

Competition & Antitrust and Trade

# Business Collaborations for the Greener Good: CCCS issues Environmental Sustainability Collaboration Guidance Note

## Introduction

Competition benefits consumers. However, there may be instances where business competitors need to collaborate for the greater, or greener, good. Seeking to achieve net-zero emissions by 2050 under the Singapore Green Plan 2030, Singapore has embarked on a whole-of-nation sustainability movement. Businesses play an important part in this sustainability movement but may be hindered from doing so due to issues of scale and finance. One way to overcome these issues is via collaborations. However, businesses may be reluctant to collaborate due to fears of falling foul of competition laws.

The Competition and Consumer Commission of Singapore ("**CCCS**") recognises that the sustainability movement may involve business competitors engaging in various forms of collaborations in existing, emerging or new markets in pursuit of environmental sustainability objectives. Following a public consultation exercise that ran from 20 July to 4 September 2023,<sup>1</sup> CCCS has issued, on 1 March 2024, its [Guidance Note on Business Collaborations Pursuing Environmental Sustainability Objectives](#) otherwise known as the Environmental Sustainability Collaboration Guidance Note ("**ESCGN**"), which aims to provide greater clarity to businesses on how CCCS will assess collaborations pursuing environmental sustainability objectives, so that such collaborations may be pursued in a way that does not harm competition.

This Update briefly outlines salient aspects of the ESCGN.

## Coverage of the ESCGN

The ESCGN provides additional guidance on the application of Section 34 of the Competition Act 2004 ("**Competition Act**") to business collaborations in the context of environmental sustainability initiatives. The ESCGN should be read together with CCCS's [Guidelines on the Section 34 Prohibition](#) and [Business Collaboration Guidance Note](#).

## Environmental Sustainability Objectives

In the context of the ESCGN, the phrase "environmental sustainability objectives" encompasses objectives related to reducing negative environmental externalities such as climate change mitigation

<sup>1</sup> For more information regarding the consultation exercise, please read our Legal Update [here](#). CCCS's Response to the consultation feedback can be viewed [here](#).

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measures, improving air and water quality, efficient use of natural resources and biodiversity preservation.

CCCS warns that environmental sustainability goals must not be used as a facade for anti-competitive conduct. In determining whether a collaboration is being conducted in pursuit of environmental sustainability objectives and should be assessed based on factors set out in the ESCGN (alongside other factors stated in the Business Collaboration Guidance Note), CCCS will consider the crux or main activity of the collaboration. This fact-specific exercise will consider matters such as the starting point and main focus of the collaboration, and the degree of integration of the different functions required in order to pursue the collaboration's stated environmental sustainability objective.

#### Business Collaborations and the Likelihood of Competition Concerns

Should CCCS take any enforcement action in connection with a collaboration pursuing environmental sustainability objectives, CCCS will take into consideration the extent that the businesses incorporated the ESCGN's guidance in the design and implementation of their collaboration.

The ESCGN provides guidance as to:

- (a) **Collaborations pursuing environmental sustainability objectives that are unlikely to raise competition concerns.** These are collaborations, among others, that do not affect how businesses compete with each other (i.e., do not involve price, quantity, quality, choice or innovation relating to the goods/services supplied) or where businesses are unable to carry out the activities independently.
- (b) **Conditions under which competition concerns are less likely to arise.** The ESCGN details specific examples of common types of business collaborations and the conditions under which competition concerns are less likely to arise. Two of the collaboration types and relevant conditions are summarised in the table below.

Type of Business Collaboration	Relevant Conditions
Development of industry-wide environmental standards or codes of practice and associated "green" quality marks	<ul style="list-style-type: none"> <li>• Standards established objectively</li> <li>• Transparent and inclusive development process</li> <li>• No exchange of unnecessary or irrelevant commercially sensitive information</li> <li>• Voluntary and non-discriminatory participation in the development/adoption of the standard or code</li> <li>• Any binding requirements do not restrict businesses from exceeding the standard/developing alternative standards</li> </ul>
Development and maintenance of an industry resource or database of	<ul style="list-style-type: none"> <li>• Open access for users and listed suppliers</li> <li>• Compiled based on transparent, non-discriminatory and objective evidence-based criteria</li> </ul>

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Type of Business Collaboration	Relevant Conditions
suppliers that have environmentally sustainable practices	<ul style="list-style-type: none"> <li>No exchange of commercially sensitive information</li> <li>No obligation on participants to purchase from listed suppliers</li> <li>Regularly reviewed and updated</li> </ul>

- (c) **Collaborations with a higher risk of competition concerns arising.** The assessment of such collaborations will be governed by the principles and considerations found in the Business Collaboration Guidance Note and the CCCS Guidelines on the Section 34 Prohibition. Such collaborations include: (i) collaborations that restrict competition by object (e.g., have the purpose of price-fixing, bid-rigging, market-sharing or imposing output limitations); and (ii) collaborations which would be subject to an economic assessment of their effects on competition.

When assessing a collaboration's effects on competition, CCCS will take into account other factors such as:

- whether, in the relevant market, the parties face strong competitive constraints from other credible competitors;
- any barriers to entry or expansion; and
- whether customers can switch suppliers or have countervailing buyer power.

If a collaboration is found to be anti-competitive to an appreciable extent, it will be prohibited under the Competition Act, unless excluded or exempted.

