



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

Notice of Infringement Decision issued by the Competition Commission of Singapore

Abuse of a Dominant Position by SISTIC.com Pte Ltd

4 June 2010

Case number: CCS 600/008/07

Redacted confidential information in this Notice is denoted by square parenthesis [...].

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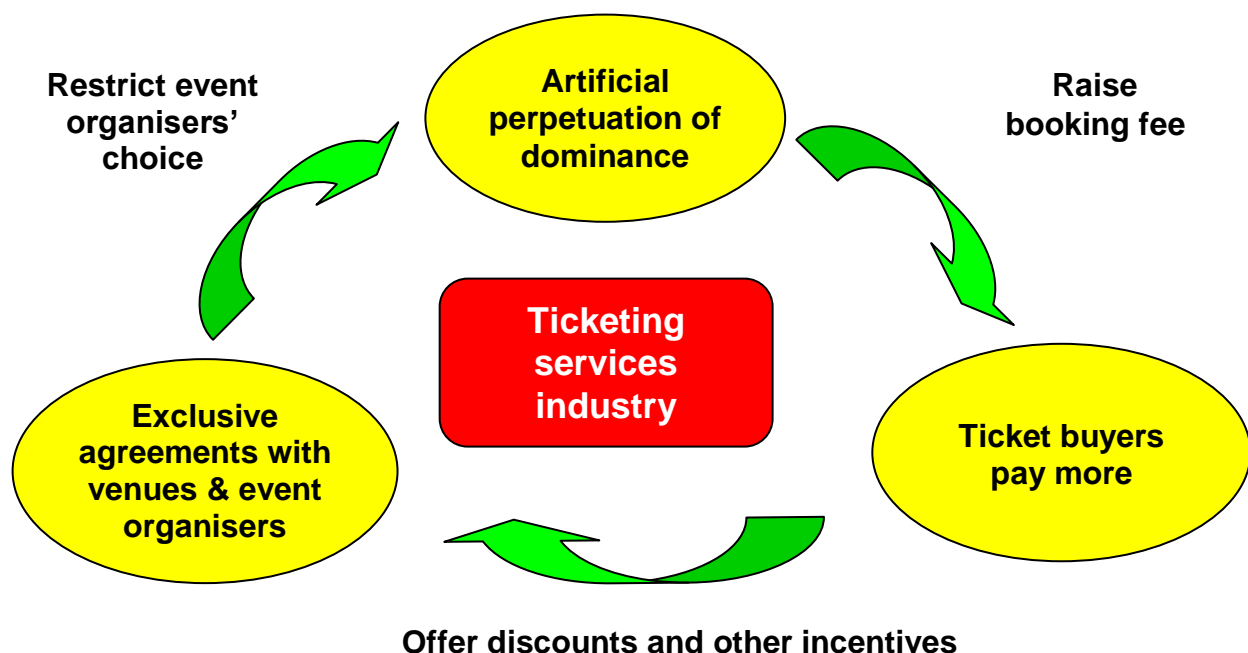
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Chapter 1 Executive Summary

- 1.1 The Competition Commission of Singapore (“CCS”) is issuing an Infringement Decision (“ID”) against SISTIC.com Pte Ltd (“SISTIC”) for its abuse of dominance, in contravention of section 47 of the Competition Act (“Act”), via the following agreements (collectively referred to as the “Exclusive Agreements”):
- The Application Service and Ticketing Agreement (“ASTA”) between SISTIC and The Esplanade Co. Ltd (“TECL”) which contains explicit restrictions requiring all events held at the Esplanade venues to use SISTIC as the sole ticketing service provider;
 - The Agreement for Ticketing Services (“ATS”) between SISTIC and Singapore Sports Council (“SSC”) which contains explicit restrictions requiring all events held at the Singapore Indoor Stadium (“SIS”) to use SISTIC as the sole ticketing service provider; and
 - 17 other agreements that contain explicit restrictions requiring the event promoters concerned to use SISTIC as the sole ticketing service provider for all their events.
- 1.2 Ticketing service providers such as SISTIC act as middlemen between two groups of customers – the event promoters and the ticket buyers – by providing them a platform to buy and sell tickets. When key venues such as the Esplanade and SIS are required to use SISTIC, event promoters who wish to hold their events at these venues have no choice but to sell tickets through SISTIC; when event promoters are required to sell tickets for all their events through SISTIC, ticket buyers who wish to attend those events have no choice but to buy tickets through SISTIC as well.
- 1.3 Therefore, the restrictions under the Exclusive Agreements are harmful to competition. They restrict event promoters’ choice of ticketing service providers, artificially¹ perpetuate SISTIC’s dominant position, and afford SISTIC the ability to charge ticket buyers higher prices. The higher revenues generated from ticket buyers in turn provide SISTIC the buffer to sustain the discounts and other incentives used to attract and retain venue operators and event promoters exclusively, as illustrated in the diagram below.

¹ Perpetuation of dominance is deemed artificial when it is achieved in ways unrelated to competitive merit. See paragraph 2.1 of the *CCS Guidelines on the Section 47 Prohibition*.



- 1.4 CCS finds that SISTIC is dominant in the ticketing services market in Singapore. Its market share had persistently been around 90%, of which about [60-70]% was attributable to the Exclusive Agreements. High entry barriers are artificially erected through the network effect between event promoters and ticket buyers, created by SISTIC's conduct. Since SISTIC raised its booking fees against ticket buyers by 50% to \$3 per ticket² in January 2008, the company has become significantly more profitable amidst economic downturn.
- 1.5 To bring the infringement to an end, CCS directs SISTIC to remove or modify as necessary any clause(s) under the Exclusive Agreements that has the effect of requiring the use of SISTIC as the sole ticketing service provider. Further, CCS is imposing a penalty of S\$989,000 on SISTIC for infringing the section 47 prohibition of the Act. The penalty amount has taken into consideration the seriousness of the infringement concerned, as well as the relevant aggravating and mitigating factors.
- 1.6 This enforcement action does not in any way prevent SISTIC from competing on merit going forward. Instead, it aims to encourage SISTIC and its competitors to focus on providing better customer services and greater value for money, through enhancing technical capabilities and operational efficiency. CCS is convinced that this enforcement action will yield a positive outcome for the ticketing services industry in Singapore, leading to higher productivity and more innovation.

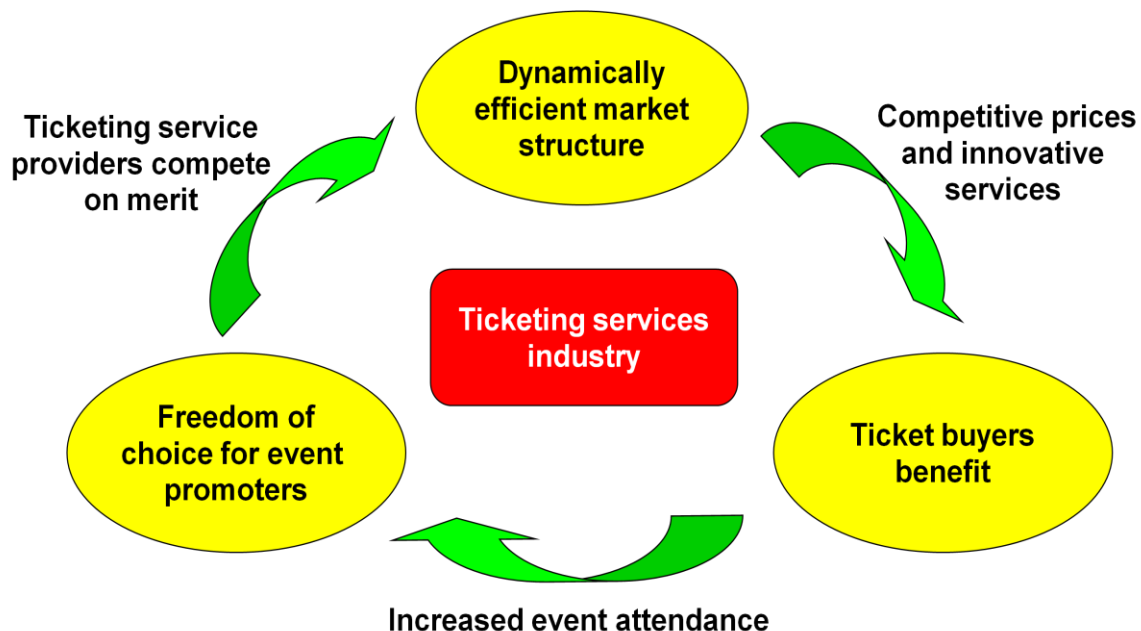
² For tickets with face value more than \$20.

Appendix 1 Competitive landscape without the Exclusive Agreements

A1.1 Without the exclusivity restrictions under the Exclusive Agreements:

- *event promoters will be able to choose* their preferred ticketing service provider(s), free from total purchase commitments, regardless of the venues where the events are held and taking into account the ticket buyers' interests;
- *ticketing service providers, including SISTIC, will compete on a level playing field* based on their own merits such as customer service, technical capability, operational efficiency and product innovation;
- *a dynamically efficient market structure* will be determined by competitive forces, including the number of ticketing service providers, and who the winner(s) is/are. SISTIC and its competitors must continue to invest, innovate and improve, or risk being displaced/eliminated;
- *ticket buyers will benefit* from more competitive ticketing services in terms of price, quality and variety; and
- *increased event attendance* resulting from more competitive ticketing services will benefit the event promoters.

A1.2 The above sets out the counterfactual against which CCS assesses the harm of the Exclusive Agreements on competition in this ID.



Chapter 2 Services and Business Practices Concerned in this ID

2.1 The ticketing services industry in Singapore

- 2.1.1 The ticketing services industry in Singapore refers to the provision of ticketing services for a variety of ticketed events. These include performing arts events, sports events, leisure events, concerts and family entertainment events held at various venues in Singapore. Examples include the Phantom of the Opera, David Tao World Tour 2008, Cinderella on Ice, Chingay Parade and Singapore Formula One Grand Prix³.
- 2.1.2 The ticketing services industry in Singapore is worth about S\$[...] million in 2008⁴, and comprises 4 main players, namely, SISTIC, Gatecrash Ticketing Pte Ltd (“Gatecrash”), Tickets.com Singapore (previously known as TicketCharge) and Global Ticket Network Pte Ltd (“GTN”). According to SISTIC’s website⁵, “SISTIC is the largest ticketing service and solution provider in Singapore. It sells tickets to events ranging from pop concerts, musicals, theatre, family entertainment to sports. It currently handles more than 90% of all events staged in Singapore”.
- 2.1.3 These ticketing service providers provide ticketing services to two distinct groups of customers, namely the event promoters and ticket buyers⁶. They act as ‘middlemen’ to help event promoters sell tickets to ticket buyers.
- 2.1.4 Services provided by a ticketing service provider to event promoters include access to a ticketing system for ticket sales and collection for a particular event, held at a specific venue, through a variety of distribution and sales channels, such as a telephone hotline, internet booking, authorised sales outlets, post offices, box offices and other remote access electronic

³ The broader industry includes ticketing services for movies shown at cinemas, entry to tourist attractions such as the Singapore Flyer and Night Safari, SMRT train rides, etc. As will be discussed in Chapter 5, these broader ticketing services do not constitute part of the relevant market for this ID.

⁴ Market statistics in this ID is computed based on (i) information provided by SISTIC via letters dated 19 December 2008, 07 May 2009 and 11 September 2009, pursuant to the section 63 notices issued by CCS dated 11 November 2008, 17 April 2009 and 09 July 2009 respectively, (ii) information provided by Exceptional Pte Ltd via letters dated 13 April 2009 and 21 July 2009, pursuant to the section 63 notices issued by CCS dated 23 February 2009 and 30 June 2009 respectively, (iii) information provided by OmniTicket (Singapore) Pte Ltd via letters dated 08 April 2009 and 14 July 2009, pursuant to the section 63 notices issued by CCS dated 25 February 2009 and 30 June 2009 respectively, and (iv) information provided by Tickets.com Singapore via letters dated 31 March 2009 and 14 July 2009, pursuant to the section 63 notices issued by CCS dated 23 February 2009 and 30 June 2009.

⁵ <http://www.sistic.com.sg>.

⁶ This decision also concerns the commercial relationships between ticketing service providers and venue operators. However, venue operators are not customers to ticketing service providers because the former do not directly purchase ticketing services from the latter.

service delivery networks such as the AXS machines and Self-Service Automated Machines (“SAM”). Some ticketing service providers also provide several other value-added services such as marketing and promotional services via email advertising, website advertising and other promotional collaterals such as brochures and events guides. Typically, event promoters pay ticketing service providers some fixed fees (e.g. ticketing administrative fee) as well as some variable fees (usually dependent on the number and face value of tickets sold).

- 2.1.5 Separately, ticket buyers also pay ticketing service providers service fees for every ticket bought. These fees include a booking fee (usually tiered according to the face value of tickets purchased) and a handling fee which vary depending on the mode of collection of the tickets (self-collection of tickets at authorised sales outlets is generally levied the lowest fees, while couriering of tickets to ticket buyers generally has the highest fees).

2.2 The industry stakeholders

Ticketing service providers

SISTIC

- 2.2.1 SISTIC.com Pte Ltd (Company Registration No.200006659E) is a company incorporated in the Republic of Singapore, having its registered office at 2 Stadium Walk, #01-08, Singapore Indoor Stadium, Singapore 397691. SISTIC was set up in 1991 as a department under the SSC, to serve the ticketing needs of the SIS. On 28 July 2000, SISTIC was corporatised to provide ticketing services to a wide range of arts, sports and entertainment events held in Singapore.
- 2.2.2 Before 2002, SISTIC was wholly owned by the SSC. Currently, SISTIC is jointly owned by the SSC (65%) and TECL (35%) as a result of an agreement entered into between TECL and SSC on 01 October 2002.
- 2.2.3 SISTIC has a large market share of the ticketing services market in Singapore. It claims that it handles over 90% of various events held in Singapore. It sells tickets on behalf of more than 30 different performing arts venues, as well as sporting events and other leisure activities held at temporary venues.
- 2.2.4 SISTIC has the exclusive rights to sell tickets for all events held at two major venues in Singapore, namely the SIS and the Esplanade. In addition,

SISTIC has engaged in a series of exclusive agreements with event promoters.

Tickets.com Singapore (“Tickets.com”)

2.2.5 Tickets.com is a global ticketing company headquartered in the United States (“US”) which provides ticketing solutions and services in around 20 countries, with annual sales of about US\$9.9 million⁷. The Singapore franchise of Tickets.com is owned by Quebec Leisure International, a subsidiary of NTUC Club Investments. Tickets.com had a market share of about [0-10]%⁸ of the total number of tickets sold in Singapore from January 2006 to March 2009. Tickets.com provides ticketing solutions for events held at NTUC owned venues such as Downtown East at Pasir Ris.

Gatecrash

2.2.6 Gatecrash was set up in April 2005 by a group of arts practitioners and IT entrepreneurs and was focused on providing ticketing services to the arts industry in Singapore. In March 2008, Gatecrash was acquired by EXCEPTional Pte Ltd, comprising the former management of Gatecrash and the founders of Beyond Marketers, Inc. (USA).

2.2.7 Gatecrash had a market share of about [0-10]%⁹ of the total number of tickets sold in Singapore from January 2006 to March 2009.

GTN

2.2.8 GTN is a ticketing service provider that has worked with OmniTicket (see below) to provide ticketing services for the Singapore Formula One Grand Prix 2008. Although GTN was considered by OmniTicket as its sub-contractor for ticketing of the F1 Grand Prix in 2008, it undertook duties of a typical ticketing service provider such as organising the call center services, outlet distribution and other operational aspects of ticketing. GTN had a market share of about [0-10]%¹⁰ in terms of the total number of tickets sold in Singapore from January 2006 to March 2009.

⁷ Figure obtained from www.answers.com, for the year ended December 2008. The figure was £6.8 million according to www.hoovers.com.

⁸ Refer to footnote 4.

⁹ Refer to footnote 4.

¹⁰ Refer to footnote 4.

2.2.9 In addition, GTN has worked with OmniTicket by utilising OmniTicket's distribution platform and access control technology to provide ticketing services for the Chingay Parade 2008 and Singapore Air Show 2008¹¹.

Ticketing system suppliers

OmniTicket Network (Singapore) Pte Ltd ("OmniTicket")

2.2.10 OmniTicket is a business registered in Singapore in 2007 as the Singapore arm of OmniTicket Network, Inc, which is a global ticketing solutions provider based in Delaware US and is privately owned and funded by several investment firms such as VPSA, GeoCapital Partners and Net Partners.

2.2.11 OmniTicket Network, Inc. is a system developer, integrator and consultant specialising in comprehensive turnkey solutions for ticketing, reservations, pre-sales, internet sales, access control, retail point-of-sale and inventory control operations. It claims to be the first and only company capable of offering complete and integrated ticketing solutions (hardware and software) to all six segments of the market: leisure (amusement parks, zoos), performing arts (theatres, concert halls, operas), movie theatres, culture and education (museums, monuments), sports (stadiums of any kind) and events (rock concerts, major expositions and larger events of any kind).

2.2.12 In this respect, OmniTicket has developed customised ticketing systems for its clients and sold them the proprietary rights to run and manage these customised systems. Examples of dedicated systems created by OmniTicket would include those currently being used by the Singapore Flyer and Singapore Science Centre.

2.2.13 In addition, OmniTicket has also provided the technology of its ticketing system to its clients / agents such as GTN, which in turn provide ticketing services for events such as the 2008 Singapore Grand Prix, Chingay Parade and the Singapore Air Show. In such instances, GTN was involved in the sale and distribution of tickets for these events.

¹¹ See Answer to Question 9 of Mr Paolo Moro's Notes of Information/Explanation Provided on 08 April 2009. ("NOI with OmniTicket")

SISTIC

2.2.14 Prior to 2002, SISTIC had been providing its ticketing services using a third-party ticketing system licensed from an Australian provider¹². In 2002, TECL introduced the vendor of the ‘Intelitix’ system to SISTIC, but this vendor went into financial insolvency subsequently, and SISTIC developed its ‘STix’ ticketing system in-house. In recent years, SISTIC has been expanding overseas as a ticketing solution provider under the brand name ‘STiX’, with clients in China, Hong Kong, Macau and Australia. From this perspective, SISTIC is simultaneously a ticketing service provider and a ticketing system supplier.

Venue operators

TECL

2.2.15 TECL, located at 1 Esplanade Drive, Singapore 038981, manages the Esplanade, a landmark premier performing arts venue in Singapore. The Esplanade consists of four main performance spaces, which are available for hire:

- the Esplanade Theatre (seating capacity of 1942)
- the Esplanade Concert Hall (seating capacity of 1811)
- the Esplanade Recital Studio (seating capacity of 245)
- the Esplanade Theatre Studio (seating capacity of 220)

2.2.16 TECL is a public company limited by guarantee. It is also a charitable organisation and has an Institute of a Public Charter (“IPC”) status¹³. Owned by the Ministry of Information, Communications and the Arts (“MICA”), TECL manages the Esplanade venues. TECL operates on a cost recovery basis, and relies on non-operating income such as grants, sponsorships and [...] for [...] % of its expenditure. TECL is the sole managing entity who handles all aspects of facilities and operations management of The Esplanade, including decisions and policies pertaining to ticketing systems.

¹² Para. 2.1 of SISTIC’s Representation dated 9 Feb 2010.

¹³ The Ministry of Finance’s conditions for the conferment of IPC status state that the object of the IPC must be charitable in nature and its activities and operations must be carried out on a non-profit making basis.

2.2.17 Based on number of tickets sold, about [20-30]%¹⁴ of all events held at the Esplanade venues from January 2006 to March 2009 were organised by TECL itself. From this perspective, TECL is simultaneously a venue operator and an event promoter.

2.2.18 TECL has entered into an exclusive agreement with SISTIC, namely the ASTA, which provides that all event promoters who hold their events at any of the Esplanade performing venues can only use SISTIC as their ticketing service provider.

SIS

2.2.19 SIS, located at 2 Stadium Walk, Singapore 397691, is an air-conditioned multi-purpose sports and entertainment facility and was constructed at the cost of S\$90 million. It officially opened on 31 December 1989. With a seating capacity of up to 13,000, SIS is the largest purpose-built indoor venue in Singapore, and one of the largest in South East Asia.

2.2.20 SIS hosts a wide variety of events, ranging from world-class pop concerts and sporting events, to smaller family entertainment shows such as ice-skating shows and musicals. In 2008, SIS hosted more than [70-80]%¹⁵ of the total number of concerts and live indoor sports events held in Singapore. Based on attendance numbers, SIS had an estimated [80-90]%¹⁶ share of the total attendance of all concerts and live indoor sports entertainment events held in Singapore in 2008. The SIS is also designed to host smaller events of up to 2,500 spectators.

2.2.21 Based on number of tickets sold, about [0-10]%¹⁷ of all events held at the SIS from January 2006 to March 2009 were organised by SIS itself. From this perspective, SIS is also simultaneously a venue operator and an event promoter, albeit to a much lesser extent than TECL.

2.2.22 SIS is a division of the SSC, a statutory board under the purview of the Ministry of Community Development, Youth and Sports (“MCYS”) and is staffed by SSC officers. SISTIC was the in-house ticketing arm of SIS before the former was corporatised on 28 July 2000.

¹⁴ SISTIC’s ticketing sales figures in this ID are computed based on information provided by SISTIC via letters dated 19 December 2008, 07 May 2009 and 11 September 2009, pursuant to the section 63 notices issued by CCS dated 11 November 2008, 17 April 2009 and 09 July 2009 respectively.

¹⁵ Refer to footnote 4.

¹⁶ Refer to footnote 4.

¹⁷ Refer to footnote 14.

2.2.23 The Chairman of SSC holds a concurrent appointment as Chairman of SISTIC. Another Council Member of SSC is also concurrently appointed as a director of SISTIC.

2.2.24 SSC has entered into an exclusive agreement with SISTIC, namely the ATS, which provides that all event promoters who hold their events in the SIS can only use SISTIC as their ticketing service provider.

Event promoters

2.2.25 Event promoters hire venues to hold their events, and engage ticketing service providers to sell tickets of their events to ticket buyers. For example, from January 2006 to March 2009, SISTIC has provided ticketing services for about [...] events held by over [...] event promoters across a variety of event genres.

2.2.26 Table 2.2.26 lists out SISTIC's top 20 customers by number of tickets sold by SISTIC, as well as by SISTIC's revenue from ticketing services, over the period from January 2006 to March 2009.

Table 2.2.26– SISTIC's Top 20 customers, by Volume of Tickets Sold and by Revenue from Ticketing Services (From January 2006 – March 2009)¹⁸

	Event organizer	Example of events held	Number of Tickets Sold	As % of All Tickets Sold (%)	Revenue from Ticketing Services (\$)	As % of Total Revenue from Ticketing Services (%)
1	[...]	[...]	[...]	[...]	[...]	[...]
2	[...]	[...]	[...]	[...]	[...]	[...]
3	[...]	[...]	[...]	[...]	[...]	[...]
4	[...]	[...]	[...]	[...]	[...]	[...]
5	[...]	[...]	[...]	[...]	[...]	[...]
6	[...] ¹⁹	[...]	[...]	[...]	[...]	[...]
7	[...]	[...]	[...]	[...]	[...]	[...]
8	[...]	[...]	[...]	[...]	[...]	[...]
9	[...]	[...]	[...]	[...]	[...]	[...]
10	[...]	[...]	[...]	[...]	[...]	[...]
11	[...]	[...]	[...]	[...]	[...]	[...]
12	[...]	[...]	[...]	[...]	[...]	[...]

¹⁸ Refer to footnote 14.

¹⁹[...].

13	[...]	[...]	[...]	[...]	[...]	[...]
14	[...]	[...]	[...]	[...]	[...]	[...]
15	[...]	[...]	[...]	[...]	[...]	[...]
16	[...]	[...]	[...]	[...]	[...]	[...]
17	[...]	[...]	[...]	[...]	[...]	[...]
18	[...]	[...]	[...]	[...]	[...]	[...]
19	[...]	[...]	[...]	[...]	[...]	[...]
20	[...]	[...]	[...]	[...]	[...]	[...]
	TOTAL		[...]	[...]	[...]	[...]

TECL

2.2.27 Notably, SISTIC's top customer is TECL which is simultaneously a venue operator and an event promoter. TECL self-organises about [20-30]%²⁰ of all events held at the Esplanade venues (based on number of tickets sold from Jan 2006 to Mar 2009).

SIS

2.2.28 SIS self-organises about [0-10]%²¹ of all events held at the SIS (based on number of tickets sold from Jan 2006 to Mar 2009). As an event promoter, SIS is not amongst the top customers of SISTIC.

The Singapore Formula One Grand Prix

2.2.29 The FIA Formula One ("F1") World Championship is a high-profile motor sports event, with an average of about 55 million people worldwide watching any Grand Prix weekend coverage. The F1 Championship 2009 takes place over 17 races, each held in different locations around the world.

2.2.30 The race in Singapore, called the Formula One SingTel Singapore Grand Prix race ("Singapore Grand Prix"), is scheduled to be held in September every year from 2008 to 2012. The first Singapore Grand Prix was attended by an estimated 100,000 people, half of whom were tourists.

2.2.31 Singapore GP Pte Ltd ("Singapore GP") is the event promoter of the Singapore Grand Prix, and holds a five year contract (from 2008 to 2012) to host the event. Singapore GP is owned by Mr Ong Beng Seng, and is a partnership between Komoco Motors and regional events company Lushington Entertainments, via its parent company Reef Enterprises.

²⁰ Refer to footnote 14.

²¹ Refer to footnote 14.

2.2.32 Ticket sales for the Singapore Grand Prix are handled by Singapore GP, which oversees a network of sales channels for the event. The sales channels for the 2009 Singapore Grand Prix include about 45 international partners in more than 18 countries.

2.2.33 In Singapore, ticketing systems for the 2008 Singapore Grand Prix were handled by OmniTicket, in conjunction with its ticketing service provider GTN. Ticket sales for the 2008 event were estimated to be about S\$[...] million (based on total ticket face value).

2.2.34 For the 2009 Singapore Grand Prix, SISTIC was the ticketing service provider. OmniTicket's role in the 2009 Singapore Grand Prix was limited to the provision of admission and venue management systems.

2.3 SISTIC's pricing structure

SISTIC's pricing structure to event promoters

2.3.1 Based on SISTIC's submission²², a description of the types of fees charged by SISTIC for providing ticketing services to event promoters, along with the quantum of the fees, is given below:

Ticketing Administration Fee (Table 2.3.2)

2.3.2 Ticketing Administration Fee²³ is a fee for computer programming time and services rendered in the development of the event web page, configuration of price structure, discounts and seating arrangements at the venue, providing standard sales reports and other services for the development of the event for ticket sales. [...].

Table 2.3.2 – Ticketing Administration Fee

For Reserved Seating events

Seating Capacity
[...]

Ticketing Administration Fee
[...]

²² Information provided by SISTIC via letter dated 19 December 2008 pursuant to the section 63 notice issued by CCS dated 11 November 2008, Annex 2.

²³ Also known as "basic fee" in the ASTA.

For General Admission events

Seating Capacity
[...]

Ticketing Administration Fee
[...]

Inside Charge (Table 2.3.3)

2.3.3 Inside charge is a per-ticket fee for the use of the SISTIC system and whose fee is included in the face value of the ticket. [...].

Table 2.3.3 – Inside Charge

Adult Ticket Prices
[...]

Inside Charge (per ticket)
[...]

Complimentary Ticket Charge

2.3.4 A charge of \$[...] per ticket issued is usually imposed for complimentary tickets that fall within the first [...] % of the event capacity. [...].

Commission

2.3.5 SISTIC charges two types of commissions:

- Basic Commission – [...].
- Corporate Exclusive Commission – [...].

Current Card Administration Fee (Table 2.3.6)

2.3.6 Current card administration fee is imposed for card payments, as a pre-determined percentage of gross ticket sales of ticketing channels calculated on the ticket price after deduction of all discounts given on the ticket price. [...].

Table 2.3.6 -Current Card Administration Fee

	Normal – Card transactions with the purchaser's signature	MOTO (Mail order/ telephone order/ internet) – Card transactions without the purchaser's signature
Visa /	[...]	[...]
Mastercard	[...]	[...]
American	[...]	[...]
Express	[...]	[...]
NETS / Cash	[...]	[...]

Card		
JCB Card	[...]	[...]
Diners Club	[...]	[...]
International		

Cancellation Fee

2.3.7 Cancellation fee is imposed for the cancellation of an event/ show/ticket. [...].

Promoter Pull Tickets²⁴ and Mass Pull Tickets²⁵

2.3.8 All returned promoter pull and mass pull tickets are subject to a charge of \$[...] per ticket.

SISTIC's pricing structure to ticket buyers

2.3.9 Based on SISTIC's submission²⁶, a description of the types of fees charged by SISTIC to ticket buyers, along with the quantum of the fees, is as follows:

Booking Fee

2.3.10 A booking fee is charged to ticket buyers for the service rendered to sell the tickets to them. A \$3 fee per ticket applies for tickets priced above \$20, with effect from 15 January 2008. The previous fee for tickets priced above \$20 was \$2 per ticket, and \$1 prior to 1 April 2004. The fee is \$1 per ticket for tickets priced at \$20 or below throughout the same period.

Handling Fee

2.3.11 A handling fee is charged to the ticket buyer to deliver the ticket to them following their ticket purchase. The quantum of the fee (on a per transaction basis) is detailed in Table 2.3.11, according to the delivery/ collection mode.

²⁴ Tickets pulled by the promoter for its own sale which do not constitute Mass Pull tickets.

²⁵ Tickets which are pre-printed by SISTIC and sold independently of the SISTIC system at venues without SISTIC terminals on the event day for such tickets.

²⁶ Information provided by SISTIC via letter dated 19 December 2008 pursuant to the section 63 notice issued by CCS dated 11 November 2008, Annex 2.

Table 2.3.11 – Handling Fee (for hotline and internet bookings)

Delivery/ Collection Mode	Handling Fee (per transaction)
Pickup from Authorised Agents	\$0.20
Mail (Singapore address)	\$1.00
Registered Mail (Singapore address)	\$3.00
Venue Collection	\$1.00
Courier (Singapore address)	\$15.00

2.4 SISTIC’s contractual relationships with venue operators and event promoters

The Application Service and Ticketing Agreement (“ASTA”) between SISTIC and TECL

- 2.4.1 During the period immediately preceding October 2002, SISTIC was looking into upgrading its ticketing system by acquiring a new modern ticketing software, as its existing software then was outdated.
- 2.4.2 During the same period, TECL was sourcing for a ticketing solution in preparation for the opening of the Esplanade operations. TECL first came across the Intelitix system in 2001, and Intelitix Inc. wanted to sell TECL the right to use the Intelitix software for US\$[...]m. [...].
- 2.4.3 Both TECL and SISTIC explored entering into a partnership due to the similar objectives of both parties to find a new ticketing solution. [...] ²⁷.
- 2.4.4 On 1 October 2002, a shareholders’ agreement was entered into between the SSC, TECL and SISTIC (the ‘2002 Shareholders’ Agreement’) wherein TECL acquired a minority stake in SISTIC. [...] ²⁸.
- 2.4.5 [...] ²⁹, TECL concurrently entered into an Application Service and Ticketing Agreement on the same date of 1 October 2002 (the ‘2002 ASTA’) with SISTIC, whereby TECL was granted access to and use of the ticketing software system ³⁰.
- 2.4.6 In the 2002 ASTA, TECL appointed SISTIC as its exclusive ticketing agent for the sale and distribution of tickets ³¹, and further undertook not to grant the right to sell tickets, for any events held in the Esplanade venues or such other venues as agreed between both parties to any other person or

²⁷ [...].

²⁸ [...].

²⁹ [...].

³⁰ [...].

³¹ Clause 7.1 of the 2002 ASTA.

- corporation using any other computerised ticketing network system³². The 2002 ASTA was in force until 31 December 2006 and would be automatically renewed upon the same terms and conditions for successive terms, although the agreement might be [...]. The 2002 ASTA was subsequently renewed [...] with effect from 1 January 2007 via an Addendum dated 29 January 2007 ('the Addendum').
- 2.4.7 On 16 April 2008, a new Application Service and Ticketing Agreement was entered into between TECL and SISTIC (the '2008 ASTA'). The 2008 ASTA took (retrospective) effect from 1 January 2008, thus replacing the Addendum and superseding the 2002 ASTA. The 2008 ASTA is [...].
- 2.4.8 The terms contained in the 2008 ASTA are largely similar to that of the 2002 ASTA. Under the 2008 ASTA, TECL retained the appointment of SISTIC as its exclusive ticketing agent for the sale and distribution of all events³³ held in the Esplanade venues. As stated above, Clause 7.2 of the 2002 ASTA restricted TECL from granting the right to sell tickets for any event held in the Esplanade venues to other persons save in accordance with the stated exceptions. However, under the 2008 ASTA, this restriction was broadened to include the sale and distribution³⁴ of any tickets for any event held in the Esplanade venues³⁵ by persons using a computerised ticketing network service of a third party.
- 2.4.9 As part of both the 2002 ASTA and 2008 ASTA, SISTIC provides [...] ³⁶, [...] ³⁷. [...] ³⁸.
- 2.4.10 It was stated in both the 2002 and 2008 ASTA that SISTIC shall [...] ³⁹.
- 2.4.11 In both the 2002 ASTA and the 2008 ASTA, SISTIC offered a [...] ⁴⁰.

³² Clause 7.2.2 of the 2002 ASTA, save for provisions stipulated in Clauses 7.2.1, 7.2.3 and 7.2.4 pertaining to the sale of tickets by TECL or third-party sub-agents through the use of SISTIC's computerised ticketing network system.

³³ Clause 7.1 of the 2008 ASTA.

³⁴ Sale refers to the method in which the tickets are sold while Distribution refers to the method in which the tickets are collected by the ticket buyer.

³⁵ Clause 7.2 of the 2008 ASTA.

³⁶ Clause 13.1 of the 2008 ASTA.

³⁷ Clause 13.2 of the 2008 ASTA.

³⁸ Clause 18.4 of the 2008 ASTA.

³⁹ Clause 12.5 of the 2002 and 2008 ASTA.

⁴⁰ [...].

The Agreement for Ticketing Services (“ATS”) between SISTIC and SSC

2.4.12 On 22 February 2006, an Agreement for Ticketing Services (‘ATS’) was entered into between the SSC and SISTIC. Under the ATS, SSC was defined as a body corporate established under the Singapore Sports Council Act (Chapter 305) and which expression included the Singapore Indoor Stadium division of the SSC.

2.4.13 In the ATS, SSC agreed to appoint SISTIC as the sole and exclusive agent for the sale of tickets for each and every show staged by hirers of the SIS⁴¹. Accordingly, the hirers of SIS shall appoint SISTIC to, *inter alia*, print, issue and sell the tickets for their events and collect the proceeds of such tickets.

2.4.14 The ATS commenced from 22 February 2006 and was valid for 3 years. This period was defined as the “First Term” under the ATS⁴². The ATS may be terminated by either party without reason upon the provision of 6 months’ notice. Unless the ATS was terminated, the ATS would be automatically renewed on the same terms and conditions for a period of [...]. This period was defined as the “Renewed Term” under the ATS⁴³. SISTIC has submitted that the current status of the ATS with SSC is that it is continuing⁴⁴.

2.4.15 It was stated in the ATS that SISTIC shall, as a gratuitous service to SSC, [...].

2.4.16 [...].

2.4.17 In the ATS, SISTIC offered the following discounts for events organised by the SIS:

- [...];
- [...] ⁴⁵;
- [...]; and
- [...].

⁴¹ Clause 2.2.1 of the ATS.

⁴² Clause 4.1 of the ATS.

⁴³ Clause 4.2 of the ATS.

⁴⁴ See Answer to Question 36 of Mr Kenneth Tan’s Notes of Information/Explanation Provided on 30 April 2009 (“NOI with SISTIC”).

⁴⁵ Corresponds to Ticketing Administration Fee under SISTIC’s standard fee structure.

Exclusive ticketing sales agreements with event promoters

2.4.18 Apart from TECL and SIS (who are simultaneously venue operators and event promoters), there are 17 other event promoters that have entered into contractual agreements with SISTIC⁴⁶. These agreements provide that SISTIC shall be the exclusive ticketing agent for all ticketed events organised by the event promoter during the fixed term specified in those agreements. In return, SISTIC usually offers these event promoters some form of discounts [...]. These 17 agreements are all drafted based on a standard template⁴⁷, although the contractual duration and discount structures are individualised.

2.4.19 The list of these 19 event promoters (including TECL and SIS) is given in Table 2.4.19, along with the time period for which the exclusive agreements (including the ASTA and the ATS) were entered into⁴⁸.

Table 2.4.19 – Event promoters entering into exclusive ticketing sales agreements with SISTIC

	Event promoter	Start of Contractual Relationship	End of Latest Contract
1	[...]	[...]	[...]
2	[...]	[...]	[...]
3	[...]	[...]	[...]
4	[...]	[...]	[...]
5	[...]	[...]	[...]
6	[...]	[...]	[...]
7	[...]	[...]	[...]
8	[...]	[...]	[...]
9	[...]	[...]	[...]
10	[...]	[...]	[...]
11	[...]	[...]	[...]
12	[...]	[...]	[...]
13	[...]	[...]	[...]
14	[...]	[...]	[...]
15	[...]	[...]	[...]
16	[...]	[...]	[...]
17	[...]	[...]	[...]
18	[...]	[...]	[...]
19	[...]	[...]	[...]

⁴⁶[...].

⁴⁷ Ticket Sales Agreement with Promoter, Form of Agreement.

⁴⁸ [...].

2.4.20 Table 2.4.20 lists the range of discounts SISTIC offered on the Ticketing Administration Fee and Inside Charge to these event promoters respectively.

Table 2.4.20 - Discounts offered by SISTIC on Ticketing Administration Fee to event promoters with exclusive agreements

Discount Offered	Event promoter
[...]%	• [...]
[...]%	• [...]
[...]%	• [...]
[...]%	• [...]
[...]%	• [...]*
[...]%	• [...]

*[...].

[...].

Discounts offered on Inside Charge to event promoters with exclusive agreements

Discount Offered	Event promoter
\$[...]	• [...]
\$[...]	• [...]
\$[...]	• [...]
\$[...]	• [...]

The pre-discounted Inside Charge ranges from \$[...] to \$[...], depending on the full adult ticket price of each ticket.

Chapter 3 The Proceedings

3.1 Investigations in respect of ticketing restrictions

- 3.1.1 In October 2007, a complaint was referred to CCS concerning restrictions imposed by TECL on event promoters hiring the Esplanade venues, on their choice of ticketing service providers. The complainant alleged that it is *“not ethical to compel external promoters who are hiring the venue at a premium price to be COMPELLED [sic] to use a subsidiary company which also charges a premium price”*.
- 3.1.2 In January 2008, after a preliminary enquiry, CCS decided that there were reasonable grounds for suspecting that a possible infringement of section 47 prohibition of the Act with regard to ticketing services in Singapore had occurred.
- 3.1.3 CCS commenced formal investigations under the Act and between the period 10 March 2008 to 11 November 2008, sent a total of 27 notices requesting documents and information under section 63 of the Act to various parties as detailed in the table below:

	Company/ Venue	Date(s) of s63 Notice	Date response(s) received
Venue Operators*			
1.	The Esplanade Company Ltd	10 Mar 08	31 Mar 08
2.	Alliance Francaise de Singapour (Alliance Francaise Theatre)	10 Mar 08	24 Mar 08
3.	The Old Parliament House Limited (The Arts House)	10 Mar 08	03 Apr 08
4.	Raffles Hotel (1886) Ltd (Jubilee Hall)	10 Mar 08	24 Mar 08
5.	Singapore Repertory Theatre (DBS Arts Centre)	10 Mar 08	24 Mar 08
6.	Kreta Ayer People's Theatre Foundation Management Committee (Kreta Ayer Theatre)	10 Mar 08	31 Mar 08
7.	Singapore Chinese Orchestra Limited (Singapore Conference Hall)	10 Mar 08	24 Mar 08
8.	Singapore Symphonia Company	10 Mar 08	07 Apr 08

	Limited (Victoria Concert Hall)		
9.	Yong Siew Toh Conservatory of Music	10 Mar 08	24 Mar 08
10.	National Arts Council (Victoria Theatre and Drama Centre)	10 Mar 08	20 Mar 08
11.	Young Musicians' Society Ltd	10 Mar 08	24 Mar 08
12.	NUS Center for the Arts (University Cultural Centre)	10 Mar 08	01 Apr 08
13.	Nanyang Academy of Fine Arts (Lee Foundation Theatre)	10 Mar 08	24 Mar 08
14.	Theatreworks (Singapore) Ltd (72-13)	08 May 08	21 May 08
15.	Starworth Pte Ltd (Chijmes Hall)	08 May 08	22 May 08
16.	Marine Parade Community Club (Marine Parade Community Complex)	08 May 08	26 May 08
17.	RELC International Hotel (RELC Auditorium)	08 May 08	23 May 08
18.	Rock Productions Pte. Ltd. (Rock Auditorium)	08 May 08	12 Jun 08
19.	Suntec Singapore (Suntec International Convention & Exhibition Centre)	08 May 08	21 May 08
20.	ACT 3 International (ACT 3 Theatre)	08 May 08	22 May 08
21.	The Grassroots' Club (Grassroots Club Theatre)	08 May 08	20 May 08
22.	The Substation Ltd	08 May 08	04 Jun 08
23.	The Republic Polytechnic (The Republic Cultural Centre)	08 May 08	15 May 08
24.	Singex Venues Pte Ltd (Singapore Expo Max Pavillion)	08 May 08	20 May 08
25.	Tampines East Community Club (Tampines Cultural Centre)	08 May 08	20 May 08
26.	NTUC Income Insurance Co-operative Ltd (NTUC Income Auditorium)	20 May 08	02 Jun 08
Ticketing Service Providers			
1.	SISTIC.com Pte Ltd	11 Nov 08	19 Dec 08 23 Dec 08 29 Dec 08 30 Dec 08 05 Jan 09 09 Jan 09

* Note: Some parties have been sent two sets of Notices under section 63 of the Act as they are both a venue operator as well as an event promoter

3.2 Investigation against SISTIC

3.2.4 Based on the information obtained from the section 63 notices, CCS expanded the scope of its investigations to cover (a) ticketing restrictions on hirers of event venues, in particular, performing arts venues; and/or (b) exclusive ticketing arrangements entered into by ticketing agents with event promoters who hire event venues and/or with venue owners/operators, in particular, performing arts and live entertainment venues.

