CPI COMPETITION POLICY INTERNATIONAL

CPI Antitrust Chronicle
August 2015 (1)

Competition Law in Singapore

Kala Anandarajah, PBM &
Dominique Lombardi

Rajah & Tann Singapore LLP

Competition Law in Singapore

Kala Anandarajah, PBM & Dominique Lombardi[1]

I. HISTORY OF THE INTRODUCTION OF COMPETITION LAW

Singapore was one of the first ASEAN countries to adopt (and enforce effectively) a generic competition law. The decision to introduce a generic competition law was based on the recommendations of the Economic Review Committee in 2003 to "create a level playing field for businesses, big and small, to compete on equal footing."[2]

The adoption of the Competition Act (Cap.50B) in 2004 ("Act") was also triggered by the United States-Singapore Free Trade Agreement ("USSFTA") that entered into force on January 1, 2004 and set out extensive competition-related obligations. In particular, Article 12.2 of the USSFTA required Singapore to (a) adopt or maintain measures to proscribe anticompetitive business and (b) establish an authority responsible for the enforcement of the measures to proscribe anticompetitive business conduct. Under the USSFTA, Singapore committed to enact a generic competition law by January 2005.

The Act has two main purposes: to provide a generic law to ensure fair competition in Singapore markets and to establish the Competition Commission of Singapore ("CCS"). The CCS is a statutory body under the purview of the Ministry of Trade and Industry ("MTI"), responsible for administering and enforcing the substantive provisions of the Act.

Complementing the Competition Act are various regulations issued either by the Minister of Trade and Industry ("the Minister") or the CCS with the approval of the Minister. The regulations provide details on (i) the various processes or fees that the infringing party or the parties need to comply with in the event of an investigation by the CCS, (ii) proposed infringement decisions by the CCS, (iii) applications by one or more parties to the CCS to get guidance or a decision from the CCS, and (iv) appeals against a decision by the CCS.

Guidelines have also been issued by the CCS to provide guidance to undertakings as to how the CCS would interpret and apply the provisions of the Competition Act. Such guidelines

---

[1] Kala Anandarajah, PBM is Partner at Rajah & Tann Singapore LLP where she heads the Competition & Antitrust and Trade Practice and also leads the Corporate Governance Practice. She has an LLB (Hons) from the National University of Singapore and an MBA (Banking and Finance) from the Nanyang Technological University of Singapore. Dominique Lombardi is Partner at Rajah & Tann Singapore LLP and Deputy Head, Competition & Antitrust and Trade Practice. She holds a DESS (post-graduation degree - AE) in International Business Law from Paris X University (France) as well as a Master's degree in business law, also from Paris X University. The authors would like to acknowledge the aassistance of Lynette Goh, Trainee, in the preparation of the draft.

[2] The Economic Review Committee ("ERC"), set up in December 2001, completed its work in February 2003. The ERC Main Report outlines key recommendations to remake Singapore into a globalized and diversified economy. The Committee recommended that a national competition law be enacted to create a level playing field for businesses big and small to compete on an equal footing. This will make for a more conducive business environment: *available at* http://www.mti.gov.sg/legislation/Pages?Competition%20Act.aspx.

indicate "the manner in which the Commission will interpret, and give effect to, [those] provisions." Although intended to aid undertakings in abiding by the Competition Act, it is noted that the guidelines are not binding on the CCS.[3] Thus, there still exists some inherent uncertainty as to their legal effect. Hence, while the CCS seeks to ensure that they follow their guidelines, it is also prudent to note that the CCS may depart from its own guidelines from time to time.

The Act was implemented in three phases between January 1, 2005, when the CCS was established, and July 1, 2007, when the provisions regulating mergers came into force. In the interval, the substantive provisions relating to anticompetitive agreements, decisions, and practices; abuse of dominance; enforcement; the appeal process; and other miscellaneous provisions had come into force on January 1, 2006.

