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

**Grounds of Decision issued by the Competition Commission of Singapore
In relation to the notification for decision of the proposed acquisition by
CommScope, Inc. of Argus Technologies (Australia) Pty Limited and Argus
Technologies (International) Ltd pursuant to section 57 of the Competition
Act**

31 August 2011

Case number: CCS 400/006/11

Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [X]

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I. Introduction

The notification

1. On 29 July 2011, CommScope, Inc. (“CommScope”) and Argus Technologies (Australia) Pty Limited and its subsidiaries, and Argus Technologies (International Limited) and its subsidiaries (collectively “the Argus Group”) filed a joint notification pursuant to section 57 of the Competition Act (Cap. 50B) (the “Act”) for a decision by the Competition Commission of Singapore (“CCS”) as to whether the proposed acquisition, by CommScope of 100% of the shares in the Argus Group (the “Transaction”), will infringe the section 54 prohibition of the Act. CommScope and the Argus Group are collectively referred to as “the Parties”.
2. In the context of this Transaction, CCS contacted end customers for base station antennas (BSAs) based in Singapore, namely the three mobile telecommunications operators (MobileOne, SingTel, and Starhub), as well as eight intermediaries who supply mobile telecommunications equipment and services in Singapore. CCS also contacted six competitors of the Parties. Approximately half of the companies contacted gave substantive responses to our questions. CCS also met with the Infocomm Development Authority (“IDA”) in order to discuss the background to the Transaction and the regulatory regime for telecommunications equipment in Singapore.
3. At the end of the consultation process and after evaluating all the evidence, CCS concludes that the Transaction, if carried into effect, will not infringe section 54 of the Act.

II. The Parties

(a) CommScope

4. CommScope is a US-based telecommunications network infrastructure company owned by Carlyle-CommScope Holdings, LP, a Delaware limited partnership, which is in turn controlled by funds affiliated with the Carlyle Group, a private equity investment company¹. CommScope provides infrastructure solutions for wireless, business enterprise, residential and commercial broadband networks. In Singapore, CommScope has a regional sales and a regional customer technical and administrative support office. CommScope also has two legal entities that are incorporated in Singapore:

¹ Paragraph 4.1 of Form M1.

CommScope Solutions Singapore Pte. Ltd, which operates sales and distribution for CommScope's enterprise business; and Andrew Telecommunications Systems (Singapore) Pte. Ltd, which operates sales and distribution for CommScope's wireless business in Singapore².

5. CommScope's enterprise business consists mainly of structured cabling systems for business enterprise applications and connectivity solutions for wired and wireless networks within organizations. CommScope's wireless business consists of sales of BSAs, RF (radio frequency) products, network products such as power amplifiers, filters, location-based systems, network optimization analysis systems and products that extend and enhance the coverage of wireless networks³. CommScope markets its BSAs under the Andrew brand.⁴
6. Global turnover of CommScope was approximately [X] for the financial year ending 31 December 2010. Turnover in Singapore for the same period was approximately [X]⁵.

(b) The Argus Group

7. The Argus Group was founded in 1994 as an Australian-based group of companies that manufactures and sells BSAs, tower mounted amplifiers and other related components for wireless telecommunications networks. The Argus Group is headquartered in Bella Vista, New South Wales, Australia⁶. In Singapore, the principal activity of the Argus Group is the sale of BSAs. The Argus Group does not have a local presence in Singapore. Sales to customers in Singapore are handled by staff based in China and Australia⁷ through a local distributor PetraCarbon Pte. Ltd⁸. Argus markets its BSAs under the Argus brand.
8. Global turnover of the Argus Group was approximately [X] in the last financial year. Turnover in Singapore was approximately [X]⁹ in the last financial year.

² Paragraph 2.2 of Form M1.

³ Paragraph 3.1 of Form M1.

⁴ www.commscope.com/andrew/eng/product/antennas/bsa/index.html.

⁵ Paragraph 3.1 of Form M1.

⁶ Paragraph 2.2 of Form M1.

⁷ Argus Technologies (International) Ltd.

⁸ Paragraph 6.1 of Form M1.

⁹ Paragraph 3.1 of Form M1.

III. The Transaction

9. The Transaction is the acquisition of sole control by CommScope of 100% of the shares in the Argus Group entities¹⁰. [X<]
10. Based on the Parties' submission that CommScope will acquire all of the shares of Argus Group post-Transaction, the Transaction constitutes a merger pursuant to s 54(2)(b) of the Act¹¹.

