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

Grounds of Decision issued by the Competition Commission of Singapore

In relation to the application for decision of the proposed merger between China CNR Corporation Limited and CSR Corporation Limited pursuant to section 57 of the Competition Act

17 February 2015

Case number: CCS 400/001/15

<p>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 [§<]</p>
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TABLE OF CONTENTS

I.	Introduction.....	3
II.	The Parties.....	3
III.	The Transaction	5
IV.	Competition Issues	9
V.	Counterfactuals	11
VI.	Relevant Markets	12
VII.	Market Structure	14
VIII.	Competition Assessment	23
IX.	Efficiencies.....	26
X.	Ancillary Restraints	27
XI.	Conclusion	31

I. Introduction

The notification

1. On 7 January 2015, China CNR Corporation Limited (“CNR”) and CSR Corporation Limited (“CSR”) (collectively referred to as the “Parties”) filed a joint notification pursuant to section 57 of the Competition Act (Cap. 50B)(the “Act”) for a decision by the Competition Commission of Singapore (“CCS”) as to whether the proposed merger between CNR and CSR (the “Transaction”) will infringe the section 54 prohibition of the Act, if carried into effect.
2. In reviewing the Transaction, CCS contacted two customers¹ and ten other suppliers / potential suppliers² of metros³ in Singapore. Out of the third-parties contacted, both customers provided responses while two suppliers⁴ provided responses to CCS’s questionnaires. The customers have indicated that they have no concerns with the Transaction. The Land Transport Authority of Singapore (“LTA”) procures metros through open tenders and there are multiple metro suppliers that participate in LTA’s tenders.⁵
3. At the end of the consultation process and after evaluating all the evidence, CCS concludes that the Transaction, if carried into effect, will not infringe section 54 of the Act.

II. The Parties

CNR

4. CNR is a joint stock company with limited liability established in the People’s Republic of China (“PRC”) on 26 June 2008. CNR is listed on both the Shanghai Stock Exchange and the Hong Kong Stock Exchange and is a subsidiary of China Northern Locomotive & Rolling Stock Industry (Group) Corporation (“CNRG”).⁶
5. CNRG is under the “ownership of the whole people of the People’s Republic of China”, and is under the immediate supervision of the State-owned Assets Supervision and Administration Commission of the State Council of the People’s Republic of China (“SASAC”), a commission

¹ The Land Transport Authority of Singapore and SMRT Trains Ltd

² [REDACTED]

³ In this decision, metros refer to metro trains, i.e., the Mass Rapid Transit trains in Singapore. Metro trains are made up of passenger carriages referred to as metro cars.

⁴ [REDACTED]

⁵ Notes of meeting with LTA on 23 January 2015

⁶ Paragraph 7.1 of Form M1

under the State Council of the PRC that is responsible for managing central state-owned enterprises including appointing top executives and drafting laws related to state-owned enterprises.⁷

6. CNR engages in, amongst other things, the manufacturing and refurbishment of rolling stock, including high-speed multiple units, locomotives, passenger coaches, freight wagons, rapid transit vehicles, railway engineering machinery and equipment and core system and components of rolling stock.⁸ Its core geographic business area is the PRC and only 7.8% of its total turnover is generated outside the PRC.⁹
7. Changchun Bombardier Railway Vehicles Company Ltd. (“B Changchun”) is 50-50 joint venture established in 1997 between a subsidiary of CNR, Changchun Railway Vehicles Co., Ltd., and Bombardier Holding (Mauritius) Ltd. CNR holds an effective share interest of 46.77% in B Changchun through its shareholdings in Changchun Railway Vehicles Co., Ltd.¹⁰ B Changchun focuses mainly on the production of metro vehicles,¹¹ and has supplied metros in Singapore either as an outsourced subcontractor of Bombardier Transportation GmbH (“Bombardier”), or as part of a consortium in tenders with Bombardier.¹²
8. Additionally, CNR has a majority-owned subsidiary, Shanghai Railway Transportation Equipment Development Co., Ltd. (“SRTED”), which participates in a joint venture, Shanghai Alstom Transport Co., Ltd. (“SATCO”) with Alstom Transport SA (“Alstom”), in which SRTED holds a 60% and Alstom has a 40% interest. CNR understands that [X].¹³ CNR does not have any assets, registered subsidiary or representative office in Singapore.¹⁴
9. Global group turnover for CNR was approximately S\$20.87 billion in the financial year ended 31 December 2013.¹⁵ Group turnover for CNR in Singapore for the same period was approximately S\$[X].¹⁶

⁷ Paragraph 7.2 of Form M1

⁸ Paragraph 10.1 of Form M1

⁹ Paragraph 10.3 of Form M1

¹⁰ Paragraph 14.1 of Form M1

¹¹ “Bombardier Transportation Facilities in China” viewed on 8 January 2015 at http://cn.bombardier.com/Ressources/documents/Facilities_China.pdf

¹² Paragraph 14.1 of Form M1

¹³ Paragraph 9.7 of the Parties’ response dated 23 January 2015 to CCS’s request for information dated 16 January 2015

¹⁴ Paragraph 10.10 of Form M1

¹⁵ Paragraph 13.1 of Form M1

¹⁶ Paragraph 13.3 of Form M1

CSR

10. CSR is a joint stock company with limited liability established in PRC and is listed on both the Shanghai Stock Exchange and the Hong Kong Stock Exchange. CSR is a subsidiary of CSR Group (“CSRG”).¹⁷ CSRG is under the “ownership of the whole people of the People’s Republic of China”, and is under the immediate supervision of SASAC.¹⁸
11. CSR engages in, amongst other things, the supply of rolling stock products in series including high speed multi-units, high-powered electric locomotives, transit vehicles, heavy haul freight trains and high-end passenger carriages. Only 6.6% of its turnover is generated outside the PRC.¹⁹
12. CSR Qingdao Sifang Co., Ltd. (“CSR Sifang”) is a subsidiary of CSR and supplies metros in Singapore as part of a consortium with Kawasaki Heavy Industries, Ltd. (“Kawasaki”). CSR Zhuzhou Electric Locomotive Co., Ltd. (“CSR Zhuzhou”), another subsidiary of CSR, has also participated in tenders for the supply of metros in Singapore either on its own or in consortium with Siemens AG but has not won any tenders. However, CSR Zhuzhou has participated in and won tenders for the supply of engineering and maintenance vehicles in Singapore.²⁰ CSR does not have any assets, registered subsidiary or representative office in Singapore.²¹
13. Global group turnover for CSR was approximately S\$20.72 billion in the financial year ended 31 December 2013.²² Group turnover for CSR in Singapore for the same period was approximately S\$[<].²³

III. The Transaction

Nature of the Transaction

14. The Parties submitted that the Transaction will be conducted by way of a “merger by absorption” pursuant to the PRC’s Company Law and the Parties’ articles of association. CSR will be the absorbing company and CNR will be the company absorbed.²⁴