While the Act is largely inspired from EU competition legislation, there are nevertheless certain aspects that are unique to Singapore. To illustrate, the Act does not apply to the Government, statutory bodies, or any person acting on their behalf; the Act does, however, apply to government-linked corporations. The Act also does not apply to (non IP-related) vertical agreements unless one or more of the parties to the agreement has a degree of market power.

Over the past decade, the CCS has taken a highly pro-active stance in ensuring compliance with competition law in Singapore. It has taken enforcement action against international cartels affecting competition in Singapore, and it has stepped up its enforcement activity in relation to merger control. The CCS has clearly established itself as a serious regulator not to be ignored and established Singapore as one of the leading countries in the implementation and enforcement of competition law.

II. MAIN PROHIBITIONS

There are three main prohibitions under the Act, namely Section 34, which prohibits anticompetitive agreements; Section 47, which prohibits abuse of a dominant position; and Section 54, which prohibits mergers that substantially lessen competition ("SLC"). Sections 34, 47 and 54 apply to all "undertakings." An "undertaking" is defined under Section 2 of the Act to mean "any person, being an individual, a body corporate, an unincorporated body of persons or any other undertaking, capable of carrying on commercial or economic activities relating to goods or services."

The Act applies to commercial and economic activities carried out by all undertakings, regardless of whether they are owned by a foreign undertaking, a Singapore undertaking, or the government. However, the government, statutory bodies, or any person acting on behalf of the government or any statutory body[4] in relation to that activity are exempted from the prohibitions contained in Sections 34, 47, and 54 of the Act.[5]

[3] Section 61(4) of the Competition Act.

[4] Under the Competition Act, a statutory body means a body corporate established by or under any written law.

[5] Section 33(4) of the Competition Act.

A. Prohibition of Anticompetitive Agreements

Section 34 of the Act prohibits agreements, decisions, or concerted practices which have the object or effect of preventing, restricting, or distorting competition within Singapore unless exempt.[6] The word "agreement"[7] is defined broadly to include both legally enforceable and non-enforceable agreements, oral or written agreements between undertakings, as well as "gentlemen's agreements" and other arrangements between undertakings. The CCS has categorically provided that a concerted practice exists "if parties, even if they do not enter into an agreement knowingly substitute, for the risk of competition, practical cooperation between them." Finally, decisions by associations of undertakings include, but are not limited to, decisions made by trade or industry associations.

It is evident that the CCS casts a very wide net on any form of cooperation between competitors.

The Section 34 prohibition only applies to agreements that have an appreciable adverse effect on competition. The CCS Guidelines on the Section 34 Prohibition ("Section 34 Guidelines") provide that an agreement will generally not have an appreciable effect on competition if:

1. The aggregate market share of the parties to the agreement does not exceed 20 percent in any of the relevant markets affected by the agreement, where the agreement is made between competitors; and
2. The market share of each of the parties to the agreement does not exceed 25 percent on any of the relevant markets affected by the agreement, where the agreement is made between non-competitors.

Potentially anticompetitive agreements, where the above thresholds are met, include agreements or arrangements between undertakings[8] that:

a) directly or indirectly fix purchase or selling prices or any other trading conditions; for instance, an industry association setting out fee guidelines has been held to have engaged in indirect price-fixing;[9]

b) limit or control production, markets, technical development, or investment;

c) share markets or sources of supply;

d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or

[6] The exemptions from the prohibition of anticompetitive agreements are set out in the Third Schedule to the Act. These include notably the exclusion of vertical agreements (provided that their primary focus is not IPR) and agreements which result in Net Economic Benefit.

[7] The use of the term "agreement" in the rest of the article refers globally to agreements, concerted practices, and decisions by associations of undertakings.

[8] Section 34(2) of the Competition Act.

[9] CCS decision 400/001/09 issued on 18 August 2010 – Application for Decision by the Singapore Medical Association in relation to its Guideline on Fees pursuant to Section 44 of the Competition Act.

e) make 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 such contracts.

