



Section 57 of the Competition Act (Cap. 50B)

Grounds of Decision issued by the Competition Commission of Singapore

In relation to the notification for decision of the proposed acquisition by F&N Foods Pte Ltd of King's Creameries (S) Pte Ltd pursuant to section 57 of the Competition Act

17 December 2010

Case number: CCS 400/007/10

I. Introduction

The notification

1. On 22 October 2010, F&N Foods Pte Ltd ("F&N Foods") and King's Creameries (S) Pte Ltd ("King's") (collectively the "Parties"), filed a joint notification pursuant to section 57 of the Competition Act (the "Act"), for a decision by the Competition Commission of Singapore ("CCS") as to whether the proposed acquisition, by F&N Foods, of all the issued share capital in King's (the "Transaction"), would infringe the section 54 prohibition of the Act.
2. CCS has concluded that the Transaction, if carried into effect, will not infringe section 54 of the Competition Act (Cap. 50B) (the "Act").

II. The Parties

F&N Foods

3. F&N Foods is a wholly owned subsidiary of Fraser and Neave Limited (“F&N”)¹, which is listed on the Main Board of the Singapore Exchange Securities Trading Limited. F&N is a pan-Asian consumer group with business interests in the food and beverage, property, publishing and printing industries².
4. F&N Foods operates F&N’s dairy business in Singapore and is in the business of producing and marketing sweetened condensed milk, pasteurized milk, fruit juices and ice cream for the Singapore and Malaysian markets as well as for export to other countries. In particular, F&N Foods distributes the *Magnolia*, *Cravio* and *Meadow Gold* brands of ice cream products in Singapore³. The Thai subsidiary of F&N, F&N United Ltd⁴, is a major producer of novelty and take-home tub ice cream products for F&N in Singapore, Malaysia and Thailand markets⁵.
5. The Parties submitted that the Singapore turnover of F&N’s ice cream business was [X] and the worldwide turnover (including Singapore, Malaysia and Thailand) was [X] in the financial year ended 30 September 2009.

King’s

6. King’s is a wholly owned subsidiary of National Foods (S) Pte Ltd (“National Foods”), which is, in turn, owned by National Foods International Holdings Limited⁶.
7. King’s is a manufacturer and distributor of a full range of ice cream products - take-home tubs and novelties in unique as well as traditional flavours - that are marketed through supermarkets, convenience stores, and food service operations in Singapore and Malaysia. The brands of ice cream products that King’s distributes in Singapore include *Potong*, *Neapolitan Bar*, *King’s Magic Cup*, *King’s Grand*, *Bud’s Super premium ice cream*, *Mochi* multipack, etc.⁷. King’s

¹ Business Profile of F&N Foods dated 25 October 2010 (Accounting and Corporate Regulatory Authority)

² Form M1, paragraph 3.1.4

³ 4 November 2010 Response to CCS letter dated 27 October 2010, Table 3

⁴ The Parties have submitted in paragraph 7.2.2 of Form M1 that F&N United is a [X] owned subsidiary of F&N and that apart from being involved in the manufacturing and distribution of ice cream products in Thailand, F&N United also supplies ice cream products to F&N Dairies (Malaysia) Sdn Bhd and F&N Foods in Malaysia and Singapore respectively.

⁵ Form M1, paragraph 2.2.2

⁶ Business Profiles of King’s and National Foods dated 25 October 2010 (Accounting and Corporate Regulatory Authority)

⁷ 4 November 2010 Response to CCS letter dated 27 October 2010, Table 3

also exports ice cream products to Brunei, Cambodia, Canada, East Timor, Hong Kong, Indonesia, Macau and Philippines etc.⁸

8. King's has [X], King's Dairies (M) Sdn Bhd and King's Creameries (M) Sdn Bhd, and [X] Treats Dairies (Sarawak) Sdn Bhd⁹. King's Dairies (M) Sdn Bhd is principally engaged in distribution and marketing of King's products in West Malaysia while Treats Dairies (Sarawak) Sdn Bhd is principally engaged in manufacturing, distribution and marketing of King's products in East Malaysia. King's Creameries (M) Sdn Bhd is principally involved in the manufacturing of King's products for sale in Malaysia and Singapore as well as other export countries¹⁰.
9. The Parties submitted that the Singapore turnover of King's was [X] and the worldwide turnover was [X] in the financial year ended 31 December 2009¹¹.

