

Competition & Anti-trust and Trade

# Topline Competition: Notifying a Merger in Singapore – When and What are the Triggers?

## Introduction

Singapore has a voluntary merger notification regime. Given this, many take a robust approach and seek to argue wide market definitions and raise other arguments so that merging parties stay below trigger thresholds. Whilst as counsel, the aim is always to put the best foot forward, this must be carefully undertaken, reviewing all risks elements. The reason is the Competition and Consumer Commission of Singapore ("**CCCS**") has its sets of precedents, concerns, and manner of reviewing matters, one of which is typically to go with narrow market definitions. Its key focus is whether there has been a substantial lessening of competition ("**SLC**") in Singapore.

This means that CCCS expects merging parties to notify them if a merger could result in an SLC. The CCCS decision against the acquisition by Grab Inc. ("**Grab**") of Uber Technologies, Inc.'s ("**Uber**") Southeast Asian business for a 27.5% stake which was completed without prior clearance from or notification to CCCS is one of the best public illustrations of this.

In the Grab/Uber decision, CCCS commenced an own-initiative investigation into the acquisition one day after merger completion. This resulted in CCCS issuing an Infringement Decision against Grab and Uber concluding that the transaction had led to a SLC in the provision of ride-hailing platform services in Singapore. CCCS also imposed directions on the parties to lessen the impact of the transaction on drivers and riders as well as financial penalties on Grab and Uber of over S\$13 million in total.

In a more recent case which was closed, CCCS issued a set of Interim Measures Directions ("**IMDs**") to Delivery Hero and Grab in relation to the possible acquisition by Grab of the whole or part of the business of Delivery Hero in Southeast Asia, including Singapore. There was no merger to speak of, and yet CCCS took a proactive step as it believed that the possible acquisition could result in SLC in the market for the supply of online food ordering and delivery services in Singapore.

Simply put, mergers that have resulted, or may be expected to result in a SLC in Singapore are strictly prohibited by Section 54 of the Competition Act ("**Act**"). Given this, parties must notify CCCS if the relevant thresholds for notifications (explained below) are crossed.

## What constitutes a merger?

Section 54(2) of the Act provides that a merger situation occurs where:

- (a) two or more undertakings, previously independent of each other, merge;
- (b) one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or

# Client Update: Singapore

## 2024 MAY

LAWYERS  
WHO  
KNOW  
ASIA

### Competition & Anti-trust and Trade

- (c) one undertaking acquires the assets (including goodwill), or a substantial part of the assets, of another undertaking, with the result that the acquiring undertaking is placed in a position to replace or substantially replace the second undertaking in the business (or the part concerned of the business) in which the second undertaking was engaged immediately before the acquisition.

The acquisitions can be undertaken by entities operating with the same markets or in different markets, and can include acquisitions by private equity as well. Separately, in Singapore, full function joint ventures are also considered as mergers that will need to be reviewed for notification.

Essentially a merger occurs in the case of an acquisition of control. Control can be acquired by a minority shareholder if the shareholding confers decisive influence on the activities of an undertaking.

### What are the thresholds for notification?

Where the following thresholds are crossed, without more, there is a high risk that the merger will result in an SLC:

- (a) the merged entity has a market share of 40%, or
- (b) the merged entity has a market share of more than 20% and the post-merger combined market share of the three largest firms (“CR3”) in the market(s) is 70% or more (the “**Indicative Thresholds**”).

As these thresholds are only indicative, transactions that do not meet the Indicative Thresholds could, in CCCS’ views nevertheless lead to an SLC and hence be investigated by CCCS.

CCCS strongly recommends merger notification where the Indicative Thresholds above are crossed. This is so even where the transaction’s rationale is completely independent of Singapore and the parties’ main markets are in other countries. CCCS does scrutinize mergers across the world to ascertain if notification is necessary. The key consideration in basic terms is whether the transaction will have a negative impact in Singapore such that competition is affected. If the parties intend not to notify, then a very strong case to establish the lack of SLC is necessary.

### Consideration of vertical and conglomerate concerns

The primary thinking is that only mergers which have overlapping concerns and which cross the Indicative Thresholds are to be notified. However, practice has shown that CCCS reviews vertical and conglomerate concerns carefully as well.

There may be vertical concerns if the transaction could potentially lead to market foreclosure in the upstream or downstream market if competitors may be restricted from supplying or accessing upstream or downstream products / services.

Conglomerate concerns arise where either party has or will gain market power in any related market, which could have foreclosure effects on that related market. A merger could give rise to conglomerate effects as the parties may have an incentive and ability to bundle or tie their services thus creating foreclosure effects.

Competition & Anti-trust and Trade

## **Potential penalties**

The key focus of CCCS is to avoid transactions or potential transactions that could result in an SLC if a merger was implemented. It is not about the fact of notification. Hence, CCCS scrutinises transactions and ascertains how best to manage such transactions, including mandating parties to notify so that it can determine whether there has or will be an SLC.

