Published on e-First 31 May 2022

10. COMPETITION LAW

Kala **ANANDARAJAH**
LLB (Hons) (National University of Singapore),
MBA (Banking and Finance)
(Nanyang Technological University of Singapore);
Advocate and Solicitor (Singapore);
Partner, Head, Competition & Antitrust and Trade Practice,
Rajah & Tann Singapore LLP.

I. Overview

10.1 Even as the COVID-19 pandemic continued into 2021, the Competition and Consumer Commission of Singapore ("CCCS") was just as active, if not more, as it continued to review new transactions, undertake investigations and issue decisions.

10.2 Although CCCS continued to investigate potential violations of the Competition Act 2004[1] ("the Act"), including seemingly commencing new investigations, it did not issue any infringement decisions relating to anti-competitive agreements or abuse of dominance in 2021. It did, however, receive one notification relating to an alliance under s 34 of the Act, which is still in the midst of review. Additionally, following the expiry of the Guidance Note on Collaborations between Competitors in Response to the COVID-19 Pandemic[2] ("COVID-19 Guidance Note"), CCCS issued a Business Collaboration Guidance Note[3] ("Guidance Note") to provide businesses with more clarity on common collaborations between competitors. CCCS also recommended that the Competition (Block Exemption for Liner Shipping Agreements) Order[4] ("BEO") should be extended for three years, which the Minister for Trade and Industry has adopted.

10.3 For merger reviews, CCCS was much busier. It reviewed ten proposed acquisitions in 2021: six were cleared unconditionally, one was cleared following commitments provided by the parties, one was withdrawn due to the termination of the merger agreement, and two were still being reviewed at the time of writing.

1 2020 Rev Ed.
2 Issued 20 June 2020; expired 31 July 2021.
3 Issued 28 December 2021.
4 2006 Rev Ed.

10.4 CCCS was also very busy on the regulatory review front. Following the public consultations on the proposed revisions to the competition guidelines, CCCS finally published the revised competition guidelines at the end of 2021. These revisions covered a number of the competition guidelines, including market definition, intellectual property, the s 47 prohibition on abuses of dominance with a particular focus on issues brought about by the digital world, the substantive assessment of mergers, merger procedures, and remedies, directions and penalties. The revised guidelines have since come into effect on 1 February 2022.

10.5 On the consumer protection front, CCCS continued to enforce the Consumer Protection (Fair Trading) Act 2003[5] ("CPFTA"). Following its investigations, CCCS received an undertaking from an errant beauty services retailer and obtained a court order against a fire extinguisher retailer to stop its unfair trade practices. CCCS, alongside the Consumers Association of Singapore ("CASE"), also issued an advisory on online consumer transactions in response to the prevalence of online shopping and the increased number of consumer complaints during the COVID-19 pandemic.

10.6 At the international level, the trend towards increasing co-operation between competition authorities continues. Regionally, CCCS concluded a memorandum of understanding ("MOU") with the Philippine Competition Commission ("PCC") on the enforcement of competition law. The CCCS also signed an MOU with China's State Administration for Market Regulation ("SAMR") on co-operation of competition law.

II. Anti-competitive agreements, decisions of associations of undertakings and concerted practices (section 34 of the Competition Act)

10.7 Section 34 of the Act prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their "object or effect the prevention, restriction or distortion of competition within Singapore". In particular, agreements which involve price-fixing, market-sharing, output control and bid-rigging agreements are considered "object" restrictions and hence *per se* violations. Under the Act, CCCS has the power to investigate allegedly anti-competitive agreements and issue directions and/or impose financial penalties against parties to such agreements.

5 2020 Rev Ed.

10.8 In 2021, CCCS did not issue any infringement decisions on anti-competitive agreements, decisions of associations of undertakings and concerted practices. However, CCCS did receive a proposed airline alliance notification.

A. Notification on proposed commercial cooperation between Singapore Airlines Limited and All Nippon Airways Co Ltd[6]

10.9 Parties who are unsure if an agreement infringes the s 34 prohibition on anti-competitive agreements have the option of notifying CCCS for the purposes of seeking guidance or decision. Upon an application for guidance under s 43 of the Act, CCCS may give guidance on whether the agreement is likely to infringe the s 34 prohibition, or whether the agreement is likely to fall under a block exemption. Upon an application for a decision under s 44 of the Act, CCCS may make a decision on whether the agreement has infringed the s 34 prohibition, and if it has not, whether that is because of an exclusion, the agreement being exempt from the prohibition, or commitments having been accepted. The key difference between the two is that the application for guidance is treated as confidential, whilst that for notification is made public. The benefit of notifying CCCS of a co-operation where there is genuine uncertainty as to whether it is potentially anti-competitive is that the arrangement benefits from immunity from financial penalties for infringement (if any) from the period beginning on the date on which the notification was lodged and ending on such date as specified by CCCS if a likely infringement is to be found.

10.10 CCCS received a public airline alliance notification this year from Singapore Airlines Limited ("SIA") and All Nippon Airways Co Ltd ("ANA"). The notification concerned their proposed commercial co-operation, with the parties entering into a joint venture framework agreement ("Proposed Commercial Co-operation"). The parties intended to co-operate on various aspects of the business, including scheduling, pricing, sales and marketing, and other commercial areas such as expanded code-sharing and special prorate arrangements. The parties to the Proposed Commercial Co-operation included SilkAir (Singapore) Private Limited (SIA's subsidiary), and Air Japan Co Ltd and ANA Wings Co Ltd (ANA's subsidiaries).

10.11 The parties submitted that the Proposed Commercial Co-operation would result in significant consumer and economic benefits and efficiencies. This included an enhanced air travel product for

6 CCCS 400/110/2021/001 (2 June 2021).

Japan to Singapore services, expanded virtual networks of the airlines, more competitive fares through the reduction of double marginalisation and better fare combinability, significant benefits to corporate account customers, benefits to both airlines' frequent flyer programme members, and improved connectivity for both Japan and Singapore.

10.12 At the time of writing, CCCS had yet to issue its decision.

III. Abuse of dominance (section 47 of the Competition Act)

10.13 Section 47 of the Act prohibits one or more undertakings with a dominant position from engaging in conduct which amounts to an abuse of dominance. For an undertaking to be liable for infringing s 47 of the Act, CCCS must first show that it is dominant in the relevant market. It is widely accepted that an undertaking holds a dominant position if it possesses substantial market power. In assessing whether a particular undertaking is dominant, CCCS will consider various factors, such as market shares, barriers to entry and expansion, as well as the extent of competitive constraints exerted by competitors and customers. As an indicative threshold, CCCS uses a 60% market share as a proxy for dominance.

