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WHITE PAPER

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Singapore's Competition Enforcement Grew in 2019

As regulators across the Asia-Pacific region work to enhance competition laws and procedures, the Competition and Consumer Commission Singapore (“CCCS”) stepped up its enforcement activity in 2019. During the year, the competition authority focused on anticompetitive practices, the hospitality industry, and marketplace disrupters. The CCCS issued financial penalties against hotel operators, released price transparency guidelines following its study of the domestic online travel industry, and joined the International Competition Network’s Framework on Competition Agency Procedures to advance procedural fairness. In this *White Paper*, we review the key developments in Singapore’s competition enforcement during the last year and describe what companies with operations in Singapore can expect in the coming years.

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CCCS ISSUES INFRINGEMENT DECISION AGAINST HOTEL OPERATORS FOR INFORMATION SHARING

In January 2019, the CCCS issued an Infringement Decision and financial penalties in excess of S\$1.5 million against the owners and operators of four hotels—Capri by Fraser Changi City, Village Hotel Changi, Village Hotel Katong, and Crowne Plaza Changi Airport—for exchanging commercially sensitive information relating to their corporate clients. Following an investigation, the CCCS found that the sales representatives had disclosed:

- Corporate room rates that each hotel separately negotiated on a confidential basis;
- Future price-related strategies each hotel intended to use with corporate customers;
- Proposed bid prices in response to customer requests; and
- Whether or not each hotel intended to agree to a particular customer’s requested price reduction.

The investigation revealed that sales representatives from Capri and Village Hotels exchanged this information from at least July 2014 through June 2015, while representatives from Capri and Crowne Plaza exchanged information from January 2014 through June 2015. The parties exchanged information in telephone conversations, face-to-face meetings, and in conversations on

WhatsApp, an encrypted messaging application that facilitates communications over various smartphone operating systems.

CCCS found that this conduct was anticompetitive and in breach of section 34 of the Competition Act (Chapter 50B) (“Competition Act”). The CCCS said that the exchange of confidential information placed the hotels in a position of advantage over their corporate customers during contract negotiations and reduced competitive pressure on rates and terms offered to clients.

This decision is the CCCS’ second enforcement action against companies that shared competitively sensitive information. This decision also highlights the CCCS’ willingness to levy fines to punish alleged anticompetitive conduct and signals more active enforcement in the coming years. Companies that do business in Singapore should ensure that their antitrust compliance manuals are up-to-date and that employees receive proper training about antitrust rules in Singapore.

COURT ORDERS E-COMMERCE RETAILER TO STOP “SUBSCRIPTION TRAPS”

The CCCS sought an injunction in the State Courts of Singapore against e-commerce retailer Fashion Interactive and its owner, Magaud Olivier Georges Albert, for engaging in a “subscription trap” on its footwear e-commerce website, myglamorous.sg. A “subscription trap” involves misleading consumers into purchasing a subscription service without notice of the subscription and associated fees, in connection with a one-off online purchase. If consumers do not cancel the subscription, they become liable to recurring payments. Customers complained to the Consumers Association of Singapore that Fashion Interactive charged a recurring monthly “VIP Club” membership fee without their knowledge or consent following a purchase on the site.

In January 2020, the State Courts of Singapore declared that Fashion Interactive and Magaud Olivier Georges Albert had engaged in unfair trade practices in contravention of Chapter 52A of the Consumer Protection (Fair Trading) Act (“CPFTA”) and ordered them to cease the conduct.

COURT ORDERS VEHICLE IMPORTER TO CEASE UNFAIR TRADE PRACTICES

In April 2019, the State Courts of Singapore issued an injunction that requires vehicle importer SG Vehicles and its director to halt alleged unfair trade practices. According to the CCCS, consumers claimed that SG Vehicles misrepresented delivery dates for motor vehicles and bidding for Certificates of Entitlement, which grant the legal right to register, own, and use a vehicle in Singapore for a period of 10 years. As a result, some consumers had to make additional payments due to changes in circumstances that were beyond their control.

SG Vehicles did not dispute the findings and consented to the court's order. The order prohibits SG Vehicles, its directors, and its agents from:

- Engaging in unfair practices;
- Doing or saying anything or omitting information in ways that may deceive or mislead consumers into believing that the purchase price and the Certificate of Entitlement are fixed or guaranteed;
- Making any false claim to a consumer about a motor vehicle's guaranteed delivery date; and
- Taking advantage of a consumer if the supplier knows or ought reasonably to know that the consumer is not reasonably able to understand the character, nature, language, or effect of the transaction or any matter related to the transaction.

The court order also requires SG Vehicles to publish the full text of the order via a prominent sign outside their shopfronts for a period of six months and to notify CCCS of any changes to its business.

SINGAPORE JOINS INTERNATIONAL COMPETITION NETWORK PROCEDURAL FAIRNESS GROUP

In May 2019, CCCS became a founding member of the Framework on Competition Agency Procedures ("CAP") of the International Competition Network ("ICN"). The ICN is an informal network of competition agencies from around the world that promote procedural and substantive benchmarks in

antitrust law. Jones Day lawyers [Laurent De Muyter](#), [Hiromitsu Miyakawa](#), [Raimundo Ortega](#), and [Peggy Ward](#) serve as non-governmental advisors to the ICN.

CAP is voluntary and open to all national and multinational competition agencies; however, members must agree to uphold the fundamental principles of fair and effective procedures in competition law investigation and enforcement. These principles include nondiscrimination, transparency and predictability, timeliness, confidentiality, avoidance of conflicts of interest, and adequate legal representation.

