Published on e-First 11 June 2019

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 and Consumer Commission of Singapore's decisions and work in 2018

10.1 The year 2018 was an important year for the Competition and Consumer Commission of Singapore ("CCCS") as it took up its new consumer protection role. This enables the CCCS to further protect consumers in a holistic manner through its new powers to take action under the Consumer Protection (Fair Trading) Act[1] ("CPFTA") against businesses that engage in unfair trading practices.

10.2 Importantly, there have been further changes and developments to the Singapore competition landscape. The amendments to the Singapore Competition Act[2] ("the Act") were passed and came into force on 16 May 2018. Under the amended Act, the CCCS now has the powers to accept binding and enforceable commitments for cases involving anti-competitive agreements and abuses of dominant position, to conduct general interviews during dawn raids and to provide confidential advice to companies for anticipated mergers that have yet to be publicly announced. Further, in light of the number of notifications regarding airline alliance agreements, the CCCS has published its Guidance Note on Airline Alliance Agreements so as to streamline and clarify the review process.

10.3 On the enforcement front, with regards to anti-competitive agreements under s 34 of the Act, the CCCS issued two infringement decisions and one provisional infringement decision (of which the infringement decision has been issued this year). Significantly, one of the infringement decisions, which involved 13 fresh chicken distributors, resulted in the CCCS handing down its record fine of S$26.9m. In respect of enforcing the s 54 prohibition against anti-competitive mergers, the CCCS commenced its first investigation into a

1 Cap 52A, 2009 Rev Ed.
2 Cap 50B, 2006 Rev Ed.

completed unnotified merger; that was the acquisition of Uber by Grab. The investigation led to the CCCS issuing an infringement decision against the merger parties, as well as imposing a S$14m fine. Lastly, while the CCCS did not issue any decision relating to abuse of dominance under s 47 of the Act, it managed to finalise commitments offered by two suppliers of lift spare parts.

10.4 Apart from infringement decisions, the CCCS has also issued several decisions relating to notifications received under ss 34 and 54 of the Act in 2018. For s 34, the CCCS received one notification for a decision regarding a proposed joint venture for slaughtering services, which involved parties that were competitors in the poultry industry. As the CCCS was of the view that competition concerns would arise from the joint venture, it approved the joint venture only after commitments were offered. With regards to notifications under s 54, the CCCS issued ten unconditional clearance decisions and one provisional statement of decision. The provisional statement of decision issued was in relation the proposed acquisition of Wilhelmsen Maritime Services AS of Drew Marine, which the CCCS provisionally found was likely to result in a substantial lessening of competition in the relevant markets.

10.5 At the international level, there is currently a trend towards increasing co-operation between competition authorities across the ASEAN region. This can be seen from the memorandum of understanding on enforcement co-operation of competition law entered into by Singapore and Indonesia, as well as the establishment of the ASEAN Competition Enforcers' Network, Regional Co-operation Framework and Virtual Research Centre. These developments aim at facilitating cross-border co-operation in relation to enforcement and merger assessments between different competition authorities, with the aim of arriving at consistent decisions and enforcement outcomes across the region.

CCCS's new consumer protection role

10.6 With effect from 1 April 2018, the Competition Commission of Singapore (as it then was) took on the additional role of consumer protection that was previously under Spring Singapore and was renamed the Competition and Consumer Commission of Singapore. This new role encompasses administering the CPFTA and preventing businesses from engaging in unfair trade practices.

10.7 While the CCCS now has the responsibility of enforcing the CPFTA, it is not the sole port of call for complaints by consumers, as the Consumers Association of Singapore ("CASE") retained its role as the bridge between consumers and businesses. Consumers wishing to lodge

complaints against businesses will have to raise them with CASE, who then facilitates the settlement of the disputes by way of mediation. If businesses refuse to cease their unfair practices and persist in exploiting consumers, CASE will refer the matter to the CCCS, who may then commence investigations against them. Under its new role, the CCCS is empowered to collect evidence against errant businesses, file injunction applications against them and enforce compliance with injunction orders issued by the courts. Interestingly, unlike its competition protection role, the CCCS does not have the power to impose financial penalties on businesses for infringing consumer protection laws, or to direct infringing businesses to compensate consumers.

10.8 As observed by the Senior Minister of State in the Ministry of Trade and Industry, Dr Koh Poh Koon, this development is welcome as the CCCS is well placed to take up the additional consumer protection role. This is due to the complementary relationship between competition and consumer protection, which is reflected in their common goal of benefitting consumers. Although the CCCS has generally advocated for total welfare in society (which includes both producer welfare and consumer welfare) as opposed to only consumer welfare in the context of competition protection, this does not detract from the fact that the total welfare approach ultimately benefits consumers through efficiency gains.

10.9 In this regard, the integration of the two functions will give rise to new synergies between competition and consumer protection. For instance, in relation to carrying out market studies, while it is not something new to the CCCS, in light of its new consumer protection role, the CCCS can and must now exercise an additional consumer protection perspective when carrying out market inquiries in the future. An illustration given by the CCCS was its 2017 market inquiry on the supply of car parts in Singapore. A potential concern that emerged was that under the warranty terms and conditions, consumers could only send non-warranty related servicing and repairs to specific authorised workshops. In turn, this restricted competition as it prevented independent workshops from competing effectively with authorised workshops. The CCCS consequently enlisted the co-operation of major car dealers in removing the warranty restrictions from their terms and conditions so as to facilitate a more competitive market, which ultimately encourages suppliers to offer more competitive prices to consumers. From a consumer protection perspective, given that the CCCS now has new powers under the CPFTA, it may now go one step further in protecting the interests of consumers. For instance, it can ensure that even after the removal of warranty restrictions, customers would not be misled to believe there is still such a requirement even if it is not specified in the contract. By approaching these issues from both

the competition and consumer protection angles, the CCCS will then be able to effectively achieve the goal of benefiting consumers.

10.10 In this respect, the CCCS is currently conducting two new market studies, the first being a market study in the market for online travel booking services, and the second being a joint study with the Personal Data Protection Commission to examine competition, consumer and personal data protection issues that could potentially arise if a right to data portability is introduced in Singapore.

Amendments to the Act

10.11 On 19 March 2018, the amendments to the Act were passed and took effect on 16 May 2018. There are three key amendments, which are set out below.

