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**Section 57 of the Competition Act 2004**

**Grounds of Decision issued by the Competition and Consumer Commission of Singapore**

**In relation to the Proposed Acquisition by Oki Electric Co., Ltd. of Yokogawa Electric Corporation's aviation equipment business**

**Date: 27 April 2023**

**Case number: 400/140/2022/007**

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<p>Confidential information in the original version of this Decision will be redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [§&lt;].</p>
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## I. INTRODUCTION

1. On 8 November 2022, the Competition and Consumer Commission of Singapore (“**CCCS**”) accepted an application for a decision pursuant to section 57 of the Competition Act 2004 (the “**Act**”) by Oki Electric Industry Co., Ltd. (“**Oki**”) and Yokogawa Electric Corporation (“**YE**”) (collectively, the “**Parties**”) as to whether the proposed acquisition of the aviation equipment business of YE and its subsidiaries, Yokogawa Manufacturing Corporation (“**YMC**”) and Yokogawa Electric Asia Pte Ltd. (“**YEA**”) (the “**Target Business**”) by Oki (the “**Proposed Transaction**”) will infringe section 54 of the Act, if carried into effect. The Proposed Transaction is implemented through a business transfer agreement dated 5 October 2021 (the “**Business Transfer Agreement**”) and is structured as an asset only acquisition by Oki of the Target Business from YE and its subsidiaries. The Proposed Transaction will be implemented in two steps and is further elaborated upon in paragraph 10 and diagrammatically presented in Figure 1 below.
2. In reviewing the Proposed Transaction, CCCS conducted a public consultation and sought feedback from third parties, including the competitors and customers of Oki and YE. All third parties contacted indicated that they had no competition concerns in relation to the Proposed Transaction.
3. At the end of the consultation process and after evaluating all relevant information, including the Parties’ submissions and feedback from third parties, CCCS concludes that the Proposed Transaction, if carried into effect, will not infringe section 54 of the Act.

## II. THE PARTIES

### (a) The Acquirer

#### Oki

4. Oki is a Japanese information and communications technology company and is headquartered in Tokyo and listed on the Tokyo Stock Exchange.<sup>1</sup> Oki is engaged in several business segments worldwide, including information and communications technology, mechatronics systems, printers and electronics manufacturing services.<sup>2</sup>

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<sup>1</sup> Paragraph 7.1 of Form M1.

<sup>2</sup> Paragraph 10.5 of Form M1.

5. In Singapore, Oki's activities involve the provision of support to distributors in Singapore and Southeast Asia in respect of Oki's printers and spare parts through Oki Data (Singapore) Pte. Ltd..<sup>3</sup>

**(b) The Target**

**YE**

6. YE is headquartered in Tokyo and listed on the Tokyo Stock Exchange. YE provides advanced technologies and services in the areas of measurement, control and information to customers across a broad range of industries, including energy, chemicals, materials, pharmaceuticals, food and water.<sup>4</sup>
7. In Singapore, YE operates through its subsidiaries, (i) Yokogawa Engineering Asia Pte Ltd; (ii) YEA; (iii) Yokogawa Electric International Pte. Ltd. (collectively, "**Yokogawa Singapore**"); and (iv) Yokogawa India Limited (Singapore Branch), to supply process control instrumentation. Yokogawa Singapore is YE's global manufacturing centre for distributed control & safety systems, and measuring instrumentation & avionics. Yokogawa Singapore is also YE's global engineering centre. Functioning as the regional headquarters, Yokogawa Singapore works closely with local country offices to serve clients across Southeast Asia, Taiwan and the Oceania regions.<sup>5</sup> Insofar as the Target Business is concerned, YEA's commercial aviation equipment business pertains to the manufacturing of flat panel displays for commercial aircraft cockpits.<sup>6</sup>

**III. THE PROPOSED TRANSACTION**

8. As mentioned in paragraph 1 above, the Proposed Transaction involves an assets-only acquisition (i.e. there is no acquisition of shares)<sup>7</sup>, pursuant to which Oki will acquire sole control of the Target Business.<sup>8</sup>
9. CCCS assesses that the Proposed Transaction constitutes a merger under section 54(2)(c) of the Act, as Oki will acquire the Target Business and replace YE and its subsidiaries, YEA and YMC, in that regard.

