

10. COMPETITION LAW

Kala ANANDARAJAH

LLB (Hons) (National University of Singapore),

MBA (Banking and Finance)

(Nanyang Technological University of Singapore);

Advocate and Solicitor (Singapore);

Partner, Head, Competition & Antitrust and Trade Practice,

Rajah & Tann Singapore LLP.

I. Overview

10.1 In 2023, the Competition & Consumer Commission of Singapore (“CCCS”) was actively involved in the regulation of anti-competitive agreements, mergers and consumer protection under the Competition Act 2004¹ (the “Act”) and the Consumer Protection (Fair Trading) Act 2003² (“CPFTA”).

10.2 Regarding anti-competitive agreements, the Competition Appeal Board (“CAB”) upheld the maximum penalty imposed by CCCS on a party for bid rigging. Crucially, the decision set out the standard of arguments expected of parties appealing on penalty amounts. CCCS also received a notification concerning a proposed joint proposal by various banks to regulate product providers of the Supplementary Retirement Scheme, and in a rare move, published a media release of unannounced inspections in the construction sector. This year, CCCS also shifted its focus to environmental trends and proposed guidelines for businesses collaborating in pursuit of environmentally sustainable objectives.

10.3 Although there were no developments on the abuse of dominance front, merger activity remained high. CCCS’s voluntary merger notification regime continued to be an effective tool for merger control, with CCCS receiving ten notifications for decisions as merger parties increasingly value commercial certainty in their transactions. Of the ten notifications, eight have been unconditionally cleared, whilst the remaining two are still under review at the time of writing.

10.4 Meanwhile, consumer protection cases were on the rise this year. The State Courts and High Court were an important pillar of enforcement, and upheld orders sought against or imposed on parties for engaging in

1 2020 Rev Ed.

2 2020 Rev Ed.

unfair practices in the supply of alkaline water filtration systems and maintenance packages, and the supply of anti-fungal treatment packages respectively. Additionally, CCCS accepted undertakings from two beauty salons for false representations regarding, amongst others, the existence and duration of price discounts. As CCCS has consistently investigated and identified unfair practices in the beauty industry, beauty retailers should be alert to potential unfair practices in their interactions with consumers. Finally, market studies were concluded in the funeral services and e-commerce industries.

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

10.5 Section 34 of the Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore unless exempted. The “object or effect” requirement operates disjunctively: if CCCS determines that an agreement’s object is to appreciably restrict competition, CCCS is not required to further examine whether the agreement’s effect is the same.

10.6 For illustration, agreements involving price fixing, bid rigging, market sharing, or output limitations are considered *per se* violations which always have an appreciable adverse effect on competition, regardless of the agreement’s effect.

10.7 Notably, matters specified in the Third Schedule to the Act (“Third Schedule”) are excluded from the application of s 34. One example is the Net Economic Benefit exclusion which, subject to certain qualifications, captures agreements improving production or distribution, or promoting technical or economic progress.

10.8 Although parties are not required to notify their agreements to CCCS, they may voluntarily notify CCCS for guidance as to whether an agreement likely infringes s 34, or for a decision as to whether an agreement has infringed s 34. These processes allow parties to have greater clarity on whether their agreement complies with the Act.

A. *Notification on proposed joint implementation of Supplementary Retirement Scheme by DBS Bank Limited, Oversea-Chinese Banking Corporation Limited and United Overseas Bank*³

10.9 On 10 October 2023, CCCS received a notification from DBS Bank Limited, Oversea-Chinese Banking Corporation Limited and United Overseas Bank concerning the proposed joint implementation of the Supplementary Retirement Scheme (“SRS”) Framework to onboard and manage SRS product providers (“SRS PPs”) and products (“Proposed SRS Framework”). The Proposed SRS Framework would set out eligibility criteria for onboarding of SRS PPs and products, auditing requirements for SRS PPs and enforcement of the SRS Framework.

10.10 The parties submitted that the relevant markets should be the supply of: (a) SRS accounts and related account management and transaction facilitation services for SRS members in Singapore (*ie*, upstream market for SRS members); (b) SRS account management and transaction facilitation services for onboarded SRS PPs (*ie*, upstream market for SRS PPs); and (c) SRS products to SRS members in Singapore (*ie*, downstream market).

10.11 It was further submitted that the Proposed SRS Framework could raise competition concerns as the parties would be horizontal competitors within the relevant markets. Moreover, the parties would become “gatekeepers” to other SRS PPs wishing to supply SRS products in the downstream market. Nonetheless, the Proposed SRS Framework could give rise to efficiencies by establishing clear and transparent onboarding requirements. This allowed more diverse SRS PPs to supply products in the SRS, thus broadening the choices of investment products for SRS members.

