(2017) 18 SAL Ann Rev 266
(Published on e-First 20 July 2018)

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.

Overview of Competition Commission of Singapore's ("CCS") decisions and work in 2017

10.1 The year 2017 has been a busy year for CCS, as seen from the culmination of several investigations conducted by CCS over the recent years. Within this year, CCS has one infringement decision and two proposed infringement decisions. Most notably, CCS imposed its largest fine to date on five capacitors manufacturers involved in the to-date largest price-fixing case in Singapore. Further, the Competition Appeal Board ("CAB") has also issued its decision in relation to the appeal against CCS's 2016 decision to impose financial penalties ten financial advisers for pressurising a competitor to withdraw its offer from the life insurance market, the only appeal decision handed down in 2017.

10.2 CCS was equally busy with its review of mergers and acquisitions, where in 2017 alone, it received nine merger notifications, two of which have now proceeded into Phase 2 review and one of which was conditionally cleared subject to commitments.

10.3 In relation to sector-specific inquiries, CCS concluded three of CCS's market inquiries into studies the formula milk, automotive parts and retail petrol industries.

10.4 Of particular interest are the imminent changes to the Singapore competition landscape. The proposed amendments to the Competition Act, which CCS published for public consultation in December 2017, would certainly be the most significant. Another important shift would be the way in which competition law will react to technological developments, in particular the rise of big data and e-commerce. In this regard, CCS has indicated its approach in responding to such developments appropriately, as seen from its two e-commerce-focused seminars, a "Symposium: E-Commerce, ASEAN Economic Integration, and Competition Policy and Law [in Singapore]" – that was held jointly with the Institute of Southeast Asian Studies and Yusof Ishak Institute, and the "Competition Law Conference

2017 – New Approaches for a New Economy" ("CCS–SAL Competition Law Conference"), jointly organised by CCS and the Singapore Academy of Law ("SAL"). It therefore remains to be seen how these developments will culminate and impact competition law in the coming year.

Focus on big data and rapid advancement of technology

10.5 At the CCS–SAL Competition Law Conference on 16 August 2017, Lim Hng Kiang, Minister for Trade and Industry, highlighted in his keynote address that a big challenge currently facing competition authorities is finding ways to ensure that the regulatory frameworks and models remain effective and relevant, given the rapid advancement of technology and the emergence of big data. Given that businesses may adopt new market strategies to foreclose competition (for example, by monopolising data to drive out competitors), it becomes important for competition authorities to give greater weight to special market characteristics such as network effects, access to data and substitutability of data. CCS Chairman, Aubeck Kam, also observed that it may be a matter of time before CCS started relying on datasets of a merged entity instead of market shares, when assessing mergers.

10.6 CCS shared key findings from its research paper on the Singapore data landscape, which explored the implications of the proliferation of data analytics and sharing on competition law and policy. While it was concluded that the existing framework was sufficiently flexible to adapt to the changing competition landscape, CCS will monitor new developments and respond appropriately. As such, the Personal Data Protection Commission ("PDPC") and CCS will be jointly exploring competition issues relating to data portability alongside a PDPC study of the benefits and risks in the increased use of algorithms in profiling and automated decision-making in Singapore.

10.7 The speeches indicate the approach that CCS will adopt in response to technological developments. This is important as there is a need to foster a business environment that balances promoting innovation by companies and ensuring that there is a level playing field for all.

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

10.8 Section 34 of the Competition 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 as "object" restrictions.

10.9 On 29 June 2017, CAB dismissed an appeal by IPP Financial Advisers ("IPP") seeking a substantial reduction in the fine it received from CCS.[1] By way of brief background, IPP (together with nine other financial advisers) was found to have infringed the Competition Act in 2016 by engaging in an anti-competitive agreement to pressurise a competitor ("iFAST") to withdraw an offer of a 50% commission rebate on competing life insurance products ("Fundsupermart Offer"). IPP was fined $239,851 for its part in the infringement.

10.10 In its appeal, IPP made four main submissions. First, that the relevant turnover used to calculate the base financial penalty should only include new policies and not existing policies entered into before financial year 2014. This ensures that the financial penalty imposed has a direct relationship with the benefit that IPP had received for its anti-competitive behaviour. Second, the starting percentage of the financial penalty imposed ought to be smaller given the short-lived nature of the infringing conduct. Third, the duration of the infringement should have been decreased to a month. Lastly, CCS had failed to consider other mitigating factors.