10.14 Being dominant is not in itself a violation of s 47 of the Act. What is prohibited is leveraging on such dominance to restrict competition in any market in Singapore. Examples of abusive conduct include predatory pricing, price discrimination, refusal to supply, exclusive dealing and margin squeeze.

10.15 This year, CCCS did not issue any infringement decisions on abuses of dominance.

IV. Mergers that (may) result in substantial lessening of competition (section 54 of the Competition Act)

10.16 Section 54 of the Act prohibits mergers that substantially lessen competition in any market in Singapore and applies to completed and anticipated mergers, unless they are excluded or exempted under the Act. Whether a merger would substantially lessen competition involves a comparative analysis between the anticipated state of competition in the market subsequent to the merger and that which is pre-existing as if the merger did not take place, that is, the counterfactual.

10.17 Notwithstanding that a merger may substantially lessen competition, the presence of efficiency gains, amongst other factors,

may operate to offset these anti-competitive effects. In such cases, CCCS will proceed to clear the merger. CCCS may clear the merger following a Phase 1 review or following a further review pursuant to a Phase 2 review, in both instances, with or without commitments. CCCS generally adopts a positive approach towards vertical mergers (mergers between undertakings operating on different levels of the production or distribution chain) and conglomerate mergers (mergers between undertakings operating in different and unrelated markets). This is because they are less likely to have an adverse impact on competition. However, this does not mean that vertical and conglomerate mergers will always be cleared. In recent times, CCCS has taken a more in-depth review of conglomerate mergers, as reflected by its approach to some of the more recent cases it was notified of. This is also evidenced by CCCS making adjustments to Form M1 to include an additional question on conglomerate effects to be explained when notifying a merger.

10.18 As the merger notification regime in Singapore is a voluntary regime, merger parties are not, strictly speaking, legally required to submit a merger notification to the CCCS. However, as was evident in the Grab/Uber merger, parties assume the various risks that come with such non-notification, such as CCCS imposing directions and financial penalties. It is worth emphasising that CCCS can wield the draconian power of unwinding a completed merger. Should CCCS choose to exercise this power, it would be extremely arduous and expensive to reverse a completed merger. It would therefore be more prudent to notify CCCS prior to implementing the merger so as to avoid an unfavourable decision and the potentially severe consequences. Indeed, many businesses have adopted this approach, as seen from the high number of merger notifications reviewed by CCCS in 2021. For merger parties who are concerned with the confidentiality of the merger (if it has yet to be announced), there is the option of obtaining confidential advice from CCCS under s 55A of the Act.

A. Proposed Acquisition by Analog Devices Inc of Maxim Integrated Products Inc[7]

10.19 On 16 April 2021, CCCS cleared the proposed acquisition by Analog Devices Inc ("ADI") of 100% issued shares of Maxim Integrated Products Inc ("Maxim"). Both parties overlap in their global supply of semiconductor technology, such as integrated circuits ("ICs"), in particular general-purpose analogue ICs, application-specific analogue ICs, digital ICs, and sensors and actuators. CCCS considered that the

7 CCCS 400/140/2020/007 (16 April 2021).

relevant markets were (a) the global supply of general purpose analogue ICs; (b) the global supply of application-specific analogue ICs; (c) the global supply of metal oxide semiconductor microcontrollers; and (d) the global supply of temperature and other sensors and actuators.

10.20 In assessing the effects of the acquisition, CCCS found that ADI and Maxim were not each other's closest competitors, which was partly due to ADI and Maxim having complementary product portfolios. Furthermore, the merged entity would continue to face sufficient competition from many other existing suppliers worldwide and in Singapore, and customers were able to switch to an alternative supplier with relative ease.

10.21 CCCS was satisfied that the proposed acquisition would not cause a substantial lessening of competition ("SLC") in Singapore and cleared the merger.

B. Proposed Acquisition by GlobalWafers Co Ltd of Siltronic AG[8]

10.22 On 11 May 2021, CCCS cleared the proposed acquisition of Siltronic AG ("Siltronic") by GlobalWafers Co Ltd ("GWC"). Under the proposed acquisition, GWC would acquire all or a substantial majority of at least 50% of the issued shares and voting rights in Siltronic. Both GWC and Siltronic are active in the supply of silicon wafers worldwide to the semiconductor device industry. The CCCS defined the relevant market to be the global supply of silicon wafers.

10.23 In its assessment, notwithstanding that there might be insufficient capacity in the supply of silicon wafers to cater to the increasing demand for semiconductor devices in the next few years, CCCS found that GWC and Siltronic were not each other's closest competitors; instead, there were three other large global suppliers, that is, Shin-Etsu Handotai Co Ltd, SUMCO Corporation and SK Siltron Co Ltd, that were likely to be important sources of competitive constraints. Furthermore, customers multi-sourced and qualified multiple suppliers, and silicon wafers supplied by qualified suppliers were generally substitutable.

10.24 The proposed acquisition was also found to contain several ancillary restrictions imposed by GWC in the form of non-compete and non-solicitation restrictions. For the non-compete restriction, CCCS found that it was not overly restrictive of competition due to the limited

8 CCCS 400/140/2021/001 (11 May 2021).

geographical and product scope of the restriction. Similarly, for the non-solicitation restriction, CCCS found that it was not overly restrictive of competition as the duration for the non-solicitation restriction was reasonable and properly limited. The non-compete and non-solicitation restrictions therefore constituted ancillary restrictions which benefitted from the ancillary restriction exclusion under the Act.

10.25 Given the above findings, CCCS was of the view that the proposed acquisition would not give rise to non-coordinated, co-ordinated or vertical effects in the relevant market and cleared the merger.

C. Proposed Acquisition by London Stock Exchange Group plc of Refinitiv Holdings Limited[9]

10.26 On 24 May 2021, the proposed all share acquisition of Refinitiv Holdings Ltd ("Refinitiv") by London Stock Exchange Group plc ("LSEG") was conditionally approved by CCCS after accepting commitments from LSEG. The acquisition was originally notified on 27 March 2020 and was subjected to a Phase 2 review by CCCS on 16 September 2020 after CCCS was unable to conclude that the acquisition would not result in an SLC.

10.27 LSEG and Refinitiv overlap in the supply of fixed-income index licensing services (excluding hybrids) to customers in Singapore. In addition, there are non-horizontal links between the parties arising from six categories of products, for which either one or both parties generate revenue from customers in Singapore. These are (a) trading services; (b) clearing services; (c) index licensing; (d) financial information products sold as packaged solutions; (e) regulatory reporting services; and (f) IT services/software.

10.28 Due to the minimal horizontal overlap between the parties across all products and services offered globally, CCCS found that competition concerns were unlikely to arise from the proposed acquisition with respect to the supply of any overlapping goods or services.