10.12 At the time of writing, CCCS was in the process of inviting public feedback on the Proposed SRS Framework.

B. *Dismissal of CU Water Services Pte Ltd’s appeal against CCCS’s financial penalty for bid rigging*⁴

10.13 On 21 November 2023, CAB issued its decision dismissing CU Water Services Pte Ltd’s (“CU Water”) appeal against the \$308,680

3 CCS 400-110-2023-001 (20 November 2023) (Pending public consultation).

4 Competition and Consumer Commission Singapore, “Competition Appeal Board Dismisses Water Feature Maintenance Contractor’s Appeal Against CCCS’s Financial Penalty for Bid-rigging”, media release (21 November 2023).

maximum penalty imposed by CCCS for CU Water's bid-rigging conduct. Previously, CCCS held that CU Water, Crystalene Product (S) Pte Ltd and Crystal Clear Contractor Pte Ltd had participated in a record 521 discrete incidents of bid rigging in tenders for the provision of maintenance services for water features in private property developments. The bid-rigging conduct typically involved one party requesting a supporting quote (the "Requesting Party"), after which the counterparty receiving the request (the "Requested Party") would provide a quotation to the customer that was, to the Requested Party's belief, higher than the Requesting Party's quotation to the customer.

10.14 CAB concluded that CU Water failed to demonstrate that CCCS used flawed legal principles in its penalty calculation, or that CCCS had made any errors which would have materially changed the outcome of its decision. As regards proportionality, CAB observed that in cases involving significant numbers of infringements, each additional infringing incident ought to be reflected when determining the penalty amount. The fine imposed was therefore proportional considering the case involved an unprecedented 521 discrete incidents of bid rigging. Accordingly, CU Water's appeal was dismissed.

10.15 In its conclusion, CAB further cautioned businesses not to simply assert that penalty amounts are excessive when appealing against CCCS's decisions on penalties. Businesses must either demonstrate how penalty calculations are incorrect or produce unjust results or establish errors in the application of penalty calculation principles resulting in higher financial penalties. As such, businesses are reminded to consider the substance of their arguments carefully before bringing an appeal to CAB on penalty amounts.

C. Unannounced inspections in building construction sector⁵

10.16 CCCS has broad powers of enforcement under the Act. In relation to anti-competitive agreements, investigations may be carried out under s 62 if CCCS has reasonable grounds for suspecting that the s 34 prohibition has been infringed. Notably, CCCS has broad powers of investigation, including being able to require document production and to enter premises without warrant by conducting unannounced inspections.

10.17 On 30 November 2023, CCCS published a media release regarding unannounced inspections, or raids, carried out in the construction

5 Competition and Consumer Commission Singapore, "CCCS Carries Out Unannounced Inspections in the Building Construction Sector", media release (30 November 2023).

industry. This represented a rare instance of CCCS publishing news of its raids as it typically does not do so. CCCS's actions therefore signify a possible shift towards more stringent cartel enforcement by CCCS.

D. Proposed Guidance Note on Business Collaborations Pursuing Environmental Sustainability Objectives⁶

10.18 With the promulgation of the Singapore Green Plan 2030, a nationwide effort to advance Singapore's sustainable development agenda, businesses are increasingly collaborating to prevent, reduce or mitigate negative environmental effects or promote environmental sustainability (*ie*, environmental sustainability objectives).

10.19 Against this backdrop, CCCS proposed the issuance of a Guidance Note on Business Collaborations Pursuing Environmental Sustainability Objectives ("Environmental Sustainability Collaboration GN") to clarify the application of s 34 of the Act to such initiatives. In summary, the Environmental Sustainability Collaboration GN sets out the following:

- (a) To assess whether a business collaboration is carried out in pursuit of environmental sustainability objectives, CCCS will conduct a fact-specific exercise and consider the crux or main activity of the collaboration. Factors such as the starting point and main focus of the collaboration, as well as the degree of integration of the different functions required to pursue the collaboration's stated environmental sustainability objective, will be considered.
- (b) Agreements pursuing environmental sustainability objectives that are unlikely to raise competition concerns include:
 - (i) agreements which do not affect factors of competition;
 - (ii) agreements which none of the parties could do independently;
 - and (iii) agreements to comply with written law.
- (c) Agreements pursuing environmental sustainability objectives that are likely to raise competition concerns include: agreements restricting competition by object (such as price fixing, bid rigging, market-sharing or output limitations agreements), or agreements which have appreciable adverse effects on competition.
- (d) If business collaborations pursuing environmental sustainability objectives fall under the Net Economic Benefit

6 Competition and Consumer Commission Singapore, "CCCS Consults on Guidance Note for Environmental Sustainability Collaborations", media release (20 July 2023).

exclusion of the Third Schedule, the s 34 prohibition will not apply. To qualify for the exclusion, the agreement between the collaborating parties must lead to economic benefits outweighing the negative competition effects, the economic benefits cannot be achieved without the agreement and any restrictions contained therein, and competition must not be eliminated in a substantial part of the market.

(e) As regards the presence of economic benefits which outweigh negative competition effects, CCCS will consider economic benefits accruing to Singapore as a whole, rather than a typical assessment of the benefits arising within the market to which the agreement relates. This recognises the role of environmental sustainability initiatives in correcting market failures, which benefits society at large. Moreover, business collaborations may use industry standards to quantify economic benefits given the difficulties of assessing nascent products, services or technologies.

(f) If parties are unclear whether their collaboration complies with the Act, they may notify CCCS for guidance or a decision in this regard. CCCS will review the collaboration in a streamlined, two-phase process, similar to its review of merger notifications. Parties may also conduct pre-notification discussions (“PNDs”) with CCCS. These discussions allow businesses to discuss the content and timing of their notifications with CCCS, including the information likely required by CCCS to assess the collaboration.