10.11 These arguments were, however, rejected by CAB. With regards to the relevant turnover, CAB held that relevant turnover refers to an undertaking's entire turnover and should not be limited to revenue directly impacted by the infringement. According to CAB, this is consistent with the approach taken in jurisdictions such as the European Union ("EU"). Moreover, even if IPP's arguments were accepted, CAB found that IPP's infringing conduct would have affected both IPP's new and existing policies, as both IPP's new and existing policies would have benefitted from the reduction in competition as a result of the withdrawal of the Fundsupermart Offer. There are also strong public policy arguments – deterrence and punishment – in favour of imposing a higher financial penalty using the entire turnover of the last available financial year.

10.12 CAB did not agree that the starting percentage was excessive as it considered IPP's infringement to be an "object" restriction even if it did not constitute a hardcore infringement. Further, CAB regarded the starting percentage as being relatively low as CCS has already taken into

1 See Competition Commission of Singapore, "Competition Appeal Board Upholds Financial Penalty Imposed by CCS and Dismisses Appeal by Financial Adviser" (2 August 2017).

account the fact that the infringing conduct was less severe than hardcore infringements. Third, while CAB accepted that the short duration of the infringement may lead to a reduction in penalties, it will only do so if it incentivises the infringing undertakings to cease their anticompetitive conduct quickly. This was the approach adopted by the UK Competition Appeal Tribunal in *Umbro Holdings Ltd v Office of Fair Trading*.[2] In this case, however, IPP's infringement was for a relatively short duration as the objective of the agreement had come to fruition relatively quickly. iFAST had complied with their request immediately so it was not necessary for parties to continue with their infringing conduct. Here, there was no conscious attempt to cease the infringing conduct.

10.13 CAB also rejected IPP's contentions that CCS had failed to properly consider that the undertaking operated in a high turnover, low profit margin industry. This was as IPP had failed to demonstrate that "monies passed through" to third parties was a significant proportion of its gross revenue. Further, IPP had failed to prove that the financial advisory industry as a whole consistently experienced high turnovers and low margins, given that the financial data submitted by IPP indicated volatility in its net profit margins. Similarly, CAB rejected IPP's assertions that there was genuine uncertainty over the legality of its conduct as it was a clear attempt to foreclose competition in the market for individual life insurance products.

10.14 Separately, in 2017, CCS issued two other infringement decisions, one proposed infringement decisions, and is currently consulting on proposed joint venture. The infringement decision was issued against Chemicrete Enterprises Pte Ltd, Cyclect Electrical Engineering Pte Ltd and Cyclect Holdings Pte Ltd (collectively, "Cyclect Group"), HPH Engineering Pte Ltd ("HPH") and Peak Top Engineering Pte Ltd ("Peak Top") for bid-rigging in the tenders for the provision of electrical services for the Formula 1 Singapore Grand Prix for 2015–2017.[3] The allegation was that the Cyclect Group had prepared price schedules and final bid prices for HPH's and Peak Top's submissions for the F1 Tender, such that Cyclect Electrical would win the tender as agreed between the undertakings. The Cyclect Group and HPH were also found to have rigged the bids for another 2015 tender for the provision of asset tagging services for GEMS World Academy. As such, CCS imposed a collective fine of $626,118 on the parties. This case

2 [2005] CAT 22.

3 See Competition Commission of Singapore, "CCS Issues Infringement Decision for Bid-Rigging in Electrical Services and Asset Tagging Tenders" (28 November 2017).

reflects the extremely strict stance that CCS takes as it analyses facts reflective of a cartel, and the penalty imposed.

10.15 The first of the two proposed infringement decisions issued by CCS was against five capacitor manufacturers, Panasonic Industrial Devices Singapore and Panasonic Industrial Devices Malaysia Sdn Bhd, ELNA Electronics (S) Pte Ltd, Nichicon (Singapore) Pte Ltd, Rubycon Singapore Pte Ltd and Singapore Chemi-con (Pte) Ltd, involving Aluminium Electrolytic Capacitors ("AECs").[4] In this case, CCS had commenced investigations following a leniency application from one of the capacitor manufacturers and ultimately imposed a record fine of $19,552,464 on the five manufacturers.

10.16 During the course of CCS's investigations, the parties were found to have colluded and engaged in the following activities:

(a) exchange of confidential and commercially sensitive business information such as customer quotations, sales volumes, production capacities, business plans and pricing strategies;

(b) discussing and agreeing on the sales prices of the AECs, including various price increases; and

(c) agreeing to collectively reject customers' requests for reduction in prices of AECs sold to them.