10.29 Instead, CCCS focused its assessment on the non-horizontal links between the parties and whether the proposed acquisition would lead to non-horizontal (vertical and conglomerate) effects. CCCS focused on the competition concerns relating to (a) foreclosure of access to specific Refinitiv's products and services; (b) foreclosure of access to Refinitiv's packaged solution and distribution services in general; (c) foreclosure of access to specific LSEG's products and services; and (d) foreclosure of

9 CCCS 400/140/2020/004 (24 May 2021).

rival clearing houses and trading venues arising from the non-horizontal link in trading and clearing services and packaged solutions.

10.30 In its assessment, CCCS found that the above competition concerns were unlikely to arise from the proposed acquisition, except for the concern relating to the possible foreclosure of competing index licensing service providers and clearing service providers from access to the WM/Reuters foreign exchange benchmarks ("WM/R FX benchmarks"). The WM/R FX benchmarks provide access to a wide range of FX data, offering intraday and closing spot rates, forward rates and non-deliverable forwards. These benchmarks were critical for clearing and index licensing providers and were proprietary to Refinitiv. CCCS therefore found that a strategy relating to the denied/restricted access of the WM/R FX benchmarks to competing clearing and index licensing competitors would likely lead to an SLC in the supply of index licensing and clearing services to customers globally.

10.31 In response, LSEG submitted commitments to address the competition concerns regarding the WM/R FX benchmarks. Under the commitments, the parties committed for a period of ten years to make the WM/R FX benchmarks available to all existing and future customers that access the WM/R FX benchmarks for the purposes of providing index licensing services, and to existing and future clearing houses that access the WM/R FX benchmarks for clearing purposes in Singapore. The parties also committed not to reclassify or redefine the WM/R FX benchmarks in a manner that would undermine the efficacy of the commitments, and to deal with the customers for index licensing or clearing purposes in good faith.

10.32 CCCS considered that these commitments were sufficient to address the competition concerns that could arise from the proposed acquisition. It therefore accepted the commitments and conditionally approved the proposed acquisition.

D. Proposed Acquisition by SK Hynix Inc of Intel Corporation's NAND and Solid State Drive business[10]

10.33 On 21 July 2021, CCCS cleared the proposed acquisition by SK Hynix Inc ("SK Hynix") of Intel Corporation's ("Intel") NAND and solid-state drive ("SSD") business ("the Target Business"). Both SK Hynix and the Target Business are active in the manufacture and distribution of NAND flash memory products as well as SSDs, which comprise client

10 CCCS 400/140/2021/002 (21 July 2021).

SSDs and enterprise SSDs. CCCS defined the relevant markets to be the global supply of (a) NAND flash memory; (b) enterprise SSDs; and (c) client SSDs.

10.34 In its assessment, CCCS found that there was a high degree of competition and the parties were not each other's closest competitors in the relevant markets, which meant that the parties would continue to face competitive constraints from several other strong suppliers. Customers also typically multi-sourced and qualified multiple suppliers for NAND flash memory and SSDs; hence, switching to those pre-qualified suppliers was not difficult.

10.35 Given the above findings, CCCS was of the view that the proposed acquisition would not give rise to non-coordinated, co-ordinated or vertical effects in the relevant markets and eventually cleared the merger.

E. Proposed Acquisition by Advanced Micro Devices Inc of Xilinx Inc[11]

10.36 On 30 August 2021, CCCS cleared the proposed acquisition by Advanced Micro Devices Inc ("AMD") of 100% issued shares of Xilinx Inc ("Xilinx"). Both AMD and Xilinx are active in the global supply of semiconductor technology, although each party has a distinct focus and offering. AMD is active primarily in the supply of central processing units ("CPUs"), graphic processing units ("GPUs"), accelerated processing units ("APUs") and semi-custom System-on-Chip ("SoC") products. Xilinx primarily designs and supplies field programmable gate arrays ("FPGAs"), programmable FPGA-based SoCs, Adaptive Compute Acceleration Platform and Smart Network Interface Cards.

10.37 As the parties did not offer any overlapping goods or services, CCCS determined that it was not necessary to conclude on the precise definition of the relevant markets. Nevertheless, CCCS considered that the possible relevant markets would be worldwide-to-worldwide supply of (a) FPGAs; (b) CPUs, including APUs; and (c) discrete GPUs.

10.38 CCCS found that there was no horizontal overlap between the parties' products. It also found that there was no vertical relationship between the parties as neither party was active in the supply of any products that were upstream or downstream relative to the products of the other party. CCCS therefore focused its assessment on the possible

11 CCCS 400/140/2021/003 (30 August 2021).

complementary relationships between Xilinx's FPGAs and AMD's CPUs and GPUs.

10.39 In its assessment, CCCS found that AMD did not have significant market shares in any markets for CPUs or discrete GPUs. Although Xilinx had significant market shares in the markets for FPGAs, there was the presence of Intel as a strong competitor and other smaller competitors which could continue to exert a competitive constraint on the merged entity. The CCCS also found that CPUs or discrete GPUs and FPGAs were not commonly purchased as a portfolio or bundle because customers had a strong preference to "mix and match" different products and there was the presence of open interconnect standards.

10.40 CCCS was satisfied that the proposed acquisition would not give rise to an SLC in Singapore and hence cleared the merger.

F. Proposed Joint Venture between Baker Hughes Company and Akastor ASA[12]

10.41 On 22 September 2021, the CCCS cleared the proposed joint venture between Baker Hughes Company ("Baker Hughes") and Akastor ASA ("Akastor"), which would combine Baker Hughes' subsea drilling services business and Akastor's subsidiary MHWirth AS ("MHWirth"). The joint venture company would be jointly controlled and owned equally by the parties.

10.42 Baker Hughes is a global provider of integrated oilfield products, services and digital solutions across the entire spectrum of oil and gas development. Akastor is an investment company with a portfolio of companies in the oilfield services sector. MHWirth, Akastor's wholly owned subsidiary, supplies topside drilling equipment and marine drilling risers. Both parties overlap in the supply of marine drilling risers. CCCS defined the relevant market as the global supply of marine drilling risers to customers worldwide, including aftermarket services and spare parts for marine drilling risers, and marine drilling riser accessories.

10.43 In its assessment, CCCS found that Baker Hughes and Akastor were not each other's closest competitors, and there were two other main suppliers of marine drilling risers, that is, Schlumberger Limited and NOV Inc, that were important sources of competitive constraints on the parties. CCCS also found that there was an overcapacity in the market for the supply of marine drilling risers globally, and it was likely that existing

12 CCCS 400/140/2021/005 (22 September 2021).

suppliers of marine drilling risers could expand their capacity quickly to act as an important competitive constraint on the parties. Furthermore, customers did not foresee or face any difficulty in switching suppliers for different drilling rigs post-transaction as the marine drilling risers supplied by existing suppliers were generally substitutable at the point of purchase.