IV. Competition Issues

11. The Parties have submitted that their activities in Singapore overlap in the sale of BSAs for wireless telecommunications. Although CommScope supplies various types of telecommunication network equipment, the Argus Group's business in Singapore mainly consists of the supply of BSAs for wireless telecommunication networks¹². The Parties therefore submitted that other than BSAs, Argus does not supply any other products which potentially compete with CommScope's products¹³.
12. As both Parties have tower mounted amplifiers (TMA) in their product portfolios, CCS also considered whether parties were actual or potential competitors for the supply of TMAs in Singapore. TMAs are used to amplify the telecommunications signal so as to improve the uplink with a stronger, clearer signal. However, the Parties submitted that neither of them has sold any TMAs in Singapore in the previous three years. They are of the view that Singapore's geographical environment means that cellular operators in Singapore are unlikely to require a significant number of TMAs. Further, since none of the third parties who responded to CCS inquiries raised any concerns in this regard, the CCS decided that it was highly unlikely that the Transaction would raise competition concerns in relation to the supply of TMAs in Singapore.
13. CCS therefore considered whether the Transaction will lead to coordinated or non-coordinated effects that would substantially lessen competition in respect of BSAs for wireless telecommunications.

¹⁰ Paragraph 1.2 of Form M1.

¹¹ Section 54(2)(b) provides that a merger occurs if one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings.

¹² Paragraph 6.1 of Form M1.

¹³ Parties' response to question 5 to CCS's information request (16 August 2011).

V. Relevant Market

(a) Product market

14. A BSA is a transmit and receive antenna designed to work in specific frequency bands assigned to licensees. BSAs vary in complexity, with the current implementations of 3G and 4G services using more complex antennas so that 2.5G service and newer 3G and 4G services¹⁴ can be provided from one antenna, thereby reducing the number of antennas at a cell site¹⁵. According to the Parties, the most common BSA today is a multi-band, cross polarized, dipole array sector antenna. CommScope, Argus and their competitors supply a full range of antennas for mobile telecommunications which vary in technical design¹⁶.
15. In terms of the supply structure for BSAs, CCS understands that BSA suppliers can supply BSAs to end customers via services and installation contractors or OEMs (Original Equipment Manufacturers) (sales via intermediaries), or they can supply BSAs directly to the end customer (direct sales). However, BSAs are not commonly sold to end customers directly; they are usually sold via OEMs as part of a packaged solution¹⁷. Moreover, the Parties are not involved in direct sales in Singapore¹⁸. The Parties noted that the following OEMs have offices in Singapore: NSN, Huawei and Ericsson¹⁹.
16. One end customer²⁰ who responded to CCS' inquiries also mentioned that it purchases all BSAs as part of a package from OEMs, which would usually include the base station, installation service, cabling works and other mobile components. This is expressed diagrammatically below.

¹⁴ 2G stands for second generation technology, in which communication is based on GSM structure and standards. 3G denotes third generation, a more advanced version of technology providing a wide range of multimedia applications. 4G technology is an extension of 3G technology; it is also referred to as LTE, or Long Term Evolution.

¹⁵ Parties' response to question 1, Annex 1 (29 July 2011).

