



**GCR INSIGHT**

**ASIA-PACIFIC**  
ANTITRUST REVIEW 2019

LAW BUSINESS RESEARCH

# **ASIA-PACIFIC**

## ANTITRUST REVIEW 2019

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# Preface

Global Competition Review is a leading source of news and insight on national and cross-border competition law and practice, with a readership that includes top international lawyers, corporate counsel, academics, economists and government agencies. GCR delivers daily news, surveys and features for its subscribers, enabling them to stay apprised of the most important developments in competition law worldwide.

GCR's coverage of Asia continues to expand, with a senior reporter now stationed in Hong Kong and more plans for growth following Law Business Research's merger with Globe Business Media Group.

Complementing our news coverage, *Asia-Pacific Antitrust Review 2019* provides an in-depth and exclusive look at the region. Preeminent practitioners have written about antitrust issues in eight jurisdictions, as well as one regional overview for merger control. The edition includes updates to 16 chapters and adds two new ones: overviews of antitrust in Malaysia and Korea. The authors are unquestionably among the experts in their field within these jurisdictions and the region.

The volume includes contributions from the chairs of the Australian Competition and Consumer Commission and Korea's Fair Trade Commission, as well as the chief executive of Hong Kong's Competition Commission. Other experts look at a range of topics, including cartels and mergers in India and Japan and abuse of dominance in India and China.

This annual review expands each year, especially as the Asia-Pacific region gains even more importance in the global antitrust landscape. It has some of the world's most developed enforcers – in Australia, Korea and Japan, for example – but it also has some of the world's newest competition regimes, including in Malaysia and Hong Kong.

If you have a suggestion for a topic to cover or would like to find out how to contribute, please contact [insight@globalcompetitionreview.com](mailto:insight@globalcompetitionreview.com). GCR thanks all of the contributors for their time and effort.

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# Singapore: Competition and Consumer Commission

Han Li Toh  
Chief executive

On 1 April 2018, the Competition Commission of Singapore was renamed the Competition and Consumer Commission of Singapore (CCCS), as it took on an additional function of administering the Consumer Protection (Fair Trading) Act. The CCCS retained its mission of 'Making markets work well to create opportunities and choices for businesses and consumers in Singapore' and expanded its vision to 'A vibrant economy with well-functioning and innovative markets' to underscore that its work benefits both businesses and consumers alike.

## Rigorous enforcement

The publicity arising out of several high-profile cases in the year has considerably helped raise public awareness on anticompetitive practices in Singapore.

The CCCS issued an infringement decision against two ride-hailing firms, Grab and Uber, with directions imposed to restore market contestability and financial penalties totalling S\$13 million based on the harm done to the market through an irreversible merger. Grab's 80 per cent post-merger market share, together with its exclusivities, created barriers to entry for potential competitors who cannot scale up to compete effectively against the firm. Potential new entrants also indicated that, without the CCCS's intervention to level the playing field, it is hard to compete effectively against Grab. While Uber has appealed against the commission's decision, primarily on the imposition of the financial penalties, Grab has since paid the financial penalties and will adhere to the CCCS's directions.

In a case involving the CCCS's highest financial penalties levied to date, 13 fresh chicken distributors were penalised for coordinating the amount and timing of price increases, and agreeing not to compete for each other's customers in the market for the supply of fresh chicken products in Singapore. The cartel conduct took place over seven years, where the distributors had control over 90 per cent of the market and a total turnover amounting to approximately half a billion dollars annually. Their price-fixing conduct was especially harmful considering that chicken is the most consumed meat in Singapore, with more than 30kg of chicken consumed per person annually. Aside from financial penalties close to S\$27 million, the distributors were directed to provide a



written undertaking to refrain from using any other industry association as a platform for anti-competitive activities.

The operators of four hotels were taken to task by the CCCS for exchanging commercially sensitive information in connection with the provision of hotel room accommodation in Singapore to corporate customers. The exchange of such information among competitors harms competition by reducing uncertainty and pressure to compete among them. This can result in customers having less competitive prices and options after such exchanges. This is also the first time that the CCCS has taken action against the hotel industry and it signals to all industry players that the commission will not hesitate to take enforcement actions as may be necessary to deter any other anticompetitive conduct in this industry.