3.2.5 Between the period 23 February 2009 to 02 December 2009, CCS sent a total of 78 notices requesting documents and information pursuant to the exercise of its powers under section 63 of the Act to various parties as detailed in the table below:

	Company/ Venue	Date(s) of section 63 Notice	Date response(s) received
Venue Operators*			
1.	The Esplanade Company Ltd	24 Apr 09	14 May 09
Event promoters*			
1.	Alliance Francaise de Singapour	24 Feb 09	20 Mar 09
2.	Braddell Heights Symphony Orchestra	24 Feb 09	19 Mar 09
3.	Genius R Us	24 Feb 09	25 Mar 09 22 Apr 09
4.	Hype Records Pte Ltd	24 Feb 09	26 Mar 09 02 Apr 09
5.	Kideas Holdings Pte Ltd	24 Feb 09	Nil Response
6.	MediaCorp TV12 Singapore Pte Ltd	24 Feb 09	23 Mar 09 08 Apr 09
7.	Rock Records (S) Pte Ltd	24 Feb 09	10 Mar 09
8.	Scorpio East Production Pte Ltd	24 Feb 09	19 Mar 09 27 Mar 09
9.	The Necessary Stage	24 Feb 09	27 Feb 09
10.	The Singapore Lyric Opera	23 Feb 09	01 Apr 09 24 Apr 09
11.	Toy Factory Production Ltd	25 Feb 09	27 Mar 09
12.	Unusual Entertainments Pte Ltd	25 Feb 09	20 Mar 09
13.	Warner Music Singapore Pte Ltd	25 Feb 09	23 Mar 09
14.	Wild Rice Limited	25 Feb 09	23 Mar 09

15.	Yong Siew Toh Conservatory of Music, NUS	25 Feb 09	23 Mar 09
16.	Zebra Crossing Productions Pte Ltd	25 Feb 09	18 Mar 09
17.	Singapore Chinese Orchestra Company Limited	24 Feb 09 15 Jul 09	23 Mar 09 27 Mar 09 27 Jul 09
18.	Singapore Repertory Theatre Ltd	25 Feb 09 15 Jul 09	18 Mar 09 27 Jul 09
19.	Drama Box Ltd	25 Feb 09	23 Mar 09 30 Mar 09
20.	Singapore Dance Theatre Limited	23 Feb 09 16 Jul 09	20 Mar 09 27 Mar 09 28 Jul 09
21.	Young People's Performing Arts Ensemble Ltd	25 Feb 09 16 Jul 09	27 Mar 09 20 Jul 09
22.	Sentosa Development Corporation	25 Feb 09	17 Mar 09
23.	The Dream Academy Productions Pte Ltd	24 Feb 09	20 Mar 09 27 Mar 09
24.	The Theatre Practice	25 Feb 09 16 Jul 09	20 Mar 09 Nil response
25.	Lunchbox Theatrical Productions Pte Ltd	26 Feb 09	27 Mar 09
26.	Singapore National Youth Orchestra (MOE)	26 Feb 09 16 Jul 09	03 Mar 09 18 Mar 09 20 Jul 09
27.	Young Musicians Society	26 Feb 09	26 Feb 09
28.	I Theatre	26 Feb 09	30 Mar 09
29.	Midas Promotions	26 Feb 09	10 Apr 09
30.	Supreme Music & Publishing Pte Ltd	26 Feb 09	01 Apr 09
31.	The Stage Club	26 Feb 09	17 Mar 09
32.	Singapore Symphony Orchestra Limited	24 Feb 09	16 Apr 09
33.	Horizon Music Entertainment Pte Ltd	10 Jul 09	15 Jul 09
34.	IMG Artists Asia Pacific	10 Jul 09	17 Jul 09
35.	M2M Pte Ltd	10 Jul 09	04 Aug 09
36.	National Arts Council	10 Jul 09	24 Jul 09
37.	Tang Renaissance Communicators Pte Ltd	10 Jul 09	24 Jul 09
38.	TCR Music Station	10 Jul 09	17 Jul 09
39.	Anglo-Chinese Junior College	13 Jul 09	20 Jul 09
40.	Basketball Association of Singapore	13 Jul 09	24 Jul 09
41.	Basketball Enterprises Pte Ltd	13 Jul 09	27 Jul 09
42.	Citystate Management Group Holdings Pte Ltd	13 Jul 09	Nil response
43.	Singapore Badminton Association	13 Jul 09	20 Jul 09
44.	Jasper Entertainment Pte Ltd	13 Jul 09	Unclaimed mail

45	Sports Management Group Pte Ltd	13 Jul 09	04 Aug 09
46	Action Theatre Ltd	14 Jul 09	Nil response
47	Sirius Art Pte Ltd	14 Jul 09	20 Jul 09
48	Century Events Pte Ltd	14 Jul 09	17 Jul 09
49	Imagine OmniMedia Pte Ltd	14 Jul 09	27 Jul 09
50	Biz Trends Media Pte Ltd	15 Jul 09	Unclaimed mail returned on 22 Jul 09
51	Singapore Indian Fine Arts Society	16 Jul 09	20 Jul 09
Ticketing Service Providers			
1.	SISTIC.com Pte Ltd - Mr Kenneth Tan - Mr Andrew Chee - Ms Jacqueline Tan - Mr Kenneth Tan - Mr Kenneth Tan - Mr Kenneth Tan - Mr Kenneth Tan - Mr Kenneth Tan - Mr Kenneth Tan - Mr Kenneth Tan	17 Apr 09 24 Apr 09 24 Apr 09 06 May 09 11 May 09 18 May 09 26 May 09 09 Jul 09 05 Oct 09 02 Dec 09	07 May 09 -dispensed of- 07 May 09 13 May 09 14 May 09+ 19 May 09+ 29 Jun 09+ 03 Sep 09 12 Oct 09 07 Dec 09
2.	EXCEPTIONal Pte Ltd	23 Feb 09 30 Jun 09	13 Apr 09 21 Jul 09
3.	OmniTicket(Singapore) Pte Ltd	25 Feb 09 30 Jun 09	08 Apr 09 14 Jul 09
4.	Tickets.com Singapore	23 Feb 09 30 Jun 09	31 Mar 09 14 Jul 09
Cinema Operators			
1.	Golden Village Multiplex Pte Ltd	21 Apr 09	05 May 09
2.	Cathay Cineplexes Pte Ltd	21 Apr 09	06 May 09
3.	EW.G Pte Ltd	21 Apr 09	06 May 09
4.	Shaw Theatres Pte Ltd	21 Apr 09	07 May 09

* Note: Some parties have been sent two sets of s63 notices as they are both a venue operator as well as an event promoter

⁺ These were emails sent to legal counsels for SISTIC, M/s Allen & Gledhill, requesting for further information and documents pursuant to the section 63 notice issued to SISTIC by CCS on 17 April 2009.

3.2.6 Over the period from March 2009 to April 2009, CCS exercised its powers under section 63 of the Act to conduct a number of interviews with the relevant personnel from the Party and third parties as detailed below:

Name	Company / Position	Date(s) of interviews
Mr. Gerald Parakrama Singam Edwards	Deputy General Manager, Quebec Leisure International Pte Ltd.	18 March 2009
Mr. Ong Min Ji	Managing Director, EXCEPTional Pte Ltd	27 March 2009
Mr. Paolo Moro	President & CEO, OmniTicket Network Inc, and Director, OmniTicket Network (Singapore) Pte Ltd	8 April 2009
Mr. Kenneth Tan	(Then) Deputy Chief Executive Officer, SISTIC.com Pte Ltd	30 April 2009

3.2.7 In addition, CCS obtained relevant information from other parties, including SSC.

3.3 Proposed infringement decision (“PID”) to and Representations from SISTIC

3.3.1 On 15 December 2009, CCS issued a PID to SISTIC. On 9 February 2010, SISTIC submitted a written representation (the “Representation”). In order to meet certain contentions raised by SISTIC in the Representation, CCS sent supplementary evidence to SISTIC on 16 April 2010. In response, SISTIC submitted further written representations (“Supplementary Representation”) on 26 April 2010. On 29 April 2010, SISTIC made an oral representation to CCS.

Appendix 3 Survey of Event promoters

A3.1 Introduction

A3.1.1 Over the period 23 February 2009 to 25 February 2009, CCS sent out section 63 notices to 31 event promoters⁴⁹, out of SISTIC's customer base of more than 200 event promoters, to better understand the ticketing requirements of event promoters and their views about the ticketing services industry in Singapore.

A3.2 Findings on Survey of Event promoters (the "Survey")⁵⁰

Key considerations in selecting ticketing service provider

- A3.2.1 The results indicated that one top consideration for event promoters in deciding the ticketing agent to use relates to the relative ease with which ticket buyers can buy tickets from the ticketing agent, with about 28 respondents ($\approx 90\%$) citing this option as one of their top 5 considerations. The ease of purchasing tickets from the ticketing agent was determined by the location and the number of the ticketing booths (i.e. physical ticketing outlets), and the various modes of purchase (call center, online booking via website, and authorised sales agents).
- A3.2.2 About 16 respondents ($\approx 52\%$) cited the cost of ticketing services as a top 5 consideration, while about 10 respondents ($\approx 32\%$) cited reliability of service of the ticketing service provider⁵¹. On a scale of 1 to 10 (1 being most important), the mean and median score for the importance of ticketing price levied on end consumers by ticketing agents in influencing the respondents' selection of ticketing agents was 5.0 and 5 respectively, which is the least important relative to other factors surveyed⁵².

⁴⁹ [...].

⁵⁰ For this Survey, if for a question, a respondent did not give an answer to that question or his/her response is 'NA', then that the response of that respondent would not count towards the number of responses to that question.

⁵¹ For example, this includes having a reliable ticketing system that allows many ticket buyers to purchase tickets at the same time (especially for big events) and also, ensuring payment/purchase of tickets is made secured over the internet.

⁵² Other factors surveyed include "ability of an agent to promote your event", "size of agent's database and its use to promote your events", "popularity of agent's website" and "ticketing price charged to show promoters by ticketing agents".

Use of other value-add services

- A3.2.3 About 17 respondents ($\approx 55\%$) indicated that they frequently (more than 50% of the time) engage ticketing service providers to carry out advertising and promotion-related activities (i.e. value-add activities offered by the ticketing service providers).
- A3.2.4 Respondents were also asked to rate the importance of the following factors on a scale of 1 (most important) to 10 (least important) when selecting a ticket service provider:
- the size of customer database; and
 - the popularity of the website.
- A3.2.5 The mean ratings among respondents were 4.5 and 3.3 respectively. The median ratings were 3 and 2 respectively.

Competitive landscape of the ticketing services industry in Singapore

- A3.2.6 About 70% of respondents would continue to use SISTIC as their main ticketing service provider for the events held at the Esplanade and/or the SIS and would not consider using other ticketing service providers in place of SISTIC even if there are no ticketing restrictions in place. Generally, the reason cited for this is that there is no viable alternative ticketing service provider besides SISTIC.
- A3.2.7 About 80% of respondents indicated that the ticketing services market in Singapore is not competitive. They indicated that Singapore is a small market, and SISTIC will remain as the dominant ticketing service provider in Singapore as other ticketing service providers cannot match SISTIC in terms of its size, customer reach and branding.
- A3.2.8 [...] are often cited by the respondents ($\approx 66\%$) as alternative ticketing service providers. However, only about 38% of respondents regard either [...] as close competitors to SISTIC. The rest felt that [...] cannot be compared to SISTIC as they lack an extensive ticket sales and distribution channel and they cater to a different audience base. Participants also felt that these 'alternative' ticketing service providers lacked experience/track record and reputation. In general, they will not consider using these 'alternative' ticketing service providers in place of SISTIC, with some respondents indicating that they will only use them if they are able to reach out to more customers and provide more competitive rates.

Importance of Venues

- A3.2.9 When selecting venues, about 64% of respondents rated the accessibility of the venue as one of their top 3 considerations. This is followed by about 64% of the respondents who cited seating capacity, and about 48% who cited cost of hiring a venue.
- A3.2.10 Other than the Esplanade and SIS which impose ticketing restrictions on hirers, respondents have indicated that venues such as the [...] also place restrictions on its hirers on the choice of ticketing service provider.
- A3.2.11 About 81% of the respondents do not think that it is justified for venue operators to impose ticketing restrictions on hirers (i.e. event promoters). They have argued that this arrangement is not fair to them and this should be a free market where they should have a choice to decide who they want to engage as their ticketing service providers. Notwithstanding this, only 3 respondents ($\approx 10\%$) indicated that they have ever switched to using other venues (or have considered doing so) because of ticketing restrictions imposed on them by existing venue operators. However, as explained by the respondents, the choice of a particular venue is highly dependent on the type of events/shows that are brought in.
- A3.2.12 About 68% of the respondents agree that there are different genres of performing venues in Singapore. These genres can be divided into 'world-class', 'premium' and 'non-premium', and the genre of each venue will depend on a mix of factors, namely, seating capacity, prestige/reputation, accessibility of location, state-of-the-art equipment and quality of acoustics and technical support rendered to event promoters.
- A3.2.13 When asked for the reasons in choosing the venues offered at the Esplanade, many respondents cited the Esplanade having state-of-the-art equipment with good acoustics and professional staff as the most important reason. Again, they have stressed that this is driven by the type of shows/events brought in by the event promoters. Secondly, the central location of Esplanade also makes it accessible to customers. In addition, the Esplanade has a large seating capacity to accommodate more audience which in turn increases revenue or improves cost efficiency.
- A3.2.14 The Survey revealed that all respondents regarded the Esplanade Theatre and Concert Hall to be 'world-class' performing venues in Singapore. They felt that there is no venue (or very few venues) that are comparable to the Esplanade. They explained that the Esplanade is in a class of its own as it is a unique venue. Secondly, the Esplanade has a good reputation as well as management structure. Thirdly, the Esplanade has state-of-art equipment with first-class sound and lighting quality.

Fourthly, the Esplanade crew is professional and provides good technical support to the event promoters. Lastly, the location is accessible and there are various F&B facilities within the Esplanade.

A3.2.15 About 70% of the respondents do not regard the Esplanade Theatre and the Esplanade Concert Hall to be substitutable for each other. According to them, the concert hall is more suitable for music performances where music takes precedence and there is less movement. Moreover, the hall does not have the facilities such as the flying system (“flybar”) which is essential for theatre productions. The Esplanade Theatre is more suitable for theatre productions as these productions require more complicated technical theatre designs. Although some performances can be held at both venues, different performing genres will generally require different stage settings, seating capacities and technical expertise.

Chapter 4 Applicability of the Competition Act

4.1 The section 47 prohibition

4.1.1 Section 47 of the Act prohibits any conduct of the part of one or more undertakings which amounts to the abuse of a dominant position in any market in Singapore⁵³.

4.1.2 In particular, section 47 (2) of the Act provides that:

“... conduct may, in particular, constitute such an abuse if it consists in –

...

- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.”

4.1.3 The section 47 prohibition is modelled after the Chapter II prohibition of the United Kingdom (“UK”) Competition Act 1998 and Article 82⁵⁴ of the European Union (“EU”) Treaty. As competition law is a new area of law in Singapore, cases from these jurisdictions may be persuasive or useful in assisting CCS in reaching its decision. However, the value of any foreign competition cases will depend very much on the overall context and the extent to which the facts of such cases are applicable to the local context and the facts of the existing case.

4.1.4 In particular, CCS has considered overseas cases and studies in the UK⁵⁵, US⁵⁶ and Ireland⁵⁷ concerning the ticketing industry, and the extent to which these cases and studies are applicable to the Singapore context. See Appendix 8B for a comparison table of the case merits.

4.1.5 In determining whether the section 47 prohibition applies, CCS applies a two-step test in its assessment⁵⁸:

⁵³ The Section 47 prohibition came into force on 1 January 2006.

⁵⁴ Article 82 is now known as Article 102 of the EU Treaty (as of 1 December 2009). For the purposes of this ID, references will be made to Article 82 instead.

⁵⁵ OFT Study *Ticket agents in the UK*, dated January 2005 (the “OFT Study”).

⁵⁶ *Competitive Impact Statement*, United States of America, et al., v. Ticketmaster Entertainment, Inc and Live Nation, Inc, case 1:10-cv-00139, 25 January 2010 (the “DOJ Competition Impact Assessment”).

⁵⁷ Decision of the Irish Competition Authority (Case COM/ 107/02), *Alleged excessive booking fees by Ticketmaster Ireland and its exclusive contractual relationships with MCD Promotions Limited and Aiken Promotions Limited*, dated 26 September 2005 (the “ICA Ticketmaster Decision”).

⁵⁸ See *The CCS Guidelines on The Section 47 Prohibition*, paragraph 3.1.

- Whether an undertaking is dominant in a relevant market, either in Singapore or elsewhere; and
- If the undertaking in question is dominant, whether it is abusing that dominant position in a market in Singapore.

4.2 The section 33(4) exclusion

- 4.2.1 Section 33(4) excludes, amongst others, any agreement entered into or any conduct on the part of the Government, a statutory body, or any person acting on behalf of the Government or that statutory body in relation to that activity, agreement or conduct, from the prohibitions under the Act.
- 4.2.2 With respect to the ASTA, CCS notes that both parties, namely TECL and SISTIC, are corporate entities. While TECL is owned directly by MICA, and SISTIC is co-owned directly by SSC and indirectly by MICA via TECL, neither TECL nor SISTIC is part of the Government or a statutory body itself. In addition, the contractual terms and conditions under ASTA are commercial in nature. There has been no suggestion that either TECL or SISTIC was acting on behalf of the Government or a statutory body in relation to the activity(s), agreement(s) or conduct(s) as specified in the ASTA. As such, CCS is satisfied that section 33(4) exclusion does not apply to SISTIC's conduct of imposing the exclusive purchasing obligations under the ASTA.
- 4.2.3 With respect to the ATS, CCS notes that while SISTIC is a corporate entity, SIS is a division under SSC, which is in turn a body corporate set up by section 3 of the Singapore Sports Council Act (Cap. 305). This means SIS is part of a statutory body within the meaning of section 33(4)(b). However, CCS is investigating into the ATS from the perspective of unilateral conduct on the part of SISTIC in imposing the exclusive dealing obligations under the ATS. In other words, the relevant question is whether the obligations are imposed *by* a statutory body as opposed to whether the obligation is imposed *upon* a statutory body. In this case, CCS notes that the exclusive purchase obligation under the ATS constitutes an obligation imposed by SISTIC upon SSC. There is also no suggestion that SISTIC is acting on behalf of the Government or a statutory body in entering into the ATS. As such, CCS is satisfied that the section 33(4) exclusion does not apply to SISTIC's conduct of imposing the exclusive dealing obligations under the ATS.

4.3 The applicability of the single economic entity (“SEE”) doctrine

The relevance of the SEE doctrine to the present case

4.3.1 In the present case, CCS is looking into exclusive purchasing obligations imposed by SISTIC via a series of agreements including, amongst others:

- The ASTA between SISTIC and TECL; and
- The ATS between SISTIC and SSC.

4.3.2 CCS notes that SISTIC is 65% owned by SSC and 35% owned by TECL. Therefore, both ASTA and ATS are agreements between related entities. Accordingly, CCS needs to determine whether the exclusive purchasing obligations imposed by SISTIC upon TECL through ASTA and upon SSC through ATS are capable of infringing section 47 of the Act. This calls for an assessment as to whether:

- (with respect to the ASTA) SISTIC and TECL form a SEE; and
- (with respect to the ATS) SISTIC and SIS form a SEE.

The concept of the SEE doctrine

4.3.3 The SEE doctrine is applied in competition law to assess if entities form a single economic unit, i.e. essentially whether entities should be treated as a single undertaking for the purposes of competition law. In the CCS guidelines, it is stated that two entities - a parent and its subsidiary company, or two companies which are under the control of a third company, form a SEE if the subsidiary has no real freedom to determine its course of action in the market and, although having a separate legal personality, enjoys no economic independence⁵⁹.

4.3.4 Some of the factors that may be considered in assessing whether a subsidiary is independent of or forms part of the same economic unit with its parent include⁶⁰:

- the parent’s shareholding in the subsidiary;

⁵⁹ Paragraph 2.7 of *CCS Guidelines on the section 34 prohibition*, which is cross-referenced in paragraph 2.6 of *CCS Guidelines on the section 47 prohibition*.

⁶⁰ Paragraph 2.8 of *CCS Guidelines on the section 34 prohibition*, which is cross-referenced in paragraph 2.6 of *CCS Guidelines on the section 47 prohibition*.

- whether the parent has control of the board of directors of the subsidiary; and
- whether the subsidiary complies with the directions of the parent on critical matters such as sales and marketing activities and investment matters.

4.3.5 Ultimately, whether or not the entities form a SEE will depend on the facts and circumstances of each case.

Application of the SEE doctrine in different jurisdictions

US

4.3.6 In the case of *Advanced Health-Care Services v. Radford Community Hospital & Ors*⁶¹, one of the issues that the US Court of Appeals had to deal with was whether the exclusive purchasing contract between Radford and Southwest fell foul of section 3 of the Clayton Act. Advanced Health-Care Services (“AHCS”), a durable medical equipment (“DME”) supplier, had filed a complaint that Radford Community Hospital (“Radford”) which provides acute care hospital services to approximately seventy-five percent of the residents of the Greater Radford, Virginia region had used its monopoly status to direct the purchase of durable medical equipment in its favour. The abusive conduct alleged by AHCS related to the exclusive purchasing contract made between Radford and its corporate affiliate⁶², Southwest Virginia Pharmacy & Medical Supply Co. (“Southwest”). Southwest had purchased a local drugstore which had become the exclusive supplier of DME and discharge services to Radford. AHCS complained that the personnel from Radford combined and conspired with its corporate affiliates to influence Radford patients not to deal with AHCS, resulting in the illegal domination of the DME market by Radford and Southwest. Section 3 of the Clayton Act prohibits a seller of goods from, *inter alia*, making a contract for the sale of goods, or pricing his goods, on the condition that the purchaser does not deal in the goods of the seller’s competitor, where the effect of this would be to substantially lessen competition or tend to create a monopoly. The US Court of Appeals ruled

⁶¹ 910 F.2d 139.

⁶² Radford is a wholly owned subsidiary of Southwest Virginia Health Services Corporation. Southwest Virginia Health Enterprises, Inc., is also a wholly owned subsidiary of that holding company. Southwest Virginia Pharmacy & Medical Supply Company is a wholly owned subsidiary of Southwest Virginia Health Enterprises, Inc.

that section 3 of the Clayton Act would not apply where the parties to the exclusive dealing contract formed a SEE. Specifically, the court held:

In the Radford case, there can be no exclusive sales arrangement as a matter of law. Although *Copperweld* has not specifically been applied to Sec.3 Clayton Act claims, extension of the Supreme Court's analysis is appropriate. If there can be no conspiracy or illegal agreement between Radford and Southwest, it follows likewise, that there cannot be an illegal exclusive dealing arrangement within the corporate enterprise.

- 4.3.7 While the *Radford* case concerns a somewhat different statutory provision, it appears to bear some relevance to abuse of dominance cases concerning exclusive dealing. CCS therefore considered whether SISTIC forms a SEE with SSC and/or TECL.

EU

- 4.3.8 There is plenty of EU case law explaining how the SEE doctrine may exclude agreements from Article 81⁶³ of the EU Treaty, which prohibits anti-competitive agreements (similar to Section 34 of the Act in Singapore). The underlying principle is that if both parties to the agreement form a single economic entity, there is no agreement between independent undertakings that would fall within the harm contemplated by Article 81.
- 4.3.9 However, there appears to be less guidance on how the doctrine may be applied in the context of Article 82 of the EC Treaty, especially regarding whether the SEE doctrine may exclude the imposition of exclusive purchasing obligations from the prohibition against abuse of dominance (and similarly the section 47 prohibition of the Act).
- 4.3.10 In *AKZO*⁶⁴, the European Commission ("EC") addressed the statement of objections to AKZO Chemie instead of only its United Kingdom subsidiary, despite the fact that the complainant had complained of the conduct of the subsidiary. In explaining the attribution of liability to the parent company, the EC stated at Paragraph 90 of its decision that "*It may well be that in private law a parent company and its subsidiaries are separate legal persons. The relevant prohibitions in Articles 85 and 86 are directed to "undertakings", a concept not limited by the strict application of the doctrine of legal personality. The present case concerns an abuse of the dominant position held by AKZO in the organic peroxides market as a whole. AKZO Chemie and the subsidiary companies through which it operates in the different Member States form a single economic unit. In any*

⁶³ Article 81 is now known as Article 101 of EU Treaty (as of 1 December 2009). For the purposes of this ID, references will be made to Article 81 instead.

⁶⁴ EC Decision 85/609/EEC of 14 December 1985.

case, the actions of AKZO UK on the flour additives market were carried out on the direction and with the knowledge of senior executives from the parent company AKZO Chemie. AKZO UK can in no way be said to conduct its business autonomously of its parent.” In light of the foregoing, the EC identified AKZO Chemie BV (including its subsidiary companies), being the economic unit in which the activities of the AKZO group in specialty chemicals are organised, as the appropriate addressee of its Decision. This finding of the EC was not contested by AKZO Chemie in the subsequent appeal before the European Court of Justice (“ECJ”) ⁶⁵.

4.3.11 Most recently, in addressing the SEE doctrine, the ECJ further held in *Akzo Nobel NV and Others v EC* ⁶⁶ that, where a parent company has a 100% shareholding in its subsidiary, there is a rebuttable presumption that the conduct of a subsidiary may be imputed to the parent company, in particular where, although having a separate legal personality, the subsidiary does not decide independently upon its own conduct on the market, but instead, the parent company exercises a decisive influence over the conduct of its subsidiary ⁶⁷.

4.3.12 The ECJ elaborated on the above position by elucidating that in ascertaining whether a subsidiary actually determines its conduct on the market independently, account must also be had of, inter alia, whether the parent company was able to influence pricing policy, production and distribution activities, sales objectives, gross margins, sales costs, cash flow, stocks and marketing. In addition, regard should also be had to the economic, organisational and legal links which tie the subsidiary to the parent company ⁶⁸. The factors to be considered vary from case to case and cannot be set out in an exhaustive list.

4.3.13 In so holding, the ECJ affirmed the statement made by the Court of First Instance ⁶⁹ (the “CFI”) ⁷⁰ that a single economic entity is a single undertaking formed by economic entities which consist of a unitary organization of personal, tangible and intangible elements, which pursue a specific economic aim on a long-term basis and can contribute to the commission of an infringement under the competition regime.

⁶⁵ Now known as the Court of Justice (as of 01 December 2009). For the purposes of this ID, references will be made to ECJ instead.

⁶⁶ Case C-97/08 P.

⁶⁷ Ibid, paragraphs 60, 63 and 72.

⁶⁸ Ibid, paragraphs 58, 73 and 74.

⁶⁹ Now known as the General Court (as of 01 December 2009). For the purposes of this ID, references will be made to CFI instead.

⁷⁰ Case T 112/05 *Akzo Nobel NV and Others v Commission* at [57]. See also case T-9/99 *HFB and Others v Commission* [2002] ECR II-1487 at [54].

4.3.14 In *Viho Europe BV v EC*⁷¹, the ECJ applied the SEE doctrine in the context of the Article 81(1) prohibition. Viho, a Dutch company marketing, importing and exporting office equipment, complained that Parker, a manufacturer of pens, whose distribution policy required its subsidiaries to restrict the distribution of Parker's products to their allocated territories, infringed Article 81 of the Treaty. The ECJ held, with reference to established EC case law that *"for the purposes of application of the competition rules, the unified conduct on the market of the parent company and its subsidiaries takes precedence over the formal separation between those companies as a result of their separate legal personalities."*

It follows that, where there is no agreement between economically independent entities, relations within an economic unit cannot amount to an agreement or concerted practice between undertakings which restricts competition within the meaning of Art 85(1) of the Treaty. Where, as in this case, the subsidiary, although having a separate legal personality, does not freely determine its conduct on the market but carries out the instructions given to it directly or indirectly by the parent company by which it is wholly controlled, Art 85(1) does not apply to the relationship between the subsidiary and the parent company with which it forms an economic unit."

Singapore

4.3.15 In CCS' decision on the application of section 34 of the Act to the co-operation agreement between Qantas Airways and Orangestar Investment Holdings⁷², CCS found that Qantas did not form a SEE with Orangestar.

4.3.16 In dealing with the parties' argument that there was unity of interest, CCS considered that it can be inferred from the rights conferred upon Qantas by the Orangestar Shareholders' Agreement that the interests of Qantas and Orangestar may diverge and the potential for competition between Qantas and Orangestar exists⁷³ and the extent to which Qantas provided financial and operational support to Orangestar appeared to be conditional upon the parties being able to coordinate prices and output⁷⁴. In light of the foregoing, CCS considered that the unity of interest which the parties claimed to exist between Qantas and Orangestar had not been substantiated⁷⁵. In deciding whether there was decisive influence, CCS noted that Qantas' shareholding in Orangestar fell short of a majority, Qantas shared its veto powers with the three nominees from Fullerton on

⁷¹ [1997] All ER (EC) 163.

⁷² CCS/400/003/06, *Decision in relation to the Notification by Qantas Airways and Orangestar Investment Holdings of their Co-Operation Agreement* dated 5 March 2007.

⁷³ Ibid, paragraph 41.

⁷⁴ Ibid, paragraphs 46 to 49.

⁷⁵ Ibid, paragraph 51.

Orangestar's nine-member board, so that the Fullerton directors were also in a position to block any resolution required for material decisions⁷⁶ and that the parties have stated themselves that the Orangestar Board is not accustomed and under no obligation to act in accordance with the directions, instructions or wishes of Qantas. CCS found that the level of Qantas' control over Orangestar was insufficient to bring agreements between them under the SEE doctrine.

4.4 With respect to the ATS, do SISTIC and SIS form a SEE?

Submission by SSC/SIS

4.4.1 SSC/SIS has submitted that⁷⁷:

- the directors currently on SISTIC's Board who are nominated by and/or associated with SSC/SIS are [...];
- SSC/SIS is not involved in the strategic business plans of SISTIC. SISTIC operates independently as a separate legal entity with its own management and Board. Strategic decisions are approved at the SISTIC Board level;
- SSC/SIS is not privy to the decisions relating to SISTIC as they are made at the SISTIC Board meeting. Approval from SSC/SIS is not required as the SISTIC Board has full autonomy to decide;
- SSC/SIS has provided the following financial and operational support to SISTIC:

Financial support

- [...]; and
- [...].

⁷⁶ Ibid, paragraph 55, paragraph 62. The Commission had been guided by the principles set out in *Gosme/Martell DMP*, OJ L 185, 11.7.1991, p. 23, decided by the EC on 16 May 1991.

⁷⁷ Information submitted by SSC via email dated 14 May 2009 pursuant to email from CCS dated 7 May 2009.

Operational Support to SISTIC

- [...] was originally General Manager of both SISTIC and SIS since SISTIC's incorporation until [...] was appointed as General Manager SIS in July 2004; and
- [...]; and
- In the absence of the ATS, SSC/SIS will take into account the following factors in deciding whether to award its business to SISTIC:
 - Sufficient liquidity of the ticketing service provider to be able to retain ticketing revenue in a separate client account until after disbursement of funds. This is to protect (i) the general public who are purchasing tickets for events at SIS by ensuring that sufficient funds are available to facilitate the process of issuing refunds should an event be subject to cancellation and (ii) hirers of the venue who are only generally permitted to collect ticketing revenue after the event has been delivered (despite having to pay all costs in advance).
 - A comprehensive physical and virtual distribution network to ensure that ticket sales for events at SIS are optimised due to the huge quantum of tickets available for sale.
- In SSC's opinion, SSC/SIS and SISTIC do not form a SEE. While SSC/SIS and SISTIC share the same Chairman, SSC/SIS does not exercise control over the SISTIC Board as there are 5 other independent directors. The SISTIC Board is the highest approving authority for its operations and activities.

SISTIC's position

4.4.2 SISTIC has not made any direct submission (and CCS did not request for a direct submission) whether it considers itself to be part of a SEE with SSC/SIS. However, in his Section 63 interview with CCS, Mr. Kenneth Tan stated that SSC/SIS has told SISTIC that, where ticketing services are concerned, SISTIC is a vendor, and like any other vendor, SSC/SIS will evaluate SISTIC's services⁷⁸. When asked whether SISTIC faced a real

⁷⁸ See Answer to Question 35 of NOI with SISTIC.

possibility of losing SIS as a business partner, Mr Tan responded that “*we have demonstrated that we are good enough*”⁷⁹.

CCS’ assessment

Shareholding structure

4.4.3 CCS first notes that SISTIC is a government-linked company (“GLC”) because it is 65% owned by SSC, a statutory board, and 35% by TECL, which in turn is owned by MICA. Neither SSC nor TECL has veto rights over decisions made by SISTIC’s board.

4.4.4 In the Second Reading speech for the Competition Bill on 19 October 2004, Dr Vivian Balakrishnan, then Senior Minister of State for Trade and Industry, said that:

The Bill will apply to commercial and economic activities carried on by private sector entities in all sectors, regardless of whether the undertaking is owned by a foreign entity, a Singapore entity, the Government or a statutory body.

4.4.5 CCS also notes that the Singapore Government has stated its philosophy on GLCs in the Budget Speech 2002⁸⁰:

1.24 Our philosophy is to have the GLCs operate as commercial entities. The Government does not interfere with the operations of the GLCs. The companies are supervised by their respective boards of directors, who are accountable to their shareholders, including the Government.

4.4.6 In terms of the respective interests of SSC and SISTIC, CCS notes that, in the “About us” sections of their websites⁸¹, SSC states that its vision is “*to create a Sporting Singapore where Sports is a way of life*”, while SISTIC states that it “*want[s] to be recognised globally as a reputable and innovative ticketing company*”.

Board structure

4.4.7 According to SSC’s submission⁸² and publicly available information gathered by CCS, SISTIC’s Board of Directors comprises 7 directors, 2 of

⁷⁹ See Answer to Question 35 of NOI with SISTIC.

⁸⁰ Paragraph 1.24 and 1.25 of the Budget Speech 2002.

⁸¹ www.ssc.gov.sg and www.sistic.com.sg.

⁸² Information provided by SSC via email dated 14 May 2009 pursuant to email from CCS dated 7 May 2009.

which were nominated by SSC, including SISTIC's chairman. One director is nominated by TECL. The other four SISTIC directors are independent.

Compliance with the parent's direction on critical matters

- 4.4.8 Based on the submissions by SSC and SISTIC, SSC has two main operational relationships with SISTIC via SIS – a client-vendor relationship and a landlord-tenant relationship. It appears that SSC/SIS has been dealing with SISTIC at arm's length.
- 4.4.9 In terms of the client-vendor relationship, CCS notes Mr Kenneth Tan's statement that SISTIC is evaluated by SIS "like any other vendor"⁸³. The ATS contract between SSC and SISTIC was not signed until 2006, 4 years after the ASTA was first signed between TECL and SISTIC.
- 4.4.10 In terms of the landlord-tenant relationship, CCS notes SSC's submission that SISTIC [...]. According to SISTIC's audited financial statements⁸⁴, SISTIC's annual rental expenses [...].
- 4.4.11 Considering the above, SSC appears to have been dealing with SISTIC at arm's length, and on the basis of merit. Therefore, SISTIC cannot be said to be simply carrying out instructions given directly or indirectly by SSC. Instead, SISTIC appears to be driven by commercial incentives to attract and retain SSC as its business partner.

Financial and operational support

- 4.4.12 Based on the submission by SSC, the financial and operational support given to SISTIC by SSC was largely a historical matter, given the legacy that SISTIC was incorporated by SSC in 2002. During CCS' assessment period from January 2006 to March 2009, SISTIC's senior management executives were permanent hires rather than staff seconded from SSC, [...]. The extent of financial and operational support by SSC is insufficient to suggest that SSC and SISTIC form a SEE.

⁸³ See Answer to Question 35 of NOI with SISTIC.

⁸⁴ See (i) information submitted by SISTIC via letters on 19 December 2008 and 5 January 2009, pursuant to the section 63 notices issued by CCS dated 11 November 2008, (ii) information submitted by SISTIC via two letters on 7 May 2009, pursuant to the section 63 notices issued by CCS dated 17 April 2009 and 24 April 2009, (iii) information submitted by SISTIC via letter on 29 June 2009, pursuant to the section 63 notice by CCS dated 17 April 2009, and (iv) information submitted by SISTIC via letter on 29 May 2009, pursuant to CCS' email dated 18 May 2009.

Conclusion

4.4.13 Having considered all of the above factors, CCS is of the view that SISTIC and SSC/SIS do not form a SEE. Hence, the ATS cannot be viewed as an agreement within the same undertaking.

4.5 With respect to the ASTA, do SISTIC and TECL form a SEE?

TECL's submission

4.5.1 In its submission (dated 14 May 2009), TECL submitted that:

- [...], CEO and director TECL, is the only director nominated by TECL on SISTIC's Board and he was appointed on 18 January 2002;
- TECL has no role in instructing or giving approval for the strategic business plans of SISTIC. The two companies – TECL and SISTIC – are separate legal entities and involved in different businesses;
- TECL has never been and is not involved in the business operations of SISTIC. Likewise, TECL has never been and is not involved in the formulation of SISTIC's practice of entering into exclusive agreements with venue operators and event promoters;
- Neither TECL nor [...] has a right to approve or withhold their approval of decisions relating to SISTIC. It follows that neither has ever exercised its/his rights to approve or withhold its approval for decisions relating to SISTIC at any of SISTIC's Shareholders or Board meeting respectively. [...] has always acted in what he as a director of SISTIC considers to be in the best interest of SISTIC;
- there have been no instances where TECL has extended financial and operational support to SISTIC;
- had the ASTA with SISTIC not existed, TECL would base its decision on whether or not to award ticketing business to SISTIC entirely on commercial, technical and efficiency grounds, as well as its ability to meet the national objectives to develop the arts in Singapore;
- TECL takes the view that TECL and SISTIC do not form a SEE for the following reasons:
 - TECL only has a minority shareholding in SISTIC (35%);

- TECL has only one director on SISTIC's Board,
- TECL does not enjoy any veto rights, i.e. does not have control of the Board of SISTIC; and
- TECL does not give directions to SISTIC on sale and marketing activities and investment matters.

CCS' assessment

4.5.2 Many of CCS' considerations in this section resemble that between SSC and SISTIC. Therefore, the arguments below are presented in terms of similarities and differences with the corresponding arguments in section 4.4.

Shareholding structure

4.5.3 Unlike SSC which holds 65% of SISTIC, TECL holds 35% only. Therefore, SISTIC is even less likely to form a SEE with TECL. In this regard, CCS notes that there is US case law suggesting that minority shareholdings may not be sufficient to establish unity of interest⁸⁵.

Board structure

4.5.4 Unlike SSC which nominated 2 out of 7 directors on SISTIC's Board of Directors, including the Chairman of SISTIC, TECL nominated 1 director only. As such, it is even less likely that TECL can exercise decisive influence on SISTIC's course of action.

Compliance with the parent's direction on critical matters

4.5.5 Similar to SSC, TECL appears to have been dealing with SISTIC at arm's length, and on the basis of merit. CCS notes SISTIC's submission that it is under pressure from TECL to improve services "*all the time*", and that if SISTIC does not perform, TECL "*will go elsewhere*"⁸⁶. CCS further notes that, when the 2002 ASTA expired in December 2006, the commercial relationship between SISTIC and TECL continued based on the Addendum for over a year, until the 2008 ASTA was reached in April 2008 with revised terms and conditions. This reveals a lengthy negotiation process

⁸⁵ *Sonitrol of Fresno, Inc. v AT&T*, 1986-1 Trade Cas. (CCH) P67,080, decided by the US District Court for the District of Columbia on 30 April 1986.

⁸⁶ See Answers to Questions 31 and 32 of NOI with SISTIC.

between TECL and SISTIC, implying that SISTIC is not simply carrying out instructions given directly or indirectly by TECL.

Financial and operational support

4.5.6 Unlike SSC, TECL did not participate in the initial corporatisation of SISTIC in 2002, and accordingly did not extend any financial and operational support that is beyond normal commercial relationships⁸⁷. As such, the extent of financial and operational support provided by TECL to SISTIC would not render the two companies a SEE.

Conclusion

4.5.7 Based on all of the above, CCS is of the view that SISTIC and TECL do not form a SEE. Instead, they are dealing with each other at arm's length, just like any supplier-customer relationship. Hence, the ASTA is not an agreement within the same undertaking, and is thus capable of falling within the ambit of the section 47 prohibition.

4.6 The applicability of the section 47 of the Act

4.6.1 Having considered that:

- SISTIC is an undertaking engaging in the primary business of providing ticketing services to event promoters and ticket buyers for commercial rewards (i.e. monetary profits);
- SISTIC has entered into the Exclusive Agreements. The exclusive purchasing obligations under these agreements amounts to “conduct” on its part, within the meaning of section 47 of the Act;
- the section 33(4) exclusion does not apply to any of SISTIC's agreements under investigation; and
- none of the contractual parties, including TECL and SSC/SIS in relation to the ASTA and ATS, form a SEE with SISTIC;

CCS is satisfied that the exclusive purchasing obligations under the Exclusive Agreements entered into by SISTIC are capable of falling within the ambit of the section 47 prohibition.

⁸⁷ [...].

4.7 Structure of CCS' legal and economic assessment

- 4.7.1 Having established the applicability of the section 47 prohibition of the Act in this chapter, CCS' legal and economic assessment in subsequent chapters is structured as follows⁸⁸: Chapter 5 identifies the Relevant Market for the assessment purposes of this case; Chapter 6 establishes SISTIC as dominant in the Relevant Market; Chapter 7 assesses the harmful effects of SISTIC's exclusive purchasing conduct on competition; and Chapter 8 evaluates the objective justification claims raised by SISTIC. Together, they form the legal and economic basis for CCS' finding that SISTIC has infringed the section 47 prohibition of the Act.

⁸⁸ Unless otherwise specified, the assessment period for this ID is from 01 January 2006 to 31 March 2009.

Chapter 5 Market Definition

Summary of Key Points in this Chapter:

- i. **SISTIC operates in a market where it serves as a middleman for ticketing transactions between event promoters and ticket buyers.**
- ii. **Dedicated ticketing services for cinemas, attractions, transport, etc. do not compete in the same market as open ticketing services that flexibly cater for a wide variety of events.**
- iii. **Self-ticketing by venue operators or event promoters is not a credible threat that can translate into strong bargaining power against SISTIC, as it is not prevalent in Singapore in any material way.**
- iv. **The relevant market for this case is the provision of open ticketing services in Singapore to both event promoters and ticket buyers.**

5.1 The concept of a relevant market

5.1.1 Section 47 of the Act prohibits “*any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position **in any market in Singapore***” (emphasis added). To assess whether an undertaking is dominant, it is helpful to define the relevant market. The relevant market forms the basis upon which the competitive constraints faced by the subject undertaking can be identified, and various aspects of competition assessment, such as analysis of market share and barriers to entry, can be performed.

5.1.2 The *CCS Guidelines on Market Definition* sets out the conceptual framework for market definition. In essence, two key dimensions of the relevant market need to be defined:

- **The product market** – First, the focal product (i.e. the product under investigation) is specified. Next, all products on the demand side that buyers regard as reasonable substitutes to the focal product, and all sellers who supply the focal and substitute products, or who could potentially supply them fairly quickly and easily, are identified.
- **The geographic market** – First, the focal area (i.e. the area under investigation, in which the focal product is sold), is specified. Next,

the geographical scope of area over which product substitution takes place is identified.

- 5.1.3 For section 47 proceedings, the primary purpose of market definition is to assess whether the subject undertaking is dominant i.e. whether it possesses a significant degree of unilateral market power. Accordingly, the key question is whether the supply of the focal product is subject to competitive constraint from other demand-side and supply-side substitutes, not whether the focal product imposes a competitive constraint on other products. In other words, only one-way substitution is relevant. The ability of the subject undertaking to compete beyond the focal product and area is not a material consideration.
- 5.1.4 The *CCS Guidelines on Market Definition* sets out the hypothetical monopolist test in defining the relevant market⁸⁹. Starting with the focal product and focal area, the relevant market is progressively expanded by repeatedly asking the question whether a significant number of buyers will switch to the next best substitute product or area to render a small but significant, and non-transitory increase in price (“SSNIP”) of about 10% by the hypothetical monopolist unprofitable, until the point is reached where a SSNIP would be profitable.
- 5.1.5 It should however be noted that, in practice, defining a market in strict accordance with the SSNIP test is rarely possible. Availability of information is a major issue, given that the test is hypothetical in nature. In particular, the ‘cellophane fallacy’ problem tends to result in too wide a defined market⁹⁰. Nevertheless, if evidence is very clear-cut (e.g. all customers have never switched, and will never switch, from Product A to Product B, no matter what the prices are⁹¹), then a narrowly-defined market would be robust even without explicitly performing the SSNIP test, and even if the problem of cellophane fallacy is present⁹².
- 5.1.6 Apart from identifying groups of substitutes, the relevant market can also be defined to include groups of complements⁹³. Complements are groups of products that are consumed or produced together. They are included in the same market when competition in the supply of one product constrains the price charged for the other. However, if evidence clearly suggests that a

⁸⁹ This test is used by many competition authorities around the world, including the European Commission, the Office of Fair Trading in the United Kingdom and the Department of Justice and Federal Trade Commission in the US.

⁹⁰ The UK Competition Appeal Tribunal specifically acknowledged the problem of the cellophane fallacy in the case *Aberdeen Journals Ltd v Office of Fair Trading* [2003] CAT 11, [2003] CompAR 67.

⁹¹ In theory, there is always a price at which customers will cease consumption of Product A completely, but this does not necessarily mean these customers will switch into Product B.

⁹² This is because, even though cellophane fallacy tends to widen the market definition, evidence still suggests the opposite. This means the evidence is strong enough to overcome the cellophane fallacy.

⁹³ Paragraph 6.1 of the *CCS Guidelines on Market Definition*.

product must be bought or sold with another regardless of price, then the SSNIP test can be deemed satisfied, meaning that both products are to be included in the relevant market.

5.2 Overseas cases

5.2.1 The jurisprudence of the EU has established that market definition is premised on the concept of interchangeability⁹⁴. In order to determine whether, in any given case, an undertaking has a dominant position (or substantial market power), it is necessary to define the market in which that market power is said to exist.

5.2.2 In *Continental Can Co Inc*⁹⁵, Continental Can Co Inc ('Continental Can') had been found by the EC to have infringed Article 82 by abusing its dominant position through the acquisition of a substantial percentage of shares and debentures of a competitor in the product markets for light containers for meat, light containers for fish and metal closures for glass jars, other than crown corks. EC found that Continental Can's conduct had the effect of eliminating actual or potential competition in respect of the products in question in a substantial part of the common market. On appeal in *Europemballage Corp and Continental Can Co Inc v EC*⁹⁶, the ECJ annulled EC's decision. In considering the alleged dominant position of Continental Can and the consequences of the merger in question, the ECJ held:

“For the appraisal of [Continental Can's] dominant position and the consequences of the disputed merger, the definition of the relevant market is of essential significance, for the possibilities of competition can only be judged in relation to those for the purpose of delimiting the market, those characteristics of the products in question by virtue of which they are particularly apt to satisfy an inelastic need and are only to a limited extent interchangeable with other products”⁹⁷.