10.20 As environmental issues come to the fore, CCCS is likely to scrutinise business collaborations to ascertain that environmental sustainability initiatives are not being used as a guise for anti-competitive conduct. To better ensure that business collaborations comply with the Act, parties should also refer to CCCS’s Business Collaboration Guidance Note⁷ which provides more specific guidance on the application of s 34 for common types of business collaborations.

10.21 At the time of writing, CCCS was in the process of inviting public feedback on the proposed Environmental Sustainability Collaboration GN.

7 “Business Collaboration Guidance Note” *Competition & Consumer Commission Singapore* <<https://www.ccs.gov.sg/legislation/competition-act/business-collaboration-guidance-note>> (accessed 25 July 2023).

III. Mergers that (may) result in substantial lessening of competition (s 54 of the Act)

10.22 Section 54 of the Act prohibits mergers that have resulted, or may result in a substantial lessening of competition (“SLC”) within any market for goods or services in Singapore. “Mergers” are defined broadly and may include an undertaking acquiring *de facto* control of another undertaking by being able to affect the latter’s key strategic commercial behaviour. To assess the effects of a merger, CCCS compares the likely state of competition if the merger situation proceeds with the likely state of competition if the merger situation does not proceed, known as the counterfactual.

10.23 Under CCCS’s voluntary merger notification regime, merger parties are not required to notify CCCS of their merger. Parties wishing for greater certainty may still apply to CCCS for a decision on whether an anticipated merger will, or a merger has already, infringed s 54. CCCS’s review of the notified merger spans two phases. A favourable decision may be issued upon the completion of Phase 1, failing which the merger will be reviewed more comprehensively in Phase 2. In the absence of a merger notification, CCCS may nonetheless conduct its own investigation and impose directions on parties to remedy the SLC or pay financial penalties.

10.24 In the process of merging, parties may also conclude restrictive agreements, arrangements or provisions in conjunction with the merger, such as non-compete or non-solicitation clauses. Such agreements are known as ancillary restrictions. Under para 10 of the Third Schedule to the Act (“Paragraph 10 Exclusion”), ancillary restrictions are excluded from the s 34 prohibition and s 47 prohibition if they are “directly related and necessary to the implementation of a merger”. Notably, CCCS will not take a broad-brush approach towards ancillary restrictions, and parties should be prepared to explain the inclusion and extent of such restrictions in their merger agreements. This is evidenced by CCCS’s rejection of restrictive agreements lacking justification in their purpose and scope.

A. *Proposed acquisition by SATS International SAS of Promontoria Holding 243 BV*⁸

10.25 On 27 January 2023, CCCS cleared the proposed acquisition by SATS Ltd (“SATS”) through its indirectly wholly-owned subsidiary,

8 CCCS 400-140-2022-008 (27 January 2023).

SATS International SAS, of Promontoria Holding 243 BV (“PH 243”), which in turn owns 100% of the shares in WFS Global Holdings SAS (“WFS”). Post-acquisition, SATS would indirectly have sole control of WFS. SATS operates at both Singapore Changi Airport (“Changi Airport”) and Seletar Airport, providing ground handling services, cargo handling services and premium passenger services. In Singapore, WFS operates under the brand name “JetQuay” and provides premium passenger services through the JetQuay CIP Terminal at Changi Airport.

10.26 In its assessment, CCCS found that there was no competitive overlap between SATS and WFS in the provision of premium passenger services as the parties’ operations in different airports served different flights and were not substitutable. Post-acquisition co-ordination amongst premium lounge service providers was also unlikely given the low degree of homogeneity in the provision of premium lounge services.

10.27 As regards vertical effects, foreclosure by WFS of SATS’s ground-handling competitors was unlikely as JetQuay CIP Terminal handled an insignificant number of passengers compared to the main terminals of Changi Airport. It would also not be in WFS’s interests as the operator of the JetQuay CIP Terminal to compromise service delivery by excluding SATS’s competitors from providing ground handling services. Relatedly, it was unlikely SATS could foreclose WFS’s potential competitors for premium bespoke passenger services should such competitors take over WFS’s operation of the JetQuay CIP Terminal. SATS was contractually obliged to provide ground handling services where it was appointed by airlines and private jet operators. In any case, any new CIP Terminal operator could switch to another competitor to provide ground handling services.

10.28 As regards portfolio effects, the parties would not be able to tie or bundle ground handling services with premium lounge services as customers could procure ground handling services from competing providers. Similarly, ground handling services and premium bespoke passenger services would unlikely be tied or bundled given the distinct nature of premium bespoke passenger services targeted at specific customer groups.

10.29 The proposed acquisition was also found to contain ancillary restrictions, specifically, a non-solicitation restriction. CCCS determined that the non-solicitation restriction was directly related to and necessary to the implementation of the proposed acquisition. The restriction’s scope and duration were also limited. Accordingly, the non-solicitation restriction constituted an ancillary restriction falling within the Paragraph 10 Exclusion.

10.30 Given the above findings, CCCS held that the proposed acquisition would not cause an SLC in Singapore and cleared the merger.