10.44 For vertical effects, CCCS assessed the vertical relationship between MHWirth and Baker Hughes. It found that the proposed joint venture was unlikely to have the ability and/or incentive to foreclose close competition in the upstream markets for the global supply of each component of the pressure control equipment or in the downstream market for the global supply of complete drilling equipment packages for floaters and non-floaters.

10.45 Given the above findings, CCCS was of the view that the proposed acquisition would not give rise to non-coordinated, co-ordinated or vertical effects in the relevant market and cleared the merger.

G. Proposed Acquisition by Thermo Fisher Scientific Inc of PPD Inc[13]

10.46 On 25 November 2021, CCCS cleared the proposed acquisition by Thermo Fisher Scientific Inc ("Thermo Fisher") of 100% issued shares of PPD Inc ("PPD"). Thermo Fisher is a global manufacturer and supplier of a broad range of analytical, research and bioprocessing products, and pharmaceutical development and manufacturing services. PPD is a clinical research organisation ("CRO") which provides clinical development services to support pharmaceutical and biotech companies in the organisation and evaluation of clinical trials. PPD also operates a small number of laboratories which offers a range of testing services.

10.47 As the assessment was focused on the vertical effects of the proposed acquisition, CCCS categorised the relevant markets into upstream markets and downstream markets. CCCS defined the relevant upstream markets to be (a) the global supply of clinical trial comparator sourcing services; (b) the global supply of clinical trial ancillary sourcing services; (c) the global supply of clinical trial packaging services; and (d) the global supply of clinical trial supply storage, distribution and other logistics services. CCCS defined the relevant downstream market to be the global supply of CRO services.

13 CCCS 400/140/2021/006 (25 November 2021).

10.48 In its assessment, CCCS found that customer foreclosure concerns were unlikely to arise for the upstream markets for clinical trial support services. For new clinical trials, Thermo Fisher's competitors were able to supply to many alternative CROs that made up a large majority of the CRO services market, even if PPD shifted its purchases of clinical trial support services to Thermo Fisher. For existing clinical trials, there were significant costs and time involved with changing suppliers for clinical trial support services in the middle of a clinical trial, which made the likelihood of PPD shifting its purchases of clinical trial support services away from Thermo Fisher's competitors for existing clinical trials low.

10.49 CCCS also found that input foreclosure concerns were unlikely to arise in the downstream market for CRO services. There were multiple viable competitors to Thermo Fisher in the provision of clinical trial support services and switching to alternative suppliers between clinical trials was relatively easy. There was also little incentive for Thermo Fisher to engage in input foreclosure against PPD's competitors for existing clinical trials due to the difficulties that end-customers faced when switching CRO service providers in the middle of clinical trials. The competitors of Thermo Fisher also had capacity to expand supply and would be able to absorb additional demand from customers that switch from Thermo Fisher.

10.50 Given the above findings, CCCS was of the view that the proposed acquisition would not give rise to non-coordinated, co-ordinated or vertical effects in the relevant market and cleared the merger.

H. Proposed Acquisition by Korean Air Lines Co Ltd of Asiana Airlines Inc[14]

10.51 On 2 July 2021, CCCS received a notification relating to the proposed acquisition by Korean Air Lines Co Ltd ("Korean Air") for 63.88% of the issued share capital of Asiana Airlines Inc ("Asiana"). Both parties provide passenger air transport services and air cargo transport services in Singapore. In relation to passenger air transport services, the parties overlap in the supply of bidirectional passenger air transport services between Singapore and Seoul ("the Overlapping Passenger Air Transport Route"). In relation to air cargo transport services, the parties overlap in the supply of international air cargo transport services on the following unidirectional routes: (a) Singapore to Korea; (b) Korea to Singapore; (c) Singapore to China; (d) China to Singapore; (e) Singapore to Japan; (f) Japan to Singapore; (g) Singapore to North America;

14 CCCS 400/140/2021/004 (2 July 2021).

and (h) North America to Singapore ("the Overlapping Air Cargo Transport Routes").

10.52 The parties submitted that the relevant markets should be classified as follows: (a) the supply of bidirectional passenger air transport services on the Overlapping Passenger Air Transport Route; and (b) the supply of international air cargo transport services on the Overlapping Air Cargo Transport Routes.

10.53 At the time of writing, CCCS had not yet released its decision.

I. Proposed Merger between Cargotec Corporation and Konecranes plc[15]

10.54 On 15 October 2021, CCCS received a notification for the proposed merger between Cargotec Corporation ("Cargotec") and Konecranes plc ("Konecranes"). Konecranes specialises in lifting solutions for various applications, offering material handling solutions for general manufacturing and process industries, container handling equipment and respective automation solutions. Cargotec offers many kinds of material flow solutions, ranging from cargo and load handling equipment to engineering solutions for the maritime industry. Konecranes' business activities in Singapore primarily relate to the sale of container handling equipment, the marketing and selling of industrial lifting equipment and providing related services, and the trading in, installing and maintaining of building maintenance units and other serialised construction equipment in Singapore. Cargotec's business activities in Singapore mainly relate to the sale of container handling equipment.

10.55 The parties submitted that, based on their respective sales data from 2018 to 2020, they only overlapped in the supply of empty container handlers ("ECH") in Singapore. Separately, the parties submitted that, with reference to the period 2010–2021, they had supplied or sought to supply automated guided vehicles ("AGVs"), automated rubber-tyred gantry cranes ("RTGs") and reach stackers ("RS") in Singapore.

10.56 The parties submitted that the primary relevant market should be the market for the global supply of ECH. For completeness, the parties also considered the market for the global supply of AGVs; the market for the global supply of gantry cranes, which included automated RTGs; and the market for the global supply of RS.

15 CCCS 400/140/2021/007 (15 October 2021).

10.57 At the time of writing, CCCS had not yet released its decision.

J. Proposed Business Combination of Aon plc and Willis Towers Watson Public Limited Company[16]

10.58 On 2 March 2021, CCCS commenced the review into the proposed business combination of Aon plc ("Aon") and Willis Towers Watson Public Limited Company ("WTW"), whereby Aon would acquire the entire issued share capital of WTW in exchange for shares of Aon. Aon is a global professional services company which is active in Singapore in commercial risk solutions, reinsurance solutions, retirement solutions, health solutions, and data and analytics services. WTW is a global professional services firm which is active in Singapore in human capital and benefits, corporate risk and broking, and investment risk and reinsurance.

10.59 The parties submitted that the notification related to the supply of retirement benefits consulting services and human capital consulting services. Accordingly, the parties submitted that the relevant markets should be classified as follows: (a) the supply of retirement benefits consulting services no narrow than Singapore, with a potential to be regional; and (b) the global supply of human capital consulting services.