5.2.3 In order to define the relevant market the ECJ also held that account must be taken of the supply side of the market⁹⁸, that is to say, whether other producers could begin supplying a substitute product in the short term

⁹⁴ CCS notes that 'interchangeability' literally implies two-way substitution, which is a stronger form than one-way substitution explained in paragraph 5.1.3. Therefore, when two products are interchangeable, they are in the same relevant market; if not, it is still possible for one-way substitution to exist, in which case the focal product in question and the direction of substitution will determine whether the two products are in the same relevant market for the purpose of a section 47 proceeding.

⁹⁵ *Re Continental Can Co Inc* [1972] O.J. L7/25.

⁹⁶ Case 6/72 *Europemballage Corp and Continental Can Co Inc v EC* [1973] ECR 215, [1973] CMLR 199.

⁹⁷ Case 6/72 *Europemballage Corp and Continental Can Co Inc v EC* [1973] ECR 215, [1973] CMLR 199, at para. 32.

⁹⁸ *Ibid*, paragraphs 35 and 37.

without incurring significant additional cost or risk, particularly in the event of a SSNIP of the product concerned.

- 5.2.4 In *Hoffmann-La Roche & Co AG v EC*⁹⁹, the ECJ upheld EC's decision that Hoffmann La-Roche had infringed Article 82 by concluding fidelity agreements with large-scale users and multinational customers to buy all or most of their requirements for vitamins exclusively, or in preference, from Hoffmann La-Roche. The ECJ specifically confirmed EC's finding that Hoffmann-La Roche held a dominant position in several, separate vitamin markets¹⁰⁰. As far as the relevant product market is concerned, the ECJ said:

“The concept of the relevant market in fact implies that there can be effective competition between the products which form part of it and this presupposes that there is a sufficient degree of interchangeability between all the products forming part of the same market in so far as a specific use of such products is concerned.”¹⁰¹

- 5.2.5 In *Nederlandsche Banden Industrie Michelin NV v EC*¹⁰² the ECJ substantially upheld EC's decision that Michelin had infringed Article 82 on the market in new replacement tyres for heavy vehicles by tying tyre dealers in the Netherlands to itself by giving selective discounts on an individual basis conditional upon sales targets and discount percentages. The ECJ said that:

“As the Court has repeatedly emphasised ... for the purposes of investigating the possibly dominant position of an undertaking on a given market, the possibilities of competition must be judged in the context of the market comprising the totality of the products which, with respect to their characteristics, are particularly suitable for satisfying constant needs and are only to a limited extent interchangeable with other products. However, it must be noted that the determination of the relevant market is useful in assessing whether the undertaking concerned is in a position to prevent effective competition from being maintained and behave to an appreciable extent independently of its competitors and customers and consumers. For this purpose, therefore, an examination limited to the objective characteristics only of the relevant products cannot be sufficient: the competitive conditions and the structure of supply and demand on the market must also be taken into consideration.”

⁹⁹ Case 85/76 [1979] ECR 461, [1979] 3 CMLR 211.

¹⁰⁰ Ibid, paragraph 46.

¹⁰¹ Ibid, paragraph 28.

¹⁰² Case 322/81 [1983] ECR 3461, [1985] 1 CMLR 282.

5.3 The focal product

5.3.1 The focal product is defined by the subject of the investigation. In this case, the investigation concerns the Exclusive Agreements entered into by SISTIC that confines the event promoters' choice of ticketing service providers. As such, CCS is satisfied that the focal product for this case is the provision of ticketing services to event promoters¹⁰³ by SISTIC (the "Focal Product").

5.3.2 CCS notes that the events serviced by SISTIC can be classified by genres. For example, the pull-down menu of SISTIC's website¹⁰⁴ contains the following categories of events:

- Concert
- Dance
- Family Entertainment
- Film/Movies
- Lifestyle/Leisure
- MICE¹⁰⁵
- Musical
- Orchestra
- Seminar/Workshop
- Sports
- Theatre

5.3.3 Nevertheless, CCS does not find it necessary to delineate the Focal Product further by genres. In a survey of event promoters across different genres¹⁰⁶ (the "Survey"), CCS found that their ticketing service requirements generally relate to distribution capability and service reliability. On the supply side, as submitted by SISTIC, its STiX platform is also capable of satisfying the general requirements of event promoters across different genres. Moreover, SISTIC's contracts under investigation are generally not genre-specific.

5.3.4 Event promoters engage SISTIC primarily for the sale and distribution of tickets for their events. Some of these event promoters also use other optional advertisement/promotion services (e.g. advertisements in newspapers, entertainment guides and SISTIC's website, electronic mailing, etc) offered by SISTIC.

5.3.5 However, CCS notes that SISTIC's contracts under investigation do not subject the provision of primary ticketing services, discounts or other incentives to the subscription of the optional services. Besides, the competitive constraints of advertising-related services are vastly different from that of ticketing services. As such, CCS is satisfied that these optional services do not constitute part of the Focal Product, and accordingly, substitutes to these services will not be identified in defining the relevant market for this case.

¹⁰³ SISTIC's commercial relationships with venue operators are not part of the focal product because venue operators are not buyers of ticketing services. In particular, TECL and SIS are buyers of the focal product in their capacity as event promoters, not venue operators.

¹⁰⁴ <http://www.sistic.com.sg>.

¹⁰⁵ MICE stands for Meetings, Incentives, Conventions, Exhibitions.

¹⁰⁶ See Appendix 3.

5.4 Ticketing services to ticket buyers as a supply-side complement

- 5.4.1 SISTIC serves two distinct groups of customers in the provision of its ticketing services, namely event promoters¹⁰⁷ and ticket buyers. Ticket buyers are consumers who purchase tickets from SISTIC to be eligible for admission to the venues where the events are held.
- 5.4.2 Clearly, from a supply-side point of view, it is impossible for SISTIC to sell its ticketing services to event promoters without also selling tickets to ticket buyers, since this is the very purpose of ticketing services. It is also impossible for SISTIC to sell tickets to ticket buyers without events. This relationship is clearly not a matter of price, but one of inseparability, regardless of price¹⁰⁸. As such, CCS is satisfied that ticketing services to ticket buyers should be included in the relevant market as a supply-side complement to the Focal Product, because the two products are “produced together”¹⁰⁹. This market structure is sometimes referred to as a “two-sided market” in economics literature (see an illustration in Appendix 5).
- 5.4.3 In this case, CCS notes that a consequential relationship exists between these two groups of customers. It is the event promoters who first choose which ticketing service provider to engage. The ticket buyers would then have to buy tickets from that particular ticketing service provider chosen by the event promoter in order to attend the event. In other words, the demand from ticket buyers is derived first from the demand from event promoters¹¹⁰. Accordingly, CCS will focus on the choice of event promoters in identifying substitute products in the subsequent sections.

5.5 Demand- and supply-side substitutes in the product market

- 5.5.1 In defining the product market for this case, CCS has to determine, on the demand side, the products that buyers would regard as reasonable substitutes for the Focal Product and its complements and, on the supply side, the sellers who supply the Focal Product and its substitutes and complements, or could potentially supply them with relative ease.
- 5.5.2 In this regard, CCS has identified two types of ticketing services that might conceivably be substitutes to the Focal Product and its complements:
- **‘Open’ ticketing services:** Open ticketing services essentially cater to, and are capable of meeting the needs of, different types of event

¹⁰⁷ SSC/SIS and TECL are customers of SISTIC in their capacity as event promoters, although they are by and large venue operators.

¹⁰⁸ Therefore, CCS need not explicitly perform a SSNIP test to confirm the complementary relationship.

¹⁰⁹ See Paragraph 6.1 of the *CCS Guidelines on Market Definition*.

¹¹⁰ Although subsequently, the clustering of ticket buyers around a ticketing service provider may influence the choice of event promoters.

promoters or venue operators. Accordingly, the ticketing system or solution is built flexibly to allow for customisation to meet various customers' needs concurrently. Examples of open ticketing service providers include SISTIC, Gatecrash, Tickets.com and GTN.

- **'Dedicated' ticketing services:** Dedicated ticketing services provide specific ticketing needs on a perennial basis. Accordingly, the ticketing system or solution is built with a dedicated purpose for use by a particular event, activity or venue, and is incapable of serving other ticketing purposes without significant modification or revamp. Examples include ticketing for cinemas, places of interests/attractions (e.g. Singapore Flyer, The Night Safari, etc.), SMRT, S-League, etc.

Substitutability of open ticketing services

- 5.5.3 Given that open ticketing services possess the capabilities to meet different customer needs at the same time, CCS is of the view that, on a *prima facie* basis, these ticketing services are interchangeable¹¹¹ with the Focal Product and its complement.
- 5.5.4 However, this does not necessarily mean that the event promoters would indeed regard all open ticketing service providers as *close* substitutes to SISTIC, because other factors (such as brand loyalty and long-term relationship)¹¹² may affect how substitutable such ticketing services are in reality.
- 5.5.5 Notwithstanding this, CCS has proceeded on the basis that all open ticketing services are part of the relevant product market without strictly applying the SSNIP test. This possibly broadens the defined product market, and thus gives SISTIC some benefit of doubt¹¹³. However, as demonstrated in Chapter 6, SISTIC is dominant in the market where all open ticketing service providers are included.
- 5.5.6 CCS notes that although SISTIC has not made a definitive submission regarding its position on the relevant product market, it regards all open ticketing service providers in Singapore – Tickets.com, Gatecrash and GTN – as its competitors¹¹⁴.

¹¹¹ See paragraph 5.2.1.

¹¹² 72% of the Survey respondents indicated a strong preference for the SISTIC brand and 62% do not consider the ticketing services provided by [...] to be close substitutes. Other factors include track record, long-term working relationship, etc.

¹¹³ This is because if CCS applies the SSNIP test strictly, other open ticketing services may, or may not, be substitutes to SISTIC's customers.

¹¹⁴ See Answer to Question 6 of NOI with SISTIC, Information Memorandum for divestment of SISTIC, section 3.1 and Information Memorandum prepared by KPMG.

Substitutability of dedicated ticketing services

- 5.5.7 Typically, product market definition begins with demand-side substitutability. Dedicated ticketing services, however, by their very nature of being custom-built for dedicated purposes, are not capable of serving other ticketing purposes unless some system modifications are made. In this regard, if CCS were to examine demand-side substitutability first, it will entail finding out if the event promoters are willing (or prepared) to alter their ticketing needs (e.g. moving a live musical to a cinema, the Night Safari or an SMRT train). In CCS' view, this is not a sensible starting point¹¹⁵. CCS notes that none of the event promoters in the Survey have identified any dedicated ticketing service provider as an alternative to SISTIC.
- 5.5.8 It is therefore sensible for CCS to examine supply-side substitutability first (e.g. asking if the Night Safari is capable of modifying its ticketing system within reasonable time and cost to sell tickets for a live musical held at the Esplanade). If 'yes', CCS would then examine demand-side substitutability (e.g. would the organiser of a live musical held at the Esplanade consider switching to the modified ticketing service provided by Night Safari?).
- 5.5.9 With regard to supply-side substitutability, CCS notes that event promoters seeking open ticketing services generally have the following requirements:
- an extensive network of ticketing sales and distribution channels comprising physical outlets, call centre and internet/web-based applications;
 - seat management capabilities for different venues or different events/activities; and
 - capacity and capability to reliably and efficiently handle a potentially large number of ticket buyers concurrently especially for events of international/regional appeal which can potentially attract a large number of ticket buyers concurrently at any point in time.
- 5.5.10 To meet the above requirements, dedicated ticketing service providers would need to incur significant cost and time to modify or revamp their systems. For places of interest (e.g. Singapore Flyer) and public transport operators (e.g. SMRT), seating management is not part of their ticketing system capabilities. Others such as S-League are not computerised for efficient handling of ticketing transactions and cannot conceivably compete with the open ticketing service providers without a substantial revamp of their existing ticketing systems. Hence, CCS is satisfied that these

¹¹⁵ Most Survey respondents said that the hiring of venues would largely depend on the type/genre of events they are organising. Certain types/genres of events would have certain requirements (e.g. stage, seating capacity, acoustics), and not all venues can meet these requirements.

dedicated ticketing services are clearly not supply-side substitutes to open ticketing services.

5.5.11 One possible exception to the above is the dedicated ticketing services for cinema operations, which may possibly compete against open ticketing services because their ticketing systems or solutions:

- have rather well-established network of ticket sale and distribution channels such as box-office located in various cinemas island-wide, e-kiosks, call-centre and internet applications; and
- have the capability of seat management.

5.5.12 Accordingly, CCS obtained evidence from cinema operators¹¹⁶ to determine if the ticketing services for cinema operations would form part of the relevant product market. Responses from the cinema operators show that:

- all respondents do not consider provision of ticketing services as part of their core business, and would not enter into the business of open ticketing services. One respondent submits that it *“wish[es] to focus on [its cinema] operations”*. Another submits that it does not see *“any significant benefits or value to... shareholders”*. The other one who had attempted in the past cited its *“frustrating and humbling experience”*;
- all respondents have indicated that not even a 10% increase in market price would make a difference to their choice not to enter into the open ticketing business. One respondent sees *“more problems than benefits”* and *“a serious burden on [its] existing cinema business”*. Two others simply answered *“no”* without further elaboration¹¹⁷; and
- all respondents have indicated that it will take considerable time and costs to enter into the open ticketing business. One submits that it *“requires significant modification and cost”*. Another submits that it *“do[es] not have the appropriate software expertise”*. The other one quoted a significant sum of investment required.

5.5.13 The findings above indicate that supply-side substitution from ticketing services for cinema operations is very remote. The cinema operators are neither able nor willing to enter into the open ticketing business, and their inability and unwillingness is clearly not a matter of price.

5.5.14 Furthermore, it does not matter whether the cinema operators are unable or unwilling to enter into the open ticketing business. So long as they do not enter into the business in response to a SSNIP, there is no competitive

¹¹⁶ Information received from Golden Village Multiplex Pte Ltd dated 5 May 2009, Cathay Cineplexes Pte Ltd dated 6 May 2009, EW.G Pte Ltd (Eng Wah Cinemas) dated 6 May 2009 and Shaw Theatres Pte Ltd dated 7 May 2009 pursuant to the section 63 notices issued by CCS on 21 April 2009.

¹¹⁷ [...].

constraint imposed upon open ticketing service providers. In this regard, CCS notes that it has been more than 15 months since SISTIC raised its booking fees by 50% in January 2008, and none of the cinema operators (or any other dedicated ticketing service providers) has actually entered into the open ticketing business. Therefore, CCS is not satisfied that dedicated ticketing service providers can be regarded as potential suppliers of open ticketing services. Instead, dedicated ticketing services should be excluded from the relevant product market for the purpose of this case.

- 5.5.15 On the demand side, however, it is still possible for some event promoters to switch to ticketing services for cinema operations, especially for those organising events under the ‘movie/film’ genre that might be willing to switch their venues to cinemas (e.g. film festival). Nevertheless, this genre of events made up only about [...] % of SISTIC’s total ticket sales¹¹⁸ and hence, the SSNIP test could not possibly be satisfied for this particular reason, even if applied. This reinforces CCS’ conclusion that dedicated ticketing services should be excluded from the relevant product market.
- 5.5.16 CCS notes that, for overseas cases and studies in Ireland¹¹⁹, UK¹²⁰ and the USA¹²¹, ticketing services for cinemas, attractions and theme parks were not part of the relevant product market. In addition, according to SISTIC’s submission on the “cross-jurisdictional analysis of size of ticketing market with market share of top ticketing service provider”¹²², the estimates by Asia Pacific Ticketing Association have also excluded movies, theme parks and attractions.
- 5.5.17 Lastly, CCS acknowledges that SISTIC is probably capable of providing customised ticketing services for dedicated purposes, if the customer so wishes. However, as noted in paragraph 5.1.3, only one-way substitution, i.e. whether dedicated ticketing service providers can compete against SISTIC, is relevant. The possibility that SISTIC can compete against the dedicated ticketing service providers is not a relevant consideration for the purposes of this ID.

Self-ticketing by venue operators and/or event promoters

- 5.5.18 CCS has also considered whether the option of self-ticketing by venue operators and event promoters could impose significant competitive constraint upon open ticketing service providers, and should thus be included in the relevant product market.

¹¹⁸ In terms of number of tickets sold by SISTIC for the period from 1 January 2006 to 31 March 2009.

¹¹⁹ The ICA Ticketmaster Decision.

¹²⁰ The OFT Study.

¹²¹ The DOJ Competition Impact Assessment.

¹²² Refer to paragraph 5.21 of the Representation.

5.5.19 CCS notes that there are overseas examples in the UK¹²³, USA¹²⁴ and Australia¹²⁵ that self-ticketed venue operators or event promoters are *actual* competitors to open ticketing service providers. For this very reason, the respective competition authorities have taken self-ticketing into consideration in their competition assessment.

5.5.20 For instance, the OFT found that the preferential agreement between Ticketmaster and Clear Channel contained an explicit contractual exclusion for self-ticketing by Clear Channel:

“An agreement exists between the largest promoter, Clear Channel, and the largest agent, Ticketmaster. What this means in practice is that Ticketmaster is Clear Channel's primary ticket agent and has preferential rights to access for sale a high proportion of the tickets which Clear Channel has the right to sell after negotiations with venues and other promoters. **This does not include tickets sold by Clear Channel through its own box offices** or any tickets sold through box offices at venues and certain other ticket sales. The agreement runs until ... (5 to 10 years in duration).”¹²⁶ (emphasis added)

5.5.21 In the USA, the DOJ also considered self-ticketing in the context of actual contractual evidence:

“recognising Live Nation’s potential to disrupt its dominant position in the market for primary ticketing services, Ticketmaster attempted to renew Live Nation’s primary ticketing contract before its December 31, 2008 expiration. But **Live Nation instead chose to license technology from CTS Eventim AG that would enable it to sell concert tickets to its own venues** beginning in 2009 and to compete with Ticketmaster with other venues’ primary ticketing contracts in the future”¹²⁷. (emphasis added)

5.5.22 In Singapore, however, CCS notes that none of the Exclusive Agreements contain similar provisions for self-ticketing, and none of the contractual partners are actually self-ticketed. In particular, ticketing services at the box offices of SIS and the Esplanade are provided by SISTIC. Based on SISTIC’s submissions and other information available to CCS, there is no evidence to suggest that self-ticketing is prevalent in Singapore in any material way.

5.5.23 Therefore, CCS is of the view that self-ticketing in Singapore can, at its highest, only be considered in the context of *potential* competition. In this

¹²³ Some self-ticketing venues in the UK have become primary ticket agents, offering to sell tickets on behalf of promoters or other venues (e.g. the Scottish Exhibition and Conference Centre Ltd in Glasgow has set up Ticketsoup and the National Exhibition Centre Ltd in Birmingham has set up Ticketfactory).

¹²⁴ Live Nation Inc. in the USA is an example of an event promoter/ venue operator who decided to self-ticket using licensed technology from a ticketing systems provider.

¹²⁵ Queensland Performing Arts Centre has developed their in-house ticketing system Qtix, and the Victorian Arts Centre and Sydney Opera House have licensed Tessitura as their ticketing system. Refer to para. 3.20 of the Representation.

¹²⁶ Paragraph 4.11 of the OFT Study.

¹²⁷ Page 10 of the DOJ Competitive Impact Statement.

regard, any competitive constraint imposed by potential self-ticketing service providers can be reflected in the exercise of countervailing power, in the sense that venue operators and event promoters can use the option of self-ticketing as a threat to bargain for better prices or services from open ticketing service providers.

5.5.24 The pertinent issue of countervailing bargaining power will be thoroughly assessed in section 6.6, with or without including self-ticketing services in the relevant product market. In any case, there is no change to CCS' conclusions on market share¹²⁸ and barriers to entry¹²⁹, as well as SISTIC's ability to profitably sustain prices above competitive levels¹³⁰. Hence, there is no need for CCS to be explicit as to whether self-ticketing is part of the relevant product market.

The relevant product market

5.5.25 In view of the above, CCS concludes that the relevant product market is that of open ticketing services.

5.5.26 In SISTIC's various submissions¹³¹, Tickets.com Singapore, Gatecrash and GTN are consistently mentioned as its main competitors, while dedicated ticketing service providers and self-ticketing are not mentioned.

5.6 Geographic market

The focal area

5.6.1 In defining the geographic market for this case, CCS identifies Singapore as the focal area (the "Focal Area"), because SISTIC's contracts under investigation cover various events held at various venues throughout Singapore (but not outside Singapore).

Demand-side substitution

5.6.2 In determining the geographic substitution, CCS notes that, from the demand-side perspective, event promoters generally do not use ticket service providers located outside of Singapore. This is true even for international roadshows, i.e. same event held in different countries¹³². This

¹²⁸ SISTIC's market share is consistently higher than the CCS indicative threshold of 60%, See section 6.4.

¹²⁹ Barriers to entry are moderate without the Exclusive Agreements. See section 6.5.

¹³⁰ SISTIC has actually sustained prices profitably above competitive levels. See section 6.2.

¹³¹ See Answer to Question 6 of NOI with SISTIC; Information Memorandum for divestment of SISTIC, section 3.1 and Information Memorandum prepared by KPMG.

¹³² For example, the 'Jacky Cheung World Tour 2007' used SISTIC for its Singapore stop, and different ticketing service providers for other stops.

is primarily because event promoters consider it essential for a ticketing service provider to possess an extensive network of physical outlets located throughout Singapore and to render them the necessary ground support. This suggests that a strong local presence of the ticketing service provider is considered crucial by the event promoters and venue operators¹³³.

Supply-side substitution

- 5.6.3 On the supply side, CCS also considers it difficult for ticketing service providers located outside of Singapore to switch their supply into Singapore promptly and at low costs, in view of the fact that they would first need to establish a physical presence, i.e. ticket sale and distribution channels, to be able to compete effectively. In this regard, CCS notes that, to date, no overseas ticketing service provider has penetrated Singapore without a local partner. Tickets.com, a US-based company, has licensed Quebec Leisure International Pte Ltd, a local company owned by NTUC Club Investments Pte Ltd, for its Singapore operations. OmniTicket, which is the Singapore arm of global ticketing solutions provider (OmniTicket Network, Inc) based in Delaware US, has engaged GTN for its Chingay Parade and Singapore Grand Prix projects¹³⁴.
- 5.6.4 While CCS acknowledges that SISTIC has been able to compete overseas, notably in Australia, China, Hong Kong and Macau¹³⁵, this is not relevant for the definition of the geographic market because only inbound substitution to Singapore is relevant, for similar reasons to those stated in paragraph 5.1.3.

The relevant geographic market

- 5.6.5 In view of the above, CCS concludes that the relevant geographic market is Singapore.
- 5.6.6 In this regard, CCS notes SISTIC's submission that it benchmarks itself against the best ticketing service providers internationally. However, only Singapore-based ticketing service providers – Tickets.com Singapore,

¹³³ Competitors of SISTIC have also indicated that having strong local presence is important to be able to compete effectively in the ticketing business in Singapore. (See Answer to Question 8 of Mr. Gerald Parakrama Singam Edwards' Notes of Information/Explanation Provided on 18 March 2009 ("NOI with Tickets.com"); see Answer to Question 11 of Mr. Ong Ming Ji's Notes of Information/Explanation Provided on 27 March 2009 ("NOI with Gatecrash") and see Answer to Question 18 of NOI with OmniTicket.

¹³⁴ The remaining player, Gatecrash, is a brand established in April 2005 and currently owned by a local company – EXCEPTional Pte Ltd.

¹³⁵ CCS notes that SISTIC is a ticketing system supplier, not a ticketing service provider, in overseas markets. See Answer to Question 21 of NOI with SISTIC.

Gatecrash and GTN – are mentioned as its main competitors in its various submissions¹³⁶.

5.7 Functional and temporal markets

- 5.7.1 In terms of the functional dimension, CCS notes that there is no distinct wholesale and retail levels for open ticketing services in Singapore. However, a distinction should be drawn between ticketing service providers and ticketing system suppliers. The latter supplies a key input – the technical system or software solution – to the former. SISTIC is simultaneously a ticketing service provider and a ticketing system supplier, because its system, i.e. the STiX, is developed in-house. The same may not necessarily be true for other competitors. For example, OmniTicket is the ticketing system supplier for GTN. For the avoidance of doubt, ticketing system providers do not constitute part of the relevant market for this case, and therefore players such as OmniTicket are not considered by CCS as a direct competitor to SISTIC.
- 5.7.2 There is no evidence in this case that would call for CCS’ consideration whether the relevant market should be delineated along the temporal dimension.

5.8 Conclusion – the relevant market

- 5.8.1 Having considered the above, CCS is satisfied that, for the purpose of this ID, the relevant market is the market for the provision of open ticketing services in Singapore to both event promoters and ticket buyers (the “Relevant Market”). Existing competitors in this market include SISTIC, Tickets.com, Gatecrash and GTN. CCS notes that this definition is consistent with the market share cited in SISTIC’s submission¹³⁷, internal documents¹³⁸, and external communications¹³⁹.
- 5.8.2 As noted in *CCS Guidelines on the Section 47 Prohibition*, it is not necessary for the dominant position, abuse and effects of the abuse, to be in the same market¹⁴⁰. In this case, however, as dominance, abuse and effect

¹³⁶ See Answer to Question 6 of NOI with SISTIC; Information Memorandum for divestment of SISTIC, section 3.1 and Information Memorandum prepared by KPMG.

¹³⁷ Diagram 9 of the Representation.

¹³⁸ Information Memorandum for divestment of SISTIC, section 3.1 and Information Memorandum prepared by KPMG.

¹³⁹ <http://www.sistic.com.sg>. However, CCS notes that the statement “It currently handles more than 90% of all events staged in Singapore” has been removed after CCS issued a PID to SISTIC on 19 December 2009.

¹⁴⁰ Paragraph 4.6 of *CCS Guidelines on the Section 47 Prohibition*.

all take place in the Relevant Market, CCS has not defined other markets for the purposes of its assessment.

Appendix 5 The two-sidedness of the Relevant Market

A5.1 The definition of two-sided markets in economics

A5.1.1 In economics, a market is two-sided when not only price level, but also price structure, would affect output and welfare¹⁴¹. Alternatively, it can be shown that a market is two-sided when all the following conditions are met¹⁴²:

- There are two distinct groups of customers;
- Indirect network effects exist between the two groups of customers; and
- The two groups of customers fail to negotiate and internalise the externalities resulting from the indirect network effects¹⁴³.

The third condition is particularly relevant in illustrating the two-sided structure of a market, because the failure to negotiate and internalise implies a need for a ‘middleman’ to provide a ‘matching’ service (i.e. a platform through which the two groups of customers are able to utilise in order to transact). Had the two groups negotiated and internalised between themselves, the first two conditions would have been narrowed down into a classic mutual coincidence of wants between two parties, which can be resolved in a conventional one-sided market, where one group sells and the other group buys. Typically, high transaction cost is the main reason why the two groups of customers fail to negotiate and internalise between themselves.

A5.2 Is the Relevant Market two-sided?

A5.2.1 In this case, the Relevant Market clearly satisfies the first condition, with the two distinct groups of customers being event promoters and ticket buyers.

A5.2.2 The second condition also appears to be satisfied, as indirect network effects do appear to exist in the Relevant Market. As a ticketing service

¹⁴¹ Rochet and Tirole (2005): *Two-Sided Markets – A Progress Report*.

¹⁴² David S. Evans (2002): *The Antitrust Economics of Two-Sided Markets*.

¹⁴³ Or more technically, the Coase Theorem fails.

provider secures more events, more ticket buyers will buy tickets through this service provider and use this service provider to search for events of their interests. In turn, when more ticket buyers buy tickets or make searches via this service provider, more event promoters will then prefer to use its ticketing service because their target customers cluster around its promotion and distribution channels¹⁴⁴, thereby resulting in reinforcement of the indirect network effects¹⁴⁵. Refer to paragraphs 6.5.9 to 6.5.33 for a factual demonstration of indirect network effects in the Relevant Market.

A5.2.3 The third condition also appears to be satisfied. The sheer existence of ticketing service providers as middlemen, not only in Singapore but in most other places in the world, indicates that transaction cost is high for ticketing sales. The main reason is that event ticketing generally involves high volumes of low-value transactions. The market structure would be highly fragmented without a middleman, as there are many events held at many venues appealing to many different kinds of ticket buyers throughout the year. Also, it would be highly inefficient for each and every event promoter to sell all its tickets on its own, given that their core business is in staging/hosting of events. This is especially so if the event promoter's shows are sporadic or infrequent.

A5.2.4 For the above reasons, the Relevant Market can be characterised as two-sided.

A5.3 Why does the economics of two-sided markets matter in this case?

A5.3.1 For one-sided markets, price level is the most important consideration in competition economics. For example, dominance is defined as the ability to sustain prices profitably above the competitive *level*; when retail price *level* is too low, it can be predatory; when wholesale price *level* is too high, it can amount to refusal to supply.

A5.3.2 For a two-sided market, price level (more precisely, the *absolute* price level of either side) is not the only factor. Price *structure* (i.e. the *relative* price level *between* the two sides) is also an important determinant of the

¹⁴⁴ E.g. its website, ticketing hotline, in-house magazine and physical outlets.

¹⁴⁵ The network effect is "indirect" because it results from the cross-influence between the two groups of buyers – event promoters choose a ticketing service provider not because of other event promoters, but because of ticket buyers; ticket buyers buy tickets from a service provider not because of other ticket buyers, but because of the events.

volume of output¹⁴⁶. It follows that the profit-maximising strategy of a seller in a two-sided market is an integrated, holistic decision of the level and structure of prices across both sides. One cannot rationalise such a strategy by analyzing the price level of either side in isolation.

A5.3.3 Not dissimilar to the role of price level in one-sided markets, price structure in a two-sided market is a double-edge sword. A competitive two-sided market is a *price-structure-taking* market¹⁴⁷, leading to an optimal equilibrium price structure that maximises welfare by maximising output. In contrast, an uncompetitive two-sided market is a *price-structure-searching* market, where the dominant player may choose its price structure strategically to foreclose competition from one side and exploit consumers on the other side, leading to output reduction and welfare loss.

A5.3.4 In this case, CCS has not considered, in isolation, whether SISTIC's exclusive purchasing agreements with event promoters and venue operators are predatory, or whether SISTIC's booking and handling fees charged against ticket buyers are excessive. Instead, it is the indirect network effect between event promoters and ticket buyers that gives rise to the ability and incentive for SISTIC to deploy a strategic price structure that forecloses competition from one side, extracts monopoly rent from the other side, and perpetuates its dominance on both sides, all done *concurrently*.

A5.4 Conclusion

A5.4.1 In conclusion, the economics of two-sided markets is useful in illustrating the competition issues in this case, because it provides an integrated framework for understanding the interactive relationships between dominance, conduct and effect.

¹⁴⁶ Loosely speaking, there is scope for increasing business volume by reducing price on one side and raising price on the other side (even though the 'combined' price level of both sides may remain constant).

¹⁴⁷ In practice, there could be some workably competitive two-sided markets where competitors differentiate their products via different price structures.

Chapter 6 Dominance

Summary of Key Points in this Chapter:

- i. SISTIC has sustained its market share at around 90% during the period from January 2006 to March 2009.**
- ii. SISTIC created an artificial network effect between event promoters and ticket buyers through the Exclusive Agreements, and perpetuated such effect through its website, outlets and customer database.**
- iii. SISTIC is not constrained by countervailing bargaining power, as event promoters and ticket buyers are small, and venue operators have weak incentives to exercise their power.**
- iv. SISTIC's booking fee increase in 2008 has demonstrated its ability to profitably sustain its price above competitive levels in the Relevant Market.**
- v. SISTIC is dominant, but the Relevant Market is not a natural monopoly, as economies of scale are moderate and not insurmountable in the absence of the Exclusive Agreements.**

6.1 The concept of dominance

- 6.1.1 The *CCS Guidelines on the Section 47 Prohibition* sets out the concept of dominance. An undertaking will not be deemed dominant unless it has substantial market power. Market power arises where an undertaking does not face sufficiently strong competitive pressure and can be thought of as having the ability to profitably sustain prices above competitive levels or to restrict output or quality below competitive levels¹⁴⁸. In other words, the *ability to act independently without sufficient competitive constraint* is the defining concept of dominance. The abilities to “increase prices”, “restrict output” and “reduce quality” are derived from this underlying concept.
- 6.1.2 The EC has described a position of dominance in similar terms in its *Guidance on the Commission's enforcement priorities in applying Article*

¹⁴⁸ Paragraph 3.3 of *CCS Guidelines on the Section 47 Prohibition*.

82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings¹⁴⁹.

“The Commission considers that an undertaking which is capable of profitably increasing prices above the competitive level for a significant period of time does not face sufficiently effective competitive constraints and can thus generally be regarded as dominant. In this Communication, the expression “increase prices” includes the power to maintain prices above the competitive level and is used as shorthand for the various ways in which the parameters of competition - such as prices, output, innovation, the variety or quality of goods or services - can be influenced to the advantage of the dominant undertaking and to the detriment of consumers.”

6.1.3 In *United Brands v EC*¹⁵⁰ the ECJ defined a dominant position as:

“[...] a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of its consumers.”¹⁵¹

6.1.4 This definition of dominance consists of three elements: (i) there must be a position of economic strength on a market which (ii) enables an undertaking to prevent effective competition being maintained on that market by (iii) affording it the power to behave independently to an appreciable extent.

6.1.5 This position was adopted by the ECJ in *Hoffmann-La Roche v EC*¹⁵²:

“... a [dominant] position does not preclude some competition, which it does where there is a monopoly or a quasi-monopoly, but enables the undertaking which profits by it, if not to determine, at least to have an appreciable influence on the conditions under which that competition will develop, and in any case to act largely in disregard of it so long as such conduct does not operate to its detriment...”¹⁵³

6.1.6 The CFI followed this approach in *France Télécom SA (formerly Wanadoo Interactive SA) v EC*¹⁵⁴. EC decided that Wanadoo, a subsidiary of France Télécom, was guilty of predatory pricing by charging prices that did not enable it to cover its variable costs until August 2001 or to cover its full costs from August 2001 onwards as part of a plan to pre-empt the market in high-speed internet access. In rejecting Wanadoo’s submission that EC was wrong to find it dominant because the market was increasingly competitive, the CFI specifically stated that:

¹⁴⁹ Paragraph 11, *Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings*, 2 February 2009.

¹⁵⁰ Case 27/76 [1978] ECR 207, [1978] 1 CMLR 429.

¹⁵¹ *Ibid*, paragraph 65.

¹⁵² Case 85/76 [1979] ECR 461, [1979] 3 CMLR 211.

¹⁵³ *Ibid*, paragraph 39.

¹⁵⁴ Case T-340/03 [2007] ECR II-107, [2007] 4 CMLR 919.

“Even the existence of lively competition on a particular market does not rule out the possibility that there is a dominant position on that market, since the predominant feature of such a position is the ability of the undertaking concerned to act without having to take account of this competition in its market strategy and without for that reason suffering detrimental effects from such behaviour ... Thus, the fact that there may be competition on the market is a relevant factor for the purposes of ascertaining whether a dominant position exists, but it is not in itself a decisive factor in that regard.”¹⁵⁵

- 6.1.7 In assessing whether an undertaking is dominant, i.e. the extent to which there are competitive constraints on an undertaking’s ability to act independently, CCS will holistically consider the combination of all relevant factors.
- 6.1.8 In this particular case, evidence considered by CCS include actual incidents of price increase that demonstrate the subject undertaking’s ability to profitably sustain prices above competitive levels; actual exit of competitors that demonstrates the subject undertaking’s ability to eliminate or weaken competition; market share of the subject undertaking and its competitors; barriers to entry to the relevant market; and countervailing buyer power.

6.2 Ability to profitably sustain price above competitive levels

- 6.2.1 As discussed above, an undertaking will not be deemed dominant unless it has substantial market power. Market power arises where an undertaking does not face sufficiently strong competitive pressure and can be thought of as the ability to profitably sustain prices above competitive levels or to restrict output or quality below competitive levels¹⁵⁶.
- 6.2.2 It should be noted in the outset that the definition of market power refers to the *ability* to profitably sustain prices above competitive levels. It is not a required condition to show that the undertaking has *actually* done so, or has done so consistently for every single year¹⁵⁷. On the contrary, if evidence suggests that an undertaking has indeed priced profitably above competitive levels for a sustained period, then it cannot be that the undertaking has no ability to do so.

¹⁵⁵ Ibid, paragraph 101.

¹⁵⁶ Paragraph 3.3 of the *CCS Guidelines on the Section 47 Prohibition*.

¹⁵⁷ In a predatory pricing case, for example, it is certainly possible that, during the predation phase, a dominant undertaking actually priced unprofitably below competitive levels.

SISTIC has increased its booking fee

- 6.2.3 On 15 January 2008, SISTIC raised its booking fee charged against ticket buyers by 50% from \$2 to \$3 for those tickets with face values higher than \$20. Although the booking fee is only one component of SISTIC's prices charged to one group of its customers (i.e. the ticket buyers), [...]. In FY07/08 and FY08/09, when the booking fee increase was partially and fully reflected, the booking fee accounted for [...] % and [...] % of the Relevant Turnover¹⁵⁸ respectively. Importantly, revenues from event promoters during the same period did not decline¹⁵⁹, indicating that the incremental revenues from booking fees are not 'competed away' on the event side of the Relevant Market.
- 6.2.4 As such, CCS is satisfied that SISTIC has recently increased its price by a significant margin in the Relevant Market, thus allowing CCS to directly observe whether it has been able to profitably sustain price above competitive levels.

SISTIC's booking fee increase has been profitable

- 6.2.5 At the company level, SISTIC's return on invested capital ("ROIC") from FY06/07 (before booking fee increase) through FY07/08 (booking fee increased during the last quarter) to FY08/09 (full year impact of increased book fee) grew from [...] % to [...] % and further to [...] %. In FY08/09, all revenue lines [...] ¹⁶⁰ amidst economic downturn¹⁶¹, except revenues from booking fees which grew by [...] % year on year. This clearly shows that SISTIC's increase in profits was attributable to its booking fee increase.
- 6.2.6 At the segmented level, SISTIC's ROIC trend in the Relevant Market was consistent with that at the company level¹⁶². See Table 6.2.6 below:

Table 6.2.6: SISTIC's ROIC at company and segmented levels

Booking fee increase?	Yes			No		
Fiscal year	06/07	07/08	08/09	06/07	07/08	08/09
Company ROIC	[...]	[...]	[...]	-	-	-
Segmented ROIC (revenue)	[...]	[...]	[...]	[...]	[...]	[...]
Segmented ROIC (Equal	[...]	[...]	[...]	[...]	[...]	[...]

¹⁵⁸ Refer to A6.6.7.

¹⁵⁹ [...]. See Exhibit A6.8.

¹⁶⁰ See Exhibit A6.8.

¹⁶¹ Singapore's nominal GDP declined by 2.7% over the same period. (Source: <http://www.singstat.gov.sg>) Change is measured by difference between non-seasonal adjusted, nominal GDP from Q2/08 – Q1/09 and that from Q2/07 – Q1/08).

¹⁶² Refer to A6.4.14 to A6.4.26.

proportion mark-up “EPMU” ¹⁶³)						
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6.2.7 Comparing the above figures across industries and against SISTIC’s cost of capital¹⁶⁴, CCS concludes that SISTIC has been economically profitable throughout the period from FY06/07 to FY08/09, and its booking fee increase in January 2008 further contributed to a significant increment in profitability.

SISTIC’s price is above competitive levels

6.2.8 As shown in the table below, SISTIC’s booking fee is, as a matter of fact, higher than that of its competitors in the Relevant Market¹⁶⁵. The same was true when the Act came into force in January 2006¹⁶⁶.

Table 6.2.8: Comparison of Booking Fees

Face value of tickets	Above \$20	At or Below \$20
SISTIC	\$3	\$1
Tickets.com	\$2	\$1
Gatecrash	\$2	\$1
GTN	Not currently active	

6.2.9 However, SISTIC submits that its “*booking fees are low compared to ticketing fees in other major cities, such as in Australia, the United States, and the United Kingdom*”¹⁶⁷. CCS has reproduced the table submitted by SISTIC and updated the figures based on the exchange rate on 31 March 2009¹⁶⁸.

¹⁶³ Refer to paragraph A6.4.23.

¹⁶⁴ See section A6.4 for details.

¹⁶⁵ CCS notes that the competitive level of price refers to the equilibrium price at which price equals to the margin cost of a hypothetical efficient competitor. As real competitors may or may not be efficient, and their prices may or may not be competitive, the actual prices charged by competitors are higher than or equal to the competitive level. Since SISTIC’s price is higher than the actual prices of its competitors, it is higher than the competitive level as well.

¹⁶⁶ In April 2004, SISTIC raised its booking fee from \$1 to \$2 for tickets with face value above \$20. In April 2005, Gatecrash entered into business with a booking fee of \$1. In March 2007, Gatecrash revised its booking fee from \$1 to \$2 for tickets with face value above \$20. In July 2007, Tickets.com entered into business with a booking fee of \$2 for tickets with face value above \$20. In January 2008, SISTIC raised its booking fee from \$2 to \$3 for tickets with face value above \$20.

¹⁶⁷ Information provided by SISTIC via letter dated 19 December 2008 pursuant to the section 63 notice issued by CCS dated 11 November 2008, paragraph 16.3.

¹⁶⁸ www.exchange-rates.org.

Table 0: Comparison by SISTIC with Australia, US, UK¹⁶⁹

	SISTIC (Singapore)	Australia	United States	United Kingdom
Booking fee	S\$ 3 per ticket	From A\$ 3 per ticket	US\$ 6 per ticket	£ 1 per ticket
in SGD	S\$ 3	S\$ 3.16	S\$ 9.13	S\$ 2.17
Handling fee	S\$ 1 per transaction	From A\$ 7	From US\$ 2	From £ 2
in SGD	S\$ 1	S\$ 7.36	S\$ 3.04	S\$ 4.34

6.2.10 In this regard, CCS notes that selective international benchmarking may not be representative and reliable. For example, a different sampling would show that SISTIC's booking and handling fees combined is the highest amongst the ticketing service providers of Singapore, Hong Kong, South Korea and Taiwan¹⁷⁰:

Table 6.2.10: Comparison between Singapore, Hong Kong, South Korea and Taiwan¹⁷¹

	SISTIC (Singapore)	Urbtix (Hong Kong)	Interpark (South Korea)	Ticket.com (Taiwan)
Booking fee	S\$ 3 per ticket	HK\$ 6.5 per ticket up to max of HK\$ 20 per transaction	1000 won per ticket	Nil
Handling fee	S\$ 1 per transaction	Free for local delivery by regular mail	2000 won per transaction for normal delivery	50 NT per transaction
Total cost of buying 1 ticket	S\$ 4	S\$ 1.27	S\$ 3.32	S\$ 2.24
Total cost of buying 4	S\$ 13	S\$ 3.92	S\$ 6.63	S\$ 2.24

¹⁶⁹ Information provided by SISTIC via letter dated 19 December 2008 pursuant to the section 63 notice issued by CCS dated 11 November 2008, paragraph 16.3. See also information provided by SISTIC via letter dated 07 May 09 pursuant to the section 63 notice issued by CCS dated 17 April 2009, paragraph 5.2.

¹⁷⁰ Based on exchange rates on 31 March 2009. See www.exchange-rates.org.

¹⁷¹ Based on price comparison of 1 and 4 high-value tickets bought via internet, delivered by local regular mail.

tickets				
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Source: www.sistic.com.sg, urbtix.cityline.com.hk, ticket.interpark.com, www.ticket.com.tw

- 6.2.11 CCS notes that the industry and economic conditions are different across countries. The comparison of SISTIC's booking fees with overseas ticketing service providers is not indicative of whether SISTIC's booking fee is above competitive levels in the Relevant Market. For the purpose of our assessment, CCS is of the view that the relevant comparison is with the booking and handling fees charged by SISTIC's competitors within the Relevant Market.
- 6.2.12 SISTIC submits that, for tickets bought via hotline or internet and collected over-the-counter, its handling fee is \$0.20 as opposed to \$1 for Tickets.com. However, CCS notes that handling fees account for only [...] % of SISTIC's relevant turnover¹⁷², and the example cited only refers to one category of its handling fees¹⁷³. With regard to this category, SISTIC submits that "the dependency on outlets for collection of tickets are [*sic*] negligible"¹⁷⁴.
- 6.2.13 For completeness, CCS has also compared SISTIC's effective total ticketing price, based on ticketing services revenues earned from both event promoters and ticket buyers, divided by number of tickets sold, against its competitors'. [...] ¹⁷⁵. [...] ¹⁷⁶. SISTIC was the only player who exhibited a consistent uptrend in prices. On the premises, CCS concludes that SISTIC had sustained its effective total ticketing price above competitive levels.