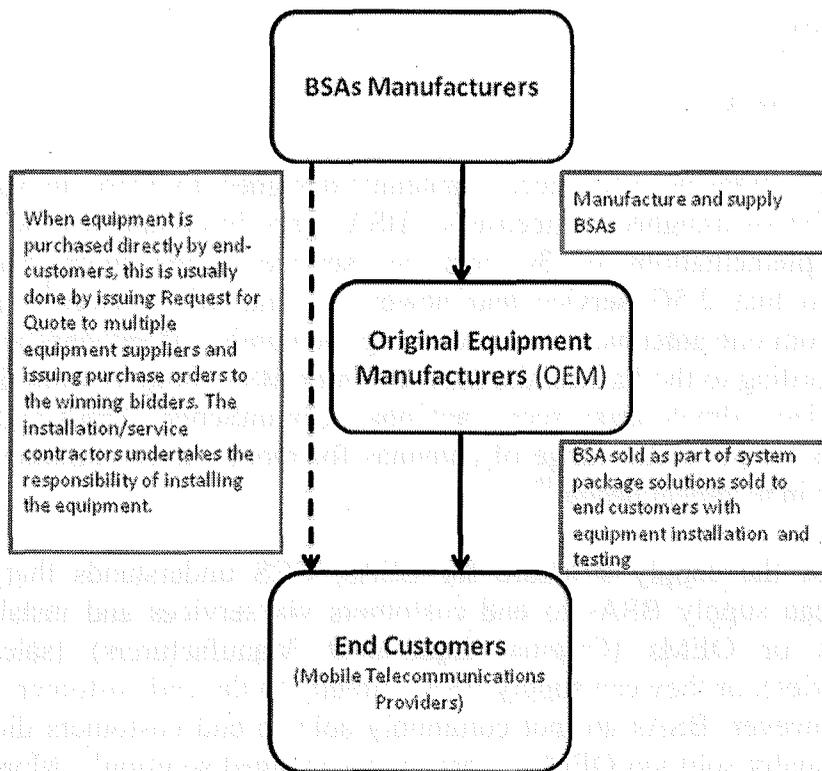
¹⁶ Paragraph 6.1 of Form M1 and response by [X] to question 5 of CCS Questionnaire to competitors.

¹⁷ Response from [X] to questions 13-16 of CCS Questionnaire to competitors.

¹⁸ Parties' responses to questions 6 and 12, Annex 1 (29 July 2011).

¹⁹ Parties' response to question 9, Annex 1 (29 July 2011).

²⁰ Response from [X] to question 10-13 of CCS Questionnaire to end customers.



Source: The Parties' response to question 6, Annex 1 (29 July 2011) and Third Parties' submissions to CCS' questionnaire to competitors, OEMs and end customers.

17. BSAs are used by all mobile telecommunications operators in Singapore. The Parties have submitted that each operator has around [X] base stations in Singapore per type of technology (2G, 3G)²¹.
18. The Parties have submitted that there are no alternative products that would serve the same purpose as BSAs in mobile telecommunications. This view was supported by third parties who responded to our inquiries²². At its widest, the relevant product market is therefore the market for BSAs for mobile telecommunications.
19. Mobile telecommunications operators (MobileOne, SingTel and Starhub) require BSAs that meet their specific requirements in terms of performance and use. For example, end customers may require BSAs for use in stadiums, for indoor or outdoor use or for 3G or 4G applications. The Parties indicated that as mobile telecommunications operators in Singapore are now running LTE (Long Term Evolution, i.e. 4G) trials, it is expected that full scale LTE

²¹ Parties' response to question 10, Annex 1 (29 July 2011). CCS notes that 2G and 3G technology may be co-located on the same site or base station.

²² For example, responses from [X].

deployment will occur over the next two to four years. This is likely to create a demand for additional BSAs, depending on each operator's system design and the degree to which a 3G service will be maintained alongside the 4G service²³. The projected demand for additional BSAs for one of the end users is in the range of [X] BSAs²⁴ over 5 years. Trade publications also report a likely increase in demand for BSAs for 4G applications.

20. Although end-customers may have quite specific requirements for BSAs at any given time, suppliers of BSAs generally supply a wide range of BSAs. Furthermore, the Parties and third parties submitted that there are no intellectual property rights that would impose constraints on the ability of existing suppliers of BSAs to supply other types of BSAs for mobile telecommunications. A competitor of the Parties noted that it is possible to customize and produce large quantities of a new type of BSA in a period of two months²⁵. The Parties also noted that there is a degree of substitutability between different types of antennas from a demand perspective²⁶.
21. The available evidence indicates that most suppliers of BSAs have a full range of BSAs available for sale. The evidence also points to supply-side substitution for different types of BSAs used for mobile telecommunications. We have therefore assessed this Transaction on the basis that the relevant product market is the market for BSAs for mobile telecommunications.

(b) Geographic Market

22. The relevant geographic market is the area over which substitution of the relevant product takes place. The Parties have submitted that the market for the manufacturing and supply of BSAs is global²⁷. In their view, larger competitors are capable of supplying the Singapore market²⁸.
23. CCS found that the main suppliers all operate on a global basis, manufacturing in a few locations and then shipping their products to countries around the world. Suppliers do not need a local presence in order to compete in a particular country²⁹. For example, one of the Parties, the Argus Group, does not have a physical presence in Singapore. Instead, it supplies BSAs in Singapore via its sales staff in China and Australia and its

²³ Parties' response to question 9, Annex 2 (3 August 2011).

