

Market Inquiry into the Leasing of Private Retail Spaces in Singapore

Findings and Recommendations

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Market Inquiry into the Leasing of Private Retail Spaces in Singapore

Findings and Recommendations

I. EXECUTIVE SUMMARY

Introduction

1. In March 2020, the Competition and Consumer Commission of Singapore (“**CCCS**”) noted media reports which suggested that tenants in private retail developments in Singapore were faced with an uneven bargaining position when negotiating their tenancy agreements. CCCS observed that tenants had complained that unfair tenancy clauses were common in tenancy agreements, and that tenancy agreements may contain potentially anti-competitive clauses.
2. CCCS commenced a market inquiry in April 2020 to look into features of the retail space market(s), with a focus on whether there are structural problems in the market(s) for the leasing of private retail spaces in Singapore. It is not anti-competitive for a landlord to possess market power or to be able to charge higher rents or be more profitable. Landlords may have market power based on competitive merits, such as providing retail spaces that are more attractive to tenants than other retail spaces. Competition concerns arise when a landlord that has substantial market power abuses its market power to engage in conduct to foreclose competition within a market. In this regard, CCCS inquired into whether landlords possess market power and, if so, potential reasons for such market power, as well as whether tenancy agreements contain potentially anti-competitive clauses.
3. As part of the assessment, CCCS conducted a tenant survey and interviews, sought information from major landlords, and worked with Enterprise Singapore (“**EnterpriseSG**”) and the Urban Redevelopment Authority (“**URA**”) to obtain relevant information and data on retail spaces in Singapore. Where necessary, CCCS also exercised its statutory powers to obtain commercially sensitive information from landlords and tenants.
4. On 26 June 2020, key representatives from Singapore’s landlord and tenant communities, together with industry experts, formed the Fair Tenancy Pro Tem Committee to strengthen collaboration between landlords and tenants, with the intent to address long-standing tenancy issues for Singapore’s retail, food & beverage, and

lifestyle sectors, and establish industry norms on tenancy practices and terms. On 26 March 2021, a Code of Conduct for Leasing of Retail Premises in Singapore (“CoC”) was introduced. The CoC sets out fair and balanced guidelines for the negotiation of lease agreements and sets out a process for resolving disputes after lease agreements have been signed. On 3 May 2021, the Fair Tenancy Industry Committee (“FTIC”), which comprises representatives from both landlord and tenant communities as well as neutral parties, was set up to be the custodian of the CoC and to monitor industry compliance.

Overview of retail spaces in Singapore

5. In Singapore, retail space can be categorised into public and private retail spaces:
 - a. Public retail spaces predominantly comprise HDB-owned units in neighbourhood/town centres, and HDB shopping complexes.
 - b. Private retail spaces can be strata-titled or non-strata-titled. Strata-titled retail developments typically have decentralised ownership, where multiple landlords each own one or some (but typically not all) units in the development. In contrast, non-strata-titled retail developments are typically owned by a single landlord such as a property developer or real estate investment trust.
6. CCCS noted that from Q1 2015 to Q1 2020, vacancy rates for private retail spaces remained consistently higher than that for public retail spaces, and that there was a rising trend in vacancy rates for both private and public retail spaces over this period. During this period, vacancy rates for private retail spaces in the Central Area also remained relatively stable, as compared to private retail spaces in the rest of Singapore. At the same time, there was a decreasing trend of supply of private retail spaces in the pipeline from 2021 to 2023. Total available stock of private retail spaces in Singapore generally decreased from Q2 2020 to Q3 2021, with a slight increase as at end Q4 2021.

Factors impacting market power of landlords

7. In the context of a landlord-tenant relationship, market power arises when landlords of retail developments do not face sufficiently strong competitive pressure. From the market inquiry, CCCS identified several factors which are likely to confer market power to some centrally managed private retail developments, namely:
 - a. **Strata-titled and public retail developments are generally not viable alternatives to centrally managed non-strata-titled retail developments.** The

results from the tenant survey and interviews indicated that strata-titled retail developments tend not to be centrally managed, which may affect marketing efforts, maintenance, upgrading efforts, the tenant mix and footfall. Such developments also tend not to be in a good location (e.g., not next to an MRT station), and do not generate high footfall. Similar considerations of footfall, mall management and location were also cited as reasons for public retail developments generally not being a viable alternative.

- b. **Retail developments outside of the relevant planning area are generally not considered to be alternatives.** Tenants that are chain operators (which tend to form the bulk of the tenants at centrally managed non-strata-titled retail developments) have a general strategy of locating their outlets at various retail developments in Singapore in order to maximise their catchment of customers. Therefore, to such chain operator tenants, only retail developments that are approximately within the same planning area are treated as substitutes. Retail developments in different planning areas may be considered by such tenants as complements instead of substitutes.
- c. **Tenants value retail developments that attract high shopper footfall.** Such developments bring more customers, especially of the target customer profile, to a tenant's outlet and are particularly of value to mass market concepts that depend on high shopper traffic and visibility to attract and capture customers.
- d. **Tenants value retail developments with a strategic location.** In particular, a key advantage that a retail development would have is its proximity to an MRT station on a key transport node, which confers an advantage in terms of ensuring higher shopper footfall generated from MRT commuters.
- e. **Tenants value retail developments with better perceived mall management.** Such developments are better resourced to put together comprehensive marketing campaigns or strategies to increase shopper footfall. A better managed retail development can also result in shoppers enjoying a more pleasant shopping experience and being attracted to return.
- f. **High switching costs incurred from relocation may weaken competition.** Even in the face of rising rental rates or perceived unfair or unfavourable terms and conditions in tenancy agreements, tenants may be unwilling to relocate due to high switching costs. A lease could be as long as three years, and a tenant would need to stay sufficiently long in order to justify its initial capital expenditure. A move to relocate would also incur extra costs such as renovation at the new

location and could cause the potential loss of a tenant's established client base at its current location.

- g. **Limited availability of spaces in alternative retail developments.** The more popular retail developments tend to be well-occupied, resulting in limited availability of alternative ideal retail spaces, even if a tenant wanted to be located at such a retail development.

Evidence of market power

8. Having identified a range of factors which may impact market power, CCCS then conducted a review of the evidence available to it to determine which retail developments are likely to have market power. The market power of a landlord may be reflected in its ability to charge rents above competitive levels, earn a higher revenue per square foot or dictate the terms and conditions in tenancy agreements.
9. First, CCCS observed that there were generally higher median retail rental rates in suburban regions (i.e., East, North, North-East and West Region) as compared to the Central Region (i.e., Central Area and Fringe Area) in the period of Q1 2015 to Q1 2020, which suggests that some landlords of retail developments in these areas may possess a degree of market power which enabled them to charge higher rents over this period.
10. Second, CCCS identified key centrally managed retail developments in Singapore that are managed by major property managers, and determined which ones are more likely to possess a degree of market power. This was done through an examination of their annual gross revenue per square foot of net lettable area ("**NLA**"). A retail development is more likely to possess market power if it can command higher rental rates to earn a higher gross revenue per square foot of NLA. CCCS noted that the top centrally managed retail developments by gross revenue per square foot of NLA are typically the largest or the only retail developments in their respective planning areas and are next to the main MRT station in the planning area.
11. CCCS found that a retail development's footfall and mall management have statistically significant effects on a retail development's gross revenue per square foot of NLA, which is consistent with the findings from the tenant survey and interviews that footfall and mall management are key considerations for tenants when choosing a retail development.
12. Third, CCCS noted that some landlords have the ability to dictate certain clauses in their tenancy agreements. Such tenancy clauses include terms that (a) give landlords the

ability to prematurely terminate leases due to asset enhancement initiatives without compensating tenants for expenses incurred in the course of setting up their shops and (b) establishing rental structures which are favourable to landlords. Tenants often found themselves with little bargaining power when negotiating rent, exacerbated by the lack of transparency and thus the lack of a benchmark in determining the market rate for rental in a particular private retail development. The tenants' lack of bargaining power is manifested in the landlords' "take-it-or-leave-it" attitude towards such clauses in negotiations and the landlords' ability to pick and choose their tenants.

13. Overall, the evidence shows that some retail developments are able to charge higher rents, earn higher gross revenues per square foot of NLA or dictate the terms and conditions, suggesting that they may possess some degree of market power within a planning area.

Potential anti-competitive issues

14. As part of the market inquiry, CCCS examined a sample of over 500 tenancy agreements and identified two categories of contractual clauses used by landlords that may give rise to potential competition concerns, namely (a) exclusivity radius clauses that restrict a tenant from opening a similar business at another retail development within a certain radius and (b) clauses that impose restrictions on the choice of electricity retailers that can be used by a tenant.

Exclusivity radius clauses

15. Where the landlord of a retail development is dominant, its use of exclusivity radius clauses may restrict the ability of other landlords in the same catchment area from securing tenants based on their competitive merit and having a suitable tenant mix.
16. CCCS examined 530 tenancy agreements and found that only 18 agreements had such exclusivity radius clauses. Given this and the lack of concerns raised by tenants during the interview sessions, CCCS assessed that any potential anti-competitive effects arising from the usage of such clauses would be not significant.

Restrictions on the choice of electricity retailer

17. Clauses restricting the choice of electricity retailer a tenant may use (a) bind tenants to pay for their electricity consumption to or through their landlord, who purchases electricity for the entire retail development from an Open Electricity Market retailer,

and (b) allow landlords to have the ability to determine the electricity rates charged to tenants.

18. CCCS noted feedback from tenants who have such a clause in their tenancy agreements that they are obliged to use the landlord's designated utilities provider if they want the location and unit in the retail development. In addition, such tenants do not have visibility of their usage rate and how the charges are determined, which are subject to the landlord's discretion. As there are no avenues prescribed in the tenancy agreements for any appeal, review, or dispute of these charges with their landlord, tenants' ability to contest such charges is likely to be weak.
19. The effect of such clauses is similar to a tying arrangement which limits the ability on the part of tenants to purchase electricity from more affordable alternative electricity retailers. By requiring tenants to purchase electricity from the landlord as a condition for the grant of a rental lease, the landlord of a retail development that has a dominant position in a market for leasing of retail spaces in Singapore may be abusing its dominance by imposing such terms.
20. CCCS noted that the use of such electricity clauses is widespread and can involve the significant mark-up of electricity rates by landlords. Thus, where the landlord of a retail development is found to be dominant, such an arrangement may bring about anti-competitive effects where it prevents, restricts or distorts competition in connection with the supply of electricity to tenants (e.g., restriction of tenants' choice in electricity retailers, and foreclosure of other suppliers of electricity from serving such tenants).

Recommendations

21. Given the widespread use of restrictive electricity clauses by landlords, CCCS recommended to the Ministry of Trade and Industry that the issue would be better addressed through an industry-wide regulatory solution, rather than investigations in each case as to whether the landlord of a retail development is dominant and abusing such dominance.
22. In assessing the appropriate solution for the issue, CCCS noted the varying constraints faced by landlords depending on the existing electricity infrastructure of their buildings. Where the existing physical infrastructure of the building could support tenants being allowed to choose their own electricity retailers, CCCS recommended that tenants be allowed to do so. In contrast, where the existing physical infrastructure of the building could not support tenants being allowed to choose their own electricity retailers and where consent from all tenants in the building is required for landlords to bulk purchase

electricity, CCCS noted landlords' explanation that the bulk purchase of electricity enabled cost savings from economies of scale. In such situations, CCCS agreed that landlords need not provide tenants with the choice of their own electricity retailers. Instead, CCCS recommended that landlords be required to charge electricity fees without any mark-up or price discrimination between landlord and tenants in the same building so that both the landlord and tenants can benefit from the cost savings. CCCS notes that the CoC has incorporated these features.

II. INTRODUCTION

1. This report sets out the Competition and Consumer Commission of Singapore's ("CCCS") findings and recommendations from its market inquiry into the leasing of private retail spaces in Singapore.
2. CCCS commenced the market inquiry in April 2020 to look into features of the retail space market(s) in Singapore including structural and regulatory issues, industry practices, tenants' considerations and barriers to entry that may prevent, restrict or distort competition. It is not anti-competitive for a landlord to possess market power or to be able to charge higher rents or earn higher profits. Landlords may have market power based on competitive merits, such as providing retail spaces that are more attractive to tenants. Competition concerns arise when a landlord that has substantial market power abuses its market power to engage in conduct to foreclose market competition.

III. BACKGROUND

3. Arising from the COVID-19 pandemic in March 2020, CCCS noted media reports that suggested that tenants in private retail developments in Singapore were faced with an uneven bargaining position when negotiating their tenancy agreements. In particular, according to news articles published by TODAY and The Business Times¹, tenants complained that certain unfair tenancy clauses were common in tenancy agreements. These pro-landlord clauses purport to impose onerous payment terms on tenants, restrict tenants' early termination rights, impose charges or obligations on tenants without negotiation, and restrict/exclude either the landlords' duties or landlords' liabilities towards tenants.
4. While a sub-committee under the Singapore Business Federation ("SBF") had put out a Fair Tenancy Framework in 2015 aimed at bringing landlords and tenants together to discuss fair and equitable leasing practices and to put a stop to unfair leasing practices, the SBF noted that landlords had resisted doing so given that the framework was voluntary and had no legal basis. The news articles also noted tenants' desire for more transparency in terms of rental information, which would allow them to make more informed decisions.
5. CCCS also noted that there may be potentially anti-competitive clauses contained in tenancy agreements, such as clauses which restrict tenants from setting up similar businesses at other retail developments within a certain radius ("**exclusivity radius clauses**"), normally between 1 to 2 km, of the retail development. This may foreclose other retail developments from having access to these tenants, especially if they are considered desirable to the tenants

¹ "Businesses push for fair tenancy law as grouses against landlords resurface amid Covid-19 outbreak", TODAY online, 25 March 2020; "Timely to give Singapore's fair tenancy framework legislative bite", The Business Times, 3 April 2020.

which would increase the attractiveness of competing retail developments. The use of such clauses could potentially be anti-competitive under section 47 of the Competition Act 2004 (“**Competition Act**”) if the landlord of the retail development imposing such clauses is considered dominant in a relevant market for the leasing of retail spaces in Singapore.

