

IN THE ACT

MAKING MARKETS WORK WELL

ISSUE 2 | OCTOBER 2018 - JANUARY 2019

BEHIND CLOSED DOORS

FOUR HOTELS FINED
\$1.5M FOR SHARING
COMMERCIALLY SENSITIVE
INFORMATION

FOOD FOR THOUGHT

NTUC Enterprise-Kopitiam
proposed acquisition cleared





CE's NOTE

Just last week, CCCS signalled to businesses that information sharing among competitors can be problematic. Four competing hotels were penalised by CCCS for sharing commercially sensitive information, which harms competition by reducing the pressure to compete among them.

In another case, CCCS had cleared the acquisition by NTUC Enterprise of Kopitiam. Mergers and acquisitions involving competitors will invariably result in the merged entity having a bigger market share. However, not all mergers/ acquisitions give rise to competition concerns. Only mergers that substantially lessen competition and have no net economic efficiencies will infringe the Competition Act. In the case of the acquisition by NTUC Enterprise of Kopitiam, CCCS found no substantial lessening of competition in three relevant markets. In this regard, the proposed acquisition was cleared by CCCS.

The Consumers Association of Singapore (CASE) has also recently issued two advisories alerting consumers that they should be wary of fine print

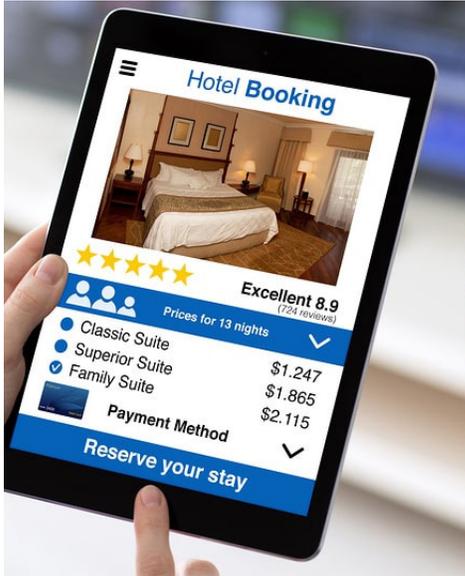
when shopping online and that they are not obliged to make payment to a business for unsolicited goods or services, until and unless they have agreed to the purchase.

In the last quarter, we welcomed visits by Mr. Matthew Boswell, Interim Commissioner of Competition, Competition Bureau Canada and H.E. Dr Mohamed Omar Abdulla Balfaqeeh, Ambassador of the United Arab Emirates to Singapore. Emeritus Professor Richard Whish QC was also in Singapore to conduct a public seminar co-organised by CCCS and the Singapore Academy of Law on recent developments in EU and UK Competition Law.

I hope you will enjoy reading the latest issue of *In the Act*, and we look forward to continue working with you to make markets work well.

TOH HAN LI
CHIEF EXECUTIVE
COMPETITION AND CONSUMER COMMISSION OF SINGAPORE

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ABOUT CCCS

The Competition and Consumer Commission of Singapore (“CCCS”) is a statutory board of the Ministry of Trade and Industry. CCCS administers and enforces the Competition Act (Cap. 50B) which empowers CCCS to investigate and adjudicate anti-competitive activities, issue directions to stop and/or prevent anti-competitive activities and impose financial penalties. CCCS is also the administering agency of the Consumer Protection (Fair Trading) Act (Cap. 52A) or CPFTA which protects consumers against unfair trade practices in Singapore. Our mission is to make markets work well to create opportunities and choices for business and consumers in Singapore.

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SPOTLIGHT

BOOKING

Search hotels

Where would you like to go?
Location, region, district or hotel

Check-in

Guests

1

"The exchange of non-public commercially sensitive information between competitors is harmful to competition and customers in the market as it reduces the competitive pressures faced by competitors in determining their commercial decisions, including the price they will offer to customers. This can result in customers having less competitive prices and options after such exchanges. If a business receives such information from its competitor, it should immediately and clearly distance itself from such conduct and report it to CCCS."

- Mr. Toh Han Li, Chief Executive, CCCS

BEHIND CLOSED DOORS

Exchange of commercially sensitive info: Competing Hotels Penalised

The owners and operators of Capri by Fraser Changi City Singapore, Village Hotel Changi and Village Hotel Katong as well as Crowne Plaza Changi Airport Hotel were fined a total of S\$1.5 million by CCCS on 30 January 2019 for infringing the Competition Act by exchanging commercially sensitive information in connection with the provision of hotel room accommodation in Singapore to corporate customers.