²⁴ Response from [X] to question 8 of CCS Questionnaire to end customers.

²⁵ Response from [X] to question 31 of CCS Questionnaire to competitors.

²⁶ Parties' response to question 2 (16 August 2011).

²⁷ Paragraph 6.1.10 of Form M1.

²⁸ Parties' response to Question 13, Annex 2 (3 August 2011).

²⁹ Parties' response to Question 2 (16 August 2011).

distributor in Singapore. Moreover, there are other BSA suppliers that do not sell directly to end customers in Singapore, choosing instead to sell via intermediaries and/or local distributors under non-exclusive distribution agreements³⁰.

24. Third parties who responded to our inquiries were generally of the view that the market for BSAs is global³¹.
25. CCS considered if there were any particular requirements in relation to the sale or use of BSAs in Singapore that may indicate that the geographic market is narrower. In Singapore, base station antennas are an accessory used for telecommunication purposes and therefore fall under the definition of telecommunications equipment³².
26. Companies who wish to sell BSAs in Singapore are subject to oversight by IDA³³. They require a dealer's class licence³⁴ and must comply with licence conditions. Third parties have provided feedback that it was easy to obtain such a licence³⁵.
27. In CCS' view, this requirement does not constitute a material barrier for companies supplying BSAs to customers in Singapore. In light of the available evidence, the CCS considers that the market for BSAs may well be global in geographic scope. However, CCS has also assessed this Transaction in terms of its specific effect on customers in Singapore.

VI. Market Structure

(a) Market shares and market concentration

28. The Parties' estimates of global market shares for BSAs are set out in the table below.

³⁰ Responses from [X] to question 14 of CCS Questionnaire to competitors; [X] to question 24 of CCS Questionnaire to OEMs.

³¹ For example, responses from [X] to question 11 of CCS Questionnaire to competitors.

³² Telecommunication equipment is defined under section 2 of the Telecommunications Act (Chapter 323) as "any appliance, apparatus or accessory used or intended to be used for telecommunication purposes."

³³ Pursuant to the Telecommunications (Dealers) Regulations.

³⁴ Regulation 3 and regulation 21(1) of the Telecommunications (Dealers) Regulations read with Table B.1 Annex B of IDA Guide EQR 2011.

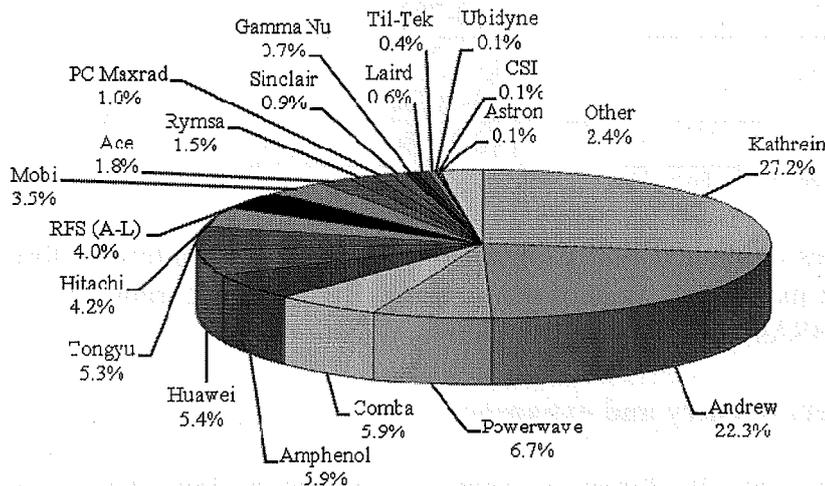
³⁵ Response from [X] to Question 2 of CCS Questionnaire to distributors.

