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10. COMPETITION LAW

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I. Overview

10.1 Despite the unusual circumstances brought about by COVID-19, 2020 remained a year where the Competition and Consumer Commission of Singapore ("CCCS") continued to review matters and issue decisions. The CCCS issued two infringement decisions, concluded two of its investigations, and received one notification relating to an alliance under s 34 of the Competition Act[1] ("the Act"). In light of the COVID-19 pandemic, the CCCS also saw itself issuing a Guidance Note on collaborations between competitors, in recognition of the need for competitors to collaborate and come to new agreements in these unprecedented times.

10.2 The CCCS was busier in so far as merger clearances under s 54 of the Act were concerned. It cleared five proposed acquisitions – substantially more than in 2019 – although it moved one proposed transaction into an in-depth Phase 2 review. As part of its continued review of merger clearances where remedies are imposed, the CCCS released the remedies imposed on Grab, which were first mandated following a 2018 infringement decision under s 54 as a new regulatory framework for ride hailing comes into force, and which will see the Land Transport Authority ("LTA") overseeing activities in the ride-hailing sector under the Point-to-Point Transport Regulatory Framework ("P2P Regulatory Framework").

10.3 On the consumer protection front, the CCCS has remained active in its enforcement efforts under the Consumer Protection (Fair Trading) Act[2] ("CPFTA"). It undertook several investigations which culminated in the requirement for undertakings from four errant retailers and

1 Cap 50B, 2006 Rev Ed.
2 Cap 52A, 2009 Rev Ed.

obtaining a court order against one e-commerce retailer to stop its unfair trade practices.

10.4 From a regulatory review standpoint, the CCCS issued for public consultation proposed amendments to its competition guidelines relating to market definition, intellectual property, the s 47 prohibition on abuses of dominance, and the substantive assessment of mergers, merger procedures, and remedies, directions and penalties. Some of these amendments followed from a market study on e-commerce platforms that commenced in late 2019 and concluded in September 2020. Separately, the CCCS also published a set of Guidelines on Price Transparency, which whilst primarily provides guidance for consumer protection issues, nevertheless has an impact on competition analysis as well.

10.5 The year 2020 saw the issuance by a number of competition regulators across the world of guidance to businesses on how they would apply competition laws to agreements amongst competitors in response to the COVID-19 pandemic. Some ASEAN competition regulators likewise did so, taking the lead from the ASEAN Experts Group on Competition ("AEGC"), comprising senior representatives from the multiple ASEAN competition regulators, which issued a joint statement in response to the COVID-19 pandemic. The joint statement nevertheless reiterated that competition enforcers in ASEAN "will not hesitate to take action against any business taking advantage of the current pandemic crisis by engaging in exploitative conduct that amounts to an abuse of their dominant position".

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

10.6 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. In 2020, the CCCS issued two infringement decisions relating to bid-rigging, reiterating that such conduct continues to be one of the most severe forms of anti-competitive conduct. It likewise concluded an investigation into anti-competitive behaviour after finding that the competition issues in the relevant markets had been sufficiently addressed. It also received a single proposed airline alliance notification, which is currently still undergoing review.

10.7 Aside from the cases discussed above, enforcement has continued as usual, with a slew of smaller price-fixing and bid-rigging cases involving a number of industries such as warehousing operators, providers of various types of maintenance services. The recent infringement decision in Singapore against contractors for bid-rigging in tenders for maintenance services of swimming pools and water features must be highlighted as the first one where parties received a discount as leniency applicants and additionally for their participation in the CCCS's Fast Track Procedure. Under the Fast Track Procedure, parties who admit liability for their infringement of the Act and successfully conclude a Fast Track Agreement with CCCS are eligible for a fixed 10% reduction in the amount of financial penalty. This comes on top of the reduction obtained pursuant to leniency. This is the first time CCCS has applied both discounts cumulatively since the Fast Track Procedure was formalised.

A. Competition Appeal Board overturns appeal in part by Fresh Chicken Distributors[3]

10.8 An important decision, which will have an impact on how competition law is enforced, is the decision issued in December 2020 in Singapore by the Competition Appeal Board ("CAB") in relation to the appeal lodged by five fresh chicken distributors ("the Parties") against the 2018 CCCS decision which found that the Parties had entered into a price-fixing agreement and a non-aggression pact ("NAP") for a period of close to seven years. Whilst the CAB affirmed the CCCS decision that the Parties had participated in a price-fixing arrangement over the period, the CAB agreed with the Parties that the CCCS had not established to the requisite legal standard that all the parties had participated in the NAP. In particular, the CAB noted that "if CCCS's case is that the NAP and Price Discussions are distinct infringements, they should not approach the evidence in a general broad-brush manner to treat relevant evidence as pointing to participation in a general collective 'Anti-Competitive Discussions' constituting both NAP and Price Discussions", adding that evidence indicating participation in one agreement "cannot simply be taken to also indicate participation" in the other.

10.9 The CAB further disagreed with the CCCS's calculations of the financial penalties imposed. In addition to confirming that the relevant turnover for the purpose of calculating the penalties had to be the turnover in the financial year preceding the end of the infringement(s) – as opposed to the year preceding the issuance of the infringement decision – the CAB found that the CCCS was incorrect to assert that

3 *Gold Chic Poultry Supply Pte Ltd v Competition and Consumer Commission of Singapore* [2020] SGCAB 1.

minor and passive participation is not a mitigating factor. As a result, the overall penalty imposed on the appellants was reduced by an average of 40%. Whilst there are number of critical points that arise from the CAB's decision on process and procedure, which weigh in favour of businesses, it is worth noting that the CAB decision ends on the following remarks:[4]

> Parliament legislated for very broad powers for the CCCS and the Competition Appeal Board that focused on the substance of infringements and somewhat less on the procedural elements as for example waiving the applicability of the Evidence Act and the law of evidence.

B. CCCS penalises three contractors for bid-rigging of quotations for provision of building, construction and maintenance services to Wildlife Reserves Singapore[5]

10.10 An infringement decision was issued on 4 June 2020 against contractors Shin Yong Construction Pte Ltd, Geoscapes Pte Ltd and Hong Power Engineering Pte Ltd, who were found to have participated in anti-competitive agreements to rig bids for the provision of building, construction and maintenance services under Invitations to Quote and Invitations to Tender called by Wildlife Reserves Singapore ("WRS"). By way of background, the complaint was referred to the CCCS by WRS. Following investigations by the CCCS, it was discovered that the Parties had exchanged bid information and co-ordinated their bids for eight tenders and quotations called by WRS from 1 July 2015 to 6 October 2016. The CCCS then conducted unannounced inspections at their places of business, following which the parties applied for leniency under the CCCS's leniency programme.

