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Competition law fact sheet

Singapore

March 2021

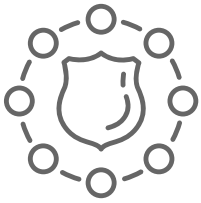
Main features of the law

Prohibitions of anti-competitive agreements, abuses of a dominant position and mergers and acquisitions that substantially lessen competition

Voluntary merger control regime

Exemption of vertical agreements

Sector-specific competition rules



Enforcement trends

A growing focus on digital platforms; building, construction and maintenance services; as well as beauty and wellness sectors

More active enforcement and increases in the level of fines

Substantive provisions

Main rules

The Competition Act (Cap. 50B) (the "Competition Act") is the primary statute which governs competition law in Singapore, and aims to protect consumers and businesses from anti-competitive practices in Singapore. It prohibits three types of anti-competitive conduct:

- anti-competitive agreements, decisions and practices (the "section 34 prohibition");
- abuses of a dominant position (the "section 47 prohibition"); and
- mergers and acquisitions that substantially lessen competition (the "section 54 prohibition").

The Competition Act does not apply to certain specific sectors, where the exercise of competition law is governed by sectoral regulations. These include areas such as broadcasting and media, the telecommunications sector, electricity and gas sectors, the auxiliary police, the supply of wastewater management services, the provision of public transport, the provision of cargo terminal operations, the operation of clearing houses and the postal service.

The section 34 prohibition (anti-competitive agreements)

Section 34 of the Competition Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore. Examples of such prohibited behaviour include but are not limited to – directly or indirectly fixing prices, bid-rigging (collusive tendering), market sharing, limiting or controlling production or investment, exchanging price information, restricting advertising, setting technical or design standards, etc. The Competition and Consumer Commission of Singapore ("CCCS") in its guidance explains that the first four types of agreements are considered serious infringements of the Competition Act and are, by their very nature, regarded as restrictive of competition to an appreciable extent. Other types of agreements will be examined on their facts and

if found to be restrictive of competition by object, will similarly be regarded as restrictive of competition to an appreciable extent. However, vertical agreements, which are agreements between undertakings at different levels of the production or distribution chain, are excluded from the section 34 prohibition.

Market share is a central factor in considering whether the Competition Act has been breached and the CCCS has issued guidance that an agreement is unlikely to have an appreciable adverse effect on competition if:

- the aggregate market share of the parties to the agreement does not exceed 20 per cent in any of the markets affected (where the agreement is between competitors);
- the market share of each of the parties does not exceed 25 per cent in any of the markets affected (where the agreement is between non-competitors); or
- each undertaking is a small or medium-sized enterprise ("SME").[1]

The section 47 prohibition (abuses of dominance)
The Competition Act prohibits conduct that constitutes an abuse of a dominant position in a market, including conduct that protects, enhances or perpetuates the dominant position of an undertaking in ways unrelated to competitive merit. Examples of such conduct include, but are not limited to, predatory behaviour towards competitors (such as selling below cost), limiting production, markets, or technical development to the prejudice of consumers, vertical restraints between companies at different levels of the production or distribution chain, refusals to supply or make essential facilities available to competitors, price discrimination or applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which by their nature or according to commercial usage, have no connection with the subject of the contracts, etc.

The section 47 prohibition only prohibits abuses of a dominant position but does not prohibit dominance itself. Business undertakings will not be penalised solely because they have a dominant position or attempt to achieve it. A dominant position maintained through conduct arising from efficiencies, such as through successful innovation or economies of scale, will not be regarded as an abuse of dominance. Note, however, that mergers or acquisitions that substantially lessen competition may be subject to section 54 of the Competition Act. This may in some circumstances prevent a merger which leads to the creation of a dominant undertaking.

The CCCS applies a two-step test to assess whether the section 47 prohibition has been infringed: (i) whether an undertaking is dominant and (ii) whether it is abusing its dominant position in a market in Singapore.

Under the CCCS's guidance, what amounts to a "dominant position" is determined by a number of factors, including whether the entity can profitably sustain prices above competitive levels or restrict output or quality below competitive levels. Although market share is not a fool-proof guide, a market share greater than 60 per cent will generally be considered dominant in that market.