¹⁷ Paragraph 7.3 of Form M1

¹⁸ Paragraph 7.4 of Form M1

¹⁹ Paragraph 10.6 of Form M1

²⁰ Paragraph 14.1 of Form M1

²¹ Paragraph 10.10 of Form M1

²² Paragraph 13.2 of Form M1

²³ Paragraph 13.4 of Form M1

²⁴ Paragraph 11.3 of Form M1

15. The Transaction will be implemented by way of a securities exchange where the shares of CNR will be cancelled in exchange for new shares in CSR. The shareholders of CNR would thereby become shareholders of the merged entity. Upon completion of the Transaction, each of the current controlling shareholders (being CSRG and CNRG) will become substantial shareholders but not controlling shareholders of the merged entity.²⁵
16. The Parties submitted that the Transaction is subject to the Parties obtaining approvals from, *inter alia*, SASAC, the China Securities Regulatory Commission and the Securities and Futures Commission of Hong Kong.²⁶
17. The Parties submitted that completion of the Transaction is expected to take place in May 2015²⁷, and is subject to satisfaction or appropriate waiver from CSR and CNR of having obtained or being deemed to have obtained the merger-control clearances in applicable jurisdictions including, but not limited to Singapore.²⁸
18. The Parties submitted that following completion of the Transaction, the merged entity will inherit and assume all assets, liabilities, businesses, employees, contracts, qualifications and all other rights and obligations of CSR and CNR.²⁹

Commercial Rationale for the Transaction

19. The Parties submitted that they envisage the Transaction to create a global equipment enterprise group which will operate transnationally. The Merger is expected to improve the efficiency of resource utilisation, effectively reduce operational costs, and strengthen profitability.³⁰ The Parties also submitted that the Transaction is expected to improve the ability of the Parties to compete globally, through the merged entity and is expected to help expand the Parties' business scales and strengthen their profitability so as to benefit shareholders of the merged entity.³¹ Specifically, the Parties submitted that through the Transaction, they aim to accomplish, among other things:³²

- a. consolidating capabilities in response to global competition;

²⁵ Paragraph 11.4 of Form M1

²⁶ Paragraph 11.7 of Form M1

²⁷ Paragraph 11.9 of Form M1

²⁸ Paragraph 11.8 of Form M1

²⁹ Paragraph 11.5 of Form M1

³⁰ Paragraph 12.1 of Form M1

³¹ Paragraph 12.1 of Form M1

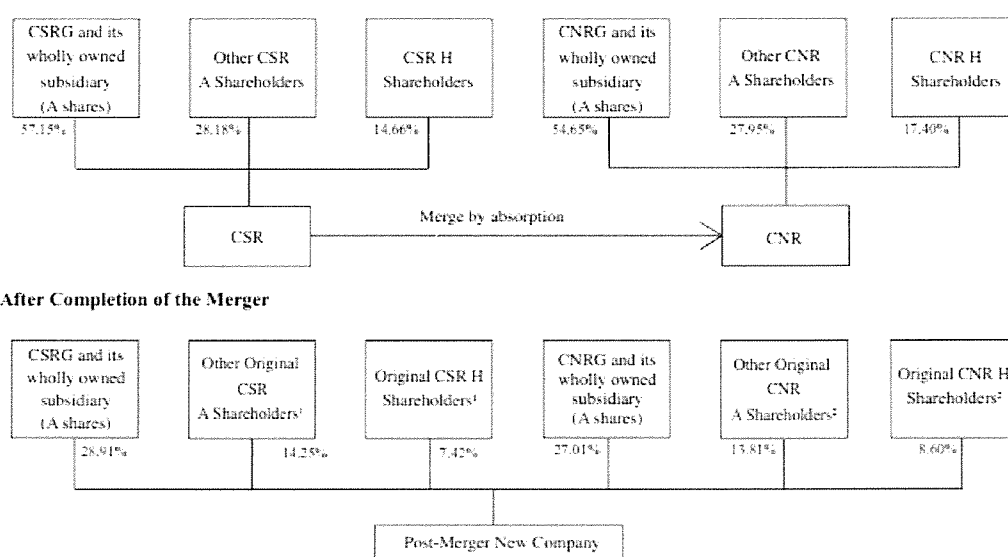
³² Paragraph 12.2 of Form M1

- b. integrating resources and achieving synergies to strengthen competition capabilities of the Parties;
- c. optimising capital structure and enhancing financial strength; and
- d. improving forward-looking awareness of the Parties and enhancing their strength in basic research and development.

Merger under Section 54 of the Competition Act

20. The Parties submitted that the Transaction constitutes a merger falling under section 54(2)(a) of the Act.³³
21. Paragraph 3.5 of *CCS Guidelines on the Substantive Assessment of Mergers* provides that a merger within the meaning of section 54(2)(a) of the Act occurs when two or more independent undertakings amalgamate into a new undertaking and cease to exist as separate legal entities. A merger may also occur when an undertaking is absorbed by another, with the latter retaining its legal identity while the former ceases to exist as a legal entity.³⁴
22. The Parties submitted the following diagram to represent the proposed ownership structure pre and post-Transaction:³⁵

Merger of CSR and CNR by way of absorption and share-exchange:



23. The Parties have also submitted that CNR and CSR are independent undertakings. Although both the majority shareholders of CNR and CSR, being CNRG and CSRG, are under the “ownership of the whole people of the People’s Republic of China” and under the immediate supervision and

³³ Paragraph 9.9 of Form M1

³⁴ Paragraph 3.5 of *CCS Guidelines on the Substantive Assessment of Mergers*

³⁵ Paragraph 8.3 of Form M1

management of SASAC, the Parties submitted that they are not directly or indirectly under the “control” of the SASAC for the purposes of the Act for the following reasons:³⁶

- a. CNR and CSR each have an independent power of decision from SASAC and the level of state intervention in the PRC in the industry section relevant to the Transaction is relatively minor;
- b. SASAC essentially exercises the basic ownership functions on behalf of the state as a non-managerial trustee. Apart from nominating the top management in both companies, SASAC’s key functions are to review the end-year results of the Parties and ensure that the Parties are operating within the permitted business license. SASAC does not interfere with the strategic decision-making of CNR or CSR, such as the approval of the business plan or budget. SASAC respects, in accordance with the law, the independent operation of the Parties and does not interfere in their production and operational activities apart from performing the responsibilities of an investor; and
- c. As required by the relevant listing rules and local law in the PRC and Hong Kong, there is a strong independent element on each of the CNR and CSR board of directors as follows:
 - (i) CNR and CSR are listed on the Shanghai Stock Exchange and the Hong Kong Stock Exchange. Three out of the seven directors on the CSR board of directors are independent, non-executive directors. Four out of seven directors on the CNR board of directors are independent, non-executive directors;³⁷
 - (ii) the Hong Kong Exchange Listing Rules requires that every board of directors of a listed issuer must include at least three independent non-executive directors and an issuer must appoint independent non-executive directors representing at least one-third of the board;³⁸
 - (iii) Appendix 14 to the Hong Kong Exchange Listing Rules, the Corporate Governance Code (which a listed issuer is expected to comply with, but may choose to deviate from), states that the board should include a balanced composition of executive and non-executive directors (including independent non-executive directors) so that there is a strong independent

³⁶ Paragraph 9.4 of Form M1

³⁷ Paragraph 9.5 of Form M1

³⁸ Paragraph 9.6 of Form M1

element on the board, which can effectively exercise independent judgment;³⁹ and

- (iv) the China Securities Regulatory Commission Guidelines for Introducing Independent Directors to the Board of Directors of Listed Companies also requires that at least one-third of the board of directors comprise of independent directors.⁴⁰

24. For the reasons submitted above, the Parties consider that they are not directly or indirectly under the control of the same undertaking in respect of section 54 and therefore that the Transaction constitutes a merger falling under section 54(2)(a) of the Act.⁴¹

CCS's Conclusion on whether the Transaction constitutes a Merger under the Act

25. Based on the Parties' submissions that CNR and CSR are independent undertakings and that the merger will be implemented by way of a securities exchange where the shares of CNR will be cancelled in exchange for new shares in CSR, CCS considers that the transaction constitutes a merger pursuant to section 54(2)(a) of the Act.

