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**Section 68 of the Competition Act (Cap. 50B)**

**Notice of Infringement Decision**

**Sale of Uber's Southeast Asian business to Grab in consideration of a 27.5% stake in Grab**

**Date: 24 September 2018**

**Case number: 500/001/18**

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## EXECUTIVE SUMMARY

1. The Competition and Consumer Commission of Singapore (“**CCCS**”) has issued an infringement decision (“**ID**”) today as it has assessed that the sale of Uber’s<sup>1</sup> Southeast Asian business to Grab<sup>2</sup> in consideration of Uber holding a 27.5% stake in Grab (“**Transaction**”) has resulted in a substantial lessening of competition (“**SLC**”) in the market for two-sided platforms matching drivers and riders for the provision of booked chauffeured point-to-point transport services (“**CPPT platform services**”) in Singapore (“**Platform Market**”).
2. After due consideration of the information obtained from Grab, Uber and third parties, CCCS finds that the Transaction has resulted in an SLC in the Platform Market by removing competition between Grab and Uber, which were each other’s closest competitor in the provision of CPPT platform services in Singapore. The merged entity is likely to be able to increase effective price and has evidently done so since the completion of the Transaction. Further, post-Transaction, Grab would have the ability and incentive to tie chauffeured private hire car (“**CPHC**”) rental companies and drivers who rent from these CPHC rental companies in exclusive arrangements and reinforce Grab’s position in the Platform Market by increasing the barriers to entry.
3. Given that SLC concerns have arisen from the Transaction in the abovementioned market, CCCS has also assessed the claimed efficiencies submitted by Grab and Uber (collectively, “**Parties**”). However, CCCS finds that the evidence does not suggest that the efficiencies claimed by the Parties are demonstrable, timely and/or will be sufficient to outweigh the detriment to competition arising from the Transaction.
4. Whilst Grab submitted to CCCS two (2) sets of commitment proposals dated 14 June 2018 and 26 July 2018 respectively, CCCS is of the view that neither would be appropriate or sufficient to address the SLC concerns arising from the Transaction in the Platform Market.
5. For the reasons set out in this ID, CCCS finds that the Transaction has infringed section 54 of the Competition Act (Cap. 50B) (“**Act**”). As such, CCCS directs a set of remedies and imposes financial penalties upon the Parties.

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<sup>1</sup> All references to “Uber” in this Notice may refer to Uber Technologies, Inc., and its subsidiaries and any other related entities including but not limited to Uber Singapore Technology Pte. Ltd., Lion City Holdings Pte. Ltd., Lion City Rentals Pte. Ltd., Lion City Automobiles Pte. Ltd., and LCRF Pte. Ltd..

<sup>2</sup> All references to “Grab” in this Notice may refer to Grab Inc., and its subsidiaries and any other related entities including but not limited to GrabCar Pte. Ltd., GrabTaxi Holdings Pte. Ltd., GrabTaxi Pte. Ltd., Grab Rentals Pte. Ltd. and Grab Rentals 2 Pte. Ltd..

## CHAPTER 1: THE FACTS

### A. BACKGROUND

1. On 26 March 2018, Grab<sup>3</sup> and Uber<sup>4</sup> (each a “**Party**”, and collectively referred to as the “**Parties**”) announced the sale of Uber’s Southeast Asian business to Grab in consideration of Uber acquiring a 27.5% stake in Grab (“**Transaction**”).<sup>5</sup>
2. Prior to the aforesaid announcement, there had been news reports speculating that there could be a potential transaction between Grab and Uber without definite details. On 9 March 2018, the Competition and Consumer Commission of Singapore (“**CCCS**”)<sup>6</sup> sent a letter to each Party, explaining Singapore’s merger notification regime and CCCS’s corresponding powers to investigate, give directions, impose financial penalties and/or impose interim measures on merging parties. On 19 March 2018, Uber sent a letter informing CCCS that it will reach out to CCCS in the event it enters into an agreement that has effects on competition in Singapore.
3. After the announcement of the Transaction, CCCS sent a second letter dated 26 March 2018 to the Parties requesting clarifications on the details of the Transaction and whether (and if so, when) the Parties intended to notify the Transaction to CCCS.
4. CCCS notes that Uber and Grab began transferring Uber’s assets (including information and data) to Grab and migrating Uber drivers and riders to Grab’s chauffeured point-to-point transport platform (“**CPPT platform**”) immediately after the announcement and completion of the Transaction.<sup>7</sup> In particular, Uber started redirecting its riders and drivers to download the Grab app, and informing them that the Uber service will no longer be available in Southeast Asia after 8 April 2018.<sup>8</sup>
5. On 27 March 2018, CCCS commenced an investigation into the Transaction under section 62 of the Competition Act (Cap. 50B) (“**Act**”) as there were reasonable grounds for suspecting that section 54 of the Act had been infringed.

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<sup>3</sup> All references to “Grab” in this Notice may refer to Grab Inc., and its subsidiaries and any other related entities including but not limited to GrabCar Pte. Ltd., GrabTaxi Holdings Pte. Ltd., GrabTaxi Pte. Ltd., Grab Rentals Pte. Ltd. and Grab Rentals 2 Pte. Ltd.

<sup>4</sup> All references to “Uber” in this Notice may refer to Uber Technologies, Inc., and its subsidiaries and any other related entities including but not limited to Uber Singapore Technology Pte. Ltd., Lion City Holdings Pte. Ltd., Lion City Rentals Pte. Ltd., Lion City Automobiles Pte. Ltd., and LCRF Pte. Ltd..

<sup>5</sup> *Grab Merges with Uber in Southeast Asia*, Grab, 26 March 2018 (<https://www.grab.com/sg/press/business/grab-merges-with-uber-in-southeast-asia/>).

<sup>6</sup> CCCS was named the Competition Commission of Singapore (“**CCS**”) prior to 1 April 2018. Where appropriate, references to CCCS in this Notice may refer to CCS.

<sup>7</sup> *Grab Merges with Uber in Southeast Asia*, Grab, 26 March 2018 (<https://www.grab.com/sg/press/business/grab-merges-with-uber-in-southeast-asia/>); Emails sent to riders on 26 March 2018 from Uber (“*Important announcement: Uber combining operations with Grab in Singapore*” and “*Important Terms Update*”) and Grab (“*Welcome Uber to the Grab family*”); Email sent to drivers on 27 March 2018 from Uber (“*Important Terms Update*”) obtained by CCCS from [§<]; Paragraphs 1.6 to 1.11 of the Parties’ joint response to CCCS dated 28 March 2018.

<sup>8</sup> *Welcome Uber to the Grab family*, Grab, (<https://www.grab.com/sg/comingtogether>) (accessed on 11 April 2018).

6. On 28 March 2018, at about 9.47 a.m., CCCS received the Parties' joint response confirming the Transaction and the Parties' intention to file a merger notification no later than 16 April 2018 ("**28 March Response**").<sup>9</sup>
7. On 30 March 2018, CCCS issued its Notice of Proposed Interim Measures Directions<sup>10</sup> ("**Proposed IMD**"), which was brought to the notice of, *inter alia*:
  - a. Grab Holdings Inc. ("**GHI**");
  - b. Grab Inc. ("**GI**");
  - c. GrabCar Pte. Ltd. ("**GrabCar**").; and
  - d. Uber Singapore Technology Pte. Ltd. ("**USG**"),(collectively referred to as the "**IMD Parties**").
8. On 4 and 6 April 2018, the IMD Parties submitted written representations<sup>11</sup> which included proposals for alternative interim measures. CCCS considered the IMD Parties' written representations together with feedback and information from third parties.
9. On 13 April 2018, CCCS issued Interim Measures Directions ("**IMD**") on the IMD Parties under section 67 of the Act which allows CCCS to give such directions, *inter alia*, that it considers necessary for the purpose of preventing any action that may prejudice the giving of any direction under section 69 of the Act upon the conclusion of CCCS's investigation. Subsequently, on 7 May 2018, Smith & Williamson LLP ("**S&W**") was appointed as the independent monitoring trustee, to monitor compliance with the IMD terms.
10. From S&W's review from 7 May 2018 to 3 September 2018, S&W found the following instances where the IMD had been breached:
  - a. Uber's platform was not available from 00:00 to 09:51 on 7 May 2018;
  - b. The Parties breached paragraph 15 of the IMD by allowing Grab to receive operational data from Uber in or around June or July 2018; in addition, Grab also retained personal data of Singapore riders that have not chosen to move to the Grab platform following the data transfer of Uber in breach of paragraph 15 of the IMD; and
  - c. Grab also breached paragraph 16 of the IMD by entering into agreements with at least [X] New Drivers (as defined in the IMD) on an exclusive basis.
11. On 16 April 2018, CCCS received a joint notification from the Parties under section 58 of the Act for a decision on whether the Transaction has infringed section 54 of the Act. CCCS informed the Parties that the notification was not necessary given that CCCS was

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<sup>9</sup> Paragraphs 1.1 to 1.5 of the Parties' 28 March Response.

<sup>10</sup> CCCS's Notice of Proposed IMD dated 30 March 2018.

<sup>11</sup> Written Representations of Grab Holdings Inc., Grab Inc., and GrabCar Pte. Ltd. dated 4 April 2018 ("**Grab's 4 April 2018 Written Representations**"); Written Representations of Grab Holdings Inc., Grab Inc., and GrabCar Pte. Ltd. dated 6 April 2018 ("**Grab's 6 April 2018 Written Representations**"); Written Representations of Uber Singapore Technology Pte. Ltd. dated 4 April 2018 ("**USG's 4 April 2018 Written Representations**").

already investigating the merger, and that the information provided in the notification would be taken into account for the ongoing investigation.

12. On 5 July 2018, CCCS issued notices of the Proposed Infringement Decision (“**PID**”) to the Parties as referred to in paragraphs 352 and 354 below. The Parties submitted written representations to CCCS on 26 July 2018,<sup>12</sup> 3 August 2018,<sup>13</sup> 3 September 2018<sup>14</sup> and 6 September 2018,<sup>15</sup> and made oral representations on 2 August 2018.
13. During the course of CCCS’s investigations, CCCS made seven (7) formal requests for information pursuant to section 63 of the Act to each of Grab<sup>16</sup> and Uber.<sup>17</sup> CCCS also sought and reviewed feedback from drivers ([REDACTED] (“[REDACTED]”) and [REDACTED] (“[REDACTED]”)), 14 competitors in the car rental market (comprising six (6) car rental operators which are Grab’s exclusive fleet partners,<sup>18</sup> [REDACTED],<sup>19</sup> and seven (7) car rental operators which are not affiliated with either of the Parties<sup>20</sup>), four (4) competitors in the CPPT platform market,<sup>21</sup> six (6) competitors in the taxi services market ([REDACTED] (“[REDACTED]”) and [REDACTED]<sup>22</sup>) and seven (7) corporate customers.<sup>23</sup> In addition, CCCS received 53 complaints from consumers, 72 complaints from drivers and 64 general complaints between 26 March 2018 and 19 June 2018.

## **B. THE PARTIES**

### **(a) The Acquirer**

#### **Grab**

14. GHI is an exempted company with limited liability incorporated under the laws of the Cayman Islands.<sup>24</sup> GHI owns [REDACTED]% of GI, also an exempted company with limited

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<sup>12</sup> Written Representations of Grab Holdings Inc., Grab Inc., GrabCar Pte. Ltd., Grab Rentals Pte. Ltd., and Grab Rentals 2 Pte. Ltd. dated 26 July 2018 (“**Grab’s 26 July 2018 Written Representations**”); Written Representations of Uber Singapore Technology Pte. Ltd. dated 26 July 2018 (“**USG’s 26 July 2018 Written Representations**”); Charles River Associates economic observations on the PID dated 26 July 2018 (“**CRA’s 26 July 2018 Report**”).

<sup>13</sup> Written Representations of Grab Holdings Inc., Grab Inc., GrabCar Pte. Ltd., Grab Rentals Pte. Ltd., and Grab Rentals 2 Pte. Ltd. dated 3 August 2018 (“**Grab’s 3 August 2018 Written Representations**”).

<sup>14</sup> Written Representations of Grab Holdings Inc., Grab Inc., GrabCar Pte. Ltd., Grab Rentals Pte. Ltd., and Grab Rentals 2 Pte. Ltd. dated 3 September 2018 (“**Grab’s 3 September 2018 Written Representations**”); Written Representations of Uber Singapore Technology Pte. Ltd. dated 3 September 2018 (“**USG’s 3 September 2018 Written Representations**”).

<sup>15</sup> Written Representations of Grab Holdings Inc., Grab Inc., GrabCar Pte. Ltd., Grab Rentals Pte. Ltd., and Grab Rentals 2 Pte. Ltd. dated 6 September 2018 (“**Grab’s 6 September 2018 Written Representations**”).

<sup>16</sup> CCCS’s section 63 Notices to Grab dated 16 April 2018, 7 May 2018, 4 June 2018, 11 June 2018, 22 June 2018, 30 July 2018 and 24 August 2018.

<sup>17</sup> CCCS’s section 63 Notices to Uber dated 16 April 2018, 7 May 2018, 4 June 2018, 11 June 2018, 13 June 2018, 22 June 2018 and 24 August 2018.

<sup>18</sup> [REDACTED].

<sup>19</sup> [REDACTED].

<sup>20</sup> [REDACTED].

<sup>21</sup> [REDACTED].

<sup>22</sup> [REDACTED].

<sup>23</sup> [REDACTED].

<sup>24</sup> Paragraph 7.1 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; Annex 2 of Grab’s 12 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

liability incorporated under the laws of the Cayman Islands.<sup>25</sup> GI, as Grab's transportation business holding company, in turn owns [X]% of the following Grab businesses/entities incorporated in, and carrying out business operations in, Singapore:<sup>26</sup>

- a. GrabCar;
- b. GrabTaxi Pte. Ltd.;
- c. Grab Rentals Pte. Ltd. and Grab Rentals 2 Pte. Ltd. (together, "**Grab Rentals**");
- d. GrabTaxi Holdings Pte. Ltd.;
- e. GP Network Asia Pte. Ltd.;
- f. Kudo Digital Solutions Pte. Ltd.; and
- g. GFin Services (S) Pte. Ltd.<sup>27</sup>

(collectively, "**Grab Singapore Businesses**").

15. Grab's organisational chart is set out in Annex A.
16. Grab operates online-to-offline mobile platforms in the transportation, food and package delivery, mobile payments and financial services space in Southeast Asia. In the transportation space, Grab offers a ride-hailing and transport connecting service.<sup>28</sup> In Singapore, Grab's services include:<sup>29</sup>
  - a. Provision of a booking/matching platform for intra-city passenger transport services. Product offerings include: GrabTaxi, GrabCar, GrabHitch, GrabShare, GrabCoach, GrabShuttle, GrabShuttle Plus, GrabFamily, GrabCycle, JustGrab, and GrabNow;
  - b. Rental/Leasing of private cars;
  - c. Payment services; and
  - d. Food delivery services.<sup>30</sup>
17. [X] Grab had [X], it did not operate any food delivery business in Singapore prior to the Transaction.<sup>31</sup>

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<sup>25</sup> Annex 3 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Annex 2 of Grab's 12 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

<sup>26</sup> Paragraph 10.1 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Paragraphs 1.1 and 1.6 of Grab's 16 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>27</sup> GFin Services (S) Pte. Ltd. is indirectly [X]% owned by GHI: Paragraph 1.1 of Grab's 16 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>28</sup> Paragraph 10.1 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>29</sup> Paragraph 14.1 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>30</sup> *Grab launches food delivery service in Singapore as UberEats app is discontinued*, The Straits Times, 28 May 2018 (<https://www.straitstimes.com/singapore/transport/grab-launches-food-delivery-service-in-singapore-as-ubereats-app-is-discontinued>).

<sup>31</sup> Paragraph 17.1 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

(b) **The Vendor / Target**

**Uber**

18. Uber International C.V. (“**UICV**”) is a commanditaire vennootschap (limited partnership) formed under the laws of The Netherlands.<sup>32</sup> Apparate International C.V. (“**AICV**”) is also a commanditaire vennootschap formed under the laws of The Netherlands.<sup>33</sup> UICV and AICV are [X] % owned by Uber Technologies, Inc. (“**UTI**”) and [X] % owned by Neben, LLC (“**Neben**”).<sup>34</sup> Uber’s organisational chart is set out in Annex A.
19. The following Uber entities (see Annex A) were based in and/or conducted business activity, directly or indirectly, in Singapore at the time of the Transaction (“**Uber Singapore Businesses**”):<sup>35</sup>
- a. Uber B.V. (“**UBV**”) is a company organised under the laws of The Netherlands and is the operating entity for Uber’s business in almost all countries outside of the U.S., meaning it licenses the Uber apps and provides electronic services via the Uber apps to riders and drivers outside the U.S..<sup>36</sup> UBV is Uber’s main operating entity that contracted with passengers and drivers in Singapore;
  - b. USG is a private company incorporated in Singapore and was a local support entity that provided marketing and support services to UBV;
  - c. Uber Portier B.V. is a company incorporated in the Netherlands that [X];<sup>37</sup>
  - d. Lion City Holdings Pte. Ltd. (“**Lion**”), is a private entity incorporated in Singapore and is a holding company with no active commercial/trading activities;
  - e. Lion City Rentals Pte. Ltd. (“**LCR**”) is a private company incorporated in Singapore which is an operating subsidiary that operates a car rental business for private hire vehicles in Singapore;
  - f. LCRF Pte. Ltd. (“**LCRF**”) is a private company incorporated in Singapore which owns 100% of the vehicles operated out by LCR. LCRF leases the vehicles to LCR, which then rents the vehicles out to drivers; and
  - g. Lion City Automobiles Pte. Ltd. holds a dealer licence but is not engaged in any active commercial/trading activities at the moment.

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<sup>32</sup> Annex A of USG’s 22 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

<sup>33</sup> Annex A of USG’s 22 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

<sup>34</sup> Annex T of USG’s 16 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>35</sup> Paragraph 10.2 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; Paragraph 1.1 of USG’s 16 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>36</sup> Paragraph 19 of USG’s 4 April 2018 Written Representations.

<sup>37</sup> Paragraph 1.1.3 of USG’s 16 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.



20. CCCS understands that business operations of UBV, USG and Uber Portier B.V. relating to Singapore will cease/have ceased pursuant to the Transaction, whereas Lion, LCR, LCRF and Lion City Automobiles Pte. Ltd. (collectively, “**Lion City Rentals**”) continue to operate post-Transaction.

## C. THE TRANSACTION

### *Parties’ submissions*

21. The Transaction relates to Grab’s acquisition of assets, certain employees, contracts and data (“**Acquired Uber Assets**”) from UICV, certain of its subsidiaries, and AICV, with respect to Singapore, Cambodia, Indonesia, Malaysia, Myanmar, Thailand, the Philippines and Vietnam (“**Covered Jurisdictions**”), pursuant to the purchase agreement dated 25 March 2018 entered into between GHI, UICV and AICV (“**Purchase Agreement**”).<sup>38</sup> The Acquired Uber Assets relate to all of Uber’s businesses in the Covered Jurisdictions, being its provision of intra-city transport facilitation and food delivery services, excluding intellectual property other than data of riders, driver partners, UberEats merchants, eaters and couriers, as well as excluding Viet Car Rental Company Limited, Uber Philippines Centre of Excellence LLC and Lion City Rentals.<sup>39</sup> In consideration, AICV has received shares in Grab representing a 27.5% ownership interest on a fully-diluted basis.<sup>40</sup> Grab has not acquired Uber’s technology platform or Uber’s proprietary intellectual property such as pricing, matching or [X] algorithms, [X], and the Parties submitted that Uber continues to operate its global business separately, and is not involved in the operations of Grab.<sup>41</sup>
22. Specifically, with respect to Singapore, Grab in essence acquired all of USG’s assets, properties, privileges, claims and rights pursuant to the Singapore Bill of Sale and Assignment and Assumption Agreement dated 25 March 2018 entered into between USG and GrabCar (“**Singapore Bill of Sale**”), except for certain excluded assets (“**Local Excluded Assets**”) and liabilities (“**Local Excluded Liabilities**”).<sup>42</sup> The assets captured by the definition of the Local Acquired Assets under the Singapore Bill of Sale are as follows:<sup>43</sup>

- a. [X]; and
- b. [X]:

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<sup>38</sup> Paragraphs 1.1 and 11.1 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; Paragraphs 16 and 17 of USG’s 4 April 2018 Written Representations; Paragraph 2.2.1(i) of Grab’s 4 April 2018 Written Representations.

<sup>39</sup> Paragraph 11.7 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; [X].

<sup>40</sup> Paragraphs 11.2 and 11.8 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; Paragraph 16 of USG’s 4 April 2018 Written Representations; Paragraph 2.2.1(iv) of Grab’s 4 April 2018 Written Representations.

<sup>41</sup> Paragraph 11.6 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; Paragraph 18 of USG’s 4 April 2018 Written Representations; Paragraph 2.2.1(i), (iv) of Grab’s 4 April 2018 Written Representations.

<sup>42</sup> Singapore Bill of Sale, read with Section 1.2 of the Purchase Agreement; Paragraph 4.4 of Grab’s 16 May 2018 response to CCCS’s 7 May 2018 section 63 Notice; Paragraph 3.4 of USG’s 16 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>43</sup> Paragraphs 4.1 and 4.2 of USG’s 14 June 2018 response to CCCS’s 4 June 2018 section 63 Notice.

- i. [REDACTED];
  - ii. [REDACTED];
  - iii. [REDACTED]; and
  - iv. [REDACTED].
23. In this connection, the Local Excluded Assets include the Intercompany Service Agreement and Support Services Agreement by and between USG and LCR;<sup>44</sup> while the Local Excluded Liabilities include any liabilities of USG *vis-à-vis* Lion City Rentals and, any liabilities of Lion City Rentals.<sup>45</sup> In Singapore, the Transaction also excludes any agreements between Uber, any of its subsidiaries, and ComfortDelGro Corporation Limited (“**CDG**”), including (i) the Sale and Purchase Agreement dated 8 December 2017 (“**Lion City SPA**”) pursuant to which Mieten B.V. agreed to sell and transfer 51% of the outstanding capital stock of Lion to CDG (“**Lion City Transaction**”); (ii) the Commercial Collaboration Agreement dated 8 December 2017 between and amongst UBV, LCR, CDG and other parties (“**Collaboration Agreement**”); and (iii) all other documents and agreements contemplated thereby or otherwise relating to the transactions between Uber and CDG.<sup>46</sup> In this connection, CCCS has since received joint confirmation from Uber and CDG on 25 May 2018, that the Lion City Transaction and the Collaboration Agreement have been terminated as of the same date.<sup>47</sup>
24. Pursuant to and in connection with the transactions contemplated by the Purchase Agreement, GHI and UBV entered into a Transition Services Agreement (“**TSA**”), whereby UBV agreed to perform certain transitional services for Grab in connection with the Transaction, including [REDACTED].<sup>48</sup> [REDACTED].<sup>49</sup>
25. Although the Transaction excludes from the Acquired Uber Assets any share capital or liabilities in relation to Lion City Rentals,<sup>50</sup> the Purchase Agreement provides for certain covenants in relation to the Lion City Transaction and Lion City Rentals.<sup>51</sup>
26. With regard to the Lion City Transaction (before it was terminated), the Purchase Agreement provides that [REDACTED].<sup>52</sup> [REDACTED].<sup>53</sup>

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<sup>44</sup> Exhibit C of the Singapore Bill of Sale; Exhibit 1.3(b)(i) of the Purchase Agreement.

<sup>45</sup> Section 1.5(b) of the Purchase Agreement.

<sup>46</sup> Paragraph 11.2 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; See also sections 1.3 and 1.5 of the Purchase Agreement.

<sup>47</sup> Uber and CDG’s joint letter to CCCS dated 25 May 2018.

<sup>48</sup> TSA, Annex 3 of Grab’s 19 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; Paragraph 19 of USG’s 4 April 2018 Written Representations.

<sup>49</sup> TSA, Annex 3 of Grab’s 19 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; Paragraph 20 of USG’s 4 April 2018 Written Representations.

<sup>50</sup> Paragraph 11.7 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; [REDACTED].

<sup>51</sup> Section 6.1 of the Purchase Agreement.

<sup>52</sup> Section 6.1(d) of the Purchase Agreement.

<sup>53</sup> Section 6.1(e), read with section 10.1 of the Purchase Agreement.

27. With regard to Lion City Rentals, [REDACTED],<sup>54</sup> [REDACTED].<sup>55</sup> [REDACTED]:
- a. [REDACTED],<sup>56</sup>
  - b. [REDACTED],<sup>57</sup>
  - c. [REDACTED],<sup>58</sup>
  - d. [REDACTED],<sup>59</sup>
  - e. [REDACTED],<sup>60</sup>
  - f. [REDACTED],<sup>61</sup>
  - g. [REDACTED],<sup>62</sup>
  - h. [REDACTED],<sup>63</sup>
  - i. [REDACTED],<sup>64</sup> and
  - j. [REDACTED].<sup>65</sup>
28. The Transaction (and the Purchase Agreement) was signed and completed on 25 March 2018 (United States time) (on 26 March 2018 (Singapore time)).<sup>66</sup>
29. The Parties submitted that from Grab's perspective, the strategic and economic rationale for the Transaction is:<sup>67</sup>
- a. To further Grab's mission of providing safe and affordable transportation and related services across the Covered Jurisdictions, in the context of the developments of Southeast Asia's transport infrastructure, amidst rapidly growing urban populations. Grab's customers are both passengers and drivers and Grab's role is to find a balance between lower passenger prices and the ability for drivers to earn livelihoods, ultimately arriving on a sustainable solution to tackle congestion, affordability and connectivity issues;

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<sup>54</sup> Section 6.1(a)(iv) of the Purchase Agreement.

<sup>55</sup> Section 6.1(a)(iii)(B), read with section 10.1 and Exhibit 6.1(a)(iii)(B) of the Purchase Agreement.

<sup>56</sup> Section 6.1(a)(iii)(B)(I) of the Purchase Agreement.

<sup>57</sup> Section 6.1(a)(iii)(B)(II) of the Purchase Agreement.

<sup>58</sup> Section 6.1(a)(iii)(B)(III) of the Purchase Agreement.

<sup>59</sup> Section 6.1(a)(iii)(B)(IV) of the Purchase Agreement.

<sup>60</sup> Paragraph 1 of Exhibit 6.1(a)(iii)(B) of the Purchase Agreement.

<sup>61</sup> Paragraph 2 of Exhibit 6.1(a)(iii)(B) of the Purchase Agreement.

<sup>62</sup> Paragraph 3 of Exhibit 6.1(a)(iii)(B) of the Purchase Agreement.

<sup>63</sup> Paragraph 4 of Exhibit 6.1(a)(iii)(B) of the Purchase Agreement.

<sup>64</sup> Paragraph 5 of Exhibit 6.1(a)(iii)(B) of the Purchase Agreement.

<sup>65</sup> Paragraph 6 of Exhibit 6.1(a)(iii)(B) of the Purchase Agreement.

<sup>66</sup> Paragraphs 11.9, 11.10 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Paragraph 21 of USG's 4 April 2018 Written Representations.

<sup>67</sup> Paragraph 12.1 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

- b. To grow Grab's user base, who will be able to access Grab's platform and enjoy Grab's innovative services across the Covered Jurisdictions; and
  - c. To improve network density and efficiency so as to offer a more attractive service to riders and drivers alike.
30. Further, the Parties submitted that from USG's perspective, the strategic and economic rationale for the Transaction is to formalise Uber's exit from the Southeast Asia market, including Singapore, through a sale of its assets to Grab. USG submitted that its understanding is that Uber has decided to exit the Southeast Asia market considering the high losses accumulated since its market entry (around US\$[redacted] million (approximately S\$[redacted] million)), and the amount of capital that it was expecting to spend in the next [redacted] years in the region to maintain its operations (up to US\$[redacted] billion (approximately S\$[redacted] billion)). In view of its planned initial public offering in 2019, among other reasons, USG stated that it understands that Uber has decided to reallocate its capital expenditures to other parts of the world and/or projects with a higher expected return on investment.<sup>68</sup> In this regard, USG submitted that Uber has also taken similar steps in relation to its operations in China (sold to Didi Chuxing in 2016) and in Russia and certain neighbouring countries in Eastern Europe and Central Asia (entered into a joint venture with Yandex in 2018).<sup>69</sup>
31. Uber's internal documents revealed that the Transaction [redacted], and that it would be [redacted].<sup>70</sup> Grab's internal documents state that the Transaction would allow Grab a [redacted],<sup>71</sup> and provide Grab [redacted].<sup>72</sup>
32. The Parties submitted that the Transaction falls within section 54(2)(c) of the Act, as Grab has acquired the Acquired Uber Assets (which includes Uber's assets for its ridesharing and food delivery services businesses in Southeast Asia), which places Grab in a position to replace Uber in Southeast Asia by providing former Uber drivers and riders (amongst others) the opportunity to use Grab as an alternative transportation and food delivery platform.<sup>73</sup>

#### *CCCS's assessment*

33. CCCS has assessed that the Transaction constitutes a merger pursuant to section 54(2) of the Act. Under section 54(2)(c) of the Act, pursuant to the Transaction, Grab, having acquired the Acquired Uber Assets which forms a substantial part of the assets of Uber's ridesharing and food delivery services businesses in Southeast Asia (including

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<sup>68</sup> Paragraph 12.2 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Paragraph 13 of USG's 4 April 2018 Written Representations.

<sup>69</sup> Paragraph 12.3 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Paragraph 14 of USG's 4 April 2018 Written Representations.

<sup>70</sup> Slide 2 of Annex 8 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Slide 4 of Annex 10 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>71</sup> Slide 4 of *Grab's Board Presentation [redacted]* (2 March 2018), Annex 2 of Grab's 19 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>72</sup> Slides 8 and 30 of *Grab's Board Presentation [redacted]* (2 March 2018), Annex 2 of Grab's 19 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>73</sup> Paragraphs 11.3 and 11.4 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

Singapore), is now placed in a position to substantially replace Uber in the businesses in which Uber was engaged immediately before the Transaction.

## CHAPTER 2: LEGAL AND ECONOMIC ASSESSMENT

### A. THE SECTION 54 PROHIBITION

34. Section 54(1) of the Act prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition (“**SLC**”) within Singapore (“**section 54 prohibition**”):

*“Subject to section 55, mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods or services are prohibited.”*

35. In this connection, section 54(2) of the Act provides that a merger occurs if:

*“(a) 2 or more undertakings, previously independent of one another, merge;*

*(b) one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or*

*(c) the result of an acquisition by one undertaking (the first undertaking) of the assets (including goodwill), or a substantial part of the assets, of another undertaking (the second undertaking) is to place the first undertaking in a position to replace or substantially replace the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition.”*

36. In assessing whether a merger has resulted in an SLC in a relevant market, CCCS will compare the state of competition with the merger, with the likely state of competition if the merger had not proceeded (i.e. the counterfactual). Such a comparison enables CCCS to assess the degree by which the merger has lessened competition.<sup>74</sup>
37. As the focus of CCCS’s analysis is on evaluating how the competitive conditions on the merger parties and their competitors could change as a result of the merger, the starting point is to define the relevant market, then review the changes in the market structure resulting from the merger.<sup>75</sup> CCCS analyses the extent of competition in each relevant market by assessing factors such as market shares and concentration, barriers to entry and expansion, and countervailing buyer power to determine whether the merger gives rise to non-coordinated, coordinated and/or vertical effects.<sup>76</sup>
38. In the event CCCS finds that a merger has resulted in an SLC in a market in Singapore, CCCS will consider the presence of any economic efficiencies resulting from the merger which could outweigh the SLC arising from the merger (“**Net Economic**

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<sup>74</sup> Paragraph 2.5 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>75</sup> Paragraph 5.1 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>76</sup> Paragraphs 2.3 and 2.4 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

**Efficiencies**”).<sup>77</sup> Mergers that generate sufficient Net Economic Efficiencies are excluded from the section 54 prohibition.<sup>78</sup>

39. Once CCCS has decided that a merger has infringed the section 54 prohibition, it has to decide on the action to remedy, mitigate or prevent the SLC or any adverse effects resulting from the SLC.<sup>79</sup> However, CCCS may consider any commitments that are offered by the merger parties at any time during the merger review process.<sup>80</sup>
40. Section 69 of the Act provides that where CCCS has made a decision that any merger has infringed the section 54 prohibition, it may give to such person as it thinks appropriate such directions as it considers appropriate to bring the infringement to an end and, where necessary, requiring that person to take such action as is specified in the direction to remedy, mitigate or eliminate any adverse effects of such infringement and to prevent the recurrence of such infringement.<sup>81</sup>
41. In particular, where CCCS has made a decision that any merger has infringed the section 54 prohibition, it may give directions requiring:<sup>82</sup>
  - a. the merger to be dissolved or modified in such manner as CCCS may direct;
  - b. any parties to any agreement that is directly related and necessary to the implementation of the merger to modify or terminate the agreement;
  - c. any person concerned with any conduct that is directly related and necessary to the implementation of the merger to modify or cease that conduct;
  - d. any party involved in a merger that has infringed the section 54 prohibition:
    - i. To enter such legally enforceable agreements as may be specified by CCCS and designed to prevent or lessen the anti-competitive effects which have arisen;
    - ii. To dispose of such operations, assets or shares of such undertaking in such manner as may be specified by CCCS; and
    - iii. To provide a performance bond, guarantee or other form of security on such terms and conditions as CCCS may determine.

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<sup>77</sup> Paragraphs 7.1 to 7.18 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>78</sup> Section 55 of the Act, read with paragraph 3 of the Fourth Schedule to the Act.

<sup>79</sup> Paragraph 8.1 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>80</sup> Section 60A of the Act provides that CCCS may accept commitments at any time before making a decision on a merger; Paragraph 6.8 of the *CCCS Guidelines on Merger Procedures 2012*.

<sup>81</sup> Refer to section 69(1)(d) of the Act.

<sup>82</sup> Refer to sections 69(2)(c) and (e) of the Act.

42. In the case of a merger which has infringed the section 54 prohibition, CCCS may, if the infringement was committed intentionally or negligently, also require any party involved in the merger to pay such financial penalty as CCCS may determine.<sup>83</sup>

#### Application to Undertakings and Single Economic Entities

43. The section 54 prohibition applies to “*undertakings*”, which is defined under section 2(1) of the Act to mean “*any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services*”. It is trite that the concept of an “*undertaking*” covers any entity capable of carrying on commercial or economic activities, regardless of its legal status or the way in which it is financed.<sup>84</sup>
44. In certain cases, a parent and its subsidiary company or two (2) companies which are under the control of a third company may form a single economic entity (“**SEE**”) and be treated as a single undertaking. The law on SEE applicable in Singapore has been neatly summarised in the Competition Appeal Board (“**CAB**”) decision, *Express Bus Operators Appeal No. 3*:<sup>85</sup>

“67 It is generally accepted that a single economic entity is a single undertaking between entities which form a single economic unit. In particular, an agreement between a parent and its subsidiary company, or between two companies which are under the control of a third company...if the subsidiary has no real freedom to determine its course of action in the market and although having a separate legal personality, enjoys no economic independence. Ultimately, whether or not the entities form a single economic unit will depend on the facts and circumstances of the case ([2.7]-[2.8] of the [CCCS] Guidelines on the section 34 prohibition; see also *Akzo Nobel v Commission of the European Communities*, 11 December 2003, at [54]-[66])”.

45. In the *Freight Forwarding Case*,<sup>86</sup> CCCS also considered that companies formed an SEE when taking into consideration the reporting structure, arrangements with regard to profit sharing, common directorship, the right to nominate directors, and influence in commercial policies.
46. The EU courts have recognised that while companies belonging to the same group may have distinct and separate natural or legal personalities, the term “*undertaking*” must be understood as designating an economic unit for the purpose of the subject-matter of the

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<sup>83</sup> Section 69(2)(d), read with 69(3) of the Act; Paragraphs 8.4 and 8.5 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>84</sup> Case C-41/90 *Hofner and Elser v Macrotron GmbH* [1991] ECR I-1979, at [21]; Also see in particular, Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and others v Commission* [2005] ECR I-5425, at [112]; Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-289, at [107]; Case C-205/03 P *FENIN v Commission*, [2006] ECR I-6295, at [25]; and Case C-97/08 P *Akzo Nobel NV v Commission* [2009] ECR I-08237, at [54].

<sup>85</sup> *Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand: Transtar Travel Pte Ltd and Regent Star Travel Pte Ltd* [2011] SGCAB 2, at [67].

<sup>86</sup> CCS 700/003/11 *Infringement of the section 34 prohibition in relation to the provision of air freight forwarding services for shipments from Japan to Singapore* (11 December 2014), at [527] to [632].

agreement in question even if in law, that economic unit consists of several persons, natural or legal.<sup>87</sup>

47. Under EU competition law, when a parent company has a 100% shareholding in a subsidiary, whether held directly or indirectly, there is a rebuttable presumption that the parent company does in fact exercise a decisive influence over the conduct of its subsidiary and accordingly, the parent and subsidiary are an SEE unless proven otherwise.<sup>88</sup> The European Court of Justice (“**ECJ**”) in *Akzo Nobel NV v Commission* stated that “it is for the parent company to put before the Court any evidence relating to the organisational, economic and legal links between its subsidiary and itself which are apt to demonstrate that they do not constitute a single economic entity”.<sup>89</sup>
48. An SEE can also exist where the parent company does not have 100% shareholding in a subsidiary. For example, in *Istituto Chemioterapico SpA & Commercial Solvents Corp v Commission* (“**Commercial Solvents**”), the parent company owned 51% of its subsidiary with a 50% representation on its decision-making board and committee, and held the right to appoint the subsidiary’s Chairman, who held the casting vote.<sup>90</sup> The ECJ ruled in *Commercial Solvents* that the parent and subsidiary are an SEE on account of the parent company’s power of control over the subsidiary.<sup>91</sup>
49. It is also notable that the SEE doctrine is not confined to anti-competitive agreements but may also be invoked in the merger assessment context. In the *Holcim-Lafarge Case*, CCCS considered the market shares of Lafarge’s 33% owned subsidiary in assessing Lafarge’s market share in the market for ready-mix concrete.<sup>92</sup> In its decision, CCCS noted that in the European Commission (“**EC**”) merger decision of *Grupo Vilar Mir/EnBW*<sup>93</sup> which concerned a merger in the electricity market, the EC raised competition concerns after having considered that one (1) of the acquirers EnBW was jointly controlled by EDF (an energy company) and OEW (a non-energy company).<sup>94</sup>
50. Further, in applying Article 14 of the EU Merger Regulation<sup>95</sup> (“**EUMR**”) which allows the EC to impose fines on “undertakings”, the EC has considered entities comprising an SEE to be part of the same “undertaking”. In *Facebook/WhatsApp*, the EC found that Facebook, Inc. had provided misleading information in its merger notification, and addressed its decision imposing a financial penalty pursuant to Article 14 to both Facebook, Inc. and Facebook Ireland Limited (a wholly-owned subsidiary of Facebook, Inc. through which Facebook, Inc. trades in the European Economic Area).<sup>96</sup>

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<sup>87</sup> Case 170/83 *Hydrotherm Gerätebau GmbH v Compact del Dott. Ing. Mario Andreoli & C.Sas* [1984] ECR 2999, at [11]; and Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA* [2006] ECR I-11987, at [40].

<sup>88</sup> Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-8237, at [60]-[61]; see also Case C-90/09P *General Química SA and Others v Commission* [2011] ECR I-1, at [39] to [42] and [84] to [91].

<sup>89</sup> Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-8237, at [65].

<sup>90</sup> Case C-6/73 *Istituto Chemioterapico SpA & Commercial Solvents Corp v Commission* [1974] ECR 223, at [6].

<sup>91</sup> Case C-6/73 *Istituto Chemioterapico SpA & Commercial Solvents Corp v Commission* [1974] ECR 223, at [41].

<sup>92</sup> *Re Proposed Merger between Holcim Ltd. and Lafarge S.A.* [2014] SGCCS 3, at [59].

<sup>93</sup> Case COMP/M.2434 – *Grupo Vilar Mir/EnBW* (26 September 2001), at [31].

<sup>94</sup> *Re Proposed Merger between Holcim Ltd. and Lafarge S.A.* [2014] SGCCS 3, at [12] to [14].

<sup>95</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

<sup>96</sup> Case No. M8228 – *Facebook / WhatsApp* (17 May 2017).



## CCCS's Notification Regime

51. Singapore has a voluntary merger regime, meaning that there is no mandatory requirement for merger parties to notify their merger situation to CCCS, either before or after implementation of the merger. Notwithstanding, merger parties have to carry out their own self-assessment as to whether their conduct infringes the Act and decide whether they should notify a merger to CCCS, or at their own risk, proceed to implement a merger. Merger parties who are concerned that their merger situation may infringe the section 54 prohibition can choose to notify CCCS of the merger situation before implementation. For completed transactions, CCCS can investigate the merger on its own initiative<sup>97</sup> and require, *inter alia*, the merger to be dissolved or modified, and can impose financial penalties, if the implemented merger is found to have infringed the section 54 prohibition.<sup>98</sup>
52. The ability for parties to notify their merger for CCCS's assessment is set out in the Act. Section 57 of the Act provides that merger parties have the option of notifying an anticipated merger for CCCS's decision as to whether the merger will infringe the section 54 prohibition:<sup>99</sup>

*“(1) A party to an anticipated merger of the relevant type which applies for the anticipated merger to be considered under this section shall —*  
*(a) notify the Commission of the anticipated merger; and*  
*(b) apply to it for a decision.”*

53. To assist merger parties with planning and consideration of anticipated mergers, in particular at the stage when the merger parties are concerned to preserve the confidentiality of the transaction, CCCS has also provided such parties with the ability to seek CCCS's confidential advice on whether a merger is likely to raise competition concerns in Singapore and therefore whether a notification is advisable, with the necessary qualification that such advice is provided without having taken into account third-party views. Confidential advice is available if CCCS is satisfied that the following conditions are met:
  - a. The merger must not be completed but there must be a good faith intention to proceed with the transaction;
  - b. The merger must not be in the public domain except in exceptional circumstances;
  - c. In CCCS's view, the merger situation must raise a genuine issue relating to the competitive assessment in Singapore; and

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<sup>97</sup> Section 62(1)(d) of the Act provides that CCCS may conduct an investigation if there are reasonable grounds for suspecting that the section 54 prohibition has been infringed by any merger.

<sup>98</sup> Paragraphs 2.3 to 2.4 and 3.2 to 3.12 of the *CCCS Guidelines on Merger Procedures 2012*; see also above paragraphs 39 to 42.

<sup>99</sup> Paragraphs 2.3 and 3.2 of the *CCCS Guidelines on Merger Procedures 2012*.

- d. The requesting party or parties are expected to keep CCCS informed of significant developments in relation to the merger situation in respect of which confidential advice was obtained.<sup>100</sup>

## **B. COMPETITION ISSUES**

54. The Parties overlap in the provision of chauffeured point-to-point transport booking/matching platform services (“**CPPT platform services**”) through Uber and Grab’s respective CPPT platforms (“**Overlapping Product**”).<sup>101</sup> In addition, the Overlapping Product is in a vertical relationship with the Parties’ respective operations in chauffeured private hire car (“**CPHC**”) rental services.
55. In evaluating the potential impact of the Transaction, CCCS considered whether the Transaction will substantially lessen competition by considering the coordinated, non-coordinated and/or vertical effects that could arise from the Transaction with respect to the Overlapping Product. Specifically, CCCS considered the following theories of harm:
  - a. By removing competition between Grab and Uber, which are each other’s closest competitor in the provision of CPPT platform services in Singapore, the merged entity is likely to be able to increase the effective price and/or reduce quality and/or output to the detriment of drivers and riders;
  - b. The Transaction may increase the likelihood that, post-Transaction, CPPT platform services providers may coordinate their behaviour to raise prices and/or reduce quality and/or output to the detriment of drivers and riders; and
  - c. Post-Transaction, Grab may have the ability and incentive to tie CPHC rental companies (including Lion City Rentals) and drivers who rent from these CPHC rental companies in exclusive arrangements and reinforce Grab’s position in the provision of CPPT platform services in Singapore by increasing the barriers to entry.

## **C. THE COUNTERFACTUAL**

56. CCCS assesses whether a merger substantially lessens competition in a market by comparing the state of competition with the merger, with the likely state of competition if the merger had not proceeded (i.e. the “counterfactual” – the scenario without the merger situation).<sup>102</sup> In most cases, the appropriate counterfactual will be the prevailing conditions of competition prior to the merger, as this may provide a reliable indicator of future competition without the merger. However, CCCS may need to take into account likely and imminent changes in the structure of competition in order to reflect as

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<sup>100</sup> Paragraphs 3.18 to 3.23 of the *CCCS Guidelines on Merger Procedures 2012*; see also now section 55A of the Act which came into force on 16 May 2018.

<sup>101</sup> CCCS notes that pursuant to the Transaction, Grab has not acquired Lion City Rentals. As of 24 September 2018, Uber still owns 100% of Lion City Rentals, while Grab, which Uber has acquired a 27.5% stake in pursuant to the Transaction, owns Grab Rentals.

<sup>102</sup> Paragraph 2.1 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

accurately as possible the nature of rivalry without the merger.<sup>103</sup> To that end, the counterfactual is forward looking and is affected by the extent to which events or circumstances and their consequences are foreseeable.<sup>104</sup> In instances where there could be multiple counterfactuals, CCCS will generally adopt the most likely scenario as the counterfactual.<sup>105</sup> In order for CCCS to conclude that an alternative scenario is more likely than the prevailing conditions prior to the merger, the evidence on likely and imminent changes must be sufficiently demonstrable.

57. For the avoidance of doubt, the “factual” that will be compared against the counterfactual in CCCS’s merger assessment is the state of competition with the Transaction but without the IMD issued by CCCS on 13 April 2018 pursuant to section 67 of the Act. As the IMD was issued for the purpose of preventing any action that may prejudice the giving of any subsequent direction by CCCS under section 69 of the Act, and will cease to have effect upon the completion of CCCS’s review and/or resolution of any competition concerns that arise from the Transaction, the effects of the IMD on the state of competition in the interim period immediately post-Transaction should, in principle, be excluded as the state of competition while the IMD was in effect does not reflect the state that it would have been in the ordinary course upon completion of the Transaction.

#### *Parties’ submissions*

58. The Parties submitted that Uber had already made the irreversible decision to exit the Southeast Asia market (which includes Singapore), and that there is no scenario where it will continue to operate in Singapore or the rest of Southeast Asia, in view of Uber’s planned initial public offering in 2019 and its consequent decision to relocate its capital expenditures to other parts of the world and/or projects with a higher expected return on investment.<sup>106</sup>
59. The Parties further submitted that from Grab’s perspective, in the absence of the Transaction, and if the current market situation is to persist, an exit by one (1) of the platforms would be inevitable as it is unsustainable for Grab and Uber to maintain [X] weekly losses. This would, according to the Parties, leave only profitable taxi and public transport operators, who remain key competitors in the transport space, and whose profits had been increasing even after the entry of Grab and Uber into Singapore. The Parties further highlighted that even though CDG’s profits declined in 2017, [X]. The Parties submitted that with or without the Transaction, the improved quality, coverage, and accessibility of existing bus and train services, compounded by the entry of Via Transportation, Inc. and Ryde (and the potential entry of a number of other players) results in a significant increase in substitutability for Grab’s services, representing even greater competitive constraints on Grab.<sup>107</sup>

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<sup>103</sup> Paragraph 4.16 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>104</sup> Paragraph 4.15 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>105</sup> Paragraph 4.22 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>106</sup> Paragraph 23.1 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; Paragraphs 1, 13 and 111 of USG’s 4 April 2018 Written Representations; Paragraph 2.4.2(iv) of Grab’s 4 April 2018 Written Representations.

<sup>107</sup> Paragraph 23.2 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; Paragraph 2.4.2(vi) and Paragraph 5 of Annex 1 of Grab’s 4 April 2018 Written Representations.

60. In addition, the Parties submitted, through an economic consultancy report by Charles River Associates (“**CRA Report**”), that it would be wrong to assume that the relevant counterfactual is just an extrapolation of the experience of the last couple of years, or in recent months, in which Uber and Grab were competing head-to-head. The CRA Report stated that while one can hypothesise around multiple scenarios about what would have happened but for the Transaction, a simple extrapolation of the recent past into the medium term cannot be the appropriate framework because Uber would not have persisted as a competing force in Southeast Asia with the same degree of commitment, given that the level of [ ~~] had become a major concern for its management and investors as seen from Uber’s internal documents reviewed by CRA. In the Parties’ view, pre-Transaction prices also cannot be used as a meaningful guide to the future as the losses incurred could not be sustained indefinitely by Grab or Uber.<sup>108</sup>~~
61. Further, the CRA Report states that there is no inconsistency between the proposition that Uber had taken a corporate decision to exit Southeast Asia and evidence that Uber continued to take actions into March 2018 that were designed to improve the competitive position of its ride-sharing business in Singapore. The Parties highlighted that while it is difficult to say what exactly Uber would have done in the absence of the Transaction, its strategy documents showed other “[ ~~]”, including the possibility of selling to another buyer. Thus, the fact that Uber continued to take actions designed to improve its ride-sharing business was a rational and value-maximising strategy. The Parties submitted that none of the pre-Transaction measures (e.g. collaboration with CDG, launch of UberFlash and UberCommute) required any significant capital investment on Uber’s part; moreover, its pre-Transaction measures could also increase the value of Uber’s business to a buyer who was not already active in the Singapore market.<sup>109</sup>~~

*CCCS’s assessment*

62. After careful examination of the evidence, which is detailed below, CCCS’s assessment is that, in the absence of the Transaction, Uber would not have exited Singapore in a ‘barefoot’ manner (i.e. simply terminating a business without extracting the residual value from its assets, branding and goodwill). Instead, Uber would have remained in operation in Singapore, while exploring other strategic options, such as collaboration with another market player, or a sale to an alternative buyer (the “**Counterfactual**”). Contrary to the Parties’ assertion, CCCS has not made a definitive finding that Uber will not exit Singapore in the future. What is important is that, first, Uber would not exit unless and until a strategic commercial alternative has been found, and second, regardless of which strategic option that Uber might eventually take under the Counterfactual, there would be no loss of close rivalry between the Parties in the immediate term.

