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from Singapore****- Session V -****30 November 2018**

This contribution is submitted by Singapore under Session V of the Global Forum on Competition to be held on 29-30 November 2018.

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Competition Law and State-Owned Enterprises

- Contribution from Singapore* -

1. Competition Law in Singapore

1. Competition law in Singapore is administered and enforced by the Competition and Consumer Commission of Singapore¹ (“CCCS”), a statutory body established under the Competition Act (Cap. 50B) (“**Competition Act**”) and which operates under the purview of Singapore’s Ministry of Trade and Industry (“**MTI**”).
2. Section 6(1) of the Competition Act sets out CCCS’s functions and duties. Under section 6(1)(b) of the Competition Act, one of the key functions of the CCCS is to eliminate or control practices having an adverse effect on competition in Singapore. The three key prohibitions in the Competition Act are as follows:
 - **The section 34 prohibition** – section 34 of the Competition Act prohibits agreements, decision and concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore.
 - **The section 47 prohibition** – section 47 of the Competition Act prohibits any conduct which amounts to the abuse of a dominant position in any market in Singapore.
 - **The section 54 prohibition** – section 54 of the Competition Act prohibits mergers and acquisitions that substantially lessen competition with any market in Singapore.

2. Government and Sectoral Exclusions

3. Section 33(4) of the Competition Act expressly excludes any activity carried on by, any agreement entered into, or any conduct by the Government, any statutory body, or any person acting on behalf of the Government or that statutory body, as the case may be, in relation to that activity, agreement or conduct (the “**section 33(4) exclusion**”). Section 33(5) of the Competition Act extends this exclusion to a person acting on behalf of a statutory body, or to any activity, conduct or agreement engaged in by a statutory body or person acting on its behalf in relation to such activity, conduct or agreement, as the Minister may prescribe by order in the Government Gazette. In addition, paragraphs 5 and 6 of the Third Schedule and paragraph 2 of the Fourth Schedule, read with sections 35, 48 and 55 of the Competition Act, exclude matters or mergers which are governed by any other written law or code of practice by another regulatory authority, or which relate to “specified

* This contribution has been prepared by Competition and Consumer Commission of Singapore.

¹ Previously, CCCS was known as the Competition Commission of Singapore (“**CCS**”) and assumed its current name on 1 April 2018 after it became the administering agency of the Consumer Protection (Fair Trading) Act (Cap. 52A) (“**CPFTA**”), which aims to protect consumers against unfair trade practices in Singapore. For consistency, the name “CCCS” will be used throughout this contribution, even in relation to work undertaken by the CCS prior to 1 April 2018.

activities” in the areas of postal services, piped potable water, rail services, and others, from the ambit of the Competition Act. For example, competition matters in the telecommunications and media industries are regulated by the Infocomm Media Development Authority (“**IMDA**”), while those in the energy market are regulated by the Energy Market Authority (“**EMA**”).²

4. As stated by the-then Senior Minister of State for Trade and Industry, Dr. Vivian Balakrishnan, in his Second Reading Speech for the Competition Bill on 19 October 2004, the section 33(4) exclusion was included in the Competition Bill because the intent of competition law is to regulate the conduct of market players, and not the Government.³ In that same speech, it was also noted that the Competition Act applies to commercial and economic activities carried on by private sector entities in all sectors, regardless of whether the undertaking is owned by a foreign entity, a Singapore entity, the Government or a statutory body.⁴ This means that the section 33(4) exclusion only applies when the Government and/or statutory body participates in any market directly in such capacity, and not when government-linked companies (“**GLCs**”) or private companies which the Singapore Government or its statutory boards own or are shareholders of engage in commercial or economic activities in any market.⁵ This is an important distinction, seeing as state-owned enterprises and GLCs such as Singapore Airlines, ST Marine Limited, Singapore Technologies Aerospace Pte Ltd, to name a few, play a significant role in Singapore’s economy.

5. It also bears highlighting that the “carve-outs” for “specified activities”, or industries which are governed by another regulatory authority, were included in the Competition Act because of public interest considerations, transitional requirements, or the need for specific technical knowledge that the sectoral competition regulators possess, and not to insulate the state-owned enterprises which operate in these industries from the ambit of competition law.⁶ In fact, the legislative frameworks that sectoral regulators like IMDA and EMA operate under contain provisions which are largely similar to the prohibitions in the Competition Act.⁷

² IMDA and EMA are statutory boards established under the Info-Communications Media Development Authority Act 2016 (Act 22 of 2016) and Energy Market Authority of Singapore Act (Cap. 92B) respectively.

³ Competition and Consumer Commission of Singapore, *Second Reading Speech for the Competition Bill by the Senior Minister of State for Trade and Industry Dr Vivian Balakrishnan* (19 October 2004), www.cccs.gov.sg/media-and-publications/speeches?page=5 (accessed 2 November 2018).