10.11 Bid-rigging is considered to be one of the most harmful types of anti-competitive conduct. It distorts the competitive bidding process as it eliminates the pressure on suppliers to submit their best offers to a customer. This prevents the customer from getting the best value for their tenders. In this case, the parties rigged and co-ordinated their bids, creating the false impression that independent and competitive bids were being submitted when they were not.

10.12 On the facts of this case, the CCCS held that the parties' conduct was anti-competitive, and found that their conduct distorted competition as the parties would agree on their bid prices before submitting their tenders to WRS, and this prevented WRS from obtaining the best prices through independent competitive bids. The CCCS imposed a financial

4 *Gold Chic Poultry Supply Pte Ltd v Competition and Consumer Commission of Singapore* [2020] SGCAB 1 at [357].

5 CCCS 500/7003/16 (4 June 2020).

penalty of $32,098 on the parties. Additionally, the parties have also been barred by WRS from bidding for any of WRS's contracts.

10.13 This case serves as a good illustration and reminder of how bid-rigging can be detected without a formal investigation. Here, it was WRS who detected the suspicious activity and reported it to the CCCS.

C. CCCS fines three contractors for rigging bids in tenders for maintenance of swimming pools and other water features[6]

10.14 On 14 December 2020, an infringement decision was issued against three businesses for infringing s 34 of the Act. CU Water Services Pte Ltd ("CU Water"), Crystalene Product (S) Pte Ltd ("Crystalene"), and Crystal Clear Contractor Pte Ltd ("Crystal Clear") were found to have engaged in bid-rigging conduct relating to tenders called for the provision of maintenance services for swimming pools, spas, fountains and other water features. Affected developments included condominiums and hotels in Singapore.

10.15 The CCCS investigation revealed numerous instances of bid-rigging conduct between CU Water and Crystalene, as well as separately between CU Water and Crystal Clear, in tenders by privately owned developments from 2008 to 2017. The parties' conduct consisted of a systematic pattern of either party ("Requesting Party") requesting a support quotation from the other party ("Requested Party"), where the support quotation by the Requested Party was intended to be priced higher than the Requesting Party's own bid. The Requesting Party would often specify a price for the Requested Party to quote as well. This formed most of the bid-ridding incidences between CU Water and Crystalene, and between CU Water and Crystal Clear.

10.16 However, in some cases, the infringing bid-rigging conduct also involved the market sharing of customers where each party in their respective bilateral agreements agreed or understood not to compete for the other party's customers in tender bids when that party was the incumbent contractor at a privately owned development. In such cases, a contractor (that is, the Requested Party) which knew or verified that the other contractor was the incumbent contractor would similarly approach the incumbent contractor (that is, the Requesting Party) and seek instructions on the price to quote. The parties agreed or understood that the Requested Party would not quote lower than the Requesting Party for a privately owned development.

6 CCCS 500/7003/17 (14 December 2020).

10.17 The CCCS conducted raids at the parties' places of business, following which Crystalene and Crystal Clear submitted leniency applications. In finding the parties liable, the CCCS held that the bid-rigging conduct between the parties resulted in there being no competitive pressure between the parties to submit their best offers to potential customers. The conduct also created the false impression that the bids submitted by the parties were the outcome of a competitive tender process when it was not. This resulted in potential customers not being able to obtain competitive offers that best fulfilled their requirements. The CCCS imposed a financial penalty of $419,014 on the parties, taking into account each business's relevant turnover, the nature and seriousness of the infringement, Crystalene and Crystal Clear's leniency applications as well as the mitigating factors of the parties' admissions to the infringing conduct and their co-operation with the CCCS.

10.18 Another noteworthy point in this case is that Crystalene submitted that they would only provide support quotes where the customer itself (that is, the privately owned developments) requested them. In response, the CCCS held that even if the parties were asked by a potential customer to procure additional bids, the parties should have left it to their competitors to independently decide their own bids. Critically, in this case, the CCCS noted additionally that the parties did not merely provide an additional quote to the customer; rather, the quote sent by the Requesting Party to the Requested Party would knowingly be higher than the Requesting Party's quote. Based on this, the CCCS took the view that the mere fact that the customer may have requested for an additional quotation did not negate the finding that the parties had participated in bid-rigging conduct.

10.19 Finally, the CCCS had to consider the question of whether liability for an infringement could be found where the original legal entity responsible for the anti-competitive conduct no longer existed. This was since some of the infringing conduct, which took place from 2008 to 2017, could be attributed to Crystal Clear's predecessor, Crystal Clear Contractor, which was a partnership established in 1996 and terminated on 5 September 2012. In holding the successor, Crystal Clear, liable for its predecessor's infringing conduct, the CCCS relied on the doctrine of single economic entity ("SEE").

10.20 The CCCS held that where an undertaking that engaged in the anti-competitive conduct had been through organisational changes such as a merger or acquisition, it did not absolve the undertaking of liability and its economic successor would also be found liable for any infringement. In coming to this decision, the CCCS took into account the fact that Crystal Clear Contractor and Crystal Clear shared the same registered address and were also involved in similar principal activities.

This suggested that Crystal Clear was the functional and economic successor of Crystal Clear Contractor. It was also found that Crystal Clear had as its directors and shareholders the previous partners of Crystal Clear Contractor. Therefore, the same people would have similarly been able to exercise decisive influence over Crystal Clear. Therefore, it was found that Crystal Clear Contractor and Crystal Clear constituted an SEE prior to the cessation of Crystal Clear Contractor's registration.

D. CCCS concludes investigation into alleged anti-competitive conduct by Singapore Institute of Surveyors and Valuers[7]

10.21 On 9 April 2020, the CCCS concluded its investigation into alleged anti-competitive behaviour by the Singapore Institute of Surveyors and Valuers ("SISV").

10.22 The investigations followed an initial complaint made to the CCCS that SISV's by-laws contained provisions which could restrict price competition and facilitate market-sharing amongst its members, which would restrict competition among SISV members and limit choices for consumers. The CCCS also considered if the by-laws could have a dampening effect on innovation and the adoption of technological tools such as automated valuation models, which would further harm competition in the industry.

10.23 The investigation was closed after SISV revised its by-laws and reiterated its support for the use of technological tools in the performance of property valuations, which the CCCS considered as having sufficiently addressed its competition concerns.