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<sup>108</sup> Pages 2 and 3 of Grab’s 14 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

<sup>109</sup> Pages 49 to 50 of Grab’s 14 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

Uber submitted that it is not a failing firm

63. Uber has submitted that the failing firm scenario<sup>110</sup> is not applicable.<sup>111</sup> The Parties have also not otherwise submitted any arguments and evidence relating to the failing firm scenario.<sup>112</sup> This means that, immediately prior to the Transaction, there was no operational or financial emergency that would have rendered an immediate, ‘barefoot’ exit inevitable for Uber.

Uber submitted that it did not make a decision to exit Singapore

64. In its oral representations to CCCS, Uber submitted that its board of directors did not make a formal decision that Uber should leave Southeast Asia “no matter what”. It submitted that this was not the way Uber operated. Instead, it went through its options until a solution was found in relation to its Southeast Asian operations. Uber also submitted that it never had to make the hard decision whether to simply pull the plug or stay in the market, because it reached a deal to sell its Southeast Asian business to Grab.<sup>113</sup> CCCS also notes that Uber is unable to provide any internal documents to substantiate its claim that it would have exited Singapore in the absence of the Transaction. In particular, Uber is unable to provide any internal documents to establish that Uber would have exited Singapore in a ‘barefoot’ manner.
65. As such, CCCS determines that, in terms of causality, it is the Transaction that had caused Uber to exit its operations in Southeast Asia/Singapore as an independent player immediately. It is not the case that Uber had already made a decision to exit Southeast Asia/Singapore, before entering into the Transaction. It follows that, in the Counterfactual, Uber would not have exited its operations immediately, unless and until a strategic alternative had been found.

Uber’s own counterfactual when its board deliberated on the Transaction

66. Between 13 and 18 March 2018, the Uber board deliberated on whether to enter into the Transaction.<sup>114</sup> In the board presentation, Uber discussed the benefits that would arise from the Transaction. In particular, Uber [X];<sup>115</sup> [X].<sup>116</sup>
67. CCCS is of the view that Uber’s own comparison of its [X] is an accurate reflection of its own view of the counterfactual, especially given that it was the very occasion on which

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<sup>110</sup> As set out in paragraph 4.17 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*, the following conditions have to be met to qualify for the failing firm defence: (i) the firm must be in such a dire situation that without the merger, the firm and its assets would exit the market in the near future; (ii) the firm must be unable to meet its financial obligations in the near future and there must be no serious prospect of re-organising the business; and (iii) there should be no less anti-competitive alternative to the merger. Refer to paragraphs 4.17 to 4.20 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016* for further information on the failing firm defence.

<sup>111</sup> Paragraphs 44.1 and 45.1 of Annex B of USG’s 30 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>112</sup> Paragraph 23 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; Page 3 of Grab’s 14 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

<sup>113</sup> Paragraph 31 of Written record of USG’s oral representations on 2 August 2018.

<sup>114</sup> Paragraphs 1.2, 1.3, 1.8 and 2.3 of USG’s 25 June 2018 response to CCCS’s 22 June 2018 section 63 Notice.

<sup>115</sup> [X].

<sup>116</sup> Slide 4 of Annex 10 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

the Uber board was asked to approve entering into the Transaction with Grab.<sup>117</sup> Uber's own projection to [REDACTED] "over the next [REDACTED] years" without the Transaction reflects its consideration that it would have to continue its operation in the region for the same period. Had Uber decided to cease its operations immediately without the Transaction, [REDACTED], and Uber would not have projected that [REDACTED].

68. CCCS notes that Uber's board presentation did not mention Uber exiting Singapore/Southeast Asia as a possible alternative scenario in the absence of the Transaction. In this regard, Uber submitted that there was no need to highlight to its board a situation where Uber exits Singapore, given that the board was simply asked to approve a transaction with Grab. Therefore, Uber asserted that its non-projection of an exit scenario does not mean that it intends to remain in Singapore.<sup>118</sup> However, CCCS is of the view that the Uber board, as fiduciaries of the company, owe a duty to act in the best interests of the company, and to give due consideration to all available commercial alternatives before making an important strategic decision for the company to enter into an M&A transaction. If an exit was a concrete option, it is only logical that Uber's board be presented with such a scenario and the associated costs and benefits *vis-à-vis* the Transaction. The complete absence of such a mention is consistent with Uber's submission that no decision was made on an imminent exit prior to the Transaction.

#### Grab's own counterfactual when its board deliberated on the Transaction

69. Similarly, in Grab's presentation to its board dated 2 March 2018, [REDACTED],<sup>119</sup> Grab quantified the benefits by projecting that under the "[REDACTED]" scenario, [REDACTED], while under the "[REDACTED]" scenario, [REDACTED].<sup>120</sup> These projections clearly indicate that Grab expected Uber to continue to compete with Grab until at least 2021, causing Grab to [REDACTED] under the "[REDACTED]" than the "[REDACTED]" scenario.
70. Grab submitted that it had to account for a scenario that Uber may remain in Southeast Asia and update its board on the difference in funding required, but this does not indicate that Grab considered Uber's exit to be unlikely. It has also submitted that Grab is not privy to Uber's internal documents. CCCS has noted Grab's submissions, but has considered that the need to account for such a scenario shows that Grab considered Uber's stay in Singapore a concrete possibility. On the contrary, Grab did not mention the possibility of an Uber exit even without the Transaction. In this regard, CCCS notes that Grab had to allocate 27.5% of its shares to Uber as consideration for the Transaction. If Grab had considered Uber's exit credible, it would have been the duty of Grab's board to duly consider such a scenario, as it would not have required Grab to offer 27.5% of its equity (worth [REDACTED])<sup>121</sup> to acquire its competitor, which would have exited.

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<sup>117</sup> Paragraphs 1.2, 1.3, 1.8 and 2.3 of USG's 25 June 2018 response to CCCS's 22 June 2018 section 63 Notice.

<sup>118</sup> Paragraph 16 of USG's 26 July 2018 Written Representations.

<sup>119</sup> Paragraph 1.1 of Grab's 25 June 2018 response to CCCS's 22 June 2018 section 63 Notice.

<sup>120</sup> Slide 30 of *Grab's Board Presentation [REDACTED] (2 March 2018)*, Annex 2 of Grab's 19 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>121</sup> Paragraph 28.1 of USG's 18 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

Uber's internal documents – monthly business updates, as of February and March 2018

71. In Uber's Singapore Monthly Business Update in February and March 2018,<sup>122</sup> CCCS notes that there was a multiplicity of business plans and projections that went beyond the Transaction date of 26 March 2018, including [REDACTED],<sup>123</sup> [REDACTED],<sup>124</sup> [REDACTED].<sup>125</sup> These indicate that, prior to the Transaction, Uber had already drawn detailed operational planning for at least [REDACTED] months of 2018.
72. In the same monthly business updates, Uber stated that [REDACTED]<sup>126</sup> and there had been [REDACTED]<sup>127</sup> and [REDACTED].<sup>128</sup> Such improvements in market conditions and business performance are inconsistent with the scenario that required an imminent exit by Uber.
73. CCCS notes Uber's submission that these business plans were prepared by local employees who were not privy to the senior executive discussions about the future of Uber's operations in Southeast Asia.<sup>129</sup> In the same vein, CCCS has also not received evidence from Uber showing that its senior management had taken the decision to shut down its Singapore operations in the absence of the Transaction. On the contrary, Uber's monthly business updates shows that the *decision makers* in Uber had at least contemplated sustaining Uber's operations in Singapore and is consistent with CCCS's finding that Uber would not have exited the Singapore market unless and until a strategic alternative has been found.
74. Further, CCCS notes from Uber's Singapore Monthly Business Update in January 2018,<sup>130</sup> that Uber's local employees projected that Uber was on track to obtain [REDACTED]% market share in Singapore by June 2018 subject to the revised spend target of \$[REDACTED] million. As shown in Table 1A, using a simple approximation, CCCS notes that the estimated funding projection by the local employees for the next [REDACTED] years for Singapore is at \$[REDACTED] million. This estimated figure by the local employees is in fact lower than CCCS's computed estimated funding required for Singapore at \$[REDACTED] million based on projection found in Uber's board update. As such, CCCS is of the view that the funding projection for Singapore for the next [REDACTED] years by both the local team and global team is broadly consistent – i.e. Uber will continue to invest heavily in Singapore.

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<sup>122</sup> Annex AI of USG's 23 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>123</sup> Slides 22 and 29 of Annex AI of USG's 23 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>124</sup> Slides 2 and 16 of Annex AI of USG's 23 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>125</sup> Slide 30 of Annex AI of USG's 23 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>126</sup> Slide 2 of Annex AI of USG's 23 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>127</sup> Slide 24 of Annex AI of USG's 23 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>128</sup> Slide 2 of Annex AI of USG's 23 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>129</sup> Paragraph 14 of USG's 26 July 2018 Written Representations.

<sup>130</sup> Slide 39 of Annex AI of USG's 23 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

**Table 1A: Estimated Funding Forecast for Uber<sup>131</sup>**

	Funding for Southeast Asia Region	Estimated % of funding's for Singapore (based on % of revenue)	Estimated Funding for Singapore in 2018 H1	Estimated Funding for Singapore for the next [X] years
<b>Funding projection for Singapore by local employees</b>	[\$X]million	[X] %	[\$X] million	[\$X] million <sup>132</sup>
<b>Estimated funding projection for Singapore based on board update</b>	[\$X]million	[X] %	[\$X] million	[\$X] million <sup>133</sup>

Uber's strategic alternative – collaboration with CDG, since January 2018

75. CCCS notes that Uber's collaboration with CDG pre-Transaction ("CDG Collaboration"), which commenced in January 2018 (and which, as of 25 May 2018, has since been terminated post-Transaction), indicates that Uber would likely have continued to compete and exert significant constraints on Grab in the absence of the Transaction. In particular, the CDG Collaboration entailed a long term plan [X].<sup>134</sup>
76. As submitted in Uber/CDG's Form 1 submissions to CCCS, the rationale of the CDG Collaboration [X].<sup>135</sup> Pursuant to the CDG Collaboration, and shortly before the Transaction, Uber had launched a new service known as the UberFlash service on 19 January 2018, which is similar to Grab's JustGrab service. The launch of a complex new service does not indicate that an imminent market exit was contemplated by Uber, and was in fact seen by Grab as a competitive threat as it expected its market share to [X].<sup>136</sup> Uber had further stated in a press release that they expected UberFlash to have an overall positive impact and "further [boost] [Uber's] confidence in continuing [their]

<sup>131</sup> Slide 39 of Annex AI of USG's 23 May 2018 response to CCCS's 7 May 2018 section 63 Notice; Slide 4 of Annex 10 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Slide 26 of [X] Financial due diligence report (13 March 2018), Annex 2 of Grab's 19 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>132</sup> [\$X] million x [X] = [\$X] million

<sup>133</sup> [\$X] million x [X]% = [\$X] million.

<sup>134</sup> Paragraph 3.1 of the Collaboration Agreement.

<sup>135</sup> Paragraph 13.9 of Form 1 dated 11 December 2017 filed by Uber and CDG in relation to their Application for Decision under sections 44 and 51 of the Act.

<sup>136</sup> Slide 7 of 3Q2017 Board Meeting, Annex 1 of Grab's 25 May 2018 response to CCCS's 7 May 2018 section 63 Notice.



*investment and momentum in Singapore for the long term.*”<sup>137</sup> Subsequently, on 25 February 2018, Uber issued a press release providing positive updates on the take-up of UberFlash, including a statement requesting the public to “*watch [the] space for more UberFLASH announcements in the coming months, as [Uber] improve[s] Singapore’s transport landscape...*”<sup>138</sup> Indeed, portions of Uber’s most recent strategy documents [§].<sup>139</sup> [§].<sup>140</sup>

77. CCCS further notes that Uber had also later on launched a new service known as UberCommute on 13 March 2018, as part of its “[*commitment to being part of [the Singapore car-lite] vision.*”<sup>141</sup> In this regard, internal strategy documents do not suggest the business was unsustainable. [§].<sup>142</sup> [§].<sup>143</sup>
78. While the Parties have highlighted that the introduction of UberFlash and UberCommute was made not at significant cost,<sup>144</sup> CCCS notes that in addition to time and resources expended by Uber’s local management and operational staff, it is likely that not an insubstantial amount of capital investment had been contemplated for such pre-Transaction launches. In relation to the CDG Collaboration for instance, Uber had to, [§]<sup>145</sup> – such costs being in addition to other related costs such as those required for the engagement of lawyers, any filings or correspondence with local regulatory authorities, and time spent on negotiations with CDG. Thus, CCCS is of the view that the totality of these pre-Transaction launches and plans lend weight to the finding that Uber would not have left the Singapore market in the near to medium term in the absence of the Transaction. This is consistent with the corporate statement of intent from Uber’s CEO (in his email to Uber staff explaining the rationale for the Transaction) that in lieu of competing with Grab in Southeast Asia, Uber will be participating in Grab’s growth through the 27.5% equity stake obtained in consideration for Uber exiting the markets in Southeast Asia: “*After investing \$700 million in the region, we will hold a stake worth several billion dollars, and strategic ownership in what [Uber believes] will be the winner in an important global region.*”<sup>146</sup>
79. Uber submitted that the [§] [“§”].<sup>147</sup> It further submitted that even if a solution could be found to make its business sustainable in a single jurisdiction, it was looking at the future of its Southeast Asia operations as a whole.<sup>148</sup> In this regard, while the CDG

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<sup>137</sup> *Uber & ComfortDelGro’s New Service Lets You Get a Ride in a Flash*, Uber, 17 January 2018 (<https://www.uber.com/en-SG/newsroom/uber-comfortdelgros-new-service-lets-get-ride-flash>); *UberFLASH is arriving now*, Uber, 18 January 2018 (<https://www.uber.com/en-SG/blog/uberflash-is-arriving-now/>).

<sup>138</sup> *UberFLASH Gains Good Momentum with Riders and Drivers*, Uber, 25 February 2018 (<https://www.uber.com/en-SG/newsroom/uberflash-gains-good-momentum-riders-drivers/>).

<sup>139</sup> See generally, Annex AI of USG’s 23 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>140</sup> Slides 9 to 11 and 36 of Annex AI of USG’s 23 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>141</sup> *UberCommute Launches in Singapore*, Uber, 13 March 2018 (<https://www.uber.com/en-SG/newsroom/uber-commute-launches-singapore>).

<sup>142</sup> Slides 2 and 3 of Annex AI of USG’s 23 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>143</sup> Slide 2 of Annex AI of USG’s 23 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>144</sup> Paragraph 111 of USG’s 4 April 2018 Written Representations; Pages 49 and 50 of Grab’s 14 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

<sup>145</sup> Clauses 2.4, 2.5 and 7 of the Collaboration Agreement.

<sup>146</sup> *A New Future for Uber and Grab in Southeast Asia*, Uber, 25 March 2018 (<https://www.uber.com/en-SG/newsroom/uber-grab>).

<sup>147</sup> In particular, [§].

<sup>148</sup> Paragraphs 18 to 19 of USG’s 26 July 2018 Written Representations.

Collaboration is Singapore-specific, and may not on its own determine the sustainability of Uber's regional operations, CCCS nonetheless considers that the CDG Collaboration was an important strategic step that was consistent with Uber's overall strategy to sustain its operations in Singapore until a solution could be found. The CDG Collaboration does not indicate that Uber was likely to exit in the immediate term absent the Transaction. In particular, Uber submitted that the [X] were included in the [X] because Uber had been in negotiation with Grab. This means that in the absence of the Transaction with Grab, the [X] would carry little significance, and would not otherwise indicate that Uber is likely to exit Singapore. Instead, these clauses support CCCS's view that Uber would have continued to carry out its Singapore business as usual while exploring strategic commercial options concurrently.

80. CCCS also notes the Parties' submission that Uber's introduction of new products and initiatives such as UberFlash and UberCommute were also aimed at increasing the value of Uber's business to a (potential) buyer,<sup>149</sup> illustrating Uber's strategy to effect a potential sale of Uber's business by continuing to operate to increase the value of Uber's business in the event of a sale.

Uber's strategic alternative – [X]

81. Internal documents provided by the Parties indicate that, [X],<sup>150</sup> [X].<sup>151</sup> [X].<sup>152</sup> [X]:<sup>153</sup>
- a. [X];
  - b. [X];
  - c. [X]; and
  - d. [X].
82. Further, Uber's internal documents suggest that Uber expected [X] to reduce its loss, as compared to a scenario where it continues to operate in Southeast Asia on a standalone basis. Uber estimated that its EBITDA for 2018 and 2019 following a merger with [X] would be about US\$[X]m whereas the EBITDA that Uber expected to earn if it operated on a standalone basis was estimated at US\$[X]m (see Table 1B).

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<sup>149</sup> Pages 49 and 50 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

<sup>150</sup> [X].

<sup>151</sup> Slides 2, 6 and 7 of Annex 8 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>152</sup> Slide 2 of Annex 8 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice; and Slide 4 of Annex 10 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>153</sup> Slide 6 of Annex 8 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

**Table 1B: Forecast EBITDA for Uber under different scenarios<sup>154</sup>**

	Uber/Grab merger	[X]	Uber standalone (Hold CP)	Uber standalone (Gain CP)
<b>Estimated EBITDA for 2018 and 2019 (US\$m)</b>				
<b>Uber</b>	<i>Deliberately left blank.</i>	<i>Deliberately left blank.</i>	[X]	[X]
[X]	[X]	<i>Deliberately left blank.</i>	[X]	[X]
<b>Grab</b>	<i>Deliberately left blank.</i>	[X]	[X]	[X]
<b>Merged company</b>	[X]	[X]	<i>Deliberately left blank.</i>	<i>Deliberately left blank.</i>
<b>Proportion of EBITDA attributed to Uber (US\$m)</b>				
<b>Uber share<sup>155</sup></b>	[X]	[X]	[X]	[X]

83. Uber submitted that from its point of view, [X] was far from a foregone conclusion. In this regard, [X] has also submitted that [X].<sup>156</sup> However, CCCS considers that Uber’s negotiation with [X] is consistent with its broad strategy to continue its operations in the Southeast Asia region, while concurrently exploring various strategic options. [X] was one such option that was sufficiently concrete to be presented to the Uber board as a “*strategic alternative*”, even though it did not materialise.

The opinion of the Parties’ economic consultant on the counterfactual

84. CCCS notes that CRA, the economic consultant engaged by the Parties, takes the view that “*it is not realistically possible to identify one specific counterfactual that would have come to pass in the absence of this deal between Grab and Uber*”. However, it also opines that “[*r*]ather than exiting by simply shutting down operations, it was natural for Uber to seek to realise value for some of its goodwill and initial investment by selling to a third party”, and that “[*t*]here were however a range of possible outcomes if it had failed to agree terms with Grab. It might have opened (or re-opened) negotiations with [X] or with some other new entrant. Alternatively, it might have decided to [‘]wait and see[’] a bit longer, stemming losses in the near term by softening promotions and incentives”.<sup>157</sup>
85. CRA’s view is largely consistent with CCCS’s finding that in the absence of the Transaction, Uber would not have exited ‘barefoot’, but would instead continue its operations while exploring strategic commercial alternatives, until a solution was found.

<sup>154</sup> Slide 11 of Annex 8 of Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>155</sup> ‘Uber share’ for the merger cases is determined by multiplying the EBITDA of the merged company with Uber’s proportion of ownership, which is 27.5% for the Uber/Grab merger, and [X]% for the [X]. Assumptions underlying the scenarios were not provided.

<sup>156</sup> Paragraph 3 of [X].

<sup>157</sup> Section 3.2 of CRA’s 26 July 2018 Report.

### Third-party feedback

86. In addition, third-party feedback from the Parties' competitors, potential competitors, customers and rental partners indicates an expectation that the Singapore market would be able to accommodate more than one (1) major player sustainably;<sup>158</sup> though some third parties also commented that consolidation would happen in the long run.<sup>159</sup>
87. In this regard, Uber submitted that third parties are not privy to its decision making process and their views are therefore pure speculation.<sup>160</sup> In this regard, CCCS notes that there is insufficient evidence to support third-party submissions that consolidation would happen in the long run. However, third-party feedback that the Platform Market can sustain more than one (1) major player is consistent with the Parties' own submissions,<sup>161</sup> and supports CCCS's finding under the Counterfactual that, regardless of the strategic option that Uber might eventually have taken in the absence of the Transaction, there would have been no loss of close rivalry between the Parties in the immediate term.

### Conclusion on the counterfactual

88. After careful examination of the evidence above, CCCS concludes that, in the absence of the Transaction, Uber would not have exited Singapore 'barefoot'. Instead, Uber would have remained in operation in Singapore, while exploring other strategic commercial options, such as collaboration with another market player, or a sale to an alternative buyer. Importantly, regardless of which strategic option that Uber might eventually have taken under the Counterfactual, there would have been no loss of close rivalry between the Parties in the immediate term. The prevailing situation prior to the merger would have continued. There is no demonstrable evidence of any other counterfactual to the one used by CCCS, nor does CRA put forward any alternative that CRA says is more likely.

### Price levels under the counterfactual

89. The Parties submitted that prices were increasing prior to the Transaction, which is inevitable given that the Pre-Transaction prices were unsustainable. Any increase in

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<sup>158</sup> Paragraph 34 of [REDACTED]; Paragraph 35 of [REDACTED]; Paragraph 40.1 of [REDACTED]; Paragraph 17 of [REDACTED]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraph 14 of [REDACTED]'s 5 June 2018 response to CCCS's 4 June 2018 section 63 Notice; Paragraph 17 of [REDACTED]'s 6 June 2018 response to CCCS's 30 May 2018 section 63 Notice; Paragraph 17 of [REDACTED]'s 1 June 2018 response to CCCS's 30 May 2018 section 63 Notice; Paragraph 17 of [REDACTED]'s 10 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraph 34 of [REDACTED]'s 30 May 2018 response to CCCS's 11 May 2018 section 63 Notice; Paragraph 14 of [REDACTED]'s 28 May 2018 response to CCCS's 23 May 2018 section 63 Notice; Paragraph 10 of [REDACTED]'s 3 May 2018 response to CCCS's 26 April 2018 section 63 Notice; Page 5 of [REDACTED]'s 5 June 2018 response to CCCS's 30 May 2018 section 63 Notice; Paragraph 14 of [REDACTED]'s 6 June 2018 response to CCCS's 5 June 2018 section 63 Notice; Paragraph 14 of [REDACTED].

<sup>159</sup> Paragraph 17 of [REDACTED]'s 10 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraph 34 of [REDACTED]'s 30 May 2018 response to CCCS's 11 May 2018 section 63 Notice; Paragraph 14 of [REDACTED]'s 6 June 2018 response to CCCS's 4 June 2018 section 63 Notice; Paragraph 14 of [REDACTED]'s 11 June 2018 response to CCCS's 4 June 2018 section 63 Notice; Paragraph 14 of [REDACTED]'s 28 May 2018 response to CCCS's 23 May 2018 section 63 Notice; Paragraph 10 of [REDACTED]'s 3 May 2018 response to CCCS's 26 April 2018 section 63 Notice; Page 5 of [REDACTED]'s 5 June 2018 response to CCCS's 30 May 2018 section 63 Notice.

<sup>160</sup> Paragraph 17 of USG's 26 July 2018 Written Representations.

<sup>161</sup> Paragraph 4 of Grab's 26 July 2018 Written Representations; Paragraphs 68 to 73 of USG's 26 July 2018 Written Representations; Page 8 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

prices is therefore a reflection of the commercial unsustainability of the previous discounts and incentives, and not due to an SLC brought about by the Transaction.<sup>162</sup>

90. In this regard, CCCS notes that the commercial considerations behind whether to maintain effective price (i.e. trip fares and driver commission net of promotions and incentives respectively) at below-cost levels, and for how long, are complex. For example, it may be of strategic value to invest in the acquisition of a user base for future expansion into other businesses such as food delivery and electronic payment. When cross-subsidies are involved in a platform offering multiple services, the allocation of cost is also complicated. CCCS further notes that the CRA Report did not state any particular price level to be expected under any counterfactual. As such, CCCS has used the Parties' own projection of funding and [X] under the "[X]" scenario in estimating the effective price level in the Counterfactual. This reflects the Parties' own view of the expected price levels in the absence of the Transaction. CCCS has not made any conclusions whether pre-Transaction discounts and promotions were sustainable or not.

#### **D. RELEVANT MARKETS**

91. Market definition in the context of the section 54 prohibition serves two (2) purposes. First, market definition analysis assists in the identification of the scope of competitive constraints under which the merged entity will operate, in order to properly examine the competitive effects of a merger.<sup>163</sup> Second, where liability has been established, market definition can help to determine the turnover of the business of the undertaking in Singapore for the relevant product and relevant geographical markets that are affected by the infringement and therefore, the appropriate amount of penalty.<sup>164</sup>
92. In assessing a merger, the main competitive concern is whether the merger will result in an SLC whereby the merged entity has an increased ability to raise prices above the prevailing level. As a result, in defining the market for mergers that have not been completed, the relevant price level is the current price rather than the competitive price.<sup>165</sup> In this case, CCCS notes that the merger has already been completed. The relevant price level would therefore be the prices that would prevail in the absence of the Transaction. Market definition focuses attention on the areas of overlap in the merger parties' activities.<sup>166</sup>

#### *Parties' submissions*

93. The Parties submitted that there is a broad range of intra-city transportation options available in Singapore. Within this broad landscape in Singapore, the Parties are technology companies, offering data and software services to (i) match riders and drivers; (ii) optimise dispatch efficiency (low wait/drive times) and dynamic prices to encourage strong trip volume growth; and (iii) to balance the supply and demand for trips as much

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<sup>162</sup> Paragraphs 4.38 to 4.39 of Grab's 26 July 2018 Written Representations; Paragraphs 3.1 to 3.2 of Grab's 6 September 2018 Written Representations; Paragraphs 5.2 and 5.3.2 of Grab's 3 September 2018 Written Representations; Paragraph 110 of USG's 4 April 2018 Written Representations.

<sup>163</sup> Paragraph 5.2 of the CCCS *Guidelines on the Substantive Assessment of Merger 2016*.

<sup>164</sup> Paragraph 2.1 of the CCCS *Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*.

<sup>165</sup> Paragraph 5.3 of the CCCS *Guidelines on the Substantive Assessment of Merger 2016*.

<sup>166</sup> Paragraph 5.5 of the CCCS *Guidelines on the Substantive Assessment of Merger 2016*.

as possible. Riders receive transportation services from the Parties' third-party driver partners. These drivers either were previously or are concurrently engaged in a wide range of other occupations and are responsible for supplying their own vehicles, whether CPHCs or taxis. The vehicle supply-chain consists of multiple segments including rentals and self-supply (i.e. drivers making use of their own private vehicles).<sup>167</sup>

94. The Parties submitted that the overlapping service provided by Grab and the Acquired Uber Assets in Singapore is the provision of a matching platform for intra-city passenger transport services which competes with all other transportation options.<sup>168</sup> Specifically, the booking platform relates to a software solution that handles the dispatch of CPHC and taxi drivers, matching consumers requiring intra-city transportation services (riders) with independent drivers. The software solution is available on a mobile app that is compatible with the main operating systems.<sup>169</sup>
95. The services are provided to individuals or corporate customers who need intra-city transportation services in Singapore. The other customer group are driver-partners who use the services to provide intra-city transportation services as a source of income.<sup>170</sup>
96. The Parties submitted that the nature of booking services for intra-city transportation is that it involves a two-sided platform, in that they bring together two (2) categories of users (namely, riders and drivers) in which the value that each category of user gets from the service depends on the presence of the other. This follows because (i) riders will only use a booking service if there are enough drivers to provide rides in a timely manner; and (ii) drivers will only sign up to a booking service if there is sufficient demand (i.e. riders to use their services).<sup>171</sup>

#### Product market: Rider-side

97. The Parties further submitted that consumers in need of intra-city transportation services can choose from a broad range of transportation options with different business models that operate at different price/quality/convenience points. These include (but are not limited to) consumers' own private cars, CPHCs, taxis, public transportation services such as public and private buses, shuttle coaches, MRT trains and LRT trains, social carpooling, and bike sharing. Although these options differ in various respects, they all perform the same fundamental function of conveying travelers from point A to point B.<sup>172</sup>
98. The Parties submitted that the relevant question for market definition on the rider side of the market is therefore whether consumers meaningfully substitute between these options and the Parties submitted that this is indeed the case.<sup>173</sup> The Parties hence took the view that the relevant product market on the rider side is for intra-city transportation services comprising at least CPHCs, taxis, private car usage and all modes of public

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<sup>167</sup> Paragraphs 18.1 and 18.2 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>168</sup> Paragraph 15.1 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>169</sup> Paragraph 19.2 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>170</sup> Paragraph 19.4 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>171</sup> Paragraph 20.1 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>172</sup> Paragraph 19.5 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>173</sup> Paragraph 19.6 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

transportation. In other words, it includes, without limitation, buses, shuttle coaches, private cars, taxis and CPHCs, MRT, and LRT, and also social carpooling and bike-sharing services. The Parties are also further constrained by riders' ability to substitute intra-city transportation services with their own private vehicles and conversely, the Parties aim to persuade an ever growing number of car owners to use ride sharing for certain trips and eventually forego car ownership altogether. The Parties submitted that private car ownership constitutes an important constraint on existing market players within the transport space.<sup>174</sup>

99. The Parties also stressed that there can be significant competitive interaction between services even if they operate at different price points. This is because, when choosing between different transportation options, consumers will consider a range of factors as well as price such as comfort, speed and convenience.<sup>175</sup>
100. The Parties noted that CCCS had in the IMD expressed some scepticism about whether public transportation competed with CPHC services. CCCS had stated that public transportation options "*may not be sufficiently close substitutes*" as a result of their technical characteristics (in particular, the fact that they are not "*chauffeured, point-to-point, on demand*" and that CPHC/taxi trips tend to have "*a shorter travel duration*").<sup>176</sup> In response, the Parties noted that markets are not defined on the basis of technical or functional differences between products. Technical characteristics and functionalities matter only to the extent that they influence consumers' willingness to switch between transport modes. The Parties submitted that consumers can and will switch to public transportation in significant numbers in response to relative price changes. Indeed, they are more likely to switch to public transportation than any other alternative mode.<sup>177</sup>
101. The Parties further noted that CCCS had stated that public transportation may not be a close substitute "*for commuters who value accessibility, time, and comfort*". In response, the Parties submitted that while there will be *some* consumers who place such value on these characteristics such that they would not switch to public transportation, this is not the relevant question for market definition. The relevant question is whether it would be possible to price discriminate according to the value consumers place on these product characteristics, and it would not be possible as long as there is a sufficiently large volume of consumers who are sufficiently "*close to the margin*" that they will switch to public transportation in response to a price increase.<sup>178</sup>
102. The Parties submitted that with the introduction of ridesharing services in Singapore, the average daily ridership for taxi trips fell marginally from 967,000 in 2013 to 954,000 in 2016 and fell further to 785,000 in 2017. Ridesharing trips grew far more than the decline in taxi trips.<sup>179</sup> The Parties submitted that this is, in itself, evidence that these services compete with a broad range of incumbent transportation options beyond other CPHC operators and taxi operators. Rather than simply "*reallocating*" trips previously taken by

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<sup>174</sup> Paragraph 20.5 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>175</sup> Paragraph 19.17 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>176</sup> Paragraph 20.9 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>177</sup> Paragraph 20.10 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>178</sup> Paragraph 20.11 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>179</sup> Paragraph 20.12 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

taxis, CPHCs have expanded the market significantly by competing for trips that were either taken by other modes of transport, or would not otherwise have been taken at all.<sup>180</sup>

103. In a less than a two-year period, both Uber and Grab have seen trip volumes either triple or quadruple. Given that the number of taxi trips in Singapore has not fallen by the same amount, and in fact, bus and rail ridership rose by 4.3% from 2015 to 2016, and inched up 0.7% from 2016 to 2017, the Parties submitted that it is clear that CPHC services are competing with, and winning share from, other transportation providers (i.e., non-taxi operators) and private car usage.<sup>181</sup>

#### Taxis vs CPHCs

104. The Parties submitted that taxis operate at a similar price/quality point to CPHCs and offer a substitutable service. This is underlined by the fact that almost half the respondents of the Public Transport Council (“**PTC**”) Point-to-Point Transport Services Customer Satisfaction Survey 2016 indicated that they had no preference between taxis and CPHCs, underscoring the ability of both types of service to serve passenger and driver needs. The results of a YouGov survey in October 2015 also reflected the close substitutability between taxis and CPHCs for consumers – 29% and 23% indicated that they would take the cheaper or more available option, respectively. Larger taxi companies such as CDG also provide a booking app for their taxi dispatch service, offering customers greater ease and convenience in booking a taxi.<sup>182</sup>

#### Public transportation vs CPHCs<sup>183</sup>

105. The Parties submitted that the high quality of Singapore’s public transportation system and its continued improvement underline the strength of public transport as a close substitute for a wide range of trips to CPHCs. In the recent Committee of Supply 2018 debates, Minister for Transport Mr. Khaw Boon Wan (“**Minister Khaw**”) stated in his speech that there would be significant expansions to the existing public transportation network. In relation to the rail network, the Ministry of Transport (“**MOT**”) was planning to expand the length of the rail network to 360km, and the number of stations to 270, with additional lines such as the Thomson-East Coast Line, Jurong Region Line and Cross Island Line. With regard to public buses, through the S\$1.1 billion Bus Service Enhancement Programme, approximately 1,000 new buses were added to the existing fleet, with 80 new routes, in addition to the building and upgrading of new depots and interchanges or bus terminals.
106. Minister Khaw also stated that the peak hour public transport mode share in 2017 was 67%, with the aim to reach 75%, while taxi and private hire cars stood at only 5%. Furthermore, both Minister Khaw and Second Minister for Transport Mr. Ng Chee Meng expounded on the emergence of autonomous vehicle technology, during which Minister Ng specifically raised the example of Singapore Technologies Kinetics, which has partnered the MOT and the Land Transport Authority (“**LTA**”) to provide autonomous buses and shuttles. The LTA has since awarded contracts to Ministry of Movement Pte. Ltd. and Via Transportation, Inc. to carry out trial testing for on-demand bus services so

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<sup>180</sup> Paragraph 20.15 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>181</sup> Paragraph 20.16 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>182</sup> Paragraph 19.8 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>183</sup> Paragraphs 19.9 to 19.15 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.



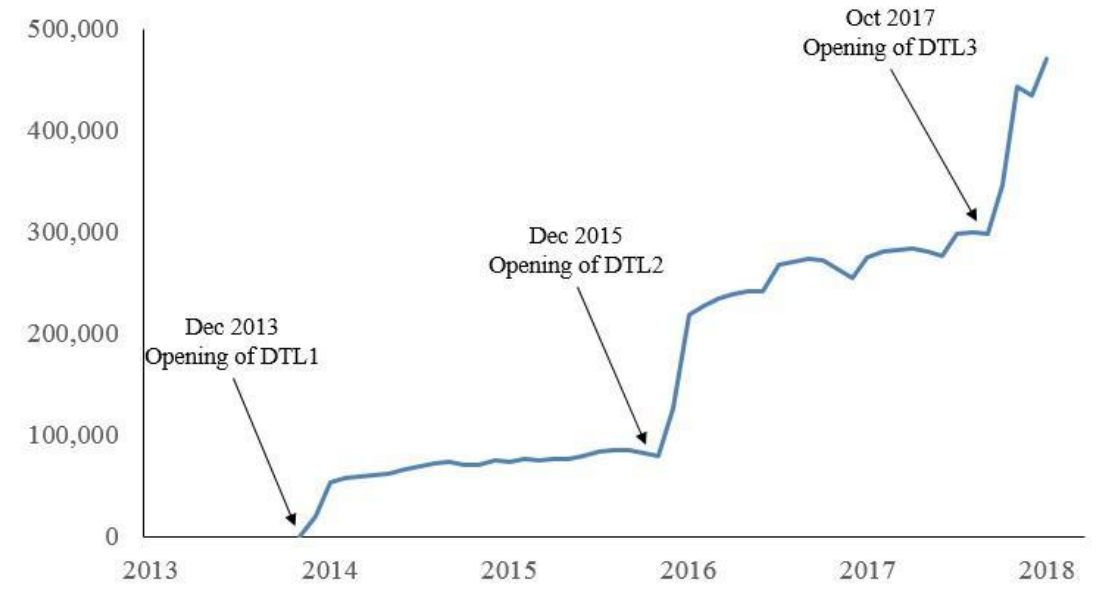
as to reduce the number of fixed-route buses. The Parties further noted initiatives by the LTA to improve train and bus services in Singapore, as recognised in the LTA's Annual Report 2016-2017:

*“Going forward, the key is to **make public transport as good a choice as any other transportation mode**. The LTA is also paying close attention to two areas - enhancing the reliability of rail and bus systems, and improving the infrastructure, including a transnational network”. (emphasis added)*

107. The Parties submitted that the following initiatives in particular have improved the quality, coverage, and accessibility of existing bus and train services, making them even closer substitutes for CPHCs:
- a. the increase in MRT coverage (in particular with the opening of Stages 2 and 3 of the Downtown Line in December 2015 and October 2017, respectively) has led to reduced travelling times by consumers;
  - b. the expansion in the bus network through the bus contracting model will see more coverage and routes available to consumers and shorter average wait times;
  - c. the introduction of more parallel bus services to connect major HDB towns to the city area via the expressways;
  - d. to support the public bus industry's transition to the bus contracting model pursuant to which operators have to meet higher service reliability standards, the launch of the Singapore Bus Academy on 17 October 2016, as a centralised academy to offer enhanced training to all bus professionals;
  - e. along a similar vein, the launch of the Singapore Rail Academy on 23 February 2017 to build and deepen local rail engineering and research capabilities, certify the proficiency of railway professionals and promote careers in the rail industry;
  - f. the improvements made to bus and train systems to make them disabled-friendly;
  - g. the addition of 200 km of covered linkways island-wide under the LTA's Walk2Ride programme to connect public transport nodes to nearby schools, public amenities and residential developments, due to be completed by 2018; and
  - h. the introduction of the MyTransport.SG mobile application with features allowing consumers to plan their journeys efficiently between all modes of land transport including trains and buses, and includes real time information on bus arrivals, amongst others.
108. Arising from this, bus and rail ridership has increased by 4.3% from 2015 to 2016, with the MRT and LRT posting 8.3% growth to 3.3 million rides a day, close to the 3.9 million daily average rides recorded by public buses in 2016. Bus and rail ridership inched up a further 0.7% from 2016 to 2017. The opening of Stage 3 of the Downtown Line

(“DTL3”), which improved MRT coverage and accessibility, has led to a steady increase in daily weekday ridership on the Downtown Line. According to the LTA, Downtown Line ridership has grown by more than 50% from 300,000 to 470,000 per weekday after the opening of DTL3, with the figure expected to cross 500,000 by the end of 2018. Figure 1 below reflects the steady increase of Downtown Line daily weekday ridership.

**Figure 1: Downtown Line Daily Weekday Ridership<sup>184</sup>**



109. Grab further submitted that it had experienced [X].<sup>185</sup>

[X]

110. Construction of the Thomson-East Coast Line, Circle Line 6 and North East Line extension is currently underway and will expand MRT coverage further and improve accessibility to MRT stations. The LTA has also begun planning for two (2) more new rail lines – the Cross Island Line and the Jurong Region Line. The LTA’s goal is to have eight (8) in every 10 households within a 10-minute walk from a train station by 2030. With the opening of the DTL3 doubling the number of households within a 10-min walk from a station in Tampines and Bedok, and increasing the number of Singapore households within a 10-min walk from a MRT station from 60% to 64%, the LTA is one step closer to achieving this goal.

111. The Parties further submitted that the impact of public transportation shutdowns on demand for their services (resulting in “spikes” in demand) provide compelling, Singapore-specific evidence of significant competitive interaction between CPHC services, taxis and public transportation consistent with a broad market definition on the rider side of the market. The Parties argued that the fact that consumers switch from public transport to the Parties in significant numbers when public transportation is

<sup>184</sup> *Ridership Grew 50% Since Downtown Line 3 Opening*, LTA, 10 February 2018 (<https://www.lta.gov.sg/apps/news/page.aspx?c=2&id=943e1050-4fb0-4444-bead-dfdd2bccf89a>).

<sup>185</sup> Paragraph 5.1 of Grab’s 25 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

unavailable is consistent with significant competitive interaction between these providers.<sup>186</sup> The Parties also noted that “*natural experiments*” which examine reactions to a sudden lack of availability of one option are often described as equivalent to an “*infinite*” increase in the price of that option and as such, are not informative of consumers’ reactions to the 5 to 10% price increase which is the standard benchmark for market definition. However, the Parties submitted that episodes where public transport was unavailable are still informative about the distribution of consumers’ preferences.<sup>187</sup>

112. The Parties also submitted that the recent expansion of the public transportation network in Singapore represents a significant competitive constraint on pricing. Post-Transaction reactions from commuters showed that there was strong likelihood of reverting to public transportation should the fear of private hire car fare increases eventuate.<sup>188</sup>
113. The Parties further cited a survey commissioned by Uber and [X] (“**Uber Survey**”), examining how consumers view different transportation options and how they would respond to hypothetical price increases. The headline results indicated that ridesharing services face significant competitive constraints in Singapore not just from traditional taxis, but also broader transportation options. Users of one party’s service are more likely to identify public transport as their “*next best alternative*” than they are the other merging party.<sup>189</sup>

#### Private car ownership vs CPHC

114. The Parties submitted that the ability of many consumers in Singapore to travel by private car constitutes an additional competitive constraint on CPHC and ride-hailing services, and that the available evidence indicates that the rise of CPHC services around the world has, and will, increasingly disrupt the automobile manufacturing industry by reducing private car usage and ultimately ownership, consistent with significant competitive interaction between these segments.<sup>190</sup>
115. The Parties cited a 2017 survey of Londoners commissioned by Uber and conducted by YouGov, which found that 43% of respondents saw app-based services as an alternative to owning a car. The same study found that 22% of respondents who owned a car then would consider abandoning it if app-based services became more easily available.<sup>191</sup> Similarly, a survey conducted in the United States found that a significant proportion (9%) of consumers who sold, traded in, or gave away their existing personal vehicle in the past chose not to replace it and relied on ridesharing options instead as their primary means of getting around town.<sup>192</sup>
116. In the Singapore context, the Parties submitted that there is evidence that increased use of app-based CPHC services is contributing to declines in industries related to car ownership and usage. The Parties submitted that, for example, it has been reported that

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<sup>186</sup> Paragraph 20.17 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>187</sup> Paragraph 20.20 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice

<sup>188</sup> Paragraph 20.23 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>189</sup> Paragraph 20.7 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>190</sup> Paragraph 20.24 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>191</sup> Paragraph 20.26 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>192</sup> Paragraph 20.27 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

operators of airport car parks are increasingly concerned that increased use of ridesharing services is reducing their revenues as private car use declines. As Singaporeans increasingly turn to ridesharing services, car sales in Singapore are predicted to plunge in 2018, with commercial and passenger vehicle registrations forecast to drop by 20% and 6.5%, respectively.<sup>193</sup>

#### Other transport services vs CPHC

117. The Parties considered that car-sharing services, on-demand bus services, biking and bike-sharing initiatives and social carpooling services can substitute existing public transport services.<sup>194</sup>
118. Social carpooling is typically cheaper than CPHC options, as the rider is only supposed to pay the driver for costs incurred as part of the ride. With the partnership between social carpooling service providers, such as Ryde, and taxi operators, such as CDG, social carpooling users have access to privately-owned vehicles driven by social carpoolers and Comfort Transportation Pte. Ltd. (“**Comfort**”) and CityCab Pte. Ltd. (“**CityCab**”)’s taxi fleet representing approximately 57% of the total number of Singapore taxis in December 2017.<sup>195</sup>

#### Product market: Driver-side

119. On the driver side, the Parties submitted that they compete for drivers in a broad labour market and are significantly constrained by the need to ensure that their services remain attractive relative to other occupations.<sup>196</sup> The Parties further submitted that drivers are recruited from a wider labour market, and not just from the pool of professional drivers. The choice to become a CPHC driver is dependent upon the financial return from driving as an occupation and other benefits from all the options available to the driver. If the returns from driving a vehicle to provide passenger transportation services were to decrease materially, this would dissuade potential drivers from choosing this occupation and they would instead seek other labour market opportunities.<sup>197</sup> The Parties submitted that the fact that drivers are recruited from a broad labour market and switching costs are low means that driver supply will tend to be highly elastic to the level of earnings and that driver earnings are inherently self-equilibrating.<sup>198</sup> The Parties further cited the exponential growth of CPHC services in Singapore, in which the number of rental cars (a portion of which are used for CPHC services) had risen by more than the decline in taxi population over the period of December 2014 to December 2017, to illustrate that drivers are recruited from a broad labour market pool rather than from individuals, such as taxi and limousine drivers, with previous professional driving experience.<sup>199</sup>

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<sup>193</sup> Paragraph 20.28 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>194</sup> Paragraph 20.31 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>195</sup> Paragraph 19.16 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>196</sup> Paragraph 20.33 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>197</sup> Paragraph 19.7 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>198</sup> Paragraph 20.34 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>199</sup> Paragraph 20.33.3 of the Parties’ 20 April 2018 response to CCCS’s 16 May 2018 section 63 Notice.

### Geographic market

120. The Parties submitted that the relevant geographic market is national in scope, i.e. Singapore-wide. This follows because Singapore is sufficiently compact that transport providers (and, in particular taxi and CPHC drivers) can quickly respond to geographic price differentials. A price increase in a particular area of Singapore would cause drivers from other areas to quickly shift to the high-price area, catering to any excess demand and driving the price down again.<sup>200</sup> A hypothetical monopolist of CPHC trips could not profitably increase prices in a single area of Singapore, even if that area is underserved by public transport. CPHC drivers in Singapore are still able to shift freely to any area in the city and public transport is general available in all areas in Singapore.<sup>201</sup>
121. In addition, Uber charges [X]. For riders, Uber's algorithm [X]. Grab's pricing methodology generally comprises [X]. The fact that the fares for travelling to different locations vary based on the algorithm does not mean that there are different geographic markets as the algorithm takes into account the different costs of providing services to different areas equally (i.e. the same algorithm applies).<sup>202</sup>
122. The submission that the market is national in scope is also supported by the fact that all transportation options in Singapore are regulated by the LTA with uniform approaches to factors such as permits and licences.<sup>203</sup>

### *CCCS's assessment*

123. As a starting point, the relevant question for market definition is not the number of consumers who switch between different products (if switching occurs at all), but instead, whether such switching (if any) in the context of the existence of close substitutes (if any) is sufficient to constrain a profitable increase in price of the focal product.<sup>204</sup> Closely related to this point is that market definition is not a binary cut-off exercise. While CCCS applies the framework of the hypothetical monopolist test to arrive at a defined relevant market which serves as the base case for competition assessment, the reality is that there is a spectrum of various closeness of substitution across different products. CCCS will also take the closeness of substitution across different products into account in its competition assessment.
124. Based on the competition issues identified at paragraph 55 above, in evaluating the impact of the Transaction, CCCS proceeds to define the relevant markets by identifying (i) the focal product based on the horizontal overlap between the services provided by the Parties; (ii) substitutes to the focal product; (iii) vertically-related products to the focal product; and (iv) substitutes to the vertically-related products.

### The focal product

125. CCCS is of the view that the Parties overlap in the provision of CPPT platform services in Singapore. In this regard, CCCS notes that the Parties overlap in the provision of

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<sup>200</sup> Paragraph 20.40 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>201</sup> Paragraph 20.41 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>202</sup> Paragraph 20.42 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>203</sup> Paragraph 20.43 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>204</sup> Paragraphs 2.6 and 2.7 of the *CCCS Guidelines on Market Definition*.

booking and matching of drivers and riders for both taxis and CPHCs. Therefore, the booking and matching of drivers and riders for both types of vehicles are included in the focal product. CCCS notes the Parties' submission that they overlap in "*intra-city passenger transport services*". However, the Parties have no respective operations, let alone overlapping operations, in intra-city passenger transport services such as buses, trains, taxis, and CPHCs. Therefore, these transport services do not constitute the focal product. Whether they are close substitutes to the focal product will be assessed below.

#### Functional levels of the focal product

126. The focal product concerns two (2) related functional levels of service provision: first, at the platform level, i.e. the provision of a platform that facilitates matching between riders and drivers, and second, at the service delivery level, the provision of the underlying transportation service, i.e. the booked CPPT rides.
127. In this regard, the Uber app's terms and conditions which are imposed on riders and drivers (or an independent company in the business of providing transportation services ("**Transportation Company**")) provide, *inter alia*, that:<sup>205</sup>
  - a. Services made available by UBV constitute "*a technology platform that enables users of Uber's mobile applications or websites provided as part of the Services... to arrange and schedule transportation and/or logistics services with independent third party providers of such services, including independent third party transportation providers and independent third party logistics providers under agreement with Uber or certain of Uber's affiliates*";
  - b. A user acknowledges that "**UBER DOES NOT PROVIDE TRANSPORTATION OR LOGISTICS SERVICES OR FUNCTION AS A TRANSPORTATION CARRIER AND THAT ALL SUCH TRANSPORTATION OR LOGISTICS SERVICES ARE PROVIDED BY INDEPENDENT THIRD PARTY CONTRACTORS WHO ARE NOT EMPLOYED BY UBER OR ANY OF ITS AFFILIATES**";
  - c. Uber facilitates the "*payment of the applicable Charges on behalf of the Third Party Provider as such Third Party Provider's limited payment collection agent*", and that "*payment of the Charges in such manner shall be considered the same as payment made directly by [a rider] to the Third Party Provider*"; and
  - d. Transportation Companies acknowledge and agree that their provision of transportation services to users "*creates a legal and direct business relationship*" between the Transportation Company and the user, to which Uber is not a party, and Uber does not, and shall not be deemed to direct or control the Transportation Company or drivers generally, including in connection with the operation of the Transportation Company's business, the provision of transportation services and the acts or omissions of drivers.

