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10. COMPETITION LAW

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I. Overview

10.1 As the COVID-19 pandemic gradually subsided in 2022, the Competition Consumer Commission of Singapore ("CCCS") continued to see the number of notifications and transactions that it had to review remain active, and had to undertake investigations and issue decisions.

10.2 CCCS continued to be active in investigating potential violations of the Competition Act 2004[1] ("the Act") in 2022. While there were no infringement decisions issued relating to abuse of dominance, CCCS issued one infringement decision relating to anti-competitive conduct by warehouse operators under s 34 of the Act. In addition, it also received three notifications for decisions, two of which pertained to airline alliances, while the other pertained to the novel application of an exclusion under the Third Schedule to the Act. Separately, CCCS would also have received notifications for guidance, which are kept confidential.

10.3 For merger reviews, CCCS continued to remain busy. It reviewed 12 proposed acquisitions in 2022: seven were cleared unconditionally, one was withdrawn due to the termination of the merger agreement, and four were still being reviewed at the time of writing.

10.4 On the consumer protection front, CCCS continued to enforce the Consumer Protection (Fair Trading) Act 2003[2] ("CPFTA"). Following its investigations, CCCS received undertakings from a laptop manufacturer and its reseller, and applied to the State Courts for an injunction against a water dispenser retailer to stop its unfair trade practices. CCCS, alongside the Consumers Association of Singapore ("CASE"), also published a guide on fair trading practices in the renovation industry in response to the

1 2020 Rev Ed.
2 2020 Rev Ed.

high number of customer complaints relating to unsatisfactory service and a failure to honour contractual obligations on the part of contractors.

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

10.5 Section 34 of the 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 are considered "object" restrictions and hence *per se* violations. Under the Act, CCCS has the power to investigate allegedly anti-competitive agreements and issue directions and/or impose financial penalties against parties to such agreements.

10.6 In 2022, CCCS issued one infringement decision on an anti-competitive agreement and concerted practice in relation to price fixing. CCCS also issued a conditional clearance in respect of an airline alliance notification (which was initially proposed in 2019), as well as a decision in respect of a notification pertaining to the application of the by-laws of a clearing house association. Separately, CCCS received a further proposed airline alliance notification.

A. Proposed commercial cooperation between Singapore Airlines Limited and Malaysia Airlines Berhad[3]

10.7 Parties who are unsure if an agreement infringes the s 34 prohibition on anti-competitive agreements have the option of notifying CCCS for the purposes of seeking guidance or a decision. Upon an application for a decision under s 44 of the Act, CCCS may make a decision on whether the agreement has infringed the s 34 prohibition, and if it has not, whether that is because of an exclusion, the agreement being exempt from the prohibition or commitments having been accepted. The key difference between an application for guidance and an application for decision is that the former is treated as confidential whilst the latter is made public. The benefit of notifying CCCS of a co-operation where there is genuine uncertainty as to whether it is potentially anti-competitive is that the arrangement benefits from immunity from financial penalties for infringement (if any) during the period beginning on the date on

3 CCCS 400/110/2019/002 (10 May 2022) (media release only; Grounds of Decision pending).

which the notification was lodged and ending on such date as specified by CCCS if a likely infringement is to be found.

10.8 CCCS received a public airline alliance notification in 2019 from Singapore Airlines Limited ("SIA") and Malaysia Airlines Berhad ("MAB"). The notification concerned their proposed commercial co-operation, with the parties entering into a Commercial Cooperation Framework Agreement ("Proposed Commercial Co-operation") to bring about a metal-neutral alliance in respect of services between Singapore and Malaysia. The parties intended to co-operate on various aspects of the business, including scheduling, pricing, sales and marketing co-operation, as well as other commercial areas such as special prorate agreements and expanded code sharing co-operation. The parties to the Proposed Commercial Co-operation included SilkAir (Singapore) Private Limited and Scoot Tigerair Pte Ltd ("Scoot") (both SIA's subsidiaries), and FlyFirefly Sdn Bhd (MAB's sister company).

10.9 The parties submitted that the Proposed Commercial Co-operation would result in significant consumer and economic benefits and efficiencies. This included an enhanced air travel product for Singapore-to-Malaysia services, expanded virtual networks of the airlines, more competitive fares through the reduction of double marginalisation and better fare combinability, significant benefits to corporate account customers, benefits to both airlines' frequent flyer programme members, potential scheduling benefits and time savings, and improved connectivity for both Singapore and Malaysia, with consequential benefits to both countries' aviation industry and tourism.

10.10 At the time of writing, CCCS has granted conditional approval of the Proposed Commercial Co-operation between SIA and MAB after accepting a set of proposed commitments from the parties. CCCS has yet to issue its written decision.

B. Proposed expansion of joint venture between Singapore Airlines Limited and Deutsche Lufthansa AG[4]

10.11 CCCS received a public airline alliance notification in 2022 from SIA and Deutsche Lufthansa AG ("DLH"). The notification concerned their proposed expansion of the joint venture entered into between SIA and DLH in 2016, which was previously approved by CCCS. The proposed expanded joint venture would include additional European and Asian/Asia-Pacific countries.

4 CCCS 400/110/2022/001 (notifying date: 9 December 2022) (Grounds of Decision pending).

10.12 At the time of writing, CCCS was in the process of inviting public feedback on the proposed expansion of the joint venture.

C. Infringement decision issued on warehouse operators for fixing the price of warehousing services at Keppel Distripark[5]

10.13 CCCS considers agreements and/or concerted practices involving price fixing as always having an appreciable adverse effect on competition and, consequently, constituting a restriction of competition by object, thereby infringing s 34 of the Act. Such types of co-ordination between undertakings are regarded by their very nature as being harmful to the proper functioning of normal competition.