E. Notification on proposed commercial co-operation framework between Singapore Airlines Ltd and TATA SIA Airlines Ltd[8]

10.24 Parties who are unsure if an agreement infringes the s 34 prohibition on anti-competitive agreements have the option of seeking guidance or making a notification to the CCCS. Guidance may be sought as to whether an agreement is likely to infringe the s 34 prohibition or is likely to fall under a block exemption, while notifications may be made for a CCCS decision on whether an agreement has indeed infringed s 34 of the Act. An application for guidance is usually treated confidentially,

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7 Competition and Consumer Commission Singapore, "CCCS Concludes Investigation into Alleged Anti-Competitive Conduct in the Property Valuation Industry Following Changes by SISV to Foster Greater Competition and Technology Embracement in the Industry", media release (9 April 2020).

8 CCCS 400/110/2020/001 (30 November 2020).

although the CCCS may share any information provided with third parties if it deems it necessary to consider the application. On the other hand, while a notification may enjoy confidentiality pending decision by the CCCS, it should be noted that all notification decisions are eventually published on the CCCS public register and thus do not enjoy the same level of confidentiality as a request for guidance. While there is no requirement to notify the CCCS of agreements, notification of an agreement provides immunity from financial penalties for infringement (if any) from the period beginning on the date on which the notification was given and ending on such date as specified by the CCCS.

10.25 The CCCS received one public airline alliance notification this year from Singapore Airlines Limited ("SIA") and TATA SIA Airlines Limited ("UK"). The notification concerned their proposed commercial co-operation, with the parties entering into a commercial co-operation framework agreement ("Proposed Co-operation"); the parties would co-operate on various factors including scheduling, pricing, sales and marketing co-operation as well as other commercial areas such as special prorate arrangements and expanded code-sharing co-operation. The Proposed Co-operation included SIA's wholly owned subsidiaries (SilkAir (Singapore) Private Limited) and, potentially, Scoot Tigerair Pte Ltd.

10.26 The parties submitted that the Proposed Co-operation would result in significant consumer and economic benefits and efficiencies, including improved connectivity for both Singapore and India. There would also be consequential benefits to both countries' aviation industries and tourism sectors under the current COVID-19 circumstances, improved fare availability at all fare levels as a result of inventory and pricing co-ordination, more competitive fares through the reduction of double marginalisation, increased potential for the parties to add capacity and/or introduce new routes, and the increased likelihood of an expedited and more sustainable reinstatement of capacity in the current COVID-19 circumstances. Each of these improved measures would in turn result in significant benefits to both SIA and UK's corporate account customers as well as both SIA and UK's frequent flyer programmes.

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

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

10.28 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, the 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, the 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, the CCCS uses a 60% market share as a proxy for dominance.

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

A. CCCS closes investigations into online food delivery and virtual kitchen sectors[9]

10.30 The CCCS on 30 September 2019 commenced an investigation into online food delivery operators' refusal to supply food delivery services to competing virtual kitchens. The investigations were eventually closed following the parties offering the food delivery services to virtual kitchens.

10.31 Virtual kitchens are commercial kitchen spaces provided to food and beverage ("F&B") operators for the purposes of preparing food. Since they only have a kitchen space with typically no dine-in facilities, F&B operators using virtual kitchens rely on online food delivery service providers to fulfil their delivery orders.

10.32 Prior to the investigations, only one main online food delivery service provider in Singapore – FoodPanda – offered services to F&B operators using Smart City Kitchens, a competing virtual kitchen which did not operate its own online food delivery service. Following the CCCS's investigations, the remaining two large online food delivery service providers, GrabFood and Deliveroo, also started supplying their services to these F&B operators. As a result, there is now greater competition in the virtual kitchen sector. Consumers have also benefited, as they are able to enjoy a greater choice of food available to them online.

10.33 Although the CCCS has closed its investigations on 5 August 2020, it has stated that it will continue to monitor market practices in these sectors and take any necessary enforcement actions against any anti-competitive conduct that may arise.

9 Competition and Consumer Commission Singapore, "CCCS Concludes Investigation into Online Food Delivery and Virtual Kitchen Sectors", media release (5 August 2020).

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

10.34 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 the counterfactual (that is, if the merger does not take place).

10.35 Notwithstanding that a merger may substantially lessen competition, the presence of efficiencies gains, amongst other factors, may operate to offset these anti-competitive effects. In such cases, the CCCS will proceed to clear the merger. The CCCS generally adopts a positive approach towards vertical mergers (that is, mergers between undertakings operating on different levels of the production or distribution chain) and conglomerate mergers (that is, mergers between undertakings operating in different and unrelated markets). This is because they are less likely to have an adverse impact on competition.

10.36 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 the CCCS imposing directions and financial penalties.

A. Proposed acquisition by SembWaste Pte Ltd of Veolia ES Singapore Pte Ltd [10]

10.37 On 19 February 2020, the CCCS cleared the proposed acquisition by SembWaste Pte Ltd of 100% issued shares of Veolia ES Singapore Pte Ltd ("VESS"). Both parties overlap in their provision of Public Waste Collection ("PWC") and General Waste Collection ("GWC") services in Singapore. The CCCS considered the relevant markets in this case to be (a) the market for PWC services in Singapore; and (b) the market for GWC services in Singapore.

10.38 In assessing the effects of the acquisition, the CCCS found that the merged entity would continue to face sufficient competition from other suppliers in Singapore and overseas. In the market for PWC services, it

10 CCCS 400/140/2020/002 (19 February 2020).

was found that the National Environment Agency ("NEA") was the sole customer, thereby according it bargaining power to constrain any increase in market power by the merged entity. It also found that the barriers to entry were not high and there remained several credible competitors who were capable of expanding into the market to compete with the merged entity. In the market for GWC services, it was found that the combined market share of both parties was below the CCCS's indicative thresholds, suggesting that competition concerns were unlikely to arise and that customers would be able to switch to alternative suppliers. The incremental market share arising from the proposed market share was also low, suggesting that the proposed transaction was unlikely to alter the market structure significantly.

10.39 The proposed transaction was also found to contain several ancillary restrictions imposed by SembWaste in the form of non-compete and non-solicitation clauses. While the CCCS found that the non-solicitation clauses in both markets were not overly restrictive of competition and that the non-compete obligation under the GWC services market was reasonable, it found that in relation to the PWC services market, the duration of the non-compete obligation was not reasonable and proportionate to the overall requirements of the proposed transaction. Parties had to reduce the duration of this non-compete obligation to ensure that it constituted an ancillary restriction which was excluded from the prohibition against anti-competitive agreements under para 10 of the Third Schedule to the Act.