10.60 Following its initial review, CCCS announced on 29 June 2021 that a further review on the competition effects of the proposed acquisition was necessary. CCCS was concerned that the merged entity would become the largest provider of executive compensation and related consulting services in Singapore, and that there were limited alternative providers available who were able to compete effectively in Singapore.

10.61 Ultimately, the notification was withdrawn by the parties on 4 August 2021 after the parties terminated their merger agreement.

V. Consumer protection

10.62 The CPFTA regulates consumer transactions (excluding the sale of immovable property and employment contracts) in Singapore. It was enacted with a view to protect consumers against unfair trade practices and allow them to seek redress in relation to non-conforming goods. Unfair practices under s 4 of the CPFTA include reasonably deceiving or misleading a consumer, making a false claim and taking advantage of the consumer. The Second Schedule to the CPFTA sets out specific

16 CCCS 400/140/2020/006 (4 August 2021).

unfair practices, such as making false or misleading misrepresentations on the availability, characteristics and condition of the goods, and taking advantage of a consumer.

10.63 Under the CPFTA, CCCS has the power to conduct investigations into reasonably suspected unfair practices. If CCCS is satisfied that a retailer has engaged, or is likely to engage, in an unfair practice, it may apply to the courts for a declaration that the said practice is unfair and/or an injunction to restrain the seller from engaging in the unfair practice. However, unlike its competition law function, CCCS does not have the power to impose financial penalties on errant retailers.

A. False claims and pressure sales tactics by Tokyo Bust Express Pte Ltd[17]

10.64 Tokyo Bust Express Pte Ltd ("TBE") was found to have engaged in unfair trade practices, which included making false and unsubstantiated representations that misled consumers about the qualities or benefits of certain TBE's treatments and products, as well as exerting undue pressure on consumers to purchase its products and treatments.

10.65 During its investigations, CCCS noted that TBE had made changes in its business practices to ensure compliance with the CPFTA by taking steps to remove objectionable posts on its social media platforms and all false and misleading claims in its marketing materials. Furthermore, TBE had given an undertaking to CCCS that it would, amongst other things:

(a) stop engaging in the identified unfair practices;

(b) not make any claims or guarantees about the results, benefits or effects of its treatments or products unless these are substantiated;

(c) take all reasonable steps to make sure that its staff do not harass or exert undue pressure on customers to purchase its treatments or products;

(d) include in its agreements/invoices/receipts for its services or products a term that allows customers a five-day cooling off period to cancel their transactions and make sure that this term is made known to its customers;

17 Competition and Consumer Commission Singapore, "Tokyo Bust Express Gives Undertaking to CCCS to Cease False Claims and Pressure Sales Tactics", media release (25 June 2021).

(e) put in place an internal compliance policy to make sure that its marketing materials and practices comply with the CPFTA; and

(f) make sure that its staff are familiar with the types of conduct that would amount to an unfair practice under the CPFTA.

10.66 While investigations against TBE have been closed, CCCS will initiate further investigations against TBE if it breaches the undertaking or if it engages in any other unfair practices.

10.67 In addition, CCCS highlighted that the beauty industry consistently sees one of the highest rates of consumer complaints received by CASE. CCCS therefore monitors this industry closely for any unfair practices that may harm consumers.

B. Fire Safety & Protection (SG) ordered to stop unfair trade practices[18]

10.68 On 11 October 2021, the CCCS obtained a court order from the State Courts for a declaration and an injunction. The declaration stated that Fire Safety & Protection (SG) ("FSPSG") had engaged in unfair trade practices involving the supply of fire extinguishers and contravened the CPFTA. These unfair practices included:

(a) representing that FSPSG was affiliated with or approved by the Government, the Singapore Civil Defence Force or various community centres to sell fire extinguishers, when it was not;

(b) representing to consumers that there was a new law or regulation requiring each household to own a fire extinguisher by a certain date when there was no such law or regulation;

(c) representing that PAssion or National Trades Union Congress cardholders, members of the Pioneer Generation or Singaporeans were entitled to a discount on the purchase of fire extinguishers sold by FSPSG when no such discount existed;

(d) initially quoting consumers a price of $17.90 for a fire extinguisher and subsequently charging a higher amount of $179 for the same fire extinguisher;

(e) representing that the fire extinguishers sold by FSPSG were non-refundable when, in fact, consumers have the right

18 Competition and Consumer Commission Singapore, "Fire Safety & Protection (SG) Ordered to Cease Unfair Trade Practices", media release (11 October 2021).

to cancel the purchase of such fire extinguishers and obtain a refund pursuant to the Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations 2009; and

(f) representing that customers would enjoy yearly free replacements or servicing of fire extinguishers purchased from FSPSG when, in fact, a replacement would only be provided if the relevant fire extinguisher had certain defects or was used under certain circumstances.

10.69 The injunction that was issued restrained FSPSG and its sole proprietor, Kelvin Tan, from engaging in such unfair practices. The injunction also restrained Kelvin Tan's ex-employees (Adrian Tan, Zack Chai and Alex Neo) from abetting or aiding FSPSG to engage in such unfair practices.

C. Competition and Consumer Commission of Singapore and Consumers Association of Singapore issue advisory on online consumer transactions[19]

10.70 On 2 September 2021, CCCS and CASE released an advisory to alert consumers to common tactics used by errant online retailers to mislead consumers into purchasing products. Some of the commonly used online tactics highlighted in the advisory include: false or misleading information on business location; false or misleading claims about the product sold; seemingly large discounts; and false contact information for consumer refunds and redress.

10.71 The advisory also provided some precautions that consumers should adopt when shopping online:

(a) Before making a purchase, look out for inconsistent or questionable claims about the retailer's business premises, research the claims made by the retailer about accreditation/awards received by the product sold, check whether any claims made by the retailer about itself or its product can be separately verified, and check and understand the terms and conditions and return/refund policy listed on the retailer's website or advertisement.

(b) When making a purchase, make purchases through e-commerce websites that are verified, safe and secure, and use escrow payment arrangements where the option is available.

19 Competition and Consumer Commission Singapore, "CASE and CCCS Advisory on Online Consumer Transactions", media release (2 September 2021).

(c) When receiving the goods, check the products as soon as they are delivered.

10.72 This advisory provides useful guidance for consumers, especially with the prevalence of online shopping amidst the COVID-19 pandemic. From January 2020 to 2 August 2021, CASE had received 52 complaints related to transactions with overseas online retailers where consumers were misled into making purchases.

VI. Regulatory action by the Competition and Consumer Commission of Singapore

A. Expiry of guidance note on collaborations between competitors during the COVID-19 pandemic

10.73 The COVID-19 Guidance Note expired on 31 July 2021. It provided clarity to businesses on how CCCS would treat collaborations between competitors during these exceptional times. For collaborations that end after the COVID-19 Guidance Note expired, CCCS would evaluate them using the criteria applicable under normal circumstances to assess whether they would infringe s 34 of the Act.

