

Section 57 of the Competition Act (Cap. 50B)

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

In relation to the notification for decision of the proposed acquisition of Kopitiam Investment Pte Ltd by NTUC Enterprise Co-operative Limited pursuant to section 57 of the Competition Act (Cap. 50B)

18 December 2018

Case number: CCCS 400/008/18

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I. INTRODUCTION

1. On 21 September 2018, NTUC Enterprise Co-operative Limited (“NE”) filed a sole notification pursuant to section 57 of the Competition Act (Cap. 50B) (“the Act”) for a decision by the Competition and Consumer Commission of Singapore (“CCCS”) as to whether the proposed acquisition by NE of 100 per cent of the equity interest in Kopitiam Investment Pte. Ltd. and its subsidiaries (“Kopitiam”) (“the Proposed Transaction”) will infringe the section 54 prohibition, if carried into effect. CCCS accepted NE’s filing as complete on 28 September 2018.
2. In reviewing the Proposed Transaction, besides conducting a public consultation, CCCS also contacted 20 landlords, 26 competitors, 8 customers, representatives of 5 hawker associations and engaged various government agencies to gather relevant information necessary for CCCS’s assessment of the Proposed Transaction. Of the third parties contacted, 22 replied, with 21 third parties providing substantive responses to CCCS’s questions. More than two-thirds of the third parties indicated that they have no concerns with the Proposed Transaction, with a few raising concerns over the Proposed Transaction.¹ Feedback that do not have an impact on competition were not considered in CCCS’s assessment.
3. At the end of the consultation process and after evaluating all the evidence, CCCS concludes that the Proposed Transaction, if carried into effect, will not infringe section 54 of the Act.

II. THE PARTIES

4. NE, which is the acquirer, is a social enterprise under the National Trades Union Congress (“NTUC”). NTUC is the holding cooperative for the group of NTUC Social Enterprises (“SEs”)², and is involved in various industry sectors including childcare, eldercare, food and daily essentials, cooked food and financial services.³ The food and beverage retail business of NE is conducted through Foodfare Co-operative Limited (“Foodfare”). Foodfare is involved in

¹ The concerns relate mainly to Foodfare (“Foodfare Co-operative Limited”) becoming a bigger player in the operation of hawker centres, coffee shops and food courts (collectively referred to as “Street Stalls”) thereby enjoying stronger bargaining power over the landlords, and food vendors and consumers may face higher rental fees and food prices respectively as a result of fewer Street Stall operators. CCCS has carefully considered these concerns in assessing the merger parties’ market shares in the relevant markets, their closeness of rivalry before the Proposed Transaction, as well as other factors including the barriers to entry and expansion.

² Paragraphs 7.1 and 10.10 of Form M1.

³ Paragraph 14.1 of Form M1.

the sale of cooked food to consumers, as well as the rental of stalls within hawker centres, coffee shops and food courts (NE had collectively refer to these as “Street Stalls”) to food vendors. Foodfare is also the managing agent for a few government-owned hawker centres.⁴

5. NE submitted that Foodfare operates 14 food courts, 10 coffee shops, 9 hawker centres, 32 other cafés, 1 cafeteria and 1 factory located across Singapore.⁵ NE also conducts the management and rental of commercial property through Mercatus Co-operative Limited (“Mercatus”), although NE submitted that this area of business is not a significant part of NE’s business.⁶
6. Kopitiam’s primary business activity is in the food and beverage retail. Specifically, Kopitiam leases food stalls to food vendors in Singapore, manages the daily operations of its Street Stalls, and within those that it manages, Kopitiam directly operates all the drinks, fruits and desserts stalls.⁷ Kopitiam submitted that, together with its subsidiaries, it operates 56 food courts, 21 coffee shops, 3 hawker centres and 2 factories located across Singapore.⁸ Kopitiam also engages in the rental of commercial property for retail and Street Stall premises, however, Kopitiam has submitted that this area of business is insubstantial.⁹

III. THE TRANSACTION

Nature of Proposed Transaction

7. The Proposed Transaction is an acquisition by NE of 100 per cent of the equity interests in Kopitiam and its subsidiaries.¹⁰ Following the completion of the Proposed Transaction, NE will operate Foodfare and Kopitiam as separate entities due to the current separate and different branding, operating procedures and corporate culture. While best practices of both will be mutually adopted, in the interim, NE requires time to further study their alignment and integration.¹¹
8. The Share Purchase Agreement (“SPA”) was entered into between NE and Kopitiam (each a “Party”, and together “Parties”) on 17 September 2018.

⁴ Paragraph 14.2 of Form M1.

⁵ Paragraph 10.15 of Form M1.

⁶ S/No. 1 of NE’s Response dated 5 November 2018 to CCCS’s RFI dated 1 November 2018; Paragraphs 18.1 and 36.4.1 of Form M1.

⁷ Paragraphs 10.12, 10.13 and 13.3 of Form M1.

⁸ Paragraph 10.16 of Form M1.

⁹ Paragraph 14.4 of Form M1.

¹⁰ Paragraph 11.1 of Form M1.

¹¹ Paragraph 11.5 of NE’s Response dated 23 October 2018 to CCCS’s RFI dated 16 October 2018.

Completion of the SPA will take place upon a clearance decision given by CCCS.

Commercial rationale of the Proposed Transaction

9. NE submitted that its SEs aim to achieve meaningful scale in the sectors they operate in, in order to moderate prices on a daily basis, set industry standards, as well as to attain efficiency. The Proposed Transaction would allow NE, by way of Foodfare and Kopitiam, to create a scaled and efficient business while simultaneously delivering high social impact.¹²

Merger under section 54 of the Act

10. The Proposed Transaction will result in NE acquiring 100 per cent of the shares of Kopitiam and hence, direct control of the whole of Kopitiam. Therefore, CCCS considers that the Proposed Transaction constitutes a merger pursuant to section 54(2)(b) of the Act.