CCCS ISSUES DRAFT GUIDELINES ON PRICE TRANSPARENCY

Following a September 2019 study of the domestic online travel booking industry that raised concerns about misleading consumer practices in the industry, the CCCS issued draft guidelines related to price transparency. The proposed guidelines set forth recommendations to "encourage online travel booking providers to adopt transparent pricing practices" that avoid "misleading consumers."

CCCS' guidelines identified four "common practices" of online travel booking providers that allegedly raise competition and consumer protection issues:

- **Drip pricing:** Drip pricing is the practice of adding mandatory and optional fees during a transaction or payment process, resulting in a final price that is higher than originally advertised. According to the CCCS, drip pricing can lure consumers into making purchases made based on incomplete price information. It can also make it difficult for consumers to compare products across suppliers.
- **Pre-ticked boxes:** Pre-ticked boxes are used with optional add-on products or services that are pre-checked by default. Customers must opt out if the consumer does not want to purchase the product. According to the CCCS, the practice can lead to unwanted purchases of add-on products as a result of a failure to opt out.
- **Strikethrough pricing:** Strikethrough pricing involves the display of a discount price adjacent to a purported "original" price that has been crossed out. According to the

CCCS, this practice misleads consumers into making a purchase or paying a higher price if the comparison price is false or misleading.

- **Pressure selling:** Pressure selling involves false or misleading claims to create a false sense of urgency which, in turn, causes consumers to make a purchase based on inaccurate information. This includes promoting a temporary sale or special price for a limited period when the price will be available beyond the limited period.

Although the study focused on the online travel booking industry, the CCCS plans to apply the draft guidelines to all consumer-facing industries. The draft guidelines also set forth recommendations that help companies avoid missteps in price advertising that, in the view of the CCCS, mislead consumers and violate the CPFTA. The guidelines are not intended to substitute for the CPFTA and its regulations, nor are they intended to set a limit on the investigation and enforcement actions of CCCS.

- **Drip pricing and pre-ticked boxes:** Suppliers should ensure that mandatory fees are included in the total price and should avoid using pre-ticked boxes. If pre-ticked boxes are used, suppliers must disclose the goods or services offered in a clear and prominent manner.
- **Price comparisons:** Suppliers should ensure that any comparisons with other suppliers' prices are not false or misleading. Suppliers should also ensure that use of terms such as "cost price" is not false or misleading.
- **Discounts:** When displaying discounted prices, suppliers should use the actual, bona fide previous price of the product or service so that consumers are not misled about the savings from purchasing a discounted product.
- **Use of the term "free":** Suppliers should ensure that any representation that the price is \$0 or "free" is not false or misleading. Any qualifiers, terms, or conditions, such as subsequent charges, should be stated upfront clearly and prominently.

CCCS SETTLES REFUSAL TO DEAL CASE

The CCCS closed an investigation into allegations that Chevalier Singapore Holdings and Fujitec Singapore Corporation refused to supply third-party maintenance contractors with spare parts for elevator repairs. The CCCS closed

the investigation subject to voluntary commitments from the parties. According to CCCS, third-party contractors could not compete for service contracts without access to spare parts.

The CCCS previously accepted similar voluntary commitments from three other companies, including an agreement that the companies will sell spare parts to purchasers on a fair, reasonable, and nondiscriminatory basis.

MERGER REVIEW CLEARANCE

In 2019, the CCCS reviewed four merger notifications—three of which were cleared and one of which it conditionally approved after accepting four voluntary commitments from the notifying party to address competition concerns arising from the merger. The three cleared transactions were (i) Bread Talk Group Limited's acquisition of Food Junction Management Pte Ltd; (ii) Gebr. Knauf KG's acquisition of USG Corporation; and (iii) the joint venture involving hearing aid suppliers, Sivantos Pte Ltd and Widex A/S and their subsidiaries.

The CCCS cleared the acquisition of Innovative Diagnostic Private Limited and Quest Laboratories Pte Ltd by Pathology Asia Holdings Pte Ltd subject to conditions. Innovative and Quest provided in-vitro diagnostic ("IVD") tests. The CCCS claimed that the merger parties were each other's closest competitors were the top two suppliers of IVD tests among private clinical labs in Singapore. The CCCS expressed concerns about whether alternative providers (e.g., private clinical laboratories) could constrain the pricing of the merged company to customers (e.g., private hospitals with no in-house laboratories).

The parties agreed to commitments that include: (i) supplying IVD testing to competing laboratories so they can compete for customers; (ii) not locking in customers on an exclusive basis; and (iii) maintaining the prices to private hospitals with no in-house laboratories.

CONCLUSION

Finalizing and then enforcing the guidelines on price transparency is likely to be a key focus for the CCCS in 2020. Companies that operate a consumer-facing business in Singapore should consider whether the draft guidelines apply

to their business and prepare to train their employees on the new rules. The CCCS further noted that it is “closely monitoring other businesses that engage in similar unfair practices where consumers are made to believe that there is scarcity in the availability of goods or services through misrepresentation of discount or promotion periods.”

That the CCCS settled allegations of anticompetitive conduct in the elevator spare parts industry through voluntary commitments demonstrates that Singapore remains a business-friendly environment. Although the CCCS does not yet have the same level of enforcement activity (or staffing) as other antitrust enforcers in the region, its participation in the ICN’s procedural initiatives and recent focus on anticompetitive conduct and misleading consumer practices suggest that it will be a more active enforcer in the coming years. Companies operating in Singapore should ensure that their employees are trained to comply with Singapore’s competition rules, especially rules related to the exchange of competitively sensitive information for which the CCCS has issued substantial fines.

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