Regardless of the appreciable effect thresholds, some types of agreements are always to be regarded as anticompetitive by the CCS. Such agreements are termed "black-listed activities" and include price-fixing, market-sharing, limiting or controlling production, and bid-rigging.

The CCS has, over the decade since the Act was introduced, shown little tolerance for cartel activities, and has vigorously taken enforcement action. The revamped Leniency Program in 2009 (which included the introduction of a marker system and a Leniency+ system) opened the door to more international cartels being investigated. In 2014, and further to leniency applications, the CCS issued infringement decisions against two international cartels, both of which were found to have had an adverse effect on competition in Singapore. The CCS imposed hefty financial penalties on both the foreign parent companies and their local subsidiaries.

B. Prohibition of Abuse of Dominance

While Singapore generic competition law is based on the EU rather than U.S. model, the Act recognizes that Singapore's main concern is with economic goals. This is reflected in the wording of Section 47 that primarily addresses exclusionary conduct by a dominant undertaking, rather than exploitative conduct. Specifically, the wording of Section 47 differs from that of Article 102 of the TFEU by identifying "predatory behavior towards competitors" as a potential abuse, with no reference to "directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions."

Unlike some other ASEAN competition laws, it is not the Act but the CCS Guidelines that provide that, as a rule of thumb, the threshold to establish dominance is a market share of 60 percent and above. Apart from market share, however, a number of other factors are taken into account before establishing dominance—such as the structure of the market, countervailing buyer power, and barriers to entry. Note that the Act does not prohibit dominance, but only the abuse of a dominant position through, for instance, predatory behavior, limitation of output or technical developments, discrimination, or tying/bundling. In practice, the CCS appears specifically concerned with exclusive dealings, whether these result from express agreements or from discount schemes.

When assessing whether conduct by a dominant undertaking amounts to an abuse, the CCS will have regard to various factors. In particular, the CCS will endeavor to determine:

1. Whether a dominant position is achieved or maintained through conduct arising from efficiencies. Conduct arising from efficiencies will not be regarded as an abuse of dominance.
2. The effects of the undertaking's conduct. In the *Sistic Case*,[10] the CCS highlighted that "exclusionary conduct may be abusive to the extent that it harms competition." The CCS,

[10] Case No CCS 600 / 008 / 07 on 4 June 2010 – *Abuse of a Dominant Position by SISTIC.com Pte Ltd* ("Sistic Case").

and later the Competition Appeal Board, have, however, qualified this statement by deciding that it is sufficient to establish the likely (rather than the actual) effects of competition foreclosure for the purpose of the Section 47 prohibition.

3. Whether there is any objective justification to the dominant undertaking's conduct. This is on the basis that the conduct is proportionate to the legitimate commercial interest that it is intended to protect.

4. Whether there are any demonstrable benefits arising from the dominant undertakings conduct and whether the conduct is proportionate to the benefits claimed.

To date, the CCS has only issued one infringement decision in respect of a violation of the Section 47 prohibition, namely, an abuse of a dominant position in the *Sistic Case*. Importantly, however, the CCS has, in two instances, closed investigations into alleged abuses of dominance further to undertakings provided by the parties investigated:

1. In 2012, the CCS opened an investigation into the potentially anticompetitive restraints (such as exclusivity conditions and conditional rebates) that Coca Cola Singapore Beverages ("CCSB") had in its supply agreements with on-premise retailers. This investigation was closed in 2013 (with no finding of dominance) after CCSB voluntarily removed the potentially infringing provisions from its contracts and undertook to the CCS not to impose exclusivity restrictions on its on-premises retailers, nor to grant loyalty-inducing rebates.

2. In 2014, the CCS opened an investigation into exclusivity agreements between Cordlife Group Limited ("Cordlife"), a company active in the cord blood bank industry and baby fair organizers on the one hand and hospitals on the other hand. The CCS closed its investigation in 2015, further to Cordlife's undertaking to remove the exclusive agreements in place and not to enter into exclusive arrangements with baby fair organizers and private maternity hospitals in Singapore.