III. The Transaction

10. The notified Transaction is a cash offer by F&N Foods to the seller, National Foods, for all of the issued share capital in King's¹². [X]¹³.
11. The Parties submitted that the Transaction will enable the merged entity to [X]¹⁴.
12. Based on the Parties' submission that F&N Foods will acquire sole control of King's post-Transaction¹⁵, the Transaction constitutes a merger pursuant to section 54(2)(b) of the Act¹⁶.

IV. Competition Issues

13. The Parties submitted that the area of overlapping business between F&N Foods and King's is the manufacturing and sale and distribution of ice cream products¹⁷.

⁸ Form M1, paragraph 2.2.3

⁹ Form M1, Annex 3

¹⁰ Form M1, paragraph 7.2.5

¹¹ Form M1, paragraph 3.1.7

¹² Form M1, paragraph 1.3.1

¹³ Form M1, paragraph 3.1.14(b) and Annex 4, Clause 3.1(b)

¹⁴ Form M1, paragraph 3.2.1

¹⁵ Form M1, paragraph 3.1.2

¹⁶ Section 54(2)(b) provides that a merger occurs if one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings.

¹⁷ Form M1, paragraph 3.1.9

[X] ¹⁸. In view of the Parties' submission, CCS has proceeded to consider whether the Transaction would substantially lessen competition in these markets.

V. The Relevant Markets

(a) Product market

(i) *The Parties' submissions*

14. The Parties submitted that ice cream can be categorised according to how it is manufactured and distributed and that a distinction is usually made between artisanal ice cream, which is generally produced, distributed and consumed on a small scale, and industrial ice cream, which is produced for wide scale distribution¹⁹. According to the Parties, they do not overlap in the sale and distribution of artisanal ice cream²⁰.
15. It is the Parties' submission that ice cream products can be categorised according to where it is intended to be consumed, in the following categories:
 - (a) *'Impulse' ice cream*: this consists of single wrapped items and individual portions of 'scooped' ice cream, designed for immediate consumption at or near the place of purchase;
 - (b) *'Take-home' ice cream*: this includes multipacks of single items, blocks, tubs, dessert products etc., intended for consumption at home; and
 - (c) *Catering ice cream*: this is essentially made up of industrial ice cream sold in bulk to hotels, restaurants, cafes etc. for consumption as part of a catering service, e.g. dessert, in those places²¹.
16. The above categorization of ice cream products has also been identified by the European Commission in *Case Nos IV/34.073, IV/34.395 and IV/35.436 Van den Bergh Foods Limited*²².
17. However, the Parties have taken the view that in the context of Singapore, the market for the sale and distribution of ice cream should be defined broadly to include all ice cream products²³, i.e. artisanal ice cream and industrial ice cream²⁴, not broken down into 'impulse', 'take-home' and catering categories of ice cream, for the following reasons.

¹⁸ 10 November 2010 Response to CCS letter dated 4 November 2010, paragraph 1.1

¹⁹ Form M1, paragraph 6.1.4

²⁰ Form M1, paragraph 6.1.14

²¹ Form M1, paragraph 6.1.5

²² Form M1, paragraph 6.1.9

²³ Form M1, paragraph 6.1.13

²⁴ Form M1, paragraph 6.1.14

18. The Parties submitted that there is a chain of substitution across the categories of ice cream products which include artisanal ice cream, in that where there is a small, but significant non-transitory increase in the price of industrial ice cream, consumers may find greater value in consuming artisanal ice cream over the price differential with industrial ice cream²⁵. On the other hand, frozen yoghurt, ‘water ices’/ ‘ice pops’ (water-based products) and ‘soft’/ ‘whipped’ ice cream (which is made with vegetable fat and has no dairy content) do not form part of the relevant product market as their contents differ substantially from ice cream products generally and the Parties do not overlap in the sale and distribution of these products in Singapore²⁶.
19. The Parties further submitted that, in the context of Singapore, the distinction between take-home ice cream and impulse ice cream is not clear-cut²⁷. This is because ice cream is perceived to be an “indulgence consumable” which consumers are generally price sensitive to²⁸ and given the small geographic size of Singapore, the location of the consumption of ice cream may not be as significant a factor as was considered by the EC in *Van den Bergh*²⁹. Further, Singapore is not subject to a great extent of seasonal changes, which may drive the urgency for immediate consumption (i.e. impulse consumption) of ice cream outside of the home³⁰.
20. In respect of supply-side substitution, the Parties are of the view that the know-how and equipment used in the manufacturing and distribution of ice cream are scalable and translatable across the manufacturing and distribution of different categories of ice cream products and competitors have demonstrated the resources and ability to easily and quickly enter the market for the sale and distribution of ice cream products across the various categories³¹. In this regard, the Parties cited observations of a competitor’s apparent exclusive arrangements with selected petrol marts and selected convenience stores and various competitors’ new product launches in recent years³². It is, in the Parties’ opinion, likely that any small but significant non-transitory increase in prices of ice cream products in one product category will be met by suppliers switching production to such ice cream products from other product categories³³. Further, the requirements of manufacturing and operating the business in the sale and distribution of impulse ice cream in Singapore would not be significantly

