
Section 57 of the Competition Act 2004

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

In relation to the notification for decision on the proposed acquisition by AI PAVE Dutchco I B.V. of GfK SE

Date: 22 February 2023

Case number: 400-140-2022-006

<p>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 [X].</p>

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I. INTRODUCTION

1. On 31 October 2022, the Competition and Consumer Commission of Singapore (“CCCS”) accepted a joint application by AI PAVE Dutchco I B.V. (“Advent Topco”) and GfK SE (“GfK”) (collectively, “the Parties”) pursuant to section 57 of the Competition Act 2004 (the “Act”) for a decision as to whether the acquisition of sole control by Advent Topco of GfK (the “Proposed Transaction”) will infringe section 54 of the Act.
2. In reviewing the Proposed Transaction, CCCS conducted a public consultation, which included obtaining feedback from the Parties’ competitors and customers (collectively referred to as “third parties”). Of the 23 third parties who responded from the 73 contacted, a significant majority of them indicated that they were neutral or had no competition concerns about the Proposed Transaction, with only five third parties raising some concerns.
3. At the end of the consultation process and after evaluating all the information, CCCS concludes that the Proposed Transaction, if carried into effect, will not infringe section 54 of the Act.

II. THE PARTIES

Advent Topco (The Acquirer)

4. Advent Topco is an investment holding company whose sole investment in the market research sector is NielsenIQ (“NIQ”) which is headquartered in the US.¹ NIQ provides market research services, primarily to clients in the fast-moving consumer goods (“FMCG”) sector², consisting of retail transactional measurement data, consumer behaviour information and analytics.³
5. In Singapore, NIQ is active in the following business activities⁴:
 - a. Customised Market Research (“CMR”);⁵

¹ Paragraph 7.4 of Form M1.

² According to the Parties, FMCGs, which are also known as consumer-packaged goods, are non-durable products that are sold quickly and at a relatively low cost and purchased frequently. Examples include food, alcoholic and non-alcoholic beverages, tobacco and tobacco products, personal care, household products, baby care and pet care. Paragraph 7.5 of Form M1, footnote 3.

³ Paragraph 7.5 of Form M1.

⁴ Paragraph 10.14 of Form M1.

⁵ CMR services involve targeted research conducted on an ad hoc or project-by-project basis and is specifically tailored to meet a customer’s specific demands or needs. CMR is largely survey-based research, which focuses not on what consumers buy but what they think about particular products or brands. This enables manufacturers to understand what consumers think about their products and the reasons behind purchasing/not purchasing a product. Paragraphs 18.1 and 19.1 of Form M1.

- b. Retail Measurement Service (“RMS”)⁶ for the FMCG market; and
- c. Consumer Panel Service (“CPS”)⁷.

GfK SE (The Target)

- 6. GfK is a European company registered in Germany.⁸ GfK provides market research and media measurement services, primarily to clients in the non-FMCG sector.⁹ GfK is active in the following business activities in Singapore:¹⁰
 - a. CMR;
 - b. RMS for the non-FMCG market; and
 - c. Media Measurement.¹¹
- 7. GfK does not supply CPS services in Singapore.¹²

III. THE PROPOSED TRANSACTION

Nature of the Proposed Transaction

- 8. The Proposed Transaction relates to the acquisition by Advent Topco of 100% of the issued and outstanding equity interests of GfK from its current owners.¹³ Following consummation of the Transaction, GfK will be a wholly owned, indirect subsidiary of Advent Topco.¹⁴ The Transaction will result in the combination of Advent TopCo’s NIQ business with GfK.¹⁵

⁶ Retail measurement services involves the continuous measurement and reporting of key market metrics, such as sales volume. It permits customers to track objective data such as market shares and retail prices over time. The essential input for RMS is point-of-sale (“POS”) data, which is obtained from retailers. Paragraphs 20.4.1(i) and 20.4.3(i) of Form M1.

⁷ Consumer Panel Services involves the continuous tracking of purchases made by groups of consumers, and the analysis of said data to provide insights on consumption behaviour and retail trends. The essential input for CPS is purchasing data, which is obtained from selected groups of consumers through consumers panels. Paragraph 28.1 of the Parties’ 18 November 2022 Response to CCCS’s 4 November 2022 RFI.

