

## Singapore Commission Proposes Amendments to Competition Act

### IN SHORT

**The Bill:** The Singapore Parliament passed a bill giving the Competition Commission of Singapore (or CCS) regulatory powers over consumer protection. The expanded body is now (effective 1 April 2018) called the Competition and Consumer Commission of Singapore (or CCCS), and it will adopt its consumer protection functions in the second half of 2018.

**The Proposed Amendments:** The CCCS proposes amending the Competition Act to empower the CCCS to conduct general interviews during inspections; accept binding and enforceable commitments for cases involving anticompetitive agreements and abuse of dominance; and codify the process for approaching the CCCS for confidential advice in relation to a potentially anticompetitive merger.

**The Total Effect:** The CCCS consolidation and proposed amendments will be beneficial for Singapore's regulatory environment. However, the legal consequences are significant and parties that believe they may be affected by the amendments should seek legal advice.

In December 2017, the Competition Commission of Singapore ("CCS"), now the Competition and Consumer Commission ("CCCS") released a consultation paper proposing three primary changes to the Competition Act (Cap. 50B) ("Act").

In addition, in February 2018, the Singapore Parliament passed the Enterprise Singapore Board Bill ("Bill"), which will restructure the CCS to enforce consumer protection rules, in addition to its historic function to enforce competition rules under the Act.

The expansion of the CCS, and the proposed changes to the Act, indicate the CCCS's intent to establish a more certain and efficient enforcement framework, while expanding its own investigative and enforcement powers.

The CCCS's expansion and proposed amendments will on the whole improve competition regulation in Singapore, but the legal implications of the proposed amendments are significant and should be understood by businesses operating in Singapore.



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### The Proposed Amendments

#### Amendment 1: Codify the Process for Approaching the CCCS for Confidential Advice on Possible Mergers

The CCCS proposes to include a provision in the Act that outlines the process for parties seeking confidential advice on potentially anticompetitive mergers.

Currently, the process is contained in the CCCS *Guidelines on Mergers Procedures 2012* ("Guidelines"). Making this a formal statutory process should give businesses greater confidence in consulting with the CCCS.

In February 2018, the CCCS released a "Response to Public Consultation" paper, which assured concerned parties that the wording of the provision would ensure the consultation process remains confidential, consistent with the current Guidelines.

We welcome the inclusion of this legislation in its current form, as it will give businesses further confidence to consult with the CCCS. Similar voluntary notification procedures are in place in Australia and the United Kingdom.

#### Amendment 2: Empower the CCCS to Conduct General Interviews During Inspections and Searches Under the Act

The proposed amendment would allow the CCCS to ask general questions to the occupants of premises being searched under sections 64 and 65 of the Act.

This is an expansion of the CCCS's current questioning powers during inspections; currently occupants can only be questioned about documents seized during the course of a CCCS investigation, and the CCCS cannot ask general questions to occupants without first serving written notice to each individual to

be interviewed.

The proposed amendments raised two concerns:

1. The language is broad enough to allow CCCS to interview persons or material outside the scope of the investigation (perhaps unintentionally).
2. The occupants would not be sufficiently informed and equipped to answer the general interview questions.

The CCCS attempted to allay these concerns by explaining:

1. The subject matter and purpose of each investigation will continue to be set out in the section 64 notice and a warrant will issued by the court.
2. There is no substantive change to the process, as typically investigators will serve notice on the occupier of the premises, who would then assist in identifying relevant persons who may be able to assist. Persons unable to provide information will be able to rely on the statutory defences under sections 75(2) and 75(3) of the Act.

The CCCS has stated that these amendments are intended to streamline the investigation process and minimise disruptions to business. In our opinion, this proposal would be a significant procedural change, and companies need to be aware that employees may need to be prepared for "on the spot" general questioning.

### **Amendment 3: Empower the CCCS to Accept Binding and Enforceable Commitments for Certain Competition Cases**

Currently under sections 34 and 47 of the Act (the prohibitions against anticompetitive agreements and abuse of dominance, respectively), parties can provide voluntary undertakings to the CCCS that they will take a certain course of remedial action. These undertakings are binding; however, if parties breach an undertaking under the current process, the CCCS's only immediate recourse is to re-open an investigation.

The CCCS proposes to make voluntary undertakings under sections 34 and 37 binding commitments, similar to the way merger commitments are binding and enforceable by the courts.

The CCCS argues that this process allows it to remedy the market harm in a more timely manner, as well as save resources. It states that the process will be modelled on *CCS Guidelines on the Substantive Assessment of Mergers 2016* and *CCS Guidelines on the Merger Procedures 2012*.

If these amendments become law, parties will have to give further legal consideration to the scope, terms, and consequences of engaging in undertakings with the CCCS.

### **The CCCS's Administration of the Consumer Protection (Fair Trading) Act**

In February 2018, the Singapore Parliament passed the Enterprise Singapore Board Bill ("Bill"), which will restructure the CCCS to regulate and enforce the consumer protection function, in addition to performing its regulatory function as the competition regulator under the Competition Act (Cap. 50B).

The consumer protection function, in accordance with the Consumer Protection ("Fair Trading") Act will be transferred from the Standards, Productivity and Innovation Board ("SPRING") in the second quarter of 2018. The Bill will also establish the Enterprise Singapore Board, to carry out the remaining functions of SPRING and the International Enterprise Singapore Board. The final entity will be named the Competition and Consumer Commission of Singapore.

This consolidation will bring the functions of the CCCS in line with other jurisdictions such as Australia, the United Kingdom, and Japan. As in other jurisdictions, consolidating the functions will allow the CCCS to streamline separate investigations and share information, thereby developing more robust consumer protections. As we have seen in Australia (although Australia has combined legislation), issues attracting the attention of the Australian Competition and Consumer Commission or ACCC often involve anticompetitive and consumer protection issues.

We believe this amendment is a step forward for competition and consumer regulation in the region.

## **TWO KEY TAKEAWAYS**

1. These proposed changes signal that the CCCS intends to establish itself more authoritatively as the competition and consumer protection watchdog in the jurisdiction.
2. If the proposed amendments to the Competition Act become law, entities operating in Singapore should ensure they understand the legal consequences, and seek counsel where they require clarification.

## **CONTACTS**



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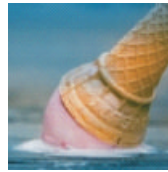
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