

Section 57 of the Competition Act 2004

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

In relation to the proposed acquisition by MOMQ Holding Company of CoorsTek KK.'s crucibles business

Date: 18 October 2022

Case number: 400/140/2022/005

Confidential information in the original version of this Decision will be redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [§<].

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I. INTRODUCTION

1. On 26 August 2022, the Competition and Consumer Commission of Singapore (“CCCS”) accepted a joint notification from MOMQ Holding Company (“**Momentive**”) and CoorsTek KK. (“**CoorsTek**”) (collectively, the “**Parties**”) for a decision as to whether the proposed acquisition by Momentive of CoorsTek’s crucibles business (“**Target Business**”) structured as a share acquisition of 100 per cent. of CoorsTek's wholly owned subsidiary, CoorsTek Nagasaki Corporation (“**CoorsTek Nagasaki**”) (the “**Proposed Transaction**”), if carried into effect, would infringe section 54 of the Competition Act 2004 (the “**Act**”).
2. In reviewing the Proposed Transaction, CCCS conducted a public consultation and sought feedback from third parties including the Parties’ competitors and customers. Most respondents were neutral or had no competition concerns in relation to the Proposed Transaction.
3. At the end of the consultation process and after evaluating the available information, CCCS concludes that the Proposed Transaction, if carried into effect, will not infringe section 54 of the Act.

II. THE PARTIES

(a) The Acquirer

Momentive

4. Momentive is an advanced material company engaged in the design and manufacture of ultra-high performance quartz and ceramic products. In Singapore, Momentive is primarily involved in the supply of quartz crucibles¹ used in the production of 300mm silicon wafers.

(b) The Target

CoorsTek

5. CoorsTek is an indirect subsidiary of CoorsTek, Inc., a global manufacturer of technical ceramics.² It develops and manufactures a variety of products made of

¹ Quartz crucibles are vessels made of high purity quartz powder fused by electric arc fusion process for melting silicon metal to grow crystalline silicon ingot from molten silicon metal. Paragraph 19.1 of Form M1; and paragraph 1.5 of the Parties’ 6 September 2022 Response to CCCS’s 29 August 2022 request for information (“**RFI**”).

² Paragraph 7.3 to 7.4 of Form M1.

inorganic materials for use in the production of semiconductor devices.³ In Singapore, CoorsTek is involved in the sale of various ceramic products including quartz crucibles used in the production of 300mm silicon wafers.

6. The Target Business to be acquired by Momentive is CoorsTek's crucibles business.

III. THE PROPOSED TRANSACTION

7. The proposed acquisition by Momentive of the Target Business will be structured as a share acquisition of 100 per cent. of CoorsTek's wholly-owned subsidiary, CoorsTek Nagasaki.⁴
8. CCCS assesses that the Proposed Transaction constitutes a merger under section 54(2)(b) of the Act as Momentive will acquire and have sole control over the Target Business via the acquisition of 100 per cent. of CoorsTek Nagasaki.

IV. COMPETITION ISSUES

9. The Parties submitted that they overlap only in the supply of quartz crucibles used in the production of 300mm silicon wafers in Singapore.⁵
10. CCCS notes that while the Target Business will supply quartz powder (which is an input in the production of quartz crucibles) following the Proposed Transaction,⁶ the Target Business already supplies [X] its quartz powder to CoorsTek for it to produce its own quartz crucibles pre-Proposed Transaction.⁷ The Proposed Transaction does not add to the Target Business's market power, if any, in the supply of quartz powder since Momentive does not supply quartz powder. Hence, the Proposed Transaction will not give rise to any vertical competition concerns post-Proposed Transaction.
11. Given the above, CCCS has focused its assessment on the supply of quartz crucibles and considered whether the Proposed Transaction will give rise to non-coordinated or coordinated effects that would lead to a substantial lessening of competition ("SLC") in Singapore.

³ Paragraph 10.6 of Form M1.

⁴ Paragraph 11.1 of Form M1.

⁵ Paragraph 15.1 of Form M1.

⁶ Paragraph 36.2 of Form M1 and paragraph 9.3 of Parties' 6 September 2022 Response to CCCS's 29 August 2022 RFI.

⁷ Paragraphs 10.1 to 10.2 of the Parties' 7 September 2022 Response to CCCS's 29 August 2022 RFI.

V. COUNTERFACTUAL

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

VI. RELEVANT MARKET

13. Based on the Parties' submissions and third parties' feedback, for the purpose of this assessment, CCCS considers the relevant market to be the global supply of quartz crucibles used in the production of 300mm silicon wafers (referred to as "quartz crucibles (for 300mm wafers)" below) (the "**Relevant Market**").