10.14 Following a finding that an agreement and/or concerted practice has infringed s 34 of the Act, CCCS may impose on a party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of that party in Singapore for each year of infringement, up to a maximum of three years. In determining the financial penalties to be imposed, CCCS will calculate a base penalty having regard to the seriousness of the infringement and the party's turnover of the business in Singapore. Thereafter, a multiplier is applied for the duration of infringement and the figure will then be adjusted to take into account factors such as deterrence, aggravating and mitigating considerations, and leniency discounts.

10.15 CCCS issued an infringement decision this year against CNL Logistics Solutions ("CNL"), Gilmon Transportation & Warehousing Pte Ltd ("Gilmon"), Penanshin (PSA KD) Pte Ltd ("Penanshin") and Mac-Nels (KD) Terminal Pte Ltd ("Mac-Nels") for their participation in an agreement and/or concerted practice to fix the price of warehousing services at Keppel Distripark. CCCS determined that the warehouse operators had co-ordinated to impose an additional and identically named charge known as the Free Trade Zone ("FTZ") Surcharge ("FTZ Surcharge"), which was a surcharge imposed on import cargo stored within the FTZ by warehouse operators.

10.16 The parties knew that independently imposing the FTZ Surcharge could result in their customers switching warehousing service providers, especially if their competitors did not impose such a charge. The exchange of price information and their respective intentions to impose the FTZ Surcharge put the parties in a stronger bargaining position with their customers to insist that their customers agree to the surcharge. In doing

5 CCCS 700/001/2020/001 (17 November 2022).

so, the parties knowingly substituted the risks of price competition in favour of practical co-operation between them and did not determine their prices independently. The price-fixing conduct of the parties was held to be, by its very nature, harmful to competition, and the parties were found to have infringed s 34 of the Act.

10.17 On penalties, Penanshin was granted a leniency discount for co-operating with CCCS and providing useful information, although the discount was less than 100% given that Penanshin had made its leniency application only after CCCS had commenced investigations. CNL was not granted any leniency discount as it did not provide any details of the cartel activity. Ultimately, CCCS imposed financial penalties of $522,889 on CNL, $1,436,378 on Gilmon, $297,351 on Penanshin and $542,520 on Mac-Nels.

10.18 Parties are eligible for lenient treatment when they voluntarily provide CCCS with information on their cartel activities. Depending on the stage at which the party came forward for leniency, the evidence already in CCCS's possession when the party applied for leniency and the quality of information provided by the party, parties can be granted total immunity or a reduction of up to 100% or 50% in the level of financial penalties.

D. Notification on the application of Rule 27.23 of the Bye-Laws of the Singapore Clearing House Association and Guidelines[6]

10.19 Parties can rely on certain exclusions under the Third Schedule of the Act when parties intend to co-operate on certain ventures or set certain industry standards. This would allow parties to exempt their agreement/conduct from the s 34 prohibition. These exclusions apply to undertakings entrusted with the operation of services of general economic interest, any agreement or conduct for the purposes of complying with a legal requirement and any agreements with net economic benefit.

10.20 CCCS received an application for decision from the Singapore Clearing House Association ("SCHA") as to whether the proposed r 27.23 ("the proposed Rule") of the by-laws of SCHA and the accompanying guidelines would infringe s 34 of the Act. SCHA established the Singapore Automated Clearing House ("ACH"), which administers Fast and Secure Transactions ("FAST"), an electronic funds transfer system that facilitates the almost instantaneous transfer of Singapore dollar funds between participating banks in Singapore. The proposed Rule sought to govern

6 CCCS 400/110/2021/002 (8 December 2022).

the admission to and the use of FAST by non-financial institutions by restricting FAST users from allowing their electronic wallet users to cash out funds in their electronic wallets through FAST when the funds were sourced from unsecured credit card facilities issued in Singapore.

10.21 In particular, CCCS examined the scope of exclusion under para 7 of the Third Schedule of the Act ("the Paragraph 7 Exclusion"). This is the first time that CCCS has considered the Paragraph 7 Exclusion. The Paragraph 7 Exclusion excludes the application of the s 34 prohibition to any agreement or conduct which relates to the clearing and exchanging of articles undertaken by the ACH under the Banking (Clearing House) Regulations,[7] or any activity of the SCHA in relation to its activities regarding the ACH.

10.22 Although SCHA submitted that the Paragraph 7 Exclusion did not apply to the proposed Rule, proceeding instead on the basis that there was no potential violation of s 34, CCCS adopted a purposive interpretation of the Paragraph 7 Exclusion and applied it to the facts of the case. CCCS's broad reading of the Paragraph 7 Exclusion suggests that the Paragraph 7 Exclusion could potentially extend to all current and future by-laws, regulations and conditions enacted by SCHA. CCCS thus applied the Paragraph 7 Exclusion and held that the proposed Rule did not infringe s 34 of the Act as the proposed Rule fell within the scope of the Paragraph 7 Exclusion.

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

10.23 Section 54 of the Act prohibits mergers that substantially lessen competition in any market in Singapore and applies to completed and anticipated mergers, unless they are excluded or exempted under the Act. Whether a merger would substantially lessen competition involves a comparative analysis between the anticipated state of competition in the market subsequent to the merger and that which is pre-existing as if the merger did not take place, that is, the counterfactual.

10.24 Notwithstanding that a merger may substantially lessen competition, the presence of efficiency gains, amongst other factors, may operate to offset these anti-competitive effects. In such cases, CCCS will proceed to clear the merger. CCCS may clear the merger following a Phase 1 review or following a further review pursuant to a Phase 2 review; in both instances, with or without commitments. CCCS

7 2004 Rev Ed.

generally adopts a positive approach towards vertical mergers (mergers between undertakings operating on different levels of the production or distribution chain) and conglomerate mergers (mergers between undertakings operating in different and unrelated markets). This is because they are less likely to have an adverse impact on competition. However, this does not mean that vertical and conglomerate mergers will always be cleared. In recent times, CCCS has taken a more in-depth review of conglomerate mergers, as reflected by its approach to some of the more recent cases it was notified of. This is also evidenced by CCCS making adjustments to Form M1 to include an additional question on conglomerate effects to be explained when notifying a merger.