IV. Competition Issues

26. For the purposes of this Transaction, the Parties submitted that they overlap in the supply of metros in Singapore ("Overlapping Product"), but that, however, CNR's joint venture, B Changchun, has only limited sales of metros in Singapore.⁴²
27. The Parties have also submitted that they supply maintenance and repair services and components for metros in Singapore. However, such services are supplied as part of the metro procurement contracts and the Parties do not provide such services and products for metros manufactured by other suppliers in Singapore. Accordingly, the Parties submitted that the supply of maintenance and repair services and components for metros should be examined within the broader supply of metros in Singapore.⁴³
28. CNR's turnover in respect of the Overlapping Product for the financial year ended 31 December 2013 was approximately S\$[X]. CSR's

³⁹ Paragraph 9.7 of Form M1

⁴⁰ Paragraph 9.8 of Form M1

⁴¹ Paragraph 9.9 of Form M1

⁴² Paragraph 15.1 of Form M1

⁴³ Paragraph 15.2 of Form M1

turnover in respect of the Overlapping Product for the financial year ended 31 December 2013 was approximately S\$[X].⁴⁴

29. [X].

The Parties' Submissions

30. The Parties submitted that the Transaction will not give rise to any non-coordinated effects in the supply of the Overlapping Product in Singapore in view of (a) the structure of the tender market which encourages intense competition, (b) the presence of strong countervailing power, and (c) the presence of alternative suppliers and the absence of insurmountable barriers to entry.⁴⁵
31. The Parties also submitted that the Transaction will not give rise to coordinated effects in the supply of the Overlapping Product in Singapore, in view of (a) the structure of the tender market which encourages intense competition, (b) the large number of existing and potential competing global competitors who can, and do, qualify and participate in open tenders called by the LTA in Singapore, and who will thereby be able to disrupt any coordinated behavior, (c) the excess capacity of global competitors facing mature home markets who have the ability and incentive to compete to win tenders for the supply of metros in Singapore, and (d) the strong countervailing buyer power of the LTA, who will be able to disrupt any coordinated behaviour.⁴⁶
32. In respect of the vertical supply relationships noted in paragraph 29 above, the Parties submitted that these supply relationships do not represent a significant part of the Parties' businesses, the extent of vertical integration between the Parties is minimal and the Transaction would not strengthen any vertical integration between the Parties⁴⁷, such that there is no need to consider vertical effects of the Transaction further.⁴⁸
33. In evaluating the potential impact of the Transaction, CCS has considered whether the transaction will lead to coordinated or non-coordinated effects that would substantially lessen competition in relation to the supply of metros in Singapore.

⁴⁴ Paragraph 16.1 of Form M1. Includes maintenance and repair services and components for metros.

⁴⁵ Sections 33 and 34 of Form M1

⁴⁶ Paragraph 35.1 of Form M1

⁴⁷ Paragraph 36.2 of Form M1

⁴⁸ Paragraph 36.2 of Form M1

V. Counterfactuals

34. As stated in paragraph 4.6 of the *CCS Guidelines on the Substantive Assessment of Mergers*, 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. In which case 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.
35. The *CCS Guidelines on the Substantive Assessment of Mergers* also states that in most cases, the best guide to the appropriate counterfactual will be prevailing conditions of competition, as this may provide a reliable indicator of future competition without the merger. However, CCS may need to take into account likely and imminent changes in the structure of competition in order to reflect as accurately as possible the nature of rivalry without the merger.⁴⁹
36. The Parties submitted that in the absence of the Merger, the Parties will continue to operate separately and independently.⁵⁰
37. The Parties submitted that competitors are likely to continue to compete for customers with or without the Transaction, in view of the nature of competition (for instance, where procurement is generally conducted by way of open tender), and in view of the LTA’s announced plans to expand the rail network in Singapore, which will provide potential entry and expansion opportunities for global players in Singapore.⁵¹

CCS’s Conclusion on the Relevant Counterfactual

38. CCS has considered the Parties’ submissions. There is no information before CCS to suggest that there are likely and imminent changes in the structure of competition in the supply of metros in Singapore. Accordingly, CCS accepts that the relevant counterfactual scenario for the purposes of CCS’s competition assessment is that absent the Transaction, the Parties will continue to be competitors in the supply of metros in Singapore.

⁴⁹ Paragraph 4.7 of *CCS Guidelines on the Substantive Assessment of Mergers*

⁵⁰ Paragraph 23.1 of Form M1

⁵¹ Paragraph 23.2 of Form M1

VI. Relevant Markets

(a) Product Market

39. The Parties submitted that the relevant product market definition in relation to the Overlapping Product is the market for the supply of metros.⁵²
40. Metros are a type of passenger (rail) vehicle within the rolling stock product segment of passenger (rail) vehicles.⁵³ Passenger (rail) vehicles can be segmented into (i) high-speed trains (including very high-speed trains, high speed trains and intercity high-speed trains); (ii) electric multiple units (“EMU”) (including electric multiple units and hybrid multiple units); (iii) diesel multiple units (“DMU”); (iv) passenger coaches (including regional and commuter coaches, long-distance coaches and double-deck coaches); (v) metros; and (vi) light rail vehicles (“LRV”).⁵⁴
41. In Singapore, metros are better known as MRT trains. The MRT system is rapid transit system forming a major component of the public transport network.⁵⁵ Metros are sold directly by suppliers to LTA in Singapore, or directly to the MRT operators in Singapore. LTA regulates and oversees public transport in Singapore and ensures that they meet safety and service standards.⁵⁶ LTA, which constructs the rail lines and is the major customer of metros in Singapore⁵⁷, issues operating licences to the public transport operators, SMRT Trains Ltd (“SMRT”) and SBS Transit Ltd (“SBS Transit”), who are responsible for the day-to-day operations of running the MRT train systems.⁵⁸ LTA procures metros through the use of open tenders⁵⁹ separately from other systems, e.g. signaling systems, required to operate the whole MRT system.⁶⁰
42. The Parties submitted that, from a demand-side perspective, metros are highly specialised in terms of specific use from the customer’s point of view, and hence there are unlikely to be any substitutes to metros to achieve the same functions of transporting high-flow of passengers within city centres.⁶¹ Market feedback corroborate that there are unlikely to be product substitutes for metros.⁶²

⁵² Paragraph 20.1 of Form M1

⁵³ Paragraph 19.1 of Form M1

⁵⁴ Paragraph 18.2.2 of Form M1

⁵⁵ Paragraph 19.2 of Form M1

⁵⁶ Paragraph 18.11 of Form M1

⁵⁷ [X]. See notes of meeting with [X].