The sales representatives exchanged information which is likely to have influenced the hotels' subsequent conduct in the market or placed them in a position of advantage over their corporate customers in contract negotiations.

This included critical factors that were taken into consideration in the determination of subsequent prices that were offered by the hotels to their corporate customers.

In levying financial penalties, CCCS took into account the relevant turnovers of the Parties, the nature, duration and seriousness of the infringement, aggravating and mitigating factors (such as whether a party had co-operated with CCCS), as well as representations made by the Parties. CCCS had earlier issued a Proposed Infringement Decision against the hotels on 2 August 2018.

[How The Hotels Infringed the Act >>](#)

COMPETING HOTELS FINED \$1.5M FOR EXCHANGE OF COMMERCIALY SENSITIVE INFORMATION



WHO ARE INVOLVED?

Capri by Fraser Changi City Singapore ("Capri")

TOTAL FINES^{*}
S\$793,925

Owner: Ascendas Frasers Pte. Ltd. (until 30 March 2015)
Operator*: Frasers Hospitality Pte. Ltd.

TOTAL FINES^{*}
S\$216,526

Owner: Frasers Hospitality Trustee Pte. Ltd. (from 31 March 2015)
Operator*: Frasers Hospitality Pte. Ltd.

Village Hotel Changi and Village Hotel Katong ("Village Hotels")

TOTAL FINES^{*}
S\$286,610

Owner of Village Hotel Changi: Far East Organisation Centre Pte. Ltd.
Owner of Village Hotel Katong: Orchard Mall Pte. Ltd.
Operator*: Far East Hospitality Management (S) Pte. Ltd.

Crowne Plaza Changi Hotel Airport Hotel ("Crowne Plaza")

TOTAL FINES^{*}
S\$225,293

Owner/master lessee: OUE Airport Hotel Pte. Ltd.
Operator*: Inter-Continental Hotels (Singapore) Pte. Ltd.

** Operator refers to the appointed agent for the management/operation of the hotel(s)
^ Fines are imposed on both owner and operator of the hotel*

HOW DID THEY INFRINGE THE COMPETITION ACT?



Sales representatives of the following hotels exchanged commercially sensitive information relating to their corporate customers:

- Capri and Village Hotels: From at least 3 July 2014 to 30 June 2015
- Capri and Crowne Plaza: From at least 14 January 2014 to 30 June 2015

These information is likely to have:

- Influenced the hotels' subsequent conduct in the market or
- Placed them in a position of advantage over their corporate customers in contract negotiations.



Corporate room rates that had been negotiated on a confidential basis and agreed upon with specific customers

Future price-related strategies, such as proposed price increases and bid prices

Intention to agree to a particular customer's price reduction request during corporate rate negotiations

WHY IS IT HARMFUL TO COMPETITION AND CUSTOMERS?



Reduces competitive pressures faced by competing hotels in determining their commercial decisions, including the prices they will offer to customers.

Results in customers facing less competitive prices and options after such exchanges.



WHAT SHOULD BUSINESSES DO?



If a business receives such information from its competitor, it should immediately and clearly distance itself from such conduct and report it to CCCS.



CCCS's Leniency Programme

Businesses that are part of an anti-competitive/ cartel agreement can come forward to CCCS with information on their activities. Where eligible for lenient treatment, they can be granted total immunity or a reduction of up to either 100% or 50% in fines, subject to certain conditions.

FOOD FOR THOUGHT

CCCS clears NTUC Enterprise-Kopitiam Proposed Acquisition

CCCS cleared the proposed acquisition by NTUC Enterprise of Kopitiam on 20 December 2018 after its assessment concluded that the proposed transaction, if carried into effect, will not lead to a substantial lessening of competition within the relevant markets in Singapore.

CCCS made its decision after consulting stakeholders and evaluating all relevant information. As part of its assessment, a public consultation was conducted from 1 October to 17 October 2018. CCCS also contacted key stakeholders including landlords, competitors, customers, representatives from hawker associations and engaged various government

agencies to gather relevant information necessary for its assessment.