⁴ *Ibid.*

⁵ Competition and Consumer Commission of Singapore, *Frequently Asked Questions* (4 May 2015), www.cccs.gov.sg/faq/competition-act-and-government-agencies (accessed 4 November 2018).

⁶ Competition and Consumer Commission of Singapore, *Second Reading Speech for the Competition Bill by the Senior Minister of State for Trade and Industry Dr Vivian Balakrishnan* (19 October 2004), www.cccs.gov.sg/media-and-publications/speeches?page=5 (accessed 2 November 2018).

⁷ *Ibid.* See, for example, sections 50 (anti-competitive agreements) and 51 (abuse of dominant position) of the Electricity Act (Cap. 89A), which is administered and enforced by EMA, and sections 8 and 9 of the Code of Practice for Competition in the Provision of Telecommunication Services 2012, which was issued under the Telecommunications Act (Cap. 323) and administered and enforced by IMDA.

6. As stated above, CCCS does not treat state-owned enterprises/GLCs and privately-owned companies differently for the purpose of enforcing the Competition Act. This approach is best exemplified in the following cases involving state-owned enterprises, which will be discussed in more detail in the sections below:

- Abuse of Dominant Position by SISTIC.com Pte Ltd;⁸ and
- Abuse of Dominant Position by E M Services Pte Ltd.⁹

2.1. Case Study 1 – Abuse of Dominant Position by SISTIC.com Pte Ltd

7. On 4 June 2010, CCCS issued an infringement decision against SISTIC.com Pte Ltd (“SISTIC”) for its abuse of dominance in the ticketing industry. This was CCCS’s first infringement decision for an infringement of section 47 of the Competition Act, arising from SISTIC’s participation in the following agreements (“**Exclusive Agreements**”):

- The Application Service and Ticketing Agreement (“ASTA”) between SISTIC and The Esplanade Co. Ltd (“TECL”), which contained explicit restrictions requiring all events held at the Esplanade’s (a performing arts centre in Singapore) venues to use SISTIC as the sole ticketing service provider;
- The Agreement for Ticketing Services (“ATS”) between SISTIC and the Singapore Sports Council (“SSC”), which contained explicit restrictions requiring all events held at the Singapore Indoor Stadium to engage SISTIC as the sole ticketing service provider; and
- 17 other agreements which contained similar restrictions.

8. Ticketing service providers like SISTIC act as middlemen between event promoters and ticket buyers by providing them with a platform to buy and sell tickets.¹⁰ Following its investigations, CCCS found that SISTIC was dominant in the ticketing services market in Singapore with a market share in the region of 90%, of which 60-70% was attributable to the Exclusive Agreements.¹¹ Having found that SISTIC was dominant in the relevant market, CCCS found that SISTIC’s Exclusive Agreements amounted to abuses of that dominant position by restricting event promoters from choosing alternative ticketing service providers, artificially perpetuated SISTIC’s dominant position, and afforded SISTIC the ability to raise the prices it charged to ticket buyers.¹² For example, CCCS noted

⁸ CCS 600/008/07: *Infringement Decision: Abuse of a Dominant Position by SISTIC.com Pte Ltd* (4 June 2010), www.ccs.gov.sg/public-register-and-consultation/public-consultation-items/abuse-of-dominant-position-by-sisticcom-pte-ltd (accessed 2 November 2018).

⁹ Competition and Consumer Commission of Singapore, *CCS Investigates Restrictive Industry Practices in the Supply of Lift Spare Parts in HDB Estates* (14 July 2016), www.ccs.gov.sg/public-register-and-consultation/public-consultation-items/investigation-of-lift-spare-parts-industry-em-services (accessed 2 November 2018).

¹⁰ CCS 600/008/07: *Infringement Decision: Abuse of a Dominant Position by SISTIC.com Pte Ltd* (4 June 2010), www.ccs.gov.sg/public-register-and-consultation/public-consultation-items/abuse-of-dominant-position-by-sisticcom-pte-ltd (accessed 2 November 2018), at [1.2].

¹¹ *Ibid.*, at [1.4].

¹² *Ibid.*, at [1.3].

that SISTIC raised its booking fees for ticket buyers in 2008 by 50% to \$3 per ticket for tickets with a face value of more than \$20.¹³

9. Having found that SISTIC had infringed section 47 of the Competition Act, CCCS imposed a financial penalty of \$989,000 on it, taking into account the seriousness and duration of the infringement, its turnover, the aggravating and mitigating factors, and other considerations.¹⁴ Soon after, SISTIC lodged an appeal against CCCS's infringement decision and the penalty imposed on 13 August 2010. On 28 May 2012, the Competition Appeal Board, which has appellate jurisdiction over CCCS's decisions, upheld CCCS's findings on liability but reduced the financial penalty to \$769,726.¹⁵

10. In arriving at its decision above, CCCS had to consider whether the section 33(4) exclusion operated to absolve SISTIC of any liability under section 47 of the Competition Act. This issue arose because SISTIC was, in essence, a state-owned enterprise. SISTIC was set up in 1991 under a statutory board (SSC) to serve the ticketing needs of the Singapore Indoor Stadium. On 28 July 2000, SISTIC was corporatised to provide ticketing services to a wide range of arts, sports and entertainment venues held in Singapore. At the time of CCCS's decision, SISTIC was owned 65% by the SSC and 35% by TECL.

