

PUBLIC CONSULTATION ON POSSIBLE REMEDIES TO ADDRESS POTENTIAL COMPETITION CONCERNS ARISING FROM GRAB/UBER MERGER

5 July 2018

FOREWORD

Introduction

1. The Competition and Consumer Commission of Singapore (“CCCS”) is inviting public feedback on the possible remedies as to whether they are sufficient and workable to address the harm to competition resulting from the Grab/Uber merger.

Responding to this public consultation

2. CCCS welcomes responses from all stakeholders, including law firms, the business community, government departments as well as members of the public. Where appropriate, persons responding to this public consultation should give an indication of the organisation(s) or interests they represent. The public consultation period begins on 5 July 2018 and ends on 19 July 2018.
3. You may wish to submit your response via our Public Consultation Online Form at <https://www.cccs.gov.sg/public-register-and-consultation/public-consultation/public-consultation-online-form>.
4. Alternatively, you may also write or email your response to:
 - (i) Post/Courier:
Competition and Consumer Commission of Singapore
45 Maxwell Road
#09-01, The URA Centre
Singapore 069118
Attention: Ms. Ethel Lin, Senior Assistant Director (Legal)
 - (ii) Email: cccs_feedback@cccs.gov.sg
5. It would be helpful if respondents could organise their submissions as follows:
 - (i) Cover page
 - (ii) Table of contents
 - (iii) Statement of interest
 - (iv) Summary of major points
 - (v) Comments and responses to questions

(vi) Conclusion

6. Supporting material may be annexed. All submissions should be clearly and concisely written and should provide a reasoned explanation for any proposed amendments or additions. Where feasible, respondents should identify the specific section or paragraph on which they are commenting.
7. In the interest of transparency, CCCS proposes to publish a summary of the key comments to this public consultation. Respondents may request that any part of the submission that they believe to be proprietary, confidential or commercially sensitive be kept confidential. Any such information should be clearly marked. Where CCCS agrees with the request, it will consider the information but will not publicly disclose it. If CCCS rejects the request, it will not consider the information and will return the information to the respondent. As far as possible, respondents should limit any request for confidential treatment of information submitted. CCCS will not accept any submission that requests confidential treatment of all, or a substantial part of the submission.

Next Steps

8. Following this public consultation, CCCS will review the responses provided and take them into account in its final decision.

POSSIBLE REMEDIES TO ADDRESS POTENTIAL COMPETITION CONCERNS ARISING FROM GRAB/UBER MERGER

BACKGROUND

1. Following Grab's¹ announcement on 26 March 2018 that it has acquired Uber's² Southeast Asian business, with Uber acquiring a 27.5 per cent stake in Grab³ ("**Transaction**"), CCCS commenced an investigation into the Transaction under section 62 of the Competition Act (Cap. 50B) ("**Act**") on 27 March 2018 as there were reasonable grounds for suspecting that section 54 of the Act has been infringed.
2. On 13 April 2018, CCCS issued Interim Measures Directions on Grab Holdings Inc., Grab Inc., GrabCar Pte. Ltd., and Uber Singapore Technology Pte. Ltd. under section 67 of the Act which, *inter alia*, allows CCCS to give such directions that it considers is necessary for the purpose of preventing any action that may prejudice the giving of any direction under section 69 of the Act.
3. In the course of CCCS's investigations, CCCS has made several formal requests for information pursuant to section 63 of the Act to the Parties. CCCS also sought and reviewed feedback from drivers, competitors in the car rental market, ride-hailing app market, and taxi services market, as well as corporate customers. In addition, CCCS received complaints from consumers, drivers, and the general public.
4. On 16 April 2018, CCCS received a joint notification from Grab and Uber ("**Parties**") under section 58 of the Act for a decision from CCCS on whether the Transaction infringes section 54 of the Act. CCCS informed the Parties that its notification was not necessary given that it was already assessing the merger, but that the information would be taken into account for the ongoing investigation.
5. In its Notice of Proposed Infringement Decision ("**PID**") issued on 5 July 2018 to the Parties, CCCS proposes to conclude that the Transaction has resulted in a substantial lessening of competition ("**SLC**") in the market for two-sided platforms matching drivers and riders for the provision of booked chauffeured point-to-point transport services ("**CPPT platform services**") in Singapore (the "**Platform Market**"). A summary of CCCS's proposed findings are set out in the section below. The Parties have the opportunity to make written and oral representations to CCCS by 26 July 2018. CCCS will decide, after assessing the Parties' representations, whether to make a decision that the Transaction has infringed section 54 of the Act.
6. CCCS invites comments on the remedies set out in this document, which CCCS considers may remedy the provisional SLC in the relevant market(s) and the resulting adverse effects arising from the Transaction.