Table 1: Estimated global market shares for BSAs 2008-2010

	2008		2009		2010	
	US\$ mil	Share %	US\$ mil	Share %	US\$ mil	Share %
Total market	∞		∞		∞	
Kathrein	∞	[25-35]	∞	[25-35]	∞	[20-30]
CommScope (Andrew)	∞	[20-30]	∞	[20-30]	∞	[20-30]
Powerwave	∞	[0-10]	∞	[5-15]	∞	[5-15]
Antel/Jaybeam	∞	[0-10]	∞	[0-10]	∞	[0-10]
RFS	∞	[0-10]	∞	[0-10]	∞	[0-10]
Argus	∞	[0-10]	∞	[0-10]	∞	[0-10]
Comba	∞	[0-10]	∞	[5-15]	∞	[5-15]
Others (approx. 30)	∞	[15-25]	∞	[20-30]	∞	[10-20]

Source: The Parties' response to question 8, Annex 1 (29 July 2011).

29. The table above shows that, based on figures for 2010, the acquisition leads to a combined share of the global BSA market of around [∞]% with an increment of [∞]%. The merged entity will be one of the two largest suppliers of BSAs worldwide, the other being Kathrein. Globally, the merged entity will be constrained by one large and a number of smaller, but still sizeable, competitors, and a significant fringe of players with very low market shares.



ABI Research: Base Station Antenna Market Share by Vendor, Revenue World Market 2011

30. The Parties also submitted a market research report which forecasted the BSA global market share by vendors (see diagram above).³⁶ CommScope's market share for 2011 is shown as 22.3%. Market shares of 20 competitors

³⁶ ABI Research, *Base Station, Fixed Outdoor and Active Antennas for Wireless Infrastructure and Mobile Wireless Systems*, L. Wilson and A. Kaul (4 March 2011).

are also provided and these range from 27% to 0.1%. The Argus Group was not mentioned in this section of the report.

31. CCS assessed whether or not the merged entity would face the same, or equivalent, competitors in Singapore as it does globally. The Parties submitted that in the previous three years, there had been limited demand for BSAs because the mobile telecommunications operators in Singapore have established networks here. The last big network rollout for Singapore was the 3G launch in 2004. Since then the mobile telecommunications operators have purchased BSAs in relatively small quantities³⁷. For example, in 2010, the total value of BSAs supplied in Singapore was [x] corresponding to approximately [x] units³⁸. Since purchases in recent years are relatively minor, market shares may not be an accurate indicator of the merged entity's market power.
32. The Parties' estimates of market shares in Singapore in 2010 are provided in the table below.

Table 2: Estimated market shares for BSAs in Singapore in 2010

Supplier	Market Share (%)
CommScope	[5-15]%
Argus	[60-70]%
Kathrein	[10-20]%
Comba	[0-10]%
Powerwave	[0-10]%

Source: Paragraph 8.1, Form M1.

33. The Parties explained that CommScope's sales in the previous three years have been mainly for trials of 4G systems. By contrast, Argus' sales in 2010 were for BSAs for indoor and stadium applications³⁹.

(b) Barriers to entry and expansion

34. New entry and the threat of entry can represent important competitive constraints on the behavior of the merged entity. For new entry (actual or threatened) to be considered a sufficient competitive constraint on the merged entity it must be timely, likely and sufficient in scope⁴⁰.

³⁷ Paragraph 6.1, Form M1 and Parties' response to question 10, Annex 1 (29 July 2011).

³⁸ Paragraph 8.1, Form M1.

³⁹ Parties' response to question 16, Annex 1 (29 July 2011).

⁴⁰ CCS *Guidelines on Substantive Assessment of Mergers*, paragraphs 7.3 – 7.11.

35. CCS notes that the relevant market is the global market for BSAs. This means that in the context of barriers to entry CCS would consider, for example, which barriers suppliers in neighbouring product markets would face if they wished to enter this market. The Parties did not specifically address this issue in their submissions, although they did note that there were a number of recent (or imminent) new entrants into this market from China. This was supported by third parties who responded to our enquiries⁴¹.
36. In terms of excess capacity and the possibility of expansion, the Parties estimated that current global usage of capacity to manufacture BSAs is about [X]%⁴². Feedback received by CCS during the consultation process indicated that it is not difficult for manufacturers to increase production significantly in a fairly short period of time⁴³.
37. Overall, it has not been necessary for CCS to conclude on the likelihood of new entry, or the significance of barriers to entry in this sector.