IV. THE INDUSTRY

(a) Definition of hawker centres, coffee shops and food courts

11. CCCS notes that there is no formal definition of the terms “hawker centre”, “coffee shop” and “food court” that has been adopted by either government agencies or by market players.¹³
12. The National Environment Agency (“NEA”) regulates and plans for the supply of government-owned hawker centres¹⁴ in Singapore. NEA considers hawker centre as a naturally ventilated premises with multiple stalls selling a variety of affordable and hygienic cooked food and drinks with a common seating area.¹⁵ NEA currently manages and regulates 114 hawker centres in Singapore which are owned by the Housing and Development Board (“HDB”) and the

¹² Paragraph 12 of Form M1.

¹³ NE has classified hawker centres as premises with no air-conditioning and contains more than 25 food stalls, coffee shop as premises with no air-conditioning and contains 1 to 10 food stalls, and, food court as premises with air-conditioning and contains 10 to 25 food stalls. Paragraph 5.1 of NE’s Response dated 11 October 2018 to CCCS’s RFI dated 4 October 2018.

¹⁴ Question 25 of NEA’s Response dated 19 October 2018 to CCCS’s RFI dated 5 October 2018 and 9 October 2018.

¹⁵ Singapore Hawker Centres: People, Places, Food. Lily Kong. Published by National Environment Agency, 2007, Page 3; Paragraph 1(a) of NEA’s Response dated 15 November 2018 to CCCS’s RFI dated 22 October 2018.

Ministry of the Environment and Water Resources (“MEWR”).¹⁶ Of these, 107 hawker centres were built between the 1960s and 1980s, also known as the Existing Hawker Centres (“EHCs”), and 7 hawker centres were built after 2011, known as the New Hawker Centres (“NHCs”). Currently, 101 EHCs are directly managed by NEA, and the remaining 6 EHCs are managed by Foodfare. The 7 NHCs are managed by socially-conscious operators.¹⁷

13. HDB characterises an “eating house” located within HDB estates as a premise with multiple food stalls that provide a large variety of lower-cost cooked food regardless of whether it has air-conditioning (in the case of food court) or not (in the case of coffee shop).¹⁸
14. To be consistent with NEA’s definition of hawker centres and HDB’s definition of “eating houses”, in this Grounds of Decision (“GD”), “hawker centres” will refer to those premises managed by NEA as hawker centres¹⁹, while coffee shops are naturally ventilated premises²⁰ and food courts are air-conditioned premises, irrespective of the number of food stalls in the eateries.²¹

(b) Interactions between market players

Interactions between Landlords and Master Lessors²²

15. NE submitted that operators such as Foodfare and Kopitiam primarily lease hawker centres, coffee shops, food courts and cafés from property owners, property managers, developers, landlords and government agencies (referred to as “Landlords”).²³ In this regard, CCCS notes that there are two categories of Landlords – Government Landlords (such as HDB, Agri-Food & Veterinary Authority of Singapore (“AVA”) and JTC Corporation (“JTC”)) and private Landlords (such as real estate investment trusts (“REITs”), shopping mall owners and private owners (in the form of companies or individuals)).²⁴

¹⁶ Notes of Meeting with NEA dated 8 October 2018.

¹⁷ These operators include NTUC Foodfare, Fei Siong Social Enterprise, Timbre+Hawkers, Hawker Management by Koufu and OTMH by Kopitiam.

¹⁸ Paragraph 1 of HDB’s Response dated 22 October 2018 to CCCS’s RFI dated 18 October 2018.

¹⁹ Based on NEA’s definition of hawker centres, Kopitiam only manages 1 NHC instead of 3 hawker centres as it had submitted in paragraph 6 above.

²⁰ The naturally ventilated premises referred to as “coffee shops” do not include hawker centres.

²¹ Paragraph 1(a) of NEA’s Response dated 15 November 2018 to CCCS’s RFI dated 22 October 2018; Paragraph 1 of HDB’s Response dated 22 October 2018 to CCCS’s RFI dated 18 October 2018.

²² Master lessors lease premises from landlords and have the option to sub-lease the stalls within these premises to food vendors.

²³ Paragraph 18.1 of Form M1.

²⁴ Annex 3 of NE’s Response dated 11 October 2018 to CCCS’s RFI dated 4 October 2018; Annex 14 Kopitiam’s Response dated 11 October 2018 to CCCS’s RFI dated 4 October 2018.

16. The methods of sourcing for master lessors²⁵, the tenancy periods of the tenancy agreement (“Master Lessor Agreement”) for the different formats of Street Stall premises²⁶, the rent structure payable by the master lessor (either by way of monthly fixed rent, or rent with a fixed and variable component)²⁷, the negotiation on price and other conditions of a lease (e.g., the variety of food offering, operation hours, occupancy of stall, cleanliness, number of stalls a master lessor is entitled to operate²⁸), differ across the Landlords.²⁹
17. In addition, master lessors may outsource the operation of their coffee shops and food courts to managing agents.³⁰

Interactions between Master Lessors and Food Vendors

18. NE submitted that as the master lessor, operators like Foodfare and Kopitiam will manage hawker centres, coffee shops and food courts and lease out food stalls to food vendors who will operate the individual stalls.³¹ Other than leasing to individual food vendors, NE submitted that the leasing of food stalls to other competing Street Stall operators for the sale of cooked food is a common industry practice.³²
19. In sourcing for food vendors, master lessors engage in tender processes, stall application exercises, applications from interested food vendors as well as marketing and outreach efforts to gather interested food vendors.³³ Food vendors are then selected based on a variety of factors including rental fees, food quality, selling price, track record, the degree of complementarity of the food offerings with other stalls, and the number of applications for individual stalls.³⁴

²⁵ Response to paragraph 3 of CCCS’s RFI to Landlords dated 5 October 2018; Paragraph 9 of Notes of Meeting with [§] dated 8 October 2018; Paragraph 6.1 of NE’s Response dated 11 October 2018 to CCCS’s RFI dated 4 October 2018; Paragraph 3.1 of Kopitiam’s Response dated 11 October 2018 to CCCS’s RFI dated 4 October 2018.