¹ All references to "Grab" may refer to Grab Holdings Inc., Grab Inc., and its subsidiaries and any other related entities including but not limited to GrabCar Pte. Ltd., GrabTaxi Holdings Pte. Ltd., GrabTaxi Pte. Ltd., Grab Rentals Pte. Ltd. and Grab Rentals 2 Pte. Ltd. (collectively, "**Grab Rentals**").

² All references to "Uber" may refer to Uber Technologies, Inc., and its subsidiaries and any other related entities including but not limited to Uber Singapore Technology Pte. Ltd., Lion City Holdings Pte. Ltd., Lion City Rentals Pte. Ltd., Lion City Automobiles Pte. Ltd., and LCRF Pte. Ltd. (collectively, "**Lion City Rentals**").

³ [Grab Merges with Uber in Southeast Asia](#), Grab, 26 March 2018.

SUMMARY OF PROPOSED FINDINGS

7. After due consideration of the information obtained from the Parties and third parties, CCCS proposes to find that the Transaction has resulted in an SLC within the Platform Market by removing competition between Grab and Uber, which are each other's closest competitor in the provision of CPPT platform services in Singapore. The merged entity is likely to be able to increase effective price and has evidently done so since the completion of the Transaction. Further, post-Transaction, Grab would have the ability and incentive to tie chauffeured private hire car ("CPHC") rental companies (including Lion City Rentals) and drivers who rent from these CPHC rental companies in exclusive arrangements and reinforce Grab's position in the provision of CPPT platform services in Singapore by increasing the barriers to entry.
8. CCCS has also assessed the claimed efficiencies submitted by the Parties. However, CCCS finds that there is insufficient evidence that the efficiencies claimed by the Parties are demonstrable, timely and/or will be sufficient to outweigh the competition detriments arising from the Transaction.

LEGAL FRAMEWORK

Directions that CCCS may give

9. Pursuant to section 69 of the Act, where CCCS has made a decision that any merger has infringed the section 54 prohibition, CCCS may give to such person as it thinks appropriate such directions as it considers appropriate to bring the infringement to an end and, where necessary, requiring that person to take such action as is specified in the direction to remedy, mitigate or eliminate any adverse effects of such infringement and to prevent the recurrence of such infringement.⁴
10. In particular, where CCCS has made a decision that any merger has infringed the section 54 prohibition, it may give directions:
 - (a) Requiring the merger to be dissolved or modified in such manner as CCCS may direct;
 - (b) Requiring any parties to any agreement that is directly related and necessary to the implementation of the merger to modify or terminate the agreement;
 - (c) Requiring any person concerned with any conduct that is directly related and necessary to the implementation of the merger to modify or cease that conduct;
 - (d) Where the decision is that any merger has infringed the section 54 prohibition, to pay to CCCS such financial penalty in respect of the infringement as CCCS may determine (provided CCCS is satisfied that the infringement has been committed intentionally or negligently⁵);

⁴ Refer to section 69(1)(d) of the Act.

⁵ Refer to section 69(3) of the Act.

- (e) Requiring any party involved in a merger that has infringed the section 54 prohibition:
- i. To enter such legally enforceable agreements as may be specified by CCCS and designed to prevent or lessen the anti-competitive effects which have arisen;
 - ii. To dispose of such operations, assets or shares of such undertaking in such manner as may be specified by CCCS; and
 - iii. To provide a performance bond, guarantee or other form of security on such terms and conditions as CCCS may determine.

Commitments

11. Pursuant to section 60A of the Act and as outlined in the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*, CCCS may also accept commitments that address any competition concerns, which may be raised by the merger.⁶ An acquiring company can take the initiative to propose suitable commitments if it thinks that they may be appropriate to meet any competition concerns that it foresees.⁷
12. The Parties may consider proposing commitments to address the provisional competition concerns identified in the PID, pursuant to section 60A of the Act. Any commitment must be aimed at preventing or remedying the adverse effects to competition which have been identified. The Parties should also note that CCCS will only accept commitments that are sufficient to address clearly the identified adverse effects to competition and are proportionate to these effects.⁸

