

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

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

**In relation to the proposed acquisition by Jacobs Douwe Egberts Holdings Asia NL B.V. of shares of OldTown Berhad**

**30 January 2018**

**Case number: CCS 400/009/17**

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Confidential information in the original version of this Decision has been 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 [X].
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## **I. Introduction**

### **The notification**

1. On 18 December 2017, Jacobs Douwe Egberts B.V. (“JDE”) filed an application pursuant to section 57 of the Competition Act (Cap. 50B) (“the Act”) for a decision by the Competition Commission of Singapore (“CCS”) on whether the proposed acquisition of OldTown Berhad (“OT”) through JDE’s wholly-owned subsidiary, Jacobs Douwe Egberts Holdings Asia NL B.V. (“JDE Asia”) (hereinafter “the Proposed Transaction”), will infringe the prohibition in section 54 of the Act, if carried into effect.
2. The Proposed Transaction would see JDE acquire sole control over OT via JDE Asia’s acquisition.
3. In reviewing the Proposed Transaction, CCS contacted nine (9) other suppliers of instant coffee mixes and/or instant milk tea mixes<sup>1</sup> (“the suppliers”), eight (8) intermediate customers<sup>2</sup> (“the intermediate customers”), and eight (8) corporate end-customers<sup>3</sup> (“the corporate customers”) (collectively, “the third parties”).
4. Of the third parties contacted, eleven (11) replied<sup>4</sup> and nine (9) of them provided substantive responses to CCS’s questions<sup>5</sup>. These third parties indicated they had no competition concerns with the Proposed Transaction and did not raise any concern that the Proposed Transaction was likely to have a major adverse impact on them.
5. At the end of the consultation process and after evaluating all the information, CCS concludes that the Proposed Transaction, if carried into effect, will not infringe section 54 of the Act.

## **II. The Parties to the Proposed Transaction**

### **JDE**

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<sup>1</sup> Suppliers: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

<sup>2</sup> Intermediate customers: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

<sup>3</sup> Corporate end-customers: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

<sup>4</sup> Suppliers: [REDACTED]; [REDACTED]; and [REDACTED]. Intermediate Customers: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]. Corporate end-customers: [REDACTED]; and [REDACTED].

<sup>5</sup> Suppliers: [REDACTED]; [REDACTED]; and [REDACTED]. Intermediate customers: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

6. JDE Asia is an investment holding company and a wholly-owned subsidiary of JDE International B.V. (“JDE International”). JDE International is wholly-owned by JDE, which is a privately held company owned by Acorn Holdings B.V. [§<], in partnership with Mondelēz International Inc. [§<]<sup>6</sup>.
7. JDE is a global coffee company that owns various brands in over 27 countries across Europe, Latin America and Australia, albeit with a very limited presence in Asia.<sup>7</sup> Its presence in Singapore is primarily through the operations of Super Group Pte. Ltd. (“SG”) and its “Moccona” brand of instant coffee which is retailed in Singapore.<sup>8</sup>
8. JDE acquired SG in June 2017. SG manufactures and sells over 160 instant food and beverage products, including instant tea mixes and instant coffee mixes.<sup>9</sup> SG also manufactures food ingredients, mainly non-dairy creamers, which can be used in preparation of instant coffee mixes.<sup>10</sup>
9. In Singapore, the “Moccona” brand of instant coffee is retailed in the modern trade<sup>11</sup> through supermarkets such as Giant and NTUC Fairprice, as well as through e-commerce players such as Lazada and Redmart. Moccona has a marginal presence in Singapore with approximately [0-10]% share in respect of the supply of instant coffee products in Singapore. Products sold under the “Moccona” brand comprise freeze-dried coffee and coffee capsules.<sup>12</sup>
10. JDE submitted that the brand names used in Singapore by the JDE Group<sup>13</sup> include “Essenso”, “Charcoal Roasted White Coffee”, “Super Power”, “Nutremill”, “Café Nova”, “Gold Café”, “Gold Eagle”, “Owl”, “Moccona”, “Super”, “Coffee King”, “Two Flying Babies” and “Ye Ye”.<sup>14</sup>
11. The entities under the JDE Group in Singapore include the following<sup>15</sup>:
  - a. Super Group Pte. Ltd.;
  - b. Super Coffee Corporation Pte. Ltd.;
  - c. Super Investment Holdings Pte. Ltd.;
  - d. Super Food Investment International Pte. Ltd.;

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<sup>6</sup> Paragraph 7.1 of Form M1.

<sup>7</sup> Paragraph 10.6 of Form M1.

<sup>8</sup> Paragraph 10.1 of Form M1.

<sup>9</sup> Paragraph 10.6 of Form M1.

<sup>10</sup> Paragraph 10.6 of Form M1.

<sup>11</sup> Retailers classified under “modern trade” are typically those with large retail space and who operate overseas chain stores with formal agreements entered into with all suppliers.

<sup>12</sup> Paragraph 10.8 of Form M1.

<sup>13</sup> The JDE Group comprises entities such as JDE, JDE Asia, and Super Group Pte. Ltd.

<sup>14</sup> Paragraph 10.4 and Annex 7 of Form M1.

<sup>15</sup> Paragraph 10.11 of Form M1.

- e. SCML Overseas Pte. Ltd.;
  - f. Super Grandex Investment Pte. Ltd.;
  - g. Super Continental Pte. Ltd.
  - h. Owl International Pte. Ltd.; and
  - i. Owl Beverage Specialist Pte. Ltd.
12. The total (group) worldwide revenue for the JDE Group in the financial year ended 31 December 2016 is €[X], approximately S\$[X].<sup>16</sup> In Singapore, the JDE Group's turnover is attributable to SG, which it acquired in 2017. SG's Singapore turnover in the financial year ended 2016 is S\$[X].<sup>17</sup>

## OT

13. OT is a publicly listed company on Bursa Malaysia, with its three largest shareholders being<sup>18</sup>:
- a. OldTown International Sdn. Bhd. with 42.58% of total shares;
  - b. The public with 40.93% of total shares; and
  - c. Mawer Investment Management Ltd. with 9.2% of total shares.
14. OT is active in three business segments<sup>19</sup>:
- a. The manufacturing of coffee and other beverages, including instant coffee mix, roasted coffee powder, instant milk tea mix and instant chocolate mix;
  - b. The marketing and sale of coffee and other beverages in over 18,000 points of distribution globally, covering modern trade, general trade<sup>20</sup> and other formats<sup>21</sup>; and
  - c. The operation of retail cafes under "OldTown White Coffee" brand across Australia, China, Hong Kong, Indonesia, Malaysia and Singapore.

<sup>16</sup> Paragraph 13.1 of Form M1.

<sup>17</sup> Paragraph 5.4 of JDE's Response to CCS's Request for Information ("RFI") dated 11 January 2018.

<sup>18</sup> Paragraph 7.4 of Form M1.

<sup>19</sup> Paragraph 10.7 of Form M1.

<sup>20</sup> Retailers classified under "general trade" generally refer to those with relatively smaller retail space, operate individual stores and who do not enter into formal agreements with suppliers.

<sup>21</sup> "Other formats" refer to retailers who are not classified under "modern trade" and "general trade". Examples of such retailers include convenience stores, specialty stores (e.g., imported food product stores).

15. JDE submitted that the brand name used in Singapore by OT is “OldTown”.<sup>22</sup> In Singapore, OT is involved in<sup>23</sup>:
- a. The marketing and sales of coffee and other beverages in points of distribution covering modern trade, general trade and other formats; and
  - b. The operation of retail cafes under the “OldTown White Coffee” brand. In this regard, OT is also involved in franchising café outlets, providing management services, and procurement of food items.
16. The entities under OT in Singapore include<sup>24</sup>:
- a. Old Town Singapore Pte. Ltd.; and
  - b. OTK Singapore Pte. Ltd.
17. As of 19 December 2017, OT also has a total of ten retail café outlets under the “OldTown White Coffee” brand, comprising<sup>25</sup>:
- i. Four fully-owned outlets;
  - ii. Two partially owned outlets;
  - iii. Three fully-owned kiosks; and
  - iv. One licensed kiosk.
18. The total (group) worldwide revenue for OT in the financial year ended 31 March 2017 is approximately S\$139 million.<sup>26</sup> The total (group) revenue for OT in Singapore in the financial year ended 31 March 2017 is approximately S\$[<].<sup>27</sup>

### **III. The Proposed Transaction**

19. The Proposed Transaction involves the acquisition by JDE of sole control over OT through JDE’s wholly-owned subsidiary, JDE Asia, by way of a voluntary general offer by JDE Asia for all the issued shares of OT.<sup>28</sup>

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<sup>22</sup> Paragraph 10.5 of Form M1.

<sup>23</sup> Paragraph 10.10 of Form M1.

<sup>24</sup> Paragraph 1.2 of OT’s Response to CCS’s RFI dated 28 December 2017.

<sup>25</sup> Paragraph 1.2 of OT’s Response to CCS’s RFI dated 28 December 2017.

<sup>26</sup> Paragraph 13.2 of Form M1.

<sup>27</sup> Paragraph 13.4 of Form M1.

<sup>28</sup> Paragraph 11.1 of Form M1.

20. JDE submitted that the aggregate consideration for JDE Asia's proposed acquisition of all the issued shares of OT is approximately RM1.47 billion (approximately S\$485 million).<sup>29</sup>
21. JDE submitted that the strategic and economic rationale for the Proposed Transaction is as follows<sup>30</sup>:
- a. The [X]market is a fast growing segment for coffee products. The Proposed Transaction enables JDE [X] in this fast growing region. The [X], coupled with the JDE Group's capabilities and experience in providing high-quality consumer products, is also expected to provide the JDE Group with the requisite scale and resource base in this region for further product innovation. In particular:
    - i. The JDE Group would have greater access to markets with a growth potential. [X];
    - ii. The JDE Group would be able [X]. JDE submitted that the Proposed Transaction would provide the JDE Group with [X]; and
    - iii. The JDE Group would benefit from the [X]. OT's capabilities in the manufacture of instant beverage products will [X]. The Proposed Transaction will also give the JDE Group access to new technology [X] and enhance the JDE Group's market proposition by providing better quality products overall.

*CCS's conclusion on whether the Proposed Transaction constitutes a Merger under the Act*

22. Based on JDE's submission that JDE will acquire sole control of OT upon JDE Asia's proposed acquisition of all issued OT shares, CCS is of the view that the Proposed Transaction constitutes a merger under section 54(2)(b) of the Act.

#### **IV. Competition Issues**

23. JDE submitted that the JDE Group and OT (collectively, the "Parties") overlap in the sale and marketing of (i) instant coffee mixes; and (ii) instant

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<sup>29</sup> Paragraph 11.6 of Form M1.