²⁵ Form M1, paragraph 6.1.14

²⁶ Form M1, paragraph 6.1.15

²⁷ Form M1, paragraph 6.1.16

²⁸ Form M1, paragraph 6.1.16

²⁹ Form M1, paragraph 6.1.19

³⁰ Form M1, paragraph 6.1.20

³¹ Form M1, paragraph 6.1.23

³² 10 November 2010 Response to CCS letter dated 4 November 2010, paragraphs 9.1 and 9.2. [X]

³³ Form M1, paragraph 6.1.23

different from the requirements for other categories of ice cream products, e.g. take-home ice cream.

21. CCS notes that the Parties have not made any specific submissions in respect of whether the distinction between catering ice cream and the other categories of ice cream, i.e. impulse and take-home, is clear and whether catering ice cream should form a separate product market. However, the Parties have submitted that there has been strong growth in the catering category of ice cream, with smaller ice cream manufacturers playing an important role³⁴.

(ii) *CCS' assessment*

22. In the market for the sale and distribution of ice cream, the Parties, together with other distributors of ice cream such as General Mills Asia Pte Ltd and Unilever Singapore Pte Ltd, supply ice cream to customers such as “retail supermarkets and hypermarkets”, convenience stores, petrol stations and other retail outlets”, and “other distribution channels, including internet retailing and the food services industry (i.e. hotels, restaurants and cafes)”³⁵, who in turn retail the ice cream to end-consumers. The manufacturing market is the market where manufacturers supply these ice-cream products to these distributors.

Artisanal Ice cream

23. While the Parties submitted that artisanal ice cream should be included in the relevant market as there is a chain of substitution across the categories of ice cream products³⁶, the *CCS Guidelines on Market Definition* state that “even though all products in the chain are substitutes, this does not mean that the whole chain is the relevant market”³⁷. CCS notes that artisanal ice cream is generally not in the same price range as industrial ice cream as the former is generally more expensive³⁸, and customers (retailers) of industrial ice cream identified in the preceding paragraph by the Parties are unlikely to substitute industrial ice cream for artisanal ice cream in response to a price increase.
24. Further, artisanal ice cream is usually made on a daily basis or on a just-in-time approach basis³⁹. Artisanal ice cream usually does not contain preservatives⁴⁰ and has a wide range of flavours, including innovative flavours such as Choya

³⁴ 10 November 2010 Response to CCS letter dated 4 November 2010, Table 3

³⁵ Form M1, paragraph 6.1.6

³⁶ Form M1, paragraph 6.1.14

³⁷ *CCS Guidelines on Market Definition*, paragraph 3.15

³⁸ An Industry Report submitted by the Parties

³⁹ http://www.udders.com.sg/the_udders_story; http://www.icekimo.com/about_us.asp; <http://www.icecreamgallery.com/>; <http://www.icecreamchefs.com/aboutus.html>

⁴⁰ http://www.icekimo.com/about_us.asp; <http://www.icecreamgallery.com/>

Lime Umeshu Sorbet⁴¹, Avocado Gula Melaka, Tangy Basil⁴², Kaya Lotee⁴³, D24 Durian⁴⁴ and Dino Milo⁴⁵.

25. From the supply perspective, fragmented entities that manufacture, sell and distribute artisanal ice cream are unlikely to respond to an increase in the price of industrial ice cream as they tend to compete on innovation and quality. For example, instead of having intense price promotions, artisanal ice cream parlors market themselves by having “Chocolate Sorbet Week” and “Chocolate Ice Cream Week”⁴⁶ (different flavours every week), or a weekly “free mix-in day” (where customers get to mix in ingredients such as chocolate bars into their ice cream for free)⁴⁷ and/or conduct ice cream making workshops⁴⁸. Further, manufacturers of artisanal ice cream are unlikely to be ready to collectively supply in the large quantities needed by the customers (retailers) of industrial ice cream as artisanal ice cream is generally produced, distributed and consumed on a small scale.⁴⁹ As such, CCS is of the view that artisanal ice cream does not fall within the relevant market, and in any case, the Parties do not overlap in the sale and distribution of artisanal ice cream.

