

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

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

**In relation to the notification for decision of the proposed acquisition by DKSH Holding (S) Pte. Ltd. of Auric Pacific Marketing Pte. Ltd. and Centurion Marketing Pte. Ltd. pursuant to section 57 of the Competition Act**

**22 February 2019**

**Case number: CCCS 400/140/2019/001**

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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 [ⓧ].

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## **I. Introduction**

### The Notification

1. On 10 January 2019, DKSH Holding (S) Pte. Ltd. (“DKSH Holding (S)”) made an application pursuant to section 57 of the Competition Act (Cap. 50B) (“the Act”) for a decision by the Competition and Consumer Commission of Singapore (“CCCS”) as to whether the proposed acquisition by DKSH Holding (S) of all the shares of Auric Marketing Pte. Ltd. (“APM”) and Centurion Marketing Pte. Ltd. (“CM”) (together the “Targets”) (the “Proposed Transaction”) will infringe the prohibition in section 54 of the Act, if carried into effect.
2. In reviewing the Proposed Transaction, CCCS sought feedback from a total of twenty nine (29) third parties, comprising seven<sup>1</sup> (7) competitors, and twenty-two (22) customers of distribution services, of which ten<sup>2</sup> (10) are manufacturers and/or suppliers of packaged food and beverage products (“Brand Principals”) who procure distribution services from DKSH Holding (S) Pte. Ltd. and the Targets (together the “Parties”) and twelve<sup>3</sup> (12) are purchasers to whom the products are distributed to i.e. various channels including brick and mortar retailers, wholesalers, foodservice businesses and e-commerce retailers (collectively, “Purchasers”). Ten (10) substantive third party responses were received.
3. At the end of the consultation process and after evaluating all the submissions, CCCS has concluded that the Proposed Transaction, if carried into effect will not infringe section 54 of the Act.

## **II. The Parties**

### DKSH Holding (S)

4. DKSH Holding (S) is a wholly-owned subsidiary of DKSH Holding Ltd., a listed company with its registered office in Zurich, Switzerland, and the ultimate holding company of the DKSH Group. The trading name of DKSH Holding (S) in Singapore is DKSH, and its

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<sup>1</sup> [REDACTED].

<sup>2</sup> [REDACTED].

<sup>3</sup> [REDACTED].

services are provided primarily through two of its subsidiaries – DKSH Singapore Pte. Ltd. (“DKSH Singapore”) and DKSH South East Asia Pte. Ltd. (“DKSH SEA”).<sup>4</sup>

5. While the DKSH Group provides distribution services globally through four business units<sup>5</sup>: consumer goods, healthcare, technology and performance material<sup>6</sup>, DKSH Singapore and DKSH SEA’s distribution services to their business partners in Singapore are focused on the first three of these business units.<sup>7</sup>
6. The total (group) worldwide turnover of DKSH Singapore for FY 2017 was [X] and its total (group) Singapore turnover for FY 2017 was [X]. The total (group) worldwide turnover of DKSH SEA for FY 2017 was [X] and its total (group) Singapore turnover for FY 2017 was SGD [X].<sup>8</sup>

### The Targets

7. The Targets are [X]. The trading name of APM and CM in Singapore are, respectively, Auric Pacific Marketing and Centurion Marketing.<sup>9</sup>
8. The Targets provide distribution services to various international consumer food brands in Singapore in the retail and foodservice channels, using temperature-controlled supply chain management to handle storage and distribution activities of ambient, air-conditioned, chilled and frozen food products.<sup>10</sup> The Targets also distribute butter and margarine brands in Singapore, being: SCS and Twin Cows, which are manufactured and supplied by Auric Pacific Food Processing Sdn Bhd (“APFP”).<sup>11</sup>

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<sup>4</sup> Paragraphs 7.1 (a), 8.1 and 10.6 (a) of Form M1.

<sup>5</sup> Paragraph 8.1 of Form M1.

<sup>6</sup> According to paragraph 10.11 of Form M1, performance material refers to Market Expansion Services in the area of specialty chemicals and food ingredients.

<sup>7</sup> Paragraph 10.9 of Form M1.

<sup>8</sup> Paragraph 14.2 of DKSH Holding (S)’s 22 January 2019 Response to CCCS’s RFI of 16 January 2019. DKSH Holding (S) submitted in paragraph 14.1 of its 22 January 2019 Response to CCCS’s RFI of 16 January 2019 that it is not able to provide the turnover figures for DKSH Singapore and DKSH SEA for FY 2018 as the financial year had only just closed. As such, DKSH Holding (S) provided the turnover figures for FY 2017 in lieu of the turnover figures for FY 2018.

<sup>9</sup> Paragraphs 8.2 and 10.6 of Form M1.

<sup>10</sup> Paragraph 10.12 of Form M1.

<sup>11</sup> Paragraph 10.7 of Form M1.