6. CCCS also noted a potential competition issue pertaining to certain landlords’ practices of restricting tenants from independently procuring electricity from electricity retailers through the Open Electricity Market. Instead, these landlords procure electricity for the entire retail development at competitive prices but charge their tenants a rate for electricity consumption which does not take into account the landlords’ cost savings.

7. In light of the above, CCCS’s assessment in the market inquiry focused on whether there are structural problems in the market(s) for the leasing of private retail spaces in Singapore. In particular, CCCS assessed whether landlords possess market power and, if so, potential reasons for their market power. CCCS also examined if there are potentially anti-competitive clauses used by landlords in their tenancy agreements.

8. As part of the assessment, CCCS conducted a tenant survey and interviews, sought information from major landlords and worked with Enterprise Singapore (“**EnterpriseSG**”) and the Urban Redevelopment Authority (“**URA**”) to obtain relevant information and data on retail spaces in Singapore. Where necessary, CCCS also utilised its powers under section 61A² of the Competition Act to obtain commercially sensitive information such as tenancy and electricity agreements from landlords and tenants.

9. On 26 June 2020, key representatives from Singapore’s landlord and tenant communities, together with industry experts, formed the Fair Tenancy Pro Tem Committee to strengthen collaboration between landlords and tenants, with the intent to address long-standing tenancy issues for Singapore’s retail, food & beverage and lifestyle sectors, and establish industry norms on tenancy practices and terms.³ On 26 March 2021, a Code of Conduct for Leasing of Retail Premises in Singapore (“**CoC**”) was introduced. The CoC sets out fair and balanced guidelines for the negotiation of lease agreements and sets out a process for resolving disputes after lease agreements have been signed.⁴ On 3 May 2021, the Fair Tenancy Industry Committee (“**FTIC**”) which comprises representatives from both landlord and tenant communities as well as neutral parties, was set up to be the custodian of the CoC

² Section 61A relates to CCCS’s power to require documents or information. Subsection (1)(a) states, “Where the Commission has reasonable grounds for suspecting that any feature, or combination of features, of a market in Singapore for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Singapore, the Commission may, by written notice to any person, require the person to produce to the Commission a specified document, or to provide the Commission with specified information, which the Commission considers relates to any matter relevant to such purposes.”

³ Singapore Business Federation, “Code of Conduct to be Introduced for Leasing of Retail Premises” dated 26 March 2021, paragraph 1.

⁴ Singapore Business Federation, “Fair Tenancy Industry Committee Takes the Lead in Adopting Code of Conduct for Leasing of Retail Premises in Singapore” dated 1 June 2021, paragraph 5.

and to monitor industry compliance.⁵

IV. OVERVIEW OF RETAIL SPACES IN SINGAPORE

(A) Overview of industry

- 10. For the purpose of the market inquiry, retail spaces refer to the spaces used for shopping, food & beverage (“F&B”), entertainment and health & fitness purposes as opposed to commercial or industrial spaces.⁶
- 11. In Singapore, retail spaces can be categorised into public and private retail spaces:
 - a. Public retail spaces predominantly comprise HDB-owned shops in neighbourhood/town centres, and HDB shopping complexes.⁷
 - b. Private retail spaces can be strata-titled or non-strata-titled. Strata-titled retail developments typically have decentralised ownership, where multiple landlords each own one or some (but typically not all) units in the development. In contrast, non-strata-titled retail developments are typically owned by a single landlord such as the property developer or a real estate investment trust (“REIT”).
- 12. **Table 1** below provides an overview of the occupied public and private retail spaces in Singapore.

[Table 1: Breakdown of Occupied Retail Spaces by net floor area and Ownership Type \(as at 4Q 2019\)⁸](#)

[✕]

(B) Planning of retail spaces by URA in Singapore

- 13. [✕]
- 14. **Annex 1** sets out URA’s planning regions, planning areas and sub-planning regions classification.

⁵ Fair Tenancy Industry Committee, <https://www.ftic.org.sg/about/> ; Singapore Business Federation, “Code of Conduct to be Introduced for Leasing of Retail Premises” dated 26 March 2021, paragraph 9.
⁶ URA REALIS.
⁷ Examples include Woodlands North Plaza, Oasis Terraces, Loyang Point, Sunshine Place, and Hong Lim Plaza.
⁸ URA’s email dated 24 April 2020.

(C) Major players in private retail spaces

15. Non-strata-titled private retail spaces in Singapore are typically owned by private developers or REITs.

16. REITs are funds that invest in a portfolio of income-generating real estate assets, such as shopping malls, offices, hotels and industrial properties with the aim of generating income for unit holders of the REIT.⁹ These assets are professionally managed, and revenues generated from assets (primarily rental income) are normally distributed at regular intervals to REIT holders. A REIT manager typically appoints a property manager to manage the real estate properties of the REIT. The property manager's responsibilities include renting out the property to achieve the best tenancy mix and rental income, running marketing events or programmes to attract shoppers/tenants and ensuring the upkeep of the property. In return, the property manager is paid a fee out of the revenue generated by assets of the REIT.¹⁰

17. While non-strata-titled retail developments are centrally managed by the property manager or the landlord, strata-titled retail developments are typically managed by a management corporation strata title ("MCST"), which is a council representing the owners of the individual strata-titled units within the retail development that is set up to manage the affairs of the retail development, especially the common areas, typically with the assistance of a managing agent.¹¹ Some examples include Lucky Plaza, Far East Plaza, Katong Shopping Centre, Queensway Shopping Centre, Beauty World Centre, and Peninsula Plaza. However, there are a relatively small number of strata-titled retail developments that are centrally managed by a property manager. For example, Lendlease is the property manager for Parkway Parade, even though the development is strata-titled with multiple owners. Further, there are some strata-titled retail developments where all units are owned by a single owner, and these may in some instances be centrally managed by the single owner. For example, Far East Organisation centrally manages its wholly owned strata-titled retail developments. Therefore, whether there is central management of a retail development is not determined solely by whether the retail development is strata-titled or non-strata-titled, though most strata-titled retail developments are not centrally managed.

18. As shown in **Figure 1** below, as at end of 2019, CapitaLand Mall Trust had the highest share in terms of net floor space of major shopping malls¹² in Singapore at 14.1%. The next largest landlord was NTUC Enterprise with 5.8% share, followed by Lendlease with a share of 4.9%. Within the REITs category, the second largest player after CapitaLand Mall Trust was

⁹ REIT Association of Singapore ("REITAS"), "What is a REIT?". <https://www.reitas.sg/reit-basics/what-is-a-real-estate-investment-trust-reit>.

¹⁰ MoneySense, "Understanding real estate investment trusts (REITs)", dated 29 October 2018. <https://www.moneysense.gov.sg/articles/2018/10/understanding-real-estate-investment-trusts-reits>

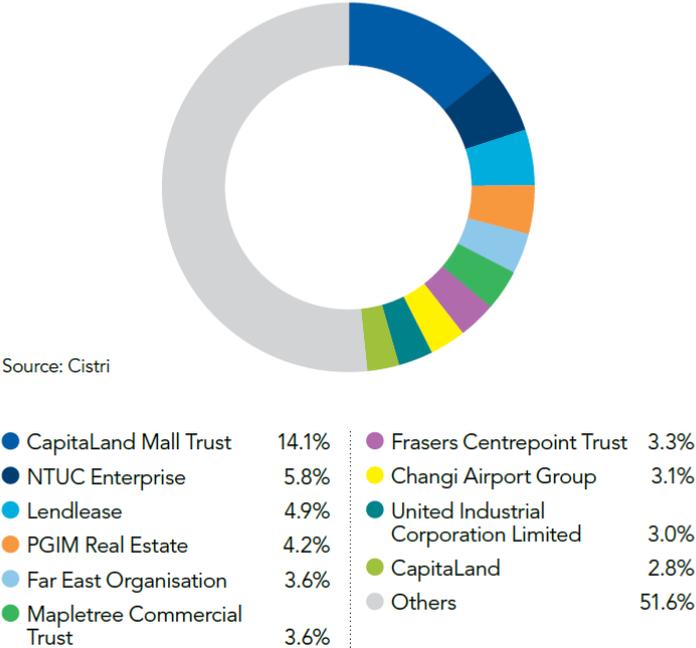
¹¹ For more information about MCSTs, refer to: <https://www1.bca.gov.sg/regulatory-info/building-maintenance-and-strata-management/management-corporation-strata-title-mcst>.

¹² Malls (leasehold and strata) with net lettable area ("NLA") of 100,000 sq ft and above as at end 2019.

Mapletree Commercial Trust which has a share of 3.6%, followed by Frasers Centrepoint Trust with 3.3%.

Figure 1: Proportions of ownership in major retail developments in Singapore by net lettable area¹³

Share of Major Shopping Mall Floor Space by Owner
Singapore, 2019



(D) Vacancy rates

19. In Singapore, vacancy rates for private retail spaces remained consistently higher than that of public retail spaces for over the period of Q1 2015 to Q1 2020, as seen in **Figure 2** below. The vacancy rates for private retail spaces averaged at 8.6% as compared to 4.8% for public retail spaces for the period of Q1 2015 to Q1 2020.

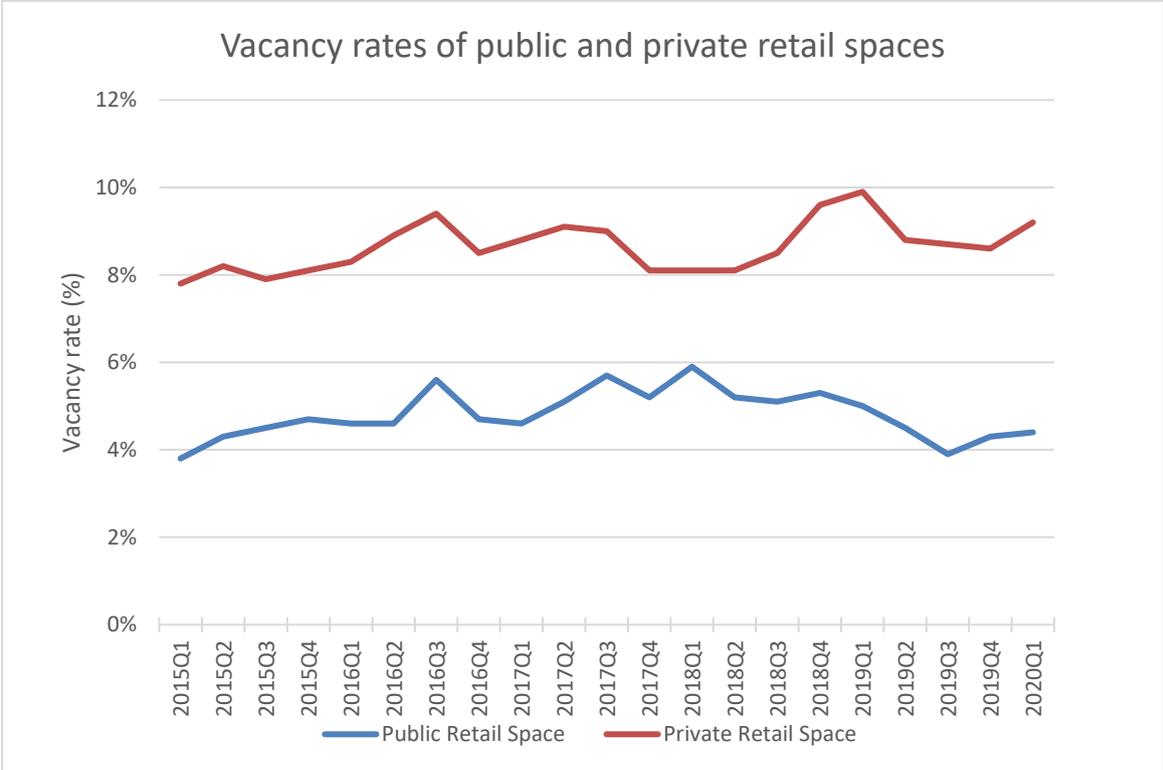
20. Since Q1 2015, there has been a general increase in vacancy rates for public and private retail spaces in Singapore. The vacancy rates for private retail spaces increased by 1.4% point from Q1 2015 to Q1 2020. A slightly smaller increase of 0.6% point was observed for public retail spaces over the same period.

21. The rising trend in vacancy rates suggests a general increase in the availability of

¹³ CapitaLand Mall Trust Annual Report 2019, Page 104; Floor space shares accounts for ownership stakes. Fund managers are treated as single owners. REITs and sponsors are treated as separate owners. For example, Frasers Centrepoint Trust’s floor space share excludes floor space owned by Frasers Property.

private retail spaces for tenants in Singapore.