10.25 As the merger notification regime in Singapore is a voluntary regime, merger parties are not, strictly speaking, legally required to submit a merger notification to the CCCS. Parties assume the various risks that come with non-notification, such as CCCS imposing directions and financial penalties. It is worth emphasising that CCCS can wield the draconian power of unwinding a completed merger. Should CCCS choose to exercise this power, it would be extremely arduous and expensive to reverse a completed merger. It would therefore be more prudent to notify CCCS prior to implementing the merger so as to avoid an unfavourable decision and the potentially severe consequences. Indeed, many businesses have adopted this approach, as seen from the high number of merger notifications reviewed by CCCS in 2022. For merger parties who are concerned with the confidentiality of the merger (if it has yet to be announced), there is the option of obtaining confidential advice from CCCS under s 55A of the Act.

A. Proposed Acquisition of Asiana Airlines, Inc by Korean Air Lines Co, Ltd[8]

10.26 On 8 February 2022, CCCS cleared the proposed acquisition of a majority interest in Asiana Airlines, Inc ("AAI") by Korean Air Lines Co, Ltd ("KAL"). Under the proposed acquisition, KAL would acquire a majority interest in AAI, with the result that AAI would be solely controlled by KAL. Both AAI and KAL overlap in the supply of passenger air transport services on the direct origin–destination pair between Singapore and Seoul/Incheon and *vice versa* ("Overlapping Passenger Air Transport Route), and the supply of air cargo transport services on the Singapore–South Korea and *vice versa* routes ("Overlapping Air Cargo Transport Routes"). CCCS defined the relevant markets to be the market for the provision of direct bidirectional passenger transport services

8 CCCS 400/140/2021/004 (8 February 2022).

along the Overlapping Passenger Air Transport Route, and the markets for the provision of direct and indirect unidirectional air cargo transport services along the Overlapping Air Cargo Transport Routes.

10.27 In assessing the effects of the acquisition, CCCS found that AAI and KAL were each other's closest competitor. Notwithstanding that, CCCS noted that AAI and KAL were the second and third largest players based on the parties' market share estimates (by passengers flown) on the Overlapping Passenger Air Transport Route. The market leader, SIA, as well as its fully owned subsidiary Scoot, would continue to impose significant competitive constraint with comparable or higher market share than the merged entity on the Overlapping Passenger Air Transport Route. Furthermore, the merged entity would face some degree of competition from potential new entrants, as the barriers to entry were moderate.

10.28 As regards air cargo transport services, CCCS noted that while AAI's and KAL's estimates of the combined market share (by cargo weight) of the merged entity was high, SIA would remain a sizeable competitor to the merged entity and continue to exert significant competitive constraint. Furthermore, the merged entity would continue to face competition from an existing competitor, Polar Air Cargo, as well as from potential new entrants.

10.29 Given the above findings, CCCS was satisfied that the proposed acquisition would not cause a substantial lessening of competition ("SLC") in Singapore and cleared the merger.

B. Proposed Acquisition by Parker-Hannifin Corporation of Meggitt plc[9]

10.30 On 28 March 2022, CCCS cleared the proposed acquisition of Meggitt plc ("Meggitt") by Parker-Hannifin Corporation ("Parker"). Under the proposed acquisition, Parker would acquire the entire issued and to be issued ordinary share capital of Meggitt. Both Parker and Meggitt are active in the supply of products and services within the aerospace manufacturing industry for a range of aircraft. Parker and Meggitt provided original equipment ("OE") products and services upstream and aftermarket products and services (downstream) in the aerospace industry. CCCS defined the relevant market to be the global supply of aerospace sensors, aircraft wheels and brakes, aerospace

9 CCCS 400/140/2021/009 (28 March 2022).

pneumatic valves, utility actuators and aerospace seals. Each relevant product market comprised the OE and aftermarket.

10.31 In its assessment, CCCS noted that Parker and Meggitt were not each other's closest competitors. CCCS found that as the products supplied were highly specific to their application and to their supplier, any horizontal overlap between Parker and Meggitt would be limited. Parker and Meggitt also did not compete in the aftermarkets as they provided maintenance, repair and overhaul services only in respect of their own equipment.

10.32 Furthermore, CCCS found that Parker and Meggitt's market shares in the product market did not cross CCCS's indicative thresholds. The merged entity would not be the largest player and there were significant competitors with larger or similar market shares that would exert competitive constraints on the merged entity.

10.33 Given the above findings, CCCS held that the proposed acquisition would not give rise to non-coordinated, co-ordinated or vertical effects in the relevant market and cleared the merger.

C. Proposed Merger between Cargotec Corporation and Konecranes plc[10]

10.34 On 15 October 2021, CCCS received a notification relating to the proposed merger between Cargotec Corporation ("Cargotec") and Konecranes plc ("Konecranes"). Konecranes specialises in lifting solutions for various applications, offering material handling solutions for general manufacturing and process industries, container handling equipment and respective automation solutions. Cargotec offers many kinds of material flow solutions, ranging from cargo and load handling equipment to engineering solutions for the maritime industry. Konecranes's business activities in Singapore primarily relate to the sale of container handling equipment, the marketing and selling of industrial lifting equipment and providing related services, and the trading in, installing and maintaining of building maintenance units and other serialised construction equipment in Singapore. Cargotec's business activities in Singapore mainly relate to the sale of container handling equipment.

10.35 However, Cargotec and Konecranes withdrew their application 30 March 2022, notifying CCCS that they had decided to abandon the proposed merger. In view of this, CCCS ended its assessment of the

10 CCCS 400/140/2021/007 (30 March 2022).

proposed merger. The cancellation of the application for the proposed merger was likely due to the UK Competition & Markets Authority's objection to the merger on 29 March 2022. The objection to the merger was premised on the fact that Cargotec and Konecranes were each other's closest competitors in the relevant markets, and the merged entity would face few significant competitive constraints following the merger.