#### Net Economic Benefit Exclusion

Collaborations which raise competition concerns may still qualify for the Net Economic Benefit ("**NEB**") exclusion under the Third Schedule to the Competition Act. The NEB exclusion broadly provides that, if the efficiency gains from an agreement outweigh the harm done to competition, such agreement will not contravene Section 34 of the Competition Act, even if it appreciably restricts competition.

To qualify for the NEB exclusion, it must be shown, among others, that the collaboration leads to economic benefits outweighing the negative effects on competition. Since collaborations pursuing environmental sustainability objectives may benefit society at large, where appropriate, CCCS will consider relevant economic benefits accruing to Singapore as a whole in its economic assessment. This contrasts with CCCS's usual NEB assessment framework, which generally considers only the economic benefits accruing within the markets affected by the agreement.

Additionally, as collaborations pursuing environmentally sustainable objectives may involve nascent products, services or technologies, businesses may highlight and provide reasons to CCCS if detailed assessment of a collaboration's economic benefits is onerous or not possible.

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### **CCCS Guidance or Decision**

There is no legal requirement for businesses to notify their collaborations to CCCS, though businesses are encouraged to use the ESCGN for their own self-assessment. Businesses that wish to seek more legal certainty may choose to notify their collaborations to CCCS for guidance or decision. In this regard, CCCS has introduced a two-phase, streamlined notification process to provide quicker assessment. Simple collaborations may be reviewed in Phase 1 within 30 working days, whilst complicated collaborations may progress to an additional Phase 2 review of 120 working days.

### **Concluding Words**

Clients and friends of the Firm will recall that we hosted a discussion session when the draft ESCGN was first proposed. We reviewed the implications, considered potential gaps and whether there were added enhancements as compared with the usual NEB pointers, and discussed how businesses could potentially benefit from the ESCGN. The ESCGN is to be welcomed but is not your silver bullet for all things seemingly sustainability. As businesses look into potential sustainable projects to collaborate in, they do need to ensure that the ESCGN is carefully considered and thoughtfully weaved into the design and implementation of the collaboration.

Please do not hesitate to contact our team below, or email us at [competitionlaw@rajahtann.com](mailto:competitionlaw@rajahtann.com), to discuss this development.

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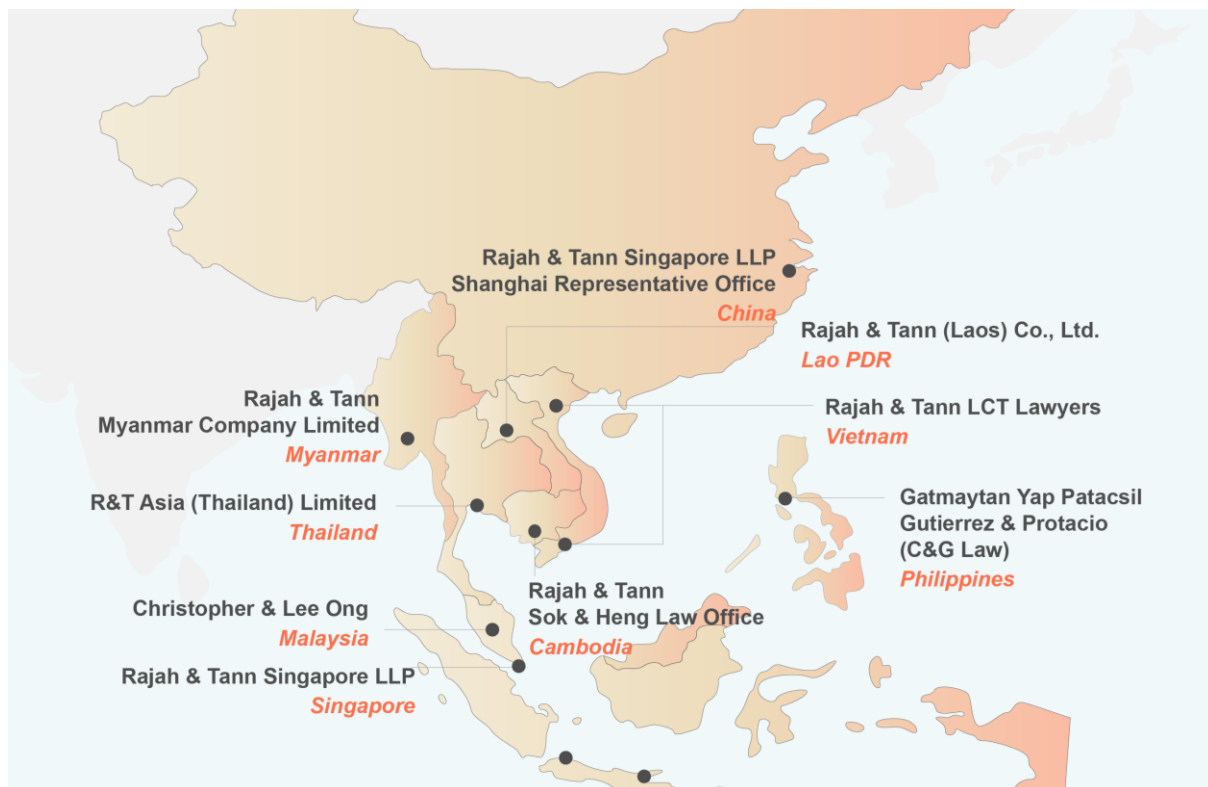
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