

Competition & Antitrust and Trade

# A Shift to Greater Focus on Conglomerate Effects in Singapore

## Introduction

In the past two years, the Competition and Consumer Commission of Singapore ("**CCCS**") has been increasingly more focused on potential competition concerns arising out of conglomerate mergers compared to before. This shift is important to transaction parties filing in Singapore as greater thought may be required at the outset to identify potential conglomerate concerns that could arise, and to canvass arguments to avoid or defend against such concerns.

## What is a conglomerate merger?

A conglomerate merger is neither a horizontal merger (i.e., merger between competitors) nor a vertical merger (i.e., merger between an upstream supplier and a downstream customer). Instead, it involves the merger of firms that operate in different product markets. An example would be Microsoft's 2019 acquisition of LinkedIn: both companies operate in different product markets as the former was active in operating systems for PCs and mobile devices while the latter operated a professional social network. As the companies did not have a horizontal or vertical relationship pre-transaction, their combination would be a conglomerate merger.

## What are the harms involved in conglomerate mergers?

The theories of harm involved in conglomerate mergers can be classified into non-coordinated and coordinated effects.

- (a) **Non-coordinated effects** arise when the merged entity unfairly gains a competitive advantage by leveraging a strong market position from one market to another (e.g., tying or bundling) to gain market share in the latter market. Competitors in the latter market could be unfairly foreclosed, which would reduce competitive pressure on the merged entity and allow it to exercise market power and increase prices.
- (b) **Coordinated effects** include the possibility that a conglomerate merger may facilitate collusion between the merged entity and the remaining competitors in the market. The possibility of collusion is heightened if the merged entity's rivals in one market are also rivals in other markets.

## Competition & Antitrust and Trade

With the merged entity and rivals operating in common markets, the incentive to collude across all these markets would be stronger.

### **Example of conglomerate effects**

*In Microsoft/LinkedIn, the European Commission raised concerns that post-transaction, Microsoft would pre-install LinkedIn on all PCs, making it redundant for original equipment manufacturers to install another professional social network application on the PCs. Further, the regulator found a serious risk that the merged entity would not provide LinkedIn's competitors with all the necessary technical information to interoperate their applications with Microsoft's operating system. In essence, the regulator was concerned that Microsoft would unilaterally leverage its market power in the OS market to gain an unfair advantage in the professional social network market.*

However, there is also widespread recognition that conglomerate mergers are oftentimes less anti-competitive than horizontal or vertical mergers. Unlike horizontal and vertical mergers, conglomerate mergers do not directly remove competitors from the market or bring together vertically related firms which could lead to customer or input foreclosure concerns. Further, conglomerate mergers often bring about efficiency gains, for example, by lowering the consumer search costs by allowing firms to be a one-stop shop for consumers.

## A shift in CCCS's focus to conglomerate mergers

There has been an observable shift in CCCS's approach to conglomerate mergers in the past two years. Where the regulator previously considered that conglomerate mergers rarely raised competition concerns, changes to CCCS's guidelines and practice show there is now a greater scrutiny of such mergers.

### **1. Amendments to SAM Guidelines**

Previously, the 2016 CCCS's Guidelines on Substantive Assessment of Mergers ("**SAM Guidelines**") stated that unless there were exceptional circumstances, conglomerate mergers "rarely" raised competition concerns. In the latest 2022 version, this has been changed to clarify that while conglomerate mergers "typically" do not raise competition concerns, conglomerate concerns may arise when the merger is between parties in closely related markets. CCCS has also provided greater detail in the 2022 version of the SAM Guidelines on how it will assess and address the conglomerate concerns (e.g., examining degree of market power, whether rivals will employ counterstrategies). The change in language from "rarely" to "typically", together with the more extensive details on assessing conglomerate mergers, suggests that CCCS has now moved to scrutinise conglomerate mergers in greater detail.

## Competition & Antitrust and Trade

### 2. Amendments to Form M1

Notifying parties must submit a Form M1 which provides the information and supporting documents required when notifying CCCS of a merger. In the old Form M1, there was no requirement for parties to specifically address conglomerate effects. However, in the updated Form M1 (revised in January 2022), parties to a conglomerate merger are expressly required to provide CCCS with information on whether they are active in related markets, whether customers prefer to purchase products and services as a bundle from the same supplier, and whether rivals are able to provide similar bundles to compete effectively with the merged entity. This is a strong indication that CCCS is now prepared to closely scrutinise any potential conglomerate effects arising from a transaction.