10.12 First, the CCCS is now empowered to accept binding and enforceable commitments for cases involving ss 34 (for anti-competitive agreements) and 47 (for abuse of dominance under the amended ss 60A and 60B of the Act. Previously, only commitments accepted under s 54 (for mergers that substantially lessen competition) were binding and enforceable. While the practice of accepting commitments under ss 34 and 47 is not new, the voluntary undertakings are arguably neither binding nor enforceable without this amendment, and any non-compliance can only be remedied by commencing new investigations. In practice, although there has yet to be a case of non-compliance with commitments provided under the old Act, the amendment seeks to address this lacuna in the law. Further, the amendment aligns the practice of accepting commitments under ss 34 and 47 with that under s 54.

10.13 Second, the CCCS's powers of investigation have now expanded to include a power to conduct general interviews during inspections and searches under s 63(4A) of the Act, which allows the CCCS to question the occupants of the premises when dawn raids are carried out. Previously, the CCCS's power to conduct interviews was limited as it had to first serve a written notice to require any person to provide specified information. Otherwise, it was not allowed to pose any questions to anyone during inspections. At first sight, the amendment seemed to merely simplify the interview process during dawn raids as it only removed the notice requirement. However, from a practical standpoint, although the CCCS has expressly stated that this power is limited to the subject-matter or the purpose of the investigation, there may still be a risk that the limits will be overstepped. This is because the individuals being questioned may be unaware of the limits of this power and may respond to questions that, strictly speaking, go beyond the

subject-matter or purpose of the investigation, without realising that they are entitled to raise concerns. Moreover, it may be possible for the subject-matter or purpose of the investigation to be worded so broadly such that in substance, it effectively allows the CCCS to conduct open-ended inquiries, thereby circumventing the limits imposed.

10.14 Third, the new s 55A of the Act makes the existing informal process of providing confidential advice in relation to anticipated mergers a statutory one. Even then, the CCCS may refuse to issue confidential advice if it is of the view that the transaction does not raise a genuine issue as to whether or not the transaction will result in a significant lessening of competition in the relevant market. Notably, this process only covers potential mergers that have yet to be publicly announced. Parties should keep in mind that the confidential advice issued is non-binding on the CCCS and a further notification may potentially be required in the future if there are changes in the circumstances.

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

10.15 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" are prohibited under s 34 of Act, unless they are excluded or exempted under the Act. Agreements made outside Singapore are within the scope of s 34 as well. Examples of such agreements include price-fixing, market sharing, output limitation and bid-rigging.

10.16 Under the Act, the CCCS has the power to investigate allegedly anti-competitive agreements and issue directions and/or impose financial penalties against parties to such agreements. Parties may also approach the CCCS to request for guidance or a decision that an agreement will not be in violation of s 34 of the Act.

10.17 In 2018, the CCCS issued one infringement decision and one provisional infringement decision, of which the final infringement decision has now been issued. At the start of 2019, the CCCS has also issued one infringement decision.

CCCS fines capacitor manufacturers involved in global cartel for price fixing and information exchange[3]

10.18 On 5 January 2018, the CCCS issued an infringement decision against five capacitor manufacturers for entering into price-fixing agreements and for exchanging commercially sensitive information in relation to the sale of aluminium electrolytic capacitors ("AECs") in Singapore, thereby infringing s 34 of the Act. The five manufacturers were Panasonic Industrial Devices and Panasonic Industrial Devices Malaysia Sdn Bhd (collectively "Panasonic"), Rubycon Singapore Pte Ltd, Nichicon (Singapore) Pte Ltd ("Rubycon"), Singapore Chemi-con (Pte) Ltd ("SCC") and ELNA Electronics (S) Pte Ltd ("ELNA"). As a result of the infringement, the CCCS imposed a penalty of S$19.5m on the parties.

10.19 By way of background, the CCCS commenced its investigation on 29 May 2014 after receiving a leniency application from Panasonic relating to the exchange of information and bid-rigging with respect to the sale of AECs in Singapore. Subsequently, Rubycon, SCC and ELNA also made leniency applications.

10.20 The CCCS found that the parties held various regular meetings in Singapore and were liable for the following conduct:

(a) agreements and exchange of information on price increases of AECS between 2006 and 2008;

(b) agreements to resist price reduction requests from customers, thus enabling them to maintain their prices and market shares; and

(c) exchange of information pertaining to specific customers, such as the customers' requests for quotations, prices quoted to customers and future pricing intentions, thereby amounting to conduct which had the object of price fixing.

10.21 Apart from the meetings held in Singapore, the CCCS also found that complementary meetings between the parties' respective Japanese parent/affiliate companies were held in Japan. These meetings involved discussions on pricing policies and the general strategic direction of the parties and directions were subsequently given by the Japanese parent/affiliate companies to the parties pursuant to the agreements and discussions.

3 CCS 700/002/13 (5 January 2018).

10.22 Ultimately, the CCCS concluded that the parties were liable for a single continuous infringement as the parties' various actions were in pursuit of a common overall objective to ensure sales and profits by fixing the prices of AECs in Singapore.

10.23 With regard to the calculation of financial penalties imposed on the parties, in fixing the starting-point percentage of the relevant turnover for each of the parties, the CCCS focused on the fact that the cartel was a long-lasting one since 1997 and was made up of the major suppliers of AECs that collectively held more than 75% of the market share for the sale of AECs in Singapore. A point to note here is that while the Act only came into force in 2006, the long duration of the cartel activity, which started as early as 1997 and lasted for a period of 16 years, was a factor that the CCCS attributed great weight to when deciding on the quantum of the penalty. The CCCS also made the necessary downward adjustments to the financial penalties by taking into account the leniency applications made by several of the parties, ultimately arriving at the total financial penalty of S$19.5m.

CCCS penalises fresh chicken distributors for price-fixing and non-compete agreements[4]

10.24 On 12 September 2018, the CCCS imposed a record fine of S$26.9m on 13 fresh chicken distributors as a consequence of infringing s 34 of the Act. Based on the evidence, the CCCS found that the parties were involved in a long-standing cartel in the market for the sale of fresh chicken products in Singapore. Over the course of close to seven years, the parties entered into market sharing agreements (that is, refusal to compete for each other's customers) and colluded with each other regarding the amount and the timings of future price changes. It should be noted that these discussions were held during social meetings at eating places, coffee houses and karaoke lounges.