⁸ Paragraph 7.1 of Form M1.

⁹ Parties submitted that non-FMCGs are purchased far less frequently, see paragraph 15.2.3(viii) of Form M1, and examples of non-FMCG categories include automotive, tech and durables (e.g., electric toothbrushes) and toys, see Table 11 of the Parties’ 18 November 2022 Response to CCCS’s 4 November 2022 RFI.

¹⁰ Paragraph 10.15 of Form M1.

¹¹ Paragraph 10.5 of Form M1. GfK also confirmed at paragraph 1.1 of the Parties’ 12 January 2023 Response to CCCS’s 23 December 2022 RFI that its Media Measurement services are separate from CPS and do not include any form of CPS.

¹² Paragraph 10.15 of Form M1.

¹³ The current owners of GfK are NIM, [§<].

¹⁴ Paragraph 8.6 of Form M1.

¹⁵ Paragraph 1.1 of Form M1.

9. CCCS considers that the Proposed Transaction constitutes a merger under section 54(2)(b) of the Act¹⁶ as Advent Topco will acquire sole direct control of GfK.

IV. COMPETITION ISSUES

10. The Parties submitted that they overlap only in the supply of CMR services in Singapore.¹⁷ CMR accounts for the majority of all market research.¹⁸ The Parties further submitted that CMR, RMS, and CPS are distinct product markets due to the different characteristics of the services offered, the different demands they each satisfy, and the different inputs that are required to provide each service.¹⁹
11. CCCS notes that while both Parties provide RMS in Singapore, NIQ provides RMS for the FMCG market whilst GfK provides RMS for the non-FMCG market. The Parties submitted that NIQ and GfK are neither actual nor potential competitors as FMCG RMS and non-FMCG RMS are two distinct product markets and neither Party has any intention to enter the RMS market in which it is not currently active in.²⁰ CCCS notes that the Parties' submissions in relation to FMCG RMS and non-FMCG RMS being two distinct product markets were supported by third party feedback. Third party feedback also corroborated the Parties' submission that CMR, RMS and CPS are distinct product markets that are not substitutable for one another.
12. The Parties further submitted that they lack the ability and incentive to engage in the bundling of RMS for FMCG with RMS for non-FMCG.²¹ CCCS did not receive third party feedback indicating complementarity between RMS for FMCG and non-FMCG products and is therefore of the view that it is unlikely for the Parties to engage in tying and bundling practices between the two products following the Proposed Transaction.
13. Given the above, CCCS focused its assessment on the supply of CMR services when it considered whether the Proposed Transaction will give rise to non-coordinated and coordinated effects that would lead to a substantial lessening of competition ("SLC") in Singapore. CCCS has also considered whether any vertical or portfolio effects related to the supply of CMR services may result.

¹⁶ Section 54(2)(b) of the Act states that a merger occurs if one or more persons or undertakings acquire direct or indirect control of the whole or part of one or more undertakings.

¹⁷ Paragraph 15.1 of Form M1.

¹⁸ Paragraph 9.2 of the Parties' submissions dated 18 October 2022.

¹⁹ Paragraph 20.4 of Form M1.

²⁰ Paragraph 3.2 of the Parties' 12 January 2023 Response to CCCS's 23 December 2022 RFI.

²¹ Paragraph 1.1.2 of the Parties' 1 February 2023 Response to CCCS's 18 January 2023 RFI; paragraph 1.1.9 of the Parties' 1 February 2023 Response to CCCS's 18 January 2023 RFI.

V. COUNTERFACTUAL

14. 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 MARKET

15. Based on the Parties submissions and third parties' feedback, for the purposes of this assessment, CCCS considers that the relevant market for the assessment of the Proposed Transaction is the market for the supply of CMR services in Singapore²² (the "Relevant Market").