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<sup>205</sup> Paragraph 4.1 of USG's 12 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

128. Likewise, Grab’s Terms of Use for Singapore GrabCar/GrabShare Passengers and its Terms and Conditions for GrabCar Singaporean Drivers provide that:<sup>206</sup>

- a. The Grab app’s “*overall purpose is to enable persons seeking transportation services to certain destinations to be matched with third party transportation providers, drivers and vehicle operators*”;
- b. Grab is a “*TECHNOLOGY COMPANY THAT DOES NOT PROVIDE OR ENGAGE IN TRANSPORTATION SERVICES AND THE COMPANY IS NOT A TRANSPORTATION PROVIDER*”;
- c. For drivers, the software and application are intended to be used for facilitating drivers (as transportation providers) to offer their transportation services to passengers and customers, and Grab is not responsible or liable for acts and/or omissions of any services provided to passengers, and for any illegal action committed by drivers. Drivers shall also, at all times, not claim or cause any person to misunderstand that he or she is the agent, employee or staff of Grab, and the services provided is not in any way to be deemed as services of Grab;
- d. For riders, it is up to the third-party transportation providers to offer transportation services and for riders to accept such services. The service of Grab is to link riders with such third-party transportation providers, but does not nor is it intended to provide transportation services or any act that can be construed in any way as an act of a transportation provider. Further, Grab is not responsible nor liable for the acts and/or omissions of any third-party transportation provider and/or any transportation services provided to riders; and
- e. A driver acknowledges that “*THE TOTAL AMOUNT OF FARE PAID TO [HIM/HER] BY THE PASSENGER OR CUSTOMER INCLUDES THE SOFTWARE USAGE FEE, WHICH [HE/SHE IS] COLLECTING ON BEHALF OF THE COMPANY*”, such “software usage fee” being up to 20% of the fare stipulated for the Service for each time the passenger or customer completes a ride.

129. Therefore, CCCS is of the view that the Parties’ operations are primarily focused at the platform level. CCCS notes Grab’s submissions that the characterisation of its business as a technology company in its terms of use is irrelevant to the issue of market definition, and that demand-side considerations of users should be taken into consideration instead. Grab also submitted that riders regard ride-hailing as more than simply a matching platform, and that Grab is invested in improving user experience and the training of its drivers to better compete with other transportation service providers.<sup>207</sup> However, CCCS is of the view that the reference to the Parties’ terms of use, which sets out the rights, obligations and liabilities between riders, drivers and the platform, is a relevant

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<sup>206</sup> Paragraphs 4.1 and 4.2 of Grab’s 12 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

<sup>207</sup> Paragraphs 3.3 to 3.7 of Grab’s 26 July 2018 Written Representations.

consideration in defining the scope of the focal product. In this regard, the terms of use clearly illustrate that the Parties merely provide a matching/booking service for riders and drivers, with the underlying transportation service being provided by drivers to riders. In fact, the Parties view drivers as their ‘customers’, who use the Parties’ matching/booking platform services to provide the underlying intra-city transportation service as a source of income,<sup>208</sup> instead of viewing them as agents for the Parties’ own provision of the underlying transportation service. Furthermore, in the Parties’ submission of relevant market turnover for the purpose of calculating financial penalties, only commission from drivers, which is turnover at the platform level, was included. In contrast, the Parties excluded trip fares, which is the turnover of the underlying transportation level, from its relevant turnover. Accordingly, CCCS is of the view that the Parties’ submissions are consistent with CCCS’s finding that the focal product is defined at the platform level.

130. In any event, CCCS has, in its assessment, noted that CPPT platform services and the underlying CPPT transportation services which are booked through CPPT platforms (“**CPPT services**”) are interrelated. CCCS has also taken into consideration the demand-side considerations of users. In particular, CCCS notes that the CPPT platform services provider is able to set the following components that determine the effective price paid by each of the customer groups: (i) trip fare;<sup>209</sup> (ii) promotions; (iii) commission rate (which determines the quantum of commission); and (iv) incentives, in relation to the CPPT services booked through the respective CPPT platforms.<sup>210</sup>
131. Accordingly, while the focal product is defined at the platform level, CCCS has also assessed other transport options and the spectrum of closeness of substitution between each transport option, CPPT services, and CPPT platform services. Some factors that are considered in analysing the closeness of substitution to the focal product include, *inter alia*, the ability to match demand and supply between riders and drivers at the platform level, the ability to render transport services directly from point A to point B, level of comfort, on-demand, commute time (or duration of travel), and cost. The key question is whether each mode of transportation imposes sufficient constraints on the ability to profitably raise prices of CPPT platform services. In terms of a competition assessment, CCCS will also consider the Parties’ position of economic influence in their role of setting prices at both the platform and the underlying transportation levels.

#### Two-sidedness of the focal product

132. The Parties submitted that CPPT platforms are two-sided, in that they bring together two (2) categories of users, namely, riders and drivers, with the value that each side gets from the platform dependent on the number of users on the other side. CCCS agrees with the Parties that their CPPT platforms are two-sided.

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<sup>208</sup> Paragraph 19.4 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>209</sup> In relation to metered taxi trips booked via Grab’s or Uber’s platform, however, Grab and Uber do not set the metered trip fare.

<sup>210</sup> For example, CCCS has received feedback from drivers that CPPT platform service providers exert influence over the jobs and income available to them: paragraph 34 of the Notes of Meeting with [X] dated 11 January 2018.



133. Notwithstanding the above, CCCS notes that the Parties have submitted that if potential unilateral effects are assessed directly, precise market definition is not necessary. The Parties further submitted that an analysis of how the employment alternatives available to CPHC drivers constrain driver-side prices also does not require that a relevant labour market be defined.<sup>211</sup> CCCS agrees broadly with the Parties' submission that the competitive assessment should ultimately be focused on the effects of the Transaction.

Product market: Rider-side

134. CCCS notes evidence that the Parties do not consider alternative intra-city transportation options to be close competitors to them. Specifically, CCCS notes that documents provided of Grab's board meetings<sup>212</sup> only reflect discussions regarding Uber, including matters such as [X]. Developments in other modes of transportation such as street-hail, public transport and private cars were not included in these internal documents. Grab has submitted that board papers are only a narrow subset of strategic discussions within Grab, and that discussions at the board level are necessarily high-level such that it is unsurprising for board papers to focus more on the discussion of rivals (such as Uber), rather than alternatives such as public transportation which change their strategic posture less frequently. Grab has further submitted that CCCS had only selectively considered Grab's board papers and that there are board papers discussing [X]. Grab also submitted that Grab's fares are inherently benchmarked against taxi fares, showing that Grab views taxis (whether street-hailed or not) as its direct competitor. However, CCCS's review of the documents submitted indicated that [X], and the expected impact on Grab.<sup>213</sup> Notably, Grab's assessment of the impact on market share also does not take into account street-hail. Likewise, documents submitted from Uber also reflected discussions on Grab but not any other form of transportation.<sup>214</sup> These suggest that Grab and Uber do not consider other intra-city transportation options to be close competitors to them. While it is possible that such board papers may form only a subset of all strategic discussions within Grab, CCCS notes that the request to the Parties had been made for 'any papers, presentations, or strategic documents generated **in the course of normal business** provided to the board or senior management' (emphasis added) for a not insignificant time period (January 2016 to March 2018),<sup>215</sup> and the Parties have not provided further documents beyond these board papers to CCCS. CCCS also notes that the Purchase Agreement contains restrictions on the direct or indirect transfer of any portion of the share capital or assets of Lion City Rentals [X], suggesting that the Parties view other third-party CPPT platform service providers to be their closest competitors.
135. Notwithstanding the above, CCCS has also considered each alternative intra-city transportation option, from the perspective of closeness of rivalry with CPPT platform services.

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<sup>211</sup> Page 50 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

<sup>212</sup> These documents were provided further to CCCS's request for papers, presentations or strategic documents generated in the course of normal business relating to competitor strategies, market shares, pricing or financial incentives for CPHC drivers, taxi drivers or passengers; the likely impact of entry of any other app-based CPHC suppliers to taxi hailing apps and the likely impact of future upgrades to Singapore's public transport system on Grab's business; Annex 1 of Grab's 25 May 2018 response to CCCS's 7 May 2018 section 63 Notice (see for example, deck titled '3Q 2017').

<sup>213</sup> Annex 1 of Grab's 25 May 2018 response to CCCS's 7 May 2018 section 63 Notice (see deck titled '3Q 2017').

<sup>214</sup> Annex AI of USG's 23 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>215</sup> Question 24 and 27 of CCCS's 7 May 2018 section 63 Notice to Grab and Uber respectively.

## Taxi booking services

136. Evidence suggests that taxi booking services (which includes bookings made via mobile apps, SMS and phone) are sufficiently close substitutes for the Parties' CPPT platform services. First, as the Parties have submitted, riders consider a range of factors in deciding on the mode of transportation to use<sup>216</sup> and the factors considered when choosing to book a taxi or CPHC are similar (such as, *inter alia*, the ability to get directly from point A to point B, level of comfort, on-demand, commute time (or duration of travel), level of comfort and cost).<sup>217</sup> Second, services such as UberFlash and JustGrab service match riders with the nearest vehicle, which includes taxis and CPHCs, suggesting that riders are generally indifferent about whether the vehicle is a taxi or a CPHC.<sup>218</sup> Third, third parties have commented that taxis and CPHCs compete for the same jobs and riders, as the perceived differences between taxis and CPHCs are not material and they essentially provide the same service of transporting passengers from point A to B.<sup>219</sup> Fourth, similar to CPHCs, the booking of taxis exhibits some features of a two-sided platform, in that there are two (2) distinct user groups (i.e. taxi drivers and riders) that provide each other with network benefits. Lastly, CCCS further notes that, following the Transaction, CDG, which is the largest taxi operator in Singapore by fleet size, saw its taxi bookings rise by nearly 9% in the last month, which is the biggest year-on-year jump since September 2014. CCCS also notes reports that the turnaround in bookings has come on the back of Uber's exit from the Southeast Asia region as well as Grab's pulling back of rider promotions and driver incentives, and CDG's marketing promotions for passengers rolled out in recent months.<sup>220</sup>
137. However, CCCS also notes third-party feedback that the Parties' CPPT platform services were the closest substitutes for each other,<sup>221</sup> and in contrast, taxi booking/platform services such as those offered by CDG are not perfect substitutes. For example, [X] has stated that taxi matching services are largely viewed as a premium and more expensive product than CPHC offerings due to the high booking fee charged by taxi companies.<sup>222</sup> The Parties' corporate customers have also indicated that while they consider Grab, Uber and CDG to be substitutes to one another, they consider Grab and Uber to be each other's

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<sup>216</sup> Paragraph 19.17 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>217</sup> Tables 1 to 4 of the Annex to the Point-to-Point Customer Satisfaction Survey, Public Transport Council, 13 February 2017 (<https://www.ptc.gov.sg/docs/default-source/default-document-library/pcss2016-press-release.pdf>).

<sup>218</sup> Paragraph 54 of the Notes of Meeting with [X] dated 4 January 2018.

<sup>219</sup> Paragraph 46 of the Notes of Meeting with [X] dated 4 January 2018; Paragraph 36 of the Notes of Meeting with [X] dated 11 January 2018.

<sup>220</sup> *ComfortDelGro sees biggest taxi booking rise since 2014*, The Straits Times, 7 June 2018 (<https://www.straitstimes.com/singapore/transport/comfortdelgro-sees-biggest-taxi-booking-rise-since-2014>); and *ComfortDelGro taxi bookings on the up and up*, ComfortDelGro, 6 June 2018 (<https://www.cdgtaxi.com.sg/documents/3166855/3536675/ComfortDelGro+Taxi+Bookings+On+The+Up+%26+Up/9a35f228-e28a-0def-3d21-8ec4f2cb2d84>).

<sup>221</sup> Paragraph 9 of [X]'s 6 June 2018 response to CCCS's 30 May 2018 section 63 Notice; Paragraph 9 of [X]'s 1 June 2018 response to 2018 response to CCCS's 30 May 2018 section 63 Notice; Paragraph 9 of [X]'s 10 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraph 10 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraph 9 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraph 10 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice..

<sup>222</sup> Paragraph 29(b) of [X].

closest competitors pre-Transaction.<sup>223</sup> In particular, [X] has stated that while, to some extent, CDG is a substitute for Grab and Uber, CDG's app does not offer all the features and functionalities of Grab's (e.g. one cannot book CPHCs through CDG's taxi booking app).<sup>224</sup> Nonetheless, CCCS considers that, on balance, the evidence suggests that taxi booking services are a sufficiently close substitute, and hence should be within the relevant market.

#### Street-hailed taxi services

138. CCCS notes that street-hailed taxi services (“**street-hail**”) appears to be a possible substitute to CPPT platform services, within the spectrum of other transportation options. As stated above, CCCS notes third-party feedback which suggests that commuters in Singapore are mostly indifferent between CPHCs and taxis.<sup>225</sup> In this regard, CCCS had included street-hail in considering the relevant market in the IMD given that CCCS had yet to complete a detailed assessment at that juncture to determine definitively whether street-hail ought to be included in the relevant market and it was not necessary for CCCS to make a definitive finding at that juncture for the purposes of the IMD.
139. The Parties submitted that it would be counterintuitive to exclude street-hail from the rider-side of the relevant market because there are no practical differences to a rider between standing on the sidewalk to obtain a vehicle by raising his hand (to hail a taxi), and obtaining a vehicle (including a taxi) by making a booking via his smartphone.<sup>226</sup> The Parties further submitted that CCCS had relied on selective anecdotal evidence, arguing that the Uber Survey results and third-party feedback clearly demonstrated that street-hail would be substitutable to CPPT platform services, and that due consideration ought to be given to street-hail during non-peak hours and in populated areas, rather than focussing too narrowly on peak hours and less populated areas in corroborating the view that there is difficulty procuring a taxi via street-hail on demand.<sup>227</sup> In relation to third-party feedback from competitors, the Parties also submitted that such feedback has low probative value as it may be self-serving and/or inaccurate.<sup>228</sup>
140. During CCCS's investigation, while third-party feedback<sup>229</sup> is mixed in relation to whether street-hail is a substitute for CPPT services (not CPPT platform services) from

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<sup>223</sup> Paragraphs 8 to 10 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraphs 6 to 10 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraph 8 of [X]'s 10 May 2018 response to CCCS's 4 May 2018 section 63 Notice, Paragraphs 7 to 10 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraphs 8 to 10 of [X]'s 10 May 2018 response to CCCS's 4 May 2018 section 63 Notice.

<sup>224</sup> Paragraphs 7 to 10 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice.

<sup>225</sup> Paragraph 54 of the Notes of Meeting with [X] dated 4 January 2018.

<sup>226</sup> Paragraphs 3.17 of Grab's 26 July 2018 Written Representations; Paragraph 37 of USG's 26 July 2018 Written Representations.

<sup>227</sup> Paragraphs 3.17 to 3.23 of Grab's 26 July 2018 Written Representations; Paragraphs 4.1 to 4.3 of Grab's 6 September 2018 Written Representations; Paragraphs 24 to 35 and 38 of USG's 26 July 2018 Written Representations.

<sup>228</sup> Paragraph 3.20.2 of Grab's 26 July 2018 Written Representations; Paragraphs 26 to 27 and 30 of USG's 26 July 2018 Written Representations.

<sup>229</sup> Response to Question 29c of [X]'s 17 May 2018 response to CCCS's 14 May section 63 Notice; Response to Question 12 of [X]'s 18 June 2018 response to CCCS's 14 May section 63 Notice; Response to Question 12 of [X]'s 31 May 2018 response to CCCS's 22 May section 63 Notice; Response to Question 3(ii) and 8 of [X]'s 10 May 2018 response to CCCS's 4 May section 63 Notice; Response to Question 8 of [X]'s 11 May 2018

the rider perspective, they also suggest that the degree of substitution is imperfect and street-hail is not a sufficiently close substitute for CPPT services. Notably, third-party feedback has indicated that Grab's fares (i.e. the price for CPPT services) would have to be raised significantly in order for street-hail demand to rise as a result, indicating that street-hail does not appear to be an immediate and close substitute to CPPT services.<sup>230</sup> Third-party feedback also reflects that consumers who are used to the certainty (in terms of price), convenience (in terms of e.g. pick-up location), comfort and familiarity of on-demand CPPT services will not revert back to street-hail.<sup>231</sup> In addition, CCCS notes further third-party feedback which indicates that street-hail is not substitutable to CPPT services, because the latter are "prebooked".<sup>232</sup>

141. CCCS is of the view that it is the *closeness of substitutability* that should be the focus. In this regard, CCCS notes that third-party feedback has reflected street-hail to be an imperfect substitute. Third parties have commented that street-hail is not as convenient as CPPT services,<sup>233</sup> and may also be more difficult to procure during peak hours and in less populated areas.<sup>234</sup> As the focal product concerns CPPT platform services, the relevant question with respect to riders' choices is whether they would switch away from CPPT platform services in response to a small but significant and non-transitory increase in the prices of CPPT platform services.
  
142. CCCS has studied empirical data on the number of street-hailed and platform-matched trips in the months before and after Uber terminated its operations in Singapore. As shown in Figure 2 below, over the period January to July 2018, the number of street-hailed trips (blue line) stayed relatively constant, approximately at the level of [X] million per month with very small fluctuations. As the Transaction was consummated and Uber phased-out its operations in Singapore in March and April 2018 (indicated by a vertical dotted line), the number of Uber's monthly rides (red line) fell sharply to zero by May 2018. During this period, the number of Grab's monthly rides (yellow line) increased significantly, and stabilised again after May 2018. On average, the number of Grab's rides per month increased by [X] from [X] between January and April 2018 to [X] between May and July 2018.<sup>235</sup>

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response to CCCS's 4 May section 63 Notice; Response to Question 8 of [X]'s 5 June 2018 response to CCCS's 30 May section 63 Notice; Response to Question 8 of [X]'s 10 May 2018 response to CCCS's 4 May section 63 Notice; Response to Question 8 of [X]'s 11 May 2018 response to CCCS's 4 May section 63 Notice; Response to Question 8 of [X]'s 1 June 2018 response to CCCS's 30 May section 63 Notice.

<sup>230</sup> Paragraph 30.4 of [X].

<sup>231</sup> Paragraph 9(c) of the cover letter of [X].

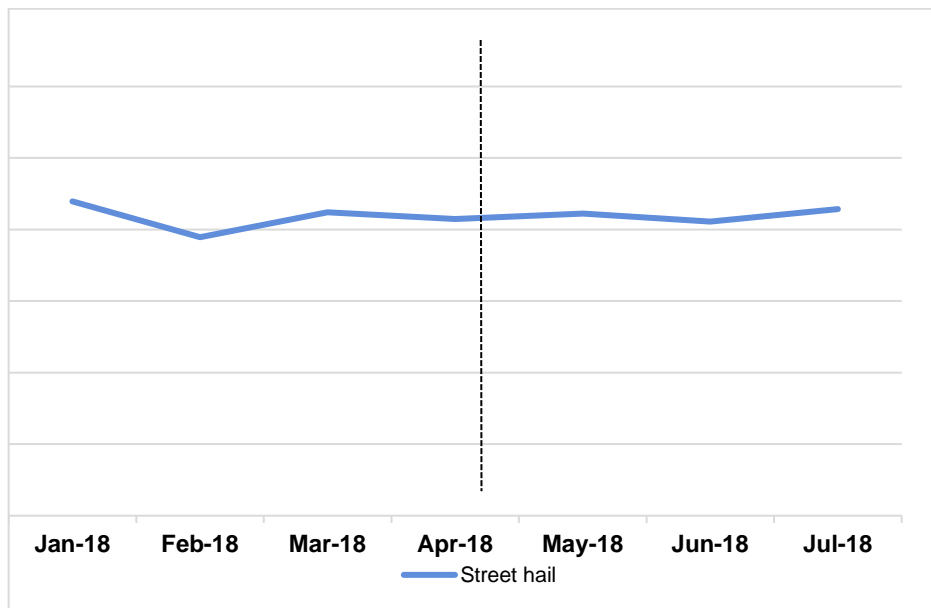
<sup>232</sup> Paragraph 8 of [X]'s 6 June 2018 response to CCCS's 30 May 2018 section 63 Notice.

<sup>233</sup> Paragraph 3 of [X]'s 10 May 2018 response to CCCS's 4 May 2018 section 63 Notice.

<sup>234</sup> Paragraph 30(c) of [X].

<sup>235</sup> For the period of January to March 2018, CCCS had used the figures submitted by the Parties. From April 2018 onwards, CCCS had used [X]'s data.

**Figure 2: The number of ride-sharing and street hailing trips in 2018 – Monthly<sup>236</sup>**



*Note: Information on the number of ride-sharing trips has been redacted.*

143. Based on the empirical data above, the significant increase in the number of rides booked through Grab after Uber ceased its CPPT platform services in Singapore indicates that Grab and Uber were the closest competitors to each other. On the contrary, there is no similar substitution observed from Uber to street-hail, indicating that street hail is not a close substitute. If street-hail were a close substitute, there should have been a significant increase in the number of street-hail trips post-Transaction due to the unavailability of Uber and the fact that Grab also reduced discounts and promotions to riders.
144. As such, CCCS concludes that street-hail is outside the relevant market. During the investigation process, CCCS has assessed the impact of the Transaction on competition under both scenarios (including and excluding street-hail), and has found that the Transaction would also result in an SLC in the scenario where the relevant market includes street-hail taking into consideration the possible competitive constraints posed by street-hail.

#### Public transportation

145. CCCS notes third-party feedback which suggests that public transportation differs from CPPT platform services in terms of various factors including commute time (or duration of travel), level of comfort, cost of transport and ease of getting to the rider's precise destination (i.e. point-to-point), making it a weak substitute for CPPT platform services. For instance, [redacted] has indicated that public transportation is not a close substitute for CPHC services due to the generally longer commute time.<sup>237</sup> [redacted] shares a similar view, indicating that public transportation pales in comparison to the comfort and convenience

<sup>236</sup> Paragraph 3.2 of Grab's 30 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Paragraph 4.2 of Grab's 3 May 2018 response to CCCS's 16 April 2018 section 63 Notice; Paragraphs 3.1 and 4.1 of USG's 30 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Data provided by LTA on 24 August 2018.

<sup>237</sup> Paragraph 30(e) of [redacted].

of CPHC services.<sup>238</sup> Notably, public transport or alternative transportation options were not indicated as substitutes by any of the corporate customers.<sup>239</sup> In response to Grab's submission that CCCS should not only take into account the views of corporate customers but also generally all riders,<sup>240</sup> CCCS is of the view that the comparison of public transport ridership data with the Parties' own trip data (Figure 3 below) adequately reflects the substitution patterns of riders more generally.

146. CCCS notes that the Parties have submitted that taxi ridership has declined by less than the increase in demand for CPHC services, implying that CPHC is taking demand from other forms of transportation, including public transportation. Figure 3 below depicts the trend in ridership on public transport and CPHC services booked on Grab and Uber.

**Figure 3: Total monthly ridership on public transport,<sup>241</sup> Uber and Grab<sup>242</sup>**

[X]

147. Figure 4 below shows the month-to-month change in average daily ridership for public transport and CPHCs (for which CCCS has combined Uber and Grab).

**Figure 4: Change in average daily ridership on public transport and CPHCs<sup>243</sup>**

[X]

148. Figure 4 shows that month-to-month changes in public transport ridership are significantly larger than the changes in CPHC ridership, which does not prove a discernible correlation<sup>244</sup> between the changes in ridership on public transport, and for CPHCs. For example, in July 2016 and January 2017, ridership increased for both CPHC and public transport. From September 2016 to November 2016, while CPHCs experienced very little month-on-month change, public transport fluctuated significantly. These trends do not support the Parties' submission that CPHC is taking demand from other forms of transportation, including public transportation.

149. The Parties have further submitted that CRA's findings on the Uber Survey were highly instructive to the question of market definition, and that the results of the Uber Survey cannot be disregarded by CCCS over technical concerns in favour of unrepresentative anecdotal evidence, especially since CCCS has not itself provided its own surveys or

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<sup>238</sup> Paragraph 9(d) of the cover letter of [X].

<sup>239</sup> Paragraphs 8 to 10 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraph 2, 3, 8 and 9 of [X]'s 10 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraphs 6 to 10 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraphs 7 to 10 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice.

<sup>240</sup> Paragraphs 3.25 to 3.26 of Grab's 26 July 2018 Written Representations.

<sup>241</sup> Public transport includes MRT, LRT and bus. CCCS counts each individual transaction as one (1) trip, irrespective of the number of interchanges made during that journey. For instance, a journey which includes an MRT ride and then a bus trip, for which the customer is charged a single fare, is counted as one (1) trip. This figure shows that public transport ridership fluctuates month to month, and generally averages around 140 million rides per month. There is no evidence of deviation from this trend in 2016 and 2017, when ridership on Uber and Grab was rapidly increasing.

<sup>242</sup> Data source: [X], Grab and Uber.

<sup>243</sup> Data source: [X], Grab and Uber.

<sup>244</sup> The correlation coefficient is -0.35.

economic analysis to refute the Uber Survey results.<sup>245</sup> CCCS has considered the survey submitted by the Parties which was conducted by [X], commissioned by Uber, as mentioned at paragraph 113 above. The survey results appear to demonstrate that users of one party's service are more likely to identify public transport as their "*next best alternative*" than the other merging party's service is.<sup>246</sup> CCCS has assessed the survey based on the documents provided by Uber, and is of the view that the survey results may not serve as credible evidence, due to various factors. In particular, CCCS notes that the survey response ordering may potentially introduce bias<sup>247</sup> and the survey findings suggest inconsistency in responses.<sup>248</sup> Taken together, CCCS is of the view that the survey findings should be treated with particular care.

150. CCCS further notes that the Parties have cited natural experiments as evidence that CPHCs and public transport are substitutes for each other. This includes occasions when the MRT service was not available (e.g. [X]) and Grab and Uber saw corresponding spikes in demand for CPHC services. CCCS notes that in the context of these natural experiments, the decision to switch between CPHCs and public transport is not based on a relative change in price. This follows because the relevant question for market definition is how riders respond to a small, but significant increase in price in the focal product by switching to other products.<sup>249</sup> In addition, CCCS notes that the relevant question for the purpose of this merger assessment is whether CPPT riders would switch to public transport,<sup>250</sup> not whether public transport riders would switch to CPPT. Hence, these natural experiments are limited in demonstrating the sufficiency of public transport posing competitive constraints on CPHC services and in demonstrating the relative closeness of public transport as a substitute to CPHCs *vis-à-vis* other modes of transport.
151. Grab has further submitted that CRA had considered [X], to arrive at the conclusion that some of the trips that Grab was not able to fulfil [X] had been diverted to other modes of transportation, and not Uber as an alternative ride-hailing platform.<sup>251</sup> However, CCCS notes that the CRA Report had likewise acknowledged the limitation of [X] for assessing the extent to which riders are willing to substitute among modes of transportations, given the unexpected and short-lived nature of such [X].<sup>252</sup>
152. On balance, CCCS is of the view that public transportation does not pose sufficient competitive constraints on the Parties, in constraining the price of the focal product, for it to constitute part of the relevant market.

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<sup>245</sup> Paragraphs 3.8 to 3.11 and 3.24 of Grab's 26 July 2018 Written Representations; Paragraphs 5.1 to 5.2 of Grab's 6 September 2018 Written Representations; Paragraph 36 of USG's 26 July 2018 Written Representations; Section 5.1 of CRA's 26 July 2018 Report.

<sup>246</sup> Paragraph 20.7 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>247</sup> For instance, while CCCS notes that the survey questionnaire presents respondents with randomized options for some questions, the survey does not do so for [X], such as unavailability of price increases (e.g. [X]). CCCS further notes that the ordering of the choices for the question appear to imply a decreasing closeness of substitution, or similar levels of substitutability between neighbouring options. [X]. CCCS has concerns that such an ordering of options may have led to "order-effects", where the order of response alternatives influences the respondents' perceptions and/or choices.

<sup>248</sup> For example, [X].

<sup>249</sup> Paragraphs 2.6 and 2.7 of the *CCCS Guidelines on Market Definition*.

<sup>250</sup> This is because the ultimate question is whether the threat of CPPT riders switching to public transport is sufficient to constrain the Parties from profitably raising prices post-Transaction, not the reverse.

<sup>251</sup> Paragraph 3.12 of Grab's 26 July 2018 Written Representations.

<sup>252</sup> Page 51 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

### Private cars

153. CCCS notes that the Parties have submitted evidence from international surveys conducted in the United States<sup>253</sup> which suggest a high level of substitution between private car usage and ridesharing, and statistics on private vehicle ownership in Singapore to support the proposition that private cars are substitutes for CPHCs and taxi booking services and hence should fall within the relevant market.
154. CCCS is of the view, and this is corroborated by third parties,<sup>254</sup> that the available evidence does not suggest that private cars are a feasible substitute for CPPT platform services, in large part due to the high cost of owning a private car in Singapore, which is prohibitive for a significant proportion of the population. On top of the Certificate of Entitlement (“COE”), which is required in order to own a vehicle for a period of 10 years, an upfront investment of at least 30% of the vehicle cost is also necessary, given that the maximum loan-to-value ratio is 70%.<sup>255</sup> Other costs include annual instalments made on the vehicle itself, road tax, car insurance, fuel, servicing, and parking charges. As an estimate, these could add up to around S\$19,780 per annum.<sup>256</sup> CCCS notes from third-party feedback that riders switching to purchase a private car should be distinguished from the situation where existing car owners switch to utilising cars they already own.<sup>257</sup> While CCCS agrees that there is some substitutability between CPPT platform services and private car usage for existing car owners, CCCS is of the view that the evidence does not suggest that this group of existing car owners forms a sufficiently large base of the Parties’ rider base such that private cars will pose a significant competitive constraint.

### Other transport options

155. CCCS further notes that the Parties had submitted that other transport options, including on-demand bus services and biking and bike-sharing initiatives form part of the relevant market. CCCS notes that the evidence does not suggest that these alternative transport options are close and viable substitutes to CPPT platform services. Specifically, these alternative transport options were not indicated as substitutes by any of the Parties’ corporate customers.<sup>258</sup> CCCS notes third-party feedback that each of these options do not appear to be close substitutes to CPPT platform services due to factors such as the

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<sup>253</sup> Paragraph 20.29 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>254</sup> Paragraph 29(f) of [§<]; Paragraph 30(f) of [§<]; Paragraph 29(f) of [§<]’s 17 May 2018 response to CCCS’s 11 May 2018 section 63 Notice; Paragraph 29 of [§<]’s 30 May 2018 response to CCCS’s 11 May 2018 section 63 Notice.

<sup>255</sup> *MAS Eases Rules on Motor Vehicle Financing*, MAS, 26 May 2016 ([www.mas.gov.sg/News-and-Publications/Media-Releases/2016/MAS-Eases-Rules-On-Motor-Vehicle-Financing.aspx](http://www.mas.gov.sg/News-and-Publications/Media-Releases/2016/MAS-Eases-Rules-On-Motor-Vehicle-Financing.aspx)).

<sup>256</sup> Based on assumption that the vehicle cost is S\$100,000, and a 30% deposit is made, with a loan tenure of 7 years; *How much it really costs to own a car in Singapore*, ChannelNewsAsia, 24 November 2017 (<https://www.channelnewsasia.com/news/brandstudio/how-much-it-really-costs-to-own-a-car-in-singapore-9346730>).

<sup>257</sup> Paragraph 30.7 of [§<].

<sup>258</sup> Paragraphs 8 to 10 of [§<]’s 11 May 2018 response to CCCS’s 4 May 2018 section 63 Notice; Paragraph 2, 3, 8 and 9 of [§<]’s 10 May 2018 response to CCCS’s 4 May 2018 section 63 Notice; Paragraphs 6 to 10 of [§<]’s 11 May response to CCCS’s 4 May 2018 section 63 Notice; Paragraphs 7 to 10 of [§<]’s 11 May 2018 response to CCCS’s 4 May 2018 section 63 Notice.



uncertainty of trip duration and the reliability of these alternative transport options.<sup>259</sup> Third parties also noted that depending on the distance of the trip, some of the alternative transport options do not appear to be viable substitutes, and it is unlikely for users to make a switch to these alternative transport options.<sup>260</sup>

#### Product market: Driver-side

156. The Parties have submitted that drivers are recruited from a wider labour market, and thus Grab is incentivised to provide drivers the greatest returns in order to encourage drivers to stay on its platform as opposed to seeking other labour market opportunities.<sup>261</sup>
157. CCCS notes that there is a spectrum of closeness of substitution across different occupations. CCCS considers the various potential occupation substitutes below.
158. As a starting point, drivers offering CPPT services through a CPPT platform must hold either a (i) PDVL or (ii) Taxi Driver's Vocational License ("TDVL"). Of the two (2), the requirements for holding a TDVL is more stringent than a PDVL: the individual must be at least 30 years old, be a Singapore citizen (holding a pink NRIC), hold a valid Class 3/3A Singapore driving licence for a continuous period of at least one (1) year at the point of application, and be able to speak and read basic English. Singapore permanent residents and foreigners are not allowed to be taxi drivers. The individual must also undergo a training course at the Singapore Taxi Academy or CDG to obtain a TDVL, which costs approximately S\$335 (inclusive of GST), has three (3) papers and takes about 25 hours to complete.<sup>262</sup> Taxi drivers are required to abide by a framework of rules and regulations under the TDVL Points System.<sup>263</sup> TDVL holders may drive both taxis and CPHCs, whilst PDVL holders can only drive CPHCs.<sup>264</sup>

#### CPHC platforms

159. CCCS first considered whether drivers would switch between accepting CPHC bookings across various CPHC platforms. CCCS notes that this is likely to be the case, given third-party feedback that post-Transaction, CPHC drivers will have "no other choice" than to drive for Grab, despite anticipation that CPHC drivers may be subject to reduction in incentives, reduced ride jobs, higher commission fees and lack of transparency on driver policies;<sup>265</sup> and that in the absence of exclusivities, drivers are free to explore other platforms as alternatives,<sup>266</sup> suggesting that CPHC platforms are closest substitutes for

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<sup>259</sup> Paragraphs 30(e) to 30 (g) of [§<]; Paragraph 29(g) of [§<]'s 17 May 2018 response to CCCS's 11 May 2018 section 63 Notice; Paragraph 9 of the cover letter of [§<].

<sup>260</sup> Paragraphs 30.4 to 30.8 of [§<].

<sup>261</sup> Paragraph 19.7 of the Parties' 20 April 2018 response to CCCS's 16 May 2018 section 63 Notice.

<sup>262</sup> *Driving a Taxi in Singapore*, LTA (<https://www.lta.gov.sg/content/ltaweb/en/public-transport/taxis%20and%20private%20hire%20cars/industry-matters-for-taxi-drivers/driving-a-taxi-in-singapore.html>) (accessed on 12 June 2018).

<sup>263</sup> *Taxi Driver's Vocational Licence Points System*, LTA (<https://www.lta.gov.sg/content/ltaweb/en/public-transport/taxis%20and%20private%20hire%20cars/industry-matters-for-taxi-drivers/vocational-licence-points-system.html>) (accessed on 12 June 2018).

<sup>264</sup> *Applications for Private Hire Car Driver's Vocational License to Open on 13 March 2017*, LTA, 9 March 2017 (<https://www.lta.gov.sg/apps/news/page.aspx?c=2&id=f1dae5f8-c9b5-4930-98d9-2eef544d9de9>).

<sup>265</sup> E.g. Complaints received by CCCS dated 03/26/2018 6:46:00 PM; 03/28/2018 12:40:00 PM; 4/2/2018 9:51:00 PM; 4/4/2018 4:02:00 PM; 4/18/2018 2:41:00 PM; 5/5/2018 10:40:30 AM.

<sup>266</sup> Paragraph 32 of [§<].

one another. This is further supported by the fact that post-Transaction, thousands of Uber drivers have signed up with Grab.<sup>267</sup> While CCCS also notes evidence that suggests that Grab drivers are unlikely to have the ability to quickly and effectively switch to drive for other CPHC platforms, CCCS is of the view that this is likely due to the relatively smaller scale at which the other CPHC platforms are operating,<sup>268</sup> or exclusivities and other impediments that prevent drivers from switching or multi-homing (see further paragraphs 198 to 208 below). Therefore, CCCS is of the view that from a driver's perspective, accepting CPHC bookings from other CPHC platforms falls within the same relevant market as accepting CPHC bookings from the merged entity's platform.

### Taxi bookings

160. CCCS next considered whether drivers would switch from accepting CPHC bookings to accepting taxi bookings. CCCS notes that, following the Transaction, CDG, which is the largest taxi operator in Singapore by fleet size, saw its taxi bookings rise by nearly 9% in May, which is the biggest year-on-year jump since September 2014. However, CCCS notes that while taxi drivers have the option of accepting bookings from CPPT platforms or their taxi companies, the same is not true for CPHC drivers who have no access to taxi companies' booking systems. While it is possible for CPHC drivers to switch to driving taxis in order to benefit from taxi bookings, such substitution is indirect, and only those CPHC drivers who are (or become) TDVL holders would be able to do so, as PDVL holders are not permitted to drive a taxi. That said, CDG has recently expanded its fleet, reportedly due to drivers switching away from driving CPHCs, with CDG reporting a sign on of close to 300 new hirers in the month of April 2018, close to double of that in April 2017.<sup>269</sup> In addition, Premier Taxis also stated that its call centre has seen "increased activity".<sup>270</sup> On balance, CCCS is of the view that from a driver's perspective, accepting taxi bookings falls within the same relevant market as accepting CPHC bookings.

### Street-hail

161. CCCS notes Grab's submission that street-hail should be included in the driver side of the relevant market as there are drivers in the CPHC fleet who hold taxi vocational licenses and can freely shift between GrabCar and GrabTaxi. Grab further submitted that it is more likely that a taxi driver would choose to pick up street-hail jobs (e.g. at designated taxi stands) in order to increase his earnings, during instances where he may not be able to procure a job through CPPT bookings (e.g. during non-peak hours and in less populated areas).<sup>271</sup> Uber likewise submitted that in the event of a commission increase, PDVL holders would have to switch to driving a taxi in order to do street-hail jobs. In this regard, Uber submitted that the evidence does not suggest that obtaining a TDVL is unduly burdensome or difficult, citing the recent uptick in the number of issued

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<sup>267</sup> *Grab signs up 'thousands' of Uber Drivers*, The Straits Times, 5 April 2018

(<http://www.straitstimes.com/singapore/transport/grab-signs-up-thousands-of-uber-drivers>).

<sup>268</sup> Paragraph 30 of the Notes of Meeting with [§<] dated 11 January 2018; Paragraph 5 of the cover letter of [§<].

<sup>269</sup> *ComfortDelGro sees biggest taxi booking rise since 2014*, The Straits Times, 7 June 2018 (<https://www.straitstimes.com/singapore/transport/comfortdelgro-sees-biggest-taxi-booking-rise-since-2014>).

<sup>270</sup> *Taxi! Upturn in fortunes for section with Uber's exit*, The Straits Times, 17 June 2018 (<https://www.straitstimes.com/singapore/taxi-upturn-in-fortunes-for-sector-with-ubers-exit>).

<sup>271</sup> Paragraph 3.30 of Grab's 26 July 2018 Written Representations.

TDVLs, and the fact that [§<] % of active Uber drivers in 2017 were TDVL holders. Uber further submitted that taxi drivers will take whatever jobs to enable them to reach their desired level of earnings, citing third-party feedback that taxi drivers taking only ride-hailing bookings are the exception, and public information indicating that street-hailing represents approximately 80% of taxi jobs.<sup>272</sup>

162. CCCS considers that, for PDVL holders, street-hail is not an option as street-hailing is not allowed for CPHCs.<sup>273</sup> This is a conclusion that CCCS has reached based on the local prevailing laws which prohibit CPHC drivers from accepting street-hail jobs. Although CCCS notes that in theory, it may be possible for a PDVL holder to obtain a TDVL such that they are able to drive a taxi and hence accept street-hail jobs, as explained at paragraph 158 above, the requirements to obtain a TDVL are more stringent than that for obtaining a PDVL. While CCCS notes that third parties have indicated that taxi drivers have switched to driving CPHCs instead,<sup>274</sup> it is worth noting that they have not indicated the same for the reverse scenario, i.e. PDVL holders obtaining a TDVL licence instead. Second, even for TDVL holders who are currently driving CPHCs, switching to street-hail would first require switching to driving a taxi. For this specific group of drivers, the focus is not just on the type of licence they are holding, but also on the type of vehicle they are driving, which determines whether they can take street-hail jobs. For TDVL holders who are currently driving a taxi, it is an option to switch between accepting street-hail and CPPT bookings. However, similarly with riders, drivers may also value the certainty and convenience of CPPT bookings, as opposed to driving around to look for customers to pick up via street-hail with no certainty of getting a job. As the focal product concerns CPPT platform services, the relevant question with respect to drivers' choices is whether they would switch away from CPPT platform services in response to a small but significant and non-transitory increase in the prices of CPPT platform services (i.e. commissions). In considering whether drivers would switch to street-hail taxi services, the issue is whether drivers would forego providing CPPT services (i.e. booked taxi or CPHC services) and instead offer street-hail taxi services in response to such small but significant and non-transitory increase in commission. In this regard, it should be noted that, for taxi drivers, they are able to offer both booked and street-hail taxi services, and providing booked services still provides additional revenue compared to providing street-hail taxi services, as long as the booking fee received by the driver is not completely captured by the CPPT platform through the commission.
163. Having considered the above, CCCS is of the view that on balance, street-hail is outside the relevant market from the drivers' perspective.

#### Wider labour market

164. CCCS notes that it is possible for CPHC drivers to take on other occupations in the wider labour market. However, CCCS notes that the evidence suggests that CPHC drivers are unlikely to have the ability to quickly and effectively switch to other professions and any substitution would be insufficient to constrain price increases by the Parties. CCCS notes that this could be in view of the difference in the work experience and skill sets required and/or rental contracts that bind the drivers to continue being a CPHC driver. This consideration is also relevant to part-time drivers (although to a lesser extent) as part-

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<sup>272</sup> Paragraphs 44 to 46 of USG's 26 July 2018 Written Representations.

<sup>273</sup> Rule 40 of Road Traffic (Public Service Vehicles) Rules.

<sup>274</sup> Paragraph 50 of the Notes of Meeting with [§<] dated 4 January 2018.

time drivers may have additional skill sets compared to full-time drivers committed to driving as a profession. CCCS further notes that even if switching to other occupations in the wider labour market were possible, the key question is whether such substitution would be sufficient to constrain price increases in the focal product. The evidence does not suggest that such substitution would be significant or material. In this regard, as mentioned above, CCCS notes that post-Transaction, thousands of Uber drivers have signed up with Grab.<sup>275</sup> While CCCS notes the Parties' submissions that this may simply be a reflection of the fact that Grab had acquired Uber's assets and an immediate reaction by drivers to Uber exiting Singapore,<sup>276</sup> CCCS is of the view that this still suggests that many drivers may not view other employment options in the wider labour market as readily substitutable, at least in the short to medium term. CCCS notes that this is further corroborated by feedback from third parties, which reflect that post-Transaction, whilst they anticipate that CPHC drivers may be subject to reduction in incentives, reduced ride jobs, higher commission fees and lack of transparency on driver policies, CPHC drivers will have "no other choice" than to drive for Grab.<sup>277</sup> This runs contrary to the Parties' proposition that the wider labour market is a sufficiently close substitute for drivers.

165. In addition, CCCS also notes that lock-in periods and termination penalties could prevent drivers from switching quickly and effectively to other professions. Specifically, CCCS notes that whilst the Parties have submitted that car leasing firms will allow termination within a 7 to 21-day notice period, and, in some cases, after even shorter time periods,<sup>278</sup> most car leasing arrangements are on a contractual basis of six (6) months to a year, and if drivers terminate the contract early, they may have to pay back all their incentives accrued thus far,<sup>279</sup> and penalties for early termination.<sup>280</sup> Thirdparty feedback also indicated that switching decisions made by drivers involve many upfront costs, and the uncertainties and procedures involved may create some level of inertia for drivers to switch.<sup>281</sup> In deciding whether to switch away from Grab, drivers would then have to weigh any price increases against the potential financial losses as described above. CCCS has received a significant volume of feedback from drivers in relation to such difficulties. Drivers also raised concerns that post-Transaction they were unable to terminate their Lion City Rentals contracts timeously, despite the reduction in jobs and income available on the Uber app.<sup>282</sup> In particular, LCR drivers have provided feedback that they have been "*made to sign a contract with Grab*"<sup>283</sup> and/or were not given an option to break the lease without penalty and hence had no choice but to join Grab.<sup>284</sup>

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<sup>275</sup> *Grab signs up 'thousands' of Uber Drivers*, The Straits Times, 5 April 2018 (<http://www.straitstimes.com/singapore/transport/grab-signs-up-thousands-of-uber-drivers>).

<sup>276</sup> Paragraph 50 of USG's 26 July 2018 Written Representations; Paragraph 3.31 of Grab's 26 July 2018 Written Representations.

<sup>277</sup> E.g. Complaints received by CCCS dated 03/26/2018 6:46:00 PM; 03/28/2018 12:40:00 PM; 4/2/2018 9:51:00 PM; 4/4/2018 4:02:00 PM; 4/18/2018 2:41:00 PM; 5/5/2018 10:40:30 AM.

<sup>278</sup> Paragraph 20.33.5 of the Parties' 20 April 2018 response to CCCS's 16 May 2018 section 63 Notice.

<sup>279</sup> Paragraph 18 of the Notes of Meeting with [REDACTED] dated 11 January 2018.

<sup>280</sup> Paragraphs 12 and 21 of the Notes of Meeting with [REDACTED] and [REDACTED] dated 26 March 2018.

<sup>281</sup> Paragraph 13 of the Notes of Meeting with [REDACTED] and [REDACTED] dated 26 March 2018.

<sup>282</sup> E.g. Complaints received dated: 03/30/2018 16:54:26; 4/3/2018 10:53:00 AM; 4/16/2018 6:43:00 PM; 04/21/2018 07:59:19; 04/23/2018 12:23:35; 4/23/2018 3:59:00 PM; 04/25/2018 23:16:42

<sup>283</sup> Complaint received 03/29/2018 3:50:00PM.

<sup>284</sup> E.g. Complaints received 03/30/2018 16:52:26; 03/31/2018 3:07:00 PM; 4/2/2018 4:03:00 PM; 4/3/2018 10:53:00 AM; 4/4/2018 4:02:00 PM; 04/21/2018 07:59:19.

166. CCCS notes that the Parties commissioned [X] to conduct a survey of Uber and Grab drivers around the period of 4 May 2018 to 21 May 2018.<sup>285</sup> CCCS notes that the survey did not factor in other considerations on the drivers' end, such as rental contracts, early termination penalties and clawing back of incentives. Nonetheless, CCCS has considered the survey and weighed it against the rest of the available evidence.
167. CCCS further notes that the Parties have argued that a significant proportion of the Parties' drivers work part-time which indicate that these drivers are likely engaged in alternative labour market options.<sup>286</sup> The Parties also highlighted the apparently [X]<sup>287</sup> on the Grab and Uber platforms respectively, in support of their argument that drivers' cost of switching from driving as either a CPHC or taxi driver to another occupation are low. CCCS notes that the Parties has not provided information and evidence supporting their submission that there is a [X], and whether and how (e.g. how long it took) drivers who leave the CPPT market took on non-CPHC jobs in the broader labour market. Further, given that a significant portion of the Parties' drivers work part-time, as well as transient drivers who may be driving for a temporary period, the Parties have yet to illustrate whether these part-time drivers contribute as significantly to the Parties' total number of trips as an equivalent number of full-time drivers.
168. The Parties have submitted that individuals without prior experience as professional drivers can easily become CPHC drivers given the modest requirements for such individuals to obtain a PDVL.<sup>288</sup> However, CCCS notes that as of 7 July 2018, only 51% of the 42,900 CPHC driver population who applied for a PDVL before July 2017 had obtained their PDVL before the end of the concession period (i.e. 30 June 2018), suggesting that the requirements are not so modest after all.<sup>289</sup>
169. On balance, CCCS concludes that the wider labour market is not within the relevant market for the purpose of this merger assessment.

#### Geographic market

170. In relation to CPPT platform services, CCCS is of the view that the relevant geographic market is likely to be national in scope (i.e. Singapore) as CPPT platform services relate to intra-city transportation services where both passengers and drivers need to be based in Singapore. A CPPT platform service provider must be licensed/registered locally to provide its services in Singapore.<sup>290</sup> It is also unlikely for drivers based outside Singapore (e.g. Malaysia) to provide CPPT services in Singapore on demand or within a reasonable

<sup>285</sup> Page 78 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice; Paragraph 52 of USG's 26 July 2018 Written Representations.