Industrial Ice Cream

26. Taking the above into consideration, CCS is of the view that the relevant product markets should be confined to all or parts of industrial ice cream, and as such, proceeded to consider if the various categories of industrial ice cream, i.e. impulse, take-home and catering ice cream, may be further divided into separate markets.
27. CCS agrees with the Parties that the distinction between take-home ice cream and impulse ice cream is not clear-cut based on the following reasons:
- (a) Consumers in Singapore are likely to purchase take-home ice cream to satisfy impulse needs for ice cream;
 - (b) Consumers in Singapore can purchase impulse ice cream and consume it at home due to the close proximity of most residences to an ice cream retailer; and
 - (c) Singapore is not subject to the same extent of seasonal changes, which may drive an urge for immediate consumption of ice cream at the place of

⁴¹ http://www.udders.com.sg/our_flavours; <http://www.icecreamgallery.com/>;

⁴² <http://www.tomspalette.com.sg/flavours.html>

⁴³ <http://www.icecreamchefs.com/flavours.html>

⁴⁴ <http://www.icekimo.com/scoops.asp>

⁴⁵ <http://www.icekimo.com/scoops.asp>

⁴⁶ <http://www.tomspalette.com.sg/calander.html>

⁴⁷ <http://www.icecreamchefs.com/promotions.html>

⁴⁸ <http://www.tomspalette.com.sg/index.html>; <http://www.icekimo.com/index.asp> ;

http://www.udders.com.sg/ice_cream_workshop

⁴⁹ Form M1, paragraph 6.1.4

purchase⁵⁰. As such, consumers can buy either take-home or impulse ice cream to satisfy their ice cream cravings in Singapore.

28. From the demand perspective, CCS is of the view that catering ice cream may be considered to be in a different market from the impulse/take-home market. The EC in *Van den Bergh* had determined that ice cream which is offered to the consumer as part of catering services forms a distinct product market as value is often added to the ice cream by the caterer⁵¹, CCS notes that this is likely to hold true for ice cream tub products, as caterers serve ice cream with beverages⁵² or food and are able to “disguise” the ice cream as they need not reveal the actual brand or source of ice cream to the end customers⁵³. The taste of the ice cream may also be enhanced by the accompanying beverage or food. Further, the ice cream served by caterers as part of a beverage or food dish may be “dressed up” with toppings or garnishing such that it is aesthetically more pleasing.
29. Further, customers of catering ice cream (i.e. cafes, restaurants etc.) are unlikely to find impulse/take-home ice cream to be a substitute, as catering ice cream is generally cheaper for these customers (i.e. cafes, restaurants etc.) than impulse/take-home ice cream, and some customers receive the product in bulk packaging format⁵⁴. Similarly, customers (retailers) of impulse/take-home ice cream are unlikely to purchase bulk format (for eg. in 6 litre tubs⁵⁵ instead of 1.5 litre tubs⁵⁶) for sale to end-consumers, whereas ice-cream for the catering market is often purchased in bulk format.
30. From the supply perspective, CCS agrees with the Parties that there is considerable scope for substitution by suppliers of ice cream, such as the Parties and other manufacturers/distributors, as “the know-how and equipment used in the manufacturing and distribution are scalable and translatable across the manufacturing and distribution of different categories of ice cream products”⁵⁷. In this regard, CCS notes that the types of products purchased by the catering customers are the same or similar to those purchased by the retailers although they may differ in volume (per product) and packaging⁵⁸.

⁵⁰ Form M1, paragraph 6.1.20

⁵¹ Form M1, paragraph 6.1.10; Case Nos IV/34.073, IV/34.395 and IV/35.436 *Van den Bergh Foods Limited*, paragraph 131

⁵² Minutes of teleconference with [REDACTED], paragraph I(c)(iii)

⁵³ Minutes of teleconference with [REDACTED], paragraph 3(e)(xxii)

⁵⁴ Based on Tables 6, 7 and 8 provided in the 10 November 2010 Response to CCS letter dated 4 November 2010, [REDACTED]. However, CCS notes that this may not hold true for every product of non-scoop ice cream supplied to catering customers. [REDACTED]

⁵⁵ 10 November 2010 Response to CCS letter dated 4 November 2010, Table 8

⁵⁶ 10 November 2010 Response to CCS letter dated 4 November 2010, Tables 6 and 7

⁵⁷ Form M1, paragraphs 6.1.22 and 6.1.23

⁵⁸ 10 November 2010 Response to CCS letter dated 4 November 2010, Tables 6 to 9 and Reply to CCS Questionnaire by [REDACTED], Answer to Q 12.