Principles regarding identification of appropriate remedies

13. In addressing the question of which remedies would be appropriate, and would provide as comprehensive a solution as is reasonable and practicable to address the SLC and any adverse effects resulting from it, CCCS will take into account how adequately the action would prevent, remedy or mitigate the competition concerns caused by the merger.⁹
14. CCCS's starting point will be to choose the remedial action that will restore the competition that has been, or is expected to be, substantially lessened as a result of the merger. Given that the effect of the merger is to change the structure of the market, remedies that aim to restore all or part of the pre-merger market structure are likely to be a more direct way of addressing the adverse effects. However, in view of other considerations such as the effectiveness of the remedy and the costs associated with the remedy, other types of remedies may need to be considered. CCCS may, therefore, decide to impose more than one type of remedy.¹⁰
15. CCCS considers that structural remedies are preferable to behavioural ones, as they tend to address the competition concerns created by the merger more directly and also require

⁶ Paragraph 8.6 of *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

⁷ Paragraph 8.8 of *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

⁸ Paragraph 8.6 of *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

⁹ Paragraph 8.16 of *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

¹⁰ Paragraph 8.17 of *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

less monitoring.¹¹ The remedial action to be taken by CCCS will depend on the facts and circumstances of the case. When deciding on the appropriate remedy, CCCS will consider the effectiveness of different remedies and their associated costs, and will have regard to the principle of proportionality.¹²

16. It is for the Parties concerned to assess whether there is a risk that a merger may infringe the section 54 prohibition. In deciding upon the remedy, CCCS will normally not consider the costs of divestment which the Parties would have to incur, as it would have been open to the Parties to notify the merger to CCCS for a decision prior to carrying it into effect.¹³

POSSIBLE REMEDIES ON WHICH VIEWS ARE SOUGHT

17. CCCS sets out the possible remedies provisionally identified by CCCS to address the provisional competition concerns caused by the Transaction and seeks feedback on the possible remedies.

Structural Remedies

Unwinding of Transaction

18. CCCS may prohibit the Transaction in relation to the Platform Market, and given the Transaction has been completed, require the Transaction (or parts thereof) to be unwound including a reversal of the transfer of (i) 27.5% of Grab's shareholding to Uber and (ii) assets from Uber to Grab (e.g. data received by Grab from Uber). This seeks to restore the market to pre-Transaction conditions, but CCCS notes that it may not be feasible as Uber's exit may not be practically reversed.
19. CCCS invites feedback on:
 - (a) Whether any unwinding remedy would adequately prevent, remedy or mitigate the provisional competition concerns caused by the merger and restore competition in the Platform Market;
 - (b) Any practical issues that may arise from any unwinding remedy and its impact on any stakeholder or market player; and
 - (c) The proportionality of any unwinding remedy.

Potential sale of Lion City Rentals¹⁴/Grab Rentals¹⁵

20. Possible remedies in relation to Lion City Rentals/Grab Rentals include the following:

¹¹ Paragraph 8.18 of *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

¹² Paragraph 8.19 of *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

¹³ Paragraph 8.20 of *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

¹⁴ Lion City Holdings Pte. Ltd. and its subsidiaries.

¹⁵ Grab Rentals Pte. Ltd. and Grab Rentals 2 Pte. Ltd..

- (a) Prohibition of any sale of Lion City Rentals (or all or part of its assets) to Grab without CCCS's approval;
 - (b) A potential divestment of Lion City Rentals and/or all or part of its assets to a new entrant/existing CPPT platform services provider ("**Potential Competitor**") or such other purchaser approved by CCCS;
 - (c) A potential divestment of Grab Rentals and/or all or part of its assets to a Potential Competitor or such other purchaser approved by CCCS; and
 - (d) Uber must accept any reasonable offer by a Potential Competitor to purchase Lion City Rentals and/or all or part of its assets, unless CCCS raises objection to the potential purchase; and/or the Parties must modify the Purchase Agreement to remove any restriction on the acquirers to whom Lion City Rentals could be sold (e.g. sale to a Potential Competitor) and the Parties shall not place any restriction in relation to the use of Lion City Rentals's vehicles by any Lion City Rentals acquirer.
21. CCCS notes that the aforesaid remedies in relation to the sale of Lion City Rentals may remedy the provisional SLC given that (i) the potential alignment between Lion City Rentals and Grab (arising from Uber's 27.5% shareholding in Grab) could contribute to an increase in Grab's market power in the Platform Market and contribute to the provisional SLC, and (ii) access to a vehicle fleet (and such other fleet management capabilities as may be required) may facilitate new entry. However, CCCS notes that concerns over the potential alignment between Lion City Rentals and Grab may be addressed by the removal of any driver exclusivity imposed by Lion City Rentals or Grab Rentals (see paragraph 22 below), that the sale of Lion City Rentals may disrupt or inconvenience existing hirers, and that it may be possible for a potential entrant to purchase vehicles from alternative sources. Accordingly, CCCS seeks views on:
- (a) Whether any (or any combination) of the possible remedies in relation to Lion City Rentals and Grab Rentals would facilitate entry and/or expansion by a Potential Competitor, or prevent, remedy or mitigate the provisional competition concerns caused by the Transaction in any other manner;
 - (b) The scope and composition of any Lion City Rentals/Grab Rentals sale (e.g. the combination of assets that should be included (e.g. number of cars) to be attractive to potential purchasers and to enable the purchaser to operate effectively as an independent competitor and whether support services will be required by the purchaser on a transitional basis);
 - (c) Whether any transitional arrangements should be put in place, and what the duration of these arrangements should be (e.g. in relation to existing Lion City Rentals drivers);
 - (d) Identification of a suitable purchaser: a prospective purchaser would need to be independent of the Parties, have the necessary financial and reputational capability to compete, and be committed to competing in the relevant market(s), such that the divestiture to the purchaser will not create further competition concerns;