(c) Countervailing buyer power

38. The ability of the merged entity to raise prices may be constrained by the countervailing power of customers. In this case, customers in Singapore are generally large, sophisticated buyers of telecommunications equipment and services who are well-informed about available products and suppliers.
39. Third parties noted that due to the number of suppliers, the market for BSAs is a buyers' market⁴⁴. Any buyer power is further enhanced by the fact that end customers have contracts with a number of OEMs at any one time, and each of these OEMs has non-exclusive supply contracts with the suppliers of BSAs. Moreover, third parties did not consider that there are any material barriers to customers' switching suppliers⁴⁵ or that the merged entity would have an unassailable advantage in terms of the IP protection that it enjoys over BSAs or the package of products that it is able to offer for sale⁴⁶.

⁴¹ Response from [X] to CCS's Questionnaires to competitors, end customers and OEMs.

⁴² Parties' response to question 14, Annex 1 (29 July 2011).

⁴³ Response from [X].

⁴⁴ Response from [X].

⁴⁵ Response from [X] to Questionnaires to competitors and end customers.

⁴⁶ Response from [X].

VII. Competition Assessment

(a) Non-coordinated effects

40. 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 entities⁴⁷.
41. CCS is of the view that non-coordinated effects are unlikely to arise in the markets for supply of BSAs for mobile telecommunications for the reasons outlined below.
42. Based on the Parties' estimates for 2010, the acquisition leads to a combined share of the global BSA market of around [X]%, with an increment of [X]%. According to an independent forecast, CommScope's market share for 2011 is 22.3%. Market shares of 20 competitors are also provided and these range from 27% to 0.1%. The Argus Group was not mentioned in this section of the report. Globally, the merged entity will be constrained by one large and a number of smaller but still sizeable competitors, as well as a fringe of small players with very low market shares.
43. The Parties' combined market share in 2010 in Singapore was significant [X]%. However, CCS notes that the Parties are not close competitors since they have not bid for the same contracts. CommScope's sales in the previous three years were mainly for trials of 4G systems, and Argus' sales in 2010 were for BSAs for indoor and stadium applications⁴⁸. The Parties explained that this was due to short-term differences in their portfolios which arose as a result of different development priorities. Although both Parties now supply the two types of antennas, third parties who responded to our inquiries did not consider the Parties to be close competitors⁴⁹.
44. CCS also considered whether there are barriers to switching for customers in Singapore. Almost all the third parties who responded to our inquiries (including a competitor of the Parties with a relatively low market share in Singapore) stated that there were no barriers to switching supplier; those who responded also noted that customers were generally in a good position to negotiate. We concluded from this that any incumbency advantages are immaterial.

⁴⁷ Paragraph 6.3 of CCS *Guidelines on the Substantive Assessment of Mergers*.

⁴⁸ Parties' response to question 16, Annex 1 (29 July 2011).

⁴⁹ Response from [X]. Response from [X].

45. CCS concludes that post-merger there will be many alternative providers of BSAs in Singapore and that the market will remain competitive. CCS also notes that although many market participants have registered intellectual property rights for products related to BSAs, there are few IP rights for the antennas themselves⁵⁰. In any case, CCS did not find that IP rights raise competition issues in this case since the Transaction will not create a company with an unassailable advantage in terms of the IP protection that it enjoys. Moreover, CCS did not find that the merged entity would have such an advantage based on the package of products that it will be able to offer for sale.
46. Finally CCS found that customers for BSAs are likely to have countervailing buyer power based on the fact that they are large, sophisticated buyers of telecommunications equipment and the high number of suppliers of BSAs.
47. On this basis, CCS concludes that the Transaction does not raise concerns in terms of non-coordinated effects on competition.

(b) Coordinated effects

48. A merger may also lessen competition substantially by increasing the possibility that, post-merger, firms in the same market may coordinate their behavior 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 also arise where a merger reduces competitive constraints in a market, thus increasing the probability that competitors will collude or strengthen a tendency to do so⁵¹.
49. In order for tacit or explicit coordination to be successful or more likely as a result of a merger, three conditions should be met or created by the merger. First, participating firms must be able to align their behavior in the market. Second, these firms must have an incentive to maintain the coordinated behavior. This means that deviation from coordination should be detectable and there should be a credible way of punishing the deviating firm. Finally, coordinated behavior should be sustainable in the face of other competitive constraints⁵².
50. CCS concludes that this Transaction will not lead to coordination being more likely or more successful. First, we concluded that a fundamental

⁵⁰ Response from [X] to CCS's Questionnaire to competitors.

⁵¹ Paragraph 6.7 of *CCS Guidelines on Substantive Assessment of Mergers*.