The majority of the stakeholders indicated that they have no concerns, with a few raising concerns. These concerns relate mainly to Foodfare becoming a bigger player in the operation of hawker centres, coffee shops and food courts thereby enjoying stronger bargaining power over the landlords, and food vendors and consumers may face higher rental fees and food prices respectively as a result of fewer Street Stall operators. Feedback that do not have an impact on competition were not considered in CCCS's assessment.

[NTUC-Kopitiam Merger Assessment >>](#)

PROPOSED NTUC ENTERPRISE - KOPITIAM ACQUISITION



CCCS concluded that the proposed acquisition, if carried into effect, will not lead to a substantial lessening of competition within the relevant markets in Singapore.

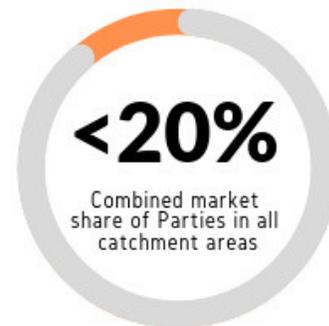
CCCS's Assessment

RELEVANT MARKET 1:

SALE OF HOT MEALS TO CONSUMERS IN HAWKER CENTRES, COFFEE SHOPS & FOOD COURTS WITHIN CATCHMENT AREAS OF 500 METRES RADIUS* FROM THE PARTIES' PREMISES



- Parties only directly sell hot meals in a very limited number of stalls located mainly within the Street Stall premises[^] they operate.
- Parties compete with many stalls operated by other food vendors within their own premises, even without considering the competing stalls in other Street Stall premises within the catchment areas.



* A catchment area is identified when both Parties are within 500 metres from each other, and the size of the catchment area is defined as an area of 500 metres radius with respect to each of the Parties' premises.

[^] Hawker centres, coffee shops and food courts are collectively referred to as "Street Stall premises".



RELEVANT MARKET 2:

RENTAL OF STALLS IN HAWKER CENTRES WITHIN SINGAPORE TO FOOD VENDORS

- Small number of hawker centres operated by merged entity relative to the total number of hawker centres in Singapore.
- Regulatory oversight by NEA on management of hawker centres and terms imposed on food vendors.

RELEVANT MARKET 3:

RENTAL OF STALLS IN COFFEE SHOPS & FOOD COURTS TO FOOD VENDORS, WITHIN CATCHMENT AREAS OF 500 METRES TO 1 KM RADIUS FROM THE PARTIES' PREMISES



(Icon made by Freepik from www.flaticon.com)



- **Parties are not each other's closest competitor;** many other strong competing operators remain, e.g. Koufu, Food Junction, Food Republic, Kimly, Broadway, etc.
- **Food vendors have some bargaining power, more so for corporate entities;** there are sufficient options for them to choose from, and master lessors want to rent out stalls quickly.
- **There are opportunities to enter and expand;** more areas for eating establishments could be made available, and food vendors can scale up to become master lessors of eating establishments.
- **Collusion between operators of coffee shops & food courts is less likely** in view of large number of competitors.
- **Merged entity does not plan to mandate food vendors to procure food supplies exclusively from NTUC Enterprise.**



COMPANY OF COMPETITORS

In-depth Review of Private Clinical Laboratories Merger

CCCS is carrying out an in-depth Phase 2 review of the merger of private clinical laboratories Pathology Asia Holdings (PAH), Innovative Diagnostics and Quest Laboratories, and the intended integration of the businesses of the latter two parties.

Innovative and Quest overlap in the provision of in-vitro diagnostic (IVD) tests in Singapore, which are tests done on samples such as blood or tissue taken from the human body. PAH is part of TPG, a leading global private investment firm.

CCCS completed its Phase 1 review of the merger on 23 October 2018. Based on information furnished by PAH and third-party feedback,

CCCS was unable to clear the merger as it had competition concerns. In particular, Innovative and Quest, being two major private independent clinical laboratories for the provision of IVD tests or clinical laboratory services by private laboratories in Singapore, are generally seen as the closest competitors to each other pre-transaction.

Third-party feedback revealed concerns about the extent to which alternative suppliers to the parties, e.g. private hospital clinical laboratories and other private independent clinical laboratories, are able to exert sufficient competitive constraint on the merged entity. Following its assessment in the Phase 2 review, CCCS will decide whether to issue a favourable or unfavourable decision.