Figure 2: Vacancy rates of public and private retail spaces in Singapore



Source: URA REALIS (downloaded in Apr 2020)

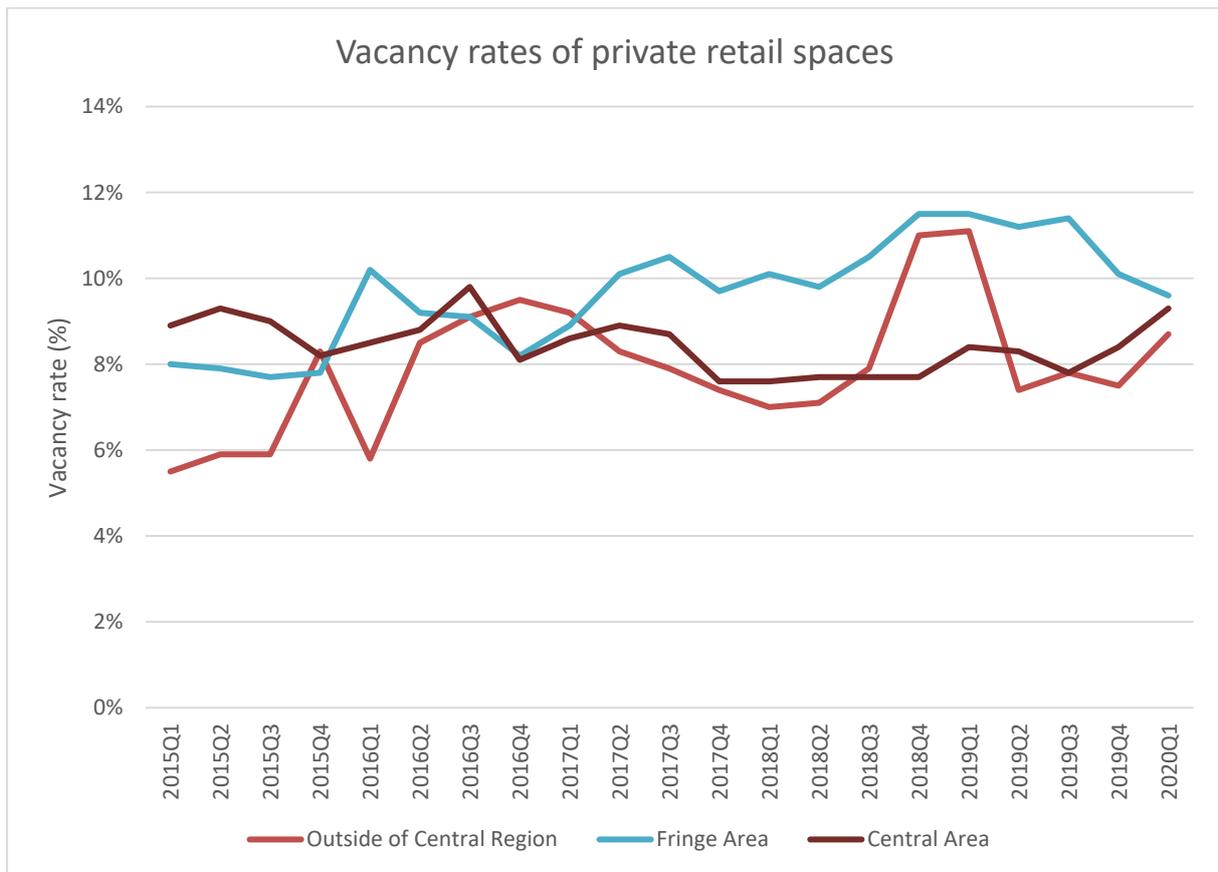
22. As shown in **Figure 3** below, across different regions/areas in Singapore, vacancy rates for private retail spaces in the Central Area have remained relatively stable as compared to that of the Fringe Area and the Outside of Central Region (i.e., East, North-East, North and West Regions)¹⁴ over the period of Q1 2015 to Q1 2020.

23. There was only a slight increase of 0.4% point in vacancy rates in the Central Area from Q1 2015 to Q1 2020. In contrast, vacancy rates for the Fringe Area increased by 1.6% point over the same period. A larger increase of 3.2% point was observed for the Outside of Central Region over the same period.

24. As at end Q1 2020, the vacancy rates for each of the Central Area, Fringe Area and Outside of Central Region converged towards the range of 8.7% to 9.6%.

Figure 3: Vacancy rates for private retail spaces in different parts of Singapore

¹⁴ Refer to Annex 1 for URA classification of planning regions, sub-planning regions and planning areas.



Source: URA REALIS (downloaded in Apr 2020)

(E) Supply in the pipeline

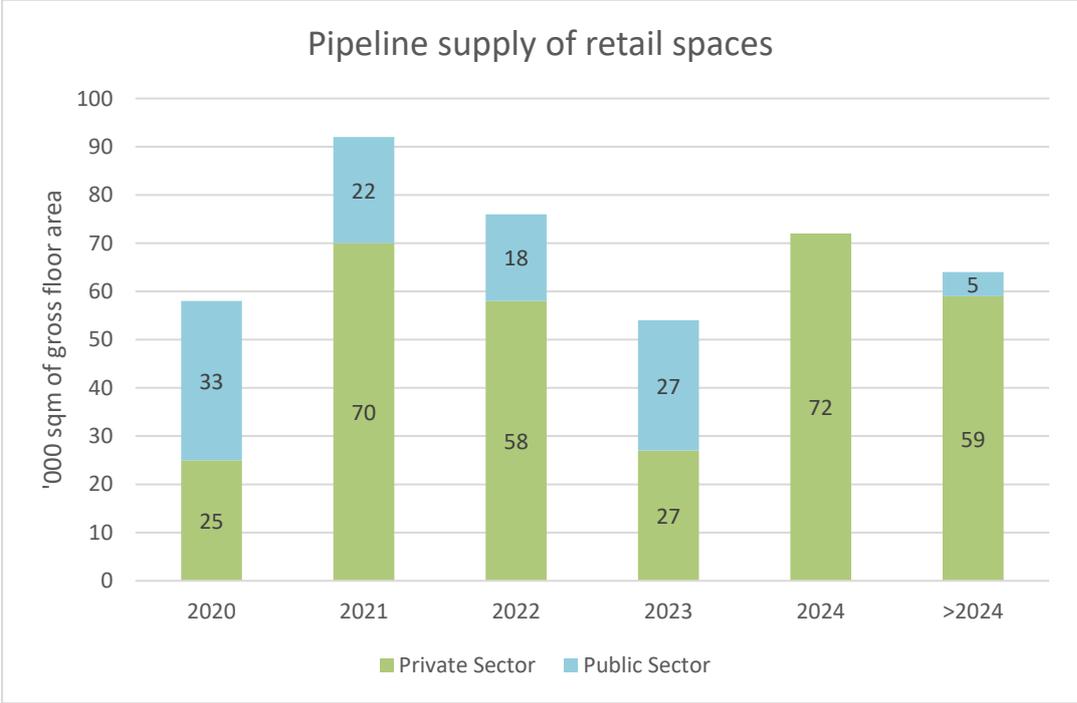
25. The total available stock of private retail spaces in Singapore stands at 4,647,000 sqm net floor area (“NFA”)¹⁵ as at end Q1 2020.¹⁶

26. As at end of Q1 2020, there was a total of 416,000 sqm of gross floor area (“GFA”) of planned public and private retail spaces in the pipeline. Around 311,000 sqm (or 75%) of the pipeline supply will be used for private retail spaces. **Figure 4** below provides the breakdown of the pipeline supply of public and private retail spaces for 2020 to 2024 and beyond.

¹⁵ Net floor area and net lettable area are generally used interchangeably.

¹⁶ URA REALIS.

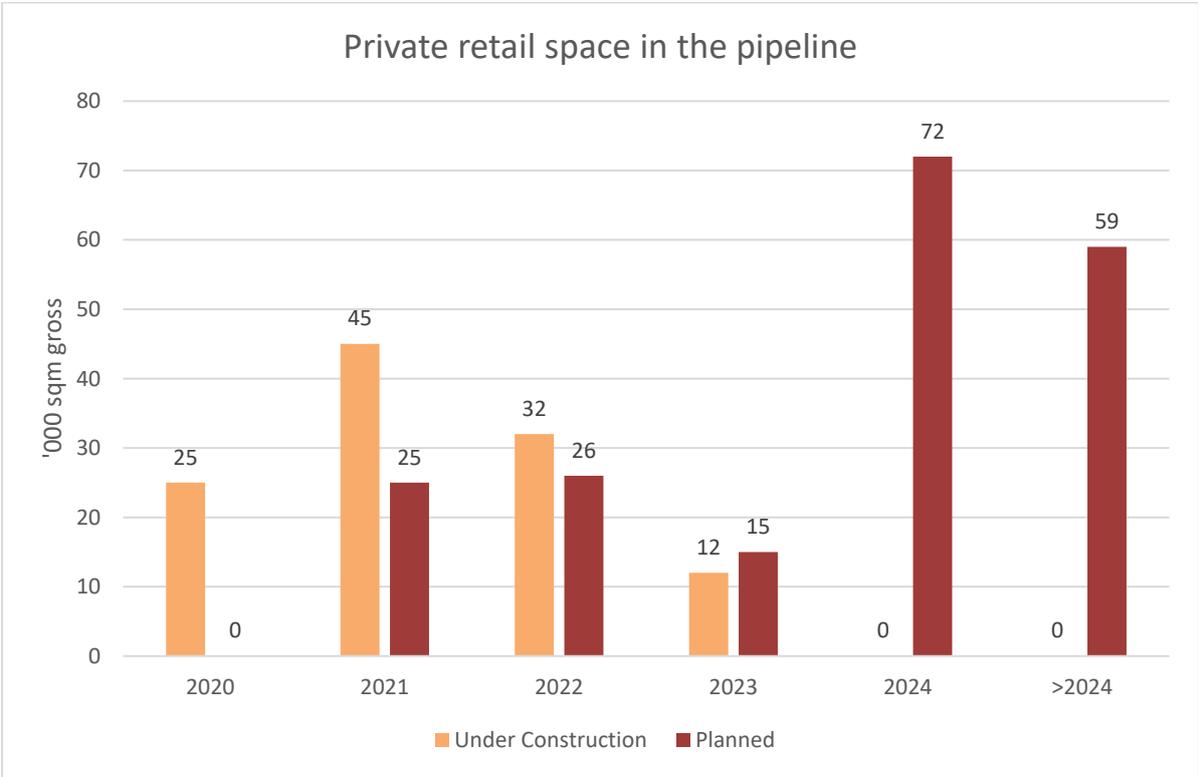
Figure 4: Pipeline supply of future retail spaces as at end Q1 2020



Source: URA REALIS (downloaded in Apr 2020)

- 27. Of the total 311,000 sqm GFA of pipeline supply of private retail spaces, around 114,000 sqm GFA (or 37%) was already undergoing construction, as shown in **Figure 5** below.
- 28. Overall, there was a decreasing trend in the supply of private retail spaces in the pipeline (planned and under construction) in the immediate two to three years as at end Q1 2020 (see **Figure 5** below).
- 29. Total available stock of private retail spaces in Singapore generally decreased from 4,651,000 sqm NFA in Q2 2020 to 4,590,000 sqm NFA in Q3 2021, with a slight increase to 4,614,000 sqm NFA as at end Q4 2021.

Figure 5: Private retail spaces in the pipeline (planned and under construction) as at end Q1 2020



Source: URA REALIS (downloaded in Apr 2020)

V. CCCS TENANT SURVEY AND INTERVIEWS

30. Between May and June 2020, CCCS conducted a tenant survey of 81 EnterpriseSG account-managed companies, as well as members of various trade associations and tenant groups which are tenants at private retail spaces in Singapore.¹⁷ CCCS received substantive responses from 121 tenants of private retail spaces which collectively leased a total of 1,671 units in private and public retail developments in Singapore. Of the respondents, 58% were involved in shopping, entertainment and health & fitness, while 42% were in the F&B business. Out of the 1,671 units leased by the respondents, only 205 units (12.3%) were located at public retail spaces. 75.4% of the respondents did not rent units in public retail spaces.

31. CCCS also conducted online interviews with four selected tenants¹⁸, each of which have multiple outlets in various private retail spaces in Singapore, two of which were F&B chains and the other two, retail chains. In-depth questions relating to factors considered by tenants in locating their outlets, and alternative retail developments were discussed.