D. Proposed Acquisition by Entegris, Inc of CMC Materials, Inc[11]

10.36 On 26 May 2022, CCCS cleared the proposed acquisition by Entegris Inc ("ENT") of 100% of the equity shareholding of CMC Materials, Inc ("CMC"). ENT is a global developer, manufacturer and supplier of microcontamination products, specialty chemicals and materials handling solutions for manufacturing processes in the semiconductor and other technology industries. CMC is a global supplier of consumable materials to semiconductor manufacturers and pipeline companies.

10.37 In its assessment, for the purpose of assessing the horizontal effects of the acquisition, CCCS defined the relevant markets to be the global supply of chemical mechanical planarisation slurries ("CMP Slurries") and formulated cleaning solutions ("Cleans"). CCCS found that the proposed acquisition would not significantly increase concentration in the relevant markets for CMP Slurries and formulated Cleans as there remained multiple suppliers in the market post-acquisition. There were also customers with countervailing buyer power that would reduce the ability of competitors in the relevant markets to align and gain the stability required for co-ordination to occur or be sustainable. Finally, suppliers in the relevant markets were unlikely to easily align their behaviour as the outcomes of the bidding process for CMP Slurries and formulated Cleans were typically not made known to other bidders.

10.38 For the purpose of assessing the vertical effects of the acquisition, CCCS defined the relevant markets to be the global supply of Wet Chemical Drums (that is, drums used for the transportation of wet chemicals, such as CMP Slurries and Cleans) and liquid filters upstream, and the global supply of CMP Slurries, formulated Cleans and commodity Cleans downstream. CCCS found that the proposed acquisition was unlikely to result in input foreclosure as ENT did not appear to be a very significant supplier of Wet Chemical Drums or liquid filters. Furthermore, customers also multi-sourced, and it was not difficult for customers to switch to other viable alternative suppliers.

11 CCCS 400/140/2022/001 (26 May 2022).

10.39 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 Talace Private Limited of Air India Limited[12]

10.40 On 14 December 2021, CCCS received a notification relating to the proposed acquisition by Talace Private Limited ("TPL"), a subsidiary of Tata Sons Private Limited ("TSPL"), of 100% of the shares and voting rights of Air India Limited ("AI") from the Government of India, along with AI's sharing holding interest of 100% in the equity share capital of Air India Express Limited ("AIXL") and 50% in the equity of share capital of Air India SATS Airport Services Private Limited ("AISATS"). TSPL and AI are active in the provision of air transport services (both passengers and cargo) along the Singapore–India and *vice versa* routes.

10.41 TPL (on behalf of its subsidiary, TSPL) and AI submitted that they overlapped in the provision of international air passenger transport services along direct flights on the Singapore–Mumbai and Singapore–Delhi routes (and *vice versa*), as well as the provision of air cargo services on the Singapore–India and *vice versa* routes.

10.42 TPL and AI submitted that the relevant markets should be the markets for the provision of international air passenger transport services along direct flights on the Singapore–Mumbai and Singapore–Delhi routes (and *vice versa*).

10.43 At the time of writing, CCCS has released a media release[13] following the completion of its Phase 1 review of the proposed acquisition. CCCS raised competition concerns with TPL on the proposed transaction, as it found that Air India and Vistara were likely to be each other's closest competitor. Further, CCCS had yet to assess the extent to which SIA competed with the merged entity along the Singapore–Mumbai and Singapore–Delhi routes, given that SIA was a joint venture partner with TSPL in Vistara, as well as whether the competitive constraint from other airlines would be sufficient. CCCS allowed TPL and AI to offer commitments to address the potential competition concerns of the proposed transaction, following which CCCS would proceed to a detailed further review of the proposed acquisition.

12 CCCS 400/140/2021/008 (3 June 2022) (media release only; pending Phase 2 review).

13 Competition & Consumer Commission Singapore, "CCCS Raises Competition Concerns on the Acquisition by Talace Private Limited of Air India Limited", media release (3 June 2022).

F. Proposed Acquisition by MOMQ Holding Co of CoorsTek KK[14]

10.44 On 18 October 2022, CCCS cleared the proposed acquisition by MOMQ Holding Company ("Momentive") of 100% issued shares of CoorsTek KK's ("CoorsTek's") wholly owned subsidiary, CoorsTek Nagasaki Corporation ("CoorsTek Nagasaki"). In Singapore, Momentive is involved in the supply of quartz crucibles used in the production of 300mm silicon wafers, while CoorsTek is involved the sale of various ceramic products including quartz crucibles used in the production of 300mm silicon wafers. CCCS defined the relevant market to be the global supply of quartz crucibles used in the production of 300mm silicon wafers.

10.45 In its assessment, CCCS found that Momentive and CoorsTek supplied differentiated products and were not close competitors in the supply of quartz crucibles, particularly in Singapore. Furthermore, customers multi-sourced and were able to switch between suppliers and source for new suppliers.

10.46 The proposed acquisition was also found to contain several ancillary restrictions imposed by Momentive in the share purchase agreement in the form of non-compete and non-solicitation restrictions. For the non-compete restriction, CCCS found that it constituted an ancillary restriction as it would allow Momentive to receive the full benefit of any goodwill or know-how acquired under the proposed acquisition and was therefore directly related and necessary to the proposed acquisition. However, for the non-solicitation restriction, CCCS noted that the parties were unable to explain further whether and how it was important for the implementation of the proposed acquisition. CCCS therefore found that the non-solicitation restriction was not an ancillary restriction. In this regard, only the non-compete restriction constituted an ancillary restriction which benefited from the ancillary restriction exclusion under the Act.

