PANORAMIC

MERGER CONTROL

Singapore

LEXOLOGY

Merger Control

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Generated on: September 19, 2024

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Merger Control

UPDATE AND TRENDS

Key developments of the past year

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QUICK REFERENCE TABLE

The table below is for quick reference only.

Voluntary or mandatory system?	Voluntary.
Notification trigger/filing deadline	No deadline as notification is voluntary.
Clearance deadlines (Phase I/Phase II)	The indicative timelines for Phases I and II are 30 and 120 working days respectively.
Substantive test for clearance	The test is whether or not the merger has resulted in, or may be expected to result in, a substantial lessening of competition within any market in Singapore for goods or services.
Penalties	If the Competition and Consumer Commission of Singapore (the Commission) finds that the infringement of the section 54 prohibition was committed intentionally or negligently, a financial penalty may be imposed on any of the merger parties, which may not exceed 10 per cent of each party's business turnover in Singapore for each year of infringement, up to a maximum of three years.
Remarks	Not applicable.

Law stated - 5 April 2024

LEGISLATION AND JURISDICTION

Relevant legislation and regulators

What is the relevant legislation and who enforces it?

The relevant piece of legislation is the Competition Act 2004, which was passed in October 2004. The Competition Act is administered and enforced by the Competition and Consumer Commission of Singapore (the Commission). The Competition Act, with some exclusions (set out in its Third and Fourth Schedules), applies generally to prohibit:

- anticompetitive agreements (section 34 prohibition);
- the abuse of a dominant position (section 47 prohibition); and
- mergers and acquisitions that have resulted, or may be expected to result in, a substantial lessening of competition within any market in Singapore (section 54 prohibition).

Laws against anticompetitive behaviour in respect of particular industry sectors, such as telecommunications, media, post, gas and electricity, can be found in other statutes and

are enforced by industry-specific regulators. These industry sectors are carved out from the Competition Act.

On cross-sectoral competition matters, the Commission will work with the relevant sectoral regulator to determine which entity is best placed to handle the case in accordance with the legal powers given to each. The Commission and the sector-specific regulator will cooperate and coordinate closely to prevent double jeopardy and to minimise the regulatory burden in dealing with the case. The lead will be taken by the agency best placed in terms of its ability to investigate the alleged anticompetitive conduct and impose any necessary remedies.

Law stated - 5 April 2024

Scope of legislation

What kinds of mergers are caught?

Subject to certain exclusions and exemptions, mergers and anticipated mergers that result, or may be expected to result, in a substantial lessening of competition within any market in Singapore will be caught.

Under section 54(2) of the Competition Act, a merger occurs if:

- two or more undertakings, previously independent of one another, merge;
- one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or
- the result of an acquisition by one undertaking (the first undertaking) of the assets (including goodwill), or a substantial part of the assets, of another undertaking (the second undertaking) is to place the first undertaking in a position to replace or substantially replace the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition.

Section 54(7) of the Competition Act provides that a merger shall not be deemed to occur if:

- the person acquiring control is a receiver or liquidator acting as such or is an underwriter acting as such;
- all the undertakings involved in the merger are, directly or indirectly, under the control of the same undertaking;
- control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy; or
- control is acquired by an undertaking, the normal activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others under the circumstances set out in section 54(9) of the Competition Act.

As set out in the Fourth Schedule to the Competition Act, the section 54 prohibition does not apply to any merger:

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if the economic efficiencies arising or that may arise from the merger outweigh the adverse effects owing to the substantial lessening of competition in the relevant market in Singapore;

- that has been approved by any minister or regulatory authority (other than the Commission), pursuant to any requirement for such approval imposed by or under any written law;
- under the jurisdiction of any regulatory authority (other than the Commission) under any written law relating to competition or a code of practice relating to competition issued under any written law (eg, in the energy, telecommunications and media industries); or
- relating to certain specified activities under the Third Schedule, such as the supply of licensed and regulated ordinary letter and postcard services, potable piped water, wastewater management services, licensed bus services, licensed and regulated rail services, or licensed and regulated cargo terminal operations.

Where the Commission proposes to make an unfavourable decision, the merging parties may apply to the Minister for Trade and Industry to exempt the merger on public interest considerations.

Law stated - 5 April 2024

Scope of legislation

What types of joint ventures are caught?

A joint venture is subject to the section 54 prohibition if it is considered a merger under the Competition Act. A joint venture constitutes a merger when:

- it is subject to joint control;
- it operates in a market and performs all the functions of an autonomous economic entity operating in that market; and
- it is intended to operate on a lasting basis.

Joint control over an undertaking exists where two or more parties have the possibility of exercising decisive influence over the undertaking, including the power to block actions that determine the strategic commercial behaviour of the undertaking. Joint control is characterised by the possibility of a deadlock resulting from the power of two or more parent companies to reject proposed strategic decisions, and a requirement that these shareholders must reach a consensus in determining the commercial activities of the joint venture.

A joint venture is subject to the section 54 prohibition only if it operates in a market and performs the functions normally carried out by undertakings operating in that market. Joint ventures that take over one specific function within the parent companies' business activities – for example, research and development or production – without access to the market will generally not be caught. However, a joint venture that uses the distribution network of its parent companies or relies heavily or entirely on sales to its parent companies for an initial start-up period is not precluded from being regarded as performing the functions of

an autonomous economic entity, as may a joint venture performing the normal functions of a trading company operating in a trade market.

Joint ventures are subject to the section 54 prohibition only if they operate on a lasting basis. This may be shown by the commitment of resources from parent companies to a joint venture for it to perform its functions. Provisions that provide for the dissolution of the joint venture, the withdrawal of one or more parent companies or a fixed duration for the joint venture do not prevent the joint venture from being considered as operating on a lasting basis.

For joint ventures of a fixed duration to be considered as operating on a lasting basis, the agreement must be for a sufficiently long period to bring about a lasting change in the structure of the undertakings concerned or provide for the possible continuation of the joint venture beyond this period.

Law stated - 5 April 2024

Scope of legislation

Is there a definition of 'control' and are minority and other interests less than control caught?