LIFTING THE LID ON SUPPLY

CCCS consults on Proposed Voluntary Commitments by Lift Companies

CCCS has conducted a public consultation from 11 to 24 January 2019 to invite feedback on two proposed commitments separately provided by Chevalier Singapore in relation to the supply of spare parts for Toshiba Elevator and Building Systems Corporation and IFE Elevators lifts; and by Fujitec Singapore in relation to the supply of spare parts for Fujitec lifts.

CCCS has been investigating alleged refusals to supply lift spare parts for lift maintenance in HDB estates. There could potentially be cost savings in engaging a third-party lift maintenance contractor for multiple brands as compared to having to procure lift maintenance services from each original lift installer. If a lift company or distributor does not provide proprietary but essential lift

spare parts to third-party lift maintenance contractors, other lift maintenance contractors may be prevented from effectively competing for maintenance contracts for lifts of that particular brand in Singapore.

To address CCCS's competition concerns, Chevalier and Fujitec Singapore's proposed voluntary commitments provide that they will undertake to sell lift spare parts of the relevant brands to a purchaser subject to certain terms and conditions. Following public consultation, CCCS will decide whether to accept or reject each of the commitments. To date, CCCS has accepted voluntary commitments by three other lift companies which addressed the respective competition concerns that CCCS had with these companies.

GLOBAL ACT



VISIT BY H.E. DR MOHAMED OMAR ABDULLA BALFAQEEH, AMBASSADOR OF THE UNITED ARAB EMIRATES TO SINGAPORE

CCCS hosted H.E. Dr Mohamed Omar Abdulla Balfaqeeh on 17 Jan and shared Singapore's experience in implementing competition law as well as discussed possible areas of cooperation between Singapore and the United Arab Emirates in the area of competition.

SEMINAR WITH EMERITUS PROFESSOR RICHARD WHISH QC



Topic: Recent Developments in EU and UK Competition Law

Professor Richard Whish is an eminently regarded expert on EU and UK Competition Law. In this in-house seminar on 29 Jan, Professor Richard Whish shared his views with CCCS officers on current competition issues being litigated within the EU and UK jurisdictions. The seminar focused on cartel cases pending before the European Commission, the enforcement by the European Commission of abuse of dominance cases, and other relevant topics and issues being examined in the EU and UK, such as the increase in private litigation.

HONG KONG COMPETITION EXCHANGE



Watch the interviews with CCCS's CE on the Competition Exchange website (https://www.compex.org/en/comp_tv.php):

- Implementation of the Competition Ordinance in Hong Kong 2018
- CCCS' experience in promoting competition in the car-hailing market
- CCCS' advocacy work in relation to the car-hailing market
- CCCS' merger review on the Uber-Grab deal

Hong Kong Competition Exchange 2018 is Hong Kong Competition Commission's inaugural international conference bringing together distinguished judges, practitioners, academics and enforcers in the field of competition law and policy to exchange perspectives, best practices and experiences.

VISIT BY MR. MATTHEW BOSWELL, INTERIM COMMISSIONER OF COMPETITION, COMPETITION BUREAU CANADA

Mr. Matthew Boswell and Mr. Brendan Ross, Major Case Director & Strategic Policy Advisor for Deceptive Marketing Practices of the Competition Bureau Canada visited CCCS on 30 October 2018. During the visit, they had interesting discussions with CCCS's senior management team and staff on deepening the relationship between both authorities and to share experiences on Competition and Consumer Protection matters.



SHOWCASE

GCR INSIGHT: E-COMMERCE COMPETITION ENFORCEMENT GUIDE



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Competition and Consumer Commission of Singapore

Lee Pei Rong Rachel and Leow Rui Ping*

The functions of the Competition and Consumer Commission of Singapore

The Competition and Consumer Commission of Singapore (CCCS) was first established on 1 January 2006 as the Competition Commission of Singapore (CCS), following the enactment of the Competition Act (Cap. 50B) (the Competition Act).¹ The Competition Act is aimed at protecting businesses and consumers from anti-competitive conduct, and so as to promote the efficient functioning of our markets and enhance the competitiveness of the Singapore economy.² The CCCS administers and enforces the provisions of the Competition Act.

The Competition Act prohibits specified activities that adversely affect competition within

markets in Singapore, including:

- agreements and/or concerted practices that prevent, restrict or distort competition;
- abuse of a dominant position; and
- mergers that substantially lessen competition.