⁵⁸ Paragraph 19.2 of Form M1

⁵⁹ [X]

⁶⁰ Notes of meeting with LTA on 23 January 2015

⁶¹ Paragraph 19.6 of Form M1

⁶² Notes of meeting with [X]

43. The Parties submitted that, from a supply-side perspective, the products within passenger (rail) vehicles are technologically and structurally similar and therefore usually utilise the same production lines. There may accordingly be an extent of flexibility for a supplier of other products within passenger (rail) vehicles, such as high speed trains, EMUs, DMUs, passenger coaches and LRVs, to switch from the production of such other products to the production of metros.⁶³ CCS notes that participants in LTA's tenders for the procurement of metros may need to meet LTA's criteria on proven expertise and experience in the design and supply, installation, delivery, testing and commissioning of trains for Rail Transit System.⁶⁴ It is uncertain whether suppliers of other passenger (rail) vehicles who do not already produce metros would be able to meet LTA's criteria. CCS finds, however, that it is unnecessary to consider whether other passenger (rail) vehicles should be included in the relevant market as CCS has not found a substantial lessening of competition by only considering current suppliers of metros.
44. CCS has also considered whether there is a separate market for the provision of maintenance and repair services and components for metros. The Parties submitted that they also supply maintenance and repair services and components for metros in Singapore, but that such services are supplied as part of the metro procurement contracts and the Parties do not provide such services and products in Singapore for metros manufactured by other suppliers.⁶⁵
45. CCS notes that there are [X].⁶⁶ [X].⁶⁷ The Parties and their partners, however, do not impose any contractual restrictions on the procurement of maintenance and repair services and components and the MRT train operators can use alternative suppliers.⁶⁸ Additionally, the MRT train operators (i.e. SMRT and SBS Transit) in Singapore maintain in-house maintenance capabilities for the metro [X].⁶⁹
46. In relation to the purchase of components, market feedback indicate that the MRT train operators can, and do, source for components from original equipment manufacturers instead of the Parties. The Parties have so far been the producers of certain components such as the metro car bodies,

⁶³ Paragraph 19.8 of Form M1

⁶⁴ Paragraph 18.19 of Form M1

⁶⁵ Paragraph 15.2 of Form M1

⁶⁶ Paragraphs 3.8 and 3.9 of the Parties' response dated 23 January 2015 to CCS's request for information dated 16 January 2015. [X].

⁶⁷ Paragraph 3.10 of the Parties' response dated 23 January 2015 to CCS's request for information dated 16 January 2015. [X].

⁶⁸ Notes of meeting with [X]

⁶⁹ Notes of meeting with [X] and response from [X]

doors and metro interior for metros supplied to Singapore⁷⁰ and need to source for components from other suppliers as well.⁷¹ [X].⁷² CCS therefore finds no necessity to assess competition effects arising from the Transaction in relation to a separate market for the supply of maintenance and repair services and components for metros.

47. Accordingly, CCS agrees that the relevant product market for the competition assessment of the Transaction is the supply of metros.

(b) Geographic market

48. The Parties submitted that the relevant geographic market definition for the supply of metros is global, in view of global players, who can, and do, qualify, participate and are awarded supply contracts for metros by LTA in Singapore. There is no local manufacturing or production of metros in Singapore.⁷³

49. Market feedback indicates that LTA sources for metro trains globally, without any restrictions as to region or country, through the use of open tenders. [X].⁷⁴ CCS is therefore of the view that the relevant geographic market for the competition assessment of the Transaction is global supply to Singapore.

50. Accordingly, CCS considers the relevant market to be the global supply of metros to Singapore.

VII. Market Structure

(a) Market shares and market concentration

Global market size (value and volume)

51. The Parties submitted that the total market size for the global market for metros is approximately S\$[X] by value and [X] metro cars⁷⁵ by volume based on information collated by SCI Verkehr GmbH from 2010 to 2014.⁷⁶

⁷⁰ Paragraphs 4.2 and 4.4 of the Parties' response dated 23 January 2015 to CCS's request for information dated 16 January 2015 and notes of meeting with [X]

⁷¹ Paragraphs 7.1 and 7.2 of the Parties' response dated 3 February 2015 to CCS's queries in meeting on 28 January 2015 and notes of meeting with [X]

⁷² Notes of meeting with [X]

⁷³ Paragraph 20.2 of Form M1

⁷⁴ Notes of meeting with [X]

⁷⁵ A metro train would be made up of multiple metro cars

⁷⁶ Paragraph 21.1 of the Form M1

52. The Parties submitted that according to the SCI Report,⁷⁷ the Parties are considered amongst the largest manufacturers of rail vehicles worldwide. However, the Parties submitted that the large revenue presence of the Parties globally results largely from the fact that CNR and CSR operate in a politically controlled and protected domestic market with very large-scale high-speed rail and metro projects⁷⁸ which has contributed to their relative revenue growth. In 2013, approximately 7.8 percent and 6.6 percent of the revenue of CNR and CSR respectively were generated outside of the domestic market in the PRC.⁷⁹

Market share estimates for the global supply of metros to Singapore

53. The Parties submitted the Singapore market share estimates by value and volume of delivered metros in Table 1 below.⁸⁰

Table 1: Estimated market shares for the supply of metros to Singapore

Supplier Name	Shares by value	Shares by volume
Bombardier	[30-40]%	[30-40]%
Kawasaki	[40-50]%	[30-40]%
Alstom	[20-30]%	[20-30]%
Total	100%	100%

54. The Parties highlighted that the data collated by SCI Verkehr GmbH from 2010 to 2014 for Singapore reflects the shares as attributable to Bombardier, Kawasaki and Alstom Transport, and make no reference to CNR or CSR (and their respective subsidiaries).⁸¹
55. The Parties, however, submitted that B Changchun (an indirect joint venture of CNR) is an outsourced manufacturer of metros for tenders won by Bombardier in Singapore, or has supplied metros in Singapore as part of a consortium with Bombardier. Similarly, CSR supplies metros in Singapore through the Kawasaki-CSR Sifang consortium.⁸² Additionally, SATCO (an indirect joint venture of CNR), is also [X].⁸³
56. The Parties submitted that it is instructive that SCI Verkehr GmbH, in its third party research, did not consider the estimated shares won by the

⁷⁷ “SCI Report” refers to the market report “Worldwide Rolling Stock Manufacturers Market Insights and Factsheets for Top 50 Manufacturers and Overview of 180 Companies and 330 Production Sites” prepared by SCI Verkehr GmbH dated May 2014.

⁷⁸ Paragraph 21.2 of Form M1 and page 17 of the SCI Report at Annex 6 of Form M1.

⁷⁹ Page 15 of the CNR Annual Report at Annex 4 of Form M1 and page 31 of the CSR Annual Report at Annex 5 of Form M1

⁸⁰ The Parties submitted that the information shown in Table 1 is based on information collated by SCI Verkehr GmbH from 2010 to 2014, as of 23 December 2014.

⁸¹ Paragraph 22.3 of Form M1

⁸² Paragraph 22.4 of Form M1

⁸³ Paragraph 9.7 of the Parties’ response dated 23 January 2015 to CCS’s request for information dated 16 January 2015

consortiums as attributable to CNR or CSR, which may indicate that the estimated shares and market power, if any, may be more realistically accrued to Kawasaki and Bombardier, who are perceived as the consortium leaders. On this basis, the Parties submitted that it would not be meaningful or realistic for the CCS to infer the estimated shares as accruing fully to either CSR or CNR. Even on a partial allocation basis, there are difficulties in ascertaining any meaningful methodology on the proportion of shares to be allocated to CSR and CNR from the consortiums with Kawasaki and Bombardier.⁸⁴

57. The Parties highlighted that tenders and procurement by customers in Singapore for metros are infrequent and lumpy. Metros are generally sold directly by suppliers to LTA in Singapore, or in limited instances, directly to the MRT operators in Singapore. The Parties submitted that for each round of procurement, LTA (or the MRT operators conducting the procurement) will typically award the contract to one supplier or consortium. The Parties further submitted that there are years in which there may be only one round of procurement of metros, either by LTA or the MRT operators, and the winning of the procurement contract in that year by a supplier or consortium may be perceived to mean that the supplier or consortium has a 100% market share in that year. Further, the Parties submitted that procurement does not take place on a yearly basis, but on an as-required basis. Accordingly, there may be years in which no market player has any market shares.⁸⁵
58. The Parties submitted that, on the other hand, if market shares are examined as of the time of delivery, metros procured under each contract may be delivered over a number of years. A market player may be perceived to have persistently high market shares over the years when it is in fact still delivering the metros won in an earlier contract, and the market shares are not representative of the competitive constraints that the market player had faced during the process of bidding for the contract, whether by way of tender, or direct procurement by LTA (or the MRT operators).⁸⁶
59. In view of the characteristics described above, the Parties submitted that market shares are not indicative of any market power.⁸⁷

Method of procurement

60. The procurement of metros in Singapore is primarily conducted by the LTA by way of open tender, where all bidders who meet the LTA tender

⁸⁴ Paragraph 22.4 of Form M1

⁸⁵ Paragraph 21.3 of Form M1

⁸⁶ Paragraph 21.4 of Form M1

⁸⁷ Paragraph 21.5 of Form M1

requirements are eligible to participate and be considered equally based on the LTA's selection criteria.⁸⁸

61. LTA's tenders have been infrequent and lumpy, with only five tenders awarded between 2008 and 2014. LTA has also awarded each tender to a single bidder⁸⁹. Competition among the bidders for such tenders has therefore been for the entire tender contract. [REDACTED].⁹⁰ Although there have been a few instances of metro purchases made by direct procurement, these have been for smaller orders and were isolated instances.