VII. CCCS'S ASSESSMENT

(a) Market Shares

16. As set out in the *CCCS Guidelines on the Substantive Assessment of Mergers*, competition concerns are unlikely to arise in a merger situation unless the merged entity will have a market share of 40% or more, or the merged entity will have a market share of between 20% and 40% and with a post-merger CR3²³ at 70% or more.²⁴
17. The Parties' combined market share in the Relevant Market ranged from [X<10-20]% to [X<10-20]% from 2019 to 2021,²⁵ while the post-merger CR3 ranged from [X<20-30]% to [X<20-30]%. CCCS notes that both the CR3 and market share indicators post-merger do not cross CCCS's indicative thresholds. Based on third party feedback, CCCS also notes that the Parties are not regarded as each other's closest competitors.

²² CCCS notes that due to the customisable nature of CMR services such that the service is specifically tailored for a customer's needs, the relevant geographical market could be (i) national, (ii) regional or (iii) global in nature. In this regard, CCCS is of the view that the relevant geographic market in respect of CMR services at the narrowest is national. It is possible that the geographical market could be expanded to include a wider geographical market, however, in the present case, CCCS is of the view that no competition concerns arise from the narrowest geographic market, and hence competition concerns are unlikely to arise in a broader geographical market since both Parties have CMR operations in Singapore.

²³ "CR3" refers to the combined market share of the three largest firms.

²⁴ Paragraph 5.15 of the *CCCS Guidelines on the Substantive Assessment of Mergers*.

²⁵ Paragraph 6.2 of the Parties' 18 October 2022 Response to CCCS's 29 September 2022 RFI and paragraph 1.1 of the Parties' 28 October 2022 Response to CCCS's 20 October 2022 RFI. The Parties estimated market shares based on their own business intelligence, revenue data as well as the European Society for Opinion and Marketing Research (ESOMAR) Global Market Research Report, which is published by a not-for-profit membership organisation in the insights and analytics sector.

(b) Barriers to Entry and Expansion

18. Based on the Parties' submissions and third parties' feedback, CCCS notes that a new entrant and/or existing competitor would generally be able to acquire the necessary capabilities to work on CMR projects. Further, to provide CMR services, firms can outsource fieldwork to access panels and with a varying level of overheads, offer competitive prices to customers. Given the above, CCCS is of the view that the barriers to entry and expansion to the Relevant Market for new and existing market players respectively are likely to be low.

(c) Countervailing Buyer Power

19. The Parties' submissions and third parties' feedback generally indicated that customers usually multi-source for their CMR projects and will select a CMR provider based on a variety of factors, including price and quality considerations. However, based on third parties' feedback, except for major manufacturers and retailers who may undertake simple CMR projects in-house, purchasers of CMR services do not generally possess countervailing buyer power vis-à-vis the Parties, as it is unlikely that customers are able to self-supply CMR services.

VIII. COMPETITION ASSESSMENT

(a) Non-Coordinated Effects

20. Based on the Parties' submissions and third parties' feedback, CCCS is of the view that non-coordinated effects in the Relevant Market are unlikely to arise from the Proposed Transaction, if carried into effect, as:
- a. The market of CMR is fragmented with a diverse and wide range of suppliers, consisting of both large and small players;
 - b. Customers are able to switch easily between CMR service providers;
 - c. The Parties are unlikely to hold significant market power as the post-merger market shares of the Parties are likely to be low given the fragmented nature of the Relevant Market;
 - d. The barriers to entry and expansion are likely to be low; and
 - e. Customers multi-source for their CMR projects and major manufacturers and retailers may undertake simple CMR projects in-house.

(b) Coordinated Effects

21. Based on the Parties' submissions and third parties' feedback, CCCS notes that there is limited transparency in the procurement process as CMR services are

generally procured through tenders. Moreover, customers are also able to switch between CMR service providers and source for new providers easily, which makes coordination more difficult. Based on the above, CCCS considers that the Proposed Transaction, if carried into effect, is unlikely to give rise to coordinated effects in the Relevant Market.

(c) Vertical Effects

22. Whilst CCCS received some third party feedback that RMS data could be used as an input to provide CMR services, the Parties submitted that RMS data is not generally used as an input for CMR services.²⁶
23. Based on the information received from the Parties and third parties, on balance, CCCS is of the view that the Proposed Transaction is unlikely to give rise to vertical effects in Singapore with respect to RMS data for CMR services. If RMS data were indeed an essential input for CMR services, the Parties would be able to leverage upon their substantial market power in their respective RMS markets into CMR services, but as noted in paragraph 17 above, the Parties have relatively low market shares for CMR services even prior to the Proposed Transaction.