<sup>286</sup> Paragraph 20.33.6 of the Parties' 20 April 2018 response to CCCS's 16 May 2018 section 63 Notice; Paragraph 3.32 of Grab's 26 July 2018 Written Representations.

<sup>287</sup> Paragraph 20.33.5 of the Parties' 20 April 2018 response to CCCS's 16 May 2018 section 63 Notice; Paragraph 52 of USG's 26 July 2018 Written Representations.

<sup>288</sup> Paragraph 20.33.2 of the Parties' 20 April 2018 response to CCCS's 16 May 2018 section 63 Notice.

<sup>289</sup> *Only 51% of private-hire drivers get license: LTA*, The Straits Times, 7 July 2018 (<https://www.straitstimes.com/singapore/transport/only-51-of-private-hire-drivers-get-license-lta>)

<sup>290</sup> *Applying for a certificate of registration for third party taxi booking service providers*, LTA (<https://www.lta.gov.sg/content/ltaweb/en/public-transport/taxis%20and%20private%20hire%20cars/industry-matters-for-taxi-operators/applying-for-a-certificate-of-registration.html>) (accessed on 8 June 2018); Also see sections 111A and 111B of the Road Traffic Act (Cap. 276) (for taxi service operators); see Third-Party Taxi Booking Service Providers Act 2015 (for third-party taxi booking service providers); see Road Traffic (Private Hire Car Booking Service Operator) Rules 2018 (for private hire car booking service operators).

time for them to impose sufficient competitive constraints on drivers in Singapore and they may also be limited by regulatory constraints.

171. As such, CCCS agrees with the Parties' submissions that the relevant geographic market is likely to be national in scope (i.e. Singapore).

#### Product market: Vehicle rental market in Singapore

172. CCCS notes that Uber's vehicle rental business was not acquired by Grab pursuant to the Transaction and vehicle rental is, accordingly, not an Overlapping Product. However, Uber, which owns Lion City Rentals, has acquired 27.5% of Grab, which owns Grab Rentals and has formed partnerships with various CPHC rental companies. Therefore, CCCS is of the view that the market for the provision of CPPT platform services in Singapore and the market for the rental of vehicles for the provision of CPPT services are materially interrelated. Accordingly, CCCS has considered the effects of the Transaction on the vehicle rental market, as well as the impact of the vehicle rental market on competition within the CPPT platform services market.<sup>291</sup> As such, CCCS has proceeded to define the relevant market in this regard.

#### CPHC rental companies

173. As a starting point, CCCS first considered whether other CPHC rental companies that are not owned by the Parties or not the Parties' preferred rental fleet partners are within the same relevant market. CCCS is of the view that rental companies offering CPHC rental services are within the same relevant market given that drivers can switch to renting a CPHC from these other CPHC rental companies. Notwithstanding, CCCS notes third-party feedback which suggests that drivers generally consider both the rental terms and the incentives that are offered by the CPPT platform service providers (e.g. Grab and Uber) and may not switch due to the bundling of rental rates and incentives from accepting matched rides from a particular CPPT platform service provider. Specifically, the incentives provided by CPPT platform service providers for drivers who drive on exclusive terms and/or hit certain specified trip targets lower the effective rental price. Third-party feedback noted that most CPHC rental companies would not be able to match such low rental prices.<sup>292</sup>

#### Taxi rental companies

174. Third-party feedback indicated that there are cases of drivers switching from renting taxis to renting CPHCs, and vice versa. As noted above, CDG has recently expanded its fleet, reportedly due to drivers switching away from driving CPHCs, with CDG reporting a sign on of close to 300 new hirers in the month of April 2018, close to double of that in April 2017.<sup>293</sup> CCCS further notes that based on data from the LTA, there has been a decline in un-hired taxis from January 2018 to April 2018, dropping from 12.5% to 9%. The number of TDVLs being issued has also increased, from 110 in April 2017 to 410 in

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<sup>291</sup> Refer to "Vertical Effects" section below.

<sup>292</sup> Paragraph 14 of the Notes of Meeting with [REDACTED] dated 11 January 2018.

<sup>293</sup> *ComfortDelGro sees biggest taxi booking rise since 2014*, *The Straits Times*, 7 June 2018 (<https://www.straitstimes.com/singapore/transport/comfortdelgro-sees-biggest-taxi-booking-rise-since-2014>).

April 2018, representing a four-fold increase.<sup>294</sup> That said, third-party feedback has indicated that while taxis present an alternative to CPHC drivers, they would need to be sufficiently motivated to obtain a TDVL (that is mandatory in order to drive a taxi), which requires a certain degree of “*determination*” to go through<sup>295</sup> and has more stringent training (16 hours compared to 10 hours) and testing (third-party feedback further highlighted that the passing rate for TDVL applicants is around 20%) requirements than those for obtaining a PDVL.<sup>296</sup> CCCS also notes that drivers under the age of 30 cannot obtain a TDVL. On balance, CCCS considers that taxi rental is unlikely to be a sufficiently close substitute to CPHC rental.

#### Privately owned cars

175. It is unlikely for a driver who does not currently own a private car and is currently renting a CPHC vehicle from a rental company to switch to buying a private car for the purpose of providing CPHC services, given the high upfront costs of purchasing a car and COE in Singapore.<sup>297</sup> Therefore, CCCS is of the view that privately owned cars are not part of the relevant market. This is corroborated by feedback from third parties, which indicate that an estimated 90% of full-time CPHC drivers rent their cars, as opposed to a very small number who own their own vehicles.<sup>298</sup> CCCS notes that this is consistent with the data submitted by Grab, which indicates that [X]% of Grab’s CPHC drivers [X] own their own vehicles<sup>299</sup> and the data submitted by Uber, which indicates that [X]% of Uber’s CPHC drivers [X] own their own vehicles.<sup>300</sup>

#### Private cars rented for leisure or personal use

176. CCCS notes that in order for rental companies to rent out a private car for the purpose of offering CPHC services, the vehicle needs to be registered under the Z10/Z11 classification.<sup>301</sup> Z10 is the classification for normal sedans while Z11 is for vehicles like SUVs and MPVs.<sup>302</sup> Notwithstanding the regulatory requirements, CCCS notes that it is generally more expensive to rent vehicles for commercial use because of the insurance and licensing costs involved. For instance, commercial auto insurance, which is required to offer CPHC services, may be about 30 to 50% more expensive than regular motor policies for private use.<sup>303</sup> As such, CCCS is of the view that private cars that are not

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<sup>294</sup> *Taxi! Upturn in fortunes for sector with Uber’s exit*, The Straits Times, 17 June 2018 (<https://www.straitstimes.com/singapore/taxi-upturn-in-fortunes-for-sector-with-ubers-exit>).

<sup>295</sup> Paragraph 31 of the Notes of Meeting with [X] on 11 January 2018.

<sup>296</sup> Paragraphs 50 and 51 of the Notes of Meeting with [X] on 4 January 2018.

<sup>297</sup> *Certificate of Entitlement (COE)*, LTA (<https://www.lta.gov.sg/content/ltaweb/en/roads-and-motoring/owning-a-vehicle/vehicle-quota-system/certificate-of-entitlement-coe.html>) (accessed on 12 June 2018).

<sup>298</sup> Paragraph 19 of the Notes of Meeting with [X] on 11 January 2018.

<sup>299</sup> Paragraph 1.2.5 of Grab’s 4 May 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>300</sup> Paragraph 1.6 of Annex A of USG’s 30 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>301</sup> Section 101(1) of the Road Traffic Act (Cap. 276).

<sup>302</sup> *Conversion and Ownership of Private Hire Cars*, LTA, 19 September 2017 ([https://www.onemotoring.com.sg/content/onemotoring/en/lta\\_information\\_guidelines/buy\\_sell\\_a\\_used/Ownership\\_Transfer0/circulars\\_to\\_esas/jcr\\_content/main\\_par/expandcollapse\\_588450364/par/download\\_51256713/1/file.res/TVLS\\_0901.pdf](https://www.onemotoring.com.sg/content/onemotoring/en/lta_information_guidelines/buy_sell_a_used/Ownership_Transfer0/circulars_to_esas/jcr_content/main_par/expandcollapse_588450364/par/download_51256713/1/file.res/TVLS_0901.pdf)).

<sup>303</sup> *New pay-as-you-use motor insurance policy for private-hire car drivers*, The Straits Times, 11 May 2016, (<https://www.straitstimes.com/singapore/transport/new-pay-as-you-use-motor-insurance-policy-for-private-hire-car-drivers>).

registered under the Z10/Z11 classification and rented cars for leisure or personal use from car rental companies are not part of the relevant market.

#### Geographic market

177. In relation to the rental market, CCCS notes that regulations relating to provision of CPPT services and availability of rental car companies are all Singapore-wide in nature. Third-party feedback did not provide any information that suggests that the geographic market should be different. Hence, CCCS is of the view that the relevant geographic market is likely to be national in scope (i.e. Singapore), as it reflects the competitive constraints faced by the Parties in Singapore.

#### Conclusion

178. CCCS therefore concludes that the relevant markets for the competition assessment on the Transaction are:
- a. two-sided platforms matching drivers and riders for the provision of booked CPPT services in Singapore (“**Platform Market**”); and
  - b. the provision of rental of CPHCs to CPPT drivers in Singapore (“**Rental Market**”),
- (collectively, the “**Relevant Markets**”).
179. Notwithstanding its finding that street-hail, public transport and the broader labour market should be excluded from the relevant market, CCCS has taken into consideration the degree of competitive constraints posed by each.<sup>304</sup> CCCS further notes that this is consistent with the Parties’ submission that if potential unilateral effects are assessed directly, precise market definition is not necessary and the analysis of how the employment alternatives available to CPHC drivers constrain driver-side prices also does not require that a relevant labour market be defined.<sup>305</sup> CCCS agrees broadly with the Parties’ submission that the competitive assessment should ultimately be focused on the effects of the Transaction.

## **E. MARKET STRUCTURE**

### **(a) Market Shares and Market Concentration**

180. As set out in the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*, CCCS is generally of the view that 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% to 40% and the post-merger concentration ratio (i.e. the aggregate market share) of the three (3) largest firms in the market (“**CR3**”) is 70% or more.<sup>306</sup> In relation to the Platform Market, CCCS notes that the Parties’

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<sup>304</sup> In this regard, CCCS is of the view that it has sufficiently addressed Grab’s submission in paragraph 3.27 of Grab’s 26 July 2018 Written Representations that CCCS should take these substitutes into account.

<sup>305</sup> Page 50 of Grab’s 14 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

<sup>306</sup> Paragraph 5.15 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.



market shares exceed the indicative thresholds set out in the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

## The Platform Market

### *Parties' submissions*

181. Uber in its written representations to the Proposed IMD, commented that “*calculating shares based on the number of vehicles is not a realistic way to assess the relative strength of Grab compared to taxi services post-Transaction*”<sup>307</sup> and instead provided market shares calculated from the number of trips matched by each player.

### *CCCS's assessment*

182. CCCS agrees that market shares based on number of trips matched can be an accurate indicator of actual market position and has compiled market shares on this basis (see Table 2).<sup>308</sup>

**Table 2: Market Share by Number of Rides Matched**<sup>309</sup>

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<sup>307</sup> Paragraph 94 of USG's 4 April 2018 Written Representations.

<sup>308</sup> Using data provided by [X] on 24 August 2018, CCCS estimated HDT's number of street-hail rides using its taxi fleet size as a proportion of the combined taxi fleet size of other taxi operators, multiplied by the total street-hail rides of these taxi operators. Taxi rides that are matched via Uber's or Grab's platform are attributed to Uber and Grab respectively.

<sup>309</sup> Paragraph 3.2 of Grab's 30 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Paragraph 4.2 of Grab's 3 May 2018 response to CCCS's 16 April 2018 section 63 Notice; Paragraphs 3.1 and 4.1 of USG's 30 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Paragraph 2.1 and Appendix 1 of [X]; Annex A of [X] 10 May 2018 response to [X]'s 26 April 2018 section 63 Notice; Paragraphs 1a and 1b of [X]'s 11 May 2018 response to CCCS's 26 April 2018 section 63 Notice; Pages 6 to 8 of [X] 9 May 2018 response to CCCS's 26 April 2018 section 63 Notice; [X]'s 1 June 2018 response to CCCS's 26 April 2018 section 63 Notice; 'Total number of rides matched' comprises each company's ride matched via its company's SMS booking service, call booking service, mobile app booking service. [X] did not submit its total rides matched via its matching services. As such, CCCS estimated [X]'s number of rides matched by using its share of taxi fleet size as a proportion of the combined taxi fleet size of [X], [X] and [X], multiplied by the total rides matched by [X], [X] and [X], for each quarter (as far as data was available). For the purpose of estimating [X]'s number of trips, figures for [X] were not used given the huge disparity in size. The methodology was similarly applied to estimate [X]'s number of trips for Q2 2018. Taxi rides that are matched via Uber's or Grab's platform are attributed to Uber and Grab respectively.

Time Period	Grab	Uber	Merged Entity	CDG	HDT	Premier	Prime	SMRT Taxis	Trans-cab	Ryde	Jugnoo	Filo	CR3	Total
Q1 2013	[0-10]%	[0-10]%	[0-10]%	[90-100]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q2 2013	[0-10]%	[0-10]%	[0-10]%	[90-100]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q3 2013	[0-10]%	[0-10]%	[0-10]%	[90-100]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q4 2013	[0-10]%	[0-10]%	[0-10]%	[90-100]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q1 2014	[0-10]%	[0-10]%	[0-10]%	[90-100]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q2 2014	[0-10]%	[0-10]%	[0-10]%	[90-100]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q3 2014	[0-10]%	[0-10]%	[0-10]%	[80-90]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q4 2014	[0-10]%	[0-10]%	[10-20]%	[80-90]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q1 2015	[10-20]%	[0-10]%	[10-20]%	[70-80]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q2 2015	[10-20]%	[10-20]%	[20-30]%	[70-80]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q3 2015	[20-30]%	[10-20]%	[30-40]%	[60-70]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q4 2015	[20-30]%	[20-30]%	[40-50]%	[50-60]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q1 2016	[20-30]%	[10-20]%	[40-50]%	[50-60]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q2 2016	[30-40]%	[20-30]%	[50-60]%	[40-50]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q3 2016	[30-40]%	[30-40]%	[60-70]%	[30-40]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q4 2016	[30-40]%	[30-40]%	[70-80]%	[20-30]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q1 2017	[40-50]%	[30-40]%	[80-90]%	[20-30]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q2 2017	[50-60]%	[30-40]%	[80-90]%	[10-20]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q3 2017	[50-60]%	[30-40]%	[80-90]%	[10-20]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q4 2017	[50-60]%	[20-30]%	[80-90]%	[10-20]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q1 2018	[50-60]%	[30-40]%	[80-90]%	[10-20]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Q2 2018	[70-80]	[0-10]	[80-90]	[10-20]	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]	[90-100]	100%

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183. CCCS is of the view that the market shares based on total rides matched by CPPT platform service providers shown in the table above are likely to be indicative of the Parties' market positions in the Platform Market. In this regard, the Parties' combined market share is [80-90]%,<sup>312</sup> which is significantly above the indicative threshold of 40% stipulated under the *CCCS Guidelines for the Substantive Assessment of Mergers 2016*, and CR3 has been consistently close to 100%. Further, the Parties' collective market share and individual shares have been increasing rapidly since their entry in 2013 at the expense of other CPPT platform service providers – in particular, CDG, which had approximately [90-100]% of the market share in Q1 2013. Post-Transaction, the merged entity with [80-90]% market share will be more than 5 times the size of the next biggest player, CDG. This suggests that the competitive constraint imposed by CDG on the merged entity will be limited, even assuming that the CPPT platform service provided by CDG is a direct and close substitute (which some third-party feedback has indicated otherwise).
184. CCCS notes Grab and Uber's submissions that taxi trips under the GrabTaxi and UberTaxi option should be attributed to the relevant taxi company that performed the services and set the fare prices instead of Grab or Uber respectively.<sup>313</sup> In this regard, CCCS notes that the relevant product is the provision of CPPT platform services and not the provision of CPPT services. While Uber and Grab do not set the trip fares, they are able to control bookings through their platforms when seeking to exercise market power (e.g. by preventing the booking of rides through GrabTaxi with the aim of increasing prices).<sup>314</sup> On a secondary note, it is not the taxi companies, but Grab and Uber, who set the booking fees for GrabTaxi and UberTaxi trips respectively, which is an additional indication of such control.<sup>315</sup> Moreover, the Parties also set and earn the commission rates charged to drivers for the provision of GrabTaxi and UberTaxi matching services.<sup>316</sup> Therefore, CCCS attributes GrabTaxi and UberTaxi trips to the market shares of Grab and Uber respectively.
185. CCCS further notes Grab's submission that CCCS had, in its market share analysis, assumed that Grab will capture all of Uber's riders and drivers post-Transaction, resulting in a flawed analysis. Given that the Transaction does not equate to a merger of operations, Uber's riders and drivers did not automatically become Grab riders and drivers post-

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<sup>310</sup> Calculated based on data from the [§<] for April 2018 – June 2018.

<sup>311</sup> Even using the figures submitted by Grab for the total number of CPHC trips taken from April 2018 – June 2018, and summing it with the taxi figures from [§<] for the same period, Grab's market share remains unchanged.

<sup>312</sup> While CCCS is of the view that street-hail is not part of the Platform Market, CCCS notes that the Parties' market shares by number of rides matched (including street-hail) is at [40-50]% in Q2 2018, which is still above the indicative threshold of 40% stipulated under the *CCCS Guidelines on the Substantive Assessment of Mergers 2016* and CR3 post-Transaction is at [80-90]% for the same period. Accordingly, CCCS is of the view that regardless whether the Platform Market includes street-hail or not, competition concerns remain.

<sup>313</sup> Paragraphs 4.34 to 4.36 of Grab's 26 July 2018 Written Representations; Paragraph 59 of USG's 26 July 2018 Written Representations.

<sup>314</sup> See Lindsay & Berridge (5<sup>th</sup> ed.) at para. 4-024.

<sup>315</sup> Due to LTA regulation, booking fees for GrabTaxi and UberTaxi trips cannot exceed the booking fees set by the taxi companies concerned. However, Grab and Uber has autonomy in setting its booking fees within the range.

<sup>316</sup> Paragraph 22.2 of Grab's 18 May 2018 response to CCCS's 7 May 2018 section 63 Notice; Paragraph 8 of USG's 3 August 2018 response to CCCS's 2 August 2018 information request. CCCS notes that Uber's commission for the provision of booking service via UberTaxi was set at [§<] prior to its shutdown in Singapore.

Transaction since not all individuals who were taking rides or driving on Uber’s platform switched over to Grab. Furthermore, Grab had employed best efforts to communicate with Uber’s drivers and riders that they had every opportunity to join any other ride-sharing platform. Grab also noted CDG’s increase in year-on-year bookings in May 2018 as an illustration of how some Uber riders and drivers may have switched to other competitors.<sup>317</sup>

186. In this regard, CCCS notes that Grab’s post-Transaction market share of [80-90]% in June 2018, is close to the Parties’ pre-Transaction total market share of [80-90]% and remains significantly above the indicative threshold of 40% stipulated under the *CCCS Guidelines for the Substantive Assessment of Mergers 2016*, while CR3 remains close to [90-100]%. The merged entity with [80-90]% market share will still be more than 4 times the size of the next biggest player, CDG, suggesting that CDG’s competitive constraint on the merged entity remains limited. Even if the number of trips made by street-hail were included, CCCS notes that the Parties’ post-Transaction market share remains above the indicative threshold of 40% stipulated under the *CCCS Guidelines for the Substantive Assessment of Mergers 2016*, and CR3 exceeds [80-90]%. Further, the number of Grab’s rides per month increased by [30-40]% from [X] million between January and March 2018 to [X] million between May and July 2018, upon Uber’s shut-down. Taxi operators did not experience the same increase. This shows that Grab has retained the largest number of diverted rides from Uber, and that Grab and Uber were each other’s closest competitor.
187. The Parties submitted that market share figures in highly dynamic markets are not indicative of market power, citing examples of “fast-paced online markets” where large market shares may turn out to be ephemeral due to frequent market entry and short innovation cycles.<sup>318</sup> However, CCCS notes that there has been no recent examples of successful disruption to CPPT platform companies like the Parties. On the contrary, there have been a few recent examples of new market players who have failed to gain significant market share or even exited.<sup>319</sup>

The Rental Market

**Table 3: Market Share by Rental Fleet Size<sup>320</sup>**

<b>CPHC Rental Companies</b>	<b>Number of CPHC for rental</b>	<b>Market Share</b>
Lion City Rentals	[X]	[20-30]%
Grab Rentals	[X]	[0-10]%
Grab Preferred Rental Fleet Partners	[X]	[10-20]%

<sup>317</sup> Paragraphs 4.32 to 4.33 of Grab’s 26 July 2018 Written Representations.

<sup>318</sup> Paragraphs 61 to 62 of USG’s 26 July 2018 Written Representations.

<sup>319</sup> See Table 7A of this ID for recent examples of failures. Refer to sections E and F of this ID for a detailed assessment on the characteristics of the market that contributed to this phenomenon.

<sup>320</sup> Paragraph 6.3 of USG’s 6 June 2018 response to CCCS’s 4 June 2018 section 63 Notice; Paragraph 20.1 of Grab’s 30 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; Paragraph 7.2 of Grab’s 8 June 2018 response to CCCS’s 4 June 2018 section 63 Notice; Paragraph 90 of USG’s 4<sup>th</sup> April Written Representations; ‘3<sup>rd</sup> Party CPHC Rental Companies’ fleet size is estimated by taking USG’s estimates for total CPHC rental fleet net of Lion City Rentals’, Grab Rentals’ and Grab Preferred Rental Fleet Partners’ fleet size.

<b>CPHC Rental Companies related to the Parties</b>	<b>[X]</b>	<b>[50-60]%</b>
<b>3<sup>rd</sup> Party CPHC Rental Companies</b>	<b>[X]</b>	<b>[40-50]%</b>
<b>Total CPHC Fleet for Rental</b>	<b>[X]</b>	<b>100%</b>

188. Table 3 above shows the market shares in the Rental Market.<sup>321</sup> CCCS notes that post-Transaction, [50-60]% of CPHC companies are related to the Parties either by equity affiliation or contractual relationships. This is likely to allow the Parties to exercise substantial market power in terms of the vertical relationship between the Rental Market and the Platform Market (see section on vertical effects for further elaboration). While the current estimates show that Grab only has a [0-10]% market share in the Rental Market through Grab Rentals, CCCS notes that Grab [X],<sup>322</sup> and has the resources to further expand its rental fleet.

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

Indirect network effects and multi-homing

189. In this section, CCCS will demonstrate that ‘indirect network effects’ are present in the Platform Market (i.e. riders value a CPPT platform more when there are more drivers, and drivers value a CPPT platform more when there are more riders).<sup>323</sup> Such indirect network effects can amount to barriers to entry and expansion, as it would be difficult for a new platform player to attract drivers without riders, and to attract riders without drivers. Such barriers to entry and expansion would not be insurmountable if ‘multi-homing’ is prevalent amongst both drivers (i.e. being able to choose jobs from multiple platforms at any point of time) and riders (i.e. being able to choose to book rides from multiple platforms at any point of time). However, exclusivity restrictions imposed by the largest incumbent platform significantly reduces multi-homing amongst drivers, reinforces the indirect network effects, and escalates the barriers to entry and expansion to such a level that effective competition in the Platform Market is impeded.

*Parties’ submissions*

190. The Parties submitted that network effects are not a significant barrier to entry, as both passengers and drivers frequently multi-home across different ride-hailing apps in response to lower prices and higher incentives respectively.<sup>324</sup> The Parties have submitted that drivers have both the ability and the “will” to multi-home, as illustrated

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<sup>321</sup> This does not take into account the [X]. CCCS also notes Grab has announced that it has secured a \$500 million five-year asset backed syndicated facility to finance the growth of its vehicle fleet: *Grab secures \$500m syndicated facility for vehicle fleet financing*, Grab, 18 June 2018 (<https://www.straitstimes.com/business/companies-markets/grab-secures-500m-syndicated-facility-for-vehicle-fleet-financing?xtor=CS3-17>).

<sup>322</sup> Letter from Gibson, Dunn & Crutcher LLP to CCCS dated 6 August 2018.

<sup>323</sup> CCCS notes that the Parties have used the term ‘network effects’ and ‘indirect network effects’ interchangeably. However, CCCS is of the view that ‘direct network effect’ is not present in the Platform Market, as drivers would not value a platform more when there are more drivers competing for jobs, and riders would not value a platform more when there are more riders competing for rides.

<sup>324</sup> Paragraph 28.6 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

by Uber's high-level estimate that an average of [X] % of drivers that were on the Uber platform were also on Grab's platform in 2017.<sup>325</sup>

191. The Parties submitted that while it may be expected that contractual restraints (i.e. exclusivities) imposed by the ride-hailing platform's affiliates and/or partners would restrict the ability of drivers to multi-home, such restrictions are limited in scale given that [X] of Grab drivers leased a car from Grab Rentals, [X] % of Grab drivers rented a car from Grab Rentals or a Grab preferred rental fleet partner, and only [X] of Uber drivers in Singapore leased a vehicle from Lion City Rentals in 2017.<sup>326</sup> On whether loyalty programs and e-wallets might act to limit multi-homing on the rider side, the Parties submitted that the findings of the Uber Survey indicate that [X].<sup>327</sup> Specifically, the Uber Survey found that [X] % of users of ride-hailing services would be willing or very willing to install a new ride-hailing app and that [X] % of Grab users and [X] % of Uber users indicated that they had used at least one (1) other ride-hailing app in the last six (6) months.<sup>328</sup>
192. The Parties also submitted that the situation in the ride-sharing industry in US, where Lyft competes against Uber throughout the US with 35% market share is sharply at odds with any suggestion that the ride-sharing industry is prone to tipping to a monopoly;<sup>329</sup> and that Grab and Go-Jek's<sup>330</sup> significant market shares of 56% and 33% respectively despite Uber entering earlier in Indonesia is against the idea that ride-sharing is a "winner takes all" market.<sup>331</sup> The Parties have submitted that the fact that ride-sharing is characterised by indirect network effects does not mean that ride-sharing is an industry prone to tipping to a monopoly<sup>332</sup> and the presence of these network effects in no way implies that this is a market prone to "tipping". The Parties have also submitted that the features of this industry (e.g. widespread multi-homing, strong competitive constraints on both sides of the market and the presence of a number of credible entrants including Go-Jek) mean that the market is not prone to "tipping": any failure by Grab to "pass on" the efficiencies generated by the Transaction would be punished by riders and drivers switching to other services, whether existing players or new entrants.<sup>333</sup>

#### CCCS's assessment

193. CCCS is of the view that barriers to entry and expansion in relation to the Platform Market are high due to the strong indirect network effects present in the market for booking services, given its two-sided nature. In particular, the interdependence of drivers and riders give rise to indirect network effects or a 'virtuous circle': a CPPT platform that has built up high levels of usage is more attractive to new drivers and riders than a

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<sup>325</sup> Paragraph 28.7 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Paragraph 17.1 of USG's 23 May 2018 response to CCCS's 7 May 2018 section 63 Notice, where USG submitted that [X].

<sup>326</sup> Page 59 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice; Paragraph 28.8 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>327</sup> Paragraph 28.8 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>328</sup> Paragraph 28.8 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>329</sup> Page 24 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

<sup>330</sup> All references to "Go-Jek" in this Notice may refer to PT GO JEK Indonesia and its subsidiaries and any other related entities including but not limited to Go-Jek Singapore Pte. Ltd..

<sup>331</sup> Page 26 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

<sup>332</sup> Page 57 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

<sup>333</sup> Paragraphs 28.9 and 42.10 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

competitor with less usage whose offer, in terms of price, quality and service, may otherwise be the same. The indirect network effect reinforces the incumbency of the existing players present in the market, and greatly increases the time and upfront expenditure needed for a new potential entrant to build up a driver network and rider network similar in scale and size to the Parties. Furthermore, markets that display strong indirect network effects run the risk of “*tipping*” which will further increase the barriers to entry and expansion.<sup>334</sup> Market tipping is a phenomenon where a single firm will become sufficiently large that the market ‘*tips*’ in its favour, meaning that the firm captures a majority share of the market and its strong position is reinforced by the networks effects.<sup>335</sup> Market tipping via artificial means such as exclusivity clauses and mergers among big competitors is of concern as once the market has tipped, the incumbent’s market position is entrenched and it may be very difficult for new entrants to dislodge their incumbent position, even if new competitors have a superior product. CCCS is not against market tipping that results from organic competition, but rather, against artificial means that enhance indirect network effects such as through exclusivities, as it may prolong the period during which a market tips to a particular party and by corollary, limit the extent to which firms are forced to compete for the market on their own merits.

194. A multi-sided market is more likely to tip: (i) the less differentiated the offerings are from competing platforms; and (ii) the less customers on one or more sides multi-home.<sup>336</sup> In this regard, CCCS notes the Parties’ submission that there is no brand loyalty for both riders and drivers.<sup>337</sup> The Parties’ submissions also show that there is weak differentiation between CPPT platform providers as evidenced by the example used, where Lyft could only differentiate itself in the US by emphasising its corporate values.<sup>338</sup> Furthermore, CCCS also notes that competing platforms to the merged entity are generally of inferior functionality. For example, CDG’s app does not offer all the features and functionalities of Grab (e.g. one cannot book CPHCs through CDG’s app; CDG’s flat-fares are not dynamically priced).<sup>339</sup>
195. In addition to the above, CCCS is also of the view that barriers to entry and expansion have been raised as a result of the Transaction due to the following:
  - a. In the absence of CCCS’s IMD, the Purchase Agreement would have allowed Grab to request Uber to not sell Lion City Rentals [X],<sup>340</sup> which would make it more difficult for the [X] potential competitors to enter and expand quickly

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<sup>334</sup> Pages 11 and 12 of *Competition Law*, by R. Whish and D. Bailey, Oxford University Press, 2012, 7<sup>th</sup> Edition.

<sup>335</sup> Page V of *E-Commerce and its impact on competition policy and law in Singapore*, by DotEcon, October 2015.

<sup>336</sup> Paragraph 12 of *Measuring market power in multi-sided markets*, K. Collyer, H. Mullan and N. Timan, Directorate for Financial and Enterprise Affairs Competition Committee, Organisation for Economic Co-operation and Development, 15 November 2017.

<sup>337</sup> Paragraph 28.5 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>338</sup> Page 57 of Grab’s 14 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

<sup>339</sup> Paragraphs 7 to 10 of [X]’ 11 May 2018 response to CCCS’s 4 May 2018 section 63 Notice.

<sup>340</sup> Section 6.1(e) of the Purchase Agreement.

given they are unable to access Lion City Rentals' existing fleet of vehicles and drivers.<sup>341</sup>

- b. A large number ([§<] <sup>342</sup>) of Uber's drivers have migrated to Grab's CPPT platform post-Transaction as it is the only viable platform due to its strong indirect network effects. This further entrenches the indirect network effects on Grab's CPPT platform, and effectively decreases the ability and/or incentive for both riders and drivers to multi-home.
- c. In the absence of CCCS's IMD, it is likely that all LCR drivers would have been required to move to the Grab platform post-Transaction, and be required to drive for Grab on an exclusive basis, given that all LCR drivers were required to drive for Uber on an exclusive basis previously. Combined with those drivers who were already driving for Grab pre-Transaction, this would translate into approximately [60-70]% <sup>343</sup> of the total number of Grab's and Uber's LCR drivers being required to drive for Grab on an exclusive basis. The enlarged network of exclusive drivers is likely to strengthen the indirect network effects of Grab's CPPT platform, while reducing the pool of drivers available to drive for other CPPT platforms.

196. In CCCS's assessment above, CCCS considered the Parties' representations that:

- a. CCCS had, instead of providing evidence that the Transaction is likely to give rise to higher barriers to entry, relied on theoretical reasoning which would apply to two-sided markets in general;<sup>344</sup> and
- b. Pre-Transaction levels of multi-homing are not determinative of drivers' ability or willingness to multi-home or to switch to a rival ride-hailing platform.<sup>345</sup>

197. Contrary to the Parties' arguments that CCCS had relied on theoretical reasoning which would apply to two-sided markets in general and that pre-Transaction levels of multi-homing are not determinative of drivers' ability or willingness to multi-home or switch to a rival CPPT platform, CCCS has taken into consideration the available evidence and economic analysis in its findings. CCCS's detailed findings with respect to the barriers to entry and expansion due to indirect network effects and drivers' ability and willingness to multi-home or switch to a rival CPPT platform are set out below at paragraphs 198 to 208.

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<sup>341</sup> CCCS's assessment on the 'factual' is based on the completed merger, and in the absence of CCCS's IMD (without which, the clause may be exercised). The IMD requires that Grab undertakes not to exercise the clause in the Purchase Agreement to request for Uber to not sell Lion City Rentals [§<].

<sup>342</sup> Paragraph 3.1 of Grab's 21 June 2018 response to CCCS's 4 June 2018 section 63 Notice

<sup>343</sup> Paragraph 18.1 of USG's 18 May 2018 response to CCCS's 7 May 2018 section 63 Notice; Paragraphs 8.1 to 8.4 of Grab's 8 June 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>344</sup> Paragraph 4.18 of Grab's 26 July 2018 Written Representations.

<sup>345</sup> Section 2.5.1 of CRA's 26 July 2018 Report.



### Driver-side multi-homing

198. Multi-homing, in the context of the driver’s side of the Platform Market, occurs where drivers are able to use more than one (1) CPPT platform simultaneously to accept CPPT jobs.<sup>346</sup> In this regard, CCCS notes the Parties’ submission that most driver-side incentive programmes tend to provide rewards when a driver does more rides on a given platform over a short period of time (e.g. less than seven (7) days) and that the short period of time means that, even if a driver decides to concentrate his or her driving on Grab during a particular week in order to qualify for an incentive payment, a new entrant could compete against Grab to be that driver’s preferred platform the next week.<sup>347</sup> However, CCCS is of the view that such a situation should not be considered as multi-homing given that drivers would not be willing to use more than one (1) CPPT platform simultaneously to accept CPPT jobs.
199. CCCS notes that based on Uber’s high-level estimate, during 2017, an average of [X]% of drivers were on both the Grab and Uber platforms and thus multi-homed. This means that the majority of its drivers ([X]%) single-home, which may increase the risk of the market “tipping”.<sup>348</sup> Table 4 below shows the extent of single-homing by active drivers in 2017 based on Uber’s estimates.

**Table 4: Extent of Single-homing by Active Drivers in 2017<sup>349</sup>**

Active Drivers	Number	Percentage
Single-home	[X]	[80-90]%
Multi-home	[X]	[10-20]%
Total	[X]	100.00%

200. While Table 4 above shows that [X] (or [10-20]%) of drivers multi-home, CCCS observes that Uber’s methodology<sup>350</sup> is likely to over-estimate the number of drivers who effectively multi-home, given Uber’s definition of multi-homing (i.e., [X]). Uber’s methodology also did not consider the extent of multi-homing by drivers in terms of actual supply hours and trip numbers (i.e. by comparing the proportion of trips driven across competing CPPT platforms). Under Uber’s methodology, a driver who drives one (1) trip a week for one (1) platform and the rest of his trips on another platform would still be considered to multi-home. Furthermore, it is more likely for part-time drivers who are unable to meet the lowest tier of either Grab or Uber’s incentive schemes to multi-home, given that they would not have any incentive to single-home. While part-time drivers comprise [X]% of Grab’s total number of drivers, they only account for [X]% of Grab’s completed trips.<sup>351</sup> Further, it may take a new player some time to acquire

<sup>346</sup> Paragraph 25 of *Market definition in multi-sided markets*, S. Wismer & A. Rasek, Directorate for Financial and Enterprise Affairs Competition Committee, Organisation for Economic and Co-operation and Development, 15 November 2017.

<sup>347</sup> Page 59 of Grab’s 14 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

<sup>348</sup> Paragraphs 17.1 and 17.2 of USG’s 23 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>349</sup> Paragraphs 20.1 to 20.3 of Grab’s 18 May 2018 response to CCCS’s 7 May 2018 section 63 Notice; Paragraph 23.1 of USG’s 18 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>350</sup> In paragraph 17.1 of USG’s 23 May 2018 response to CCCS’s 7 May 2018 section 63 Notice, USG submitted [X].

<sup>351</sup> Paragraphs 8.1 to 8.4 of Grab’s 8 June 2018 response to CCCS’s 7 May 2018 section 63 Notice.

sufficient driver supply hours from the limited pool of drivers who multi-home given the need to compete for driver supply hours without the advantage of the incumbent network.

The effect of exclusivity on driver-side multi-homing

201. Exclusivity clauses that are present in drivers' rental contracts are intended to, and effectively, prevent drivers from multi-homing as drivers are not allowed to accept CPPT bookings from other CPPT platform service providers. The Parties initially submitted that exclusivities are limited in scale given that [X] of Grab drivers leased a car from Grab Rentals and [X] of Uber drivers in Singapore leased a vehicle from Lion City Rentals in 2017.<sup>352</sup> The Parties' initial submissions do not consider (i) drivers who lease cars from Grab's rental fleet partners and drive for Grab on an exclusive basis; and (ii) the distinction between full-time and part-time drivers. The Parties' further submissions show that in Q1 2018, (i) out of Grab's total number of full time drivers of [X], [X]% drive on an exclusive basis; and (ii) a significant proportion of Grab's trips ([X]%) are undertaken by drivers who drive for Grab on an exclusive basis.<sup>353</sup> In addition, in the absence of the IMD, there is no indication post-Transaction that (i) new drivers signing up to drive with Grab; and (ii) Lion City Rentals' [X] full-time and [X] part-time drivers<sup>354</sup> would not be required to drive exclusively for Grab; given Grab Rentals and Lion City Rentals' past policy of requiring its drivers to drive exclusively for Grab and Uber respectively. CCCS notes that [X].<sup>355</sup> Exclusive contracts can be used to drive out smaller competitors or be used to prevent the entry of potential new entrants.
202. Exclusivities aside, CCCS is of the view that the willingness of drivers to multi-home is significantly reduced by the structure of the various incentive schemes offered by the Parties, which may render drivers *de-facto* exclusive. Based on third-party feedback, CCCS notes that drivers are heavily dependent on the incentive structure, often focusing on completing a higher volume of jobs in order to qualify for incentives which form the bulk of their earnings, which can constitute up to 100% of a driver's take-home profits.<sup>356</sup> Similarly, the incentive schemes are deliberate efforts by the Parties to impose implicit exclusivities to limit multi-homing by drivers.<sup>357</sup> To illustrate, CCCS notes that Grab utilises various driver incentive schemes, including:
- a. Weekly incentives provided at the platform level for all drivers (whether driving exclusively for Grab or not, or whether driving on a full-time or part-time basis), which consist of either Peak Hour Special ("PHS") or Own-Time-Own-Target ("OTOT"), paid out on a weekly basis. PHS is a weekly incentive in which drivers are given targets and pay-outs based on the number of trips that they are able to complete during peak hours within a week, while OTOT is a program of a guarantee structure in which drivers are able to "opt" into a weekly incentive in lieu of PHS, guaranteeing their level of fare earnings based on the number of rides that they complete in a given day or week;<sup>358</sup>

<sup>352</sup> Paragraph 28.8 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>353</sup> Paragraphs 8.1 to 8.4 of Grab's 8 June 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>354</sup> Paragraph 18.1 of USG's 18 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>355</sup> [X].

<sup>356</sup> Paragraphs 7 and 22 of the Notes of Meeting with [X] dated 11 January 2018.

<sup>357</sup> Paragraph 20.1 of Grab's 18 May 2018 response to CCCS's 7 May 2018 section 63 Notice; Paragraphs 4.1, 6.1 and 8.1 to 8.4 of Grab's 8 June 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>358</sup> Paragraph 3.1 of Grab's 30 August 2018 response to CCCS's 24 August section 63 Notice.

- b. Monthly incentives provided at the platform level for all drivers (whether driving exclusively for Grab or not, or whether driving on a full-time or part-time basis), paid out on a monthly basis. The monthly rewards program called “Super Steady” awards drivers a bonus pay-out at the end of the month based on a driver’s “streak”, which is defined as the number of consecutive months that the driver is able to complete 200 or more rides per month (the higher the streak, the higher the rewards get);<sup>359</sup>
- c. Weekly incentives provided at the rental level for drivers who rent from Grab Rentals and who drive exclusively for Grab (whether on a full-time or part-time basis), paid out on a weekly basis. Such drivers may opt into the “GrabRentals Loyalty Rebate”, with an incentive of \$150 for 100 trips in a week or \$100 for 75 trips in a week. For drivers who rent from Grab Rentals but do not drive exclusively for Grab (whether on a full-time or part-time basis), they may opt into the “GrabRentals Easy Rebate”, with an incentive of \$100 for 100 trips in a week or \$75 for 75 trips in a week;<sup>360</sup> and
- d. Other categories of incentives including cashback, rental rebates, birthday gifts, and Medisave contributions.<sup>361</sup>

203. CCCS notes the Parties’ representations that:

- a. The PID provides no evidence that the specific incentives offered by Grab are especially likely to be effective at preventing another operator from assembling the relevant assets to establish a competing business;<sup>362</sup>
- b. The Parties disagree with CCCS’s interpretation of driver statistics, which, in the Parties’ view, indicates that the majority of Grab drivers are able, and would not hesitate, to multi-home across ride-hailing applications given that [X];<sup>363</sup>
- c. [X] the trips on Grab were fulfilled by drivers renting vehicles from Grab Rentals or Grab’s fleet partners pre-Transaction and just [X] of drivers on the Uber platform rented a vehicle from LCR, with the overwhelming majority of these drivers working part-time, suggesting that the majority would face no contractual restrictions on who they drove with;<sup>364</sup>
- d. The [X]% or almost [X] drivers that were active on both platforms is “*not in fact a modest number; but in any case, it is not clear why the other [X]% of drivers would be unable to multi-home if they wished to do so*”;<sup>365</sup> and

<sup>359</sup> Paragraph 3.1 of Grab’s 30 August 2018 response to CCCS’s 24 August section 63 Notice.

<sup>360</sup> Paragraph 3.1 of Grab’s 30 August 2018 response to CCCS’s 24 August section 63 Notice.

<sup>361</sup> Paragraphs 13.1 to 13.3 of Grab’s 30 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; Paragraphs 13.1 to 13.2 of Grab’s 4 May 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>362</sup> Section 2.5 of CRA’s 26 July 2018 Report.

<sup>363</sup> Paragraph 4.28 of Grab’s 26 July 2018 Written Representations.

<sup>364</sup> Section 2.5.1 of CRA’s 26 July 2018 Report.

<sup>365</sup> Section 2.5.1 of CRA’s 26 July 2018 Report.

- e. For the majority of drivers, incentive payments are a modest share of income. In December 2017, [X] of active Grab drivers earned less than S\$[X] in incentive payments (approximately [X]% of average earnings for a CPHC driver working 40 hours per week) and almost [X] earned precisely S\$[X] in incentive payments. For Uber, incentives of this type for ongoing drivers have been only around [X]% of the total value of incentive expenditure since 2014.<sup>366</sup>

204. CCCS has considered the Parties' representations in its assessment at paragraphs 201 and 203 above. However, CCCS is of the view that ultimately, it is the combined effects of exclusivities and loyalty incentive schemes on drivers' incentive and ability to single-home that matters. As identified in Table 4 earlier, [80-90]% of drivers single-home. In addition, CCCS notes that the numbers submitted by the Parties in relation to incentive payments (see paragraph 203 above) do not account for the difference between part-time and full-time drivers (e.g. average numbers may be reduced due to the large number of part-time drivers who do not qualify for the incentive payments). In particular, CCCS notes that drivers who earn [X], accounted for only approximately [0-5]% of Grab's CPHC trips from January 2018 to June 2018.<sup>367</sup> The interdependence of drivers and riders give rise to indirect network effects or a '*virtuous circle*'. By signing up more drivers on an exclusive basis, the merged entity would be able to likely attract more riders who require CPPT booking services. This will then incentivise other drivers previously not driving for the merged entity on an exclusive basis to sign up exclusively or drive exclusively for the merged entity since there are many riders using the merged entity's platform. This means that over time, the merged entity relative to potential new entrants or smaller competitors will be more attractive and may not need to provide large exclusivity payments to get additional drivers to drive on an exclusive basis or single-home.

#### Driver-side switching costs

205. Multi-homing aside, CCCS also notes that drivers face significant switching costs over the duration of rental contracts. Drivers may face significant financial penalties in addition to the forfeiture of their rental deposits and claw-back of rental rebates and discounts for early termination of such rental contracts. Based on third-party feedback, the quantum of penalties would depend on the duration of the contract and the unexpired term of the contract. In some cases, it could be the amount of rental fees payable for the rest of the contractual term. Apart from termination fees, drivers may also be required to return the quantum of incentives that was accrued for the duration of the contract.<sup>368</sup>
206. As a case in point, under the rental agreement between Grab Rentals and its drivers, early termination prior to the end of the minimum rental period by drivers involves high switching costs as it entails the following (both pre- and post-Transaction):

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<sup>366</sup> Section 2.5.1 of CRA's 26 July 2018 Report.

<sup>367</sup> Paragraph 5.1 of Grab's 30 August 2018 response to CCCS's 24 August 2018 section 63 Notice; Paragraph 7.1 of Grab's 1 August 2018 response to CCCS's 30 July 2018 section 63 Notice.

<sup>368</sup> Paragraph 21 of the Notes of Meeting with [X] and [X] dated 26 March 2018.

- a. [REDACTED];
- b. [REDACTED];
- c. [REDACTED]; and
- d. [REDACTED].<sup>369</sup>

207. CCCS notes the Parties' representations that:

- a. Evidence in the CRA Report shows that [REDACTED]% of drivers surveyed stated that it was not important who they drove for, as long as they were well paid, implying that drivers are very open to switching services on the basis of opportunities to earn more;<sup>370</sup>
- b. Third-party feedback articulates that drivers do not face significant switching costs or barriers in switching;<sup>371</sup>
- c. The PID presents no evidence that switching costs would limit an entrant's access to drivers and the evidence suggests that such effects would be minimal given that:
  - i. The majority of drivers do not drive vehicles from rental providers that impose exclusivity requirements;
  - ii. Even amongst drivers who obtain a vehicle with exclusivity provisions, there will be a significant flow of drivers whose exclusivity periods are expiring at any given time. [REDACTED]% of LCR rental contracts were three (3) months, [REDACTED]% six (6) months and [REDACTED]% one (1) year. If these terms were replicated across the rental fleet, in an average month [REDACTED]% of drivers would be effectively released from exclusive rental contracts; and
  - iii. For many drivers renting vehicles with exclusivity provisions, the cost of switching may be low.<sup>372</sup> Because rental contracts tend to be relatively short, even those that do are able to switch to a new entrant after a relatively short period of time.<sup>373</sup>

208. CCCS considers that first, as discussed in paragraph 202 above, switching costs are likely to be significant even for drivers who do not drive on an exclusive basis in view of, *inter alia*, the incentive schemes and structures put in place to induce *de facto* exclusivity. Second, CCCS notes that it may be difficult for a competitor to rapidly build up a pool of drivers if it can only target [REDACTED]% of the Grab drivers currently renting from Grab Rentals and Grab's rental partners each month (whom Grab will also be fighting to retain). Furthermore, drivers whose contracts have expired may not be willing to switch to a new entrant in the presence of significant indirect network effects on Grab's

<sup>369</sup> Paragraphs 18.1 and 18.2 of Grab's 16 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>370</sup> Paragraph 4.22 of Grab's 26 July 2018 Written Representations.

<sup>371</sup> Paragraph 4.23 and 4.24 of Grab's 26 July 2018 Written Representations; Paragraphs 13.1 to 13.2 of Grab's 4 May 2018 response to CCCS's 16 April 2018 section 63 Notice; Paragraphs 5.2 and 5.3.1 of Grab's 3 September 2018 Written Representations

<sup>372</sup> Section 2.5.2 of CRA's 26 July 2018 Report.

<sup>373</sup> Section 2.6 of CRA's 26 July 2018 Report.

platform. Lastly, even after taking account of the Parties' assumption that in an average month, [§<] of drivers would be released from their rental contracts, CCCS notes that these drivers may include part-time drivers, who may have shorter rental contracts and may contribute significantly smaller numbers of trips as compared to full-time drivers. Accordingly, access to part-time drivers may not contribute as significantly to a competitor's network and ability to compete with Grab.

#### Rider-side multi-homing

209. On the rider side, CCCS is of the view that the Uber Survey suffers from consistency issues and design flaws, which undermine its credibility. In particular, respondents to the survey have provided inconsistent responses and aspects of the survey design has the propensity to introduce biased responses. In any case, even if riders were able to multi-home, single-homing by the drivers is likely to enhance and allow Grab to exercise its market power, thereby hindering the ability of a new entrant to gain market share.

