

**Section 44 of the Competition Act 2004**

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

**Application for Decision by the Singapore Clearing House Association**

**8 December 2022**

**Case number: CCCS 400-110-2021-002**

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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 [X].

**Table of Contents**

I. INTRODUCTION..... 3

II. THE APPLICATION ..... 3

III. LEGISLATIVE FRAMEWORK ..... 5

IV. APPLICABILITY OF THE ACT ..... 6

V. CCCS’S DECISION ..... 10

## **I. INTRODUCTION**

1. On 1 October 2021, the Competition and Consumer Commission of Singapore (“**CCCS**”) received an application for decision (the “**Application**”) from the Singapore Clearing House Association (“**SCHA**” or the “**Applicant**”), pursuant to section 44 of the Competition Act 2004 (the “**Act**”), as to whether the proposed Rule 27.23 of the Bye-Laws of SCHAs (“**Rule 27.23**”) and the accompanying guidelines (the “**Guidelines**”) will infringe section 34 of the Act, if carried into effect. The Application was accepted as complete on 17 October 2022.
2. In assessing the Application, CCCS considered the information contained in the Form 1 dated 1 October 2021, and the Applicant’s submissions on 24 November 2021 and 17 October 2022 to CCCS’s Requests for Information (“**RFI**”) dated 6 October 2021 and 22 August 2022 respectively. CCCS also consulted the Monetary Authority of Singapore (“**MAS**”) which chairs the SCHAs and oversees the payment services industry in Singapore.
3. Having considered the information provided, CCCS concludes that the proposed Rule 27.23 and the Guidelines, if carried into effect, will not infringe section 34 of the Act.

## **II. THE APPLICATION**

### **(a) The Applicant**

4. The SCHAs are associations that were formed in December 1980. As mentioned in paragraph 2 above, the MAS chairs the SCHAs. The SCHAs’ members comprise financial institutions (i.e., commercial banks) and non-financial institutions (“**NFIs**”) that are major payment institutions.<sup>1</sup> The main role of the SCHAs is to establish, manage and administer clearing services and facilities for cheques and other negotiable instruments of its members, debit and credit items between its members, electronic funds transfers by members, and to make bye-laws, regulations and conditions in connection with these services and facilities.<sup>2</sup>

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<sup>1</sup> Paragraph 7.1.1 of Form 1.

<sup>2</sup> Paragraph 7.1.2 of Form 1.

5. Given its role, the SCHA set up the Singapore Automated Clearing House (“ACH”)<sup>3</sup>, which, aside from administering Fast and Secure Transactions (“FAST”)<sup>4</sup>, operates the Singapore Dollar Cheque Clearing System, the United States Dollar Cheque Clearing System and the Interbank GIRO System.<sup>5</sup> The ACH is operated by Banking Computer Services Private Limited (“BCS”) pursuant to the Banking (Clearing House) Regulations.<sup>6</sup>

**(b) The Application for Decision**

*The proposed Rule 27.23 and Guidelines*

6. The Guidelines particularise the scope and manner of compliance for Rule 27.23. Rule 27.23 stipulates as follows:<sup>7</sup> [X]<sup>8</sup>
7. The Applicant submitted that Rule 27.23 was introduced into the SCHA Bye-Laws to govern NFIs’ admission to, and use of FAST.<sup>9</sup> Specifically, Rule 27.23 and the Guidelines restrict FAST Users from allowing their e-wallet users to cash out funds in their e-wallets through FAST, when the funds are sourced from unsecured credit card facilities issued in Singapore (“**Restricted Funds**”). This includes prohibiting Restricted Funds from being transferred from e-wallets to: (i) bank accounts of non-merchants<sup>10</sup>; and (ii) e-wallets on other platforms. Accordingly, the only permissible action for Restricted Funds in e-wallets, using FAST, is the transfer of Restricted Funds in e-wallets to

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<sup>3</sup> Paragraph 7.1.2 of Form 1.

<sup>4</sup> FAST is an electronic funds transfer system that enables customers of participating banks to transfer Singapore Dollar funds from one bank to another in Singapore almost instantly – see paragraph 7.1.3 of Form 1.

<sup>5</sup> GIRO was set up in 1984 as an electronic direct debit mechanism used by billing organisations as a low cost means to collect payments. GIRO is a tripartite mechanism between billing organisations, customers and the bank – see paragraph 7.17.3 of Form 1.