- (e) The appropriate timescale for achieving a divestiture and what procedural safeguards would be needed to minimise the risk associated (e.g. whether the Parties should be required to appoint an external monitoring trustee to oversee the divestiture process within a certain timeframe);
- (f) Any practical issues that may arise from any (or any combination) of the possible remedies in relation to Lion City Rentals and Grab Rentals and its impact on any stakeholder or market player; and
- (g) The proportionality of any (or any combination) of the possible remedies in relation to Lion City Rentals and Grab Rentals.

Behavioural Remedies

Removal of driver exclusivity obligations that may impede market contestability

- 22. CCCS has also provisionally considered that the removal of exclusivity obligations, lock-in periods and/or termination fees on all drivers who drive on Grab's ride-hailing platform ("Grab Drivers") and/or who rent from Grab Rentals, Lion City Rentals or rental partners of Grab ("Non-Exclusivity") may increase choices for drivers and riders and improve market contestability. In this regard, CCCS considers that:
 - (a) Grab must ensure that Grab Drivers are not penalised, directly or indirectly, due to the Non-Exclusivity; and
 - (b) The Parties must ensure that drivers who rent a vehicle from Lion City Rentals, Grab Rentals, and Grab's rental partners are at liberty to use such vehicles to drive for any ride-hailing platform providing CPPT platform services and there shall be no discriminatory terms or any other impediments (e.g. in relation to rental rates and/or insurance coverage) that limit their ability to drive for any ride-hailing platform.
- 23. CCCS notes that Grab may raise concerns that the removal of driver exclusivity may impact its ability to react to, and compete with, the entry of any significant competitor into the Singapore market who may enter into exclusive arrangements of their own. In this regard, CCCS seeks feedback on:
 - (a) Whether the removal of driver exclusivity would facilitate entry and/or expansion by a Potential Competitor, or prevent, remedy or mitigate the provisional competition concerns caused by the Transaction in any other manner;
 - (b) Whether there are any other impediments that reduce the mobility of drivers and prevent market contestability;
 - (c) Any practical issues that may arise from the removal of driver exclusivity and its impact on any stakeholder or market player;
 - (d) The proportionality of the removal of driver exclusivity; and

- (e) The conditions which may reflect a change in market conditions such that this remedy may no longer be necessary (in full or in part) to address the provisional SLCs and any adverse effects of the Transaction (e.g. where a significant part of the market is subject to exclusivity obligations imposed by non-Grab affiliated market players).

Removal of taxi/CPHC rental fleet partner exclusivity obligations that may impede market contestability

- 24. CCCS has also provisionally considered that the cessation of Grab's exclusivity arrangements with any taxi/CPHC rental fleet partner in Singapore will increase choices for drivers and riders and improve market contestability.
- 25. CCCS notes that Grab may raise concerns that the removal of taxi/CPHC rental fleet partner exclusivity may impact its ability to react to, and compete with, the entry of any significant competitor to the Singapore market who may enter into exclusive arrangements of their own. In this regard, CCCS seeks feedback on:
 - (a) Whether the removal of taxi/CPHC rental fleet partner exclusivity would facilitate entry and/or expansion by a Potential Competitor, or prevent, remedy or mitigate the provisional competition concerns caused by the Transaction in any other manner;
 - (b) Any practical issues that may arise from any (or any combination) of the removal of taxi/CPHC rental fleet partner exclusivity and its impact on any stakeholder or market player;
 - (c) The proportionality of the removal of taxi/CPHC rental fleet partner exclusivity; and
 - (d) The conditions which may reflect a change in market conditions such that this remedy may no longer be necessary (in full or in part) to address the provisional SLCs and any adverse effects of the Transaction (e.g. where any third-party ride-hailing platform not affiliated to Grab enters into any exclusivity arrangements in Singapore with any taxi fleet(s) comprising a significant part of the taxi rental market).