The essence of control is the ability to exercise decisive influence in relation to an undertaking.

For this purpose, control over an undertaking is regarded as existing under section 54(3) of the Competition Act if, by reason of rights, contracts or any other means, decisive influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by:

- ownership of, or the right to use all or part of, the assets of an undertaking; or
- rights or contracts that enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.

The Commission considers that decisive influence is generally deemed to exist if there is ownership of more than 50 per cent of the voting rights. Where the ownership is between 30 per cent and 50 per cent of the voting rights, there is a rebuttable presumption that decisive influence exists; however, these thresholds are only indicative, and control could potentially be established at levels below these thresholds if other relevant factors provide strong evidence of control.

Besides legal ownership through the acquisition of property rights and securities, de facto control may also be established. As there are no precise criteria for determining when an acquirer gains de facto control of an undertaking's activities, the Commission will adopt a case-by-case approach taking into account all relevant circumstances. Generally, the Commission may consider whether any additional agreements with the undertaking allow the party to influence the undertaking's strategic commercial behaviour, such as long-term supply agreements and financial arrangements.

It is possible that decisive influence may be capable of being exercised by a person who has only a minority interest. For example, control may exist where minority shareholders

have additional rights that allow them to veto decisions that are essential for the strategic commercial behaviour of the undertaking, such as the budget, business plans, major investments, appointment of senior management or market-specific rights.

Law stated - 5 April 2024

Thresholds, triggers and approvals

What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

Singapore has a voluntary merger notification regime, which means that there is no obligation, or mandatory requirement, for merger parties to notify their merger situations to the Commission, either before or after the implementation of a merger. It is the responsibility of merger parties to self-assess their merger and to ensure that it does not infringe section 54 of the Competition Act.

In general, mergers should be notified to the Commission if the merger parties think that the merger may result in a substantial lessening of competition within any market in Singapore. Merger parties should note the risk that if a merger is not notified, the Commission may investigate a merger or anticipated merger on its own initiative if it has reasonable grounds for believing that the section 54 prohibition has been infringed or will be infringed, and has the ability to subsequently give directions or impose financial penalties in respect of any infringement.

The Commission is unlikely to consider that merger or anticipated merger gives rise to competition concerns unless it meets or crosses the following indicative thresholds:

- the merged entity will have a market share of 40 per cent or more; or
- the merged entity will have a market share of between 20 per cent and 40 per cent, and the post-merger market share of the three largest firms (ie, the concentration ratio of the three largest firms) is 70 per cent or more.

The Commission is also unlikely to investigate a merger situation that only involves small companies, namely where the turnover in Singapore in the financial year preceding the transaction of each of the parties is below S$5 million and the combined worldwide turnover of all of the parties in the financial year preceding the transaction is below S$50 million.

The above thresholds are stated in the Commission Guidelines on Merger Procedures and are merely indicative. The Commission may investigate merger situations that fall below these thresholds in appropriate circumstances. Conversely, merger situations that meet or exceed the thresholds may not necessarily infringe the section 54 prohibition.

Law stated - 5 April 2024

Thresholds, triggers and approvals

Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

Notification to the Commission for a decision in respect of a merger or an anticipated merger is voluntary.

Merger parties may make an application to the Commission either under section 57 of the Competition Act in respect of an anticipated merger or under section 58 of the Competition Act for mergers that have been carried into effect.

Law stated - 5 April 2024

Thresholds, triggers and approvals

Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus test?

With regard to foreign-to-foreign transactions, the Competition Act will apply to any merger or anticipated merger, notwithstanding that the merger takes place outside Singapore or that any party to the merger resides outside Singapore. Notification to the Commission for a decision in respect of a foreign-to-foreign merger will likewise be voluntary.

Law stated - 5 April 2024

Thresholds, triggers and approvals

Are there also rules on foreign investment, special sectors or other relevant approvals?

In March 2024, the Significant Investments Review Act 2024 came into force. The Significant Investments Review Act provides Singapore with an updated toolkit to regulate significant investments into critical entities through (a) ownership and control provisions over designated entities to ensure the reliability of critical functions which they provide; and (b) powers that can be exercised against any entity that has acted against Singapore's national security interests.

In addition, some sectors and industries have specific requirements on foreign ownership. For example:

- sections 11 and 12 of the Newspaper and Printing Presses Act 1974 require the approval of the Minister for Communications and Information before any person can become a substantial shareholder (defined under section 81 of the Companies Act 1967), a 12 per cent controller or an indirect controller of a newspaper company; and
- section 38 of the Telecommunications Act 1999 requires that approval from the Info-communications Media Development Authority must be obtained before any party becomes a 12 per cent controller or a 30 per cent controller; obtains effective control over a designated telecommunications licensee; or acquires any business (or any part of such a business) of a designated telecommunications licensee as a going concern.

In addition to the general framework provided by the Competition Act, there are also sector-specific competition regulatory frameworks.

Law stated - 5 April 2024

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities
What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

There are no deadlines for notification, nor are there sanctions for failure to notify, as Singapore operates a voluntary merger regime. Merger parties have the option of proceeding, at their own commercial risk, with any merger during the notification process.

If the merger parties wish to notify their merger to the Competition and Consumer Commission of Singapore (the Commission) for a decision, they may do so at any time before, during or after the merger. In the case of completed mergers, parties are encouraged to notify as soon as possible after completion. Parties that wish to apply for a decision for an anticipated merger should only do so once the parties have a bona fide intention to proceed with the transaction and the merger has been made public (or if the parties have no objection to the Commission publicising their merger).

In deciding whether to notify a merger and when to notify the Commission, merger parties should bear in mind that the Commission may unwind a merger that has already been effected and (in the case of intentional or negligent infringements) impose financial penalties.

Law stated - 5 April 2024

Filing formalities
Which parties are responsible for filing and are filing fees required?

Any party to a merger or anticipated merger may apply to the Commission for a decision. The Commission encourages joint filing.