10.40 The CCCS was satisfied that the proposed transaction would not cause a substantial lessening of competition ("SLC") in Singapore and hence would not infringe s 54 of the Act.

B. Proposed acquisition by ARA Logistics Ventures I Ltd of LOGOS China Investments Ltd[11]

10.41 On 26 February 2020, the CCCS unconditionally cleared the proposed acquisition of ARA Logistics Ventures I Limited ("ARA Logistics") of LOGOS China Investments Ltd ("LOGOS"). ARA Logistics is a platform that is in the business of investment, fund management and divesting real estate assets while LOGOS is a company that manages funds which acquire, develop and operate logistics properties in Asia Pacific, including Singapore. The CCCS defined the relevant markets to be (a) the supply of warehouse rental space in Singapore; and (b) the global supply of fund management services for industrial real estate assets.

11 CCCS 400/140/2020/001 (26 February 2020).

10.42 In its assessment, the CCCS found that in the relevant market for the supply of warehouse rental space in Singapore, the merged entity's combined market share was below the CCCS's indicative threshold, suggesting that competition concerns were unlikely to arise. It was also found that customers had the ability to self-supply warehouse space for rental and counter price increases by the parties. They were also able to switch suppliers due to the number of alternative suppliers of warehouse rental space in Singapore to choose from. Barriers to entry were also not high. Therefore, potential and existing suppliers of warehouse rental space were likely to continue to be a competitive constraint on the merged entity.

10.43 In the relevant market for the global supply of fund management services for industrial real estate assets, the CCCS found that both companies were unlikely to be each other's closest competitor as their investment portfolios differed in scope, and that the combined market share of the parties was not large, and in any event, fell below the CCCS's indicative thresholds. Also, the availability of a large number of fund managers globally meant that there were no significant barriers to prevent a customer from switching service providers, and interestingly, that although barriers to entry in this market were high, the likelihood of expansion by existing fund managers would likely continue to be a competitive constraint on the merged entity.

10.44 Given the above findings, the CCCS was of the view that the proposed acquisition would not give rise to non-coordinated and co-ordinated effects in both relevant markets.

C. Proposed acquisition by Fresenius Medical Care Singapore Pte Ltd of RenalTeam Pte Ltd[12]

10.45 On 29 May 2020, the CCCS cleared the proposed acquisition by Fresenius Medical Care Singapore Pte Ltd ("FMC SG") of RenalTeam Pte Ltd ("RT").[13] FMC SG and RT both operate private centres providing kidney dialysis to End Stage Renal Disease ("ESRD") patients in Singapore. The FMC Group provides haemodialysis ("HD") and peritoneal dialysis ("PD") services through its clinics and provides outsourced HD services to outsourced clinics. FMC SG also sells dialysis products and consumables. RT supplies HD services through its clinics and provides outsourced HD services to outsourced clinics.

12 Competition and Consumer Commission Singapore, "CCCS Clears Proposed Acquisition by Fresenius Medical Care Pte Ltd of RenalTeam Pte Ltd", media release (29 May 2020).

13 CCCS 400/140/2020/003 (29 May 2020).

10.46 The CCCS considered the relevant markets in this transaction to be (a) the provision of outpatient HD services to ESRD patients by private sector providers and restructured hospitals (including joint ventures between restructured hospitals and private sector providers), excluding voluntary welfare organisations; (b) the provision of outsourced HD services to third party dialysis centres (that is, Outsourced Clinics) in Singapore; and (c) the provision of HD products and consumables in Singapore, with further examination in respect of specific HD products and/or HD consumables.

10.47 In its assessment, the CCCS found that in the relevant market for the provision of outpatient HD services to ESRD patients, amongst others, the merged entity would be the largest market player in Singapore. Importantly, however, it was also found that barriers to entry and expansion were unlikely to be high. Other service providers were able to set up new dialysis centres to compete with the merged entity, and this was evident from the various new entrants to the market in recent years. Patients also had other alternative HD service providers to choose from.

10.48 In the market for the provision of outsourced HD services, the CCCS found that, amongst others, the outsourced clinics could have bargaining power through the ability to self-supply and may source for other service providers through competitive tenders. As for the market for provision of HD products and consumables, the CCCS found that HD service providers had sufficient alternative suppliers to choose from.

10.49 The CCCS also considered the vertical effects of the proposed transaction since FMC SG is a vertically integrated provider of both HD products and services.

10.50 In relation to upstream competitors, the CCCS found that FMC SG was unlikely to have either the ability or incentive to foreclose competing suppliers of HD products and consumables in Singapore post-proposed transaction, given that the amount of sales of HD products and consumables accounted for by RT in the market (that is, from which other competing upstream suppliers would be potentially foreclosed) did not appear to be significant. The CCCS also noted that upstream suppliers were able to compete for the remaining customers of HD products and consumers in Singapore, which accounted for a significant majority of the total demand in Singapore.

10.51 As for downstream competitors, the CCCS found that FMC SG was likely to have limited incentives or ability to cease its supply of HD products and/or consumables, or increase its prices or reduce the quality and quantity of HD products and/or consumables sold, to its downstream competitors (in particular, competing private sector

providers) post proposed-transaction, as customers generally had no difficulties in switching suppliers for HD products and consumables, and had alternative choices of upstream suppliers in the market. Further, it was generally agreed that most HD machines and HD consumables from different suppliers were generally compatible with each other, and accordingly, there were no technical difficulties for customers to switch their supplier of such consumables (subject to one exception which the CCCS found that customers could nonetheless retaliate by switching away from FMC SG in respect of any other HD consumables and HD machines).

10.52 Given the above findings, the CCCS took the view that the proposed transaction would not give rise to non-coordinated, co-ordinated and vertical effects in both the relevant markets.

D. Proposed acquisition by Alstom SA of Bombardier Transportation (Investment) UK Ltd[14]

10.53 On 14 August 2020, the CCCS cleared the proposed acquisition of Bombardier Transportation (Investment) UK Ltd ("Bombardier Transportation") by Alstom SA ("Alstom"). Both parties are global players in the rail transport industry. In Singapore, Alstom supplies trains and urban signalling systems for mass rapid transit ("MRT") lines, turnkey solutions for rail transport, MRT system infrastructure and maintenance services, while Bombardier Transportation supplies trains for MRT and LRT lines, turnkey solutions for rail transport, urban signalling systems, services for communication systems and maintenance services.

10.54 The CCCS considered the following relevant markets in its assessment: (a) the supply of metro rolling stock in Singapore; and (b) the supply of urban signalling systems for MRT lines in Singapore.