10.17 The second infringement decision issued by CCS was against 13 fresh chicken distributors ("Distributors").[5] This was also notably the first supplementary proposed infringement decision ("SPID") issued by CCS. By way of background, CCS had earlier in March 2016 issued a proposed infringement decision ("PID") against the Distributors for their alleged involvement in agreements to co-ordinate the amount and timing of price increases, and not to compete with one another for customers in the market for the supply of fresh chicken products in Singapore. However, in the course of the representations made by the Distributors pursuant to the PID, new facts and admissions were raised and led CCS to re-open investigations. As such, CCS formally notified the Distributors on 27 September 2016 that further investigations would be conducted. CCS also subsequently received applications from some of the Distributors involved for lenient treatment under CCS's Leniency

4 See Competition Commission of Singapore, "CCS Fines Capacitor Manufacturers Involved in Global Cartel for Price-Fixing and Information Exchange" (5 January 2018).

5 See Competition Commission of Singapore, "CCS Issues Supplementary Proposed Infringement Decision against 13 Fresh Chicken Distributors in View of Fresh Evidence" (21 December 2017).

Programme. In light of these developments, CCS issued the SPID to allow the Distributors to address the new evidence that has arisen since the issuance of the PID.

10.18 While the practice of issuing supplementary decisions is well-established in jurisdictions like the EU, this is the first case in which CCS has deemed it necessary to issue a SPID. This practice is to be welcomed as it affords parties the opportunity to explain the new evidence raised. However, it also raises several important questions that need to be addressed by CCS. One such issue is, for instance, whether the SPID should be regarded as a fresh PID or simply a continuation of the PID issued previously. While this may seem like procedural hair splitting, CCS's treatment of the SPID can have a significant impact on the amount of fines which the parties are liable for, as the applicability of changes in the law become an issue. To illustrate, if new fining guidelines came into force in the interim between the issuance of the PID and the SPID, the applicability of the new fining guidelines would depend on whether the SPID should be considered a fresh PID or simply a continuation of the previous PID. If the SPID is viewed as a fresh PID, then the new fining guidelines will apply to the case at hand and *vice versa*. Notably in the EU, a whole body of case law has been developed to deal with this very issue. Accordingly, it is important that further guidance be given on how CCS is planning to deal with such issues going forward.

10.19 CCS is also currently inviting public comment on the proposed joint venture between several fresh chicken products distributors ("applicants"). The applicants intended to establish a joint venture company, Singapore Poultry Hub Pte Ltd, which will undertake slaughtering services on behalf of each applicant, and have applied to CCS for a decision that the proposed joint venture will not infringe s 34 of the Competition Act.

10.20 In this regard, CCS is seeking feedback in relation to (a) the current and future demand and supply conditions of poultry slaughtering services, (b) the current level of competition in the markets of the overall poultry supply chain in Singapore and the impact the proposed joint venture will have on those markets, and (c) the likelihood of the economic benefits and efficiencies claimed by the applicants.

Abuse of dominance (section 47 of Competition Act)

10.21 As a preliminary point, being dominant is not in itself a violation of s 47 of the Competition Act. What is prohibited is leveraging on such dominance (in this regard, as a guidance, a market

share of 60% or more is an indication of dominance) to restrict competition in any market in Singapore. While there is a dearth of decisions on abuse of dominance in Singapore, CCS has sent a reminder to dominant businesses, through its recent enforcement actions, that businesses must always ensure that they cannot use abuse their strong market position.

10.22 While CCS did not issue any decisions relating to abuse of dominance in 2017, it initiated a public consultation to garner feedback on two proposed commitments separately provided by (a) BNF Engineering (S) Pte Ltd ("BNF") in relation to the supply of spare parts for BNF brand of lifts, and (b) C&W Services Operations Pte Ltd ("CWO") in relation to the supply of spare parts for Ulift brand of lifts.

10.23 The consultations followed negotiated settlements between the respective parties and CCS, given the latter's investigation into alleged refusals to supply lift spare parts for the maintenance of lifts in Housing and Development Board estates. In its investigations, CCS took the view that the refusal by the original suppliers or distributors of lifts to supply essential lift spare parts to third-party lift maintenance contractors may curtail competition for contracts to maintain and service lifts of that particular brand. The respective parties provided commitments that they will undertake to sell lift spare parts of the relevant brands to a purchaser on a fair, reasonable and non-discriminatory basis ("FRAND").

