

# Navigating the Regulatory and Enforcement Landscape in 2024

Following the end of the "pandemic era", which was a relatively quiet period on the enforcement front, 2023 marked the start of a steady pick-up in the Competition and Consumer Commission of Singapore's (CCCS) enforcement activities. In particular, 2023 saw the CCCS:

- (a) Carry out dawn raids at the premises of numerous building construction services businesses in Singapore, in what was likely the first time since the onset of the COVID-19 pandemic; and
- (b) Affirm its policy that businesses engaged in cartelistic conduct can expect to receive heftier fines moving forward.

Sustainability remains a key policy priority for the CCCS. In particular, the CCCS is currently in the midst of reviewing the public's responses to their proposed guidance note for business collaborations pursuing environmental sustainability objectives, to be issued in due course. The CCCS is also developing guidelines on environmental claims made in advertising that could amount to unfair practices under the Consumer Protection (Fair Trading) Act (CPFTA).

On the merger control front, the CCCS unconditionally cleared seven mergers in 2023 (as it did in 2022). Three merger notifications from 2023 remain pending the CCCS' decision, one of which is currently undergoing a Phase 2 review.

Aside from competition issues, 2023 also saw the introduction of the Significant Investments Review Bill (recently passed in January 2024) which will come into force as the Significant Investments Review Act (SIR Act), likely in the coming months. The purpose of the SIR Act is to ensure the continuity of entities that are critical to Singapore's national security interests. The SIR Act imposes approval, notification and other obligations on potential acquirers and existing owners / potential sellers of entities designated by the Government, as well as on such designated entities themselves.

In this update, we review some of these key trends and developments from 2023 and provide our take on how businesses can navigate the regulatory and enforcement landscape in Singapore going into 2024.

## Stiffer Penalties for Cartel Conduct

The Competition Appeal Board of Singapore (CAB) affirmed the CCCS' position that bid rigging and other cases involving obvious cartelistic behaviour are serious infringements which will attract a higher starting percentage in the computation of fines than has been previously levied.

In its decision in the case of *CU Water Services Pte Ltd v Competition and Consumer Commission of Singapore (CU Water Appeal)*, the CAB disclosed the base penalty percentage (i.e., 9%) used by the CCCS in computing the financial penalty imposed on a party.<sup>1,2</sup> This is the first time that the CCCS' base penalty percentage figure has been publicly disclosed, providing a helpful indicator of the CCCS' approach to the computation of its fines for serious infringements.

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<sup>1</sup> "Infringement of the section 34 prohibition in relation to the provision of maintenance services for swimming pools, spas, fountains and water features", CCCS decision dated 14 December 2020.

<sup>2</sup> *CU Water Services Pte Ltd v Competition and Consumer Commission of Singapore* [2023] SGCAB 1 (Competition Appeal Board decision of 3 October 2023).

CU Water Services Pte Ltd had argued that the starting percentage of 9% adopted by the CCCS in calculating the financial penalty was excessive in light of past cases, where the starting percentage adopted by the CCCS was much lower. The CAB dismissed this contention, noting that while the CCCS had used lower starting percentages in the initial years of enforcement, the CCCS has now adopted a general policy that bid rigging and other obvious cartelistic behaviour are serious infringements which attract a higher starting percentage. The CAB took the view that the CCCS should have the ability to adjust the starting percentages for conduct it considers to be most harmful to competition. It noted that the CCCS' basis for the shift – that there is sufficient awareness that such conduct is harmful such that an enterprise engaging in the conduct can expect to be seriously sanctioned – is justifiable as a matter of Singapore's maturing competition enforcement policy.

The CAB also made clear that undertakings which seek to appeal against the penalties imposed should not merely state that the amount imposed is excessive. Appellants seeking lower penalties should be prepared either to:

- (a) Demonstrate how and why the principles employed by the CCCS under its financial penalty calculation framework are incorrect or produce unjust results; or
- (b) Establish any errors made by the CCCS in the interpretation or application of these penalty calculation principles that have resulted in higher financial penalties than would have been arrived at if these principles had been correctly applied.