Over the year, the CCCS reviewed 10 merger notifications across different industries, including financial services, paper products, hearing aids and food and beverage establishments. In a Phase II merger review<sup>1</sup> involving maritime products, the commission issued a provisional decision to block the proposed transaction for potential substantial lessening of competition should it proceed. The proposed transaction was subsequently abandoned by the parties when, separately, the US federal court granted a preliminary injunction to block it. In-depth reviews of two other mergers were initiated – one between eyewear wholesale distributors, and another between private clinical laboratories, of which the latter is still undergoing assessment.

Since 2016, the CCCS has been investigating a number of lift companies for refusal to supply spare lift parts for maintenance in public housing estates, which may be in breach of the Competition Act for abuse of a dominant position. The commission has accepted voluntary commitments from three lift companies after considering that they fully address the competition concerns, and is currently assessing commitments proposed by two other lift companies. These commitments would allow other smaller third-party lift maintenance companies to compete more effectively.

### Outreach and engagement

In 2018, the CCCS set up an advocacy and outreach unit to sharpen its outreach efforts. Among others, the unit will oversee development and the implementation of plans and strategies to promote awareness of the commission and understanding of the Competition Act and the CPFTA among businesses, consumers and the general public.

The CCCS held its 3rd Essay Competition, co-organised with the Economic Society of Singapore, on the topic 'Nexus between Competition and Consumer Protection Policies'. Contestants examined the extent to which both competition and consumer protection policies can harmonise or complement each other to ensure that markets function effectively.

The CCCS issued a guidance note to provide airlines with more clarity on the competition assessment of airline alliance agreements. The commission took into account public feedback, which included a roundtable discussion with competition law and economics practitioners,

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1 The CCCS can initiate a more detailed and extensive assessment of the merger under Phase II if it is unable to conclude that the merger would not raise competition concerns based on information furnished during the Phase I review.

industry stakeholders, as well as relevant government agencies. Greater clarity and streamlining of the CCCS's review process and criteria will facilitate easier self-assessment of airline alliance agreements, and a timeline is provided for review when a notification is made to the CCCS.

The CCCS co-organised a seminar on Navigating Intellectual Property and Competition Law Issues with the IP Academy, the training arm of the Intellectual Property Office of Singapore. The seminar focused on the interface between IP and Competition Law, in particular to the development of FRAND (fair, reasonable and non-discriminatory) licences and commitments, recent decisions involving FRAND, as well as the interface between IP and consumer protection laws.

The CCCS revamped its e-newsletter 'In the Act' with a new design that features simple lines, forms and colours to create impact with bold imagery and punchy titles. The commission also produced two corporate videos, one encouraging businesses to make the right choice when coerced to join a price-fixing cartel and the other urging businesses to stay ahead of the competition the right way.

Beyond consumers and businesses, the CCCS continued its advocacy role to other government agencies. In an advisory to the Housing and Development Board, the commission suggested improving competition in the process of establishing a panel of contingency weighbridge operators, including good practices to mitigate the risk of collusion among potential suppliers during procurement. In another advisory to the Singapore Tourism Board on improvements to the publication of hotel industry information, the CCCS considered that while the exchange and publication of certain information can increase market transparency, encourage competition and assist efficient resource allocation, competition risks are greater where commercially sensitive information is exchanged or published.

### Involvement in the international and regional arena

As chair of the ASEAN Experts Group on Competition in 2018, the CCCS led various initiatives to strengthen the enforcement of competition law in ASEAN member states and to increase awareness of competition policy and law in the region. These include developing the ASEAN Regional Cooperation Framework for Competition and establishing the ASEAN Competition Enforcers' Network to facilitate cooperation on competition cases in the region, and to serve as a platform to handle cross-border cases.

To stimulate research on competition in ASEAN and East Asia, the CCCS led the establishment of the Virtual ASEAN Competition Research Centre (Virtual Centre). The Virtual Centre aims to promote research collaboration on competition in ASEAN and hosts a repository of research articles on regional competition policy and law, as well as profiles of researchers and academics with an interest in competition policy and law in the region.