Maintenance of pre-Transaction pricing and commission rates

- 26. CCCS has provisionally identified that the maintenance of Grab's pre-Transaction pricing, pricing policies and product options in relation to CPPT platform services, until such time that CCCS is satisfied that the reduction in competition in the Platform Market has been sufficiently mitigated (e.g. through the entry of new players or expansion of existing players), could alleviate the provisional SLC and any adverse effects on riders and drivers arising from the Transaction. Such maintenance of pre-Transaction pricing and commission rates include the following:
 - (a) Maintenance of Grab's pre-Transaction algorithm pricing matrix (for those variables that Grab is able to control) for Grab's ride-hailing services which existed on its ride-

hailing platform in Singapore prior to the Transaction, which includes that Grab shall not adjust the surge factor and base fares beyond the surge factor cap and base fares at the levels as of 25 March 2018; and

- (b) Maintenance of Grab's driver commission rates under pre-Transaction commission structures.
27. CCCS considers that the maintenance of pre-Transaction pricing and commission rates could alleviate the potential adverse effects on riders and drivers arising from the Transaction and provisional SLC. CCCS notes concerns that the pre-Transaction pricing and commission levels (in particular the discounts, incentives and promotions provided by Grab) may not be sustainable; further, concerns have been raised that the requirement to maintain effective pre-Transaction pricing and commission levels removes Grab's flexibility to innovate on its product options and pricing/commission structure, and its ability to react to changes in market conditions and the entry of any significant competitor to the Singapore market.
28. Accordingly, CCCS seeks feedback on:
- (a) Whether the maintenance of pre-Transaction pricing and commission rates would prevent, remedy or mitigate the provisional competition concerns or adverse effects caused by the Transaction;
 - (b) The products affected by the Transaction and which should be addressed by the proposed remedies, e.g.:
 - (i) JustGrab;
 - (ii) GrabCar;
 - (iii) GrabShare;
 - (iv) GrabHitch;
 - (v) GrabFamily;
 - (vi) GrabCar Premium;
 - (vii) 6-Seater (Economy);
 - (viii) 6-Seater (Premium);
 - (ix) Standard Taxi;
 - (x) Standard Taxi (Advanced Booking);
 - (xi) Limo Taxi;
 - (xii) Limo Taxi (Advanced Booking); and
 - (xiii) GrabCoach (13-Seater, 23-Seater, 40-Seater).
 - (c) In relation to commission rates for drivers on probation, whether such commission rates (or the frequency of imposition of such commission rates) have been affected by the Transaction and should be addressed by the proposed remedies;
 - (d) Any practical issues that may arise from any (or any combination) of the maintenance of pre-Transaction pricing and commission rates and its impact on any stakeholder or market player;

- (e) How CCCS can mitigate the risk that any new service offered by Grab after 25 March 2018 may replace or vary the services available pre-Transaction or render any price-maintenance directions substantially ineffective;
- (f) The proportionality of the maintenance of pre-Transaction pricing and commission rates as a remedy to prevent, remedy or mitigate the potential competition issues and adverse effects arising from the Transaction; and
- (g) the conditions which may reflect a change in market conditions such that the maintenance of pre-Transaction pricing and commission rates may no longer be necessary (in full or in part) to address the provisional SLCs and adverse effects of the Transaction. The conditions provisionally considered by CCCS includes the following (or a combination of the following):
 - i. The entry and expansion of a new player who is able to enter the Platform Market in a likely, timely and sufficient manner,¹⁶ has the necessary financial and reputational capability to compete, and be committed to competing in the relevant market(s), *and* does not have any direct or indirect common ownership or control with Grab/the Parties; and/or
 - ii. The acquisition of a substantial percentage of market share (based on number of drivers, riders, and/or trips) through the entry and expansion of a new/existing player.

¹⁶ Paragraphs 5.46 to 5.58 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.