In general, the filing fees for mergers and anticipated mergers are:

- where the net aggregate turnover of the target undertaking or asset is equal to or less than S$200 million, the fee payable is S$15,000;
- where the net aggregate turnover of the target undertaking or asset is between S$200 million and S$600 million, the fee payable is S$50,000; and
- where the net aggregate turnover of the target undertaking or asset is above S$600 million, the fee payable is S$100,000.

If the merging parties are small or medium-sized enterprises (SMEs), or if the acquiring party is an SME and direct or indirect control in the SME will not be (or has not been) acquired, the filing fee will be S$5,000. Under the Competition (Fees) Regulations 2007, SMEs are undertakings with an annual sales turnover of not more than S$100 million or employing no more than 200 staff.

Law stated - 5 April 2024

Filing formalities

What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

Notification is voluntary and there is no requirement to suspend the implementation of a merger or anticipated merger before clearance. However, parties who give effect to or proceed with mergers without clearance do so at their own commercial risk.

Law stated - 5 April 2024

Pre-clearance closing

What are the possible sanctions involved in closing or integrating the activities of the merging businesses before clearance and are they applied in practice?

No requirement to suspend a merger or anticipated merger is specified in the Competition Act. However, where there is completion before clearance and the Commission subsequently finds that the merger infringes or is likely to infringe the section 54 prohibition (ie, the prohibition on mergers and acquisitions that have resulted, or may be expected to result in, a substantial lessening of competition within any market in Singapore), the Commission may take action to remedy, mitigate or prevent the harmful effects of infringement and prevent the recurrence of infringement. The Commission has the power to, among other things, require a merger to be dissolved or modified.

Parties should also note that the Commission can impose interim measures where it has not completed its investigations but has a reasonable suspicion that the section 54 prohibition has been infringed or will be infringed. It may make such directions as it considers appropriate for the purpose of preventing merger parties from taking any action that might prejudice the Commission's ability to consider the merger situation or to impose appropriate remedies.

Interim measures may also be imposed to prevent serious, irreparable damage to a particular person or category of persons, or to protect the public interest. These measures may include a direction that the merger or anticipated merger be suspended. As a matter of practice, the Commission is unlikely to use these powers unless it believes that there is a real possibility of serious competition concerns.

In view of the risks involved in proceeding to implement a merger that may infringe the prohibition, parties may choose to voluntarily suspend implementation in whole or in part.

Law stated - 5 April 2024

Pre-clearance closing

Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

Notification of a merger is voluntary and merger parties may, at their own risk, proceed with closing before clearance or without seeking clearance. This applies equally to foreign-to-foreign mergers.

Law stated - 5 April 2024

Pre-clearance closing

What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

There is no prohibition against closing before clearance; however, parties should take note of the actions that the Commission may take if the merger is found to have an anticompetitive effect in Singapore.

Law stated - 5 April 2024

Public takeovers

Are there any special merger control rules applicable to public takeover bids?

There are no special rules in the Competition Act. Takeovers and mergers of listed companies in Singapore are subject to non-statutory rules in the Code on Take-overs and Mergers (the Takeover Code), which is administered by the Securities Industry Council. Parties involved in public takeover bids should refer to the Takeover Code and the Guidance Note on the Merger Procedures of the Competition Commission of Singapore under Appendix 3 of the Takeover Code.

An offeror making a mandatory general offer subject to the Takeover Code must include a precondition that the offer lapses if the Commission proceeds to a Phase II review or prohibits the acquisition before the close of the offer. If the Commission prohibits the acquisition, the Securities Industry Council may require the offeror to reduce its shareholding back to below 30 per cent or a level that is less than the 1 per cent limit on acquisitions in any six-month period before the mandatory general offer was triggered.

Law stated - 5 April 2024

Documentation

What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

Before submitting Form M1, merger parties intending to make an application may approach the Commission for pre-notification discussions (PNDs) to facilitate their preparation of the form and to expedite the review process. PNDs help merger parties ascertain what information will be required by the Commission during the merger review process, help

the Commission to understand the transaction early on, and clarify the information and evidence that will be required in Form M1. The Commission is prepared to engage in PNDs for anticipated mergers that are not yet in the public domain but will not entertain discussions on purely speculative or hypothetical transactions.

Merger parties seeking a PND should contact the Commission by phone through its hotline or email. The formality and length of the PND process depend on the preference of the merger parties, the complexity of the transaction and the potential concerns raised by the merger. The Commission considers PNDs to be most useful where parties can provide a draft Form M1.

During the PND, the Commission will help to identify the information needed to provide a complete submission and any other useful information that might expedite its review. For mergers that involve more complex products or that raise potential competition issues, PNDs minimise the risk that the mergers will not be cleared in Phase I. The Commission will generally not, in the context of PNDs, give its views on whether a merger situation is likely to require a Phase II assessment or if it would lead to a substantial lessening of competition.

The Commission will review a merger situation in one or two phases, and the level of detail required will increase with each phase. For each phase, merger parties must submit the duly completed merger review Forms M1 and M2, respectively (available on the Commission's website).

Form M1 requires information relating to, among other things:

- ownership structure;
- the notified transaction;
- the activities of the merger parties;
- the industries affected;
- the market definition;
- market shares;
- efficiency gains; and
- ancillary restrictions, if they are included in the notification.

Merger parties are also required to provide their competitive assessment of the transaction, including:

- their assessment of the counterfactual (the competitive situation without the merger);
- competitors in the market;
- barriers to entry;
- existing and future countervailing buyer power;
- coordinated and non-coordinated effects of the transaction;
- vertical effects, if there is a potential vertical relationship between the merger parties;
- conglomerate effects, if there is a potential conglomerate relationship between the merger parties; and
- cooperative effects of the joint venture, if the transaction is a joint venture.

Form M2 requires further information relating to, among other things:

- the market conditions in the relevant markets, including the structure of demand and supply;
- the importance of research and development;
- the prevalence of cooperative agreements;
- possible efficiency gains arising from the merger;
- the likely effects of the merger; and
- any applicable failing firm or division arguments that the merger parties wish to submit.

The submission of Form M2 will only be required when the Commission is of the view that it is necessary to proceed to a Phase II review, in which case the applicant will be notified accordingly.