VII. CCCS'S ASSESSMENT

(a) Market Shares

14. The Parties' combined market share in the Relevant Market ranged from [20-30]% from 2019 to 2021⁸, while the post-merger CR3 was [90-100]%. This crosses the indicative threshold in the *CCCS Guidelines on the Substantive Assessment of Mergers*⁹ but the incremental share arising from the Proposed Transaction is low at [0-10]%. However, CCCS notes that the Parties' key competitors supply quartz crucibles for internal use though the extent to which they do so is unclear.¹⁰ In this regard, therefore, it is unclear whether the market shares are a good indication of the suppliers' relative market power to non-integrated customers.

(b) Barriers to Entry and Expansion

15. Based on the Parties' submissions and third parties' feedback, CCCS is of the view that, on balance, the barriers to new entry for the global supply of quartz crucibles (for 300mm wafers) are likely moderately high to high but barriers to expansion for existing suppliers to supply new crucibles or to new locations like Singapore do not appear to be insurmountable.

⁸ Paragraph 21.1 of Form M1.

⁹ Paragraph 5.15 of the *CCCS' Guidelines on the Substantive Assessment of Mergers*.

¹⁰ Paragraph 19.1 of the Parties' 6 September 2022 Response to CCCS's 29 August 2022 RFI.

(c) Countervailing Buyer Power

16. Based on the information received, on balance, CCCS considers that it is unlikely that customers have countervailing buyer power.

(d) Non-Coordinated Effects

17. Based on the information received, CCCS assesses that the Proposed Transaction is unlikely to give rise to non-coordinated effects for the following reasons:
- a. The Parties supply differentiated products and are not close competitors in the supply of quartz crucibles (for 300mm wafers), particularly in Singapore.
 - b. Customers multi-source, and are able to switch between suppliers and source for new suppliers.

(e) Coordinated Effects

18. Based on the information received, CCCS assesses that the Proposed Transaction is unlikely to give rise to coordinated effects for the following reasons:
- a. There is limited transparency in the procurement process.
 - b. Customers do not have fixed timeframes to source for suppliers and have varied procurement methods.
 - c. Customers are able to switch between suppliers and source for new suppliers.

(f) Conclusion on Competition Assessment

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

VIII. EFFICIENCIES

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

IX. ANCILLARY RESTRICTIONS

21. The Parties submitted that the non-compete and non-solicitation restrictions in the share purchase agreement (“SPA”) are ancillary restrictions to the Proposed

Transaction that are necessary for the implementation of the Proposed Transaction to protect the full value of the Target Business, are not overly restrictive and do not go beyond what is necessary to ensure that the full value of the Target Business is protected.¹¹

Non-Compete Restriction

22. CCCS considers that the non-compete restriction set out in the Parties' SPA ("**Non-Compete Restriction**")¹² constitutes an ancillary restriction as it would allow Momentive to receive the full benefit of any goodwill or know-how acquired under the Proposed Transaction and is therefore directly related and necessary to the Proposed Transaction.

Non-Solicitation Restriction

23. The non-solicitation restriction set out in the SPA ("**Non-Solicitation Restriction**")¹³ covers (i) [X], and (ii) [X]. The Parties were, however, unable to explain further whether and how [X] are important for the implementation of the Proposed Transaction, or why the scope of the Non-Solicitation Restriction extends to [X]. Hence, CCCS considers that the Non-Solicitation Restriction as submitted by the Parties is not an ancillary restriction under the Act.

CCCS's conclusion on ancillary restrictions

24. In view of the above, CCCS concludes that only the Non-Compete Restriction constitutes an ancillary restraint which benefits from the exclusion under the Act in relation to ancillary restrictions¹⁴, insofar as it relates to Singapore.

X. CONCLUSION

25. For the reasons above and based on the information available, CCCS assesses that the Proposed Transaction, if carried into effect, will not lead to an SLC in Singapore and consequently, will not infringe the section 54 of the Act.

¹¹ Paragraph 44.6 of Form M1.

¹² [X] of the SPA.

¹³ [X] of the SPA.

¹⁴ Paragraph 10 of the Third Schedule of the Act.

26. In accordance with section 57(7) of the Act, the decision will be valid for a period of one year from the date of CCCS's decision.



Sia Aik Kor
Chief Executive
Competition and Consumer Commission of Singapore