The section 47 prohibition also extends to conduct of two or more undertakings, where there is an abuse of a collective dominant position. A collective dominant position may arise when two or more legally independent undertakings present themselves or act together on a particular market as a collective entity. Essentially, undertakings holding a collective dominant position are able to adopt a common policy on the market and, to a considerable extent, act independently of their competitors, customers and consumers.

1 SMEs in Singapore are defined as an undertaking having an annual sales turnover of not more than S$100 million (approx. US$74.67 million) or having not more than 200 employees.

The section 54 prohibition (merger control)
Section 54 prohibits mergers that have resulted, or are expected to result, in a substantial lessening of competition within any market in Singapore for goods and services. In determining whether a merger is anticompetitive, the CCCS will assess whether the merger leads to a substantial lessening of competition. For example, if the merger results in increase in prices above the prevailing level, lower quality, and/or less choice of products and services for consumers – it will be considered an anticompetitive merger and infringing upon the Competition Act. While there are no mandatory merger control requirements in Singapore, it is advisable to notify the CCCS if either:

- the merged entity will have a market share of 40 per cent or more; or
- the merged entity will have a market share of between 20 per cent and 40 per cent and the post-merger combined market share of the three largest firms (CR3) is 70 per cent or more.

The above thresholds are only indicators of potential competition concerns and do not automatically give rise to a presumption that such a merger will lessen competition substantially. Merger parties must conduct a self-assessment to establish if their merger may give rise to a substantial lessening of competition within any market affecting Singapore, in which case the CCCS should be notified of the merger.

A party to an anticipated merger can notify the CCCS of the merger and apply for the CCCS to make a decision as to whether the proposed merger would be in breach of the Competition Act. Similarly, a party to a completed merger can also notify the CCCS of the merger and apply for a decision to be made as to whether any infringement under the Competition Act has occurred.

The above indicative thresholds do not differentiate between transactions with and without horizontal increments.

In addition, the CCCS is unlikely to investigate a merger involving small companies, i.e. where:

- the turnover in Singapore of each of the parties is below S$5 million (approx. US$3.73 million); and
- the combined worldwide turnover of the parties is less than S$50 million (approx. US$37.33 million).

Sanctions

The CCCS has the power to issue directions to bring infringements of the Competition Act to an end. It may also impose financial penalties on undertakings for infringing the Competition Act.

The amount of the penalty imposed may be up to 10 per cent of the turnover of the business of the undertaking in Singapore for each year of infringement, up to a maximum of three years. Financial penalties imposed by the CCCS will be calculated taking into consideration, amongst other things, the nature, duration and seriousness of the infringement, the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement, market conditions, aggravating factors including the existence of any prior anti-competitive practices and behaviour of the infringing party, and mitigating factors, which include the existence of any compliance programme and the extent to which the infringing party has co-operated with CCCS.

Directions are issued in writing by the CCCS and will typically require the person concerned, individuals and undertakings, to modify or cease the agreement or conduct in question.

Extraterritorial effect

The Competition Act applies to anticompetitive conduct outside Singapore if they have the effect of eliminating or restricting competition in Singapore. The Section 54 prohibition on merger control also applies to foreign mergers if such mergers result in a substantial lessening of competition in Singapore.

Enforcement regime

Enforcement by the CCCS

The Competition Act is enforced by the CCCS. Where the CCCS has made an infringement decision, the parties may appeal to the Competition Appeal Board, an independent body comprising members appointed by the Minister for Trade and Industry. Further appeals against the decisions of the Competition Appeal Board may be made to the High Court, and thereafter to the Court of Appeal, but only on points of law and the amount of the financial penalty.

In appropriate cases, parties under investigation for infringing the Competition Act may also offer commitments to reduce or eliminate competition concerns relating to their conduct. Where the CCCS accepts such commitments, it will cease its investigation on condition that parties agree to abide by the commitments.

Private actions and consequences of breaches of competition law

Persons who suffer direct loss or damage as a result of another party's infringement of the prohibition on anti-competitive agreements, abuses of dominance or merger control rules may bring a court action against that party for damages or other remedies. This right of private action for infringements of the prohibitions in the Competition Act is enshrined in section 86 of the Competition Act itself.