10.24 The public consultation has now closed.

10.25 These cases are significant as they operate as reminders that dominant undertakings ought to ensure that they do not engage in any potentially abusive market conduct. CCS has constantly adopted a strict approach in assessing abuse of dominance cases, as seen from its approach in defining the relevant market narrowly. As seen from the above cases, CCS found the supply of proprietary lift spare parts for each brand of lift to constitute a separate relevant market, defining the relevant markets on a brand-specific basis. In its previous investigation into Asia Pacific Breweries Singapore Pte Ltd, it has also reflected this approach as CCS adopted a narrow market definition on an outlet-specific basis. An important consequence of this is that the likelihood that an undertaking may be found dominant would be higher.

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

10.26 Section 54 of the Competition Act prohibits mergers that substantially lessen competition in any market in Singapore. The

assessment of whether a merger would substantially lessen competition involves a comparative analysis between the anticipated state of competition in the market after the merger and the counterfactual (that is, the state of competition in the absence of the merger). 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 which case, CCS would clear the merger. Further, CCS generally takes the view that 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) are less harmful than horizontal mergers (that is, mergers between competitors operating in the same market).

10.27 Singapore does not have a mandatory merger notification regime in place, and hence parties to a merger, strictly speaking, are not legally required to notify the merger to CCS. However, this means that the parties place themselves under the risk, after proceeding with the merger, of CCS raising objections to the merger. Given that a merger usually involves much time, effort, and costs, and spans across many jurisdictions, it is extremely arduous and expensive to reverse the effects of a merger once the process has commenced. Therefore, a more prudent approach would be to notify CCS of the merger before it takes place, especially if the merger could potentially lessen competition in the relevant market. Indeed, many businesses are now adopting this approach, as seen from the increasing number of merger notifications received by CCS each year.

10.28 In 2017, CCS cleared three mergers in Phase 1, whilst moving two mergers into a Phase 2 review. Specifically, the below-mentioned three mergers received unconditional clearance from CCS.

Acquisition by Nissan Motor Co Ltd of shares in Mitsubishi Motors Corp[6]

10.29 In this case, the relevant market was the market for the wholesale supply of (a) mini cars, (b) small cars, (c) medium cars, (d) sports utility vehicles, and (e) pick-up trucks in Singapore (collectively, "Relevant Markets"). Notably in clearing the decision, CCS noted that although the parties' combined market shares for the Relevant Markets with respect to passenger vehicles exceeded CCS's indicative thresholds of a merger situation that may raise competition concerns, there was still a healthy degree of competition in the market.

6 CCS 400/007/16 (23 January 2017).

The parties' combined market share was not a reliable indicator of competition in the market as it is subject to considerable volatility. Further, CCS took into account the presence of significant spare production capacity of the other suppliers as being a competitive constraint on the merger parties. In this regard, this decision reflects CCS's long standing position that its merger thresholds are only indicative in nature and other factors will be taken into consideration in the assessment of whether a merger is likely to lead to a substantial lessening of competition.

Proposed Joint Venture between Nippon Yusen Kabushiki Kaisha Ltd and Mitsui OSK Lines Ltd and Kawasaki Kisen Kaisha, Ltd[7]

10.30 The relevant market in this case is the market for container liner shipping services for the overlapping liner shipping trade routes of NYK, MOL and KL between broadly defined geographic regions involving East Asia, which is the region relevant to Singapore. This joint venture was subsequently approved by CCS as the parties' market shares in the relevant market did not exceed CCS's indicative thresholds. Further, there were low barriers to entry and significant countervailing buyer power in the market.

Proposed Acquisition by SK Holdings Co Ltd of LG Siltron[8]

10.31 The proposed acquisition of 51% of LG Siltron Inc ("LG Siltron") by SK Holdings Co Ltd ("SK Holdings") was a vertical merger cleared by CCS. LG Siltron's principal business is in the manufacturing and selling of silicon wafers while SK Holdings is the holding company of the SK Group. Accordingly, CCS was concerned that there could be potential vertical concerns arising from the integration of the upstream silicon wafer supplier, LG Siltron and the downstream semiconductor manufacturer. Nevertheless, CCS eventually cleared the acquisition as it found that the vertical integration would have a limited impact on the silicon wafer market at best. This was because a significant degree of countervailing buyer power was present in the market, as customers of silicon wafers have the ability to sponsor entry, generally source from multiple suppliers, and are still able to exercise bargaining power and negotiate with the suppliers even in times of tight supply. These factors therefore indicate that customers hence are able to easily switch between suppliers, hence operating as a significant competitive constraint.