31. Therefore, the relevant product market, in respect of the sale and distribution of ice cream, for the merger assessment may be divided into the following separate markets: (a) the sale and distribution of industrial ice cream for impulse and take-home consumption; and (b) the sale and distribution of industrial ice cream to catering customers. Accordingly, the relevant product market, in respect of the manufacturing of ice cream, for the merger assessment may be divided into the following: (c) the manufacturing of ice cream for impulse and take-home distribution; and (d) the manufacturing of ice cream for catering distribution.
32. However, where factors affecting these markets are similar, and where possible, CCS will consider these markets together.

(b) Geographic Market

(i) The Parties' submissions

33. The Parties submitted that the relevant geographic market for the sale and distribution of ice cream is national at the narrowest, with the possibility of being global⁵⁹. The Parties have not put forth any submissions on the relevant geographic market for the manufacturing market.
34. From a demand-side perspective, the Parties submitted that preferences for the different flavours, brands and categories of ice cream products are likely to differ on a national level, in particular, preferences for local ice cream flavours. Distribution arrangements, as well as consumer preferences, may vary depending on the consumption behavior and distribution structure of local markets. Consumers from Singapore are also unlikely to switch to purchasing ice cream from other countries given the nature of ice cream products requiring storage at low temperatures and specialized logistical arrangements when transported over long distances⁶⁰.
35. From a supply-side perspective, the Parties submitted that virtually all industrial ice cream products are manufactured outside of Singapore and imported into Singapore. Competitors from Singapore, for example, in the case of the ice cream product *Flipi*, are able to easily supply ice cream products manufactured from outside of Singapore to be sold through retail channels in Singapore. Ice cream products available in Singapore are now produced in countries such as Malaysia, Indonesia, Thailand, Philippines, China, Japan, Australia, USA, France, Germany and Switzerland. As such, the Parties are of the view that a plausible definition of the geographic market for the sale and distribution of ice cream affecting Singapore is a global market⁶¹.

⁵⁹ Form M1, paragraph 6.1.27

⁶⁰ Form M1, paragraph 6.1.31

⁶¹ Form M1, paragraph 6.1.32

(ii) *CCS' assessment*

36. From the point of view of customers (retailers), the ice cream products purchased from distributors such as the Parties are easily substitutable with products imported from overseas. In this regard, CCS has observed that retailers such as NTUC Fairprice, Cold Storage, and neighborhood shops, sell ice cream products from the United States, Europe, Japan, Korea and China. CCS further notes that on the supply side, virtually all industrial ice cream products sold in Singapore are manufactured outside of Singapore and imported into Singapore⁶².
37. Therefore CCS is of the view that the relevant geographic markets for the manufacturing as well as the sale and distribution of industrial ice cream are likely to be those manufactured globally and sold in Singapore.

VI. Market Structure

(i) Market shares and market concentration

38. Based on an industry report⁶³ submitted by the Parties, CCS has derived the following market shares in the market for the sales and distribution of industrial ice cream for impulse and take-home consumption:

⁶² Form M1, paragraph 6.1.32

⁶³ Parties' response to CCS letter dated 4 November 2010, Annex 1.

Table 1: Estimated market shares for sales and distribution of industrial ice cream for impulse and take-home consumption. (Figures are based on an industry report submitted by the Parties)

	Sales & Distribution of Impulse & Take Home Ice Cream in Singapore		
	2007	2008	2009
	% Mkt Share	% Mkt Share	% Mkt Share
F&N FOODS	[10 - 20%]	[10 - 20%]	[10 - 20%]
KING'S	[0 - 10%]	[0 - 10%]	[0 - 10%]
F&N FOODS + KING'S	[20 - 30%]	[20 - 30%]	[20 - 30%]
UNILEVER	[30 - 40%]	[30 - 40%]	[30 - 40%]
NESTLE	[10 - 20%]	[10 - 20%]	[10 - 20%]
GENERAL MILLS	[10 - 20%]	[10 - 20%]	[10 - 20%]
NTUC FAIRPRICE	[0 - 10%]	[0 - 10%]	[0 - 10%]
CARREFOUR SINGAPORE	[0 - 10%]	[0 - 10%]	[0 - 10%]
OTHERS	[10 - 20%]	[10 - 20%]	[10 - 20%]
PRE-MERGER CR3	[60 - 70%]	[60 - 70%]	[60 - 70%]
POST-MERGER CR3	[70 - 80%]	[70 - 80%]	[70 - 80%]