CCS's assessment

62. As set out in the *CCS Guidelines on the Substantive Assessment of Mergers*, 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.⁹¹
63. CCS notes that, as submitted by the Parties, market shares based on delivery of metros are not representative of the competitive constraints that the market player had faced during the process of bidding for the contract. Furthermore, market feedback indicates that [REDACTED].⁹²
64. CCS has therefore instead considered the share of the Parties in the supply of metros to Singapore based on the value of contracts awarded by customers. In this regard, CCS has considered the procurement of metros between 2008 and 2014, a period which covers the last five tenders awarded for the purchase of metros in Singapore. Table 2 below summarises the contracts awarded for the procurement of metros in Singapore in this period.

⁸⁸ Paragraph 34.4 of Form M1

⁸⁹ A single bidder could be made up of more than one supplier in a consortium

⁹⁰ Notes of meeting with [REDACTED]

⁹¹ Paragraph 5.15 of *CCS Guidelines on the Substantive Assessment of Mergers*.

⁹² Notes of meeting with [REDACTED]

Table 2: Contracts Awarded between 2008 and 2014 for the Purchase of MRT trains in Singapore⁹³

Supplier	Year Awarded	Tender/Direct Procurement	Estimated Contract Value Awarded	Share of Total Value of Contracts between 2008 and 2014
Kawasaki-CSR Sifang consortium	2014	[X]	S\$[X]	[50-60]%
	2014	[X]	S\$[X]	
	2012	[X]	S\$[X]	
	2009	[X]	S\$[X]	
Alstom	2012	[X]	S\$[X]	[10-20]%
Bombardier-B Changchun consortium	2013	[X]	S\$[X]	[0-10]%
Bombardier	2008	[X]	S\$[X]	[20-30]%
Total Value of Contracts between 2008 and 2014			S\$[X]	100%

65. Based on the total value of contracts for the purchase of metros in Singapore awarded between 2008 and 2014, the market shares of the consortiums in which CSR and CNR participate are [50-60]% and [0-10]% respectively. If these shares of the consortiums are attributed fully to CSR and CNR, then the Parties would have a combined market share of **[60-70]%** post-merger, with incremental market share arising from the merger being **[0-10]%**. Corresponding CR3 both pre-merger and post-merger would be **[90-100]%** as the Bombardier-B Changchun consortium is not among the top three suppliers of metros to Singapore. These shares and CR3 are above CCS's indicative thresholds of potential competition concerns arising from a merger.
66. CSR Sifang's share of the contract value in the Kawasaki-CSR Sifang consortium, however, is between [X]⁹⁴ while B Changchun's share of the contract value in the Bombardier-B Changchun consortium is between [X]⁹⁵. If these sub-shares are attributed fully to the Parties, they would hold a combined market share of **[20-30]%** post-merger.
67. Regardless of which measure of market share is taken, CCS notes that the incremental increase in market share arising from the merger would be small, suggesting that the incremental effects arising from the merger may not be significant. The consortiums' market shares may also not be a

⁹³ Consolidated information from Annex 8 of Form M1 and the Parties' response dated 23 January 2015 to CCS's request for information dated 16 January 2015

⁹⁴ Paragraph 6.2 of the Parties' response dated 23 January 2015 to CCS's request for information dated 16 January 2015

⁹⁵ Paragraph 6.4 of the Parties' response dated 23 January 2015 to CCS's request for information dated 16 January 2015

permanent reflection of how the Parties would participate in LTA tenders as the consortiums are formed on a tender by tender basis.⁹⁶ Additionally, high market shares may not be an indication of market power in a situation where procurement is made through the use of open tenders.

68. CCS notes, as the Parties submitted, that Bombardier and another supplier[×] have used two of CNR's indirect joint ventures, B Changchun and [×] respectively, as outsourced manufacturers of metros for Singapore. It is unclear what amount of turnover would be derived by B Changchun and [×] for providing such manufacturing services, but the contracted supplier of metros to the customer in Singapore is Bombardier or [×] rather than CNR's indirect joint ventures.

(b) Barriers to entry and expansion

69. *CCS Guidelines on the Substantive Assessment of Mergers* provide that a new entry and the threat of entry can represent important competition constraints on the behavior of merger parties. 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 Transaction (whether through coordinated or non-coordinated strategies).⁹⁷

The Parties' submission

70. The Parties submitted that bidders of LTA projects are required to meet the eligibility criteria and requirements under LTA's terms of tender. Such eligibility criteria could include proven expertise and experience in the design, supply, installation, delivery, testing and commissioning of trains. Suppliers may also be required to meet certain certification criteria under global standards, such as the ISO standard, or the International Railway Industry Standard ("IRIS").⁹⁸
71. The Parties submitted that in their experience, the LTA may evaluate tenderers on factors including:⁹⁹
- a. technical expertise;
 - b. track record;
 - c. product quality/reliability;
 - d. price; and
 - e. service quality.

⁹⁶ Paragraph 24.4 of Form M1 and response of [×]

⁹⁷ Paragraph 7.2 of *CCS Guidelines on the Substantive Assessment of Mergers*

⁹⁸ Paragraph 24.9 of Form M1

⁹⁹ Paragraph 24.10 of Form M1

72. The Parties submitted that it is not meaningful to consider the capital expenditure required for a new entrant to commence production of passenger (rail) vehicles, or more specifically, metros, as the worldwide rail vehicle supply industry is a mature manufacturing sector, where new companies rarely enter the market.¹⁰⁰
73. Instead, the Parties submitted that market entry in Singapore arises from existing global competitors who can, and do, qualify and participate in open tenders called by the LTA for the supply of metros. As there is no local manufacturing or production of metros in Singapore, and metros sold and exported into Singapore are manufactured outside of Singapore by the respective overseas suppliers, the Parties submitted that there is no specific capital expenditure required to enter the market for the supply of metros in Singapore. The quality, safety, certification and testing requirements of the LTA (and consequently the MRT operators) are similarly required by customers in other jurisdictions, and accordingly already met by the existing global suppliers. Further, as illustrated by the Parties' experience, they are able to supply metros in Singapore without having to invest in physical assets, subsidiary or representative offices in Singapore.¹⁰¹
74. The Parties submitted that the LTA generally conducts open tenders for the procurement of metros and any manufacturer who can meet the LTA's tender requirements are eligible and able to participate in the tenders instead. Eligible manufacturers will be evaluated based on the LTA's objective criteria, without having to invest in advertising and promotion. The Parties submitted that the LTA and the MRT operators are familiar with the global manufacturers of metros and that the LTA may, from time to time, engage external consultants with expertise in the global passenger rail market to evaluate the tenders received for the supply of metros in Singapore, and such consultants are also familiar with the global manufacturers of metros.¹⁰²