<sup>30</sup> Paragraph 12.1 of Form M1.

milk tea mixes to consumers through retailers or directly to consumers through other means<sup>31</sup> (“in-home sales”).<sup>32</sup> Together, the Parties supply approximately S\$[×] of instant coffee mixes and S\$[×] of instant milk tea mixes for in-home sales in Singapore in 2016.<sup>33</sup>

24. CCS further notes that the JDE Group and OT overlap in the supply of instant coffee mixes to businesses (“out-of-home sales”).<sup>34</sup> As noted by the European Commission (“EC”) in its decision in “*DEMB/Mondelez/Charger Opco*”<sup>35</sup>, out-of-home and in-home sales differ in the types of customers and procurement processes. In-home sales customers generally engage in individual negotiations with suppliers on an ad-hoc basis for their retail stores whereas out-of-home sales customers may have a service contract for a defined period with the suppliers.<sup>36</sup> Different from in-home sales, out-of-home sales are generally priced and negotiated according to the contents of the package sold to the customer.<sup>37</sup> Given the varied needs and requirements across customers, identical out-of-home requirements between customers are rare. The customers’ requirements will depend on, among other things, the number of uses, drinks variety needed, emphasis on hygiene, physical space, taste and quality, cost and customer preference.<sup>38</sup>
25. JDE submitted that its presence in out-of-home sales in Singapore for instant coffee mixes is negligible, and the Proposed Transaction would not have any substantive impact in Singapore for out-of-home sales of instant coffee mixes.<sup>39</sup>
26. The JDE Group’s turnover in respect of the supply of the instant coffee mixes for out-of-home sales for the financial year ended 31 December 2016 is S\$[×].<sup>40</sup> OT’s turnover in respect of the supply of the instant coffee mixes for out-of-home sales for the financial year ended 31 March 2017 is S\$[×].<sup>41</sup>

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<sup>31</sup> Other means here refer to online retail.

<sup>32</sup> Paragraphs 15.1 and 18.2 of Form M1; paragraph 9.1 of JDE’s Response to CCS’s RFI dated 27 December 2017.

<sup>33</sup> Paragraph 16.1 of Form M1; Paragraph 2.1 of JDE’s Response to CCS’s RFI dated 19 January 2018; and Table 5A(1) of OT’s Response to CCS’s RFI dated 9 January 2018. JDE submitted turnover figures for the financial year ended 31 December 2016. OT submitted turnover figures for the financial year ended 31 March 2017.

<sup>34</sup> Paragraph 1.1 of JDE’s Response to CCS’s RFI dated 19 January 2018.

<sup>35</sup> EC Case No. M.7292 – DEMB/MONDELEZ/CHARGER OPCO.

<sup>36</sup> EC Case No. M.7292 – DEMB/MONDELEZ/CHARGER OPCO.

<sup>37</sup> Paragraph 2.3 of JDE’s Response to CCS’s RFI dated 9 January 2018.

<sup>38</sup> Paragraph 2.3 of JDE’s Response to CCS’s RFI dated 9 January 2018.

<sup>39</sup> Paragraph 2.1 of JDE’s Response to CCS’s RFI dated 9 January 2018.

<sup>40</sup> Paragraph 1.1 of JDE’s Response to CCS’s RFI dated 9 January 2018.

<sup>41</sup> Table 5A(1) of OT’s Response to CCS’s RFI dated 9 January 2018.



Given JDE's submission that the estimated size (by value) of the supply of the instant coffee mixes for out-of-home sales is S\$[X]<sup>42</sup>, the combined market share of the Parties for the supply of instant coffee mixes for out-of-home sales is approximately [0-10]%. Third parties have confirmed JDE's claims that the presence of OT and JDE in out-of-home sales for instant coffee mixes is negligible.<sup>43</sup>

27. JDE also submitted for completeness, the JDE Group owns and operates a retail café at Changi Airport Terminal 1 departure lounge under the "OWL" brand. However, JDE submits that this does not give rise to any overlaps with OT, as access to the retail café is limited to transit customers at Changi Airport. In any event, the JDE Group intends to cease operations of the retail café once the lease expires in 2018.<sup>44</sup> JDE has submitted that there are no vertical relationships between the Parties in Singapore.<sup>45</sup>
28. In evaluating the potential impact of the Proposed Transaction, CCS considered whether the Proposed Transaction will lead to coordinated and/or non-coordinated effects that would substantially lessen competition or raise competition concerns in any market(s) in Singapore. In view of the negligible presence of OT and JDE in out-of-home sales for instant coffee mixes, CCS's assessment as to whether the Proposed Transaction infringes section 54 of the Act has focused on the supply of instant coffee mixes for in-home sales and the supply of instant milk tea mixes for in-home sales.

## **V. Counterfactual**

29. As stated at paragraph 4.14 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016* (the "Merger Guidelines"), CCS will, in assessing mergers and applying the substantial lessening of competition ("SLC") test, evaluate the prospects for competition in the future with and without the merger. The competitive situation without the merger is referred to as the "counterfactual". The SLC test will be applied prospectively, that is, future competition will be assessed with and without the merger.

### *JDE's submission*

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<sup>42</sup> Paragraph 3.7.2 of JDE's Response to CCS's RFI dated 9 January 2018.

<sup>43</sup> Notes of Teleconference between [X] and CCS on 17 January 2018; Notes of Teleconference between [X] and CCS on 17 January 2018; and [X] Response to Questions 12 and 20 to CCS's RFI dated 27 December 2017.

<sup>44</sup> Paragraph 15.2 of Form M1.

<sup>45</sup> Paragraph 37.1 of Form M1.

30. JDE submitted that in the absence of the Proposed Transaction, the Parties will continue to operate separately and independently. However, there will be a loss in opportunity for the Parties to rationalise and achieve the objectives as described at paragraph 21 above.<sup>46</sup>
31. JDE further submitted that in the absence of the Proposed Transaction, the Parties and other suppliers are likely to continue to compete in the supply of instant coffee mixes and instant milk tea mixes in Singapore. The Proposed Transaction will not result in an SLC in relation to the supply of instant coffee mixes and instant milk tea mixes in Singapore, or result in any adverse effect of an SLC relative to the counterfactual scenario.<sup>47</sup>

*CCS's conclusion on the relevant counterfactual*

32. CCS has considered JDE's submissions and is of the view that the relevant counterfactual for the purposes of CCS's competition assessment is that, absent the Proposed Transaction, the Parties will continue their business operations and compete in the supply of instant coffee mixes and instant milk tea mixes.

**VI. Relevant Markets**

**(a) Product Market**

33. JDE submitted that the relevant markets for the purposes of this notification are<sup>48</sup>:
- a. at the narrowest, the supply of instant coffee mixes for in-home sales, but potentially broader to include the supply of all coffee for in-home sales; and
  - b. at the narrowest, the supply of instant milk tea mixes for in-home sales, but potentially broader to include the supply of all tea for in-home sales.
34. JDE submitted that in-home sales of instant coffee mixes and instant milk tea mixes typically involves sales to intermediate customers (e.g., supermarkets, hypermarkets, convenience stores) which then sell instant coffee mixes or instant milk tea mixes to end-consumers.<sup>49</sup>

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<sup>46</sup> Paragraph 23.1 of Form M1.

<sup>47</sup> Paragraph 23.2 of Form M1.

<sup>48</sup> Paragraph 20.1 of Form M1.

<sup>49</sup> Paragraph 18.8 of Form M1; paragraph 2.2 of JDE's Response to CCS's RFI dated 9 January 2018.

35. In the in-home sales segment, coffee and tea manufacturers typically negotiate supply agreements with retailers to place their products on the retailers' shelves for purchase by end-consumers. Such negotiations cover all types of formats of coffee and tea products as consumers are exposed to a wide range of products and prices.<sup>50</sup>

*(i) Instant Coffee Mixes*

36. JDE submitted that instant coffee mixes are also known as coffee powder or soluble coffee. Instant coffee mixes are produced by the following processes: extraction, filtration and concentration, recovery of aromatic volatiles, dehydration, freeze-drying or spray-drying, aromatisation, and packaging. As consumers can rehydrate the instant coffee by mixing it with hot water, instant coffee can be prepared at short notice with readily available appliances (such as a kettle or a stove). Due to its preparation method, instant coffee mixes have a very long shelf life.<sup>51</sup>
37. The rules applicable to the import of instant coffee mixes are largely similar to the rules applicable to the vast majority of processed food imported into Singapore. Any import of food into Singapore is subject to the requirements imposed by the Agri-Food & Veterinary Authority of Singapore ("AVA").<sup>52</sup>
38. The standard process governing any import of food into Singapore entails, in addition to applying for a trader's licence or registration with the AVA, complying with the relevant food legislation, meeting AVA's conditions for specific types of food and satisfying AVA's labelling requirements, prior to applying for an import permit.<sup>53</sup> Instant coffee mixes are not subject to complex procedural or administrative regulatory conditions, such as additional veterinary conditions, procurement of meat and meat products, processed eggs, live poultry, or fish and fish products into Singapore.<sup>54</sup>

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<sup>50</sup> Paragraph 18.3 of Form M1.

<sup>51</sup> Paragraph 15.1.1 of Form M1.

<sup>52</sup> Relevant statutes and guidance include the Sale of Food Act (Chapter 283), regulation 56(1) of the Food Regulations, as well as AVA's Labelling Guidelines for Food Importers and Manufacturers, paragraph 18.11 of Form M1.

<sup>53</sup> See description of the process at: <https://www.ava.gov.sg/explore-by-sections/food/bringing-food-into-singapore-and-exporting/commercial-food-imports>

<sup>54</sup> Paragraph 18.12 of Form M1.

39. JDE submitted that all variants of coffee (e.g., single-serve and multi-serve coffee<sup>55</sup>, Roast & Ground (“R&G”) coffee<sup>56</sup>) are substitutes for instant coffee mixes. This applies to all variants and brands of instant coffee mixes sold by JDE, OT and their competitors.<sup>57</sup>
40. JDE submitted that, from a demand-side perspective, consumers in Singapore generally perceive various coffee options as alternatives for instant coffee mixes. Within in-home sales, there is no single product characteristic or combination of product characteristics for which consumers will consider two different types of coffee as not substitutable.<sup>58</sup> JDE further submitted that from a demand-side perspective, there is a chain of substitution that exists across each coffee type with different characteristics.<sup>59</sup>
41. From the supply-side perspective, JDE submitted that suppliers of instant coffee mixes are able to switch between supplying different variants of the same easily. JDE further submitted that the know-how and equipment used in the manufacturing and distribution of instant coffee mixes are scalable and translatable across the manufacturing and distribution of the different categories and brands of instant coffee mixes.<sup>60</sup>
42. JDE further submitted that with regard to the other alternatives of coffee for in-home sales, e.g., single-serve and multi-serve coffee, the supply-side switching process is not straightforward, as new plant equipment may need to be procured in order to produce instant coffee, and vice versa. However, there are commonalities in the production, such as procurement of coffee beans and other raw materials, understanding of consumer preferences and the path to market, as well as relationships with retailers, that could facilitate a supplier of one coffee product to switch to another.<sup>61</sup>

*(ii) Instant Milk Tea Mixes*

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<sup>55</sup> Single-serve and multi-serve coffee refers to coffee brewed using various appliances, ranging from the simple French press to the more sophisticated single-serve machines which can produce a wide array of beverages.

<sup>56</sup> R&G coffee refers to coffee beans that have been roasted, ground and are mostly used in multi-serve machines. R&G coffee comprises a wide range of varieties and aromas, and is suitable for a number of brewing methods.

<sup>57</sup> Paragraph 12.2 of JDE’s Response to CCS’s RFI dated 27 December 2017.

<sup>58</sup> Paragraph 12.3 of JDE’s Response to CCS’s RFI dated 27 December 2017.

<sup>59</sup> Paragraph 12.3 of JDE’s Response to CCS’s RFI dated 27 December 2017.

<sup>60</sup> Paragraph 12.5 of JDE’s Response to CCS’s RFI dated 27 December 2017.

<sup>61</sup> Paragraph 19.15 of Form M1.