10.55 In its assessment, the CCCS found that in the relevant markets for supply of metro rolling stock and urban signalling systems for MRT lines in Singapore, it was likely that there would continue to be sufficient competition post-merger and that the parties were unlikely to be each other's closest competitor. Existing and potential suppliers, as well as having the LTA as the sole customer, would also constrain the merged entity's ability to raise prices. The CCCS also found that in the relevant market for the supply of urban signalling systems for MRT lines in Singapore, Bombardier Transportation had no market share as it had not won any tenders thus far.

14 CCCS 400/140/2020/005 (14 August 2020).

10.56 As for vertical effects, the CCCS found that the potential for input foreclosure was low, given that the competitors to the merging entities generally did not purchase input from them or sell input to them.

10.57 Given the above reasons, the CCCS was of the view that the proposed transaction would not give rise to non-coordinated, co-ordinated and vertical effects in both the relevant markets.

E. Proposed merger between Korea Shipbuilding & Marine Engineering Co Ltd and Daewoo Shipbuilding & Marine Engineering Co Ltd[15]

10.58 On 25 August 2020, the proposed merger between Korea Shipbuilding & Marine Engineering Co Ltd ("KSOE") and Daewoo Shipbuilding & Marine Engineering Co Ltd ("DSME") was finally cleared. The merger was originally notified on 12 September 2019 and was subjected to a Phase 2 review by the CCCS on 23 January 2020 after the CCCS was unable to conclude that the merger would not result in an SLC.

10.59 Following the Phase 2 review, the CCCS found that the relevant market was the global supply of commercial vessels (including oil tankers, containerships, liquefied natural gas carriers and liquefied petroleum gas carriers). In this market, the barriers to entry and expansion were generally high. KSOE and DSME were also close competitors. While this would normally lead to the conclusion that the merger would result in undesirable anti-competitive effects, the CCCS also found that there were nonetheless alternative suppliers that were able to meet demand, in the event the merged entity was to raise prices. It also found that there were several close competitors that could constrain KSOE and DSME's bid prices.

10.60 As an SLC within any market in Singapore was deemed unlikely to arise for those reasons, the proposed merger was cleared.

10.61 The merger has also been cleared by the State Administration for Market Regulation in China on the basis that the merger does not violate competition laws or endanger competition. On the other hand, the merger is also currently undergoing Phase 2 reviews in the European Union, where concerns have been raised by the European Commission, as well as in Korea and Japan. It will be interesting to see if the authorities

15 CCCS 400/140/2019/002 (25 August 2020).

will come to a similar conclusion as the CCCS and decide not to impose commitments, or otherwise.

F. Proposed acquisition by Analog Devices Inc of Maxim Integrated Products Inc[16]

10.62 As for merger notifications, the CCCS received a notification on 17 December 2020 relating to the proposed acquisition by Analog Devices Inc ("ADI") for the 100% issued share capital of Maxim Integrated Products Inc ("Maxim").

10.63 ADI designs, manufactures and markets a broad line of integrated circuits ("ICs") that incorporate analogue, mixed-signal and/or digital signal processing technologies globally and in Singapore. Maxim is a global technology company that designs, develops, manufactures, and markets a range of analogue, mixed-signal and digital ICs. Both ADI and Maxim are active in the supply of semiconductor technology such as ICs, primarily to downstream original equipment manufacturers which incorporate this technology into electronic devices sold to end-users.

10.64 The parties submitted that the relevant markets should be classified as follows: (a) the global supply of general purpose ICs; (b) the global supply of application-specific analogue ICs; (c) the global supply of general metal oxide semiconductor microcontrollers; and (d) the global supply of temperature and other sensors for sensors and actuators.

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

G. Proposed acquisition by London Stock Exchange Group plc of Refinitiv Holdings Ltd[17]

10.66 On 27 March 2020, the CCCS received a notification for the proposed acquisition by London Stock Exchange Group plc ("LSEG") of the 100% issued share capital of Refinitiv Holdings Limited ("Refinitiv Holdings"). Following a Phase 1 review completed on 2 July 2020, it was unable to clear the merger due to competition concerns. On 16 September 2020, the CCCS announced that it was unable to clear the proposed acquisition and moved it into a Phase 2 review.

10.67 LSEG and Refinitiv overlap in the supply of fixed-income index licensing services (excluding hybrids) to customers in Singapore. In

16 CCCS 400/140/2020/007 (17 December 2020).
17 CCCS 400/140/2020/004 (27 March 2020).

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; (e) regulatory reporting services; and (f) IT services/software.

10.68 After assessing the information received from the parties and the feedback from its public consultation, the CCCS was concerned that the proposed acquisition would result in the merged entity being affiliated to a major clearing provider as well as a major licensing provider, each with a global presence. This could potentially reduce the merged entity's incentive to continue supplying input to its rival providers. In light of this, the CCCS did not clear the proposed acquisition in Phase 1.

10.69 The CCCS is currently continuing with its Phase 2 review.

H. CCCS releases directions on Grab following commencement of point-to-point transport regulatory framework[18]

10.70 On 24 September 2018, the CCCS issued an infringement decision[19] against Grab and Uber in relation to the sale of Uber's Southeast Asian business to Grab for a 27.5% stake in Grab in return, which was found to have infringed s 54 of the Competition Act.

10.71 Alongside the infringement decision, the CCCS also issued directions on Grab to lessen the adverse impact of the merger on drivers and riders. Such directions included requiring Grab to maintain its pre-merger pricing, pricing policies and product options in the ride-hailing services market and to remove all exclusivity obligations imposed by Grab on drivers and taxi fleets in Singapore.

10.72 From 20 November 2020 onwards, the directions were lifted with the commencement of the P2P Regulatory Framework administered by the LTA which awards Ride-hail Service Operator Licences ("RSOLs") to Grab and other ride-hailing service providers.

10.73 With a sectoral regulatory framework in place, the competition issues identified are now more appropriately considered under the P2P Regulatory Framework. As such, the CCCS released its directions imposed on Grab.

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18 Competition and Consumer Commission Singapore, "CCCS Releases Directions on Grab Following the Commencement of the Point-to-Point Transport Regulatory Framework ('P2P Regulatory Framework')", media release (20 November 2020).

19 CCCS 500/01/18 (24 September 2018).

V. Competition appeals

A. Competition Appeal Board upholds the CCCS's decision against Uber for anti-competitive merger with Grab[20]

10.74 On 31 January 2021, the CAB dismissed Uber's appeal against the decision of the CCCS that Uber's sale of its Southeast Asian business to Grab ("the Transaction") resulted in an SLC in the ride-hailing platform market in Singapore and infringed s 54 of the Act. The CAB upheld the directions issued by the CCCS to Uber and Grab at the material time (which have since been lifted) as well as the financial penalty of $6,582,055 imposed on Uber. Uber was also ordered to pay the CCCS's costs in relation to the appeal.

