

Antitrust & Competition: What Lies Ahead in 2023

2022 remained a busy year for the Competition and Consumer Commission of Singapore (CCCS) on the merger control front despite the slight dip in M&A activity. The CCCS issued its first cartel infringement decision in a couple of years – meting out fines to four warehouse operators for coordinating the imposition of certain surcharges on their customers. The two hot topics of the day, “digital markets” and “sustainability” remained at the forefront, and the CCCS made various public statements highlighting its commitment to develop competition policy in those areas.

With these trends and developments in 2022, what should businesses expect going into 2023? This update briefly surveys the key developments of 2022 and provides our take on how they may shape the competition law landscape in Singapore in 2023.

Merger control: Expect longer review periods, scrutiny of vertical / conglomerate effects and third party feedback

While M&A activity may have fallen slightly compared with the record highs of 2021, the CCCS still received eight merger notifications in 2022 (just two fewer than in 2021). It cleared a total of seven mergers unconditionally, covering a broad range of industries, including self-storage, energy, offshore marine, printing, semi-conductors, aerospace manufacturing, and air transport services.

While these merger notifications were all cleared following a phase 1 review, the total time taken for clearance to be obtained, based on the date of notification to the clearance date, increased from an average of approximately 70 working days (in 2021) to 92 working days (in 2022). This is likely due to the relatively high caseload and also the increased complexity of the relevant markets involved. As the CCCS’ Chief Executive (Ms Sia Aik Kor) noted in her keynote speech during the Antitrust in Asia 2022 conference, the CCCS has “observed an increase in merger filings involving multiple product offerings, requiring deeper dives into issues concerning vertical effects”.

The CCCS’ merger decisions also continue to show that it does proactively reach out to other relevant stakeholders for feedback and will examine and address concerns that may be raised. For example, the *Sembcorp Marine Limited / Keppel Offshore & Marine Limited* decision¹ noted that the CCCS “contacted more than 90 stakeholders, including competitors and customers” and “received feedback from more than 20 stakeholders”. The CCCS also engaged with relevant government agencies to gather feedback on the industry. Importantly, the CCCS indicated that certain competitors and customers had raised concerns about the transaction leading to price increases and a reduction in alternative suppliers – and proceeded to analyse those concerns, before concluding that there was insufficient evidence to reach such conclusions.

¹ “Proposed Combination of Sembcorp Marine Limited and Keppel Offshore & Marine Limited”, CCCS decision dated 2 November 2022.

These trends are likely to continue going into 2023. Parties who intend to notify transactions to the CCCS should be mindful of the following:

- (a) Commencing the merger control assessment process, and preparing the filing, as early as possible – particularly where the relevant markets involve a large number of, and/or complex, products and services;
- (b) Factoring the CCCS' review period into the transaction timeline. Do keep in mind that while the indicative period for a phase 1 review is 30 working days, the review clock may be stopped for a multitude of reasons, e.g., if there are a substantial number of follow-up information requests raised and more time is needed to prepare a detailed response; and
- (c) Considering whether third parties are likely to provide adverse feedback to the CCCS, and if so, considering how to counter/address such points in advance.

Investigations: Expect more enforcement activity

In 2022, the CCCS issued one infringement decision (the first since the end of 2020), where it meted out fines totalling S\$2.8 million to four warehouse operators for coordinating the imposition of a “FTZ surcharge” on their customers. It is noteworthy that:

- (a) The investigation was initiated following a complaint from “a member of the public”. Businesses should take note that the CCCS has a reward scheme under which informants who provide information leading to infringement decisions against cartel members may receive a monetary reward (although there are no details on whether a reward was paid in this case).
- (b) One of the warehouse operators applied for leniency during the CCCS' unannounced inspections and received a reduction in the financial penalty imposed. Businesses should note that they may still benefit from such reductions even if leniency is sought after the CCCS' investigations have commenced and should seek legal advice at the earliest possible stage.