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

14 CCCS 400/140/2022/005 (18 October 2022).

G. Proposed Acquisition by ContiTech Global Holding Netherlands BV of Printing Solutions Sweden Holding AB from Trelleborg AB[15]

10.48 On 27 October 2022, CCCS cleared the proposed acquisition of the entire shareholding of Printing Solutions Sweden Holding AB from Trelleborg AB ("Trelleborg") by ContiTech Global Holding Netherlands BV ("ContiTech"). In Singapore, both Trelleborg and ContiTech are active in the supply of flat-backed/fabric printing blankets and self-adhesive printing blankets.

10.49 CCCS found that it was not necessary to conclude on a precise definition of the relevant market as it did not affect the outcome of CCCS's competition assessment of the proposed acquisition. Nevertheless, as a frame of reference for the purposes of the competition assessment, CCCS considered the relevant market to be the manufacturing and supply of offset printing blankets as a whole (on a wider definition), and the manufacturing and supply of the specific overlapping types of printing blankets in Singapore, such as flat-backed/fabric printing blankets and self-adhesive printing blankets (on a narrower definition).

10.50 In its assessment, notwithstanding that the merged entity would become the largest player after the proposed acquisition, CCCS found that there was no particular closeness of competition between ContiTech and Trelleborg. In addition, there were other large global manufacturers (such as Flint, Kinyosha, Meiji and Fujikura) which were suitable alternative manufacturers that were able to offer similar products. Furthermore, customers were able to switch between different manufacturers of the printing blankets that they required, which would allow suitable alternative suppliers to exert competitive constraint on the merged entity.

10.51 CCCS also found that there was likely to be sufficient spare capacity amongst existing competitors in the global production of printing blankets. High supply-side substitutability meant that competing manufacturers were able to adjust and allocate their production capacities across different types of offset printing blankets in response to market and customer demand.

10.52 The proposed acquisition was also found to contain several ancillary restrictions imposed by ContiTech in the sales and purchase agreement in the form of non-compete and non-solicitation restrictions. For the non-compete restriction, CCCS found that it was properly

15 CCCS 400/140/2022/003 (27 October 2022).

limited and not overly restrictive of competition. Similarly, for the non-solicitation restriction, CCCS found that the duration for the non-solicitation restriction was properly limited and not overly restrictive of competition. The non-compete and non-solicitation restrictions therefore constituted ancillary restrictions and benefited from the ancillary restriction exclusion under the Act.

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

H. Proposed Combination of Sembcorp Marine Limited and Keppel Offshore & Marine Limited[16]

10.54 On 29 July 2022, CCCS received a notification relating to the proposed acquisition by Sembcorp Marine Limited ("SCM") of 100% issued shares of Keppel Offshore & Marine Limited ("KOM"). SCM and KOM provide shipbuilding (including commercial vessel conversions) and ship repair services at their Singapore shipyards. CCCS found that it was not necessary to conclude on a precise definition of the relevant markets as the absence of a precise definition would not affect the competition assessment of the proposed acquisition. Nevertheless, CCCS considered the relevant markets to be the global supply of commercial vessels and the regional supply of ship repair services, based on trade routes.

10.55 In its assessment, CCCS found that in relation to the commercial vessels market, there were many strong competitors globally, such as shipbuilders in China, South Korea and Japan, which customers could easily switch to. In relation to the ship repair market, the presence of competitors regionally, such as in China, South Korea and the Middle East, would exert competitive constraint on the merged entity. Customers could also switch between alternative shipyards located along the trading routes plied by the commercial vessels. Furthermore, it was unlikely that the merged entity had the ability to exert their purchasing power to foreclose competitors' access to specialised inputs as the suppliers for specialised inputs have a diverse customer base, including larger competing shipyards overseas.

10.56 Given the above findings, CCCS held that the proposed acquisition was unlikely to lead to an SLC in Singapore.

16 CCCS 400/140/2022/004 (2 November 2022) (media release only; Grounds of Decision pending).

I. Proposed Acquisition by SATS International SAS of Promontoria Holding 243 BV[17]

10.57 On 27 October 2022, CCCS received a notification relating to the proposed acquisition by SATS International SAS ("SATS"), through its indirectly wholly owned subsidiary SATS International, of Promontoria Holding 243 BV ("Promontoria"), a holding company which in turn indirectly owns 100% of the shares in WFS Global Holdings SAS ("WFS"). SATS and WFS are active in the provision of ground handling and cargo handling services.

10.58 SATS and WFS submitted that there was no horizontal overlap of any material significance (if at all) between SATS and WFS in Singapore. While both SATS and WFS provided ground handling services as part of their respective business activities worldwide, there was no overlap in respect of the provision of ground handling services in Singapore, as WFS did not have a presence in the provision of ground handling services in Singapore.

10.59 As regards premium passenger services in Singapore, both SATS and WFS submitted that there was no competitive overlap as the premium passenger services operated in different airports were not substitutable, and there was a distinction between the full suite of premium bespoke passenger services (provided by WFS at the JetQuay CIP Terminal) and premium lounge services (provided by SATS at Changi Airport).

10.60 SATS and WFS submitted that the relevant market should be the provision of premium passenger services at Changi Airport.

10.61 At the time of writing, CCCS has yet to release its decision.

J. Proposed Acquisition by AI PAVE Dutchco I BV of GfK SE[18]

10.62 On 31 October 2022, CCCS received a notification relating to the proposed acquisition of sole control by AI PAVE Dutchco I BV ("AI PAVE") of GfK SE ("GfK"). The proposed acquisition would result in the combination of the businesses of GfK and NielsenIQ ("NIQ"), which is wholly owned by AI PAVE. In Singapore, both NIQ and GfK are active in providing customised market research services, retail measurement services and consumer panel services. However, in respect of the retail measurement services, NIQ provides these services to clients in the fast-

17 CCCS 400/140/2022/008 (27 January 2023).
18 CCCS 400/140/2022/006 (22 February 2023).

moving consumer goods ("FMCG") sector, while GfK provides these services to clients in the non-FMCG sector.