10.75 In its decision, the CAB noted that while Singapore has a voluntary merger regime, it did not mean that there were no risks to parties proceeding with a merger before notifying the CCCS. Further, in situations where a merger was irreversible (as it was in this case), not only did the merger parties run the risk of potentially infringing of s 54 of the Act, but any commitments they might subsequently offer to the CCCS (to remedy, mitigate or prevent any SLC or any effects that result or may result from the completed merger) could also be rejected by the CCCS as inappropriate or inadequate.

10.76 The CAB also made the important point that the CCCS could consider the need to deter businesses from engaging in anti-competitive practices when exercising its discretion to accept commitments and issue directions to the merger parties instead, including imposing financial penalties. The CAB also clarified that this was open to the CCCS even if the commitments offered by the merger parties were in fact sufficient to remedy or prevent any SLC arising from the merger.

VI. Consumer protection

10.77 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

20 *Uber Singapore Technology Pte Ltd v Competition and Consumer Commission of Singapore* [2020] SGCAB 2.

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

10.78 Under the CPFTA, the CCCS has the power to conduct investigations into reasonably suspected unfair practices. If the 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. It does not, however, have the power to impose financial penalties on errant retailers.

A. E-commerce retailer, Fashion Interactive Pte Ltd ordered to stop unfair trade practices[21]

10.79 On 17 January 2020, the CCCS obtained a court order from the State Courts for a declaration and an injunction. In particular, the declaration stated that Fashion Interactive Pte Ltd ("Fashion Interactive") had engaged in unfair trade practices and contravened the CPFTA. The injunction that was issued restrained Fashion Interactive and its director, Magaud, from further engaging in such unfair practices.

10.80 By way of background, Fashion Interactive is an e-commerce shoe retailer. On its website myglamorous.sg, it had misleading advertisements that directed the focus of visitors of the site to the discounts and shoes for sale instead of the membership subscription and recurring monthly fees. Consumers who wanted to purchase shoes at the advertised price were not aware that they could not do so without first subscribing to the retailer's "VIP Club" membership. Consumers were also led to believe that when they placed an order, they were consenting to a one-off purchase of shoes rather than a membership.

10.81 Such practices amount to a "subscription trap" and are prohibited under the CPFTA. They mislead consumers into signing up for a recurring subscription by giving the impression that they are making a one-off purchase. Consumers are also not aware or informed that they will be liable for recurring charges if they do not cancel their subscriptions, which typically have a grace period. Errant retailers often hide such subscription traps by omitting key terms and conditions, hiding them in fine print, placing them several clicks away and with confusing terminology.

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21 Competition and Consumer Commission Singapore, "E-Commerce Retailer Fashion Interactive Ordered to Cease Unfair Trade Practices and Stop Using 'Subscription Traps'", media release (17 January 2020).

10.82 The CCCS is empowered to take action against retailers for such behaviour, which includes collecting evidence, commencing investigations, filing injunction applications and enforcing compliance with injunction orders issued by courts. The court order issued by the State Courts prohibits Fashion Interactive from misleading consumers into signing up and/or continuing with a subscription service requiring payment or recurring payment. Interestingly, Magaud is also prohibited from abetting Fashion Interactive to mislead customers into doing the same. The court order also goes as far as to impose duties on Fashion Interactive that it must abide by for three years. Fashion Interactive will have to, from 6 January 2020 onwards, display the details of the declaration and injunction on its website, notify its customers of the declaration and injunction before entering into a contract, and include in every invoice or receipt that a declaration and injunction has been granted against it.

B. False and misleading trade practices by two beauty parlours – Wishing Well Beauty Centre and Ruby Beauty Pte Ltd[22]

10.83 Two beauty parlours, Wishing Well Beauty Centre ("Wishing Well") and Ruby Beauty Pte Ltd ("Ruby Beauty"), were found to have breached the CPFTA for engaging in various unfair trade practices that misled consumers into purchasing beauty services.

10.84 Investigations initiated in 2019 revealed that the staff of both parlours had enticed consumers with discounted treatments and would perform unsolicited services without revealing the price difference until after the treatment begun. They would then charge consumers a substantially higher price for the unsolicited treatment and offer to offset the payment by pressuring consumers to purchase more expensive beauty packages. Consumers were also misled on the terms and conditions of their purchased packages, such as the validity and transfer terms.

10.85 Under the CPFTA, it is an unfair practice for a supplier to mislead, make a false claim or take advantage of a consumer if the supplier knows or ought to know that the consumer is not in a position to protect its own interests or is not reasonably able to understand the transaction or any matter related to it. In particular, the CCCS's investigations found that Wishing Well and Ruby Beauty engaged in the following unfair trade practices as specified in the Second Schedule to the CPFTA:[23]

22 Competition and Consumer Commission Singapore, "Wishing Well Beauty and Ruby Beauty Pte Ltd to Cease Unfair Trade Practices Following CCCS's Investigation", media release (31 March 2020).

23 Consumer Protection (Fair Trading) Act (Cap 52A, 2009 Rev Ed) Second Schedule, paras 8, 9, 20 and 22.

> 8 Charging a price for goods or services that is substantially higher than an estimate provided to the consumer …;
>
> 9 Representing that a transaction involving goods or services involves or does not involve rights, remedies or obligations where that representation is deceptive or misleading;
>
> …
>
> 20 Omitting to provide a material fact to a consumer, using small print to conceal a material fact from the consumer or misleading a consumer as to a material fact, in connection with the supply of goods or services; and
>
> …
>
> 22 Purporting to assert a right to payment for the supply of unsolicited goods or services.

10.86 Both parlours have signed undertakings to cease the unfair practices and not to engage in any other unfair practices under the CPFTA. They have also undertaken not to use any deceptive or misleading methods in order to entice customers to sign up for packages that customers would not otherwise have agreed to, in lieu of payment for unsolicited beauty services. While investigations against both parlours have closed, the CCCS will continue to monitor their conduct and reserves the right to investigate and take necessary actions against any breach of the undertakings provided or any other unfair practices engaged by these parlours.

10.87 It is worth noting that the CCCS has consistently ranked the beauty industry as among the top three industries with the most complaints received by the Consumers Association of Singapore and it was ranked the top in 2018. The CCCS therefore monitors this industry closely for any unfair practices that may harm consumers.