Parties should note that even where the applicant has submitted complete Forms M1 or M2, the Commission may require the applicant to provide additional information that is over and above what is required under Forms M1 and M2.

Law stated - 5 April 2024

Investigation phases and timetable

What are the typical steps and different phases of the investigation?

Two separate processes are available to parties before formal notification to the Commission. First, subject to section 55A of the Competition Act and the Commission's Guidelines on Merger Procedures, parties may seek confidential advice from the Commission on whether an anticipated merger is likely to raise competition concerns in Singapore and whether a notification is advisable. Second, parties may engage the Commission in PNDs to discuss the content and timing of their notifications to expedite the merger review process.

To obtain confidential advice from the Commission, parties must meet three conditions set out in section 55A of the Competition Act:

- the merger must not be completed but there must be a good-faith intention to proceed with the transaction (as evidenced to the satisfaction of the Commission) by the party or parties requesting the confidential advice;
- the anticipated merger must not be in the public domain – in exceptional circumstances, the Commission may consider giving confidential advice in relation to anticipated mergers that are no longer confidential, but the requesting party or parties must provide good reasons for why they wish to receive confidential advice and not proceed with a notification; and
- in the Commission's view, the merger situation must raise a genuine issue relating to the competition assessment in Singapore, so there must be some doubt as to whether the merger situation raises concerns such that notification may be

appropriate (eg, there may be a genuine issue if there is a lack of relevant precedents and therefore the Commission's approach to the merger situation is genuinely in doubt, but there would be no genuine issue if both merger parties have an insignificant market presence in Singapore).

Confidential advice may be requested through the Commission's hotline or by email. The Commission will then agree on a provisional timeline for parties to submit full information similar to that required in Form M1. No third-party enquiries will be carried out and third-party contact details are not required.

The Commission will carry out an internal assessment of the merger and may meet with the requesting parties. At the end of the process, it will provide a letter stating whether the merger is likely to raise competition concerns in Singapore and whether notification is advisable within 14 working days of receiving all required information. The advice is not binding on the Commission, and the merger may be investigated regardless of the advice given.

PNDs are similarly commenced by contacting the Commission through its hotline or by email. No specific timetable is given, although the Commission states that their length and formality depend on the preference of the merger parties, the complexity of the transaction and the concerns that the merger may raise. The Commission states that PNDs are most useful where a draft Form M1 is provided.

The formal notification process begins with the filing of Form M1 with the Commission. The Commission will first determine if the application is complete, with the necessary supporting documents and filing fees. Once a completed Form M1 is accepted, the Phase I review commences. The Commission will gather information about the effect on competition of the merger situation from the applicant or applicants and from third parties. This is expected to be completed within 30 working days.

If the Commission is unable to form the conclusion during the Phase I review that the merger situation does not raise competition concerns, it will provide the applicant or applicants with a summary of its key concerns, and, upon the filing of a complete Form M2 and response to the Phase II information request, the Commission will proceed to Phase II review. A Phase II review entails a more detailed and extensive examination of the effects of the merger situation. Accordingly, the Commission endeavours to complete it within 120 working days.

During the review process, the Commission may impose interim measures to preserve its ability to review the merger situation further or preserve its ability to impose appropriate remedies later, or both. Interim measures may also be imposed as a matter of urgency to protect public interest or to prevent serious, irreparable damage to persons.

Law stated - 5 April 2024

Investigation phases and timetable

What is the statutory timetable for clearance? Can it be speeded up?

Phase I

Phase I review entails a quick review and allows merger situations that clearly do not raise any competition concerns to proceed without undue delay.

The Commission expects to complete a Phase I review within 30 working days, where day one is the working day after the Commission receives a completed Form M1. By the end of this period, the Commission will decide whether to issue a favourable decision to allow the merger situation to proceed or to carry on to a Phase II review.

Phase II

The indicative time frame of 120 working days for a Phase II review commences when the Commission notifies the applicant or applicants that the merger situation has proceeded to a Phase II review, and after the Commission receives a complete Form M2 and a response to the Phase II information request that the Commission deems satisfactory. In any case, the Phase II review period will not commence until the expiry of the indicative time frame of 30 working days for Phase I review.

Throughout the course of the application, the Commission may request further information above and beyond that required in Form M1 or Form M2. Failure to furnish such information may result in the Commission exercising its discretion to determine the application without providing a decision.

Although the Commission typically reviews mergers within the indicative time frames, the time frames are not binding on the Commission, and the Commission may stop the clock in a review if, for example, the merger parties do not respond to the Commission's request for information in time or when commitments are being considered. The indicative time frames may also be extended in exceptional circumstances, upon informing the merger parties in writing in advance.

There is currently no mechanism in place to accelerate a merger clearance decision by the Commission.

Law stated - 5 April 2024

SUBSTANTIVE ASSESSMENT

Substantive test

What is the substantive test for clearance?

For the Competition and Consumer Commission of Singapore (the Commission) to clear a merger or anticipated merger, it must be satisfied that the merger does not, or will not be expected to, result in a substantial lessening of competition within any market in Singapore for goods or services. In applying the substantial lessening of competition test, the Commission will evaluate the prospects for competition in the future with and without the merger (commonly termed as a comparison between the factual and the counterfactual).

The counterfactual is usually forward-looking and should not involve a violation of competition law. In many cases, the best guide to the appropriate counterfactual will be the prevailing conditions of competition in the market without the merger. The Commission may also take into account likely and imminent changes in the structure of competition to reflect

as accurately as possible the nature of rivalry without the merger. For instance, where one of the parties is a failing firm, pre-merger competition conditions might not prevail even without the merger as the failing firm may exit the market if the merger does not occur (known as the failing firm defence). In those cases, the counterfactual will have to reflect the likely firm failure and the resulting loss of competition.