Table 6.2.13: Comparison of effective total ticketing price, January 2006 - March 2009

Effective Total Price (S\$)	2006	2007	2008	2009 (Jan-Mar)
SISTIC	[...]	[...]	[...]	[...]
Tickets.com	[...]	[...]	[...]	[...]
Gatecrash	[...]	[...]	[...]	[...]
GTN	NA	NA	[...]	NA

¹⁷² Handling fees account for [...] % of SISTIC's relevant turnover for the period FY05/06 to FY08/09.

¹⁷³ SISTIC's handling fees for other categories – for collection by mail and at- the-venue – are \$1, same as its competitors'.

¹⁷⁴ See answer to Question 55 of NOI with SISTIC.

¹⁷⁵ In other words, SISTIC has sustained its prices persistently above at least one actual competitor's levels, and thus above the competitive levels of a hypothetically efficient competitor.

¹⁷⁶ [...].

- 6.2.14 For the above reason, CCS has considered and dismissed the possibility that, from the perspective of total ticket price (i.e. face value plus booking and handling fees)¹⁷⁷, SISTIC's price is not above the competitive level. CCS notes that face value of tickets does not constitute part of SISTIC's price – it is the price charged by event promoters, which is beyond SISTIC's control. As SISTIC had charged its own prices against both event promoters and ticket buyers above competitive levels in the first instance, it cannot be argued that the total ticket price is competitive *because of* the face value of tickets which is an exogenous factor.
- 6.2.15 In any case, SISTIC's submission also acknowledges that “*SISTIC is comparatively more expensive*” and that “*its ticketing fees may be slightly higher than that of its competitors*”. However, it attributed the price premium to the “*premium level of services that we provide*” and the “*reliability and additional services that SISTIC offers*”¹⁷⁸. Nevertheless, CCS notes that SISTIC price level has been sustained profitably. It cannot be argued that SISTIC's price premium is proportionate to its premium services, because competitive pressure is not substantial enough to erode SISTIC's profits through additional costs or investments incurred in maintaining its premium services. Instead, this disproportionality indicates SISTIC's ability to act independently without *sufficient* competitive constraint.

SISTIC has *sustained* its booking fee increase profitably

- 6.2.16 As discussed above, SISTIC has become more profitable from its increase in booking fee in January 2008 till the end of the assessment period in March 2009. The increase in booking fee has not resulted in a significant loss in ticketing sales over a period of 15 months¹⁷⁹. In the year 2009, SISTIC has continued to increase its volume of business by providing services for projects such as the Singapore Grand Prix and entering into two new exclusive purchasing agreements with event promoters¹⁸⁰. As such, CCS is satisfied that SISTIC has *sustained* its increased booking fee profitably.

¹⁷⁷ As opposed to effective total ticketing price which excludes the face value of tickets but includes charges to event promoters (e.g. inside charges and ticketing administration fees).

¹⁷⁸ Information provided by SISTIC via letter dated 19 December 2008 pursuant to the section 63 notice issued by CCS dated 11 November 2008, paragraph 16.4; See Answer to Question 6 of NOI with SISTIC.

¹⁷⁹ SISTIC's volume of ticket sales was flat between FY07/08 and FY08/09.

¹⁸⁰ [...].

Conclusion

- 6.2.17 Having regard to the totality of the evidence above, CCS concludes that SISTIC is able to profitably sustain its price above competitive levels in the Relevant Market.

6.3 Ability to eliminate or weaken competitors

- 6.3.1 In assessing whether an undertaking is dominant, a factor that may be taken into account is the ability of the undertaking to effectively eliminate or substantially weaken competitors.
- 6.3.2 In *AKZO v EC*¹⁸¹ the ECJ held that the EC had rightly pointed out that various factors other than market share confirmed AKZO's dominance, and in particular:

“... (vi) AKZO has on its own account been able effectively to eliminate ‘troublesome’ competitors (besides ECS) from the market or weaken them substantially: the example of SCADO for one shows that AKZO is in a position, if it so wishes, to exclude a less powerful producer;”

The exit of TicketCharge

- 6.3.3 TicketCharge was established by a Singaporean entrepreneur in the 1990's. During SISTIC's board meeting on 9 October 2002, Mr Kenneth Tan informed the board that TicketCharge informed him that “[...]”¹⁸².
- 6.3.4 Eventually, Quebec Leisure bought over the assets from TicketCharge in January 2006, and became the franchisee of Tickets.com in Singapore. Therefore, the exit of TicketCharge has not resulted in a reduction in the number of competitors in the Relevant Market.

[...] reluctantly used SISTIC

- 6.3.5 In February 2007, [...] brought the musical show [...] to Singapore. According to [...] ¹⁸³, only Esplanade would be able to stage this show because it was an international production. [...] wanted to use [...] as the ticketing service provider for this event, and wrote to TECL requesting for permission to do so. TECL rejected the request, citing that they were not confident of the system of [...]. TECL did not mention any legally binding agreement, but mentioned that they have some sort of service contract with

¹⁸¹ *ECS/AKZO* OJ [1985] L 374/1, [1986] 3 CMLR 273, para. 69, upheld on appeal in Case 62/86 *AKZO Chemie BV v EC* [1991] ECR I-3359, [1993] 5 CMLR 215.

¹⁸² SISTIC's board minutes dated 9 October 2002, paragraph 8.2.

¹⁸³ [...].

SISTIC. In the end, [...] conducted the show using SISTIC “*due to Esplanade’s requirement*”.

- 6.3.6 [...]. This incident indicates SISTIC’s ability to weaken its competitors in the Relevant Market through the use of Exclusive Agreements like ASTA.

Conclusion

- 6.3.7 The above incidents indicate to a certain extent the difficulties for competitors to compete against SISTIC. This, in conjunction with the other considerations stated in this chapter, were taken into account by CCS in assessing whether SISTIC has the ability to act independently without sufficient competitive constraint in the Relevant Market.

6.4 Market share

Concept

- 6.4.1 An undertaking’s market share is an important factor in assessing dominance. It provides a useful first indication on the extent to which the undertaking is faced with *existing* competition in the relevant market. However, market share does not, on its own, determine whether an undertaking is dominant. Other factors such as entry barriers, buyer power, product differentiation and innovation, actual price increases and actual exit of competitors, may also be considered¹⁸⁴.
- 6.4.2 The history of the market shares of all the undertakings within the relevant market is often more informative than considering market shares at a single point of time, partly because a snapshot might not reveal the dynamic nature of the market¹⁸⁵. It is also important to consider the positions of other undertakings operating in the same market and how market shares have changed over time. An undertaking is more likely to be deemed as dominant if its competitors have relatively weak positions and it has enjoyed a persistently high market share over time¹⁸⁶.
- 6.4.3 In *Hoffmann La-Roche v. EC*¹⁸⁷ the ECJ held that “....the view may legitimately be taken that very large market shares are in themselves, and save in exceptional circumstances, evidence of the existence of a dominant position”. Further, the ECJ also held that “a special feature of a dominant position is the ability of an undertaking which has a very large market share to hold it for some time without having much smaller market players

¹⁸⁴ Paragraph 3.7 of the CCS Guidelines on the section 47 Prohibition.

¹⁸⁵ Ibid, paragraph 3.6.

¹⁸⁶ Ibid, paragraph 3.5.

¹⁸⁷ [1979] ECR 461.

*being able to meet the demand of those who would like to break away from the undertaking”.*¹⁸⁸

- 6.4.4 As stated in *CCS Guidelines on the Section 47 Prohibition*, there are no market share thresholds for defining dominance under the section 47 prohibition¹⁸⁹. As a general starting point, however, CCS will consider a market share above 60% as likely to indicate that an undertaking is dominant in the relevant market¹⁹⁰.

Methodology

- 6.4.5 To calculate the market shares in the Relevant Market, CCS obtained information for each event ticketed by the four ticketing service providers¹⁹¹. Both annual figures and an aggregated figure for 1 January 2006 to 31 March 2009 was considered to take into account the possibility of market share fluctuations within certain years.
- 6.4.6 In accordance with the Relevant Market defined in Chapter 5, only events which were held in Singapore and which used open ticketing services are included to calculate market shares in the Relevant Market.

Market share by number of tickets sold

- 6.4.7 Table 6.4.8 below shows the market share of the four ticketing service providers for the Relevant Market for the respective years, in terms of the number of tickets sold by each provider.
- 6.4.8 Based on volume of ticket sales, SISTIC's market share persisted at about 90% over the period from January 2006 to March 2009. SISTIC's market share dipped slightly in 2008, mainly due to GTN winning the contract to provide ticketing services for the 2008 Singapore Grand Prix. SISTIC has since recovered its market share in the period January 2009 to March 2009 to about [90-100]%. On an aggregated basis, SISTIC has a market share of about [85-95]% in the Relevant Market over the period from January 2006 to March 2009.

¹⁸⁸ Paragraph 41, [1979] ECR 461.

¹⁸⁹ Paragraph 3.5 of the *CCS Guidelines on the Section 47 Prohibition*.

¹⁹⁰ Ibid, paragraph 3.8.

¹⁹¹ CCS is only looking at ticketing data on an annual basis from when the Competition Act came into force, i.e. on 1 January 2006.

Table 6.4.8 – Market share estimates by number of tickets sold (January 2006 - March 2009)¹⁹²

	2006		2007		2008		Jan 2009 -Mar 2009		Aggregated (Jan 2006 – Mar 2009)	
	No. of Tickets	%	No. of Tickets	%	No. of Tickets	%	No. of Tickets	%	No. of Tickets	%
SISTIC	[...]	[85-95]	[...]	[85-95]	[...]	[85-95]	[...]	[90-100]	[...]	[85-95]
Tickets.com	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
Gatecrash	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
GTN	N.A.	N.A.	N.A.	N.A.	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
Total	[...]		[...]		[...]		[...]		[...]	

Market share by revenues earned from ticket sale and distribution¹⁹³

6.4.9 Table 6.4.11 below shows the market share of the four ticketing service providers in the Relevant Market for the respective years, in terms of the total revenue earned by them from for the sale and distribution of tickets¹⁹⁴.

6.4.10 On the basis of revenues, SISTIC's market share was over 90% during 2006 and 2007. In 2008, SISTIC's market share dropped considerably to about [65-75]%, again due to the Singapore Grand Prix. This single event accounted for more than [20-30]% of revenues for the entire Relevant Market in 2008, although its share by number of tickets was only about [0-10]%. On an aggregated basis, SISTIC had a market share of about [80-90]% of the total ticketing revenues in the Relevant Market over the period from January 2006 to March 2009.

6.4.11 SISTIC has recovered its market share in the period January 2009 to March 2009 to about [90-100]%. In addition, CCS notes that SISTIC has been appointed as the ticketing service provider for the 2009 Singapore Grand Prix. This arrangement is likely to reinstate SISTIC's market shares for the later part of 2009, and its dip in market shares in 2008 can be viewed as transient.

¹⁹² Refer to footnote 4.

¹⁹³ Using data submitted by: (i) SISTIC dated 19 December 2008, 7 May 2009 and 11 September 2009 in response to the section 63 notices issued by CCS dated 11 November 2008, 17 April 2009 and 09 July 2009, (ii) Exceptional Pte Ltd dated 13 April 2009 and 21 July 2009 in response to the section 63 notices issued by CCS dated 23 February 2009 and 30 June 2009 (iii) OmniTicket (Singapore) Pte Ltd dated 8 April 2009 and 14 July 2009 in response to the section 63 notices issued by CCS dated 25 February 2009 and 30 June 2009 and (iv) Tickets.com Singapore dated 31 March 2009 and 14 July 2009 in response to the section 63 notices issued by CCS dated 23 February 2009 and 30 June 2009.

¹⁹⁴ A description of how SISTIC structures its pricing is given in section 2.3.

Table 6.4.11 –Market share estimates by revenues (January 2006 - March 2009)¹⁹⁵

	2006		2007		2008		2009 (Jan-Mar)		Aggregate (Jan 2006- Mar 2009)	
	Ticketing Revenue (S\$)	%	Ticketing Revenue (S\$)	%	Ticketing Revenue (S\$)	%	Ticketing Revenue (S\$)	%	Ticketing Revenue (S\$)	%
SISTIC	[...]	[85-95]	[...]	[90-100]	[...]	[65-75]	[...]	[90-100]	[...]	[80-90]
Tickets.com	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
Gatecrash	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
GTN	N.A.	N.A.	N.A.	N.A.	[...]	[20-30]	[...]	[0-10]	[...]	[10-20]
Total	[...]		[...]		[...]		[...]		[...]	

Conclusion

6.4.12 Based on the market share estimates, both by volume and by revenues, SISTIC has sustained its market share way above its competitors, and persistently above the indicative starting point of 60% stipulated in the *CCS Guidelines for the Section 47 Prohibition*. As such, CCS is satisfied that evidence of market shares of SISTIC and its competitors support the finding that SISTIC is dominant in the Relevant Market.

6.4.13 In this regard, CCS notes that SISTIC's website also states that in Singapore, it is "*the largest ticketing service provider selling tickets for more than 90% of a wide variety of arts, entertainment and sports events*"¹⁹⁶. [...], SISTIC estimates its market share to be at [85-95]% for FY06/07¹⁹⁷.

6.5 Barriers to entry

6.5.1 Entry barriers are important in the assessment of market power. The higher the entry barriers, the less likely it will be that *potential* competition will prevent undertakings already within a market from profitably sustaining prices above competitive levels. Examples of entry barriers include highly

¹⁹⁵ Refer to footnote 4.

¹⁹⁶ <http://www.sistic.com.sg>.

¹⁹⁷ Section 3.1 of the Information Memorandum dated March 2008, prepared by KPMG Corporate Finance Pte Ltd.

developed sales networks¹⁹⁸, the ability to offer a wide range of products¹⁹⁹ and indirect network effects²⁰⁰.

Technical and regulatory barriers

- 6.5.2 CCS does not consider technology to be an important barrier to entry for the Relevant Market. As a matter of fact, ticketing system suppliers such as OmniTicket are available in Singapore. As noted by SISTIC, [...] ²⁰¹.
- 6.5.3 CCS also notes that there do not seem to be regulatory barriers of entry in place, since ticket service providers are not licensed in Singapore.

Economies of scale

- 6.5.4 CCS acknowledges that some degree of economies of scale exists in the ticketing services industry. However, this is true for most businesses in practice. Therefore, the key consideration is whether the economies of scale are overwhelming and insurmountable. In this regard, SISTIC submits that economies of scale are significant in the Relevant Market, to such an extent that it is a natural monopoly, especially given the small size of the Singapore market²⁰².
- 6.5.5 However, SISTIC's argument is not supported by factual evidence. CCS finds that, although [...] % of SISTIC's recurrent cost is 'fixed cost' under its accounting treatment, its cost structure is nonetheless [...] in an economic sense. Its business is [...], and its [...] ²⁰³. Mr Kenneth Tan's remarks in his interview with CCS are also generally consistent with the above observations²⁰⁴.
- 6.5.6 Overseas cases and studies are also consistent with CCS' observation that economies of scale exist, but are not insurmountable. For instance, the ICA found that sunk costs do not appear to be high²⁰⁵, economies of scale are modest²⁰⁶, and the efficiencies are non-trivial²⁰⁷. The OFT also found that ticketing agents do rely on exploitation of economies of scale, but not to the extent that it would affect an otherwise as-efficient competitor to compete

¹⁹⁸ *Hoffman La-Roche v. EC*, [1979] ECR 461.

¹⁹⁹ *Michelin*, [2002] OJ L143/I.

²⁰⁰ EC decision of 24 March 2004 OJ [2007] L 32/23, upheld on appeal Case T-201/04 *Microsoft Corp v EC* [2007] ECR II-3601, [2007] 5 CMLR 846, paras 448 – 459.

²⁰¹ See Answer to Question 10 of NOI with SISTIC.

²⁰² Refer to Appendix to Chapter 5 of the Representation.

²⁰³ See section A6.6 for details.

²⁰⁴ See Answers to Questions 11, 12 and 19 of NOI with SISTIC.

²⁰⁵ Refer to paragraph 2.54 of the ICA Ticketmaster Decision.

²⁰⁶ *Ibid*, paragraph 2.90.

²⁰⁷ *Ibid*.

- effectively²⁰⁸. UK Competition Commission (“UKCC”) found that small-scale entry is possible through obtaining from promoters a small allocation of tickets across a wide range of their events²⁰⁹.
- 6.5.7 Furthermore, SISTIC’s submission on the cross-jurisdictional analysis of the size of ticketing market and the viability of major ticketing service providers²¹⁰ does not support its argument that market size matters. Based on the data submitted by SISTIC, CCS finds a very weak relationship between market size and market share of top ticketing service providers across countries²¹¹.
- 6.5.8 For the above reasons, CCS concludes that economies of scale exist, but are modest and not insurmountable in the Relevant Market.

Indirect network effect

- 6.5.9 In fact, SISTIC’s submission demonstrates that network effect is a more important entry barrier than economies of scale²¹². According to the data submitted by SISTIC, the smaller the market size, the smaller the critical volume that is required for the viability of a ticketing service provider²¹³. If economies of scale were more important, the *absolute* volume required would have been more or less constant across countries, irrespective of market size. Instead, the critical volume varies in *proportion* to market size across countries, suggesting that viability depends on attaining a certain market share, rather than a certain ticketing volume, i.e. network effect prevails over economies of scale. This is consistent with UKCC’s finding that, while small-scale entry is possible, large-scale entry is difficult due to the need to attract large numbers of customers²¹⁴.
- 6.5.10 In *Microsoft v EC*²¹⁵ the CFI held that network effects constituted a barrier to entry²¹⁶. The CFI upheld the EC’s finding that the ubiquity of Microsoft

²⁰⁸ Refer to paragraph 4.30 of OFT Study.

²⁰⁹ Refer to paragraph 11 of the Summary of the UKCC report titled *Ticketmaster and Live Nation, a report on the completed merger between Ticketmaster Entertainment, Inc and Live Nation, Inc*, dated 7 May 2010 (the “UKCC Ticketmaster/Live Nation Report”).

²¹⁰ Refer to Diagram 8, 9 and 10 of the Representation.

²¹¹ According to a simple regression of market share against market volume, the estimated coefficient that corresponds to the attributable effect of market size is -0.155 (p-value = 0.486). The overall relationship is weak with $R^2 = 0.062$. If anything, the intercept of 78.15% is relatively significant (p-value = 8.52E-07), meaning that, large or small markets alike, the leading player’s market share tends to be 78%. This is well short of suggesting a natural monopoly.

²¹² Economies of scale is a supply-side concept where unit cost decreases with volume, while network effect is a demand-side concept where demand increases with market share.

²¹³ Refer to Diagram 8 and 10 of the Representation.

²¹⁴ Refer to paragraph 11 of the Summary of the UKCC Ticketmaster/Live Nation Report.

²¹⁵ EC decision of 24 March 2004, on appeal Case T-201/04 Microsoft Corp v EC [2007] CMLR 846.

in the personal computer operating systems market meant that nearly all commercial applications software were written first and foremost to be compatible with the Microsoft platform, thus proving that there are significant indirect network effects in the relevant market for operating systems²¹⁷.

6.5.11 As noted in section A5.2, the Relevant Market can be characterized as two-sided, where indirect network effect exists. When the tickets of most events are sold through SISTIC, it will naturally be able to attract or pull in more ticket buyers. In turn, this will attract more event promoters or venue operators to choose SISTIC as their ticketing service provider²¹⁸. In this instance, access to events triggers the indirect network effect. Maintaining a significant number of events within its base is therefore important to SISTIC strategically.

6.5.12 In the UK, OFT also acknowledges the “tipping effect” as a “demand side advantage” for the ticketing service industry:

“At some point, final consumers might be attracted to Ticketmaster because it has agreements with the majority of promoters. In turn, promoters may become equally attracted to Ticketmaster because it is used by the majority of consumers. This may be sufficient to foreclose the market to new entrants and existing players. Some American commentators have argued that tipping in this sector has led to foreclosure of agents in the US.”²¹⁹

However, the market position of Ticketmaster in the UK²²⁰ was insufficient for such tipping effects to take off²²¹. Similarly, the UKCC acknowledged the possibility of a ‘virtuous circle’²²² and a ‘chick-and-egg’ problem due to the “two-sided nature of the market”²²³, but found no actual evidence in the UK primary ticketing market to support these.

Indirect network effect – website

6.5.13 In the Survey, the importance of the popularity of the ticketing agent’s website to the event promoters’ choice of ticketing agent was rated

²¹⁶ CCS notes that the relevant market for dominance in the *Microsoft v EC* case – operating systems – is also a market where indirect network effect exists between application developers and personal computer terminal users.

²¹⁷ See paragraphs 448 to 464 of EC decision of 24 March 2004, upheld in paragraph 1062 of the decision of the Court of First Instance.

²¹⁸ In fact, SISTIC’s marketing capability, as discussed in paragraph 6.5.27, is an example of network effect. Event promoters engage SISTIC to carry out advertisement/promotion activities because of its unmatched database of ticket buyers enables targeted marketing.

²¹⁹ Refer to paragraph 4.41 of the OFT Study.

²²⁰ Ticketmaster’s market share in the UK was 50% according to paragraph F.5 of Annex F to the OFT Study.

²²¹ Ibid, paragraph 4.43.

²²² Refer to paragraph 5.57 of the UKCC Ticketmaster/Live Nation Report.

²²³ Ibid., paragraph 5.43.

highly²²⁴. The existence of network effect is further confirmed by the web analytics between the ticketing websites in Singapore: first, SISTIC's website comprehensively outperforms its competitors' by various benchmarks; second, only SISTIC is able to generate a majority of its web traffic directly via keyword search rather than indirectly via search of venues or events, i.e. SISTIC's website is a first 'port of call' for browsing events.

[...]

Indirect network effect – distribution outlets

6.5.14 CCS considers that, for an existing or potential ticketing service provider to compete effectively against SISTIC, it is important to have a good network of ticket sales and distribution channels. In *Hoffmann-La Roche v. EC*²²⁵ the ECJ held that one of the relevant factors in establishing the dominant position of an undertaking is the existence of an established sales network as it confers a technical and competitive advantage on the dominant undertaking over its competitors²²⁶.

6.5.15 Based on interviews with SISTIC, Tickets.com, Gatecrash and OmniTicket, having well-located outlets throughout Singapore is a critical success factor in the Relevant Market²²⁷. Although online sale of tickets has gained popularity in recent years, physical outlets are still important²²⁸, [...] ²²⁹. However, about [55-65]% of the tickets purchased (including physical, online and phone purchase) are collected from these physical outlets²³⁰.

6.5.16 In this regard, CCS notes that SISTIC [...] ²³¹ [...] ²³² [...] ²³³. CCS is of the view that this arrangement limits the accessibility of the ticket sale and distribution outlets of existing and potential competitors.

6.5.17 SISTIC's internal and public documents confirm the importance of its network of distribution outlets. [...]:

“[...] ²³⁴. ”

²²⁴ Refer to paragraph A3.2.4.

²²⁵ [1979] ECR, 461.

²²⁶ Paragraph 48, [1979] ECR 461.

²²⁷ See Answer to Question 53 of NOI with SISTIC. See Answer to Question 29 of NOI with Tickets.com. See Answer to Question 33 of Mr Ong Min Ji's Notes of Information/Explanation Provided on 27 March 2009. See Answer to Question 24 of NOI with OmniTicket.

²²⁸ See Answers to Questions 54 and 55 of NOI with SISTIC.

²²⁹ SISTIC refers to these physical outlets as authorised agents.

²³⁰ Ticker purchasers can buy tickets online and collect their tickets at a physical outlet. The handling fee is cheaper for physical collection than by mail.

²³¹ [...].

²³² [...].

²³³ [...].

²³⁴ [...].

- In addition, SISTIC's Monthly Entertainment Guide appends an SMRT route map showing that its outlets are located in many shopping malls near MRT stations.
- 6.5.18 CCS notes that there are other alternatives to information counters at shopping malls where ticketing service providers can establish distribution outlets. [...] ²³⁵.
- 6.5.19 [...].
- 6.5.20 [...] ²³⁶. [...].
- 6.5.21 [...].
- 6.5.22 [...].
- 6.5.23 In the Survey, many respondents cited accessibility to retail outlets as a key consideration in their choice of ticketing agent ²³⁷. This implies that an extensive physical distribution network increases demand from event promoters. This in turn increases demand from ticket buyers whose purchase decisions are event-driven. Hence, the first direction of network effect (i.e. outlets \Rightarrow customers) is established.
- 6.5.24 In terms of the opposite direction (i.e. customers \Rightarrow outlets), given the space constraints in Singapore ^{238 239}, landlords are not willing to accommodate more than one ticket agent ^{240 241}. Given that many strategically located and popular shopping malls have already been taken up by SISTIC ^{242 243}, it is difficult for competitors to match SISTIC's network of retail outlets without having substantial ticket volume ^{244 245}. In other words, higher demand from ticket buyers increases the feasibility of establishing an extensive physical distribution network. Hence, a two-way network effect is established.
- 6.5.25 In Ireland, the ICA also acknowledged the two-way network effect in relation to the "economies of density" in the physical distribution of tickets ²⁴⁶:

²³⁵ Refer to paragraphs 3.13 and 6.29 of the Representation, and paragraphs 2.18, 2.20, 2.21, 2.22, 2.24 and 2.28 of the Supplementary Representation.

²³⁶ [...].

²³⁷ Refer to paragraph A3.2.1.

²³⁸ Refer to paragraph 7.12 of the Representation.

²³⁹ See answer to Question 28 of NOI with Tickets.com.

²⁴⁰ See answer to Question 28 of NOI with Tickets.com.

²⁴¹ See answer to Question 39 of NOI with OmniTicket.

²⁴² See answer to Question 28 of NOI with Tickets.com.

²⁴³ See answer to Question 40 of NOI with OmniTicket.

²⁴⁴ See answer to Question 35 of NOI with Gatecrash.

²⁴⁵ See answer to Question 39 of NOI with OmniTicket.

²⁴⁶ Refer to the ICA Ticketmaster Decision.

Outlets ⇒ Customers	...a ticketing service provider that does not possess an island-wide network of retail outlets and/or has limited call centre and Internet capabilities will not be considered a viable alternative... (Paragraph 2.17)
Customers ⇒ Outlets	If an entrant were to enter with a network of retail outlets sufficient to provide coverage across the island of Ireland, it would need sufficient demand in order that the costs of providing the ticketing service were not prohibitive. (Paragraph 2.88)

6.5.26 Based on the factors considered above, CCS concludes that the indirect network effect arising from an entrenched physical distribution network constitutes a barrier to entry in the Relevant Market.

Indirect Network Effect – customer database

6.5.27 SISTIC submits that it has been able to [...]. SISTIC submits that this capability is crucial and unmatched by its competitors²⁴⁷, albeit easily replicable²⁴⁸.

6.5.28 The two-way indirect network effect arising from an extensive customer database is explained succinctly by Tickets.com’s submission:

“It cuts two ways, it is important as a marketing tool for the ticketing agent and it is also a way to attract business from show promoters, as your database grows bigger. The bigger the database of customers, the better a level of customer relationship management you can offer to promoters, which gives you a competitive edge. With a large customer database, you can also do more targeted advertisement for show promoters (e.g. targeting certain groups of people who have attended similar types of events). Show promoters value this service because advertisement is important and advertisement cost is not cheap. Hence, it is good if they can ride on other means (e.g. ride on ticketing agents’ website or customer database.)”²⁴⁹

Gatecrash also acknowledged the importance of a large customer database, although it is not the only factor:

“Large customer database – Though having a large database is important because it supports the marketing of a show, we feel that the flexibility and adaptability of our ticketing software is also important as this can help

²⁴⁷ See Answers to Questions 8 and 9 of NOI with SISTIC.

²⁴⁸ Refer to Paragraph 1.14 of the Representation.

²⁴⁹ See Answer to Question 9 of NOI with Tickets.com.

promoters to target their audience for a particular genre of performance based on their demographics... A large database provides promoters incentives to use a particular ticketing agent. Due to our shorter history in this industry, we admit that we have a smaller database than SISTIC. [...]. One point to emphasize is that most experienced organizers would not consider database blasting as their sole form of marketing...”²⁵⁰

6.5.29 In the Survey, the size of a ticketing agent’s customer database scored, on a scale of 1 to 10 (1 being most important to the event promoters’ choice of ticketing agents), a mean and median of 4.5 and 3 respectively. This is consistent with the submissions of SISTIC, Tickets.com and Gatecrash that having a large customer database is an important factor, albeit not the only one.

6.5.30 The potency of an extensive customer database in facilitating marketing and promotion is also recognised by competition authorities overseas. In the US, the DOJ states that:

“... Ticketmaster’s scale provides another important incumbent advantage over other firms – extensive data about individual concertgoers collected over many years. Ticketmaster can use that data as a powerful marketing tool to secure venue contracts for primary ticketing services.”²⁵¹

In the UK, the OFT also states that:

“Economies of scale also exist through the ability of ticket agents to build up a database of individuals who purchase various types of ticket. Such a database is of value to promoters and ticket agents when carrying out marketing activities because there are cost savings from serving the same customer more than once.”²⁵²

6.5.31 CCS considers that the superior marketing capability and reputation confer a competitive advantage upon SISTIC over its competitors, and thus constitute a barrier to entry.

Indirect network effect - conclusion

6.5.32 Based on the above, CCS is of the view that the indirect network effect between event promoters and ticket buyers exists in the Relevant Market, and it constitutes a barrier to entry.

6.5.33 Consistent with CCS’ analysis and conclusion, SISTIC’s documents also identified the following factors as important value propositions for the company:

²⁵⁰ See Answer to Question 12 of NOI with Gatecrash.

²⁵¹ Refer to Page 9-10 of the DOJ Competition Impact Assessment.

²⁵² Refer to Paragraph 4.32 of the OFT Study.

	KPMG Memorandum ²⁵³	SISTIC's Proposal for Singapore GP ²⁵⁴
Website	"[...]" ²⁵⁵ .	"[...]" ²⁵⁶
Distribution Outlets	"[...]" ²⁵⁷ .	"[...]" ²⁵⁸
Customer Database	"[...]" ²⁵⁹ .	"[...]" ²⁶⁰ "[...]" ²⁶¹ .

Strategic conduct

6.5.34 It should however be noted that the indirect network effect in the Relevant Market is not natural and not unbreakable. [...] ²⁶², [...]. As CCS will demonstrate in Chapter 7, it is SISTIC's Exclusive Agreements that have been preventing its partners and customers from doing so. This is consistent with UKCC's finding that long-term preferred relationships between incumbent ticketing agents and event promoters and venue operators made large-scale entry even harder²⁶³.

6.5.35 In other words, the barrier to entry in relation to network effect is artificially erected and sustained by SISTIC's strategic conduct.

Conclusion

6.5.36 Having considered the above, CCS concludes that the level of barriers to entry is moderately high for the Relevant Market. There are no technical or regulatory barriers that would prevent competition. Although SISTIC's distribution network and marketing capability are clearly superior at present, and some degree of economies of scale exists, these barriers are not

²⁵³ Information Memorandum dated March 2008, prepared by KPMG Corporate Finance Pte Ltd ("KPMG Memo").

²⁵⁴ SISTIC's Proposal for Provision of Ticketing Services for the Singapore Grand Prix 2009. ("GP Tender") dated 10 November 2008.

²⁵⁵ Refer to section 2.4.3.1 of the KPMG Memo.

²⁵⁶ Refer to Executive Summary on pg 2 of the GP Tender.

²⁵⁷ Refer to section 2.4.1.1 of the KPMG Memo.

²⁵⁸ Refer to section 2b, subsection 4 on page 11 of the GP Tender.

²⁵⁹ Refer to section 1.2 of the KPMG Memo.

²⁶⁰ Refer to Executive Summary on pg 3 of the GP Tender.

²⁶¹ Refer to section 2b, subsection 4iii) on pg 14 of the GP Tender.

²⁶² See paragraph 3.14 of the *CCS Guidelines on the Section 47 Prohibition*.

²⁶³ Refer to paragraph 11 of the Summary of the UKCC Ticketmaster/Live Nation Report.

insurmountable, especially over time. However, CCS found that the network effect created by SISTIC's strategic conduct to maintain its exclusive access to events and venues is preventing the barriers to entry from being overcome by its actual or potential competitors.

6.6 Countervailing buyer power

6.6.1 The strength of buyers and the structure of the buyers' side of the market may constrain the market power of a seller. A buyer's bargaining strength might be enhanced if, amongst other things²⁶⁴:

- the buyer is well-informed about alternative sources of supply and could readily, at little cost to itself, switch substantial purchases from one seller to another while continuing to meet its needs;
- the buyer could commence production of the item itself, or "sponsor" new entry by another seller relatively quickly, for example, through a long-term contract, without incurring substantial sunk costs (i.e. irretrievable costs);
- the buyer is an important outlet for the seller, that is, the seller would be willing to cede better terms to the buyer in order to retain the opportunity to sell to that buyer;

Event promoters and ticket buyers have no ability to exercise countervailing power

6.6.2 In this regard, CCS notes that demand from event promoters is highly fragmented in Singapore. No single event promoter accounts for more than [5-15]% of SISTIC's ticket sales (in terms of number of tickets sold) during the assessment period from January 2006 to March 2009²⁶⁵. They are unlikely to have significant buyer power against SISTIC²⁶⁶. This is even more so for ticket buyers who are individuals.

Venue operators lack incentives to exercise bargaining power

6.6.3 In contrast, the two major venue operators, TECL and SIS, accounted for [30-40]% and [20-30]%²⁶⁷ of SISTIC's ticket sales respectively during the

²⁶⁴ Paragraph 3.14 of the *CCS Guidelines on the Section 47 Prohibition*.

²⁶⁵ Although the 2009 Singapore Grand Prix event may account for more than [5-15]% of SISTIC's ticketing revenues, it did not fall within the assessment period.

²⁶⁶ Refer to paragraph A7.1.6 for more details regarding the lack of coordination among buyers and its implications on foreclosure effect.

²⁶⁷ Refer to footnote 14.

assessment period. They are likely to have strong bargaining power against SISTIC. However, they are not exactly ‘buyers’ of SISTIC’s ticketing service. The venue operators may engage SISTIC to be the ticketing service provider for events held at their venues, but the event promoters are the parties who eventually buy SISTIC’s ticketing service. It follows that the venue operators, despite having strong bargaining power, have weak incentives to exercise their power against SISTIC, because the profit and loss implications would be borne by event promoters²⁶⁸.

- 6.6.4 The weak incentives for venue operators to exercise their bargaining power against SISTIC are clearly reflected in their contractual terms. [...] ²⁶⁹, [...] ²⁷⁰. The terms and conditions of the ATS are similar. In both cases, the third-party event promoters must individually negotiate with SISTIC, despite a restriction of choice imposed by the venue operators in the first place²⁷¹. These contractual relationships clearly demonstrate that, when a major venue operator is also the event promoter itself, it has the power to bargain for significant discounts, and has indeed done so. However, when the venue operator is not the event promoter itself, [...].
- 6.6.5 These terms and conditions under the ASTA and ATS contrast sharply to those under Ticketmaster’s preferred (not exclusive) contracts in Ireland with the two major event promoters, namely MCD Promotions (“MCD”) and Aiken Promotions (“Aiken”) ²⁷². The Irish Competition Authority (“ICA”) found that “the promoters exert downward pressure on booking fees”. Specifically, Ticketmaster’s booking fees are contractually capped by MCD and Aiken:

“A cap of €5.50 first appeared in TicketMaster Ireland’s contract with Aiken in 2002. It was increased to €5.95 in the 2003 contract. In the case of MCD, a price cap of €5.50 first appeared in their 2002 contract, which was increased to €5.95 in the 2004 contract.” ²⁷³

²⁶⁸ TECL and SIS are also event promoters for [20-30]% and [0-10]% (refer to footnote 14) of the events held at their venues respectively. However, the proportions are too small for them to exercise their bargaining powers against SISTIC in full.

²⁶⁹ [...].

²⁷⁰ [...].

²⁷¹ For example, this was the basis on which the anonymous complaint mentioned in paragraph 3.1.1 was made.

²⁷² Although Ticketmaster’s contracts with MCD and Aiken are called “exclusive distribution agreements”, the ICA has noted that “these contracts are not ‘exclusive’ in the strictest sense of the term. They provide that TicketMaster Ireland will handle [75-85]% - rather than 100% - of all tickets available for an event”. (Refer to footnote 4 of the ICA Ticketmaster Decision).

²⁷³ Refer to paragraph 2.60 of the ICA Ticketmaster Decision.

The ICA went on to state that:

“The booking fees outlined in Table 2 above indicate that ***TicketMaster Ireland does not have unfettered discretion to charge any amount for its services.*** In other words, TicketMaster Ireland is unable to act as a supplier of ticketing services with substantial market power and charge the end consumer accordingly. Rather, for tickets sold over the telephone or Internet, TicketMaster Ireland is contractually bound to charge no more than the “cap” put in place in its contracts with the Promoters. ***This significantly restricts TicketMaster Ireland’s ability to set prices to end consumers***”²⁷⁴. (emphasis added)

and that:

“In sum, TicketMaster Ireland’s ability to act independently with respect to the prices it charges end consumers is constrained by the strong bargaining position of the Promoters, which allows them to impose a limit on the level of the booking fee. The Promoters are quite properly concerned that ***if TicketMaster Ireland were unconstrained by such contractual terms, it would charge end consumers a higher booking fee***”²⁷⁵. (emphasis added)

- 6.6.6 The difference between the Irish situation and Singapore’s illustrates that, when the contractual partner is a large event promoter, it has the ability and incentives to exercise countervailing power, and the Irish promoters have indeed done so by contractually capping Ticketmaster’s booking fees. In Singapore, the event promoters do not have the ability to exercise countervailing power because they are small, while the venue operators do not have the incentives to do so because they are not buyers. Indeed, TECL and SIS have not exercised their bargaining power [...] ²⁷⁶.

Dollar gain, dollar loss – the ‘Chicago critique’²⁷⁷

- 6.6.7 SISTIC submits that the venue operators have strong incentives to exercise countervailing power because “*every dollar increase to ticketing fees for ticket buyers represent a dollar loss to venue operators and event promoters of what they may charge in hiring fees or ticket prices*”²⁷⁸.
- 6.6.8 CCS first notes that SISTIC’s theory does not conform to the evidence. If SISTIC is correct that the venue operators and event promoters have the ability and incentives to exercise their bargaining power, they would have imposed contractual constraints on SISTIC’s [...] under the Exclusive Agreements, similar to the Irish situation. The reality is, they have not.

²⁷⁴ Ibid, paragraph 2.62.

²⁷⁵ Ibid, paragraph 2.64.

²⁷⁶ Refer to paragraph A7.1.6 for the implications of the venue operators’ indifference on foreclosure effects.

²⁷⁷ Refer to section A7.1.

²⁷⁸ Refer to page 22 of the Representation.

Instead, CCS' analysis of abilities and incentives above perfectly explains the difference between the situations in Ireland and Singapore.

- 6.6.9 In any case, CCS notes that this 'dollar gain, dollar loss' argument is thoroughly researched and robustly critiqued in antitrust literature. When contractual externality exists and/or buyers fail to coordinate their purchasing decisions, countervailing power is not exercised to the full extent²⁷⁹. In this case, contractual externality exists because venue operators are not buyers themselves, while buyers fail to coordinate their purchasing decisions because event promoters are small. These problems do not exist in Ireland where there are two large event promoters.

Flat booking fees weaken the venue operators' incentive to exercise bargaining power

- 6.6.10 Another distinct feature of SISTIC's pricing policy is a uniform booking fee across all venues, events and sales channels. This is in contrast to the Irish situation where Ticketmaster's booking fee is €0 for tickets bought at event venue box offices, €2 for tickets bought at Ticketmaster's retail agents and €2-5.95 for internet and telephone bookings²⁸⁰.
- 6.6.11 In CCS' view, this difference in booking fee structure between Ireland and Singapore makes economic sense only if event promoters in Ireland have exhibited stronger influence on booking fees than venue operators in Singapore did.
- 6.6.12 Ticketmaster's variable fee structure in Ireland creates incentives for event promoters to negotiate for lower booking fees where their vested interests are the strongest. Notably, booking fee is €0 at box offices, where the tickets sold are identifiable for the particular events held at the same venue. For ticket sales through retail agents, where booking fee revenues are split between Ticketmaster and the retail outlets²⁸¹, the same charge applies to all venues and events. For internet and telephone sales, where booking fee revenues accrue to Ticketmaster alone²⁸², event promoters have individually capped the booking fees applicable to the respective events of their own²⁸³.

²⁷⁹ Refer to section A7.1.

²⁸⁰ Refer to Table 2 of the ICA Ticketmaster Decision.

²⁸¹ Refer to paragraph 2.59 of the ICA Ticketmaster Decision.

²⁸² Although the call centre servicing Ticketmaster Ireland is based in England. It is owned and managed by Ticketmaster UK, and Ticketmaster Ireland pays annual fee for its service. Refer to footnote 32 of the ICA Ticketmaster Decision.

²⁸³ For example, Aiken and MCD capped Ticketmaster's booking fees at €5.95 and at €5.50 respectively during the period from 2003 to 2004. Refer to paragraph 2.60 of the ICA Ticketmaster Decision.

6.6.13 In contrast, SISTIC's uniform booking fee *across the board* creates externalities. Where an individual venue operator awards an exclusive contract to SISTIC, it has little incentive to internalize for the interests of event promoters and ticket buyers, because the consequence of a booking fee increase is borne by all of SISTIC's ticket buyers, not just those attending events held at its own venue. In other words, this venue operator does not bear any competitive disadvantage *specific to itself*, because its rivals' costs are raised²⁸⁴.

Reputational versus financial impact

6.6.14 SISTIC draws a further distinction between "reputational" and "financial" impact on venue operators²⁸⁵. In this regard, CCS finds that the venue operators have strong incentives to exercise *quality* control in engaging ticketing service providers to ensure high service standards in ticketing sales for events held at their venues, as these reputational benefits accrue more to themselves. However, they do not have the same incentives to optimise the *prices* paid for such services, as these financial benefits accrue more to event promoters and ticket buyers. As a result, the choices of venue operators are biased in favour of 'luxury' services.

6.6.15 Again, CCS' finding above is based not on theory, but on the actual contractual terms under the Exclusive Agreements. [...] ²⁸⁶, [...].

Self-ticketing as a threat

6.6.16 CCS has also considered whether venue operators and/or event promoters can exercise countervailing power by threatening to do self-ticketing. In this regard, CCS notes that competition authorities overseas have again relied on actual evidence rather than theories. In *US DOJ v Ticketmaster/Live Nation*, the DOJ found that:

"By 2008, Ticketmaster's longstanding dominance faced a major threat. Live Nation was better positioned to overcome the entry barriers discussed above than any other existing or potential competitor because it could achieve sufficient scale to compete effectively with Ticketmaster simply by ticketing its own venues. Live Nation also possessed a unique competitive advantage in that it could bundle access to important concerts with its ticketing service. Recognising Live Nation's potential to disrupt its dominant position in the market for primary ticketing services, Ticketmaster attempted to renew Live Nation's primary ticketing contract before its December 31, 2008 expiration. But Live Nation instead chose to license technology from CTS Eventim AG

²⁸⁴ Refer to paragraph A7.1.6 for the implications of raising rivals' costs on foreclosure effects.

²⁸⁵ Refer to Diagram 6 on page 24 of the Representation.

²⁸⁶ Appendix F of the 2008 ASTA.

(“CTS”) that would enable it to sell concert tickets to its own venues beginning in 2009 and to compete with Ticketmaster for other venues’ primary ticketing contracts in the future”²⁸⁷.

- 6.6.17 CCS notes that Live Nation has *all along* been “better positioned” and “possessed a unique competitive advantage” for the reasons identified by the DOJ, but the DOJ did not consider Ticketmaster’s “longstanding dominance” to be under “major threat” until “[b]y 2008” when Live Nation “chose” to “enable it to sell concert tickets to its own venues beginning in 2009 and to compete with Ticketmaster”. This means, unless and until actual evidence of self-ticketing surfaced, the DOJ did not consider a theoretical analysis of Live Nation’s ability to threaten self-ticketing to be sufficient to refute a dominant position being held by Ticketmaster.
- 6.6.18 According to SISTIC’s submission²⁸⁸, there also appears to be *actual* competitive constraint from self-ticketing in Australia, where the Sydney Opera House, the Queensland Performing Arts Centre in Brisbane and the Victorian Arts Centre in Melbourne are *indeed* doing so.
- 6.6.19 Based on SISTIC submission and other information available to CCS, self-ticketing has not actually taken off in Singapore. There is also no documentary evidence to suggest any credible threat of self-ticketing from any major venue operator or event promoter. As such, CCS cannot accept the theoretical possibility of self-ticketing as a material contributing factor to the ability and incentives for venue operators and event promoter to exercise their bargaining power.