10.25 In its infringement decision, the CCCS reiterated the well-established principle that mere passive participation by undertakings in collusive discussions effectively creates and/or strengthens a cartel. The CCCS also further emphasised that non-implementation of the agreement by a passive undertaking, or if the undertaking was a mere recipient of the information, did not relieve that undertaking of its liability under s 34 – only public distancing will suffice for an undertaking to avoid infringing competition law. To this end, the CCCS clarified that silence by the undertakings did not amount to public

4 CCCS 500/7002/14 (12 September 2018).

distancing as it was not "an expression of firm and unambiguous disapproval".[5]

10.26 In deciding on the quantum of the financial penalties to be imposed, the CCCS took into account various factors, including the fact that the agreements amounted to restrictions by object, the parties holding an aggregate market share of more than 90% and the duration of the infringement for each party. The CCCS then made necessary adjustments to the quantum of the penalties by considering the aggravating and mitigating factors, as well as any leniency applications made. Notably, the CCCS rejected the parties' submission that the mere passive or follower role of a party, as well as the non-implementation of the anti-competitive agreement, could amount to a mitigating factor.

10.27 This decision is currently being appealed by some of the parties.

CCCS issues infringement decision against the exchange of commercially sensitive information between competing hotels[6]

10.28 On 2 August 2018, the CCCS issued its proposed infringement decision against the former and current owners and operators of four hotels, Capri by Fraser Changi City Singapore ("Capri Hotel"), Village Hotel Changi, Village Hotel Katong (collectively "Village Hotels") and Crowne Plaza Changi Airport Hotel ("Crowne Plaza"). Most recently on 30 January 2019, the CCCS issued its infringement decision and fined the parties a total of S$1.5m for exchanging commercially sensitive information in the market of providing hotel room accommodation to corporate customers in Singapore.

10.29 By way of background, the CCCS commenced its investigations on 27 November 2013 at its own initiative and conducted dawn raids and interviews with key personnel at the premises on 30 June 2015. Subsequently, the owners and/or operators of Village Hotels and Crowne Plaza made leniency applications.

10.30 During the course of its investigations, the CCCS found that there were two separate exchanges of commercially sensitive information. The first was between the sales representatives of Capri Hotel and Village Hotels, and the second was between the sales representatives of Capri Hotel and Crowne Plaza. The information

5 *Infringement of the Section 34 Prohibition in Relation to the Sale and Distribution of Fresh Chicken Products in Singapore* CCCS 500/7002/14 (12 September 2018) at [443].

6 CCCS 700/002/14 (30 January 2019).

exchanged in both instances related to each hotel's corporate customers, rates, bid prices and pricing strategies. The investigations further revealed that such conduct by the sales representatives corresponded with the instructions received from their respective employers (that is, the operators), which was to approach their competitors for customer information. As such, the CCCS concluded that such conduct had the potential of influencing each party's future conduct in respect of competing for customers and the pricing of their offerings. In turn, each party was less likely to independently offer more competitive rates, thereby reducing the competitive pressure in the market; hence, it amounted to an infringement of s 34 of the Act.

10.31 In its infringement decision, the CCCS took the opportunity to clarify the doctrine of a single economic entity ("SEE") in the context of principal–agent relationships. With regard to the owners and the operators of the hotels, the CCCS found that the owner and operator for each hotel were in a principal–agent relationship. This was because the operators were the sole and exclusive managers and operators and were wholly entrusted with the day-to-day activities of the hotels. Further, the owners were kept apprised of the marketing strategies employed by the operators. As such, each owner and operator amounted to an SEE and the owners were thus equally liable for the anti-competitive conduct, especially since there was no evidence suggesting that the owners prohibited the exchange of commercially sensitive information. Importantly, the CCCS made it clear that liability was still attributable to the owners even though the anti-competitive activities carried out by the operators did not strictly fall within the scope of activities entrusted to them, and that it was not open to the owners to plead ignorance of the anti-competitive conduct as a defence.

10.32 In levying the financial penalties, the CCCS took into consideration the facts that the infringement was a serious one as it had the object of restricting competition; the parties were close competitors; and that, if not for the cartel conduct, the parties would have aggressively competed for customers. As leniency applications were made by the owners and/or operators of Village Hotels and Crowne Plaza, the CCCS made adjustments to the quantum of their penalties, which were reduced to S$286,610 and S$225,293 respectively. For Capri, its owner and operator received a penalty of S$793,925.

10.33 In 2018, the CCCS has issued one conditional approval decision in response to a notification by the parties for a decision regarding a proposed joint venture.

Proposed Joint Venture between Mr Tan Chin Long, Kee Song Holdings Pte Ltd, Sinmah Holdings (S) Pte Ltd, Tong Huat Poultry Processing Factory Pte Ltd and Tysan Food Pte Ltd[7]

10.34 On 29 June 2018, the CCCS conditionally approved the proposed formation of Singapore Poultry Hub Pte Ltd ("SPH"), a joint venture company between Tan Chin Long, Kee Song Holdings Pte Ltd, Sinmah Holdings (S) Pte Ltd, Tong Huat Poultry Processing Factory Pte Ltd and Tysan Food Pte Ltd.

10.35 The parties overlapped in the markets of (a) the breeding, supply and/or procurement of live chickens into Singapore; (b) the provision of slaughtering services in Singapore; and (c) the marketing and sale of chicken products to the wholesale market in Singapore. As the purpose of the SPH was to provide slaughtering services, the parties sought a decision from the CCCS as to whether the proposed joint venture would infringe s 34 of the Act.

10.36 During its assessment, the CCCS identified that there was a risk of exchanging commercially sensitive information between competitors arising out of the joint venture. This was due to the initial structure of the SPH, in particular through the parties' positions as shareholders and any directors whom they may appoint to SPH's board. Moreover, the CCCS was particularly concerned with this risk as most of the parties were involved in the cartel relating to the distribution of fresh chicken as mentioned above.[8]

10.37 Consequently, to alleviate the CCCS's concerns, the parties proposed changes to the initial structure of the SPH and offered commitments. As such, the CCCS ultimately conditionally approved the proposed joint venture. The following commitments were offered by the parties included:

> (a) undertakings to refrain from exchanging any commercially sensitive information;
>
> (b) establishing a "clean team" to manage commercially sensitive information;
>
> (c) mandating the signing of non-disclosure agreements to enforce the obligations with respect to commercially sensitive information;
>
> (d) implementing a competition compliance programme, including conducting training sessions, compliance manuals,

7 CCS 400/005/17 (29 June 2018).

8 See paras 10.24–10.28 above.

a whistleblower programme and annual declarations of compliance; and

(e) appointing a monitoring trustee to monitor compliance with the commitments and the non-disclosure agreements.