C. False claims on validity period of promotions by operator of Expedia Singapore, BEX Travel Asia Pte Ltd[24]

10.88 BEX Travel Asia Pte Ltd ("BEX"), which operates the Expedia Singapore website, committed to tweak the manner in which its "Daily Deals" promotions appeared on its sites, following an investigation by the CCCS, which concluded on 12 November 2020.

24 Competition and Consumer Commission Singapore, "Operator of the Expedia Singapore Website Ceases False Claims on Validity Period of 'Daily Deals' Promotions", media release (12 November 2020).

10.89 These "Daily Deals" promotions involved the listing of certain "Daily Hotel Deals" and "Daily Package Deals", which BEX represented as lasting for only 24 hours. Given the language used, there was a suggestion that the deals would last beyond 24 hours, and there were at least 55 of such "Daily Deals" offers where the promotional price remained the same after they were supposed to expire. The CCCS took the view that this misled consumers into believing that there was a price benefit which was only available for a limited period, thereby creating unwarranted pressure or a sense of urgency for them to make an immediate purchase.

10.90 BEX was also found to have engaged in another unfair practice where their "Hot deals for 24 hours only!" offers expired in less than 24 hours, which meant that such deals were available for a shorter time period than represented. These false claims on promotions had taken place from 2016 to October 2019. Such practices impair competition as it gives errant retailers an unfair advantage over other suppliers who do not make misleading representations on discount or promotion periods.

D. Misleading claims on "Closing Down Sale" and "Fire Sale" advertisements by ABC Bargain Centre, Valu$ and ABC Express[25]

10.91 Another instance of misleading claims involves misleading advertisements by ABC Bargain Centre, Valu$ and ABC Express. Interestingly, this was a case where the retailers had approached the CCCS in 2019 to discuss the use of certain advertisements in their retail outlets. These advertisements bore the phrases "Closing Down Sale" and "Fire Sale".

10.92 The CCCS took the view that the advertisements did not state any end date, which could be misleading to consumers as they would be led to believe that there was a price benefit which would only be available for a limited period. This perception could be further exacerbated as the language of the advertisements concerned created the impression that the reason for the discounted price was due to impending closure of the business. Therefore, they constituted an unfair practice in breach of the CPFTA.

10.93 The CCCS accepted the retailers' voluntary undertakings to cease the use of the "Closing Down Sale" and "Fire Sale" advertisements,

25 Competition and Consumer Commission Singapore, "ABC Bargain Centre, Value$ and ABC Express Outlets to Cease 'Closing Down Sale' and 'Fire Sale' Advertisements", media release (16 October 2020).

noting their co-operation to ensure that their advertisements complied with the CPFTA. The parties' undertakings include:

> (a) removing any and all advertisements containing the word "Fire Sale" at the retail outlets;
>
> (b) not advertising any products as being available at a discounted price for a limited period of time at the retail outlets, where the parties know or ought to know that the products will continue to be so available for a substantially longer period, unless the retail outlet in question is genuinely ceasing operations; and
>
> (c) not advertising products as being available at a discounted price at the retail outlets where no genuine price benefit or advantage underlying the advertisement exists.

10.94 The retailers also undertook to use all reasonable efforts to ensure that all of their franchised retail outlets trading as "ABC Bargain Centre" and "Valu$" adhered to the obligations as well. The undertakings are subjected to an ongoing basis so as to ensure continued compliance with the CPFTA. The CCCS has also pointed out that suppliers may take reference from the CCCS Guidelines on Price Transparency[26] ("the Guidelines") for greater clarity on what pricing practices may potentially infringe the CPFTA.

10.95 Under the Guidelines, suppliers that offer a discount to represent a price benefit should base such discounts on genuine previously offered prices to provide a basis for the price comparison so that consumers are not misled by the savings that they may be able to achieve from purchasing the discounted product (or service). It is also good practice to retain records of volumes of and prices at which foods or services are sold, as well as to state the time period of the sale clearly and prominently.

VII. Regulatory action by the CCCS

A. CCCS issues guidelines on price transparency

10.96 The Guidelines issued by the CCCS on 7 September 2020 took effect on 1 November 2020. It sets out the pricing practices that may potentially fall foul of the CPFTA, the actions that suppliers should take and also focuses on clarifying how the four pricing practices of (a) drip

26 Competition and Consumer Commission Singapore, *Guidelines on Price Transparency* (7 September 2020).

pricing; (b) price comparison; (c) discounts; and (d) use of the term "free" may in certain cases amount to unfair practices under the CPFTA.

10.97 In providing these clarifications, the Guidelines also addresses key general points that were raised to the CCCS during the consultation process. In particular, the Guidelines makes clear that it applies to all suppliers (whether operating online or in physical stores) and does not "absolve suppliers of obligations" under any other guidance from any sectoral regulators. Where such guidance is more stringent than the Guidelines, suppliers should follow the stricter approach.

B. CCCS issues guidance note on collaborations between competitors during the COVID-19 pandemic[27]

10.98 On 20 July 2020, the CCCS issued a Guidance Note on Collaborations between Competitors in response to the COVID-19 pandemic ("Guidance Note"). The Guidance Note followed from similar guidance issued by other competition authorities worldwide and aimed to provide more clarity to businesses on how the CCCS would view collaborations between competitors in response to this exceptional period.

10.99 Section 34 of the Act prohibits agreements between businesses which have as their object or effect the prevention, restriction or distortion of competition within Singapore. However, agreements or collaboration which generate net economic benefits ("NEB") are excluded.

10.100 The NEB criteria for essential goods or services are that (a) the collaboration improves production or distribution or promote technical or economic progress; (b) the agreement or restriction is indispensable; and (c) the collaboration does not eliminate competition in respect of a substantial part of the goods or service.

10.101 Under the Guidance Note, the CCCS clarified that it will generally not investigate collaborations between competitors which (a) sustain or improve the supply of essential goods or services in Singapore; (b) are put in place from 1 February 2020 and end by 31 July 2021; and (c) do not involve price-fixing, bid-rigging, market-sharing or output limitation (since it is assumed that such collaborations are likely to generate NEB and are therefore unlikely to infringe the Competition Act).

27 Competition and Consumer Commission Singapore, *CCCS Guidance Note on Collaborations between Competitors in Response to the Covid-19 Pandemic* (20 July 2020).

10.102 Collaborations that improve or sustain the supply of essential goods or services in Singapore but involve price-fixing, bid-rigging, market-sharing or output limitation are less likely to satisfy the NEB criteria but, under the Guidance Note, could still qualify for the NEB exclusion. To do so, one must additionally consider factors such as the extent of reduction in competition arising from the agreement and the competitive constraints in the market.