### 3. Cases

Historically, CCCS has infrequently raised concerns about conglomerate effect. In the five years from 2016 to 2020, CCCS only looked into these concerns in four out of 33 decisions. From January 2021 to date however, CCCS raised conglomerate concerns in three out of six decisions (an almost 40% increase). Of these, the *Advanced Micro Devices / Xilinx* case (notified in March 2021) was the first instance where CCCS raised conglomerate concerns on its own initiative, without prompt from the third parties. Following changes to the Form M1 (see above), the parties in the *Entegris / CMC Materials* merger were also required to explain at the outset whether their transaction gave rise to conglomerate effects.

Ultimately, CCCS did not find conglomerate concerns or imposed remedies based on such concerns, in any of its cases. Nonetheless, it is evident that the regulator is increasingly scrutinising potential conglomerate effects.

## Our comments

As CCCS is now taking a much closer look at conglomerate effects arising from transactions, merging parties should be aware of the following:

- (a) At the initial notifiability assessment, conglomerate effects risks should factor as a potential source of competition concern that could warrant a Singapore filing;
- (b) When preparing the Form M1, any potential conglomerate issues must be addressed at the outset; and
- (c) Merging parties should be ready for more questions from CCCS about potential conglomerate effects relating to their transaction.

## Competition & Antitrust and Trade

Whether this shift in focus will result in a divergence in merger review outcomes in Singapore compared to other jurisdictions also remains to be seen. To date, CCCS has not imposed remedies based on conglomerate effects. However, experience with the Chinese regulator – which has been unafraid to impose China-specific remedies based on conglomerate effects where the transaction had been cleared unconditionally in every other jurisdiction (e.g., NVIDIA/Mellanox Technologies case) – is a reminder that such outcomes are possible if there are Singapore-specific competition concerns arising.

If you have any questions or comments in relation to the above development or on competition laws in Singapore, please do not hesitate to contact our team below or email us at [competitionlaw@rajahtann.com](mailto:competitionlaw@rajahtann.com).

To learn more about the trends in merger controls in Southeast Asia, we invite you to join us at the Rajah & Tann Asia 9th Regional Competition Conference taking place on 14 September 2022 in Singapore, where our competition law experts from across Southeast Asia will discuss competition enforcement trends. To register, please click [here](#).

## Contacts



**Kala Anandarajah**  
Head, Competition & Antitrust  
and Trade

T +65 6232 0111

[kala.anandarajah@rajahtann.com](mailto:kala.anandarajah@rajahtann.com)



**Tanya Tang**  
Partner  
(Chief Economic and Policy  
Advisor)  
Competition & Antitrust and  
Trade

T +65 6232 0298

[tanya.tang@rajahtann.com](mailto:tanya.tang@rajahtann.com)



**Alvin Tan**  
Partner  
Competition & Antitrust and  
Trade

T +65 6232 0904

[alvin.tan@rajahtann.com](mailto:alvin.tan@rajahtann.com)



**Joshua Seet**  
Senior Associate  
Competition & Antitrust and  
Trade

T +65 6232 0104

[joshua.seet@rajahtann.com](mailto:joshua.seet@rajahtann.com)

---

Please feel free to also contact Knowledge and Risk Management at [eOASIS@rajahtann.com](mailto:eOASIS@rajahtann.com)

## Our Regional Contacts

RAJAH & TANN | *Singapore*  
**Rajah & Tann Singapore LLP**  
T +65 6535 3600  
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*  
**R&T Sok & Heng Law Office**  
T +855 23 963 112 / 113  
F +855 23 963 116  
kh.rajahtannasia.com

RAJAH & TANN 立杰上海  
SHANGHAI REPRESENTATIVE OFFICE | *China*  
**Rajah & Tann Singapore LLP  
Shanghai Representative Office**  
T +86 21 6120 8818  
F +86 21 6120 8820  
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*  
**Assegaf Hamzah & Partners**