11. CCCS noted that while TECL and SISTIC were corporate entities, TECL was directly owned by the-then Ministry of Information, Communications and the Arts ("MICA") and SISTIC was co-owned directly by SSC and directly by MICA as well.¹⁶ However, CCCS found that the section 33(4) exclusion did not apply for the following reasons:¹⁷

- Neither TECL nor SISTIC was part of the Government or a statutory body.
- The contractual terms and conditions under the ASTA were commercial in nature.
- There was no suggestion by SISTIC that either TECL or SISTIC were acting on behalf of the Government or a statutory body in relation to the activities, conduct or agreements specified in the ASTA.
- In relation to the ATS between SISTIC and SSC, the exclusive purchase obligation was imposed by SISTIC (which was not acting on behalf of the Government or a statutory body) on SSC (which was part of a statutory body, SSC). In so doing, SISTIC was not acting on behalf of the Government or a statutory body and the section 33(4) exclusion did not apply.

¹³ *Ibid.*, at [1.4].

¹⁴ *Ibid.*, at [1.5].

¹⁵ *Re Abuse of Dominance by SISTIC.com Pte Ltd* [2012] SGCAB 1, at [264].

¹⁶ CCS 600/008/07: *Infringement Decision: Abuse of a Dominant Position by SISTIC.com Pte Ltd* (4 June 2010), www.ccs.gov.sg/public-register-and-consultation/public-consultation-items/abuse-of-dominant-position-by-sisticcom-pte-ltd (accessed 2 November 2018), at [4.2.2].

¹⁷ *Ibid.*

2.2. Case Study 2 – Abuse of Dominant Position by E M Services Pte Ltd

12. In June 2014, CCCS commenced investigations following a complaint that several companies were refusing to supply lift spare parts required for the maintenance of lifts in Housing and Development Board (“HDB”) public housing estates in Singapore.¹⁸ One of the companies that was investigated was a state-owned enterprise, E M Services Pte Ltd (“EMS”). EMS was set up as a joint venture between HDB Corporation Pte Ltd, the corporatised building and development arm of HDB, and Keppel Land Limited, the property arm of Keppel Corporation, which is in turn partly-owned by Temasek Holdings (Private) Ltd.

13. Notwithstanding EMS’s status as a state-owned enterprise, CCCS found that EMS was dominant in the supply of lift spare parts for its brands for which it was the sole distributor and had refused to supply these spare parts to third-party lift maintenance contractors in Singapore. After informing EMS of the findings and competition concerns arising from EMS’s business practices, EMS offered commitments to CCCS. After a public consultation with industry players, CCCS accepted EMS’s voluntary commitments to, *inter alia*, provide lift spare parts on terms and conditions which are reasonably similar to those provided by the spare parts manufacturers to EMS itself.

3. Conclusion

14. Ever since its establishment, CCCS has consistently treated state-owned enterprises no differently from privately-owned enterprises for the purpose of enforcing the Competition Act, with the exception of the limited circumstances in which the section 33(4) exclusion applies. This is evident from the two case studies set out above.

15. Apart from its enforcement work, CCCS is also exploring the impact of state-owned enterprises on competition in the logistics sector in Association of Southeast Asian Nations (“ASEAN”) Member States as part of a ASEAN Experts Group on Competition (“AEGC”) study. This study is part of the ASEAN Competition Action Plan (“ACAP”) that guides the work of the CCCS-chaired AEGC, and will be conducted with support from OECD. The logistics sector was selected as it is an important sector as it plays a key role in catalysing development and connectivity among ASEAN Member States. In particular, the study will assess laws and regulations affecting the logistics sectors in each Member State, ascertain the impact of any special rights and privileges conferred to state-owned enterprises in each Member State and identify any unnecessary restrictions to competition. The AEGC will also provide recommendations which are less-restrictive of competition.

¹⁸ Competition and Consumer Commission of Singapore, *CCS Investigates Restrictive Industry Practices in the Supply of Lift Spare Parts in HDB Estates* (14 July 2016), www.ccs.gov.sg/public-register-and-consultation/public-consultation-items/investigation-of-lift-spare-parts-industry-em-services (accessed 2 November 2018).