With effect from 1 April 2018, the CCS was renamed the CCCS and has taken on responsibility for the additional function of administering the Consumer Protection (Fair Trading) Act (Cap. 51A) (CPFTA).³ The CPFTA was enacted in 2003 and contains safeguards to protect consumers from

1. Lee Pei Rong Rachel is an assistant director of the Enforcement Division and Leow Rui Ping is an assistant director with the Policy and Markets Division of the Competition and Consumer Commission of Singapore.
2. The provisions of the Competition Act are found at <https://sso.agc.gov.sg/Act/CA2004>.
3. Speech delivered by then Senior Minister of State for Trade and Industry, Dr Vivian Balakrishnan during the Second Reading for the Competition Bill on 30 October 2004. This is found at <https://www.ccs.gov.sg/media-and-publications/speeches/second-reading-speech-for-the-competition-bill-by-the-senior-minister-of-state-for-trade-and-industry-dr-vivian-balakrishnan>.
4. The provisions of the CPFTA are found at <https://sso.agc.gov.sg/Act/CPFTA2003>.

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to read



CCCS contributed an article (pg 220) which focuses on CCCS's current efforts to address the rise of e-commerce and disruptive technologies and examines the challenges that CCCS faces in this field, as well as whether CCCS's current suite of enforcement tools is sufficient to deal with implications from these new developments.

CCCS CORPORATE VIDEOS (WITH CHINESE SUBTITLES)



Who are you hurting the most?

Will you make the right choice to protect the ones you love most?

Scan the QR code
to view the videos



Coffeshop Talk

When Chan's business did not do well, he sought out his friends' advice. Will Chan stay ahead of the competition the right way?

ON THE RECORD



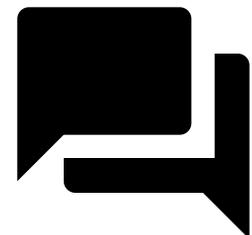
"The information provided by third parties during public consultation plays an important role in CCCS's assessment of mergers. For this reason, CCCS's public register makes available information relating to a merger transaction that describes the merger parties involved, the rationale for it and a description of the business activities of the merger parties. Information on parties who would be affected by the transaction and the possible competitive effects and efficiencies arising from it is also available. This information (on CCCS's public register) helps interested parties to better understand the merger transaction, and enables them to raise specific competition concerns on or show support for the transaction to the CCCS."



- Mr. Teo Wee Guan, Director (International & Strategic Planning), CCCS, in a forum reply to The Straits Times on 11 October 2018 in relation to the NTUC/Kopitiam acquisition, clarifying on the type of information made publicly available on merger parties during public consultation.

"CCCS is investigating a number of lift companies which have allegedly refused to supply lift spare parts for maintenance in HDB estates since 2016. The companies under investigation can offer voluntary commitments which are legal undertakings to supply lift parts to address competition concerns. To date, we have accepted such voluntary commitments from three lift companies and this is deemed sufficient to address our concerns. CCCS is seeking public feedback on the commitments offered by two other lift companies. Since the start of CCCS' investigation, the number of complaints about the inability to secure lift spare parts has fallen. CCCS will continue to detect anti-competitive conduct and, where appropriate, mete out necessary directions, including financial penalty."

- Mr. Herbert Fung, Director (Business & Economics), CCCS, in a forum reply to The Straits Times on 30 January 2019, highlighting CCCS's investigations and enforcement action into the alleged refusal by lift companies to supply spare parts to 3rd party maintenance contractors, which may be in breach of the Competition Act.



BLUEPRINT

BUYERS BEWARE!



LUXSTYLE INTERNATIONAL: SENT PAYMENT NOTICES WHICH CONSUMERS DID NOT AGREE TO



Businesses cannot demand payment for unsolicited goods or services.

Consumers are **not obliged** to make payment for unsolicited goods.



THE AISLE BRIDAL BOUTIQUE: SUDDEN CLOSURE



Total consumers' prepayments lost: at least **\$56,770**.

Consumers can **purchase insurance** that covers business insolvency to **protect prepayments**.



FASHION INTERACTIVE/ MYGLAMOROUS.SG: CONSUMERS AUTO ENROLLED AS VIP MEMBER, CHARGED MONTHLY MEMBERSHIP FEES



Businesses cannot use small print to conceal facts from consumers.

Consumers should be wary of fine print when shopping online and review credit card statements.