(d) Portfolio Effects

24. Two third parties indicated that there may be potential bundling or tying of RMS services (whether for FMCG or non-FMCG) with CMR services as a result of the Proposed Transaction.
25. However, based on the information received from the Parties and the rest of the third parties, CCCS has assessed that there is no evidence to suggest that the merged entity would engage in bundling or tying practices between RMS and CMR services given their relatively low market shares for CMR services. The ability and incentive, if any, for the Parties to bundle RMS and CMR services would have already existed pre-merger given that both NIQ and GfK have a high market share in RMS for both the FMCG and non-FMCG markets respectively. Further, CCCS did not receive any third-party feedback to indicate that the Parties currently bundle RMS and CMR services.

CCCS's overall conclusion on competition assessment

²⁶ Paragraphs 6.4 and 6.5 of the Parties' 12 January 2023 Response to CCCS's 23 December 2022 RFI.

26. 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

27. Given that the above competition assessment did not raise SLC concerns, it is not necessary for CCCS to make an assessment of the claimed efficiencies by the Parties.

X. ANCILLARY RESTRICTIONS

28. The Parties submitted that the non-solicitation clauses in the Parties' Equity Purchase Agreement ("Purchase Agreement") are ancillary restrictions²⁷ to the Proposed Transaction.²⁸

Non-Solicitation Clause

29. The non-solicitation clauses in [X] the Purchase Agreement ("Non-Solicitation Restrictions") restrict each Party from [X] the Purchase Agreement and [X] for a period of [X] after the closing of the Proposed Transaction.²⁹ The [X] the Purchase Agreement are [X].³⁰ The Non-Solicitation Restrictions have [X].³¹
30. The Parties submitted that the Non-Solicitation Restrictions are directly related and necessary to the implementation of the Proposed Transaction. In this vein, the Parties submitted that the Non-Solicitation Restrictions would protect the full value of the combined NIQ and GfK business by protecting each Party against competition from the respective counterparty [X].³²
31. The Parties further submitted that [X].³³
32. CCCS considers that the Non-Solicitation Restrictions, as it relates to [X], are directly related and necessary to the Proposed Transaction as it would allow Advent Topco, as the purchaser, to attain the full benefit of the acquisition. In addition, the duration of [X] is properly limited and not overly restrictive of

²⁷ Paragraph 10 of the Third Schedule of the Act.

²⁸ Paragraph 44.6 of Form M1.

²⁹ Schedule 7.9 of the Purchase Agreement in the Parties' 18 October 2022 Response to CCCS's 29 September 2022 and 14 October 2022 RFIs.

³⁰ Paragraphs 28.3 and 28.4 of the Parties' 14 December 2022 Response to CCCS's 5 December 2022 RFI.

³¹ Paragraph 59.1 of the Parties' 18 November 2022 Response to CCCS's 4 November 2022 RFI.

³² Paragraph 57.2 of the Parties' 18 November 2022 Response to CCCS's 4 November 2022 RFI.

³³ Paragraph 58.2 of the Parties' 18 November 2022 Response to CCCS's 4 November 2022 RFI.

competition, insofar as such time is likely to be sufficient for Advent Topco to [§]. However, in CCCS's view the Parties failed to provide sufficient justification as to how, in the absence of the broad Non-Solicitation Restrictions [§], the Parties will be unable to obtain the full value of the combined business following the implementation of the merger, [§]. Hence, CCCS considers that the Non-Solicitation Restrictions in relation to NIQ as submitted by the Parties are not ancillary restrictions under the Act.

CCCS's conclusion on ancillary restrictions

33. In view of the above, CCCS concludes that the Non-Solicitation Restrictions related to [§] constitute ancillary restrictions and consequently fall within the exclusion under paragraph 10 of the Third Schedule of the Act insofar as they apply to Singapore.

XI. CONCLUSION

34. 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 the section 54 of the Act.
35. 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