



A decade in control

Toh Han Li, chief executive of the **Singapore Competition Commission (CCS)**, evaluates the merger control environment at the commission's ten-year juncture

In 2015 and 2016 the Competition Commission of Singapore (CCS) reached a significant milestone and handled several firsts in its cases. Established in 2005, 2015 was the CCS' tenth anniversary and to celebrate it launched a review of its merger practices, resulting in the introduction in 2016 of a new fast-track procedure and new guidance on financial penalties. Alongside this the CCS also handled its first ever merger where it accepted commitments to address potential competition concerns and made its first ever public disclosure of an intention to block a proposed merger. Here, CCS chief executive Toh Han Li outlines the challenges faced by a modern competition authority and looks at the CCS' own attempts to become more sophisticated.

What are the most pressing challenges in merger control facing the CCS?

In the current business climate, the main challenges that the CCS faces include technological changes that have given rise to increasingly more complex market structures and business conduct; market issues which cut across various business sectors in Singapore and involve many stakeholder

groups; and more cases involving cross-border conduct that have an anti-competitive impact on Singapore. These challenges have pushed the CCS towards engaging in more coordinated dialogue with other regulatory agencies in Singapore and in greater cooperation with competition authorities from other jurisdictions.

One of the challenges brought about by technological changes is the assessment of products and services offered in the online marketplace. To date, CCS has worked on several e-commerce related matters, one of which is the acquisition of JobStreet Singapore by Seek Asia Investments. The JobStreet merger brought together the top two online recruitment advertising service providers in Singapore. It proceeded to a phase II review and the CCS formed the view that the merger, if carried into effect, was likely to give rise to a number of non-coordinated effects. The Jobstreet merger was eventually cleared subject to a number of behavioural and divestiture commitments offered to the CCS. This marked the first case where the CCS had accepted commitments to address the potential competition concerns arising from a merger.

Closer coordination between competition authorities is crucial in both cartel and merger enforcement activities

How many mergers do you expect to review in 2016, how long does clearance typically take and how has your approach developed in terms of imposing remedies or blocking mergers?

Singapore has a voluntary merger notification regime. As of November 5 2016, a total of 56 mergers had been notified to the Commission; of which 50 were cleared, two granted conditional clearance, three withdrawn and one anticipated merger was abandoned. In 2016 the CCS reviewed seven mergers, all of which were cleared unconditionally save for one (involving the proposed acquisition by ADB of Safegate International), which was granted conditional clearance.

In view of the economic slowdown both in Singapore and the world, corporate activity in Singapore has also slowed over the third quarter with deal value of announced M&A down by 27.2% from the previous quarter and lower by 26.7% from a year ago. As such, the CCS is expecting a general decline in mergers for review purposes.

As a matter of administrative procedure, the CCS adopts a two-phase approach in evaluating merger applications. In general, the Commission expects to complete a phase I review within 30 working days, commencing from the date on which the Commission receives a completed Form M1, accompanied by the relevant supporting documents and appropriate fees.

In the event that the Commission is unable during the phase I review to conclude that a merger does not raise competition concerns and is of the view that a more detailed examination is required, it will notify the merger parties of the decision to carry out a more detailed assessment. The indicative time frame of 120 working days for a phase II review commences when the Commission receives a complete Form M2. While the Commission typically reviews mergers within the stipulated time frames, they are not binding on the Commission and the Commission may so choose to stop the clock in a review, *inter alia*, if the merger parties do not respond to the Commission's request for information within stipulated time period or when commitments are being considered.

In 2015, the CCS issued a provisional decision to block the proposed acquisition of RadLink-Asia by Parkway Holdings from Fortis Healthcare Singapore. The Parkway-RadLink merger marked the first time that the CCS publicly disclosed its intention to block a proposed merger. This was welcomed by practitioners as it sheds light on the increasingly nuanced and sophisticated approach taken by the CCS, including its assessment of vertical effects in mergers.

In relation to remedies, CCS is recognising the importance and relevance of behavioural commitments especially in situations where structural remedies may be difficult to offer since this could possibly mean divesting all or parts of the assets of the acquired business in Singapore and which could render a merger deal less attractive to merger parties. A case example is the proposed acquisition by ADB of all the shares of Safegate International from Fairford Holdings.

What have been the most interesting cases of 2016 and how did the CSS balance its objectives in these cases?

One of the highlights in 2016 was the conditional approval of the ADB-Safegate merger. The merger was approved after the CCS accepted voluntary behavioural commitments offered by the merger parties to address competition concerns.

This marks the second case in which the CCS has cleared a merger subject to commitments. The ADB-Safegate merger, which concerned the supply of airfield lighting systems in Singapore, was cleared on the basis of behavioural commitments. After evaluating feedback provided by industry players and customers during the public consultation exercise held in December 2015 on the proposed commitments, the CCS considered these commitments to be sufficient to address the competition concerns it had identified. To effectively monitor ADB's compliance with the proposed commitments, the merging parties will be providing the CCS with regular independent audit reports.