The two cases above are interesting as the Act does not confer an express power to the CCS to settle or to accept commitments (apart from in merger cases). There is nevertheless an overriding power accorded to the CCS to do anything incidental to its functions under the Act. While the CCS has been considering crystalizing the process for commitments/undertakings (in cases other than for mergers), no regulations or guidelines have been issued thus far in that regard. It is likely that steps will be taken in the future.

C. Prohibition of Mergers That Substantially Lessen Competition ("SLC")

Section 54 of the Act prohibits mergers that are likely to result in a SLC in any market for goods or services in Singapore.

Singapore is one of the rare countries in the world where the Merger Regime provides for a voluntary, rather than compulsory, notification of a merger. This means that parties to a merger are required to self-assess the effect of their transaction in Singapore and make a determination as to whether to notify that merger to the CCS for its clearance. The risk of not notifying a merger that could result in a SLC is that the CCS is empowered to initiate an investigation of such mergers and to take enforcement action if it deems that a non-notified merger led to a substantial lessening of competition. Specifically, the CCS can impose financial

penalties on the merger parties and/or issue directions, including ordering parties to unwind their anticompetitive merger.

There has been increased merger scrutiny by the CCS in recent years. In particular, the CCS has stepped up its market surveillance, including with the setting-up of a monitoring unit, and has issued letters to merger parties to request for more information in relation to non-notified mergers. This has led to a significant amount of mergers or proposed mergers being notified to the CCS in the last two years.

The term "Merger" encompasses a wide range of transactions, including, but not limited to, acquisitions (whether of shares or assets), takeovers, and the creation of joint ventures. The key element for a transaction to qualify as a Merger is that control must pass from one undertaking to another. To aid businesses in assessing the effect of their Merger on competition in Singapore, the CCS has in the Guidelines provided indicative thresholds, which, if crossed, suggest that a SLC could result from the Merger. Notification of a Merger to the CCS is, therefore, effectively necessary, where, post-merger:

a) the "merged entity" has a market share of 40 percent or more, or
b) the "merged entity" has a market share of between 20 to 40 percent and the post-merger combined market share of the three largest firms ("CR3") (in the relevant market) is 70 percent or more.

The thresholds in (a) and (b) above take into account the market share of the merged entity in the relevant geographic market and not just in Singapore. Hence, the CCS will consider the indicative thresholds crossed if the merged entity has a share of 40 percent or more in a market that is wider than Singapore.

In reviewing whether a Merger results in a SLC, the CCS looks at various factors. First, the CCS has made clear that it is unlikely to investigate Mergers involving small companies, i.e. where the turnover in Singapore in the financial year preceding the transaction of each of the parties is below S$5 million and the combined worldwide turnover in the financial year preceding the transaction of all of the parties is below S$50 million.

Second, the CCS will review a number of factors to determine whether the Merger would result in coordinated and/or non-coordinated effects or whether the competitive constraints on the merged entity post-merger will offset any potential SLC.

Other factors the CCS will take into account include whether a party to the merger is genuinely failing and would exit the market but for the merger. In 2014, the CCS relied on "the failing firm defense" to clear the proposed acquisition of Tiger Airways Holdings Limited by Singapore Airlines Limited; in this case, the CCS found that Tiger Airways was likely to exit its operations in the absence of the proposed acquisition.

While most of the Mergers notified to the CCS have been cleared either with or without structural and/or behavioral commitments being offered, it is worth noting that the CCS has also blocked mergers. In early 2015, the CCS announced a provisional decision to prohibit the proposed acquisition of Radlink-Asia Pte Ltd ("Radlink") by Parkway Holdings Ltd ("Parkway"). After an in-depth review of the proposed transaction, the CCS concluded that the merger would substantially lessen competition in the market for the supply of radiopharmaceuticals in

Singapore and in the market for the provision of radiology and imaging services. The parties have since dropped their proposed transaction.