Abuse of dominance (s 47 of the Act)

10.38 Section 47 of Act prohibits any conduct of one or more undertakings with a dominant position which amounts to an abuse of dominance. The prohibition also applies to dominant undertakings outside Singapore if it engages in conduct amounting to an abuse that affects a Singapore market. As a preliminary point, being dominant is not in itself a violation of s 47 of the 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, the CCCS has sent a reminder to dominant businesses, through its recent enforcement actions, that businesses must always ensure that they cannot abuse their strong market positions.

10.39 Since 2016, the CCCS has been investigating allegations against various companies providing lift maintenance services for their alleged refusal to supply lift spare parts in Housing and Development Board ("HDB") estates. By way of background, town councils are free to choose either the original lift installers of the lifts or third-party lift maintenance contractors to provide lift maintenance services by calling for tenders. Generally, lift contractors who intend to bid for lift maintenance projects will require brand-specific lift spare parts, which are necessary for the provision of the maintenance services. In this regard, the CCCS was concerned with the refusal to supply essential lift spare parts by suppliers of spare parts to the third-party lift maintenance contractors. It took the view that such a refusal to supply amounted to an abuse of dominance under s 47 of the Act as it prevented third-party lift maintenance contractors to compete effectively for contracts to provide lift maintenance services in Singapore.

10.40 To address the CCCS's competition concerns, several suppliers of lift spare parts have offered voluntary commitments to the CCCS. The first supplier to do so was E M Services Pte Ltd, who undertook in 2016 to sell lift spare parts of a particular brand to purchasers on terms and conditions reasonably similar to those provided by the relevant lift spare parts manufacturer to itself. The second and third suppliers to offer voluntary commitments were BNF Engineering (S) Pte Ltd and C&W Services Operations Pte Ltd, who undertook to sell lift spare parts of the relevant brands to purchasers on a fair, reasonable and

non-discriminatory basis. The commitments commenced on 18 January 2018 and 12 February 2018 respectively, without a specified end date.

10.41 Most recently in 2019, the CCCS has initiated a public consultation to gather feedback on two proposed commitments separately provided by Chevalier Singapore Holdings Pte Ltd and Fujitec Singapore Corporation Ltd. Under the proposed commitments, both parties undertook to sell lift spare parts (with software if applicable) of the relevant brands to purchasers subject to certain terms and conditions.

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

10.42 Section 54 of the Competition Act prohibits mergers that substantially lessen competition in any market in Singapore and applies to both 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 the counterfactual (that is, the state of competition should the merger not take place). 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 such cases, the CCCS will proceed to clear the merger. In this regard, the CCCS generally adopts a positive approach towards 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). This is because the CCCS is of the view that such mergers are less likely to have obvious adverse effects on competition. However, this does not mean that vertical and conglomerate mergers will always be cleared. In certain instances, they may still be a cause of concern and may warrant a more in-depth review, such as the *Essilor/Luxottica* merger.[9]

10.43 As the merger notification regime in Singapore is a voluntary regime, merger parties are therefore, strictly speaking, not legally required to submit a merger notification to the CCCS. However, this means that the parties assume the risk, after proceeding with the merger, of the CCCS raising objections and commencing investigations into the merger. In this regard, the CCCS has the power to impose

9 *Proposed Merger between Essilor International (Compagnie Generale d'Optique) SA and Luxottica Group SpA* CCS 400/006/17 (12 April 2018). See para 10.66 below.

directions should it find that the completed merger has the effect of substantially lessening competition in the market, which happened in the *Grab/Uber* merger. Importantly, the CCCS has the draconian power to order an unwinding of a completed 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 the CCCS of the merger before it is completed, 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 filed with the CCCS. 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 the CCCS under the new s 55A of the Act.

Acquisition of Uber's Southeast Asian business by Grab and Uber's acquisition of a 27.5 per cent stake in Grab[10]

10.44 On 24 September 2018, the CCCS issued an infringement decision against Grab and Uber in relation to their completed merger. Following its investigation, the CCCS found that s 54 of the Act had been infringed. As a result, the CCCS imposed a S$13m financial penalty on the parties and issued directions to address the competition concerns arising from the transaction. It should be highlighted that the penalty was not imposed for the parties' failure to notify, but rather that the merger resulted in a substantial lessening of competition in the market for two-sided platforms matching drivers and riders for the provision of booked chauffeured point-to-point transport ("CPPT platform") services in Singapore.

10.45 By way of background, Grab announced on 26 March 2018 that it had acquired Uber's Southeast Asia operations in consideration of Uber acquiring a 27.5% stake in Grab. The transfer of Uber's assets and migration of Uber drivers and riders to Grab began immediately after the completion of the transaction. As no formal merger notification was filed, the CCCS commenced its investigation a day after the announcement was made. Consequently, it issued Interim Measures Directions ("IMD") to ensure that the market remained competitive while pending the CCCS's final decision. The IMD included, amongst other things, removing exclusivity obligations on drivers, preserving the pre-transaction pricing and ensuring that the Uber platform remained available until a later date.

10 CCCS 500/001/18 (24 September 2018).

10.46 On 5 July 2018, the CCCS issued its Proposed Infringement Decision and subsequently its final infringement decision on 24 September 2018. In its final infringement decision, the CCCS found that in the absence of the transaction, Uber would not have exited the market and would have continued its operations until it found a strategic commercial alternative. This was corroborated by Uber's collaboration with ComfortDelGro, as the collaboration was only withdrawn in light of the transaction. Had the transaction not taken place, there would not have been a loss of close rivalry between the parties in the immediate term.

10.47 A point to note here was that the CCCS placed particular importance on Grab's internal documents when conducting its competition assessment. For instance, the documents indicated that the parties did not regard street-hail and other intra-city transportation as their close competitors; hence, these transportation options were excluded from the CCCS's market definition. Further, in finding that the merger increased Grab's ability to raise prices due to the elimination of competition between the parties, the CCCS relied on their internal documents and funding estimates, which indicated that they had expected the transaction to increase Grab's ability to raise effective prices.