B. Proposed acquisition by AI PAVE Dutchco I BV of GfK SE⁹

10.31 On 22 February 2023, CCCS cleared the proposed acquisition by AI PAVE Dutchco I BV (“Advent Topco”) of 100% of the issued and outstanding equity interests of GfK SE (“GfK”). Under the proposed acquisition, Advent Topco would combine its wholly-owned NielsenIQ (“NIQ”) business with GfK and acquire sole direct control of the latter. Both Advent Topco (through NIQ) and GfK are active in the supply of customised market research (“CMR”) services in Singapore, which CCCS defined as the relevant market.

10.32 As regards non-coordinated effects, CCCS found that the market of CMR was fragmented with a diverse range of suppliers, and customers could switch easily between CMR service providers. Co-ordinated effects were also unlikely to arise due to limited transparency in the tender procurement process for CMR services. As regards vertical effects, CCCS noted that even if retail measurement service (“RMS”) data, which both Advent Topco (through NIQ) and GfK provided, was an essential input for CMR services, Advent Topco and GfK had relatively low market shares for CMR services and would not be able to leverage upon any market power in their respective RMS markets into CMR services. Finally, regarding portfolio effects, CCCS found that Advent Topco and GfK lacked the ability and incentive to bundle or tie RMS and CMR services.

10.33 The proposed acquisition was also found to contain ancillary restrictions, specifically, non-solicitation restrictions, in the equity purchase agreement. CCCS did not consider the non-solicitation restrictions relating to NIQ to be ancillary restrictions. There was insufficient justification as to how, in the absence of such restrictions, the parties would be unable to obtain the full value of the combined business following the proposed acquisition. However, the remaining non-solicitation restrictions were found to be directly related and necessary to the proposed acquisition as Advent Topco, the purchaser, would be able to attain the full benefit of the acquisition. Accordingly, only the remaining non-solicitation restrictions constituted an ancillary restriction falling within the Paragraph 10 Exclusion.

10.34 Given the above findings, CCCS held that the proposed acquisition would not cause an SLC in Singapore and cleared the merger.

9 CCCS 400-140-2022-006 (22 February 2023).

C. *Proposed acquisition by Oki Electric Industry Co, Ltd of Yokogawa Electric Corporation*¹⁰

10.35 On 27 April 2023, CCCS cleared the proposed acquisition by Oki Electric Industry Co, Ltd (“Oki”) of the aviation equipment business of Yokogawa Electric Corporation (“YE”) and its subsidiaries, Yokogawa Manufacturing Corporation (“YMC”) and Yokogawa Electric Asia Pte Ltd (“YEA”) (the “Target Business”). Oki’s wholly-owned subsidiary, Oki Circuit Technology Co, Ltd (“OTC”), supplies Multilayer Rigid Circuit Boards (“MRCBs”) to YEA in Singapore for use in relation to the Target Business. CCCS determined the relevant upstream market to be the global supply of MRCBs to worldwide customers, and the relevant downstream market to be the global supply of Flat Panel Displays to worldwide customers.

10.36 In its assessment, as regards vertical effects, CCCS found that Oki unlikely had the ability or incentive to foreclose competitors in the relevant downstream market as, through OTC, Oki was not a significant supplier of MRCBs in the relevant upstream market. Customer foreclosure was also unlikely as MRCBs were generic products used in other industries, and Oki’s demand for MRCBs was unlikely to be large or significant enough for it to be considered a major customer of generic MRCB suppliers. Finally, co-ordination amongst competitors in both the upstream and downstream markets was unlikely to arise as the number of existing players in each market was unlikely to be reduced post-acquisition.

10.37 The proposed acquisition was also found to contain ancillary restrictions, specifically, non-compete and non-solicitation restrictions, in the business transfer agreement. CCCS determined that there was insufficient justification as to the duration of the non-compete and non-solicitation restrictions. Accordingly, both restrictions were not considered ancillary restrictions falling within the Paragraph 10 Exclusion.

10.38 Given the above findings, CCCS held that the proposed acquisition would not cause an SLC in Singapore and cleared the merger.

D. *Proposed acquisition by Hanwha Group of Daewoo Shipbuilding & Marine Engineering Co*¹¹

10.39 On 22 March 2023, CCCS cleared the proposed acquisition by the Hanwha Group of Daewoo Shipbuilding & Marine Engineering

10 CCCS 400-140-2022-007 (27 April 2023).

11 CCCS 400-140-2022-009 (22 March 2023).

Co Ltd (“DSME”). In Singapore, the Hanwha Group supplies various products and services including petrochemical products, chemicals and solar modules, trade brokerage for petrochemical products, bituminous coal, coal, feedstock and oil, and investment services such as outsourcing, advisory services, fund management and brokerage. DSME engages in shipbuilding in Singapore, including the building of liquified natural gas (“LNG”) carriers and large crude carriers.

10.40 CCCS defined the relevant upstream markets as the global supply of dynamic or turbo air (and gas) compressors. It additionally defined the relevant downstream markets as the global supply of LNG carriers, the global supply of offshore plant production facilities and the global supply of offshore plant storage facilities.