CCS's assessment

75. Market feedback indicates that both quality and the price offered by bidders are crucial factors taken into consideration when LTA assesses the tenders.¹⁰³ [REDACTED].¹⁰⁴ However, market feedback also indicates that intellectual property is not a barrier to entry for the supply of metros to Singapore and [REDACTED].¹⁰⁵

¹⁰⁰ Paragraph 26.1 of Form M1

¹⁰¹ Paragraph 26.2 of Form M1

¹⁰² Paragraph 27.2 of Form M1

¹⁰³ Notes of meeting with [REDACTED]

¹⁰⁴ Notes of meeting with [REDACTED]

¹⁰⁵ Notes of meeting with [REDACTED]

76. CCS is of the view that the barriers for a new potential metro supplier to supply metros to Singapore are generally significant given LTA's eligibility criteria that includes proven expertise and experience in the design, supply, installation, delivery, testing and commissioning of trains. In this regard, CCS observes that there has not been any new entrant in the last five years. However, there are already a number of existing potential metro suppliers that have participated in LTA's tenders. CCS observes that about three to six bidders enter into each of LTA's tenders and the bidders that participate from tender to tender may vary. Excluding the Parties and their consortium partners¹⁰⁶, there are at least four other suppliers¹⁰⁷ who have participated in LTA's last five tenders between 2008 and 2014.¹⁰⁸ An existing potential metro supplier may therefore not face significant difficulties to meeting LTA's criteria to participate in tenders to supply metros to Singapore. Market feedback, however, suggests that existing suppliers who already had a design for existing MRT trains on a given MRT line may have an advantage over other suppliers who did not if there were no drastic changes to the tender specifications.¹⁰⁹
77. CCS also notes from market feedback that the Parties' roles in the supply of metros to Singapore have primarily been to manufacture metro car bodies, assemble the metros and carry out testing of the metros.¹¹⁰ Their consortium partners, such as Kawasaki and Bombardier, [REDACTED].¹¹¹ [REDACTED].¹¹² Market feedback suggests that the barriers of entry for the roles the Parties play in manufacturing metros are low, with low-cost manufacturing available in other parts of the world such as India and Eastern Europe.¹¹³
78. Overall, CCS considers that the main barriers to entry to supply metros in Singapore arises from the design expertise, technology and know-how required to meet LTA's requirements. These barriers could be significant for new entrants but could be much less significant for existing potential metro suppliers that had experience and expertise in the design of metros.

¹⁰⁶ Bombardier, Kawasaki and Siemens (Siemens has bidden in LTA tenders in consortium with CSR Zhuzhou)

¹⁰⁷ Alstom [REDACTED], Mitsubishi Heavy Industries, Hyundai Rotem and CAF

¹⁰⁸ [REDACTED]

¹⁰⁹ Notes of meeting with [REDACTED]

¹¹⁰ Paragraphs 4.2 and 4.4 of the Parties' response dated 23 January 2015 to CCS's request for information dated 16 January 2015 and notes of meeting with [REDACTED]

¹¹¹ Paragraphs 4.1 and 4.3 of the Parties' response dated 23 January 2015 to CCS's request for information dated 16 January 2015

¹¹² Paragraphs 4.3, 4.4 and 8.2 of the Parties' response dated 23 January 2015 to CCS's request for information dated 16 January 2015 and response of [REDACTED]

¹¹³ Notes of meeting with [REDACTED]

(c) Countervailing buyer power

The Parties' submission

79. The Parties submitted that the LTA is [X] customer of CNR's joint venture, B Changchun in Singapore for the supply of metros,¹¹⁴ while LTA and SMRT are [X] customers of CSR in Singapore for the supply of metros.¹¹⁵ SMRT only bought [X] from Kawasaki-CSR Sifang [X], and LTA had been [X] customer of CSR in Singapore for the supply of metros.¹¹⁶
80. The Parties submitted that there are no, or only minimal, switching costs involved when LTA, the primary customer in Singapore, decides to switch between suppliers of metros. The ease of switching is illustrated by the competitive open tendering process of the LTA where tenderers, regardless of whether they are existing suppliers of metros in Singapore, are assessed equally on the basis of the objective criteria listed above.¹¹⁷
81. The Parties submitted that such criteria apply whether the tender or procurement is called for new rail lines or extensions of existing rail lines in Singapore. There is no requirement for tenderers to have a track record in Singapore in order to participate in LTA's tenders for the supply of metros because track record, as well as experience and expertise in the supply of metros outside of Singapore are considered by the LTA equally.¹¹⁸
82. Specific to the procurement of metros for the extensions of existing rail lines, the Parties submitted that there are no technical restrictions preventing metros manufactured by different suppliers from operating on the same rail line. Accordingly, there are no technical requirements requiring LTA to procure from an existing metro supplier for extensions of the same rail lines.¹¹⁹
83. Further, the Parties submitted that as a matter of LTA policy and Singapore government procurement requirements, procurement for new metros are generally conducted by way of open tender, which creates opportunities for competition.¹²⁰

¹¹⁴ Paragraph 31.1 of Form M1

¹¹⁵ Paragraph 31.2 of Form M1

¹¹⁶ Paragraph 31.2 of Form M1

¹¹⁷ Paragraph 32.2 of Form M1

¹¹⁸ Paragraph 32.3 of Form M1

¹¹⁹ Paragraph 32.4 of Form M1

¹²⁰ Paragraph 32.5 of Form M1

84. On top of that, the Parties submitted that bidders also compete to meet the eligibility criteria and requirements under LTA's terms of tender, which LTA does not negotiate with bidders on.¹²¹
85. In view of the ability of LTA to switch between competing bidders, the Parties submitted that the merged entity will be constrained in its actions post-Merger by the countervailing buyer power of the LTA.

CCS's assessment

86. CCS notes that LTA decides on the eligibility criteria for metro suppliers to participate in tenders to supply metros in Singapore and that LTA attracts three to six bidders in the open tenders it conducts. There are no proprietary systems in the supply of metros that forces LTA to procure metros from a prior supplier. Furthermore, other than for [X], LTA purchases all the metros in Singapore. CCS is therefore of the view that there is significant countervailing buyer power.

VIII. Competition Assessment

(a) Non-coordinated effects

87. 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.¹²² Other firms in the market may also find it profitable to raise their prices because the higher prices of the merged entity's product will cause some customers to switch to rival products, thereby increasing demand for the rivals' products.¹²³

Market shares

88. As noted in paragraphs 65 and 66 above, the combined market shares of the Parties post-merger could be as high as [60-70]%. However, even taking this combined market share for the Parties post-merger, the incremental market share arising from the merger is low at [0-10]%. CR3 also does not change as a result of the Transaction. The incremental effects arising from the Transaction is therefore unlikely to be significant given the additional consideration that consortiums are formed on a tender by tender basis and there have been at least four metro suppliers who participated in LTA tenders without forming a consortium with the Parties.

¹²¹ Paragraph 32.6 of Form M1

¹²² Paragraph 6.3 of *CCS Guidelines on the Substantive Assessment of Mergers*.

¹²³ Paragraph 6.3 of *CCS Guidelines on the Substantive Assessment of Mergers*.