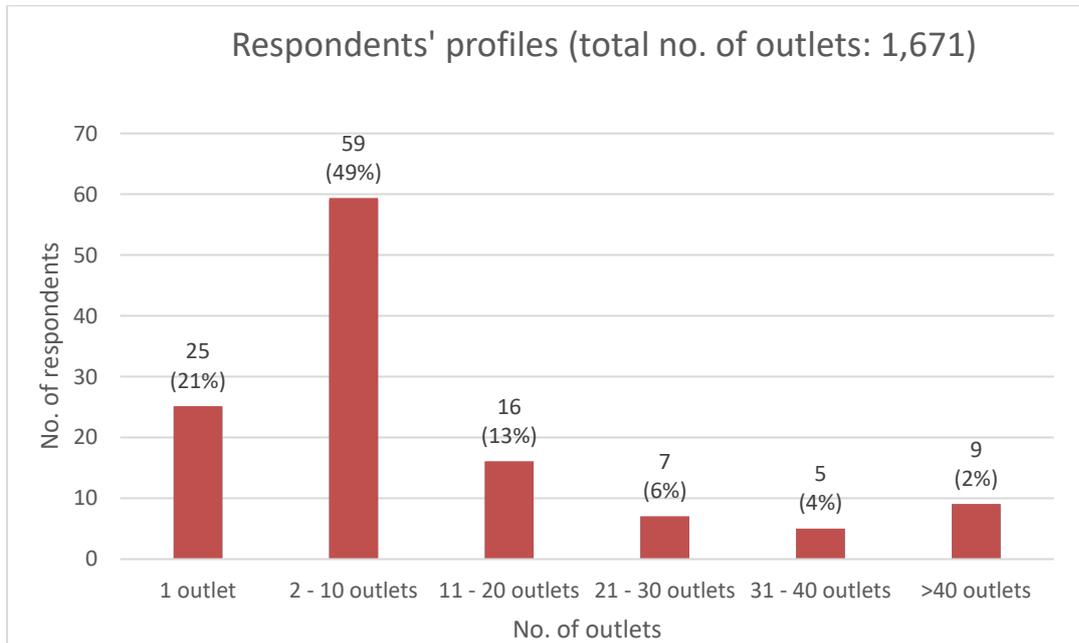
32. The survey focused on understanding, from the tenants' perspectives, whether there are certain retail developments which are preferred to other retail developments even though the latter are located within the vicinity and, if so, the reasons why, and whether this has resulted in these preferred retail developments having significant market power. Amongst others, questions were asked relating to the factors considered by tenants in their choice of location, alternatives the tenants had considered prior to locating their outlets at their current retail developments, reasons for and against their decisions, the extent to which they considered strata-titled and public retail developments to be good substitutes to non-strata titled developments, and their experience with various perceived unfair/unfavourable clauses in their tenancy agreements.

33. **Figure 6** below shows a breakdown of the respondents' profiles by number of outlets.

¹⁷ The trade associations and tenant groups were the Singapore Business Federation, Association of Small and Medium Enterprises, Restaurant Association Singapore, Singapore Retailers Association, Singapore Tenants United for Fairness and Singapore Furniture Industries Council.

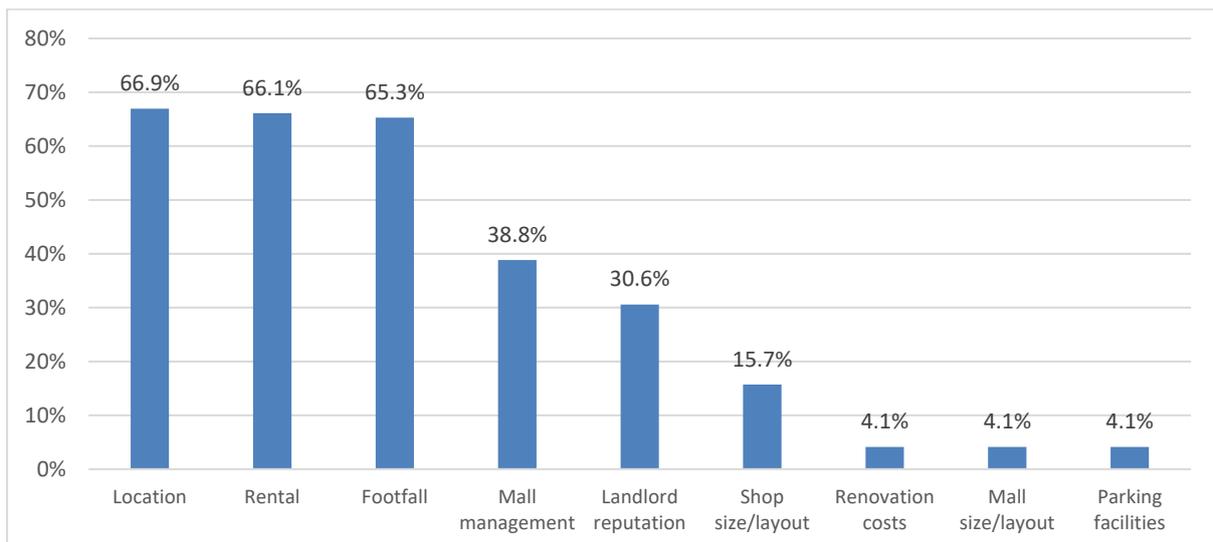
¹⁸ CCCS interviewed [redacted] on 4 May 2020, [redacted] on 6 May 2020, [redacted] on 8 May 2020 and [redacted] on 15 May 2020.

Figure 6: Respondents' profiles by number of outlets



34. As shown in **Figure 7** below, the most common factors considered by tenants in their choice of private retail development to lease were: (1) location (66.9%), (2) rental (66.1%), (3) footfall¹⁹ (65.3%), (4) mall management²⁰ (38.8%) and (5) landlord reputation (30.6%).

Figure 7: Factors considered by tenants when selecting private retail developments



¹⁹ Footfall includes attributes of shoppers such as profile of targeted shoppers.

²⁰ Mall management includes tenant mix, brand positioning and shopping experience of the retail development.

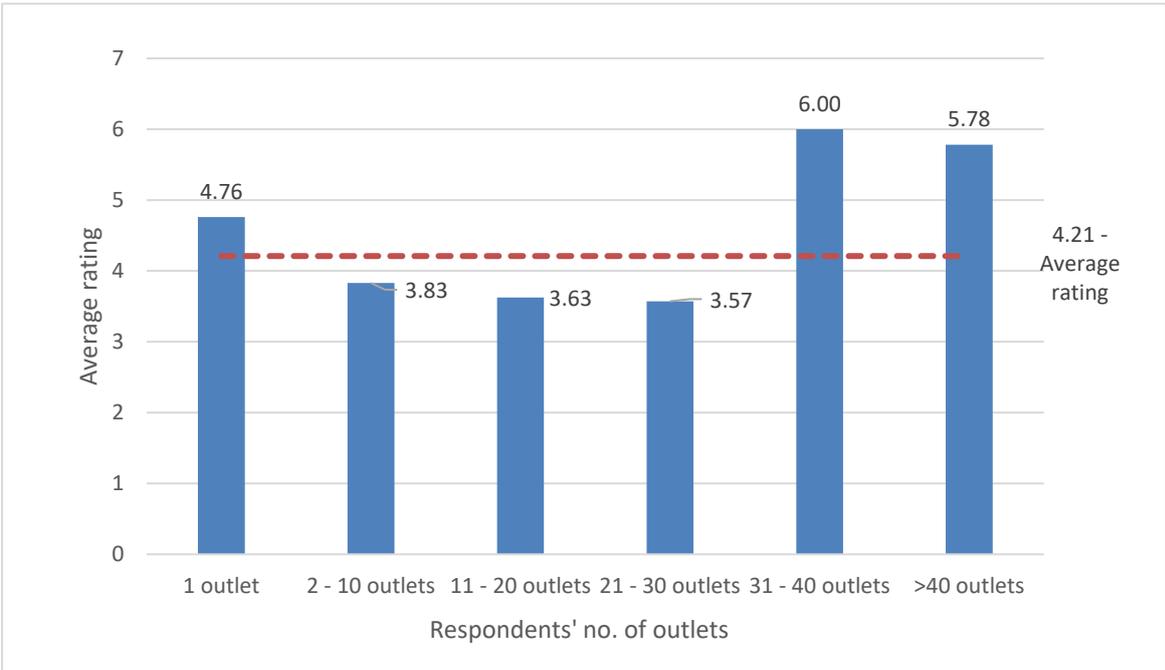
VI. FACTORS WHICH IMPACT MARKET POWER OF LANDLORDS

(A) Strata-titled and public retail developments are not viable alternatives to centrally managed non-strata-titled retail developments

Public retail developments are not generally regarded as viable alternatives

35. **Figure 8** below shows the average rating given by respondents of the tenant survey when asked about the extent to which they view public retail developments as an alternative to the non-strata-titled retail developments which they are currently leasing in Singapore. Respondents gave an average rating of 4.21 out of 10 (10 being an excellent substitute). Tenants with either only 1 outlet or more than 30 outlets tend to view public retail developments more favourably as substitutes compared to tenants with between 2 to 30 outlets. From the survey feedback, tenants with only 1 outlet may on average be more sensitive to the cost of rental, and more open to developing a customer base in a neighbourhood centre with their first outlet. Tenants with 2 to 30 outlets (i.e., the majority of chain stores) tend to be on average more concerned about developing their mass market brand and presence across the island. Tenants with more than 30 outlets may on average already have an established reputation and presence throughout the island with outlets at their preferred private retail developments and therefore are on average more willing to consider public retail developments as alternative locations to set up their next outlet.

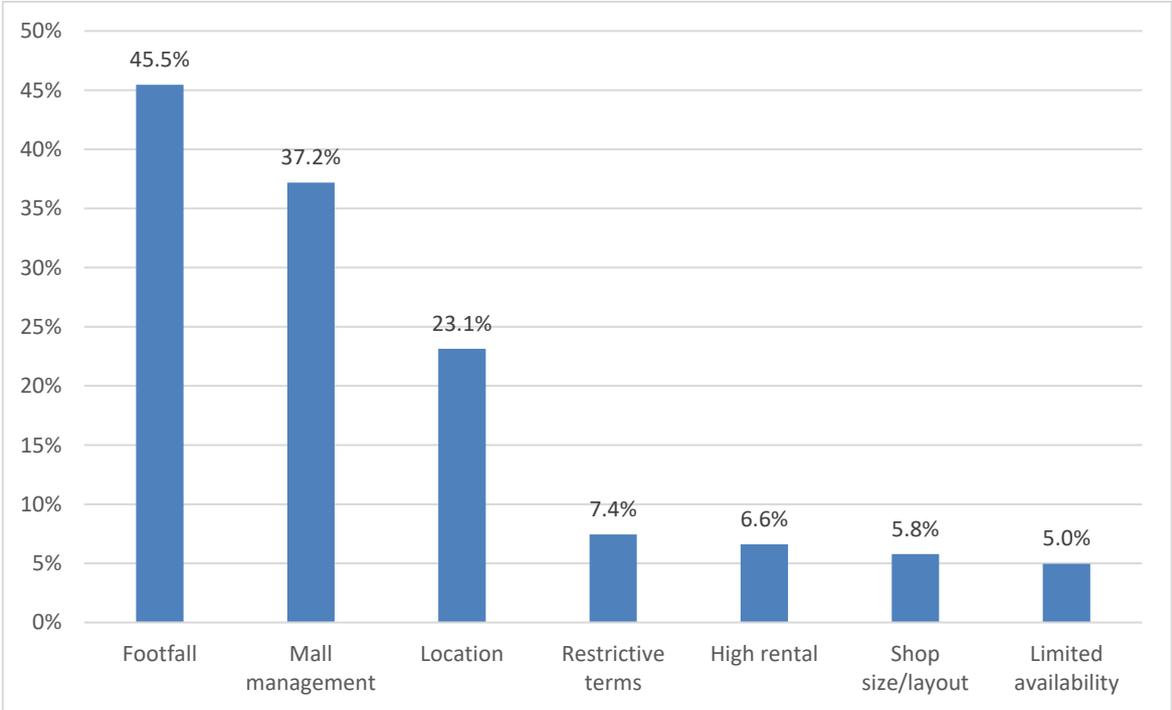
Figure 8: Average rating of public retail developments as alternatives



36. Tenants with outlets in non-strata-titled retail developments tend not to view public retail developments as viable alternatives, mainly due to the general advantages of non-strata-titled retail developments being in locations that attract many targeted customers, and being able to provide better tenant mix, brand positioning and shopper experience. From tenant feedback, the right tenant mix tends to be a retail development that has a variety of complementary retail categories (e.g., presence of anchor tenants) and a small number of tenants in the same retail category that would attract shoppers seeking products in that particular category but not too many such that it would raise tenants’ concerns about excessive competition for shoppers within the development.