When reviewing a Merger, the CCS will also assess whether restrictions that are ancillary to the transaction should be cleared together with the merger or otherwise. Ancillary restrictions are defined by the CCS as restrictions that are directly related and necessary to the implementation of a merger, i.e. "connected with the merger but ancillary or subordinate to the main object" of the merger. This typically applies to non-compete clauses, provided that such clauses are properly limited in duration and scope and protect a legitimate interest (for instance to ensure that the buyer receives the full benefit of the business acquired).

The CCS, however, does not hesitate to investigate non-compete clauses that do not fulfill this criteria. For instance, the CCS investigated—and obtained commitments by the parties that they will not enforce in Singapore—a clause which object was to prevent the purchaser from competing with the seller in a market not concerned by the transaction. The CCS took the view that this was an anticompetitive agreement, falling within the ambit of Section 34 prohibition.

The CCS' increased scrutiny of non-notified mergers and possibly stricter approach during merger assessment suggest that businesses may need to be more conservative in their self-assessment of the need to notify a proposed transaction to the CCS. When in doubt, under the revised merger procedures which came into effect in July 2012, businesses may choose to seek the CCS' confidential advice as to whether or not a proposed merger is likely to raise competition concerns in Singapore and therefore whether a notification is advisable. To qualify for confidential advice, the merger parties must show a good faith intention to proceed with the transaction, the merger must not be in the public domain, and there must be some doubt as to whether or not the merger situation raises concerns such that notification may be appropriate.

It should be highlighted that the information to be submitted to the CCS for confidential advice is almost equivalent to that required for a formal merger notification. However, for merger parties who are still in the early stages of negotiations and are genuinely uncertain as to whether their proposed transaction may raise competition concerns, this process offers significant benefits—it allows the parties to obtain guidance from the CCS within a relatively short period of 14 working days while preserving the confidentiality of the transaction.

III. INSTITUTIONAL ARRANGEMENTS

A. Appeal and Judicial Review

As noted above, the CCS is a statutory body established under Singapore's Ministry of Trade and Industry. As highlighted by CCS' CEO in a recent interview

> [S]tructurally, while CCS is under MTI administratively, for enforcement matters, the Commission is vested with independent powers under the law to investigate, adjudicate and impose sanctions for competition law breaches. We therefore draw a clear line on enforcement matters from MTI.

This, in turn, gives the CCS "the independence which is important in lending credibility to the Commission's actions/decisions with non-government stakeholders."

Under the Act, infringement decisions issued by the CCS as well as certain directions issued by the CCS are appealable to the Competition Appeal Board ("CAB"). The CAB is an

independent tribunal that only hears competition cases. The CAB has all the powers and duties of the CCS that are necessary to perform its functions and discharge its duties under the Act.

In addition, on hearing appeals, the CAB has the powers, rights, and privileges vested in a District Court, including the power to enforce the attendance of witnesses and their examination on oath or otherwise, the power to compel the production of documents, and the power to award costs. CAB can either confirm or set aside the whole or part of the appealed decision or direction. In doing so, it has: (i) the power to remit the matter to the CCS; (ii) impose, revoke, or vary the amount of a financial penalty, (iii) give such direction, or take such other step, as the CCS could itself have given or taken and, more generally, (iv) make any decision which the CCS could itself have made.

The hearing before the CAB is public except in relation to any part where confidential information is to be considered. To date, the CAB has issued eight decisions, primarily on the amount of financial penalties imposed on the appellants.

Parties to the proceedings in which a decision by the CAB is made can appeal such decision before the High Court. An appeal to the High Court can only be in relation to a point of law arising from the CAB's decision or in relation to a decision in relation to the amount of a financial penalty. The High Court may confirm, modify, or reverse the decision of the CAB. It can also issue orders in relation to costs, expenses, or interest. The possibility of appeal against decisions by the High Court in competition law matters is the same as for decisions made by the High Court in the exercise of its original civil jurisdiction.