The number of infringement decisions issued have remained low during the COVID-19 pandemic – a total of three decisions since 2020. However, this is unlikely to be a trend going forward and we envisage an uptick in such infringement decisions with the progressive easing of COVID-19 related measures since the second half of 2022.

Digital platforms: More scrutiny going forward

Consistent with global trends in antitrust enforcement, the CCCS is also likely to enhance focus on anti-competitive practices in the digital markets. As the CCCS' Chief Executive has said in recent public remarks, digital markets have been their primary area of focus in recent years, and the CCCS will “continue to monitor developments and bolster enforcement efforts against anti-competitive conduct as digital platforms gain traction globally”.

In the same vein, the CCCS issued its updated Competition Act guidelines earlier in 2022, in part to implement the findings and recommendations from its E-commerce Platforms Market Study published in September 2020 (for example, to provide clarity on market definitions and assessment of potentially abusive conduct in the context of digital platforms).

While there has to date not been an infringement decision involving anti-competitive or abusive conduct in digital markets, the CCCS is no stranger to tackling issues unique to such markets and is unlikely to shy away from taking enforcement action even where global players are involved. For example, it had in 2018 issued an infringement decision against Grab and Uber in relation to the sale of Uber's Southeast Asian business to Grab,² which was subsequently appealed to the Competition Appeal Board.³ Businesses which are active in digital markets should “keep their house in order” and seek advice if they have concerns over existing practices.

Sustainability: More certainty on collaborations to come

Regulators across the globe have taken varying approaches to assessing sustainability-related initiatives from an antitrust/competition perspective. For example:

- (a) The European Commission has proposed to amend its guidelines on horizontal cooperation agreements to provide a framework for assessing sustainability agreements (i.e., agreements that pursue sustainability objectives),⁴ and also put forward a draft proposal for a block exemption for sustainability agreements in the agriculture sector.⁵
- (b) The UK Competition and Markets Authority (**UK CMA**) has indicated that it is unlikely to introduce block exemptions at this stage but that it will undertake a balancing approach to consider whether the “fair share” of benefits to consumers of sustainability agreements outweighs any adverse impact on competition.⁶ In this regard, the UK CMA has also recently issued draft guidance on how competition law may apply to environmental sustainability agreements between firms operating at the same level of the supply chain.⁷
- (c) On the other hand, some authorities have taken the view that it is not for competition law to promote sustainability goals, and as such have ruled out incorporating sustainability considerations into their competition assessment.⁸

² “Acquisition of Uber’s Southeast Asian business by Grab and Uber’s acquisition of a 27.5 per cent stake in Grab”, CCCS Infringement Decision dated 24 September 2018.

³ *Uber Singapore Pte Ltd and others vs Competition and Consumer Commission of Singapore* [2020] SGCAB 2 (Competition Appeal Board decision of 29 December 2020). Our Antitrust & Competition practice acted for Uber in this matter as well as the appeal before the Competition Appeal Board.

⁴ The guidelines are available [here](#).

⁵ More details are available [here](#).

⁶ More details are available [here](#).

⁷ More details are available [here](#).

⁸ For example, it was reported by the Global Competition Review that the president of Brazil’s competition authority has said his agency will not expand the objectives of the consumer welfare standard to include societal issues such as inequality or sustainability.

In Singapore, the CCCS' Chief Executive has acknowledged that sustainability is an increasingly critical issue which now has recurring importance and relevance to the CCCS' work, given the nexus between competition and consumer protection and sustainability. At the same time, she cautioned against sustainability goals being used as an excuse or cover for businesses to engage in cartel or other anti-competitive activity. Notably, she indicated that the CCCS is considering issuing further guidance to businesses as they collaborate on the shift toward supporting sustainability – particularly as the CCCS guidelines do not currently reference any sustainable benefits and objectives.

With sustainability-related goals likely to stay in the spotlight in 2023, businesses should remain mindful of the competition-related concerns that may arise when collaborating with other parties to achieve or advance such goals. More guidance may be forthcoming from the CCCS in this area but businesses should always seek advice before entering into discussions on such collaborations, particularly when dealing with their competitors.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



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