²⁶ Annex 3 of NE’s Response dated 11 October 2018 to CCCS’s RFI dated 4 October 2018; Annex 14 Kopitiam’s Response dated 11 October 2018 to CCCS’s RFI dated 4 October 2018; Response to paragraph 6 of CCCS’s RFI to Landlords dated 5 October 2018.

²⁷ Response to paragraph 7 of CCCS’s RFI to Landlords dated 5 October 2018.

²⁸ Paragraph 10.3 of NE’s Response dated 23 October 2018 to CCCS’s RFI dated 16 October 2018; Response to paragraph 10 of CCCS’s RFI to Landlords dated 5 October 2018.

²⁹ Paragraph 2 of NE’s Response dated 23 November 2018 to CCCS’s RFI dated 21 November 2018.

³⁰ Paragraph 24.15 of Form M1.

³¹ Paragraph 18.2 of Form M1.

³² Paragraph 24.19 of Form M1.

³³ Paragraph 18.2 of Form M1; Paragraph 14.1.1 of NE’s Response dated 11 October 2018 to CCCS’s RFI dated 4 October 2018; Paragraph 8.1 of Kopitiam’s Response dated 11 Oct to CCCS’s RFI dated 4 Oct 2018.

³⁴ Paragraph 18.2 of Form M1.

20. Master lessors decide on (i) the tenancy period which can be for several years and may be renewable³⁵; (ii) the structure of rent which differs across the different formats of Street Stall premises³⁶; and (iii) the charges for ancillary support services including cleaning and dish-washing services, and the rental of point of sales systems.³⁷

Interaction between Food Vendors and Consumers

21. Other than the food vendors selling cooked food to consumers, the master lessor, like Foodfare and Kopitiam³⁸, will typically directly operate certain stalls, such as drinks, fruits and desserts stalls, in the Street Stalls that it operates.³⁹

Factory and Food Vendors

22. Some food vendors have central kitchens/factories that supply the food vendors with, for example, ingredients or cooked food prepared for sale.⁴⁰

(c) Regulatory oversight of Street Stall premises in Singapore

Licensing and certification requirements

23. NE submitted that for operators to set up Street Stall premises and other quick-service eateries (collectively, “Quick-service Eateries”), and for food vendors to operate food stalls, they are required to obtain the necessary licences and certification, including food shop licences, food stall licences, basic food hygiene training, food hygiene officer certificates, planning permission, liquor licences, halal certification, food processing licences, tobacco licences and renovation-related permits.⁴¹

³⁵ Paragraph 15.6 of NE’s Response dated 11 October 2018 to CCCS’s RFI dated 4 October 2018; Paragraph 9.4 of Kopitiam’s Response dated 11 October 2018 to CCCS’s RFI dated 4 October 2018.

³⁶ Paragraph 15 of NE’s Response dated 11 October 2018 to CCCS’s RFI dated 4 October 2018; Paragraph 9.1 of Kopitiam’s Response dated 11 October 2018 to CCCS’s RFI dated 4 October 2018; Response to paragraph 7 of CCCS’s RFI to Landlords dated 5 October 2018.

³⁷ Paragraph 18.3 of Form M1.

³⁸ Paragraph 4 and Annex 4 of NE’s Response dated 23 November 2018 to CCCS’s RFI dated 21 November 2018.

³⁹ Paragraph 18.3 of Form M1; Foodfare currently directly operates food stalls in its food courts and hawker centres, which primarily sell drinks, fruits and dessert. Kopitiam currently directly operates food stalls in its hawker centre, coffee shops and food courts, which sell drinks, fruits, desserts and dim sum.

⁴⁰ Paragraphs 15.4 and 36.1 of Form M1; Annex 1 of NE’s Response dated 11 October 2018 to CCCS’s RFI dated 4 October 2018.

⁴¹ Paragraph 18.8 of Form M1.

Regulatory oversight by NEA

24. For EHCs in general, NEA engages professional valuers to assess the market rent payable by food vendors. Food vendors pay for ancillary support services including Service and Conservancy Charges (“S&CC”) and table-cleaning fee. In some hawker centres, they pay centralised dishwashing fee.⁴²
25. The 7 NHCs are managed by socially-conscious operators appointed by NEA.⁴³ NEA exercises oversight over the socially-conscious operators of all NHCs by stipulating requirements in the Master Lessor Agreement in relation to how master lessors are required to manage various aspects of the NHCs, including the stalls’ rental charges, fees for ancillary support services, price and variety of food offerings by food vendors, etc. All Master Lessor Agreements with NEA are up for renewal after the tenancy term.⁴⁴ Further, in November 2018, NEA announced that it has reviewed some key contractual terms between the operators and food vendors to better safeguard the well-being and interest of the food vendors. This will enhance NEA’s oversight regarding the ways that the NHCs are run.⁴⁵

Regulatory oversight by HDB

26. HDB typically leases out its eating houses by way of open tenders. Starting from September 2018, HDB had revised the evaluation criteria to include price and quality considerations, which take into account the operators’ business proposals and consider “quality factors” such as productive concept, track record, operations and management, business proposal which includes affordability of food, participation in the Health Promotion Board’s Healthier Dining Programme, and, community-centric proposals.⁴⁶

Urban Redevelopment Authority (“URA”)

27. URA reviews land use zoning in Singapore as part of the ongoing review of the Master Plan. There are certain areas which are zoned as “Commercial”, where a range of commercial uses such as shops and eating establishments are

⁴² Paragraph 4 of NEA’s Response dated 19 October 2018 to CCCS’s RFI dated 5 October 2018 and 9 October 2018.