B. CCCS issues guidance note on business collaborations[20]

10.74 With the expiry of the COVID-19 Guidance Note, CCCS announced its intention to consult on a guidance note to provide businesses with more clarity on common collaborations between competitors. On 28 December 2021, CCCS issued the Guidance Note, which clarifies CCCS's position on common types of business collaborations and provides supplementary guidance on how CCCS will generally assess whether such collaborations comply with s 34 of the Act. The Guidance Note also sets out factors and conditions under which competition concerns are less likely to arise. It seeks to serve as a reference to provide businesses and trade associations with the information they need to collaborate with greater confidence.

10.75 Essentially, the Guidance Note reiterates that agreements or collaboration which generate net economic benefits will not be caught under the s 34 prohibition. Specifically, the it addresses the following types of business collaborations: (a) information sharing; (b) joint production; (c) joint commercialisation; (d) joint purchasing; (e) joint

20 Competition and Consumer Commission Singapore, "CCCS issues Guidance Note on Business Collaborations", media release (28 December 2021).

research and development; (f) standards development; and (g) standard terms and conditions in contracts. Each type of business collaboration is briefly discussed in the paragraphs that follow.

A. Information sharing

10.76 Information sharing includes the exchange of both price and non-price information among businesses. Information sharing between businesses may allow them to understand the market and plan their strategies. However, information sharing may be anti-competitive when it impedes independent competitive decision-making.

10.77 The Guidance Note provides that, generally, information sharing is more likely to be regarded as anti-competitive the more commercially sensitive or the more recent or current the information shared, and the more frequent the sharing. This includes both price and non-price information sharing, price recommendations or guidelines by trade associations, and one-way disclosures of commercially sensitive information.

10.78 The Guidance Note also provides that competition concerns are less likely to arise from information sharing where:

(a) information shared is publicly available or is not related to price or other important factors that impact how businesses compete;

(b) information shared is historical, aggregated (especially by independent third parties), and cannot be attributed to individual businesses;

(c) the market has many players with frequent entry and exits, and the relevant goods/services are highly differentiated or change rapidly; or

(d) where commercially sensitive information needs to be shared for an efficiency-enhancing collaboration, to implement safeguards such as sharing only information that is strictly necessary to implement the collaboration, and ringfencing of commercially sensitive information to prevent unnecessary sharing.

B. Joint production

10.79 Joint production agreements involve collaborations between businesses to jointly produce a product, share production capacity or subcontract production. While joint production agreements can facilitate efficiency gains by allowing businesses to achieve cost savings in

production or utilise more efficient technologies, they may also be used to facilitate market sharing, bid-rigging, price-fixing or output limitation.

10.80 CCCS has stated that subcontracting agreements to expand production are less likely to raise competition concerns compared to reciprocal subcontracting and unilateral subcontracting.

10.81 The Guidance Note also states that competition concerns are less likely to arise from joint production agreements where:

(a) the collaboration does not facilitate price-fixing, bid-rigging, output limitation or market sharing;

(b) collaborating businesses do not have market power;

(c) the collaboration does not result in collaborating businesses having a significant proportion of common costs unless there is significant cost reduction that outweighs the potential harm arising from such common costs; and

(d) the collaboration does not raise competition concerns in relation to information sharing, or it contains safeguards to minimise concerns with information sharing.

C. Joint commercialisation

10.82 Joint commercialisation agreements involve collaborations between businesses in the selling, tendering, distribution or promotion of their products. Joint commercialisation agreements may enable competitors to collaborate to achieve certain efficiencies that may not be obtained individually. However, there is the risk that joint commercialisation may be used to facilitate collusion between businesses.

10.83 The Guidance Note sets out the following guidance on specific types of joint commercialisation agreements:

(a) Joint advertising agreements are less likely to restrict competition.

(b) Joint distribution agreements may raise competition concerns where horizontal competitors agree to distribute each other's competing products on a reciprocal basis, but are less likely to raise competition concerns where each party remains free to set commercial terms such as price and quantity independently.

(c) Joint bidding agreements are unlikely to raise competition concerns if the businesses in the joint bid are not actual or potential competitors to each other for that particular tender contract.

(d) Joint selling agreements between competitors, if they contain restrictions relating to prices and quantities to sell to customers, would be considered as restricting competition by object and would infringe the s 34 prohibition, unless they fulfil the net economic benefit exclusion.

10.84 The Guidance Note also provides that competition concerns are less likely to arise from joint commercialisation agreements in circumstances similar to those set out in the part on joint production above.[21]

D. Joint purchasing

10.85 Joint purchasing agreements involve collaborations between businesses to jointly purchase some or all of their input from one or more suppliers. Joint purchasing agreements allow businesses greater bargaining power to enjoy efficiencies, such as volume discounts, or to share delivery and distribution costs by combining their purchases. However, there is the risk that joint purchasing may be used to facilitate harmful collusive outcomes in the market.

10.86 When assessing the effects of a joint purchasing agreement, CCCS will assess the effects of the joint purchasing agreement in the purchasing market and the downstream selling market. The purchasing market is where the joint purchase businesses interact with the suppliers, while the downstream selling market is where the joint purchasing businesses are active as sellers, specifically where they are actual or potential competitors.

10.87 The Guidance Note further provides that competition concerns are less likely to arise from joint purchasing agreements where:

(a) the collaboration does not facilitate price-fixing, bid-rigging, output limitation or market sharing;

(b) collaborating businesses do not have buyer power in the purchasing market and do not have market power in the selling market;

(c) the available supply in the purchasing market is not limited and other competing purchasers continue to be able to obtain supplies from the suppliers;

21 See paras 10.79–10.81 above.

(d) the collaboration does not result in collaborating businesses having a significant proportion of common costs unless there is significant cost reduction that outweighs the potential harm arising from such common costs; and

(e) the collaboration does not raise competition concerns in relation to information sharing, or it contains safeguards to minimise concerns with information sharing.

E. Joint research and development

10.88 Joint research and development ("R&D") involve collaborations between businesses on R&D activities, such as the sharing of technical information, know-how and resources. R&D collaborations can lead to new products and technologies, improvements in existing products and technologies, and quicker developments.

10.89 The Guidance Note states that competition concerns are less likely to arise from R&D collaborations in the following cases:

(a) The collaboration is between businesses that are not actual or potential competitors or does not remove a maverick competitor from the market.

(b) Where the collaborating businesses are actual or potential competitors for existing products or technologies, they do not have market power.