10.41 In its assessment, as regards vertical effects, CCCS found input foreclosure was unlikely to arise as the Hanwha Group was not a significant supplier in the relevant upstream markets. Customer foreclosure was also unlikely as DSME had low market share and was not the largest player in the relevant downstream markets, and was hence unlikely to be a major combined customer of either of the relevant upstream markets. As regards co-ordinated effects, the number of existing players in the relevant markets was unlikely to be reduced post-acquisition such as to facilitate collusion between them.

10.42 Given the above findings, CCCS held that the proposed acquisition would not cause an SLC in Singapore and cleared the merger.

E. Proposed acquisition by City Energy Pte Ltd of Tan Soon Huah Gas Supply Pte Ltd¹²

10.43 On 2 August 2023, CCCS cleared the proposed acquisition by City Energy Pte Ltd (“City Energy”) of Tan Soon Huah Gas Supply Pte Ltd’s (“TSH”) liquefied petroleum gas (“LPG”) business. City Energy’s key business is the production and retailing of town gas to residential, commercial and industrial customers in Singapore. TSH’s key business is the retailing of LPG to residential, commercial and industrial customers in Singapore. Accordingly, CCCS defined the relevant markets to be each market for the retail of LPG and town gas to residential, commercial and industrial customers in Singapore.

10.44 In its assessment, as regards non-coordinated effects, CCCS found that City Energy and TSH were not each other’s closest

12 CCCS 400-140-2023-002 (2 August 2023).

competitors, and other LPG competitors of similar or larger size than TSH could exercise competitive constraint against the merged entity post-acquisition. As regards co-ordinated effects, CCCS found that the number of LPG retailers would not be reduced post-acquisition, and there was no additional information made available to competing suppliers that would allow collusion between competitors. As regards conglomerate effects, the supply of LPG and town gas would unlikely be tied or bundled given that they were different fuel types which would not typically be purchased in a bundle. Moreover, City Energy's Gas Retailer License contained conditions preventing it from unfairly using its town gas business to disadvantage competitors supplying other fuel types.

10.45 The proposed acquisition was also found to contain ancillary restrictions, specifically, non-compete and non-solicitation restrictions. CCCS determined that both restrictions were directly related to, and necessary to the implementation of the proposed acquisition. The duration of both restrictions was also justified to ensure that City Energy obtained the full benefit from the goodwill and know-how acquired as part of the proposed acquisition. Accordingly, the non-compete and non-solicitation restrictions constituted ancillary restrictions falling within the Paragraph 10 Exclusion.

10.46 Given the above findings, CCCS held that the proposed acquisition would not cause an SLC in Singapore and cleared the merger.

F. Proposed acquisition by FUJIFILM Holdings America Corporation of Entegris, Inc¹³

10.47 On 22 September 2023, CCCS cleared the proposed acquisition by FUJIFILM Holdings America Corporation ("Fujifilm") of 100% of the issued and outstanding equity interests of Entegris, Inc's electronic chemicals business, which is operated by CMC Materials KMG Corporation ("CMC"). Fujifilm and CMC overlap in the supply of cleaning solutions used principally in semiconductor manufacturing. However, CCCS left open the exact definition of the relevant market given that the proposed acquisition was unlikely to lead to competition concerns under any market definition.

10.48 In its assessment, as regards non-coordinated effects, CCCS found that Fujifilm and CMC unlikely had significant market power post-acquisition and were not each other's closest competitors. Moreover, customers multi-sourced and could switch between suppliers. As regards

13 CCCS 400-140-2023-004 (22 September 2023).

co-ordinated effects, CCCS considered that the low price transparency of high-purity process chemicals (“HPPCs”) and the qualification process for new suppliers of HPPCs reduced the likelihood of collusion between market players post-acquisition.

10.49 The proposed acquisition was also found to contain ancillary restrictions, specifically, non-compete and non-solicitation restrictions, in the purchase agreement. CCCS determined that both restrictions were directly related to, and necessary to the implementation of the proposed acquisition. Accordingly, the non-compete and non-solicitation restrictions constituted ancillary restrictions falling within the Paragraph 10 Exclusion.

10.50 Given the above findings, CCCS held that the proposed acquisition would not cause an SLC in Singapore and cleared the merger.

G. *Proposed acquisition by Grab Rentals Pte Ltd of Trans-cab Holdings Ltd*¹⁴

10.51 On 16 October 2023, CCCS completed its Phase 1 review of the proposed acquisition by Grab Holdings Limited (“Grab”) through its wholly-owned subsidiary, Grab Rentals Pte Ltd (“GrabRentals”), of 100% of the shareholding in Trans-cab Holdings Ltd (“Trans-cab”). In Singapore, Grab operates a range of services, including ride-hailing platform services, over a mobile application. In turn, GrabRentals owns a fleet of private-hire cars for rental to drivers providing ride-hailing services to passengers. Trans-cab is a licensed street-hailing service operator in Singapore and also owns a fleet of private-hire cars for rental to drivers providing ride-hailing services. Additionally, Trans-cab offers phone taxi booking services in respect of its taxi fleet. Accordingly, Grab, GrabRentals and Trans-cab overlap in the provision of private-hire car rentals for ride-hailing services, and ride-hailing platform services in Singapore.