9. The total (group) worldwide turnover<sup>12</sup> of APM in the financial year ended 31 December 2017 was [§<]. The total (group) Singapore turnover of APM in the financial year ending 31 December 2017 was [§<]. The total (group) worldwide turnover of CM in the financial year ended 31 December 2017 was [§<]. The total (group) Singapore turnover of CM in the financial year ending 31 December 2017 was [§<].<sup>13</sup>

### **III. The Transaction**

#### Nature of the Proposed Transaction

10. The Proposed Transaction concerns the acquisition of the Targets by DKSH Holding (S) under a share purchase agreement entered into by DKSH Holding (S) and APGL on 21 December 2018.<sup>14</sup>
11. The Proposed Transaction is part of a wider acquisition by the DKSH Group. The DKSH Group, through DKSH Holdings (Malaysia) Berhad (“DKSH Malaysia”), has at around the same time entered into a separate share purchase agreement with APGL to purchase all of the shares of Auric Pacific (M) Sdn Bhd, a company incorporated in Malaysia.<sup>15</sup>
12. The value of the Proposed Transaction is approximately SGD 60.726 million, subject to certain adjustments at completion, including customary completion net debt and net working capital adjustments.<sup>16</sup>

#### Merger under section 54 of the Act

13. Based on DKSH Holding (S)’s submissions, CCCS is of the view that the Proposed Transaction constitutes a merger pursuant to section 54(2)(b) of the Act.

### **IV. Competition Issues**

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<sup>12</sup> For the avoidance of doubt, all the turnover figures submitted by DKSH Holding (S) of APM and CM only include APM and CM which are to be acquired by DKSH Holding (S).

<sup>13</sup> Paragraphs 13.2 and 13.5 of Form M1.

<sup>14</sup> Paragraph 11.1 of Form M1.

<sup>15</sup> Paragraph 11.2 of Form M1.

<sup>16</sup> Paragraph 11.8 of Form M1. According to paragraph 11.9 of Form M1, the value of the MY Transaction is approximately SGD 157.674 million, subject to certain adjustments at completion, including customary completion net debt and net working capital adjustments.

14. DKSH Holding (S) submitted that the Parties overlap in the provision of distribution services of packaged food and beverage products. Distributors such as the Parties provide an array of services to the Brand Principals. These services range from the essential such as the sale and physical delivery of food products from the Brand Principals to Purchasers, to other ancillary value-added services including sourcing, market analysis and research, marketing, cash collection and after-sales services.<sup>17</sup> CCCS notes that while DKSH Singapore and DKSH SEA provide distribution services for non-food products in Singapore, the Targets have chosen to focus on food and beverage products and have not sought to provide distribution services for non-food products. In addition, CCCS also notes that while the Targets provide distribution services for air-conditioned, chilled and frozen food products in Singapore, DKSH Holding (S) does not currently distribute these types of food products.
15. In evaluating the potential impact of the Proposed Transaction, CCCS considered whether the Proposed Transaction will lead to coordinated and/or non-coordinated effects that would substantially lessen competition or raise competition concerns in the provision of distribution services for packaged food and beverage products in Singapore.

## **V. Counterfactual**

16. DKSH Holding (S) submitted that, in the absence of the Proposed Transaction, the Parties would have independently continued with the provision of distribution services. However, there would be a loss in the opportunity from the Proposed Transaction to reap synergies from a single platform with increased economies of scale.<sup>18</sup>
17. Having considered DKSH Holding (S)'s submissions and having reviewed the internal board documents submitted by DKSH Holding (S), CCCS is of the view that there is no evidence to suggest that the Parties will not continue to operate separately and independently if the Proposed Transaction did not take place. Therefore, CCCS is of the view that the prevailing conditions of competition is the relevant counterfactual in applying the Substantial Lessening of Competition ("SLC") test.

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<sup>17</sup> Paragraph 15.1 of Form M1.

<sup>18</sup> Paragraph 23.3 of Form M1 and paragraph 24.1 of DKSH's 22 January 2019 Response to CCCS's RFI of 16 January 2019.

## **VI. Relevant Market**

18. Based on DKSH Holding (S)'s and third parties' submissions, CCCS is of the view that the relevant market for the purposes of this assessment is the market for the provision of distribution services for packaged food and beverage products in Singapore.

## **VII. CCCS's Assessment**

### **(a) Market shares and market concentration**

19. DKSH Holding (S) estimated that the Parties have combined market shares in the relevant market of less than 10% for the fiscal year of 2017.<sup>19</sup> However, DKSH Holding (S) noted that the figures submitted are only a proxy and may not be sufficiently representative of the actual market shares.<sup>20</sup> CCCS therefore sought to verify market share information from third parties. Third party feedback similarly suggested that the Parties do not have large market shares. In particular, CCCS notes that the products distributed by the Parties make up less than 10% of some of the Purchasers' total purchase of packaged food and beverage products, and that the incremental market share arising from the Proposed Transaction is not large. Third parties also provided feedback that they do not view the Parties to be each other's closest competitors.

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

20. Based on DKSH Holding (S)'s submissions and third party feedback, CCCS is of the view that while that there may exist barriers to entry, including significant costs of entry and reputation of existing distributors, no third party has indicated that these barriers to entry are insurmountable. Importantly, CCCS notes that the barriers to expansion are comparably lower. For existing competitors, they already possess the necessary expertise and infrastructure to provide the distribution services and therefore unlikely to require significant additional capital expenditure to expand. Hence, CCCS is of the view that, while some barriers to entry exist in the relevant market, these are not insurmountable and that barriers to expansion for existing players to expand are not high.

