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Merger Control 2025

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Singapore: Law & Practice

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SINGAPORE

Law and Practice

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Drew & Napier LLC is a full-service law firm with one of the oldest and largest dedicated competition law practices in Singapore, which has grown in tandem with the development of national and sectoral competition laws in Singapore. It comprises an experienced and highly qualified team of 12 lawyers who handle competition and regulatory matters both generally under the Competition Act 2004 and in the carved-out sectors, such as telecommunications, media, energy and post; the practice has worked on every noteworthy competition law-related matter in the telecommunications, media and postal sectors. Drew & Napier is regularly commissioned by the Singapore competition regulators to undertake market studies, and regularly assists regional companies, multinational corporations, associations, government bodies and industry regulators on a wide range of matters in Singapore and ASEAN member countries.

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1. Legislation and Enforcing Authorities

1.1 Merger Control Legislation

The merger control legislation in Singapore is set out in the Competition Act 2004, which is the primary competition legislation in Singapore. In particular, Section 54 of the Competition Act prohibits mergers and acquisitions that have resulted – or may be expected to result – in a substantial lessening of competition (SLC) within any market in Singapore (the Section 54 Prohibition).

The Competition Act was enacted on 19 October 2004 and implemented in phases, with the merger provisions coming into force on 1 July 2007. It is administered and enforced by the Competition and Consumer Commission of Singapore (the Commission), which has issued the following guidelines on how it will interpret and give effect to the merger control provisions in the Competition Act:

- Guidelines on Merger Procedures (revised on 1 February 2022); and
- Guidelines on the Substantive Assessment of Mergers (revised on 1 February 2022).

1.2 Legislation Relating to Particular Sectors

In March 2024, the Significant Investment Review Act 2024 (SIRA) came into force. The SIRA regulates significant investments into critical entities, and aims to safeguard national security interests. Designated critical entities under the SIRA must notify or seek approval from the Minister for Trade and Industry before undergoing changes in ownership or control.

Aside from the SIRA, Singapore does not have any general legislation prohibiting or requiring consent for foreign transactions or investments, although certain sectors (eg, media and telecommunications) may have laws on foreign ownership.

Certain industry sectors, such as telecommunications, media, post, gas and electricity, are regulated by industry-specific statutes containing merger control provisions, which are in turn enforced by industry-specific regulators.

In particular, the Section 54 Prohibition does not apply to the following mergers specified in the Fourth Schedule of the Competition Act:

- mergers approved by any Minister or any regulatory authority (other than the Commission), including the Monetary Authority of Singapore, pursuant to any requirement imposed by or under any written law;
- mergers under the jurisdiction of another regulatory authority under any written law or code of practice relating to competition;
- mergers relating to 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; and
- mergers with economic efficiencies that outweigh the adverse effects of the SLC within a market in Singapore.

1.3 Enforcement Authorities

The Commission is the statutory body responsible for administering and enforcing the Competition Act. With effect from 1 April 2018, the Commission also assumed responsibility for administering and enforcing the Consumer Protection (Fair Trading) Act 2003, which provides for the protection of consumers against unfair practices and related matters.

As mentioned in **1.2 Legislation Relating to Particular Sectors**, sectoral regulators have purview over merger control in their respective sectors.

In cross-sectoral competition matters, the Commission will work with the relevant industry-specific regulator(s) to determine which regulator is best placed to handle the matter in accordance with statutory powers. The lead will be taken by the agency that is best placed in terms of its ability to investigate the alleged anti-competitive conduct and impose any necessary remedies.

2. Jurisdiction

2.1 Notification

Notification in respect of a merger or an anticipated merger is voluntary.

Merger parties may notify a merger before, during or after the merger comes into effect.

However, there are risks attached to proceeding with a merger before or during notification, as the Commission may commence investigations on its own initiative and issue directions or impose financial penalties if any infringement is found.

2.2 Failure to Notify

As notification is voluntary, there are no sanctions for failing to notify the Commission of a merger. Merger parties should undertake a self-assessment to determine if notification is appropriate – eg, if they think that the merger may result in an SLC within any market in Singapore.

Even if no notification is made, the Commission may nonetheless initiate an investigation if it has reasonable grounds for suspecting that the Section 54 Prohibition has been or will be infringed. If the Commission decides that there is or will be an infringement, it may decide on actions to remedy, mitigate or prevent any adverse effects to competition caused by the merger. These actions may include a direction to divest all or part of the business or to unwind the merger (see **5.2 Parties' Ability to Negotiate Remedies**).

If the Commission finds that the infringement was committed intentionally or negligently, a financial penalty may be imposed on any of the merger parties, which may not exceed 10% of each party's business turnover in Singapore for

each year of infringement, up to a maximum of three years.

2.3 Types of Transactions

In general, mergers and anticipated mergers that have resulted – or may be expected to result – in an SLC within any market in Singapore will be caught by the Section 54 Prohibition. Internal restructurings or reorganisations and operations not involving the transfer of shares or assets typically would not infringe the Section 54 Prohibition.

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 of the business in which that undertaking was engaged immediately before the acquisition.

While an undertaking's acquisition of a majority stake in another undertaking is one of the more obvious examples of a merger, the creation of a joint venture through the transfer or pooling of assets may also be subject to the merger provisions. A joint venture may constitute a merger if it is created to perform all functions of an autonomous economic entity on a lasting basis and is subject to joint control; see **2.10 Joint Ventures**.

However, certain transactions do not constitute a merger for the purposes of the Competition Act, including:

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

The determination of whether a merger exists is based on qualitative rather than quantitative criteria, focusing on the concept of control, which may occur on either a legal or de facto basis.