#### Market-tipping

210. CCCS also notes that there is limited multi-homing and high costs of switching on the driver side as discussed in paragraphs 198 to 208 above. Based on third-party feedback, Grab remains the only viable platform post-Transaction as it is the only CPPT platform which is sufficiently capitalised to be able to offer similar ongoing commissions and bonuses to drivers as Uber did and the main CPPT platform that offers on-demand ride-hailing services in Singapore, such that any new driver and/or rider will be naturally inclined to join.<sup>374</sup> As such, most drivers who were on Uber's CPPT platform before the Transaction have migrated to Grab's CPPT platform and, consequently, most riders have also migrated to Grab's CPPT platform.
211. Although Grab submitted that if entry into the ride-hailing space were as difficult as the PID suggests, and the market was as prone to tipping as the PID makes out, one would expect the PID to provide evidence of a dearth of candidate entrants, and precedents of tipping in other geographical markets, Table 5 below shows the post-Transaction increase in the number of Grab's (i) active drivers; (ii) active riders; and (iii) trips completed. While CCCS notes the Parties' submissions on entry by (i) Lyft; and (ii) Go-Jek and Grab in the US and Indonesia respectively, CCCS is not privy to the details on the conditions and structure of the aforesaid markets prior to entry, including the costs of switching and the extent of multi-homing. In addition, CCCS notes that the CRA Report confirms Grab's ability to prevent new entry from eroding Grab's scale "*if Grab tries to defend its category position with pro-competitive increases in rider and driver-side promotions*".<sup>375</sup> While Grab submitted that CCCS did not provide analysis on rider switching, and only focused on the Uber Survey in paragraph 172 of the PID,<sup>376</sup> CCCS notes that a networked market<sup>377</sup> is likely to be served by a single platform when multi-homing costs are high for at least one user side (i.e. the drivers' side in this case), indirect network effects are positive and strong, and neither side's users have a strong preference

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<sup>374</sup> Paragraph 5 of the cover letter of [§<]; Paragraph 26.1 of [§<].

<sup>375</sup> Page 42 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

<sup>376</sup> Paragraph 4.30 of Grab's 26 July 2018 Written Representations.

<sup>377</sup> *Two-sided markets: Models and business cases*, A Alberto and G Ruffoni, SDA Bocconi School of Management.

for special features. Therefore, while CCCS is of the view that the finding of SLC is not contingent on a finding of market tipping, CCCS is of the view that the Transaction has raised the possibility that the market may tip towards a monopoly.

**Table 5: Post-Transaction Increase in Number of Grab’s Active Drivers; (ii) Active Riders; and (iii) Trips Completed using Grab’s CPPT platform service<sup>378</sup>**

	<b>Mar 18</b>	<b>Jun 18</b>	<b>% Change</b>
Number of Active Drivers	[REDACTED]	[REDACTED]	[30-40]%
Number of Active Riders	[REDACTED]	[REDACTED]	[30-40]%
Number of Trips Completed	[REDACTED]	[REDACTED]	[50-60]%

Costs of building sufficient network and scale

*Parties’ submissions*

212. The Parties submitted that the capital expenditure necessary to gain a 5% market share is low given that:

- a. Technological requirements to operate a ride-hailing platform are insignificant and not insurmountable. Any potential entrant with sufficient funding can easily develop an online platform to provide intra-city transportation services at a relatively low cost (US\$35,000 to US\$80,000 or approximately S\$45,913 to S\$104,944). In fact, there are market players who are active outside Singapore, e.g. Go-Jek, who already possess the required technology to operate a ride-hailing platform.<sup>379</sup>
- b. The nature of ridesharing is such that an entrant need not invest in a vehicle fleet to begin operation.<sup>380</sup> As both Uber and Grab were able to grow to a significant size without an affiliated rental operator, there is no reason to expect that any new entrant would not be able to do the same, especially given that Lion City Rentals is not involved in the Transaction with its vehicles being made available for any potential entrant as required under the IMD.<sup>381</sup>
- c. There is no brand loyalty for both consumers and drivers. Instead, consumers consider CPHC services together with all other transportation available and drivers consider incentives offered by different ride-hailing platforms as well as other opportunities in the wider labour market.<sup>382</sup>
- d. A competitor who had already developed the technology would need to spend a total of S\$[REDACTED].<sup>383</sup> While network effects are important, building a sustainable

<sup>378</sup> Paragraph 4.1 of Grab’s 8 June 2018 response to CCCS’s 4 June 2018 section 63 Notice; Paragraphs 20.1 to 20.3 of Grab’s 18 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>379</sup> Paragraphs 26.1 and 28.4 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>380</sup> Paragraph 26.1 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>381</sup> Paragraph 28.8 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>382</sup> Paragraph 28.5 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>383</sup> Paragraph 27.1 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

“core” network does not require the new entrant to fully replicate the network of the incumbent as there is an element of diminishing returns which means that the industry is likely to be able to support a competing network operating at a smaller scale.<sup>384</sup>

213. The Parties also submitted that going forward, the market is facing complete disruption due to the introduction of innovative technologies. New players could enter in the short term with new innovative solutions, including driverless cars which, although would require capital investment, would enable fares to be lowered given the much lower operating cost.<sup>385</sup>

*CCCS’s assessment*

Significant cost for a new entrant to expand in scale

214. CCCS is of the view that the new entrant would need to incur significant cost in order to build up a competing network operating at a sufficient scale. CCCS also notes that the Parties had in their submissions above, ignored the costs involved in driver and rider acquisition. In particular, the indirect network effects point to a need for any new entrant to incur a significant amount of upfront expenditure in order to attract drivers and riders to move over from the incumbent CPPT platform, so as to build up a critical mass of users, such that sufficient scale can be achieved. Such expenditure includes incentive schemes and promotions for both drivers and riders and would vary according to the strength of the indirect network effects captured by the incumbent. Notably, such incentive schemes and promotions are also not once-off costs for the new entrant. The new entrant would likely have to continue sustained expenditure in these areas in order to compete with the incumbent CPPT platform, which would rationally respond with incentive schemes and promotions of a similar or even larger scale.
215. As a case in point, Table 6 below shows the quantum spent by the Parties in Singapore over the period from 1 January 2016 to 31 March 2018 on: (i) incentive schemes for drivers; and (ii) promotional schemes for riders. Table 6 shows that a new entrant would need to incur a significant amount of expenses on a sustained basis in order to reasonably compete with the incumbent. Based on third-party feedback, the estimated cost of acquiring a 5% market share is high at \$[redacted].<sup>386</sup>

**Table 6: Quantum Spent by Parties from 1 Jan 2016 to 31 Mar 2018 on Incentive Schemes for Drivers and Promotional Schemes for Riders<sup>387</sup>**

	Grab (SGD)	Uber (SGD)
Total quantum of incentives for drivers	[redacted]	[redacted] <sup>388</sup>

<sup>384</sup> Page 57 of Grab’s 14 June 2018 response to CCCS’s to CCCS’s 11 June 2018 section 63 Notice.

<sup>385</sup> Paragraph 26.2 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>386</sup> Paragraph 23.1 of [redacted].

<sup>387</sup> Paragraphs 14.1 to 14.3 and 15.1 of Grab’s 4 May 2018 response to CCCS’s 16 April 2018 section 63 Notice; Paragraphs 15.1 and 16.1 of USG’s 9 May 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>388</sup> Translated using exchange rate of USD\$1 = SGD\$1.35. Based on Annex 4 of Grab’s 4 May 2018 response to CCCS’s 16 April 2018 section 63 Notice.



Quantum of incentive per driver per month (average)	[X]	[X] <sup>389</sup>
Total quantum of promotions for riders	[X] <sup>390</sup>	[X] <sup>391</sup>
Quantum of promotions per rider <sup>392</sup> per month (average)	[X] <sup>393</sup>	[X] <sup>394</sup>

216. CCCS notes the Parties’ representations on operating costs, that it is inappropriate for CCCS to refer to operating costs of the Parties in the initial years as reflecting the necessary costs of entry for a new entrant into the relevant market as there were upfront investment costs that the Parties had to sink in in order to cultivate customers’ behaviour in conceiving in-application on-demand ride-hailing as an alternative to other modes of transportation.<sup>395</sup> CCCS disagrees with the Parties’ representations on operating costs and notes the Parties have themselves submitted that “*both consumers and drivers are always on the hunt for the best value propositions and display high willingness to switch*”.<sup>396</sup> CCCS also notes from third-party feedback that if the aggressive incentive and promotion schemes to drivers and riders were to persist, entry would be unattractive as the entrant would have to spend billions to start another price war<sup>397</sup> and that Grab, “*as a monopolist*”, would be more able now than before the Transaction to engage in a price war and create significant barriers to entry to maintain its monopolistic power if a new entrant were to enter the market.<sup>398</sup> In this regard, CCCS notes that driver and rider acquisition costs faced by a new entrant in entering a market in the face of a large established ride-sharing incumbent (i.e. Grab) may in fact be higher than entering before any CPPT platform was well established.

217. While CCCS notes the Parties’ representations that building a sustainable “*core*” network does not require the new entrant to fully replicate the network of the incumbent as there is an element of diminishing returns and the industry is likely to be able to support a competing network operating at a smaller scale, CCCS notes that the insignificant market share gained by smaller entrants such as Ryde to date (see paragraph 182 above) suggests that smaller players are not able to exert significant competitive constraints on the Parties.

<sup>389</sup> Translated using exchange rate of USD\$1 = SGD\$1.35. Based on Annex 4 of Grab’s 4 May 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>390</sup> Translated using exchange rate of USD\$1 = SGD\$1.35. Based on Annex 4 of Grab’s 4 May 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>391</sup> Translated using exchange rate of USD\$1 = SGD\$1.35. Based on Annex 4 of Grab’s 4 May 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>392</sup> Based on number on number of riders who have enjoyed such promotions.

<sup>393</sup> Translated using exchange rate of USD\$1 = SGD\$1.35. Based on Annex 4 of Grab’s 4 May 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>394</sup> Translated using exchange rate of USD\$1 = SGD\$1.35. Based on Annex 4 of Grab’s 4 May 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>395</sup> Paragraph 4.21 of Grab’s 26 July 2018 Written Representations.

<sup>396</sup> Paragraph 4.22 of Grab’s 26 July 2018 Written Representations; Paragraph 6.3 of Grab’s 6 September 2018 Written Representations.

<sup>397</sup> Paragraph 9 of the Notes of Meeting with [X] dated 9 April 2018.

<sup>398</sup> Paragraph 17 of the cover letter of [X].

## Access to CPHC vehicles

218. In addition, based on third-party feedback, it is critical for a new entrant to secure a fleet of vehicles available for their drivers to tap on, especially in the early stages of a CPPT platform, where it is important to build a certain minimum critical mass.<sup>399</sup> This could be done through either: (i) the purchase of their own fleet of vehicles (as Uber did in Singapore), in which case upfront investment would be significant; or (ii) acquisition and/or entering into partnerships with potential fleet partners (i.e. car rental companies).
219. While CCCS notes Grab's and CRA's submissions that while a CPHC service needs its drivers to have adequate access to vehicles, it is not a fair reading of the evidence to conclude that this necessitates an in-house rental fleet,<sup>400</sup> and CRA understands that the potential pool of untied rental vehicles includes those vehicles provided by Grab's fleet partners and that third-party rental players currently have spare capacity that could be rented to drivers seeking to work on another platform,<sup>401</sup> CCCS is of the view, supported by third-party feedback,<sup>402</sup> that a new entrant would face significant difficulties regardless of the option chosen due to the following:
- a. Purchase of their own fleet of vehicles would require significant resources given LTA's policy on the cap in the number of COE at 0% growth rate and high COE prices;
  - b. Acquiring and/or entering into partnerships with potential fleet partners would be difficult. While [X]% ([X] vehicles) of the total fleet size of CPHC rental cars in Singapore (excluding Lion City Rentals) are owned by third-party car rental companies which do not have exclusive arrangements with Grab, the largest of such companies, [X] is small, and only represents around [X]% ([X]) of CPHC rental cars in Singapore.<sup>403</sup> Third parties have suggested that third-party car rental companies are not of sufficient scale and size, and may not be able to offer competitive economic rates.<sup>404</sup> A potential new entrant would therefore have to acquire and/or enter into partnerships with many third-party car rental companies in order to acquire vehicles of sufficient scale. Furthermore, CCCS notes that the Purchase Agreement allows Grab to request for Uber to not sell Lion City Rentals [X],<sup>405</sup> which raises barriers to entry for the [X] potential competitors.<sup>406</sup>

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<sup>399</sup> Paragraphs 2 and 10 of the cover letter of [X]; Paragraph 26 of [X]; Paragraph 27.1 of [X].

<sup>400</sup> Section 2.6 of CRA's 26 July 2018 Report; Paragraph 6.2 of Grab's 6 September 2018 Written Representations.

<sup>401</sup> Paragraph 4.22 of Grab's 26 July 2018 Written Representations; Section 2.6 of CRA's 26 July 2018 Report.

<sup>402</sup> Paragraphs 10 and 13 of the cover letter of [X]; Paragraphs 12 and 22 of [X]; Paragraph 2 of [X].

<sup>403</sup> CCCS notes that the largest 3<sup>rd</sup> party CPHC rental company, [X], has around [X] vehicles consisting of both passenger cars and commercial vehicles. CCCS further notes that even if CCCS assumes all [X] vehicles can be rented for CPHC services, [X] will only account for [X] of CPHC rental cars in Singapore: Paragraph 1 of [X]'s 15 June 2018 response to CCCS's 5 June 2018 section 63 Notice

<sup>404</sup> Paragraph 2 of [X].

<sup>405</sup> Section 6.1(e) of the Purchase Agreement.

<sup>406</sup> CCCS's assessment on the 'factual' is based on the completed merger, and in the absence of CCCS's IMD (without which, the clause may be exercised). The IMD requires that Grab undertakes not to exercise the clause in the Purchase Agreement to request for Uber to not sell Lion City Rentals [X].

220. CCCS also notes the importance in securing a fleet of vehicles. While the Parties were able to reach a certain scale without a vehicle fleet, CCCS notes that Grab and Uber had nevertheless established Grab Rentals and LCR respectively in order to obtain a pool of drivers to drive exclusively for their respective CPPT platforms. In fact, it was reported that “Grab is taking on US\$700 million in debt to expand its car rental program” and that “Grab argues making rental cars available will help it grow its network of drivers in countries where car ownership is relatively low”.<sup>407</sup> Similarly, it was reported that LCR was established because it is “difficult for drivers to get a car, and that made it difficult to expand the business”.<sup>408</sup> The importance of a vehicle fleet is further evidenced by Grab’s Q2 2016 Board Meeting Slides<sup>409</sup> which indicate that:

- a. [REDACTED];
- b. [REDACTED];
- c. [REDACTED]:
  - i. [REDACTED];
  - ii. [REDACTED]; and
  - iii. [REDACTED].

221. CCCS further notes that access to vehicles may be required by a new entrant, given that the CPPT services business is characterised by low effective CPHC car rental rates (offered through (i) rental rebates conditional on a driver completing a stipulated minimum number of trips; and (ii) rental discounts conditional on a driver driving exclusively) cross-subsidised by commission rates earned through the CPPT platform.<sup>410</sup>

#### Access to drivers

222. Access to vehicles aside, a new entrant would also face difficulties in attracting a sufficient quantity of drivers post-Transaction given the:

- a. Limited willingness to multi-home due to exclusivity obligations and loyalty incentive schemes offered by Grab. As mentioned in paragraph 204 above, the combined effect of exclusivities is such that at least [80-90]% of drivers single-home. Such behaviour by drivers strengthens the indirect network effects on Grab’s CPPT platform, giving rise to a ‘*virtuous circle*’ where an increased number of drivers attracts an increased number of riders, and vice-versa.
- b. Significant driver switching costs during the duration of rental contracts; drivers are also subject to severe financial penalties in addition to the forfeiture of their rental deposits and claw-back of rental rebates and discounts for early termination of such rental contracts. In addition, drivers whose contracts have

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<sup>407</sup> Grab plans to spend \$700m on a rental car fleet, TechnAsia, 22 October 2017 (<https://www.technasia.com/grab-plans-spend-700m-growing-rental-car-fleet>).

<sup>408</sup> All hail the ride-hailing kings, The Straits Times, 22 May 2017 (<https://www.straitstimes.com/singapore/transport/all-hail-the-ride-hailing-kings>).

<sup>409</sup> Annex 1 of Grab’s 25 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>410</sup> Paragraph 14 of Notes of Meeting with [REDACTED] dated 11 January 2018.

expired may not be willing to switch to a new entrant in the presence of significant indirect network effects on Grab's platform.

223. As of 22 June 2018, 23,000 CPHC drivers have yet to obtain their PDVL.<sup>411</sup> This may mean that new entrants could have a smaller supply of drivers with existing PDVLs to bring on-board to their CPPT platforms and a significant monetary cost will have to be incurred to send drivers with no PDVL for training and certification, raising barriers to entry and expansion.
224. Based on the above, while it may not be difficult or costly for a new player to enter the market, a new entrant would need to incur significant time and costs to recruit and retain drivers, and build up a considerable network of drivers to compete with Grab, before it is able to impose significant competitive constraints on Grab.

#### Partnerships with taxi operators

225. Apart from acquiring its own fleet of vehicles and pool of drivers, CCCS notes from third-party feedback that while a new entrant may enter the market through partnerships with taxi operators, this may be a less attractive option given that taxi drivers are not solely dedicated to CPPT platforms since they accept jobs from (i) street-hails; (ii) centralised taxi booking systems; and (iii) bookings from taxi apps.<sup>412</sup> Furthermore, the establishment of such partnerships is limited given that all but one (1) taxi operator are currently restricted to working with Grab on an [§<].<sup>413</sup>
226. While the Parties have submitted that taxi/rental operators can switch from Grab to other ride-hailing platforms with relative ease,<sup>414</sup> CCCS notes that such taxi/rental partners are [§<].<sup>415</sup> In any event, CCCS notes that even if taxi/rental partners are able to switch to other CPPT platforms, they are unable to work with other platforms concurrently with Grab, making it difficult for smaller or newer players to attract such partners to even try using their platforms.

#### High investment of the Parties

227. Finally, Uber has invested around US\$[§<] million (approximately S\$[§<] million) since its market entry into Southeast Asia, and the amount that Uber was expecting to spend

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<sup>411</sup> 23,000 private-hire drivers yet to obtain vocational licence a week before deadline, ChannelNewsAsia, 22 June 2018 (<https://www.channelnewsasia.com/news/singapore/private-hire-drivers-pdvl-atd-concession-vocational-licence-10458528>).

<sup>412</sup> Paragraph 10 of the cover letter of [§<].

<sup>413</sup> Paragraphs 19.1 and 19.2 of Grab's 30 April 2018 response to CCCS's 16 April 2018 section 63 Notice. CCCS's assessment on the 'factual' is based on the completed merger, and in the absence of CCCS's IMD (without which, Grab's exclusive arrangement with taxi operators will still stand). The IMD requires that Grab shall cease its exclusivity arrangements with all taxi fleets in Singapore, provided that (a) there are no exclusivity arrangements in Singapore between any taxi fleets and any third-party ride-hailing platform other than Grab, and (b) that all taxi operators permit their respective taxi drivers to drive for any third-party ride-hailing platform for standard fare and fixed fare jobs.

<sup>414</sup> Paragraph 4.27 of Grab's 26 July 2018 Written Representations.

<sup>415</sup> Annex 3 of Grab's 30 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

[X] was \$[X].<sup>416</sup> This is inconsistent with the Parties' submission above that entry and expansion costs are low. On the contrary, the Parties' admissions revealed that the costs a new entrant would expect to incur to build sufficient network and scale, and to maintain the same, are likely to be significant.

#### Disruption by innovative technologies

228. On the Parties' submission that the market faces complete disruption due to the introduction of innovative technologies such as driverless cars, CCCS notes that the Parties have not provided sufficient evidence to justify this claim. In fact, reports predict that driverless cars remain 10 to 15 years away from widespread deployment.<sup>417</sup>

#### **(c) Actual and Potential Competition**

##### *Parties' submissions*

229. The Parties submitted that a number of existing ridesharing players including Ola, Lyft, Go-Jek, CaoCao Zhunche, Yidao Zhunche and Meituan Dianping could enter the Singapore market, which poses a competitive constraint on Grab, forcing it to provide attractive services to riders or to continue improving services through constant innovation.<sup>418</sup> The Parties cited that the entrance of Meituan Dache in Shanghai on 21 March 2018 operating 150,000, 250,000, and over 300,000 trips respectively in its first three (3) days of operation; and capturing 35% market share in less than a week following consolidation in the Chinese market, illustrates low barriers to entry.<sup>419</sup> In addition, the Parties also cited entry by Lyft, Go-Jek, Careem and Taxify in the United States, Indonesia, Middle East, and Africa respectively.<sup>420</sup>
230. The Parties submitted that the same dynamic is at play in Singapore with Go-Jek and Ryde, which is reported to have a 55,000-strong network of drivers, separately announcing their intentions to enter the market in Singapore.<sup>421</sup> Within two (2) weeks of its announcement, Ryde had signed up close to 2,500 CPHC drivers and reported a 15-fold increase in app downloads. On the same note, Go-Jek had set up a sizeable office in Singapore, held an industry event at the end of March 2018 where they recruited for operations roles for Singapore and is reported to be receiving investments of S\$1.6 billion, which is the largest round of investment received by Go-Jek to date, and would provide it with the requisite financials to further expand its operations regionally.<sup>422</sup>

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<sup>416</sup> Paragraph 13 of USG's 4 April 2018 Written Representations; Paragraph 12.2 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Slide 6 of Annex 8 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>417</sup> *Driverless cars picking up speed in Singapore*, IMDA, 3 November 2017 (<https://www.imda.gov.sg/infocomm-and-media-news/whats-trending/2017/2/driverless-cars-picking-up-speed-in-singapore>).

<sup>418</sup> Paragraphs 18.24 and 24.10 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>419</sup> Paragraphs 14 and 106 of USG's 4 April 2018 Written Representations; Paragraph 18.25 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>420</sup> Pages 24 to 27 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

<sup>421</sup> Paragraph 18.26 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>422</sup> Paragraphs 18.26 and 24.10 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

231. The Parties submitted that there have been numerous instances of market entry in the past five (5) years. A summary of the new entrants in the past five (5) years and their current status as submitted by the Parties can be found in Table 7A below.

**Table 7A: Summary of new entrants in the past five (5) years and their current status as submitted by Parties** <sup>423</sup>

<b>Entrants</b>	<b>Date of entry</b>	<b>Status</b>
Uber	Uber launched its CPPT platform services in Singapore in February 2013.	Acquired by Grab
MoobiTaxi	MoobiTaxi launched its app for taxi-booking services in Singapore in July 2013, with the aim to bring the mobile booking services of all taxi operators under one (1) platform. MoobiTaxi has been issued with a certificate to operate a third-party taxi booking service as a Class 2 provider.	-
Grab	Grab launched its taxi-booking services in Singapore in October 2013 with GrabTaxi, and subsequently expanded its service offerings to include ridesharing with CPHCs on its platform. Grab has entered into exclusive partnerships with taxi operators to onboard these taxi operators' drivers to utilise its app exclusively to serve on-demand passenger bookings.	Acquired Uber
Easy Taxi	Easy Taxi, a Brazilian-based start-up taxi-booking app, ceased operations in Singapore in September 2015 after entering the market in December 2013. Easy Taxi had, at one point, "as many as 50 staff, with over 20,000 taxi drivers on its platform" in Singapore.	Exited the market
Hailo	Hailo, a London-based taxi-booking app, ceased operations in Singapore in November 2016. It launched its app in Singapore in October 2014 under a partnership with SMRT Roads, a subsidiary of SMRT, to match riders with nearby taxis.	Exited the market
Ryde	Ryde launched a home-grown social carpool app in April 2015. In May 2017, it was reported that Ryde partnered with CDG to launch a taxi-booking service on its app, at which point in time Ryde had some 30,000 cars in its fleet. Ryde has been issued with a certificate to operate a third-party taxi booking services as a Class 2 provider. Ryde announced that it would be launching RydeX, a private hire car service. Ryde was reported to have already started accepting sign-ups of drivers via the Ryde app as of 28 March 2018, and aimed to have 5,000 full-time drivers.	Operating

*CCCS's assessment*

<sup>423</sup> Paragraphs 29.1 to 29.8 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

232. In assessing the state of actual and potential competition, CCCS considers whether entry by new competitors may be sufficient in likelihood, scope and time to deter or defeat any attempt by the merger parties or their competitors to exploit the reduction in rivalry flowing from the Transaction (whether through coordinated or non-coordinated strategies).<sup>424</sup>
233. The likelihood of entry depends on whether firms can profitably enter the market in light of any entry conditions. This could depend on the revenue that a firm expects to earn, post entry prices, costs and quantities, or the return the firm might otherwise earn using its resources elsewhere (opportunity cost), or the relative risk of entry compared to alternative investments.<sup>425</sup> In assessing the likelihood of entry, CCCS will consider the experience of any firm (or firms) that have entered or withdrawn from the relevant market or markets in recent years and evidence of planned entry by third parties. CCCS will also consider the type of market and gather information on the costs involved in entry.<sup>426</sup>
234. Any such prospective new entry, in response to any exercise of market power by the merged entity, would have to be sufficiently timely and sustainable to provide a lasting and effective post-merger competitive constraint. The assessment of whether entry would be sufficiently timely would depend on the facts of each specific merger and the particular characteristics of the market(s) in question.<sup>427</sup>
235. Any new entry should be of sufficient scope to constrain any attempt to exploit increased post-merger market power. Small-scale entry may be insufficient to prevent an SLC, even when the entry may provide the basis for later expansion. For entry to be sufficient, it must be likely that incumbents would lose significant sales to new entrants.<sup>428</sup> Entry that is small-scale, localised or targeted at niche segments is unlikely to be an effective constraint post-merger.<sup>429</sup>
236. CCCS is of the view that entry by new competitors would not be sufficient in likelihood, scope and time to constrain the merged entity post-merger. In particular, the evidence does not suggest that: (i) CDG will expand its CPPT platform services to include third-party taxi or CPHC services and compete more closely with Grab; (ii) Go-Jek's potential entry into the Platform Market has been confirmed; (iii) Ryde's entry is sufficient to pose a competitive constraint on Grab; and (iv) non-CDG taxi operators offering CPPT platform services will have the incentive and ability to expand their CPPT platform services to compete more closely with the merged entity.
237. In this regard, CCCS notes third-party feedback that actual and potential competitors would have difficulty imposing sufficient competitive constraints on Grab in view of, *inter alia*, the following:
- a. Without access to a sufficient number of drivers and vehicles, new entrants may not be able to optimise rider experience in terms of pricing and waiting times;

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<sup>424</sup> Paragraphs 5.46 to 5.59 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>425</sup> Paragraphs 5.49 to 5.60 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>426</sup> Paragraphs 5.49 to 5.60 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>427</sup> Paragraph 5.56 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>428</sup> Paragraph 5.53 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>429</sup> Paragraph 5.54 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

and as a result, riders may still gravitate towards Grab. While riders may be able to switch between platforms, the non-availability of drivers is a real concern for a potential entrant when one (1) player (i.e. Grab) has access to a significant part of the total supply;<sup>430</sup>

- b. Barriers to entry are high due to (i) LTA's policy on the cap in the number of COE at 0% growth rate, which limits the supply of vehicles; and (ii) LTA's requirement for CPHC drivers to have a PDVL, which limits the supply of drivers;<sup>431</sup>
- c. New entrants will face difficulty in accessing a sufficient number of drivers and vehicles to optimise rider experience so as to compete with Grab's post-Transaction network;<sup>432</sup>
- d. Uber and Grab had been aggressive on offering incentive schemes to drivers and promotions to riders and that if such practices were to persist, entry would be unattractive, as the entrant would have to spend billions to start another price war.<sup>433</sup> Furthermore, given Grab's market power post-Transaction, Grab is able to hamper entry through exclusivity obligations on its drivers and taxi/CPHC rental partners and aggressive price wars,<sup>434</sup> and
- e. Successful entry and expansion is contingent on CCCS's intervention to mitigate the SLC and adverse effects arising from the Transaction.<sup>435</sup>

238. CCCS also notes that while there were instances of market entry in the past five (5) years such as Uber, Grab, MoobiTaxi, Ryde, EasyTaxi and Hailo, it is not appropriate to consider Uber and Grab's previous entry in the current context given that the structure of the market prior to, and during the entry of Uber and Grab five (5) years ago, was materially different from what it currently is today. Prior to Uber and Grab's entry, the market comprised a large non-open platform player (i.e. CDG) and several smaller players.<sup>436</sup> As CPPT platforms did not exist on the scale that Grab does today then, Grab and Uber were able to offer differentiated services against the incumbent taxi companies. Furthermore, incentive schemes to prevent drivers from switching did not exist or were minimal back then.<sup>437</sup> While there was entry by a number of CPPT platforms over the

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<sup>430</sup> Paragraph 7 of the Notes of Meeting with [REDACTED] dated 9 April 2018.

<sup>431</sup> Paragraphs 6 and 7 of the Notes of Meeting with [REDACTED] dated 9 April 2018; Paragraph 2 of [REDACTED].

<sup>432</sup> Paragraphs 7 and 8 of the Notes of Meeting with [REDACTED] dated 9 April 2018; Paragraphs 22 and 26 of [REDACTED].

<sup>433</sup> Paragraph 9 of the Notes of Meeting with [REDACTED] dated 9 April 2018.

<sup>434</sup> Paragraph 17 of the cover letter of [REDACTED].

<sup>435</sup> Paragraph 2 of the cover letter of [REDACTED].

<sup>436</sup> Paragraph 3 of the Notes of Meeting with [REDACTED] dated 4 January 2018.

<sup>437</sup> Paragraph 43 of the Notes of Meeting with [REDACTED] dated 4 January 2018.



past five (5) years including EasyTaxi,<sup>438</sup> Hailo<sup>439</sup> and Karhoo,<sup>440</sup> they have since exited the market citing financial difficulties with continuing to operate in Singapore. This supports CCCS's view that a new entrant would need to incur a significant amount of expenses on a sustained basis in order to attract and retain a sufficient number of drivers and riders.

### CDG

239. Feedback from third parties do not suggest that CDG will expand its CPPT platform services to include providing such services to drivers renting vehicles from other taxi operators or CPHC drivers, and compete more closely with Grab. According to [§<].<sup>441</sup> [§<].<sup>442</sup>
240. While CDG has a taxi booking app which CCCS considers to be part of the Platform Market, CCCS notes that the CDG's app only allows CDG taxi drivers but no other taxi operator or CPHC rental companies' drivers to accept bookings. Further, based on third-party feedback, CDG's app has limitations, such as the lack of automatic pushing of jobs to drivers and predictive demand heat maps, amongst others.<sup>443</sup> As stated above, [§<] has stated that, although CDG's app is to some extent a substitute for Grab's and Uber's, CDG's app does not offer all the features and functionalities of Grab. For instance, one cannot book CPHCs through CDG's app.<sup>444</sup> Further, while CDG offers a fixed fare service via its app, third parties have highlighted that the fares are static fixed fares computed using the metered-fare structure unlike Grab's or Uber's dynamic fixed fare offering.<sup>445</sup> As such, CCCS is of the view that CDG is unlikely to pose sufficient competitive constraints on Grab.
241. CCCS notes the Parties' representations that:
- a. CDG has strong intention to enter the ride-hailing business to compete more closely with Grab, as suggested by press reports,<sup>446</sup>
  - b. A partnership with CDG is likely to be an attractive proposition for a new impending entrant such as Go-Jek and there are reports indicating that CDG is in talks with Go-Jek to offer ride-hailing services in Singapore;<sup>447</sup>

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<sup>438</sup> *Easy Taxi exits Singapore amid stiff competition*, The Straits Times, 18 September 2015 (<http://www.straitstimes.com/singapore/transport/easy-taxi-exits-singapore-amid-stiff-competition>).

<sup>439</sup> *Hailo is second ride-hailing app to pull out of S'pore in a week*, The Straits Times, 17 November 2016 (<http://www.straitstimes.com/singapore/transport/hailo-is-second-ride-hailing-app-to-pull-out-of-spore-in-a-week>).

<sup>440</sup> *Ride-hailing start-up Karhoo grinds to a halt*, The Straits Times, 9 November 2016 (<http://www.straitstimes.com/singapore/transport/ride-hailing-start-up-karhoo-grinds-to-a-halt>).

<sup>441</sup> Paragraph 6.1 of [§<]; Paragraph 1a of [§<].

<sup>442</sup> Paragraphs 6.1 and 11.1 of [§<]; Paragraph 1b of [§<].

<sup>443</sup> Paragraph 24 of the Notes of Meeting with [§<] dated 26 March 2018.

<sup>444</sup> Paragraphs 7 to 10 of [§<]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice.

<sup>445</sup> Paragraph 19 of the Notes of Meeting with [§<] dated 4 January 2018.

<sup>446</sup> Paragraph 4.8 of Grab's 26 July 2018 Written Representations; Paragraph 71 of USG's 26 July 2018 Written Representations.

<sup>447</sup> Paragraph 4.8 of Grab's 26 July 2018 Written Representations.

- c. CCCS should consider the “*actual actions taken by CDG to expand into the ride-hailing space... rather than unsubstantiated speculations from third parties*”;<sup>448</sup> including CDG’s partnership with Ryde;<sup>449</sup>
- d. CDG is a strong competitor to Grab in its own right, has continually expanded its taxi fleet,<sup>450</sup> and can easily choose to upgrade their applications to compete more effectively with Grab at low costs;<sup>451</sup> CCCS has failed to consider Grab’s submissions and statements in the CRA Report (including the repeated emphasis on CDG having the largest fleet) in considering the competitive constraint from CDG;<sup>452</sup> and
- e. CDG’s statements are likely to be largely self-serving and minimise its potential impact on competition in order to maximise the remedies imposed on the Parties.<sup>453</sup>

242. CCCS considers that, first, CDG’s public statements broadly indicating its intention to “*enter the private vehicle space*” is insufficient to suggest an intention to expand the offer of its CPPT platform services to include drivers renting from other taxi operators or CPHC drivers and compete more closely with Grab, and must be balanced against the direct feedback that CCCS obtained from [§<]. Despite the Parties’ submissions of the structural advantages and CDG’s ability to expand its CPPT platform services and pose further competitive constraints on the Parties, CCCS notes that despite facing competition from the Parties since their entry, CDG has yet to expand its CPPT platform services to include drivers renting from other taxi operators or CPHC drivers and has instead, lost significant market share in the Platform Market. Furthermore, there is no evidence of additional steps taken by CDG which indicate that CDG would do so now. CCCS has also considered the competitive constraint imposed by CDG in the preceding sections on market definition and market shares and notes that despite the Parties’ representations that “*CDG and Ryde may easily choose to upgrade their applications*”, the fact that CDG (and Ryde) have not done so reveals that there may be some level of difficulty involved and that the strength of indirect network effects on Grab’s CPPT platform prevents CDG (and Ryde) from competing with Grab as efficiently.

243. While the Parties have submitted that CDG “*continually expanded its taxi fleet*”, CCCS notes that CDG’s fleet has in fact decreased from 13,244 in December 2017 to 12,573 in July 2018, falling by 5% (see Table 7B).<sup>454</sup> In relation to recent news reports on CDG’s

<sup>448</sup> Paragraph 4.8 of Grab’s 26 July 2018 Written Representations.

<sup>449</sup> Paragraph 4.8 of Grab’s 26 July 2018 Written Representations.

<sup>450</sup> Paragraph 4.8 of Grab’s 26 July 2018 Written Representations.

<sup>451</sup> Paragraph 4.10 of Grab’s 26 July 2018 Written Representations.

<sup>452</sup> Paragraph 4.8 of Grab’s 26 July 2018 Written Representations.

<sup>453</sup> Paragraph 66 of USG’s 26 July 2018 Written Representations.

<sup>454</sup> LTA data report

([https://www.lta.gov.sg/content/dam/ltaweb/corp/PublicationsResearch/files/FactsandFigures/taxi\\_info\\_2018.pdf](https://www.lta.gov.sg/content/dam/ltaweb/corp/PublicationsResearch/files/FactsandFigures/taxi_info_2018.pdf)) (accessed on 10 September 2018);

([https://www.lta.gov.sg/content/dam/ltaweb/corp/PublicationsResearch/files/FactsandFigures/taxi\\_info\\_2017.pdf](https://www.lta.gov.sg/content/dam/ltaweb/corp/PublicationsResearch/files/FactsandFigures/taxi_info_2017.pdf)) (accessed on 10 September 2018);

([https://www.lta.gov.sg/content/dam/ltaweb/corp/PublicationsResearch/files/FactsandFigures/taxi\\_info\\_2016.pdf](https://www.lta.gov.sg/content/dam/ltaweb/corp/PublicationsResearch/files/FactsandFigures/taxi_info_2016.pdf)) (accessed on 10 September 2018);

([https://www.lta.gov.sg/content/dam/ltaweb/corp/PublicationsResearch/files/FactsandFigures/taxi\\_info\\_2015.pdf](https://www.lta.gov.sg/content/dam/ltaweb/corp/PublicationsResearch/files/FactsandFigures/taxi_info_2015.pdf)) (accessed on 10 September 2018).

purchase of vehicles for its taxi fleet, CCCS notes [REDACTED]. In any event, CCCS notes that Grab's [REDACTED] vehicles [REDACTED] the number of vehicles CDG may procure [REDACTED]. [REDACTED].

**Table 7B: CDG's Fleet Size**

	Dec-15	Dec-16	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18
<b>CDG</b>	16,997	16,821	13,244	13,031	12,775	12,687	12,627	12,576	12,535	12,573

244. While CCCS is cognisant, and has taken note, of reports indicating that CDG is in talks with Go-Jek to offer ride-hailing services in Singapore, [REDACTED] indicates no confirmed plans. [REDACTED]. Further, CCCS has considered that even if such talks are underway and any collaboration materialises, CCCS considers that any entry and expansion in this regard is likely to be short of timeliness and sufficiency given CDG's lack of expertise in the model adopted by CPPT platforms like Grab and Uber (for example, the incorporation of dynamic pricing), its drivers' possible resistance to getting on-board any third-party platform as observed by Uber in the CDG Collaboration,<sup>455</sup> and Go-Jek's inexperience in Singapore, having operated predominantly platform services for motorcycle rides in countries such as Jakarta, with significantly different characteristics from the Singapore market. It should also be noted that any such collaboration might be predicated upon market contestability being protected by CCCS's IMD and the remedies to be imposed under this ID.

#### Go-Jek

245. In relation to Go-Jek, while CCCS is aware of reports indicating that Go-Jek intends to enter the Singapore Platform Market in the near future,<sup>456</sup> the evidence does not show that Go-Jek's potential entry into the Platform Market is confirmed. [REDACTED] as the Transaction has introduced significant obstacles to the Singapore market, and its entry is contingent on, *inter alia*, CCCS finding that the Transaction is an infringement of the section 54 prohibition and exercising its powers to eliminate the monopolistic or otherwise adverse effects of the Transaction.<sup>457</sup> [REDACTED]. [REDACTED] the challenges and barriers to entry are more significant than other markets.<sup>458</sup> [REDACTED] that accordingly, entry into the Singapore market has yet to be confirmed given the high barriers to entry and expansion and Go-Jek's entry heavily depends on:

- a. [REDACTED];
- b. [REDACTED]; and
- c. [REDACTED].<sup>459</sup>

<sup>455</sup> Slides 9 to 11 and 36 of Annex AI of USG's 23 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>456</sup> *Ride-hailing firm Go-Jek to enter Singapore, other Southeast Asian markets in next few months*, ChannelNewsAsia, 24 May 2018, (<https://www.channelnewsasia.com/news/asia/go-jek-to-enter-singapore-philippines-thailand-vietnam-10273010>).

<sup>457</sup> Paragraph 2 of the cover letter of [REDACTED].

<sup>458</sup> Paragraph 16 of the Notes of Meeting with [REDACTED] dated 9 April 2018.

<sup>459</sup> Paragraph 2 of the cover letter of [REDACTED].

246. [X].<sup>460</sup> [X], [X].<sup>461</sup>

247. [X].<sup>462</sup>

248. [X] indirect network effects as a barrier to entry and expansion. [X] without access to a sufficient number of drivers and vehicles, [X] may not be able to optimise rider experience in terms of pricing and waiting times; and as a result, riders may still gravitate towards Grab.<sup>463</sup> While riders may be able to switch between platforms, the non-availability of drivers is a real concern for a potential entrant when one (1) player (i.e. Grab) has access to a significant part of the total supply.<sup>464</sup> Even though CCCS notes news reports that Go-Jek is currently exploring a partnership with CDG which [X] given the lack of access to supply of CPHC vehicles in Singapore, CCCS notes that taxis take (i) street-hails; (ii) taxi centralised bookings; and (iii) taxi mobile application bookings. [X]. [X].<sup>465</sup> <sup>466</sup> [X].<sup>467</sup>

249. The Parties submitted that CCCS's findings are inconsistent with public reports, including an interview by The Straits Times with the President of Go-Jek, Mr Andrew Soelistyo, which confirmed Go-Jek's plans to enter the Singapore market within the next few months and grow its business in Singapore to have '*hundreds of employees*'.<sup>468</sup> Further, the Parties submitted that these press statements are supported by evidence of Go-Jek [X]. The Parties submitted that CCCS has failed to discharge its burden of proof to show that Go-Jek would not become a formidable competitor in the short term given its backing by investors such as Google and Temasek, and its publicly declared war chest of \$500 million to expand across the region.<sup>469</sup> The Parties also submitted that it is in Go-Jek's commercial interest to ensure that CCCS makes a finding that there is an SLC<sup>470</sup> and "*the evidence provided by Go-Jek is likely to be largely self-serving as it is in its interests to ensure that remedies are imposed on the Parties*".<sup>471</sup>

250. CCCS considers that Go-Jek's entry into the Platform Market in Singapore is yet to be confirmed. While CCCS has considered the possibility that Go-Jek's statements may possibly be self-serving in assessing their probative weight, CCCS also notes that the information had been provided by Go-Jek in response to notices to produce information and documents pursuant to section 63 of the Act, wherein CCCS had brought to Go-Jek's attention offences in relation to the provision of false or misleading information under the Act. In addition, CCCS notes that in response to CCCS's multiple requests for clarifications and supporting documents on Go-Jek's submissions, Go-Jek had submitted

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<sup>460</sup> Paragraph 9 of the Notes of Meeting with [X] dated 9 April 2018.

<sup>461</sup> Paragraph 17 of the cover letter of [X].

<sup>462</sup> Paragraphs 6 and 7 of the Notes of Meeting with [X] dated 9 April 2018; Paragraph 2 of [X].

<sup>463</sup> Paragraph 8 of the Notes of Meeting with [X] dated 9 April 2018.

<sup>464</sup> Paragraph 7 of the Notes of Meeting with [X] dated 9 April 2018.

<sup>465</sup> Paragraph 10 of the cover letter of [X]; Paragraph 1 of [X].

<sup>466</sup> Paragraph 13 of the cover letter of [X].

<sup>467</sup> Paragraph 15 of the cover letter of [X].

<sup>468</sup> Paragraphs 4.3 to 4.5 of Grab's 26 July 2018 Written Representations.

<sup>469</sup> Paragraphs 68, 71 to 73 of USG's 26 July 2018 Written Representations; Paragraphs 5 to 13 of USG's 3 September 2018 Written Representations.

<sup>470</sup> Paragraphs 4.3 to 4.5 of Grab's 26 July 2018 Written Representations.

<sup>471</sup> Paragraph 67 of USG's 26 July 2018 Written Representations.

supporting documents corroborating its submissions in relation to the barriers to entry in Singapore.<sup>472</sup> [§<]. [§<].

251. Lastly, the fact that Go-Jek has a war chest of \$500 million backed by investors such as Google and Temasek does not imply that Go-Jek would enter the Platform Market in Singapore. CCCS notes that such funding is meant for Go-Jek's possible expansion in the Vietnam, Philippines and Thailand markets, which Go-Jek had indicated were priority markets over and above Singapore in view of the lower market saturation and barriers to entry in these markets. In this regard, CCCS notes that, consistent with its stated intentions and priorities, Go-Jek has already entered Vietnam.
252. In any case, CCCS has considered the possibility that even if Go-Jek's entry was confirmed, the evidence available does not suggest that its entry is likely to be sufficient in its timeliness and extent such that the merged entity's market power would sufficiently be constrained to avert any SLC in the absence of CCCS's intervention, in view of, *inter alia*, the high barriers to expansion as discussed in the preceding section on barriers to entry and expansion. This is particularly so in view that, as noted in paragraph 244 above, Go-Jek has operated predominantly platform services for motorcycle rides in countries such as Jakarta with significantly different characteristics from the Singapore market. As noted in paragraph 238 above, CCCS notes that previous entrants such as EasyTaxi and Hailo have exited the market, indicating the difficulty for a new entrant to exert competitive constraints on Grab on a sustained basis. It should also be noted that if not for CCCS's IMD, Go-Jek might not be able to purchase vehicles from LCR given that the Purchase Agreement [§<].<sup>473</sup> It should also be noted that Go-Jek's entry might be predicated upon market contestability being protected by CCCS's IMD and the remedies to be imposed under this ID.

### Ryde

253. Ryde, which traditionally offered platform services for carpooling rides, has launched a CPHC platform service called RydeX on 2 May 2018.<sup>474</sup> However, while Ryde has a large number of registered drivers of [§<],<sup>475</sup> only [§<] (or [§<]%) are active.<sup>476</sup> Similarly, Ryde also has a small number of riders as compared to Grab as evidenced by the [§<] trips per day<sup>477</sup> undertaken across RydeEXEC and RydeX, amounting to less than [§<] trip per active driver per day.<sup>478</sup> Such statistics clearly show Ryde's inability to expand due to high barriers to expansion arising from the significant indirect network effects on Grab's CPPT platform. Table 8A below compares Ryde's number of trips and drivers to that of Grab and Uber. Table 8B shows a similar comparison, between Ryde and Grab, in June 2018, three (3) months post-Transaction. Even looking at June 2018

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<sup>472</sup> Paragraph 1 of [§<]; Paragraph 1 of [§<].

<sup>473</sup> Section 6.1(e) of the Purchase Agreement.

<sup>474</sup> *Ryde to launch private-hire car service RydeX on May 2*, The Straits Times, 2 May 2018 (<https://www.straitstimes.com/singapore/transport/ryde-to-launch-private-hire-car-service-rydex-on-may-2>).

<sup>475</sup> Based on number of trips on 10 May 2018, which is the day with the largest number of trips over the period of 28 April 2018 till 10 May 2018, based on [§<].

<sup>476</sup> Paragraph 7 of [§<].

<sup>477</sup> Based on number of trips on 10 May 2018, which is the day with the largest number of trips over the period of 28 April 2018 till 10 May 2018, based on [§<].

<sup>478</sup> Paragraphs 6 and 7 of [§<].

data (i.e. three (3) months post-Transaction), Ryde’s number of trips still continues to account for an insubstantial proportion of the total market share.<sup>479</sup>

**Table 8A: Comparison of Number of Trips and Drivers between Ryde, Grab and Uber<sup>480</sup>**

	<b>Ryde<sup>481</sup></b>	<b>Grab<sup>482</sup></b>	<b>Uber<sup>483</sup></b>
Trips per Day	[REDACTED]	[REDACTED]	[REDACTED]
Number of Registered Drivers	[REDACTED]	[REDACTED]	[REDACTED]
Number of Active Drivers	[REDACTED]	[REDACTED]	[REDACTED]
Proportion of Active Drivers to Registered Drivers	[0-5]%	[20-30]%	[40-50]%
Number of Trips per Day per Active Driver	[REDACTED]	[REDACTED]	[REDACTED]

**Table 8B: Comparison of Number of Trips and Active Drivers between Ryde and Grab for June 2018<sup>484</sup>**

	<b>Ryde<sup>485</sup></b>	<b>Grab<sup>486</sup></b>
Trips per Day	[REDACTED]	[REDACTED]
Number of Registered Drivers	[REDACTED]	[REDACTED]
Number of Active Drivers	[REDACTED]	[REDACTED]
Proportion of Active Drivers to Registered Drivers	[20-30]%	[40-50]%
Number of Trips per Day per Active Driver	[REDACTED]	[REDACTED]

254. Ryde’s lack of ability to expand may also be attributed to its limited financing of only S\$[REDACTED] raised thus far.<sup>487</sup> This has restricted the company’s ability to provide the much needed incentives to drivers and promotions to riders in order to expand its network. As shown in Table 9, the quantum of incentives to drivers and promotions to riders provided by Ryde is significantly less than those provided by Grab and Uber. Ryde’s limited ability to expand its network illustrates the difficulties a new entrant would face in achieving sufficient scale without sufficient capital.

<sup>479</sup> Based on data from [REDACTED] for Ryde’s July 2018 CPHC trips.

<sup>480</sup> Paragraphs 6 and 7 of [REDACTED]; Paragraph 20.1 of Grab’s 18 May response to CCCS’s 7 May 2018 section 63 Notice; Paragraph 23.1 of USG’s 18 May response to CCCS’s 7 May 2018 section 63 Notice.

<sup>481</sup> Based on 10 May 2018 figures. Paragraphs 6 and 7 of [REDACTED].

<sup>482</sup> Based on March 2018 figures. Paragraph 4.1 of Grab’s 8 June 2018 response to CCCS’s 4 June 2018 section 63 Notice.

<sup>483</sup> Based on March 2018 figures. Paragraph 23.1 of USG’s 18 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>484</sup> Paragraphs 1 and 2 of [REDACTED]; Paragraph 8.1 of Grab’s 1 August 2018 response to CCCS’s 30 July 2018 section 63 Notice.

<sup>485</sup> Paragraphs 1 and 2 of [REDACTED].

<sup>486</sup> Paragraph 8.1 of Grab’s 1 August 2018 response to CCCS’s 30 July 2018 section 63 Notice.

<sup>487</sup> Paragraph 5 of [REDACTED].