10.63 NIQ and GfK submitted that they only overlapped in the supply of customised market research services in Singapore, which they deemed as the relevant market for the purposes of the review. The parties further submitted that the retail measurement services for FMCG and non-FMCG products were two distinct product markets; hence, the parties did not overlap in the provision of retail measurement services. Despite the limited overlap, there remains a potential risk to find an SLC within s 54 of the Competition Act. There could also be potential conglomerate effects. It is such factors that trigger the notification for clearance.

10.64 At the time of writing, CCCS has yet to release its decision.

K. Proposed Acquisition by Oki Electric Co, Ltd of the aviation equipment business of Yokogawa Electric Corporation[19]

10.65 On 7 November 2022, CCCS received a notification relating to the proposed acquisition by Oki Electric Co, Ltd ("Oki") of Yokogawa Electric Corporation's ("YE") aviation equipment business from YE and its subsidiaries, Yokogawa Manufacturing Corporation and Yokogawa Electric Asia Pte Ltd ("YEA"). Oki is active in the provision of information and communications technology, mechatronics systems, printers and electronics manufacturing services worldwide, while YE is active in the energy and sustainability, materials, life and measuring instruments businesses worldwide. In Singapore, Oki offers various printers for sale, while YE manufactures distributed control and safety systems, and measuring instrumentation and avionics.

10.66 Oki and YE submitted that they did not offer any overlapping goods or services. Accordingly, the parties also submitted that there were no applicable relevant markets, and that the proposed acquisition would not give rise to any co-ordinated or non-coordinated effects. Despite the parties not being in overlapping markets, given the nature of their presence in the markets, such mergers are notified to ensure that there are no residual anti-competitive behaviour as well as potential conglomerate effects.

10.67 At the time of writing, CCCS has yet to release its decision.

19 CCCS 400/140/2022/007 (27 April 2023).

L. Proposed Acquisition of Mandarin Self Storage Target Companies by StorHub Venture Pte Ltd[20]

10.68 On 14 November 2022, CCCS cleared the proposed acquisition of 100% issued shares of Mandarin Self Storage Target Companies ("MSS") by StorHub Venture Pte Ltd ("StorHub"). StorHub's primary business involves the conversion of properties into self-storage infrastructure and providing self-storage services to customers, while MSS's primary business is the operation of self-storage facilities. CCCS defined the relevant markets to be the markets for the supply of self-storage services, excluding wine and mobile-storage services, both nationwide and within smaller catchment areas of certain self-storage facilities operated by the StorHub Group or MSS. The approach taken by CCCS in the market definition is reflective of how it typically does adopt narrow market definitions.

10.69 In this case, following its assessment, CCCS found that StorHub and MSS were not each other's closest competitors in the relevant markets, and that the presence of other sizeable competitors meant that there would likely be sufficient alternatives for the merged entity's customers in the relevant market.

10.70 Given the above findings, CCCS was of the view that the proposed acquisition would not cause an SLC in Singapore and cleared the merger.

IV. Consumer protection

10.71 The CPFTA regulates consumer transactions (excluding the sale of immovable property and employment contracts) in Singapore. It was enacted with a view to protect consumers against unfair trade practices and allow them to seek redress in relation to non-conforming goods. Unfair practices under s 4 of the CPFTA include doing or saying anything, or omitting to do or say anything, with the result that a consumer might reasonably be deceived or misled; making a false claim; and taking advantage of the consumer. The Second Schedule to the CPFTA sets out specific unfair practices, such as making false or misleading misrepresentations on the availability, characteristics and condition of the goods, and taking advantage of a consumer.

10.72 Under the CPFTA, CCCS has the power to conduct investigations into reasonably suspected unfair practices. If CCCS is satisfied that a retailer has engaged, or is likely to engage, in an unfair practice, it may

20 CCCS 400/140/2022/002 (14 November 2022).

apply to the courts for a declaration that the said practice is unfair and/or an injunction to restrain the seller from engaging in the unfair practice. However, unlike its competition law function, CCCS does not have the power to impose financial penalties on errant retailers.

A. Unfair practices involving screen refresh rate of laptops by Lenovo Singapore and Want Join[21]

10.73 Lenovo Singapore ("Lenovo") and Want Join ("WJ") were found to have engaged in unfair trade practices, which included making false and unsubstantiated representations that misled consumers about the qualities of certain models of Lenovo laptops. While Lenovo and its former authorised reseller/partner, WJ, advertised that the Legion Laptop could achieve a screen refresh rate of up to 144 Hz, these models could in fact only achieve a screen refresh rate of up to 60 Hz.

10.74 To mitigate liability, Lenovo and WJ gave CCCS undertakings that they would put in place an internal compliance policy to ensure that their conduct in relation to advertising, marketing materials and listings of their retail goods and services did not amount to unfair practices under the CPFTA. Given that both Lenovo and WJ had stopped selling the Legion laptop either before or shortly after CCCS commenced its investigations, CCCS decided to accept the undertakings and closed its investigations.

10.75 In addition, CCCS highlighted that it continues to work with CASE closely to monitor the e-commerce industry, given that consumers are increasingly making purchases online. For businesses, it is imperative that they do not engage in practices that deceive or mislead consumers about the performance characteristics of their products or services. Businesses should exercise due diligence when putting out information relating to their goods or services and review their practices occasionally to ensure that these do not amount to unfair practices under the CPFTA.

21 Competition and Consumer Commission Singapore, "Lenovo Singapore and Want Provide Undertakings to CCCS in View of Past Unfair Practices Involving Screen Refresh Rate of Certain Models of Lenovo Legion Y540 Gaming Laptop", media release (14 April 2022).