However (unlike in jurisdictions like the UK) a private action in Singapore cannot be brought as a "stand-alone" action – it must be brought as a "follow-on" claim, meaning that the decision of the CCCS, Competition Appeal Board or the Higher Courts must be used to establish the fact that an infringement has occurred. The party bringing the claim must wait for this decision to establish liability, and cannot gather and present its own evidence to establish liability.

Contracts which violate the prohibition on anticompetitive agreements are considered void to the extent that they infringe Section 34 of the Competition Act. As a result, such anti-competitive agreements cannot be enforced.

Leniency

The Competition Act does not contain express provisions in respect of a leniency policy. However, section 61 of the Competition Act provides that the CCCS can publish guidelines indicating the manners in which the CCCS will give effect to the provisions of the Competition Act, further to which the CCCS published Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity, as last revised in 2016 (the "Leniency Guidelines").

The CCCS leniency programme is only available for certain infringements of the section 34 prohibition, such as for hard-core cartels (i.e. cartels involving price-fixing, output limitation, bid-rigging and market sharing) and the sharing of forward-looking price information.

As of January 2021, the leniency programme has led to the issuance of infringement decisions and the impositions of financial penalties in nine out of 16 of the CCCS's cartel infringement decisions. This amounts to more than 50 per cent of cartel infringement decisions.

Investigation powers

The CCCS has extensive and wide-ranging powers of investigation and enforcement. Its investigative powers include the power to enter into premises for inspection (with or without a warrant), undertake dawn raids, require the production of specified documents and information (including emails) and request explanations of documents from directors, employees or parent company managers. The CCCS can take copies and extracts from documents on premises that are entered without a warrant. If the CCCS enters premises with a court warrant, they can also seize original documents. Failure to cooperate with a CCCS investigation is a criminal offence.

Recent enforcement trends

Public and private enforcement

Cartels

Between January 1, 2006, when the section 34 prohibition came into effect, and January 31, 2021, 16 cartel and bid-rigging infringement decisions have been issued by the CCCS. Of the 16 cartel and bid-rigging infringement decisions issued by the CCCS to date, three involved international cartels.[2]

Financial penalties imposed by the CCCS
January 1, 2006 to January 2021

Cartel and bid-rigging case	Fines (S$ million)	Cartel and bid-rigging case	Fines (S$ million)
Fresh chicken distributors cartel	26.95	Bid-rigging for maintenance service for swimming pools and water features	0.41
Capacitor manufacturers cartel	19.55	Modelling agencies cartel	0.36
Ball and roller bearings cartel	9.31	Ferry operators cartel	0.29
Freight forwarders cartel	7.15	Pest control operators cartel	0.26
Express bus operators cartel	1.70	Electric works cartel	0.19
Hotel operators cartel	1.52	Motor vehicle traders cartel	0.18
Financial advisers cartel	0.91	Employment agencies cartel	0.15
Electrical services and asset tagging services cartel	0.63	Bid-rigging for building, construction and maintenance services for Wildlife Reserves Singapore	0.03

2 CCCS 700/002/11, Infringement of the Section 34 prohibition in relation to the supply of ball and roller bearings, CCCS 700/003/11, Infringement of the Section 34 prohibition in relation to the provision of air freight forwarding services for shipments from Japan to Singapore; CCS 700/002/13, Infringement of the Section 34 prohibition in relation to the supply of aluminum electrolytic capacitors in relation to Singaporean customers.

Abuses of dominance

As of January 2021, the CCCS has only issued one infringement decision (in June 2010) in respect of a violation of the section 47 prohibition since the provision took effect on January 1, 2006, namely, an abuse of a dominant position by SISTIC. The SISTIC case related to explicit restrictions requiring two venues and 17 event promoters to use SISTIC, Singapore's largest ticketing agency, as the sole ticketing service provider for all their events. The financial penalty imposed was of around S$1 million (approx. US$0.75 million). Following an appeal by SISTIC, the Competition Appeal Board upheld the CCCS's decision on liability in 2012, but varied the quantum of SISTIC's financial penalty to S$769,000 (approx. US$574,000).