37. As set out in **Figure 9** below, the most common reasons cited by respondents for public retail developments not being viable alternatives to non-strata-titled retail developments were: (1) footfall (45.5%), (2) mall management (37.2%), and (3) location (23.1%). The feedback from the tenant survey was supported by feedback from CCCS’s interviews with tenants. An F&B chain opined that the footfall for public retail developments was not as high as that for non-strata-titled retail developments,²¹ and a retailer that previously had outlets in HDB developments, said it wanted space in non-strata-titled retail developments instead of HDB spaces because of brand positioning and pricing.²²

Figure 9: Reasons cited for public retail developments being unviable alternatives to non-strata-titled retail developments (by % of respondents)



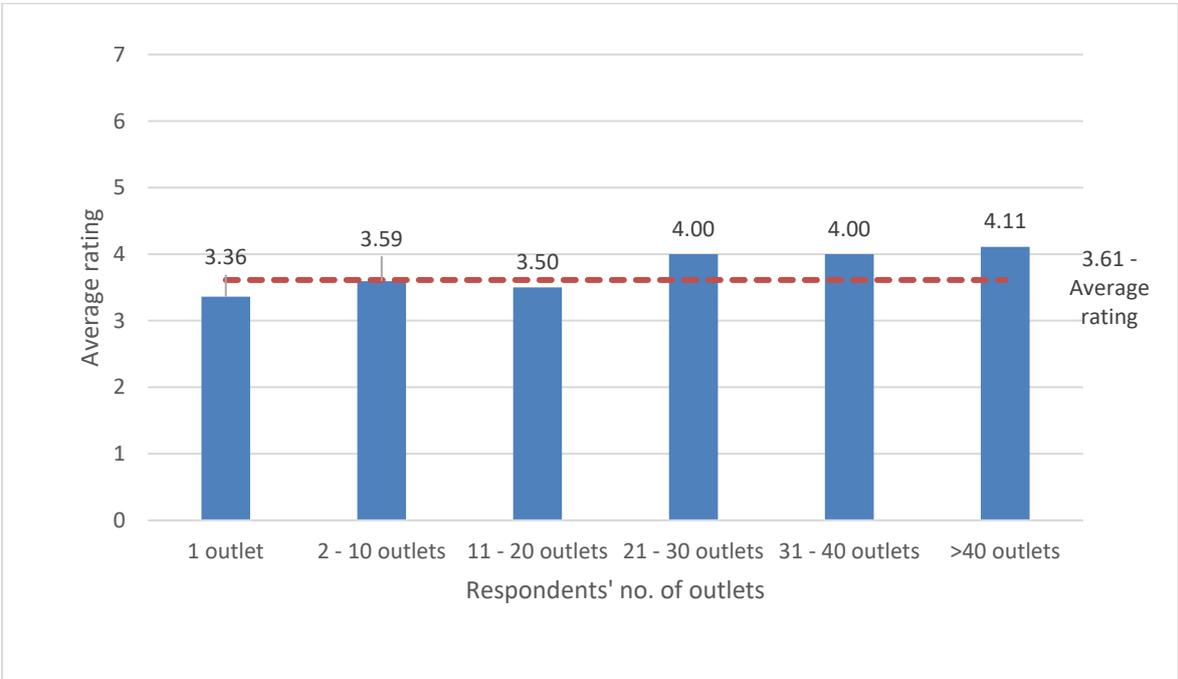
²¹ Interview with [redacted] dated 6 May 2020.

²² Interview with [redacted] dated 15 May 2020.

Strata-titled retail developments are not generally regarded as viable alternatives

38. **Figure 10** below shows the average rating given by respondents of the tenant survey when asked about the extent to which they view strata-titled retail developments as alternatives to non-strata-titled retail developments which they are currently leasing in Singapore. Respondents gave an average rating of 3.61 out of 10. Unlike the case for public retail developments, there was less of a difference in the average ratings of strata-titled retail developments as substitutes between tenants with varying number of outlets, though the tenants with the larger number of outlets on average gave a slightly higher rating than the tenants with a smaller number of outlets.

Figure 10: Average rating of strata-titled retail developments as alternatives

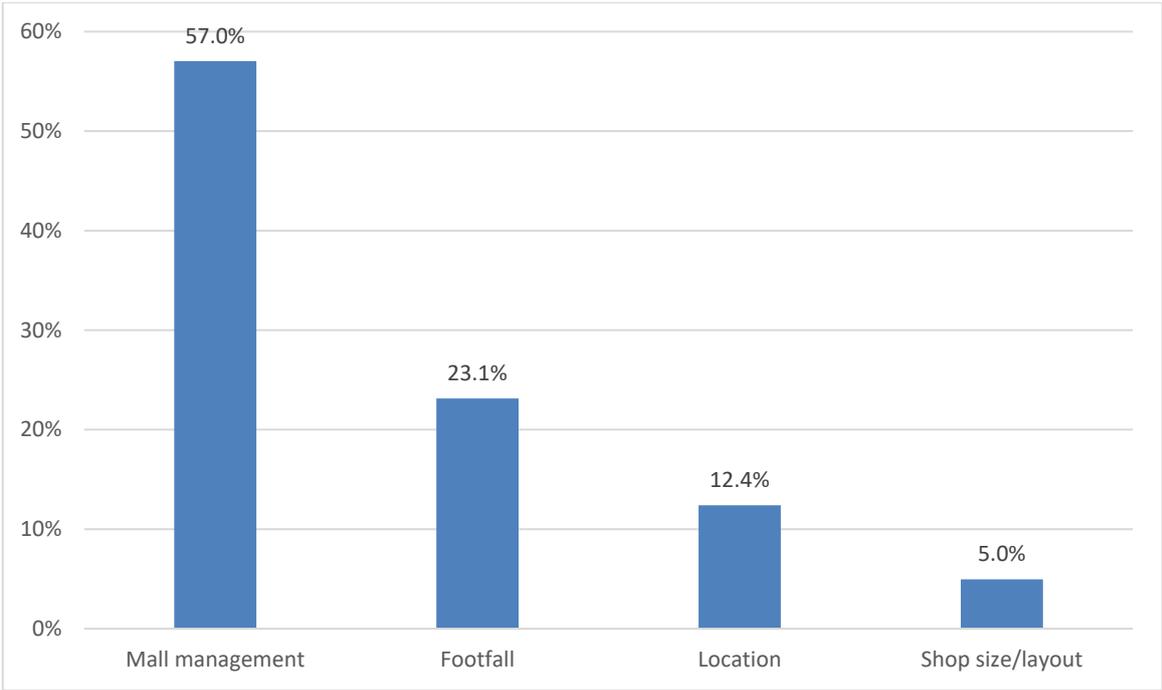


39. Tenants with outlets in non-strata-titled retail developments tend not to view strata-titled retail developments as viable alternatives mainly due to concerns that strata-titled retail developments tend not to be centrally managed, which may affect marketing efforts, maintenance issues, upgrading efforts, tenant mix and footfall.

40. As set out in **Figure 11** below, the most common reasons cited by respondents for strata-titled retail developments not being viable alternatives to non-strata-titled retail developments were: (1) mall management (57%) and (2) footfall (23.1%). The feedback from the tenant survey was supported by feedback from CCCS’s interviews with tenants. An F&B chain observed that strata-titled developments do not generate high footfall and the tenant mix was not cohesive. Generally, these developments are also not in a good location, e.g., not

next to an MRT station.²³ Another F&B chain explained that while strata-titled retail developments were theoretically substitutes, it would be preferable for mainstream brands, which are not destination restaurants, to locate at major non-strata-titled retail developments which enjoy significant footfall as strata-titled retail developments tend to be less well-organised and host a “potpourri of players”.²⁴

Figure 11: Reasons cited for strata-titled retail developments being unviable alternatives to non-strata-titled retail developments (by % of respondents)



(B) Retail developments outside of the relevant planning area are generally not considered as alternatives

41. A tenant that is locating its first outlet would tend to have a wider choice of retail developments to choose from. However, many of the tenants of centrally managed non-strata-titled retail developments are chain operators, rather than having just a single outlet. For chain operators, the number of optimal retail developments available to such tenants would diminish with the more outlets each tenant operates. However, looking at where such chain operators choose to locate their outlets would give CCCS a general sense of how wide of an area the respective retail development would capture, i.e., the catchment area, such that the outlets of the operator would not cannibalise sales from each other. The tenants surveyed and interviewed, in particular chain operators, that have a general strategy of locating their outlets at various retail developments in Singapore in order to maximise their

²³ Interview with [redacted] dated 6 May 2020.
²⁴ Interview with [redacted] dated 4 May 2020.

catchment of customers, appear to only treat retail developments approximately within the same planning area as substitutes.

42. The catchment area is likely to be smaller than the URA-defined planning *regions*²⁵ as many tenants choose to locate their outlets within the same planning region and often in retail developments which are located in neighbouring planning *areas*. For example, a retail chain²⁶ with more than 30 outlets in various retail developments in Singapore has outlets at [§<], with each MRT station adjacent or at most two stops away and are all located within the North-East region. In addition, the same retailer also has outlets at [§<] which are in the West region, and at [§<] in the North region. This strategy of locating outlets at various retail developments within the same planning region can be seen in many other chain operators CCCS surveyed.

43. Further, out of the 277 instances in the survey in which the tenants had considered or tried to source for alternative retail developments for their current outlets, in 229 instances (82.7%) tenants either named a retail development that is within the same planning area as an alternative or did not indicate any retail development outside of the same planning area as an alternative.

44. This suggests that depending on the location of the retail development within each planning area together with the size and demographics of the population, the catchment area for a retail development may be no wider than the planning area where the retail development is located and may even be narrower. In other words, retail developments in different planning areas, depending on the proximity of the retail development to the boundaries of the planning area, may be considered by tenants as complements instead of substitutes.

(C) Tenants value retail developments that attract high shopper footfall

45. As noted in **Figure 7** above, footfall is one of the major considerations for tenants in their choice of private retail development. Tenants value retail developments that attract higher footfall, especially of the target customer profile, as they bring more potential customers to the tenant's outlet.

46. The importance to tenants of a retail development's ability to attract footfall and the target customer profile was also highlighted by the tenants interviewed by CCCS.²⁷ In the interview with one tenant²⁸, it was noted that for mass market F&B concepts, its strategy would be to locate in retail developments with high shopper footfall to generate sales. Unlike

²⁵ URA's planning regions consist of the Central, East, North-East, North and West regions further subdivided into 55 planning areas within the regions.

²⁶ [§<]

²⁷ Interview with [§<] dated 4 May 2020; interview with [§<] dated 6 May 2020; interview with [§<] dated 15 May 2020; interview with [§<] dated 8 May 2020.

²⁸ [§<]

destination concepts where customers plan to dine at, mass market concepts depend on high shopper footfall and visibility to attract and capture customers.

(D) Tenants value retail developments with a strategic location

47. As noted in **Figure 7** above, a large proportion of tenants consider location when selecting the private retail development for their outlet. The proximity of a retail development to an MRT station particularly on a key transport node confers an advantage in terms of ensuring higher shopper footfall generated from the commuters using the MRT. This is supported by CCCS's interviews with tenants, where it was consistently pointed out that the proximity to an MRT station allows the retail development to capture the residents who reside nearby.²⁹ Hence, the tendency is for tenants to choose retail developments located next to the MRT station as this ensures that they can capture a significant portion of commuters using the MRT, or at the very least, increases visibility of the shop to potential customers.

48. The importance of proximity to MRT was also highlighted by the interviews with two of the tenants that had business outlets located at [X]. These tenants cited the proximity to [X] MRT as the key reason why [X] and [X] were the preferred locations. As their businesses were located at [X], the tenants indicated that they had also considered [X] as a possible alternative. However, both tenants noted that [X] was further from the MRT station, had lower footfall, and was consequently less attractive as an option.³⁰

(E) Tenants value retail developments with better perceived mall management

49. Tenants tend to prefer retail developments that are run by the major property managers, as they are better resourced to put together comprehensive marketing campaigns or strategies to increase footfall to the retail development. These retail developments are widely perceived to be better run such that shoppers would enjoy a more pleasant shopping experience at the retail developments and be attracted to return.

50. As shown in **Figure 7** above, mall management (38.8%) and landlord reputation (30.6%) were also common factors considered by tenants in their choice of private retail development. While two retail developments may be located close to each other, some retail developments may stand out from their competitors because of perceived better mall management ability. The survey results and interviews indicated that tenants have different perceptions about the management strategies of different landlords or property managers, which include their ability to choose the right tenant mix and the ability to launch effective marketing campaigns to draw in shopping crowds. This suggests that the property manager's reputation and perceived ability may also affect tenants' decision-making.

²⁹ Interview with [X] dated 6 May 2020; interview with [X] dated 15 May 2020; interview with [X] dated 8 May 2020.

³⁰ Interview with [X] dated 5 May 2020; Interview with [X] dated 15 May 2020.

51. In two of the interviews, tenants cited the example that while [X] are located close to each other and are close to [X] MRT station, their preferred location was [X], run by [X]. In particular, one of the tenants had switched from [X] to [X], which is managed by [X], but subsequently found that [X] was better run.³¹ These sentiments were echoed in an interview with another tenant, which shared the same opinion that [X] had the highest footfall and appeared to have the right tenancy mix. Hence, even though the latter tenant was offered a unit in [X] at a 10-20% cheaper rental rate compared to [X], he ultimately chose to hold out for a unit at [X].³²

52. As for [X], the same tenants cited the relatively lower footfall and better tenant mix at nearby [X] which made [X] a less attractive choice in comparison. Hence, apart from location, other considerations could account for why some malls tend to be preferred by tenants over others.

(F) High switching costs incurred in relocating may weaken competition

53. CCCS found that tenants are unwilling to relocate to other retail developments even when faced with rising rental rates during each lease renewal or perceived unfair or unfavourable terms and conditions in the tenancy agreements because there is significant inertia to relocate, primarily due to high switching costs incurred. For instance, an often-cited justification provided to CCCS during the interviews and survey responses was the significant relocation costs. CCCS understands that once a tenant signs a lease for a location, which is typically for up to three years, it would need to stay sufficiently long in order to justify the initial capital expenditure.³³

54. If tenants were to switch out of their current location after the initial lease term, not only would the tenants lose the initial capital expenditure incurred in setting up at their current location, they would have to also pay for reinstatement costs of the current unit to its original form and incur additional renovation costs at the new location. Further, given that most landlords require that tenants provide monthly point-of-sales records, partly because the rental rate may be calculated as a percentage of the tenant's gross turnover, landlords can have a sense of the maximum amount of rental rate increase tenants are able to absorb. Therefore, taking into consideration the costs of switching *vis-à-vis* the rental rate increase, most tenants opined that they have no choice but to stay put at their current location. Survey respondents also pointed out that in relation to unfair or unfavourable tenancy clauses, most landlords have similar provisions in the tenancy agreements and therefore it does not matter whether tenants switch or not.

³¹ Interview with [X] dated 15 May 2020.