7 CCS 400/002/17 (14 March 2017).
8 CCS 400/003/17 (12 May 2017).

10.32 With regards to Phase 2 reviews, there were two mergers subjected to assessment under the Phase 2.

Proposed Merger of Essilor International (Compagnie Generale d'Optique) SA and Luxottica Group SpA[9]

10.33 Essilor International (Compagnie Generale d'Optique) SA ("Essilor") and Luxottica Group, SpA ("Luxottica") filed a joint notification for CCS to determine whether a proposed merger of their businesses would infringe s 54 of the Competition Act.

10.34 By way of background, both parties are major players in the eyewear industry. Essilor is a global manufacturer and wholesale supplier of ophthalmic lenses, and to a lesser extent, other optical products. Essilor is active in every phase of ophthalmic (corrective) lens development, from design to manufacture to wholesale. Luxottica, on the other hand, designs, manufactures, and distributes eyewear, namely, prescription frames and sunglasses. The parties submitted that there is minimal overlap between their activities in the relevant markets and that their businesses are highly complementary. Further, the parties also argued that the relevant markets were highly competitive, with low barriers to entry and significant countervailing buyer power on the part of customers.

10.35 However, CCS was unable to conclude at the end of the Phase 1 review that the transaction would not raise competition concerns, thus necessitating a more in-depth Phase 2 review with effect from 5 December 2017. Although the parties were not direct competitors, they were the two largest players in their respective main markets. As such, CCS was concerned that the merged entity may have substantial market power in the complementary products of ophthalmic lenses, prescription frames and sunglasses and may then leverage on its market power in both markets and engage in tying and/or bundling, for instance, refusing to sell individual products separately to retailers, or to sell them separately but at prices higher than the prices of the bundled products. This may therefore lead to reduced choice for retailers and substantially lessen competition in the supply of these products in Singapore.

9 CCS 400/006/17 (20 April 2018).

Proposed Acquisition by Wilhelmsen Maritime Services AS of Drew Marine[10]

10.36 On 14 November 2017, CCS announced that it had commenced a Phase 2 review of Wilhelmsen Maritime Services AS's proposed acquisition of Drew Marine's technical solutions, fire, safety and rescue business. CCS found that both parties overlapped in supplying marine welding equipment, marine gases and marine chemicals.

10.37 In deciding to move to a Phase 2 review, CCS assessed that the merger would raise competition concerns because the parties are two of the largest players in the market, with extensive international end-to-end distribution networks. The parties are also each other's closest competitors. CCS considered that post-merger, it may be difficult for other players to compete with the merged entity as it may be difficult for them to obtain sufficient geographic scale to be a viable competitor.

Proposed Acquisition by Times Publishing Limited of Penguin Random House Pte Ltd and Penguin Books Malaysia Sdn Bhd[11]

10.38 On 18 January 2017, Times Publishing Limited ("TPL") notified CCS of its proposed acquisition of Penguin Random House Pte Ltd and Penguin Books Malaysia Sdn Bhd. As part of the proposed acquisition, the parties will also enter into an exclusive distribution agreement with a group of publishers, namely, Penguin Books Limited, The Random House Group Limited, Dorling Kindersley Limited and Penguin Random House LLC (collectively, "Publishers"), for the merged entity to exclusively distribute the Publishers' books to book retailers in Singapore, Malaysia and Brunei. The relevant market for the Proposed Transaction was defined as the intermediary market for marketing and distribution of English-language only print trade books via physical and online platforms globally.

10.39 While CCS took the view that the merger will not result in horizontal concerns, it raised vertical concerns at the end of the Phase 1 review that the exclusive distribution agreement would give the merged entity the ability to favour its own downstream retailer (that is, Times bookstores) and give the merged entity a greater incentive and ability to discriminate or restrict supply of the Publishers' titles to other retailers.

10.40 To allay this fear, TPL has given commitments to CCS to supply third-party retailers the full range of the Publishers' books on a FRAND

10 CCS 400/004/17.
11 CCS 400/001/17 (25 September 2017).

basis, during the term of the exclusive distribution agreement. It has also agreed to offer the same distributor-recommended retail prices to all retailers, and to give discounts to retailers on a FRAND basis, based on a set of objective discount criteria. On this basis, CCS ultimately cleared the proposed acquisition on the condition that these conditions are implemented and complied with.