In short, CCCS can impose financial penalties of up to 10% of the infringing parties' turnover in Singapore for the period of the infringement up to a maximum of three years in relation to transactions which are implemented and which give rise to SLC. Aside from financial penalties, CCCS can impose behavioural and structural remedies. Such remedies can be imposed pre-transaction if CCCS starts an investigation. It is often costly for parties to implement these remedies and could significantly erode the value of the transaction.

All said, competition / antitrust reviews is an important component of any transaction that is undertaken. Careful analysis of the transaction and a review of whether notification is required in Singapore or elsewhere must be undertaken. If you have any questions or comments in relation to the above or on competition laws in Singapore or Southeast Asia, please do not hesitate to contact the partners listed below.

## Contacts



**Kala Anandarajah, BBM**  
Partner  
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**  
Partner  
Competition & Antitrust and  
Trade

T +65 6232 0104

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

---

The Authors would also like to thank associates, Lydia Wong and Cheong Su-Ann, who have helped in this publication.

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

## Regional Contacts

### RAJAH & TANN SOK & HENG | *Cambodia*

#### Rajah & Tann Sok & Heng Law Office

T +855 23 963 112 / 113

F +855 23 963 116

kh.rajahtannasia.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

### 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

### 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

### 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 | *Singapore*

#### Rajah & Tann Singapore LLP

T +65 6535 3600

sg.rajahtannasia.com

### RAJAH & TANN | *Thailand*

#### R&T Asia (Thailand) Limited

T +66 2 656 1991

F +66 2 656 0833

th.rajahtannasia.com

### RAJAH & TANN | *Lao PDR*

#### Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239

F +856 21 285 261

la.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

### CHRISTOPHER & LEE ONG | *Malaysia*

#### Christopher & Lee Ong

T +60 3 2273 1919

F +60 3 2273 8310

www.christopherleeong.com

#### Hanoi Office

T +84 24 3267 6127

F +84 24 3267 6128

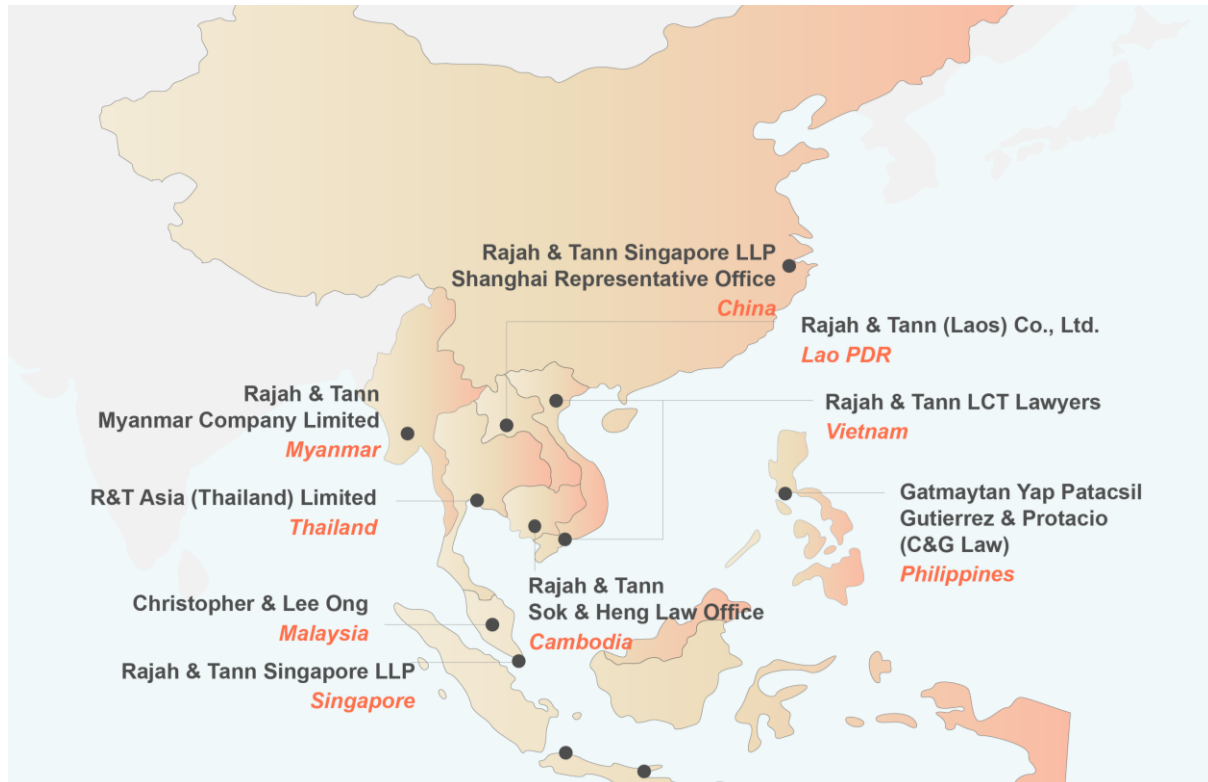
www.rajahtannlct.com

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.

## 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 Management at [eOASIS@rajahtann.com](mailto:eOASIS@rajahtann.com).