however, differ from actual practice as the Sultan commands the utmost respect from state bureaucrats and politicians.

On 23 December 2020, the High Court in Kuantan dismissed the farmers' applications for judicial review on the basis that they are trespassers and hence have no legal standing. This court decision is likely to be construed by the general public to be unfair. Legal constraints aside, it might be worth to consider economic efficiency. What arrangement would allow the durian industry in Raub to flourish whilst ensuring that the state government receives its fair share of revenues (lease payments, quit rents and tax revenues)? To do this, the courts should stay the 'grabbing hands' of the state and allow the 'invisible hand' of the market to do what it does best in commerce. This would require the court to recognise the right of the farmers to be fairly compensated (for past investments, should they choose to exit farming) or to a fair revenue-sharing contract (should they choose to continue farming). Such a contract should be negotiated without the threat of eviction.

To conclude, the boom in Malaysia's durian exports has brought about a conflict between major players and institutions in the country – farmers, state and the royalty. A fair solution to this conflict can only be obtained through negotiations without threat of eviction.

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