10.48 With regard to the horizontal effects, as mentioned in the earlier paragraph, the CCCS found that it resulted in Grab's increased ability to raise prices. In fact, this was the case post-transaction as there was a significant reduction in promotions and incentives. Moreover, the CCCS found that entry by new competitors was an insufficient competitive constraint on the parties as they faced high barriers to entry and expansion. This resulted from the presence of strong indirect network effects in the market (that is, riders would value a CPPT platform if there were more drivers and drivers would value a CPPT platform). The indirect network effects effectively cemented the market position of Grab *vis-à-vis* small players as Grab had high usage levels, which made it more attractive than small players with lower usage levels. Importantly, the CCCS also found that the presence of exclusivity arrangements between Grab and taxi companies, car rental companies and drivers reinforced the network effects. As a result, these have led to significant barriers to entry and expansion of the CPPT platform market as potential competitors will have to incur greater upfront costs to establish a similar network in order to compete effectively. Additionally, in assessing the vertical effects of the merger, the CCCS found that post-transaction, Grab would have both the ability and incentive to tie chauffeured private hire car rental companies and their drivers in exclusive arrangements. This in turn contributed to the high barriers to entry, which again strengthened Grab's market position in the CPPT platform market.

10.49 To address the anti-competitive effects of the merger, the CCCS issued directions on Grab as part of its final decision, which included, amongst other things, the removal of all exclusivity arrangements between the parties and drivers to allow drivers to use any CPPT platform and to refrain from entering into such arrangements, and requiring Grab to maintain its pre-transaction pricing, pricing policies as well as product options. The CCCS also imposed financial penalties on both Grab and Uber as it found that the parties had intentionally infringed s 54 of the Act. Notably, this finding was made based on internal documents, such as board presentations and the purchase agreement. The documents showed that both parties had contemplated the competition risks and, in particular, a mechanism to apportion the financial penalties and costs in the event an investigation into the merger was launched was included in the purchase agreement.

10.50 Currently, Uber has made an appeal against the CCCS's infringement decision independently of Grab on the ground that an extremely narrow market definition was applied by the CCCS.

10.51 The takeaway point of this case is that while Singapore's merger notification regime is entirely voluntary, there is still a real risk that a completed merger transaction may be subject to investigations by the CCCS if the merger parties decide against notifying the CCCS. This is even so if an anti-trust self-assessment was been conducted. Bearing in mind that the CCCS has the power to unwind a merger, parties should adopt a prudent approach and notify the CCCS, or at the very least obtain confidential advice.

10.52 Further, as the transaction spanned across several jurisdictions in ASEAN, the competition authorities in Philippines, Malaysia and Vietnam have launched separate investigations into the merger. At the time of writing, only the Philippines Competition Commission ("PCC") has completed its investigations. While it had conditionally approved the transaction, the PCC nevertheless penalised the merger parties for consummating the merger too soon and for failing to maintain the quality of the services offered. Most recently, on 25 January 2019, the PCC imposed a second penalty on the merger parties for hindering the independent auditor in its monitoring of their compliance with the parties' commitments by submitting incorrect information relating to fares. In Vietnam, the Competition Council has announced that it will be returning this case back to the Ministry's Competition Consumer Protection Department for re-investigation. These cases therefore illustrate that a single global transaction may be subject to several merger reviews spanning across the region, or even across the world. Merger parties must therefore be aware of this and ensure compliance with the different merger regimes in multiple jurisdictions. Importantly, as there has been increased co-operation between competition

authorities across the world, parties must exercise caution and ensure that the information submitted to the different authorities is consistent, thereby minimising the risk of the authorities reaching conflicting decisions.

10.53 In 2018, the CCCS unconditionally cleared nine mergers, eight of which were cleared in Phase 1.

Proposed Acquisition by Jacobs Douwe Egberts Holdings Asia NL BV of Shares of OldTown Bhd[11]

10.54 In this case, the relevant markets were defined as the market for the supply of (a) instant coffee mixes for in-home sales in Singapore; and (b) instant milk tea mixes for in-home sales in Singapore. Although the CCCS found that the parties' combined market shares for each of the relevant markets exceeded the indicative thresholds of a merger situation that may raise competition concerns and that the market for the supply of instant coffee was relatively concentrated, it nevertheless cleared the merger. This was because the CCCS found that there were sufficient competitive constraints exerted by both existing and potential competitors due to low barriers to entry and expansion in the relevant markets. Further, there was strong countervailing buyer power exerted by larger intermediate customers (namely, retailers such as hypermarkets, supermarkets and convenience chain stores) as they could exercise their bargaining power when negotiating with the parties.

Proposed Joint Venture between CAE International Holdings Ltd ("CAE") and Singapore Airlines Ltd[12]

10.55 On 31 January 2018, the CCCS unconditionally approved the proposed joint venture between the parties in the form of a full function joint venture company that will establish, develop and operate a commercial flight training centre in Singapore to offer type-rated, recurrent and conversion pilot training for B744, B777, B787 and B737MAX ("the Boeing Aircraft Types"). The relevant markets were defined as the provision of (a) pilot training services segmented by the Boeing Aircraft Types in the Asia Pacific region; and (b) pilot training devices for the Boeing Aircraft Types worldwide. For the provision of pilot training services, the CCCS found that the joint venture would increase the capacity made available for training and would in fact result in an increase in the level of competition. For the supply of pilot training devices, the CCCS considered the vertical effects of the proposed joint

11 CCS 400/007/17 (18 December 2017).
12 CCS 400/010/17 (31 January 2018).

venture and concluded that the joint venture was unlikely to lead to a substantial lessening of competition due to the presence of countervailing buyer power, significant competitive constraints exerted by existing competitors and the absence of any incentive for CAE to restrict the supply of its training devices due to its interdependent relationship with its competitors.

Proposed Acquisition of Lee Metal Group by BRC Asia Ltd[13]

10.56 For this proposed merger, the relevant markets were defined as the processing and distribution of (a) rebars and cut and bend; (b) mesh; and (c) prefab in Singapore. Despite finding that the merger parties had a high combined market share; significant barriers to entry were present; and customers could only exercise limited countervailing buyer power, the CCCS ultimately took the view that non-coordinated effects were unlikely to arise due to strong competition from existing competitors. This was because the other competitors had the ability to increase production as they had excess capacity. Further co-ordinated effects were unlikely to arise as non-price factors (for example, long-term business relationships and quality of products and delivery services) were important considerations in the customers' decision-making.

