



Singapore Steps Up Competition Enforcement

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On February 20, 2012, the Competition Commission of Singapore (“CCS”) issued a public consultation paper proposing changes to its *Guidelines on Merger Procedures*. This consultation signals CCS’ intention to step up its merger enforcement in a number of ways.

The first is to refine the existing merger notification procedures to make it easier for merging parties to assess whether to notify their transaction under Singapore’s voluntary merger notification regime. This is achieved by moving away from the indicative market share thresholds, which require parties to undertake market definition at the notification assessment stage. Under the proposals, merging parties are strongly encouraged to notify their transaction to the CCS if the parties supply goods or services of the same description and their share of supply of such goods or services exceeds 40 percent of the total supply in Singapore. However, one would not be able to apply this bright-line test to vertical or conglomerate mergers for obvious reasons. It is therefore still necessary to conduct a preliminary merger assessment based on the substantial lessening of competition (“SLC”) test to determine whether to notify the transaction in Singapore.

Another important aspect of the proposals is introduce a process for merging parties to obtain confidential advice from CCS on whether their proposed transaction is likely to raise concerns. Yet such advice would not be granted as of right. The CCS has full discretion whether to provide the confidential advice, after taking into account amongst others its resources at that particular point in time. Parties seeking such confidential advice should also be aware that the advice would be qualified by the fact that the CCS would not have taken into account views of third parties in providing the advice. There are a number of other criteria to satisfy before parties can take advantage of this process, including demonstrating to the CCS that the merger situation presents genuine issues relating to competition assessment in Singapore. As this confidential advisory mechanism is generally intended to apply to transactions that are not in the public domain save for exceptional circumstances, confidential guidance is unlikely to be commonly sought.

The proposed revisions to the Guidelines also seek to formalize the pre-notification discussions (“PNDs”) process. In practice, some have already been approaching the CCS for such discussions before submitting their notifications. PNDs, particularly when used in conjunction with a draft Form M1, allow a notifying party to better manage the clearance process and timelines. For example, the CCS may seek clarification on certain information in the draft Form M1 or identify gaps in the information submitted. The notifying party can also have the opportunity to point out information that is not relevant to the particular

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transaction under consideration. From CCS' perspective, PNDs allow the agency to plan its resource allocation to facilitate a more expeditious merger review process.

The CCS has also spelled out its approach towards market intelligence and surveillance in the revised Guidelines. Aside from monitoring the media for transactions that may potentially raise competition concerns, as a number of its international counterparts do, CCS may also publish a notice on its website indicating that it is in the process of considering whether a non-notified transaction could possibly raise concerns under Singapore merger provisions. Such a move may encourage third parties, particularly those that have not been approached by the CCS for views on the transaction, to provide their feedback on the transaction to the CCS.

Despite being a relatively young agency, CCS has made notable progress in its enforcement efforts since its establishment in 2005. In recent years, there has been a noticeable uptrend in the number of investigations and infringement decisions. Most recently, on March 9, 2012, the CCS issued its proposed infringement decision against two ferry operators plying the Singapore-Batam route. If the CCS proceeds with a final decision against these two operators, this would be its sixth cartel decision and the third in a space of six months. The CCS has stated on a number of occasions that cartels remain its enforcement priority and it is expected to continue focusing on trade associations and certain services sectors with a history of coordinated activities.

Aside from the usual investigatory activities, the CCS has also undertaken eight market studies in the past two years, a stark increase from none in 2009. These market studies covered a broad range of sectors including retail mall rental, healthcare services, retail petrol, pay TV, airport ground handling, concrete and cement, as well as real estate services.

CCS has also recently signalled its intention to conduct a market study into the industrial property sector. Such a market study is a timely one given that prices of multi-user industrial space for 2011 have increased by 27.1 percent, with rentals increasing by 16.2 percent. Industrial property was by far the top-performing real estate sector in Singapore last year. The emergence of industrial property real estate investment trusts ("REITs") coupled with strong demand from retail investors shifting to industrial space in response to residential property cooling measures are possible contributing factors. The move demonstrates CCS's continued emphasis on markets with broader impact on the local economy as the competitiveness of small and medium-sized enterprises ("SMEs") are significantly affected by rising rentals in the industrial property market.

Some commentators have observed that Singapore has not taken an infringement decision against an international cartel so far. There is no doubt that we will see such infringement decisions in due course, some of which may be brought to CCS attention through its leniency program. However, one should recognize that international cartels have far greater impact on bigger economies. Without similar levels of resources as its larger counterparts in more mature jurisdictions, CCS should be applauded for directing its enforcement efforts towards conduct and behavior that presents significant competitive harm to the

local economy. In time to come, CCS will no doubt join the global fight against international cartels, and recent trends suggest that CCS is clearly well placed to do so.