³² Interview with [X] dated 5 May 2020.

³³ Based on tenants' feedback including from the interview with [X] dated 4 May 2020, the interview with [X] dated 5 May 2020, and survey responses from tenants such as [X], [X] and [X].

55. On the other hand, in one of the interviews, the tenant informed CCCS of a single instance in the past where it had been willing to forego its capital expenditure in relocating an outlet from [X] to [X] as it took into account the significantly higher footfall at [X], as well as the relocation of a key anchor tenant [X] from [X] to [X]. These factors justified the loss of the initial capital expenditure incurred by the tenant when it decided to relocate to [X].³⁴ CCCS also notes from its review of tenancy agreements as well as survey responses that some landlords require tenants to renovate or refurbish the shopfront upon every lease renewal. This may actually lower the switching costs to an alternative retail development as some renovation costs would similarly have to be incurred (albeit to a smaller extent at the current location) regardless of whether the lease is renewed at the current location or a lease is taken up at a new space.

56. Apart from the loss of initial capital expenditure and extra costs to be incurred, CCCS understands that tenants are also reluctant to move to alternative locations because of the potential loss of their established customer base at the current location. For instance, one of the surveyed tenants, which has a number of outlets at several retail developments opined that the brand risked losing its customer base which would be familiar with their shops' location if they relocated.³⁵ Another tenant that runs a beauty and wellness business also indicated that it considered the alternative location of [X] to [X] (where an outlet is currently located) but opined that it was not confident of being able to attract its regular customers from [X] to [X].³⁶

(G) Limited availability of spaces in alternative retail developments may weaken competition

57. CCCS found that there is a lack of rental spaces at popular or preferred retail developments. As the more popular private retail developments tend to be well-occupied, there is typically limited availability for rental spaces in these private retail developments. For instance, some of the tenants interviewed informed CCCS that at the time when they were considering certain retail developments in the West or East Region, the more popular private retail developments such as [X] or [X] either did not have any available rental spaces or the only available spaces that were offered were not in ideal locations within the retail development (such as on a floor with low footfall).

58. The data obtained by CCCS on occupancy rates corroborates the feedback that occupancy rates for some popular retail developments tend to be 100% or close to it. For example, in 2019, 10 of the 12 retail developments operated by [X] had occupancy rates above 95%, and 16 of the 17 retail developments operated by [X] had occupancy rates above 95% (including 7 retail developments with 100% occupancy rates). These occupancy rates can

³⁴ Interview with [X] dated 5 May 2020.

³⁵ Survey response submitted by [X] on 13 May 2020.

³⁶ Survey response submitted by [X] on 10 May 2020.

be contrasted with the island-wide occupancy rate of 92.5% for 2019.³⁷

(H) Conclusion on factors affecting market power

59. In summary, CCCS notes that the interplay of the following factors is likely to confer market power to some centrally managed private retail developments:

- a. Strata-titled and public retail developments are generally not viable alternatives to centrally managed non-strata-titled retail developments;
- b. Retail developments outside of a planning area are generally not alternatives;
- c. The ability to attract high shopper footfall;
- d. Strategic location;
- e. Better perceived mall management;
- f. High switching costs to relocate; and
- g. Limited availability of spaces in alternative retail developments.

³⁷ Shirley Wong and Tricia Song, *Colliers 2H2019 Singapore Retail Market Update*, 25 February 2020, <https://www.reitas.sg/wp-content/uploads/2020/02/Colliers-2H-2019-Singapore-Retail-market.pdf>.

VII. EVIDENCE OF MARKET POWER

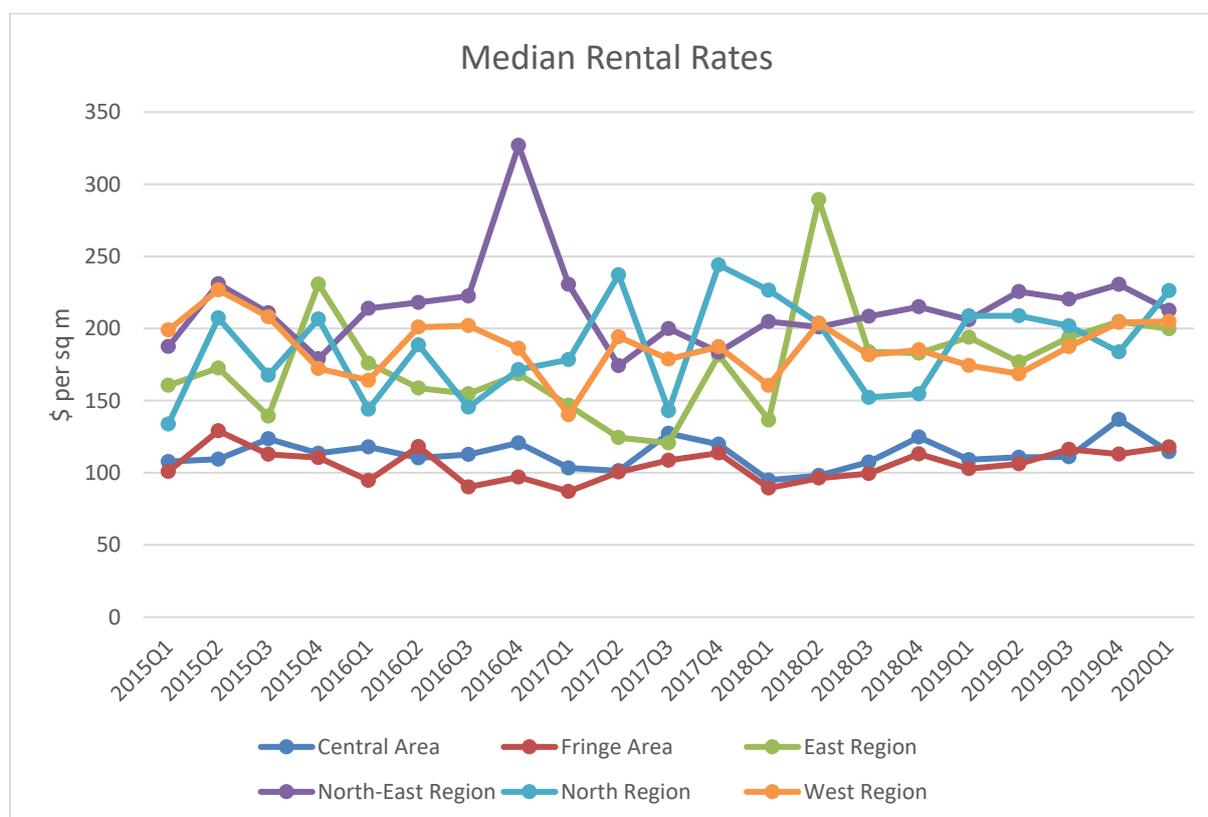
60. Market power arises where landlords of retail developments do not face sufficiently strong competitive pressure (e.g., have the ability to charge rents above competitive levels, earn higher revenue per square foot of net lettable area (“NLA”), or dictate terms and conditions in tenancy agreements).

(A) Retail rental rates

61. As the catchment area for a retail development may be no wider than the planning area where the retail development is located, and may even be narrower, CCCS has examined whether and to what extent retail rental rates vary across planning areas.

62. Overall, higher median retail rental rates were observed in suburban regions (i.e., East, North, North-East and West Region) as compared to the Central Region (i.e., Central Area and Fringe Area) from Q1 2015 to Q1 2020.³⁸ This suggests that some landlords of retail developments in the suburban regions may possess some market power for them to be able to charge higher rents. **Figure 12** below shows the median retail rental rates by URA planning regions and sub-planning regions.

Figure 12: Median rental rates per month by planning regions and sub-planning regions



Source: URA REALIS (downloaded in Apr 2020)

³⁸ Includes all retail spaces where there exist stamp duty records (excluding HDB sold shops and shophouses).

63. Within each planning region/sub-planning region, the median retail rental rates vary across different planning areas. **Table 2** below lists, in order from highest to lowest, the average median retail rental rates for each planning area over the period of Q1 2015 to Q1 2020. As shown below, the top 10 planning areas with the highest average median retail rental rates span across different regions in Singapore.

Table 2: Average median retail rental rates from Q1 2015 to Q1 2020 by planning areas

| S/N | Planning Area | Planning Region/Sub-Planning Region | Average Median over 5 years (\$ per sqm per month) |
|-----|------------------|-------------------------------------|--|
| 1 | Punggol | North East Region | 288.90 |
| 2 | Ang Mo Kio | North East Region | 259.32 |
| 3 | Serangoon | North East Region | 255.95 |
| 4 | Jurong West | West Region | 253.56 |
| 5 | Woodlands | North Region | 251.41 |
| 6 | Choa Chu Kang | West Region | 241.84 |
| 7 | Tampines | East Region | 223.33 |
| 8 | Changi | East Region | 204.61 |
| 9 | Yishun | North Region | 200.47 |
| 10 | Sengkang | North East Region | 198.38 |
| 11 | Jurong East | West Region | 193.48 |
| 12 | Bukit Panjang | West Region | 193.36 |
| 13 | Bukit Batok | West Region | 180.91 |
| 14 | Museum | Central Area | 179.18 |
| 15 | Bishan | Fringe Area | 178.61 |
| 16 | Pasir Ris | East Region | 177.02 |
| 17 | Bukit Merah | Fringe Area | 157.59 |
| 18 | Sembawang | North Region | 138.84 |
| 19 | Orchard | Central Area | 131.28 |
| 20 | Downtown Core | Central Area | 128.69 |
| 21 | Southern Islands | Fringe Area | 122.10 |
| 22 | Clementi | West Region | 114.86 |
| 23 | Pioneer | West Region | 114.15 |
| 24 | Bedok | East Region | 112.00 |
| 25 | Outram | Central Area | 111.44 |
| 26 | Novena | Fringe Area | 110.66 |
| 27 | Queenstown | Fringe Area | 109.27 |
| 28 | Newton | Central Area | 96.37 |
| 29 | Marine Parade | Fringe Area | 91.89 |
| 30 | Toa Payoh | Fringe Area | 87.98 |
| 31 | Tanglin | Fringe Area | 87.70 |
| 32 | Singapore River | Central Area | 85.31 |
| 33 | Rochor | Central Area | 80.96 |

| | | | |
|----|--------------|-------------------|-------|
| 34 | Geylang | Fringe Area | 79.30 |
| 35 | Hougang | North East Region | 79.24 |
| 36 | Bukit Timah | Fringe Area | 75.97 |
| 37 | River Valley | Central Area | 72.26 |
| 38 | Kallang | Fringe Area | 60.34 |

Source: URA REALIS (downloaded in Apr 2020)

(B) Performance of key retail developments

64. Further analysis on the performance of each individual retail development may also help to identify retail developments which are more likely to possess some market power. To assess the performance of an individual retail development, CCCS identified key centrally-managed retail developments in Singapore managed by major property managers namely [X]. CCCS examined their annual gross revenue per square foot of NLA figures where such information is available to CCCS.³⁹

65. Generally, a retail development is more likely to possess market power if it can command higher rental rates to earn a higher gross revenue per square foot of NLA.

Gross revenue per square foot of NLA

66. Apart from the [X] luxury retail developments ([X]) in the sample of 47 centrally-managed retail developments, CCCS notes that the top centrally-managed retail developments by gross revenue per square foot of NLA are not generally retail developments in the Orchard or Downtown Core planning areas, but are typically the largest or the only retail developments in their respective planning areas, and are next to the main MRT station in the planning area (e.g., [X], [X], [X], [X], [X]). In contrast, centrally-managed retail developments with the lowest gross revenue per square foot of NLA tend to be those that are of a smaller size as compared to others nearby (e.g., [X], [X], [X]) or that are in areas with low population or no MRT/LRT passenger traffic (e.g., [X], [X], [X]). Please refer to **Annex 2** for the gross revenue per square foot of NLA of the centrally-managed retail developments in the sample.

67. CCCS conducted a regression analysis to further assess whether (a) shopper footfall, (b) proximity to MRT/LRT passengers,⁴⁰ and (c) mall management, affect the gross revenue per square foot of NLA of a retail development, after taking into account other factors that

³⁹ Information based on respective landlords' Annual Reports and landlords' section 61A responses.

⁴⁰ Proximity to MRT/LRT passengers were measured by the number of passengers at MRT/LRT stations within 1 km of the retail development, adjusting for the walking distance between each such station and the retail development.

may also affect its gross revenue per square foot.⁴¹ CCCS did not find statistical evidence that a retail development's proximity to MRT/LRT passengers affects its gross revenue per square foot. However, CCCS found statistical evidence that the retail development's shopper footfall, and whether the retail development was managed by [X], affected the retail development's gross revenue per square foot of NLA.

68. Based on the regression estimates (see **Annex 3** for details of the regression), CCCS notes that:

- a. An additional million of **annual footfall** for a retail development is associated with an additional annual gross revenue of \$[X] per square foot (or equivalently an additional monthly gross revenue of \$[X] per square foot), holding the other factors constant.⁴²
- b. **Being managed by [X]** is associated with a decrease in annual gross revenue of \$[X] per square foot (or equivalently a decrease in monthly gross revenue of \$[X] per square foot), holding the other factors constant.⁴³

69. The above results are consistent with the findings from the tenant survey and interviews that footfall and mall management are key considerations for tenants when choosing a retail development.

(C) Unfair terms and clauses faced by tenants

70. The market power of landlords may also be reflected in their ability to dictate certain clauses in the tenancy agreements.