10.52 Whilst the Point-to-Point Transport regulatory framework prohibits licensed ride-hailing operators from imposing exclusive arrangements on their drivers, CCCS received third-party feedback that the proposed acquisition may affect drivers’ usage of rival ride-hailing platforms. This would raise barriers to expansion and entry for Grab’s rival ride-hailing platforms. Accordingly, CCCS was unable to conclude at the end of its Phase 1 review that the proposed acquisition would not give rise to any competition concerns.

14 CCCS 400-140-2023-001 (16 October 2023) (media release only, pending Phase 2 review).

10.53 At the time of writing, CCCS has since commenced its Phase 2 review of the proposed acquisition on 31 January 2024 after declining to accept Grab's voluntary commitments. In particular, CCCS found that the commitments did not adequately address competition concerns such as Grab's ability and incentive to discourage Trans-cab drivers from using rival ride-hailing platforms whilst inducing them to use Grab's ride-hailing platform instead. Additionally, both the proposed two-year duration for the commitments and Grab's self-monitoring mechanisms were insufficient from a competition perspective. Nonetheless, Grab might propose revised commitments to address CCCS's competition concerns during the Phase 2 review.

H. Proposed acquisition by iNova Pharmaceuticals (Singapore) Pte Limited of Mundipharma¹⁵

10.54 On 5 December 2023, CCCS cleared the proposed acquisition by iNova Pharmaceuticals (Singapore) Pte Limited ("iNova") of Mundipharma's consumer healthcare business. Both iNova and Mundipharma are active in the supply of throat preparation products to customers in Singapore, which CCCS defined as the relevant market.

10.55 In its assessment, CCCS found that there were multiple suppliers of throat preparation products that competed closely with the merged entity, and customers could switch easily between rival suppliers. The proposed acquisition was also unlikely to facilitate collusion between co-ordinators given the low transparency of prices charged to intermediate customers. CCCS further determined that the merged entity would not be able to foreclose competitors by bundling products. This was because certain intermediate customers had some degree of countervailing buying power, and customers generally preferred to stock a range of products across various brands and suppliers.

10.56 The proposed acquisition was also found to contain ancillary restrictions, specifically, non-compete restrictions, in the international sale and purchase agreement. CCCS determined that the restrictions were directly related to, and necessary to the implementation of the proposed acquisition. Accordingly, the non-compete restrictions constituted ancillary restrictions falling within the Paragraph 10 Exclusion.

10.57 Given the above findings, CCCS held that the proposed acquisition would not cause an SLC in Singapore and cleared the merger.

15 CCCS 400-140-2023-003 (5 December 2023) (media release only, grounds of decision pending).

I. Proposed acquisition by ANA Holdings Inc of Nippon Cargo Airlines Co, Ltd¹⁶

10.58 On 7 December 2023, CCCS received a joint notification concerning the proposed acquisition by ANA Holdings Inc (“ANAHD”) of Nippon Cargo Airlines Co, Ltd’s (“NCA”) entire issued share capital. Under the proposed transaction, NCA would become the wholly-owned subsidiary of ANAHD. The parties submitted that NCA and ANAHD overlapped in the provision of international air cargo transport services. These services were provided to “forwarders” who, in turn, provided logistics services for senders and recipients of air cargo. Additionally, the parties considered the relevant market to be the supply of international air cargo transport on the Singapore-to-Japan routes and Japan-to-Singapore routes.

10.59 The parties further submitted that the proposed acquisition would not lead to an SLC in Singapore. Generally, there was strong competition in relation to pricing, network flexibility and services amongst all airlines in the international air cargo transport market. As regards non-coordinated effects, airlines providing international air cargo transport had difficulty differentiating themselves apart from their capacity to transport specialised cargo. As regards co-ordinated effects, the large number of existing and potential global competitors supplying cargo services to and from Singapore could disrupt any co-ordinated behaviour. Forwarders were also able to negotiate prices for short durations and receive price quotes from several airlines for urgent requests. As regards vertical effects, the parties submitted that there was limited vertical integration. ANAHD only had some freight forwarding capabilities, and related warehouse capacities were outsourced to a third party. Thus, foreclosure of existing or potential competitors was unlikely.

10.60 At the time of writing, CCCS was in the process of inviting public feedback regarding the proposed acquisition.

IV. Consumer protection

10.61 Unfair trading practices are regulated under the CPFTA. Section 4 of the Act defines unfair practices as: (a) doing or saying anything, or omitting to do or say anything, which may reasonably deceive or mislead a consumer;¹⁷ (b) making a false claim;¹⁸ or (c) taking advantage of a

16 CCCS 400-140-2023-005 (7 December 2023) (Pending public consultation).

17 Consumer Protection (Fair Trading) Act 2003 (2020 Rev Ed) s 4(a).

18 Consumer Protection (Fair Trading) Act 2003 (2020 Rev Ed) s 4(b).

consumer if the supplier knows, or ought to reasonably know that the consumer is not in a position to protect their own interests, or is not reasonably able to understand the transaction or matters related to the transaction.¹⁹ A non-exhaustive list of unfair practices is also set out in the Second Schedule, including representing to a consumer that a price benefit or advantage exists for certain goods or services when it does not.