2.4 Definition of "Control"

Control is the ability to exercise "decisive influence" in relation to the activities of an undertaking. This requires consideration of all relevant circumstances of the case and not only the legal effect of any instrument, deed, transfer, assignment or other act.

As provided in Section 54 (3) of the Competition Act, control of an undertaking is deemed to exist if decisive influence is capable of being exercised, particularly 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 com-

position, voting or decisions of the organs of an undertaking.

The Commission considers that decisive influence is deemed to exist if there is ownership of more than 50% of the undertaking's voting rights. Where ownership is between 30% and 50% of the undertaking's voting rights, there is a rebuttable presumption that decisive influence exists. "Voting rights" refers to all the voting rights linked to the share capital of an undertaking and currently exercisable at a general meeting. That said, control could potentially be established at levels below these indicative thresholds if other relevant factors (eg, other forms of voting rights) provide strong evidence of control.

The Commission may also assess whether a party has de facto control over an undertaking, on a case-by-case basis.

There is no precise criterion for determining when an acquirer obtains de facto control. For example, decisive 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, the appointment of senior management or market-specific rights. The acquisition of a minority shareholding that confers decisive influence over an undertaking could amount to a merger that is reviewable by the Commission.

2.5 Jurisdictional Thresholds

The Commission is unlikely to investigate a merger involving only small companies where the following applies in the financial year preceding the merger:

- each party's turnover in Singapore was below SGD5 million; and
- the combined worldwide turnover of all the parties was below SGD50 million.

The Commission generally takes the view that competition concerns are unlikely to arise in a merger situation unless the market share of the merged entity will be:

- 40% or more; or
- between 20% and 40%, and the post-merger market share of the three largest firms is 70% or more.

As merger notification is voluntary, the above thresholds set out by the Commission are indicative thresholds. Mergers that fall below these thresholds may still be investigated in appropriate circumstances, if there is strong evidence of an SLC.

Conversely, mergers that meet or exceed the above thresholds are not necessarily prohibited under Section 54 of the Competition Act. Merger parties are encouraged to carry out self-assessments as to whether their transaction is likely to lead to an SLC in any market in Singapore and if notification to the Commission is recommended.

There are also prescribed notification thresholds in the merger control regimes of some sectors regulated by industry-specific statutes.

2.6 Calculations of Jurisdictional Thresholds

The indicative thresholds are calculated on the basis of market shares.

2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds

Market share thresholds are based on how the market is defined and this, in turn, is dependent

on the specific facts and circumstances of the particular merger under assessment or investigation. The Commission typically adopts the hypothetical monopolist test in defining the relevant markets.

2.8 Foreign-to-Foreign Transactions

Barring the exceptions set out in the Fourth Schedule to the Competition Act, the Section 54 Prohibition applies to any merger or anticipated merger that has resulted – or may be expected to result – in an SLC within any market in Singapore, regardless of whether or not the parties to the merger have a local presence within Singapore. Similar to mergers involving Singapore merger parties, the notification of foreign-to-foreign transactions is also voluntary.

2.9 Market Share Jurisdictional Threshold

Theoretically, one party may meet the indicative market share thresholds in the absence of a substantive overlap. However, notification of the merger to the Commission is recommended only where there are concerns that the merger will lead to an SLC in any market in Singapore.

2.10 Joint Ventures

The merger provisions apply to joint ventures that constitute a merger – ie, if they:

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

Joint control exists where two or more parties are able to exercise decisive influence over the undertaking, which includes the power to block actions that determine the strategic commercial behaviour of the undertaking. Joint control is characterised by the possibility of a deadlock arising from the power of two or more parent companies to reject proposed strategic decisions; therefore, there is a requirement that the 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 the market and performs all the functions of an autonomous economic entity. A joint venture that only takes over one specific function within the parent companies' business activities without access to the market will not come under the purview of the Section 54 Prohibition – for example, if the joint venture is limited to research and development, or production only, or the distribution or sales of its parent companies' products. However, a joint venture that makes use of one or more of its parent companies' distribution networks or outlets, or relies almost entirely on sales to or purchases from its parent companies for an initial start-up period, is not precluded from being regarded as performing all the functions of an autonomous economic entity, if it is geared to play an active role in the market.

A joint venture that constitutes a merger must be intended to operate on a lasting basis, which may normally be demonstrated by the commitment of resources by its parent companies. For joint ventures established with a specified duration, the agreement should provide for a sufficiently long time period in order to bring about a lasting change in the structure of the undertakings concerned, or otherwise for the possible continuation of the joint venture beyond this period. Conversely, a joint venture established for a short, finite duration will not be considered to be operating on a lasting basis.

2.11 Power of Authorities to Investigate a Transaction

The Commission may conduct an own-initiative investigation into mergers that were not notified if there are reasonable grounds to suspect that the Section 54 Prohibition has been or will be infringed. The Commission may also investigate a merger based on information from complaints by third parties or its market intelligence function. There is no statute of limitations on the Commission's ability to investigate a merger or apply sanctions.

If the Commission carries out an own-initiative investigation and identifies an SLC, it may direct the parties to remedy the SLC. The Commission also has the power to impose financial penalties on parties; see **5.1 Authorities' Ability to Prohibit or Interfere With Transactions**.

2.12 Requirement for Clearance Before Implementation

There is no requirement for parties to suspend the implementation of a merger or anticipated merger prior to clearance. While merger parties may implement an anticipated merger or further integrate a completed merger before or during notification to the Commission, these actions are taken at the parties' own risk if there is a likelihood that the merger may lead to an SLC; see **2.13 Penalties for the Implementation of a Transaction Before Clearance**.