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<sup>3</sup> Paragraph 10.8 of Form M1.

<sup>4</sup> Paragraph 7.4 of Form M1.

<sup>5</sup> Paragraph 10.9 of Form M1.

<sup>6</sup> Please refer to Figure 1 below for a graphical representation of the various components of the Target Business.

<sup>7</sup> Paragraph 11.3 of Form M1.

<sup>8</sup> Paragraph 11.1 of Form M1.

10. The Proposed Transaction will be completed in two steps. The first step<sup>9</sup>– [X].<sup>10</sup> The ownership structure of the Target Business before and after the Proposed Transaction (including the two-step process) is illustrated in Figure 1 below.<sup>11</sup>

**Figure 1: Ownership structure of the Target Business before and after the Proposed Transaction**

[X]

#### **IV. COMPETITION ISSUES**

11. The Parties submitted that Oki and the Target Business do not supply any overlapping good or services in Singapore.<sup>12</sup> Instead, for the purposes of CCCS’s review, Parties submitted that the focus of CCCS’s assessment should be on the market involving the Target Business’s only product that is supplied in Singapore; namely, flat panel displays for commercial aircraft cockpit systems (“**Flat Panel Displays**”)<sup>13</sup>, as this is the market likely to be affected by the Proposed Transaction (if at all).<sup>1415</sup>
12. Given that the nature of the Proposed Transaction involves Oki acquiring sole control of the Target Business such that Oki effectively replaces YE in the manufacture and supply of Flat Panel Displays in Singapore, CCCS notes that the result of the Proposed Transaction is a one-for-one replacement on the supply side with no change to the market structure. CCCS notes that third parties did not raise any competition concerns arising from the Proposed Transaction.<sup>16</sup> CCCS therefore considers that the Proposed Transaction is unlikely to result in any substantial lessening of competition (“**SLC**”) in the market for the supply of Flat Panel Displays in Singapore and accordingly has not carried out any further assessment of the horizontal impact of the Proposed Transaction.

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<sup>9</sup> Step 1 also [X]. See paragraph 8.4.1 of Form M1.

<sup>10</sup> Paragraph 8.4 of Form M1.

<sup>11</sup> Figure 1 under paragraph 8.3 of Form M1.

<sup>12</sup> Paragraph 15.1 of Form M1.

<sup>13</sup> Flat panel displays for commercial aircraft cockpit systems are essentially the same as the LCD screens used in personal computers and others. The difference is that in order to be used in commercial aircraft cockpits, they need to be ruggedized to be altitude resistant, durable, damage-resistant and able to remain visible in all lighting conditions for severer aircraft environments (in terms of temperature, air pressure, vibration and impact).

<sup>14</sup> Paragraph 19.2 of Form M1.

<sup>15</sup> At paragraph 1.2 of Parties’ response dated 13 April 2023 to CCCS’s RFI dated 27 December 2022, the Parties clarified that YEA’s aviation manufacturing business is the business involved in manufacturing flat panel displays in Singapore for commercial aircraft cockpits.

<sup>16</sup> For example, [X] noted that [X]. [X] response dated 2 December 2022 to CCCS’s RFI dated 22 November 2022.