As set out in the Fourth Schedule to the Competition Act, the section 54 prohibition (ie, the prohibition on mergers and acquisitions that have resulted, or may be expected to result in, a substantial lessening of competition within any market in Singapore) does not apply to a merger:

- if the economic efficiencies arising or that may arise from the merger outweigh the adverse effects owing to the substantial lessening of competition in the relevant market in Singapore;
- that has been approved by any minister or regulatory authority (other than the Commission), pursuant to any requirement for such approval imposed by or under any written law;
- under the jurisdiction of any regulatory authority (other than the Commission) under any written law relating to competition or a code of practice relating to competition issued under any written law (eg, in the energy, telecommunications and media industries); or
- relating to certain specified activities, such as the supply of licensed and regulated ordinary letter and postcard services, potable piped water, wastewater management services, licensed bus services, licensed and regulated rail services, or licensed and regulated cargo terminal operations.

Law stated - 5 April 2024

Substantive test

Is there a special substantive test for joint ventures?

No, the same test applies.

Law stated - 5 April 2024

Theories of harm

What are the 'theories of harm' that the authorities will investigate?

The Commission has set out the factors that it will take into account in its assessment of the competitive effects of a merger in its Guidelines on the Substantive Assessment of Mergers.

In the case of horizontal mergers, the Commission has stated that a horizontal merger may result in a substantial lessening of competition by virtue of coordinated or non-coordinated effects, or both.

Non-coordinated effects may occur where two close competitors merge and, as a result of the merger, the merged entity finds it profitable to raise prices (or reduce output,

quality or innovation) because of the loss of competition between the merged entities. Non-coordinated effects may also arise in markets where innovation is an important feature of competition, and where one or more of the merging parties is a key innovator and has the potential to exert significant competitive pressure in the future on other firms in the market.

While the profits from non-coordinated effects are generally captured by the merger parties, rival firms in the market may also find it profitable to raise their prices independently because of the loss of competitive pressure arising from the merger.

Coordinated effects may arise where the merger increases the possibility that, post-merger, firms in the same market may find it profitable to coordinate their behaviour by raising prices or reducing quality, output or innovation. The Commission will consider the structure of the market, market characteristics and any history of coordination in the market concerned.

In the case of non-horizontal mergers, the Commission's Guidelines on the Substantive Assessment of Mergers describe situations in which vertical mergers and conglomerate mergers may trigger competition concerns. With respect to vertical mergers, factors that the Commission will consider include the possibility of foreclosure, the increased potential for collusion, the creation of barriers to entry and the ability of customers to exercise countervailing power.

While conglomerate mergers typically do not result in the substantial lessening of competition, competition concerns may arise in mergers between parties in closely related markets. With respect to conglomerate mergers, the Commission will consider the potential coordinated and non-coordinated effects, barriers to entry and the ability of customers to exercise countervailing power.

Law stated - 5 April 2024

Non-competition issues

To what extent are non-competition issues relevant in the review process?

Under section 57(3) of the Competition Act, the Minister for Trade and Industry has the power to exempt a merger or an anticipated merger on the grounds of any public interest consideration. This power may be exercised on the application of a merger party who has been notified that the Commission proposes to issue a decision that the section 54 prohibition has been infringed.

Section 2 of the Competition Act defines 'public interest consideration' as 'national or public security, defence and any other considerations that the Minister may, by order in the Gazette, prescribe'. As at 5 April 2024, the Minister has not gazetted any other matters as public interest considerations.

Law stated - 5 April 2024

Economic efficiencies

To what extent does the authority take into account economic efficiencies in the review process?

The Competition Act allows the Commission to take efficiency gains into account at two separate points in the analytical framework.

First, efficiencies may be taken into account where the merger increases rivalry in the market such that it is likely to prevent a substantial lessening of competition from occurring. For example, the efficiency gains from a merger between two of the smaller firms in a market may enable the merged entity to exert greater competitive pressure on its larger competitors.

Second, efficiencies may be taken into account where, despite not averting a substantial lessening of competition, they are of sufficient magnitude that the merger could be said to give rise to net economic efficiencies in markets in Singapore. Where merger parties can demonstrate that the efficiencies will be sufficient to outweigh the adverse effects resulting from the substantial lessening of competition, the merger may be excluded from the section 54 prohibition (ie, the prohibition on mergers and acquisitions that have resulted, or may be expected to result in, a substantial lessening of competition within any market in Singapore) pursuant to paragraph 3 of the Fourth Schedule to the Competition Act.

To be taken into account by the Commission, efficiencies must be demonstrable (ie, they are clear and quantifiable), merger-specific (ie, they will only arise from the merger), timely (ie, the benefits will materialise within a reasonable period) and sufficient in extent (with reference to the magnitude of the efficiencies). Such efficiencies could include lower costs, greater innovation, greater choice or higher quality.

Law stated - 5 April 2024

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

What powers do the authorities have to prohibit or otherwise interfere with a transaction?

Where the Competition and Consumer Commission of Singapore (the Commission), upon completion of its investigations, decides that a merger has infringed – or that an anticipated merger, if carried into effect, will infringe – the section 54 prohibition (ie, the prohibition on mergers and acquisitions that have resulted, or may be expected to result in, a substantial lessening of competition within any market in Singapore), it will decide on the appropriate action to remedy, mitigate or prevent the harmful effects of such practice and to prevent the recurrence of infringement.

The Commission may implement remedies by issuing directions or by accepting commitments. The direction may prohibit an anticipated merger from being carried into effect or require a merger to be dissolved or modified in such manner as directed. The direction may also require the merger parties to:

- dispose of such operations, assets or shares of the undertaking as may be specified by the Commission;
- enter into such legally enforceable agreements as may be specified by the Commission and designed to prevent or lessen the anticompetitive effects that have arisen;
-

provide a performance bond, guarantee or other form of security on such terms and conditions as the Commission may determine; or

- pay to the Commission such financial penalty in respect of the infringement as the Commission may determine if the Commission is satisfied that the infringement has been committed intentionally or negligently.