39. As set out in the above table, the Parties had a combined market share of [20 – 30%] in 2009, and the post-merger CR3 is estimated to be [70 - 80%]. As the merged entity is likely to have a market share of between 20% to 40% and the post-merger combined market share of the three largest firms (also known as “CR3”) is 70% or more⁶⁴, CCS is of the view that competition concerns could potentially arise in the market for the sale and distribution of industrial ice cream for impulse and take-home consumption.
40. The Parties have submitted that information relating to market shares in respecting of the catering market is not readily available, and they are not aware of any market sources which provide such estimates⁶⁵.
41. In any case, the thresholds set out in paragraph 39 above are simply indicators of potential competition concerns. CCS will consider other factors such as entry and expansion, countervailing buying power and efficiencies⁶⁶ to determine whether there will be a substantial lessening of competition in this particular market post-Transaction.

⁶⁴ CCS Guidelines on the Substantive Assessment of Mergers, para 5.15

⁶⁵ Parties' response to CCS letter dated 1 November 2010, paragraph 2.3

⁶⁶ CCS Guidelines on the Substantive Assessment of Mergers, paragraph 5.16 and Part 7

(ii) Barriers to entry and expansion

42. Based on feedback received by CCS, the barriers to entry for the ice cream business do not appear to be high. Feedback given to CCS generally indicates that there is competition in both the ‘impulse’/‘take-home’ ice cream market and the catering ice cream market and customers will have sufficient choice after the Transaction⁶⁷. This is in line with the findings on the competitive landscape of the local ice cream industry in an industry report submitted by the Parties, where it is mentioned that there is “intense competition”⁶⁸.
43. One of the factors mentioned by respondents (both competitor and customer) as an entry barrier is that suppliers of ice cream products are required to pay “listing fees” to retailers in order for their products to be stocked and displayed for sale at the retailer outlets⁶⁹. However, [X], CCS is of the view that such fees do not appear to be priced at a level that would deter new entrants.
44. One of the Parties’ competitors was of the opinion that it would not be difficult to enter the ice cream market in Singapore as the local end-consumers like new choices and would welcome any new entry, and all that would be needed is the ability and capability to handle the supply chain and to build up a brand image⁷⁰. The same respondent stated that although it is not difficult to enter the market, it might be difficult to succeed as the challenge is in building the brand, gaining customer loyalty, finding the right sales channels and the right price points⁷¹.
45. CCS further notes that there was a new entrant in May 2009, when Chia Tai Consumer Products Pte Ltd brought in *Flipi*, a multi-pack ice cream from France, to provide an alternative to other imported brands from regional countries such as Malaysia and Indonesia. *Flipi* had an introductory “buy one get one free” offer when it was launched in Sheng Siong supermarkets to attract consumer interest in the new product⁷².

(iii) Product differentiation

46. Competition in the ice cream market generally takes place on both price as well as non-price factors, such as quality, packaging and product range. In particular,

⁶⁷ Minutes of teleconference with [X], paragraph III(b)(xv); Minutes of teleconference with [X], paragraph 2.

⁶⁸ An Industry Report submitted by the Parties

⁶⁹ Response to CCS letter dated 27 October 2010, paragraph 7.1

⁷⁰ Minutes of teleconference with [X], paragraph III(b)(xiv)

⁷¹ Minutes of teleconference with [X], paragraph III(b)(xiv)

⁷² An industry report provided by the Parties

it is clear from both respondents' feedback⁷³ and industry reports⁷⁴ that product innovation and quality are particularly important in this market.