13. The Parties also submitted that there are vertical relationships arising from the Proposed Transaction with regards to two aspects. The first relates to the supply of Multilayer Rigid Circuit Boards (“**MRCBs**”)<sup>17</sup> and the second relates to the supply of Integrated Circuit screening services (“**IC screening services**”)<sup>18</sup>.
14. On the supply of MRCBs, the Parties submitted that Oki’s wholly-owned subsidiary, Oki Circuit Technology Co., Ltd. (“**OTC**”), supplies MRCBs to YMC and YEA for use in relation to the Target Business.<sup>19</sup> Specifically, OTC supplies MRCBs to YEA for use in relation to the Target Business’s production in Singapore of Flat Panel Displays<sup>20</sup> and supplies MRCBs to YMC for use in relation to the Target Business’s production in Japan. Following the Proposed Transaction, OTC will continue to supply MRCBs for use in the Target Business, as well as to its customers globally.<sup>21</sup>
15. On the supply of IC screening services, Oki submitted that its wholly-owned subsidiary, Oki Engineering Co., Ltd. (“**OEG**”), supplies IC screening services to the Target Business, and does not have any sales outside of Japan with respect to IC screening services.<sup>22</sup> While OEG supplies IC screening services to YMC in relation to the Target Business, YMC is only active in Japan and not in Singapore. Hence, CCCS considers that the supply of IC screening services does not appear to have a clear nexus to a market in Singapore and, therefore, need not be further assessed.
16. Given the above, CCCS has focused its assessment on whether the Proposed Transaction will lead to vertical effects that result in, or may be expected to result in, an SLC in the supply of MRCBs in Singapore; namely, (i) input foreclosure and (ii) customers foreclosure, which are discussed further below.

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<sup>17</sup> Based on desktop research, MRCBs are a form of circuit board which are solid and inflexible in their structure and therefore cannot be bent or flexed. MRCBs consist of two or more inner layers with a compact design, multiple functions, lightweight production, durability, and flexibility, and are used in a wide range of industries, including consumer electronics, telecommunications, defense and military.

<sup>18</sup> IC screening services involves the screening of integrated circuits to reduce the possibility of defects. It includes testing to eliminate latent defects by placing certain stresses on the integrated circuits as well as testing to confirm the regular functioning of the integrated circuits. In relation to the Target Business, IC screening is conducted for integrated circuits used in aviation equipment, namely flat panel displays, fuel quantity indicators and image generation devices, thermometers and control units.

<sup>19</sup> Paragraph 36.1 of Form M1 and Paragraph 2.1 of the Parties’ response dated 13 April 2023 to CCCS’s RFI dated 27 December 2022.

<sup>20</sup> Paragraph 2.1 of the Parties’ response dated 13 April 2023 to CCCS’s RFI dated 27 December 2022.

<sup>21</sup> Paragraph 36.3 of Form M1.

<sup>22</sup> Paragraph 36.5.3 of Form M1.

## V. COUNTERFACTUAL

17. CCCS considers the prevailing conditions of competition prior to the Proposed Transaction to be the appropriate counterfactual for this assessment. The available evidence does not indicate that the market structure or competition dynamics in the counterfactual would differ from the status quo.

## VI. RELEVANT MARKET

### *Upstream Market – Supply of MRCBs*

18. According to the Parties' submissions, MRCBs are generic products that are widely used as component products for different industries, and not just in the manufacture of Flat Panel Displays (or the aviation industry).<sup>23</sup> From a demand-side perspective, there are no specific requirements or specifications for MRCBs used for Flat Panel Displays, fuel quantity indicators and image generation devices in aircraft cockpits and other aviation instruments. This is generally corroborated by third party feedback, verifying that MRCBs purchased from OTC were used for individual customers' industries<sup>24</sup> and not only for Flat Panel Displays.<sup>25</sup>
19. From a supply-side perspective, the Parties submitted that suppliers of MRCBs that are currently not producing MRCBs for the aviation industry can easily produce MRCBs for the aviation industry.<sup>26</sup> This is also generally corroborated by feedback from third parties.<sup>27</sup>
20. Based on the information provided, CCCS is of the view that the upstream product market for the purposes of the present assessment is the supply of MRCBs generally and that it is unnecessary to define a separate sub-market for the supply of MRCBs for Flat Panel Displays.

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<sup>23</sup> Paragraph 4.4 of the Parties' response dated 13 April 2023 to CCCS's RFI dated 27 December 2022.

