

## COMPETITION LAW UPDATE

### CCS COMPLETES ITS MARKET STUDY ON RETAIL MALL RENTAL SPACE IN SINGAPORE

The Competition Commission of Singapore (the “CCS”) announced on 31 October 2008 that “*there are unlikely to be competition concerns in the retail mall rental market at this juncture*” based on the results of a retail space market study it had commissioned. The study, undertaken by DTZ Debenham Tie Leung (SEA) Pte Ltd, was completed in the third quarter of 2008.

Click [here](#) to access the CCS’ summary of the study and its views.

#### What is a Market Study?

The Competition Act (the “Act”) was amended in 2007 to empower the CCS to require production of documents or information which is not in the public domain for market studies or inquiries. The CCS may invoke this power when it has reasonable grounds to suspect that the Act has been infringed or that competition in a particular market is restricted. During the Second Reading of the Amendment Bill to the Act, the then Minister of State for Trade and Industry, Mr Lee Yi Shyan, expressed that “*[t]his information can play a critical role in helping the Commission to understand the intricacies of market practices and their competitive impact, thereby leading to sounder and more robust decisions*”. Market studies may be used by the CCS to obtain a better understanding of market conditions in areas of potential competition concern.

#### Results of Market Study on Retail Mall Rental Space in Singapore

This is the first time, since the CCS’ inception in 2004, that it has made public the details of its market study into any particular area of business. (The CCS had, in 2006, commissioned a study into the practice of Price Recommendations by Trade and Professional Associations in Singapore, but the results of that study were not released.) This study focused on the rental of private non-strata retail space (ie. malls that are primarily under a single ownership and management). It did not examine the rental of strata-titled retail space, shophouses or retail space owned by public agencies as such retail spaces were not considered to be part of the same market.

The study considered the key players in the retail mall industry, business practices and the impact of REITS and property funds on retail mall rental. It also assessed the competition within each of the following market segments: Regional Malls, City Malls, Suburban Malls, Neighbourhood, Specialty Malls, Entertainment, Warehouse Retail Scheme/Standalone and Others.

The study found that no single entity held more than 25% of each market segment. It also found that while, currently, most tenants do not wield much bargaining power in relation to leasing terms and conditions, the market was undergoing rapid evolution and market conditions could change in the near future. It was further observed that the emergence of REITs and property funds since 2002 generally raised the level of professionalism in the industry.

In light of the study results, the CCS is of the view that there are unlikely to be competition concerns in the retail mall market at the present time, for the following reasons:

- (a) no landlord is likely to hold a dominant position in retail malls;
- (b) bargaining positions are a function of demand and supply for retail mall rental space, and the uncertain economic outlook may ease increasing rentals;
- (c) there is expected to be an increase in supply of net lettable area by about 19% in the next few years; and
- (d) the entry of REITs and property funds has led to an overall improvement in retail mall management.

The CCS however cautioned that the views expressed in the study do not in any way restrict or confine the CCS' ability to deviate from them when carrying out its duties and functions under the Act.

Interested parties should bear in mind that the CCS has merely concluded that it is presently not required to intervene at an industry level. However, any complaint in respect of a specific business practice will have to be assessed by the CCS on its own facts.

Should you wish to discuss how this update may potentially affect you or your business, please feel free to contact our Competition Law Business Group:

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Cavinder handles complex litigation spanning a wide area of corporate and commercial matters. One of his areas of expertise is competition law where he has represented various clients in investigations by competition law regulators both in Singapore and overseas. Cavinder previously practised anti-trust law in New York, working on cases like the Microsoft anti-trust litigation, and obtaining US Department of Justice approval for the merger between Grand Metropolitan and Guinness in one of the, then, world's largest mergers. Cavinder graduated from Oxford University with First Class Honours in Law. He worked for the Chief Justice of Singapore as a Justices' Law Clerk. Cavinder also has a Masters in Law from Harvard Law School which he attended on a Lee Kuan Yew Scholarship.

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Chong Kin practises corporate law with strong emphasis in the specialist area of competition law. Chong Kin played a key role in the development of sectoral competition regulation in the telecommunications, media and print industries in Singapore. Chong Kin regularly advises a number of large international clients on competition law, and was involved in the first merger notification filing to the Competition Commission of Singapore in 2007. He was cited in *Who's Who Legal – Singapore 2008* as a leading competition and regulatory communications lawyer.

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