71. Based on the tenant survey, a large percentage of tenants have encountered perceived unfair or unfavourable terms and conditions in their tenancy agreements with landlords. As shown in **Figure 13** below, the most commonly perceived unfair terms and conditions encountered by tenant respondents were: (1) no safeguards in relation to unforeseen circumstances⁴⁴ (91.7%); (2) tenancy being subject to relocation and/or area

⁴¹ The other factors taken into account were: (1) whether the retail development has a luxury brand positioning; (2) the population of the planning area in which the retail development is located in; (3) the retail development's net lettable area; (4) the total net lettable area of other centrally managed private retail developments within 1 km of the retail development, adjusting for the walking distance between each such other development and the retail development; and (5) whether the retail development is managed by a specific other mall manager.

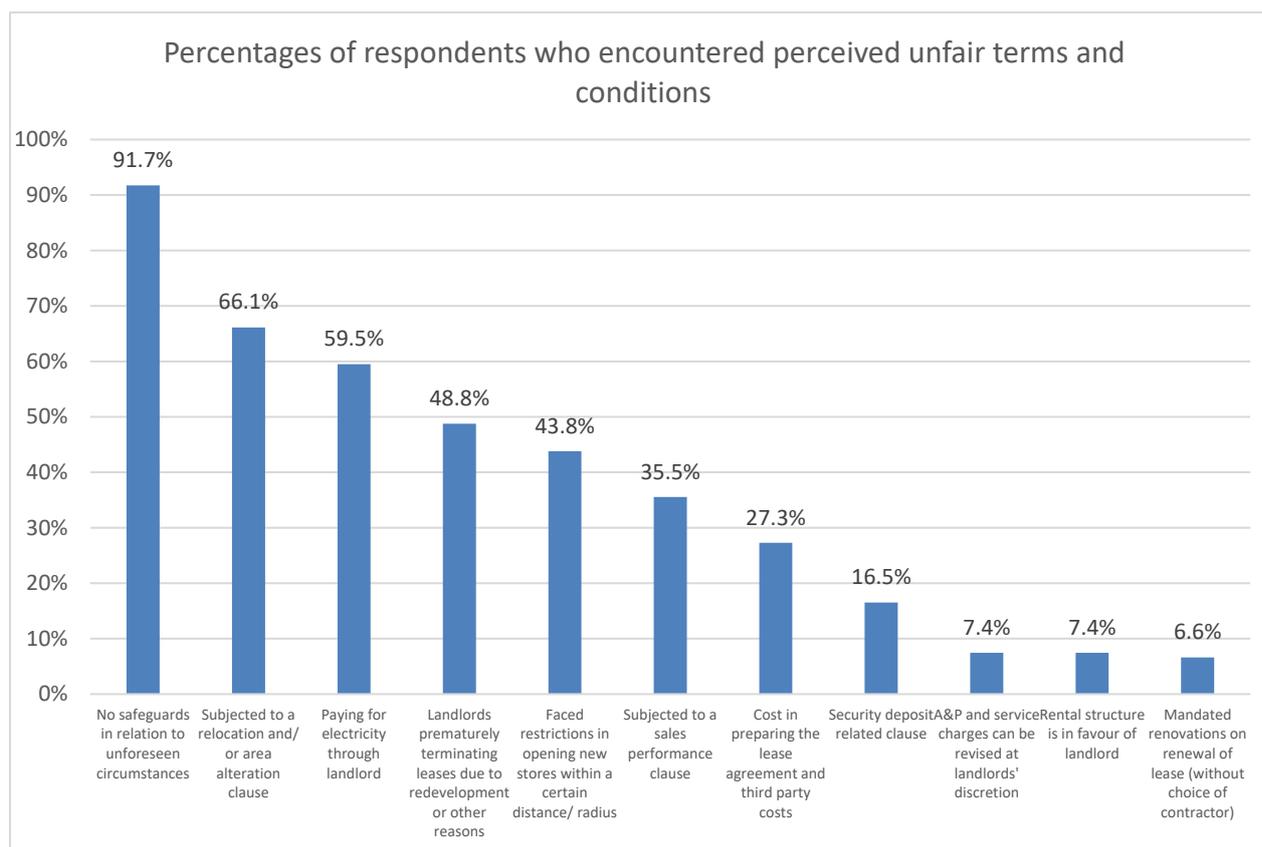
⁴² The p-value for the t statistic is less than 0.001, i.e., the probability that this difference would have occurred by chance is less than 0.1%.

⁴³ The p-value for the t statistic is 0.005, i.e., the probability that this difference would have occurred by chance is 0.5%.

⁴⁴ The safeguards in relation to unforeseen circumstances clause relates to circumstances beyond landlord's control such as force majeure, fire, act of God, terrorism etc.

alteration clause⁴⁵ (66.1%); (3) paying for electricity through landlord (59.5%); (4) landlords prematurely terminating leases due to redevelopment or other reasons⁴⁶ (48.8%); and (5) restrictions for opening new stores within a certain distance/radius (43.8%). Concerns were also expressed by tenants about sales performance clauses⁴⁷, and the rental structure being in the favour of the landlord.

Figure 13: Percentages of respondents who encountered perceived unfair terms and conditions



72. Reflecting feedback received from surveyed tenants, a tenant that was interviewed raised concerns about tenancy clauses that gave the ability of landlords to prematurely terminate the lease based on asset enhancement initiatives, without compensating the tenant for capital expenditure in setting up the shop.⁴⁸ Further, the notice period given by

⁴⁵ The relocation and/or area alteration clause relates to where the landlords have the discretion to relocate tenants within the same retail development with a short notice period when undertaking reconfiguration works and/or revise rental rates upwards where the surveyed floor area is larger than as stipulated in the lease agreement without any compensation.

⁴⁶ The landlord may have the discretion to prematurely terminate the lease with a short notice period when undertaking redevelopment works without any compensation.

⁴⁷ The sales performance clause relates to where the landlords have the discretion to terminate the lease agreement within a specified notice period if the tenant is unable to meet a gross sales turnover within a specified period.

⁴⁸ Interview with [redacted] dated 4 May 2020, and interview with [redacted] dated 6 May 2020.

landlords to tenants in such situations was typically short, in the range of 60 to 90 days.⁴⁹

73. CCCS also received feedback from tenants that they often find themselves on the losing end with no bargaining power when negotiating terms and conditions for a tenancy agreement. For example, it was highlighted by tenants that, given the confidentiality clauses which are commonplace in tenancy agreements, there is no transparency in the market as to how much the other tenants in the same retail development are paying. Consequently, there is no benchmark for them to know what the current market rate for rental in the private retail development of their choice is when negotiating rent.⁵⁰ Apart from rent, this also applies to extra mandatory charges such as service charges and advertising and promotion charges, which are often increased without being transparent as to how these are calculated. Tenants are also frequently told that they are unable to dispute these mandatory miscellaneous charges as they are fixed.⁵¹

74. Tenants' feedback also showed that the larger landlords, which also tend to be the ones that own key retail developments around MRT stations, often take the position that the terms found in the tenancy agreements are standard clauses and adopt a "take-it-or-leave-it" attitude in negotiations. Hence, tenants typically had very little leeway in negotiating any change to the terms and conditions in the tenancy agreements, and this was often the reason why tenants chose to eventually accept the terms in the tenancy agreements, even though these terms tend to heavily favour landlords.

75. The tenants also opined that as a matter of commercial strategy, the retail development manager could have decided to first approach their tenants of choice at the time when rental space first became available before extending the space to others, as these targeted tenants may be a better fit for the retail development's tenant mix in the manager's view. This further suggests that landlords of certain retail developments enjoy a significant degree of market power in being able to pick and choose their choice tenants.

(D) Conclusion on evidence of market power

76. Overall, the evidence shows that some retail developments are able to charge higher rents, earn higher gross revenue per square foot of NLA and dictate terms and conditions, suggesting that they may possess some degree of market power in a market for leasing of private retail space. Some of these retail developments are owned by different landlords and are located in different regions in Singapore, suggesting that the presence of market power, if any, is likely to be on a more localised level i.e., within a planning area instead of a region.

⁴⁹ Interview with [REDACTED] dated 4 May 2020.

⁵⁰ Interview with [REDACTED] dated 4 May 2020, and interview with [REDACTED] dated 6 May 2020.

⁵¹ Interview with [REDACTED] dated 6 May 2020.

VIII. POTENTIAL ANTI-COMPETITIVE ISSUES

77. As part of the market inquiry, besides the tenants' survey, CCCS also examined 41 tenancy agreements submitted by 3 tenants⁵² and 489 tenancy agreements obtained from 9 landlords, obtained under CCCS's section 61A powers. Through the responses gathered from the tenants' survey and the review of the tenancy agreements from both the tenants and landlords, CCCS identified contractual clauses and arrangements by landlords which may give rise to potential competition concerns. Such clauses relate to the following:

- a. Exclusivity radius clauses; and
- b. Restrictions on the choice of electricity retailer.

(A) Exclusivity radius clauses

78. From the tenants' survey, CCCS noted that 53 (44%) of the tenants indicated that they had encountered exclusivity radius clauses in their tenancy agreements. However, the tenants did not provide supporting evidence to show that such clauses exist in their tenancy agreements. Although it is unclear whether the landlords actually enforce such clauses, tenants noted that they generally adhere to the terms of their tenancy agreements for fear of the lease being terminated by their breach of any clause.

79. On the other hand, CCCS notes from the interview sessions with landlords that such exclusivity radius clauses are not prevalent and are only applied for a small number of tenants.⁵³ In addition, CCCS understands from the landlords that such an exclusivity radius clause is applied when the landlord has incurred substantial costs to accommodate certain tenant's peculiar needs.⁵⁴

80. From the tenancy agreements obtained from the 3 tenants and the 9 landlords, CCCS found that some landlords⁵⁵ had incorporated an exclusivity radius clause where the tenants (or any entities that the tenant or its shareholders have a direct or indirect interest in) are either restricted from opening another similar business in a competitor's retail development within a stipulated distance from the landlord's retail development, or if they do commence another similar business in the vicinity, their base rent would be increased. **Table 3** below shows examples of the types of exclusivity radius clauses found in these tenancy agreements. However, CCCS notes that such clauses were found only in 18 out of 530 (3%) tenancy agreements examined, which suggest that the use of exclusivity radius clauses is not

⁵² [REDACTED].

⁵³ Notes of meeting with [REDACTED] dated 28 May 2020; Notes of meeting with [REDACTED] dated 28 May 2020; Notes of meeting with [REDACTED] dated 28 May 2020; Notes of Meeting with [REDACTED] dated 3 June 2020.

⁵⁴ Notes of meeting with [REDACTED] dated 28 May 2020.

⁵⁵ [REDACTED].

widespread.⁵⁶

Table 3: Examples of exclusivity radius clause

| Landlord - Retail mall | Exclusivity radius clause |
|------------------------|--|
| [X] | If the tenant has another trade or business within a radius of 1 km of similar permitted use, the monthly base rent is increased by a further 10%. If the trade or business is within a radius exceeding 1 km but not exceeding 2 km, the rent is increased by 6%. |
| [X] | The tenant is not allowed to commence another business/branch of the business, which is similar to the permitted use in the landlord's premises, within the radius of 3 km from the landlord's premises, whether solely or jointly with another party and through a partnership/company or by any other arrangement, or whether as a shareholder directly or indirectly having any interest in any partnership or company. |
| [X] | The tenant shall not own, operate, maintain or control whether directly or indirectly or in any way participate in the ownership, management or control, operation or profits of any business similar to or in competition with that conducted in the premises within a radius of 1 km from the boundaries of the building. |
| [X] | During the period commencing the Commencement Date until expiry of the Term, the Tenant shall not own, operate, maintain or control whether directly or indirectly or in any way participate in the ownership, management or control, operation or profits of any business similar to or in competition with that conducted in the Premises within a radius specified in [X] from the boundaries of the Building. It is further provided that this clause shall not apply to the Tenant's existing business(es) at the location(s) specified in [X], if any. |

⁵⁶ CCCS requested tenants to provide their latest tenancy agreements for each retail development they are currently leasing and landlords to provide (a) the most recent 5 tenancy agreements with non-anchor food and beverage tenants, (b) the most recent 5 tenancy agreements with non-anchor retail tenants and (c) the most recent 2 tenancy agreements with anchor tenants, for each of their retail developments in Singapore signed within the period of 2017 to 2019.

| | |
|--|------------|
| | [REDACTED] |
|--|------------|

81. Where the landlord of a retail development is dominant, its use of exclusivity radius clauses may restrict the ability of other landlords in the same catchment area from securing tenants to establish a suitable tenant mix. Where the use of exclusivity radius clauses by a dominant landlord is widespread, it may be abusive to the extent that it harms competition and there could be significant adverse effects. However, given the small proportion of tenancy agreements examined that have exclusivity radius clauses, and the lack of concerns raised by tenants during the interview sessions, CCCS assessed that the use of such clauses by landlords are unlikely to be widespread, and any possible anti-competitive effects arising from the usage of such clauses to be not significant.

(B) Restrictions on the choice of electricity retailer

82. CCCS had also noted the imposition of certain utilities terms and charges⁵⁷ by landlords on tenants.⁵⁸ With the tenancy agreements from the abovementioned 3 tenants and 9 landlords, CCCS had the opportunity to review the clauses on utilities in detail. CCCS notes that there are clauses related to the purchase of electricity in the tenancy agreements which (a) bind the tenants to pay for their electricity consumption to or through their landlord, which purchases electricity for the entire retail development from an Open Electricity Market retailer, and (b) allow landlords to have the ability to determine the electricity rates charged to tenants.