Businesses can expect that financial penalties for cartelistic conduct will continue to be hefty in coming years. As such, they should continue to focus on competition compliance processes, and at the same time be prepared for investigations and dawn raids by antitrust authorities (see "Preparation Plan and Key Takeaways – What can Businesses do?" below).

## Return of the Raids

In what was likely the first dawn raids since the onset of the COVID-19 pandemic, the CCCS carried out dawn raids<sup>3</sup> at the premises of numerous businesses providing building construction services in Singapore in or around November 2023.<sup>4</sup> These dawn raids came just two years after the CCCS imposed fines totalling S\$32,098 on three parties in the building, construction and maintenance services sector for bid-rigging conduct.<sup>5</sup>

Where, for obvious reasons, dawn raids were paused in light of the COVID-19 pandemic, we can expect enforcement action by the CCCS to pick up strongly in the near future – particularly as the CCCS has indicated that it has received an increase in tip-offs in both the public and private sector.<sup>6</sup>

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<sup>3</sup> Dawn raids are carried out by the CCCS as part of their investigations into possible infringements of section 34 of the Competition Act by the inspected businesses, for example, if they have reason to believe that such businesses may be conducting anti-competitive activities such as price fixing and bid rigging, etc.

<sup>4</sup> More details are available [here](#).

<sup>5</sup> "CCCS Penalises Contractors for Bid Rigging of Quotations for Wildlife Reserves Singapore", CCCS decision dated 4 June 2020.

<sup>6</sup> "Singapore enforcement pipeline is 'looking good', antitrust chief says", article by Jet Damazo-Santos dated 29 August 2023 as reported in MLex.

## Merger Control – Early Preparation, Faster Clearance

While mergers were cleared more quickly in 2023 than in 2022,<sup>7</sup> the average period for a Phase 1 clearance was still around three calendar months, but stretched to six months in one case. The CCCS has emphasised that parties can assist in expediting the review process by ensuring that their merger filings contain all requisite information from the start.<sup>8</sup> This allows the CCCS to have as complete a record of information and documents it might need, as early as possible, to reach a decision swiftly. In this regard, the CCCS has also issued a revised Form M1 that contains more detailed questions which seek information typically required for the CCCS' assessments. The submission of incomplete merger filings can lead to protracted requests for information processes (and concurrent review clock stoppages) or in the worst case, a rejection of the application.

Failure to provide all relevant information to the CCCS may also lead to an application proceeding to a Phase 2 review. In 2023 alone, the CCCS cleared two mergers at Phase 2 without accepting commitments after looking at the cases more closely.

## Sustainability Remains Key Policy Area in 2024

Businesses looking at sustainability-related collaborations in Singapore should note that the CCCS sought public feedback in July 2023 on its proposed Guidance Note on Business Collaborations Pursuing Environmental Sustainability Objectives (**Draft Guidance Note**).<sup>9</sup>

Much like the European Commission and the UK Competition and Markets Authority – which have also introduced guidelines on the competitive assessment of sustainability agreements<sup>10,11</sup> – the Draft Guidance Note aims to shed more light on, among others, the CCCS' framework for assessing collaborations relating to "environmental sustainability objectives".

While there is no indication of when the Draft Guidance Note will be finalised and released by the CCCS, the Draft Guidance Note still serves as a good resource to aid businesses in navigating competition concerns that may arise in the sustainability space.

On the consumer protection front, the CCCS is also developing guidelines on the environmental claims that could amount to unfair practices under the CPFTA. As such, we can look forward to greater clarity on forms of greenwashing conduct that may amount to unfair practices.