Other notifications

10.41 CCS also received notifications for the *Proposed Acquisition by ComfortDelGro Corp Ltd of 51% of the Shares in Lion City Holdings Pte Ltd from Uber Technologies, Inc*,[12] *Proposed Acquisition by Jacobs Douwe Egberts Holdings Asia NL BV of Shares of OldTown Berhad*[13] and *Proposed Joint Venture between CAE International Holdings Ltd and Singapore Airlines Ltd*.[14] The latter two have most recently been cleared on 30 January 2018 and 31 January 2018 respectively, while the former is still currently in Phase 1 of the review process.

CCS public consultation on proposed amendments to the Competition Act

10.42 On 21 December 2017, CCS launched a three-week public consultation on its proposed amendments to the Competition Act, which aims to align CCS's enforcement with international best practice.

10.43 First, the proposed amendments seek to empower CCS to accept binding and enforceable commitments for cases involving s 34 (for anti-competitive agreements) and s 47 (for abuse of dominance) of the Competition Act would accord with the current position for commitments that are accepted under s 54 (for mergers that substantially lessen competition) of the Act. Further, without this amendment, the only recourse for CCS with regards to any future breach of these undertakings under the current approach would be to re-open the investigation into the case. This is resource-intensive and does not allow CCS to address the market harm in a timely manner.

10.44 Second, CCS's powers will be expanded to conduct general interviews during inspections and searches pursuant to ss 64 and 65 of the Competition Act, allowing CCS to question the occupants of any premise which CCS inspects or searches. Under the current Act, such occupants are only required to provide an explanation for any

12 CCS 400/008/17.
13 CCS 400/009/17 (30 January 2018).
14 CCS 400/010/17 (30 January 2018).

documents seized from the premises or information uncovered in the course of CCS's investigations and, strictly, CCS is not empowered to ask general questions without first serving written notice under s 63 of the Act and on each individual to be interviewed. CCS has given reassurance that the scope of its general questioning will still be limited to the subject matter of the investigations.

10.45 Third, the amendments will formalise the provision of confidential advice from CCS to businesses in relation to potential mergers as a statutory process. The rationale behind this is to give businesses greater assurance when approaching CCS for confidential advice in relation to a potential merger which may have anti-competitive effects.

10.46 The proposed amendments raise significant procedural changes that merit further debate and consideration. The amendment to empower CCS to conduct general interviews during inspections and searches is one significant procedural change. It raises questions such as whether there could be the risk and potential for the relevant officers to go beyond the subject matter or the purpose of the investigation (perhaps unintentionally) when conducting such general interviews, and whether the occupants of the premise would be sufficiently informed and equipped to answer any such general interview questions or to raise concerns where the scope of questioning goes beyond the subject of the investigation. This is in contrast to the current process where CCS has to serve written notices on each individual to be interviewed; in such cases, CCS would have carefully considered and pre-identified the individuals to be interviewed, which will likely be based on their decision-making position in the company and their knowledge of the conduct under investigation. Moreover, these individuals, because of their position in the company, are also more likely to be able to respond to the CCS queries and to raise concerns where the scope of questioning goes beyond the subject of the investigation.

10.47 With respect to the formalisation of the provision of confidential advice by CCS in relation to potential mergers, this is generally welcome as it will provide businesses with greater certainty by "encoding" in the Competition Act the process that is already set out in the CCCS Guidelines on Merger Procedures 2012 and which we know from experience has been used by businesses since its introduction in 2012. However, the drafting under the proposed new s 55A of the Act does not make any reference to such advice being provided by CCS on a confidential basis. Therefore, clarity needs to be sought as to whether or not CCS intends for such processes to continue to be confidential, and if so, whether the new section of the Act can be clarified to that effect.

Publications by CCS

Findings from CCS's formula milk study[15]

10.48 In October 2015, CCS undertook a review of the formula milk market due to the sharp increase of formula milk prices in Singapore in recent years, a trend which had caused much concern amongst parents. The review was completed in December 2016 and CCS released its findings on 10 May 2017. CCS found that the increase in the prices was mainly attributable to three factors.

10.49 One of these factors is the increase in mark-up of wholesale prices over manufacturing costs of formula milk, which was driven largely by the heavy investment by formula milk manufacturers into marketing and research and development ("R&D"). This focus on aggressive marketing and R&D was in turn due to strong consumer preference for "premium brands" and high brand loyalty. Second, consumers possessed little awareness of the nutritional content of formula milk and the dietary requirements of infants and young children, which led them to wrongly perceive that premium products are of higher quality. Third, the negligible presence of parallel imports in Singapore limits the extent of price competition in the formula milk market. All of these factors therefore present significant barriers to entry for new brands or barriers to expansion for existing brands which do not engage in such efforts.