(iv) Countervailing buyer power

47. In respect of 'take-home' and 'impulse' ice cream, CCS notes that the main buyers of these ice cream products are major retailers with numerous branches all over Singapore. As mentioned above, suppliers of ice cream products are required to pay "listing fees" to retailers in order for their products to be stocked and displayed for sale at the retailer outlets⁷⁵.
48. [X] suppliers of these retailers often have to give reasons why the retailers should list their products. In particular, retailers have the incentive to list products that will sell quickly, and allocate shelf space according to how quickly products are able to sell. In particular, one of the top customers of industrial ice cream, a supermarket chain, has indicated that if price increases of a particular brand of ice cream cause purchases by end-consumers to fall drastically, then the amount of shelf space allocated may be correspondingly reduced⁷⁶, to the detriment of the supplier.
49. One of the Parties' largest customers of industrial ice cream, a supermarket chain, also indicated to CCS that there is a long list of potential suppliers of ice cream but the supermarket has been unable to display these competing products due to the lack of shelf space⁷⁷. It is therefore likely that customers will be able to switch to competing suppliers in the face of any price increases by existing distributors of ice cream.
50. It is CCS' view that the ability of the retailers to decide whether to list these products puts the retailers in a strong buyer position. In addition, one of the Parties' competitors said that although freezer cabinets for the ice cream products are supplied to the retailers on a 'rental' basis, in practice the supplier does not charge these retailers but instead pays these retailers to lease a space for their freezer cabinets⁷⁸. This strengthens CCS' view that the retailers generally have strong countervailing buyer power. Finally, it has to be noted that these retailers did not indicate any concern(s) arising from the Transaction.

⁷³ Minutes of teleconference with [X], paragraph III(b)(xvi), Minutes of teleconference with [X], paragraphs I(c)(iii), I(d)(v), II(h)(x), Minutes of teleconference with [X], paragraph 5, Reply to Questionnaire by [X], paragraph 6.

⁷⁴ Industry reports submitted by the Parties

⁷⁵ Response to CCS letter dated 27 October 2010, paragraph 7.1

⁷⁶ Minutes of teleconference with [X], paragraph 23

⁷⁷ Minutes of teleconference with [X], paragraph 22

⁷⁸ Minutes of teleconference with [X], paragraph I (c)

51. In respect of the catering ice cream market, the feedback from the Parties' customers has been that the suppliers in this market are competitive⁷⁹. While CCS received feedback that price increases would be passed on to the end consumers to a certain extent, there was also feedback that customers are able to switch to alternative suppliers⁸⁰. As such, customers in the catering ice cream market appear to have some degree of buyer power to check price increases.

VII. Competition Assessment

(a) Non-coordinated effects

52. Non-coordinated effects may arise where, as a result of the Transaction, the merged entity finds it profitable to raise prices (or reduce output or quality) because of the loss of competition between the merged entities⁸¹. CCS is of the view that non-coordinated effects are unlikely to arise in the relevant markets ('impulse', 'take-home' and catering ice cream) as a result of the Transaction for the reasons set out below.
53. In respect of 'impulse' and 'take-home' ice cream, supply is fragmented with many existing competitors, both domestic as well as imported. Further, the barriers to entry are relatively low, and given that many of the buyers are relatively big retailers, there exists strong buyer power. In particular, industry feedback has been that the competition is intense, and price promotions are expected to "continue into 2015" in order for ice cream suppliers to stand out from among the intense competition⁸².
54. CCS further notes that even with the Transaction, Unilever Singapore Pte Ltd, with a market share of [30 – 40%] in 2009, is likely to remain the market leader. [REDACTED]⁸³. It therefore appears that Unilever Singapore Pte Ltd is a strong competitor capable of sustaining sufficient levels of post-merger rivalry.
55. In respect of catering ice cream, customers have choices of alternative suppliers and the barriers of entry are also relatively low. These factors are indicators of constraints on any exercise of post-Transaction market power.

⁷⁹ Minutes of teleconference with [REDACTED], paragraph I(ii), Reply to Questionnaire by [REDACTED], paragraph 2 and Minutes of teleconference with [REDACTED], paragraph I (b)

⁸⁰ Reply to Questionnaire by [REDACTED], paragraphs 6 and 18, Minutes of teleconference with [REDACTED], paragraphs III(xv) and III(xix), Minutes of teleconference with [REDACTED], paragraphs II(e), III(o) and III(s)

⁸¹ *CCS Guidelines on the Substantive Assessment of Mergers*, paragraph 6.3

⁸² An industry report submitted by the Parties

⁸³ See Table 1 above.

(b) Coordinated effects

56. Based on feedback given in respect of 'impulse' and 'take-home' ice cream, CCS notes that supply is fragmented with many existing competitors who compete on price, quality, product range and product innovation. In particular, innovation, product range and quality are important factors to customers. Further, low barriers of entry and strong countervailing power would be sufficient to render coordination difficult. As such, CCS considers that it is unlikely that coordinated effects will arise.
57. In respect of catering ice cream, product range and quality (or taste) is similarly important factors to customers. For example, one customer indicated that a wide range of flavours is necessary for his business as he provides an ice cream buffet as part of his business⁸⁴, and another customer indicated that the ice cream supplied must be suitable for its beverages⁸⁵. In addition, barriers of entry are not significant.
58. In view of the above factors, the risk of coordinated behavior is low.