⁴³ These operators are NTUC Foodfare, Fei Siong Social Enterprise, Timbre+ Hawkers by Timbre Group, Hawker Management by Koufu and OTMH by Kopitiam.

⁴⁴ Master Lessor Agreement between NEA and Foodfare for NHCs.

⁴⁵ Media Release by NEA on “Update On Review Of Contractual Terms Between Socially-Conscious Enterprises And Hawkers” dated 9 November 2018.

⁴⁶ Paragraph 1 of HDB’s Response dated 12 October 2018 to CCCS’s RFI dated 5 October 2018.

permissible. The supply of new hawker centres is planned by NEA, and URA works with NEA to identify suitable sites to serve their identified catchment. HDB regulates and manages the eating establishments in their Town Centres. For privately owned sites zoned as “Commercial” or “Commercial/Residential” which are developed as shopping malls and work places, the eating establishments (e.g. café, restaurant and food court etc.) set up by private business operators are generally allowed.⁴⁷

AVA

28. AVA licenses food processing establishments where food is manufactured, processed, prepared or packed for the purpose of distribution to wholesalers and retailers.⁴⁸ There is no regulatory restriction on food processing establishments selling their products to third parties⁴⁹ and the number of licences available for setting up food processing establishments for food items such as dim sums and desserts⁵⁰.

V. COMPETITION ISSUES

29. NE submitted that NE and Kopitiam overlap in (i) the sale of cooked food in Quick-service Eateries to individual consumers, and (ii) the rental of stalls located within Street Stall premises to food vendors.⁵¹
30. CCCS agrees with NE’s submission that the Proposed Transaction will have negligible impact on competition in the market for the manufacturing of food items and the supply of commercial property for retail rental. In terms of manufacturing of food items in Singapore, there are at least 50 central kitchens that prepare ingredients and/or ready-cooked food, and at least 10 food factories that produce ready-to-serve-meals.⁵² In terms of the supply of retail space in Singapore, there are many suppliers, including 10 listed retail REITs that lease retail spaces in commercial properties.⁵³
31. Accordingly, CCCS considered whether the Proposed Transaction will lead to coordinated, non-coordinated and vertical effects that would substantially

⁴⁷ URA’s Response dated 19 October 2018 to CCCS’s RFI dated 10 October 2018; URA’s Response dated 17 December 2018.

⁴⁸ Retrieved from <https://www.ava.gov.sg/explore-by-sections/food/food-manufacturing-storage-innovation/overview-of-food-establishments-in-singapore>

⁴⁹ Paragraph 1(b) of AVA’s Response dated 29 October 2018 to CCCS’s RFI dated 10 October 2018.

⁵⁰ Paragraph 1(e) of AVA’s Response dated 29 October 2018 to CCCS’s RFI dated 10 October 2018.

⁵¹ Paragraph 20.1 of Form M1.

⁵² Directory of Food Factories by Singapore Agri-Food Business Directory.

⁵³ Market information by SGX retrieved from <https://www.sgx.com/wps/portal/sgxweb/home/marketinfo/securities/reits>

lessen competition in relation to the sale of cooked food to consumers and the rental of stalls to food vendors.

VI. COUNTERFACTUAL

32. CCCS agrees with NE's submission that the relevant counterfactual for the purposes of CCCS's competition assessment is the prevailing conditions of competition, i.e. where NE and Kopitiam are competitors in the sale of cooked food to consumers and the rental of stalls in Street Stall premises to food vendors.

VII. RELEVANT MARKETS

(a) Product market

- (i) The sale of cooked food in Quick-service Eateries to individual consumers

33. **Types of food items.** The Parties overlap primarily in terms of (i) sale of drinks, fruits, desserts and/or dim sum that are generally sold from a single stall unit; and (ii) sale of hot meals. For the latter, the dishes/cuisines offered by the Parties are limited. In terms of the sale of drinks, fruits, desserts and/or dim sum that are generally sold from a single stall unit, the Parties almost exclusively operate such a stall within the premises they operate. The Parties submitted that such stalls are considered as part of the offerings which provides individual consumers the ability to purchase a complementary item (i.e. drinks, fruits, desserts and/or dim sum) to complement their meals. This, in turn, would increase the attractiveness of the Parties' respectively-operated Street Stall premises to prospective tenants.⁵⁴

34. CCCS agrees that the Parties do not directly compete in the sales of drinks, fruits, desserts and/or dim sum as the stalls involved are not operated as a viable standalone business; rather they are operated as a complementary business to improve the attractiveness of the Parties' premises as part of their stall rental business. As such, the sale of drinks, fruits, desserts and/or dim sum does not form a standalone relevant product market.