<sup>6</sup> Paragraph 8.5.1 of the Applicant’s 24 November 2021 Response to CCCS’s 6 October 2021 RFI.

<sup>7</sup> Applicant’s 17 October 2022 Response to CCCS’s 22 August 2022 RFI, Rule 27.23 and Guidelines.

<sup>8</sup> [X]

<sup>9</sup> Rule 27.23 and the Guidelines apply to all FAST Users which operate e-wallets where top-up can be made via credit cards. Currently, only NFIs operate e-wallets that can be topped up using credit cards - see footnote 7 of Form 1.

<sup>10</sup> “Merchant” refers to a person or entity providing goods and services – see footnote 3 of Part 4 of Form 1.

## CONFIDENTIAL

merchant bank accounts (i.e., to make payments for goods and services).<sup>11</sup>

### *Purpose and effect of the proposed Rule 27.23 and Guidelines*

8. According to the Applicant, Rule 27.23 and the Guidelines are intended to avoid potential adverse commercial and public policy implications of individuals being able to cash out Restricted Funds in their e-wallets. This may excessively expose credit card issuers to cardholders who cash out unsecured credit from their credit cards through e-wallets, which is a form of cash advance and unsecured borrowing. The ease of cashing out from credit card top ups may also unduly encourage credit card users to “borrow” funds from unsecured credit. Banks may also be prevented from being able to track whether the Restricted Funds are used for the payment of any goods or services or are cashed out and therefore would not be able to accurately report on cash advances, which may in turn have a negative impact on the accuracy of customers’ credit scores. There could also be a potential increase in the incidence and impact of credit card fraud as the fraudster could transfer the funds from an e-wallet sourced from credit card fraud to a bank account and use the funds for any purpose, instead of being limited to the purchase of goods and services through the e-wallet. This could allow fraudsters to move funds more easily and potentially put the money out of reach.<sup>12</sup>
9. The Applicant is of the view that the proposed Rule 27.23 and the Guidelines do not have the object or effect of appreciably preventing, restricting or distorting competition in any market in Singapore.<sup>13</sup>

## III. LEGISLATIVE FRAMEWORK

10. Section 34 of the Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore (the “**section 34 prohibition**”). The

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<sup>11</sup> Applicant’s 17 October 2022 Response to CCCS’s 22 August 2022 RFI, updated Part 4 of Form 1.

<sup>12</sup> Paragraph 14.11 of Form 1.

<sup>13</sup> Paragraphs 14.14 and 14.18 of Form 1.

## CONFIDENTIAL

section 34 prohibition does not apply to matters set out in the Third Schedule of the Act,<sup>14</sup>

11. Paragraph 7 of the Third Schedule of the Act (the “**Paragraph 7 Exclusion**”) reads:

*7. The section 34 prohibition and the section 47 prohibition shall not apply to any agreement or conduct which relates to —*

*(a) the clearing and exchanging of articles undertaken by the Automated Clearing House established under the Banking (Clearing House) Regulations (“**Paragraph 7(a)**”); or*

*(b) any activity of the Singapore Clearing Houses Association in relation to its activities regarding the Automated Clearing House (“**Paragraph 7(b)**”).*

## IV. APPLICABILITY OF THE ACT

12. CCCS considers that based on a purposive interpretation of the Paragraph 7 Exclusion, the phrase “[SCHA’s] activities regarding the ACH” under Paragraph 7(b) is broad enough to include Rule 27.23 and the Guidelines, such that the section 34 prohibition does not apply.
13. The purposive interpretation of a legislative provision involves three-steps<sup>15</sup>:
- a. First, ascertaining the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole.
  - b. Second, ascertaining the legislative purpose or object of the statute.
  - c. Third, comparing the possible interpretations of the text against the purposes or objects of the statute.

### Possible interpretations of the Paragraph 7 Exclusion

14. Despite the Applicant's view that the proposed Rule 27.23 and Guidelines do not give rise to competition concerns under the section 34 prohibition, the Applicant nevertheless submitted that the Paragraph 7 Exclusion does not apply to Rule 27.23 and the Guidelines, as:

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<sup>14</sup> Section 35 of the Act.

<sup>15</sup> *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 (“*TCB v AG*”) at [37].