2.13 Penalties for the Implementation of a Transaction Before Clearance

The Commission may issue directions imposing any interim measures it considers appropriate for mergers under investigation. Interim directions are issued for the purposes of preventing merger parties from taking any action that may prejudice the Commission's investigations or its ability to impose the appropriate remedies, or as a matter of urgency to prevent serious, irreparable damage to a particular person or category of persons, or to protect the public interest.

These measures may include:

- suspending the merger;
- prohibiting the transfer of staff; or
- setting limits on the exchange of commercially sensitive information.

If the parties concerned do not comply with the Commission's direction, the Commission may apply to register the direction with a district court, following which any person who fails to comply with the registered direction without reasonable excuse may be found to be in contempt of court. Sanctions for contempt of court include the imposition of a fine or imprisonment. The court may also issue orders to secure compliance with the direction, or to require any person to remedy, mitigate or eliminate any effects arising from non-compliance.

As a matter of practice, the Commission is unlikely to use these powers unless it believes there is a real possibility of the merger raising serious competition concerns. Interim decisions may be issued to ensure that the relevant market remains open and contestable until investigations are completed. As of 9 May 2025, the Commission has only exercised its power to issue interim directions twice.

- The first instance was Grab's acquisition of Uber's South-East Asian business and Uber's acquisition of a 27.5% stake in Grab (Grab-Uber case). The directions made by the Commission included orders to maintain pre-transaction pricing and commission levels, and the removal of exclusivity obligations with new drivers.

- The second instance was the possible acquisition by Grab of the whole or part of the business of Delivery Hero in South-East Asia (Grab-Delivery Hero case), including Singapore. The interim decisions included directions for the parties to deal with each other at arm's length and to not share confidential information with each other. However, this set of interim measures ceased to be in effect from 23 February 2024 after the Commission was informed that the possible acquisition had been abandoned.

Where the Commission finds that there has been an infringement of the Section 54 Prohibition, it will decide on the appropriate action to remedy, mitigate or prevent the adverse effects resulting from the merger, and to prevent the recurrence of such infringements. Such actions may involve directions requiring the unwinding of the merger or the divesting of one of the overlapping businesses that led to the competition concerns, as well as the imposition of financial penalties; see **5.2 Parties' Ability to Negotiate Remedies**.

2.14 Exceptions to Suspensive Effect

The notification of a merger under the Competition Act does not itself have a suspensive effect on the transaction. However, where the Commission issues interim directions to the parties, there are no prescribed general exceptions to the suspensive effect of such interim directions. Prior to the issuance of interim directions (ie, to suspend a merger), the Commission will provide parties with the proposed interim directions and an opportunity to make written representations. The Commission will consider the written representations before making a decision on whether or not to issue the interim directions.

If issued, the interim directions take effect immediately from the date of issuance and remain in effect until the completion of the Commission's investigations, or unless otherwise varied by the Commission.

2.15 Circumstances Where Implementation Before Clearance Is Permitted

As notification is voluntary, merger parties may choose to implement an anticipated merger or further integrate a completed merger while it is being considered by the Commission, or before notifying the Commission. However, see **2.12 Requirement for Clearance Before Implementation** and **2.13 Penalties for the Implementation of a Transaction Before Clearance** regarding the risks of proceeding with a merger before clearance.

3. Procedure: Notification to Clearance

3.1 Deadlines for Notification

As notification is voluntary, the Competition Act does not stipulate any deadlines for notification. Instead, merger parties are strongly encouraged to conduct a self-assessment of the merger and consider whether to notify the Commission. Parties may choose to notify their merger to the Commission for a decision at any time before, during or after the merger.

Anticipated mergers may only be notified if they are no longer confidential and may be made known to the public, preferably prior to the completion of the merger. For completed mergers, an application may be made at any time, although parties are encouraged to do so as soon as possible after completion.

Parties should be aware that, if the parties choose not to notify the merger and the Com-

mission finds an intentional or negligent infringement of the Section 54 Prohibition, the Commission may impose financial penalties on the parties; see **5.1 Authorities' Ability to Prohibit or Interfere With Transactions**.

3.2 Type of Agreement Required Prior to Notification

For anticipated mergers, an application can only be made 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 objections to the Commission publicising their merger for the purpose of seeking third-party views. In practice, the Commission is likely to require a memorandum of understanding or draft agreement to evidence such an intention. For completed mergers, the Commission would require a binding agreement for the filing to be made.

3.3 Filing Fees

The filing fees for mergers or anticipated mergers are as follows:

- where the turnover of the target undertaking or asset is equal to or less than SGD200 million, the fee is SGD15,000;
- where the turnover of the target undertaking or asset is between SGD200 million and SGD600 million, the fee is SGD50,000; and
- where the turnover of the target undertaking or asset is above SGD600 million, the fee is SGD100,000.

If the merger 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 SGD5,000. SMEs are defined in the Competition (Fees) Regulations 2007 as undertakings with an annual sales turnover of not more than SGD100 million or having no more than 200 employees.

3.4 Parties Responsible for Filing

Any party to a merger or anticipated merger may apply to the Commission for a decision. Joint filings are encouraged by the Commission.

3.5 Information Included in a Filing

The Commission will review a merger in either one or two phases. A Phase 1 review, which begins with the submission of a completed Form M1, entails a quick assessment and allows the Commission to give a favourable decision with regard to a merger situation that clearly does not raise any competition concerns.