43. JDE submitted that instant milk tea mixes are prepared by the following processes: tea selection, extraction, aroma stripping, tea cream processing, concentration, and spray-drying, and can be rehydrated for consumption with hot water. Similar to instant coffee mixes, instant milk tea can be prepared at short notice, and has a very long shelf life.<sup>62</sup>
44. Similar to instant coffee mixes, the statutory requirements and guidelines applicable to the import of instant tea mixes are largely similar to the rules applicable to the vast majority of processed food imported into Singapore.<sup>63</sup>
45. JDE submitted that tea bags and loose tea leaves are substitutes to instant milk tea mixes.<sup>64</sup>
46. JDE further submitted that, from a demand-side perspective, consumers in Singapore generally perceive various tea options as alternatives for instant tea mixes. Within in-home sales, there is no single product characteristic or combination of product characteristics for which consumers will consider two different types of tea as not substitutable. From a demand-side perspective, there is a chain of substitution that exists across each tea type with different characteristics.<sup>65</sup>
47. From the supply-side perspective, JDE submitted that suppliers of instant tea products are able to switch between supplying different variants of the same easily. JDE further submitted that the know-how and equipment used in the manufacturing and distribution of instant tea mixes are scalable and translatable across the manufacturing and distribution of the different categories and brands of instant tea mixes.<sup>66</sup>
48. With regard to the other alternatives of tea for in-home sales, e.g., tea leaves and tea bags, JDE submitted that the switching process is not prohibitive, as an instant tea manufacturer would only have to re-allocate its expenditure. For example, if an instant tea manufacturer wishes to switch to the supply of tea bags instead, resources used to purchase tea solids could be used to purchase oxidized tea leaves instead. There are commonalities in the production of tea variants that could facilitate a supplier of one tea product to switch to another.<sup>67</sup>

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<sup>62</sup> Paragraph 15.1.2 of Form M1.

<sup>63</sup> Key legislative requirements include compliance with the Sale of Food Act (Cap. 283), regulation 56(1) of the Food Regulations, as well as AVA's Labelling Guidelines for Food Importers and Manufacturers, see paragraph 18.11 of Form M1.

<sup>64</sup> Paragraph 19.5 of Form M1.

<sup>65</sup> Paragraph 12.3 of JDE's Response to CCS's RFI dated 27 December 2017.

<sup>66</sup> Paragraph 12.5 of JDE's Response to CCS's RFI dated 27 December 2017.

<sup>67</sup> Paragraph 19.16 of Form M1.

*CCS's assessment of the relevant product markets*

49. CCS has considered the possibility of broader product market definitions in relation to the supply of instant coffee mixes and instant milk tea mixes for the in-home sales segment.
50. Feedback from the majority of third parties indicated that, from the demand-side perspective, instant coffee mixes and instant milk tea mixes are not direct substitutes to other coffee products or tea products respectively as the selling point of instant coffee mixes and milk tea mixes is convenience.<sup>68</sup> End-consumers who switch to other coffee products (e.g., ground coffee) would require filter pads and this would necessitate a longer brewing time.<sup>69</sup> This would be similar for end-consumers who switch to other tea products (e.g., tea leaves) as they would be required to brew from tea leaves.<sup>70</sup>
51. CCS further notes that one intermediate customer indicated that instant coffee mixes and tea mixes cater to the mass market for end-consumers who require their daily “pick-me-up” without having to spend excessively.<sup>71</sup>
52. With regard to supply-side substitution, CCS notes that [X] is of the view that it would be easy for suppliers to switch production between variants of instant coffee mixes or variants of instant milk tea mixes, on the basis that the same production technology and equipment is used for the two variants. However, the ability of suppliers to switch between the different production technologies and equipment is largely dependent on available capital and the type of technology currently employed by that supplier.<sup>72</sup> Feedback from third parties also suggested that it would not be easy for suppliers of instant coffee mixes to switch to producing other types of coffee. For instance, coffee capsules use a different technology. The difficulty of coffee capsule production does not lie in producing the capsules, but rather in the investment into the research and development into the capsules and machines.<sup>73</sup>
53. In view of the above, CCS is of the view that the relevant product markets for the competition assessment of the Proposed Transaction are:

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<sup>68</sup> [X] Response dated to Questions 6 and 7 of CCS's RFI dated 27 December 2017; [X] Response dated to Questions 6 and 7 of CCS's RFI dated 27 December 2017; Notes of Teleconference between [X] and CCS on 4 January 2018, Response to Questions 1 and 2; [X] Response to Question 4 of CCS's RFI dated 27 December 2017; and [X] Response to Questions 6 and 7 of CCS's RFI dated 27 December 2017.

<sup>69</sup> [X] Response to Question 6 of CCS's RFI dated 27 December 2017.

<sup>70</sup> [X] Response to Question 7 of CCS's RFI dated 27 December 2017.

<sup>71</sup> [X] Response to Questions 6 and 7 of CCS's RFI dated 27 December 2017.

<sup>72</sup> [X] Response to Question 13 of CCS's RFI dated 28 December 2017.

<sup>73</sup> [X] Response to Question 5 of CCS's RFI dated 27 December 2017.

- (i) the market for the supply of instant coffee mixes for in-home sales; and
- (ii) the market for the supply of instant milk tea mixes for in-home sales.

**(b) Geographical Market**

54. JDE submitted that the relevant geographical markets for (i) the supply of instant coffee mixes for in-home sales; and (ii) the supply of instant milk tea mixes for in-home sales are global.<sup>74</sup>

*CCS's assessment of the relevant geographical markets*

55. CCS has considered JDE's submissions regarding the geographical markets.
56. With respect to the relevant geographical markets for the supply of instant coffee mixes for in-home sales and the supply of instant milk tea mixes for in-home sales, CCS notes from the feedback from third parties that instant coffee mixes and instant milk tea mixes are sourced from local suppliers and/or local distributors for overseas suppliers.<sup>75</sup> Instant coffee mixes are mainly purchased from local manufacturers and distributors such as Nestlé, Gold Kili, OT (through its appointed distributor DKSH) and Gold Roast.<sup>76</sup> Instant milk tea mixes are purchased from local manufacturers and distributors such as Gold Roast, Gold Kili, Unilever, Super, Twinings, and Tasty Food.<sup>77</sup> CCS also notes that international suppliers such as Nestlé and Unilever have corporate offices and/or manufacturing facilities in Singapore.
57. In view of this, CCS is of the view that the relevant geographic markets for the supply of instant coffee mixes for in-home sales and the supply of instant milk tea mixes for in-home sales are at the narrowest, Singapore. CCS also considers that if no competition concerns arise when looking at a narrower geographic definition (e.g., Singapore market), it is unlikely that there would be any competition concerns even if a wider geographical definition was adopted.

**(c) Conclusion on relevant markets**

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<sup>74</sup> Paragraph 20.2 of Form M1.

<sup>75</sup> [X] Response to Questions 1,4 and 5 of CCS's RFI dated 27 December 2017; [X] Response to Question 16 of CCS's RFI dated 27 December 2017; and [X] Response to Questions 8 and 12 of CCS's RFI dated 27 December 2017, List of Suppliers.

<sup>76</sup> [X] Response to Questions 4 and 16 of CCS's RFI dated 27 December 2017.

<sup>77</sup> [X] Response to Question 5 of CCS's RFI dated 27 December 2017.

58. Given the considerations set out above, CCS is of the view that the relevant markets for the competition assessment of the Proposed Transaction are:
- (i) the market for the supply of instant coffee mixes for in-home sales in Singapore;
  - (ii) the market for the supply of instant milk tea mixes for in-home sales in Singapore; and
- (collectively, the “Relevant Markets”).

## VII. Market Structure

### (a) Market shares and market concentration

#### (A) Market for the supply of instant coffee mixes for in-home sales in Singapore

##### *JDE’s submission*

59. JDE submitted its estimates of the total market size and market shares, by value and volume, of instant coffee mixes for in-home sales in Singapore for the years 2015 to 2017.<sup>78</sup> JDE explained that the estimates provided are based on available market data from Nielsen Company (US), LLC (the “Nielsen Data”).<sup>79</sup>
60. The market share estimates by value of the supply of instant coffee mixes for in-home sales in Singapore are summarized in **Table 1** below.<sup>80</sup>

**Table 1. Market shares (by value) of suppliers of instant coffee mixes for in-home sales in Singapore**

Name	2015 <sup>81</sup>		2016 <sup>82</sup>		2017 <sup>83</sup>	
	Sales Value (S\$’000)	Share (by value)	Sales Value (S\$’000)	Share (by value)	Sales Value (S\$’000)	Share (by value)

<sup>78</sup> The year refers to the period of 12 months from October of the previous year to September of the specified year.

<sup>79</sup> Paragraph 21.1 of Form M1.

<sup>80</sup> Paragraphs 21.1, 21.5 and 21.7 of Form M1; and Paragraph 26.1 and 26.2 of JDE’s Response to CCS’s RFI dated 27 December 2017.

<sup>81</sup> Year 2015 refers to the period of 12 months from October 2014 to September 2015.

<sup>82</sup> Year 2016 refers to the period of 12 months from October 2015 to September 2016.

<sup>83</sup> Year 2017 refers to the period of 12 months from October 2016 to September 2017.



<b>JDE (Moccona)</b>	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
<b>JDE (Super Group)</b>	[X]	[10-20]%	[X]	[20-30]%	[X]	[20-30]%
<b>OT</b>	[X]	[10-20]%	[X]	[10-20]%	[X]	[10-20]%
<b>Combined</b>	[X]	[30-40]%	[X]	[30-40]%	[X]	[30-40]%
Nestlé	[X]	[30-40]%	[X]	[30-40]%	[X]	[30-40]%
Gold Roast	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Power Root	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Gold Kili	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Pt Sari Incofood	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Aik Cheong	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Chek Hup	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Trung Ngyuen	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Fresh Food Corp. Pte Ltd.	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
UCC	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
<b>Total Market Size (by Value)<sup>84</sup></b>	[X]	<b>100%</b>	[X]	<b>100%</b>	[X]	<b>100%</b>

61. The market share estimates by volume of the supply of instant coffee mixes for in-home sales in Singapore are summarized in **Table 2** below.<sup>85</sup>

<sup>84</sup> The market shares of each supplier of instant coffee mixes in Table 1 do not sum up to 100%. JDE submits that there are many other suppliers of instant coffee mixes all of whom have an estimated share of lower than five per cent. For example, CCS understands that there are intermediate customers such as [X], [X] and [X] that supply their own private label brands of instant coffee mixes.

<sup>85</sup> Paragraphs 21.2, 21.6 and 21.8 of Form M1 and paragraphs 26.1 and 26.2 of JDE's Response to CCS's RFI dated 27 December 2017.

**Table 2. Market shares (by volume) of suppliers of instant coffee mix for in-home sales in Singapore**

Name	2015		2016		2017	
	Sales Volume (kg)	Share (by Volume)	Sales Volume (kg)	Share (by Volume)	Sales Volume (kg)	Share (by Volume)
JDE (Moccona)	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
JDE (Super Group)	[X]	[20-30]%	[X]	[20-30]%	[X]	[20-30]%
OT	[X]	[10-20]%	[X]	[10-20]%	[X]	[10-20]%
Combined	[X]	[30-40]%	[X]	[40-50]%	[X]	[40-50]%
Nestlé	[X]	[30-40]%	[X]	[30-40]%	[X]	[30-40]%
Gold Roast	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Power Root	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Gold Kili	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Pt Sari Incofood	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Aik Cheong	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Chek Hup	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Trung Ngyuen	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Coffee Hock	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Morning Sun	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
<b>Total Market</b>	[X]	<b>100%</b>	[X]	<b>100%</b>	[X]	<b>100%</b>

<b>Size (by Volume)<sup>86</sup></b>						
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#### *CCS's assessment*

62. As set out in the *CCS Merger Guidelines*, CCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless the merged entity will have a market share of 40% or more, or the merged entity will have a market share of between 20% to 40% and with a post-merger CR3 at 70% or more.
63. Based on the market share figures submitted by JDE, CCS notes that the JDE Group's and OT's combined market share by value is [30-40]% in 2017. Post-merger the CR3 of the market for the supply of instant coffee mixes for in-home sales is [70-80]%, which is above CCS's indicative thresholds of a merger situation that may raise competition concerns.
64. In terms of market shares by volume, CCS notes that the JDE Group's and OT's combined market share was [40-50]% in 2017. This exceeds CCS's indicative thresholds for a merger to raise competition concerns. Although it is arguable that the combined market shares of the JDE Group and OT had just increased over the 40% indicative threshold over the past two years, CCS notes that the post-merger CR3 of the market for the supply of instant coffee mixes for in-home sales over the past three years has consistently been above 70%, which suggests that the market is relatively concentrated.