How do you interact with other competition authorities?

In today's globalised economy, closer coordination between competition authorities is crucial in both cartel and merger enforcement activities and in the development of competition law jurisprudence and best practices. With growing interest in competition law heightened by the increasing adoption of competition law in the region, co-operation with competition authorities from other jurisdictions will become increasingly more important, and the cross-border dimension of competition authorities' work increasingly critical.

In this respect, the CCS has continued to strengthen its links with international competition authorities and institutions, like the International Competition Network, the OECD and the Global Competition Review, as these have been invaluable resources for the CCS's growth. In 2016, the CCS hosted the International Competition Network's (ICN) 15th Annual Conference which marked the first time ICN held such an event in South East Asia.

Most recently, the CCS hosted the ICN Annual Conference in April 2016 at Marina Bay Sands, Singapore. The ICN Annual Conference 2016 saw the gathering of over 500 government officials, competition experts, non-governmental advisors, academics and practitioners from the legal and economic community. Topics of discussion were diverse and touched on several current issues that the competition community is facing. These included developments in competition policy and law, the important role of ICN in the development of competition policy and law in ASEAN and competition law concerns arising from disruptive innovations. During the conference, the CCS also launched a handbook on competition policy and law, aimed at helping businesses intending to expand their operations within ASEAN.

E-commerce also poses a whole different set of challenges to the existing competition policy framework

The CCS further recognises the increasing profile of competition law in the Association of Southeast Asian Nations (ASEAN). The ASEAN Expert Group on Competition (AEGC), with the support of ASEAN Secretariat, plays an important role of building ties and capacities among government agencies, increasing the engagement and interaction between ASEAN countries and facilitating the development and implementation of competition laws among ASEAN member countries. The CCS has been active in the AEGC in several ways. It took on the inaugural chairmanship of the expert group in 2008, chaired a working group on ASEAN regional guidelines and has hosted various conferences and workshops. The CCS also chaired the working group on developing strategies and tools for regional competition advocacy. The CCS is also developing an ASEAN Competition Policy and Law (CPL) Programme which has as one of its objectives the promotion of greater collaboration amongst competition agencies in ASEAN. The CPL Programme is targeted to start in 2017.

What developments in rules or policies have you introduced recently that you think are significant for prospective merger parties?

The CCS has recently conducted a review of its competition guidelines. The guidelines were first issued in 2007 and outline how the CCS will administer and enforce the provisions under the Competition Act. The guidelines were reviewed to take into account ten years of experience and enforcement by the CCS and international best practices. A public consultation on the proposed changes to the guidelines was held and having reviewed the comments received, the revised guidelines were published on November 1 2016 and will come into effect on December 1 2016. They include a new fast-track procedure for shorter, faster investigations, more clarity and guidance on how the CCS calculates financial penalties and simplified processes to save businesses time.

What do you believe will be the interesting areas of development for the coming years?

The CCS will next be undertaking a comprehensive review of the Competition Act. The review will be done with a view to balancing

regulatory and business compliance costs against the benefits from effective competition.

Another interesting area of development is the emergence of e-commerce and disruptive technologies, where we are seeing evolving business models which are changing the nature of competition between traditional and new businesses, as well as between local and foreign businesses. With its uniqueness, e-commerce also poses a whole different set of challenges to the existing competition policy framework. The CCS recognises that a level playing field in the e-commerce space is crucial to facilitate businesses in

their expansion plans in Singapore and overseas. This is because anti-competitive practices in the online or offline market may stifle innovation and the entry and expansion of new businesses. Apart from actively soliciting feedback from industry stakeholders, the CCS is looking closely into this area and studying its implications on competition policy in Singapore through market studies related to the subject matters of Big Data and e-commerce. We will also be learning from the experience of other countries in how they deal with the opportunities and challenges presented by e-commerce.

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About the author

Toh Han Li has been the chief executive and a commissioner of the Competition Commission of Singapore since 2013. He is from the Singapore Legal Service and has served as a justices' law clerk to the chief justice of Singapore, deputy public prosecutor and state counsel in the Attorney-General's Chambers, senior assistant registrar at the Supreme Court and as registrar and principal district judge of the State Courts. He also serves on the Military Court of Appeal, the Copyright Tribunal and the Monetary Authority of Singapore's Appeals Advisory Panel.

Han Li read law at Cambridge University, obtained a masters of law from the University of Chicago and a masters in public management from the Lee Kuan Yew School of Public Policy. He attended the Stanford Executive Programme at its Graduate School of Business and is admitted to practice law in Singapore, England and New York.