The financial penalty imposed by the Commission may not exceed 10 per cent of the turnover of the business of each relevant merger party in Singapore for each year of infringement, up to a maximum of three years. The Commission's basis of calculation of financial penalties is based on an undertaking's relevant turnover of the business year preceding the date on which the decision of the Commission is taken or, if figures are not available for that business year, the business year immediately preceding it. Information on the calculation of financial penalties is generally set out in the Commission's Guidelines on the Appropriate Amount of Penalty in Competition Cases and, particularly in respect of infringements of the section 54 prohibition, its Guidelines on Merger Procedures.

The Commission may accept commitments at any time during a Phase I or Phase II review, or during an investigation before a final decision on whether there has been an infringement of the section 54 prohibition. Commitments are generally proposed by the merger parties and must be aimed at remedying, mitigating or preventing the competition concerns that have been identified as arising from the merger situation.

If the Commission considers the proposed commitments to be acceptable in principle, it will seek public comments on its website and solicit third-party views. The commitments, if accepted, will be published as part of a favourable decision. The favourable decision may be revoked if the commitments are breached. Applications may be made to the Commission to vary, substitute or release a commitment.

Commitments are binding on the parties when they are accepted by the Commission and are enforceable in the District Court.

The Competition Act also gives the Commission the power to take interim measures.

Law stated - 5 April 2024

Remedies and conditions

Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

Merger parties may propose, and the Commission may accept, commitments at any time during a Phase I or Phase II review, or during an investigation before a final decision on whether there has been an infringement of the section 54 prohibition.

Commitments are generally proposed by the merger parties, although the Commission may invite merger parties to consider whether they want to offer commitments, for instance, where it believes that the competition issues seem amenable to be remedied by commitments. The commitments must aim to prevent or remedy the adverse effects to competition identified.

Generally, the Commission will only accept commitments that sufficiently and clearly address the adverse effects to competition and are proportionate to them. If the Commission considers proposed commitments to be acceptable in principle, it will seek public comments on its website and solicit third-party views. The commitments, if accepted, will be published as part of a favourable decision. The favourable decision may be revoked if the commitments are breached. Applications may be made to the Commission to vary, substitute or release a commitment.

There are broadly two types of remedies that the Commission may consider: structural remedies and behavioural remedies.

Structural remedies are generally preferred to behavioural ones because they clearly address the market structure issues that give rise to the competition problems and require little ongoing monitoring by the Commission. Typically, structural remedies require the sale of one of the overlapping businesses that have led to the competition concern. The Commission's Guidelines on Directions and Remedies state that ideally, this should be a self-standing business that is capable of being fully separated from the merger parties and, in most cases, will be part of the acquired enterprise. The sale should be completed within a specified period.

In appropriate cases, the Commission will consider other structural or quasi-structural remedies, for example, the divestment of the acquirer's existing business (or part of it) or an amendment to intellectual property licences. Before the sale of any business, the Commission must approve the buyer. This is to ensure that the proposed buyer has the necessary expertise, resources and incentives to operate the divested business as an effective competitor in the marketplace. If that is not the case, it is unlikely that the proposed divestiture will be considered as an effective remedy for the anticompetitive effects previously identified.

The Commission will consider behavioural remedies in situations where it considers that structural remedies will be impractical or disproportionate to the nature of the concerns identified. Further, behavioural remedies may sometimes be necessary to support structural remedies.

Law stated - 5 April 2024

Remedies and conditions

What are the basic conditions and timing issues applicable to a divestment or other remedy?

In its Guidelines on Merger Procedures, the Commission specifically sets out a process whereby the Commission and the merger parties can resolve competition concerns in Phase I by way of commitments. Merger parties are encouraged to take the initiative to propose suitable commitments that can appropriately resolve any competition concerns that they foresee arising from the merger situation. This can be done at any time during the review process.

The Commission will indicate its competition concerns in an issues letter to the merger parties where the Commission considers that a Phase II review may be appropriate, although

this letter does not constitute a decision to proceed to a Phase II review. At this stage, parties may propose commitments to address all the competition concerns identified in Phase I.

If the commitments proposal does not adequately address all competition concerns, the Commission will proceed to a Phase II review. During the Phase II review process, the Commission may call for a state of play meeting and set out its competition concerns in a Phase II issues letter.

If, towards the end of a Phase II review, the Commission is of the preliminary view that the merger situation is likely to give rise to a substantial lessening of competition, it will issue a statement of decision (provisional) to the merger parties, stating the facts on which the Commission relies and its reasons. The statement of decision (provisional) may outline any remedies that the Commission considers appropriate.

The Commission will give the parties an opportunity to make written representations to the Commission, which will also be the last opportunity to propose commitments. The Commission may consider and impose alternative remedies that differ from those proposed by the parties.

If the Commission considers the proposed commitments to be acceptable in principle, it will seek public comments on its website and solicit third-party views. The commitments, if accepted, will be published as part of a favourable decision.

Applications may be made to the Commission to vary, substitute or release a commitment. Such applications must be made in writing and include an explanation of the basis for the application and demonstrate how the change would address any competition concerns persisting at the time of the application and would not give rise to new competition concerns.

Law stated - 5 April 2024

Remedies and conditions

What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

From the publicly available decisions as at 5 April 2024, six mergers were cleared conditional upon the Commission receiving remedies or commitments:

- the proposed acquisition by SEEK Asia Investments Pte Ltd of the JobStreet Business in Singapore;
- the proposed acquisition by ADB BVBA of all the shares of Safegate International AB from Fairford Holdings Private AB;
- the proposed acquisition by Times Publishing Limited of Penguin Random House Pte Ltd and Penguin Books Malaysia Sdn Bhd;
- the completed acquisition of Innovative Diagnostic Private Limited and Quest Laboratories Pte Ltd by Pathology Asia Holdings Pte Ltd;
- the proposed acquisition by London Stock Exchange Group PLC of Refinitiv Holdings Limited; and
- the proposed acquisition by Talace Private Limited of Air India Limited.

Of the cases above, only the ***ADB/Safegate,*** the ***London Stock Exchange/Refinitiv*** and the ***Talace/Air India*** mergers concerned foreign-to-foreign transactions.