#### (B) Market for the supply of instant milk tea mixes for in-home sales in Singapore

##### *JDE's submission*

65. JDE submitted that as instant milk tea mixes does not constitute a significant proportion of the JDE Group's and OT's revenues, both the JDE Group and OT do not track or subscribe to market data for the instant milk tea space in Singapore.<sup>87</sup> JDE further submitted that the data for instant milk tea mixes has not been published by Euromonitor.<sup>88</sup>

<sup>86</sup> The market shares of each supplier of instant coffee mixes in Table 2 do not sum up to 100%. JDE submits that there are many other suppliers of instant coffee mixes all of whom have an estimated share of lower than five per cent.

<sup>87</sup> Paragraph 21.3 of Form M1 and paragraph 23.1 of JDE's Response to CCS's RFI dated 27 December 2017.

<sup>88</sup> Paragraph 2.5 of JDE's Response to CCS's RFI dated 5 January 2018.

66. JDE submitted, as a proxy of the market size and market share estimates of instant milk tea, the estimates for the sales and market shares of the broader category of instant tea mixes in Singapore for the calendar years 2014 to 2016, as extracted from data published by Euromonitor (the “Euromonitor Data”).<sup>89</sup> JDE submitted that it is of the view that the data from Euromonitor for instant tea should form a reasonable proxy for the narrower segment of instant milk tea mixes.<sup>90</sup>
67. In relation to the estimates on the sales of instant tea in Singapore, JDE submitted that:
- The final size and share data for instant tea in Singapore for 2017 has not been published by Euromonitor at the time of JDE’s submission; and
  - The sales volume for instant tea in Singapore are not tracked in the data published by Euromonitor.<sup>91</sup>
68. The market share estimates by value of the supply of instant tea for in-home sales in Singapore are summarized in **Table 3** below.<sup>92</sup>

**Table 3. Market shares (by value) of suppliers of instant tea in Singapore**

Name	2014		2015		2016	
	Sales Value (US\$ million)	Share (by value)	Sales Value (US\$ million)	Share (by value)	Sales Value (US\$ million)	Share (by value)
JDE (Super Group)	[X]	[30-40]%	[X]	[30-40]%	[X]	[30-40]%
Unilever Group	[X]	[40-50]%	[X]	[40-50]%	[X]	[40-50]%
Boh Plantations Sdn Bhd	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Gold Kili Trading Enterprise Singapore Pte Ltd	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%

<sup>89</sup> Paragraph 2.2 of JDE’s Response to CCS’s RFI dated 5 January 2018 and paragraph 8.1 of JDE’s Response to CCS’s RFI dated 10 January 2018.

<sup>90</sup> Paragraph 2.4 of JDE’s Response to CCS’s RFI dated 5 January 2018.

<sup>91</sup> Paragraph 2.5 of JDE’s Response to CCS’s RFI dated 5 January 2018.

<sup>92</sup> Paragraphs 2.2, 2.6 and 2.8 of JDE’s Response to CCS’s RFI dated 5 January 2018.

Sari Incofood Corp Pt	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
Viz Branz Ltd	[X]	[0-10]%	[X]	[0-10]%	[X]	[0-10]%
<b>Total Market Size (by Value)<sup>93</sup></b>	[X]	<b>100%</b>	[X]	<b>100%</b>	[X]	<b>100%</b>

69. JDE submitted that the Euromonitor Data does not track OT's sales values and estimated shares as a named competitor, and it may be that OT is included under "Others". This suggests that OT's shares are so insubstantial such that Euromonitor did not track OT as a named competitor.<sup>94</sup>
70. JDE further highlighted that amongst the named competitors tracked by Euromonitor, [X] has the lowest estimated share of [0-10]%. In addition, as illustrated by the data from Euromonitor, the instant tea space in Singapore is small, with a total sales value in 2016 of approximately US\$[X].<sup>95</sup>

#### *CCS's assessment*

71. CCS obtained from OT its sales value of instant milk tea mixes in Singapore for the financial years ended 31 March 2015, 2016 and 2017 (see **Table 4**).<sup>96</sup>

**Table 4: OT's Sales value of instant milk tea mixes in Singapore**

<b>Year</b>	<b>Sales Value of instant milk tea mixes for in-home sales in Singapore (S\$)</b>
FY15	[X]
FY16	[X]
FY17	[X]

<sup>93</sup> The market shares of each supplier of instant tea mixes in Table 3 do not sum up to 100%, as there are other smaller suppliers of instant tea mixes. For example, CCS understands that there are intermediate customers such as [X] and [X] that supply its own private label brands of instant milk tea mixes.

<sup>94</sup> Paragraph 2.7 of JDE's Response to CCS's RFI dated 5 January 2018.

<sup>95</sup> Paragraph 2.7 of JDE's Response to CCS's RFI dated 5 January 2018.

<sup>96</sup> Table 4A(1) of OT's Response to CCS's RFI dated 9 January 2018.

72. **Table 5** below summarises estimates of the combined market shares of the JDE Group and OT based on information provided by them in respect of the market for the supply of instant milk tea mixes for in-home sales in Singapore.
73. While the information provided by OT to CCS pertains to different relevant period as compared to the Euromonitor data submitted by JDE, CCS is of the view that the turnover figures submitted by OT provide a sufficient proxy for the size of OT in the market for the supply of instant milk tea mixes in Singapore.<sup>97</sup>

**Table 5: Estimates of the Market Shares of JDE Group and OT for the supply of instant milk tea mixes for in-home sales in Singapore**

Name	2014		2015		2016	
	Sales Value (US\$ million)	Share (by value)	Sales Value (US\$ million)	Share (by value)	Sales Value (US\$ million)	Share (by value)
JDE (Super Group)	[<]	[30-40]%	[<]	[30-40]%	[<]	[30-40]%
OT <sup>98</sup>	[<]	[0-10]%	[<]	[0-10]%	[<]	[0-10]%
<b>Combined Entity</b>	[<]	[40-50]%	[<]	[40-50]%	[<]	[40-50]%

74. Based on the market share figures in **Table 5**, CCS notes that the estimated combined market share of the JDE Group and OT by value was [40-50]% in 2016. CCS also notes that this market share figure is consistent with the feedback from intermediate customers that the proportion of instant milk tea mixes sold at their premises (by sales revenue) from the JDE Group and OT is between [<]% and [<]%.<sup>99</sup> The market share of [40-50]% exceeds CCS's indicative thresholds of a merger situation that may raise competition concerns.

**(b) Barriers to entry and expansion**

<sup>97</sup> OT's submission was based on the financial years ended 31 March which was utilised as a proxy for the calendar year before, given that there is only a 3-month discrepancy.

<sup>98</sup> CCS estimated the turnover figures submitted by OT (in S\$) in US\$ based on the Monetary Authority of Singapore's average daily exchange rate for the relevant period.

<sup>99</sup> [<] Response to Questions 1 and 2 of CCS's RFI dated 12 January 2018.

75. In assessing barriers to entry and expansion, CCS considered whether entry by new competitors or expansion by existing competitors may be sufficient in likelihood, scope and time to deter or defeat any attempt by the merger parties or their competitors to exploit the reduction in rivalry flowing from the Proposed Transaction (whether through coordinated or non-coordinated strategies).<sup>100</sup>

*JDE's submission*

76. JDE submitted that the barriers to entry for the import of instant coffee and tea products in Singapore are low.<sup>101</sup> Other than food-labelling requirements and approvals from the AVA, there are no significant legislations or regulations restricting market entry.<sup>102</sup> JDE submitted that the relevant legislation and guidance that apply to instant coffee mixes and instant milk tea mixes include the Sale of Food Act (Cap. 283), regulation 56(1) of the Food Regulations<sup>103</sup>, as well as AVA's Labelling Guidelines for Food Importers and Manufacturers.<sup>104</sup>
77. In relation to the presence of any import restrictions, JDE submitted that the fact that the majority of instant coffee and instant tea products in Singapore are imported is a strong indication that import barriers are low. In addition, it is a fundamental characteristic of the market that global suppliers are able to easily enter Singapore through local distributors.<sup>105</sup>
78. JDE estimated that the annual expenditure on advertising and promotion required to achieve a market share of five per cent would be approximately S\$[X]. However, there exist market suppliers who have managed to achieve a market share of five per cent without investing in advertising or promotion. Such suppliers include business entities that entered into agreements with existing manufacturers to create their own private label brands.<sup>106</sup>
79. JDE submitted that it would be relatively quick and easy for an existing manufacturer of instant coffee mixes and instant milk tea mixes to enter Singapore, as they may do so directly or through existing distributors in Singapore. In order to enter Singapore and gain market share, a manufacturer

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<sup>100</sup> Paragraph 5.46 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>101</sup> Paragraph 33.3 of Form M1.

<sup>102</sup> Paragraph 34.19 of Form M1.

<sup>103</sup> Section 155 and 160 of the Food Regulations Act are applicable to instant coffee mixes and instant milk tea mixes.

<sup>104</sup> Paragraph 18.11 of Form M1.

<sup>105</sup> Paragraph 28.2 of Form M1.

<sup>106</sup> Paragraph 26.4 of Form M1.

- would have to invest in various items, such as advertising and promotions, listing fees in the modern trade, marketing support fees, etc, which are not prohibitive. For example, a manufacturer who wish to sell its instant coffee mixes and instant milk tea mixes to end-consumers could easily hire promoters in supermarkets, or put up advertisements for their products. Such investments would usually apply equally to all existing manufacturers.<sup>107</sup>
80. JDE submitted that potential suppliers such as Starbucks which already has a presence in grocery stores in countries such as the United States, as well as suppliers such as Ajinomoto, Strauss, Paulig, Segaffredo, Melitta, Tchibo and Orimi, could easily enter and compete in Singapore.<sup>108</sup>
81. Where a new entrant without existing manufacturing capabilities is looking to enter the market for the supply of instant coffee products and instant milk tea mixes in Singapore, the new entrant may do so without incurring any manufacturing capital expenditure. A new entrant may enter into agreements with existing manufacturers to create its own private label brand (through either private label or co-packing contracts) and have its instant coffee or instant milk tea products manufactured and packaged by the co-contractor. Hence, a new entrant would not require any manufacturing capabilities to enter the market for the supply of instant coffee products and instant milk tea mixes in Singapore.<sup>109</sup> The new entrant in this case would only incur the private labelling or co-manufacturing costs (without the associated capital expenditure) and the costs to sell and market its products.<sup>110</sup>
82. JDE further submitted that retailers are also able to easily enter the market for the supply of instant coffee products and instant milk tea mixes. Retailers are able to outsource the manufacturing and packing of such products to existing manufacturers and to sell such products under its own brand name, without incurring capital expenditure. Retailers are able to potentially achieve a five per cent share with a pure variable cost model, low capital intensity, and by focusing on the sale and distribution of the packaged instant beverage product.<sup>111</sup>
83. JDE also submitted that the know-how and equipment for the manufacturing and distribution of instant coffee and instant milk tea mixes are scalable and translatable across the manufacturing and distribution of different instant

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<sup>107</sup> Paragraph 26.1 of Form M1.