B. Competition and Consumer Commission of Singapore publishes Guide on Fair Trading Practices for Renovation Industry[22]

10.76 On 5 May 2022, CCCS published a Guide on Fair Trading Practices for the Renovation Industry ("the Guide"). The Guide is intended to raise contractors' awareness of good practices that they should adopt to enable consumers to make well-informed decisions, as well as conduct which may constitute unfair practices under the CPFTA.

10.77 The impetus for the Guide stems from the high rate of complaints made to CASE in relation to the renovation industry. CASE had received 1,300 complaints in 2021 and 419 complaints in the first quarter of 2022 against contractors. Most of the complaints received involved unsatisfactory service and failure to honour contractual obligations on the part of the contractors, such as poor workmanship, poor quality of materials used for renovation, slow progress or failure to complete renovation works on time.

10.78 The Guide broadly addresses the following points:

(a) Contractors should include a mutually agreed work schedule with clear deadlines in the renovation contract, including the projected start date and completion date. There should be agreement on how work delays or contingencies should be managed.

(b) Contractors should ensure that the prices quoted to consumers are transparent, accurate, clear and itemised. Mandatory charges for the works should be stated in the contract at the onset. If the charges cannot be calculated in advance, contractors should disclose the existence of such charges and provide estimates of such charges to the consumer before the contract is entered into.

(c) Contractors should ensure that claims made on goods and services and claims in relation to their business are clear and accurate. A reasonably detailed breakdown and description of the goods and services to be supplied for the works involved should be stated clearly in the renovation contract.

(d) Contractors should inform consumers on their rights and remedies, such as exchanges, repairs and refunds, and have

22 Competition and Consumer Commission Singapore, "CCCS Publishes Guide on Fair Trading Practices for Renovation Industry", media release (5 May 2022).

such rights and remedies stated clearly and accurately in the contract. Agreed warranties should also be honoured.

(e) Contractors should adhere to the renovation contract once it has been signed and supply goods and services that the consumer has consented to. Revisions to the contract or work order variations should be made only with the consumer's express agreement.

C. Triple Lifestyle Marketing Pte Ltd ordered to cease alleged false or misleading claims[23]

10.79 On 16 December 2022, CCCS filed court proceedings in the State Courts against Triple Lifestyle Marketing Pte Ltd ("TLM") and its director, Tan Jia Huang, under the CPFTA for a declaration and an injunction. The declaration sought by CCCS was in relation to TLM's engagement in various alleged unfair practices. These unfair practices included:

(a) making the false claim that TLM or TLM's products were accredited and that Thomson Medical Centre was one of its customers;

(b) representing that its water dispenser was free for a limited time when the price benefit or advantage did not exist;

(c) misleading consumers by claiming that it would repair or replace faulty water dispensers or provide the change of water filters when requested by consumers to do so under the maintenance service package, or giving false excuses about its delay or inability to do so;

(d) accepting payment for its maintenance service packages which included the provision of a one-year warranty for its "tankless" water dispenser to consumers, when TLM knew or ought to have known that it would not be able to repair or replace faulty water dispensers with functioning units within the warranty period; and

(e) misleading consumers by claiming that alkaline and/or filtered water could prevent or improve the condition of diseases such as osteoporosis, cancer, diabetes, arthritis, kidney or colonic disorders, and psoriasis.

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23 Competition and Consumer Commission Singapore, "CCCS Seeks Court Order for Triple Lifestyle Marketing Pte Ltd to Cease Alleged False or Misleading Claims on its Alkaline Water Filtration Systems and Maintenance Service Packages", media release (16 December 2022).

10.80 The injunction that was sought by CCCS was in relation to stopping TLM's director, Tan Jia Huang, from knowingly abetting, aiding, permitting or procuring TLM to engage in various alleged unfair practices, including the unfair practices listed above.

10.81 At the time of writing, the decision on the application has not been made.

V. Developments in telecommunication and media sector

10.82 Paragraph 5 of the Third Schedule to the Act provides that the ss 34 and 47 prohibitions do not apply to any agreement or conduct which relates to any goods or services, where any other written law or code of practice relating to competition gives another regulatory authority jurisdiction in the matter. The telecommunication and media sectors are separately regulated under the Telecommunications Act 1999[24] ("TA") by the Info-comm Media Development Authority ("IMDA"). Section 30(1)(*i*) of the TA empowers IMDA to issue codes of practice in relation to competition, abuse of a dominant position in the market and fair market conduct in the telecommunication industry in Singapore.

A. Code of Practice for Competition in the Provision of Telecommunication and Media Services 2022

10.83 IMDA issued a revised Code of Practice for Competition in the Provision of Telecommunication and Media Services 2022 ("the Code") on 2 May 2022, which merged the provisions previously found in the Code of Practice for Competition in the Provision of Telecom Services 2012 and the Code of Practice for Market Conduct in the Provision of Media Services 2010.

10.84 The revision of the Code ensures that competition regulation in the telecommunication and media sectors keeps up with rapid advancements in digital and information technologies, as well as the evolution of business models. The revised Code includes updates to key aspects of the Code, including the classification of dominant entities, anti-competitive conduct, mergers and acquisitions, and consumer protection.

24 2020 Rev Ed.

B. Dominant entities

10.85 Under the Code, dominant entities are subject to additional regulatory obligations and general prohibitions against the abuse of dominant position. The Code provides that a telecommunication licensee or regulated person will be classified as a dominant entity if it:

> (a) operates facilities used for the provision of telecommunication and/or media services that are sufficiently costly or difficult to replicate; or
>
> (b) has the ability to exercise significant market power ("SMP") in any market in which it provides services pursuant to its telecommunication or media licence.