If the Commission is unable to clear a merger situation after a Phase 1 review, it will provide the applicant(s) with a summary of its key concerns and conduct a more detailed assessment in a Phase 2 review, upon receiving a completed Form M2 and response to the Phase 2 information request from the applicant(s).

Applicants should include all relevant documents to support statements and explanations made in Form M1, including transaction documents, annual reports and accounts, and business plans.

Form M2 lists the further information and supporting documents that may be required by the Commission in a Phase 2 review. If the applicants consider that the merger is likely to go into a Phase 2 review, they may also voluntarily submit the information required in Form M2 at the outset, together with Form M1.

Even where Forms M1 and/or M2 have been completed and submitted, the Commission may require additional information from the

applicant(s) for the purposes of assessing the merger situation.

3.6 Penalties/Consequences of Incomplete Notification

The Commission may refuse to accept an application if it is not:

- complete;
- accompanied by relevant supporting documents;
- substantially in the prescribed form;
- accompanied by the appropriate fee; or
- in compliance with any requirement prescribed under the Competition Act or accompanying regulations.

If the application is refused for any non-conformity with the above factors, the Commission will notify the applicant(s) as soon as practicable. The 30 working day indicative timeframe for the Phase 1 review, as discussed further in **3.8 Review Process**, will only commence after such non-conformity has been rectified.

To avoid any unnecessary delay, merger parties should therefore ensure that the application is complete and that all filing requirements are met upon submission.

3.7 Penalties/Consequences of Inaccurate or Misleading Information

If the Commission has issued a favourable decision based on information that was incomplete, false or misleading, it may review and revoke the decision.

Persons who recklessly or intentionally provide false or misleading information to the Commission may also be charged and convicted of a criminal offence under the Competition Act. Upon conviction, such persons may face a fine of up to SGD10,000 or imprisonment for up to 12 months, or both. As of 9 May 2025, based on publicly available information, no cases have been brought in respect of such offences under the Competition Act.

3.8 Review Process

In general, the Phase 1 review is expected to be completed within 30 working days, commencing on the working day after the day of receipt of a completed application. If a Phase 2 review is required, the Commission will endeavour to complete it within 120 working days of the applicant(s) submitting a completed Form M2 and a response to the Phase 2 information request that is deemed satisfactory by the Commission. In any event, the indicative timeframe for Phase 2 will only commence after the expiry of the indicative timeframe of 30 working days for the Phase 1 review. The Commission may extend the timelines for both Phase 1 and Phase 2 reviews in exceptional circumstances, and will notify the applicant(s) in writing in advance.

Merger parties should note that the indicative timeframes are not binding on the Commission and that the Commission has the power to "stop the clock" during the review – eg, if the merger parties fail to provide the Commission with the additional information requested within the stipulated time period (or any extensions of time given), or if commitments are being considered.

3.9 Pre-Notification Discussions With Authorities

Parties may either engage the Commission in pre-notification discussions (PNDs) or seek confidential advice before submitting Form M1 and commencing the formal notification process.

PNDs

To expedite the review process, merger parties intending to make an application may engage the Commission in PNDs to discuss the content of the notification and the timing of the formal notification.

No specific timetable is given, since the Commission states that the length and formality of PNDs depend on the merger parties' preference, the transaction's complexity and the concerns that may be raised. The Commission states that PNDs are most useful where a draft Form M1 is provided.

In PNDs, the Commission will generally not give its views on whether a merger situation is likely to proceed to Phase 2 review or if it might lead to an SLC.

While parties can engage in PNDs for anticipated mergers that may not yet be made public, PNDs are not intended to relate to purely speculative or hypothetical transactions. Parties should demonstrate a good-faith intention to proceed with the transaction – eg, by already having a draft agreement in place.

Confidential Advice

Parties may approach the Commission for confidential advice on an anticipated merger, especially at the stage when merger parties are concerned about preserving the confidentiality of the transaction. However, any such confidential advice provided by the Commission on anticipated mergers is not binding on the Commission, and is given without third-party consultations.

This process is only available if the Commission is satisfied that the following conditions are met:

- the merger must not be completed but there must be a good-faith intention to proceed with the transaction (evidenced to the satisfaction of the Commission);
- the merger must not be in the public domain, unless exceptional circumstances apply;
- the merger situation must raise a genuine issue relating to competitive assessment in Singapore – eg, if there is a lack of relevant precedents – and therefore the Commission's approach to the merger situation is genuinely in doubt; and
- the requesting party or parties are expected to keep the Commission informed of significant developments in relation to the merger in respect of which confidential advice was obtained – eg, the completion date or abandonment of the merger.

If the Commission decides that the above conditions are not met, it will return the confidential information that was submitted by the merger parties. The Commission will not disclose the fact that confidential advice was requested, nor the parties' information, to other organisations or foreign competition authorities unless relevant waivers are given by the merger parties.

3.10 Requests for Information During the Review Process

In both Phase 1 and Phase 2 reviews, the Commission may request additional or more comprehensive information when it is clear that such information is necessary. Applicants are encouraged to comply with such information requests promptly and within such deadline as the Commission deems appropriate, so that the merger assessment can be completed within the indicative timeframes. If the requested information cannot be furnished within the deadline, the applicants should promptly request an extension of time from the Commission.

The Commission may "stop the clock" and thereby extend the relevant time period for assessing the merger. If the applicant fails to provide the additional information within the deadline and any time extensions that have been granted, the Commission has the power to determine the application by not giving a decision, and then commence its own investigation into the merger using its statutory powers.