<sup>108</sup> Paragraph 24.9 of Form M1.

<sup>109</sup> Paragraph 26.3 of Form M1.

<sup>110</sup> Paragraph 30.12 of JDE's Response to CCS's RFI dated 27 December 2017.

<sup>111</sup> Paragraph 26.2 of Form M1.



beverage products. Any product differentiations may be easily replicated by existing and/or potential competitors. There are also no capacity constraints for competitors to ramp up production or introduce a new product range in competition.<sup>112</sup>

84. JDE submitted that there have been new entrants/brands of instant coffee mixes that have entered Singapore in recent years.<sup>113</sup> In respect of the market for the supply of instant milk tea mixes for in-home sales in Singapore, JDE submitted that it does not have granular data on such suppliers entering or exiting the supply of instant tea in Singapore, and is not able to comment meaningfully, other than such entry and exits are of insignificant players in the instant tea space in Singapore.<sup>114</sup>

#### *Feedback from Third Parties*

85. Feedback from third parties indicates that entry by a new entrant is made more feasible if the entrant invests to have its products listed in the supermarkets, so as to be able to have a presence in the modern trade in Singapore. In order to be listed in the supermarkets, the entrant would need to pay a listing fee to the supermarket, commit to a certain spending amount on promotions and marketing support for its products, as well as manpower to manage the distribution of the products.<sup>115</sup>
86. Feedback from third parties also suggests that the listing fees charged by different retailers vary.<sup>116</sup> For instance, [X] charges \$[X] and \$[X].<sup>117</sup> [X] charges a listing fee of \$[X].<sup>118</sup> [X] charges a \$[X] and \$[X].<sup>119</sup> [X].<sup>120</sup>
87. While investment costs and horizon may vary from case to case, third party feedback suggests that a reputable and resourceful supplier of instant coffee

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<sup>112</sup> Paragraph 34.21 of Form M1 and paragraph 30.9 of JDE's Response to CCS's RFI dated 27 December 2017.

<sup>113</sup> Paragraph 29.1 of Form M1; paragraph 37.7 of JDE's Response to CCS's RFI dated 27 December 2017; and paragraph 10.2 of JDE's Response to CCS's RFI dated 10 January 2018.

<sup>114</sup> Paragraph 11.1 of JDE's Response to CCS's RFI dated 10 January 2018.

<sup>115</sup> [X] Response to Question 24 of CCS's RFI dated 27 December 2017; and [X] Response to Question 24 of CCS's RFI dated 27 December 2017.

<sup>116</sup> [X] Response to Question 21 of CCS's RFI dated 27 December 2017; [X] Response to question 20 of CCS's RFI dated 27 December 2017; Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 16; and [X] Response to Question 21 of CCS's RFI dated 28 December 2017.

<sup>117</sup> [X] Response to Question 21 of CCS's RFI dated 27 December 2017.

<sup>118</sup> [X] Response to Question 20 of CCS's RFI dated 27 December 2017; and Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 16.

<sup>119</sup> [X] Response to Question 21 of CCS's RFI dated 28 December 2017.

<sup>120</sup> [X] Response to Question 21 of CCS's RFI dated 27 December 2017; and [X] Response to Question 21 of CCS's RFI dated 27 December 2017.

mixes and/or instant milk tea mixes should not face any major difficulties in supplying its products in Singapore.<sup>121</sup> One third party indicated that the estimated time required for entrants to enter the market through supermarket listings is 30 to 45 days. However, if an entrant chooses to list its products via general trade, it should be able to do so almost immediately by offering consignments or longer credit terms to individual shops.<sup>122</sup>

88. Third party feedback also indicates that it is difficult to develop a private label product as the whole process involves multiple steps such as sourcing for a supplier, verifying the quality and taste profile, finding a reputable packer and working out supply and pricing terms. This process could take about 8 to 12 months.<sup>123</sup>
89. However, some retailers are currently able to self-supply instant coffee mixes and instant milk tea mixes via the introduction of private labels.<sup>124</sup> This includes [X], [X], and [X].<sup>125</sup>
90. One retailer which currently does not have any private label brands also indicated that it can directly import from overseas or work with a local producer if it wishes to introduce its own private label brand. It estimated that it may take about six months for the introduction of a new private label as the whole process involves sourcing, tasting of products, verifying and auditing of the manufacturing plant etc.<sup>126</sup>
91. Third party feedback noted that promotions are used to introduce new brands and products.<sup>127</sup> However while suppliers have observed that price promotions are a common strategy adopted by suppliers which do result in end-consumers switching between brands<sup>128</sup>, there is third party feedback

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<sup>121</sup> [X] Responses to Questions 23 and 24 of CCS's RFI dated 27 December 2017.

<sup>122</sup> [X] Response to Question 24 of CCS's RFI dated 27 December 2017.

<sup>123</sup> Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 13.

<sup>124</sup> [X] Response to Question 23 of CCS's RFI dated 27 December 2017; [X] Response to Question 9 of CCS's RFI dated 27 December 2017; and Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 13.

<sup>125</sup> [X] Response to Question 23 of CCS's RFI dated 27 December 2017; [X] Response to Question 9 of CCS's RFI dated 27 December 2017; and Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 13.

<sup>126</sup> [X] Response to Question 23 of CCS's RFI dated 27 December 2017.

<sup>127</sup> [X] Response to Question 24 of CCS's RFI dated 27 December 2017.

<sup>128</sup> [X] Response to Question 11 of CCS's RFI dated 27 December 2017; [X] Response to Question 22 of CCS's RFI dated 28 December 2017; and [X] Response to Question 4 of CCS's RFI dated 27 December 2017.

that some end-consumers are price insensitive and particularly loyal to certain brands of instant coffee.<sup>129</sup>

92. Feedback from suppliers also suggests that suppliers of instant coffee mixes and instant milk tea mixes in Singapore do not face capacity constraints and would be able to increase its current production capacity to meet increased consumer demand.<sup>130</sup>

#### *CCS's assessment*

93. CCS is of the view that the barriers to entry into the market for the supply of instant coffee mixes and instant milk tea mixes for in-home sales in Singapore are relatively low and not insurmountable.
94. CCS notes that there are multiple methods (e.g. listing in modern trade, listing in general trade, co-packing / co-manufacturing, private labels) for a new entrant to enter into the market. Even within the modern trade, which appears to be the most feasible way in which a new entrant can gain presence in the market, there are various supermarkets that will be able to sell the new entrant's products provided that the new entrant pays the listing fees. In this regard, a new entrant has various options to enter the market, and is not constrained to choosing a particular method of entering.
95. In addition, based on the third party feedback received, CCS is of the view that the time taken for a new entrant without manufacturing capabilities to enter the market appears relatively short (i.e. 6 months to 1 year). In this regard, CCS is of the view that a new entrant with existing manufacturing capabilities will require an even shorter period of time to enter the market, as it only needs to secure the listing of its products either in the modern or general trade channels.
96. In terms of barriers to expansion, CCS notes that suppliers have indicated that they do not face capacity constraints in increasing their production to meet an increased demand. CCS notes however that there exists some brand loyalty in the relevant markets, which could serve as a barrier to expansion.

#### **(c) Countervailing Buyer Power**

##### *JDE's submission*

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<sup>129</sup> [X] Response to Question 11 of CCS's RFI dated 27 December 2017; and Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 12.

<sup>130</sup> [X] Response to Question 22 of CCS's RFI dated 27 December 2017; and [X] Response to Question 22 of CCS's RFI dated 27 December 2017.

97. JDE submitted that the landscape for coffee and tea products for in-home sales in Singapore is characterised by strong countervailing buyer power. The main intermediate customers are large, sophisticated retailers such as hypermarkets, supermarkets, and convenience chain stores, [X<].<sup>131</sup>
98. JDE submitted that suppliers 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, if price increases of a particular brand cause purchases by end consumers to fall drastically, then the amount of shelf space allocated may be correspondingly reduced to the detriment of the supplier.<sup>132</sup>
99. JDE further submitted that there is a long list of potential suppliers but retailers are unable to display all competing products due to the lack of shelf space. Customers will be able to easily switch to competing suppliers in the face of any price increases by existing suppliers of coffee products for in-home sales.<sup>133</sup>
100. In addition, JDE submitted that intermediate customers such as [X<]. In addition, they are able to exercise their buyer power because they have [X<].<sup>134</sup>
101. JDE also submitted that retailers have in-house capabilities to become instant coffee manufacturers.<sup>135</sup> JDE submitted that retailer brands are present at all levels and compete head-to-head with branded manufacturers across the full range of price, quality and variety of offerings. Private label brands are packaged in a manner which matches that of manufacturers' brands, and are sold from the same shelves as manufacturers. [X<].<sup>136</sup> JDE is of the view that there is [X<].<sup>137</sup>
102. Intermediate customers also have a range of negotiation levers they can deploy to secure lower prices, such as (i) delisting manufacturers' products or part thereof; (ii) halting deliveries to reduce the on-shelf availability of

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<sup>131</sup> Paragraph 32.1 of Form M1.

<sup>132</sup> Paragraph 32.2 of Form M1.

<sup>133</sup> Paragraph 32.3 of Form M1.

<sup>134</sup> Paragraph 32.4 of Form M1.

<sup>135</sup> Paragraph 32.6 of Form M1.

<sup>136</sup> Paragraph 32.4 of Form M1.

<sup>137</sup> Paragraph 32.6 of Form M1.

products; or (iii) reducing cooperation on promotions.<sup>138</sup> Since retailers ultimately control which brands have access to promotional and marketing opportunities, and a reduction in such opportunities would have a significant impact on a brand's sales, retailers are able to use promotions as a strong negotiation lever.<sup>139</sup>

103. Overall, JDE submitted that retailers are in a position to constrain suppliers in three ways, being as follows:
- a. As gatekeepers, controlling the access to shelf space, promotional slots, marketing and advertising and setting retail prices
  - b. As customers of suppliers with power to delist products and exclude certain brands; and
  - c. As competitors, with their own private labels.<sup>140</sup>

#### *Feedback from Third Parties*

104. Feedback from third parties was mixed with regard to the extent of buyer power that intermediate customers are able to exercise. The feedback also suggested that the larger the intermediate customer, the greater its ability to negotiate prices and/or supply terms with the suppliers.<sup>141</sup>

#### *Extent of bargaining power*

105. In terms of bargaining power of intermediate customers, third party feedback was mixed. Some intermediate customers accepted the supply terms and retail prices recommended by the merging parties<sup>142</sup>, while others indicated that they are able to influence the retail price<sup>143</sup> or are not bound by the price recommendations from the merging parties<sup>144</sup>.
106. Most intermediate customers indicated that they have tried to negotiate on various terms such as prices and promotional support with the merging

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<sup>138</sup> Paragraph 32.4 of Form M1.

<sup>139</sup> Paragraph 32.5 of Form M1.

<sup>140</sup> Paragraph 32.7 of Form M1 and paragraph 30.6 of JDE's response to CCS's RFI dated 27 December 2017.