10.50 Based on these findings, CCS made several recommendations to improve competition in the supply of formula milk in Singapore. Firstly, CCS proposed to increase consumer awareness of the viability of cheaper alternative formula milk brands through consumer education, which allows consumers to make more informed decisions rather than relying on perceptions such as "premium prices means better quality". This would in turn lead to increased price competition over time. Secondly, CCS proposed to review the current practice of sponsorships by manufacturers to hospitals, given that majority of parents tend to continue with the brand of formula milk that their babies are exposed to at birth in the hospitals as such sponsorships operate as a barrier to entry and expansion for new and existing brands. Lastly, CCS has proposed to review existing regulatory rules which prohibit parallel importation. By allowing the entry of new private labels into the market,

15 See Competition and Consumer Commission of Singapore, "CCS Looks into Supply of Infant Formula Milk", available at <https://www.cccs.gov.sg/media-and-publications/cccs-in-the-news/ccs-looks-into-infant-formula-milk-prices> (accessed 25 May 2018).

more price competition in the market for formula milk will be encouraged.

Findings from CCS's market inquiry on automotive parts[16]

10.51 On 11 December 2017, CCS published its findings from its market inquiry into the supply of car parts in Singapore for the servicing, repair and customisation of cars. The purpose of the market inquiry was to better understand how the relevant markets functioned, and whether there were any features or market practices that limited competition in the relevant markets in Singapore. This market inquiry into the automotive parts industry in Singapore comes on the back of the recommendation to look further into the aspects of potential concerns that have been identified in the consultancy report that it had commissioned from HoustonKemp Pty Ltd ("HoustonKemp").

10.52 HoustonKemp had raised several competition concerns with regards to the installation markets (which were further broken down into the (a) servicing and maintenance, (b) repairs, and (c) customisation segments, including:

(a) limitations on the number of authorised workshops;

(b) resale price maintenance arrangements which allowed car manufacturers to set the price of car parts on-sold to end-customers, and car manufacturers requiring authorised workshops to use Original Equipment ("OE") parts (namely, genuine parts that come in packaging marked with the car manufacturer's brand and may be manufactured by the car manufacturer or purchased from car parts manufacturers for resale);

(c) the inability for independent workshops to have access to technical information and diagnostic equipment ("Essential Inputs"), which consequently limited their ability to perform car-servicing and repairs; and

(d) warranty terms and conditions that require non-warranty-related servicing and repairs to be carried out at authorised workshops in order for the car warranty to remain valid ("Warranty Restrictions").

10.53 Following HoustonKemp's report, CCS formally launched an inquiry under the Competition Act and focused on 11 major authorised

16 Competition Commission of Singapore, *Market Inquiry on Car Parts in Singapore* (11 December 2017).

car dealers that distribute 19 car brands which make up more than 90% of the car population in Singapore in 2016.

10.54 In the course of CCS's market inquiry, however, CCS found that the competition concerns raised by resale price maintenance arrangements were offset by the availability of alternatives to OE parts (such as Original Equipment Manufacturer or generic parts). Similarly, with regards to the limited supply of Essential Inputs, CCS found that independent car workshops could obtain viable substitutes from third-party suppliers, notwithstanding that these substitutes may not perform as well. Finally, CCS noted that the competition concerns raised by the limited number of authorised workshops could be more directly addressed through the removal of Warranty Restrictions.

10.55 As such, CCS narrowed its investigations to Warranty Restrictions, which require customers to service their cars exclusively at the respective dealer's authorised workshops during the warranty period or risk having their warranties voided by the car dealers. In particular, CCS expressed concern over two categories of Warranty Restrictions:

(a) explicitly requiring all servicing and repairs (even non-warranty-related repairs) to be done at authorised workshops; and/or

(b) allowing warranty claims over a defect or malfunction to be rejected on the basis that the car (or any part of it) had been serviced by independent car workshops.

10.56 CCS took the view that such Warranty Restrictions essentially prevented independent workshops from competing effectively with authorised workshops as car owners will be disincentivised from approaching independent workshops for repairs, maintenance and car-servicing, especially when the duration of such warranties was to increase from three to five years. This will in turn enable authorised workshops to raise their prices to the detriment of the customers.