Loopholes in the “feedback loop”²⁸⁹

- 6.6.20 SISTIC submits that the market structure of the ticketing service industry is a “feedback loop” where ticket buyers are a common denominator to venue operators, event promoters and ticketing service providers. However, based on the assessment above, CCS has identified many gaps within the loop that has prevented venue operators and event promoters from imposing effective competitive constraints upon SISTIC – venue operators are indifferent; event promoters are too small, let alone ticket buyers.
- 6.6.21 In any case, according to SISTIC’s submission²⁹⁰, demand elasticity of ticket buyers is low. Therefore, the potency of the ticket buyers in providing feedback to event promoters, venue operators and ticketing service providers cannot be exaggerated in the first instance. As a matter of

²⁸⁷ Refer to page 10 of the DOJ Competition Impact Assessment

²⁸⁸ Refer to paragraph 3.20 of the Representation.

²⁸⁹ Refer to paragraph 3.31 of the Representation.

²⁹⁰ Refer to paragraph 7.10 of the Representation.

fact, since SISTIC increased its booking fees by 50% in January 2008, there has been no decline in ticket sales volume.

Conclusion on countervailing buyer power

- 6.6.22 Given the above, CCS concludes that, in Singapore, the event promoters and ticket buyers have no countervailing buyer power against SISTIC. The major venue operators do have strong bargaining power (not ‘buyer’ power), but they have weak incentives to exercise their power with respect to price, and evidence suggests that they are indeed not exercising their power.

6.7 Conclusion

- 6.7.1 Having considered all the factors mentioned in the chapter, CCS is satisfied that SISTIC is dominant in the Relevant Market.

Appendix 6 Analysis of SISTIC's Financial Performance

A6.1.1 This appendix sets out the details of CCS' analysis of SISTIC's financial performance that supported various conclusions drawn in the ID. The analysis is structured as follows: section A6.2 states the specific purposes of performing this analysis; section A6.3 records the source documents based upon which this analysis is performed; section A6.4 explains the methodology used to measure SISTIC's profitability trends; section A6.5 details the analysis and conclusions on SISTIC's profitability trends; section A6.6 covers other aspects of the analysis of SISTIC's financial performance; finally, Exhibit A6.8 tabulates the detailed figures and calculations.

A6.2 Purposes

A6.2.1 The purposes of analyzing SISTIC's financial performance are fourfold:

- Dominance – to assist in CCS' assessment whether SISTIC is able to profitably sustain price above competitive levels in the Relevant Market;
- Effects on competition – to assist in CCS' assessment whether SISTIC's conduct has led to harmful effects on competition;
- Objective justification – to assist CCS in verifying whether SISTIC's objective justification claims are substantiated; and
- Penalties – to determine the Relevant Turnover for the purpose of calculating the financial penalties to be imposed upon SISTIC

A6.3 Source documents

A6.3.1 Unless otherwise stated, all of the analyses and conclusions in this appendix are based on the following source documents submitted by SISTIC in response to section 63 notices by CCS:

- Audited income statement, balance sheet, cash flow statement and notes to financial statements of SISTIC, annually for the fiscal years (ending March) 2000/01 to 2008/09²⁹¹; and

²⁹¹ For FY00/01 to FY 03/04 and FY08/09, SISTIC submitted unconsolidated financial statements. For FY04/05 to FY 07/08, SISTIC submitted consolidated financial statements. To reconcile the difference, CCS has made a minor adjustment to the account "other payables and accruals" on SISTIC's balance sheet for FY08/09. This difference is negligible (no difference in Relevant Turnover, total revenues, net income and total assets; 0.01% difference in shareholder's equity).

- Finance department management reports (unaudited) for SISTIC management meetings, monthly from December 2004 to March 2009 (the “Monthly Reports”).

A6.4 Methodology

A6.4.1 In assessing SISTIC’s profitability trends for the purposes of this ID, CCS has used ROIC as the primary measure. Nevertheless, CCS has also considered a number of different financial performance indicators to observe whether the profitability trends are consistent across these measures (refer to Exhibit A6.8 for detailed formulas and calculations).

The concept of ROIC

A6.4.2 ROIC is defined as net adjusted operating profit after tax (“NOPAT”)²⁹² divided by invested capital. Invested capital is defined as interest-bearing debt plus shareholder’s equity²⁹³, adjusted for off-balance sheet items such as operating lease or R&D expenses, as well as excess cash.

A6.4.3 ROIC is a commonly accepted measure of profitability, because necessary adjustments are made to remove the company-specific differences. This allows meaningful comparisons across different companies and industries²⁹⁴. In the book *On Competition*²⁹⁵, Michael E. Porter remarked²⁹⁶:

“Return on invested capital (ROIC) is the appropriate measure of profitability for strategy formulation, not to mention for equity investors. Return on sales or the growth rate of profits fail to account for the capital required to compete in the industry. Here, we utilise earnings before interest and taxes divided by average invested capital *less excess cash* as the measure of ROIC. *This measure controls for idiosyncratic differences in capital structure and tax rates across companies and industries.*”²⁹⁷ (emphasis added)

A6.4.4 CCS notes that ROIC has been reported by many publicly listed companies as a “Non-GAAP Financial Measure”²⁹⁸. Pursuant to Regulation G of the US Securities Exchange Commission (“SEC”),

²⁹² NOPAT adjusts for the non-operating and non-recurrent items, as well as off-balance sheet items such as operating leases and R&D expenditures.

²⁹³ This is the liability approach. Equivalently, invested capital can be defined by the asset approach as total assets less non-interest-bearing liabilities, plus other adjustments.

²⁹⁴ In particular, capital-intensive and labour-intensive businesses are comparable by ROIC. Cash-rich companies are also comparable to financially leveraged ones by ROIC.

²⁹⁵ *On Competition* by Michael E. Porter, Harvard Business School Publishing, ISBN 978-1-4221-2696-7

²⁹⁶ Ibid, Page 6, Figure 1.2.

²⁹⁷ CCS used NOPAT, which is after-tax, as the numerator. This results in lower levels of ROIC as compared to Michael Porter’s methodology.

²⁹⁸ GAAP abbreviates Generally Accepted Accounting Principles.

companies may choose to report Non-GAAP financial measures in their financial reports (Form 10-Q, 10-K, etc.), provided that definitions of such financial measures and reconciliations with the closest GAAP measures are provided²⁹⁹.

The concept of excess cash

A6.4.5 For the calculation of ROIC, only a required level of cash is included in the calculation of invested capital. Any excess cash position held on balance sheet is excluded because excess cash is not actually *invested* into the business³⁰⁰.

A6.4.6 With regard to the required level of cash, the book *Valuation: Measuring and Managing the Value of Companies*³⁰¹ cited a survey:

“Companies do not disclose how much cash they deem necessary for operations. Nor does the accountant’s definition of cash versus marketable securities distinguish working cash from excess cash. To estimate the size of working cash, we examined the cash holdings of S&P 500 non-financial companies. Between 1993 and 2000, the companies with the smallest cash balances held cash just below 2 percent of sales. If this is a good proxy for working cash, *any cash above 2 percent should be considered excess*.”³⁰²
(emphasis added)

A6.4.7 The required level of cash varies from business to business. Those businesses whose financial performance fluctuates more, seasonally or cyclically, or due to foreign exchange exposure, would need to hold more cash in hand. Those with significant imbalances between short-term receivables and payables would also need to hold more cash.

A6.4.8 Table A6.4.8 below shows that the actual percentage used by those companies which reported ROIC as a Non-GAAP Financial Measure pursuant to Regulation G of the US SEC ranged from 0-5%:

Table A6.4.8: ROIC and required cash under SEC Regulation G reporting

Company	Industry	Period	Cash as % revenues included in calculating ROIC	ROIC
Flextronics	Electronics	Jul-Sep 2008	0%	11.3%
Kimberly Clark	Personal Hygiene	Jan-Dec 2008	2.16%	14.1%

²⁹⁹ Regulation G further stipulates that Non-GAAP performance measures should be considered in addition to, not as a substitute for, the financial performance reported in accordance with US GAAP.

³⁰⁰ It is also mathematically consistent to exclude excess cash from the denominator in the calculation of ROIC, because interest income is also excluded from the numerator – NOPAT, which measures operating performance of a business rather than interest earned from cash holdings.

³⁰¹ *Valuation: Measuring and Managing the Value of Companies, Fourth Edition*, by Tim Koller, Marc Goedhart, David Wessels, McKinsey & Company, Inc., ISBN 10-0-471-70218-8.

³⁰² Ibid, page 171.

Marriott Int'l	Hotel	Jan-Dec 2008	1.81%	16%
Motorola	Telecoms Equipment	Jan-Dec 2008	5%	2.45%
Norfolk Southern	Railway	Jan-Dec 2008	3.86%	12.1%
Pepsi Americas	Beverage	Jan-Dec 2008	0%	8.0%
Unilever	Consumer	Jan-Dec 2008	0%	15.7%

Note: Kimberly Clark, Marriott International and Norfolk South included their actual cash holdings in their calculations. The rest excluded all or part of their cash holdings deemed excessive from their calculations.

Excess cash on SISTIC's balance sheet

A6.4.9 [...] ³⁰³. [...] ³⁰⁴, [...] ³⁰⁵. [...].

Figure A6.4.9: SISTIC's cash vs total assets

[...]

A6.4.10 [...] ³⁰⁶.

A6.4.11 [...].

Figure A6.4.10: SISTIC's cash (excluding gate collections held in trust) as % of total revenues

[...]

Methodology in calculating SISTIC's ROIC

A6.4.12 [...].

A6.4.13 [...].

Figure 0: SISTIC's ROIC from FY01/02 to FY08/09.

[...]

Segmentation of ROIC

The merits of segmentation

A6.4.14 CCS has considered whether the measurement of SISTIC's ROIC should be based on segmented profitability pertaining to its business in the Relevant Market.

³⁰³ Paragraph 8.2 or 9.2 of every Monthly Report from January 2005 to March 2009.

³⁰⁴ See Answer to Question 30 of NOI with SISTIC.

³⁰⁵ See Answer to Question 29 of NOI with SISTIC.

³⁰⁶ See Table A6.4.8

A6.4.15 First and foremost, there are merits in assessing SISTIC’s profitability at the company level (i.e. unsegmented). CCS notes that, in industries with high common costs, engaging in multiple business lines to share the common costs is typical of the competitive process to capture efficiencies through economies of scope. As SISTIC puts it:

“[...]”³⁰⁷ (emphasis added).

A6.4.16 If the Relevant Market were competitive, SISTIC would be under competitive pressure to pass on any efficiency benefits generated through economies of scope to customers in the Relevant Market, so long as the efficiencies realised from multiple business activities enabled SISTIC to keep “ticket costs affordable”. Therefore, if SISTIC were matching its competitors’ prices in the Relevant Market, and as a result could not retain profits *at the company level*, then the conclusion would have been that SISTIC were unable to profitably sustain prices above competitive levels *in the Relevant Market*, and vice versa.

A6.4.17 Even without explicit segmentation, it is still possible to associate profit increments to specific business activities. In FY08/09, [...] ³⁰⁸ amidst economic downturn³⁰⁹, except revenues from booking fees which grew by [...] % year on year. This clearly shows that SISTIC’s increase in profits was attributable to its booking fee increase.

Methodology for segmentation of ROIC

A6.4.18 Notwithstanding the merits of assessing SISTIC’s profitability at the company level, CCS reckons that the conclusions will be more robust if the assessment results are consistent across segmented and unsegmented measures. Therefore, CCS has gone on to consider SISTIC’s segmented profits in the Relevant Market.

A6.4.19 First, CCS notes that SISTIC’s business lines are [...]. Common costs account for about [...] % of its total recurrent expenses³¹⁰. [...].

A6.4.20 It is well recognised in overseas jurisdictions that, when common costs are high, it is necessary to allocate such common costs to the various business activities. For instance, the EC states that:

“It is necessary for the Commission to determine what the actual costs for the relevant product are. Appropriate cost allocation is therefore fundamental to determining whether a price is excessive. For example, where a company is engaged in a number of activities, it will be necessary to allocate relevant costs

³⁰⁷ Refer to paragraph 2.3 of the Representations.

³⁰⁸ See Exhibit A6.8.

³⁰⁹ Singapore’s nominal GDP declined by 2.7% over the same period (Source: <http://www.singstat.gov.sg>; Change is measured by difference between non-seasonal adjusted, nominal GDP from Q2/08 – Q1/09 and that from Q2/07 – Q1/08).

³¹⁰ Refer to Exhibit A6.8

to the various activities, together with an appropriate contribution towards common costs. It may also be appropriate for the Commission to determine the proper cost allocation methodology where this is a subject of dispute”³¹¹.

A6.4.21 The next question is how to allocate common costs. At the conceptual level, CCS notes that there are demand-side (e.g. Ramsey-Boiteux pricing³¹²) and supply-side (e.g. fully distributed costs³¹³) methodologies to allocate common costs. At the practical level, common costs can be allocated by volume, by revenues or by incremental costs³¹⁴. In this case, CCS has used equal proportion mark-up (“EPMU”) as the primary methodology to allocate SISTIC’s common costs, as detailed below.

A6.4.22 In theory, Ramsey-Boiteux pricing is the economically efficient way of allocating common costs for a monopoly business. This, however, rests upon the assumption that the monopoly is taken as given. When the monopoly position is potentially challengeable, Ramsey-Boiteux pricing tends to perpetuate the monopoly through diminishing opportunities for competitive entry³¹⁵. Therefore, CCS reckons that Ramsey-Boiteux pricing cannot be applied in this case for allocation of SISTIC’s common costs.

A6.4.23 In any case, Ramsey-Boiteux pricing is dismissed in overseas jurisdictions for practical difficulties in estimating demand elasticities. For instance, the UK Office of Communications (“OFCOM”) states that:

“In the May and December consultations, it was considered whether the efficient charge level should be set in accordance with Ramsey principles, that is, whether the mark-up for the recovery of common costs should be set on the basis of demand conditions. In theory, Ramsey prices minimise the loss in economic efficiency introduced by the departure from marginal cost pricing due to the presence of common costs. However, Ofcom has concluded that the derivation of Ramsey prices, or more generally of welfare-optimal prices, raises complex conceptual and practical issues which do not allow for sufficiently reliable optimal prices to be estimated. Ofcom believes that EPMU achieves a more appropriate balance between practicality and efficiency than the Ramsey methodology”³¹⁶.

³¹¹ Refer to paragraph 107 of the *Notice on the application of the competition rules to access agreements in the telecommunications sector, Framework, Relevant Markets and Principles* (98/C 265/02)

³¹² Common costs to be allocated according to the inverse of price elasticity of demand between different business lines (c.f. Ramsey (1927) and Boiteux (1956)).

³¹³ *An Analysis of Fully Distributed Cost Pricing in Regulated Industries*, in The Bell Journal of Economics, Vol. 11, No. 1 (Spring 1980) Ronald R. Braeutigam.

³¹⁴ Refer to page 183-184 of *An Analysis of Fully Distributed Cost Pricing in Regulated Industries*, in The Bell Journal of Economics, Vol. 11, No. 1 (Spring 1980) Ronald R. Braeutigam.

³¹⁵ Refer to page 193-194 of *An Analysis of Fully Distributed Cost Pricing in Regulated Industries*, in The Bell Journal of Economics, Vol. 11, No. 1 (Spring 1980) Ronald R. Braeutigam.

³¹⁶ Refer to paragraph 6.8 of OFCOM’s *Statement on Wholesale Mobile Voice Call Termination*, dated 1 June 2004.

A6.4.24 For the conceptual and practical reasons highlighted above, CCS has decided to adopt the fully distributed cost approach rather than Ramsey-Boiteux pricing.

A6.4.25 As noted above, there are three variants to the fully distributed cost methodology – by volume, by revenues or by incremental costs. Allocating common costs by volume is not possible in this case, as it requires a common unit to measure volume³¹⁷, which does not exist between SISTIC’s businesses. There is also circular logic³¹⁸ in allocating common costs by revenues³¹⁹. Therefore, CCS is satisfied that common-cost allocation by incremental costs, which is the same as OFCOM’s EPMU methodology, is the best for this case.

SISTIC’s segmented ROIC

A6.4.26 Based on the considerations above, and for the sake of completeness, CCS has computed SISTIC’s ROIC at both the company level and the segmented level. Segmentation of ROIC for the Relevant Market is based on allocation of common costs, both by revenues and by EPMU. The results are summarised in Table A6.4.26 below (see Exhibit A6.8 for details):

Table A6.4.26: SISTIC’s ROIC at company and segmented levels*

Booking fee increase?	Yes			No		
Fiscal year	06/07	07/08	08/09	06/07	07/08	08/09
Company ROIC	[...]%	[...]%	[...]%	-	-	-
	([...])%	([...])%	([...])%			
Segmented ROIC (revenue)	[...]%	[...]%	[...]%	[...]%	[...]%	[...]%
	([...])%	([...])%	([...])%	([...])%	([...])%	([...])%
Segmented ROIC (EPMU)	[...]%	[...]%	[...]%	[...]%	[...]%	[...]%
	([...])%	([...])%	([...])%	([...])%	([...])%	([...])%

*Figures in parenthesis refer to pre-tax ROIC

Do the ROIC figures suggest that SISTIC is economically profitable?

A6.4.27 In order to assess SISTIC’s economic profitability, CCS has performed two benchmark comparisons: first, comparing SISTIC’s pre-tax ROIC

³¹⁷ Refer to page 187-188 of *An Analysis of Fully Distributed Cost Pricing in Regulated Industries*, in The Bell Journal of Economics, Vol. 11, No. 1 (Spring 1980) Ronald R. Braeutigam.

³¹⁸ Exploitation of monopoly power leads to higher revenues, which in turn leads to more common costs being allocated, which in turn leads to lower segmented profitability, thus potentially leading to the wrong conclusion that monopoly power does not exist in the first instance.

³¹⁹ Refer to page 184-185 of *An Analysis of Fully Distributed Cost Pricing in Regulated Industries*, in The Bell Journal of Economics, Vol. 11, No. 1 (Spring 1980) Ronald R. Braeutigam.

against those across different industries; second, comparing SISTIC's post-tax ROIC against its weighted average cost of capital ("WACC").

A6.4.28 According to the book *On Competition*³²⁰, the mean and median of average pre-tax ROIC across different industries in the USA over the period 1992-2006 were 14.9% and 14.3% respectively. Using this as a benchmark, table A6.4.26 suggests SISTIC's ROIC were consistently above average, at both the company and segmented levels, with or without the increase in booking fees, and regardless of the segmentation methodology used. After SISTIC's increase in booking fees, its segmented pre-tax ROIC in the Relevant Market for FY08/09 of [...]%- [...] % was well above 25.3% at the 90th percentile level and 40.9% of the most profitable industry surveyed³²¹.

A6.4.29 CCS has also estimated SISTIC's WACC in the following table. One important estimate is SISTIC's beta based on a comparison with Ticketmaster, a leading multinational ticketing service provider. In CCS' view, this is a reasonable estimate, given that (i) both companies are in the same industry; (ii) Ticketmaster's profitability is below SISTIC's³²²; and (iii) Ticketmaster's cost of capital has increased as a result of its merger with Live Nation³²³.

Table A6.4.29: Estimation for SISTIC's WACC

Parameters	Estimates	Source
Risk-free rate	[...]%	EMA
Equity market risk premium	[...]%	EMA
Ticketmaster's levered beta	[...]	Reuters ³²⁴
Ticketmaster's debt-to-equity ratio	[...]x	Ticketmaster's SEC filing ³²⁵
SISTIC's unlevered beta	[...]	Ticketmaster's unlevered beta ³²⁶
SISTIC's debt-to-equity ratio	[...]x	SISTIC audited financial statement ³²⁷
SISTIC's levered beta	[...]	[...]

³²⁰ Refer to page 6-7 of *On Competition* by Michael E. Porter, Harvard Business School Publishing, ISBN 978-1-4221-2696-7.

³²¹ Ibid.

³²² Ticketmaster's gross margin was 39.7% for FY09; operating margin was 6.5% and net margin was 2.0%. Refer to page F-3 *Ticketmaster Entertainment LLC Form 10-K* filed with the United States Securities and Exchange Commission ("SEC"), dated 25 February 2010.

³²³ Ibid, page 40.

³²⁴ Financial Times website and MSN Money website.

³²⁵ Ibid, page F-4.

³²⁶ Unlevered beta = levered beta / (1+debt-to-equity ratio).

³²⁷ Refer to footnote 84.

SISTIC's cost of equity	[...]%	Capital Asset Pricing Model ³²⁸
SISTIC's WACC	[...]%	[...]

A6.4.30 CCS notes that in the Representation, SISTIC used a discount rate of [...] % to calculate the net present value of its capital expenditure³²⁹. As such, CCS is satisfied that the WACC estimate of [...] % for SISTIC is reasonably lenient.

A6.4.31 Using the above as a benchmark, Table A6.4.26 suggests SISTIC's ROIC were consistently above its WACC, at both the company and segmented levels, with or without the increase in booking fees, and regardless of the segmentation methodology used. Alternatively, SISTIC's segmented and unsegmented ROIC of [...] % - [...] % in FY06/07 before its increase in booking fees imply that the beta estimate for SISTIC has to be at least [...] for SISTIC's profitability to be considered not above normal. At the ROIC level of [...] % - [...] % in FY08/09 after SISTIC's booking fee increase, the company is clearly profitable.

A6.4.32 Based on the above, CCS concludes that SISTIC has been economically profitable throughout the period from FY06/07 to FY08/09, and its booking fee increase in January 2008 further contributed to a significant increment in profitability.

A6.5 SISTIC's profitability trends

Measures of profit margins

A6.5.1 [...] ³³⁰, [...] ³³¹, [...] ³³² [...] ³³³ [...].

Figure A6.5.1: **SISTIC's profit margins**

[...]

Measures of investment returns

A6.5.2 [...] ³³⁴ [...] ³³⁵ [...].

Figure A6.5.2: **SISTIC's investment returns**

³²⁸ Refer to page 294 of *Valuation: Measuring and Managing the Value of Companies, Fourth Edition*, by Tim Koller, Marc Goedhart, David Wessels, McKinsey & Company, Inc., ISBN 10-0-471-70218-8.

³²⁹ Refer to paragraph 5.49 of the Representation.

³³⁰ Gross profit margin is defined as total revenues minus cost of goods sold ("COGS"), divided by total revenues.

³³¹ Earnings before interest, tax, depreciation and amortisation ("EBITDA") divided by total revenues.

³³² NOPAT divided by total revenues.

³³³ Profit after tax ("PAT") divided by total revenues.

³³⁴ Return on equity ("ROE") is defined as net income divided by shareholders' equity.

³³⁵ Return on assets ("ROA") is defined as earnings before interest and tax ("EBIT") divided by total assets.

[...]

CCS' analysis of SISTIC's profitability trends during FY01/02-08/09

A6.5.3 [...]:

- [...];
- [...];
- [...] ³³⁶ [...] ³³⁷; and
- [...].

A6.6 Other aspects of SISTIC's financial performance

Is SISTIC's business capital-intensive or labour-intensive?

A6.6.1 [...] ³³⁸.

Figure A6.6.1: **SISTIC's labour intensity vs capital intensity**

[...]

The extent to which SISTIC's cost base is scalable

A6.6.2 [...] ³³⁹ [...] ³⁴⁰ [...] ³⁴¹.

A6.6.3 [...] ³⁴² . [...] ³⁴³ , [...] ³⁴⁴ , [...] ³⁴⁵ . [...] ³⁴⁶ .

A6.6.4 As such, CCS concludes that SISTIC's cost base is [...].

Figure A6.6.2: **SISTIC's cost composition**

[...]

Have SISTIC's capital investments matured and since when?

A6.6.5 [...].

A6.6.6 [...] ³⁴⁷.

Figure A6.6.6: **SISTIC's maturity of capital investments**

³³⁶ See Monthly Report dated 13 March 2007, paragraph 4.1; dated 17 April 2007, paragraph 4.4; dated 13 March 2008, paragraph 4.7.

³³⁷ See Monthly Report dated 17 March 2006, paragraph 4.5; dated 13 March 2008, paragraph 3.2.

³³⁸ See Answers to Question 10 and Question 11 of NOI with SISTIC.

³³⁹ COGS plus "variable cost" as defined under the Monthly Reports.

³⁴⁰ Using SG&A expenses as a proxy.

³⁴¹ Using depreciation as a proxy.

³⁴² See Monthly Report dated 13 May 2005, paragraph 3.3.

³⁴³ See Monthly Report dated 17 April 2007, paragraph 4.4.

³⁴⁴ See Monthly Report dated 13 March 2008, paragraphs 4.5 and 4.6.

³⁴⁵ See Monthly Report dated 13 November 2009, paragraph 4.6.

³⁴⁶ See Answer to Question 12 of NOI with SISTIC.

³⁴⁷ Net book value of fixed assets divided by depreciation expense.

[...]

Calculation of the Relevant Turnover

A6.6.7 [...].

A6.6.8 [...] ³⁴⁸.

A6.6.9 [...].

A6.6.10 [...] ³⁴⁹. Given that the penalty imposed upon SISTIC is based on the audited financial report of the latest financial year, there is no need to define the relevant turnover for other years, although the corresponding figures are readily obtainable from SISTIC's audited financial statements.

The split between Relevant Turnover earned from event promoters and from ticket buyers

A6.6.11 Before SISTIC raised its booking fee during FY07/08, ticket buyers (booking fee plus handling fee ³⁵⁰) contributed to [35-45]% of SISTIC's revenues from the Relevant Market in FY06/07. As the increase in booking fee took full effect in FY08/09, the proportion increased to [40-50]%.

Table A6.6.11: % of Relevant Turnover earned from ticket purchasers

[...]

A6.7 Conclusion

A6.7.1 The conclusions of this appendix are fourfold:

- Dominance – CCS concludes that SISTIC is economically profitable. This has contributed to CCS' assessment of SISTIC's ability to sustain prices profitably above competitive levels in section 6.2;
- Effects on competition – CCS concludes that SISTIC has become more profitable after its booking fee increase in 2008. This has contributed to CCS' assessment of the balance of harm and benefits arising from the Exclusive Agreements in section 7.11;
- Objective justification – CCS concludes that SISTIC has little fixed or sunk investments. This has contributed to CCS' rejection of SISTIC's recoup investment defence in section 8.2 ;

³⁴⁸ [...].

³⁴⁹ In the Representation, SISTIC submitted a "recomputed" profit-and-loss analysis [...] To give SISTIC the benefit of doubt, CCS has used its own computation which is lower than SISTIC's.

³⁵⁰ [...].

- Penalties – CCS concludes that SISTIC's relevant turnover is S\$[...]. This has contributed to CCS' computation of financial penalties against SISTIC in section 10.3.

A6.8 Detailed calculations

[...]

[...]

Chapter 7 Foreclosure effects on competition

Summary of Key Points in this Chapter:

- i. **SISTIC unilaterally imposed the exclusivity restrictions upon its contractual partners, thereby artificially dictating an ‘all-or-nothing’ mode of competition.**
- ii. **SISTIC imposed total and explicit exclusivity restrictions upon its contractual partners, and induced them through individualised discounts and incentives.**
- iii. **The Exclusive Agreements prevent competitors from gaining a foothold progressively in the Relevant Market through picking up residual demand.**
- iv. **As a result of the venue operators’ indifference and the event promoters’ coordination problems, a broad foreclosure effect has occurred with minimal profit sacrifice on SISTIC’s part.**
- v. **The Exclusive Agreements had been perennially renewed and carried on by SISTIC’s contractual partners.**
- vi. **The Exclusive Agreements are an integral part of SISTIC’s holistic strategy of concurrent foreclosure, recoupment and perpetuation of dominance.**

7.1 Purpose

7.1.1 Having established the dominance of SISTIC in the Relevant Market, the next step is to assess whether SISTIC’s business practice in relation to the following contractual relationships with event promoters and venue operators (collectively referred to as the “Exclusive Agreements”) amounts to an abuse of dominance³⁵¹:

- **The ASTA**, which contains explicit restrictions requiring all events held at the Esplanade venues to use SISTIC as the sole ticketing service provider;
- **The ATS**, which contains explicit restrictions requiring all events held at the SIS to use SISTIC as the sole ticketing service provider; and

³⁵¹ See section 2.4 for more details on these contractual relationships

- **17 other agreements** which contain explicit restrictions requiring the event promoters concerned to use SISTIC as the sole ticketing service provider for all their events.

7.1.2 This chapter concerns whether the Exclusive Agreements are exclusionary³⁵² in nature and have the effects of foreclosing competition. This, alongside the absence or invalidity of the objective justifications raised by SISTIC (Chapter 8), will constitute the necessary and sufficient conditions for the Exclusive Agreements to amount to an abuse of dominance.

7.2 The concept of exclusive purchasing as an abusive conduct

7.2.1 Section 47(2) of the Act prohibits a dominant undertaking from, amongst others, “*making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts*”.

7.2.2 In *Hoffmann-la Roche v EC*³⁵³, the ECJ gave a definition of abuse as follows:

“An objective concept relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market where, as a result of the very presence of the undertaking in question the degree of competition is weakened and which, through *recourse to methods different from those which condition normal competition in products or services on the basis of the transaction of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition*”³⁵⁴ (emphasis added)

7.2.3 One type of conduct that can infringe section 47 of the Act is exclusive purchasing³⁵⁵, whereby a customer is required to purchase a particular brand of goods or services only from a dominant supplier. The customer is prevented from purchasing competing products from anyone other than the dominant firm. Exclusive purchasing is objectionable under the competition law of many jurisdictions. For example, section 3 of the Clayton Act in the US prohibits exclusive dealing that leads to monopolisation. The EC states in the *Guidelines on Vertical Restraints* that, as far as Article 82 is

³⁵² See Paragraph 4.3 of the CCS Guidelines on the Section 47 Prohibition

³⁵³ Case 85/76 [1979] ECR 461, [1979] 3 CMLR 211

³⁵⁴ Ibid, paragraph 91

³⁵⁵ Various other terminologies have been used to describe exclusive purchasing, including ‘single-branding’, ‘exclusive dealing’, ‘requirements contracts’ and ‘non-compete obligations’. They can be used interchangeably, but for consistency sake, CCS have used the terminology ‘exclusive purchasing’ throughout this ID, except citations from other sources.

concerned, a dominant firm may not impose a non-compete obligation on buyers unless it can objectively justify such a commercial practice³⁵⁶.

- 7.2.4 EC jurisprudence explains why exclusive purchasing may constitute an abuse. In *Prokent-Tomra*³⁵⁷, the EC found that “*Exclusivity obligations, because they require the customers to purchase all or significant parts of their demand from a dominant supplier, have by their nature a foreclosing capability. It is the very purpose of these kinds of agreements or arrangements to exclude competitors from respective parts of the market.*” In *Hoffmann-La Roche v EC*³⁵⁸ the EC found that fidelity agreements constitute an abuse because “*it hampers the freedom of choice by purchasers in their selection of sources of supply and restricts the competition between bulk vitamin manufacturers*”. This was upheld by the ECJ in the subsequent appeal.
- 7.2.5 CCS notes that exclusive purchasing obligations, especially those imposed by non-dominant firms, is a common practice in commercial life which may not be anti-competitive *per se*. In many circumstances, exclusive purchasing, especially those which come with discounts and other incentives, may bring about some pro-competitive outcomes such as lower prices and higher efficiency.
- 7.2.6 This issue was explored in *BPB Industries v EC*³⁵⁹, in which the CFI upheld EC’s decision that British Gypsum Limited (“BG”), a dominant producer of plasterboard, which was a wholly owned subsidiary of BPB Industries plc, had abused its dominant position through a scheme of payments to builders’ merchants who agreed to purchase plasterboard exclusively from it. In 1985 and 1986 BG supplied about 96% of the plasterboard sold in the UK, with the remainder of the market being shared between two suppliers. The CFI said:

“The Court considers, in limine, that the applicants are correct in their view that the making of promotional payments to buyers is a standard practice forming part of commercial cooperation between a supplier and its distributors. In a normal competitive market situation, such contracts are entered into in the interest of both parties. The supplier thereby seeks to secure its sales by ensuring loyalty of demand, whereas the distributor, for his part, can rely on security of supply and related commercial facilities.

It is not unusual for commercial cooperation of that kind to involve, in return, an exclusive purchasing commitment given by the recipient of such payments or facilities to his supplier. Such exclusive purchasing commitments cannot, as a matter of principle, be prohibited. As the Court of First Instance stated in its

³⁵⁶ Paragraph 141 of the EC *Guidelines on Vertical Restraints*

³⁵⁷ Case Comp/E-1/38.113, decision issued by the EC on 29 March 2006. Case is currently pending appeal before the CFI.

³⁵⁸ [1979] ECR 461

³⁵⁹ Case T-65/89 [1993] ECR II-389, [1993] 5 CMLR 32.

judgment in Case T-61/89 Dansk Pelsdyravlerforening v EC [1992] ECR II-1931, *appraisal of the effects of such commitments on the functioning of the market concerned depends on the characteristics of that market*. As the Court of Justice held in Case C-234/89 Delimitis v Henninger Braeu [1991] ECR I-935, it is necessary, in principle, to examine the effects of such commitments on the market in their specific context.

But *those considerations, which apply in a normal competitive market situation, cannot be unreservedly accepted in the case of a market where, precisely because of the dominant position of one of the economic operators, competition is already restricted*. An undertaking in a dominant position has a special responsibility not to allow its conduct to impair genuine undistorted competition in the common market.”³⁶⁰ (emphasis added)

- 7.2.7 The above suggests that, where exclusive purchasing obligations are imposed by a dominant undertaking, the conduct is capable of infringing Article 82, thus necessitating further assessment of effects on competition.

7.3 Methodology for assessing foreclosure effects

- 7.3.1 *CCS Guidelines on the Section 47 Prohibition* set out that, in considering whether there has been an abuse of dominance, CCS will conduct a detailed examination of the effects of the undertaking’s conduct³⁶¹. Exclusionary conduct may be abusive to the extent that it harms competition. However, the likely effect of each particular kind of behaviour will be assessed on the particular facts of each case³⁶².

- 7.3.2 In terms of operationalising an effects-based approach, the secretariat of the *OECD Policy Roundtables – Competition on the Merits (2005)* suggested a number of possible tests for the effects of competition foreclosure:

“The profit sacrifice test states that conduct should be considered unlawful when it involves a profit sacrifice that would be irrational if the conduct did not have a tendency to eliminate or reduce competition. The no economic sense test states that conduct should be unlawful if it would make no economic sense without a tendency to eliminate or lessen competition. The equally efficient firm test states that conduct should be unlawful if it would be likely to exclude a rival that is at least as efficient as the dominant firm is. Consumer welfare balancing tests determine whether conduct should be unlawful by requiring decision-makers to weigh the positive and negative effects that the conduct has on consumer welfare.”

- 7.3.3 All the above tests are contemplated in *CCS Guidelines on the Section 47 Prohibition*:

³⁶⁰ Ibid, paragraphs 65-67.

³⁶¹ Paragraph 2.1 of the *CCS Guidelines on the Section 47 Prohibition*

³⁶² Ibid, paragraph 4.3

- **The ‘profit sacrifice’ test** – paragraph 11.5 of the *Guidelines* states that if a dominant undertaking sets prices below average variable cost (AVC), it may be presumed that it is doing so for predatory purposes unless it can prove otherwise. CCS notes that, since the present case concerns exclusive purchasing discounts rather than predatory pricing, the focus is on the selectiveness of profit sacrifice, not gravity;
- **The ‘no economic sense’ test** – paragraph 11.11 of the *Guidelines* states that, in assessing the effects of a dominant undertaking’s discount scheme, it is important to consider if the scheme is commercially rational only because it has the effect (or likely effect) of foreclosing all, or a substantial part, of the market to competition;
- **The ‘equally efficient firm’ test** – paragraph 11.18 of the *Guidelines* states that a vertically integrated undertaking could potentially harm competition by setting such a low margin between its input price (e.g. wholesale price) and the price it sets in the downstream market (e.g. retail price) such that an equally efficient downstream competitor is forced to exit the market or is unable to compete effectively. Although this pertains more to margin squeezing cases, CCS notes that the EC has applied the ‘as-efficient competitor test’ in the provisional decision of the *Intel*³⁶³ case concerning loyalty rebates.
- **The ‘proportionality’ test**³⁶⁴ – paragraph 4.4 of the *Guidelines* states that CCS may consider if the dominant undertaking is able to demonstrate any benefits arising from its conduct, but it will still be necessary for a dominant undertaking to show that its conduct is proportionate to the benefits claimed³⁶⁵.

7.3.4 As will be detailed in this chapter, CCS has sufficient evidence to demonstrate foreclosure effects on competition in a holistic manner. While CCS seeks to incorporate the essence of all the above tests, it is not bound by any of these tests in isolation.

7.3.5 In addition, CCS will consider two important dimensions of foreclosure – scope and duration. The wider the coverage of the Exclusive Agreements in the Relevant Market is and the longer the Exclusive Agreements last, the more significant the foreclosure effects are.

³⁶³ COMP/C-3/37.990 – Intel

³⁶⁴ Given that the competition policy in Singapore adopts the total welfare standard instead of the consumer welfare standard, CCS has renamed OECD’s ‘consumer welfare balance’ test as ‘proportionality’ test to reflect the policy difference.

³⁶⁵ This test essentially concerns the balance between foreclosure effects on competition (Chapter 7) and objective justifications (Chapter 8).

7.3.6 In *Prokent-Tomra*³⁶⁶, EC acknowledged the standard required by the case-law of the Community Courts to establish an abuse, namely that³⁶⁷ it is sufficient to “*show that the abusive conduct of the undertaking in a dominant position tends to restrict competition or, in other words, that the conduct is capable of having that effect*”. In other words, it is sufficient to establish the likely effects of competition foreclosure for the purpose of the section 47 prohibition. In this particular case, however, CCS has nonetheless examined both the actual and likely effects.

7.4 SISTIC initiated the exclusivity restrictions

7.4.1 SISTIC submits that it:

“has in no way **leveraged** on a dominant position, without prejudice to whether it is established that SISTIC has a dominant position, to **impose** ticketing restrictions on hirers of event venues”³⁶⁸ (emphasis added).

In the Representation, SISTIC further submits that:

“Exclusive contracts are the most efficient way for venues and event promoters to **extract** the best competitive terms from ticketing service providers. Venues and event promoters are able to **leverage** on the combined bargaining power of all their ticketing requirements to negotiate for better discounts and terms, and ticketing service providers are able to offer more competitive terms on the basis of the volumes which they expect to receive as a result of the exclusive contract. The Exclusivity Agreements between SISTIC and the venues (i.e. TECL and SIS), and event promoters are a result of commercial negotiations between SISTIC and the venues where the economic value extracted by SISTIC are passed on as discounts to the venues and event promoters for SISTIC’s services”³⁶⁹ (emphasis added).

7.4.2 In other words, SISTIC claims that it was not the cause of the exclusivity restrictions – it is the event promoters and venue operators leveraging their bargaining power to extract value from SISTIC, rather than SISTIC leveraging its market power to impose exclusivity restrictions. However, CCS notes that SISTIC’s claim is contradicted by a public statement by TECL:

“Please note that Esplanade engages the services of Sistic on the basis of objective commercial and technical factors which show that it was the best vendor to provide the ticketing operations we needed at the relevant times.

³⁶⁶ Case Comp/E-1/38.113, decision issued by the EC on 29 March 2006. Case is currently pending appeal before the Court of First Instance

³⁶⁷ Case T-219/99 [2003] ECR II-5917, [2004] 4 CMLR 1008, para. 293.

³⁶⁸ Information provided by SISTIC via letter dated 19 December 2008 pursuant to the section 63 notice issued by CCS dated 11 November 2008, paragraph 16.6

³⁶⁹ Refer to paragraph 5.4 of the Representation.

To work with them, *Sistic proposed and stipulated various terms of an agreement that entailed us working exclusively with them* to manage the ticketing for the venue”³⁷⁰. (emphasis added)

- 7.4.3 CCS also notes that the 17 exclusive contracts between SISTIC and event promoters are all based on a standard template, namely Ticket Sales Agreement with Promoter, Form of Agreement. Important clauses, including the exclusivity commitment and contractual duration, are prescribed in the standard template, suggesting that these restrictions are unilaterally imposed by SISTIC rather than the customers³⁷¹.

No economic sense for customers to volunteer exclusivity

- 7.4.4 CCS fails to see any economic sense for event promoters and venue operators to ‘volunteer’ the exclusivity restrictions, had SISTIC not demanded them. Unless SISTIC insists on subjecting discounts, price commitments, premium services and/or other incentives to exclusivity, there is no commercial reason for event promoters and venue operators to tie their hands.
- 7.4.5 On the contrary, there is no reason why the claimed efficiencies cannot be realised in the absence of exclusivity restrictions. If SISTIC sees economic value in volume, it can structure a transparent, non-discriminatory and volume-based discount scheme to achieve scale. Event promoters and venue operators, in return, can exercise choice in allocating their business volume to ticketing service provider(s) in order to extract the maximum value. Without *ex ante* restrictions, efficiency can be achieved *ex post*.
- 7.4.6 If an event promoter or venue operator will patronise SISTIC in any case, then efficiency can be achieved with or without the exclusivity restrictions³⁷². On the contrary, if SISTIC is at risk of losing volume from an event promoter or venue operator, and the exclusivity restrictions critically eliminate this risk, then foreclosure effects have been achieved³⁷³. In other words, SISTIC’s exclusivity restrictions are either redundant or anti-competitive. Given SISTIC’s insistence on exclusivity restrictions, such restrictions cannot be redundant.
- 7.4.7 Therefore, CCS is satisfied that the exclusivity restrictions are imposed by SISTIC upon event promoters and venue operators, and these restrictions

³⁷⁰ ‘SISTIC engaged on basis of objective factors’, Letter from Fiona Soh, Deputy Director Corporate Communications and Public Affairs, The Esplanade Co Ltd TODAY Online Voices, 31 December 2009.

³⁷¹ [...].

³⁷² [...].

³⁷³ This is to the extent that SISTIC is dominant in the Relevant Market. Exclusivity restrictions imposed by a non-dominant undertaking may not critically eliminate the risk of losing volume/customers.

make no economic sense except having the primary effect of foreclosing competition.

- 7.4.8 The above conclusion is without prejudice to the jurisprudence established in Europe that causation is not required between dominance and abuse under Article 82³⁷⁴. In this case, however, CCS is able to demonstrate not only a one-way causation between dominance and effects, but a two-way relationship between foreclosure effects and perpetuated dominance.

7.5 **SISTIC unilaterally and artificially dictates the mode of competition**

- 7.5.1 SISTIC submits that the nature of competition in the ticketing services market is one of competition *for* the market, and not *in* the market. In CCS' view, however, the mode of competition for the Relevant Market is not a result of natural evolution based on the intrinsic characteristics of the industry. Instead of letting market forces optimise the extent to which competition be *for* or *in* the market, it is SISTIC who unilaterally and artificially dictates that any competition be *for* the market through the use of exclusivity restrictions. 'Competition for exclusives', even if it takes place, cannot be unreservedly accepted as efficient, especially where there is a dominant firm in the market, and the mode of competition is dictated by this firm. The balance of harm and benefits need to be carefully examined.

An equally efficient firm cannot compete on an all-or-nothing basis

- 7.5.2 'Competition for exclusives' is *all or nothing*. A new entrant either displaces the incumbent firm, or fails to enter the market. In a market with moderate barriers to entry, such as the Relevant Market with some economies of scale and indirect network effects, this mode of competition discourages customers from experimenting with new entrants by switching a minor portion of their needs. Consequently, new entrants are denied of the opportunity to pick up *residual* demand in the market, build capability and credibility *progressively*, and *eventually* attain critical mass to become an effective competitive constraint upon the incumbent³⁷⁵.
- 7.5.3 In the US, the DOJ expressed this concern in the *US DOJ v Ticketmaster/Live Nation* case that Ticketmaster held a longstanding dominant position

³⁷⁴ Case 6/72 *Europemballage Corp'n and Continental Can Co Inc v EC* [1973] ECR 215, [1973] CMLR 199.