3.11 Accelerated Procedure

No separate accelerated review procedure is currently available. However, Phase 1 is generally considered a quick assessment that allows the Commission to issue a favourable decision in the case of a merger that is unlikely to raise any competition concerns.

4. Substance of the Review

4.1 Substantive Test

The Commission employs the SLC test in assessing mergers. There is no precise threshold as to what constitutes an SLC. In applying the SLC test, the Commission will compare the likely state of competition in the scenario where the merger has proceeded against the scenario where the merger has not proceeded (often referred to as the "counterfactual"). The counterfactual should not involve a violation of competition law.

Typically, the appropriate counterfactual will be the prevailing conditions of competition as this may be indicative of future competition in the market without the merger. However, in certain circumstances, the Commission may take into account likely and imminent changes to the structure of competition to accurately reflect competition in the market without the merger – eg, where one of the parties is genuinely failing, also known as the failing firm defence. To qualify for the failing firm defence, the merger party must be able to show that it is in such a dire situation that, without the merger, it would exit the market or be unable to meet its financial obligations, and that there is no less anti-competitive alternative to the merger.

4.2 Markets Affected by a Transaction

As noted in **2.5 Jurisdictional Thresholds**, the Commission will seek to define the relevant market(s), in order to assess the extent of competition in each relevant market both with and without the merger. However, as market shares alone do not provide deep insight into the nature of competition between firms in a market, an SLC could potentially be established at thresholds below those set out in **2.5 Jurisdictional Thresholds**, if other relevant factors provide strong evidence of an SLC.

4.3 Reliance on Case Law

While market definition depends on the specific facts and circumstances of the particular merger under assessment or investigation, the Commission may be guided by market definitions from other jurisdictions if such definitions are relevant, based on the facts of the case.

4.4 Competition Concerns

In assessing whether a merger situation might have the effect of an SLC in the relevant market, the Commission will look at:

- the extent to which the merger parties are close competitors;
- competition from existing competitors operating in the relevant market;
- competition from potential competitors; and
- the degree of countervailing buyer power of customers, such that some or all customers

would be able to prevent the merged entity from raising prices.

For horizontal mergers, the Commission will consider whether the merger situation gives rise to non-co-ordinated effects or co-ordinated effects, or both.

Non-Co-Ordinated Effects (or Unilateral Effects)

Non-co-ordinated effects (or unilateral effects) may arise where a firm has merged with its closest competitor and could find it profitable to raise prices (or reduce output, quality or innovation) because of the loss of competition between the merged entities. Rival firms in the market may also find it profitable to increase their prices independently, because of the loss of competitive pressure arising from the merger. Non-co-ordinated effects may also arise when an existing firm merges with a potential or emerging competitor, thereby preserving the market power of the incumbent firm that would otherwise have been threatened, or 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.

In examining potential non-co-ordinated effects, the Commission will consider the profitability of price increases and whether this will be defeated by competitors repositioning products or expanding sales in the market, as well as customers' ability and willingness to switch to another competitor, or the potential of new entrants to the market.

Co-Ordinated Effects

Co-ordinated effects may arise due to the merger situation increasing the possibility that, post-merger, some or all firms in the same market may find it profitable to co-ordinate their behaviour by raising prices or by reducing quality, output or innovation. This may occur where a merger reduces competitive constraints from actual or potential competition in a market, thus increasing the probability of collusion or strengthening a tendency for competitors to collude.

In considering the likelihood of co-ordinated effects resulting from the merger, the Commission will consider, among other factors, the ability of participating firms to align their behaviour in the market and incentives to maintain such co-ordinated behaviour.

Non-Horizontal Mergers

Non-horizontal mergers, such as vertical mergers and conglomerate mergers, may also trigger competition concerns in certain circumstances. With respect to vertical mergers, the Commission will consider factors such as the possibility of foreclosure, the increased potential for collusion, the creation of barriers to entry and the ability of customers to exercise countervailing power. With respect to conglomerate mergers, the Commission will consider factors such as:

- the prospects of the conglomerate merger increasing the feasibility of potential co-ordinated and non-co-ordinated effects;
- whether the replication of the range of products offered by the merged entity itself represents a strategic barrier to entry; and
- the ability of customers to exercise countervailing power.

4.5 Economic Efficiencies

Economic efficiencies may be considered by the Commission at two distinct points in the analytical framework.

Firstly, efficiencies may be assessed when considering whether the merger is likely to lead to an SLC in the first place. A merger may not result in an SLC where, for example, the efficiency gains from the merger of two of the smaller firms in a market allow the merged entity to exert greater competitive pressure on larger competitors. Secondly, efficiencies may also be taken into account where they outweigh the adverse effects resulting from the SLC caused by the merger, such that there are net economic efficiencies in markets in Singapore.

In general, efficiencies must be demonstrable (ie, clear and quantifiable), merger-specific (ie, likely to arise from the merger), timely (ie, the benefits will materialise within a reasonable period of time) and sufficient in extent (with reference to the magnitude of the efficiencies).

The Commission will compare the economic efficiencies with the adverse effects of the SLC (ie, comparing the magnitude of efficiencies against those of the anti-competitive effects from the merger). The merger is likely to be cleared if the Commission considers that the efficiencies outweigh the potential negative effects of the merger. If the Commission considers that the potential negative effects outweigh the economic efficiencies, it may impose remedies or prohibit the merger.