Roles of the Parties in supplying metros to Singapore

89. As noted in paragraph 77, the Parties' roles in the supply of metros to Singapore have primarily been to manufacture metro car bodies, assemble the metros and carry out testing of the metros.¹²⁴ Their consortium partners, such as Kawasaki and Bombardier, [X].¹²⁵ It is therefore their consortium partners [X].
90. As noted in paragraph 78, barriers to entry could be significant for new entrants but could be much less significant for existing potential metro suppliers that had experience and expertise in the design of metros. As it is the Parties' consortium partners [X], the Transaction is unlikely to reduce the number of suppliers / potential suppliers that can supply metros to Singapore. Instead, market feedback suggests that the Transaction may allow the Parties to pool their know-how and resources and compete on their own without relying on consortium partners, thereby creating a new independent supplier.¹²⁶

Extent of existing competition between the Parties

91. Given the Parties' similar roles in their respective consortiums, the Parties may potentially be the closest competitors in terms of supplying low cost manufacturing and the assembly of metros. The Transaction may therefore result in a substantial loss of competitive constraint on the lowest price supplier, if the Parties were consistently the lowest price bidders in LTA tenders.
92. CCS has observed, however, that the Parties and/or their consortiums have not been consistently the lowest price bidders in LTA tenders and no supplier has been consistently the lowest price bidder (see Table 3 below). [X]. CCS also notes that the lowest price bidder is not consistently the winning bidder in LTA tenders. The Transaction is therefore unlikely to substantially lessen the competitive constraint on the lowest price supplier.

¹²⁴ Paragraphs 4.2 and 4.4 of the Parties' response dated 23 January 2015 to CCS's request for information dated 16 January 2015 and notes of meeting with [X]

¹²⁵ Paragraphs 4.1 and 4.3 of the Parties' response dated 23 January 2015 to CCS's request for information dated 16 January 2015

¹²⁶ Notes of meeting with [X] and response from [X]

Table 3: Comparison of the Parties' / Parties' consortium's bids in terms of price for LTA tenders awarded between 2008 and 2014¹²⁷

Tender Ref	MRT Line	Year Awarded	Amount Awarded	Winning Bidder	Bidders	[X]
T251	Thomson Line	2014	S\$749,840,000	Kawasaki-CSR Sifang	Kawasaki-CSR Sifang	[X]
					Hyundai Rotem	[X]
					Bombardier-B Changchun	[X]
					Siemens-CSR Zhuzhou	[X]
					CAF	[X]
					Alstom	[X]
151B	N-S/E-W lines	2012	S\$281,508,884	Kawasaki-CSR Sifang	CAF	[X]
					Kawasaki-CSR Sifang	[X]
					CSR Zhuzhou-Siemens	[X]
					Bombardier-B Changchun	[X], not shortlisted ¹²⁸
751C & 830C	N-E/Circle line	2012	S\$368,840,583	Alstom	CAF	[X]
					CSR Zhuzhou	[X]
					Alstom	[X]
					Hyundai Rotem	[X]
					Kawasaki-CSR Sifang	[X]
151A	N-S/E-W lines	2009	S\$368,000,000	Kawasaki-CSR Sifang	Hyundai Rotem	[X]
					Kawasaki-CSR Sifang	[X]
					Bombardier	[X]
					Mitsubishi	[X]
951	Downtown line	2008	S\$570,700,000	Bombardier	Bombardier	[X]
					Kawasaki	[X]
					Alstom	[X]
					Hyundai Rotem-Mitsui	[X]

CCS's assessment and conclusion on non-coordinated effects

93. Given the small incremental change in the Parties' market shares post-merger, the use of open competitive tenders by LTA to procure metros in Singapore, the number of existing suppliers, the role the Parties play in their consortiums, the absence of consistently lowest priced bids from the Parties and the significant countervailing buyer power of LTA, CCS concludes that the Transaction is unlikely to raise concerns of non-coordinated effects.

¹²⁷ Extracted from GeBIZ Management Console

¹²⁸ Paragraph 15.2 of the Parties' response dated 23 January 2015 to CCS's request for information dated 16 January 2015

(b) Coordinated effects

94. A merger may also lessen competition substantially by increasing the possibility that, post-merger, firms in the same market may coordinate their behaviour 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 also arise where a merger reduces competitive constraints in a market, thus increasing the probability that competitors will collude or strengthen a tendency to do so.¹²⁹ Vertical mergers may facilitate coordination, for example by increasing market transparency. Integration may afford the merged entity better knowledge of selling prices in the upstream or downstream market, thereby facilitating collusion in either of those markets.¹³⁰

CCS's assessment and conclusion on coordinated effects

95. As noted in paragraph 65, the estimated CR3 is high at [90-100]% and may suggest high concentration in the relevant market. Additionally, the barriers for a new potential metro supplier to supply metros to Singapore could also be significant given LTA's eligibility criteria.
96. CCS notes, however, that the Transaction does not give rise to an increase in CR3 and that the barriers to entry would be much less significant for existing potential metro suppliers that had experience and expertise in the design of metros. As noted in paragraph 76, there are already a number of existing potential metro suppliers that can, and do, participate in LTA's tenders.
97. The procurement of metros in Singapore primarily through infrequent, open tenders reduces transparency and increases the difficulty of suppliers coordinating their behaviours in the market. Further, given the number of potential suppliers for the supply of metros to Singapore and LTA's significant countervailing buyer power, CCS concludes that the Transaction is unlikely to raise concerns of coordinated effects.

IX. Efficiencies

98. The Parties submitted that the Transaction aims to:
- a. consolidate capabilities in response to global competition;

¹²⁹ Paragraph 6.7 of *CCS Guidelines on the Substantive Assessment of Mergers*

¹³⁰ Paragraph 8.8 of *CCS Guidelines on the Substantive Assessment of Mergers*

- b. integrate resources and achieve synergies to strengthen competition capabilities of the Parties;
- c. optimise capital structure and enhancing financial strength; and
- d. improve forward-looking awareness of the Parties and enhancing their strength in basic research and development.

CCS's assessment

99. CCS notes that claimed efficiencies may be taken into account at two separate points in the analytical framework: first, where they increase rivalry in the market so that no SLC will result from the merger and second, efficiencies can be taken into account where they do not avert an SLC, but will nevertheless bring about lower costs, greater innovation, greater choice or higher quality and be sufficient to outweigh the detriments to competition caused by the merger in Singapore.¹³¹
100. 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 any claimed efficiencies by the Parties.

X. Ancillary Restraints

101. Paragraph 10 of the Third Schedule to the Act states that the “*section 34 prohibition and the section 47 prohibition shall not apply to any agreement or conduct that is directly related and necessary to the implementation of a merger*” (“Ancillary Restriction Exclusion”).
102. In order to benefit from the Ancillary Restriction Exclusion, the agreement or conduct “must be directly related and necessary to the implementation of the merger”.¹³² A restriction is not automatically deemed directly related to the merger simply because it is agreed at the same time as the merger or is expressed to be so related¹³³ but needs to be connected with the merger and subordinate to its main object.¹³⁴ In determining the necessity of the restriction to the implementation of the merger, considerations such as whether its duration, subject matter and geographical field of application are proportionate to the overall requirements of the merger will be taken into account. CCS will consider all these factors in the context of each case.¹³⁵

¹³¹ Paragraphs 7.15 to 7.17 of *CCS Guidelines on the Substantive Assessment of Merger*

¹³² Paragraph 10.9 of *CCS Guidelines on the Substantive Assessment of Merger*

¹³³ Paragraph 10.12 of *CCS Guidelines on the Substantive Assessment of Merger*

¹³⁴ Paragraph 10.10 of *CCS Guidelines on the Substantive Assessment of Merger*

¹³⁵ Paragraph 10.13 of *CCS Guidelines on the Substantive Assessment of Merger*

103. The Parties submitted that the following constitutes an ancillary restriction to the Transaction.

Merged Entity Undertaking

104. The Parties submitted that pursuant to Article 27 of the Code of Corporate Governance for Listed Companies (“CSRC Code”), issued by the China Securities Regulatory Commission (“CSRC”), CSRG and CNRG have made the Merged Entity Undertaking.¹³⁶