(c) Where the collaboration is on new products or technologies, there are multiple viable, ongoing alternative R&D projects undertaken by competing innovators that can produce close substitutes.

F. Standards development

10.90 Standards development involves the setting of industry or technical standards. Standards development can help to reduce information asymmetry and to foster trust in the market. However, CCCS has identified three potential areas of concern:

(a) foreclosure of innovation, whereby standards may limit technical development and innovation when competing technologies are excluded during the standard-setting process;

(b) exclusion or discrimination on use of the standards, whereby certain businesses may be prevented from obtaining licences or effective access to the standardised technology; and

(c) elimination or reduction of competition, whereby businesses may engage in anti-competitive discussions, resulting in collusive outcomes.

10.91 The Guidance Note states that CCCS will generally assess standardisation processes based on their effect on competition, including:

(a) whether the standards were established objectively;

(b) whether access to the standard through licensing/licences or otherwise is provided fairly; and

(c) availability of alternatives in the market.

G. Standard terms and conditions in contracts

10.92 Standard terms and conditions in contracts involve the usage of terms shared amongst competitors establishing conditions of sale and purchase of goods and services between them and their customers. Standard terms can benefit businesses by helping to lower business costs and can benefit customers by allowing comparison across competing offers.

10.93 Competition concerns may arise where prescriptive standard terms that define the scope of a product or service become the industry norm, or where standard terms relate to or prescribe prices. Thus, industry standard terms should not have overly prescriptive benchmarks, and should not facilitate price-fixing, bid-rigging, market sharing or output limitation. Businesses should also not be compelled to adopt the standard terms.

10.94 The Guidance Note provides that CCCS will assess standard terms based on:

(a) whether there are overly prescriptive terms or terms relating to important factors of competition;

(b) existing competition to the standard terms; and

(c) how extensive the standard terms are.

C. CCCS revises competition guidelines

10.95 Taking into account the findings and recommendations from its e-commerce platform market study report, amendments to the Act in 2018, its experience in administering and enforcing the Act since the guidelines were last revised, as well as international best practices, CCCS

revised various CCCS guidelines for enhanced clarity and guidance. These revisions took effect from 1 February 2022.

10.96 The following guidelines were revised: (a) CCCS Guidelines on Market Definition ("Market Definition Guidelines"); (b) CCCS Guidelines on the s 47 Prohibition ("Section 47 Guidelines"); (c) CCCS Guidelines on the Substantive Assessment of Mergers ("Merger Substantive Guidelines"); (d) CCCS Guidelines on Merger Procedures ("Merger Procedure Guidelines"); (e) CCCS Guidelines on Directions and Remedies (formerly known as CCCS Guidelines on Enforcement); (f) CCCS Guidelines on the Treatment of Intellectual Property Rights ("IP Guidelines"); and (g) CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases ("Penalty Guidelines"). Consequential amendments were also made to the CCCS Guidelines on the Major Competition Provisions[22] and the CCCS Guidelines on the Section 34 Prohibition[23] for consistency with revisions made to the other Guidelines. Each is discussed briefly in the paragraphs that follow.

A. CCCS Guidelines on Market Definition

10.97 The Market Definition Guidelines outlines the framework on how CCCS determines relevant markets when it investigates/assesses possible infringements of the s 34 or 47 prohibitions or assesses mergers in the context of the s 54 prohibition.

10.98 One of the key changes to the Market Definition Guidelines was the clarification of market definition issues that may be particularly relevant in digital markets which are characterised by multi-sided platforms. CCCS defined "multi-sided platform" to refer to "an undertaking acting as a platform that facilitates interactions between two or more groups of users and creates value for sellers or buyers on one side of platform by matching or connecting them with buyers or sellers on the other side of the platform".[24]

10.99 In order to address the practical complexities when performing the market definition exercise for multi-sided platforms, CCCS will supplement the traditional market definition exercise with the consideration of additional factors. This includes the interactions between the different sides of the platform, externalities such as indirect network effects and usage externality, price structure on the platform, and

22 Effective 1 December 2016.
23 Effective 1 December 2016.
24 Competition and Consumer Commission of Singapore, *CCCS Guidelines on Market Definition* (effective 1 February 2022) at p 23.

non-monetary aspects such as data security and the level of innovation. Depending on the market circumstances and extent of substitution by buyers and sellers, the relevant market may differ on a case-by-case basis.

10.100 The revised Market Definition Guidelines also clarifies that CCCS will take into account both demand-side and supply-side factors in considering whether products that are not considered complementary or from adjacent markets should be included in a relevant market. CCCS explained that this concept of "product ecosystem" complements the analysis where the traditional framework may not suffice to deal with whether such distinct products should be included in a relevant market, and that it is not unprecedented for a focal product to be defined as a package or bundle of products.

B. CCCS Guidelines on the Section 47 Prohibition

10.101 The Section 47 Guidelines outlines the factors and circumstances which CCCS may consider when determining whether an undertaking has the breached the s 47 prohibition by engaging in conduct amounting to an abuse of a dominant position in a market.

10.102 The revisions to the Section 47 Guidelines provide greater clarity on issues relating to the assessment of market power and types of potentially abusive conduct in the context of multi-sided platforms.

10.103 For the assessment of market power, the revisions include how CCCS may assess the strength of network effects in the context of multi-sided platforms and the control or ownership of key inputs. The revisions also provide clarifications on how economies of scope, network effects, and purchasing efficiencies may act as barriers to entry.

10.104 Three types of potentially abusive conduct were introduced/elaborated on in the revised Section 47 Guidelines: (a) exclusive purchasing requirements; (b) tying and bundling; and (c) preferential leveraging of market power. Preferential leveraging of market power was introduced into the Section 47 Guidelines in place of the originally proposed term "self-preferencing", providing greater clarity on the harm that CCCS intended to prevent behind the concept – that certain forms of preferential conduct could result in competition harm – for instance, where an undertaking leverages market power from one market to obtain a competitive advantage which is then used to foreclose competitors in a separate market.

C. CCCS Guidelines on the Substantive Assessment of Mergers

10.105 Under the voluntary merger regime, businesses have to self-assess whether their merger or acquisition is likely to raise competition issues. The Merger Substantive Guidelines outlines CCCS's framework in assessing mergers and acquisitions and provides guidance to merger parties in conducting self-assessment.

10.106 The revisions to the Merger Substantive Guidelines provide better guidance to businesses, consumers, and competition practitioners on issues relating to CCCS's assessment of mergers, such as the relevance of proprietary rights and data as barriers to entry or expansion, including those involving digital platforms. The revisions also provide that the potential impact arising out of conglomerate mergers, especially mergers between parties in closely related markets, must be considered and addressed.