4.6 Non-Competition Issues

The Minister for Trade and Industry (the Minister) has the power to exempt a merger or an anticipated merger on the grounds of any public interest consideration, upon the application of a merger party that has been notified that the Commission proposes to issue an unfavourable decision in respect of the merger. For the purposes of the Competition Act, “public interest consideration” refers to ”national or public security, defence and such other considerations as the Minister may, by order published in the Gazette, prescribe”. As of 9 May 2025, the Minister has not gazetted any other matters as “public interest considerations” under Section 2 of the Competition Act.

As mentioned in **1.2 Legislation Relating to Particular Sectors**, apart from the SIRA, Singapore does not have general legislation prohibiting or requiring consent for foreign investment or foreign subsidies. However, some sectors and industries have specific requirements on foreign ownership, such as news media, banking, telecommunications and real estate. These regulations are separate from the merger control rules under the Competition Act.

- The Telecommunications Act 1999 requires a person to obtain the approval of the Infocommunications Media Development Authority before becoming a 12% controller or a 30% controller, before obtaining effective control over a designated telecommunications licensee, or before acquiring any business (or any part of such business) of a designated telecommunications licensee as a going concern.
- The Newspaper and Printing Presses Act 1974 requires the Minister for Digital Development and Information’s approval before a person can become a substantial shareholder or a 12% controller or indirect controller of a newspaper company, and prohibits persons from entering into agreements to acquire, hold or dispose of interest in voting shares of more than 5% of all voting shares in a newspaper company.
- The Broadcasting Act 1994 does not allow a broadcasting company to be granted or to hold a relevant licence where a foreign source holds or is in a position to control more than

49% of its shares/its holding company's shares, or where a foreign source is in a position to appoint a majority of persons with direction, control or management of the company or where such persons are under an obligation to act in accordance with the directions, instructions or wishes of any foreign source, without the Minister for Digital Development and Information's approval.

4.7 Special Consideration for Joint Ventures

The same substantive assessment applies to a joint venture that is deemed to constitute a merger for the purposes of the Competition Act. As the creation of a joint venture merger may increase the probability of co-ordination between the joint venture parent entities in some cases, the Commission will assess any co-ordination that takes place outside of the approved joint venture with a view to establishing whether the behaviour poses competition concerns.

5. Decision: Prohibitions and Remedies

5.1 Authorities' Ability to Prohibit or Interfere With Transactions

Where the Commission makes a decision that a merger has infringed the Section 54 Prohibition, or that an anticipated merger will infringe the Section 54 Prohibition if it is carried into effect, it may give such directions as it thinks appropriate. The directions may include provisions prohibiting an anticipated merger from being brought into effect or requiring a merger to be dissolved or modified in such a manner as the Commission may direct (eg, requiring the disposal of such operations, assets or shares of such undertaking in a manner specified).

The Commission may also require merger parties that intentionally or negligently infringe the Section 54 Prohibition to pay a financial penalty, determined by the Commission, of up to 10% of each party's turnover in Singapore for each year of infringement, up to a maximum of three years.

5.2 Parties' Ability to Negotiate Remedies

Generally, merger parties are encouraged to take the initiative to propose appropriate commitments to remedy, mitigate or prevent any competition concerns at any time before the Commission decides on the merger. The Commission will only accept commitments that are proportionate and sufficient to clearly address the identified adverse effects on competition. Even if merger parties propose commitments, the Commission may consider and impose alternative remedies.

The Commission may consider two types of remedies: structural remedies and behavioural remedies. These are generally preferred over financial penalties to restore competitive conditions in the market, although financial penalties may be imposed to reflect serious infringements and deter future infringements.

Structural Remedies

Of the two types of remedies, structural remedies are generally preferred to behavioural remedies because they clearly address the market structure issues that gave rise to the competition problems and, once implemented, require little ongoing monitoring by the Commission. Typically, structural remedies involve the sale of one of the overlapping businesses that led to the competition concern. The Commission considers 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, subject to the Commission's approval of 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. Otherwise, it is unlikely that the proposed divestiture will be an effective remedy for the anti-competitive elements identified.

In appropriate cases, the Commission will also consider other structural or quasi-structural remedies, such as the divestment of the buyer's existing business (or part of it) or an amendment to intellectual property licences. The Commission must approve the buyer before the sale to ensure that the buyer is able to act as an effective competitor in the market.

Behavioural Remedies

The Commission will consider behavioural remedies in situations where divestment is considered to be impractical or disproportionate to the nature of the concerns identified. In some cases, behavioural remedies may also be necessary to support structural divestment.

In determining which remedies would be appropriate and comprehensive, the Commission will take into account how effectively the action would prevent, remedy or mitigate the competition concerns caused by the merger. The Commission's starting point will be to choose the remedial action that will restore the competition that has been – or is expected to be – substantially reduced as a result of the merger. Given that the effect of a merger is to change the structure of the market, remedies that aim to restore all or part of the pre-merger market structure are likely to be a more direct way of addressing the adverse effects, although other remedies may be considered in view of the associated costs and effectiveness.

5.3 Legal Standard

When deciding on the appropriate remedy, the Commission will consider the effectiveness of different remedies and their associated costs, and will have regard to the principle of proportionality.

5.4 Negotiating Remedies With Authorities

As the Commission may accept commitments at any time before making its decision, parties can generally propose commitments at any time during the Commission's review or investigation. While merger parties are encouraged to take the initiative to propose commitments that they think may be appropriate to meet any competition concerns, the Commission may also invite merger parties to consider whether they want to offer commitments.

Phase 1 and 2 Reviews

If the Commission identifies competition concerns in Phase 1 which indicate that a Phase 2 review may be appropriate, those concerns will be communicated to the applicant(s) in writing through an issues letter. This presents the applicant(s) with a final opportunity to propose commitments to address these concerns in Phase 1.