83. Such electricity clauses were found in 465 out of 489 tenancy agreements obtained from landlords, which indicates the widespread use of such electricity clauses by landlords. This corroborated the tenants' responses from the survey, which found that around 60% of the tenants obtain electricity through their landlords instead of directly from electricity retailers.

84. Tenants⁵⁹ also provided feedback that they are obliged to use the landlord's designated utilities provider if they want the location and unit in the retail development. In addition, tenants do not have visibility of the usage rate or how electricity charges are determined. Through a review of the tenancy agreements obtained from the landlords, CCCS has collated in **Table 4** below the mark-ups charged by landlords with respect to electricity

⁵⁷ In 2018, based on data from data.gov.sg, utilities charges accounted for around 0.4% - 3% of the total business cost to a retailer (as compared to 9.5% – 17% for rental payment).

⁵⁸ An email dated 3 December 2018 from [REDACTED], to [REDACTED], providing feedback on [REDACTED] not being able to enjoy better electricity rates despite the liberalisation of the electricity market.

⁵⁹ [REDACTED].

clauses. Most of the mark-ups charged by landlords on the electricity rate were in the range of [§<]%.

Table 4: Electricity charges and mark-ups by landlords⁶⁰

[§<]

85. In addition, some tenancy agreements allow the landlord to determine the usage rate of electricity according to their discretion and such rate can be subject to further review and change by the landlord. There are no avenues prescribed in the tenancy agreements for tenants to appeal, review or dispute the charges notified to the tenants by the landlords. Consequently, a tenant's ability to contest such charges is likely to be weak.

86. Some explanations for such electricity clauses have been put forward. Specifically, there are cost savings from the economies of scale derived from the bulk purchase by the landlords of electricity at rates that are lower than would otherwise be the case, but this is only beneficial to both tenants and landlords if landlords do not directly profit from it. Further, CCCS notes that the EMA's En-bloc Contestable Scheme ⁶¹, which allows landlords from multi-tenanted retail developments to purchase from the Open Electricity Market, requires consent from 100% of the tenants before the landlord can bulk purchase electricity from electricity retailers. Without such electricity clauses, there is a risk of hold-up by tenants i.e., by withdrawing consent at any point in time. This would result in the possibility of landlords incurring damages for non-fulfilment of their electricity contract which typically runs for multiple years. Landlords may also have to incur costs to rewire the building should they wish to bulk purchase without consent from 100% of its tenants through EMA's Demand Aggregation Scheme.

87. However, CCCS considers that the effect of such electricity clauses, which are similar to a tying arrangement, restricts tenants from using a cheaper electricity retailer for their leased premises. A tying arrangement occurs when a supplier makes the purchase of one product (the tying product) conditional on the purchase of a second product/service (the tied product). Tying imposed by a dominant supplier can foreclose competition where that supplier is able to leverage its dominance in one market to foreclose competition in other markets.

88. In this case, the tied product is the purchase of electricity from the landlord and by requiring tenants to purchase electricity from the landlord as a condition for the grant of a lease, a landlord that has a dominant position with respect to a retail development may be

⁶⁰ Some landlords may have incurred administrative costs for the administration of bulk electricity purchase agreements.

⁶¹ www.openelectricitymarket.sg/business/faqs/master-sub-metering-arrangement

abusing its dominance by imposing such restrictive terms. As a result of such arrangements, tenants do not have a choice of electricity retailers, and they are unable to enjoy the market rates offered by various electricity retailers. Further, competition in the supply of electricity to such tenants is foreclosed where competitors are prevented from competing effectively for the supply of electricity to such tenants. Tenants are also obliged to pay the higher rates that landlords charge for electricity consumption, as demonstrated by the tenant survey responses⁶².

89. As evidenced above, the use of such electricity clauses has been very widespread for retail tenancies, unlike the use of exclusivity clauses. Further, as seen in **Table 4** above, mark-ups on electricity rates charged by the landlords are large. Hence, such a practice may be abusive to the extent that it harms competition and there are significant adverse effects. In this regard, where the landlord of a retail development is found to be dominant, CCCS is of the view that such arrangement of a landlord reselling electricity to tenants may bring about anti-competitive effects where it prevents, restricts or distorts competition in connection with the supply of electricity to retail tenants.

(C) Other contractual clauses

90. Further, the review of the tenancy agreements has also revealed certain other contractual clauses in the tenancy agreements that highlight the potential imbalance in bargaining position between landlords and tenants. **Table 5** below sets out some of these clauses and CCCS’s findings in relation to them.

Table 5: Other contractual clauses in tenancy agreements

| Clause | Findings |
|-------------------------------------|---|
| Pre-termination by landlords | Landlords are able to terminate tenancy agreements at their sole discretion without compensation to the tenants. In addition, the review showed that most tenancy agreements had no pre-termination clauses for tenants. |
| Force majeure | There are no force majeure clauses for tenants in most tenancy agreements reviewed. Even if there are force majeure-related clauses, such as “Untenantability”, “Rent suspension”, and “Termination or Abatement on Damage”, the abatement of rent and promotion charges payable are according to the nature and extent of damage |

⁶² [§].

| | |
|--|--|
| | and are determined by the landlords at their absolute discretion. |
| Area alteration of premises | Where there is revision of boundaries of premises imposed by the landlords, tenants must lease the additional area and pay additional rent for the increased floor area. |
| Preparatory costs and expenses | All costs incurred by the landlord in connection with the preparation and completion of the tenancy agreement, including expenses from landlord's surveyor or engineer, are paid by the tenant. |
| Requirement for tenants to use landlords' appointed consultants/contractors to supervise all works carried out to alter their store | Tenants to use the landlord's appointed contractors or consultants to supervise all works carried out to alter their store, such as works relating to internal partitions, electrical wiring, or additions to the shopfront. |

91. CCCS has considered that the contractual clauses listed in the table above are unlikely to have potential effects on competition, rather they are manifestations of the possible market power landlords possess.

IX. RECOMMENDATIONS

Given the widespread use of restrictive electricity clauses by landlords, CCCS recommended to the Ministry of Trade and Industry that the issue would be better addressed through an industry-wide regulatory solution, rather than investigations in each case as to whether the landlord of a retail development is dominant and abusing such dominance.

92. In assessing the appropriate solution for the issue, CCCS noted the varying constraints faced by landlords depending on the existing electricity infrastructure of their buildings. Where the existing physical infrastructure of the building could support tenants being allowed to choose their own electricity retailers, CCCS recommended that tenants be allowed to do so. In contrast, where the existing physical infrastructure of the building could not support tenants being allowed to choose their own electricity retailers and where consent from all tenants in the building is required for landlords to bulk purchase electricity, CCCS noted landlords' explanation that the bulk purchase of electricity enabled cost savings from economies of scale. In such situations, CCCS agreed that landlords need not provide tenants with the choice of their own electricity retailers. Instead, CCCS recommended that landlords be required to charge electricity fees without any mark-up or price discrimination between landlord and tenants in the same building so that both the landlord and tenants can benefit

from the cost savings.

93. CCCS notes that the CoC has incorporated these features and compliance by relevant parties of the CoC would address such competition concerns in the long term.

X. ANNEX 1: URA PLANNING REGIONS, PLANNING AREAS AND SUB-PLANNING REGIONS

| Planning Region | Planning Area | Sub-Planning Region | |
|------------------------|----------------------|----------------------------|----------------------|
| Central Region | Downtown Core | Central Area | Downtown Core |
| | Orchard | | Orchard |
| | Marina East | | Rest of Central Area |
| | Marina South | | |
| | Museum | | |
| | Newton | | |
| | Outram | | |
| | River Valley | | |
| | Rochor | | |
| | Singapore River | | |
| | Straits View | | |
| | Bishan | Fringe Area | |
| | Bukit Merah | | |
| | Bukit Timah | | |
| | Geylang | | |
| | Kallang | | |
| | Marine Parade | | |
| | Novena | | |
| | Queenstown | | |
| | Southern Islands | | |
| | Tanglin | | |
| Toa Payoh | | | |
| East Region | Bedok | Outside Central Region | |
| | Changi | | |
| | Changi Bay | | |
| | Pasir Ris | | |
| | Paya Lebar | | |
| | Tampines | | |
| | Ang Mo Kio | | |

| | |
|-------------------|-------------------------|
| North-East Region | Hougang |
| | North-Eastern Islands |
| | Punggol |
| | Seletar |
| | Sengkang |
| | Serangoon |
| North Region | Central Water Catchment |
| | Lim Chu Kang |
| | Mandai |
| | Sembawang |
| | Simpang |
| | Sungei Kadut |
| | Woodlands |
| | Yishun |
| West Region | Boon Lay |
| | Bukit Batok |
| | Bukit Panjang |
| | Choa Chu Kang |
| | Clementi |
| | Jurong East |
| | Jurong West |
| | Pioneer |
| | Tengah |
| | Tuas |
| | Western Islands |
| | Western Water Catchment |

URA REALIS (downloaded in Apr 2020)

XI. ANNEX 2: GROSS REVENUE PER SQUARE FOOT OF NLA (2019) OF THE SAMPLE OF CENTRALLY MANAGED RETAIL DEVELOPMENTS IN SINGAPORE

[X]

XII. ANNEX 3: REGRESSION ANALYSIS OF GROSS REVENUE PER SQUARE FOOT OF CENTRALLY MANAGED PRIVATE RETAIL DEVELOPMENTS

1. The following potential independent variables were considered for the regression model to explain the gross revenue per square foot of NLA of the centrally managed retail developments in the sample:
 - a. Dummy variable for the retail development having a luxury brand positioning;⁶³
 - b. The population in 2019 of the planning area in which the retail development is located;⁶⁴
 - c. The annual shopper footfall of the retail development in 2019;⁶⁵
 - d. The number of MRT/LRT passengers within 1 km of the retail development in December 2018 weighted by the walking distance;⁶⁶
 - e. The NLA of the retail development in 2019;⁶⁷
 - f. The total NLA of other centrally managed retail developments within 1 km of the retail development weighted by the walking distance;
 - g. Dummy variable for there being no other centrally managed retail development within 1 km of the retail development;
 - h. The total NLA of other centrally managed retail developments within the planning area of the retail development;
 - i. Dummy variable for there being no other centrally managed retail development within the planning area;

⁶³ Based on the key tenants indicated by the retail development in its annual report or website.

⁶⁴ Source: Ministry of Trade and Industry – Department of Statistics.

⁶⁵ Sources: Landlords' section 61A responses, annual reports, websites.

⁶⁶ Sources: LTA, SLA One Map. The underlying assumption of this distance weighted MRT/LRT passenger number is that on average a passenger is less likely to walk to a mall further away than to one nearer to it, all other things equal. As an illustration, based on data from OneMap, the walking distances between Suntec City Mall (centred at 3 Temasek Boulevard) and each of the 6 MRT stations within 1 km (Promenade CC4-DT15, Esplanade CC3, Bugis DT14, Bugis EW12, and City Hall EW13-NS25, and Nicoll Highway CC5) are 360m, 606m, 616m, 811m, 963m, and 987m respectively. Based on LTA's data, the December 2018 passenger numbers at these stations were 1.26mil, 0.63mil, 1.18mil, 2.82mil, 3.10mil, and 0.30mil respectively (rounded off in this footnote for brevity). For example, using the weight of $(1000-360)/1000$ for Promenade CC4-DT15, this gives a distance-weighted passenger number of 0.8m from Promenade CC4-DT15. Summing across the 6 MRT stations, this gives Suntec City Mall a distance-weighted total passenger number of 2.16mil for December 2018.

⁶⁷ Sources: Landlords' section 61A responses, annual reports, websites.

- j. Dummy variable for the retail development being managed by [X] in 2019;
 - k. Dummy variable for the retail development being managed by [X] in 2019;
 - l. Dummy variable for the retail development being managed by [X] in 2019;
 - m. Dummy variable for the retail development being managed by [X] in 2019;
 - n. Dummy variable for the retail development being managed by [X] in 2019;
 - o. Dummy variable for the retail development being managed by [X] in 2019; and
 - p. Dummy variable for the retail development being managed by [X] in 2019.
2. The following independent variables were selected for the regression model, taking into account the adjusted R-squared⁶⁸:
- a. Dummy variable for the retail development having a luxury brand positioning;⁶⁹
 - b. The population of the planning area in which the retail development is located;
 - c. The annual shopper footfall of the retail development in 2019;
 - d. The number of MRT/LRT passengers within 1 km of the retail development in December 2018 weighted by the walking distance;
 - e. The NLA of the retail development in 2019;
 - f. The total NLA of other centrally managed retail developments within 1 km of the retail development weighted by the walking distance;
 - g. Dummy variable for the retail development being managed by [X] in 2019; and
 - h. Dummy variable for the retail development being managed by [X] in 2019.

⁶⁸ The adjusted R-squared increases when the additional independent variable improves the regression model by more than it would be expected by chance.

⁶⁹ Based on the key tenants indicated by the retail development in its annual report or website.

4. The regression results are as follows:

[X]

5. The regression results of other model specifications were also analysed. Compared to the regression model selected above, the statistical significance of “footfall” and “[X]” are robust to the omission of “[X]” from or the addition of any one of the other 5 major mall managers to the regression model.