Proposed Joint Venture by EQT Fund Management S.à.r.l. and Widex Holding A/S[14]

10.57 The proposed joint venture involved combining the activities of the parties under a newly incorporated joint venture entity. The relevant market identified by the CCCS was the supply of traditional hearing aids including body-worn hearing aids as well as accessories and services that were intrinsically linked to the supply of hearing aids in Singapore. In clearing the proposed joint venture, the CCCS found that there were sufficient competitive constraints exerted by existing competitors as the parties were not each other's closest competitors. Additionally, the CCCS noted that existing suppliers faced little difficulty in expanding in the market due to low barriers to expansion.

13 CCS 400/001/18 (22 February 2018).
14 CCCS 400/005/18 (12 October 2018).

Proposed Combination of the Mobility Business of Siemens AG with Alstom SA[15]

10.58 On 24 October 2018, the CCCS cleared the proposed merger of the mobility business of Siemens AG and Alstom SA, with the focus of the merger review being on the markets for the supply of (a) urban signalling systems for MRT lines; and (b) metros in Singapore. Although the merger resulted in the parties becoming the largest player in the urban signalling systems market, the parties still faced significant competition from existing alternative suppliers, including potential global suppliers. In particular, the CCCS found that the sole customer for all operating assets for Singapore's metro network, the Land Transport Authority ("LTA"), was able to exercise significant countervailing buyer by leveraging on its strong bargaining power and that it would readily switch to alternative suppliers if the terms offered by a particular supplier were unfavourable. Moreover, despite the stringent standards imposed by the LTA on the supply of urban signalling systems, the CCCS found that once a potential supplier has a proven track record, the barriers to entry/expansion are not insurmountable.

10.59 Interestingly, this merger was also notified in the European Union ("EU"). However, unlike the CCCS, the European Commission ("EC") has issued a decision prohibiting the merger as it was it was likely to significantly harm competition in the European railway industry. Importantly, the EC rejected the parties' argument that the merger was necessary to create a "European champion" that was able to compete with rival Chinese suppliers. Following this decision, the economic ministries of Germany and France issued a joint statement calling for new powers to allow the EU's heads of state to overrule the EC's merger decisions. This move was based on industrial policy considerations, with the view of enabling European companies to compete globally.

10.60 While it remains to be seen how these developments will culminate in the EU, a point to note is that as seen from this merger, decisions by competition authorities in different jurisdictions may differ vastly, especially if the market conditions are largely dissimilar and if the individual competition regimes are driven by entirely different policy considerations.

15 CCCS 400/002/18 (24 October 2018).

Proposed Acquisition by Nasdaq Technology AB of Cinnober Financial Technology AB[16]

10.61 In this case, the CCCS identified the relevant market as the global supply of market technology solutions to Singapore, including trading solutions, clearing solutions, market surveillance solutions and risk management solutions. In clearing the merger, the CCCS found that the barriers to entry and expansion to the relevant market were low, strong countervailing buyer power was present as the parties' customers base consisted of large and sophisticated customers who were able to credibly threaten to switch to alternative suppliers, and that existing competitors were able to exert sufficient competitive constraints. In addition, the CCCS observed that co-ordinated effects were unlikely to arise due to the presence of several competitors in the market and that sales were often done by way of non-transparent bidding processes.

Proposed Acquisition by Japan Pulp and Paper Co Ltd of Spicers Paper (Singapore) Pte Ltd[17]

10.62 For this proposed merger, the CCCS focused its assessment on the relevant markets of the wholesale of (a) printing and communications paper in Singapore; (b) paperboard products in Singapore; and (c) carbonless paper in Singapore. Ultimately, the CCCS cleared the merger as it found that the barriers to entry and expansion in the relevant markets were low, and that there were many other suppliers which the parties' customers could readily switch to.

Proposed Acquisition by NTUC Enterprise Co-Operative Ltd of Kopitiam Investment Pte Ltd[18]

10.63 In unconditionally clearing this merger, the CCCS defined the relevant markets as (a) the sale of hot meals to consumers in street stall premises, using the catchment areas of a 500-m radius from the parties' premises; (b) the rental of stalls in hawker centres within Singapore to food vendors; and (c) the rental of stalls in coffee shops and food courts to food vendors, using the catchment areas of 500-m to 1-km radius from the parties' premises. Importantly, the CCCS drew a distinction between "hawker centres" and "coffee shops and food courts", with the former referring to premises managed by the National Environment Agency ("NEA"). This distinction was made on the grounds of differences in operation costs (for example, rental fees) and labour

16 CCCS 400/010/18 (17 October 2018).
17 CCCS 400/009/18 (17 October 2018).
18 CCCS 400/008/18 (20 December 2018).

considerations, and that the supply of stalls in hawker centres was subject to NEA's control.

10.64 For the sale of hot meals to consumers, the CCCS noted that the parties would face sufficient competitive constraints by many competing stalls as the parties would only operate one stall within the 500-m catchment areas post-merger. For the rental of stalls in hawker centres, the CCCS also found that the parties would only operate a small number of hawker centres relative to the total number of hawker centres in Singapore. Moreover, as hawker centres are subject to the regulatory oversight of NEA, who will review the key contractual terms between the operators and the food vendors, it was unlikely that the merger would result in a substantial lessening of competition. For the rental of stalls in coffee shops and food courts, the CCCS observed that the parties' combined market share fell below the indicative thresholds of a merger situation that may raise competition concerns. Moreover, there were at least five other established existing competitors in each catchment area, which could exert sufficient competitive constraints. Furthermore, food vendors were generally able to exert strong countervailing buyer power, especially those which were body corporates, and the parties were unlikely to restrict or refuse the lease of stall space to foreclose competitors in the market for the sale of hot meals since they only owned a small proportion of the properties in the market.

10.65 For Phase 2 reviews, three mergers were subjected to assessment, with one being cleared unconditionally, another prohibited by the CCCS and the third currently still undergoing review.

Proposed Merger between Essilor International (Compagnie Generale d'Optique) SA and Luxottica Group SpA[19]

10.66 On 12 April 2018, the CCCS cleared the proposed merger between Essilor International (Compagnie Generale d'Optique) SA ("Essilor") and Luxottica Group, SpA ("Luxottica"), the merger notification of which was filed on 13 September 2017. Both parties were major players in the eyewear industry, with Essilor being a global manufacturer and wholesale supplier ophthalmic lenses and Luxottica being a global designer, manufacturer and distributor of prescription frames and sunglasses. The relevant markets defined in this case were the (a) wholesale distribution of ophthalmic lenses; (b) wholesale distribution of sunglasses; (c) wholesale distribution of prescription frames; and (d) retail of optical products in Singapore.