B. Sectoral Regulators

The Act co-exists with various sectoral laws, which regulate competition in specific industries (e.g. media, telecommunications). Under Section 33 of the Act, if the generic substantive prohibitions under the Act apply:

> to an industry or a sector of industry that is subject to the regulation and control of another regulatory authority:
>
> a) the exercise of powers by that other regulatory authority shall not be construed as derogating from the exercise of powers by the Commission; and
> b) the exercise of powers by the Commission shall not be construed as derogating from the exercise of powers by that other regulatory authority.

In other words, both the CCS and sectoral regulators may have concurrent jurisdiction in matters involving activities and/or undertakings under the purview of another regulator. Sectoral regulators who have specific authority to deal with competition issues in the industries under their purview include, *inter alia*, the Energy Market Authority ("EMA"), the Infocomm Development Authority ("IDA"), the Media Development Authority ("MDA"), the Civil Aviation Authority of Singapore ("CAAS"), the Casino Regulatory Authority ("CRA"), and the Monetary Authority of Singapore (MAS").

In practice, one should not assume that the Act does not apply to an activity or an undertaking only because these fall under the purview of a sectoral regulator. A careful check must be undertaken to ensure that the sectoral regulator has the authority to deal with the

competition issue at stake or otherwise. To illustrate, the CCS, in June 2015, issued a proposed infringement decision to financial advisers who are otherwise regulated by the MAS.

IV. REGULATORY PROCESSES

A. Investigations

The Act gives the CCS strong administrative powers, including some backed by criminal sanctions, to investigate potential anticompetitive situations.

The CCS may commence an investigation if it has reasonable grounds for suspecting that the prohibitions of anticompetitive agreements, conduct, or mergers have been infringed or are likely to be infringed. The CCS may decide to start an investigation on its own, further to a complaint, or, in the case of cartels, further to a leniency application.

The investigating powers of the CCS include the power:

a) to request any person to produce documents or information that CCS considers relevant to any matter investigated;

b) to enter premises with or without a warrant—the term "premises" includes any vehicle as well as domestic premises if such premises are used in connection with the affairs of an undertaking or if documents relating to the affairs of an undertaking are kept there;

c) to search premises (with a warrant);

d) to interview individuals; and

e) to seize documents.

Offenses under the Act which can result in fines and/or imprisonment include: (i) the failure to comply with a requirement to provide documents/information; (ii) the provision of false or misleading information; (iii) the destruction or concealment of documents; and (iv) the obstruction of the investigation, for instance, by delaying a CCS official in the discharge of his duties.

Where the CCS finds that an agreement, a conduct, or a merger has infringed the Act, it can issue any direction it deems appropriate to bring the infringement to an end and impose a financial penalty of up to 10 percent of the undertaking's turnover in Singapore (multiplied by a maximum of three years). It is important to note that the term "undertaking" may include both a parent and its subsidiary, i.e. the turnover is not limited to that of the company established in Singapore and may encompass the turnover that an entire group of companies derives from sales into Singapore.

Apart from the extensive investigative powers granted to the CCS as highlighted above, the Act provides for various "tools" to allow undertakings to ensure that their agreements, conduct, or mergers do not fall foul of the Act. Specifically, parties can notify the CCS of their agreements, conduct, or mergers for guidance—or a decision as the case may be—that they do not violate the relevant provisions of the Act.

B. Notifications of Agreements or Conduct

An undertaking may apply to the CCS for guidance or a decision as to whether (i) an agreement to which the undertaking is a party is likely to infringe, or has infringed, the Section 34 prohibition, (ii) the agreement is likely to fall under a block exemption or is excluded; or (iii) conduct by the undertaking is likely to infringe the Section 47 prohibition.

To date, there have been no decisions issued as to whether a specific conduct would infringe the Section 47 prohibition or otherwise. However, a number of agreements have been notified to the CCS for a decision that they do not violate the prohibition of anticompetitive agreements. Notably, the CCS has so far reviewed a dozen of alliances among airlines, which were generally cleared on the basis of the Net Economic Benefit exemption.