<sup>24</sup> While MRCBs are generic in nature, MRCBs may have to be configured according to individual customer's needs.

<sup>25</sup> [X] response dated 14 March 2023 and [X] response 21 March 2023 to question 1 of CCCS's RFI dated 15 March 2023.

<sup>26</sup> Paragraph 4.4 of the Parties' response dated 13 April 2023 to CCCS's RFI dated 27 December 2022.

<sup>27</sup> For example, when asked whether the manufacturing process for MRCBs used in the production of Flat Panel Displays was significantly or fundamentally different from the manufacturing process for MRCBs that are used for other industrial applications, one of the two third parties who responded to this question stated "no" while the other opined that it could be different due to different application purposes. [X] response dated 14 March 2023 and [X] response 21 March 2023 to question 1 of CCCS's RFI dated 15 March 2023.

21. CCCS also notes that the Parties consider Oki's subsidiary, OTC, which supplies MRCBs, to be competing on a global basis against competitors located in different countries/regions.<sup>28</sup> In this regard, CCCS further notes that OTC's customers are located in different countries such as [X] and that they procure on a global basis from suppliers of MRCBs located in different countries/regions.<sup>29</sup> Thus, CCCS considers that the geographic market for the supply of MRCBs is likely to be global-to-global.

*Downstream Market – Flat Panel Displays*

22. From a demand-side perspective, the Parties submitted that whilst Flat Panel Displays supplied for cockpit instruments used in other aircraft could be substitutes to those supplied by YE and its subsidiaries, such other Flat Panel Displays may not be a close substitute due to differences in sizes and configuration.<sup>30</sup> Feedback from third parties generally supports this.<sup>31</sup>
23. From the supply-side perspective, the Parties submitted that other suppliers of Flat Panel Displays and other LCD panel manufacturers can switch to producing Flat Panel Displays that are suitable substitutes for the ones currently supplied by YE and its subsidiaries. However, these other suppliers and LCD manufacturers will have to invest significant cost and time to obtain the necessary certification<sup>32</sup> and configure the Flat Panel Displays produced<sup>33</sup>, which, in the Parties' view, may take [X] years and cost JPY [X] (approx. S\$[X]).<sup>34</sup> In this regard, CCCS notes that feedback from a third party LCD panel producer broadly supports the Parties' submissions<sup>35</sup>, and that the Parties were able to point to past examples of LCD panel producers entering the market for the supply of Flat Panel Displays.<sup>36</sup>
24. CCCS notes that the sizes and configuration of Flat Panel Displays used for different commercial aircraft cockpits are sufficiently different such that existing suppliers of Flat Panel Displays will have to invest time and cost to switch to supplying different aircraft manufacturers. However, CCCS considers that the

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<sup>28</sup> In the Parties' submission on OTC's presence and the subsequent market shares, it is apparent that the Parties consider the supply of MRCBs to be global in nature. Paragraphs 36.1 to 36.3 of Form M1.

<sup>29</sup> Paragraph 4.1 of the Parties' response dated 19 January 2023 to CCCS's RFI dated 27 December 2022.

<sup>30</sup> Paragraph 19.10 of Form M1.

<sup>31</sup> [X] response dated 15 December 2022 to Question 7a of CCCS's RFI dated 29 November 2022.

<sup>32</sup> For example, the AS9100 certification and any other certification or qualification [X] or [X] may impose.

<sup>33</sup> Paragraphs 19.11 and 19.12 of Form M1.

<sup>34</sup> Paragraph 6.4 of the Parties' response dated 5 December 2022 to CCCS's RFI dated 8 November 2022.

<sup>35</sup> [X] response dated 16 December 2022 to Question 4a of CCCS's RFI dated 29 November 2022.