**Table 9: Comparison of Quantum Spent on Incentives to Drivers and Promotions to Riders between Ryde, Grab and Uber from 1 Jan 2016 to 31 Mar 2018<sup>488</sup>**

	Ryde (\$SGD)	Grab (\$SGD)	Uber (\$SGD)
Total quantum of incentives for drivers	[X]	[X]	[X] <sup>489</sup>
Total quantum of promotions for riders	[X]	[X] <sup>490</sup>	[X] <sup>491</sup>
No. of active drivers	[X]	[X]	[X]
No. of active riders	[X]	[X]	[X]
Incentive per active driver	[X]	[X]	[X]
Promotion per active Rider	[X]	[X]	[X]

255. Furthermore, CCCS notes that riders and drivers may not view Ryde’s app as a close enough substitute to Grab and Uber’s apps due to its lack of functionality and features. This is evidenced by Ryde’s rating of 2.8\* compared to Grab and Uber’s rating of 4.4\* and 4.2\* respectively on the Google Play Store as at 14 April 2018.<sup>492</sup> As at 7 August 2018, the rating of Ryde’s app has declined to 2.7\*, while the rating of Grab’s app has maintained at 4.4\*.<sup>493</sup> Similarly, CCCS notes that Ryde’s app has a rating of 2.1\* compared to Grab and Uber’s rating of 4.0\* and 4.4\* respectively on the Apple Store as at 12 September 2018.<sup>494</sup>
256. Further, as described in paragraph 137 above, none of Grab’s corporate customers indicated Ryde as a viable substitute for Grab and Uber in view of significant indirect network effects present on Grab and Uber’s respective CPPT platforms. Notably, [X] had also stated that smaller suppliers such as Ryde would not be able to compete due to the significantly smaller rider and driver base. That Ryde does not pose significant competitive constraints on Grab is also evidenced by feedback from players in the Platform Market such as [X], which has indicated Grab to be the only viable ride-hailing platform in Singapore, with other players holding nominal market shares and not being sufficiently capitalised to be long-term sustainable market players that can compete with Grab.<sup>495</sup>
257. CCCS notes the Parties’ representations that:
- a. *“The number of Ryde drivers has grown to 10,000 in a short span of slightly over two months since Ryde first launched. This clearly indicates the ability of*

<sup>488</sup> Paragraphs 7, 15 and 17 of [X]; Paragraphs 14.1 to 14.3 and 15.1 of Grab’s 4 May 2018 response to CCCS’s 16 April 2018 section 63 Notice; Paragraphs 15.1 and 16.1 of USG’s 9 May 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>489</sup> Translated using exchange rate of USD\$1 = SGD\$1.35. Based on Annex 4 of Grab’s 4 May 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>490</sup> Translated using exchange rate of USD\$1 = SGD\$1.35. Based on Annex 4 of Grab’s 4 May 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>491</sup> Translated using exchange rate of USD\$1 = SGD\$1.35. Based on Annex 4 of Grab’s 4 May 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>492</sup> Google Playstore (accessed 14 April 2018).

<sup>493</sup> Google Playstore (accessed 7 August 2018).

<sup>494</sup> App Store (accessed 12 September 2018).

<sup>495</sup> Paragraph 5 of the cover letter of [X].

competitors, such as Ryde, to grow quickly and the constraint from such competitors”;<sup>496</sup> and

- b. “CDG and Ryde may easily choose to upgrade their applications to compete more effectively with Grab at low costs”.<sup>497</sup>

258. CCCS considers that, first, as shown in Table 8A above, while Ryde may have acquired over 10,000 drivers, only [X] are active drivers. Similarly, Ryde also has a small number of riders as compared to Grab as evidenced by the [X] trips per day undertaken across RydePool, RydeEXEC and RydeX, amounting to less than [X] trip per active driver. Second, CCCS notes the Parties’ representations that “CDG and Ryde may easily choose to upgrade their applications”. However, as mentioned in paragraph 242 above, the fact that CDG and Ryde have not done so reveals that there may be some level of difficulty involved. Furthermore, even if CDG and Ryde were able to upgrade their applications, the strength of indirect network effects on Grab’s CPPT platform prevents CDG and Ryde from competing with Grab as efficiently.
259. Based on the above, CCCS is of the view that Ryde’s current presence in the Platform Market is likely to be insufficient in extent to pose a competitive constraint on Grab to avert any SLC. There is also no indication that Ryde would pose a competitive constraint on Grab in the foreseeable future.
260. CCCS notes that Kardi,<sup>498</sup> Jugnoo,<sup>499</sup> and MVL (Tada)<sup>500</sup> have launched CPPT platform services since the Transaction and various news outlets have reported the number of driver sign-ups and user downloads for these new entrants. In particular, Jugnoo has about 500 drivers and 2,000 commuters in Singapore who are actively using the app and Tada has signed up more than 9,500 drivers and chalked up nearly 50,000 bookings.<sup>501</sup> However, CCCS notes that the number of driver sign-ups and user downloads does not reflect that the entrants are sufficient in extent to pose a competitive constraint on Grab. As set out in paragraphs 182 and 253 to 259, players such as Ryde, Kardi, Jugnoo, and MVL (Tada) do not have significant numbers of completed trips and are not able to pose a competitive constraint on Grab, despite their reported driver sign-ups and user downloads. Additionally, the ability of these new entrants to stay in the market remains unclear. In this regard, CCCS notes that Jugnoo, which was launched in June 2018, has

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<sup>496</sup> Paragraph 4.9 of Grab’s 26 July 2018 Written Representations.

<sup>497</sup> Paragraph 4.10 of Grab’s 26 July 2018 Written Representations.

<sup>498</sup> *New ride-hailing player Kardi targets June 5 launch in Singapore*, The Straits Times, 2 June 2018 (<https://www.straitstimes.com/singapore/transport/new-ride-hailing-player-kardi-targets-june-5-launch-in-singapore>).

<sup>499</sup> *Ride-hailing newcomers Jugnoo, RydeX launch in Singapore*, ChannelNewsAsia, 2 May 2018 (<https://www.channelnewsasia.com/news/videos/ride-hailing-newcomers-jugnoo-rydex-launch-in-singapore-10196290>).

<sup>500</sup> *Tada! Firm launches new ride-hailing app*, The Straits Times, 27 July 2018 (<https://www.straitstimes.com/singapore/transport/tada-firm-launches-new-ride-hailing-app>).

<sup>501</sup> *Indian firm Jugnoo and local player Kardi team up to fight ride-hailing battle*, The Straits Times, 12 August 2018 (<https://www.straitstimes.com/singapore/transport/indian-firm-jugnoo-and-local-player-kardi-team-up-to-fight-ride-hailing-battle>).



confirmed that it will shut down its Singapore app by the end of August 2018.<sup>502</sup> In particular, Jugnoo has cited the difficulty of recruiting drivers locally as one of the contributing reasons for its exit. Ensuring that a sufficient base of riders and drivers utilise the platform also requires sufficient capital, which serves as another barrier to expansion.

#### Taxi operators other than CDG

261. Given the relevant markets as identified and elaborated on in section D above, CCCS is of the view that taxi operators which provide CPPT platform services are competitors to Grab. In this regard, CCCS notes that there are seven (7) taxi operators in Singapore currently. These are namely, Comfort, CityCab, SMRT Taxis Pte. Ltd. (“**SMRT**”), Trans-Cab Services Pte. Ltd. (“**Trans-Cab**”), Premier Taxis Pte. Ltd. (“**Premier**”), Prime Car Rental & Taxi Services Pte. Ltd. (“**Prime**”) and HDT Singapore Taxi Pte. Ltd. (“**HDT**”). Comfort and CityCab are wholly-owned by CDG. Of the five (5) remaining taxi operators, CCCS notes that each of them has [redacted] with Grab,<sup>503</sup> and offers taxi services on Grab’s platform through the JustGrab and Standard Taxi product options. Given the existing partnership(s) with Grab, CCCS is of the view that there is weak incentive for these five (5) taxi operators to exert any form of competitive constraints on Grab. In addition, CCCS also notes that the five (5) taxi operators do not have significant matching/platform capabilities that can compete against Grab, and these taxi operators have also indicated that [redacted].<sup>504</sup> While the non-CDG taxi operators offer CPPT platform services via SMS or phone call, CCCS is of the view that the competitive constraints offered by these non-CDG taxi operators are low. This is evidenced by the negligible market share of approximately [redacted]% for each of these non-CDG taxi operators in the Platform Market (see Table 2).

#### Other potential entrants

262. CCCS is of the view that the Parties’ submission on Meituan’s launch in Shanghai is insufficient to support a finding that barriers to entry are low in Singapore. CCCS notes reports that:<sup>505</sup>

- a. The submitted estimated market share of 35% may be inaccurate as a high proportion of trips that were recorded might not have actually occurred;

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<sup>502</sup> *Indian firm Jugnoo and local player Kardi team up to fight ride-hailing battle*, The Straits Times, 12 August 2018 (<https://www.straitstimes.com/singapore/transport/indian-firm-jugnoo-and-local-player-kardi-team-up-to-fight-ride-hailing-battle>).

<sup>503</sup> Paragraph 19.1 of Grab’s 30 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>504</sup> Paragraph 5 of [redacted]’s 10 May 2018 response to CCCS’s 26 April 2018 section 63 Notice; Paragraph 5 of [redacted]’s 11 May 2018 response to CCCS’s 26 April 2018 section 63 Notice; Paragraph 2 of [redacted]’s 3 May 2018 response to CCCS’s 26 April 2018 section 63 Notice; Page 13 of [redacted]’s 9 May 2018 response to CCCS’s 26 April 2018 section 63 Notice.

<sup>505</sup> *Didi’s internal email: MeiTuan DaChe’s market shares in ShangHai have fallen to 15%, each trip on the platform results in negative profits of 30 CNY*, Sina News, 4 April 2018 (<http://tech.sina.com.cn/i/2018-04-04/doc-ifysuuya5871414.shtml>); *The Big Read: Why the Grab-Uber deal is making some uneasy*, ChannelNewsAsia, 10 April 2018 (<http://www.channelnewsasia.com/news/singapore/the-big-read-why-the-grab-uber-deal-is-making-some-uneasy-10120830>).

- b. Meituan’s market share has declined since 26 March 2018 to 15%, and is continuing to decline;
  - c. CCCS notes that the aforementioned reduction in Meituan’s market share follows the implementation of regulations that prevent players such as Didi Chuxing and Meituan from using high subsidies to gain market share; Meituan’s gross merchandise volume<sup>506</sup> subsidy rate of 100% is unsustainable given that it would need to burn US\$7 billion a year if it maintains a 20% market share at current subsidy rates;<sup>507</sup>
  - d. Meituan is lagging behind Didi Chuxing in terms of technological advancement such as transportation predictions and big data; and
  - e. It took more than a year before a new entrant decided to enter the China market following Didi Chuxing’s acquisition of Uber’s China operations.
263. While there are a number of existing ridesharing players including Ola, Lyft, Go-Jek, CaoCao Zhunche, Yidao Zhunche and Meituan Dianping which could potentially enter the market, CCCS notes that no indication has been provided by any of such players. In addition, CCCS notes that the Purchase Agreement which allows Grab to request for Uber to not sell Lion City Rentals [X],<sup>508</sup> raises barriers to entry for the [X] potential entrants.<sup>509</sup>
264. CCCS notes that several other ridesharing players have indicated their intent to enter the Singapore market. This includes players such as Dacsee, Quikk and Go-Jek.<sup>510</sup> However, CCCS notes that none of these aforementioned players have launched their services yet. In the absence of CCCS’s IMD, these players, including Go-Jek and Ryde, might not have entered or considered entering the Platform Market in Singapore, due to the high barriers to entry and expansion arising from Grab’s exclusive arrangements with CPHC rental companies and their drivers, which limits a new entrant’s access to CPHC vehicles and drivers. In this regard, [X] indicated that there was a general increase in the number of signups on its platform and that exclusive arrangements would result in unfair advantage towards Grab,<sup>511</sup> suggesting that the IMD has allowed it to access Lion City Rentals’ drivers who might otherwise have been tied exclusively to Grab.
265. For the other existing ridesharing players indicated by the Parties, while they may be potential entrants in the future, there has neither been any indication from any of these players that they intend to enter the market, nor any evidence suggesting so.

<sup>506</sup> This refers to the value of the ride.

<sup>507</sup> *MeiTuan DaChe executes fresh concept of “Cross Marketing” to focus more on user experience*, DO News, 13 June 2018 (<http://www.donews.com/news/detail/4/3006074.html>).

<sup>508</sup> [X].

<sup>509</sup> CCCS’s assessment on the ‘factual’ is based on the completed merger, and in the absence of CCCS’s IMD (without which, the clause may be exercised). The IMD requires that Grab undertakes not to exercise the clause in the Purchase Agreement to request for Uber to not sell Lion City Rentals [X].

<sup>510</sup> *Indian firm Jugnoo and local player Kardi team up to fight ride-hailing battle*, The Straits Times, 12 August 2018. (<https://www.straitstimes.com/singapore/transport/indian-firm-jugnoo-and-local-player-kardi-team-up-to-fight-ride-hailing-battle>)

<sup>511</sup> Paragraphs [X].

**(d) Countervailing Buyer Power**

266. The *CCCS Guidelines on the Substantive Assessment of Mergers 2016* provides that the ability of a merged entity to raise prices may be constrained by the countervailing power of customers.<sup>512</sup>

The Platform Market

*Parties' submissions*

267. The Parties submitted that the customers of the Parties' platform services for intra-city transportation are primarily individual riders and corporate customers on the rider side of the market and individual drivers on the driver side of the market.<sup>513</sup> Each individual rider and driver accounts for a negligible proportion of the Parties' turnover respectively. In relation to corporate customers, Grab's corporate customers [X] (see Table 10) while Uber's turnover from corporate customers [X].<sup>514</sup>

**Table 10: Grab's top five customers on the rider side for the booking of intra-city transportation services in Singapore for the financial year ended 2016<sup>515</sup>**

S/ N	Name of customer	Revenue attributable to customer for FY2016 (S\$)	Percentage of Grab's total group worldwide / Singapore revenue for FY2016
1.	[X]	[X]	[0-10]% / [0-10]%
2.	[X]	[X]	[0-10]% / [0-10]%
3.	[X]	[X]	[0-10]% / [0-10]%
4.	[X]	[X]	[0-10]% / [0-10]%
5.	[X]	[X]	[0-10]% / [0-10]%

268. The Parties also submitted that if the merged entity was to raise prices post-Transaction, riders would have the option to drive their own cars, by acquiring private cars, including second-hand cars, and availing themselves of the multiple financing options that are available on the market and the key competitive constraint is the multiple other transportation options available to riders and the labour market opportunities available to drivers, rather than their ability to self-supply.<sup>516</sup>

269. Further, the Parties submitted that if the merged entity increases prices post-Transaction, riders would have the following options, in addition to driving their own cars:

<sup>512</sup> Paragraphs 5.60 to 5.65 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>513</sup> Paragraph 18.4 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>514</sup> Paragraphs 31.1 and 31.2 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>515</sup> Table 31.4 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>516</sup> Paragraphs 32.1 and 32.2 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

- a. use one of the social carpooling or bike-sharing services;
- b. take public transportation;
- c. book (by phone or app) or hail a taxi; and
- d. cycle or use other forms of personal mobility devices like electric scooters.<sup>517</sup>

### *CCCS's assessment*

270. CCCS is of the view that buyer power may be absent in the Platform Market for various reasons. As submitted by the Parties, drivers and riders are individual renters and customers respectively,<sup>518</sup> who are unlikely to have significant buyer power given each customer only constitutes an insignificant proportion on the Parties' revenues. In particular, for CPHC drivers with only PDVLs, post-Transaction, there are no other CPPT platform service providers for them to switch to.<sup>519</sup>
271. While the Parties submitted that riders can have the option of driving their own cars, by acquiring private cars, including second-hand cars, CCCS is of the view that given the high cost of car ownership in Singapore, private cars are not a feasible substitute for CPPT platform services.<sup>520</sup>
272. In relation to corporate customers, feedback from of the Parties' corporate customers indicated that post-Transaction, they will have little bargaining power to negotiate for better terms and conditions from the merged entity given that there are limited CPPT platform service provider alternatives of a similar scale and availability as compared to the Parties pre-Transaction.<sup>521</sup> CCCS notes that based on the figures provided by Grab in Table 10 above, the top five (5) corporate customers only made up a mere [X%] of Grab's Singapore revenue in FY 2016 and less than [X%] of Grab's global revenue in FY 2016.
273. As such, CCCS is of the view that individual drivers and riders do not have any buyer power and the level of countervailing buyer power possessed by corporate customers is insignificant relative to the merged entity.

## The Rental Market

### *Parties' submissions*

274. Uber submitted that drivers (i.e. the customers) can be very price sensitive and are able to switch suppliers easily and quickly, as the minimum rental periods are very short. The

<sup>517</sup> Paragraph 32.3 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>518</sup> Paragraph 18.4 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>519</sup> CCCS notes that there has been media reports of CPHC drivers switching over to renting taxis post-Transaction. *ComfortDelGro sees biggest taxi booking rise since 2014*, The Straits Times, 7 June 2018 (<https://www.straitstimes.com/singapore/transport/comfortdelgro-sees-biggest-taxi-booking-rise-since-2014>).

<sup>520</sup> Paragraph 29(f) of [X]; Paragraph 30(f) of [X].

<sup>521</sup> Paragraph 14 of [X]'s 6 June 2018 response to CCCS's 30 May 2018 section 63 Notice; Paragraphs 7, 14 and 16 of [X]'s 1 June 2018 response to CCCS's 30 May 2018 section 63 Notice; Paragraph 14 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraph 14 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice.

Parties cited the example of Lion City Rental’s car rental services, where the notice period for termination by a hirer is seven (7) days once the minimum rental period of one (1) month from the date of collection has been satisfied. Uber further noted that drivers are able to tap on rival firm Tribecar’s services, which operates on an “ultra-short-term” rental business model, allowing drivers to hire a car from S\$2 to S\$6 per hour.<sup>522</sup>

275. Uber submitted that drivers have the option to acquire private cars (which can be easily registered as CPHCs), including second-hand cars, and avail themselves of the multiple financing options that are available in the market. Privately owned cars can be easily registered with the LTA as CPHCs. The costs required to convert and register a car as/into a CPHC is not prohibitive. The LTA charges S\$20 to obtain and install the necessary CPHC car decal at LTA-authorized centres. The conversion of vehicle registration from a private car to CPHC costs approximately S\$100, while commercial insurance costs are between S\$1,200 and S\$2,500.<sup>523</sup>

#### *CCCS’s assessment*

276. CCCS is of the view that countervailing buyer power is insignificant in the Rental Market. First, the ability of drivers to self-supply by purchasing their own car to provide CPHC services would unlikely be a viable alternative for most drivers. Third-party feedback highlighted that the cost of owning a vehicle in Singapore is very high and only a very small number of CPHC drivers own their own vehicles.<sup>524</sup> Second, drivers are individual renters whose individual action will not have a substantial impact on the Parties.

## **F. COMPETITION ASSESSMENT**

### **(a) Non-Coordinated Effects**

277. Non-coordinated effects may arise where, as a result of the transaction, the merged entity finds it profitable to raise prices (or reduce output or quality) because of the loss of competition between the merged entities.<sup>525</sup> Other firms in the market may also find it profitable to raise their prices because the higher prices of the merged entity’s product will cause some customers to switch to competitors’ products, thereby increasing demand for the competitors’ products.<sup>526</sup> A horizontal merger between competing firms can have the likely effect of an SLC through non-coordinated effects (also known as unilateral effects). Non-coordinated effects may arise when a firm merges with an existing competitor that would otherwise provide a significant competitive constraint.<sup>527</sup>
278. Non-coordinated effects may also arise when an existing firm merges with a potential or emerging competitor. In such situations, the merged entity may be able to preserve the

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<sup>522</sup> Paragraphs 32.3 to 32.5 of Form M1 dated 11 December 2017 filed by Uber and CDG in relation to their Application for Decision under section 57 of the Act.

<sup>523</sup> Paragraphs 32.1 to 32.2 of Form M1 dated 11 December 2017 filed by Uber and CDG in relation to their Application for Decision under section 57 of the Act.

<sup>524</sup> Paragraph 19 of the Notes of Meeting with [REDACTED] dated 11 January 2018.

<sup>525</sup> Paragraph 5.21 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>526</sup> Paragraph 5.30 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>527</sup> Paragraph 5.20 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

market power of the existing firm that would have otherwise been threatened by the potential or emerging competitor.<sup>528</sup>

#### *Parties' submissions*

279. The Parties submitted that the Transaction is unlikely to give rise to non-coordinated effects in the provision of intra-city transportation services in Singapore.<sup>529</sup> On the rider side of the market, there are many efficient transport alternatives that give Grab the competitive pressure to match these transport alternatives in terms of price and quality.<sup>530</sup> Further, well-informed consumers use all types of transportation services and also multi-home within the mobile application booking space. Grab will remain significantly constrained by strong competition posed by other technology companies and taxi operators, as riders are sophisticated consumers who travel with the service that provides the better price and quality.<sup>531</sup> The Parties further submitted that there are a number of credible players such as BlueBird (Indonesia), the Chinese ride-sharing companies, Lyft (USA), Ola (India) and Go-Jek (Indonesia) that can quickly enter Singapore on a material scale.<sup>532</sup> On the driver side, rival CPHC and taxi booking service providers are able to recruit drivers and the low barriers to obtaining a PDVL indicates that the option of driving CPHCs will remain a viable and attractive option for potential drivers.<sup>533</sup> The Parties also submitted that price-sensitive drivers would be able to switch easily to rival operators if they are offered attractive opportunities such as better fees, rates or incentives.<sup>534</sup>

#### *CCCS's assessment*

280. CCCS is of the view that as a result of the Transaction, Grab has increased its market power, manifested in its ability to raise prices (or reduce quality or choice) because of the elimination in competition between Grab and Uber. In coming to its finding, CCCS has considered that:

- a. The Transaction has led to an elimination in competition between the two (2) closest and largest competitors, which has contributed to an SLC in the Platform Market, which in turn increases Grab's ability to raise prices in the absence of a significant competitive constraint, i.e. its market power;
- b. The Parties' contemporaneous internal documents and funding estimates indicate that the Parties expect the Transaction to increase Grab's ability to increase effective price;
- c. There has been a significant reduction in promotions and incentives post-Transaction and consequently an increase in the effective price for trips, which demonstrates an increase in Grab's ability to increase prices post-Transaction;

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<sup>528</sup> Paragraph 5.22 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>529</sup> Paragraph 34.1 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>530</sup> Paragraph 34.2 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>531</sup> Paragraph 34.3 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>532</sup> Paragraph 34.4 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>533</sup> Paragraph 34.5 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>534</sup> Paragraph 34.6 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

- d. Third parties have raised concerns over Grab's increased ability to increase prices through the elimination of competition between Grab and Uber through the Transaction;
- e. The Parties' submissions in relation to CRA's Gross Upward Pressure Pricing ("GUPPI") analysis is not indicative of the upward pricing pressure in the Platform Market post-Transaction or lack thereof, and is insufficient to refute CCCS's finding that the elimination of competition through the Transaction has increased Grab's ability to increase prices; and
- f. Entry by new competitors has not been demonstrated to be sufficient in likelihood, scope and timeliness to deter or defeat any attempt by the merger parties to exploit the reduction in rivalry flowing from the merger.

281. From the onset, CCCS notes the Parties' submissions that pre-Transaction prices were unsustainable and would rise irrespective of the Transaction. CCCS emphasises that it does not take a subjective view on the appropriate and sustainable price levels in the Platform Market. Instead, the crux of CCCS's findings is that the Parties had eliminated the close and intense competitive rivalry between themselves through the Transaction, and Grab had increased its ability to increase prices (or reduce quality or choice) through the Transaction. The fact that promotions and incentives have reduced more sharply post-Transaction, is illustrative of Grab's increased ability to raise prices with the market power gained through the Transaction.

282. CCCS would also like to emphasise that, in assessing whether there would be non-coordinated effects amounting to an SLC arising from the Transaction, CCCS only needs to demonstrate an increase in the Parties' *ability* to raise prices (or reduce quality or choice), gained through the Transaction.<sup>535</sup> It is not a requirement for CCCS to demonstrate an actual increase in price. In this case, however, there is contemporaneous documentary evidence that it is the Parties' intention to raise prices through reduction in discounts and incentives, as well as empirical evidence that effective prices have indeed increased significantly and more sharply post-Transaction. CCCS is of the view that these are persuasive evidence that the Parties have increased their ability to raise prices post-Transaction.

The Transaction has led to the reduction of competition between the two (2) closest and largest competitors in the Platform Market, which has contributed towards substantially lessening competition in this market

283. CCCS's view is that the Parties are evidentially the *closest* competitors to each other in the Platform Market, and that the Transaction had removed the competitive constraints Uber used to pose on Grab. In this regard, CCCS reiterates its findings at section D in relation to the insufficient degree of substitution of, *inter alia*, street-hail taxis, public transportation options, such as buses, shuttle coaches, MRT trains and LRT trains, and the wider labour market.

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<sup>535</sup> Paragraph 4.6 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

284. CCCS also notes that the merged entity has around [80-90]% combined market share in the Platform Market and CR3 post-Transaction is around [90-100]%. Even if street-hail is included into the relevant market, CCCS notes that the merged entity has around [40-50]% market share and CR3 post-Transaction is around [80-90]%. In either case, the merged entity's market share is significantly above the indicative threshold of 40% set out in the *CCCS Guidelines for the Substantive Assessment of Mergers 2016*.
285. CCCS notes that the Parties' internal documents relating to the Transaction indicate that the CP of the Parties is seen as one that is differentiated from taxis. Uber's [X] Status Update states: [X].<sup>536</sup> The share referred to in this document only refers to Uber's market share against Grab and Go-Jek in the Southeast Asian market. The entire status update considers CP, and does not discuss public transport or taxis.<sup>537</sup> CCCS also notes that [X].<sup>538</sup> Further, CCCS notes that [X].<sup>539</sup>
286. Taxi booking services, particularly, CDG's CPPT platform services, compete with the Parties in the relevant market and may constrain the Parties by allowing riders to multi-home, although the extent may be limited due to loyalty programmes and e-wallets such as GrabRewards and GrabPay. However, driver multi-homing is unlikely given the incentives offered by CPPT platform service providers which incentivise drivers to effectively use only one (1) CPPT platform service provider to accept jobs in order to earn higher incentives. Further, the exclusivity arrangements between Grab and the [X] taxi operators, and the same between Grab and Grab Rentals and its other preferred rental fleet partners, effectively prevent the affected drivers from multi-homing. In addition, based on third-party feedback, CDG's app has technical limitations, such as the lack of automatic pushing of jobs to drivers and predictive demand heat maps, amongst others, which makes it unattractive to CDG drivers.<sup>540</sup> CCCS also notes that one cannot book CPHC services or taxi services provided by non-CDG drivers through CDG's CPPT platform services.<sup>541</sup> Further, while CDG offers a fixed fare service via its app, third parties have highlighted that the fares are static fixed fares computed using the metered-fare structure unlike Grab's or Uber's dynamic fixed fare offering.<sup>542</sup> As such, CCCS is of the view that CDG is likely to only pose a limited competitive constraint on Grab.

#### Estimated effective price increase based on the Parties' internal documents

287. In relation to Grab, CCCS notes that in Grab's presentation made to its board [X],<sup>543</sup> [X],<sup>544</sup> [X].<sup>545</sup> In relation to Uber, in Uber's presentation to its board in March 2018, Uber projected to [X].<sup>546</sup> The above, coupled with the fact that the Parties have not submitted any quantification on efficiency gains arising from cost savings, implies that

<sup>536</sup> Slide 2 of Annex 8 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>537</sup> Slide 2 of Annex 8 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>538</sup> Slides 13 and 27 of Annex AI of USG's 23 May 2018 response to CCCS's 7 May 2018 section 63 Notice.

<sup>539</sup> Paragraph 22.7 of Annex B of USG's 30 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>540</sup> Paragraph 24 of the Notes of Meeting with [X] dated 26 March 2018.

<sup>541</sup> Paragraphs 7 to 10 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice.

<sup>542</sup> Paragraph 19 of the Notes of Meeting with [X] dated 4 January 2018.

<sup>543</sup> [X].

<sup>544</sup> [X]: see Annex 4 of Grab's 30 August 2018 response to CCCS's 24 August 2018 section 63 Notice

<sup>545</sup> Slide 30 of *Grab's Board Presentation [X](2 March 2018)*, Annex 2 of Grab's 19 April 2018 response to CCCS's 16 April 2018 section 63 Notice; Paragraph 6 of Grab's 30 August 2018 response to CCCS's 24 August 2018 section 63 Notice.

<sup>546</sup> Slide 4 of Annex 10 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice; [X].



the [X] is likely to be due to an increase in effective price post-Transaction, primarily through reductions in promotions and incentives to riders and drivers.

288. Based on the difference in funding needs for Grab in relation to its ride-hailing business under the two (2) different scenarios, CCCS estimates that the Transaction will result in a [20-30]% increase in effective trip fare (i.e. trip fare net of promotions) through the reduction of discounts for the next four (4) years till 2021 (see Table 11 below). This is a conservative estimate, as Grab's total number of trips is assumed to be the same in the "[X]" and "[X]" scenario. Given that Uber's service has been discontinued post-Transaction, Grab's number of trips are likely to increase post-Transaction. This would in turn imply that Grab's promotions under the "[X]" scenario would be distributed over a higher number of trips, which would further reduce the average amount of promotions per trip (and would further increase the effective price per trip).

**Table 11: CCCS’s estimates of average effective price increase to riders as a result of the Transaction**

	“[X]” Scenario	“[X]” Scenario
Estimated funding required for Southeast Asia Region (till 2021) in USD <sup>547</sup>	\$(X)million	\$(X)million
Estimated funding required for Singapore (till 2021) in SGD <sup>548</sup>	\$(X)million	\$(X) million
Estimated number of trips (till 2021) <sup>549</sup>	[X]	[X]
Average promotion and incentive per trip <sup>550</sup>	\$(X)	\$(X)
Average Trip Fare without (Promotion + Incentives) <sup>551</sup>	\$(X)	
Effective Price (Fare net of promotion and incentive)	\$(X)	\$(X)
Drop in average (Promotion + Incentives) per trip	\$(X)	
<b>Average percentage increase in effective fares as a result of the Transaction</b> <sup>552</sup>	<b>[20-30]%</b>	

289. CCCS notes Grab’s submission that it disagrees with CCCS’s estimates of a price increase due to the Transaction. Grab claims that the funding contemplated by Grab also relates to its payment business besides its ride-hailing business.<sup>553</sup> In this regard, CCCS first notes that Grab did not submit any alternative calculation to quantify the [X] funding attributable to its payment business in its written representations. Second, there was no horizontal overlap between Grab and Uber in the payment business, as Uber was not an existing competitor in the payments market before the Transaction. In addition, CCCS notes that the supporting documents [X] in relation to its funding projections for “[X]” and “[X]” scenarios reflect no difference in funding required for Grab’s payment

<sup>547</sup> Paragraph 6 of Grab’s 30 August 2018 response to CCCS’s 24 August 2018 section 63 Notice; CCCS has taken the total quantum of estimated funding, less the funding specified for its payment and food delivery business.

<sup>548</sup> Estimated based on Singapore’s share of commission contribution to Grab; Slide 10 of Annex J of USG’s 30 April 2018 response to CCCS’s 16 April 2018 section 63 Notice; Exchange rate of 1 USD to 1.3352 was used (12 June 2018 exchange rate) as obtained from Monetary Authority of Singapore’s website on 13 June 2018.

<sup>549</sup> ‘Total trips’ is estimated by aggregating Grab’s total trips in Q2 2017, Q3 2017, Q4 2017 and Q1 2018 and multiplying for a period of 3.75 years.

<sup>550</sup> CCCS assumes that the all funding is spent on riders’ promotion and drivers’ incentive.

<sup>551</sup> Calculated by dividing ‘estimated total fares till 2021’ by ‘Total trips’. ‘Estimated total fares till 2021’ is calculated by summing up fares collected by Grab in Q2 2017, Q3 2017, Q4 2017 and Q1 2018 and multiplying for a period of 3.75 years. Annex 3 of Grab’s 16 May 2018 response to CCCS 7 May 2018 section 63 Notice.

<sup>552</sup>  $[(X) / (X)]$ .

<sup>553</sup> Paragraph 4.44 of Grab’s 26 July 2018 Written Representations.

business under the "[X]" scenario and "[Y]" scenario,<sup>554</sup> indicating that contrary to Grab's submission, [X]'s projected [Y] funding requirements is unlikely to be attributable to a [X] funding for Grab's payment business.

290. In addition, [X]'s projected (i) number of trips; (ii) trip fares; (iii) cost per trip<sup>555</sup> on a monthly basis show that the effective price under the "[Y]" scenario is estimated to be [20-30]%<sup>556</sup> higher than the effective price under the "[X]" scenario by December 2021 (see Figure 5 below). As stated in paragraph 282 above, it is not a requirement for CCCS to demonstrate an actual increase in price but the contemporaneous documentary evidence is persuasive that effective price is to become more than 20% higher as a result of the Transaction.

**Figure 5: Change in Effective Price under the "[Y]" Scenario and "[X]" Scenario<sup>557</sup>**

[X]

291. CCCS notes the Parties' recurrent argument that prices would have to increase at some point, irrespective of the merger, given the unsustainable price levels before the Transaction.<sup>558</sup> This development has already been accounted for under the "[Y]" scenario in the analysis above carried out by CCCS. This implies that the difference in funding between the two (2) scenarios reflects the plan of an *incremental* reduction in promotions and incentives that is *specific to the Transaction*. More precisely, in the absence of any significant and demonstrable efficiencies brought about by the Transaction, the difference in funding between the two (2) scenarios must be the outcome of a planned reduction in promotions/incentives due to the elimination of a significant competitor brought about by the Transaction. [X]'s projections set out in Figure 5 above also illustrate that the projected increase in effective price under the [X] scenario is higher than under the "[Y]" scenario.<sup>559</sup>

Effective price has actually increased post-Transaction<sup>560</sup>

292. Paragraph 13 of the IMD requires Grab to maintain its pre-Transaction algorithm pricing matrix (for those variables that Grab is able to control) for Grab's ride-hailing services which existed on its CPPT platform in Singapore prior to the Transaction including the base price and surge factor cap, as well as its pre-Transaction driver commission rates. In spite of the above, CCCS has received numerous complaints from both riders and drivers in relation to increase in effective price imposed on both riders and drivers post-Transaction. Riders pay an effective price comprising 'trip fare net of promotions' to the

<sup>554</sup> Paragraph 6 of Grab's 30 August 2018 response to CCCS's 24 August 2018 section 63 Notice.

<sup>555</sup> CCCS estimated the projected effective price by taking the projected Gross Merchandise Volume per ride less the projected cost per ride.

<sup>556</sup> [X].

<sup>557</sup> Paragraph 6 of Grab's 30 August 2018 response to CCCS's 24 August 2018 section 63 Notice; [X] assumed that the Transaction occurred between December 2017 and January 2018.

<sup>558</sup> Paragraph 4.38 to 4.39 of Grab's 26 July 2018 Written Representations; Paragraph 110 of USG's 4 April 2018 Written Representations.

<sup>559</sup> Paragraph 6 of Grab's 30 August 2018 response to CCCS's 24 August 2018 section 63 Notice.

<sup>560</sup> It is not a requirement for CCCS to demonstrate an actual increase in price, but evidence of actual price increase is persuasive of the merged entity's ability to increase price post-merger.

drivers via the CPPT platform. As of 19 June 2018, CCCS has received 11 complaints from riders in relation to the quantum and frequency of promotions decreasing post-Transaction due to the Transaction. Drivers pay an effective price of ‘[c]ommission net of incentives’ to the CPPT platform. As of 19 June 2018, CCCS received 13 complaints from drivers in relation to the reduction of quantum of incentives received post-Transaction due to the Transaction. Grab has in fact admitted that it has been rolling back its discounts for customers and incentives for drivers but also highlighted that the roll back of promotions and incentives had started before the Transaction.<sup>561</sup>

293. CCCS observed that post-Transaction, as set out in Table 12 below, there has been a significant increase in effective price (gross trip fares to riders less discounts and promotions) by [10-15]% from \$[X] in March 2018 to \$[X] in July 2018.

**Table 12: Grab’s discounts to riders per CPHC trip**<sup>562</sup>

	Gross trip fare	Discounts	Effective price	Cumulative change in effective price since Transaction
2015	\$[X]	\$[X]	\$[X]	n.a.
2016	\$[X]	\$[X]	\$[X]	n.a.
2017	\$[X]	\$[X]	\$[X]	n.a.
Dec 2017	\$[X]	\$[X]	\$[X]	n.a.
Jan 2018	\$[X]	\$[X]	\$[X]	n.a.
Feb 2018	\$[X]	\$[X]	\$[X]	n.a.
Mar 2018	\$[X]	\$[X]	\$[X]	-
Apr 2018	\$[X]	\$[X]	\$[X]	[0-5]%
May 2018	\$[X]	\$[X]	\$[X]	[5-10]%
Jun 2018	\$[X]	\$[X]	\$[X]	[10-15]%
Jul 2018	\$[X]	\$[X]	\$[X]	[10-15]%

294. While CCCS notes Grab’s comment to the media that discounts to riders have been dropping prior to the Transaction,<sup>563</sup> CCCS observed that the average riders’ discounts per trip dropped by \$[X] post-Transaction (from end-March to end-July 2018), *vis-à-vis* \$[X] for the few months prior to the Transaction (end-December 2017 to end-March 2018), as shown in Table 12. This indicates that the decline in discounts *intensified* after the elimination of competition between the Parties brought about by the Transaction. The

<sup>561</sup> *Grab cuts back on customer discounts and driver incentives but say users still getting good value*, The Straits Times 7 May 2018 (<https://www.straitstimes.com/singapore/grab-cutting-back-on-customer-discounts-and-driver-incentives?xtor=CS3-18>)

<sup>562</sup> Paragraphs 20.1 to 20.3 of Grab’s 18 May 2018 response to CCCS’s 7 May 2018 section 63 Notice; Paragraph 4.1 of Grab’s 8 June 2018 response to CCCS’s 4 June 2018 section 63 Notice; Annex 4 of Grab’s 13 August 2018 response to CCCS’s 30 July 2018 section 63 Notice; Paragraph 1.1 of Grab’s 30 August 2018 response to CCCS’s 24 August 2018 section 63 Notice.

<sup>563</sup> *Grab cuts back on customer discounts and driver incentives but say users still getting good value*, The Straits Times 7 May 2018 (<https://www.straitstimes.com/singapore/grab-cutting-back-on-customer-discounts-and-driver-incentives?xtor=CS3-18>)

CRA Report also confirms “*there is no denying that Grab’s rider-side promotions and driver-side incentives have declined since Uber’s exit and this has resulted in an increase in Grab’s profit margins*”.<sup>564</sup>

295. Noting Grab’s comment that discounts to riders have been shifted to Grab’s loyalty programme pre-Transaction, CCCS also analysed Grab’s discounts to riders per CPHC trip after Grab’s loyalty programme, GrabRewards, was launched in Singapore on 8 December 2016. CCCS observed that the average discounts per CPHC trip increased from \$[redacted]<sup>565</sup> during the pre-GrabRewards period (i.e. August 2015 to December 2016) to \$[redacted]<sup>566</sup> during the post-Grab Rewards period before the Transaction (i.e. January 2017 to March 2018). However, the average discount to riders per CPHC trip post-Transaction decreased to \$[redacted].<sup>567</sup>

#### Concerns raised by third parties

296. CCCS has received third-party feedback from the Parties’ corporate customers and competitors in support of the finding that the elimination of competition through the Transaction is likely to have led to Grab’s ability to increase prices. [redacted] (“[redacted]”) highlighted that aggressive pricing and promotions will likely be reduced with the reduced competition.<sup>568</sup> [redacted] indicated that absent the Transaction, the Parties would have continued to compete through promotions, service standards and innovations to attract and retain riders.<sup>569</sup> [redacted] highlighted that Grab now has the ability to act errantly as a market leader given that there are no alternatives due to Grab’s high market share.<sup>570</sup> [redacted] believes that as a result of the Transaction, rider fares and driver commission rates have increased; and that rider promotions and driver incentives have decreased due to Grab’s position as a *de facto* monopoly.<sup>571</sup> [redacted] also highlighted that while Grab had previously kept rider fares low through subsidies, it will now be inclined to raise fares since riders have no viable alternative to switch to.<sup>572</sup> [redacted] commented further that, Grab will lack the incentive to maintain its service quality to both riders and drivers, and be less inclined to differentiate its customer service and support.<sup>573</sup> [redacted] indicated that Grab is likely to increase fares and commission rates to increase its revenues.<sup>574</sup> [redacted] highlighted that the Parties will have market power over both riders and drivers with the Transaction, and is likely to abuse this market power.<sup>575</sup> [redacted] stated that post-Transaction, the Parties may be able to unilaterally set unreasonable commission rates and fares since they are not regulated to the extent that taxi operators are.<sup>576</sup> [redacted]

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<sup>564</sup> Page 22 of Grab’s 14 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

<sup>565</sup> Paragraphs 20.1 to 20.3 of Grab’s 18 May 2018 response to CCCS’s 7 May 2018 section 63 Notice. Refers to the average discount per trip for the months August 2015 to December 2016.

<sup>566</sup> Paragraphs 20.1 to 20.3 of Grab’s 18 May 2018 response to CCCS’s 7 May 2018 section 63 Notice. Refers to the average discount per trip for the months January 2017 to March 2018.

<sup>567</sup> Paragraphs 20.1 to 20.3 of Grab’s 18 May 2018 response to CCCS’s 7 May 2018 section 63 Notice. Refers to the average discount per trip for the months April 2018 to July 2018.

<sup>568</sup> Paragraph 14 of [redacted]’s 10 May 2018 response to CCCS’s 4 May 2018 section 63 Notice.

<sup>569</sup> Paragraph 17 of [redacted]’s 11 May 2018 response to CCCS’s 4 May 2018 section 63 Notice.

<sup>570</sup> Paragraph 29 of [redacted].

<sup>571</sup> Paragraph 7 of the cover letter of [redacted].

<sup>572</sup> Paragraph 27 of [redacted].

<sup>573</sup> Paragraph 27 of [redacted].

<sup>574</sup> Page 16 of [redacted]’s 9 May 2018 response to CCCS’s 26 April 2018 section 63 Notice.

<sup>575</sup> Paragraph 18 of [redacted]’s 11 May 2018 response to CCCS’s 26 April 2018 section 63 Notice.

<sup>576</sup> Paragraph 27 of the Notes of Meeting with [redacted] dated 26 March 2018.

highlighted that the Transaction will result in an increase in transport costs.<sup>577</sup> [X] commented that they will be at the mercy of price surges set by Grab.<sup>578</sup> [X] stated that the Transaction will result in fewer choices and higher prices to riders, and fewer choices and lower income for drivers.<sup>579</sup> CCCS notes that only [X] and [X], have commented that the Transaction does not positively or negatively impact its business.<sup>580</sup> However, [X] commented that the Transaction may mean fewer choices for consumers.<sup>581</sup>

297. CCCS notes Grab's submission that the number of complaints that CCCS received in relation to the reduction of incentives and discounts are insignificant relative to the total number of drivers and riders.<sup>582</sup> Grab's implicit assumption – which is flawed – is that the remaining population of drivers and riders who did not provide feedback have no concerns relating to the reduction of incentives and discounts. In any event, CCCS notes that the complaints and feedback received corroborates the other data and analysis set out in this section.

Parties' submissions on GUPPI understates the extent of upward pricing pressure arising from the Transaction

298. CCCS notes that the CRA Report has made use of a variant of the GUPPI test. The GUPPI test is a screening tool for merger analysis that is applied to markets with differentiated products and price competition, and is based on the closeness of competition between the products produced by the merging firms and on the price-cost margins of the products. The stronger the substitutability between two (2) products (reflected by diversion ratios) and the higher the profitability of product 2 (reflected by profit margins), the stronger the upward pricing pressure for product 1. For the Transaction however, CRA is of the view that the Parties' historical negative margins in Singapore prevented the use of the conventional GUPPI test, since negative profit margins would result in a negative GUPPI which would not be meaningful. For this reason, CRA has adopted a variant of the GUPPI test by estimating how high margins would have to be over the long run, given the estimated diversion ratios for the GUPPI to reach a level of concern (the "**critical margin approach**"). Using the critical margin approach, the CRA Report concluded that the Parties' long-run margins are unlikely to meet the critical values required to lead to 10% GUPPI for each of the Parties.<sup>583</sup>
299. In this regard, CCCS first notes that the GUPPI test is typically used as a screening tool to identify potentially problematic mergers for further investigation, and is less relevant to the Transaction which is a *completed* instead of an *anticipated* merger. For this reason, the assessment of *actual evidence of effects* should carry more weight for the Transaction. Second, CCCS notes that the CRA Report has relied on the Uber Survey to estimate diversion ratios needed for the GUPPI test. As highlighted in paragraph 149 above, CCCS is of the view that the Uber Survey suffers from consistency/design issues and is

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<sup>577</sup> Paragraph 14(a) of [X]'s 1 June 2018 response to CCCS's 30 May 2018 section 63 Notice.

<sup>578</sup> Paragraph 14 of [X]'s 6 June 2018 response to CCCS's 30 May 2018 section 63 Notice.

<sup>579</sup> Paragraph 11 of [X]'s 11 June 2018 response to CCCS's 4 June 2018 section 63 Notice.

<sup>580</sup> Page 4 of [X]'s 5 June 2018 response to CCCS's 30 May 2018 section 63 Notice; Paragraph 14 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice.

<sup>581</sup> Paragraph 14 of [X]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice.

<sup>582</sup> Paragraph 4.42 of Grab's 26 July 2018 Written Representations.

<sup>583</sup> Pages 34 to 37 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

likely to have understated the true degree of substitution between the Parties (and overstated the substitution between the Parties and public transportation). This implies that the GUPPI results should be viewed with some caution, given that any inaccuracy in the estimation of diversion ratios may materially skew the GUPPI outcome. Third, the CRA Report's variant of the GUPPI test involved an estimation of "critical margins", which in turn required an assumption of the Parties long-run positive margins, which is difficult to determine as acknowledged by the CRA Report.<sup>584</sup> Fourth, the CRA Report arbitrarily selects a GUPPI in excess of 10% as the threshold for a merger to be problematic.

300. Further, CCCS notes that the GUPPI analysis used in the CRA Report ignores the two-sided feature of the Platform Market. In the current context, the indirect network effects are positive – rider demand increases with the number of drivers, who in turn cares about the potential pool of riders. This implies that in the event one of the Parties raise their prices, it would not only lose riders but also drivers to the other Party. Given that CRA's GUPPI analysis only looks at the internalisation of the loss in riders and ignores the similar internalisation of the loss in drivers brought about by the Transaction, the analysis understates the extent of upward pricing pressure imposed by the Transaction.<sup>585</sup>
301. CCCS notes CRA's submission that its GUPPI results are still relevant for the purpose of assessing the effects arising from the Transaction, based on three (3) factors.<sup>586</sup> First, studying the medium-run pricing dynamics is more informative than looking at short-run dynamics. Second, CRA had also made use of natural experiments instead of the Uber Survey to estimate diversion ratios and the results similarly showed that Uber is unlikely to have the critical margin required to cause an upward pricing pressure that would be of concern. Third, Uber's low margins in its most profitable city markets show that Uber would also be unlikely to meet the critical margins needed to cause an upward pricing pressure of concerning levels in Singapore. As highlighted above, CCCS has also studied the medium-run pricing dynamics in addition to short-run dynamics, including an analysis on the effective price increase based on the Parties' own projections for the next four (4) years. CCCS also highlights that it is the CRA Report itself which had stated that the short-run diversion patterns observed in response to the unexpected and temporary Grab outages will overstate the diversion ratios and is therefore not an accurate estimation of the diversion ratios needed for the GUPPI test.<sup>587</sup> Further, the Parties' profit margins in other city markets are not a good indication, if at all, of their margins for CPPT platform services in Singapore, given that the market structure, the competition dynamics and government regulations differ across countries.

#### Non-coordinated effects unlikely to be averted by entry or expansion

302. CCCS also notes that entry by new competitors has not been demonstrated to be sufficient in likelihood, scope and time to deter or defeat any attempt by the merger parties to exploit the reduction in rivalry flowing from the merger, as discussed in paragraph 280.

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<sup>584</sup> Page 36 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

<sup>585</sup> The academic literature has considered upward pricing pressure tests in two-sided markets, which accounts for the interdependence between the two (2) sides of the market. See Salop, S. Moresi, S. and Woodbury, J. (2010) "Scoring Unilateral Effects with the GUPPI: the Approach of the New Horizontal Merger Guidelines", CRA Competition Memo ([http://www.crai.be/sites/default/files/publications/Commentary-on-the-GUPPI\\_0.pdf](http://www.crai.be/sites/default/files/publications/Commentary-on-the-GUPPI_0.pdf)).

<sup>586</sup> Section 5.2 of CRA's 26 July 2018 Report.

<sup>587</sup> Page 34 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

In this regard, CCCS refers to its findings in section E on “Barriers to Entry and Expansion” and “Actual and Potential Competition”. In addition, CCCS notes that despite evidence of new entry by players like Ryde, Jugnoo, Kardi, and MVL (Tada), Grab has actually increased effective price post-Transaction.

303. In the absence of an existing close competitor and/or a significant potential new entrant, and given the elimination of competition between the Parties pursuant to the Transaction, Grab has gained in its *ability* to raise prices for riders and commission rates for drivers, and/or lower the quality of its services.