The CCCS has also issued media releases on several investigations relating to abuses of dominance. Notably, the CCCS has closed its investigations in six cases following voluntary commitments to remove exclusive arrangements and/or commitments to supply, including by Coca-Cola Singapore Beverages, Cordlife Group, Asia Pacific Breweries, E M Services, BNF Engineering, C&W Services Operations, Chevalier Singapore Holdings, and Fujitec Singapore.

Mergers and acquisitions

Since the start of the merger control regime in 2007, the CCCS has received 83 merger notifications as of February 2021, of which six progressed to a Phase 2 review for complex mergers. Four were granted conditional clearance subject to commitments while six were withdrawn by the merger parties, and the remainder cleared in CCCS's Phase 1 review.

The most notable merger decision issued by the CCCS is the infringement decision in relation to the sale of Uber's Southeast Asian business to Grab, which was not notified to the CCCS and which resulted in remedies and fines of S$6.5 million (approx. US$4.85 million) imposed on Uber and of an equivalent amount imposed on Grab. To date, this is the first and only CCCS decision relating to a failure to notify a merger. Following the completion of the transaction, the CCCS commenced an investigation on the basis that the transaction may have infringed the Competition Act as an anticompetitive merger. The CCCS found that Uber would not have left Singapore absent the transaction and observed that Grab increased its prices post-transaction. Further, the CCCS found that potential competitors were hampered by strong network effects and exclusivities between Grab and taxi companies, car rental partners, and some of its drivers which prevented competitors from competing effectively against Grab. In January 2021, the Competition Appeal Board upheld the CCCS decision, noting that the country's voluntary merger control regime does not mean that there are no risks to proceeding with a merger without notifying the CCCS.

Latest enforcement priorities

The CCCS continues to use market studies to complement its enforcement efforts. In 2019, the CCCS completed a market study on the online provision of bookings for flight tickets and hotel accommodation to Singapore consumers. The study examined various business practices adopted by industry players, as well as the competition and consumer protection issues associated with these practices. This was the first market study by the CCCS to examine both competition and consumer protection issues. The study sets out a series of recommendations to encourage online travel booking providers to adopt transparent pricing practices so as to enable consumers to make informed choices and allow businesses to compete on a level playing field.

The CCCS also published its market study on e-commerce platforms in September 2020. While the market study found that the existing competition framework was able to address the competition issues that may arise from the proliferation of e-commerce platforms that compete in multiple market segments, the CCCS identified key areas where further guidance could be beneficial, including in relation to the market definition exercise in cases involving multi-sided platforms or when assessing market power in cases involving digital platforms, as standard indicators of market power (such as market shares) may not be conclusive in relation to digital platforms .

The CCCS has also become more aggressive in its imposition of fines. In 2018, the CCCS issued its largest cartel fine to date (S$26.95 million (approx. US$20.12 million)) to 13 distributors of fresh chicken for fixing prices and agreeing not to compete during a seven-year period. The CCCS is also open to negotiating settlements with the parties, which occurs most frequently in relation to cases involving alleged abuses of dominance. The Uber/Grab infringement decision and fines imposed on the parties are also signs of a more robust enforcement on the merger front.

Key information

Relevant legislation

Singapore Competition Act (Chapter 50B)

Competition authority

Competition and Consumer Commission of Singapore
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- Mr Jaspal Singh S/O Gurbachan Singh
- Prof Wong Poh Kam
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- Dr Faizal Bin Yahya
- Ms Koh Puay Eng Agnes
- Ms Cindy Khoo
- Ms Loo Siew Yee
- Ms Chandra Mallika
- Prof Euston Quah

Executives of the Commission

- Mr Max Loh Khum Whai (Chairman)
- Ms Sia Aik Kor (Chief Executive)
- Mr Lok Shiu Meng (Assistant Chief Executive of the Commission (Legal, Enforcement and Consumer Protection))
- Ms Ng Ee Kia (Assistant Chief Executive (Policy, Business & Economics))
- Ms Yeo Hwee Kiang (Senior Personal Assistant Chief Executive (Policy, Business & Economics), Senior Director (Business & Economics) and Director (Policy & Markets))
- Mr Tan Hi Lin (Director (Policy & Markets))
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