<sup>36</sup> Paragraph 4.2 of the Parties' response dated 5 December 2022 to CCCS's RFI dated 8 November 2022 and Paragraph 19.12 of Form M1.



additional costs involved in having to obtain the necessary certifications and adding further customisation to LCD panels is likely to be marginal relative to the sunk costs that these manufacturers would have already incurred to enter the market for the manufacture and supply of Flat Panel Displays or LCD panels generally. Based on the information provided, CCCS considers that there is no necessity for the purposes of the present assessment to define a sub-market for Flat Panel Displays by aircraft type.

25. Third Party<sup>37</sup> feedback corroborates the Parties' submission that the competitive impact of the Proposed Transaction will most likely be on the global supply of Flat Panel Displays<sup>38</sup>. Thus, CCCS considers that the relevant geographic market for the assessment of the Proposed Transaction is the global supply of Flat Panel Displays.
26. Based on the Parties' submissions and third parties' feedback, for the purpose of this assessment, CCCS considers the relevant markets to be:
  - i. Upstream market: the global supply of MRCBs to worldwide customers (the "**Relevant Upstream Market**"); and
  - ii. Downstream market: the global supply of Flat Panel Displays to worldwide customers (the "**Relevant Downstream Market**"),

which will be collectively referred to hereafter as the "**Relevant Markets**".

## VII. CCCS'S ASSESSMENT

### (a) Market Shares

#### Relevant Upstream Market

27. The Parties estimate that OTC's market share in the Relevant Upstream Market in 2020 was [X] [X0-5]% globally.<sup>39</sup>

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<sup>37</sup> [X] response dated 16 December 2022 to Question 5 of CCCS's RFI dated 12 December 2022 and [X] response dated 21 December to Question 1 of CCCS's email dated 19 December 2022.

<sup>38</sup> Paragraph 20.2.2 of Form M1.

<sup>39</sup> Paragraph 36.1 of Form M1.

### Relevant Downstream Market

28. The Parties submitted that they do not have precise global market share data of Flat Panel Displays<sup>40</sup>, but assessed YE's best estimates<sup>41</sup> of the global market share of the Target Business for Flat Panel Displays in FY 2019, FY 2020 and FY 2021 by value and volume to be [X<50-60]%.<sup>42</sup> Further, the Parties estimated their market shares in Singapore for Flat Panel Displays in FY 2019, FY 2020 and FY 2021 by value and volume to be [X<90-100]%.<sup>43</sup>
29. CCCS considers that the market share estimates submitted by the Parties may not be reliable for several reasons. First, the market share figures were best estimates derived using market shares of commercial aircraft, which is the end-product (i.e. Flat Panel Displays are supplied to aircraft cockpit system assemblers who in turn supply the fully assembled cockpit systems that are used in the eventual commercial aircraft). Second, the Parties had also derived market share figures based on the net orders<sup>44</sup> submitted by each aircraft manufacturer, obtained from a Reuters article published on 12 January 2022 discussing deliveries of aircraft manufacturers.<sup>45</sup> However, the net orders referred to in the article relates solely to year 2021 figures, which the Parties had used "as a proxy to derive the market share figures for FY2020 and FY 2019". Third, CCCS notes that the Parties had submitted that, in their view, the figures for FY 2020 and FY 2019 are unlikely to accurately reflect the market situation due to the impact of COVID-19.<sup>46</sup> Consequently, CCCS considers that the market share figures provided by the Parties are at best, estimates, and may not be fully indicative of any potential competition concerns in the Relevant Markets.

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<sup>40</sup> Footnote 17 of Form M1.

<sup>41</sup> The Parties provided their best estimates of global market size on the following basis: (1) Airbus and Boeing's market shares in the market for commercial aircraft is approximately [X<40-50]% each; and (2) YEA supplies [X<90-100]% of the flat panel displays used for Airbus' aircraft to [X<], while [X<] supplies [X<90-100]% of the flat panel displays used for Boeing's aircraft. Accordingly, YE estimates that the global market size is [X<] YEA's sales of flat panel displays. Footnote 17 of Form M1.