Towards the end of Phase 2, if the Commission reaches a preliminary view that the merger is likely to give rise to an SLC, it will issue a Statement of Decision (Provisional), which may outline remedies that the Commission considers appropriate. Parties will be given a final opportunity to respond and propose commitments.

Invitations to Comment

In both Phase 1 and Phase 2, where the Commission considers that the commitments proposed by the merger parties are a suitable remedy, it will issue an invitation to comment on its website, and may also approach third parties individually for their views. Having obtained third-party views, the Commission will decide whether or not the commitments are appropriate and may be accepted. Where commitments have been accepted, the Commission will issue a favourable decision and may publish the details of all commitments as part of its decision on the merger on its public register. If an unfavourable decision is issued (eg, if the Commission finds that the proposed commitments would not be appropriate or sufficient to address competition concerns arising from the merger), directions will be given in writing to such person(s) as the Commission considers appropriate, and the decision and directions will be published on the public register.

5.5 Conditions and Timing for Divestitures

Divestitures to a pre-approved buyer should be completed within a specified period. An independent trustee may be appointed, at the undertaking's expense, to monitor the operation of the business pending disposal and/or to handle the sale if the undertaking has not completed the divestiture within the specified period.

If the parties are required to complete divestitures pursuant to a commitment accepted by the Commission, which has issued a favourable decision, the Commission may revoke the decision for failure to adhere to the terms of the commitment.

Where divestitures are ordered pursuant to directions imposed by the Commission but are not complied with, the Commission may seek to enforce its directions with a district court. See **2.13 Penalties for the Implementation of a Transaction Before Clearance** regarding the possible penalties for non-compliance with the Commission's directions.

5.6 Issuance of Decisions

The Commission will give notice of its decision to the applicant(s), announce the decision on its website, and publish the text of the decision on the public register (with confidential information redacted if the Commission agrees with the confidentiality claims of the merger parties).

5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions

For foreign-to-foreign transactions, there have been three cases where the Commission has accepted commitments from the merger parties:

- on 29 January 2016, the proposed acquisition by ADB BVBA of all the shares of Safegate International AB from Fairford Holdings Private AB received a clearance decision from the Commission that was subject to certain commitments (ADB-Safegate);
- on 24 May 2021, the Commission granted approval for the acquisition of Refinitiv Holdings Limited by the London Stock Exchange Group plc, conditional upon the implementation of and compliance with the final commitments (LSE-Refinitiv); and
- on 5 March 2024, the Commission granted approval for the proposed acquisition of shares by Talace Private Limited in Air India (Talace-Air India) after accepting commitments from the merger parties.

6. Ancillary Restraints and Related Transactions

6.1 Clearance Decisions and Separate Notifications

If merger parties have included ancillary restrictions in their notification application, a clearance decision will cover ancillary restrictions as well. Separate notifications for guidance, or a decision, may be necessary for parties that have not notified their mergers.

The Commission considers that ancillary restrictions are agreements, arrangements or provisions that are directly related and necessary to the implementation of a merger. Pursuant to an exception under the Third Schedule of the Competition Act, restrictions that fit within this definition are excluded from the application of:

- Section 34 of the Competition Act, which prohibits anti-competitive agreements; and
- Section 47 of the Competition Act, which prohibits abuse of a dominant position.

However, a restriction is not automatically deemed to be directly related to the merger simply because it is agreed at the same time as the merger, or is expressed to be so related. 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 determining the necessity of the restriction, the Commission will consider whether its duration, subject matter and geographical field of application are proportionate to the overall requirements of the merger.

In addition, merger parties must demonstrate that they have chosen the option that is the least restrictive of competition, if equally effective alternatives are available for attaining the same objective.

7. Third-Party Rights, Confidentiality and Cross-Border Co-Operation

7.1 Third-Party Rights

Third parties are permitted to be involved in the review process; see **7.2 Contacting Third Parties** for further information. Third parties may also make complaints to the Commission.

In general, parties that suffer loss or damage as a result of a competition law infringement will have a private right of action to seek relief in civil proceedings. Such rights will only arise after the Commission has made a decision that a merger has infringed the Section 54 Prohibition and the appeal period has expired, or upon the determination of an appeal if one has been brought. Private actions must be brought within two years from the date of the Commission's decision or from the determination of the appeal, whichever is later.

Relief may be in the form of an injunction or declaration, damages, and such other relief as the court deems fit.

7.2 Contacting Third Parties

The Commission gathers information about the competitive effects of the merger from the merger parties and from third parties, including customers, competitors, suppliers and other

regulatory bodies and government departments, where relevant.

The Commission will invite third parties to comment on the merger and commitments (if any) via a public consultation exercise.

7.3 Confidentiality

Details of notified mergers will be published on the public register when the Commission receives a satisfactory application. The details published will usually include:

- the names of the merger parties;
- a description of the transaction;
- a description of the merger parties' business activities (worldwide and in Singapore);
- a description of the overlapping goods or services, including brand names;
- a description of substitute goods or services; and
- the applicant's views, including but not limited to the definition of the relevant markets, barriers to entry and countervailing buyer power, and the competitive effects of the merger.

All relevant information, including information that may be confidential, must be provided to the Commission. Both confidential and non-confidential versions of an application or submission should be provided, as non-confidential versions are required to facilitate the Commission's discussions and meetings with third parties and the publication of a non-confidential version of the decision without delay.