The CCCS also led the development of an ASEAN Competition Compliance Toolkit to provide guidance to ASEAN member states on promoting business compliance with competition law. To strengthen the capabilities of ASEAN competition authorities to respond to antitrust challenges arising from big data and algorithms, the commission jointly organised a workshop on Big Data and Competition with Indonesia's Commission for the Supervision of Business Competition (KPPU).

Currently, the CCCS is a member of the International Competition Network (ICN) Steering Group and a co-chair of the ICN advocacy working group (AWG). As a co-chair of the AWG, the

commission is leading the Advocacy and Digital Markets Project, which focuses on collating agencies' experience in conducting competition advocacy in relation to digital markets. The CCCS also partnered with the ICN to host a workshop for ASEAN Competition Officials on Business Compliance. The workshop helped younger competition authorities in ASEAN better understand the issues in business compliance, and better equipped them to encourage greater competition law compliance and increase awareness of competition policy and law in their respective countries.

At the bilateral level, the CCCS signed a memorandum of understanding (MOU) with the KPPU to enhance cooperation on competition enforcement between both agencies. This is the first MOU that the commission has entered into with an ASEAN competition authority.

### Looking ahead

The CCCS's work initiatives for 2019 have been developed around five work themes:

- facilitate innovative or disruptive business models;
- advance the digital and data economy;
- enable consumers' choices;
- promote pro-competition regulations; and
- ensure diversification of sources of supply.

The key sectors of focus would be on digital platforms, transport, hospitality, and administrative and support services.

The CCCS is set to conclude and publish the results of a market study that looks into online travel booking. The market study looks at online booking platforms and examines the relationship and arrangements that third-party vendors have with service providers, including how platforms and providers compete with each other. A joint study with the Personal Data Protection Commission on data portability will also be published.

The CCCS will also commence its review of the Block Exemption Order in the coming year. It will take into consideration, among other things, industry and regulatory developments in Singapore and overseas.

In looking to enable consumers' choices, while facilitating disruptive business models, the CCCS will focus on consumer protection issues relating to e-commerce platforms. Specifically, the commission will explore guidelines and policy positions to address issues such as drip pricing, pre-ticked boxes and strikethrough pricing, which are prevalent across e-commerce platforms. Another focal area would be to engage and advocate government agencies to take into account potential consumer issues when they formulate policies and regulations. The CCCS would also be reviewing the CPFTA and looking to strengthen the existing enforcement powers on errant suppliers.



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**Han Li Toh**

**Competition and Consumer Commission of Singapore**

Han Li Toh has been the chief executive and a commissioner of the Competition and Consumer Commission of Singapore (CCCS) since 2013. He was previously the assistant chief executive (legal and enforcement).

He has served as a justice's law clerk to the chief justice and Court of Appeal of Singapore; deputy public prosecutor and state counsel in the Attorney-General's Chambers; senior assistant registrar of the Supreme Court; registrar and district judge of the State Courts; and assistant chief executive (legal and enforcement) in the CCS. He serves on several tribunals, including the Military Court of Appeal, the Monetary Authority of Singapore's Appeals Advisory Panel and the Copyright Tribunal.

Mr Toh read law at Cambridge University, obtained his masters of laws from the University of Chicago and holds a masters in public management from the Lee Kuan Yew School of Public Policy. He attended the Stanford Executive Programme at the Graduate School of Business, Stanford University. He is admitted to practise law in Singapore, England and New York.



The Asia-Pacific Antitrust Review 2019 edition of Global Competition Review Insight is one of a series of books that also covers many jurisdictions and topical issues in antitrust law in the Asia-Pacific region. Each book delivers specialist intelligence and research designed to help readers – general counsel, academics, government agencies and private practitioners – successfully navigate the world’s increasingly complex competition regimes.

Global Competition Review has worked exclusively with the region’s leading competition practitioners, and it is their wealth of experience and knowledge – enabling them not only to explain law and policy, but also put it into context – that makes the report particularly valuable to anyone doing business in the Asia Pacific region today.