³⁷⁵ In paragraph 1004 of the *Intel* provisional decision, for instance, EC states that the as-efficient competitor analysis attempts to analyse whether a competitor which is as efficient as Intel, but which would not have as broad a sales base as Intel, would be foreclosed from entering.

and enjoyed large profit margins for many years due to high barriers including, *inter alia*:

“Second, major concert venues are reluctant to enter long-term exclusive contracts with new primary ticketing companies because they lack Ticketmaster’s established reputation for capably handling high-volume on-sale and providing high-quality service to venues...

Sixth, Ticketmaster’s practice of signing long-term exclusive contracts with venues limits how quickly other firms can amass sufficient scale to compete effectively with Ticketmaster on any of these dimensions.”³⁷⁶

7.5.4 UKCC also noted that small-scale entry is possible through obtaining from promoters a small allocation of tickets across a wide range of their events, but large-scale entry is difficult due to the need to attract large numbers of customers, and long-term preferred relationships between incumbent ticketing agents and event promoters and venue operators made large-scale entry even harder³⁷⁷.

7.5.5 In the present case, CCS is concerned that SISTIC’s dictated mode of competition – *for* not *in* the market – has critically and perennially prevented other ticketing service providers from becoming equally efficient to or more efficient than SISTIC through innovation or otherwise in the longer term³⁷⁸. In other words, notwithstanding SISTIC’s claims that the Exclusive Agreements generate *productive* efficiencies³⁷⁹, these agreements hurt *dynamic* efficiencies³⁸⁰.

7.5.6 In particular, SISTIC submits that the Exclusive Agreements are won on merit due to its premium quality of services to customers, and not a result of exclusionary conduct. It alleges that the poor quality of services offered by its competitors is down to their inertia to compete, not inability to compete.

7.5.7 In CCS’ view, insofar as SISTIC’s exclusionary conduct has prevented other ticketing service providers from becoming equally or more efficient, the incentives for these competitors to invest in the Relevant Market and improve their quality of services are already dampened in the first instance. It is invalid for SISTIC to reverse the causality and argue that it has won the Exclusive Agreements on merit due to the poor quality of services of its

³⁷⁶ Refer the DOJ Competition Impact Assessment.

³⁷⁷ Refer to paragraph 11 of the Summary of the UKCC Ticketmaster/Live Nation Report.

³⁷⁸ Refer to paragraphs A7.2.2-A7.2.4 for more details on the perennial denial of competitors from becoming equally efficient.

³⁷⁹ Productive efficiency is achieved where output is produced at the lowest average costs, given the current constraints in the production process. To the extent that economies of scale exist, higher volume improves productive efficiency.

³⁸⁰ Dynamic efficiency concerns the improvement of production processes over time to reduce costs, in contrast to productive efficiency which concerns static cost minimization given the current production constraints.

competitors. These competitors have already been disincentivised in the very beginning:

Cause	Consequence
<p>Gatecrash expressed that the main obstacles it faces in building competitive advantages to rival its competitors is <i>“the exclusive agreements which SISTIC has with the Esplanade and the Indoor stadium”</i>³⁸¹</p> <p>OmniTicket stated that <i>“[i]f SISTIC did not have any exclusive agreements, it would enable other competitors to slowly grow their business”</i>³⁸²</p> <p>Tickets.com stated that <i>“[t]he whole market is aware that venues like Esplanade and Singapore Indoor Stadium have exclusive agreements to use SISTIC. It has become a rule of thumb for the industry. For a ticketing agent, it is not encouraging but we just have to accept it.”</i>³⁸³</p> <p>[...] stated that <i>“... with the exclusivity contracts it has with venues such as The Esplanade and Singapore Indoor Stadium – both of which are premiere performing venues in Singapore – it makes it difficult for any other ticketing service to rival them”</i>³⁸⁴.</p>	<p>[...] was of the view that <i>“[a]ll ticketing service providers have the opportunity to be fully competitive if they are willing to invest in the necessary infrastructure, IT and personnel to develop a professionally operated and efficient ticketing service”</i>³⁸⁵.</p> <p>[...] stated that <i>“[t]he perception is that the other ticketing agents do not seem to make the effort to improve their system and/or services”</i>³⁸⁶.</p>

7.5.8 In other words, these competitors have the ability to compete in the counterfactual, but SISTIC’s exclusionary conduct has disincentivised competition. This is foreclosure effect.

³⁸¹ See Answer to Question 26 of NOI with Gatecrash.

³⁸² See Answer to Question 37 of NOI with OmniTicket.

³⁸³ See Answer to Question 24 of NOI with Tickets.com.

³⁸⁴ [...].

³⁸⁵ [...].

³⁸⁶ [...].

Dynamic efficiency losses are disproportionate to productive efficiency gains

7.5.9 As discussed above, competition *for* or *in* the market can be viewed in this instance as a trade-off between productive and dynamic efficiencies. Nevertheless, CCS notes that productive efficiency – via economies of scale – can be achieved through transparent, non-discriminatory and volume-based price incentives, without exclusivity restrictions. On the contrary, dynamic efficiency is critically and perennially injured by the exclusivities. Therefore, on balance, competition for exclusives, unilaterally and artificially dictated by SISTIC, fails the proportionality test.

7.5.10 In this regard, CCS notes that in the UK, OFT did not unreservedly accept the notion of competition *for* the market without assessing the actual evidence:

“We accordingly looked at the nature of competition for these preferential rights and also at whether the nature of the contracts was such that, in the future, they could be expected anti-competitively to reduce the number of agents competing for contracts. Our assessment is that there is no evidence of ineffective competition for these contracts at present, and no basis to expect this to become a problem in the future.”

In arriving at the conclusion that there is no evidence of ineffective competition, the OFT made the following observations which suggest the actual coexistence of competition *for* and *in* the market³⁸⁷:

Actual competition <i>for</i> the market	Actual competition <i>in</i> the market
“See Tickets also provides a ticketing service for the 12 London theatres owned by its parent company, Really Useful Theatres. It has further agreements to act as the call centre for a number of other venues including Wembley Arena and Earls Court.” (Paragraph 3.35)	An OFT mystery shopping exercise of theatre and rock/pop concert events shown that the same events are ticketed by multiple ticketing agents. (Table 3.3)
“... See Tickets, has formal agreements with Metropolis and Triple A... SJM allocate a proportion of tickets to all major ticket agents, including See Tickets.” (Paragraph 4.14)	“We were told, both by promoters and venues, that there is some movement of the allocated tickets for an event between different agents, and between agents and the box office, depending on how well sales of each are going. The promoter’s main objective is to maximise ticket sales through the combined distribution

³⁸⁷ Refer to the OFT Study.

	channels.” (Paragraph 3.20)
“See Tickets in particular is important to some promoters and Mean Fiddler has a contract with it commencing on 13 January 2005.” (Paragraph 4.42)	“In some instances third party ticket agents have actually sold a higher percentage of tickets than Ticketmaster for a Clear Channel event.” (Paragraph 4.36)
“We have not found a lack of competition between ticket agents resulting in a higher level of gross ticket prices to consumers. The form of competition in the sector is mainly between ticket agents to secure contracts from promoters and venues, which by individually putting high volumes of tickets with a single (although not necessarily the same) agent, enable efficiencies to be achieved.” (Paragraph 4.46)	“Promoters use Ticketmaster in addition to other agents because multi-agent distribution is attractive to them, but they indicated that they are not dependent on Ticketmaster for distribution.” (Paragraph 4.42)
	“... although there are two ticket agents that have significantly larger shares of the value of ticket sales than the rest of the market, there are at least eight other ticket agents ... operating in this sector.” (Paragraph 4.43)

7.5.11 UKCC also found that small-scale entry is possible through obtaining from promoters a small allocation of tickets across a wide range of their events³⁸⁸.

7.5.12 As demonstrated in the UK’s case, it is not the intrinsic nature of the ticketing service industry that competition *in* the market cannot possibly happen. It is indeed common for event promoters to use multiple ticketing agents for the same event to maximise ticket sales, even when preferential agreements exist. Since multi-agent ticketing has happened at the micro level of individual events, there is no question such practices can happen at the macro levels of (i) event promoters who stage multiple events; (ii) venue operators who host multiple event promoters; and (iii) the aggregate market with multiple venues. It follows that the relative market sizes of the ticketing industry between different countries is not deterministic of the viability of competition *in* the market. In other words, competition *in* the Relevant Market is possible in Singapore.

³⁸⁸ Refer to paragraph 11 of the Summary of the UKCC report titled *Ticketmaster and Live Nation, a report on the completed merger between Ticketmaster Entertainment, Inc and Live Nation, Inc*, dated 7 May 2010 (the “UKCC Ticketmaster/Live Nation Report”).

- 7.5.13 Based on SISTIC's submission, there appears to be effective competition at least *for* the market in Australia, as the actual evidence suggests that exclusive contracts³⁸⁹ with various venues are distributed fairly evenly between Ticketmaster and Ticketek³⁹⁰. Besides, the Sydney Opera House, the Queensland Performing Arts Centre in Brisbane and the Victorian Arts Centre in Melbourne are actually self-ticketing³⁹¹.
- 7.5.14 In comparison, competition with respect to the Relevant Market in Singapore is lacklustre, be it *for* or *in* the market. SISTIC has sustained persistently high market shares over the years – higher than those of the top ticketing service providers in the UK, US and most other Asian countries. Other competitors have not been able to win exclusive or preferential contracts with any major venue operator or event promoter³⁹². Ticket sale by multiple ticketing service providers of the same event is rare in Singapore. And, there have been actual exits of competitors.
- 7.5.15 In the absence of actual and convincing evidence of effective competition, either *for* or *in* the Relevant Market, CCS is unable to accept that the efficiency benefits, if any, of SISTIC's insistence on single-agent ticketing outweigh the harm on competition through its depriving the Relevant Market of the option of multi-agent ticketing.

Exclusivity makes no economic sense for a natural monopolist

- 7.5.16 In CCS' view, if the mode of competition in the Relevant Market were genuinely and naturally *for* the market, then there would be no competition *in* the market for SISTIC to fend off. In that case, it would not be necessary for SISTIC to proactively prevent competition *in* the market from happening. Customers would see the benefits themselves and spontaneously tender for single-agent contracts without needing SISTIC's insistence on exclusivity³⁹³. If the Relevant Market were a natural monopoly, a single winner would emerge with or without exclusive agreements, and any efficiency could be achieved in any case.
- 7.5.17 Instead, SISTIC insists that the Exclusive Agreements are necessary and beneficial. This makes no commercial or economic sense unless the Exclusive Agreements were effective in unilaterally shifting the mode of competition from one *in* the market to one *for* the market, in which case the outcome would be artificial rather than natural, meaning that foreclosure

³⁸⁹ These contracts are exclusive according to SISTIC without citation. CCS notes that this does not necessarily imply explicit and total purchase restrictions, in contract or in practice.

³⁹⁰ Refer to Table 13 of the Representation.

³⁹¹ Refer to paragraph 3.20 of the Representation.

³⁹² [...].

³⁹³ [...].

effect would be achieved. In other words, SISTIC has critically impaired the market process in determining the optimal mode(s) of competition with respect to the Relevant Market.

7.5.18 In this regard, CCS notes that in Ireland, where there is no competition *in* the ticketing service market, the ICA accepted that there is effective competition *for* the market. This is based on actual evidence which strongly suggests that the mode of competition is largely determined by the customers, rather than by Ticketmaster:

Table 7.5.18 : ICA's findings in the Ticketmaster case³⁹⁴

Paragraph	ICA's Findings
Executive Summary (Page 2)	There are <i>frequent renegotiations</i> by MCD Promotions and Aiken Promotions <i>during</i> the multi-year contracts with TicketMaster Ireland.
Executive Summary (Page 3)	Eleven companies <i>tendered</i> for the contracts, with the GAA drawing up a short-list of five before finally selecting TicketMaster Ireland. Significantly, the <i>contract duration was determined solely by the GAA</i> . This example clearly demonstrates both the potential for competition between ticketing service providers for individual contracts and the bargaining power of promoters vis-à-vis TicketMaster Ireland.
2.44	If the Promoters do not get the terms and conditions that they want from TicketMaster Ireland they can <i>credibly threaten</i> to examine either [alternative ticketing service providers] or [setting up their own ticketing facilities] when they renegotiate the terms of their respective contracts with TicketMaster Ireland. The latter has identified in internal documentation that [this is the case].
2.58	Statements provided by key officials of both Promoters and TicketMaster Ireland reveals that the renegotiations and extensions of the contracts were <i>always at the behest of the Promoters, not TicketMaster Ireland</i>it is the <i>Promoters, rather than TicketMaster Ireland, which drive the terms of the contract</i> .
2.6	The booking fees outlined in Table 2 above indicate that TicketMaster Ireland <i>does not have unfettered discretion to charge</i> any amount for its services. In other words, TicketMaster Ireland is unable to act as a supplier of ticketing services with substantial market power and charge the end consumer accordingly. Rather, for tickets sold over the telephone or Internet, TicketMaster Ireland is <i>contractually bound to charge no more than the "cap"</i> put in place in its contracts with the Promoters. This

³⁹⁴ Refer to the ICA Ticketmaster Decision.

	significantly restricts TicketMaster Ireland's ability to set prices to end consumers.
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7.5.19 CCS notes that, in Singapore, the Exclusive Agreements are not tendered by the customers, but instead, initiated by SISTIC. TECL's public statement suggests that the subject of exclusivity is at the behest of SISTIC. The standard Form of Agreement for Ticket Sales Agreement with Promoter suggests that the exclusivity restrictions are determined by SISTIC rather than the customers. There is no evidence to suggest frequent renegotiations during the contractual terms, or credible threats of switching. Last but not least, there is no contractual cap on booking fees, meaning that SISTIC has unfettered discretion to charge higher prices against ticket buyers.

Conclusion

7.5.20 Based on the foregoing, CCS concludes that competition is lacklustre *for or in* the Relevant Market. SISTIC has unilaterally and artificially dictated the mode of competition via the Exclusive Agreements, thereby impeding market forces from determining an optimal outcome that maximises allocative, productive and dynamic efficiencies.

7.6 SISTIC's Exclusive Agreements contain explicit and total restrictions

7.6.1 As discussed above, the Exclusive Agreements contain explicit and total restrictions that prevent venue operators and event promoters from engaging ticketing services providers other than SISTIC. CCS is of the view that, in general, explicit exclusivity is more anti-competitive than implicit ones, and totality commitment is more anti-competitive than partial ones³⁹⁵.

Explicit restriction

7.6.2 In the *Intel* provisional decision³⁹⁶, EC used the term 'naked restrictions' to distinguish rebates conditional upon cancelling or postponing the commercialisation of AMD products from loyalty rebates with implicit

³⁹⁵ For example, the EC block exemption for vertical agreements characterises a requirement to purchase more than 80% of one's requirements as a non-compete obligation.

³⁹⁶ COMP/C-3/37.990 – Intel, section 4.3

sales targets. In *Prokent-Tomra*³⁹⁷, the EC drew a distinction between ‘exclusivity’ and ‘*de facto* exclusivity’. The former refers to agreements with exclusivity clauses or exclusionary rebates. The latter refers broadly to quantity commitments and rebates schemes which, given the purchasing volumes they referred to, implied full or partial exclusivity. The EC stated further that:

“Exclusivity obligations, because they require the customers to purchase all or significant parts of their demand from a dominant supplier, have by their nature a foreclosing capability. It is the very purpose of these kinds of agreements or arrangements to exclude competitors from respective parts of the market. Given Tomra’s dominant position on the market and the fact that exclusivity obligations were applied to a not insubstantial part of the total market demand, it was capable of having and in fact had a market distorting foreclosure effect. Tomra was not allowed to engage in this kind of practice, and the exclusivity agreements and arrangements constituted an abuse of a dominant position.”³⁹⁸

Total restriction

- 7.6.3 SISTIC submits that exclusive contracting is a common and necessary practice of the ticketing industry globally which has been recognised by competition authorities overseas³⁹⁹. However, this claim is factually incorrect. In Ireland, for instance, the ICA found that Ticketmaster’s contracts with MCD and Aiken are merely preferential in nature, rather than totally exclusive:

“The Competition Authority can confirm that the contracts between Ticketmaster Ireland and MCD Promotions as well as Aiken Promotions ... provide that Ticketmaster Ireland will handle [75-85%] of all tickets to an event organised by either MCD Promotions or Aiken Promotions”⁴⁰⁰.

- 7.6.4 In the UK, the OFT even found that, in practice, the preferential agreements are not as preferential as they might appear:

“an important feature in the industry is the existence of arrangements between individual event promoters or venues on the one hand, and larger ticket agents on the other, that grant preferential contractual rights to certain agents to ***access for sale a proportion of the tickets allocated to ticket agents by the promoters or venues***”⁴⁰¹.

“The degree of preferential access rights within contracts also varies markedly. We were told by Ticketmaster that although the agreement with Clear Channel provided a firm long-term basis for a commercial relationship there was a need

³⁹⁷ Case Comp/E-1/38.113, decision issued by the EC on 29 March 2006. Case is currently pending appeal before the Court of First Instance.

³⁹⁸ Ibid, paragraph 290.

³⁹⁹ Refer to page 40 of the Representation.

⁴⁰⁰ Refer to page 2 of the Representation.

⁴⁰¹ Refer to page 29 of the OFT Study.

for some flexibility on an event-by-event basis. In some instances third party ticket agents have actually sold a higher percentage of tickets than Ticketmaster for a Clear Channel event⁴⁰².”

“In reality contracts in the sector are not, in practice, as preferential, in terms of granting access to tickets, as they might appear, making it easier for other agents to have a larger share of ticket sales than the contract terms might suggest”⁴⁰³, (emphasis added).

7.6.5 UKCC found that Ticketmaster’s long-term preferred relationships (not exclusive) with event promoters and venue operators made large-scale entry “even harder”⁴⁰⁴.

7.6.6 In the US, the DOJ found that Ticketmaster’s practice of signing long-term exclusive agreements contributed to its longstanding dominance and large profit margins for many years^{405 406}:

“Contracts between venues and primary ticketing companies are individually negotiated. In a typical contract, a venue agrees to use one primary ticketing company as its exclusive service provider for several years”⁴⁰⁷.

“...Ticketmaster’s practice of signing long-term exclusive contracts with venues limits how quickly other firms can amass sufficient scale to compete effectively with Ticketmaster...”⁴⁰⁸.

Necessity of exclusive agreements

7.6.7 CCS notes SISTIC’s submission on its corporate history which clearly suggests exclusive agreements are not necessary to grow market share significantly in the ticketing service industry:

“From 1998 to 2000, SISTIC’s *market share grew significantly* and was the preferred brand for show promoters due to its proven track record of reliability, efficiency and higher service levels. Before The Esplanade was completed, a large part of SISTIC’s share of the ticketing market was attributable to ticketing services procured by event promoters and theatre groups which were staging performances outside of SIS in over 20 venues in Singapore, *none of which had an exclusive arrangement with SISTIC*”⁴⁰⁹. (emphasis added)

7.6.8 Another example is [...], which has been a longstanding customer of SISTIC, has been given substantial discounts, without exclusivity or total

⁴⁰² Refer to page 37 of the OFT Study.

⁴⁰³ Refer to page 37-38 of the OFT Study.

⁴⁰⁴ Refer to paragraph 11 of the Summary of the UKCC Ticketmaster/Live Nation Report.

⁴⁰⁵ Refer to page 9-10 of the DOJ Competition Impact Assessment.

⁴⁰⁶ CCS notes that such contractual practices existed before the merger between Ticketmaster and Live Nation, and was therefore not the subject matter of the case.

⁴⁰⁷ Refer to page 3 of the DOJ Competition Impact Assessment.

⁴⁰⁸ Ibid, page 10.

⁴⁰⁹ Refer to paragraph 2.4 of the Representation.

volume commitment⁴¹⁰. This again shows that exclusive agreements are not necessary to compete in the ticketing service industry.

Conclusion

- 7.6.9 CCS therefore rejects the assertion that exclusive agreements are a common and necessary business practice in the ticketing service industry that is recognised by competition authorities overseas. Instead, CCS is of the view that the explicit and total restrictions under the Exclusive Agreements are a strong form of restraint to effect exclusive purchasing. This does not mean, however, that explicit and total restrictions should be prohibited *per se*. CCS notes that the restrictions came with discounts to event promoters, and other incentives to venue operators ([...]). Accordingly, the proportionality between the restrictions and the benefits to the customers of SISTIC will be examined.

7.7 The Exclusive Agreements are individualised

- 7.7.1 CCS notes that the Exclusive Agreements are not openly offered based on standardised and transparent criteria, but instead, individually negotiated. The discounts and incentives, as well as durations, of these agreements are not uniform⁴¹¹.
- 7.7.2 In *Nederlandsche Banden-Industrie-Michelin v EC*⁴¹², the ECJ identified a number of factors which led it to conclude that Michelin's discount system was an abuse of a dominant position. In order to benefit from the variable annual discounts granted by Michelin, the tyre dealers had to attain individualised sales results. In particular, the criteria were not transparent for tyre dealers⁴¹³. Similarly, in *Prokent- Tomra*⁴¹⁴, the EC objected to agreements containing individualised quantity commitments⁴¹⁵.
- 7.7.3 In contrast, the *British Gypsum II* case⁴¹⁶ illustrates that the EC is prepared to deem certain standardised and transparent rebate schemes permissible. In particular, the EC indicated its intention to approve two proposals by BG,

⁴¹⁰ Refer to paragraph 4.42 of the Representation.

⁴¹¹ See paragraph 2.4.20 for details.

⁴¹² Case 322/81 [1983] ECR 3461, [1985] 1 CMLR 282.

⁴¹³ Ibid, paragraphs 81-83.

⁴¹⁴ Case Comp/E-1/38.113, decision issued by the EC on 29 March 2006. Case is currently pending appeal before the Court of First Instance.

⁴¹⁵ Ibid, paragraph 97.

⁴¹⁶ *British Gypsum II* arose from *BPB Industries v EC* (Case T-65/89 [1993] ECR II-389, [1993] 5 CMLR 32), where the CFI upheld the EC's decision that British Gypsum Limited ("BG") had abused its dominant position through (i) a policy of rewarding 'loyalty' customers who obtained all their plasterboard requirements from it; and (ii) a policy of reserving priority deliveries for 'loyalty' customers only.

one which would give eligible customers discounts negotiated within a standardised range set by reference to the anticipated volume of their purchases in the coming year and the other which would give eligible customers a discount on the total value of half-yearly purchases⁴¹⁷.

- 7.7.4 In this case, evidence suggests that the 17 exclusive agreements with event promoters are all drafted based on a standard template⁴¹⁸. While the exclusivity clause is standardised in the template, the contractual duration and discount structures are individualised. As such, CCS is satisfied that SISTIC's Exclusive Agreements, and the underlying selection criteria, are individualised and should be viewed unfavourably⁴¹⁹. This does not, however, demonstrate foreclosure effect on its own, and must therefore be considered in conjunction with other contributing factors.

7.8 Foreclosure effect of the ASTA and ATS

- 7.8.1 SISTIC's agreements with the two venue operators, namely the ASTA with TECL and the ATS with SSC/SIS, are highly strategic in nature. Given that the demand from event promoters are fragmented in the Relevant Market (and even more so from ticket buyers), exclusive agreements with the two major venue operators provide an important avenue for winning business in blocks. CCS notes that events held at TECL and SIS account for [30-40]% and [20-30]% of SISTIC's total ticket sales respectively from January 2006 to March 2009, while no single event promoter accounted for more than [0-10]%.
- 7.8.2 Tickets.com summarised the competitive harm in a Straits Times press article published on 19 July 2007. The article quoted Mr Lim Eng Lee, Chairman of Quebec Leisure (owner of Tickets.com) as saying that *"it will be a tall order for Tickets.com Singapore to usurp Sistic's position as the market leader. Ticketing giant Sistic has exclusive agreements with the Singapore Indoor Stadium and the Esplanade to sell tickets to events held in the two venues. This accounts for 75 per cent of the total number of tickets in Singapore, said Mr Lim. He added that this is a huge obstacle for other industry players hoping to get a bigger slice of the market."*
- 7.8.3 Quantity of events aside, the quality of the venues in hosting events is also an important consideration. CCS notes that the Esplanade venues is the only world-class venue for staging premium performing arts events in Singapore, while the SIS is the indoor venue with the largest seating capacity to stage popular live concerts/entertainment events in Singapore.

⁴¹⁷ OJ [1992] C 321/9-C321/12, [1993] 4 CMLR 143n.

⁴¹⁸ Ticket Sales Agreement with Promoter, Form of Agreement.

⁴¹⁹ Refer to paragraph A7.1.6 for the implications of individualised contract terms on foreclosure effects.

Securing these two venues will significantly restrict the choice of many event promoters who stage all or some of their events at these two venues.

An equally efficient firm cannot compete for TECL due to [...]

- 7.8.4 When the 2002 ASTA was entered into in October 2002, TECL had arguably no choice but to engage SISTIC, who was then the incumbent ticketing service provider. However, given that the Act did not come into force until January 2006, there is no need for CCS to assess whether SISTIC was an unavoidable trade partner^{420 421} to TECL and whether an equally efficient firm could compete against SISTIC for TECL's business in October 2002. The important fact is that, when the Act came into force in January 2006, an equally efficient firm could not compete for ticketing business from TECL, because SISTIC had already engaged TECL on an exclusive basis, and the 2002 ASTA was still in effect.
- 7.8.5 The 2002 ASTA expired in December 2006, and was eventually superseded by the 2008 ASTA in April 2008, with the Addendum in effect during the interim period. CCS then examines whether, during this contract renewal period from December 2006 to April 2008, SISTIC was an unavoidable trade partner to TECL, and whether an equally efficient firm would have been able to contest for TECL's signature and thereby imposing effective competitive constraint upon SISTIC.
- 7.8.6 In this regard, CCS identifies the structure of the '[...]' provided by SISTIC to TECL to be an important obstacle for switching. [...]. In its submission to CCS, TECL states that, in deciding whether to award business to SISTIC:
- “[...]”
- 7.8.7 [...].
- 7.8.8 TECL's board meeting minutes⁴²² suggest that TECL was unable to switch to another ticketing service provider [...]:
- “[...]”⁴²³
- 7.8.9 A new clause was subsequently inserted into the 2008 ASTA [...]:
- 18.4 [...].

⁴²⁰ If the dominant undertaking is an unavoidable trade partner for its customers (i.e. customers cannot avoid purchasing *at least part of* their demand from this dominant supplier), then it is able to impair an equally efficient firm's ability to pick up *residual* demand in the relevant market by means of *total* purchase obligations imposed upon its customers.

⁴²¹ See also paragraph 36, *Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings*, 2 February 2009.

⁴²² Minutes of the Board Meeting (5/2006) dated 28 July 2007.

⁴²³ Ibid, paragraph 44.

- 7.8.10 [...]. This, in conjunction with the CEO's remarks in TECL's board meeting minutes above, suggests that, during the period from December 2006 to April 2008, TECL was unable to [...] switch to the ticketing application and services provided by an equally efficient firm to SISTIC.
- 7.8.11 [...] ⁴²⁴. This means it is not sufficient for the new provider to be equally efficient. It has to be more efficient than SISTIC to provide an impetus for TECL to switch.
- 7.8.12 [...] CCS is satisfied that, during the period from December 2006 to April 2008, i.e. after the 2002 ASTA expired and before the 2008 ASTA was signed, SISTIC was an unavoidable trade partner to TECL such that an equally efficient firm to SISTIC would not have been able to contest for TECL's business on an exclusive basis.
- 7.8.13 More importantly, contestability should be considered in conjunction with proportionality. CCS notes that the ASTA is the largest exclusive purchasing agreement for SISTIC, accounting for [30-40]% of the Relevant Market, and its contractual duration (4 years for the 2002 ASTA and [...] for the 2008 ASTA) is also the longest amongst the exclusive purchasing agreements.
- 7.8.14 With regard to the ATS, CCS will deal with the question of whether an equally efficient firm could contest for SSC's signature in paragraphs 7.9.7 to 7.9.11.

Scope of foreclosure is disproportionate to the benefits to venue operators

- 7.8.15 The discounts and incentives provided to TECL and SIS under the ASTA and ATS are strategically structured. [...] ⁴²⁵.
- 7.8.16 [...].
- 7.8.17 [...]. The structure of these incentives takes advantage of the venue operators' self-interest and indifference to the interests of event promoters, thereby achieving a broad foreclosure of competition with a narrow scope of profit sacrifice.
- 7.8.18 For example, [...] highlighted that it had once brought in "[...]", an international production from West End which had to be staged at the Esplanade due to the show's stature and stage technical requirements. [...]. [...] ended up not being able to choose its own ticketing service provider for

⁴²⁴ [...].

⁴²⁵ About [...] % and [...] % of events held at the Esplanade and SIS were organised by the venue operators themselves, respectively, from January 2006 to March 2009.

a show which it had brought in and had to use SISTIC, even though it knew that [...] was able to handle the show⁴²⁶.

7.8.19 CCS notes that the anonymous complainant mentioned in paragraph 3.1.1 was also aggrieved by the restriction of choice of ticketing service providers to third-party event promoters who wished to hold their events at the Esplanade.

7.8.20 Overall, from January 2006 to March 2009, only [20-30]%⁴²⁷ of events⁴²⁸ held at the Esplanade venues (in terms of total number of tickets sold) were organised by TECL itself. The corresponding figure for the SIS was [0-10]%⁴²⁹. Viewing these figures from another angle, SISTIC has managed to foreclose competition for [30-40]% and [20-30]%⁴³⁰ of the Relevant Market through the ASTA and the ATS respectively ([50-70]% combined), by providing discounts on ticketing services to [0-10]% and [0-10]% ([0-10]% combined)⁴³¹ of the Relevant Market only. On this basis, CCS is satisfied that the harm on competition caused by the ASTA and ATS is disproportionate to the benefits from discounts and other incentives to its customers. This is without even considering the broader foreclosure effects on competition for ticket buyers.

7.9 Foreclosure effect of the exclusive purchasing agreements with event promoters

7.9.1 In CCS' view, the 17 exclusive agreements with event promoters provide an important bridging effect on SISTIC's overall strategy in foreclosing competition. First, they broaden the scope of events foreclosed in the Relevant Market, thus further restricting the choice of ticket buyers; second, they create a 'chicken-and-egg' situation⁴³² that restricts the choice of venue operators.

7.9.2 Of the 17 event promoters that are on exclusive purchasing agreements with SISTIC, 7 have staged events at the Esplanade venues, and 6 have staged events at the SIS between January 2006 and March 2009⁴³³. CCS has observed some difference in the pattern of contracts between these two groups that warrant separate analyses of foreclosure effects, as discussed below.

⁴²⁶ [...].

⁴²⁷ Refer to footnote 14.

⁴²⁸ Measured by volume of tickets sold.

⁴²⁹ Refer to footnote 14.

⁴³⁰ Refer to footnote 4.

⁴³¹ Refer to footnote 4.

⁴³² See paragraph 7.9.10 for details.

⁴³³ [...].

An equally efficient firm cannot compete for the event promoters due to the venue exclusivities

Event promoters who stage events at the Esplanade

- 7.9.3 Of the major hirers of the Esplanade venues, CCS notes that SISTIC does not have many exclusive purchasing agreements with event promoters who stage all or most of their events at the Esplanade, even for the largest ones such as [...]. In contrast, SISTIC has entered into a few exclusive purchasing agreements with event promoters who stage a relatively large portion of their events outside the Esplanade, even for the smaller ones such as [...] (see Table 7.9.3 below).

Table 7.9.3: Top Hirers of Esplanade Venues, ranked by Total Turnover of ticket sales for events (excluding TECL)⁴³⁴

	% total Esplanade ticket turnover	Total number of events	% total events held at Esplanade	% total events held at venues outside Esplanade/SIS
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...] ^{435*}	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]

* These event promoters have exclusive ticketing agreements with SISTIC.

⁴³⁴ Refer to footnote 4.

⁴³⁵ [...].

- 7.9.4 Since TECL requires all hirers of its venues to use SISTIC pursuant to the ASTA, it follows that an equally efficient firm to SISTIC would not be able to compete for the events held at the Esplanade venues. In other words, those event promoters who stage all or most events at the Esplanade have become captive customers for SISTIC, such that there is no need for SISTIC to further engage them exclusively.
- 7.9.5 For those event promoters who need to stage some events at the Esplanade, SISTIC is an unavoidable trade partner. The reason is explained succinctly in Gatecrash's submission⁴³⁶ that being unable to provide services to all venues would result in a "mathematical disadvantage for them". Even if it were to offer a more attractive rate than SISTIC for the venues which it serves, a producer which produces shows at, say, both the Esplanade and the Drama Centre would not be able to realise true cost efficiencies if it were to take up Gatecrash's offer. This means that Gatecrash is unable to compete effectively even though it has a more competitive deal. Tickets.com has stated that some promoters have been forced to break a long connection or relationship with an existing ticketing agent if the promoter intends to hold an event at either the Esplanade or the SIS⁴³⁷.
- 7.9.6 For the above reasons, CCS is satisfied that an equally efficient firm to SISTIC would be unable to compete not only for those events held at Esplanade, but also for those held outside Esplanade if these events are organised by the same event promoters who cannot avoid also holding some other events at the Esplanade. In other words, the scope of foreclosure is broadened.

Event promoters who stage events at the SIS

- 7.9.7 As in the case of the Esplanade, SISTIC has engaged in exclusive purchasing agreements with some event promoters who hold some events at the SIS and some outside SIS, such as [...]. The analysis of foreclosure effects is similar to that under the Esplanade.
- 7.9.8 However, unlike the case of the Esplanade, SISTIC has relatively more exclusive purchasing agreements with the top hirers of SIS who stage all or most of their events at the SIS, such as [...] (see Table 7.9.8 below).

⁴³⁶ See Answers to Questions 10 and 26 of NOI with Gatecrash.

⁴³⁷ See Answer to Question 26 of NOI with Tickets.com.

Table 7.9.8: Top Hirers of Singapore Indoor Stadium, ranked by Total Turnover of ticket sales for events⁴³⁸

	% total SIS ticket turnover	Total number of events	% total events held at SIS	% total events held at venues outside Esplanade/SIS
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]

* These event promoters have exclusive ticketing agreements with SISTIC.

7.9.9 CCS notes that, unlike its relationship with TECL, SISTIC does not provide [...] to the SIS to render itself an unavoidable trade partner to the latter⁴³⁹. Therefore, engaging the top hirers of the SIS exclusively has the ‘reverse’ effect of foreclosing competition on the partnership with SIS. For example, [...] accounted for [...] % and [...] % of events held at the SIS⁴⁴⁰ respectively from January 2006 to March 2009.

7.9.10 Since SISTIC entered into an exclusive purchasing agreement with [...] in April 2006, followed by [...] in October 2007, a ‘chicken-and-egg’ situation has been created – when [...] renew their agreements with SISTIC every year, they cannot switch ticket service provider, because of the restrictions imposed by the SIS; when SSC/SIS opted to automatically renew the ATS for [...] after the first term expired in February 2009, it could not switch ticket service provider as well because at least [...] % of its hirers (in terms of total turnover of ticket sales) are locked-in by SISTIC⁴⁴¹. In other words,

⁴³⁸ Refer to footnote 4.

⁴³⁹ This is probably because targeted marketing is less important for the SIS than to the Esplanade, due to the mass-market appeal of the former.

⁴⁴⁰ Measured by turnover from ticket sales. Refer to footnote 14 for the information sources used in computing the figures.

⁴⁴¹ Refer to paragraph A7.1.6 for the implications of staggered contracts on foreclosure effects.

SISTIC has become an unavoidable trade partner with both the SSC/SIS and the event promoters concerned⁴⁴². An equally efficient firm would not be able to contest for these exclusive relationships with SISTIC. This confirms CCS' position in paragraph 7.8.14⁴⁴³.

- 7.9.11 It is arguable whether the foreclosure effect caused by this 'chicken-and-egg' situation began in February 2006 (when SIS was first engaged exclusively) or April 2006 (when [...] was first engaged exclusively). However, given that the infringement period lasted for longer than the statutory limit of 3 years for the imposition of financial penalties⁴⁴⁴, there is no need for CCS to deliberate on this point.

Event promoters who stage events outside the Esplanade and the SIS

- 7.9.12 For those event promoters who have never staged any event at the Esplanade or the SIS, CCS notes that the conditions are satisfied for the "lack of coordination among buyers"⁴⁴⁵, namely (i) there are many customers; (ii) customers are small; (iii) customers are not end-users; (iv) the downstream market where the customers operate is competitive; and (v) the downstream product is differentiated. Therefore, these customers are inclined to transact with SISTIC even if an equally efficient firm is able and willing to match the terms and conditions of SISTIC.

- 7.9.13 In addition, an equally efficient firm is unable to compete effectively with SISTIC due to the indirect network effect from ticket buyers. See paragraphs 7.10.3 to 7.10.5 for details.

Incremental foreclosure is disproportionate to the benefits to event promoters

- 7.9.14 From the perspective of broadening the scope of foreclosure effect from events held at the Esplanade and SIS to those held at other venues, CCS estimates that, from January 2006 to March 2009, the 17 exclusive purchasing agreements accounted for [20-30]% of the Relevant Market by ticket volume, of which only [10-20]% was attributable to events held at the Esplanade and SIS⁴⁴⁶.

⁴⁴² [...].

⁴⁴³ that an equally efficient firm cannot contest for SIS' business on similar terms and conditions to those under the ATS.

⁴⁴⁴ See Chapter 10 for more details regarding financial penalties.

⁴⁴⁵ Refer to paragraph A7.1.6 for the implications of lack of coordination among buyers.

⁴⁴⁶ Refer to footnote 4.

- 7.9.15 In terms of the foreclosure effect attributable to the ‘chicken-and-egg’ situation between SIS and those event promoters who always hold their events at the SIS, CCS estimates that [...] accounted for only [0-10]% of the Relevant Market, but a foreclosure of [20-30]% of the Relevant Market was achieved through the ATS with SIS⁴⁴⁷.
- 7.9.16 Based on the above, CCS is satisfied that the harm on competition caused by the 17 exclusive purchasing agreements with event promoters is disproportionate to the benefits to the customers concerned, because SISTIC has achieved a broader scope of foreclosure effect on competition with a narrower scope of discount and other incentives given to its contractual partners. This is without even considering the broader foreclosure effects on competition for ticket buyers.

7.10 Foreclosure effect on competition for ticket buyers

- 7.10.1 SISTIC’s booking fee charged against ticket buyers used to be at \$1 for all events. On 1 April 2004, SISTIC increased its booking fee from \$1 to \$2 for tickets with face values of \$20 or higher. On 15 January 2008, SISTIC increased the same fee from \$2 to \$3. As noted in section 6.2, SISTIC’s booking fee is profitably sustained above competitive levels. While various discounts and incentives are given to event promoters and venue operators, no discount or other incentives are given to ticket buyers over the years.
- 7.10.2 Amongst the various service fees charged against event promoters and ticket buyers, the booking fee is the single largest contributor to SISTIC’s revenues. In FY06/07, booking fees accounted for [...]% of Relevant Turnover. In FY08/09, after the price increase in January 2008 has been fully reflected, the contribution of booking fees became [...]%.

An equally efficient firm cannot compete for ticket buyers

- 7.10.3 This pricing strategy is clearly motivated by the consequential relationship of demand between event promoters and ticket buyers⁴⁴⁸. In order to create the indirect network effect on ticket buyers, it is strategically important for SISTIC to engage the venue operators and event promoters first. Once this network effect is created, an equally efficient firm would not be able to compete for ticket buyers, because the majority of events are bound to sell tickets through SISTIC. SISTIC’s profitable increase in booking fee clearly demonstrates that it has little incentive to offer competitive prices to

⁴⁴⁷ Refer to footnote 4.

⁴⁴⁸ Refer to paragraph 5.4.2.

ticket buyers, because it has already become an unavoidable trade partner for the ticket buyers indirectly through the Exclusive Agreements.

- 7.10.4 The indirect network effect works both ways. As most ticket buyers buy tickets through SISTIC due to the restrictions under the Exclusive Agreements, more potential ticket buyers will cluster around SISTIC's advertising, promotion and distribution channels to look out for upcoming events. This in turn attracts more event promoters, including those who are not engaged exclusively by SISTIC, to use SISTIC's ticketing service in order to reach out to more potential ticket buyers. Since an equally efficient firm could not compete for the venues and events covered under the Exclusive Agreements, it would not be able to match this indirect network effect to attract those non-exclusive event promoters.
- 7.10.5 Therefore, even those event promoters who have never staged their events at the Esplanade or SIS, hence are not otherwise restricted in choice, are willing to engage SISTIC on an exclusive basis in exchange for discounts, because an equally efficient firm would not be able to match SISTIC's indirect network effect between event promoters and ticket buyers.

Harm to ticket buyers is disproportionate to benefits to event promoters

- 7.10.6 From the perspective of 'one-way' network effects between the two sides of the Relevant Market, SISTIC has been able to foreclose competition on both customer groups – event promoters and ticket buyers – by engaging in the Exclusive Agreements with one group only – the event promoters. From the perspective of 'two-way' network effects, the foreclosure effect may even extend to other non-exclusive events, as ticket buyers cluster around SISTIC's promotion and distribution channels. On the premise, CCS is satisfied that the harm on competition caused by the Exclusive Agreements is disproportionate to the benefits, if any, to the venue operators, event promoters concerned and ticket buyers.
- 7.10.7 With regard to the increase in booking fees, SISTIC submits that its booking fees "*do not make a big difference*"⁴⁴⁹ to ticket buyers. In this regard, CCS notes that the following comments by ticket buyers have been made at various platforms. One event promoter ([...]) attributes poor event performance to SISTIC's booking fee increase, amongst others. Notably, SISTIC's first booking fee increase in 2004 was still in people's minds after many years:

⁴⁴⁹ See Answers to Questions 48, 50 and 51 of NOI with SISTIC.

- *“I LITTLE expected to be charged \$3 in advance booking fee by Sistic for a \$25 seat for a concert at DBS Auditorium on May 29... Sistic outlets are for public convenience and to encourage more patrons to support such events. Charges for concerts should be tailored to fit the pockets of even retirees, with reasonable discounts... I hope my concerns will bring about some encouraging changes to the way Sistic charges for its bookings.”*⁴⁵⁰
- *“Higher ticket prices might also have affected sales at a time when people were feeling the pinch, said festival director [of National Arts Council] Goh Ching Lee. The price of the cheapest ticket rose from \$20 to \$25, while ticketing agent Sistic tripled the booking fee per ticket to \$3.”*⁴⁵¹
- *“I can sympathise with the rising cost of fuel and pervasive spread of the ERP... But just a quick question: why did Sistic have to raise their booking charges from \$2 to \$3?”*⁴⁵²
- *“FROM the initial announcement of the increase in its ticket booking fees from Jan 15 to the reply by Mr Kenneth Tan, deputy CEO of Sistic.com, Mr Tan cited the investment in its ticketing system as a key reason for the fee revision ('Why that hike in booking fee for tickets over \$20'; ST, Jan 22)... While Sistic's investment is 'aimed at providing a secure and reliable ticketing experience' for customers and the fee increase 'is intended to provide customers with the efficient ticketing service', it is ironic that Mr Tan seems unaware that the expensive new system is unreliable and problematic... On many occasions this year, my friends and I have been unable to access Sistic's website to book tickets. After the main web page is displayed, all further selections lead to time-out failure. This happened many times a day, whether at noon or midnight... Visits to Sistic counters on several occasions also proved frustrating as the counter staff were unable to serve us due to 'system down'... All this could be attributed to initial hiccups in a new system. However, in such a situation, Sistic should have delayed its fee increase until these problems are completely ironed out.”*⁴⁵³
- *“I WAS very disappointed to read about Sistic increasing its booking fee for tickets over \$20 by 50 per cent. This is the latest in a long string*

⁴⁵⁰ Straits Times Online Forum, 12 May 2009 titled *SISTIC should be more considerate about booking charges*.

⁴⁵¹ Straits Times article dated 25 June 2008, titled *Arts Fest attendance lowest since 1980*.

⁴⁵² Straits Times Discussion Board, 20 May 2008, titled *Rising costs force food operators to charge more for home deliveries*.