C. Notification of Mergers

With regards to mergers, Singapore has established a voluntary merger notification regime. This means that there is no obligation, or mandatory requirement, for merger parties to notify their merger to CCS, either before or after implementation of the merger. However, merger parties have the option of notifying their merger to CCS and to apply for a decision as to whether the merger situation infringes, or will infringe, the Section 54 prohibition. Merger parties will have to carry out their own assessment to determine whether or not notification may be appropriate.

The timelines that the CCS adheres to when reviewing merger notifications are:

1. **Phase I**: Up to 30 working days. At the end of the Phase I review, the CCS will either make a favorable decision or make a decision to open a Phase II review. For mergers that do not raise substantive competition issues, the CCS will issue a favorable decision at the end of Phase I.
2. **Phase II**: Up to 120 (additional) working days. Mergers that appear to pose significant competition concerns will proceed to a Phase II review. At the end of the Phase II review, the CCS will either make a favorable decision (with or without legally binding commitments by the merging parties), or make an unfavorable decision and issue all appropriate directions to remedy the competition concerns identified, including unwinding the merger or imposing orders for divestiture where necessary. Where a merger has been implemented, the CCS may impose a financial penalty on the merger parties found to have infringed the Section 54 prohibition.

Over the past few years, the CCS has taken a more pro-active approach towards looking into non-notified mergers. It has stepped up its market surveillance and issued letters to merger parties to request more information in relation to non-notified mergers. This has led to a significant number of mergers being notified to the CCS in 2014 (although there has been a slowdown in merger notifications in 2015), covering a whole range of industries from the cement industry to the airline industry, from the medical industry to on-line recruitment services.

It is noteworthy that in 2014, for the first time, the CCS:

a) authorized one merger subject to both behavioral and structural commitments;

b) authorized a merger on the grounds of the failing firm defense; and

c) publicly announced its intention to block a merger—the transaction was subsequently abandoned by the parties.

The fact of the CCS exercising greater scrutiny and issuing more considered decisions must mean that businesses have to take Singapore's merger regime seriously, albeit it being voluntary and, at the very least, conduct a thorough self-assessment of their transactions and their potential effects on competition in Singapore.

V. HOW THE INTRODUCTION OF COMPETITION LAW HAS BEEN RECEIVED IN THE COUNTRY BY BUSINESS, THE LEGAL PROFESSION, ETC.

The introduction of any new law, let alone competition laws, will always put businesses on the defensive as one of their immediate concerns is the cost implications of compliance. In particular, many businesses perceive competition law as being contrary to encouraging and promoting business; it is seen as stifling. To address such concerns, the approach of the CCS has always been to encourage undertakings to voluntarily comply with competition laws and regulations. To aid this, the CCS released the guidelines set out in the preceding section, which provide useful explanations on how the CCS interprets, administers, and enforces the Competition Act. Importantly, the CCS has an active outreach program to reach out to as many businesses as possible. This has been done through trade associations as well as other means.

The success of the CCS outreach program can be anecdotally assessed through checks on whether businesses are even aware of competition laws when they do their risk assessments. In a 2012 survey of stakeholders, while about 42 percent of business respondents indicated that their top leadership strongly advocated compliance with competition law in Singapore, only 37 percent had compiled instructions on compliance for their employees, and only 32 percent regularly conducted training on this aspect.

In this regard, the CCS has continued to develop initiatives on the ground to educate businesses about the competition regime and teach that competition law is there to protect businesses from anticompetitive behavior by their competitors and to level the commercial playing field.[11] To understand the challenges that may pressure some companies to adopt anticompetitive behaviors, the CCS has assigned "relationship managers" to different industries, whose role is to become acquainted with the key players in an industry. This sensitizes the CCS to ground developments and deepens its understanding of the driving forces acting on an industry.

