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## **Section 57 of the Competition Act 2004**

### **Grounds of Decision issued by the Competition and Consumer Commission of Singapore in relation to the Proposed Acquisition by City Energy Pte. Ltd. of Tan Sooh Huah Gas Supply Pte. Ltd.'s Liquefied Petroleum Gas Business**

**Date: 2 August 2023**

**Case number: 400-140-2023-002**

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Confidential information in the original version of this Decision will be 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 [X].

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## I. INTRODUCTION

1. On 30 May 2023, the Competition and Consumer Commission of Singapore (“**CCCS**”) accepted an application for a decision pursuant to section 57 of the Competition Act 2004 (the “**Act**”) by City Energy Pte. Ltd. (as trustee of City Energy Trust) (“**City Energy**”) as to whether the proposed acquisition of Tan Sooh Huah Gas Supply Pte. Ltd.’s (“**TSH**”) liquefied petroleum gas (“**LPG**”) business by City Energy (the “**Proposed Transaction**”) will infringe section 54 of the Act, if carried into effect. City Energy and TSH are referred to collectively as the “**Parties**”.
2. In reviewing the Proposed Transaction, CCCS conducted a public consultation and sought feedback from various stakeholders, including competitors and customers of City Energy and TSH (collectively referred to as “**third-parties**”). Most respondents had no competition concerns in relation to the Proposed Transaction.
3. At the end of the consultation process and after evaluating the available information, CCCS concludes that the Proposed Transaction, if carried into effect, will not infringe section 54 of the Act.

## II. THE PARTIES

### (A) THE ACQUIRER

4. City Energy is the trustee of City Energy Trust. City Energy Trust is wholly owned by Keppel Infrastructure Trust, a diversified business trust listed on the Singapore Exchange.<sup>1</sup>
5. City Energy’s key business is in the production and retailing of town gas to residential, commercial and industrial customers in Singapore, for which it holds a Gas Retailer Licence issued by the Energy Market Authority (“**EMA**”) under the Gas Act 2001. EMA regulates the prices and quality of the supply of town gas in Singapore.
6. In addition to town gas, City Energy retails natural gas to industrial customers in Singapore via the natural gas pipeline network through its subsidiary City-OG Gas Services Pte. Ltd., which holds a Gas Shipper Licence and Gas Retailer Licence.<sup>2</sup>

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<sup>1</sup> Paragraph 7.1 of Form M1.

<sup>2</sup> Paragraphs 10.6 and 18.3 of Form M1.

City Energy is also engaged in the sale of residential and commercial appliances/equipment (mainly kitchen appliances/equipment, water heaters and laundry appliances/equipment that run on gas) and the provision of gas supply related services.<sup>3</sup>

## **(B) THE TARGET**

7. TSH's key business is in the retail sale of LPG to residential, commercial and industrial customers in Singapore.<sup>4</sup> TSH also provides ancillary products and services such as residential and commercial appliances/equipment (mainly kitchen appliances/ equipment, water heaters and laundry appliances/equipment that run on gas) and LPG equipment.<sup>5</sup> TSH is not active in the town gas, natural gas or electricity business.<sup>6</sup>

## **III. THE PROPOSED TRANSACTION**

8. The Proposed Transaction concerns the acquisition of sole control by City Energy over TSH's LPG business through the acquisition of a majority of shares in a private company (the "**Company**"). The Company will acquire TSH's LPG business as a going concern, including business contracts, assets, liabilities and TSH's employees.<sup>7</sup>
9. CCCS assesses that the Proposed Transaction constitutes a merger under section 54(2)(b) of the Act because City Energy will acquire sole control of the Company and therefore TSH's LPG business.

## **IV. COMPETITION ISSUES**

10. Given that the Parties retail different fuels (i.e. LPG, town gas and natural gas) that may nevertheless be in the same relevant markets, CCCS has identified each type of fuel that the Parties retail that can be considered as a focal product (i.e. starting with a focus on each fuel type in turn and considering whether other fuel types are substitutes for the particular fuel in question) and then assessed whether there are competition issues arising from the Proposed Transaction in relation to the retail of that particular fuel.

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<sup>3</sup> Paragraph 10.7 of Form M1.

<sup>4</sup> Paragraph 10.9 of Form M1.

<sup>5</sup> Paragraph 10.10 of Form M1.

<sup>6</sup> Paragraph 10.11 of Form M1.

<sup>7</sup> Paragraph 11.5 of Form M1.

## **V. COUNTERFACTUAL**

11. CCCS considers the prevailing conditions of competition prior to the Proposed Transaction to be the appropriate counterfactual for this assessment. The available evidence does not indicate that the market structure or competition dynamics in the counterfactual would differ from the status quo.

## **VI. RELEVANT MARKETS**

12. Based on City Energy's submissions and feedback from third-parties, for the purpose of this assessment, CCCS considers the relevant markets to be the markets for the retail of:
  - a. LPG and town gas to residential customers in Singapore;
  - b. LPG and town gas to commercial customers in Singapore; and
  - c. LPG and town gas to industrial customers in Singapore

(each a “**Relevant Market**” and collectively, the “**Relevant Markets**”).