⁴⁵³ Straits Times Forum Letter, dated 28 January 2008, titled *New Sistic ticketing system faulty*.

of price/fare/fee increases announced recently, some justifiable and others obviously less so."⁴⁵⁴

- *"They command majority of the market. To get ticket for a show, there is no way to buy it unless you get through sistic (no walk-in, buy for theater / venue counter or any other means). Sounds monopoly to me. It is fair ? well, if you want to watch a show, even if the booking fee is \$10 or \$20, we will still have no choice but to pay right ?... I wonder if CASE or any org got anything to comment ?"*⁴⁵⁵
- *"Ms Chen Weiling, 28, said she spent the whole morning trying to get through to Sistic and even got her colleagues in the office to help, but to no avail... 'It looks like the system cannot support such a high volume,' she said... 'The Sistic fee has already increased 100 per cent from \$1 to \$2, but did Sistic invest in a better system or get more IT support to cope with the big volume?'"*⁴⁵⁶

7.10.8 Based on the above, CCS cannot accept SISTIC's general statement that its booking fees do not make a big difference to consumers. Instead, due weight must be given to the harm on consumers caused by SISTIC's profitable increase in booking fees against ticket buyers⁴⁵⁷. It is the result of foreclosure of competition from the event side of the Relevant Market that conferred the ability upon SISTIC to charge higher prices against the ticket buyers.

7.11 SISTIC's holistic strategy of concurrent foreclosure, recoupment and perpetuation of dominance

7.11.1 So far, CCS has considered SISTIC's relationships with different groups of stakeholders – venue operators, event promoters and ticket buyers – in separate sections. However, the fundamentally objectionable conduct to CCS is SISTIC's holistic and integrated strategy of concurrent foreclosure of competition, recoupment of sacrificed profits and artificial perpetuation of dominance. Isolated consideration of these individual elements of SISTIC's overall strategy may lead to Type II error⁴⁵⁸ such as concluding

⁴⁵⁴ ST Discussion Board, ST Forum, *Hike in Sistic booking fee excessive*, dated 17 January 2008.

⁴⁵⁵ ST Discussion Board, ST Forum, *Hike in Sistic booking fee excessive*, dated 17 January 2008.

⁴⁵⁶ Straits Times article, 26 October 2007, titled *Jay Chou's First Singapore Concert in 3 Years... Fans upset over hard time booking tickets*.

⁴⁵⁷ Although Singapore adopts a total welfare standard in its competition policy, harm on consumers is an important part of total welfare, insofar as a profitable increase in price reduces output.

⁴⁵⁸ In the antitrust context, Type II errors mean under-enforcement, i.e. failing to prohibit agreements, conduct or mergers where there is likely or actual harm to the market. See Page 57 of the book *EC*

that SISTIC is dominant on merit, that it is providing discounts and other benefits to customers, and that raising prices is not an exclusionary practice. This section explains why CCS rejects all these arguments.

SISTIC's profit sacrifice makes no economic sense but for a holistic strategy to foreclose competition, recoup losses and perpetuate dominance

7.11.2 CCS takes the view that SISTIC's increase in booking fees is not a plain-vanilla exploitation of ticket buyers in isolation. Given the indirect network effects in the Relevant Market, SISTIC's price structure (i.e. *relative* price level between event promoters and ticket buyers) is a holistic and interactive decision. The application of 'no economic sense' test is to demonstrate that SISTIC's price structure is commercially rational only if it is strategically aimed at foreclosure of competition.

7.11.3 As noted above, while various discounts and incentives are given to event promoters and venue operators, no discount or other incentives are given to ticket buyers. Ticket buyers all pay standard booking fees and handling fees, and SISTIC has in fact increased its booking fees twice in 2004 and 2008 respectively. In particular, booking fees are charged on a per-ticket basis regardless of the number of tickets purchased in a single transaction. In other words, there is no bulk purchase discounts, despite the operational efficiencies⁴⁵⁹.

7.11.4 In explaining SISTIC's pricing strategy, Mr Kenneth Tan said that⁴⁶⁰:

“[...].”

7.11.5 SISTIC's submission illustrates two points. First, the pricing decisions between the two groups of customers are closely related; second, it is more difficult to charge higher prices against the event promoters than against the ticket buyers.

7.11.6 CCS queries that, if SISTIC has been facing sufficient competitive pressure in the Relevant Market, then why would SISTIC be able to profitably increase booking fees against ticket buyers? On the contrary, if SISTIC has substantial market power in the Relevant Market⁴⁶¹, then why would SISTIC not simply exploit its market power on both sides of the Relevant Market? If SISTIC is able to dominate the ticket buyers, then why would SISTIC sacrifice profits by giving discounts and other incentives to venue operators and event promoters? Why would SISTIC, for example, structure

Competition Law – Text, Cases and Materials (Third Edition) by Alison Jones and Brenda Sufrin (Oxford University Press, ISBN 978-0-19-929904-1).

⁴⁵⁹ For example, in Hong Kong, Urbitix caps its per ticket charge of HK\$6.5 at a maximum of HK\$20 per transaction. In Taiwan, Era Tickets charges only a per-transaction fee of NT\$50 inclusive of mail delivery.

⁴⁶⁰ See Answers to Questions 48, 50 and 51 of NOI with SISTIC.

⁴⁶¹ See the detailed proof of SISTIC's dominance in Chapter 6.

the inside charges with clear volume incentives, but no bulk purchase discounts on booking fees to promote efficiencies?

- 7.11.7 An interactive and iterative relationship clearly exists: without sacrificing profits to foreclose competition from the event promoters' side, SISTIC would not have market power to exploit on the ticket buyers' side; without recouping sacrificed profits from the ticket buyers' side, SISTIC would not be able to sustain its profit sacrifice on the event promoters' side. Without concurrent foreclosure and recoupment, SISTIC would not be able to perpetuate its dominant position. Neither pure competition nor pure exploitation can adequately explain this connection in pricing strategy between the two sides.
- 7.11.8 Based on the above, CCS is satisfied that, but for a strategic price structure that takes advantage of the indirect network effect in the Relevant Market to foreclose competition from one group of customers, concurrently recoup sacrificed profits from the other group of customers, and artificially perpetuate market power against both groups, SISTIC's pricing strategy makes no economic sense.

An equally efficient firm cannot overcome SISTIC's holistic strategy

- 7.11.9 SISTIC's holistic strategy stems from the Exclusive Agreements. Once competitors' access to venue operators and event promoters is foreclosed by SISTIC (refer to sections 7.8 and 7.9), recoupment and perpetuation are inevitable. Not even an equally efficient firm can overcome this perennial problem.

SISTIC's price increase is disproportionate to its profit sacrifice

- 7.11.10 So far, CCS has considered proportionality in isolation – that SISTIC benefits the venue operators at the expense of third-party event promoters, and that SISTIC locks in event promoters at the expense of ticket buyers. An important indication of overall disproportionality is that SISTIC has become more profitable in recent years through increasing booking fees. CCS notes that SISTIC's strategy entails profit sacrifice through giving discounts and other incentives to event promoters and venue operators on one side of the Relevant Market, while recouping sacrificed profits from ticket buyers on the other side. The combined profitability of the two sides is therefore a good proxy for the balance of benefits and harms.

7.11.11 As noted in Chapter 6 and Appendix 6, SISTIC was economically profitable in FY06/07 and FY07/08, and has become significantly more profitable in FY08/09. The incremental profits are largely attributable to its booking fee increase in January 2008 above competitive level. On this basis, CCS concludes that SISTIC's strategy has been disproportionate, i.e. the harmful effects have outweighed the benefits.

Table 7.11.11: SISTIC's ROIC at company and segmented levels

Booking fee increase?	Yes			No		
Fiscal year	06/07	07/08	08/09	06/07	07/08	08/09
Company ROIC	[...]%	[...]%	[...]%	-	-	-
Segmented ROIC (revenue)	[...]%	[...]%	[...]%	[...]%	[...]%	[...]%
Segmented ROIC (EPMU)	[...]%	[...]%	[...]%	[...]%	[...]%	[...]%

7.12 Scope of foreclosure

7.12.1 Having established the foreclosure effects of SISTIC's conduct based on contestability, proportionality and rationality, CCS then assesses the extensiveness of the foreclosure effect in the Relevant Market. In *Prokent-Tomra*⁴⁶², the EC held that:

“Given Tomra's dominant position on the market and the fact that exclusivity obligations were ***applied to a not insubstantial part of the total market demand***, it was capable of having and in fact had a market distorting foreclosure effect.”⁴⁶³ (emphasis added)

7.12.2 In estimating the scope of foreclosure, CCS notes there is no specific threshold in terms of percentage of the relevant market covered to be satisfied. In this case, CCS has used the percentage of the Relevant Market covered by the Exclusive Agreements as a proxy, but importantly, the scope of foreclosure is to be considered in conjunction with the extent of dominance of the undertaking concerned.

7.12.3 Table 7.12.3 shows a breakdown of the contributions of the Exclusive Agreements to the accumulated foreclosure in the Relevant Market from January 2006 to March 2009⁴⁶⁴:

- Foreclosure attributable to the ASTA, i.e. events held at Esplanade, amounts to about [30-40]%, both by volume and by revenues earned from ticket sales.

⁴⁶² Case Comp/E-1/38.113, decision issued by the EC on 29 March 2006. Case is currently pending appeal before the CFI.

⁴⁶³ Ibid, paragraph 290.

⁴⁶⁴ The figures are presented on a pro-forma basis, assuming that all contracts were effective throughout the assessment period, although some contracts were only entered into during the assessment period.

- Foreclosure attributable to the ATS, i.e. events held at SIS, amounts to about [20-30]% by volume and [20-30]% by revenues.
- Foreclosure attributable to the exclusive contracts with 17 other event promoters amounts to about [20-30]%, by volume and by revenues.
- The accumulated foreclosure attributable to the Exclusive Agreements, after adjusting for overlaps⁴⁶⁵, amounts to about [60-70]% by volume and [60-70]% by revenues.

Table 7.12.3: Estimates of cumulative percentage of the Relevant Market foreclosed by SISTIC's Exclusive Agreements (January 2006 to March 2009)⁴⁶⁶

The Exclusive Agreements	Percentage foreclosed	
	% by volume	% by revenues
ASTA	[30-40]%	[30-40]%
ATS	[20-30]%	[20-30]%
Contracts with 17 other event promoters	[20-30]%	[20-30]%
(Less: overlap)	[10-20]%	[10-20]%
Accumulated foreclosure	[60-70]%	[60-70]%

7.12.4 Based on the above, CCS is satisfied that the accumulated foreclosure of [60-70]% of the Relevant Market attributable to the Exclusive Agreements from January 2006 to March 2009, considered in conjunction with SISTIC's persistently high market share of around 90%, is substantial. In addition, CCS notes that the foreclosure effect on competition for ticket buyers would follow, because the ticket buyers can only buy tickets of these foreclosed events through SISTIC. More importantly, CCS considers that the foreclosure is widespread enough to trigger a network effect in the Relevant Market that artificially perpetuates SISTIC's dominant position.

7.13 Contractual duration and termination notice

7.13.1 CCS notes that the 2008 ASTA is a [...] contract till December 2012, terminable by either party with a [...] written notice without penalty. Further, the ATS, which has been renewed for [...], is also terminable by either party with a [...] written notice without penalty. According to SISTIC's submission, most of the exclusive agreements with event promoters are of short durations of [...] and can be terminated easily with short notice without any penalty⁴⁶⁷.

⁴⁶⁵ Those events organised by the 17 event promoters that are held at the Esplanade or SIS.

⁴⁶⁶ Refer to footnote 4.

⁴⁶⁷ See Clause 18.2 of the 2008 ASTA, Clause 4.4 of the ATS, information provided by SISTIC via letter dated 19 December 2008 pursuant to the section 63 notice issued by CCS on 11 November 2008 at paragraphs 3.3, 6.6 and 16.18, information provided by SISTIC via letter dated 7 May 09 pursuant to the section 63 notice issued by CCS on 17 April 2009 at paragraphs 3.5 and information provided by SISTIC

7.13.2 CCS notes that the duration of the Exclusive Agreements is one of the factors relevant to the determination of whether SISTIC's conduct can be deemed abusive. Holding other factors constant, a longer contractual period would be more likely to have a foreclosure effect than a shorter one. However, CCS has taken into account the relevant factors in this case, and has not taken a formalistic approach towards the issue of contractual duration. This 'effects-based approach' is also adopted by the EC after its review of Article 82 (now Article 102) of the EU Treaty:

“In general, the longer the duration of the obligation, the greater the likely foreclosure effect. However, if the dominant undertaking is an unavoidable trading partner for all or most customers, even an exclusive purchasing obligation of short duration can lead to anti-competitive foreclosure.”⁴⁶⁸

7.13.3 Jurisprudence from other jurisdictions has examined the substance as opposed to the form of exclusive purchasing agreements. In *Frankfurt Airport*⁴⁶⁹, the EC accepted exclusive service agreements for contractual periods of one year, automatically renewable but terminable on six months' notice. In *Soda-ash-ICI*⁴⁷⁰, however, the EC found loyalty discounts running on contracts that were terminable with a 3-6 months notice after a year to be unacceptable due to the “total requirement clause”⁴⁷¹. In *Gas Natural/Endesa*⁴⁷², the EC accepted a 12-year agreement upon an amendment that Endesa could purchase a certain portion of its demand elsewhere. In *United States v Dentsply International Inc.*⁴⁷³, the Court of Appeal held that exclusive dealing can be unlawful even in the absence of explicit contracts.

7.13.4 In *Van den Bergh v EC*⁴⁷⁴, the appellant, HB, argued that freezer cabinet exclusivity did not result in outlet exclusivity because retailers had the

via letter dated 12 October 2009 pursuant to the section 63 notice issued by CCS on 05 October 2009 at paragraph 4.

⁴⁶⁸ Refer to Paragraph 36 of the EC *Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings*.

⁴⁶⁹ OJ [1998] L 72/30, [1998] 4 CMLR 779.

⁴⁷⁰ Case 91/300/EEC, EC Decision of 19 December 1990. The EC had found that ICI had abused its dominant position which it holds in the market for soda-ash in the United Kingdom by applying to its major customers a system of loyalty rebates and discounts by reference to marginal tonnage and contractual arrangements tending to ensure an effective exclusivity of supply for ICI. Until 1979, most of ICI's supply agreements were “evergreen contracts” (i.e contracts running for an indefinite period) with a two year notice of termination and which stipulated that the buyer obtain the whole of its requirements from CIC. Following negotiations with the OFT, ICI began in October 1980 to offer its UK customers a range of contract options which included running contracts on a total requirements basis but terminable on a shorter notice (three to six months notice after a year). The EC however considered that the total requirements clause even for short periods was unacceptable.

⁴⁷¹ That is, contractual commitment of purchasing the entire customer's requirement solely from the dominant supplier.

⁴⁷² EC Press Release IP/00/297, 27 March 2000.

⁴⁷³ 399 F.3d 181, 193-94 (3d Cir. 2005).

⁴⁷⁴ Case T-65/98, [1998] ECR II-2641.

option of terminating their (otherwise perpetual) distribution agreements with HB on two months' notice at any time. The CFI held that:

“[The short termination notice] in no way precludes the effective enforcement of the agreements in question during the period in which that option is not used. Consequently, in assessing the effects of the distribution agreements on the relevant market, *the Court must take their actual duration into consideration*.”⁴⁷⁵

“[The short notice argument] *might be convincing if that option were exercised in practice and if outlets were thus to become regularly available to new entrants on the relevant market*. However, as the Commission has shown, that is not the case, because *HB's distribution agreements are terminated on average every eight years*.” (emphasis added)⁴⁷⁶

7.13.5 CCS notes that none of the 17 exclusive purchasing agreements between event promoters and SISTIC signed on or in force as of 1 January 2006, renewed yearly, had been terminated or not renewed as of March 2009⁴⁷⁷. Also, the terms and conditions applied to each of the event promoters had never been modified upon renewal. This shows that each of these event promoters renewed the agreement with SISTIC, on the same terms and conditions, year after year. Similarly, the ASTA and ATS were never terminated, but instead, were renewed [...].

7.13.6 As such, CCS cannot accept the formality of short contractual duration and termination notice as mitigating factors for SISTIC's conduct, because in practice, none of the 19 Exclusive Agreements (including the ASTA and ATS) was ever terminated or not renewed over a period of more than 3 years since the Act came into force in January 2006.

7.13.7 The contrast between *Soda-ash-ICI*⁴⁷⁸ and *Gas Natural/Endesa*⁴⁷⁹, as discussed in paragraph 7.13.3 above, also suggests that contractual duration should be considered in conjunction with the extent of purchase commitment. In this regard, CCS notes that the Exclusive Agreements contain explicitly exclusive and contractually bound conditions that require total commitment of purchase solely from SISTIC.

7.13.8 In the UK and Ireland, the OFT and ICA also considered the balance of factors, and focused on the substance rather than form of Ticketmaster's contractual practices:

- the OFT, in arriving at the conclusion that Ticketmaster's “contracts, usually up to five years, are not particularly long”, has taken into account, *inter alia*, that the preferential agreements are not as

⁴⁷⁵ Ibid, paragraph 105.

⁴⁷⁶ Ibid, paragraph 105.

⁴⁷⁷ [...].

⁴⁷⁸ Case 91/300/EEC, EC Decision of 19 December 1990.

⁴⁷⁹ EC Press Release IP/00/297, 27 March 2000.

preferential as they seem in practice, and that other ticketing agents are also able to win preferential contracts (refer to Table 8.5.4 for more details); and

- the ICA, in sanctioning Ticketmaster's contract with MCD and Aiken of an average duration of 4.5 years, has taken into account, *inter alia*, that the customers initiated frequent renegotiations during the contractual terms, and that booking fees are contractually capped (refer to Table 7.5.18 for more details).

7.13.9 In CCS' consideration, it is the combination of discounts and other incentives with explicit and total commitments that creates the perennial effects for event promoters and venue operators to stay loyal to SISTIC. The key consideration is not how soon these contracts can expire or be terminated, but that (a) SISTIC is an unavoidable trade partner; (b) once a contract is terminated or not renewed, the discounts and incentives would be foregone; and (c) so long as a contract requires total commitment, event promoters and venue operators are restricted from allocating even a minor portion of their demand to other ticketing service providers.

7.13.10 On the basis of the above, CCS is satisfied that the actual duration of the contractual relationships behind the Exclusive Agreements demonstrates perennial foreclosure effect on competition.

7.14 Conclusion

7.14.11 Based on all the considerations under this chapter, CCS concludes that the Exclusive Agreements are explicitly exclusionary in nature, and has actually led to substantial and perennial foreclosure effects on competition in the Relevant Market.

Appendix 7 The economics of foreclosure effect

A7.1 Exclusive dealing as an anti-competitive strategy

A brief history of the evolution of antitrust economics in the US

The 'Harvard School'

A7.1.1 The US antitrust policy has gone through a pendulum swing since World War II. In the 1950s and 1960s, there was general political scepticism in the western world against concentration of economic power. Against this background, the 'Harvard School'⁴⁸⁰ emerged with the influential work of Joe Bain, which advocated that antitrust policy should focus on tackling market structure, as business conduct is inevitably harmful in monopolistic markets. During the same period, the 'Warren Court' was widely seen as interventionist in its antitrust decisions, adopting a *per se* approach against various market structures and conduct, leading to Type I (over-enforcement) errors.

The 'Chicago School'

A7.1.2 The 'Chicago School' emerged in the 1970s and 1980s, revolutionising the US antitrust policy with the work of Justice Robert Bork and Justice Richard Posner. They critiqued the 'Harvard School' with a pure economics approach, focusing on efficiencies, fundamentally challenged the commercial rationality for dominant firms to engage in anticompetitive practices, and adopted their thinking in their court decisions. While the 'Chicago School' is often criticised as liberalist, and overly permissive of dominant-firm conduct, leading to Type II (under-enforcement) errors, it is nonetheless credited for stimulating the advent of more robust antitrust economics.

The 'post-Chicago School'

A7.1.3 The 'post-Chicago School' broadly encompasses economists' efforts from the 1990s till present to strike a balance between the Harvard and Chicago approaches. It is often characterised by the use of rigorous economics to assess the balance of harm and benefits of various market structures and business conduct. The post-Chicago School does not completely refute the Chicago School findings. Instead, it acknowledges the need for a rule of reason to verify presumptions on a case-by-case basis.

⁴⁸⁰ Otherwise known as the 'Structure-Conduct-Performance' paradigm in the economics of industrial organisation.

The antitrust economics of exclusive dealing

The Harvard School

A7.1.4 The concern that a dominant firm might use exclusive contracts to erect trade barriers and prevent competitive entry prompted a distinct section under the Clayton Act (Clayton §3) that expressly prohibits exclusive dealing that may substantially lessen competition or tends to create a monopoly.

The Chicago School

A7.1.5 The Chicago School, however, advocated that it makes no commercial sense for dominant firms to engage in exclusive dealing if the primary purpose is to prevent competitive entry, because it is less profitable for them to do so than to simply exploit their market power. Where exclusive dealing takes place, it must be for some efficiency reasons. As Bork argued:

“The truth appears to be that there has never been a case in which exclusive dealing or requirement contracts were shown to injure competition. A seller who wants exclusivity must give the buyer something for it. If he gives a lower price, the reason must be that the seller expects the arrangement to create efficiencies that justify the lower price. If he were to give the lower price simply to harm his rivals, he would be engaging in deliberate predation by price cutting, and that ... would be foolish and self-defeating behaviour on his part.”

“The seller may not offer lower prices, however. Instead, he may offer new efficiencies to the purchaser, such as an assured source of supply and the elimination of selling and buying costs. Increased efficiency, of course, cannot be classified as improperly exclusionary, and there is every reason to believe that exclusive dealing and requirement contracts have no purpose or effect other than the creation of efficiency.”⁴⁸¹

The post-Chicago School

A7.1.6 Post-Chicago antitrust literature has identified a number of specific market conditions where exclusive dealing, as an anti-competitive strategy, can be more profitable than plain-vanilla exploitation of market power. In other words, the Chicago argument is refutable in specific circumstances:

- Rasmusen et al (1991)⁴⁸² and Segal and Whinston (2000)⁴⁸³ demonstrated that in the presence of economies of scale or **network**

⁴⁸¹ Refer to page 309 of *The Antitrust Paradox*, Robert H. Bork (1978).

⁴⁸² Eric Rasmusen, Mark Ramseyer, John Wiley, Naked Exclusion, *The American Economic Review*, Dec 1991 and Naked Exclusion: Reply 2000.

⁴⁸³ Ilya Segal and Michael Whinston, Naked Exclusion: Comment, *The American Economic Review*, March 2000.

effect, exclusive dealing can be profitable by denying competitors of minimum efficient scale.

- Rasmusen et al (1991)⁴⁸⁴ demonstrated that when there are many buyers in the market, exclusive dealing could profitably deter entry due to the *lack of coordination among buyers*. While buyers know that they would be collectively better off by rejecting exclusive offers or negotiating for more compensation, they do not individually take care of each other's interest.
- Segal and Whinston (2000)⁴⁸⁵ demonstrated that *discriminatory offers* of exclusive contracts can profitably exclude rivals by exploiting the *contractual externalities* among buyers, without relying on buyers' disorganisation.
- Simpson and Wickelgreen (2001)⁴⁸⁶ adopted a game-theory approach to demonstrate that, where buyers are not end-consumers, but instead *downstream competitors* amongst themselves, the upstream dominant firm can profitably induce exclusive dealing to deter entry. Fumagalli and Motta (2002)⁴⁸⁷ qualified that exclusive dealing might not succeed if the downstream market is price competitive with little *differentiation*.
- Stefanadis (1998)⁴⁸⁸ demonstrated that a dominant firm could profitably induce exclusive dealing to deter entry if an individual buyer could *raise rivals' costs* through the granting of exclusivity to confer monopoly power upon the seller to exploit other buyers.
- Frasco (1992)⁴⁸⁹ demonstrated that exclusive dealing could profitably deter entry if some exclusive contracts were entered into before new entrants were ready and the *expiry dates are staggered* between different exclusive contracts.

⁴⁸⁴ Eric Rasmusen, Mark Ramseyer, John Wiley, Naked Exclusion, The American Economic Review, Dec 1991 and Naked Exclusion: Reply 2000.

⁴⁸⁵ Refer to *Naked Exclusion: Comment*, Ilya R. Segal and Michael D. Whinston, The American Economic Review March 2000.

⁴⁸⁶ Simpson J and Wickelgreen A.L, Naked Exclusion, efficient breach, and Downstream competition

⁴⁸⁷ Fumagalli C. and M. Motta, Exclusive Dealing and Entry, When Buyers Compete, London: CEPR Discussion Paper, 2002.

⁴⁸⁸ Refer to *Selective contracts, foreclosure, and the Chicago School view*, C. Stefanadis, Journal of Law and Economics, 1997.

⁴⁸⁹ Frasco, Gregg P., *Exclusive Dealing and the Pullman Sleeping Car Corporation*, Review of Industrial Organisation, 1992.

Application of the antitrust economics to the present case

SISTIC raised the Chicago School defence

A7.1.7 SISTIC argued in its submissions that it has no ability to reap monopoly profits from ticket buyers as venue operators and event promoters have strong incentives to exercise their countervailing power. In addition, the Exclusive Agreements are necessary and generate substantial efficiencies. In particular, SISTIC argued that:

“Further, every dollar of the ticket booking fees represents revenue that could have been made by the venues and promoters themselves from ticket buyers as part of the overall ticket price. It would not make economic sense for the venues and event promoters to sacrifice their overall profitability for monopoly profits to be reaped by the ticketing service provider.”⁴⁹⁰

“In this regard, ticketing service providers provide an ancillary service to facilitate the overall experience of ticket buyers in attending events and are dependent on selection by venues and event promoters for their continued viability. It is therefore not conceivable that venues and event promoters would allow the ticketing service provider to dictate prices and terms without taking into account the interests of ticket buyers.”⁴⁹¹

A7.1.8 SISTIC’s argument is especially similar to Bork’s analysis on the case *FTC v Motion Picture Advertising Service Co.*⁴⁹²:

“Blake and Jones appear, however, to have the case and the argument the wrong way round. Under what theory can small firms take a monopoly profit and actually use the difficulty of entry at the large firms’ level as the factor that preserves their ability to exploit the large firms? The large firms, here the theaters, would not stand for such nonsense for a moment. They would support new entrants in the production and distribution of advertising firms or enter that activity themselves. They would certainly not use their own market strength to give a monopoly to their suppliers. That is true whether the monopoly returns are taken directly from the theaters or indirectly from the advertisers. In either case the theaters would receive less than they should.”⁴⁹³

A7.1.9 As illustrated above, SISTIC’s arguments are essentially the Chicago School defence.

Post-Chicago conditions are satisfied in the Relevant Market for SISTIC’s exclusive dealing strategy to be effective in foreclosing competition

A7.1.10 As discussed above, the Chicago School defence necessitates the application of rigorous economics to assess the balance of harm and benefits on a case-by-case basis. In this case, CCS has thoroughly

⁴⁹⁰ Refer to Paragraph 7.15 of the Representation.

⁴⁹¹ Ibid, Paragraph 7.16.

⁴⁹² 344 U.S. (1953).

⁴⁹³ Refer to page 308-309 of *The Antitrust Paradox*, Robert H. Bork (1978).

demonstrated that most, if not all, of the market conditions envisaged in post-Chicago literature are present in the Relevant Market:

- **Network effect** – there is an indirect network effect between event promoters and ticket buyers (paragraph 6.5.9 to 6.5.32)
- **Lack of coordination among buyers** – there are many small event promoters with little bargaining power against SISTIC (paragraph 6.6.2).
- **Discriminatory offers** – the discounts and incentives of the Exclusive Agreements are individualised (section 7.7)
- **Contractual externalities** – venue operators have weak incentives to exercise their bargaining power against SISTIC because they are not the buyers of ticketing services (paragraph 6.6.3 to 6.6.6)
- **Downstream competitors** – venue operators and event promoters are not end-users. Instead they compete in their respective markets (paragraph 2.2.15 to 2.2.34)
- **Differentiation** – The Esplanade and SIS are highly differentiated venues (paragraph 7.8.3); there are multiple genre of events (paragraph 5.3.2)
- **Raise rivals' costs** – SISTIC's flat booking fee structure allows an individual venue operator or event promoter to raise rivals' costs in granting monopoly power upon SISTIC through the Exclusive Agreements (paragraph 6.6.10 to 6.6.13)
- **Staggered contracts** – The expiry dates of the Exclusive Agreements are staggered. In particular, the staggering of contracts between the ATS and the one with [...] has created a 'chicken-and-egg' effect (paragraph 7.9.10)

A7.1.11 More importantly, CCS has relied not on theoretical underpinnings, but on factual evidence that venue operators and event promoters have not contractually constrained SISTIC's ability to raise booking fees; SISTIC has actually raised its booking fee profitably above competitive levels; the Exclusive Agreements are not actually initiated by venue operators and event promoters; SISTIC's cost base is [...]; and multi-agent ticketing has actually taken place in other countries, even at the micro level of individual events.

A7.1.12 Based on the foregoing, CCS concludes that the facts of this case support the post-Chicago theory and contradict the Chicago theory. This conclusion is reinforced further when the two-sidedness of the Relevant Market is taken into account.

A7.2 The economics of foreclosure effect in a two-sided market

A7.2.1 In this ID, CCS emphasised that it is a holistic and integrated strategy on the part of SISTIC to foreclose competition from one side of the market, recoup sacrificed profits on the other side, and artificially perpetuate its dominant position on both sides. This appendix provides the economic reasons to illustrate why this holistic strategy may be explained by considering the Relevant Market as two-sided. In any event, the harm of SISTIC's conduct to competition is established based on the actual evidence as found by CCS and set out in Chapter 7 and in other parts of the ID, so that there is no need to formally define the Relevant Market as two-sided. This appendix nonetheless provides a useful explanation of the underlying concepts of two-sided markets.

SISTIC is more able to foreclose competition in a two-sided market

A7.2.2 Where a dominant supplier imposes exclusive purchasing obligations upon buyers in a typical one-sided market, an 'equally efficient firm'⁴⁹⁴ should be able to contest for these customers upon contract expiry, or compete for new customers on an exclusive basis, by matching the terms and conditions of the dominant supplier's offer⁴⁹⁵. Absent some special features such as economies of scale that would render the incumbent a natural cost advantage, exclusive purchasing agreements may not critically impair competition.

A7.2.3 As discussed in paragraph A5.2.2, however, indirect network effects exist in the Relevant Market. The concept of an 'equally efficient firm' is different from that in a one-sided market without economies of scale. A competitor cannot, even in principle, be 'as efficient' without first attaining a critical mass of ticketing transactions to match SISTIC's indirect network effect. Given the incumbent position of SISTIC, a hypothetical competitor can only be *potentially* as efficient as SISTIC, pending the attainment of critical mass. It cannot be *already* as efficient right from the beginning.

A7.2.4 It follows that exclusive purchasing obligations can critically impair competition in a two-sided market with indirect network effects by preventing the potentially-equally-efficient firm from attaining critical mass. In particular, the total commitment to use SISTIC as the sole ticketing service provider prevents the potentially-equally-efficient firm

⁴⁹⁴ An 'equally efficient firm' is a hypothetical competitor that is able to match both the quality and the price of the dominant undertaking's product. It is a widely accepted benchmark for establishing foreclosure effect on competition, because it controls for the scenario where a real competitor loses due to inefficiency.

⁴⁹⁵ This should be the case if the competitor is as-efficient.

from picking up the *residual* demands of event promoters and accumulating network effects *progressively*. When event promoters and venue operators are bound to choose one ticketing service provider only for all their events, then they would perennially prefer SISTIC.

SISTIC is more able to recoup sacrificed profits in a two-sided market

- A7.2.5 In a one-sided market, the dominant supplier must give discounts and recoup sacrificed profits from the same group of customers. To be able to exclude competitors from as many customers for as long a period as possible, more discounts must be given to these customers. However, if most customers are locked in (and compensated) for a long period of time, then the dominant supplier can only recoup its sacrificed profits either from the few remaining customers, or after the contractual periods lapse. Therefore, the dilemma is that the wider and the longer one forecloses, the narrower and the later one recoups, and vice versa.
- A7.2.6 There are two distinct groups of customers in a two-sided market. When most customers from *one* side are locked in, competition is foreclosed on *both* sides. This is true in the Relevant Market, because when key venue operators and event promoters are engaged by SISTIC exclusively, the ticket buyers will have little choice but to buy tickets from SISTIC in order to attend the events they want. Unlike a one-sided market, even if SISTIC were to lock in (and compensate) all major venue operators and event promoters for an extended period of time, it can still recoup sacrificed profits *concurrently* from the ticket buyers. In other words, SISTIC does not face the dilemma between profits and discounts. It can foreclose *and* recoup at the same time.

SISTIC is more able to perpetuate its dominance in a two-sided market

- A7.2.7 For any abusive strategy to be viable and sustainable, the dominant supplier must be able to recoup its profits sacrificed in foreclosing competition. In a one-sided market, price *level* is the only tool for administering both foreclosure and recoupment. As mentioned above, one cannot foreclose and recoup concurrently. It follows that, the dominant supplier must alternate its price level between ‘foreclosure mode’ and ‘recoupment mode’ from time to time. Otherwise, the profit sacrifice will not be sustainable in the long run.

A7.2.8 As the Relevant Market is two-sided, price *level* is not the only tool available. SISTIC can also use price *structure*⁴⁹⁶ to administer foreclosure and recoupment. With a more *tilted* price structure than the competitive structure⁴⁹⁷, SISTIC can achieve simultaneous foreclosure and recoupment in the Relevant Market. There is no need to adjust the absolute price level from time to time. SISTIC can *persistently* maintain the same tilted price structure.

A7.2.9 This strategy is more sustainable in the long-run. So long as competition *remains* foreclosed for a significant proportion of events held in Singapore, SISTIC can effectively perpetuate its dominant position, and *continue* to extract economic rent from ticket buyers. So long as recurrent profits continue to be generated from ticket buyers, SISTIC can afford to perpetuate its discounts and incentives to attract and retain venue operators and event promoters exclusively. There is no need to recoup sacrificed profits by exploiting event promoters or venue operators. There is also no need to sacrifice profits to attract and retain ticket buyers.

⁴⁹⁶ Price structure in a two-sided market means the *relative* price level between the two customer groups, holding the *combined* price level constant in *absolute* terms.

⁴⁹⁷ Slightly sub-competitive price level for event promoters; highly supra-competitive price level for ticket buyers; supra-competitive price level combined.

Chapter 8 Objective Justifications

Summary of Key Points in this Chapter:

- i. **SISTIC has made little investments to justify its Exclusive Agreements, and in any case, immunity from competition does not spur investment and innovation.**
- ii. **SISTIC's claim that its customers prefer exclusivities is factually incorrect, and in any event, such restrictions are redundant if customers genuinely prefer to use SISTIC only.**
- iii. **SISTIC's discounts are not volume-based, but instead, strategically individualised and conditional upon exclusivity restrictions.**
- iv. **Total and explicit restrictions with individualised incentives are neither necessary nor proportionate to achieve the efficiencies claimed by SISTIC.**

8.1 Concept

8.1.1 The *CCS Guidelines on The Section 47 Prohibition* provides that CCS may, in assessing cases of alleged abuse, consider if the dominant undertaking is able to objectively justify its conduct. The burden of raising and proving objective justifications resides with the dominant undertaking. In *Microsoft Corp v EC*⁴⁹⁸, the CFI held that:

“...it is for the dominant undertaking concerned, and not for the Commission, before the end of the administrative procedure, to raise any plea of objective justification and to support it with arguments and evidence ...⁴⁹⁹”

8.1.2 In assessing the justifications raised by SISTIC, CCS has considered whether, with respect to its engagement into the Exclusive Agreements, SISTIC is acting in defence of its legitimate commercial interest, whether it has taken more restrictive measures than are necessary to do so, whether any benefit arises, and whether the restrictions are proportionate to the benefits claimed⁵⁰⁰.

8.1.3 This chapter sets out CCS' assessment on the justification claims raised by SISTIC.

⁴⁹⁸ EC decision of 24 March 2004, on appeal Case T-201/04 *Microsoft Corp v EC* [2007] ECR II-00. [2007] CMLR 846, paras 448 – 459.

⁴⁹⁹ Ibid. paragraph 1144.

⁵⁰⁰ Refer to para. 4.4 of the *CCS Guidelines on the Section 47 Prohibition*.

8.2 The ‘recoup investment’ defence

8.2.1 SISTIC submits that exclusive agreements are needed to recoup investments. If exclusivities are removed, no ticketing service provider, SISTIC or otherwise, will have the scale and certainty of volume to make the investments required to offer premium services. Against this backdrop, SISTIC has highlighted its investments at two levels: first, value-added services in general; and second, venue- or event-specific investments.

Certainty of reward does not spur investment and innovation

8.2.2 Certainty of reward, while appealing to businesses as an impetus for investment and innovation, is fundamentally rejected in competition policy upon careful weighing of the pros and cons. It is competition, not immunity from competition, that stimulates investment and innovation. According to the Second Reading speech for the Competition Bill on 19 October 2004:

“Sir, competition is a key tenet of Singapore's economic strategy. Market *competition spurs firms to be more efficient, innovative, and responsive to consumer needs*. Consumers would enjoy more choices, lower prices, and better products and services. The economy as a whole benefits from greater productivity gains and more efficient resource allocation.” [emphasis added]

8.2.3 Furthermore, it is not only the investment incentive of the incumbent player that matters, but also that of new entrants. As discussed in paragraph 7.5.7, the Exclusive Agreements hurt dynamic efficiency by dampening the incentives for SISTIC’s competitors to invest and improve their quality of services in the long term.

8.2.4 In this connection, SISTIC compared its capital expenditure on its website and STiX with those by Gatecrash⁵⁰¹. In CCS’ view, while this analysis shows that SISTIC has invested more under the status quo than its competitors, it is insufficient to demonstrate that SISTIC would not have made such investments without the Exclusive Agreements, and/or Gatecrash would not have invested more in the absence of the foreclosure effects of the Exclusive Agreements.

Investments in value-added services in general

8.2.5 At the general level, SISTIC has not substantiated its claim that it would have to scale down on its premium and value-added services without the Exclusive Agreements. It fails to explain why it is impossible to compete on merit – invest first and then attract customers to attain efficient scale, rather than monopolising the customers first before investing.

⁵⁰¹ Refer to paragraph 5.46 of the Representation.

8.2.6 In particular, SISTIC submitted a breakdown of its fixed costs on value-added services⁵⁰². [...] ⁵⁰³. [...] ⁵⁰⁴. As for other fixed cost items, SISTIC did not substantiate its claim with verifiable documents that these cost items are specific to the Relevant Market.

Venue- and event-specific investments

8.2.7 [...].

8.2.8 For the ‘recoup investment’ defence to qualify as an objective justification, SISTIC must demonstrate that the investments made were specific and directly attributable to the exclusivity of the ASTA. In this regard, the EC has set out in its *Guidance on the Commission’s Enforcement Priorities* that:

“the dominant undertaking will generally be expected to demonstrate, with a sufficient degree of probability, and on the basis of verifiable evidence, that ... the efficiencies have been, or are likely to be, realised **as a result of** the conduct ... and that... there must be **no less anti-competitive alternatives** to the conduct that are capable of producing the same efficiencies ...”⁵⁰⁵ (emphasis added)

“The Commission will consider evidence demonstrating that exclusive dealing arrangements result in advantages to particular customers **if those arrangements are necessary** for the dominant undertaking to make certain **relationship-specific investments** in order to be able to supply those customers.”⁵⁰⁶ (emphasis added)

8.2.9 CCS notes that the 2002 ASTA signed between TECL and SISTIC was for the duration 1 October 2002 to 31 December 2006. [...].

8.2.10 SISTIC submits that, prior to the 2002 ASTA agreement, it “*was of the view that there was a need to improve the quality of its services provided by SISTIC in order to compete better and to match the standards of ticketing solutions provided in other countries which SISTIC had benchmarked itself against*”⁵⁰⁷ and that “[...]”⁵⁰⁸ in order to do so.

8.2.11 [...] ⁵⁰⁹.

⁵⁰² Refer to Table 10 of the Representation.

⁵⁰³ Refer to Appendix A6.6.3.

⁵⁰⁴ Ibid.

⁵⁰⁵ Refer to paragraph 30 of the *Communication from the Commission — Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings*, Official Journal of the European Union, 2009.

⁵⁰⁶ Ibid, paragraph 46.

⁵⁰⁷ Information provided by SISTIC via letter dated 19 December 2008 pursuant to the section 63 notice issued by CCS on 11 November 2008 at paragraph 7.2.

⁵⁰⁸ Ibid, paragraph 7.2.

⁵⁰⁹ Ibid, paragraph 7.1.

8.2.12 The above statements demonstrate that SISTIC was already looking to replace [...]. That is, its investment [...] was not a direct consequence of [...] requirements leading up to the signing of the 2002 ASTA.

8.2.13 Hence, while [...], CCS is not convinced that the investments would not have been made, had the 2002 ASTA not been entered into, or had TECL and SISTIC dealt with each other on a non-exclusive basis.

8.2.14 [...] ⁵¹⁰. [...].

8.2.15 In any case, as the 2002 ASTA was entered into before the section 47 prohibition became effective on 1 January 2006, CCS has focused on the continuation of the 2002 ASTA between TECL and SISTIC from 1 January 2006 onwards. [...].

8.2.16 In relation to the extension of the 2002 ASTA, although SISTIC has submitted that the extension was necessary “*in order for SISTIC to commit to the investments required to be made by SISTIC to service a performance arts venue of the scale and proportion such as the Esplanade*” ⁵¹¹, SISTIC also notes that “[...]” ⁵¹².

8.2.17 In addition, CCS noted the following in its analysis of SISTIC’s financial performance ⁵¹³:

- [...]; and
- [...].

8.2.18 [...].

8.2.19 Given that there were no significant investments in the Relevant Market to begin with, the questions as to whether investments would have been made absent the extension of the ASTA (and the exclusivity thereunder), and whether the renewed contractual duration of [...] is proportionate, do not arise.

Conclusion

8.2.20 Considering the above, CCS is not satisfied that the ‘recoup investment’ defence qualifies as an objective justification for the Exclusive Agreements entered into by SISTIC.

⁵¹⁰ See paragraph A6.5.3.

⁵¹¹ Information provided by SISTIC via letter dated 19 December 2008 pursuant to the section 63 notice issued by CCS on 11 November 2008 at paragraph 5.2.1.

⁵¹² See Answer to Question 37 of NOI with SISTIC.

⁵¹³ See Appendix 6.

8.3 The “customer request” defence

8.3.1 SISTIC submits that the exclusive ticketing agreement between SISTIC and TECL was a mutually negotiated agreement, where the exclusivity arose in view of the reliability, quality and range of services that SISTIC offers. Venues operators and event promoters have chosen to use SISTIC, in the absence of any exclusive ticketing arrangement, in view of similar considerations.

8.3.2 In *Hoffmann La Roche v. EC*⁵¹⁴ the ECJ held that:

“An undertaking which is in a dominant position on a market and ties purchasers – *even if it does so at their request* – by an obligation or promises on their part to obtain all or most of their requirements exclusively from the said undertaking abuses its dominant position within the meaning of Article [82] of the Treaty, whether the obligation in question is stipulated without further qualification or whether it is undertaken in consideration of the grant of a rebate”. (emphasis added)

8.3.3 CCS notes that it is no defence that the customer willingly entered into the agreement, or even that it requested exclusivity. This is because the pertinent issue is not whether the agreement is oppressive to the customer, but whether it has the effect of foreclosing competition in the relevant market.

8.3.4 In *ProkentTomra*⁵¹⁵, Tomra had asserted that customers would have chosen Tomra products in any case for reasons other than its prices, which is demonstrated by their willingness to pay higher prices for Tomra equipment than for that of its competitors. In response, the EC stated that:

“...it is not clear why Tomra had to apply its strategy of tying in the major customers through exclusivity, quantity or rebate scheme arrangements if the customer, as argued by Tomra, would have chosen its products anyway regardless of its higher prices.”⁵¹⁶

“the fact that some customers often accepted exclusivity or a similar status since this allowed them to benefit from the best conditions that Tomra was willing to offer and, as Tomra claims, may in some cases have proposed exclusivity themselves, is not an objective justification.”⁵¹⁷

8.3.5 As CCS demonstrated in sections 7.4 and 7.5, it was SISTIC who initiated the Exclusive Agreements, thereby unilaterally and artificially dictating that any competition be *for* the market. In this regard, the ‘customer request’ defence cannot stand on factual grounds.

⁵¹⁴ [1979] ECR 461, paragraph 89.

⁵¹⁵ Case Comp/E-1/38.113, decision issued by the EC on 29 March 2006. Case is currently pending appeal before the Court of First Instance.

⁵¹⁶ Ibid, paragraph 300.

⁵¹⁷ Ibid, paragraph 292.