(c) Efficiencies

59. The Parties have submitted that the merged entity is expected to achieve [REDACTED]⁸⁶.
60. As the Parties have not produced documents in support of the cost reductions, CCS is unable to take these efficiencies into account in the assessment of the Transaction.

(d) The Ice Cream Manufacturing Market

61. In addition to King's being involved in the manufacturing of ice cream, CCS notes that [REDACTED] is similarly engaged in this market. It is clear from the [REDACTED]⁸⁷ and Parties' submissions above on efficiencies that F&N Foods regards the manufacturing facilities of F&N United as an integral part of the ice cream business. As such, CCS has considered both King's and F&N United's involvement in the ice cream manufacturing market in determining whether the

⁸⁴ Minutes of teleconference with [REDACTED], paragraphs II(f) and II(k)

⁸⁵ Minutes of teleconference with [REDACTED], paragraph I (c)(iii)

⁸⁶ [REDACTED]

⁸⁷ [REDACTED]

Transaction is likely to give rise to substantial lessening of competition post-Transaction.

62. The Parties have submitted that information in relation to estimates of the size of the market and market shares in respect of the business of contract manufacturing for third parties is not readily available and that they are not aware of any market sources which provide such estimates for this market⁸⁸. However, CCS notes the Parties' submission that King's contract manufacturing customers are primarily overseas⁸⁹, which in turn implies that the Parties' market share in manufacturing would not materially differ from their market share in sales and distribution.
63. In addition, given that the downstream customers of industrial ice cream are large retailers⁹⁰ with strong countervailing buyer power, it is unlikely that the post-Transaction entity would be able to leverage significant market power in the manufacturing market to substantially foreclose competition. Feedback from a major retailer and a caterer confirms that they would be able to turn to alternative manufacturers or suppliers⁹¹.

VIII. Ancillary Restrictions

64. The Parties have notified the following restrictions entered into pursuant to the Transaction: [REDACTED]⁹². These restrictions will be collectively referred to as the "SSA restrictions".

(i) *The Parties' submissions*

65. The Parties submitted that the SSA restrictions are necessary for the implementation of the Transaction in order to allow F&N Foods to fully benefit from the goodwill acquired as part of the Transaction. The Parties submitted that the restriction for the duration of [REDACTED] is necessary to protect the value of the business and assets acquired by F&N Foods, in view of the market structure and nature of the business involved.⁹³

⁸⁸ 10 November 2010 Response to CCS letter dated 4 November 2010, paragraph 3.1

⁸⁹ 8 November 2010 Response to CCS letter dated 1 November 2010, Table 17

⁹⁰ 8 November 2010 Response to CCS letter dated 1 November 2010, Table 17

⁹¹ Minutes of teleconference with [REDACTED], paragraph 14, Reply to Questionnaire by [REDACTED], paragraph 11.

⁹² [REDACTED]

⁹³ Form M1, Part 2C, paragraphs 10.1.4, 10.1.5

(ii) *CCS' assessment*

66. CCS is of the view that the SSA restrictions constitute ancillary restrictions and consequently fall within the exclusion under paragraph 10 of the Third Schedule to the Act. The CCS Guidelines on the Substantive Assessment of Mergers state that non-compete clauses, if properly limited, are generally accepted as essential if the purchaser is to receive the full benefit of any goodwill and/or know-how acquired with any tangible assets⁹⁴. CCS will consider the duration of the clause, its geographical field of application, its subject matter and the persons subject to it.
67. CCS is of the view that, on the facts of this case, [X] is a reasonable amount of time for F&N Foods to protect the value of its ice cream manufacturing, sale and distribution business and assets post-Transaction as well as fully benefit from the goodwill acquired from the Transaction. For the same reasons, CCS is also of the view that the geographical market scope of the SSA restrictions is necessary for the Transaction, and reasonable, [X].

IX. Conclusion

68. For the reasons above and based on the information available, CCS assesses that the Transaction, if carried into effect, will not infringe the section 54 prohibition. In accordance with section 57(7) of the Act, this decision shall be valid for a period of one year from the date of this decision.



Yena Lim
Chief Executive
Competition Commission of Singapore

⁹⁴ CCS Guidelines paragraph 10.15