19 CCS 400/006/17 (12 April 2018). See para 10.42 above.

10.67 By way of background, the CCCS was unable to conclude that the proposed merger would not raise competition concerns at the end of its Phase 1 review and commenced the Phase 2 review on 5 December 2017. This was because despite being a conglomerate merger (which was less likely to give rise to adverse competition effects), both parties were the largest players in their respective main markets. As such, the CCCS was concerned with the possibility that the merger parties would engage in anti-competitive tying or bundling (for example, refusing to sell individual products separately to retailers or to sell them separately but at prices higher than the prices of the bundled products) by leveraging on Essilor's position in the market for ophthalmic lenses and Luxottica's position in the markets for sunglasses and prescription frame, thus foreclosing competitors in the other market.

10.68 At the end of its assessment, the CCCS found that the merger would not give rise to a substantial lessening of competition in the relevant markets. While the CCCS was concerned that the merger parties would enjoy a significant degree of market power post-transaction, it was nevertheless insufficient to give the parties the ability to foreclose competition in the market for ophthalmic lenses. This was because retailers could readily switch suppliers if the merger parties engaged in tying or bundling. Additionally, evidence suggested that sunglasses and ophthalmic lenses were not directly complementary and that the popular brands owned by Luxottica (for example, Ray-Ban and Oakley) were not "must-have" brands by retailers. As such, the CCCS concluded that the parties would face significant difficulty in tying sunglasses to ophthalmic lenses.

10.69 The CCCS also considered the possibility of the merger parties leveraging on Essilor's position in the ophthalmic lenses market to foreclose competition in the market for sunglasses and prescription frames. Similarly, the CCCS ultimately concluded that the merger parties were unlikely to do so due to the retailers' ability to easily switch to other lenses suppliers, and that Essilor's popular brands were not "must-have" products for retailers.

Proposed Acquisition by Wilhelmsen Maritime Services AS of Drew Marine[20]

10.70 Following the Phase 2 review, the CCCS issued its provisional statement of decision on 25 May 2018, finding that the proposed acquisition by Wilhelmsen Maritime Services AS ("WMS") of sole control over Drew Marine Technical Solutions was likely to result in a

20 CCS 400/004/17 (30 July 2018).

substantial lessening of competition in the market for the supply of marine water treatment chemicals in Singapore, therefore infringing s 54 of the Act.

10.71 By way of background, WMS filed a sole notification on 10 August 2017 for the CCCS's decision as to whether the proposed acquisition would infringe s 54 of the Act. After completing the Phase 1 review on 29 September 2017, the CCCS was unable to conclude that the transaction would not raise competition concerns. This therefore necessitated an in-depth Phase 2 review, which commenced on 27 October 2017.

10.72 Similar to its Phase 1 review findings, at the end of its Phase 2 review, the CCCS provisionally found that the merger parties were the two largest players in the market and held very strong market positions due to their global supply networks, which enabled them to provide strong technical support and ancillary value-added services. In particular, their next largest competitor held less than one-twentieth of their combined market share; hence, the existing and potential competitors would be unable to exert sufficient competitive pressure on the parties. Moreover, evidence suggested that the parties' customers had limited countervailing buyer power as they only accounted for a small fraction of the parties' sale Further, self-supply by the customers was not a viable alternative. Although WMS proposed a price cap commitment applicable to marine water treatment chemicals, the CCCS rejected the proposed commitment as it found that the commitment was not appropriate to address the competition concerns.

10.73 It should be noted that the proposed acquisition was blocked by the US Federal Trade Commission ("FTC"), which similarly found that the proposed acquisition would significantly reduce competition in the market for marine water treatment chemicals and services as the merger. As the US District Court for the District of Columbia announced that it would grant the FTC's motion for an injunction to block the acquisition, the parties consequently abandoned the transaction. In contrast, the transaction was cleared by the UK Competition and Markets Authority. This therefore reiterates the point made above,[21] that competition authorities in different jurisdictions may arrive at conflicting decisions due to dissimilar market conditions and policy considerations.

21 See para 10.64 above.

Acquisition of Innovative Diagnostic Pte Ltd and Quest Laboratories Pte Ltd by Pathology Asia Holdings Pte Ltd[22]

10.74 On 15 October 2018, the CCCS commenced its Phase 2 review of the proposed acquisition of Innovative Diagnostics Private Ltd ("Innovative") and Quest Laboratories Pte Ltd ("Quest") by Pathology Asia Holdings Pte Ltd ("PAH") and the intended integration of the businesses of Innovative and Quest. For the purpose of the merger assessment, the parties were found to be have overlapped in the provision of in-vitro diagnostic tests in Singapore (that is, tests done on samples such as blood or tissue taken from the human body).

10.75 At the end of the Phase 1 review, the CCCS found that the proposed transaction may give rise to competition concerns, thus necessitating a more in-depth Phase 2 review, which commenced on 9 November 2018. This was because the merger parties were regarded as each other's closest competitors, given that they were two major private independent clinical laboratories providing in-vitro diagnostic tests. Moreover, based on third-party feedback, the CCCS was of the view that alternative suppliers, such as private hospital clinical laboratories, were unable to exercise sufficient competitive constraints. This was because their main focus was on their patients' laboratory testing requirements. As such, relative to the merger parties, their supply of in-vitro diagnostic tests was limited.

Proposed Acquisition by Gebr Knauf KG of USG Corp[23]

10.76 The CCCS received a joint notification on 28 August 2018 regarding the proposed acquisition of Gebr Knauf KG of USG Corp and has most recently cleared the merger on 8 February 2019. The merger parties were both involved in the supply of gypsum boards, modular suspended ceilings and metal profiles in Singapore. In this regard, the CCCS defined the relevant markets as (a) the supply of gypsum boards in Singapore; and (b) the global supply of modular suspended ceilings using mineral fibre tiles to Singapore.

10.77 In clearing the merger, the CCCS observed that the parties were not each other's closest competitors, the increase in market share as a result of the merger was not substantial and that other competitors could exert sufficient competitive constraints as they were viewed as viable alternatives and had capacity any increase in demand. In addition, for the supply of modular suspended ceilings using mineral fibre tiles,

22 CCCS 400/007/18 (9 November 2018).
23 CCCS 400/003/18 (8 February 2019).

the CCCS also noted that suppliers of modular suspending ceilings using tiles of other materials (for example, metal and gypsum) posed a significant competitive constraint as they are considered as substitutes. Therefore, the CCCS concluded that the merger was unlikely to give rise to a substantial lessening competition in the relevant markets.