## CONFIDENTIAL

- a. There is no clear precedent or guidance on the interpretation or exact scope of the Paragraph 7 Exclusion, and in the absence of such precedent or guidance, the Applicant considers that the policy intent behind the Paragraph 7 Exclusion is to exclude any agreement or conduct relating to:
    - i. the clearing and exchanging of articles undertaken by ACH (which is operated by BCS); and
    - ii. SCHA's governance of BCS's provision of the clearing and exchanging of articles undertaken by the ACH, such as the pricing set by BCS and the criteria to participate in the ACH.<sup>16</sup>
  - b. While FAST transfers can be considered to be articles<sup>17</sup> cleared and exchanged through the ACH, Rule 27.23 and the Guidelines in effect require a NFI to self-regulate the types of funds it submits for clearing with the ACH, and is not in itself a restriction placed on the clearing and exchanging of articles undertaken by ACH which is operated by BCS.<sup>18</sup> Thus, Rule 27.23 and the Guidelines do not apply to BCS insofar as it processes the clearing and exchanging of articles. Hence, based on the policy intent as set out above, the Applicant considers that Rule 27.23 and the Guidelines do not fall within the scope of the Paragraph 7 Exclusion.<sup>19</sup>
15. CCCS notes that Paragraph 7 of the Third Schedule of the Act contains two sub-paragraphs, and Paragraph 7(b) makes no reference to the clearing and exchanging of articles. Therefore, it appears to CCCS that the Applicant's submission, while not referring specifically to the sub-paragraphs under the Paragraph 7 Exclusion, implies that Paragraph 7(a) limits the scope of Paragraph 7(b) to the SCHA's governance of the

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<sup>16</sup> Paragraphs 8.3 to 8.5 of the Applicant's 24 November 2021 Response to CCCS's 6 October 2021 RFI.

<sup>17</sup> The Applicant considers the relevant FAST transfer an "article" within the meaning of regulation 3 of the Banking (Clearing House) Regulations (Revised Edition 2004) ("2004 Regulations"), which provides that "There shall be established an Automated Clearing House for the clearing and exchanging of articles". FAST was duly notified in the Gazette pursuant to the Payment and Settlement Systems (Finality and Netting) (Designated System) (Fast and Secure Transfers) Order 2021 (5 February 2021), following which FAST transfers would be considered as a type of "article".

<sup>18</sup> CCCS understands this to mean that in other words, Rule 27.23 governs the selection of transactions to be put into FAST, which takes place **before** clearing and exchanging of articles and does not involve ACH.

<sup>19</sup> Paragraphs 8.6 of the Applicant's 24 November 2021 Response to CCCS's 6 October 2021 RFI.

## CONFIDENTIAL

clearing and exchanging of articles undertaken by the ACH. Specifically, the implication is that the phrase “[SCHA’s] activities regarding the [ACH]” in Paragraph 7(b) is to be construed, in light of Paragraph 7(a), as being limited to SCHA’s governance of the clearing and exchanging of articles undertaken by the ACH.

16. CCCS also notes that Paragraph 7(a) and Paragraph 7(b) are separated by the word “or”. In ordinary usage, “and” is conjunctive and “or” is disjunctive though not every application of the word “or” produces a disjunctive result.<sup>20</sup> The requisite adequacy of context necessitating a conjunctive reading of the word arises from parliamentary intent.<sup>21</sup>
17. In the present case, the Applicant did not provide any substantiation or supporting documents in support of its interpretation of the Paragraph 7 Exclusion. CCCS has also not sighted any materials in support of a parliamentary intent necessitating a conjunctive reading. On the contrary, a conjunctive reading would render Paragraph 7(b) otiose, as “any agreement or conduct which relates to the clearing or exchanging of articles undertaken by the ACH” under Paragraph 7(a) is sufficiently broad to include any activity of the SCHA in relation to its governance of BCS’s provision of the clearing and exchanging of articles undertaken by the ACH. This conclusion should be avoided as Parliament should not be taken to have legislated in vain.<sup>22</sup> The fact that Paragraph 7(b), unlike Paragraph 7(a), has omitted the phrase “the clearing and exchanging of articles” suggests to CCCS that the scope of the exclusion in Paragraph 7(b) cannot be restricted only to “SCHA’s activities regarding the clearing and exchanging of articles” of the ACH.