<sup>141</sup> Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 3; [X] Response to Question 18 of CCS's RFI dated 27 December 2017; and [X] Response to Question 28 of CCS's RFI dated 27 December 2017.

<sup>142</sup> [X] Response to Question 18 of CCS's RFI dated 27 December 2017; [X] Response to Question 20 of CCS's RFI dated 27 December 2017; [X] responses to Questions 18 and 20 of CCS's RFI dated 28 December 2017; [X] Response to Question 20 of CCS's RFI dated 27 December 2017.

<sup>143</sup> [X] Response to Questions 17 and 19 of CCS's RFI dated 27 December 2017.

<sup>144</sup> [X] Response to Question 20 of CCS's RFI dated 27 December 2017.

parties. Some intermediate customers were not successful in doing so<sup>145</sup>, and were [X]<sup>146</sup>. One intermediate customer also indicated it [X].<sup>147</sup>

107. Other intermediate customers, who were successful in negotiating with the merger parties, noted that they had negotiated on retail prices and margins<sup>148</sup>, [X]<sup>149</sup>, advertising and promotional support<sup>150</sup> and [X]<sup>151</sup>. Such negotiations happen regularly, with some occurring as and when the category managers meet with the suppliers<sup>152</sup>.
108. Suppliers also noted that intermediate customers are also able to negotiate prices with suppliers of instant coffee mixes and instant tea mixes. While these suppliers do recommend the retail prices to intermediate customers, they noted that intermediate customers are still able to decide on the final retail prices at which they sell the products.<sup>153</sup> The extent of influence of the intermediate customers depends on its size. The intermediate customers may be able exercise its bargaining power by threatening to delist the products if the products are not selling well and do not meet the target turnover of the intermediate customer.<sup>154</sup>

#### Ability to self-supply

109. As noted in paragraphs 89 and 90 above, third party feedback suggests that some intermediate customers are able to self-supply instant coffee mixes and instant milk tea mixes through the introduction of private labels.

#### *CCS's assessment*

110. Having considered the responses received, CCS is of the view that intermediate customers are generally able to exercise some countervailing

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<sup>145</sup> [X] Response to Question 19 of CCS's RFI dated 27 December 2017.

<sup>146</sup> [X] Response to Question 20 of CCS's RFI dated 27 December 2017.

<sup>147</sup> [X] Response to Question 18 of CCS's RFI dated 27 December 2017.

<sup>148</sup> [X] Response to Questions 17 and 19 of CCS's RFI dated 27 December 2017; [X] Response to Question 18 of CCS's RFI dated 27 December 2017; [X] Response to Question 19 of CCS's RFI dated 28 December 2017.

<sup>149</sup> [X] Response to Questions 17 and 19 of CCS's RFI dated 27 December 2017.

<sup>150</sup> Notes of Meeting between [X] and CCS on 9 January 2018, Response to Questions 15 and 16; [X] Response to Question 18 of CCS's RFI dated 27 December 2017; [X] Response to Questions 18 and 19 of CCS's RFI dated 27 December 2017.

<sup>151</sup> [X] Response to Questions 18 and 19 of CCS's RFI dated 27 December 2017.

<sup>152</sup> [X] Response to Questions 17 and 19 of CCS's RFI dated 27 December 2017; and [X] Response to Question 19 of CCS's RFI dated 27 December 2017.

<sup>153</sup> [X] Response to Question 28 of CCS's RFI dated 27 December 2017; and [X] Response to Question 28 of CCS's RFI dated 27 December 2017.

<sup>154</sup> [X] Response to Question 28 of CCS's RFI dated 27 December 2017.

buyer power against suppliers of instant coffee mixes and instant milk tea mixes, although the extent of the countervailing buyer power exercised depends on how large the intermediate customer is. CCS also considers that the intermediate customers may not have the incentive to exercise their countervailing buyer power by delisting the products even if they could<sup>155</sup>, given that the brands carried by the Parties are the popular brands. Further, while retailers may be able to self-supply private labels of instant coffee mixes, CCS notes that the brand share of private labels of instant coffee mixes is low.<sup>156</sup>

111. CCS also notes that the larger intermediate customers generally have some negotiation power with the suppliers. However, some smaller intermediate customers, such as [X] and [X] have less bargaining power.
112. On the balance, CCS is of the view that the major intermediate customers (i.e. supermarkets) may be able to exercise bargaining power over the merged entity post-Transaction.

## **VIII. Competition Assessment**

### **(a) Non-coordinated effects**

113. 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 entities.<sup>157</sup>

### Supply of Instant Coffee Mixes for In-home Sales in Singapore

#### *JDE's submission*

114. JDE submitted that the Proposed Transaction would not give rise to non-coordinated effects in the market for the supply of instant coffee mixes in Singapore for the following reasons:
  - a. Shifting consumer preferences may erode market shares and discipline suppliers;
  - b. There is strong countervailing buyer power; and
  - c. There are low barriers to entry.<sup>158</sup>

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<sup>155</sup> CCS notes however that [X].

<sup>156</sup> Euromonitor Report on Instant Coffee in Singapore – Datagraphics, January 2017.

<sup>157</sup> Paragraph 5.21 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>158</sup> Paragraphs 34.9 to 34.23 of Form M1.

115. JDE noted that the combined shares of the Parties in the supply of in-home instant coffee (by value) is [30-40]%. JDE submitted that the combined shares do not exceed the CCS's indicative market share threshold of 40% for competition concerns, as set out in the *CCS Merger Guidelines*. However, JDE submitted that it is conscious that the combined shares may be perceived to exceed the CCS's indicative market share threshold of 20% for the merged entity and the concentration ratio of the three largest competitors in the relevant markets of 70%.<sup>159</sup>
116. JDE also submitted that considering the challenging environment in which the Parties operate, the strong consumer preference culture and the constant demand for high quality products, measures of non-price competition such as product range, innovation and quality are decisive in this industry. As a result, JDE considers that the merged entity will continue to face significant competitive constraints post-Transaction.<sup>160</sup>
117. JDE further submitted that [X], and will continue to rely on a leading global knowledge base and scale that will allow it to sustain rivalry with the merged entity.<sup>161</sup>

*Shifting consumer preferences may erode market shares and discipline suppliers*

118. The products of the JDE Group and OT for instant coffee mixes in Singapore are differentiated by price, taste and branding.<sup>162</sup>
119. Brands play an important role for coffee products. Players in this space invest in promotion and advertising to maintain the desired image of their brands and to ensure final customers' loyalty.<sup>163</sup>
120. JDE submitted that coffee markets are dynamic and subject to change. Consumers are able to switch between different brands of instant tea and coffee products with ease and without any significant costs. [X]. As a result of the intense level of market competition, suppliers are required to both constantly innovate on product range and price competitively in order to compete with evolving trends.<sup>164</sup>

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<sup>159</sup> Paragraphs 34.2 and 34.3 of Form M1

<sup>160</sup> Paragraph 34.6 of Form M1.

<sup>161</sup> Paragraph 34.7 of Form M1.

<sup>162</sup> Paragraph 33.1 of Form M1

<sup>163</sup> Paragraph 33.2 of Form M1

<sup>164</sup> Paragraph 34.9 of Form M1.



Strong countervailing buyer power

121. JDE submitted that the main intermediate customers for instant coffee mixes are large sophisticated retailers such as hypermarkets, supermarkets, and convenience chain stores [X].<sup>165</sup> Retailers are in a position to constrain suppliers in three ways, namely, (i) as gatekeepers, controlling the access to shelf space, promotional slots and setting retail prices, (ii) as customers of suppliers with power to delist, and (iii) as competitors, with their own private labels.<sup>166</sup>
122. As such, sellers of instant coffee and tea products would have to price competitively, and provide an innovative range of products to suit consumer preferences, to maintain a compelling proposition and compete for shelf space.<sup>167</sup>
123. In this regard, JDE notes that there are other similar competitors who can offer a portfolio range of products, or individual products, to retailers who can switch.<sup>168</sup> JDE submitted that these include its current competitors [X], who offer a wide range of instant coffee variants such as 3-in-1, reduced sugar and hazelnut flavor which are in competition with those products currently marketed and sold by SG and OT.<sup>169</sup>

Low barriers to entry

124. JDE submitted that other than food-labelling requirements and approvals by the AVA,<sup>170</sup> there are no significant legislations or regulations for entry.<sup>171</sup>
125. JDE also noted that the majority of instant coffee products consumed in Singapore are imported, reflecting the low barriers to import. Moreover, global suppliers can easily enter Singapore through distributors.<sup>172</sup>
126. JDE also submitted that the know-how and equipment for the manufacturing and distribution of instant coffee are scalable and translatable across the manufacturing and distribution of different instant beverage products. Any product differentiations may be easily replicated by existing and/or potential

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<sup>165</sup> Paragraph 34.12 of Form M1.

<sup>166</sup> Paragraph 34.13 of Form M1.

<sup>167</sup> Paragraph 34.14 of Form M1.

<sup>168</sup> Paragraph 34.15 of Form M1.

<sup>169</sup> Paragraph 29.1 of JDE's response to CCS's RFI dated 27 December 2017.

<sup>170</sup> See paragraph 76 above.

<sup>171</sup> Paragraph 34.19 of Form M1.

<sup>172</sup> Paragraph 34.20 of Form M1.

competitors. Further, there are no capacity constraints for competitors to ramp up production or introduce a new product range.<sup>173</sup>

### *Feedback from Third Parties*

127. Third parties opined that the impact of the Proposed Transaction on competition is minimal as the market for instant coffee mixes is very competitive.<sup>174</sup> Feedback also indicated that retailers stock between [X]<sup>175</sup> and [X]<sup>176</sup> brands of coffee products which represents significant choices for end-consumers.
128. Third party feedback further indicated that, from the perspective of the intermediate customers, whether intermediate customers decide to switch to other brands of instant coffee mixes will largely depend on the end-consumers' demand.<sup>177</sup> Some intermediate customers also indicated that while it is possible to switch to other brands of instant coffee in accordance with consumer preferences, it will not switch brands if there is an increase in the price of instant coffee mixes supplied by the merging parties.<sup>178</sup> This is because Super and OT brands make up a significant portion of the market.<sup>179</sup>
129. Third party feedback also suggested that it is possible and relatively easy for intermediate customers (e.g., retailers) to switch to selling another brand of instant coffee mixes<sup>180</sup> given the existing relationships that the intermediate customers have with other suppliers<sup>181</sup>; and that local distributors, who are the ones promoting and listing instant coffee products, are the ones that actively approach the intermediate customers to sell their products.<sup>182</sup>

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<sup>173</sup> Paragraph 34.21 of Form M1.

<sup>174</sup> [X] Response to Question 2 to CCS's RFI dated 27 December 2017; [X] Response to Question 2 of CCS's RFI dated 27 December 2017; Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 2.

<sup>175</sup> [X] Response to Question 4 of CCS's RFI dated 27 December 2017.

<sup>176</sup> [X] Response to Question 8 of CCS's RFI dated 27 December 2017, Appendix 1.

<sup>177</sup> [X] Response to Questions 11 and 15 of CCS's RFI dated 27 December 2017; [X] Response to Questions 11 and 15 of CCS's RFI dated 27 December 2017; [X] Response to Questions 9 and 13 of CCS's RFI dated 28 December 2017; [X] Response to Questions 10 and 14 of CCS's RFI dated 27 December 2017.

<sup>178</sup> [X] Response to Questions 11 and 15 of CCS's RFI dated 28 December 2017; [X] Response to Question 24 of CCS's RFI dated 27 December 2017.