35. **Types of eateries for sales of hot meals.** In addition, the Parties also directly operate stalls that sell hot meals. Third parties indicated that although there are some differences in characteristics across the three formats of Street Stalls (i.e. hawker centres, coffee shops and food courts), consumers view them as

⁵⁴ Paragraph 6 of NE's Response dated 23 November 2018 to CCCS's RFI dated 21 November 2018.

substitutes given the similarity in food variety and price point.⁵⁵ All the three formats of Street Stalls offer multiple food stalls with a variety of low-cost hot meals ranging from S\$3 to S\$8 a meal.⁵⁶

36. However, feedback from third parties indicated that cafes, fast food restaurants and specialty restaurants do not have the same characteristics⁵⁷, and are therefore not substitutes to Street Stall premises⁵⁸. Further, feedback also suggested that the frequency of visits differ, i.e., it is unlikely for consumers to consume fast food on a daily basis, unlike the hot meals sold at Street Stalls.⁵⁹
 37. From a supply-side perspective, operators of other Quick-service Eateries may not be able to quickly enter the market to supply hot meals at Street Stalls as their operating models and cuisines are generally different. They are also unlikely to be able to convert their existing premises into Street Stalls. Fast food restaurants and cafes are typically operated out of designated premises at town centres and neighbourhood centres while the supply of new eating houses is kept separate.⁶⁰
 38. While CCCS recognises that there may be some constraint on the merger parties posed by other Quick-service Eateries, CCCS has not received sufficient evidence to widen the product market from Street Stalls to include other Quick-service Eateries. Accordingly, a conservative approach is adopted to exclude other Quick-service Eateries in CCCS's primary filter to identify local markets where competition concerns may arise from the Proposed Transaction. CCCS therefore concludes that the relevant product market is the sale of hot meals in Street Stall premises to consumers.
- (ii) The rental of stalls located within Street Stall premises to food vendors
39. Feedback from third parties supports NE's submission that food vendors are generally indifferent to offering cooked food for sale at hawker centres, coffee

⁵⁵ Paragraph 3 of [X]'s File Note of Teleconference Call dated 29 October 2018.

⁵⁶ Paragraph 4 of [X]'s File Note of Teleconference Call dated 24 October 2018; Paragraph 6 of [X]'s Response dated 22 October 2018 to CCCS's RFI dated 18 October 2018.

⁵⁷ [X]'s Response dated 12 October 2018 to Question 3 of CCCS's RFI dated 5 October 2018; Paragraph 7 of [X]'s Notes of Meeting dated 8 October 2018.

⁵⁸ Only [X] shared a similar view with NE that fast food chains compete with Street Stalls. Paragraph 2 of [X]'s File note of Teleconference Call dated 16 October 2018.

⁵⁹ Report by Euromonitor International on "Fast Food in Singapore" dated April 2018; [X]'s Response dated 12 October 2018 to Question 3 of CCCS's RFI dated 5 October 2018.

⁶⁰ [X]'s Response dated 12 October 2018 to Question 3 of CCCS's RFI dated 5 October 2018.

shops and food courts, as they compete for the same consumer segment.⁶¹ Food vendors generally select the location and format of Street Stall premises based on consumer traffic and whether the rental terms are competitive.⁶²

40. However, CCCS also notes from the feedback received, that there may be some differences in operation costs (including rental fees and ancillary fees) and labour considerations when food vendors consider hawker centres vis-à-vis coffee shops and food courts.⁶³
41. On the supply-side, while operators of coffee shops and food courts may bid/buy premises to operate the other format of Street Stalls, it is not possible for existing operators to enter the market and supply stalls in NHCs readily as the supply is controlled by NEA.⁶⁴
42. In view of both demand-side and supply-side considerations, CCCS considers it necessary to define a separate product market for the rental of stalls in hawker centres vis-à-vis coffee shops and food courts. However, there is no need to further segment the market for hawker centres into NHCs and EHCs, given that food vendors are able to readily switch between both types of hawker centres. NEA also controls the supply and terms of both types of hawker centres and the selection of their operators. CCCS therefore concludes that relevant product markets are the rental of stalls in (i) hawker centres, and (ii) coffee shops and food courts, to food vendors.

(b) Geographic market

(i) The sale of cooked food in Quick-service Eateries to individual consumers

43. CCCS considers the willingness of individual consumers to travel to purchase cooked food as a starting point. Survey evidence and planning guidance for land use in Singapore supplied by HDB and NEA indicate that consumers are generally only willing to travel short distances for the purpose of food consumption on an average day. Based on information available to CCCS, CCCS is of the view that NE's proposed radius of 500 metres for a catchment

⁶¹ Paragraph 7.2 of NE's Response dated 23 October 2018 to CCCS's RFI dated 16 October 2018; Paragraph 10 of [REDACTED]'s File note of Teleconference Call dated 24 October 2018; Paragraph 2 of [REDACTED]'s File note of Teleconference Call dated 2 November 2018.

⁶² Paragraph 7.3 of NE's Response dated 23 October 2018 to CCCS's RFI dated 16 October 2018.

⁶³ Paragraphs 9 and 10 of [REDACTED]'s File Note of Teleconference Call dated 24 October 2018. Under NEA's National Hawkers Policy, food vendors in hawker centres are not allowed to hire foreign workers (unlike that in coffee shops and food courts). Further, only individuals are allowed to rent stalls in hawker centres (i.e. body corporates are not allowed to do so) and the licence holders must operate the stalls.

⁶⁴ [REDACTED]'s Response dated 19 October 2018 to Questions 25 and 26(ii) of CCCS's RFIs dated 5 and 9 October 2018.

area which consumers are willing to travel for food consumption is reasonable from the demand-side perspective. More specifically, a catchment area is identified when both Parties are within 500 metres from each other, and the size of the catchment area is defined as an area of 500 metres radius from one of the Party's premise (where the Parties overlap in).

44. From a supply-side perspective, it may be conceivable that food vendors outside of a 500 metres catchment area may enter the market. However, apart from HDB, and NEA which requires NHC operators to reference food prices in similar eating establishments in the vicinity, CCCS has not received information that suggests the geographic market should be widened significantly.
45. Accordingly, CCCS concludes that the relevant geographic market would be defined as catchment areas within 500 metres radius from the merger parties' premises.