<sup>42</sup> Paragraph 9.4 of the Parties responses dated 5 December 2022 to CCCS's RFI dated 8 November 2022.

<sup>43</sup> Paragraphs 22.1 and 22.2 of Form M1.

<sup>44</sup> Net Orders refers to new orders minus cancellations.

<sup>45</sup> Paragraph 10.1 of the Parties response dated 5 December 2022 to CCCS's RFI dated 8 November 2022.

<sup>46</sup> Paragraph 5.1 of the Parties' response dated 23 January 2023 to CCCS's RFI dated 20 December.

**(c) Vertical Effects**

30. Based on the information received, CCCS assesses that the Proposed Transaction is unlikely to give rise to vertical effects in the Relevant Markets for the following reasons:

- a. Input foreclosure is unlikely to arise as a result of the Proposed Transaction given that the Oki may not have the ability to foreclose competitors of the Target Business in the Relevant Downstream Market since OTC is not a significant supplier in the Relevant Upstream Market, and customers in the Relevant Downstream Market will still be able to obtain MRCBs from other suppliers. Furthermore, OTC does not currently supply competitors of the Target Business in the Relevant Downstream Market<sup>47</sup>, which suggests that there are minimal risks of OTC foreclosing rivals in the Relevant Downstream Market arising from the Proposed Transaction. Oki is also unlikely to have the incentive to foreclose competitors of the Target Business in the Relevant Downstream Market as the sale of MRCBs from OTC to the Target Business constitute [~~3~~][~~3~~0-5]% of OTC's total sales of MRCBs pre-merger.<sup>48</sup>
- b. Customer foreclosure is unlikely to arise as a result of the Proposed Transaction. CCCS notes that while there may be ability and incentive for the Target Business to purchase solely from OTC post-merger, YE and its subsidiaries are already purchasing MRCBs solely from OTC for use in Flat Panel Displays prior to the Proposed Transaction. Thus, given the generic nature of MRCBs and the fact that MRCBs are sold to an array of other industries, the Target Business's demand for MRCBs is unlikely to be large or significant enough for it to be considered a major customer of generic MRCB suppliers, even though the Target Business could be considered a significant player in the supply of Flat Panel Displays. Furthermore, third parties did not raise concerns in relation to customer foreclosure.

**(d) Coordinated Effects**

31. CCCS assesses that the Proposed Transaction, if carried into effect, is unlikely to result in coordinated effects. The Proposed Transaction is unlikely to lead to

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<sup>47</sup> According to the Parties, apart from YEA and YMC (who are directly involved in the manufacturing of Flat Panel Displays), none of OTC's customers are active in the Relevant Downstream Market. Paragraph 16.2 of the Parties' response dated 5 December 2022 to CCCS's RFI dated 8 November 2022.

<sup>48</sup> Paragraph 36.1 of the Form M1.

foreclosure of either upstream or downstream competitors in the Relevant Markets identified for reasons stated in the preceding paragraphs. The number of existing players in each of the Relevant Markets is unlikely to be reduced as a result of the Proposed Transaction such that it becomes easier for remaining players to coordinate. The Proposed Transaction is also unlikely to increase the access of Oki or OTC, post the Proposed Transaction, to commercially sensitive information about the activities of non-integrated rivals. In particular, the case team notes that prior to the Proposed Transaction, Oki (through OTC) does not supply MRCBs to any of the Target Business's rivals. This in turn also suggests that the Proposed Transaction is unlikely to align the incentives of suppliers to maintain coordination since Oki does not, in the first instance, supply to rivals of the Target Business in the Relevant Downstream Market.

(e) **Conclusion on Competition Assessment**

32. Based on the above, CCCS concludes that the Proposed Transaction, if carried into effect, will not lead to an SLC in Singapore.

**VIII. EFFICIENCIES**

33. Given that the competition assessment did not raise SLC concerns, it is not necessary for CCCS to assess the efficiencies claimed by the Parties.