#### Conclusion on non-coordinated effects

304. Contrary to the Parties’ submission that they will continue to be constrained by (i) riders’ ability to switch easily to competing modes of transport; (ii) drivers’ ability to switch easily to rival CPHC and taxi operators; and (iii) entry of new competitors, CCCS finds that the Transaction will eliminate competition between the Parties in the Platform Market. The Parties are each other’s closest competitor with taxi booking services provided by taxi operators posing weaker competitive constraint to the Parties due to its limitations. Further, the market is characterised by strong indirect network effects, which require entrants to incur sunk costs upfront. This creates a significant barrier to entry and expansion which makes it difficult for potential competitors to enter and challenge the merged entity. The Parties are likely to have increased their *ability* to raise fares and commission rates charged to individual riders and drivers, who lack countervailing buyer power to constrain the Parties from doing so. This is supported by both third-party feedback and CCCS’s finding that, as a result of the Transaction, effective trip fare paid by riders has already increased by [10-15]% from March to July 2018, and is estimated to increase by [20-30]% on average till 2021. In addition, while the Parties have claimed that driver incentives and rider discounts have been decreasing even prior to the Transaction, the rate of decrease in incentives/discounts has steepened significantly post-Transaction. Further, CCCS notes that it has received numerous complaints from both riders and drivers in relation to the increase in effective price (e.g. via a decrease in quantum and frequency of promotions and incentives).
305. As such, CCCS is of the view that the Transaction is likely to have led to non-coordinated effects by the merged entity, and consequently an SLC to the detriment of riders and drivers.

#### **(b) Coordinated Effects**

##### *Parties’ submissions*

306. The Parties submitted that the Transaction is unlikely to give rise to coordinated effects in the relevant market affecting Singapore.<sup>588</sup> The market will remain extremely competitive post-Transaction and the presence of a large number of existing competitors in the market of varying sizes, combinations and scales of operation means that it would be impossible for the Parties to align or coordinate their behaviour with other competitors

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<sup>588</sup> Paragraph 35.1 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.



as collusion is untenable and unsustainable.<sup>589</sup> The Parties further submitted that riders and drivers are able to switch easily between intra-city transportation and labour market options respectively.<sup>590</sup> The market is also rapidly expanding with new innovative products and aggressive promotions being rolled out regularly, which makes coordination impossible.<sup>591</sup>

#### *CCCS's assessment*

307. A merger may also lessen competition substantially by increasing the possibility that, post-Transaction, firms in the same market may coordinate their behaviour to raise prices, or reduce quality or output. Given certain market conditions, and without any express agreement, tacit collusion may arise merely from an understanding that it will be in the firms' mutual interests to coordinate their decisions. Coordinated effects may arise where a merger reduces competitive constraints from actual or potential competition in a market, thus increasing the probability that competitors will collude or strengthening a tendency to do so.<sup>592</sup>
308. In order for tacit or explicit coordination to be successful or more likely as a result of a merger, three (3) conditions should be met or be created by the merger:
- a. Participating firms should be able to align their behaviour in the market;
  - b. Participating firms should have the incentive to maintain the coordinated behaviour; and
  - c. The coordinated behaviour should be sustainable in the face of other competitive constraints in the markets.<sup>593</sup>
309. The following characteristics of the market increase the likelihood of such coordination.
310. First, the small number of players and the high concentration of the market make it easy for firms to coordinate their behaviour. In addition to the merged entity, there are only six (6) other CPPT platform service providers operating in Singapore pre-Transaction. CDG accounts for around 60% of the taxi fleet, and together with the Parties have a joint market share of approximately [90-100]% based on the number of rides matched in the Platform Market. The fact that Grab also has [X] taxi operators is likely to facilitate further coordinated behaviour between them.
311. Second, there is a high degree of transparency on pricing. Information on the pricing practices of competing firms can be easily obtained, are reported online and regularly commented on in the media. Combined with the small number of participants in the market, this means that firms can quickly and readily observe other firms' activities and detect deviations from any tacit agreement.

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<sup>589</sup> Paragraph 35.1.1 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>590</sup> Paragraph 35.1.2 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>591</sup> Paragraph 35.1.3 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>592</sup> Paragraph 5.35 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>593</sup> Paragraph 5.39 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

312. Third, there is repeated interaction, which the sustainability of coordination rests upon, since the prospect of future retaliation will discourage firms from pursuing more competitive strategies.
313. Finally, competitive constraints are low. The barriers to entry in the market are characterised by strong indirect network effects that require large entry costs upfront, which implies that the oligopolistic structure of the market will likely persist and reduce the likelihood of entry by maverick firms that do not engage in the coordination.
314. While the market characteristics facilitate effective *detection* and *punishment* of any maverick player, the two (2) key conditions for successful tacit collusion, CCCS has considered that on balance the evidence available does not suggest that the Transaction is likely to have resulted in coordinated effects.

**(c) Vertical Effects**

*Parties' submissions*

315. The Parties submitted that there are no vertical relationships between Grab and the Acquired Uber Assets and that the Transaction also does not give rise to any vertical effects as Grab is not acquiring the car rental/leasing assets or business of Uber in Singapore.<sup>594</sup>

*CCCS's assessment*

316. As stated in the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*, CCCS will consider the following information when assessing the vertical effects of a merger:<sup>595</sup>
- a. vertical relationship(s) between the merger parties before and after the merger;
  - b. the extent of vertical integration before the merger and how this is created or strengthened by the merger;
  - c. the merger parties' market shares in the upstream and downstream markets;
  - d. any existing supply arrangements between the merger parties; and
  - e. the extent to which the competitors are vertically integrated.
317. As mentioned in paragraph 218 above, third-party feedback indicates that access to a fleet of vehicles is essential for a potential new entrant as it is required to build a certain minimum critical mass.<sup>596</sup> A new entrant could either (i) purchase their own vehicles, which would require significant resources given the high COE prices; or (ii) acquire and/or enter into partnerships with car rental companies, which might prove difficult given the small size of third-party car rental companies which do not have exclusive

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<sup>594</sup> Paragraph 36.1 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

<sup>595</sup> Paragraph 6.16 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>596</sup> Paragraphs 2 and 10 of the cover letter of [S<]; Paragraph 26 of [S<]'s 23 May 2018 response to CCCS's 11 May 2018 section 63 Notice; Paragraph 27.1 of [S<].

arrangements with Grab. CCCS also notes that partnerships by a potential new entrant with taxi operators are not perfect substitutes given that taxi drivers are not solely dedicated to taking jobs from CPPT platforms.

318. *Countervailing Buyer Power.* CCCS is of the view, supported by third-party feedback, that countervailing buyer power may be insignificant in the Rental Market for various reasons. It is important to note that drivers are individual renters whose individual action is unlikely to have a substantial impact on the Parties.<sup>597</sup>
319. *Barriers to Entry and Expansion.* CCCS is of the view that while it may not be difficult for new players to enter the market, there may be considerable barriers to expansion including a significant amount of time and upfront capital expenditure that may be required to build a car rental network similar to Lion City Rentals, given LTA's policy on the cap in the number of COEs at 0% growth rate and high COE prices; the cost of maintaining a CPHC vehicle is significantly higher than that of a normal rental vehicle; and CPHC rental companies may not be able to expand and compete effectively without a tie-up to a CPHC platform.<sup>598</sup> Such tie-ups may be achieved by CPHC rental companies entering the Platform Market, or by partnering with third-party CPHC platforms. As discussed in the sections above, barriers to entry and expansion in the Platform Market are substantial. Furthermore, as a result of the Transaction, the number of viable options of CPPT platforms for CPHC rental companies may have been reduced from two (2) to one (1).
320. CCCS notes that a total of [50-60]% ([X]vehicles) of the total fleet size of CPHC rental cars in Singapore are owned by Grab Rentals (which is a subsidiary of Grab), Grab rental fleet partners (which are contractually exclusive to Grab) and Lion City Rentals (which is owned by Uber who in turn owns 27.5% of Grab). CCCS also notes that the remaining [40-50]% of vehicles in the market are fragmented with the next largest player having a very low market share of [0-10]% (see above at Table 3 and paragraph 219). Such third-party car rental companies are not of sufficient scale and size, and may not be able to offer competitive economic rates to a new entrant.<sup>599</sup> As mentioned in paragraph 263 above, the Purchase Agreement allows Grab to request for Uber to not sell Lion City Rentals [X],<sup>600</sup> which already raises barriers to entry for the [X] potential competitors.<sup>601</sup>
321. Accordingly, while CCCS is of the view that it is not necessary for CCCS to establish vertical effects in order to make a finding of SLC given CCCS's findings on non-coordinated effects at paragraphs 280 to 305 above, CCCS notes that post-Transaction, Grab would have the ability and incentive to tie CPHC rental companies (including Lion City Rentals) and drivers who rent from these CPHC rental companies in exclusive arrangements and reinforce Grab's position in the Platform Market by increasing the barriers to entry and expansion.

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<sup>597</sup> Paragraph 11 of the Notes of Meeting with [X] dated 4 January 2018.

<sup>598</sup> Paragraph 18 of [X]'s 5 January 2018 response to CCCS's 28 December 2017 Request for Information.

<sup>599</sup> Paragraph 2 of [X].

<sup>600</sup> Section 6.1(e) of the Purchase Agreement.

<sup>601</sup> CCCS's assessment on the 'factual' is based on the completed merger, and in the absence of CCCS's IMD (without which, the clause may be exercised). The IMD requires that Grab undertakes not to exercise the clause in the Purchase Agreement to request for Uber to not sell Lion City Rentals [X].

## G. EFFICIENCIES

### *Parties' submissions*

322. The Parties submitted that the Transaction is expected to generate efficiency benefits through two (2) main channels: (i) scale economies that lead to more efficient utilisation of drivers and shorter wait times for both riders and drivers; (ii) and service improvements that improve the experience and safety of passengers and drivers.<sup>602</sup>
323. Such scale economies arise from the two-sidedness of the ridesharing business models. Both riders and drivers benefit from a greater number of users in the other category of service. Increasing the number of drivers results in shorter wait times for passengers, while increasing the number of riders allows drivers to spend a higher proportion of their supply hours on trips. Importantly, benefits can accrue to both riders and passengers – one group does not have to lose for the other to gain. The reason this is so is because free drivers and prospective riders are distributed across space, and the nearest free driver/rider is on average closer when there are more drivers and riders.<sup>603</sup>
324. Such improvements are important for drivers and riders. Higher driver utilisation benefits drivers by increasing earnings (holding fares constant). Shorter wait times benefit riders, as wait times are one (1) of the three (3) most important considerations for riders of taxi and CPHC services.<sup>604</sup>
325. As a case in point, [§<].<sup>605</sup> The Parties expect these efficiency improvements to continue following the Transaction and the increase in network density which will result. The precise benefits are not amenable to quantitative modelling since a large portion of the gains in efficiency will result from ex-post improvements in network design following experimentation by Grab and because more qualitative improvements (e.g. the introduction of new products) cannot be anticipated in advance.<sup>606</sup>
326. All of these efficiencies above are underpinned by the higher network density brought about by the Transaction. Higher network density is achieved by having more drivers available for booking at a given price and by having more riders wanting to book at that price. In addition, for “pool” products where a driver picks up multiple riders per trip, an increase in network density increases the extent of overlap in routes between riders on the same trip, thus lowering costs which enable lower fares to be charged.<sup>607</sup> The Transaction, which potentially expands Grab’s network, is thus indispensable for enabling these efficiencies.<sup>608</sup>

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<sup>602</sup> Paragraph 42.1 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>603</sup> Paragraph 42.2 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>604</sup> Paragraph 42.3 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>605</sup> Paragraph 42.5 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>606</sup> Paragraphs 42.7 and 42.9 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>607</sup> Pages 45 to 47 of Grab’s 14 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

<sup>608</sup> Paragraph 42.12 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

*CCCS's assessment*

327. The Act allows CCCS to take efficiency gains into account at two (2) separate points in the analytical framework. First, efficiencies must be taken into account where they increase rivalry in the market so that no SLC would result from a merger. Second, efficiencies may also be taken into account where they do not avert an SLC, but will nevertheless result in Net Economic Efficiencies in markets in Singapore.<sup>609</sup>
328. In assessing the claimed efficiencies, the Parties must demonstrate that the efficiencies are:<sup>610</sup>
- a. Demonstrable with detailed and verifiable evidence;
  - b. Merger specific, that is, they are likely to arise only as a result of the merger and could not be attained by feasible alternative scenarios that raise less serious competition concerns;
  - c. Timely, in that the benefits will materialise within a reasonable period of time; and
  - d. Sufficient in extent.
329. The Parties have claimed efficiencies in respect of a higher network density due to the Transaction. Such a higher network density arises from an increase in the number of drivers and riders in the network. However, the Parties have not demonstrated that the claimed efficiencies arising from a higher network density are merger specific and likely to arise only as a result of the merger, and could not be attained by feasible alternative scenarios such as signing up more drivers, incentivising more drivers to drive on a full time basis, providing more promotions to attract new riders etc. that raise less serious competition concerns. Crucially, the Parties have not demonstrated that higher network density cannot be achieved under a multi-player scenario where both drivers and riders multi-home, unconstrained by exclusive tie-ups, such that any driver can be matched up with any rider on any platform.
330. Furthermore, CCCS is of the view that such claimed efficiencies have not been demonstrated or quantified. CCCS notes that the Transaction may not lead to a higher network density given the Parties' submission that "*the Transaction does not lead to an assured combination in Singapore of Grab's and Uber's pre-Transaction market shares*" and that "*Post-Transaction, as Uber users continue to have the option of whether to switch to Grab's platform, there is no assurance that drivers and customers previously using Uber will switch to Grab's services*".<sup>611</sup>
331. In addition, while some third-party feedback suggests that the Transaction could generate some benefits including better matching and shorter waiting times, feedback from most third parties indicate that there are no efficiencies to be gained from the Transaction.

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<sup>609</sup> Section 55 of the Act, read with paragraph 3 of the Fourth Schedule to the Act.

<sup>610</sup> Paragraphs 7.9 to 7.18 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>611</sup> Paragraphs 21.2 to 21.4 of the Parties' 20 April 2018 response to CCCS's 16 April 2018 section 63 Notice.

Instead, the Transaction reduces options for consumers and may potentially result in increased prices.<sup>612</sup>

332. Finally, CCCS notes that the Parties have, to-date, not made any submissions on the quantum of any cost savings arising from the merger.
333. Based on the above, CCCS is unable to conclude whether the claimed efficiencies either avert an SLC or are sufficient to outweigh the detriments to competition caused by the merger in Singapore.
334. CCCS notes Grab's submission that there are efficiencies generated from a higher network density through the Transaction, as a larger driver base would generate a more efficient utilisation of drivers and shorter waiting times for both riders and drivers.<sup>613</sup> Grab has however still failed to quantify the benefits or provide evidence demonstrating that the claimed efficiencies are merger-specific. Neither has Grab demonstrated that the benefits are timely and sufficient in extent. Further, CCCS notes from the CRA Report that [§<].<sup>614</sup> It is therefore unclear whether a combined network arising from the Transaction will generate any incremental efficiencies. In any event, CCCS notes that efficiencies have not led to lower prices in the Platform Market and effective prices have in fact increased. As such, CCCS is still unable to conclude that the claimed efficiencies can avert an SLC or are sufficient to outweigh the competition harm.

## H. PROPOSED COMMITMENTS

*Grab's proposed commitments dated 14 June 2018*

335. On 14 June 2018, Grab proposed voluntary commitments to CCCS ("**First Commitments Proposal**").<sup>615</sup> Specifically, Grab proposed to undertake the ceasing of its exclusivity arrangements with:
  - a. all taxi fleets in Singapore, provided that (a) there are no exclusivity arrangements in Singapore between any taxi fleets and third party ride-hailing platforms other than Grab, and (b) that all taxi operators permit their respective taxi drivers to drive for any third party ride-hailing platforms for standard fare and fixed fare jobs ("**Taxi Non-Exclusivity Commitment**");
  - b. all car rental companies, with the exception of Grab Rentals, provided that there are no exclusivity arrangements in Singapore between car rental companies, and any third party ride-hailing platforms or taxi operators ("**Car Rental Non-Exclusivity Commitment**"); and
  - c. all drivers and riders in Singapore, provided that there are no exclusivity arrangements in Singapore between drivers and riders, and any third party ride-

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<sup>612</sup> Paragraphs 37 and 38 of [§<]; Paragraph 38 of [§<]; Paragraphs 12 and 13 of [§<]'s 10 May 2018 response to CCCS's 4 May 2018 section 63 Notice; Paragraphs 12 to 14 of [§<]'s 11 May 2018 response to CCCS's 4 May 2018 section 63 Notice.

<sup>613</sup> Paragraphs 4.52 to 4.53 of Grab's 26 July 2018 Written Representations.

<sup>614</sup> Page 43 of Grab's 14 June 2018 response to CCCS's 11 June 2018 section 63 Notice.

<sup>615</sup> Paragraph 1 of Grab's First Commitments Proposal.

hailing platforms or taxi operators. For avoidance of doubt, this does not prevent Grab from conducting its rewards programme for its drivers and riders, provided that such rewards do not have the effect of giving rise to exclusivities (“**Driver and Rider Non-Exclusivity Commitment**”).

336. Grab further proposed to undertake:

- a. To allow the porting of personal data of riders (i.e. contact details) to other ride-hailing platforms, upon the rider’s request and consent, to facilitate and enhance the ability of riders to switch between ride-hailing platforms (“**Personal Data Porting Commitment**”); and
- b. To commit to investing in and improving its current services, increasing driver welfare through providing bursaries, and increasing rider benefits through investing in product innovation and loyalty rewards (“**Driver-Rider Welfare Commitment**”).

337. Grab also proposed to undertake:

- a. To maintain its pre-Transaction algorithm pricing matrix (for those variables that Grab is able to control) for Grab’s ride-hailing services which existed on its ride-hailing platform in Singapore prior to the Transaction, which includes that Grab shall not adjust the surge factor and base fares beyond the surge factor cap and base fares at the levels as of 25 March 2018 (except for pre-defined events for which the surge cap shall be adjusted to [X]) (“**Algorithm Freeze Commitment**”); and
- b. To ensure its driver commission rates under pre-Transaction commission structures shall not exceed pre-Transaction levels (“**Commission Cap Commitment**”),

insofar as the above commitments do not apply to any new services, pricing structures or commission structures offered by Grab after 25 March 2018, provided that the new services, pricing structures or commission structures shall not vary or replace the services or commission structures available pre-Transaction or render this commitment substantially ineffective.

338. Grab proposed for the commitments in the preceding two (2) paragraphs above to continue until the earlier of 12 months or:

- a. A significant competitor (e.g., Go-Jek, Lyft, Ola etc.) commencing operations in Singapore by (a) offering contracts to drivers to sign up for its ride-hailing platform in Singapore, (b) riders being able to book a ride within Singapore on its ride-hailing platform in Singapore, or (c) entering into a collaboration agreement or similar arrangement with a taxi company or significant car rental company to offer a ride-hailing service in Singapore; or

- b. CDG launching a ride-hailing platform to offer its own CPHC services in Singapore, or opens up its ride-hailing platform to third party taxi or CPHC services in Singapore.

339. Grab submitted that the general principles of the proposed commitments are to maintain an open and contestable market for ride-hailing in Singapore.<sup>616</sup>

*CCCS's assessment of the First Commitments Proposal*

340. As outlined in the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*, CCCS may accept commitments that address any competition concerns, which may be raised by the merger or anticipated merger.<sup>617</sup> An acquiring company can take the initiative to propose suitable commitments if it thinks that they may be appropriate to meet any competition concerns that it foresees.<sup>618</sup> The commitments were considered under section 60A of the Act.

341. In assessing the commitments proposed by Grab, CCCS has analysed whether it is an appropriate remedy by taking into account how adequately the action would prevent, remedy or mitigate the competition concerns caused by the Transaction. CCCS also considered the effectiveness of the proposed commitments, their associated costs and proportionality, and whether the proposed commitments are capable of ready implementation.<sup>619</sup> Furthermore, CCCS notes that the assessment of commitment proposals is fundamentally different from the assessment of interim measures proposals under the IMD, which were intended to aid in preserving pre-Transaction conditions during CCCS's assessment period, and to preserve the ability of CCCS to impose any remedy at the end of its assessment.

342. CCCS has considered the First Commitments Proposal and is of the view that it would not be appropriate or sufficient to address the SLC concerns in the Platform Market. For example:

- a. *Taxi Non-Exclusivity Commitment.* CCCS notes that the Taxi Non-Exclusivity Commitment is conditional upon there being no exclusivity arrangements in Singapore between any taxi fleets and third-party CPPT platforms other than Grab. Any exclusive tie-up between any taxi fleet and third-party CPPT platform will render the Taxi Non-Exclusivity Commitment perfunctory, even if the taxi fleet and third-party CPPT platform are not of significant size and do not pose sufficient competitive constraints on Grab and even if Grab still holds significant market share and power. In addition, the requirement that all taxi operators permit their respective taxi drivers to drive for any third-party CPPT platforms for standard fare and fixed fare jobs in fact requires a positive step by taxi operators not currently partnering with Grab for standard fare and fixed fare jobs to permit their drivers to drive on the Grab platform. The stringent conditions to the Taxi Non-Exclusivity Commitment means that Grab is, in the

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<sup>616</sup> Paragraph 1 of Grab's First Commitments Proposal.

<sup>617</sup> Paragraph 8.6 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>618</sup> Paragraph 8.8 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>619</sup> Paragraphs 8.7, 8.16, 8.17 and 8.19 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.



meantime, able to tie down its taxi partners exclusively and prevent access to these taxi partners by new or potential entrants.

- b. *Car Rental Non-Exclusivity Commitment.* CCCS notes that the Car Rental Non-Exclusivity Commitment excludes Grab Rentals. As with the Taxi Non-Exclusivity Commitment, the Car Rental Non-Exclusivity Commitment is also conditional upon there being no exclusivity arrangements in Singapore between car rental companies and any third-party CPPT platforms or taxi operators even if the car rental company and third-party CPPT platform are not of significant size and do not pose sufficient competitive constraints on Grab and even if Grab still holds significant market share and power and is therefore able to tie up a significant portion of the rental market exclusively.
- c. *Driver and Rider Non-Exclusivity Commitment.* The Driver and Rider Non-Exclusivity Commitment is also conditional upon there being no exclusivity arrangements in Singapore between drivers and riders, and any third-party CPPT platforms or taxi operators, even if these third-party CPPT platforms or taxi operators are not of significant size and do not pose sufficient competitive constraints on Grab and only sign up an insignificant number of drivers on an exclusive basis, and even if Grab still holds significant market share and power and is therefore able to tie up a significant portion of drivers and riders exclusively.
- d. *Personal Data Porting Commitment.* CCCS notes that the Personal Data Porting Commitment is limited to the porting of personal data of riders (i.e. contact details) to other CPPT platforms, upon the rider's request and consent, to facilitate and enhance the ability of riders to switch between CPPT platforms, and does not cover, for example, operational data acquired by Grab from Uber pursuant to the Transaction.
- e. *Driver-Rider Welfare Commitment.* The Driver-Rider Welfare Commitment lacks details and it has not been shown how this might be sufficient to address the competition issues and adverse effects arising from the Transaction.
- f. *Algorithm Freeze Commitment and Commission Cap Commitment.* While the Algorithm Freeze Commitment and Commission Cap Commitment requires Grab to maintain its pre-Transaction algorithm pricing matrix (for those variables that Grab is able to control), including surge factor and base fares, as well as pre-Transaction driver commission rates, CCCS notes complaints that effective fares and commission rates have increased post-Transaction despite a similar requirement being imposed on Grab under the IMD.
- g. The Personal Data Porting Commitment, Driver-Rider Welfare Commitment, Algorithm Freeze Commitment and Commission Cap Commitment will discontinue after 12 months or immediately upon:

- i. A significant competitor (e.g., Go-Jek, Lyft, Ola etc.) commencing operations in Singapore by (a) offering contracts to drivers to sign up for its CPPT platform in Singapore, (b) riders being able to book a ride within Singapore on its CPPT platform in Singapore, or (c) entering into a collaboration agreement or similar arrangement with a taxi company or significant car rental company to offer a ride-hailing service in Singapore; or
  - ii. CDG launching a CPPT platform to offer its own CPHC services in Singapore, or opens up its CPPT platform to third-party taxi or CPHC services in Singapore.<sup>620</sup>
- h. The First Commitments Proposal does not address concerns regarding restrictions that may prevent LCR drivers from driving on any CPPT platform and restrictions on Uber to transfer (directly or indirectly) any portion of the share capital or assets of Lion City Rentals [X].<sup>621</sup>

*Parties' proposed commitments dated 26 July 2018*

343. On 26 July 2018, the Parties proposed alternative voluntary commitments to CCCS (“**Second Commitments Proposal**”) in their respective written representations, with Uber submitting further revisions to the Second Commitments Proposal on 17 September 2018.<sup>622</sup> The Parties’ proposed voluntary commitments under the Second Commitments Proposal are as follows:

- a. Grab shall not impose any exclusivity obligations, lock-in periods and/or termination fees on all taxi drivers and CPHC drivers who drive on Grab's ride-hailing platform (“**Grab Drivers**”) that require such drivers to drive exclusively on the Grab ride-hailing platform, regardless of whether such CPHC drivers own their vehicles or hire from LCR, Grab Rentals or any other car rental fleets, and shall ensure that Grab Drivers are not penalised, directly or indirectly, as a result of the non-exclusivity. For existing agreements that Grab has with Grab Drivers that require such drivers to drive exclusively on the Grab ride-hailing platform, such agreements, to the extent that they remain in effect as of the date of these commitments, are permitted to remain in place for the remainder of the duration of these agreements, provided that Grab shall not renew the term of these agreements and such drivers are permitted to terminate early the agreements at any time on their own initiative without penalty by Grab for the early termination. For the avoidance of doubt, Grab Rentals and Lion City Rentals shall be permitted to impose minimum rental periods, lock-in periods and/or termination fees in vehicle rental agreements, provided that such provisions do not require the rental customer to drive exclusively on the Grab ride-hailing platform.

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<sup>620</sup> Paragraph 1 of Grab’s First Commitments Proposal.

<sup>621</sup> Section 6.1(e), read with section 10.1 of the Purchase Agreement.

<sup>622</sup> Letter from Gibson, Dunn & Crutcher LLP to CCCS dated 17 September 2018.

- b. Grab shall cease any exclusive arrangements with any taxi fleet in Singapore that require the taxi drivers of such taxi fleets to accept trip bookings exclusively on the Grab ride-hailing platform to the exclusion of other ride-hailing platforms. Without prejudice to the other grounds of release in these commitments, Grab may apply to CCCS to release Grab from this commitment if a Significant Competitor enters into exclusive arrangements with any taxi fleet in Singapore; or if CDG enters into exclusive arrangements with any ride-hailing platform other than Grab, whichever is earlier.
- c. LCR (or all or part of its assets) shall not be sold to Grab without CCCS's approval. Any such purchase from the time of the Transaction to the date of any final decision by CCCS shall be reversed unless otherwise approved expressly by CCCS. The obligations in this paragraph do not apply to a sale of cars from LCR to Grab if:
  - i. the number of cars sold to Grab does not exceed 2,000 in the aggregate; and
  - ii. no Significant Competitor has, at the time Grab and LCR enters into an agreement for the sale of such cars, made a firm offer to purchase the same cars on the same conditions.
- d. If any new entrant/existing CPPT platform service provider ("**Potential Competitor**") makes a reasonable offer to purchase LCR or all or part of its assets, Uber/LCR must accept the offer unless CCCS raises objection to the potential purchase. In the absence of any such offer, Uber/LCR is free to sell LCR or its assets to any third party, subject to the above limitation on a sale to Grab.
  - i. The circumstances under which an offer will not be deemed to be reasonable include:
    - (A) in the case of a purchase of the assets of LCR, the offer is lower than the fair market value (defined to be the price at which a willing seller would sell, and a willing buyer would buy, such LCR's shares or assets having full knowledge of the relevant facts in an arm's-length transaction without either party having time constraints, and without either party being under any compulsion to buy or sell, as determined in good faith by the board of directors of LCR (in the case of a sale by LCR of its assets) or by the board of directors of Lion City Holdings Pte. Ltd. (in the case of a sale of LCR's shares); and in each case, taking into account, where applicable, a valuation of the assets or shares by a competent independent valuer and any competing offers or bids from other interested buyers and the terms offered) of the assets, it being understood that, in the case of vehicles of LCR, the fair market value of the vehicles shall be the higher of the estimated value of the vehicles in Singapore, as reported by SGCarmart

([www.sgcar mart.com](http://www.sgcar mart.com)), and the sum of the value of the government rebates (COE and ARF<sup>623</sup>) and the export value of the vehicles, as determined by an independent expert; or

- (B) in the case of a purchase of the shares of LCR, the offer is lower than the higher of the book value of the shares and the fair market value of the shares; or
  - (C) the offer is to acquire only some but not all of LCR's shares, or less than 75% of its assets (except for an offer for only unhired vehicles).
- e. For no more than a period of 12 months from the date of the commitments, Grab shall maintain its pre-Transaction pricing, pricing policies and product options (including driver commission rates and structures) in relation to all its ride-hailing products in the Relevant Services that existed prior to the Transaction, including but not limited to JustGrab; GrabCar; GrabShare; GrabFamily; GrabCar Premium; 6-Seater (Economy), 6-Seater (Premium) Standard Taxi, Standard Taxi (Advanced Booking), Limo Taxi and Limo Taxi (Advanced Booking), but excluding GrabHitch, and GrabCoach (13 Seater, 23 Seater and 40 Seater). In particular, Grab shall maintain its pre-Transaction algorithm pricing matrix (for those variables that Grab is able to control) for Grab's ride-hailing services which existed on its ride-hailing platform in Singapore prior to the Transaction (other than GrabHitch, and GrabCoach (13 Seater, 23 Seater and 40 Seater)), which includes that Grab shall not adjust the surge factor and base fares beyond the surge factor cap [X] and base fares at the levels as of 25 March 2018, except for certain pre-defined events for which the surge factor cap shall be adjusted to [X]. For the avoidance of doubt, the obligations in the commitments:
- i. do not prevent Grab from introducing new product options, or new pricing or commission structures provided that such product options, and pricing and commission structures do not replace or vary the product options or pricing and commission structures that existed pre-Transaction or render the commitment set out in this paragraph substantially ineffective; and
  - ii. do not require Grab to maintain any pre-Transaction promotions, discounts or incentives.
- f. For the purpose of the Second Commitments Proposal:
- i. "Relevant Services" shall mean services matching drivers and riders for the provision of booked CPPT services in Singapore.
  - ii. Significant Competitor refers to:

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<sup>623</sup> Additional Registration Fee.

- (A) a new player who is able to commence provision of Relevant Services in a likely, timely and sufficient manner and does not have any direct or indirect common control with Grab; or
  - (B) any existing player supplying Relevant Services that does not have any direct or indirect common control with Grab that can be demonstrated to pose sufficient competitive constraint on Grab.
- iii. “Control” (including its correlative meanings, “controlled” and “common control”) shall mean, with respect to an undertaking, the right to exercise, directly or indirectly, more than 30% of the voting rights of the undertaking; or the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such undertaking.
- g. CCCS may at any time vary, substitute or release Grab from one (1) or more of the commitments pursuant to an application by Grab to CCCS supported by reasons, including but not limited to:
- i. any circumstances where the commitment is no longer necessary or appropriate against the objective of CCCS in preventing the Transaction from resulting in an SLC; or
  - ii. circumstances where compliance with any of the commitments has a detrimental effect on the current or future development of the intra-city transportation service industry in Singapore.
- h. Without prejudice to the generality of the foregoing, CCCS shall pursuant to an application from Grab, release Grab from all of the commitments (to the extent that all or any of the commitments had not been released by CCCS pursuant to other grounds for release as set out in specific commitments) in the event that a Significant Competitor, or multiple competitors collectively, achieves a matching of at least 20% of total rides in CPPT transport aggregated against any 30 consecutive calendar day period.
- i. For the purpose of the above, the total rides in CPPT transport shall mean the total number of CPPT trips in Singapore matched by all booking platforms through any medium or form of communication including but not limited to mobile applications, online webpages, telephone calls or text messages. “Matching” shall refer to matching of riders and drivers for CPPT trips in Singapore by any booking platform through any medium or form of communication.
- j. For the avoidance of doubt, CCCS shall consider all applications from Grab for variation, substitution or release of these commitments provided that such applications are based on information reasonably available to Grab. A commitment may be released by CCCS upon the earlier of an applicable trigger event or the expiration of the specified duration of the commitment, as

applicable. In the event that CCCS is not able to determine an application by Grab for variation, substitution or release of these commitments within 14 working days from the date of such application, the relevant commitments which are the subject of Grab's application shall cease to apply to Grab, and CCCS shall not enforce such commitments, until such time when CCCS determines that the application is not approved.

*CCCS's assessment on the Second Commitments Proposal*

344. CCCS has considered the Second Commitments Proposal and is of the view that it would not be appropriate or sufficient to address the SLC concerns in the Platform Market arising post-Transaction. For example, CCCS notes that:

- a. Grab's non-exclusivity commitments does not cover exclusivity restrictions on taxi rental fleet partners which would allow Grab to prevent its partners from reaching agreements to work with other operators;
- b. Grab's proposal allows Grab to continue to impose exclusivity obligations on drivers with ongoing exclusive contracts;
- c. Uber's proposal that it or LCR is free to sell LCR's assets to any third party in the absence of a reasonable offer, which will not be deemed to be reasonable in the case where the offer is to acquire less than 75% of its assets (except for an offer for only unhired vehicles), would also render the proposed commitment to sell vehicles to a Potential Competitor ineffective in most cases, and restrict a Potential Competitor's ability to access LCR's existing cars and drivers; and/or
- d. While CCCS is agreeable to the Parties' proposal that they should be allowed to apply for CCCS to vary the directions should market conditions change, the proposal for Grab to be released from all the proposed commitments as long as any combination of competitors achieves more than 20% of market share based on the number of rides, and the proposal that the relevant commitments which are the subject of Grab's application shall cease to apply to Grab automatically after 14 working days from the date of Grab's application, would mean the commitments may cease to be effective prematurely.

345. In relation to the Parties' submission that to the extent that CCCS agrees that the alternative commitments are appropriate for the purpose of remedying, mitigating or preventing the SLC or adverse effects resulting from the Transaction, CCCS should make a decision that the section 54 prohibition has not been infringed by the Transaction pursuant to section 60B(1) of the Act,<sup>624</sup> CCCS notes that under section 60A(1) of the Act, CCCS **may** accept appropriate commitments. Further, section 60B(1) of the Act comes into effect only where CCCS "*has accepted a commitment under section 60A(1)*" of the Act (which CCCS has not). CCCS notes that the Parties have themselves submitted that the Transaction cannot be reversed, and with Uber having exited the market, it would

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<sup>624</sup> Paragraph 5.6 of Grab's 26 July 2018 Written Representations; Paragraphs 5 and 90 to 91 of USG's 26 July 2018 Written Representations.

not be possible to restore pre-merger conditions. CCCS also refers to its finding that the Parties had intentionally, or at the least negligently, elected to complete the Transaction in a manner they knew was irreversible and was likely to raise antitrust concerns (see paragraphs 373 to 391 below), without first ensuring that appropriate commitments had been offered and accepted by CCCS in order to mitigate such concerns. Accordingly, having considered the Parties' representations and the Second Commitments Proposal, CCCS is of the view that it would not be appropriate, in the circumstances of this case, to accept the Second Commitments Proposal under section 60A(1) of the Act and issue a decision of non-infringement under section 60B(1) of the Act.

## **I. OVERALL ASSESSMENT**

346. After due consideration of the information obtained from the Parties and third parties, CCCS finds that the Transaction has resulted in an SLC in the Platform Market by removing competition between Grab and Uber, which were each other's closest competitor in the Platform Market. The merged entity is likely to have gained in its ability to increase effective price and has evidently done so since the completion of the Transaction. Further, post-Transaction, Grab would have the *ability* and *incentive* to tie CPHC rental companies (including Lion City Rentals) and drivers who rent from these CPHC rental companies in exclusive arrangements and reinforce its position in the Platform Market by increasing barriers to entry.
347. Given the SLC that is likely to occur from the Transaction, CCCS has also assessed the claimed efficiencies submitted by the Parties. However, CCCS finds that there is insufficient evidence that the efficiencies claimed by the Parties are demonstrable, timely and/or will be sufficient to outweigh the competition detriments arising from the Transaction.
348. For the reasons above and based on the information available, CCCS finds that the Transaction, having been carried into effect, has infringed the section 54 prohibition.

## **CHAPTER 3: INFRINGEMENT DECISION AND CCCS'S ACTION**

### **A. ADDRESSEES OF THE INFRINGEMENT DECISION**

349. The relevant case law on SEE has been discussed above at paragraphs 43 to 50.
350. UICV, AICV, USG, GHI and GrabCar are parties to the Purchase Agreement and the Singapore Bill of Sale which form the basis of the Transaction. Pursuant to and in connection with the transactions contemplated by the Purchase Agreement, GHI and UBV also entered into the TSA, whereby UBV agreed to perform certain transitional services for Grab in connection with the Transaction (as described above at paragraph 24). Further, the Transaction also requires Grab to provide certain transitional services to Lion City Rentals (as described above at paragraph 27).
- (a) **Uber**
351. CCCS notes that the Uber Singapore Businesses are [X]% owned by UICV, through UICV's subsidiaries. USG has submitted that UTI is the ultimate parent entity of the Uber Singapore Businesses. USG staff supported the Uber business in Singapore and

liaised with UBV and UTI where necessary. They did, from time to time, interact with employees from other Uber entities.<sup>625</sup> Further, although UICV and AICV do not have any employees<sup>626</sup> or directors, [§].<sup>627</sup> In this regard, CCCS notes that [§].<sup>628</sup> Accordingly, CCCS makes a finding that the Uber Singapore Businesses, UBV, UICV, AICV and UTI comprise an SEE.

352. As noted in paragraph 40 above, section 69 of the Act provides that where CCCS has made a decision that any merger has infringed the section 54 prohibition, it may give to such person as it thinks appropriate such directions as it considers appropriate to bring the infringement to an end and, where necessary, requiring that person to take such action as is specified in the direction to remedy, mitigate or eliminate any adverse effects of such infringement and to prevent the recurrence of such infringement.<sup>629</sup> CCCS therefore addresses this infringement decision (“ID”) to the following Uber entities:

- a. UTI;
- b. UICV;
- c. AICV;
- d. UBV;
- e. USG;
- f. Lion;
- g. LCR;
- h. LCRF; and
- i. Lion City Automobiles Pte. Ltd.

**(b) Grab**

353. Similarly, CCCS makes the finding that the Grab Singapore Businesses, GHI and GI comprise an SEE. GHI, as the overall group holding company, and GI, as Grab’s transportation business holding company, can both decide/influence the commercial, strategic, or pricing policies of the Grab Singapore Businesses. [§].<sup>630</sup> Further, [§].<sup>631</sup> Accordingly, CCCS makes the finding that the Grab Singapore Businesses, GHI and GI comprise an SEE.

354. Pursuant to section 69 of the Act, CCCS finds that it is necessary to give such appropriate directions to the following Grab entities to remedy, mitigate or eliminate the adverse effects of the infringement, and therefore addresses this ID to the following Grab entities:

- a. GHI;
- b. GI;
- c. GrabCar; and

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<sup>625</sup> Paragraphs 1.3 and 1.4 of USG’s 16 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>626</sup> Paragraph 1.5 of USG’s 16 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>627</sup> Paragraphs 5.1 and 5.2 of USG’s 12 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

<sup>628</sup> Paragraphs 5.1 and 5.2 of USG’s 12 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.

<sup>629</sup> Refer to section 69(1)(d) of the Act.

<sup>630</sup> Paragraph 1.6 of Grab’s 16 May 2018 response to CCCS’s 7 May 2018 section 63 Notice.

<sup>631</sup> Paragraphs 1.3 to 1.5 of Grab’s 16 May 2018 response to CCCS’s 7 May 2018 section 63 Notice; Paragraph 5.1 of Grab’s 12 June 2018 response to CCCS’s 11 June 2018 section 63 Notice.



d. Grab Rentals.

**B. DIRECTIONS**

355. In addressing the question of which remedies would be appropriate, and would provide as comprehensive a solution as is reasonable and practicable to address the SLC and any adverse effects resulting from it, CCCS will take into account how adequately the action would prevent, remedy or mitigate the competition concerns caused by the merger.<sup>632</sup>
356. CCCS's starting point will be to choose the remedial action that will restore the competition that has been, or is expected to be, substantially lessened as a result of the merger. Given that the effect of the merger is to change the structure of the market, remedies that aim to restore all or part of the pre-merger market structure are likely to be a more direct way of addressing the adverse effects. However, in view of other considerations such as the effectiveness of the remedy and the costs associated with the remedy, other types of remedies may need to be considered. CCCS may, therefore, decide to impose more than one (1) type of remedy.<sup>633</sup>
357. CCCS considers that structural remedies are preferable to behavioural ones, as they tend to address the competition concerns created by the merger more directly and also require less monitoring.<sup>634</sup> The remedial action to be taken by CCCS will depend on the facts and circumstances of the case. When deciding on the appropriate remedy, CCCS will consider the effectiveness of different remedies and their associated costs, and will have regard to the principle of proportionality.<sup>635</sup>
358. It is for the parties concerned to assess whether there is a risk that a merger may infringe the section 54 prohibition. In deciding upon the remedy, CCCS will normally not consider the costs of divestment which the parties would have to incur, as it would have been open to the parties to notify the merger to CCCS for a decision prior to carrying it into effect.<sup>636</sup>
359. In this regard, the PID set out the following proposed remedies ("**Proposed Remedies**") that CCCS considered may be sufficient to address the identified competition concerns and adverse effects to competition set out in the PID:
- a. Grab shall remove all exclusivity obligations, lock-in periods and/or termination fees on all drivers who drive on Grab's ride-hailing platform ("**Grab Drivers**"), and shall ensure that Grab Drivers are not penalised, directly or indirectly, as a result of the non-exclusivity. Grab may apply to CCCS to vary this direction if (i) a Significant Competitor<sup>637</sup> imposes exclusivity obligations on a significant portion of CPPT drivers in the market or (ii) CDG offers CPHC services in Singapore, whether on its own or with a partner, or opens up its ride-hailing

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<sup>632</sup> Paragraph 8.16 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>633</sup> Paragraph 8.17 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>634</sup> Paragraph 8.18 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>635</sup> Paragraph 8.19 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>636</sup> Paragraph 8.20 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>637</sup> A Significant Competitor is defined as a new player who is able to enter the Platform Market in a likely, timely and sufficient manner and does not have any direct or indirect common ownership or control with Grab.

platform to third party taxi or CPHC services in Singapore and imposes exclusivity obligations on a significant portion of CPPT drivers.

- b. The Parties shall remove all exclusivity obligations, lock-in periods and/or termination fees on all drivers who rent a vehicle from Lion City Rentals, Grab Rentals, and Grab’s rental fleet partners, and shall ensure that these drivers are at liberty to use such vehicles to drive for any ride-hailing platform providing CPPT platform services and there shall be no discriminatory terms or any other impediments (e.g. in relation to rental rates and/or insurance coverage) that limit their ability to drive for any ride-hailing platform. Grab may apply to CCCS to vary this direction if a Significant Competitor enters into exclusive arrangements with any car rental company and imposes exclusivity obligations on a significant portion of CPPT drivers in the market.
- c. Grab shall cease any exclusive arrangements with any taxi fleet in Singapore. Grab may apply to CCCS to vary this direction if a Significant Competitor enters into exclusive arrangements with any taxi fleet in Singapore; or if CDG enters into exclusive arrangements with any ride-hailing platform.
- d. Lion City Rentals (or all or part of its assets) shall not be sold to Grab without CCCS’s approval. Any such purchase from the time of the Transaction to the date of any final decision by CCCS shall be reversed unless otherwise approved expressly by CCCS.
- e. If any new entrant/existing CPPT platform service provider (“**Potential Competitor**”) makes a reasonable offer to purchase Lion City Rentals or all or part of the assets, Uber must accept the offer unless CCCS raises objection to the potential purchase.
- f. Grab shall maintain its pre-Transaction pricing, pricing policies and product options (including driver commission rates and structures) in relation to all its products in the Platform Market including but not limited to JustGrab; GrabCar; GrabShare; GrabHitch; GrabFamily; GrabCar Premium; 6-Seater (Economy); 6-Seater (Premium); Standard Taxi; Standard Taxi (Advanced Booking); Limo Taxi; Limo Taxi (Advanced Booking); and GrabCoach (13-Seater, 23-Seater, 40-Seater). In particular, Grab shall maintain its pre-Transaction algorithm pricing matrix (for those variables that Grab is able to control) for Grab’s ride-hailing services which existed on its ride-hailing platform in Singapore prior to the Transaction, which includes that Grab shall not adjust the surge factor and base fares beyond the surge factor cap ([X]) and base fares at the levels as of 25 March 2018, except for certain pre-defined events<sup>638</sup> for which the surge factor cap shall be adjusted to [Y]. Grab may apply to CCCS to vary this direction if (i) a Significant Competitor attains a substantial network of riders and drivers and is able to impose sufficient competitive constraints on Grab or (ii) CDG offers CPHC services in Singapore, whether on its own or with a

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<sup>638</sup> [X]

partner, or opens up its ride-hailing platform to third party taxi or CPHC services in Singapore and is able to impose sufficient competitive constraints on Grab.

- g. The Parties must modify the Purchase Agreement to remove any restriction on the acquirers to whom Lion City Rentals could be sold (e.g. sale to a Potential Competitor) and the Parties shall not place any restriction in relation to the use of Lion City Rentals' vehicles by any Lion City Rentals acquirer.
- h. The Parties shall appoint a Monitoring Trustee to monitor the Parties' compliance with CCCS's directions within seven (7) days of any final decision. CCCS shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the terms and conditions of appointment of the Monitoring Trustee and the audit plan subject to any modifications CCCS deems necessary for the Monitoring Trustee to effectively fulfill its obligations:
  - i. If only one (1) name is approved, the Parties shall appoint or cause to be appointed, the individual or institution as Monitoring Trustee, in accordance with the terms and conditions of appointment approved by CCCS; and
  - ii. If more than one (1) name is approved, the Parties shall be free to choose the Monitoring Trustee to be appointed from among the names approved.

#### Public consultation on the Proposed Remedies

- 360. In tandem with the issuance of the PID to the Parties on 5 July 2018, CCCS conducted a public consultation on its Proposed Remedies from 5 July 2018 to 19 July 2018. The public consultation sought to invite public feedback with regard to whether the Proposed Remedies were sufficient and workable to address the harm to competition resulting from the Transaction.
- 361. CCCS received a total of 153 responses during the public consultation, comprising responses from the general public (e.g. riders and drivers), car rental companies/fleet owners, the Parties' competitors, venture capital firms, as well as academics. The bulk of these responses indicated support for CCCS's intervention in the wake of the Transaction, and at the same time, cited various negative market outcomes which have resulted from the Transaction – such as an increase in effective price, lack of choice for riders and drivers, and Grab's reduction in service standards. Many of the responses also generally expressed agreement with CCCS's Proposed Remedies to restore market contestability (with some even suggesting other remedies which went beyond CCCS's Proposed Remedies), in particular those relating to the removal of exclusivity obligations/arrangements imposed by Grab on drivers and taxi/CPHC fleets. There were a handful of responses disagreeing with CCCS's provisional findings, and which argued that CCCS's Proposed Remedies are unnecessary and/or will be ineffective.<sup>639</sup> Among these responses were two (2) which stated that CCCS's provisional decision would have

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<sup>639</sup> See also paragraph 3.1 of Grab's 3 August 2018 Written Representations.

a chilling effect on venture capital investment in Singapore and the region, and jeopardise Singapore's reputation as a pro-business hub. Rather than affecting Singapore's reputation as a pro-business hub, the directions imposed in this ID ("**Final Directions**") are workable, proportionate and appropriate to address the SLC and any adverse effects arising from the Transaction. In any case, CCCS notes that such responses emanated from venture capital companies which appear to be affiliated to and/or are existing preference shareholders of Grab.

#### CCCS's considerations on the Final Directions

362. CCCS notes that Grab has submitted that the Proposed Remedies are reasoned in that they do not require Grab to maintain the funding of promotions, discounts and incentives, and recognise that unwinding the Transaction is not a suitable or appropriate remedy. Grab also submitted that any remedies should focus on ensuring market contestability while allowing Grab the ability to compete on the merits and engage in pro-competitive activities.<sup>640</sup> Likewise, Uber submitted that the Parties agree to the Proposed Remedies, subject to certain proposed amendments. It also submitted that at a general level, the Proposed Remedies are substantially similar to the proposals in the First Commitments Proposal – the focus being on maintaining market contestability via the mitigation of any perceived network effects by increasing the ease of switching of drivers, riders, taxi fleets and car rental companies, the removal of barriers to entry and the maintenance of pre-Transaction pricing for the transitory period before Go-Jek enters the market.<sup>641</sup>
363. CCCS also notes Grab's submission that the Proposed Remedies are difficult to implement, disproportionate to the alleged competition concerns and adverse effects of the Transaction and may engender competition concerns by creating unfair advantages to Grab's competitors.<sup>642</sup> As stated in paragraph 357 above, CCCS will consider the effectiveness of different remedies and their associated costs, and will have regard to the principle of proportionality. Accordingly, CCCS has sought to adopt some of the Parties' proposals in the Final Directions where CCCS agrees that they make the Final Directions more workable, proportionate and/or appropriate.
364. CCCS notes Grab's submission that CCCS should grant a limited transition period for existing contracts that Grab has with CPHC drivers which contain an exclusivity requirement on such drivers to drive exclusively for the Grab CPPT platform ("**Existing Grab Driver Exclusivity Contracts**"), such that the Existing Grab Driver Exclusivity Contracts are allowed to continue in force until the end of their respective terms, with drivers being given the option of unilaterally terminating these contracts at any time, and Grab not renewing the same upon their expiry.<sup>643</sup> In this regard, while CCCS is agreeable to granting a limited transition period, CCCS is of the view that the transition period must be finite and should not allow Grab to tie up a key group of drivers for an unnecessarily extended period. Accordingly, CCCS considers that a transition period of the duration of the Existing Grab Driver Exclusivity Contracts, or six (6) months from the date of issuance of the ID (which CCCS notes appears to be the most common contractual term

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<sup>640</sup> Paragraphs 5.2 to 5.4 of Grab's 26 July 2018 Written Representations.