D. CCCS Guidelines on Merger Procedures

10.107 The Merger Procedure Guidelines sets out the procedural framework for the voluntary merger notification regime and CCCS's review and investigation of mergers. The Merger Procedure Guidelines also provides guidance on when it would be appropriate for merger parties to notify CCCS, such as by providing the indicative thresholds on when a merger may result in an SLC.

10.108 Various revisions have been proposed to the Merger Procedure Guidelines which are aimed at:

(a) reflecting the practices that CCCS has introduced since 2012 when the Merger Procedure Guidelines was last amended, such as encouraging merger parties to notify CCCS preferably prior to the completion of the merger to avoid the risk of CCCS investigating and finding that s 54 has been breached;

(b) making the information-sharing process easier between CCCS and other competition authorities; and

(c) clarifying certain procedural aspects of Singapore's merger regime, such as the process of notifying mergers to CCCS.

10.109 Separately, CCCS made adjustments to its Forms M1 and M2 templates for merger notifications in January 2022. The key changes were to Form M1, which includes an additional question on conglomerate effects (where relevant) and requires details of merging parties' top ten (instead of top five) customers in the section on countervailing buyer power.

E. CCCS Guidelines on Directions and Remedies

10.110 In 2018, changes were made to the Act that enabled CCCS to accept binding commitments offered in respect of notifications and investigations under the ss 34 and 47 prohibitions and to register with the District Court to legally enforce such commitments.

10.111 To give effect to the expanded coverage of commitments and remedies brought about by the amendments to the Act, CCCS shifted the substantive and procedural guidelines relating to commitments and remedies to CCCS Guidelines on Enforcement, and renamed it as CCCS Guidelines on Directions and Remedies.

10.112 Furthermore, revisions were made to clarify CCCS's practices in assessing commitments and remedies. Changes include amendments and clarifications to timelines, processes for companies offering commitment proposals, as well as the information to be submitted for commitment proposals.

F. CCCS Guidelines on the Treatment of Intellectual Property Rights

10.113 The IP Guidelines clarifies how CCCS treats the interface between intellectual property ("IP") rights and competition law, as well as factors and circumstances CCCS may consider in assessing agreements and conduct involving IP rights.

10.114 Since the IP Guidelines was first published in 2005, there have been revisions to the legislative sources of IP rights in Singapore. The revisions to the IP Guidelines reflect the changes to IP law, such as by inserting references to the Trade Marks Act 1998[25] and Geographical Indications Act 2014,[26] as well as clarifying certain concepts and terms such as "patents", "copyright", "trade marks" and "technology market".

10.115 The revised IP Guidelines also gives more guidance and clarity on how CCCS may apply competition analysis to certain agreements and conduct involving IP rights and how certain IP-related agreements may give rise to competition concerns. In relation to the s 34 prohibition, the revisions include clarifications on the assessment of various IP agreements, such as licensing agreements, grant-backs, non-challenge clauses and IP settlement agreements. In relation to the s 47 prohibition, the revisions give guidance on some potentially abusive conduct, such as

25 2020 Rev Ed.
26 2020 Rev Ed.

the licensing of standard essential patents on fair, reasonable and non-discriminatory terms, the refusal of access to data, and post-expiration licensing conditions/royalty charges.

G. CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases

10.116 The Penalty Guidelines explains CCCS's approach in determining financial penalties for infringement of the Act. CCCS takes a six-step approach as follows:

> (a) Calculate base penalty (taking into account severity of infringement, turnover of business of undertaking in Singapore for the relevant products and relevant geographic markets affected by the infringement in the undertaking's last business year).
>
> (b) Adjust for the period of infringement.
>
> (c) Adjust for aggravating or mitigating factors.
>
> (d) Adjust for other relevant factors, such as deterrent value.
>
> (e) Adjust if statutory maximum penalty under the Act is exceeded.
>
> (f) Adjust for immunity, leniency reductions and/or fast-track procedure discounts.

10.117 Revisions to the Penalty Guidelines are mainly focused on Step (c) in the above framework to clarify the list of mitigating factors in the calculation of financial penalties in a s 34 infringement. For instance, the revisions provide a non-exhaustive list of mitigative factors as to when "substantially limited involvement" by an undertaking may be a mitigating factor.

10.118 CCCS also made clear that the fact that an undertaking not playing a leader or instigator role or being a pro-active participant in the infringement will not, in itself, be regarded as a mitigating factor. These changes were to some degree motivated by the decision of the Competition Appeal Board ("CAB") in *Gold Chic Poultry Supply Pte Ltd v Competition and Consumer Commission of Singapore*,[27] where the CAB had found that CCCS was incorrect in that case to have asserted that a minor or passive participation was not a mitigating factor.

27 [2020] SGCAB 1

D. CCCS recommends three-year extension of the block exemption order for certain liner shipping agreements

10.119 On 15 November 2021, CCCS announced that it had recommended to the Minister for Trade and Industry that the BEO be extended for three years, from 1 January 2022 to 31 December 2024, in respect of: (a) vessel sharing agreements for liner shipping services; and (b) price discussion agreements for feeder services. A block exemption is the exemption of a category of agreements from the s 34 prohibition. In the context of the BEO, this means that the categories of liner shipping agreements listed in the BEO would be exempted from the s 34 prohibition.

10.120 In arriving at its recommendation, CCCS assessed that:

(a) Vessel sharing agreements for liner shipping services generate net economic benefit for Singapore as they improve Singapore's port connectivity, contribute to Singapore's status as a major transhipment hub, and enhance competition among liners.

(b) Price discussion agreements for feeder services generate net economic benefit for Singapore as feeders attract and anchor main lines to Singapore and expand Singapore's shipping network to support its transhipment hub, while the anti-competitive effects arising from the use of such price discussion agreements by feeders appear to be limited.

(c) Price discussion agreements for main line services do not generate net economic benefit for Singapore as such agreements are no longer relevant to main lines.

10.121 Following CCCS's recommendations, the Minister for Trade and Industry extended the BEO for three years.

VII. International developments

A. CCCS signs memorandum of understanding with Philippine Competition Commission on the enforcement of competition law

10.122 On 29 November 2021, CCCS and the PCC signed an MOU to facilitate their co-operation on competition enforcement. The MOU establishes a co-operation framework between CCCS and the PCC, thus facilitating information exchange and enforcement co-ordination in which both competition authorities have a mutual interest.

B. CCCS signs memorandum of understanding with China's State Administration for Market Regulation on co-operation of competition law

10.123 On 29 December 2021, CCCS and China's SAMR entered into a MOU, which seeks to enhance understanding and co-operation between CCCS and SAMR in the field of competition law.

10.124 The MOU will establish a co-operation framework between both competition authorities, and facilitate technical co-operation, experience sharing, information exchange and co-ordination for cases of mutual interest. The MOU will also enhance the development of competition law and policy between both agencies and in the region.