<sup>179</sup> [X] Response to Question 15 of CCS's RFI dated 27 December 2017.

<sup>180</sup> [X] Response to Questions 11, 15 and 24 of CCS's RFI dated 27 December 2017; [X] Response to Question 11 of CCS's RFI dated 27 December 2017; [X] response to Question 11 of CCS's RFI dated 27 December 2017; [X] Response to Question 27 of CCS's RFI dated 27 December 2017; [X] Response to Question 24 of CCS's RFI dated 28 December 2017; and [X] Response to Question 24 of CCS's RFI dated 27 December 2017.

<sup>181</sup> [X] Response to Question 24 of CCS's RFI dated 27 December 2017.

<sup>182</sup> [X] Response to Questions 11, 15 and 24 of CCS's RFI dated 27 December 2017.

130. In terms of the extent of switching by end-consumers, third party feedback was mixed. Some third parties indicated that end-consumers will switch between brands of instant coffee mixes.<sup>183</sup> One third party also indicated that end-consumers are price sensitive and do not show loyalty to specific brand.<sup>184</sup> Intermediate customers also indicated that price promotions are a common strategy from suppliers and that these promotions do cause consumers to switch between brands.<sup>185</sup> The price promotions may cause demand for a particular brand to rise by four times<sup>186</sup>. This view is also shared by suppliers, who observed [X].<sup>187</sup> Further feedback noted that whilst suppliers try to maintain brand loyalty, competitive prices have encouraged many customers to switch to other brands.<sup>188</sup>
131. On the other hand, feedback was also received that there will be some end-consumers who are loyal to particular brands of instant coffee mixes and instant milk tea mixes that would be unlikely to switch away from their preferred brands, even if there is a price increase.<sup>189</sup> Another third party also indicated that end-consumers are relatively price insensitive when it comes to instant coffee mixes.<sup>190</sup>
132. One third party also provided feedback that Nestlé and Super, being the main players in the market for the supply of instant coffee mixes for in-home sales, compete keenly in terms of new product development, and promotion packages and will continue to do so even after the Proposed Transaction.<sup>191</sup>
133. Feedback from some larger intermediate customers also indicated that there is some countervailing buyer power, given that they had been successful in

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<sup>183</sup> Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 4; and [X] Response to Question 27 of CCS's RFI dated 27 December 2017.

<sup>184</sup> [X] Response to Question 27 of CCS's RFI dated 27 December 2017.

<sup>185</sup> [X] Response to Question 11 of CCS's RFI dated 27 December 2017; [X] Response to Question 22 of CCS's RFI dated 28 December 2017.

<sup>186</sup> Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 12.

<sup>187</sup> [X] Response to Question 13 of CCS's RFI dated 27 December 2017; and [X] Response to Questions 13 and 21 of CCS's RFI dated 27 January 2017.

<sup>188</sup> [X] Response to Question 4 of CCS's RFI dated 27 December 2017.

<sup>189</sup> Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 12.

<sup>190</sup> [X] Response to Question 11 of CCS's RFI dated 27 December 2017.

<sup>191</sup> [X] Response to Question 2 of CCS's RFI dated 27 December 2017.

their negotiations with the Parties on retail prices and margins<sup>192</sup>, [X]<sup>193</sup>, advertising and promotional support<sup>194</sup> and [X]<sup>195</sup>.

*CCS's assessment and conclusion on non-coordinated effects for the supply of instant coffee mixes in Singapore*

134. CCS notes that there are multiple brands of instant coffee mixes for consumers to choose from. The intermediate customers (i.e. retailers) generally stock different brands of coffee products depending on the end-consumer demand, as highlighted at paragraph 127 above. CCS further notes that Nestlé [X] would be able to act as a competitive constraint to the Parties. In particular, Nestlé's 3-in-1 instant coffee mixes has a comparable brand share as compared to Owl's brand share for 3-in-1 instant coffee mixes.<sup>196</sup> This suggests that Nestlé is a significant competitor in the market for the supply of instant coffee mixes and is hence able to act as a competitive constraint on the merged entity post-Transaction. In addition, CCS also notes that switching to other suppliers of instant coffee mixes is relatively easy for intermediate customers, as most of the intermediate customers have existing relationships with suppliers of different brands of instant coffee mixes.
135. CCS notes however that some intermediate customers may not completely switch away from the major brands, such as those carried by JDE and OT. Some end-consumers are loyal to particular brands of instant coffee mixes and would be unlikely to switch away from their preferred brands, even if there is a price increase.<sup>197</sup> Nevertheless, CCS notes that price promotions can have the effect of causing end-consumers to switch between brands.
136. CCS also notes that the barriers to entry and expansion are relatively low and not insurmountable, as noted at paragraphs 93 to 96 above, which serves as a potential constraint on the merging entity should they raise prices post-Transaction.

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<sup>192</sup> [X] Response to Questions 17 and 19 of CCS's RFI dated 27 December 2017; [X] Response to Question 18 of CCS's RFI dated 27 December 2017; and [X] Response to Question 19 of CCS's RFI dated 28 December 2017.

<sup>193</sup> [X] Response to Questions 17 and 19 of CCS's RFI dated 27 December 2017.

<sup>194</sup> Notes of Meeting between [X] and CCS on 9 January 2018, Response to Questions 15 and 16; [X] Response to Question 18 of CCS's RFI dated 27 December 2017; and [X] Response to Questions 18 and 19 of CCS's RFI dated 27 December 2017.

<sup>195</sup> [X] Response to Questions 18 and 19 of CCS's RFI dated 27 December 2017.

<sup>196</sup> Euromonitor Report on Coffee in Singapore, January 2017; and Euromonitor Report on Instant Coffee in Singapore – Datagraphics, January 2017.

<sup>197</sup> Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 12.

137. Given the above, CCS is of the view that non-coordinated effects are unlikely to arise in the relevant market in relation to supply of instant coffee mixes for in-home sales in Singapore.

#### Supply of Instant Milk Tea Mixes for In-home Sales in Singapore

##### *JDE's submission*

138. JDE submitted that the characteristics of the supply of instant milk tea mixes are very similar to those of the supply of instant coffee in Singapore. Accordingly, most of the observations regarding the supply of instant coffee mixes in Singapore are applicable to the supply of instant milk tea mixes.<sup>198</sup>
139. JDE submitted that the Proposed Transaction would not give rise to non-coordinated effects in the market for the supply of instant milk tea mixes for in-home sales in Singapore for the following reasons:
- a. The Parties will continue to be constrained by its competitors post-Transaction;
  - b. There is strong countervailing buyer power; and
  - c. There are low barriers to entry.

##### Existing competitors

140. JDE submitted that the merged entity will continue to be constrained by its competitors post-Transaction. JDE noted that consumers within the instant milk tea segment are price sensitive and there is intense competition. Many competitors are global blue chip FMCG<sup>199</sup> companies who are able to deliver instant tea products at affordable prices. In addition, local and regional players are also able to constrain the merged entity as they are able to localize the taste of instant milk tea products to suit consumer preferences.<sup>200</sup>
141. Existing competitors will also continue to constrain the merged entity on non-price factors such as product innovation and quality which feature significantly in the instant milk tea segment.<sup>201</sup> In this regard, JDE noted that the existing competitors such as [X] are able to sustain sufficient rivalry post-Transaction by relying on their global knowledge, base and scale.<sup>202</sup>

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<sup>198</sup> Paragraph 30.2 of JDE's response to CCS's RFI dated 27 December 2017.

<sup>199</sup> Fast Moving Consumer Goods.

<sup>200</sup> Paragraph 30.3 of JDE's Response to CCS's RFI dated 27 December 2017.

<sup>201</sup> Paragraph 24.3 of Form M1; and Paragraph 30.4 of JDE's Response to CCS's RFI dated 27 December 2017.

<sup>202</sup> Paragraph 30.5 of JDE's Response to CCS's RFI dated 27 December 2017.

### Countervailing buyer power

142. JDE submitted that the intermediate customers of JDE and OT are large sophisticated retailers who are able to constrain suppliers in three ways<sup>203</sup>:
- a. As gatekeepers, controlling the access to shelf space, promotional slots and setting retail prices;
  - b. As customers of suppliers with power to delist; and
  - c. as competitors, with their own private labels.
143. The products of the JDE Group and OT for instant milk tea mixes in Singapore are differentiated by price, taste and branding.<sup>204</sup> Sellers of instant tea products have to price competitively and provide an innovative range of products to suit consumer preferences, to maintain a compelling proposition and compete for shelf space.<sup>205</sup>
144. In this regard, JDE submitted that any attempt by the merged entity to exercise market power post-Transaction would be constrained by the significant countervailing buyer power enjoyed by its immediate customers.<sup>206</sup>

### Low barriers to entry

145. JDE submitted that there are no significant legislations or regulations regarding the supply of instant tea products in Singapore, save for food-labelling requirements and approvals by the AVA.<sup>207</sup>
146. JDE submitted that existing suppliers of instant milk tea mixes are able to easily commence supplying instant tea products to Singapore. The know-how and equipment for the manufacturing and distribution of instant tea products are scalable and translatable across the manufacturing and distribution of different instant beverage products. Any product differentiations may be easily replicated by existing and/or potential competitors.<sup>208</sup>

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<sup>203</sup> Paragraph 30.6 of JDE's Response to CCS's RFI dated 27 December 2017.

<sup>204</sup> Paragraph 33.1 of Form M1.

<sup>205</sup> Paragraph 30.7 of JDE's Response to CCS's RFI dated 27 December 2017.

<sup>206</sup> Paragraph 30.7 of JDE's Response to CCS's RFI dated 27 December 2017.

<sup>207</sup> Paragraph 30.9 of JDE's Response to CCS's RFI dated 27 December 2017.

<sup>208</sup> Paragraph 30.10 of JDE's Response to CCS's RFI dated 27 December 2017.

147. JDE further submitted that a new entrant may commence supplying instant milk tea mixes in Singapore without incurring manufacturing cost by either:
  - a. Entering into agreements with existing manufacturers to create its own private label brand; or
  - b. By entering into a co-manufacturing / co-packing agreement with the manufacturer and retraining ownership of the product formula.<sup>209</sup>
148. In both cases, the new entrant would only incur the private labelling or co-manufacturing costs (without the associated capital expenditures) and the costs to sell and market its products.<sup>210</sup>

#### *Feedback from Third Parties*

149. Third parties indicated that the impact of the Proposed Transaction would not have much effect on competition. Two third parties observed that instant milk tea mixes are a peripheral product and the market for instant milk tea mixes is small.<sup>211</sup> In this regard, suppliers do not invest as much into this market as compared to that for instant coffee mixes.<sup>212</sup> Feedback also indicated retailers sell a variety of different brands of instant milk tea mixes offered by different suppliers (e.g., Lipton, Mr Tea, Gold Kili, Aik Cheong).<sup>213</sup>
150. Third party feedback further indicated that, from the perspective of the intermediate customers, whether intermediate customers decide to switch to other brands of instant milk tea mixes will largely depend on the demand by end-consumers.<sup>214</sup> Some intermediate customers also indicated that while it is possible to switch to other brands of instant tea mixes in accordance with consumer preferences, it will not switch brands if there is an increase in prices of the instant milk tea mixes supplied by the merging parties.<sup>215</sup>

<sup>209</sup> Paragraph 30.11 of JDE's Response to CCS's RFI dated 27 December 2017.

<sup>210</sup> Paragraph 30.12 of JDE's Response to CCS's RFI dated 27 December 2017.