(ii) The rental of stalls located within Street Stall premises to food vendors

46. Feedback of third parties is consistent with NE's claims that food vendors are able to choose between competing Street Stall premises across the different geographic areas in Singapore, considering various factors including the business prospects at the current location, the rental terms/conditions and customer traffic.⁶⁵
47. CCCS considers that food vendors (unlike consumers) would be willing to consider stall options further away when relocating should they offer better business prospects as this would translate into a better livelihood. This is consistent with the feedback that food vendors would consider relocating to a different area as long as there is a business case.⁶⁶
48. However, one third party suggested that some food vendors might be deterred to relocate to further areas within Singapore. For instance, food vendors might be unlikely to move to areas that are located far away from their homes given the traveling time and costs that would be incurred. Food vendors in hawker centres might have also fostered relationships with residents in their areas, and would be unwilling to lose these established customer bases should they relocate.⁶⁷

⁶⁵ Paragraph 7 of [X]'s File note of Teleconference Call dated 24 October 2018; Paragraph 6 of [X]'s File note of Teleconference Call dated 2 November 2018.

⁶⁶ Paragraph 6 of [X]'s File note of Teleconference Call dated 2 November 2018.

⁶⁷ Paragraph 8 of [X]'s File note of Teleconference Call dated 24 October 2018.

49. In the case of hawker centres, using 500 metres catchment areas would result in no overlapping hawker centres between the Parties and therefore no further assessment will be required. However, CCCS has adopted a cautious approach by assessing any potential competition concerns that may arise in this market should all hawker centres be considered on an island-wide basis.
50. Given that the merging parties have not provided any supporting evidence, CCCS has taken a cautious approach by considering the geographic scope for the rental of stalls in coffee shops and food courts to be catchment areas of between 500 metres to 1 kilometre radius in view of the likelihood that food vendors would be willing to consider a wider geographic region and the feedback that CCCS has received.

(c) CCCS's conclusion on market definition

51. In view of the considerations above, CCCS has considered the impact of the Proposed Transaction in the following relevant markets:
 - (a) The sale of hot meals to consumers in Street Stall premises, using catchment areas of 500 metres radius (from the Parties' premises);
 - (b) The rental of stalls in hawker centres within Singapore to food vendors; and
 - (c) The rental of stalls in coffee shops and food courts to food vendors, using catchment areas of 500 metres to 1 kilometre radius (from the Parties' premises).

VIII. MARKET STRUCTURE

Market shares and market concentration

The sale of hot meals in Street Stall premises to consumers

52. CCCS notes that while NE overlaps with Kopitiam in the sale of hot meals, the overlap in the sale of hot meals is limited as the merger parties do not operate all the stalls within their Street Stall premises.
53. In fact, CCCS notes that the Parties directly sell hot meals in a very limited number of stalls located mainly within the Street Stall premises they operate. In each of these premises, the merged entity will operate 1 stall compared to the large number of competing stalls. This indicates that the merged entity will face sufficient competitive constraints in the sale of hot meals without even considering the number of competing stalls in other premises within the 500

metres catchment areas. While there is 1 premise where Foodfare operates all the stalls, there is no Kopitiam premise located within 500 metres and therefore this is not a catchment area where the Parties overlap, i.e., there is no competitive impact arising from the Proposed Transaction.

54. CCCS has taken a precautionary approach by including the sales of drinks into the relevant product market (together with the sales of hot meals) to check for any potential competition concern. The number of stalls within each catchment area is used to assess the extent of the Parties' sale of cooked food operations vis-à-vis their competitors. CCCS finds that the combined market shares of the Parties in all the catchment areas were well below 20%. Accordingly, this is below CCCS's indicative thresholds for a merger situation⁶⁸ that may raise competition concerns. Thus, CCCS concludes that there is no evidence of a substantial lessening of competition ("SLC") as a result of the Proposed Transaction.
55. Further, CCCS notes that majority of consumers are not limited to a specific catchment area as they commute daily for various purposes such as for work, for school etc. This implies that the cooked food substitutes available to them depends on their location at any point in time, which might extend beyond those found in the 500 metres catchment areas. Given that no competition concern is likely to arise in this market, CCCS did not assess this market further.

The rental of stalls located within Street Stall premises to food vendors

Hawker centres

56. Based on the 500 metres catchment area methodology, there are no overlapping hawker centres between the merger parties, i.e., the 3 NHCs operated by and the 6 EHCs managed by Foodfare are not within 500 metres of the NHC operated by Kopitiam. Given CCCS's view that a distinction need not be drawn between EHCs and NHCs, and the Parties only overlap in the operation of NHCs, the merged entity would only operate a total of 4 NHCs out of a total of 114 hawker centres in Singapore. Even considering that the merged entity would operate 4 out of the 7 NHCs NHC operators are subject to regulatory oversight by NEA in relation to how they are to manage the hawker centres and the terms imposed on the food vendors. Further, NEA's

⁶⁸ Paragraph 5.15 of *CCCS Merger Guidelines*. CCCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless the merged entity has a market share of 40% or more, or the merged entity has a market share of between 20% to 40% and the post-merger combined market shares of the 3 largest firms ("CR3") is 70% or more.

regulatory oversight of the NHC operators will be enhanced with the review of key contractual terms between operators and food vendors to better safeguard the well-being and interest of the food vendors, as announced by NEA in November 2018.⁶⁹ Therefore, there is little prospect of an SLC occurring in the market for the rental of stalls in hawker centres. As such, CCCS did not assess this market further.