10.103 The Guidance Note provides an illustration on how it is possible for an agreement to satisfy the NEB criteria when it is necessary for companies to co-ordinate supply quantities for different medicines to overcome oversupply of some medicine and shortage of others. The first and second criteria on improving production and the indispensability of the collaboration are satisfied so long as "restrictions that may be unnecessary to achieve the improvement, e.g. price-fixing, are excluded". The third criterion is satisfied so long as the companies continue to face competition in the market if, for example, other suppliers could feasibly start production and compete to supply the medicines in the near future.

10.104 While the Guidance Note is intended to address the effects of the COVID-19 pandemic and to recognise that collaborations between competitors may be necessary, the CCCS retains its discretion to commence investigations for any businesses that may take advantage of this as a cover to engage in anti-competitive activities. It is also not intended to be a blank cheque for co-ordination amongst competitors, which must still be justified with reference to their efficiencies.

10.105 Finally, agreements and collaborations that already satisfy the NEB criteria in normal circumstances continue to be excluded from the s 34 prohibition. Agreements entered into with the Singapore government or any statutory body, or agreements entered into on their behalf, also continue to be excluded under the Act.

C. Proposed amendments to competition guidelines

10.106 The CCCS has proposed several changes to its Guidelines on the Section 47 Prohibition against abuse of dominance, which it had issued for public consultation in September 2020, as part of its overall review of its suite of competition guidelines.[28] In relation to the assessment of dominance, the CCCS clarified that it will consider factors such as the strength of network effects, economies of scope, consumption synergies and control of or ownership of key inputs, including data. One key change

28 Competition and Consumer Commission Singapore, *Public Consultation on Proposed Changes to Competition Guidelines* (10 September 2020).

is the introduction of the concept of self-preferencing as a potential abuse of dominance. Self-preferencing occurs when a vertically integrated dominant undertaking gives preferential treatment to its own downstream products over competing sellers which utilise the dominant undertaking's upstream products (for example, an e-commerce platform which may give better placement of its own products as compared to other sellers). Another change is the express recognition that the CCCS may consider other indicators for market share analysis, such as the number of active users, number of transactions and gross merchandise value, as the traditional sales-related indicators of market share may not be appropriate in certain markets, such as for multi-sided digital platforms which do not charge positive prices to one or more sides.

D. CCCS e-commerce platforms market study report

10.107 The CCCS issued its findings and recommendations from its e-commerce platforms market study ("E-commerce Study") on 10 September 2020.[29]

10.108 The E-commerce Study was conducted between late 2019 and early 2020. It was driven by the CCCS's observations of a significant increase in e-commerce activities in Singapore in the past few years and the rise of regional "super apps" which compete across different market segments. The CCCS had conducted the study with the objective of learning more about the potential competition and consumer protection issues which could arise from the growing prevalence of e-commerce platforms that operate at least one multi-sided platform, facilitate e-commerce as their primary activity, and operate in more than one market segment in Singapore.

10.109 Following the E-commerce Study, the CCCS concluded that there were currently no major competition involving e-commerce platforms and that the existing competition regime is sufficiently robust and flexible to deal with any competition concerns that may arise in relation to digital platforms. In particular, it noted that (a) price competition continues to be a highly relevant factor in the e-commerce sector; (b) the absence or lack of data is not currently an insurmountable barrier to entry or a severe limitation on the ability of e-commerce platform operators to compete effectively; and (c) that data protection is currently not a key parameter of competition amongst e-commerce platforms.

29 Competition and Consumer Commission Singapore, *CCCS Market Study on E-Commerce Platforms Recommends Update to Competition Guidelines* (10 September 2020).

10.110 In coming to its conclusions, the CCCS took into account (a) the significant number of customers who practise multi-homing (the practice by suppliers or consumers of using more than one platform simultaneously to buy or sell) across different platforms; (b) the ability of industry players to collect their own data on their platforms or through third-party research capabilities; and (c) the survey results that revealed consumers who use e-commerce platforms adopt a generally ambivalent stance on data protection breaches, and do not habitually read privacy policies anyway.

10.111 It is worth noting that the CCCS bore in mind the following key features of e-commerce platforms in its competition assessment. First, the multi-sided nature of e-commerce platforms (that is, platforms that start off in a single market segment, then expand into other market segments) means that it is possible to leverage existing user bases in one market segment for a competitive edge in subsequent market segments, which could potentially lead to higher barriers to entry for potential entrants of the individual market segments. Indirect network effects (that is, effects that are generated when buyers on an e-commerce platform increase with the increase in the number of sellers listed on the platform and *vice versa*) may also affect market definitions. Finally, the use of artificial intelligence and algorithms in pricing decisions may also have an impact on findings of anti-competitive agreements or concerted practices. For example, they could increase the likelihood of collusion between sellers, including e-commerce platforms.

10.112 While the CCCS has not found any pressing competition concerns in the e-commerce sector as of yet, the CCCS will continue to monitor the sector with a view to providing clearer guidance on how the Act will be applied to digital platforms in the longer term.

10.113 The E-commerce Study also led the CCCS to propose amendments to its competition guidelines, which it has issued for public consultation. Amongst others, it is seeking public feedback on its proposed amendments to (a) the CCCS guidelines on market definition; (b) the CCCS guidelines on the s 47 prohibition; and (c) the CCCS guidelines on the substantive assessment of mergers.

10.114 In relation to market definition, the CCCS is considering taking into consideration externalities such as network effects and usage externalities and the platform's pricing structures and strategies in its assessment of market definitions and in its application of the hypothetical monopolist test. It may also consider how the number of users on the side which is not charged the positive price may respond to changes in non-monetary aspects of the product (for example, quality). The CCCS

will also consider whether consumption synergies may be significant enough to justify defining the focal product as a product ecosystem.

10.115 In relation to the s 47 prohibition, the CCCS has acknowledged that sales-related indicators of market shares may no longer be as relevant for multi-sided digital platforms which do not charge positive prices to one or more side(s). It is thus considering the use of other indicators in its market share analysis, as well as expanding the types of conduct which may constitute abuses of dominance.

10.116 As for the CCCS guidelines on the substantive assessment of mergers, the CCCS clarified that it may consider harm to data protection and innovation when assessing the anti-competitive effects of mergers. Further, while conglomerate mergers are generally not objectionable, competition concerns could still arise if the parties operate in closely related markets. It also added that the incentive and ability of the merged entity to engage in leveraging behaviour and potential barriers to entry arising from consumption synergies as a result of the merger could potentially be relevant.