### Legislative purpose or object of the Paragraph 7 Exclusion

18. As SCHA was formed to oversee the operations of the ACH, i.e. to establish, manage and administer the services of the ACH, and to make bye-laws, regulations and conditions in connection with these services,<sup>23</sup> its activities **regarding the ACH** would necessarily have to include activities beyond the mere clearing and exchanging of articles, e.g., activities including but not limited to, access to the systems operated by the ACH such as FAST, the use of these systems, and any

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<sup>20</sup> *Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 61 at [73]

<sup>21</sup> *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [72]

<sup>22</sup> *TCB v AG* at [38] and [69].

<sup>23</sup> Paragraphs 7.1.1 and 7.1.2 of Form 1.



## CONFIDENTIAL

associated conditions, fees, responsibilities, or liabilities. In this regard, Rule 27.23 and the Guidelines governs members' access to and use of FAST and sets the conditions of such use amongst other things. In CCCS's view, Paragraph 7(b) therefore serves to exclude these activities of the SCHA from the Act.

19. This is consistent with the publicly available extraneous material (e.g., second public consultation paper on the Competition Bill<sup>24</sup>) (see **Figure 1** below) which shows that the objective of Paragraph 7(b) is to exclude "activities of the SCHA regarding the ACH", which include "changes to SCHA bye-laws which govern the ACH activities". The material also envisaged that MAS would have "due consideration of any anti-competitive practices and conduct in relation to ACH or SCHA" given that, among other things, "SCHA's Committee of Management is chaired by an MAS officer", and "changes to the SCHA by-laws, which govern the ACH activities, require MAS's approval". In this regard, CCCS notes that Rule 36 of SCHA's Constitution requires MAS's approval for the making and amending of SCHA's bye-laws.<sup>25</sup>

Figure 1: Rationale and alternative regulatory framework for sectoral exclusion of clearing houses

Sector/ Activity	Rationale	Alternative Regulatory Framework
<i>Third Schedule, para. 7 (Clearing houses)</i>		
10. Clearing and exchanging of articles undertaken by the Automated Clearing House (ACH) established under the Banking (Clearing House) Regulations (Cap. 19, Rg 1)  Activities of the Singapore Clearing Houses Association (SCHA) in relation to its activities regarding the ACH	ACH provides cheque clearing and interbank GIRO services for banks. The SCHA establishes, manages and administers clearing services and facilities; and membership is open to licensed banks wishing to participate in clearing cheques and interbank GIRO transactions.  ACH is a payment system of system-wide importance. The Monetary Authority of Singapore (MAS) intends to continue its policy of having only a single provider of ACH services to maintain the stability and efficiency of the payment infrastructure.	ACH is currently regulated under the Banking (Clearing House) Regulations and will be regulated in future under the proposed Payment Systems Oversight Act, which is expected to come into effect by end-2004. SCHA's Committee of Management is chaired by an MAS officer. In addition, changes to the SCHA by-laws, which govern the ACH activities, require MAS' approval. Through these avenues, MAS will have due consideration of any anti-competitive practices and conduct in relation to ACH or SCHA.

<sup>24</sup> Published on 26 July 2004.

<sup>25</sup> Rule 36 of the SCHA Constitution reads: [36]

## **CONFIDENTIAL**

20. In light of the above, CCCS considers that Rule 27.23 in the SCHA's Bye-Laws and the Guidelines is an activity of the SCHA in relation to its activities regarding the ACH as:
- a. Rule 27.23 and the Guidelines as introduced by SCHA relate to the use of FAST, and in particular govern NFIs' admission to, and use of FAST, including the associated conditions of such use, among other things;<sup>26</sup> and
  - b. the ACH operates FAST.<sup>27</sup>
21. Given that the proposed Rule 27.23 and Guidelines fall within the scope of the Paragraph 7 Exclusion, CCCS is of the view that it is not necessary to make an assessment on the claimed effects of the proposed Rule 27.23 and Guidelines.

### **V. CCCS'S DECISION**

22. For the reasons above and based on information available, pursuant to section 44(2) of the Act, CCCS has assessed that the proposed Rule 27.23 and Guidelines, if carried into effect, fall within the scope of the Paragraph 7 Exclusion and therefore will not infringe section 34 of the Act.



Sia Aik Kor  
Chief Executive  
Competition and Consumer Commission of Singapore

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<sup>26</sup> Paragraph 7.1.6 of Form 1.

<sup>27</sup> In addition to the Singapore Dollar Cheque Clearing System, the United States Dollar Cheque Clearing System and the Interbank GIRO System – see paragraph 7.1.2 of Form 1.