10.86 With the issuance of the Code, IMDA will adopt a 50% market share threshold for the presumption of SMP, although this is a rebuttable presumption. Similar to the approach taken by CCCS, IMDA will also consider other factors, such as barriers to entry and the existence of countervailing buyer power, in determining whether the telecommunication licensee or regulated person has SMP. This marks a shift from the previous SMP presumption threshold of 60% for media markets and 40% for telecommunication markets and seeks to make the two consistent.

10.87 Duties are imposed on dominant entities. The Code aligns the *ex ante* duties that are applicable to both the telecommunication and the media markets while maintaining certain industry-specific duties for the telecommunication market only given unique factors attributable to that market. The duties applicable to both the telecommunication and the media markets include:

> (a) providing service at just and reasonable prices, terms and conditions;
>
> (b) providing service on a non-discriminatory basis;
>
> (c) providing unbundled services; and
>
> (d) providing service on reasonable request.

10.88 The duties that are specific to the telecommunication market include:

> (a) allowing resale of end user services;
>
> (b) allowing sales agency;
>
> (c) wholesale services; and
>
> (d) duties in relation to tariffs.

C. Anti-competitive conduct

10.89 Telecommunication licensees or regulated persons that have SMP are prohibited from using that dominant position in a manner that unreasonably restricts, or is likely to unreasonably restrict, competition in any telecommunication or media market in Singapore. The Code sets out examples of practices that would constitute an abuse of a dominant position by telecommunication licensees or regulated persons that have SMP. These include:

(a) pricing abuses, such as predatory pricing, price squeezes and cross-subsidisation;

(b) discrimination;

(c) predatory network alteration;

(d) tying and bundling;

(e) exclusive dealing; and

(f) imposition of non-structural safeguards.

10.90 Apart from abuses of dominant position, the Code prohibits anti-competitive preferences and leveraging. A telecommunication licensee or regulated person that has SMP is prohibited from using its SMP in a non-telecommunication or non-media market in a manner that enables it to unreasonably restrict competition in any telecommunication or media market in Singapore.

10.91 The Code also prohibits unfair methods of competition. These include:

(a) degradation of service availability or quality;

(b) provision of false or misleading information to competing telecommunication licensees or regulated persons; and

(c) improper use of information regarding a competing telecommunication licensee or regulated person's customers.

10.92 In addition, the Code includes a general prohibition against anti-competitive agreements which have as their object or effect the prevention, restriction or distortion of competition in, or in any part of Singapore's telecommunication or media industry. Similar to s 34 of the Act, agreements in relation to price fixing, market sharing, output restrictions and bid rigging are considered "object" restrictions and hence constitute *per se* violations, which are prohibited outright. Nevertheless, all other agreements will be assessed based on their effect on competition, with positive efficiencies being taken into consideration.

D. Consumer protection

10.93 The Code imposes various duties and restrictions/prohibitions on telecommunication licensees and regulated persons in relation to consumer protection, to ensure that they provide services to end users on fair, reasonable and non-discriminatory terms. These duties and restrictions/prohibitions include:

(a) a duty to comply with quality of service standards;

(b) a duty to disclose and publish information on service;

(c) a duty to inform end user of certain matters before contracting;

(d) a prohibition on disproportionate early termination liability;

(e) restrictions on service termination or suspension;

(f) a duty to prevent unauthorised use of End User Service Information;

(g) a prohibition on charging for unsolicited services;

(h) prohibition on charging for services supplied on free trial or complimentary basis.

(i) a duty to notify of certain changes to services;

(j) a duty to provide minimum billing information; and

(k) a duty to include minimum mandatory contractual provisions.

E. Mergers and acquisitions

10.94 The mergers and acquisitions provisions under the Code seek to ensure that any acquisition or consolidation involving telecommunication or media licensees does not substantially lessen competition in the telecommunication or media markets respectively. Telecommunication or media licensees who wish to enter into an acquisition, merger or other consolidation must submit requests or consolidation applications to IMDA in prescribed situations. Where a request or consolidation is likely to substantially lessen competition or is contrary to public interest, IMDA will reject the application or impose appropriate conditions.

10.95 Depending on the level of ownership interest in the relevant telecommunication licensee or regulated person that the acquirer seeks to obtain, the acquirer will have to either notify or seek approval from

IMDA. The Code sets out various thresholds that trigger the notification or approval requirements:

(a) less than 5% – no notification or approval requirement;

(b) 5% or more but less than 12% – notification to IMDA for transactions involving designated telecommunication licensees, or approval from the Minister under the Broadcasting Act 1994[25] or Newspaper and Printing Presses Act 1974[26] for transactions involving regulated persons;

(c) 12% or more but less than 30% – approval from IMDA for transactions involving designed telecommunication licensees, or approval from the Minister under the Broadcasting Act or Newspaper and Printing Presses Act for transactions involving regulated persons;

(d) 30% or more or effective control – approval from IMDA for transactions involving telecommunication licensees and regulated persons; and

(e) *pro forma* change – notification to IMDA for transactions involving telecommunication licensees and regulated persons (not yet implemented).

10.96 The Code provides two forms of application for IMDA approval – a Short Form Consolidation Application, which is a streamlined application process for transactions which IMDA believes are less likely to raise competition concerns, and a Long Form Consolidation Application for all other applications that fall outside of the scenarios listed below. A Short Form Consolidation Application may be used when none of the applicants have, and/or the post-consolidation entity will not have, a market share of:

(a) 30% or more of any telecommunication or media market in Singapore or elsewhere; or

(b) between 20% and 30% when the combined market share of the three largest designated communication licensees, designated business trusts, designated trusts or a combination thereof, or the three largest regulated persons, is 70% or more of any telecommunication or media market in Singapore.

10.97 IMDA will ordinarily complete its consolidation review within 30 days after the start of the consolidation review period. However,

25 2020 Rev Ed.
26 2020 Rev Ed.

IMDA may extend the consolidation review period by up to 90 days, to a maximum of 120 days, from the start of the consolidation review period, if it determines that the consolidation application raises novel or complex issues.