Coffee shops and food courts

57. CCCS has adopted a methodology similar to that used in analysing the market for the sale of hot meals to consumers to identify areas of concern for the rental of stalls in coffee shops and food courts to food vendors. The key differences are (i) CCCS has also assessed the number of independent competitors within each catchment area post-merger; and (ii) all stalls within their own premises that the Parties do not directly operate (i.e. leased out to food vendors), are included when computing the Parties' market shares as these stalls are managed by the Parties.
58. CCCS's research found that overseas competition authorities often use a count of the number of independent competitors in a "local market" to measure market concentration.⁷⁰ However, the overseas cases do not provide a clear threshold below which *prima facie* competition concerns would arise. For example, some cases have applied a "4 to 3" threshold⁷¹, while others applied a "5 to 4" threshold⁷².
59. CCCS has applied NE's proposed "4 to 3" independent competitors threshold i.e. overlapping catchment areas are potentially problematic if the Proposed Transaction reduces the number of independent competitors from 4 to 3, to identify areas of potential concern at the first instance. However, given the lack of guidance on the appropriate threshold, CCCS has also undertaken a

⁶⁹ Media Release by NEA on "Update On Review Of Contractual Terms Between Socially-Conscious Enterprises And Hawkers" dated 9 November 2018.

⁷⁰ J Sainbury Plc/Asda Group Ltd, CMA decision of 27 September 2018, William Hill/Stanley betting business merger enquiry, OFT decision of 15 Aug 2005; Competition Commission's ("CC") Report on the acquisition by Somerfield plc of 115 stores from Wm Morrison Supermarkets plc dated September 2005; Caltex Australia Limited - proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd, ACCC decision of 2 December 2009.

⁷¹ Examples of cases that used the threshold of '4 to 3' includes J Sainbury Plc/Asda Group Ltd, CMA decision of 27 September 2018; Cineworld/City Screen Limited, OFT decision of 5 June 2013.

⁷² Examples of cases that used the threshold of '5 to 4' includes Saint-Gobain/Build Center merger enquiry, OFT decision of 8 February 2012; Virgin Active Group Limited/Holmes Place merger enquiry, OFT decision of 27 October 2006.

more granular assessment by using stall count⁷³ for catchment areas that have been identified as raising competition concerns using the “4 to 3” independent competitors threshold. The stall count analysis was carried out using both 500 metres and 1 kilometre catchment areas to take into account the feedback that food vendors are likely to consider a wider geographic region.

60. CCCS found that, with the exception of 2 catchment areas, the combined market shares of the Parties in the remaining catchment areas range between 30% to 40%⁷⁴, which fall below CCCS’s indicative thresholds of a merger situation that may raise competition concerns.⁷⁵ While the combined market shares of the Parties in the 2 catchment areas exceed CCCS’s indicative thresholds of a merger situation that may raise competition concerns, CCCS notes that the *pre-merger* market shares of one of the Parties already exceed the indicative thresholds in both catchment areas. Further, these 2 catchment areas have at least 5 other established competing operators remaining within the 1 kilometre catchment area post-merger (which exceeds the threshold of 4 independent competitors).

Barriers to entry and expansion

61. CCCS notes that there is regular review of land use planning in Singapore by the relevant government agencies, and there might be some areas where more commercial uses can be allowed, such as shops, offices, eating establishments (including coffee shops and food courts) etc. There is also an increasing trend of shopping mall operators allocating more space within their malls to food and beverage retail in response to changing consumer needs for experience and lifestyle.⁷⁶ Further, there are instances where food vendors, such as Chang Cheng Food Paradise and Yu Kee Group, have expanded their businesses to become master lessors of coffee shops and food courts.⁷⁷
62. Accordingly, CCCS is of the view that the barriers to entry and expansion for operators of coffee shops and food courts are likely to be low.

⁷³ The Parties’ stall count refers to the total number of stalls within a catchment area, that they are able to lease to food vendors.

⁷⁴ CR3 is less than 70% for each of the remaining catchment areas.

⁷⁵ Paragraph 5.15 of *CCCS Merger Guidelines*. CCCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless the merged entity has a market share of 40% or more, or the merged entity has a market share of between 20% to 40% and the post-merger CR3 is 70% or more.

⁷⁶ Report by Euromonitor International on “Consumer Foodservice by Location in Singapore” dated April 2018.

⁷⁷ Paragraph 7 of [X]’s File note of Teleconference Call dated 24 October 2018; Paragraph 1 of [X]’s Response dated 15 November 2018 to CCCS’s RFI dated 24 October 2018; Excerpt by Yu Kee Group on “Our Milestones” retrieved from <https://yukeegroup.com.sg/about-us>; Excerpt by Kimly Group on “Our Story” retrieved from <https://kimlygroup.sg/our-story/>

Countervailing buyer power

63. While CCCS has taken a cautious approach in defining the geographic market narrowly at 500 metres at the first instance, CCCS has noted that food vendors are likely to consider locations further away. Correspondingly, this means that food vendors have available options (in terms of operators and locations of coffee shops and food courts) to switch to.
64. Further, with a significant portion of food vendors in coffee shops and food courts that are body corporates, their bargaining power is likely to be higher as master lessors will seek to keep the branding of the popular food vendors. In addition, CCCS notes that food vendors could potentially become master lessors of Street Stall premises.⁷⁸
65. CCCS also note that the majority of coffee shops and food court operators are master lessors, which means that they have the incentive to lease out their stalls quickly so as to collect rent from their food vendors in order to pay their respective landlords. Further, the vibrancy and attractiveness of the premises to consumers is in part dependent on the number of stalls being operational. This will in turn affect the level of business at the premises, and may affect the rent that operators are able to collect.
66. CCCS therefore considers that food vendors (particularly the body corporates) have some level of bargaining power vis-à-vis the coffee shop and food court operators.

IX. COMPETITION ASSESSMENT

CCCS's conclusion on anti-competitive effects

Non-coordinated effects

67. For the purpose of competition assessment, CCCS has used a conservative assumption that NE would charge on a commercial basis subject to competitive constraints from the competitors. If there is no SLC under this stricter assumption in the market for rental of stalls in coffee shops and food courts to food vendors within Singapore there will not be an SLC if this assumption is relaxed.