Law stated - 5 April 2024

Ancillary restrictions

In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

Ancillary restrictions to a merger or anticipated merger are defined in the Commission's Guidelines on the Substantive Assessment of Mergers as agreements, arrangements or provisions that are directly related and necessary to the implementation of a merger. Such ancillary restrictions are excluded from the prohibition against anticompetitive agreements (section 34 prohibition) and the prohibition against abuse of dominance (section 47 prohibition) under the Third Schedule to the Competition Act.

To be directly related, the restriction must be economically connected with the merger but ancillary or subordinate to its main object. A restriction is likely to be necessary if, for example, in the absence of the restriction, the merger would not go ahead or could only go ahead at substantially higher costs over an appreciably longer period, or with considerably greater difficulty.

In addition, in determining the necessity of the restriction, considerations such as whether its duration, subject matter and geographical field of application are proportionate to the overall requirements of the merger will also be taken into account. Merger parties must demonstrate that they have chosen the option that is the least restrictive of competition.

Merger parties should conduct a self-assessment regarding whether any agreements, arrangements or provisions that are not integral to the merger, but that are concluded in conjunction with the merger, qualify as ancillary restrictions.

Law stated - 5 April 2024

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

Are customers and competitors involved in the review process and what rights do complainants have?

The Competition and Consumer Commission of Singapore (the Commission) requires the provision in the notification form of the contact details of:

- each merger party's five most significant competitors in each relevant market, in Singapore and generally;
- at least three potential competitors, if any, where vertical, conglomerate and/or non-coordinated effects are identified;
- each merger party's 10 most significant direct customers; and
-

if the customers are not end users, the 10 most significant end users in each of the relevant markets.

The Commission may contact such parties to solicit feedback in relation to the notified mergers.

The Commission will gather information about the effect on competition of the merger situation from the applicant and from third parties, including customers, competitors, suppliers, and other regulatory bodies and government departments, where relevant. The details of the merger will be published on the public register on the Commission's website.

Complainants may make complaints to the Commission through its online form, by telephone or by email. The Commission will acknowledge receipt of the complaint within five working days and may ask for further information or launch a formal investigation if there are reasonable grounds for suspecting that the merger may result in a substantial lessening of competition. Although the Commission prefers that complaints not be anonymous, it will protect the complainant's identity as far as possible.

Parties that suffer loss or damage as a result of the infringement will have a private right of action to seek relief in civil proceedings against any undertaking that is or that has, at the material time, been a party to the infringement. Such rights of private action will only arise after the Commission has made a decision that a merger has infringed the section 54 prohibition (ie, the prohibition on mergers and acquisitions that have resulted, or may be expected to result in, a substantial lessening of competition within any market in Singapore) and the appeal period has expired or, where an appeal has been brought, upon the determination of the appeal.

There is also a two-year time bar from the time the Commission has made its decision or from the determination of the appeal, whichever is later. The relief that the court may grant includes an injunction or declaration, damages and such other relief as the court deems fit.

Law stated - 5 April 2024

Publicity and confidentiality

What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

Upon acceptance of a satisfactory application (with the exception of an application for confidential advice), the Commission will publish the details of notified mergers or anticipated mergers on the public register on its website. The information provided will usually include:

- the names of the merger parties;
- a description of:
    - the transaction;
    - the business activities of the merger parties worldwide and in Singapore;
    - the overlapping goods or services, including brand names; and
    - substitute goods or services; and

- the applicant's views on the definition of the relevant markets, the way in which competition functions in these markets, barriers to entry and countervailing buyer power, and the effects on competition of the merger.

Third parties are invited to submit their views on the merger via an invitation to comment on the Commission's website and when the Commission consults on commitments.

When applying to the Commission, merger parties must include all relevant information, including information that may be confidential. When submitting an application, parties must provide the Commission with both confidential and non-confidential versions. Non-confidential versions are necessary for the Commission's purposes of facilitating discussions and meetings with third parties and publishing a non-confidential version of its decision.

In the confidential versions of submissions, confidential information must be enclosed in square brackets. In non-confidential versions, redactions must be marked by square brackets containing the word 'confidential', with a separate annex identifying the confidential information and giving reasons why the information should be treated as confidential.

Information is confidential only if, in the Commission's opinion, disclosure of the information would:

- significantly harm the legitimate business interests of an undertaking to which it relates, where it is commercial information;
- significantly harm an individual's interest, where it relates to an individual's private affairs; or
- be contrary to the public interest.

Where excessive or unreasonable confidentiality claims are made, the Commission may stop the working time frame until the applicant files an acceptable non-confidential version. In its Guidelines on Merger Procedures, the Commission specifically cautions against blanket and overly wide confidentiality claims.

The Commission will generally treat parties' submissions on confidentiality seriously. In exceptional circumstances, it may be necessary to disclose confidential information, in which case the Commission will discuss with parties in advance to minimise any detriment to them. The Commission will give applicants the opportunity to review its draft decision before publication to determine whether it contains confidential information, although the Commission maintains ultimate discretion in relation to decisions on confidentiality.

Law stated - 5 April 2024

Cross-border regulatory cooperation

Do the authorities cooperate with antitrust authorities in other jurisdictions?

Under the Competition Act, the Commission has the ability to enter into cooperation arrangements with any foreign competition body with approval from the Minister for

Trade and Industry. Cooperation may take the form of information exchange or any other assistance necessary to facilitate the enforcement or administration of competition laws.

As at 5 April 2024, the Commission has concluded cooperation agreements with the following enforcers:

- the Japan Fair Trade Commission;
- the Indonesia Competition Commission;
- the Competition Bureau of Canada;
- the Philippine Competition Commission; and
- the State Administration for Market Regulation of the People's Republic of China.

Generally, the memorandums formalise and reinforce existing cooperation and technical assistance activities between the Commission and foreign agencies, including on areas such as case notification, information exchange and enforcement coordination, as well as technical cooperation and experience sharing.

On 16 May 2019, the Commission announced that it had joined the International Competition Network's Framework on Competition Agency Procedures as a founding member. The Procedures advance basic and non-binding principles on procedural fairness and transparency among competition agencies, and enable closer cooperation between participating agencies through dialogues to better understand each other's processes.