10.62 As the administering agency of the CPFTA, CCCS may file injunction applications against errant retailers with the courts, as well as enforce compliance with court-ordered injunctions. CCCS may also conduct market studies to pre-emptively identify potential consumer protection issues arising from certain industries and better aid enforcement of the CPFTA.

A. *State Courts orders Triple Lifestyle Marketing Pte Ltd to cease unfair practices in supply of alkaline water filtration systems and maintenance service packages*²⁰

10.63 On 28 March 2023, the State Courts issued judgment against Triple Lifestyle Marketing Pte Ltd (“TLM”) and its sole director and shareholder, Tan Jia Huang, for engaging in unfair practices under the CPFTA. CCCS had previously applied to the State Courts seeking a declaration that TLM engaged in unfair practices in the supply of its alkaline water filtration systems and maintenance service packages. This included false claims regarding: (a) the accreditation of TLM or TLM’s products; (b) price benefits or advantages for water dispensers which did not exist; (c) TLM’s ability to service faulty water dispensers, or water filters; and (d) the ability of alkaline and/or filtered water to prevent or improve the condition of various diseases.

10.64 Separately, CCCS applied to the State Courts to injunct TLM from engaging in the identified unfair practices, and to injunct Tan Jia Huang from knowingly abetting, aiding, permitting or procuring TLM’s unfair practices.

10.65 In response to CCCS’s application, the State Courts imposed the following orders on TLM and Tan Jia Huang:

- (a) TLM had engaged in the various unfair practices identified by CCCS and had to stop such conduct;

19 Consumer Protection (Fair Trading) Act 2003 (2020 Rev Ed) s 4(c).

20 Competition and Consumer Commission Singapore, “State Courts Orders Triple Lifestyle Marketing Pte Ltd to Cease Unfair Practices in Supply of Alkaline Water Filtration Systems and Maintenance Service Packages”, media release (28 March 2023).

- (b) Tan Jia Huang was to stop knowingly abetting, aiding, permitting or procuring TLM to engage in the various unfair practices;
- (c) TLM and Tan Jia Huang were to publish, at their own expense, by 29 March 2023, a full-page public notice with details of the court orders, in various newspapers. If they failed to do so, CCCS could publish a notice in any one of these newspapers and claim the cost from TLM and Tan Jia Huang;
- (d) TLM and Tan Jia Huang were to publish, at their own expense, for three years, details of the orders made against them, on the landing page of any platform used to market TLM's goods or services. Tan Jia Huang was to also publish the details of the court order made against him on the landing page of any platform utilised by him or any businesses controlled or owned by him to market TLM's goods and/or services and/or similar goods or services as TLM's;
- (e) TLM had to, for three years, before any consumer signed a contract with TLM, notify the consumer in writing about the court order and obtain their written acknowledgment of receipt of the notice; and
- (f) TLM and Tan Jia Huang shall pay costs of the proceedings at S\$12,000 to CCCS.

B. Unfair practices involving false and misleading claims and pressure sales tactics by Salon One Beauty Salon and related entities²¹

10.66 On 18 May 2023, CCCS found that Salon One Beauty Salon Pte Ltd ("Salon One AMK") and seven related entities ("Salon One Entities") had engaged in various unfair practices. These included false representations to consumers regarding price discounts for basic haircuts that, in fact, were discounted from prices which were never offered, as well as unsubstantiated representations that the Salon One Entities' treatments could prevent various diseases and enhance memory. Certain Salon One Entities had also engaged in persistent sales talks, causing consumers to feel pressured to purchase certain services or products.

10.67 Amongst the Salon One Entities, CCCS additionally found that two of its outlets at Bukit Batok and Marine Parade had made false claims

21 Competition and Consumer Commission Singapore, "Salon One Beauty Salon Undertakes to Cease False and Misleading Claims and Pressure Sales Tactics", media release (18 May 2023).

regarding the actual price discounts for beauty and wellness services offered. Both salons had further misrepresented that discounted prices for certain services were available for a limited “Opening Promotion” period, despite the discounted prices extending beyond both entities’ opening dates.

10.68 CCCS issued a warning to the Salon One Entities and accepted their undertakings that each of them would, amongst other things:

- (a) stop engaging in the identified unfair practices, and not engage in any other unfair practices under the CPFTA;
- (b) not make any claims or guarantees about the results, benefits or effects of their treatments or products unless substantiated by scientific data or other objectively verifiable evidence;
- (c) take all reasonable steps to ensure that their staff did not exert undue pressure on consumers to purchase their services or products;
- (d) include in the Salon One Entities’ contracts, invoices or receipts for their services or products a term that allowed consumers a five-day cooling-off period to cancel their transactions and ensure this term was acknowledged by consumers;
- (e) implement an internal compliance policy to ensure that their marketing materials and practices complied with the CPFTA; and
- (f) ensure that their staff underwent training to familiarise themselves with the types of conduct that would amount to an unfair practice under the CPFTA and maintain records of the training undergone by each staff.

C. *High Court dismissed appeals by Nail Palace (BPP) Pte Ltd and Nail Palace (SM) Pte Ltd on orders relating to unfair practices*²²

10.69 On 28 July 2023, the High Court dismissed Nail Palace (BPP) Pte Ltd’s (“NP BPP”) and Nail Palace (SM) Pte Ltd’s (“NP SM”) appeals against orders granted by the District Court against the parties’ unfair

22 Competition and Consumer Commission Singapore, “High Court Dismisses Appeals by Nail Palace (BPP) Pte Ltd and Nail Palace (SM) Pte Ltd”, media release (28 July 2023).

practices, which involved the supply of anti-fungal treatment packages to consumers.