## **VII. MARKET STRUCTURE**

### **(a) Market Shares**

13. The Parties' combined market share in 2021 for each of residential and commercial customers exceed 70% and 60% respectively, while their combined market share in 2021 for industrial customers was lower at between 20 and 30%. However, it is unclear to what extent town gas is a substitute for LPG and market shares may not be a good reflection of the competitive constraint that City Energy's supply of town gas imposes on TSH's supply of LPG as compared to the supply of LPG by other LPG retailers. In this regard, CCCS also considered the total size and share of supply of the Parties and their competitors in relation to the retail of LPG only and found that there are a number of competing LPG retailers with similar or larger shares than TSH in each customer segment.

### **(b) Barriers to Entry and Expansion**

14. Based on City Energy's submissions and feedback from third-parties, CCCS is of the view that, on balance, barriers to entry in relation to the retail of LPG is

moderately high, while barriers to expansion for existing LPG retailers is low to moderate.

**(c) Countervailing Buyer Power**

15. Based on City Energy's submissions and feedback from third-parties, CCCS is of the view that while commercial and industrial customers may have somewhat higher countervailing buyer power than residential customers, the countervailing buyer power for customers is generally either low or negligible.

**VIII. COMPETITION ASSESSMENT**

**(a) Non-Coordinated Effects**

16. Based on the information received, CCCS has assessed the Proposed Transaction is unlikely to give rise to non-coordinated effects in the Relevant Markets for the following reasons:
  - a. The Parties are not each other's closest competitor; and
  - b. There are other LPG competitors of similar or larger size than TSH that would continue to constrain the merged entity.

**(b) Coordinated Effects**

17. CCCS has also assessed that coordinated effects are unlikely to arise in the Relevant Markets as the Proposed Transaction is unlikely to increase the ability and incentive of firms to coordinate their behaviour. This is because the Proposed Transaction does not reduce the number of LPG retailers, which are the closest competitors to TSH in the Relevant Markets. City Energy's price and terms of supply are transparent to all fuel retailers and customers and there is no additional information made available to competing suppliers from the Proposed Transaction such that it becomes easier for competitors to collude.

**(c) Conglomerate Effects**

18. Additionally, CCCS has assessed that conglomerate effects are unlikely to arise in the Relevant Markets. In this regard, CCCS notes that the merged entity is unlikely to tie or bundle the supply of LPG and town gas as the different fuel types are not typically purchased in a bundle. The merged entity is also unable to tie the retail

of town gas to the retail of LPG as City Energy is required to supply town gas to any person that has access to the town gas system at the fixed tariff rates.<sup>8</sup>

19. CCCS further notes that that there are conditions in City Energy's license<sup>9</sup> to prevent City Energy from unfairly using its town gas business to disadvantage its competitors supplying other fuel types.

**(d) Conclusion on Competition Assessment**

20. Based on the above considerations, CCCS concludes that the Proposed Transaction, if carried into effect, will not lead to an SLC in Singapore.

**IX. EFFICIENCIES**

21. Given that the competition assessment did not raise SLC concerns, it is not necessary for CCCS to assess the efficiencies claimed by City Energy.

**X. ANCILLARY RESTRAINTS**

22. City Energy submitted several proposed non-compete clauses (the "**Proposed Non-compete Obligations**")<sup>10</sup> and a non-solicitation obligation (the "**Proposed Non-solicitation Obligation**")<sup>11</sup> which will apply for a period of [X] from the completion of the Proposed Transaction<sup>12</sup>.
23. CCCS accepts City Energy's submission that the Proposed Non-compete Obligations and Proposed Non-solicitation Obligation are directly related to and necessary to the implementation of the Proposed Transaction.
24. A [X] period is justified as it will ensure that City Energy obtains the full benefit from the goodwill and know-how acquired as part of the Proposed Transaction and is similar in length to previous ancillary restrictions that CCCS has accepted. In addition, the non-solicitation clause is limited to key personnel<sup>13</sup> who are integral to ensuring that the acquired business can be run and is sustainable.

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<sup>8</sup> Please refer to *Condition 20: Retail Obligation for Gas Conveyed through the Town Gas System* and *Condition 21: Prices for Services* of City Energy's Gas Retailer Licence.

<sup>9</sup> Please refer to *Condition 17: Separate Accounts for Town Gas Business* and *Condition 18: Dealings with Subsidiaries* of City Energy's Gas Retailer Licence.

<sup>10</sup> Paragraphs 44.2(a) to (c), and (e) of Form M1.

<sup>11</sup> Paragraph 44.2 (d) of Form M1.

<sup>12</sup> Paragraph 2.2 of City Energy's 14 July 2023 response to CCCS's 12 July 2023 e-mail.

<sup>13</sup> This is set out at the table below paragraph 1.5 of City Energy's Response dated 19 July 2023 to CCCS's RFI.

## **XI. CONCLUSION**

25. For the reasons above and based on the information available, CCCS assesses that the Proposed Transaction, if carried into effect, will not lead to an SLC in Singapore and consequently, will not infringe section 54 of the Act.
26. In accordance with section 57(7) of the Act, the decision will be valid for a period of one year from the date of CCCS's decision.



Sia Aik Kor  
Chief Executive  
Competition and Consumer Commission of Singapore