### **(c) Countervailing buyer power**

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<sup>19</sup> Paragraph 16.2 of Form M1.

<sup>20</sup> Paragraph 16.3 of Form M1.

21. CCCS notes that the feedback from Brand Principals generally indicated that while self-supply (i.e. distributing their products to Purchasers themselves) may be possible, [X]. Most Brand Principals however had provided feedback that they are able to negotiate and have successfully negotiated with distributors for more favourable terms. This is corroborated by DKSH Holding (S)'s submission that Brand Principals (and Purchasers, similarly) typically re-negotiate for better terms when the ongoing contract expires or is nearing expiry.<sup>21</sup>

**(d) Non-coordinated effects**

22. CCCS notes that the market share estimates provided by DKSH Holding (S) for the last three years show that the combined market share figures of the Parties are well below the 20% indicative threshold in the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

23. More importantly, CCCS notes that none of the Brand Principals have raised concerns with switching to alternative substitutes post-Transaction. Further, many of the Brand Principals do not consider that the Parties are each other's closest competitors. The Parties have regularly lost brands to their competitors in the past five years, suggesting that Brand Principals are both open to switching and do switch distributors, increasing the incentive for existing competitors to expand and compete.

24. In addition, CCCS notes that while there are certain barriers to entry for new entrants for the provision of distribution services of packaged food and beverage products in Singapore, given the limited size of the market and the number of players already in the market, barriers to expansion by current distributors are significantly lower. Further, CCCS notes the possibility of distributors of non-food products making the switch to distributing food products given the similarity in the distribution channels as well as the infrastructure and facilities required.

25. Given the availability of alternative suppliers which customers can switch to and the lack of significant barriers to expansion preventing alternative suppliers from increasing their supply of distribution services in Singapore, CCCS is of the view that non-coordinated effects are unlikely to arise from the Proposed Transaction in the market for the supply of distribution services for packaged food and beverage products in Singapore.

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<sup>21</sup> Paragraphs 14.1 to 14.4 of DKSH Holding (S)'s 13 February 2019 Response to CCCS's RFI of 11 February 2019.

**(e) Coordinated effects**

26. CCCS notes the number of competitors in the market of more than ten players<sup>22</sup> currently providing distribution services for food products; the common use of request for quotations or request of proposal as the method of procurement by the Brand Principals for the distribution services and the length of [redacted] between contracts; and the fact that prices for the distribution services are not transparent to all players.
27. CCCS therefore assesses that the Proposed Transaction would not lead to adverse coordinated effects in Singapore.

**VIII. Efficiencies**

28. Given that the above competition assessment did not point to an SLC, CCCS is of the view that it is not necessary to make an assessment on the claimed efficiencies by DKSH Holding (S).

**IX. Ancillary Restrictions**

29. DKSH Holding (S) submitted that:<sup>23</sup>
- a. Clause 8.1 of the SPA, a non-compete agreement between Lippo, APGL and APGL's affiliate companies under Lippo's control ("Non-Compete Entities") provides that the Non-Compete Entities, in relation to the intellectual property rights under the Proposed Transaction, will not compete for a period of 3 years ("Non-Compete Agreement"); and
  - b. Clause 8.2 of the SPA, a non-solicitation agreement between the Non-Compete Entities provides that the Non-Compete Entities are restricted [redacted]<sup>24</sup> for a period of [redacted] ("Non-Solicitation Agreement").
30. Based on the submissions by DKSH Holding (S), CCCS is satisfied that clauses 8.1 and 8.2 of the SPA in the context of the Proposed Transaction are ancillary restrictions because

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<sup>22</sup> Competitors of the Parties include LF Asia (Singapore) Pte. Ltd or Li and Fung, Lim Siang Huat Pte. Ltd., Goh Joo Hin Pte. Ltd., Matrix Star Marketing Pte. Ltd., KW Marketing, Angliss Singapore Pte. Ltd., Indoguna Singapore Pte. Ltd., Ben Foods (S) Pte. Ltd., GBA Corporation (Singapore) Pte. Ltd., and FoodXervices Inc. Pte. Ltd. It also includes pure logistics players like Keppel Logistics Pte. Ltd., CEVA Logistics Singapore Pte. Ltd. and YCH Group Pte. Ltd. Potential competitors who currently distribute non-food products and could potentially switch to distributing food products include Zuellig Pharma Specialty Solutions Group Pte. Ltd.

<sup>23</sup> Paragraphs 43.1 to 43.4 of Form M1.

<sup>24</sup> [redacted].

they are directly related and necessary to the Proposed Transaction and consequently fall within the exclusion under paragraph 10 of the Third Schedule to the Act insofar as it is applicable to Singapore.

**X. Conclusion**

31. For the reasons above and based on the information available, CCCS has assessed that the Proposed Transaction will not lead to an SLC and accordingly will not infringe the section 54 prohibition, if carried into effect.
32. 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 and Consumer Commission of Singapore