<sup>641</sup> Paragraphs 85 to 87 of USG's 26 July 2018 Written Representations.

<sup>642</sup> Paragraph 5.5 of Grab's 26 July 2018 Written Representations.

<sup>643</sup> Paragraphs 5.8 to 5.12 of Grab's 26 July 2018 Written Representations.

for vehicle rental agreements<sup>644</sup>), whichever is shorter, is sufficient to allow for a smoother transition for Grab and its existing drivers.

365. While CCCS has accepted Grab's proposal to exclude GrabHitch and coach services from the direction for Grab to maintain pre-Transaction pricing, CCCS is of the view that Grab's proposal to cap the direction at 12 months is not appropriate. While Grab has submitted that such duration would be sufficient for the ride-hailing sector to further evolve and develop in view of the entry that is already in the sector and which is anticipated in the next few months,<sup>645</sup> CCCS is of the view that, as CCCS's directions already provide for triggers for suspension and release based on market shares, and also allow for application to vary, substitute, or release, a further fixed duration cap is neither necessary nor appropriate.
366. CCCS notes Uber's proposal that any restrictions on the sale of Lion City Rentals vehicles to Grab should not apply to the sale of up to 2,000 vehicles (in the aggregate) to Grab, as this should not act as a barrier to entry or expansion to any Significant Competitor, and would increase the average utilisation rate of Lion City Rentals and make it more attractive to potential purchasers. This would also [§].<sup>646</sup> Given that the Proposed Remedies already provide for a possible sale of assets to Grab with CCCS's approval, and allows CCCS discretion to approve any sale completed prior to the issuance of this ID, CCCS is of the view that it is not necessary to specify that the direction should not apply to the sale of up to 2,000 vehicles to Grab.
367. CCCS also notes Uber's submission that the ID should clarify what constitutes a reasonable offer and that a reasonable offer should be defined as the higher of book value and fair market value.<sup>647</sup> CCCS is of the view that fair market value, defined to be the price at which a willing seller would sell, and a willing buyer would buy, such Lion City Rentals' shares or assets having full knowledge of the relevant facts in an arm's-length transaction, without either party having time constraints, and without either party being under any compulsion to buy or sell, and taking into account a valuation of the assets or shares by a competent independent valuer and any competing offers or bids from other interested buyers and the terms offered ("**Fair Market Value**"), is an appropriate measure of what constitutes a reasonable offer. However, CCCS notes that it will not be reasonable to expect a prospective buyer to make an offer higher than the Fair Market Value.
368. While CCCS has accepted Uber's proposal that it should have the right to accept or reject an offer to purchase some but not all of LCR's shares, CCCS considers that Uber's proposal that it or LCR is free to sell LCR's assets to any third party in the absence of a reasonable offer, which will not be deemed to be reasonable in the case where the offer is to acquire less than 75% of its assets (except for an offer for only unhired vehicles), would render the proposed commitment to sell vehicles to a Potential Competitor ineffective in most cases. For instance, an offer to purchase, say, several thousands of LCR vehicles at Fair Market Value might still fall below the 75% threshold, in which

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<sup>644</sup> Paragraph 18 of the Notes of Meeting with [§] dated 11 January 2018; Section 2.5.2 of CRA's 26 July 2018 Report.

<sup>645</sup> Paragraph 5.16 of Grab's 26 July 2018 Written Representations.

<sup>646</sup> Paragraph 1 of Annex A of USG's 26 July 2018 Written Representations.

<sup>647</sup> Paragraph 2 of Annex A of USG's 26 July 2018 Written Representations.

case it would not be appropriate for Uber to have unfettered discretion to reject such an offer.

369. CCCS also noted Grab's proposal for CCCS to consider any application by Grab to vary, substitute or release any direction where it is no longer necessary or inappropriate against the objective of CCCS in preventing the Transaction from resulting in an SLC, including but not limited to changes in the regulatory framework, or that a Significant Competitor has achieved a substantial network of driver and riders and is sufficient to impose competitive constraints on Grab; or compliance with any of the directions has a detrimental effect on the current or future development of the intra-city transportation service industry in Singapore. Taking into account Grab's submission, CCCS has included a mechanism for Grab to apply for CCCS to consider the variation, substitution or release of CCCS's Final Directions.
370. CCCS notes Grab's submission that there are challenges with trigger events that refer to exclusivity obligations on a significant portion of CPPT drivers, or a substantial network of drivers and riders as there is generally no published or collected data, and Grab's proposal of a trigger event that Grab be released from all the commitments once CCCS is satisfied, upon an application by Grab, that a Significant Competitor, or multiple competitors collectively, has/have achieved a matching of at least 20% of total rides in CPPT transport aggregated against any 30 consecutive calendar day period. Grab has proposed that such levels of rides matching would evidence the sufficiency of competition in the ride-hailing sector and any threshold set at more than 30% would be excessive as to the levels required to demonstrate the sufficiency of competition.<sup>648</sup> Considering Grab's submissions, CCCS is agreeable to adopting a trigger event based on the market share of total rides in the Platform Market. However, CCCS notes that Grab's proposed threshold of 20% is well below Uber's pre-Transaction market share of [30-40]%, and would not be sufficient to establish that pre-Transaction competition conditions have been restored and/or that it would be appropriate to release Grab from the Final Directions. CCCS is also of the view that the attainment of a certain market share in a 30 consecutive calendar day period may not be reflective of the ability of a competitor to exert competitive constraints on Grab on a sustained basis given transitory share fluctuations, or events such as outages. While CCCS is of the view that Grab's proposed thresholds are not appropriate as prescribed trigger events, it remains open to Grab to apply to CCCS for a variation, substitution, or release from any or all the directions pursuant to paragraph 372(i) below.
371. CCCS has taken into consideration and adopted Grab's proposal that in relation to the definition of a "Significant Competitor", the threshold of "direct or indirect common ownership" should be defined in line with the *CCCS Guidelines on the Substantive Assessment of Mergers 2016* to refer to the ability to exercise more than 30% of the voting rights of an undertaking, or the possession of power to direct or cause the direction of management or policies of such undertaking in its Final Directions.<sup>649</sup> CCCS additionally notes Grab's submission that a "Significant Competitor" should not be limited to new entrants but should include existing players in the relevant market shown to be a sufficient competitive constraint.<sup>650</sup> In this regard, CCCS notes that the Final Directions would allow Grab to apply to CCCS to vary, substitute or release Grab from one (1) or

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<sup>648</sup> Paragraphs 5.21 to 5.23 of Grab's 26 July 2018 Written Representations.

<sup>649</sup> Paragraph 3.10 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>650</sup> Paragraph 5.19 of Grab's 26 July 2018 Written Representations.

more of the Final Directions as long as Grab can show that the direction is no longer necessary or appropriate against the objective of CCCS in preventing the Transaction from resulting in an SLC. CCCS's specified trigger event also allows for all the Final Directions to be suspended and/or lifted should an existing competitor meet the specified thresholds. CCCS's specified trigger event provides that Grab may be unconditionally released from all Final Directions in the event that any open-platform competitor, being a platform operator which allows bookings to be accepted by third-party taxi or CPHC drivers/operators (and does not limit acceptance of bookings to the hirers or renters of the operator's own or affiliated fleet<sup>651</sup>), attains at least 30% or more of total rides matched in the Platform Market monthly for six (6) consecutive calendar months.

#### The Final Directions

372. Based on the above, pursuant to section 69 of the Act, CCCS hereby directs that:
- a. Grab shall remove all, and shall not impose any, exclusivity obligations, lock-in periods and/or termination fees on all drivers who drive on Grab's CPPT platform ("**Grab Drivers**"), and shall ensure that Grab Drivers are not penalised, directly or indirectly, as a result of the non-exclusivity.
  - b. The Parties shall remove all, and shall not impose any, exclusivity obligations, exclusive lock-in periods and/or termination fees on all drivers who rent a vehicle from Lion City Rentals, Grab Rentals, and Grab's rental fleet partners, and shall ensure that these drivers are at liberty to use such vehicles to drive for any CPPT platform providing CPPT platform services and there shall be no discriminatory terms or any other impediments (e.g. in relation to rental rates and/or insurance coverage) that limit their ability to drive for any CPPT platform. Existing Grab Driver Exclusivity Contracts<sup>652</sup> are permitted to remain in place for the remainder of the duration of these agreements, or six (6) months, whichever is shorter, provided that Grab shall not renew the term of these agreements and such drivers are permitted to terminate early the agreements at any time on their own initiative without penalty by Grab for the early termination.
  - c. Grab shall cease any exclusive arrangements with any taxi fleet in Singapore.
  - d. Lion City Rentals (or all or part of its assets) shall not be sold to Grab (directly or indirectly) without CCCS's approval. Any such purchase from the time of the Transaction to the date of any final decision by CCCS shall be reversed unless otherwise approved expressly by CCCS.

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<sup>651</sup> Based on the definition, CDG is not currently an open-platform competitor but will become an open-platform competitor should it open up its CPPT platform to third-party taxi or CPHC services in Singapore.

<sup>652</sup> "Existing Grab Driver Exclusivity Contracts" shall be defined as existing contracts that Grab has with CPHC drivers which contain an exclusivity requirement on such drivers to drive exclusively for the Grab CPPT platform, excluding any existing contracts which were signed post-Transaction in breach of the IMD.

- e. If any new entrant/existing CPPT platform service provider (“**Potential Competitor**”) makes a reasonable offer based on fair market value<sup>653</sup> to purchase all of Lion City Rentals’ shareholding, or all or part of the assets, Uber must accept the offer unless CCCS raises objection to the potential purchase.
- f. Grab shall maintain its pre-Transaction pricing, pricing policies and product options (including driver commission rates and structures) in relation to all its products in the Platform Market including but not limited to JustGrab; GrabCar; GrabShare; GrabFamily; GrabCar Premium; 6-Seater (Economy); 6-Seater (Premium); Standard Taxi; Standard Taxi (Advanced Booking); Limo Taxi; and Limo Taxi (Advanced Booking). In particular, Grab shall maintain its pre-Transaction algorithm pricing matrix (for those variables that Grab is able to control) for Grab’s ride-hailing services which existed on its CPPT platform in Singapore prior to the Transaction, which includes that Grab shall not adjust the surge factor and base fares beyond the surge factor cap ([X]) and base fares at the levels as of 25 March 2018, except for certain pre-defined events<sup>654</sup> for which the surge factor cap shall be adjusted to [X]. For the avoidance of doubt, this direction does not prevent Grab from introducing new product options, or new pricing or commission structures provided that such product options, and pricing and commission structures do not replace or vary the product options or pricing and commission structures that existed pre-Transaction or render the direction set out in this paragraph substantially ineffective.
- g. The Parties shall modify the Purchase Agreement to remove any restriction on the acquirers to whom Lion City Rentals could be sold (e.g. sale to a Potential Competitor) and the Parties shall not place any restriction in relation to the use of Lion City Rentals’ vehicles by any Lion City Rentals acquirer.
- h. The Parties shall appoint a Monitoring Trustee to monitor the Parties’ compliance with CCCS’s directions within seven (7) days of the issuance of this ID. CCCS shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the terms and conditions of appointment of the Monitoring Trustee and the audit plan subject to any modifications CCCS deems necessary for the Monitoring Trustee to effectively fulfill its obligations:
  - i. If only one (1) name is approved, the Parties shall appoint or cause to be appointed, the individual or institution as Monitoring Trustee, in accordance with the terms and conditions of appointment approved by CCCS; and

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<sup>653</sup> Fair market value shall be based on the price at which a willing seller would sell, and a willing buyer would buy, such Lion City Rentals’ shares or assets having full knowledge of the relevant facts in an arm’s-length transaction, without either party having time constraints, and without either party being under any compulsion to buy or sell, and taking into account a valuation of the assets or shares by a competent independent valuer and any competing offers or bids from other interested buyers and the terms offered.

<sup>654</sup> [X].



- ii. If more than one (1) name is approved, the Parties shall be free to choose the Monitoring Trustee to be appointed from among the names approved.
- i. CCCS may at any time vary, substitute or release Grab from one (1) or more of the directions on its own initiative or pursuant to an application by Grab to CCCS supported by reasons and evidence, including but not limited to any circumstances where the direction is no longer necessary or appropriate against the objective of CCCS in preventing the Transaction from resulting in an SLC.
- j. Without prejudice to the generality of the foregoing, CCCS shall, on its own initiative or pursuant to an application by Grab to CCCS supported by reasons and evidence, suspend all Final Directions on an interim basis (“**Interim Suspension**”) if an open-platform competitor without any direct or indirect common control with Grab,<sup>655</sup> attains 30% or more of total rides matched in the Platform Market for one (1) calendar month. CCCS shall unconditionally release the Parties from all Final Directions if an open-platform competitor without any direct or indirect common control with Grab, attains 30% or more of total rides matched in the Platform Market monthly for six (6) consecutive calendar months (“**Unconditional Release**”). Any action taken by Grab during the period of Interim Suspension should duly take into account the fact that CCCS may reinstate all Final Directions, as long as an Unconditional Release has not been triggered. For the avoidance of doubt, any Interim Suspension or Unconditional Release shall only take effect upon CCCS’s determination of the matter and informing the Parties of the same.

## C. FINANCIAL PENALTIES

### (a) Financial Penalties – General Points

373. Under section 69(2)(d) of the Act, CCCS may, where it has made a decision that any merger has infringed the section 54 prohibition, give to such persons, as it thinks appropriate, such directions including a direction to pay a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three (3) years.<sup>656</sup>
374. Before exercising the power to impose a financial penalty, CCCS must be satisfied, as a threshold condition, that the infringement has been committed intentionally or negligently.<sup>657</sup> This is similar to the position in the EU and the UK. In this respect, CCCS notes that in determining whether this threshold condition is met, both the EC and the

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<sup>655</sup> CCCS considers that “control” shall mean, with respect to an undertaking, the right to exercise, directly or indirectly, more than 30% of the voting rights of the undertaking; or the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such undertaking (see paragraph 3.10 of the *CCCS Guidelines of the Substantive Assessment of Mergers 2016 Guidelines*).

<sup>656</sup> Read with section 69(4) of the Act.

<sup>657</sup> Section 69(3) of the Act and paragraphs 4.3 to 4.11 of the *CCCS Guidelines on Enforcement of Competition Cases 2016*.

United Kingdom Competition and Markets Authority (“CMA”) are not required to decide whether the infringement was committed intentionally or negligently, so long as they are satisfied that the infringement was *either intentional or negligent*.<sup>658</sup>

375. An infringement is committed “*intentionally*” if the undertaking must have been aware that its conduct was of such a nature as to encourage a restriction or distortion of competition, and it is sufficient that the undertaking could not have been unaware of the same, without it being necessary to show that the undertaking also knew that it was infringing the Act:<sup>659</sup>

“456. As to the meaning of “intentionally” in section 36(3), in our judgment an infringement is committed intentionally for the purposes of the Act if the undertaking **must have been aware that its conduct was of such a nature as to encourage a restriction or distortion of competition**: see *Musique Diffusion Français*, and *Parker Pen*, cited above. It is **sufficient that the undertaking could not have been unaware that its conduct had the object or would have the effect of restricting competition, without it being necessary to show that the undertaking also knew that it was infringing the Chapter I or Chapter II prohibition**: see *BPB Industries and British Gypsum*, cited above, at paragraph 165 of the judgment, and Case T-29/92 *SPO and Others v Commission* [1995] ECR II-289, at paragraph 356. **While in some cases the undertaking’s intention will be confirmed by internal documents, in our judgment, and in the absence of any evidence to the contrary, the fact that certain consequences are plainly foreseeable is an element from which the requisite intention may be inferred**. If, therefore, a dominant undertaking pursues a certain policy which in fact has, or would foreseeably have, an anti-competitive effect, it may be legitimate to infer that it is acting “intentionally” for the purposes of section 36(3).”  
(emphasis added)

376. As to “*negligently*”, an infringement is committed negligently if the undertaking *ought to have known* that its conduct would result in an infringement.<sup>660</sup> Ignorance or a mistake of law is no bar to a finding of intentional infringement under the Act.<sup>661</sup> CCCS is likely to find that an infringement of the section 54 prohibition has been committed negligently where an undertaking ought to have known that the merger would, or was reasonably likely to, result in an SLC.<sup>662</sup>

377. In this case, the evidence suggests that the Parties were aware, or ought to have been aware, that there are competition concerns with the Transaction. CCCS notes that Grab’s

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<sup>658</sup> Case C-137/95P *Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid (SPO) and Others v Commission of the European Communities* [1996] ECR I-1611; and *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, [2002] Comp AR 13, at [452] to [458].

<sup>659</sup> *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, at [456]; Paragraph 4.7 of the *CCCS Guidelines on Enforcement of Competition Cases 2016*; Paragraph 6.27 of the *CCCS Guidelines on Merger Procedures 2012*.

<sup>660</sup> *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, at [457].

<sup>661</sup> Paragraph 4.8 of the *CCCS Guidelines on Enforcement of Competition Cases 2016*.

<sup>662</sup> Paragraph 4.10 of the *CCCS Guidelines on Enforcement of Competition Cases 2016*; Paragraph 6.27 of the *CCCS Guidelines on Merger Procedures 2012*.

board presentation on the Transaction on 2 March 2018 includes a slide on [REDACTED].<sup>663</sup> While Grab had redacted the contents of the slide due to legal privilege, this suggests that in contemplating the Transaction, and in deciding to announce, close and implement the Transaction at the same time, Grab had been well aware of, and factored in [REDACTED]. Similarly, Uber’s board presentation on the Transaction included a slide titled [REDACTED].<sup>664</sup>

378. CCCS further notes that the Purchase Agreement clearly contemplates possible antitrust concerns and investigations, and, *inter alia*, provides for the agreed apportionment between the Parties of any financial penalties and the costs of any antitrust investigations imposed by any antitrust authorities arising out of the consummation of the Transaction.<sup>665</sup> In particular, paragraph 2 of Exhibit 6.4(b) of the Purchase Agreement states that:

[REDACTED]

379. CCCS had also sent a letter to each Party on 9 March 2018 to explain Singapore’s merger notification regime and CCCS’s corresponding powers to investigate, give directions, impose financial penalties and/or impose interim measures on merging parties. Nevertheless, the Parties proceeded to complete the Transaction with a planned exit of Uber from Singapore on 8 April 2018 and began the transfers of the acquired data immediately, despite their view that Uber’s exit will not be reversible. On 28 March 2018, the Parties responded to an enquiry from CCCS on 26 March 2018, by informing CCCS that they intended to submit a joint notification under section 58 of the Act no later than 16 April 2018 (i.e. after the implementation of the Transaction), highlighting the irreversibility of the Transaction, while pointing CCCS to Exhibit 6.4(b) of the Purchase Agreement. The aforesaid suggests the Parties elected a strategy of dealing with antitrust issues retrospectively, after implementing the Transaction in a manner that cannot be reversed.
380. CCCS also notes that Grab had been advised by [REDACTED] in its Financial Due Diligence Report on Uber commissioned by Grab that [REDACTED], and that “[REDACTED]”<sup>666</sup> Therefore, by entering into the Transaction, Grab ought to have been aware of the price effects driven by change in competition and market conditions.
381. The Parties submitted that financial penalties cannot be imposed as they did not infringe the section 54 prohibition intentionally or negligently.<sup>667</sup> Grab also submitted that the imposition of financial penalties on Grab is inconsistent with a non-suspensory voluntary regime.<sup>668</sup> The Parties submitted that imposing a financial penalty would be inconsistent with the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, which state that the “[t]he imposition of a financial penalty is discretionary and is

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<sup>663</sup> Slide 7 of *Grab’s Board Presentation* [REDACTED] (2 March 2018), Annex 2 of Grab’s 19 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>664</sup> Slide 14 of Annex 10 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>665</sup> Section 6.4 of the Purchase Agreement.

<sup>666</sup> Slide 19 of [REDACTED] *Financial due diligence report* (13 March 2018), Annex 2 of Grab’s 19 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>667</sup> Paragraphs 6.23 to 6.27 of Grab’s 26 July 2018 Written Representations; Paragraphs 95 to 112 of USG’s 26 July 2018 Written Representations.

<sup>668</sup> Paragraphs 6.33 to 6.39 of Grab’s 26 July 2018 Written Representations.

*aimed at deterring not only the infringing undertaking but also other like-minded undertakings which might be considering activities contrary to the section 34, section 47 or section 54 prohibitions”, and there are no “exceptional circumstances” that warrant the imposition of financial penalties in this case.*<sup>669</sup>

382. In addition, Grab submitted that the legal test for intention or negligence in an alleged effects-based infringement must take into consideration that it is difficult in practice for an undertaking to determine if its conduct would be anti-competitive and CCCS is required to establish that Grab was aware that its conduct would probably and clearly infringe the prohibition in question, and a mere appreciation of possible antitrust risk is not sufficient.<sup>670</sup>
383. In relation to the evidence set out in paragraphs 377 to 380 above, the Parties submitted that:
- a. Grab’s board presentation only reflects that Grab had considered [~~X~~]; in addition, the Parties submitted that CCCS cannot rely on slides that it has not seen and which are protected by privilege;<sup>671</sup>
  - b. The apportionment of antitrust penalties set out in paragraph 2 of Exhibit 6.4(b) of the Purchase Agreement was incorporated to account for potential investigative risk “*however small or improbable*” and was typical of merger agreements; in addition, Uber submitted that the mechanisms put in place around potential modifications of the transaction agreements and/or the conduct of the Parties in case any regulator were to be concerned about some aspects of the Transaction were precautions that show Uber had no intentions to infringe the section 54 prohibition and also acted diligently to avoid any such infringement;<sup>672</sup>
  - c. CCCS’s letter of 9 March 2018 did not reflect that CCCS had taken the view, or had concerns that the Transaction would lead to an SLC; Uber also submitted that the letter was “*fairly standard*” and that the Parties, while hoping to reach a firm deal, did not until late March 2018 arrive at an agreement and Uber did not have any information to provide to CCCS in its response to CCCS on 11 March 2018;<sup>673</sup> and

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<sup>669</sup> Paragraphs 6.28 to 6.32 of Grab’s 26 July 2018 Written Representations; Paragraphs 94 and 100 of USG’s 26 July 2018 Written Representations.

<sup>670</sup> Paragraphs 6.8 to 6.17 of Grab’s 26 July 2018 Written Representations.

<sup>671</sup> Paragraph 6.21 of Grab’s 26 July 2018 Written Representations; Paragraph 103 of USG’s 26 July 2018 Written Representations.

<sup>672</sup> Paragraph 6.21 of Grab’s 26 July 2018 Written Representations; Paragraphs 98 and 104 of USG’s 26 July 2018 Written Representations.

<sup>673</sup> Paragraph 6.21 of Grab’s 26 July 2018 Written Representations; Paragraphs 105 to 106 of USG’s 26 July 2018 Written Representations.

- d. The [X] Financial Due Diligence Report was not a statement of Grab and should be considered from the perspective that the loss-making position and subsidisation of rides could not have been financially sustainable.<sup>674</sup>
384. In contrast, the Parties submitted that they had taken all reasonable measures to determine the Transaction would not infringe the section 54 prohibition; had conducted a self-assessment of the Transaction; had taken reasonable steps to approach CCCS prior to the Transaction, during which CCCS had not indicated that the Transaction would give rise to an SLC, before proceeding with the Transaction; and had voluntarily submitted on 16 April 2018 a post-closing notification for decision in respect of the Transaction pursuant to section 58 of the Act.<sup>675</sup>
385. Taking into consideration the Parties' representations and paragraphs 377 to 382 above, CCCS is of the view that, in the context of the present case, the Parties at the very least "ought to have known" that the merger "was reasonably likely"<sup>676</sup> to infringe the section 54 prohibition, because the merger combined by far the two (2) largest providers of CPPT platform services in Singapore and eliminated significant competition *inter se*.
386. The Parties claimed that they had obtained legal and economic advice that there was no SLC and that it is difficult to assess effects. In this regard, since the Parties have chosen not to waive legal privilege in any advice it may have received regarding the SLC analysis of the Transaction, the Parties' claim that they had taken legal advice that there was no SLC is not substantiated by any contemporaneous documentary evidence.
387. CCCS notes that it is disingenuous of the Parties to submit that they had informed CCCS of the Transaction on 23 March 2018 and had proceeded to complete the Transaction only after CCCS had purportedly not indicated that the Transaction would give rise to an SLC and had not asked the Parties to consider not closing the Transaction. Firstly, the Parties were aware, as set out in CCCS's letter dated 9 March 2018 that, in order to obtain CCCS's assessment of the merger, the Parties must notify their merger situation to CCCS and apply to it for a decision as to whether the merger situation will infringe the section 54 prohibition, or apply to seek CCCS's confidential advice. The Parties did not do so but instead sought to rely on a call right before the Transaction, during which CCCS reiterated the risks set out in its letter of 9 March 2018. The information provided to CCCS during the courtesy call was merely the fact that the Transaction would take place and basic information on the deal structure of the Transaction, without the necessary details on the market conditions and competitive dynamics that would enable CCCS to reasonably perform a competition assessment of the Transaction.
388. Further, CCCS had communicated to the Parties' counsel during the call on 23 March 2018 that CCCS is empowered under the Act to issue interim measures directions, and might consider doing so should the Parties proceed to complete the Transaction. Section 67(1A) of the Act provides that CCCS has the power to issue interim measures directions in relation to mergers which have not been notified to it:

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<sup>674</sup> Paragraph 6.21 of Grab's 26 July 2018 Written Representations.

<sup>675</sup> Paragraphs 6.23 to 6.26 of Grab's 26 July 2018 Written Representations; Paragraphs 107 to 110 of USG's 26 July 2018 Written Representations.

<sup>676</sup> Paragraph 6.27 of the CCCS *Guidelines on Merger Procedures 2012*.

“(1A) If the Commission has reasonable grounds for suspecting that the section 54 prohibition —  
 (a) will be infringed by an anticipated merger, if carried into effect; or  
 (b) has been infringed by a merger,  
 but has not completed its investigations into the matter, and considers that it is necessary for it to act under this section —  
 (i) for the purpose of preventing any action that may prejudice —  
 (A) the investigations; or  
 (B) the giving of any direction under section 69; or  
 (ii) as a matter of urgency for the purpose —  
 (A) of preventing serious, irreparable damage to a particular person or category of persons; or  
 (B) of protecting the public interest,  
 the Commission may give such directions as it considers appropriate for that purpose.”

389. Contrary to the Parties’ submission that CCCS had not indicated that it was of the view that the Transaction would lead to an SLC, the communications during the call ought to have highlighted to the Parties’ counsels that the Transaction would risk giving rise to reasonable grounds for suspecting that the section 54 prohibition would be infringed and completion of the Transaction would prejudice the investigations or the giving of any direction under section 69 of the Act, and/or would cause serious, irreparable damage to a particular person or category of persons, and/or harm public interest.
390. Further, CCCS notes that the provisions in Exhibit 6.4(b) are not “precautions” against any infringement but instead provide for the consequences of any infringement. In addition, the Parties’ submission that the provision for apportionment of antitrust penalties was typical of merger agreements is in stark contrast with [X]. CCCS is of the view that the *precise* apportionment of antitrust penalties [X] is not common and suggests that the Parties had given specific consideration to the likelihood that the Transaction would breach antitrust rules and lead to financial penalties.
391. Based on the above, CCCS finds that the Parties had intentionally, or negligently, infringed the section 54 prohibition.
392. As summarised in paragraphs 346 to 348 above, CCCS has found that the Transaction has resulted, or may be expected to result, in an SLC within the Platform Market.
393. CCCS therefore imposes a penalty on the Parties as set out in the following sections.

**(b) Calculation of Penalties**

394. The *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016* provides that the twin objectives of imposing financial penalties are: (i) to reflect the seriousness of the infringement; and (ii) to deter the infringing undertakings and other undertakings from engaging in anti-competitive practices.<sup>677</sup> In calculating the amount of penalty to be imposed, CCCS will take into consideration the seriousness of the infringement, and the turnover of the business of the undertaking in Singapore for the

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<sup>677</sup> Paragraph 1.7 of the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*.

relevant product and geographic markets affected by the infringement in the undertaking's last business year (“**relevant turnover**”). An undertaking's last business year refers to the financial year preceding the year when the infringement ended.<sup>678</sup>

395. CCCS also takes into consideration the duration of the infringement, other relevant factors such as deterrent value, and any aggravating and mitigating factors. The EC and the CMA adopt similar methodologies in the calculation of penalties. The starting point is a base figure, which is worked out by taking a percentage or proportion of the relevant sales or turnover, depending on the seriousness of the infringement. A multiplier is applied for the duration of infringement and that figure is then adjusted to take into account factors such as deterrence and aggravating and mitigating considerations.

*Step 1: Calculation of the base penalty*

396. As set out in the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, the amount of the financial penalty will depend in particular upon the nature of the infringement and how serious and widespread it is. With respect to the section 54 prohibition, the seriousness of the SLC within the relevant market that has resulted, or which may be expected to result, from the merger may be a factor used in assessing the percentage starting point.<sup>679</sup> In assessing the seriousness of the infringement, CCCS will consider a number of factors, including the nature of the product, the structure of the market, the market share(s) of the undertaking(s) involved in the infringement and the effect on competitors and third parties. The impact and effect of the infringement on the market, direct or indirect, will also be an important consideration.<sup>680</sup>
397. *Nature of the infringement.* CCCS takes the view that infringement of the section 54 prohibition is a serious infringement. The gravity of the infringement is reflected by the Parties' actions resulting in the removal of the closest competitor from the market and their removal of a critical and essential element of competition to the detriment of riders and drivers in Singapore through the Transaction. Further, the Parties' actions have rendered the effects of the Transaction practically irreversible, such that the pre-Transaction market conditions cannot be completely restored.
398. *Structure of the market and market shares of the Parties.* CCCS notes that there were only three (3) large players and some small players in the Platform Market of which the Parties were two (2) of the largest players. The Parties' estimated combined market share in the Platform Market, was [80-90]% (Grab – [50-60]]%; Uber – [30-40]%) in Q1 2018.
399. *Effect on customers, competitors and third parties.* As discussed in paragraph 292 above, CCCS has received numerous complaints from riders and drivers regarding the decrease in product/platform choices, as well as a decrease in promotions and incentives respectively. The evidence also suggests that in the absence of the Transaction, Uber is likely to have continued to compete intensively with Grab for market share via, *inter alia*, better product options and higher subsidies,<sup>681</sup> at least in the short to medium run (or until Uber found an alternative purchaser for its Singapore business).

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<sup>678</sup> Paragraph 2.1 of the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*.

<sup>679</sup> Paragraph 2.3 of the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*.

<sup>680</sup> Paragraph 2.4 of the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*.

<sup>681</sup> Slide 28 of [3<] *Financial due diligence report (13 March 2018)*, Annex 2 of Grab's 19 April 2018 response to CCCS's 16 April 2018 section 63 Notice. For example, CCCS notes that Uber's strategy since Q2 2016 [3<].

400. CCCS also notes that the Parties knew or ought to have known that the Transaction would raise competition concerns, but instead implemented the Transaction in such a way that makes it impossible for CCCS to impose a full and effective remedy, reinstating the competition that has been lost. As set out in the Parties' 28 March Response:

[REDACTED]<sup>682</sup>

401. In conclusion, having regard to the nature of the infringement, the nature of the product, the structure of the market, the market shares of the Parties, as well as the potential effect of the Transaction on riders, drivers, competitors and other third parties, CCCS considers it appropriate to fix the starting point at [REDACTED]% of relevant turnover for each of the Parties. CCCS is of the view that the Transaction has resulted in severe harm on customers, competitors and third parties.

#### Relevant Turnover

402. In this case, the relevant turnover for each infringement would be the turnover attributable to the provision of CPPT platform services in Singapore.<sup>683</sup>

403. The relevant turnover in the last business year will be considered when CCCS assesses the impact and effect of the infringement on the market.<sup>684</sup> An undertaking's "*last business year*" is the financial year preceding the year when the infringement ended, or if figures are not available for that financial year, the one immediately preceding it.<sup>685</sup> The financial penalty to be imposed on each Party has been calculated accordingly. Consistent with how CCCS defined the relevant market(s), the relevant turnover refers to the turnover of each Party attributable to the provision of CPPT platform services (i.e. commission) in Singapore.

404. Having regard to all the circumstances of the case, CCCS considers it appropriate to define the relevant turnover as the turnover of the Parties attributable to the provision of CPPT platform services (i.e. commission) in Singapore.

#### *Step 2: Duration of the Infringement*

405. After calculating the base penalty sum, CCCS will next consider whether this sum should be adjusted to take into account the duration of the infringement. The duration for which the Parties infringed the section 54 prohibition will depend on the commencement of the implementation of the Transaction, and when the Transaction ceases to result in an SLC

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<sup>682</sup> Paragraph 1.16 of the 28 March Response.

<sup>683</sup> For each Party, the relevant turnover will be all the commission charged by the Party for the booking and matching of CPPT services in Singapore.

<sup>684</sup> Paragraph 2.1 of the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*.

<sup>685</sup> Paragraph 3 of the *Competition (Financial Penalties) Order 2007*; Paragraphs 2.1 and 2.5 of the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*.



in the Platform Market. CCCS considers that an infringement over a part of a year may be treated as a full year for the purpose of calculating the duration of an infringement.<sup>686</sup>

406. CCCS notes that the Transaction was completed on 25 March 2018 and continues (or will continue) to have a detrimental effect on competition in the Platform Market, riders and drivers<sup>687</sup> until there is a material change in market conditions such that the Transaction ceases to result in an SLC in the Platform Market. CCCS is of the view that the effects of the infringement are not restricted to the period during and immediately after the Transaction was implemented. The infringement led to the exit of Uber, Grab's closest competitor, the effects of which continued significantly beyond the time of Uber's withdrawal. CCCS notes Uber's submission that its decision to exit is not reversible.<sup>688</sup> This implies that the harm on competition in the Platform Market, riders and drivers as a result of the Transaction is likely to continue beyond this ID.<sup>689</sup> Similar to bid rigging cases, CCCS considers that the effects of the Transaction are generally irreversible, cannot be easily rectified, and continue to be felt long after the duration where the infringing conduct occurred.<sup>690</sup>
407. CCCS further notes that the duration of an infringement in a section 54 case is of importance insofar as it may have an impact on the penalty that may be imposed for that infringement. Given the consideration that the infringement had a longer-lasting impact, CCCS is of the view that this is not an appropriate case where the duration should be rounded downwards to allow the Parties to benefit from a lack of competitive constraints from a significant new entrant for at least the next 12 months. Considering the above, CCCS is therefore of the view that, as a basis for calculating penalties, a duration of one (1) year is more commensurate with the impact of the Transaction. As such, the duration for the purpose of calculating penalties in this case should be a full year.
408. Grab submitted that the duration of one (1) year is excessive given that effective fares would have inevitably increased regardless of the Transaction. Grab submitted that the pre-Transaction level of promotions, discounts and incentives were commercially unsustainable and that discounts to riders and incentives to drivers have been decreasing prior to the Transaction, and would have continued independent of the Transaction.<sup>691</sup> Grab further submitted that the Transaction would not have a long lasting impact given the potential and imminent entry of new players or the expansion by current competitors of existing product offerings in Singapore.<sup>692</sup> Uber made similar representations that the duration of one (1) year is excessive and should be rounded downwards in line with the expected date for CCCS to issue its decision.<sup>693</sup>
409. CCCS reiterates its findings on the effects (and expected effects) of the Transaction at paragraphs 280 to 305, including the decline in incentives and discounts post-Transaction as well as the projected increase in prices in the medium term, the irreversibility of Uber's

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<sup>686</sup> Paragraph 2.10 of the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*.

<sup>687</sup> See Chapter 2, Section I on Overall Assessment,

<sup>688</sup> Paragraph 111 of USG's 4 April 2018 Written Representations.

<sup>689</sup> Although any remedy that is to be imposed by CCCS would aim to sufficiently address the SLC arising from the Transaction, such remedies would not be able to undo the harm by restoring the pre-Transaction state of competition entirely, due to the irreversibility of Uber's exit.

<sup>690</sup> Paragraph 2.12 of the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*.

<sup>691</sup> Paragraphs 6.46 and 6.47 of Grab's 26 July 2018 Written Representations.

<sup>692</sup> Paragraphs 6.46 and 6.47.2 of Grab's 26 July 2018 Written Representations.

<sup>693</sup> Paragraph 133 of USG's 26 July 2018 Written Representations.

exit, and the SLC caused by the Transaction (see paragraphs 346 to 348). CCCS also reiterates its findings on the competitive constraints possessed by new and existing players in paragraphs 236 to 265 above.

410. Having regard to all the circumstances and the representations made by the Parties, CCCS considers it appropriate, in the current case, to fix the duration at one (1) year.

*Step 3: Aggravating and Mitigating Factors*

411. At this next stage, CCCS will consider the presence of aggravating and mitigating factors and make adjustments when assessing the amount of financial penalty,<sup>694</sup> i.e. increasing the penalty where there are aggravating factors and reducing the penalty where there are mitigating factors.
412. Both the Parties submitted that the characteristics of the business should be taken into consideration when imposing a financial penalty – a reduction of the financial penalty should be applied given the “*high turnover, low margin*” nature of the industry.<sup>695</sup>
413. CCCS notes that the Parties’ relevant turnovers were provided by the Parties. These do not include the trip fares paid by riders, but instead, only the commission charged against drivers, which is only in the range of 20-25% of trip fares. With regard to “*low margins*”, while the Parties submitted that they have been loss-making, they have themselves submitted that CDG, the third biggest player in the Platform Market, has positive profit margins.<sup>696</sup> Therefore, it is not the intrinsic nature of the Platform Market to have “*low margins*”. Instead, it appears to be a deliberate commercial strategy by the Parties to sacrifice profit to gain market share over its competitors.
414. The Parties have also submitted that CCCS failed to take into consideration as a mitigating factor their cooperation throughout the investigative process, including their joint submission of a merger notification to CCCS (and informing CCCS that it was going to do so prior to the Transaction); commissioning of an external economist, CRA, to provide additional economics input to assist CCCS in its review of the Transaction; their open engagement with CCCS in dialogue sessions; their response to multiple requests for information from CCCS and the monitoring trustee in a timely and comprehensive manner; and Grab’s First Commitments Proposal. In addition, Grab also submitted that CCCS failed to take into consideration the fact that Grab had taken adequate steps to ensure that the Transaction was compliant with the section 54 prohibition by obtaining legal advice and conducting a self-assessment of the Transaction; taking reasonable steps to approach CCCS and proceeding to complete only after CCCS provided no indication that CCCS was of the view that the Transaction would lead to an SLC; and voluntarily submitting a merger notification.<sup>697</sup>
415. While CCCS has duly noted the aforementioned instances of cooperation with CCCS and considered the mitigating factors submitted by the Parties, CCCS also notes that these

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<sup>694</sup> Paragraph 2.13 of the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*.

<sup>695</sup> Paragraph 129 of USG’s 26 July 2018 Written Representations; Paragraphs 6.48 to 6.50 of Grab’s 26 July 2018 Written Representations.

<sup>696</sup> Paragraph 23.2.2 of the Parties’ 20 April 2018 response to CCCS’s 16 April 2018 section 63 Notice.

<sup>697</sup> Paragraphs 6.51 to 6.55 of Grab’s 26 July 2018 Written Representations; Paragraph 137 of USG’s 26 July 2018 Written Representations.

instances must be balanced against the Parties' decision to enter into the Transaction despite the fact that they knew or ought to have known, that the Transaction will infringe the section 54 prohibition. In particular, the Parties have decided to complete the Transaction in an irreversible manner and have sought to deal retrospectively with the consequences of any infringement. As set out in paragraphs 342 and 344 above, CCCS had also assessed the First Commitments Proposal (and the Second Commitments Proposal) to be insufficient to address the SLC arising from the Transaction. Further, the Parties' responses to CCCS's information requests were no more than required pursuant to section 63 of the Act, and compliance with the IMD is also no more than required under section 67 of the Act. Lastly, CCCS notes that the Parties' engagement of CRA was to assist in their own defence.

416. The adjustments for mitigating and aggravating factors, if any, will be dealt with below for each Party.

*Step 4: Other Relevant Factors*

417. CCCS may also adjust the penalty as appropriate to achieve policy objectives, particularly the deterrence of the Parties and other undertakings from completing and consummating anti-competitive mergers that result in an SLC. Under the Singapore merger notification regime, deterrence is necessary to ensure that merger parties undertake self-assessment and notify a potentially anti-competitive merger to CCCS timeously. CCCS considers that if the financial penalty to be imposed against any of the Parties after the adjustment for duration has been taken into account is insufficient to meet the policy objective of deterrence, then further adjustments will be made.

*Step 5: Maximum Statutory Penalty*

418. Section 69(4) of the Act provides that the maximum penalty CCCS can impose on an undertaking is 10% of the turnover of the business of the undertaking in Singapore for each year of infringement, up to a maximum of three (3) years ("**Statutory Maximum Penalty**"). The *Competition (Financial Penalties) Order 2007* states that applicable turnover shall be limited to the amounts derived by the undertaking from the sale of products and the provision of services falling within the undertaking's ordinary activities in Singapore after deduction of sales rebates, goods and services tax and other taxes directly related to turnover.<sup>698</sup>
419. Therefore, CCCS will determine the respective Statutory Maximum Penalty for each Party by using the business' applicable turnover for the business year preceding the date of the ID<sup>699</sup> and will multiply this figure by 10% and by the duration of the infringement (up to a maximum of three (3) years).<sup>700</sup> If the penalty calculated after Steps 1 to 4 exceeds the Statutory Maximum Penalty, then the financial penalty payable will be adjusted downwards to ensure that the figure is less than the Statutory Maximum Penalty.

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<sup>698</sup> Paragraph 1 of the Schedule to the *Competition (Financial Penalties) Order 2007*.

<sup>699</sup> For turnover figures submitted in foreign currencies, CCCS applied an average exchange rate for the calendar year, which has a greater overlap with the applicable financial year and period, for the conversion to Singapore dollars. The average exchange rate was obtained from the Monetary Authority of Singapore website at <https://secure.mas.gov.sg/msb/ExchangeRates.aspx>.

<sup>700</sup> Refer to section 69(4) of the Act; Paragraph 2.19 of the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*.

(c) **Penalty for Uber**

420. **Step 1: Calculation of the Base Penalty**: Uber was party to the Transaction that resulted in an SLC in the Platform Market.
421. Uber's financial year commences on 1 January and ends on 31 December. Uber's relevant turnover for the provision of CPPT platform services in Singapore for the financial year ending 31 December 2017 was S\$[X].<sup>701</sup>
422. Uber submitted that it follows the generally accepted accounting principles accounting method where amounts remitted to drivers are considered as a reduction in revenue or "contra revenue". As such, Uber submitted that CCCS should consider Uber's net revenue of S\$[X]<sup>702</sup> instead of the gross turnover as the relevant turnover.<sup>703</sup>
423. Under the *Competition (Financial Penalties) Order 2007*, unless the circumstances otherwise require, the applicable turnover shall be limited to the amount derived by the undertaking from the sale of products and the provision of services falling within the undertaking's ordinary activities in Singapore after deduction of sales rebates, goods and services tax and other taxes directly related to turnover. As set out in the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, while CCCS will generally base relevant turnover on the figures from an undertaking's audited accounts, CCCS retains the discretion to use different figures, for example, where the audited accounts are not available or where the audited accounts do not reflect the true scale of an undertaking's activities in the relevant market.<sup>704</sup>
424. In this regard, Uber has not shown that the "contra revenue" is directly related to the amounts of the turnover derived by Uber from the Platform Market. CCCS notes that neither the Uber platform terms and conditions nor the vehicle rental agreement with LCR provides for the payment of any incentives or rebates on a per-transaction basis, or based on the quantum of commission paid by the driver to Uber. In any event, CCCS is of the view that as incentives are part of driver acquisition costs in a deliberate strategy by Uber to acquire driver and market share at the expense of short-run profit, the amount of commission collected, without the deduction of the "contra revenue", reflects the true scale of Uber's activities in the Platform Market. Accordingly, CCCS rejects Uber's submission that CCCS should use the net revenue instead of the gross revenue as the relevant turnover.

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<sup>701</sup> Table 3.3 of USG's 21 June 2018 response to CCCS's 13 and 14 April 2018 section 63 Notices. CCCS calculated the relevant turnover using the difference between 'total gross revenue' and 'fares remitted to partners'. Next, CCCS used an exchange rate of 1 USD to 1.3366 SGD (2017 exchange rate) to calculate the relevant turnover in SGD. Exchange rate figures are extracted from Monetary Authority of Singapore.

<sup>702</sup> US\$[X] million \* 1.3366. CCCS used an exchange rate of 1 USD to 1.3366 SGD (2017 exchange rate) to calculate the relevant turnover in SGD. Exchange rate figures are extracted from Monetary Authority of Singapore.

<sup>703</sup> Paragraphs 125 and 126 of USG's 26 July 2018 Written Representations.

<sup>704</sup> Paragraph 2.6 of the *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*.

425. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 396 to 401 above and fixed for Uber the starting point at [X]% of relevant turnover. The starting amount for Uber is therefore S\$[X].
426. **Step 2: Duration of Infringement:** In accordance with paragraph 410 above, CCCS uses a duration multiplier of one. Therefore, the penalty after adjustment for duration is S\$[X].
427. **Step 3: Adjustment for aggravating and mitigating factors:** CCCS is [X] of the infringing conduct.
428. **Step 4: Adjustment for other factors:** CCCS considers that the figure of S\$[X] is sufficient to act as an effective deterrent to Uber and to other undertakings and will not be making adjustments to the penalty at this stage.
429. **Step 5: Adjustment to prevent maximum penalty being exceeded:**<sup>705</sup> Uber's turnover figure for the financial year 2017 for the purpose of calculation of the maximum financial penalty is S\$[X].<sup>706</sup> The financial penalty of S\$[X] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S\$[X]. The financial penalty at the end of this stage is S\$[X].
430. Accordingly, CCCS concludes that a financial penalty of S\$6,582,055 is to be imposed on Uber.

**(d) Penalty for Grab**

431. **Step 1: Calculation of the Base Penalty:** Grab was party to the Transaction that resulted in an SLC in the Platform Market.
432. Grab's financial year commences on 1 January and ends on 31 December. Grab's relevant turnover for the provision of CPPT platform services in Singapore for the financial year ending 31 December 2017 was S\$[X].<sup>707</sup>
433. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 396 to 401 above and fixed for Grab the starting point at [X]% of relevant turnover. The starting amount for Grab is therefore S\$[X].

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<sup>705</sup> Under section 69(4) of the Act, no financial penalty fixed by CCCS may exceed 10% or such other percentage of such turnover of the business of the undertaking in Singapore for each year of infringement for such period, up to a maximum of 3 years, as the Minister may, by order published in the Gazette, prescribe.

<sup>706</sup> Table 2.1 of USG's 13 June 2018 response to CCCS's 11 June 2018 section 63 Notice. CCCS used an exchange rate of 1 USD to 1.3366 SGD (2017 exchange rate). Extracted from Monetary Authority of Singapore.

<sup>707</sup> Table 2A of Annex 1 of Grab's 13 June 2018 response to CCCS's 11 June 2018 section 63 Notice. CCCS used an exchange rate of 1 USD to 1.3366 SGD (2017 exchange rate) to calculate the relevant turnover in SGD. Exchange rate figures are extracted from Monetary Authority of Singapore.

434. **Step 2: Duration of Infringement:** In accordance with paragraph 410 above, CCCS uses a duration multiplier of one. Therefore, the penalty after adjustment for duration is S\$[X].
435. **Step 3: Adjustment for aggravating and mitigating factors:** CCCS is [X] of the infringing conduct.
436. **Step 4: Adjustment for other factors:** CCCS considers that the figure of S\$[X] is sufficient to act as an effective deterrent to Grab and to other undertakings and will not be making adjustments to the penalty at this stage.
437. **Step 5: Adjustment to prevent the maximum penalty being exceeded:**<sup>708</sup> Grab's turnover figure for the financial year 2017 for the purpose of calculation of the maximum financial penalty is S\$[X].<sup>709</sup> The financial penalty of S\$[X] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S\$[X]. The financial penalty at the end of this stage is S\$[X].
438. Accordingly, CCCS concludes that a financial penalty of S\$6,419,647 is to be imposed on Grab.

**(e) Conclusion on Penalties**

439. In conclusion, CCCS, pursuant to section 69(2)(d) of the Act, imposes the following financial penalties on the Parties:

<b>Party</b>	<b>Financial Penalty</b>
Uber	S\$6,582,055
Grab	S\$6,419,647
<b>Total</b>	<b>S\$13,001,702</b>



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Chief Executive  
Competition and Consumer Commission of Singapore

<sup>708</sup> Under section 69(4) of the Act, no financial penalty fixed by CCCS may exceed 10% or such other percentage of such turnover of the business of the undertaking in Singapore for each year of infringement for such period, up to a maximum of 3 years, as the Minister may, by order published in the Gazette, prescribe.

<sup>709</sup> Table 2A of Annex 1 of Grab's 13 June 2018 response to CCCS's 11 June 2018 section 63 Notice. CCCS used an exchange rate of 1 USD to 1.3366 SGD (2017 exchange rate). Extracted from Monetary Authority of Singapore.

## **ANNEX A: THE PARTIES' ORGANISATIONAL CHART**

### **A. Grab's Organisational Chart (as at 2 April 2018)**

[X]

**B. Uber's Organisational Chart**

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