Given that competition law is now very much part of the fabric of Singapore's legal and business environments, and further to the fact that the CCS has gradually stepped up enforcement as it has matured, businesses owe it to themselves to take extra steps to ensure compliance with the law, and allow for early detection in the event of an infringement. Singapore businesses must institute an effective competition law compliance program, commencing with an audit check if this has not been done.

[11] Interview with Chief Executive of CCS 2013, *available at* https://www.ccs.gov.sg/~/media/custom/ccs/files/media%20and%20publications/publications/journal/interviewwithtohhanliccsnovslg.ashx.

Another important step that businesses must take is to educate its sales and marketing staff on what they can and cannot do, especially in relation to price recommendations and fee guidelines, both of which the CCS has considered to be generally harmful to competition as these tend to restrict independent pricing decisions.[12] Businesses must also be particularly mindful of the CCS' strict position in relation to cartels. The CCS has warned that the fixing of only an element of a rate, or the receipt of commercially sensitive information by a business from a competitor without actively distancing itself from the conduct, may be sufficient to constitute an infringement of the Section 34 prohibition.

Following the *Freight Forwarding Case*, Singaporean subsidiaries of foreign-registered companies should be aware that any cartel activity being engaged in by their parent companies outside of Singapore may still be caught by the CCS if the CCS determines that they form a single economic entity and if an anticompetitive impact is felt in Singapore.

Any undertaking by Singapore corporations, whether big or small, should familiarize themselves with competition laws and policies as this will not only ensure that they comply with the laws in Singapore but can also be beneficial to them, especially when such corporations go overseas to do business in developed countries. Familiarity with competition requirements will give them a competitive advantage over companies that have no experience doing business in such an environment.

VI. OVERALL ASSESSMENT OF COMPETITION LAW—WILL COMPETITION LAW HELP INTEGRATION?

We look at the issue under this section from an ASEAN perspective.

An important development on the regional front for 2015 is the establishment of the ASEAN Economic Community ("AEC"). The AEC envisages the transformation of ASEAN into a single market and production base, with free movement of goods, services, and capital in the region. One of the key pillars of the AEC is the development of competition policy and law in the region, which are necessary to ensure that the regional markets are kept open, and to prevent anticompetitive behavior from distorting competition in ASEAN.

In line with this, the ASEAN member states have, in the ASEAN Economic Blueprint, committed to the introduction of national competition policies and laws by 2015. Currently, only five member states have generic competition law legislation in place—Malaysia, Thailand, Vietnam, Indonesia, and Singapore, with the remaining countries at various stages of drafting.

Although the impending establishment of the AEC has been anticipated by businesses in this region for some time now, it is finally time for these developments to be unveiled. Businesses that are active in ASEAN and have adopted an ASEAN strategy in their business plans must therefore pay close attention to any new competition legislation that is being introduced in the region and how it would affect their business.

[12] Chapter 8, CCS issued advisory notices in 2008: *IEA Guidance* and *Singapore School Transport Association advisory*. From the advisory notices issued, it is clear that the CCS views price guidelines or recommendations as having a detrimental effect on competition.

In particular, businesses must recognize that the different ASEAN countries may adopt different approaches and thresholds under their respective competition laws—a conduct that is acceptable in one jurisdiction may be *per se* prohibited in another jurisdiction; a proposed merger that need not be notified in one jurisdiction may need to be notified in another jurisdiction. As such, businesses must familiarize themselves with the legislation in each country and recognize that there is no one-size-fits-all approach.

This will call for compliance programs and trainings to be tweaked somewhat to suit local jurisdictions and culture. It will also call for local language training to ensure awareness is effectively driven home. In so far as business activities and transactions are concerned, businesses must also ensure that competition is listed as a critical check item in a review of whether to proceed or otherwise.

Despite the potential for some differences, an overall robust competition policy that is effectively enforced in each of the ASEAN countries can only better facilitate trade and allow businesses to flourish across ASEAN. There will be some initial pain as the journey is embarked on, but the end results can only be positive.