- 8.3.6 In any case, it is not sufficient for SISTIC to demonstrate the private benefits to the direct counterparts of the Exclusive Agreements, without also considering the impact on other stakeholders. In this regard, CCS notes that for ASTA and ATS, the discounts and other incentives accrue only to the venue operators and their self-organised events. Third-party event promoters who hold their events at SIS and Esplanade are subject to restricted choice without enjoying the discounts. This is without even considering the ticket buyers whose choices are limited by SISTIC. Therefore, the ASTA and ATS fail the proportionality test.
- 8.3.7 As for the 17 other exclusive agreements, the choice of the event promoters are influenced by their need to hold some of their events at either SIS or the Esplanade. Besides, the private benefits to these event promoters are not the only considerations of economic benefits. For instance, the welfare of the ticket buyers must also be taken into account.
- 8.3.8 For the above reasons, CCS is not satisfied that the ‘customer request’ defence raised by SISTIC qualifies as an objective justification for the Exclusive Agreements entered into by SISTIC.

8.4 The ‘volume discount’ defence

- 8.4.1 SISTIC has submitted that its exclusive ticketing agreement is not dissimilar to volume discounts practised in most other industries⁵¹⁸. Essentially, these agreements enabled SISTIC to pass-through cost savings, in the form of volume discounts, to event promoters and venue operators, arising from scale economies that SISTIC would gain⁵¹⁹. In the Representation, SISTIC further submits that the structure of SISTIC’s discounts is on the basis of [...] ⁵²⁰, and subject to SISTIC’s internal set of criteria⁵²¹.
- 8.4.2 In *Hoffmann-La Roche v EC*⁵²² the ECJ accepted that not all discounts should be regarded as abusive. It held that quantity discounts linked solely to the volume of purchases, fixed objectively and applicable to all purchasers, would be permissible⁵²³. Rebates and similar practices are a normal part of commercial life and can be pro-competitive. These practices only pose a concern where they could have a detrimental effect on

⁵¹⁸ Information provided by SISTIC via letter dated 7 May 2009 pursuant to the section 63 notice issued by CCS on 17 April 2009 paragraph 3.3.

⁵¹⁹ Information provided by SISTIC via letter dated 19 December 2008 pursuant to the section 63 notice issued by CCS on 11 November 2008, paragraph 6.55.

⁵²⁰ Refer to Paragraph 6.62 of the Representation.

⁵²¹ Refer to Paragraph 6.63 of the Representation.

⁵²² [1979] ECR 461.

⁵²³ Ibid, paragraph 90.

competition, for example, because they operate as a surrogate for an exclusive purchase agreement.

8.4.3 In this case, however, CCS notes that:

- SISTIC’s discounts are not linked solely to the volume of purchases, but instead, conditional upon explicit and total exclusivity clauses;
- SISTIC’s discounts are not standardised, transparent and applicable to all event promoters, but instead, selectively offered and individualised;
- SISTIC did not submit any document to substantiate its “internal set of criteria” for negotiating discounts;
- in any case, evidence submitted by SISTIC does not indicate any clear relationship between volume and discounts (See Table 8.4.3); and
- there is no volume discount to ticket buyers. Booking fee is strictly on a per-ticket basis. Handling fees are strictly on a per-transaction basis.

Table 8.4.3: Examples of SISTIC’s contractual terms with event promoters

Price \ Volume	With discount	Without discount
Large	[...]	[...]
	[...]	[...]
Small	[...]	[...]
	[...]	[...]

8.4.4 Based on the above, CCS is not satisfied that the ‘volume discount’ defence raised by SISTIC qualifies as an objective justification for the Exclusive Agreements entered into by SISTIC.

8.5 Efficiency defence

8.5.1 SISTIC submits that there are substantial efficiencies which result from exclusive agreements that have been recognised by established international competition regulatory authorities. In addition, exclusive agreements are necessary given the size and structure of the ticketing market in Singapore.

8.5.2 For example, without the exclusive ticketing arrangement under the ASTA, SISTIC submits that multiple ticketing solutions providers serving events at the Esplanade may lead to⁵²⁴:

⁵²⁴ Information submitted by SISTIC dated 19 December 2008 pursuant to the section 63 notice issued by CCS on 11 November 2008 paragraph 16.14.

- duplication of efforts (e.g. installation of multiple ticketing software and systems, deployment of manpower trained in different ticketing systems, and operation of multiple manned box offices);
- operational inefficiencies (e.g. excess capacity, and increased operational costs which may be passed on to consumers); and
- confusion for venue hirers and consumers (e.g. fragmented services, inconsistent service levels, separate ticketing processes).

8.5.3 First and foremost, CCS acknowledges that scale efficiencies exist for most businesses in practice. The pursuit of volume, in and of itself, is not anti-competitive, and may create efficiencies. However, where a dominant undertaking generates or protects business volume through artificial means, competition may be foreclosed. On balance, CCS must consider the necessity and proportionality of total and explicit restrictions with individualised incentives as a means for SISTIC to achieve efficiencies.

8.5.4 This position of considering the balance of harm and benefits is also adopted by competition agencies overseas. In the OFT Study, for instance, wherever the OFT mentioned efficiency arguments, they were always discussed in conjunction with other balancing factors, including the actual level of competition observed in the market, the extent to which the ticketing contracts are preferential in practice, etc. See Table 8.5.4 below:

Table 8.5.4: Citation from the OFT Study

Paragraph No.	Efficiency arguments	Balancing factors
1.12	... if there are efficiencies associated with the promoter relying on primarily one ticket agent, instead of a range of agents, these arrangements could lead to lower prices.	If there is effective competition between different ticket agents for these preferential rights from promoters, then the arrangements will not raise prices....
1.13	...there are identifiable efficiency gains to be associated with these arrangements insofar as they allow some of the fixed costs of distribution and retailing to be spread over a larger number of ticket sales...	We accordingly looked at the nature of competition for these preferential rights and also at whether the nature of the contracts was such that, in the future, they could be expected anti-competitively to reduce the number of agents competing for contracts.
4.16	This form of competition can act in consumers' interests if it generates efficiencies...	...and if there is sufficient competition for the right to be a preferred retailer.
4.20/4.22	The other potential advantage is that granting one or a limited number of agents the right to distribute tickets	The key to whether this form of competition benefits consumers is whether there is effective

	may also help realise other efficiencies such as reducing the overall underlying costs of distribution (for example, through avoiding duplication of retailing costs and spreading them over a wider volume of ticket sales).	competition for the relevant contracts. We therefore looked very closely at whether the contracts – either by themselves or in combination with other industry characteristics – foreclosed the market to smaller agents and potential new agents.
4.30	We found that the operations of ticket agents do indeed rely on the exploitation of economies of scale.	Our assessment of the agreements in place, however, does not lead to the view that economies of scale are denied to otherwise efficient agents to the extent that it would affect their ability to compete effectively.
4.34	Contracts between promoters and ticket agents need to be reasonably long in order to secure the efficiencies outlined in section 2 of this chapter, and to provide incentives for agents to compete for the preferential rights to access a proportion of a promoter's tickets.	But on the other hand, the likelihood of other agents failing to win the level of business necessary to be competitive on costs increases with the average length of contracts and the degree of the preferential access rights granted to agents in the industry.
4.46	The form of competition in the sector is mainly between ticket agents to secure contracts from promoters and venues, which by individually putting high volumes of tickets with a single (although not necessarily the same) agent, enable efficiencies to be achieved.	We have not found a lack of competition between ticket agents resulting in a higher level of gross ticket prices to consumers.

8.5.5 Similarly, the ICA took a holistic consideration of the following factors in its analysis of the market characteristics with respect to Ticketmaster's contractual practices with event promoters in Ireland⁵²⁵:

- Characterising the relationship between promoters, artists, outsourced ticketing service providers and venues: an overview;
- TicketMaster Ireland's Market Share in the Market for Outsourced Ticketing Services for Events of National or International Appeal;
- The Promoters have significant countervailing buying power;
- The Promoters Initiate Contract Negotiations and Determine Contractual Terms;
- The Promoters Exert Downward Pressure on Booking Fees;

⁵²⁵The ICA Ticketmaster Decision .

- Upfront Payments and Advance Payments do not represent a sharing of monopoly rents between TicketMaster Ireland and the Promoters but rather reflect risk-sharing between TicketMaster Ireland and the Promoters;
- Exclusive agreements between TicketMaster Ireland and the Promoters do not foreclose the market;
- Exclusive Contracts Between the Promoters and TicketMaster Ireland Generate Efficiencies;
- Are End Consumers Adequately Informed about Ticket Prices and Booking Fees? and
- Is the End Consumer harmed by Current Market Arrangements for Outsourced Ticketing Services?

Necessity

8.5.6 SISTIC fails to establish why the Exclusive Agreements are objectively necessary given the size and structure of the ticketing market in Singapore. Cross-jurisdictional analysis suggests that the viability of a ticketing service provider does not depend on the absolute volume of ticket sales. [...]. Evidence is well short of suggesting that the Relevant Market is a natural monopoly. Hence, it is not necessary for SISTIC to unilaterally dictate the mode of competition to be *for* the market or *in* the market.

8.5.7 Event promoters would have factored in all these efficiency considerations in making their decisions, both in terms of how many ticketing service providers to deal with, and who to deal with. If they indeed choose to deal with SISTIC only, then there is no need for any exclusivity commitment in the first place. The same view is expressed by the EC in *Prokent-Tomra*⁵²⁶:

“...it is not clear why Tomra had to apply its strategy of tying in the major customers through exclusivity, quantity or rebate scheme arrangements if the customer, as argued by Tomra, would have chosen the products anyway regardless of its higher prices.”

8.5.8 In any case, CCS notes that multi-agent ticketing has indeed happened overseas even at the micro level of individual events⁵²⁷, especially for selected popular/big-scale sports events⁵²⁸. This enables event promoters to have a wider reach to audiences (since they will be able to concurrently tap

⁵²⁶ Case Comp/E-1/38.113, decision issued by the EC on 29 March 2006. Case is currently pending appeal before the Court of First Instance.

⁵²⁷ Refer to paragraph 7.5.11.

⁵²⁸ See Answer to Question 27 of Mr Ong Min Ji's Notes of Information/Explanation Provided on 27 March 2009.

on all the ticket sale and distribution channels of various ticketing agents). In any case, event promoters can decide whether to engage multiple ticketing agents based on their own needs and preferences⁵²⁹. Any customer confusion can be mitigated by the event promoters or venue operators themselves. For example, ‘double booking’ can be avoided by allocating certain seats to the ticketing agents upfront⁵³⁰. In Singapore, CCS notes that SISTIC did not find it necessary to compete on an exclusive basis in the past, and is still engaging a minority of its customers on a non-exclusive basis at present.

Proportionality

8.5.9 SISTIC’s efficiency defence fails on the ground of proportionality as well. CCS has demonstrated that competition in the Relevant Market has been lacklustre; SISTIC’s market share has been persistently high; network effect is artificially sustained by the Exclusive Agreements; SISTIC has unfettered discretion to charge higher prices against ticket buyers; the Exclusive Agreements contain total and explicit restrictions with individualised incentives; SISTIC capitalised on the contractual externalities arising from the individual choices of venue operators and event promoters; a sizeable portion of the Relevant Market is foreclosed; the effective duration of the Exclusive Agreements are perennial; and last but not least, SISTIC has become more profitable after raising booking fees against ticket buyers.

8.5.10 The overwhelming imbalance between the harm and benefits in this case explains why CCS is arriving at a different conclusion to some overseas cases and studies concerning the ticketing service industry. For instance, the OFT Study concluded as follows:

“Our assessment is that, *on balance*, these arrangements in practice *do not act to the detriment of consumers by leading to higher prices*, but, instead, enable *lower costs to be passed on in lower prices*. Competition between ticket agents mainly takes place in the form of rivalry for these *preferential* contractual rights.

We have found no evidence that even the largest of these agreements, between Clear Channel and Ticketmaster has affected *the intensity of this competition*”⁵³¹. (emphasis added)

Similarly, the ICA concluded the *Ticketmaster* case as follows:

“On the basis of the facts and for the reasons set out above, the Authority has decided that although TicketMaster Ireland accounts for 100% of the market

⁵²⁹ [...].

⁵³⁰ Interested ticketing agents can bid among themselves to be allocated certain seats.

⁵³¹ Refer to paragraph 4.2 and 4.3 of the OFT Study.

for outsourced ticketing services for events of national or international appeal in the island of Ireland, *it is constrained from charging excessive prices* and so its conduct could not be construed as an abuse. Therefore, TicketMaster Ireland's behaviour does not constitute a breach of Section 5 of the Act and/or Article 82 of the Treaty.

The Authority is also of the view that the agreements TicketMaster Ireland has in place with the two promoters, MCD and Aiken, *do not prevent, restrict or distort competition* in the market for outsourced ticketing services for events of national or international appeal in the island of Ireland. Thus, these agreements do not amount to a breach of Section 4 of the Act and/or Article 81 of the Treaty”⁵³². (emphasis added)

Notably, although efficiency arguments were extensively discussed by OFT and ICA in their respective assessments, both agencies based their final conclusions primarily upon the actual degree of competition and the actual level of prices.

Conclusion

8.5.11 Considering the above, CCS is not satisfied that the efficiency defence raised by SISTIC qualify as an objective justification for the Exclusive Agreements entered into by SISTIC.

8.6 Other defences that have been dealt with in other parts of this ID

8.6.1 SISTIC has submitted a few other defences that fall outside the domain of objective justifications and have been dealt with by CCS in other parts of this ID:

- that it is possible for competitors to compete for the contracts⁵³³ (dealt with under section 7.5 regarding the mode of competition dictated by SISTIC);
- that the exclusive agreements are currently extended to 18 out of approximately 200 event promoters with a ticketing relationship with SISTIC⁵³⁴ (dealt with under section 7.12 on the scope of foreclosure);
- that the Exclusive Agreements are short in duration and terminable with short notice⁵³⁵ (dealt with in section 7.13);

⁵³² Refer to paragraph 4.1 and 4.2 of the ICA Ticketmaster Decision.

⁵³³ Information submitted by SISTIC via letter on 19 December pursuant to the section 63 notice issued by CCS on 11 November 2008, paragraph 16.18.

⁵³⁴ Information submitted by SISTIC via letter on 7 May 2009 pursuant to the section 63 notice issued by CCS on 17 April 2009, paragraph 3.5(i). However, CCS notes that SISTIC's ticket sales agreement with [...] does not contain any explicit exclusivity restriction. Hence, CCS only considers that SISTIC has 17 exclusive ticket sales agreements with event promoters during the assessment period.

- that customers choose SISTIC due to its reliability, range and quality of services⁵³⁶ (to be dealt with under Appendix 8A regarding the ‘competition on merit’ defence); and
- that SISTIC operates in a natural monopoly market, in which the Exclusive Agreements are necessary to achieve efficiencies⁵³⁷ (to be dealt with under Appendix 8A regarding the ‘natural monopoly’ defence).

8.7 Conclusion

8.7.1 Based on the considerations above, SISTIC has not demonstrated that the justifications it has raised are either valid, relevant or can be deemed as proportionate. As such, the Exclusive Agreements are not objectively justified.

⁵³⁵ Information submitted by SISTIC via letter on 19 December 2009 pursuant to the section 63 notice issued by CCS on 11 November 2008 2008, see paragraph 16.18 and Information submitted by SISTIC via letter on 7 May 2009 pursuant to the section 63 notice issued by CCS on 17 April 2009, paragraph 5,5(iii).

⁵³⁶ Ibid, paragraphs 16.8 and 16.10.

⁵³⁷ Refer to Appendix to Chapter 5 of the Representation.

Appendix 8A The ‘competition on merit’ and ‘natural monopoly’ defences

A8.1 The ‘competition on merit’ defence

SISTIC’s submission that it wins competition on merit

A8.1.1 SISTIC raised the ‘competition on merit’ defence at two levels – first, SISTIC is chosen by venue operators and event promoters on merit, not because of the Exclusive Agreements; second, the Exclusive Agreements are won on merit:

Chosen not because of Exclusive Agreements	“...SISTIC is selected by the venues on the basis of competitive merit...” ⁵³⁸ “...event promoters worked with SISTIC not because of exclusivity but because of SISTIC’s track record of reliability and efficiency.” ⁵³⁹ “Venues, event promoters and event organizers have chosen to use SISTIC, in the absence of any exclusive ticketing arrangement...” ⁵⁴⁰
Exclusive Agreements won on merit	“Venue operators and event promoters had entered into the Exclusivity Agreements with SISTIC on the basis of objective competitive merit.” ⁵⁴¹ “...the exclusive ticketing arrangement between SISTIC and TECL was a mutually negotiated agreement between SISTIC and TECL, where the exclusivity arose in view of the reliability, quality and range of services that SISTIC offers.” ⁵⁴²

CCS’ position on the ‘competition on merit’ defence

A8.1.2 Dominance in itself does not infringe the Act. It is an evidential finding that an undertaking is able to act independently without sufficient competitive constraint. This is to recognise that some businesses may

⁵³⁸ Refer to Paragraph 1.9 of the Representation.

⁵³⁹ Refer to Paragraph 2.4 of the Representation.

⁵⁴⁰ SISTIC’s submission dated 19 December 2008, Executive Summary, paragraph 2 (b).

⁵⁴¹ Refer to Paragraph 5.10 of the Representation.

⁵⁴² SISTIC’s submission dated 19 December 2008, Executive Summary, paragraph 2 (b).

attain dominance through competing on merit. However, if the dominant undertaking abuses its position, then the abuse would be an infringement, regardless of how the dominant position was attained in the first instance.

- A8.1.3 It is possible for a dominant firm to simultaneously engage in different kinds of business practices, some of which are abusive, others merit-based. Where the firm has committed an abuse, any justification raised must correspond *directly* to the abusive practice in question, and objectively explain why the abusive practice *itself* is beneficial. Objective justification is not an ‘appraisal’ exercise where a dominant firm can be excused of its abusive practice by ‘compensating the society’ with some other merit-based practices. The abusive practice has to be beneficial in itself.

SISTIC’s first level of defence – it is chosen by customers on merit, not because of the Exclusive Agreements

- A8.1.4 The instances where customers have chosen SISTIC in the absence of exclusive agreements do not constitute part of the alleged abuse. Accordingly, the issues of foreclosure effect and objective justification do not arise with respect to this aspect of SISTIC’s practices. However, as explained above, dominance is an evidential finding of the ability to act without sufficient competitive constraint. Competition on merit is not a defence against such a finding.
- A8.1.5 Given that CCS has evidentially established that SISTIC is dominant in the Relevant Market, and has abused its dominant position, it is not necessary for CCS to perform a subjective assessment of its service quality. In any case, the feedback from SISTIC’s customers is mixed. In particular, there appears to be a contrast of views between event promoters⁵⁴³ and ticket buyers⁵⁴⁴.
- A8.1.6 For the above reasons, the first level of SISTIC’s defence does not fall within the scope of objective justifications.

SISTIC’s second level of defence – the Exclusive Agreements are won on merit

- A8.1.7 CCS does not accept that competition on the basis of exclusivities is merit-based *per se*. This is because exclusivity, in and of itself, may constitute a business practice that is capable of impeding competition, particularly where it is imposed by a dominant undertaking. Therefore, a rule of reason has to be applied to assess the balance of harm and benefits. In the *OECD Policy Roundtables – Competition on the Merits (2005)*, the secretariat summarised:

⁵⁴³ Refer to paragraph 5.12 of the Representation.

⁵⁴⁴ Refer to paragraph 7.10.7.

“Competition on the merits is a popular but vague term. There is substantial agreement on the broad goals and methods of enforcing competition laws against abuse of dominance, particularly with respect to studying harm to competition, not competitors, through the use of economics. There is some disagreement, however, over what variables to consider and whether to use a form-based approach or an effects-based approach. Dissatisfaction with both the ambiguity of some jurisdictions’ competition statutes and the lack of clear definitions for terms like competition on the merits has prompted a number of specific tests that aim to detect abusive conduct.”

A8.1.8 In this case, CCS has incorporated the essence of the various tests suggested by OECD in a holistic demonstration of foreclosure effects arising from the Exclusive Agreements. In particular, CCS finds that SISTIC has unilaterally and artificially dictated the mode of competition based on its exclusivities, and the Exclusive Agreements are initiated by SISTIC rather than initiated by customers. As such, CCS firmly rejects SISTIC’s attempt to reverse the causality and argue that the Exclusive Agreements are won on merit. The contest was not merit-based in the first instance⁵⁴⁵.

Conclusion

A8.1.9 While CCS has demonstrated in this case that SISTIC is dominant in the Relevant Market (Chapter 6), that its exclusive purchasing obligations imposed under the Exclusive Agreements have led to foreclosure effects on competition (Chapter 7), and that these restrictions are not objectively justified (Chapter 8), it should be emphasised that CCS’ conclusions do not imply that SISTIC’s dominant position was not attained on merit in the first instance, or that SISTIC has not been competing on merit in other aspects of its business conduct⁵⁴⁶.

A8.1.10 In enforcing the section 47 prohibitions of the Act, CCS does not tolerate any abusive conduct on the part of a dominant undertaking, even if the undertaking first attained its dominant position on merit, and has been competing on merit in other aspects of its business conduct. However, in condemning the abusive conduct, CCS does not prohibit the dominant undertaking from competing and/or defending its dominant position on merit afterwards.

⁵⁴⁵ For the avoidance of doubt, this paragraph means that it is not for SISTIC to justify if the Exclusive Agreements are won on merit, but for CCS to demonstrate foreclosure effects arising from these agreements.

⁵⁴⁶ For example, SISTIC created the “Ticket Protector” product, which is an insurance service allowing ticket buyers to claim their ticket prices in full under certain unforeseen circumstances leading to a no-show. Refer to answer to Q8 of NOI with SISTIC.

A8.2 The ‘natural monopoly’ defence

SISTIC’s submission that its monopoly position is natural and contestable

- A8.2.1 SISTIC submits that it operates on its own in the premium ticketing services market. This market is a natural monopoly due to significant economies of scale. Therefore, exclusive agreements are necessary to achieve efficiencies and recoup investments. However, this natural monopoly position is contestable, because there is competition *for* this market.

CCS’ assessment on SISTIC’s natural monopoly defence

- A8.2.2 CCS is of the view that SISTIC’s thesis of a contestable natural monopoly is inherently contradictory. On one hand, SISTIC argues that it operates in a market on its own⁵⁴⁷; on the other hand, it argues that it competes in a broader market including cinemas, attractions, self-ticketing, etc⁵⁴⁸; SISTIC argues that significant economies of scale imply a natural monopoly⁵⁴⁹, but then argues that there is no entry barrier because its business is easily replicable⁵⁵⁰; SISTIC argues that it won customers because of its premium services, not because of the exclusivities⁵⁵¹, but then argues that it will scale back investments in premium services without the exclusive agreements⁵⁵²; SISTIC argues that competition is naturally *for* the market, implying that the market can only accommodate one player⁵⁵³, but then argues that the true counterfactual is a ‘race to the bottom’, blaming the co-existence of multiple players⁵⁵⁴.
- A8.2.3 In any case, actual evidence suggest that SISTIC has a number of direct competitors⁵⁵⁵; economies of scale is moderate, and not insurmountable⁵⁵⁶; multiple ticketing service providers exist in big and small markets alike⁵⁵⁷; the Relevant Market is not contestable because of the Exclusive Agreements⁵⁵⁸; the exclusivities are redundant in achieving

⁵⁴⁷ Refer to paragraph 3.3-3.26 of the Representation.

⁵⁴⁸ Refer to paragraph 3.25-3.26 of the Representation.

⁵⁴⁹ Refer to Appendix to Chapter 5 of the Representation.

⁵⁵⁰ Refer to paragraph 1.14 and paragraphs 6.24-6.37 of the Representation.

⁵⁵¹ Refer to paragraph 1.9 and paragraphs 5.1-5.15 of the Representation.

⁵⁵² Refer to paragraph 7.18 of the Representation.

⁵⁵³ Refer to Chapter 6 of the Representation.

⁵⁵⁴ Refer to paragraph 1.18 and paragraphs 7.28-7.29 of the Representation.

⁵⁵⁵ Refer to paragraph 2.2.5 to 2.2.13.

⁵⁵⁶ Refer to section 6.5.

⁵⁵⁷ Refer to paragraph 7.5.10-7.5.12 of the ID and diagrams 8-10 of the Representation.

⁵⁵⁸ Refer to Chapter 7.

any efficiency⁵⁵⁹; competition *for* and *in* the market can both be accommodated in the ticketing services industry, but they are currently both lacklustre in Singapore due to SISTIC's conduct⁵⁶⁰.

Conclusion

A8.2.4 For the above reasons, SISTIC's natural monopoly defence cannot stand.

⁵⁵⁹ Refer to paragraphs 7.4.4 to 7.4.8.

⁵⁶⁰ Refer to paragraphs 7.5.1 to 7.5.15.

Appendix 8B Comparison of case merits with overseas cases and studies

Jurisdiction	Ireland – ICA	UK – OFT	UK – UKCC	US – DOJ	Singapore – CCS
Subject matter	Abuse of dominance Vertical agreements ⁵⁶¹	Market study ⁵⁶²	Merger ⁵⁶³	Merger ⁵⁶⁴	Abuse of dominance
Parties	Ticketmaster	Ticketmaster	Ticketmaster/ Live Nation	Ticketmaster/Live Nation	SISTIC
Relevant market	Outsourced ticketing for national and international events Ireland-wide	Primary and secondary ticketing in the UK	Primary retailing of live music tickets in the UK	Primary ticketing to major concert venues in the US	Open ticketing in Singapore
Market share	100%	50%	[40-50]%	80%	89%
Mode of competition	<i>for</i> the market	<i>for</i> and <i>in</i> the market	<i>for</i> and <i>in</i> the market	At most <i>for</i> the market	Hardly <i>for</i> or <i>in</i> the market
Key contract partners	Event promoters	Event promoters	Event promoters	Venue operators	Venue operators
Countervailing power	Exercised	Not explicitly addressed	Exercised	Not explicitly addressed	Not exercised
Self-ticketing	Credible documentary evidence	Actual evidence	Actual evidence	Actual evidence	No evidence
Booking fee	Capped	Vary	Capped	Not addressed	Flat

⁵⁶¹ The ICA Ticketmaster Decision.

⁵⁶² The “OFT Study.

⁵⁶³ The UKCC Ticketmaster/Live Nation Report.

⁵⁶⁴ The “DOJ Competition Impact Assessment.

Jurisdiction	Ireland – ICA	UK – OFT	UK-UKCC	US – DOJ	Singapore – CCS
Profit	Not explicitly addressed	Not explicitly addressed	Profitable	Large profit margins persisted for many years	Large profit margins persisted for many years
Economies of scale	Insubstantial	Achievable	Fixed costs no especially high	High	Moderate
Network effect	Economies of density	No tipping effect	No virtuous cycle or chicken-and-egg	Not explicitly addressed	Physical and on-net
Strategic entry barrier	No	No	Yes	Yes	Yes
Contract duration	~4.5 years	Usually up to 5 years	Typically 2-3 years	For several years	1-5 years
Nature of contracts	Preferential	Preferential	Preferential	Exclusive	Exclusive
Initiation/termination	Initiated by customers	Not explicitly addressed	Terminated by Live Nation	Terminated by Live Nation	Initiated by SISTIC, never terminated by customers
Dominance	Unlikely but inconclusive	Not explicitly addressed	Not explicitly addressed	Dominance	Dominance
Effects	Agreements do not restrict competition; Ticketmaster constrained from charging excessive prices	No lack of competition between ticket agents; no disproportionate advantages from preferential rights	Competition in the market was less than fully effective	Longstanding dominance, high entry barriers and persisted margins.	Perpetuated dominance, restricted choices and higher prices.
Efficiencies	Non-trivial	Identifiable, achieved	Efficiencies can be achieved through long-term contracts	A vertically integrated monopoly is unlikely to pass the efficiency benefits to consumers	Harm outweighs benefits
Conclusion	No infringement	Closure	Clearance	Conditional clearance	Infringement

Chapter 9 Liability for Infringement and the Addressee of the ID

- 9.1 As set out in Chapter 4, CCS is satisfied that the provisions under the Exclusive Agreements entered into by SISTIC are capable of falling within the ambit of the section 47 prohibition of the Act. Further, on the basis of the analysis set out in Chapter 5 to Chapter 8, CCS is satisfied that there is sufficient evidence to find that SISTIC has infringed the section 47 prohibition in respect of the exclusive purchasing restrictions under the Exclusive Agreements. Accordingly, SISTIC is the addressee of this ID.

Chapter 10 Directions on the Exclusive Agreements and Penalties

10.1 This chapter sets out CCS' directions on the exclusive agreements and penalty for SISTIC and the reasons.

10.2 Directions on the Exclusive Agreements

10.2.1 Section 69(1) of the Act provides that where CCS has made a decision that a conduct has infringed the section 47 prohibition, it may give to such person as it thinks appropriate such directions as it considers appropriate to bring the infringement to an end and, where necessary, requiring that person to take such action as is specified in the direction to prevent the recurrence of such infringement.

10.2.2 The ID has set out the grounds why SISTIC's entering into the Exclusive Agreements is found to have infringed section 47 of the Act. CCS notes that these Exclusive Agreements remain in existence. Therefore, in order to bring the infringement to an end, CCS directs SISTIC to modify these agreements as necessary, with immediate effect, to remove any clause(s) that require these contractual partners to use SISTIC exclusively, including the following:

- Clauses 7.1 and 7.2 of the 2008 ASTA;
- Clause 2.2.1 of the ATS; and
- for the 14 other Exclusive Agreements currently in force as at December 2009 ⁵⁶⁵, the clause under "DURATION OF CONTRACT" which provides that "*SISTIC shall be the exclusive ticketing agent for all ticketed events organised by the Promoter during the fixed term*".

10.2.3 To prevent the recurrence of the infringement, CCS directs SISTIC to remove the following clause under "Duration of Contract" of its template used for signing agreements with event promoters – the *Ticket Sales Agreement with Promoter, Form of Agreement*:

- "*SISTIC shall be the exclusive ticketing agent for all ticketed events organised by the Promoter during the fixed term*".

10.2.4 CCS is not directing SISTIC to nullify these Exclusive Agreements as they contain provisions unrelated to the infringement. Further, CCS is also not objecting to the discounts and incentives given by SISTIC to the event promoters/venue operators *per se*. CCS notes that the giving of discounts and incentives by suppliers are typical of commercial life, and

⁵⁶⁵ [...].

on their own, may have pro-competitive outcomes such as lower prices and/or greater consumption. In this case, CCS objects to the granting of discounts/incentives that is conditional upon the commitment of exclusivity by the event promoters/venue operators. Accordingly, CCS' remedy is to direct SISTIC to modify these agreements as necessary to remove the exclusivity requirement.

10.3 **Direction on Financial penalty**

Legal framework

- 10.3.1 Under section 69(2)(d) of the Act, CCS may, where it has made a decision that a conduct has infringed the section 47 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of 3 years.
- 10.3.2 However, CCS may impose a financial penalty only if it is satisfied that that the infringement has been committed intentionally or negligently⁵⁶⁶. Similar positions are adopted in the EC and the UK. CCS notes that both the EC and the OFT are not required to distinguish precisely whether the infringement was committed intentionally or negligently, so long as they are satisfied that the infringement was *either* intentional or negligent.

Intention or negligence

- 10.3.3 According to *CCS Guidelines on Enforcement*, the circumstances in which CCS might find that an infringement has been committed intentionally include the following:
- the conduct has as its object the restriction of competition;
 - the undertaking in question is aware that its actions will be, or are reasonably likely to be, restrictive of competition but still wants, or is prepared, to carry them out; or
 - the undertaking could not have been unaware that its conduct would have the effect of restricting competition, even if it did not know that it would infringe the section 47 prohibition.
- 10.3.4 Further, the CCS is likely to find that an infringement of the section 47 prohibition has been committed negligently where an undertaking ought to have known that its conduct would result in a restriction or distortion of competition.

⁵⁶⁶ See section 69(3) of the Act and paragraphs 4.3 to 4.11 of CCS Guidelines on Enforcement.

- 10.3.5 It should be noted that intention or negligence relates to the facts, not the law. Ignorance or a mistake of law (i.e. ignorance that the relevant conduct is an infringement) is thus no bar to a finding of intentional infringement.
- 10.3.6 In establishing whether or not there is intention, CCS may consider internal documents generated by the undertaking in question. It may be inferred that an infringement has been committed intentionally where consequences giving rise to an infringement are plainly foreseeable from the pursuit of a particular action by an undertaking.
- 10.3.7 In establishing whether it was an intentional or negligent infringement, the CCS has considered the following:
- During CCS' interview⁵⁶⁷ with Mr. Kenneth Tan (then Deputy CEO of SISTIC) , he had confirmed that at the SISTIC Board meeting held on 9 October 2002 where he was present, TicketCharge had informed him that with "Esplanade exclusive agreement with SISTIC, it makes it increasingly difficult of TicketCharge to be a viable entity". Given that the same person has been with SISTIC throughout the years, and has since progressed to become CEO at present, CCS is of the view that SISTIC, as an institution, could not have been unaware that the ASTA had the effect of weakening or eliminating competitor(s) since the Act came into force in 2006;
 - At a SISTIC Board meeting held on 29 October 2004, there was a discussion on how SISTIC should position itself in the ticketing services market. The minutes of the meeting also record measures taken by SISTIC in monitoring its own market shares and those of their competitors. As recorded in the minutes of this meeting, the GM had informed the Chairman that "[...]". A board director however felt that the company should "[...]". Given that the same person has served as SISTIC's Board director until today, CCS is of the view that SISTIC's Board could not have been unaware of the strategic value of monopolising the market by targeting even commercially unprofitable events since the Act came into force in 2006;
 - At a SISTIC Board meeting held on 22 January 2009, it was recorded that one of the threats for SISTIC would be "the outcome of the CCS' investigation [which] may have an adverse impact on SISTIC's exclusivity contracts with Esplanade, SIS and key promoters". In CCS' view, given that SISTIC's Board was aware that the prospect of losing these exclusivities was a threat that might

⁵⁶⁷ See Answer to Question 60 of NOI with SISTIC.

lead to an adverse impact on the company, it could not have been unaware that maintaining these exclusivities protect SISTIC from the risk of losing these customers to its competitors. Therefore, SISTIC could not have been unaware of the foreclosure effects of the Exclusive Agreements;

- 10.3.8 Based on the above, CCS considers that SISTIC as an institution (including its board members and senior management) not just ought to have known, but could not have been unaware, that the nature of the Exclusive Agreements and the role in which they play in perpetuating SISTIC's dominant position in the Relevant Market is reasonably likely to have the effect of preventing, restricting or distorting competition.
- 10.3.9 Hence, CCS is satisfied that the infringement by SISTIC was committed intentionally, not just negligently. In any case, the threshold for imposing a financial penalty is satisfied for this case.

Methodology for calculating the amount of penalty

- 10.3.10 The *CCS Guidelines on The Appropriate Amount of Penalty* provides that in calculating the amount of financial penalty to be imposed, CCS will take into consideration the following:
- the seriousness of the infringement;
 - the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement in the undertaking's last business year;
 - the duration of the infringement;
 - other relevant factors, e.g. as deterrent value; and,
 - any further aggravating and mitigating factors.
- 10.3.11 Similar considerations are taken into account by the EC in the calculation of fines imposed pursuant to Article 23(2)(a) of Regulation No. 1/2003 and by the OFT in calculating the level of financial penalty imposed under section 36 of the Act 1998. The EC determines the fine by:
- First working out the basic amount of the fine by looking at the value of sales (turnover) and taking a percentage of the value of sales which is based on the gravity of the infringement ("base amount"). In determining whether the percentage should be on the low or high end, the EC will consider the nature of the infringement, the combined market share of the infringing undertakings, the geographic scope of the infringement and whether or not the infringement was implemented;

- The base amount would then be multiplied by the number of years of infringement; and
 - Finally, adjustments will be made keeping in mind any aggravating or mitigating circumstances and the need for deterrence⁵⁶⁸.
- 10.3.12 The OFT adopts a similar methodology. First, it calculates the starting point or the base amount for the financial penalty, having regard to the seriousness of the infringement and the relevant turnover of the undertaking. The starting point is then adjusted taking into account the duration of the infringement, the need for specific or general deterrence, and any aggravating or mitigating factors⁵⁶⁹.
- 10.3.13 Common to both approaches is the principle of starting with a base figure, which is worked out by taking a percentage or proportion of the relevant sales or turnover, applying a multiplier for the duration of infringement and then adjusting that figure to take into account similar factors such as deterrence and aggravating and mitigating considerations. CCS has adopted this method for the calculation of penalties in the *Pest Control* case⁵⁷⁰ and the *Bus Operators*⁵⁷¹ case. CCS similarly adopts this approach for the present case.

Relevant turnover for the last business year

- 10.3.14 The relevant turnover in the last business year will be considered by the CCS for the purpose of determining the financial penalty. The “last business year” is the business year preceding the date on which the decision of CCS is taken, or if figures are not available for that business year, the one immediately preceding it⁵⁷².
- 10.3.15 CCS has defined the relevant product and geographic markets, for the purpose of calculating the penalty, to be the provision of open ticketing services in Singapore to both event promoters and ticket buyers. On this basis, the relevant turnover applicable to SISTIC will be its turnover relating to its provision of open ticketing services in Singapore in the last business year. The relevant turnover applicable to SISTIC was S\$[...] for FY 08/09, based on SISTIC’s audited financial statements.

⁵⁶⁸ See Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003.

⁵⁶⁹ See OFT’s guidance as to the appropriate amount of a penalty (December 2004).

⁵⁷⁰ CCS 600/008/06.

⁵⁷¹ CCS 500/003/08.

⁵⁷² See Competition (Financial Penalties) Order 2007, paragraph 3 and CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.5.

Base amount

10.3.16 In assessing the seriousness of the infringement, CCS has considered a number of factors, including the nature of the infringement, the market share(s) of the undertaking(s) involved in the infringement and the impact and effect of the infringement on the relevant market:

- *Nature of the Infringement* – CCS notes that, in general, exclusive purchasing is not considered to be the most severe class of abuse, due to some offsetting benefits in terms of discounts given to customers⁵⁷³. It is, however, more serious than, say, loyalty rebates with sales targets, due to the explicit and total purchase commitment.
- *SISTIC's Market Share and Structure of the Market* – CCS considers SISTIC to be highly dominant with a persistent market share of about 90% over the years from January 2006 till March 2009, both by ticket volume and by turnover. In terms of market structure, CCS notes that the indirect network effect of the Relevant Market allows simultaneous foreclosure and exploitation by SISTIC. On the demand side, CCS notes that the demand from SISTIC's customers, both event promoters and ticket buyers, are highly fragmented. Each event promoter accounted for less than [0-10]% of SISTIC's sale of tickets from January 2006 till March 2009. Hence, no single event promoter possesses significant buyer power against SISTIC⁵⁷⁴.
- *Impact and effect of the infringement on the market (including competitors and third parties)* – in terms of effects on competition, CCS notes that competition *for* and *in* the Relevant Market has been lacklustre. There have been actual exits of competitors, notably TicketCharge in 2007 and GTN's loss of the F1 Grand Prix project to SISTIC in 2009. In terms of welfare effect, CCS notes that SISTIC has never given any form of discounts to ticket buyers all along, and instead, has raised its booking fee significantly in 2008 and increased profits significantly thereafter.

10.3.17 Considering the above, CCS determines that the base amount of penalty be [...] % of Relevant Turnover, or \$[...].

⁵⁷³ As opposed to, say, refusal to supply where there is no offsetting gain to the economy.

⁵⁷⁴ Although the two major venue operators – TECL and the SIS – possess significant bargaining power against SISTIC, they have weak incentives in exercising their power because it is the event promoters who bear the consequence of SISTIC's exercise of market power, not the venue operators.

Duration of infringement

- 10.3.18 The amount of financial penalty to be imposed will also depend on the duration of the infringement. CCS notes that many of the Exclusive Agreements have been in place since 01 January 2006 when the Act came into effect and none of them has been terminated since. In particular, the ASTA between SISTIC and TECL was entered into in October 2002 and renewed after it expired on 31 December 2006, with the new expiry date for agreement being [...]. Also, the ATS between SISTIC and the SIS has been automatically renewed for another [...] since its expiry on [...].
- 10.3.19 CCS notes that SISTIC's conduct was already in existence before the Act came into force on 01 January 2006 and continued since then. However, in view of the statutory maximum penalty of 10% of the turnover of the infringing undertaking over a period of 3 years pursuant to section 69(2)(d) of the Act, CCS determines that the infringement period should be the statutory maximum of 3 years.
- 10.3.20 Applying this multiple of 3 years to the base amount, the amount of penalty becomes \$[...].

Aggravating factors

- 10.3.21 At the next stage, CCS considers the presence of aggravating or mitigating factors and makes necessary adjustments to the starting point⁵⁷⁵ which has the effect of increasing the penalty amount where there are aggravating factors and reducing the penalty amount where there are mitigating factors.
- 10.3.22 The aggravating factors stated in the *CCS Guidelines on the Appropriate Amount of Penalty* include:
- role of the undertaking as a leader in, or an instigator of, the infringement;
 - involvement of directors or senior management;
 - retaliatory or other coercive measures taken against other undertakings aimed at ensuring the continuation of the infringement;
 - repeated infringements by the same undertaking or other undertakings in the same group;
 - infringements which are committed intentionally rather than negligently; and

⁵⁷⁵ See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.10.

- retaliatory measures taken or commercial reprisal sought by the undertaking against a leniency applicant.

10.3.23 In the present case, CCS considers the involvement of directors or senior management as an aggravating factor⁵⁷⁶. Also, CCS is satisfied the infringement was committed intentionally, not just negligently. Subsequent to the Act coming into force, SISTIC had continued the infringing conduct, most noticeably by the renewal of the ASTA and the ATS. Although SISTIC's senior management (including the Board of Directors) could not have been unaware that SISTIC's conduct is likely to be restrictive of competition, they had made no attempt to terminate the conduct upon the Act coming into effect and after the commencement of investigation by CCS.

10.3.24 Considering the aggravating factors above, CCS increases the amount of penalty by [...]%, or \$[...].

Mitigating factors

10.3.25 Mitigating factors stated in the CCS' Guidelines on the Appropriate Amount of Penalty include:

- role of the undertaking, for example, that the undertaking was acting under severe duress or pressure;
- genuine uncertainty on the part of the undertaking as to whether the conduct constituted an infringement;
- adequate steps taken with a view to ensuring compliance with the section 47 prohibition, for example, existence of compliance programme;
- termination of the infringement as soon as the CCS intervenes; and
- co-operation which enables the enforcement process to be concluded more effectively and/or speedily.

10.3.26 CCS notes that this is the first infringement of section 47 of the Act in Singapore. Also, SISTIC's has sought legal advice from its legal counsels as to whether exclusive agreements with Esplanade and SIS would infringe section 47 of the Act. SISTIC had also expressed its intention to seek guidance from CCS as to whether its conduct has infringed (or likely to infringe) the Competition Act. The foregoing indicates some genuine uncertainty on the part of SISTIC as to whether its conduct constitutes an infringement. However, CCS notes that SISTIC ultimately did not

⁵⁷⁶ Ibid, paragraph 2.11.

approach CCS for guidance or decision in relation to its conduct. Lastly, SISTIC gave CCS the legally required level of cooperation that resulted in the enforcement process being concluded no more or less effectively and/or speedily than expected.

- 10.3.27 Considering the mitigating factors above, CCS decreases the amount of penalty by [...]%, or \$[...].

Amount of financial penalty

- 10.3.28 Based on the method of determining the amount of financial penalty for SISTIC, CCS imposes a penalty amount of S\$989,000⁵⁷⁷ on SISTIC for infringing the section 47 prohibition of the Act.

Conclusion on the Directions on the Exclusive Agreements

- 10.3.29 In relation to the directions on the exclusive agreements set out at paragraphs 10.2.2 and 10.2.3 above, SISTIC is required to implement the said directions no later than 4 August 2010. In this respect, SISTIC is required to provide CCS by that date, evidence that the directions as stated at paragraphs 10.2.2 and 10.2.3 have been complied with. Should SISTIC fail to comply with the directions on the exclusive agreements, CCS may apply to register the direction in a District Court, upon which, the direction shall have the same force and effect as an order originally obtained in a District Court to be executed and enforced accordingly.

Conclusion on the financial penalty

- 10.3.30 SISTIC is directed to pay the financial penalty of S\$989,000 to CCS no later than 4 August 2010. If SISTIC fails to pay the penalty within the deadline specified above, and no appeal against the imposition of a financial penalty or the amount of a financial penalty has been brought or such appeal has been unsuccessful, CCS may apply to register the direction to pay the penalty in a District Court. Upon registration, the direction shall have the same force and effect as an order originally obtained in a District Court and can be executed and enforced accordingly.

⁵⁷⁷ [...].

A handwritten signature in black ink, consisting of a stylized 'E' followed by 'g' and 'h', with a long horizontal line extending to the right.

Teo Eng Cheong
Chief Executive
Competition Commission of Singapore