⁷⁸ Paragraph 7 of [REDACTED]'s File note of Teleconference Call dated 24 October 2018.

68. There are distinct landlords for the three formats of Street Stalls.⁷⁹ Accordingly, the Street Stalls of a specific format that NE gains from Kopitiam will not accord it additional market power with the landlord for Street Stalls of another format. Third party feedback also revealed that landlords do not accord preferential treatment to a particular operator even if it is already a tenant in one or more of the landlord's leased spaces.⁸⁰
69. Third party feedback also indicated that food vendors are generally more concerned about the human traffic, prices of food that can be charged and the rental level. Thus, operators are more likely to compete on the number of premises and stalls that can be made available to food vendors rather than branding. As such, the number of premises and stalls is a suitable indicator in examining whether the Parties were close competitors before the Proposed Transaction. In this regard, CCCS notes that based on the number of premises and stalls, there are many close competitors to Foodfare (such as Koufu, Food Junction, Food Republic, Kimly and Broadway, amongst others), which have a strong presence in Singapore's Street Stall landscape. CCCS found that the Parties are not each other's closest competitor and the Proposed Transaction will not therefore remove Foodfare's closest competitor for the rental of stalls in coffee shops and food courts to food vendors within Singapore.
70. Further, the barriers to entry and expansion are low, and food vendors (especially body corporates) are able to exert some countervailing buyer power. CCCS therefore considers it unlikely for the merged entity to be able to unilaterally impose restrictions on landlords in the leasing of Street Stall premises to competing Street Stall operators post-merger, and/or raise rental fees/ancillary fees (and/or impose unreasonable terms and conditions) on its food vendors in coffee shops and food courts.

Coordinated effects

71. CCCS considers that the characteristics of the market do not facilitate coordination between operators of coffee shops and food courts. This is due to the large number of alternative coffee shop operators and food court operators⁸¹ which makes it difficult for operators to align their behavior⁸²; the low degree of transparency on pricing which makes it difficult to maintain

⁷⁹ NEA manages hawker centres. HDB and private owners (typically individuals or individual small companies) are the landlords of coffee shops. Shopping mall operators are the landlords of food courts.

⁸⁰ Response to paragraph 5 of CCCS's RFI to Landlords dated 5 October 2018; Paragraph 3 of [X]s File Note of Teleconference Call dated 24 October 2018.

⁸¹ [X]s Response dated 19 October 2018 to Question 1 of CCCS's RFI dated 5 October 2018.

⁸² Paragraph 35.4.1 of Form M1.

coordinated behavior; as well as the low barriers to entry and expansion which makes it challenging to sustain coordinated behavior.

Vertical effects

72. CCCS considers it unlikely for the merged entity to restrict/refuse the lease of stall space to competing master lessors in order to foreclose them from the market for sale of hot meals, given that competing master lessors could self-supply from their own premises. Further, these master lessors also have the option of leasing stall space from the multitude of alternative master lessors.⁸³
73. Given that the merged entity owns an insignificant number of properties in the market, CCCS considers it unlikely for the merged entity to restrict the leasing of commercial properties to other master lessors to prevent them from competing effectively in relation to the sale of hot meals and the rental of stalls in the Street Stall premises.
74. Finally, CCCS notes feedback from third parties that it would be difficult for NE to disrupt the long-standing relationships between food vendors and their preferred suppliers by mandating purchase of food supplies and raw materials through its central kitchens and supply chain networks.⁸⁴ NE does not have plans to mandate food vendors to procure their food supplies from NE on an exclusive basis, following the completion of the Proposed Transaction.⁸⁵

X. EFFICIENCIES

75. NE submitted that following the Proposed Transaction, the merged entity has the potential to (i) realise cost synergies through economies of scale joint procurement, lower renovation costs, cross pollination of tenants and adoption of point-of-sales system; (ii) optimise of food mix offerings; and (iii) realise operational efficiencies (e.g. reduction in back office/cleaning staff headcount, streamlining upstream operations through a central kitchen).⁸⁶
76. Given that CCCS has not found an SLC arising from the Proposed Transaction in the relevant markets set out in paragraph 51, it is not necessary to make an assessment on the claimed efficiencies by NE.

XI. ANCILLARY RESTRAINTS

⁸³ Paragraph 36.5 of Form M1.

⁸⁴ Paragraph 5 of [REDACTED]'s File note of Teleconference Call dated 15 October 2018.

⁸⁵ Paragraph 3 of NE's Response dated 14 December 2018 to CCCS's RFI dated 13 December 2018.

⁸⁶ Paragraph 42.1 of Form M1.

77. The Parties submitted two ancillary restraints for CCCS's consideration: (i) Non-Compete Restriction; and (ii) Non-Solicitation Restriction.
78. CCCS is of the view that the duration of the Non-Compete Restriction is a reasonable time period for NE to receive the full benefit of any goodwill and/or know-how acquired with any tangible assets. CCCS is also of the view that the geographic scope and persons subject to the Non-Compete Restriction is reasonable. CCCS accepts Non-Compete Restriction as an ancillary restriction to the extent that it applies to business currently conducted by Kopitiam and its subsidiaries in Singapore.⁸⁷
79. CCCS's assessment is that the Non-Solicitation Restriction is an ancillary restriction.

XII. CONCLUSION

80. For the reasons above and based on information available, CCCS assesses that the Proposed Transaction is unlikely to lead to an SLC, and accordingly, will not infringe the section 54 prohibition if carried into effect. CCCS has issued a clearance decision in relation to the Proposed Transaction. 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.



Toh Han Li
Chief Executive
Competition and Consumer Commission of Singapore

⁸⁷ Paragraph 9.12 of *CCCS Merger Guidelines*.