<sup>211</sup> [X] Response to Question 2 of CCS's RFI dated 27 December 2017; and [X] Response to Question 2 of CCS's RFI dated 27 December 2017.

<sup>212</sup> [X] Response to Question 2 of CCS's RFI dated 27 December 2017.

<sup>213</sup> [X] Response to Question 12 of CCS's RFI dated 27 December 2017; [X] Response to Question 12 of CCS's RFI dated 27 December 2017, Appendix 2; [X] Response to Question 12 of CCS's RFI dated 27 December 2017; and [X] Response to Question 12 of CCS's RFI dated 27 December 2017.

<sup>214</sup> [X] Response to Questions 11 and 15 of CCS's RFI dated 27 December 2017; [X] Response to Questions 11 and 15 of CCS's RFI dated 27 December 2017; [X] Response to Questions 9 and 13 of CCS's RFI dated 28 December 2017; [X] Response to Questions 10 and 14 of CCS's RFI dated 27 December 2017.

<sup>215</sup> [X] Response to Questions 11 and 15 of CCS's RFI dated 28 December 2017; [X] Response to Question 24 of CCS's RFI dated 27 December 2017.

151. Third party feedback also suggested that it is possible and relatively easy for intermediate customers (e.g., retailers) to switch to selling another brand of instant milk tea mixes<sup>216</sup> given the existing relationships that the intermediate customers have with other suppliers<sup>217</sup>; and that local distributors, who are the ones promoting and listing the instant milk tea products, are the ones that actively approach the intermediate customers to sell their products.<sup>218</sup>
152. In terms of the extent of switching by end-consumers, third party feedback was mixed. Some third parties indicated that end-consumers will switch between brands of instant milk tea mixes.<sup>219</sup> Another third party also indicated that end-consumers are price sensitive and do not show loyalty to a specific brand.<sup>220</sup> On the other hand, some feedback was also received that there will be some end-consumers who are loyal to particular brands of instant milk tea mixes that would be unlikely to switch away from their preferred brands, even if there is a price increase.<sup>221</sup>
153. Other third party feedback indicated that Unilever, which supplies the Lipton brand of tea, is the key player in the market for the supply of instant milk tea mixes.<sup>222</sup> One intermediate customer estimated that Lipton takes about [X]% share of its tea products sold in its premises, while the JDE Group's share of tea products is low at less than [X]%.<sup>223</sup> Another intermediate customer estimated that the proportion of instant milk tea mixes sold at its premises (by sales revenue) from Unilever to be between [X]% and [X]% in 2017. This is comparable to the proportion of instant milk tea mixes sold by the JDE Group and OT sold at its premises, which is between [X]% and [X]% in 2017.<sup>224</sup>
154. Feedback from some larger intermediate customers also indicated that there is some countervailing buyer power, given that they been successful in

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<sup>216</sup> [X] Response to Questions 11, 15 and 24 of CCS's RFI dated 27 December 2017; [X] Response to Question 11 of CCS's RFI dated 27 December 2017; [X] response to Question 11 of CCS's RFI dated 27 December 2017; [X] Response to Question 27 of CCS's RFI dated 27 December 2017; [X] Response to Question 24 of CCS's RFI dated 28 December 2017; and [X] Response to Question 24 of CCS's RFI dated 27 December 2017.

<sup>217</sup> [X] Response to Question 24 of CCS's RFI dated 27 December 2017.

<sup>218</sup> [X] Response to Questions 11, 15 and 24 of CCS's RFI dated 27 December 2017.

<sup>219</sup> Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 4; and [X] Response to Question 27 of CCS's RFI dated 27 December 2017.

<sup>220</sup> [X] Response to Question 27 of CCS's RFI dated 27 December 2017.

<sup>221</sup> Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 12.

<sup>222</sup> Notes of Meeting between [X] and CCS dated 9 January 2018, Response to Question 11; and [X] Response to Question 18 of CCS's RFI dated 27 December 2017.

<sup>223</sup> Notes of Meeting between [X] and CCS dated 9 January 2018, Response to Question 11.

<sup>224</sup> [X] Response to Questions 1 and 2 of CCS's RFI dated 12 January 2018.



negotiating with the merger parties on retail prices and margins<sup>225</sup>, [X]<sup>226</sup>, advertising and promotional support<sup>227</sup> and [X]<sup>228</sup>.

*CCS's assessment and conclusion on non-coordinated effects for the supply of instant milk tea mixes in Singapore*

155. CCS notes from JDE's submissions that the JDE and OT face strong competition by other suppliers in the market for the supply of instant milk tea mixes for in-home sales in Singapore. CCS is of the view that other suppliers of instant milk tea mixes, such as Unilever, which is present in Singapore, will be able to pose a strong competitive constraint on the merged entity.
156. CCS further notes that retailers sell a variety of different brands of instant milk tea mixes offered by different suppliers (e.g., Lipton, Mr Tea, Gold Kili, Aik Cheong). Switching is relatively easy for intermediate customers, as most of the intermediate customers have existing relationships with suppliers of different brands of instant milk tea mixes. However, CCS notes that intermediate customers may not completely switch away from the major brands, such as those carried by JDE and OT. This is because some end-consumers who are loyal to particular brands of instant milk tea mixes and would be unlikely to switch away from their preferred brands, even if there is a price increase.<sup>229</sup>
157. CCS also notes from JDE's submissions that the barriers to entry for importation of instant milk tea mixes are low. Large intermediate customers will also enjoy some countervailing buyer power in respect of the market for the supply of instant milk tea mixes for in-home sales in Singapore.
158. Given the above, CCS is of the view that non-coordinated effects are unlikely to arise in the relevant market in relation to the supply of instant milk tea mixes for in-home sales in Singapore.

**(b) Coordinated effects**

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<sup>225</sup> [X] Response to Questions 17 and 19 of CCS's RFI dated 27 December 2017; [X] Response to Question 18 of CCS's RFI dated 27 December 2017; and [X] Response to Question 19 of CCS's RFI dated 28 December 2017.

<sup>226</sup> [X] Response to Questions 17 and 19 of CCS's RFI dated 27 December 2017.

<sup>227</sup> Notes of Meeting between [X] and CCS on 9 January 2018, Response to Questions 15 and 16; [X] Response to Question 18 of CCS's RFI dated 27 December 2017; and [X] Response to Questions 18 and 19 of CCS's RFI dated 27 December 2017.

<sup>228</sup> [X] Response to Questions 18 and 19 of CCS's RFI dated 27 December 2017.

<sup>229</sup> Notes of Meeting between [X] and CCS on 9 January 2018, Response to Question 12.

159. A merger may also lessen competition substantially by increasing the possibility that, post-Transaction, firms in the same market may coordinate their behavior to raise prices, or reduce quality or output. Given certain market conditions, and without any express agreement, tacit collusion may arise merely from an understanding that it will be in the firms' mutual interests to coordinate their decisions. Coordinated effects may arise where a merger reduces competitive constraints from actual or potential competition in a market, thus increasing the probability that competitors will collude or strengthening a tendency to do so.<sup>230</sup>

*JDE's submission*

160. JDE submitted that the Proposed Transaction will not result in any increase in the risk of coordinated effects in the markets for the supply of instant coffee mixes and instant milk tea mixes in Singapore for four main reasons<sup>231</sup>:
- a. Any hypothetical alignment would be significantly hindered by the high degree of differentiation in the segment for instant coffee, including in light of the number, and type, of product lines currently present in the market. This means that it would be extremely difficult for firms to identify a focal point around which to coordinate, or to monitor, the terms of coordination.
  - b. The particular nature of the supply chain in the in-home sales segment implies that the vast majority of the Parties' products are sold to large and complex commercial operators such as supermarket and hypermarket chains. The bargaining power of the JDE Group in negotiations with such retailers is conducted along well-established patterns and procedures, often in accordance with standard protocols. Any price coordination in the upstream market would be quickly detected by retailers and, without doubt, promptly and forcefully fought against. In a market open to global competition, the ability to offer attractive cost prices to intermediate customers is imperative. The combination of these two factors further reduces the ability to align or to gain the stability required for coordination to occur.
  - c. Formal bidding processes are relatively rare in this sector, with the majority of contracts between suppliers and customers being entered into as a result of bilateral negotiations. This makes alignment around

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<sup>230</sup> Paragraph 5.35 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>231</sup> Paragraph 35.3 of Form M1 and paragraph 31.2 of JDE's Response to CCS's RFI dated 27 December 2017.

a focal point for coordination difficult and the monitoring of any potential alignment even more difficult.

- d. The relevant markets are characterised by intense competition and low barriers to entry and expansion, which means that any hypothetical coordination would not be sustainable.

#### *Feedback from Third Parties*

- 161. Third party feedback suggests that suppliers of instant coffee mixes and instant milk tea mixes in Singapore do not face capacity constraints and would be able to increase their current production capacity to meet increased consumer demand.<sup>232</sup> Further, some retailers have indicated that they have been able to supply their own private label brands of instant coffee mixes and/or instant milk tea mixes.<sup>233</sup>

#### *CCS's assessment and conclusion on coordinated effects*

- 162. CCS is mindful that the Proposed Transaction would solidify the JDE Group's position in the markets for the supply of instant coffee mixes and instant milk tea mixes for in-home sales in Singapore.
- 163. Nonetheless, CCS also notes that barriers to entry and expansion are relatively low and not insurmountable. Furthermore, CCS also notes that certain retailers have ventured into offering private label brands. Given that these retailers are also customers of the suppliers of instant coffee mixes and instant milk tea mixes, the ability of these retailers to self-supply their own private label brands will put competitive pressure on the market leaders, and disrupt any attempts to coordinate behavior among suppliers.
- 164. Given the above, CCS is of the view that coordinated effects are unlikely to arise.

### **IX. Efficiencies**

#### *JDE's submission*

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<sup>232</sup> [J] Response to Question 22 of CCS's RFI dated 27 December 2017; and [J] Response to Question 22 of CCS's RFI dated 27 December 2017.

<sup>233</sup> [J] Response to Question 1 of CCS's RFI dated 27 December 2017; [J] Response to Question 9 of CCS's RFI dated 27 December 2017; and Notes of Meeting between [J] and CCS on 9 January 2018, Response to Question 13.

165. From JDE's perspective, the following efficiency gains would be generated by the Proposed Transaction<sup>234</sup>:
- a. value creation of upside levers for the JDE Group's business, for example, new formats with original white coffee products; new markets with respect to the insightful penetration in China; and Hong Kong online sales, and value creation by combining the JDE Group and OT's sourcing and distribution capabilities;
  - b. gaining new footprint in retail chain cafes with high awareness, which the JDE Group is currently not present in, and which strengthens the OT brand; and
  - c. gaining new strong distribution capabilities through salesforce in Hong Kong and online distribution in China.

*CCS's assessment*

166. CCS notes that in the assessment of net economic efficiencies, merger parties are required to show that these efficiencies will be sufficient to outweigh the adverse effects resulting from SLC caused by the merger.<sup>235</sup>
167. Given that the above competition assessment did not point to an SLC, CCS is of the view that it is not necessary to make an assessment on the efficiencies claimed by the Parties.

**X. Conclusion**

168. For the reasons above and based on the information available, CCS has assessed that the Proposed Transaction, if carried into effect, will not infringe section 54 of the Act. 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.



Toh Han Li  
Chief Executive  
Competition Commission of Singapore

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<sup>234</sup> Paragraph 42.1 of Form M1; and Paragraph 39.1 of the JDE's Response to CCS's Request for Information dated 27 December 2017.

<sup>235</sup> Paragraphs 7.3 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016*.