Under the Competition Act, confidential information includes information that can reasonably be considered to be commercially sensitive or relating to the personal affairs of an individual. The Commission considers information to be confidential if disclosure of that information would significantly harm legitimate business interests or an individual's interests, or if it would be contrary to the public interest to disclose that information.

If excessive or unreasonable confidentiality claims are made, the Commission may "stop the clock" until the applicant files a non-confidential version that is deemed acceptable by the Commission.

While the Commission will treat all parties' submissions on confidentiality seriously, confidential information may need to be disclosed in exceptional circumstances. In such cases, the Commission will liaise with the parties in advance to consider ways to minimise any detriment to them. Applicants will also be given an opportunity to review the draft decision before publication to determine whether it contains confidential information, although the Commission retains the final discretion to decide whether or not information is confidential.

7.4 Co-Operation With Other Jurisdictions

The Commission is permitted under the Competition Act to enter into co-operation arrangements with any foreign competition body with approval from the Minister, which may take the form of information exchange or any other assistance as may be necessary to assist in the enforcement or administration of competition laws.

The Commission has entered into a number of memoranda of co-operation and understanding, as follows:

- on 22 June 2017, the Commission and Japan's Fair Trade Commission concluded a memorandum of co-operation;
- on 30 August 2018, the Commission signed a memorandum of understanding with Indonesia's Commission for the Supervision of Business Competition;
- on 17 September 2019, the Commission concluded a memorandum of understanding with Canada's Competition Bureau;
- on 29 November 2021, the Commission signed a memorandum of understanding with the Philippine Competition Commission; and
- on 29 December 2021, the Commission signed a memorandum of understanding with the State Administration for Market Regulation of the People's Republic of China.

Generally, the memoranda reinforce and formalise existing technical assistance and co-operation between the Commission and these foreign antitrust authorities. Co-operation includes work on areas such as information exchange, case notification, co-ordination of enforcement, technical co-operation and the sharing of experiences.

On 16 May 2019, the Commission announced that it had joined the International Competition Network's Framework on Competition Agency Procedures (CAP), as a founding member. The CAP advances basic non-binding principles on procedural fairness and transparency among antitrust agencies, and enables closer co-operation through dialogue to better understand the processes of participating agencies.

Form M1 requires the parties to state which other jurisdictions they intend to notify (or have notified) of the merger. Merger parties will also be asked if they would be willing to provide a waiver that allows the Commission to exchange confidential information with competition agencies in other jurisdictions.

8. Appeals and Judicial Review

8.1 Access to Appeal and Judicial Review

Parties have a right to appeal to the Competition Appeal Board (the Board) against the Commission's decision or direction (including interim measures). The Board is an independent body comprising members appointed by the Minister.

Any merger party may appeal against the Commission's decision, whereas the Commission's direction may be appealed by the party on which said direction is imposed. The Board can confirm, impose, revoke or vary a direction, or make any other direction or decision, as long as it is a decision or direction that the Commission itself could have given. While parties may appeal against the Commission's refusal to vary, substitute or release existing commitments, they cannot appeal against the Commission's refusal to accept any commitments offered.

An appeal to the Board against a 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).

Further appeals against the decisions of the Board are limited only to points of law and the amount of the financial penalty imposed, and may be made to the General Division of the High Court and then to the Court of Appeal. Appeals are brought by way of originating application, and the procedure governing the appeal is set

out in Order 20 of the Rules of Court 2021. Only a party to the proceedings at which the Board reached its decision can make such appeals. The General Division of the High Court may determine any such appeal by confirming, modifying or reversing the Board's decision and making such further or other order on appeal. There is no further appeal right from the Court of Appeal.

8.2 Typical Timeline for Appeals

Parties that wish to appeal to the Board must lodge a notice of appeal in the prescribed form within four weeks of the date on which they were notified of the contested decision or the date of publication of the decision, whichever is earlier. The Board may, at its discretion and on the appellant's application, extend the time limit provided for lodging a notice of appeal.

As soon as is practicable, the Board will:

- set a timetable outlining the preparatory steps to be taken by the parties for the oral hearing of the appeal;
- fix the hearing date;
- notify the parties in writing of the timetable and the date and place of the hearing; and
- send the parties a report summarising the factual context of the case and the parties' principal submissions, if it is considered to be necessary for the expeditious disposal of the appeal.

As of 9 May 2025, there has only been one appeal filed before the Board in respect of the Section 54 Prohibition in Singapore. The matter concerned Uber's appeal against the Commission's decision issued on 24 September 2018, which found that Grab and Uber had infringed the Section 54 Prohibition. Uber filed its notice of appeal on 20 October 2018 and the Board dismissed the appeal on 29 December 2020, upholding the Commission's financial penalties and directions. In addition, the Board awarded costs of the appeal to the Commission.

8.3 Ability of Third Parties to Appeal Clearance Decisions

Parties to an anticipated merger or a completed merger have a right to appeal against the Commission's decision. Any other person to whom the Commission has given a direction under Sections 58A, 67 or 69 of the Competition Act may also appeal to the Board.

As of 9 May 2025, there are no cases in which third parties have brought an appeal against a clearance decision by the Commission.

9. Foreign Direct Investment/Subsidies Review

9.1 Legislation and Filing Requirements

Singapore does not have general legislation prohibiting or requiring consent for foreign investment, with the exception of the SIRA, which regulates investments into entities deemed critical to national security interests; see **1.2 Legislation Relating to Particular Sectors** and **4.6 Non-Competition Issues**. However, some sectors and industries – such as news media, banking, telecommunications and real estate – have specific requirements on foreign ownership. These regulations are separate from the merger control rules under the Competition Act.

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