Form M1 includes specific questions on whether the parties intend to notify (or have notified) competition agencies in other jurisdictions about the merger. Parties are requested to notify the Commission of any material change in status in relation to any notifications to overseas competition agencies, including, for example, approvals, unfavourable decisions and negotiations of commitments. Parties are also asked if they would be willing to provide the Commission with a waiver allowing the Commission to exchange confidential information with competition agencies in other jurisdictions.

Law stated - 5 April 2024

JUDICIAL REVIEW

Available avenues
What are the opportunities for appeal or judicial review?

There is a right of appeal to the Competition Appeal Board (the Board) against any decision by the Competition and Consumer Commission of Singapore (the Commission) in respect of a merger or anticipated merger or any direction (including interim measures) imposed by the Commission. An appeal against the Commission's decision in respect of a merger or anticipated merger may be made by any merger party, while an appeal against a direction may be made by the person to whom the Commission gave the direction.

The Board can confirm, impose, revoke or vary a direction, or make any other direction or decision, provided that it is a decision or direction that the Commission itself could have given. There is no right to appeal to the Board against the Commission's refusal to accept

any commitments offered, but appeals may be made against the Commission's refusal to vary, substitute or release existing commitments.

An appeal to the Board against an imposed direction will not operate to suspend that direction, except in the case of appeals against financial penalties. The infringement decision and the direction will remain in effect (unless suspended by an interim order made by the Board or, in the case of a further appeal, the relevant appeal court).

Parties may make further appeals against the decisions of the Board to the General Division of the High Court and then to the Court of Appeal, but only on points of law and the quantum of the financial penalty. Such an appeal can only be made by a party to the proceedings in which the decision of the Board was made. The General Division of the High Court may determine any such appeal by confirming, modifying or reversing the decision of the Board and making such further or other order on appeal.

It is also possible to bring an action in judicial review. To do so, parties must make an application under Order 20 of the Rules of Court 2021, before a judge, for permission to bring an action in judicial review. Once permission is granted, parties must make the judicial review application within 14 days.

On 29 December 2020, the Board dismissed Uber's appeal against the Commission's 2018 decision that found that Grab and Uber had infringed the section 54 prohibition (ie, the prohibition on mergers and acquisitions that have resulted, or may be expected to result in, a substantial lessening of competition within any market in Singapore). This was the first and only appeal in respect of the section 54 prohibition to the Board. The Board upheld the Commission's directions and financial penalties, and awarded the Commission its costs of the appeal.

As at 5 April 2024, there have been no appeals from the Board to the courts and no cases of judicial review in respect of the Commission's decisions.

Law stated - 5 April 2024

Time frame

What is the usual time frame for appeal or judicial review?

A party who wishes to appeal to the Board must lodge a notice of appeal in the prescribed form within four weeks of the date on which the appellant was notified of the contested decision or the date of publication of the decision, whichever is earlier. The Board may, on the application of the appellant, in its discretion extend the time limit provided for the lodgement of the notice of appeal.

As soon as it is practicable, the Board shall set a timetable outlining the steps to be taken by the parties in preparation for the oral hearing of the appeal (whether pursuant to the directions of the Board or otherwise), fix the date for the oral hearing, notify the parties in writing of the date and place for the oral hearing and of any timetable for that hearing, and, if it considers it necessary for the expeditious disposal of the appeal, send the parties a report that contains a summary of the factual context of the case and the parties' principal submissions.

The Competition Act does not prescribe a time frame or limitation period for judicial review. Accordingly, the time frame is prescribed by the Rules of Court 2021. Under Order 24, Rule 5 of the Rules of Court, no application for a mandatory, prohibiting or quashing order may be made unless permission to make such an application has been granted. Permission to apply for a mandatory, prohibition or quashing order will not be granted unless the application was made within three months of the date of the omission, judgment, order, conviction or proceedings that gave rise to the application.

Law stated - 5 April 2024

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record
What is the recent enforcement record and what are the current enforcement concerns of the authorities?

The provisions relating to mergers and acquisitions came into force on 1 July 2007. As at 5 April 2024, a total of 109 mergers and acquisitions have been notified to the Competition and Consumer Commission of Singapore (the Commission), of which 98 have been cleared, six have been withdrawn, two anticipated mergers have been abandoned and three mergers are pending.

In addition to the notified mergers, on 27 March 2018, the Commission commenced an investigation into Grab's acquisition of Uber's Southeast Asian business in exchange for Uber's acquisition of a 27.5 per cent stake in Grab. The investigations concluded with the Commission issuing an infringement decision. On 29 December 2020, the Board dismissed Uber's appeal against the decision.

Law stated - 5 April 2024

Reform proposals
Are there current proposals to change the legislation?

There are no current public proposals to revise or change the Competition Act.

Law stated - 5 April 2024

UPDATE AND TRENDS

Key developments of the past year
What were the key cases, decisions, judgments and policy and legislative developments of the past year?

One key case pending a decision by the Competition and Consumer Commission of Singapore (the Commission) is the possible acquisition by Grab Rentals Pte Ltd, a wholly-owned subsidiary of Grab Holdings Limited, of 100 per cent of the shares of Trans-cab Holdings Ltd. The Commission was unable to conclude at the end of its Phase I review that

the acquisition does not give rise to any competition concerns. As such, the Commission is currently carrying out a more in-depth Phase II review.

Separately, on 2 February 2024, the Commission issued a set of interim measures to Delivery Hero SE, Foodpanda GmbH (Germany) and Delivery Hero (Singapore) Pte Ltd (collectively, Delivery Hero) as well as Grab Holdings Inc (Grab) in relation to the possible acquisition by Grab of the whole of part of the business of Delivery Hero in Southeast Asia, including Singapore. The interim measures were aimed at ensuring the market remains open and contestable until the completion of the Commission's investigations into the possible transaction. While the interim measures have ceased effect since 23 February 2024 after the Commission was informed that the possible transaction had been abandoned, the Commission is continuing to monitor the market and will take further action necessary to protect the market.

Law stated - 5 April 2024