**IX. ANCILLARY RESTRAINTS**

34. The Parties submitted that the non-compete and non-solicitation restrictions in the Business Transfer Agreement are ancillary restrictions to the Proposed Transaction that are necessary for the implementation of the Proposed Transaction to protect the full value of the Target Business.<sup>49</sup> The Parties submitted that these restrictions are not overly restrictive and do not go beyond what is necessary to ensure that the full value of the Target Business is protected.<sup>50</sup>
35. The scope of the non-compete restriction as set out in the Business Transfer Agreement (the “**Non-Compete Restriction**”) [X].<sup>51</sup> It takes effect from [X]<sup>52</sup>

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<sup>49</sup> Paragraph 44.6 of Form M1.

<sup>50</sup> Paragraph 44.6 of Form M1.

<sup>51</sup> Article 7.16 (1) of the Business Transfer Agreement.

<sup>52</sup> [X]

of the Proposed Transaction until [REDACTED].<sup>53</sup> Accordingly, the duration of the Non-Compete Restriction is [REDACTED].<sup>54</sup>

36. The non-solicitation restriction set out in the Business Transfer Agreement (the “**Non-Solicitation Restriction**”) [REDACTED].<sup>55</sup> The Non-Solicitation Restriction covers [REDACTED]<sup>56</sup> [REDACTED]. Accordingly, the Non-Solicitation Restriction would be in effect for [REDACTED].<sup>57</sup>
37. CCCS recognises that non-compete clauses and non-solicitation clauses may be necessary in some instances to protect the acquirer’s legitimate interest in receiving the full benefit of any goodwill and know-how acquired. However, such clauses must be proportionate to the overall requirements of the relevant merger.<sup>58</sup> CCCS considers that the information provided by the Parties does not fully explain why it is necessary for the Non-Compete Restriction and Non-Solicitation Restriction to have effect for the stated durations. This is particularly so given that the Parties had previously stated that it had taken a new entrant only two to three years to enter the market for the supply of flat panel displays.<sup>59</sup> While the Parties had explained that, unlike Oki, the new entrant had some existing experience and know-how within the supply chain for flat panel displays for cockpits,<sup>60</sup> CCCS considers that this explanation is insufficient given that Oki is acquiring the Target Business with its attendant assets (e.g. a pool of experienced employees). This differentiates Oki’s situation from that of a new entrant with no experience or expertise in the market for Flat Panel Displays. Further, it is unclear why the mere fact that Oki will have a higher production volume or is producing different types of displays means that Oki requires more time to establish itself relative to the new entrant.
38. Hence, CCCS considers that the Non-Compete Restriction and the Non-Solicitation Restriction as submitted by the Parties do not amount to ancillary restrictions to the Proposed Transaction under the Act.

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<sup>53</sup> [REDACTED]

<sup>54</sup> Paragraph 5.1 of the Parties’ 2 March 2023 response to CCCS’s 3 February 2023 RFI.

<sup>55</sup> Article 7.16 (2) and (3) of the Business Transfer Agreement.

<sup>56</sup> 5 October 2021. Preamble of Business Transfer Agreement.

<sup>57</sup> Assuming that the date of the Second Closing Date is [REDACTED].

<sup>58</sup> Paragraph 11.10 of the *CCCS Guidelines on the Substantive Assessment of Mergers*.

<sup>59</sup> Paragraph 6.1 of the Parties’ 5 December 2022 Response to CCCS’s RFI dated 8 November 2022.

<sup>60</sup> Paragraphs 6.1 to 6.4 of the Parties’ 23 January 2023 Response to CCCS’ Request for Information dated 20 December 2022.

**X. CONCLUSION**

39. For the reasons above and based on the information available, CCCS assesses that the Proposed Transaction, if carried into effect, will not lead to an SLC in Singapore and consequently, will not infringe the section 54 of the Act.
40. In accordance with section 57(7) of the Act, the decision will be valid for a period of one year from the date of CCCS's decision.

Sia Aik Kor  
Chief Executive  
Competition and Consumer Commission of Singapore