⁵² Paragraph 6.9 of *CCS Guidelines on Substantive Assessment of Mergers*.

characteristic of this market is that demand fluctuates over time, driven by life cycles of telecommunications technology, making it difficult for competitors to coordinate on price or output. Market share fluctuations are a consequence of this. We observed that there was appreciable variation in market shares of the various providers year-on-year, and there has been recent market entry and exit, indicating that the market is dynamic. In addition, there appears to be significant variation between the firms supplying Singapore in terms of size, market share and regional presence. Third, BSAs are not homogeneous products. Although they are similar in terms of use, they vary in specification and technology and there is some pressure to innovate. Fourth, prices in the market are not transparent and customers use a variety of procurement methods⁵³. Finally, we also noted the Parties' views that there is excess capacity in this sector.

51. These factors indicate that it is likely to be difficult for market participants to align their behavior in the market. The Transaction reduces the number of market participants, but this fact alone does not mean that coordination will be more likely or more successful.
52. On this basis, the CCS concludes that the Transaction does not raise concerns in terms of coordinated effects on competition.

(c) Efficiencies

53. The parties submitted that the combined research and development strength will allow the earlier introduction of new antenna designs to support 4G rollouts. In addition, the combined volume requirements of the merged entity may result in reduced costs for manufacturing operations, raw materials and shipping. Such cost reductions, if realized, could lead to lower prices⁵⁴. However, the parties did not provide evidence in support of these views. As such, CCS did not take the alleged efficiencies into account in its analysis of this Transaction, and there was, in any case, no need to do so given the CCS' conclusions.

(d) Ancillary restraints

54. The Parties have notified the following restrictions. [X] (collectively the "Restraints").⁵⁵ The Restraints are imposed for a period of up to [X] years commencing on the completion of the Transaction.

⁵³ Paragraphs 6.11-6.15 of *CCS Guidelines on the Substantive Assessment of Mergers*.

⁵⁴ Parties' response to question 15, Annex 1 (29 July 2011).

⁵⁵ Parties' response to question 18 Annex 1 (29 July 2011).

55. The Parties submitted that the Restraints are directly related and necessary for the Transaction to ensure that CommScope receives the full benefit of the goodwill and knowhow acquired as part of the Transaction⁵⁶. The Parties further submitted that the duration, subject matter and geographical field of application of the Restraints are proportionate to protect the acquired business⁵⁷.
56. CCS notes that restrictions that are directly related and necessary to the implementation of a transaction fall within the exclusion in paragraph 10 of the Third Schedule of the Act. CCS' *Guidelines on the Substantive Assessment of Mergers* state that non-compete clauses, if properly limited, are generally accepted as essential if the purchaser is to receive the full benefit of any goodwill and/or know-how acquired with any tangible assets. CCS takes into consideration the duration of the clause, its geographical application and subject matter and the persons subject to it. CCS also assesses whether or not there is a less restrictive way of achieving the same objective⁵⁸.
57. In the circumstances of this case, CCS is of the view that the non-compete restrictions are directly related to and necessary for the Transaction and that the product scope of the restrictions is reasonable. We also consider that the relevant objective cannot be achieved in a less restrictive way. However, CCS considers that a three year duration is generally sufficient to ensure that an acquirer obtains the full benefit from the goodwill and know-how acquired as part of a transaction and we did not identify compelling reasons why this should be different in this case.
58. To the extent that the restrictions affect Singapore, CCS therefore considers that a three year non-compete obligation on the seller in respect of the relevant products is an ancillary restraint that falls within the exclusion in paragraph 10 of the Third Schedule of the Act.

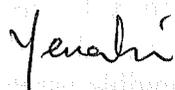
⁵⁶ Parties' response to question 19 Annex 1(29 July 2011).

⁵⁷ Paragraph 10.1, Form M1 and Parties' response to question 19, Annex 1 (29 July 2011).

⁵⁸ Paragraphs 10.7 – 10.15 of CCS *Guidelines on Substantive Assessment of Mergers*.

VIII. Conclusion

59. For the reasons above and based on the information available, CCS concludes that the Transaction will not infringe the section 54 prohibition. In accordance with section 57(7) of the Act, this decision shall be valid for a period of one year from the date of this decision.


Yena Lim
Chief Executive
Competition Commission of Singapore