Other notifications

10.78 The CCCS has also received a notification for the *Proposed Acquisition by DKSH Holding (S) of Auric Pacific Marketing and Centurion Marketing*,[24] which is still currently in Phase 1 of the review process.

10.79 Additionally, the CCCS announced on 19 February 2018 that it was unable to clear the *Proposed Acquisition by ComfortDelGro Corp Ltd of 51% of the Shares in Lion City Holdings Pte Ltd from Uber Technologies, Inc*[25] due to several competition concerns, such as whether the acquisition would lead to reduced competition in the markets for taxi and chauffeured private hire car and taxi rental market, whether the uberFLASH service offered would enable the parties to co-ordinate their prices, whether the flat-fare service offered by ComfortDelgro with "no surge pricing" will continue to be available to passengers and whether the ability of potential entrants into related business (for example, food delivery services) would be adversely affected. Ultimately, the merger notification was withdrawn by the parties on 25 May 2018 as Uber decided to pull out of the South-East Asian market.

CCCS's Guidance Note on Airline Alliance Agreements

10.80 On 5 September 2018, the CCCS published its Guidance Note for Airline Alliance Agreements ("Airline Guidance Note"), which aimed at assisting airlines in conducting their self-assessment and avoiding the common procedural and substantive issues that generally arise during the CCCS's competition assessment. While the Airline Guidance Note sets out the approach that the CCCS will generally take in addressing certain issues, it should be highlighted that the CCCS ultimately retains the discretion to deviate from the general approach, if necessary, based on the facts of the case.

10.81 For procedural matters, the Airline Guidance Note sets out the factors which airlines should consider in deciding whether to file a

24 CCCS 400/140/2019/001 (22 February 2019).
25 CCS 400/008/17 (4 June 2018).

notification with the CCCS for either a decision or guidance. Such factors include (a) whether the parties have overlapping routes; (b) market shares of the parties; and (c) passenger volumes on the overlapping routes. The Airline Guidance Note also highlights the availability of holding a pre-notification discussion with the CCCS for airlines intending to file a notification, as well as the adoption of a streamlined process, where appropriate. The streamlined process consists of two phases – a Phase 1 review that is expected to be completed within 30 days for simple case and a Phase 2 review for a period of 120 days for complicated cases.

10.82 In relation to substantive matters, the Airline Guidance Note contains several important points. First, it sets out the approach that the CCCS generally takes for market definition, with the starting point being origin-destination city pair route. It should be highlighted that despite this narrow market definition, the CCCS may adopt a wider approach in assessing whether there are any net economic benefits ("NEB"), which includes benefits from other origin–destination routes considered as closely related markets. Second, the Airline Guidance Note also indicates how the CCCS will assess the closeness of rivalry between differentiated products falling within the relevant market (for example, if a significant number of passengers are willing to take one-stop flights instead of direct flights for a particular origin–destination route). While market shares are still the starting point for the assessment, the CCCS may consider three additional approaches, namely, (a) price correlation analysis; (b) diversion ratio analysis; and (c) stationarity analysis. Third, the CCCS has also clarified the approach it has taken for "metal neutral alliances" (that is, airline agreements with object restrictions such as price-fixing and output limitations). It recognised that such alliances are capable of giving rise to operational efficiencies and benefits that may satisfy the NEB test, such as those that were cleared in the past based on the NEB exception. Fourth, when considering a potential new entry, especially when the absence of new entrants is due to the unprofitable prevailing prices, the CCCS will consider the presence of any barriers to entry, and the possibility of entry should incumbents raise the prices to levels that will incentivise entry. Last, the Airline Guidance Note also sets out the CCCS's approach in evaluating additional economic benefits that an airline alliance agreement may bring, which can be in the form of strategic air hub benefits and benefits accrued to Singapore passengers.

International developments

CCCS and Indonesia's Commission for the Supervision of Business Competition sign MOU on enforcement co-operation of competition law

10.83 On 30 August 2019, the Chief Executive of the CCCS, Toh Han Li, and the Chairman of the Commission for the Supervision of Business Competition ("KPPU"), Dr Kumia Toha, entered into a memorandum of understanding ("MOU"), which aims to enhance co-operation between the two competition authorities.

10.84 This MOU was the first cross-border competition enforcement agreement that the CCCS has entered into with an ASEAN competition authority, although it was the second agreement that the CCCS has entered into with a foreign competition authority, the first being with the Japan Fair Trade Commission in June 2017.

10.85 In particular, the MOU establishes a co-operation framework between the CCCS and the KPPU, thus facilitating information exchange and enforcement co-ordination for cases in which both competition authorities have a mutual interest. Ultimately, the MOU seeks to ensure consistent enforcement outcomes across the two jurisdictions, thus assuring businesses of regulatory certainty.

ASEAN establishes Competition Enforcers' Network, Regional Co-operation Framework and Virtual Research Centre

10.86 On 10 October 2018, the CCCS announced that the ASEAN Competition Enforcers' Network ("ACEN") was established during the 22nd ASEAN Experts Group on Competition ("AEGC") meeting held by the CCCS from 8 to 10 October 2018. This was done against the backdrop of the ASEAN Economic Community Blueprint, which highlighted the significant role that competition law plays in economic development and integration in ASEAN.

10.87 The ACEN operates to enhance co-operation in relation to cross-border cases in ASEAN, enable effective sharing of information between the various competition authorities, as well as facilitate co-operation regarding mergers and acquisitions that affect multiple ASEAN jurisdictions, such as Grab's acquisition of Uber's Southeast Asia business.

10.88 Apart from establishing the ACEN, the AEGC has also set up the Virtual ASEAN Competition Research Centre ("Virtual Centre") to encourage research on competition issues in ASEAN and East Asia. To

this end, the Virtual Centre makes available research articles to researchers and competition authorities analysing regional competition issues. Moreover, the Virtual Centre also includes profiles of researchers and academics with an interest in the regional competition policy and promotes research collaboration on ASEAN competition.

10.89 Lastly, the Regional Co-operation Framework was also launched, which sets out the guidelines for co-operation between ASEAN Member States for competition cases. The guidelines consist of the general objectives, principles and possible areas of co-operation that can be adopted by the various competition authorities on a bilateral, multilateral, sub-regional or regional approach, and on a voluntary basis, with respect to the development and enforcement of competition laws.