105. The Parties submitted that the Merged Entity Undertaking is considered a public undertaking in line with CSRC’s practice and understanding.¹³⁷

Provisions of the Merged Entity Undertaking

106. The Merged Entity Undertaking contains the following provisions:¹³⁸

- a. CSRG and separately CNRG, and their respective wholly-owned or controlled subsidiaries, will at no time in the future engage in any business activities in the future in direct competition with the business activities of the merged entity;
- b. In the event that CSRG, CNRG, their respective wholly-owned or controlled subsidiaries or associated entities supply products or services that may potentially compete with the merged entity’s primary products and services, CSRG and CNRG will grant the merged entity priority rights to acquire the assets of the respective group in relation to such products and services or all of the equity held by the respective group in associated subsidiaries;
- c. CSRG and CNRG may develop advanced and highly profitable projects that fall within the business scope of the merged entity on the condition that CSRG and CNRG provide the merged entity with priority rights to acquire the results of such projects; and
- d. CSRG and CNRG will compensate the merged entity for actual losses incurred by the merged entity arising from any failure by CSRG or CNRG to comply with the provisions above.

Impact of Merged Entity Undertaking on competition

107. The Parties submitted that the restrictions set out in the Merged Entity Undertaking restricts the ability of CSRG, CNRG and their respective

¹³⁶ Paragraph 43.6 of Form M1

¹³⁷ Submission of the Parties by email dated 13 February 2015

¹³⁸ Paragraph 43.1 and Annex 18 of Form M

subsidiaries to enter into and compete with the merged entity with regard to the operating business of the merged entity.¹³⁹ However, the Parties are clear that the undertaking is also limited to CSRG and CNRG, as the major shareholders of the listed merged entity, not to compete with the merged entity, and does not affect the relationship, including competing relationship, if any, between CSRG and CNRG.

Justification for the scope of Merged Entity Undertaking

108. CSR and CNR are listed on the Shanghai Stock Exchange and therefore subject to the CSRC Code. The Transaction is also subject to the Administration Measures on Takeover of Listed Companies of the PRC (“CSRC Takeover Rules”).¹⁴⁰
109. The Parties submitted that the regulatory rationale of the CSRC is that shareholders of a listed company, who can individually (or jointly) materially influence that company, should not compete with the listed company as such shareholders may otherwise use their material influence to take actions or make decisions which could undermine the interests of the listed company and its minority shareholders.¹⁴¹ This is embedded in Article 27 of the CSRC Code, which provides that a listed company should carry out its business independently from its controlling shareholders, and that the controlling shareholders and their subsidiaries shall not engage in any business that is identical with, or similar to that of, the public listed company. Article 27 of the CSRC Code also prescribes that the controlling shareholders shall take adequate measures to avoid horizontal competition.¹⁴²
110. The Parties have submitted that CSRG and CNRG [§<], such that it would be necessary for CNRG and CSRG to comply with the rationale of Article 27 of the CSRC Code. They also submitted that, pre-merger, there were non-compete undertakings in place which were earlier provided by each of CSRG and CNRG in respect of CSR and CNR respectively when CSR and CNR were listed on the Shanghai Stock Exchange and the Hong Kong Stock Exchange. The Merged Entity Undertaking is accordingly, in substance, a reiteration and continuation of the non-compete undertakings which CSRG and CNRG had earlier provided.¹⁴³

¹³⁹ Paragraph 43.19.1 of Form M1.

¹⁴⁰ Paragraph 5.7 of the Parties’ response dated 11 February 2015 to CCS’s request for information dated 9 February 2015

¹⁴¹ Paragraph 5.2 of the Parties’ response dated 11 February 2015 to CCS’s request for information dated 9 February 2015

¹⁴² Extract of Articles 22 to 27 of the CSRC Code provided by the Parties on 30 January 2015

¹⁴³ Paragraph 1.3 of the Parties’ response dated 3 February 2015 to CCS’s queries in meeting on 28 January 2015

111. Further, the Parties submitted that the Merged Entity Undertaking is directly related and necessary to the implementation of the Merger for the following reasons:

- a. The approval by the CSRC of the Transaction is a condition precedent for the Transaction proceeding, as referred to in Clause 10.2.5 of the merger agreement;¹⁴⁴
- b. The Merged Entity Undertaking is provided by CSRG and CNRG to ensure that the Transaction is in line with the CSRC regulatory philosophy, embedded in Article 27 of the CSRC Code, which would facilitate the Transaction obtaining the approval of the CSRC;¹⁴⁵ and
- c. In this regard, in the absence of the Merged Entity Undertaking, there are difficulties expected in obtaining approval from the CSRC for the implementation of the Transaction. Completion of the Transaction may be delayed indefinitely or the Parties may incur prohibitive cost in seeking the CSRC's approval for the Transaction.¹⁴⁶

112. The undertaking is also intended to ensure that CSRG and CNRG, the two major shareholders of the merged entity, will continue to support the development of, and investments in, the merged entity, and not undermine the value of the Transaction.¹⁴⁷

CCS's assessment of the Merged Entity Undertaking

113. CCS is of the view that the Merged Entity Undertaking, insofar as it impacts a market in Singapore, does not exceed the scope of the transaction.

114. Specifically:

- a. The non-compete restriction referred to in paragraph 106(a) above, is limited to the operating business of the merged entity;
- b. The priority rights referred to in paragraph 106(b) above are limited to products or services which may potentially compete with the merged entity's primary products and services; and

¹⁴⁴ Paragraph 5.4 of the Parties' response dated 11 February 2015 to CCS's request for information dated 9 February 2015

¹⁴⁵ Paragraph 5.5 of the Parties' response dated 11 February 2015 to CCS's request for information dated 9 February 2015

¹⁴⁶ Paragraph 5.6 of the Parties' response dated 11 February 2015 to CCS's request for information dated 9 February 2015

¹⁴⁷ Paragraph 43.7 of Form M1

- c. The priority rights referred to in paragraph 106(c) above are limited to the scope of business of the merged entity.
115. While the duration of the Merged Entity Undertaking is not expressly contained in the undertaking, the Parties submitted that the Merged Entity Undertaking will cease to have effect: (1) in the event the merged entity is no longer listed; or (2) with respect to either CSRG or CNRG if CSRG or CNRG respectively ceases to be a shareholder [X].¹⁴⁸ CCS notes that given the Parties' submissions about the obligation to comply with Article 27 of the CSRC Code, the duration of the Merged Entity Undertaking appears necessary for so long as CSRG and CNRG remain bound to comply with Article 27 of the CSRC Code (including any amendments made thereto).
116. Finally, CCS accepts the submissions made in paragraph 111 above and is therefore satisfied that the Merged Entity Undertaking is directly related and necessary to the implementation of the Transaction.
117. CCS concludes that the Merged Entity Undertaking constitutes an agreement falling within the exclusion under paragraph 10 of the Third Schedule of the Act insofar as it applies to Singapore.

XI. Conclusion

118. For the reasons above and based on the information available, CCS assesses that the Transaction is unlikely to lead to SLC concerns and accordingly, will not infringe the section 54 prohibition if carried into effect. 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

¹⁴⁸ Paragraph 2.12 of the Parties' response dated 3 February 2015 to CCS's queries in meeting on 28 January 2015