10.57 As a result, CCS noted that it had worked with the nine major authorised car dealers and several of their car manufacturers to remove the Warranty Restrictions of concern. These changes are to be retrospectively implemented for existing warranties in force and new warranties by 31 December 2017. In light of these changes, car dealers can only void warranties or reject claims if they establish that the damage or defect to be claimed under the warranty had been caused by independent workshops. In light of CCS's findings and recommendations, other car dealers are also encouraged to review their warranty terms and practices so as to ensure compliance with the Competition Act.

10.58 This move by CCS may also have implications beyond the automobile industry as well. Warranty Restrictions are common in industries such as the electronics hardware industry where warranties may be voided if the consumer approaches third parties for repairs or where manufacturers may not offer warranties if customers do not purchase the product from authorised retailers. Arguably, such Warranty Restrictions may also have the effect of creating an uneven playing field between authorised retailers and third-party resellers/repair workshops. It should be noted though that the duration of the warranty for such industries are typically shorter so it may pose less of a restraint on competition and it remains to be seen if CCS will commence investigations into the practices of such industries.

Findings from CCS's retail petrol study[17]

10.59 On 19 December 2017, CCS published its findings from the second market study inquiry that it had conducted on the Singapore retail petrol market (the "Second Market inquiry"). The Second Market Inquiry follows from the first market inquiry conducted in 2011 (the "First Market Inquiry") and the interim findings of the Second Market Inquiry released in 2016.

10.60 The First Market Inquiry was conducted with the aim of assessing the competitiveness of Singapore's retail petrol market, after which CCS concluded that there was no evidence of anti-competitive practices. While the petrol retailer's listed prices were largely similar and moved in tandem, their effective price levels differed due to the various discount and rebate schemes offered by the different retailers. Further, there was no evidence of "rock and feather" type pricing patterns. This led to the conclusion that there was a healthy level of price competition at the effective price level.

10.61 However, due to third-party feedback that retail petrol prices did not seem to be responsive to falling oil prices, CCS launched its Second Market Inquiry to study the pricing decisions of petrol retailers and the purchasing habits of retail petrol consumers.

10.62 CCS made several important findings from the Second Market Inquiry. First, CCS concluded once again that there was no evidence of collusion between the petrol retailers. Second, while price competition occurred at the effective price level, CCS took the view that the effective price levels were not transparent to customers due to the complicated

17 See Competition Commission of Singapore, "Retail Petrol Market Inquiry: CCS Recommends Improving Price Transparency and Raising Consumer Awareness on Octane Grades" (19 December 2017).

discount schemes involved. Interestingly, there was a shift in CCS's view in relation to the issue of price transparency. In its First Market inquiry, CCS took the view that the lack of price transparency did not warrant any intervention. However, in its Second Market Inquiry, CCS observed that there is a need to improve the transparency of the effective retail price so as to enable consumers to make more informed decisions and benefit from greater price transparency. While there are currently websites and mobile applications which allow consumers to compare retail petrol prices, CCS considered that such websites and mobile applications did not sufficiently provide complete and real-time updates on petrol price changes. In view of this, CCS is now considering the possibility of developing its own mobile applications and online portals to aid consumers in comparing effective petrol prices.

Handbook on E-Commerce and Competition in ASEAN

10.63 On 16 August 2017, CCS launched a handbook on e-commerce and competition policy in ASEAN which was commissioned by CCS, with supporting questionnaire responses on the ASEAN e-commerce scene from various ASEAN competition authorities.[18] The handbook identifies the disruptive effects that the rapid growth of e-commerce has on the conventional competition dynamics of various markets and provides guidance to companies and competition authorities in responding to novel competition issues. For instance, traditional approaches in defining relevant markets may no longer be applicable as many multi-sided online markets have emerged as a result of the growth in e-commerce. In response to this, market definition assessments for multi-sided markets may require the consideration of the total price charged to all sides of the market, as opposed to merely considering the price charged to each side in isolation.

10.64 As noted by Minister of Trade and Industry, Lim Hng Kiang, the handbook aims to provide guidance and support in competition policy and law to businesses engaged in e-commerce across ASEAN so as to foster an e-level playing field for businesses, particularly those operating across borders. Businesses, especially those operating in industries disrupted by e-commerce, should therefore pay close attention to this handbook.

18 Competition Commission of Singapore, "Handbook on E-Commerce and Competition in ASEAN".