10.70 Previously, CCCS had commenced separate legal proceedings in the State Courts seeking declarations and injunctions against the parties for engaging in unfair practices. NP BPP and NP SM had each made false or misleading representations to a consumer concerning the need for an anti-fungal treatment package. NP SM had additionally misled a consumer into taking several lipsticks and lip balms on the basis that they were provided free of charge as part of the anti-fungal treatment package, despite later charging the consumer.

10.71 Of the various orders granted by the District Court, both parties appealed against the accompanying orders to:

- (a) publish details of the declarations and injunctions ordered against them in major newspapers in Singapore (“Publication Orders”); and
- (b) before contracting with prospective customers, inform and obtain written acknowledgments from them of the declarations and injunctions ordered against NP BPP and NP SM (“Consumer Notification & Consent Orders”).

10.72 As the High Court has dismissed NP BPP and NP SM’s appeals, both parties must now comply with the Publication Orders and the Consumer Notification & Consent Orders.

D. Findings issued for market study on funeral services industry²³

10.73 On 17 November 2023, CCCS issued its findings for a market study into Singapore’s funeral services industry. The market study assessed the competition landscape of the funeral services industry, the ability of consumers to make informed decisions when purchasing funeral products, and the presence of competition and customer protection issues in the industry.

10.74 CCCS determined that consumers had ample choices of funeral services, and there was no evidence of any prohibited anti-competitive conduct. However, price transparency for funeral products could be improved as consumers generally were unclear as to the costs of funeral products. Thus, CCCS encouraged funeral services providers (“FSPs”) to, amongst others, provide clarity on the items included in funeral

23 Competition and Consumer Commission Singapore, “Helping Consumers Make Informed Decisions for Funeral Products”, media release (17 November 2023).

packages, and highlight to consumers that package prices could be subject to change. As regards unfair practices, CCCS highlighted that FSPs should provide clear and accurate information to consumers about their products. Unavoidable or mandatory fees should be included in a product's total headline price, and optional fees or charges should be set out clearly.

10.75 Further, CCCS developed an “ASK a FSP checklist” to encourage consumers to pre-plan funeral arrangements and ask appropriate questions when consulting with an FSP. This would help consumers make informed decisions about funeral products.

E. Findings issued for market study on greenwashing on e-commerce websites²⁴

10.76 On 16 November 2023, CCCS issued its findings for a study on greenwashing on e-commerce websites. “Greenwashing” refers to a supplier’s conduct which deceives or misleads consumers into believing that the supplier’s products or services have greater environmental benefits than is the case. CCCS noted that environmental claims, such as “environmentally friendly” or “eco-friendly”, were vague and could be prone to overstatement or exaggeration. As such, suppliers should be specific when making environmental claims, and substantiate such claims with supporting information or credible evidence.

10.77 Relatedly, CCCS noted that claims containing technical jargon could also confuse or mislead consumers as to the environmental benefit of a supplier’s products or services. Instead, suppliers should use simple language and explain the meaning of technical terms used.

10.78 CCCS further announced its development of guidelines on greenwashing conduct to clarify to suppliers the types of environmental claims which may amount to unfair practices under the CPFTA. At the time of writing, the guidelines have yet to be published.

24 Competition and Consumer Commission Singapore, “Study on Greenwashing in Online Marketing Funded by CCCS Finds Use of Vague Environmental Claims and Confusing Technical Jargon”, media release (16 November 2023).

F. *Unfair practices involving false and misleading claims on prices and right to payment by Natural Salon*²⁵

10.79 On 23 November 2023, Natural Salon Pte Ltd (“Natural Salon”) was found by CCCS to have engaged in unfair practices. This included demanding payment for the supply of unsolicited hair packages and services, falsely representing that the “member price” of a haircut was a “new opening special” when Natural Salon had been open for at least eight months, and charging prices that were substantially higher than the estimate provided to the consumer without the consumer’s consent.

10.80 CCCS issued a warning to Natural Salon and accepted its undertaking to, amongst other things:

- (a) stop engaging in the identified unfair practices and not engage in any other unfair practices under the CPFTA;
- (b) ensure that all information relevant to a consumer in deciding whether to purchase Natural Salon’s services or products (eg, pricing, disclaimers and terms and conditions) are listed clearly and prominently on advertising or marketing materials;
- (c) include in Nail Salon’s contracts, invoices or receipts for their services or products a term that allowed consumers a five-day cooling-off period to cancel their transactions and ensure that this term was acknowledged by consumers;
- (d) implement an internal compliance policy to ensure that their marketing materials and practices complied with the CPFTA; and
- (e) ensure that their staff underwent training to familiarise themselves with the types of conduct that would amount to an unfair practice under the CPFTA and maintain records of the training undergone by each staff.

25 Competition and Consumer Commission Singapore, “Natural Salon Undertakes to Cease False and Misleading Claims on Prices and Right to Payment”, media release (23 November 2023).