**Jakarta Office**  
T +62 21 2555 7800  
F +62 21 2555 7899

**Surabaya Office**  
T +62 31 5116 4550  
F +62 31 5116 4560  
www.ahp.co.id

RAJAH & TANN | *Lao PDR*  
**Rajah & Tann (Laos) Co., Ltd.**  
T +856 21 454 239  
F +856 21 285 261  
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*  
**Christopher & Lee Ong**  
T +60 3 2273 1919  
F +60 3 2273 8310  
www.christopherleeong.com

RAJAH & TANN | *Myanmar*  
**Rajah & Tann Myanmar Company Limited**  
T +95 1 9345 343 / +95 1 9345 346  
F +95 1 9345 348  
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL  
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*  
**Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)**  
T +632 8894 0377 to 79 / +632 8894 4931 to 32  
F +632 8552 1977 to 78  
www.cagatlaw.com

RAJAH & TANN | *Thailand*  
**R&T Asia (Thailand) Limited**  
T +66 2 656 1991  
F +66 2 656 0833  
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*  
**Rajah & Tann LCT Lawyers**

**Ho Chi Minh City Office**  
T +84 28 3821 2382 / +84 28 3821 2673  
F +84 28 3520 8206

**Hanoi Office**  
T +84 24 3267 6127  
F +84 24 3267 6128  
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

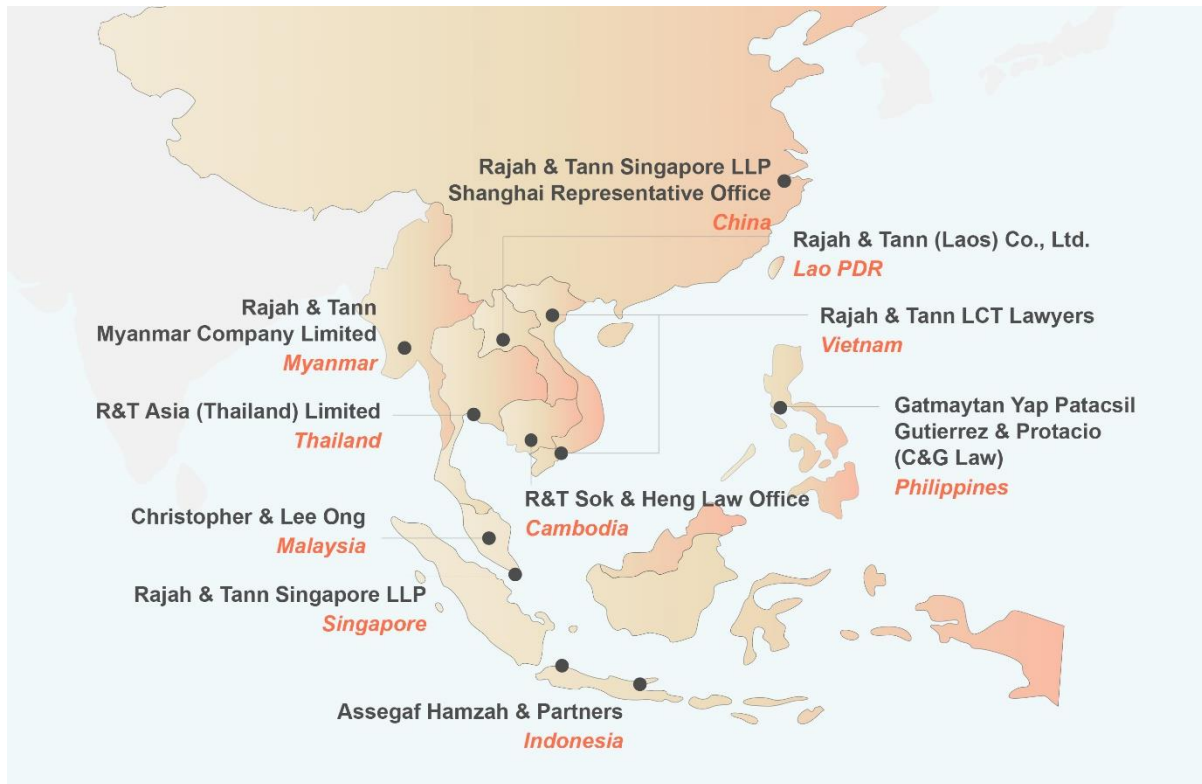
Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

# Client Update: Singapore

2022 SEPTEMBER

## Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or email Knowledge & Risk Management at [eOASIS@rajahtann.com](mailto:eOASIS@rajahtann.com).