## Introduction of the Significant Investments Review Act

Under the SIR Act that was recently passed in Parliament in January 2024, the Minister for Trade and Industry (**Minister**) has the power to review ownership or control transactions involving any entity that has acted against Singapore's national security interests. Designated entities will also be subject to various ownership and control related notification / approval requirements, as well as approval requirements for the appointment of key officers. Speaking in Parliament, the Minister also recently highlighted that all entities

<sup>7</sup> Phase 1 reviews in 2023 took an average of approximately 68 working days, down from 92 working days in 2022.

<sup>8</sup> "Singapore enforcement pipeline is 'looking good', antitrust chief says", article by Jet Damazo-Santos dated 29 August 2023 as reported in MLex.

<sup>9</sup> More details are available [here](#).

<sup>10</sup> The European Commission's revised horizontal guidelines that were released in May 2023 include a specific chapter on sustainability agreements. More details are available [here](#).

<sup>11</sup> The UK Competition and Markets Authority's guidance on environmental sustainability agreements was published in October 2023. More details are available [here](#).

being considered for designation have already been contacted over the last few months, and that businesses which have not been approached thus far are not currently being considered.

While there is no specific date indicated as yet as to when the SIR Act is expected to come into force, we expect that it will be in the coming months. The Office of Significant Investments Review will be set up by the Ministry of Trade and Industry to coordinate and oversee the implementation of the SIR Act. For more information on the SIR Act, please see our last update [here](#).

## Preparation Plan and Key Takeaways – What Can Businesses Do?

### *Competition Compliance / Dealing with Investigations*

Businesses can expect to see stronger enforcement action and heftier fines meted out in Singapore for cartelistic behaviour in the coming years. As such, businesses should be mindful of the following:

- (a) **Seek legal advice early:** Seek legal advice well in advance of entering into agreements and/or engaging in conduct involving competitors or where your business is a dominant player in its relevant market to avoid potentially high fines for anti-competitive conduct;
- (b) **Conduct regular compliance training:** Conduct regular training for employees, educating them on the types of activities or conduct that may infringe the Competition Act, particularly when communicating with competitors;
- (c) **Effective dawn raid strategy:** It is critical for businesses to have in place an effective internal dawn raid strategy and conduct regular dawn raid trainings for employees. Doing so best positions your business to be well-prepared for an unannounced dawn raid, minimising business disruption while ensuring cooperation with relevant authorities; and
- (d) **Consider applying for leniency early:** Leniency applicants can be granted up to a 100% reduction in financial penalties if they are the first in line to provide the CCCS with evidence of the cartel activity before an investigation has commenced. There are of course other considerations involved in deciding if a leniency application is the best course of action, e.g., potential exposure to civil actions or enforcement actions in other jurisdictions. Businesses should consult with legal counsel to conduct an assessment as soon as issues are detected, so that the maximum benefit from a leniency application may be obtained, if a decision is made to proceed with such an application.

### *Merger Control*

**Prepare early:** Merger control related analysis and preparations should be a priority in the mergers and acquisitions process. Depending on the complexity of the matter, businesses should (to the greatest extent possible) budget at least approximately one and a half to two months prior to signing of the transaction documentation for the submission of a merger control notification to the CCCS (if required) to work with your trusted legal advisor to conduct the relevant merger control analysis, and if necessary, gather data, and prepare your merger control notification for submission. In transactions involving parties with assets or revenue sources outside Singapore, merger control requirements of other foreign jurisdictions can apply as well, potentially necessitating multiple filings.

As merger cases continue to grow in complexity, businesses that move quickly and provision sufficient time for themselves to gather data and prepare a comprehensive merger control notification, are best positioned to achieve shorter review timelines for their transactions.

## *Environmental Claims for your Products*

On the consumer protection front, based on a study commissioned by the CCCS,<sup>12</sup> the CCCS has recommended that businesses intending to make environmental claims on their goods and services take note of the following:

- (a) Environmental claims should be specific, accompanied by supporting information, and substantiated with valid and credible evidence;
- (b) Environment claims should not imply or convey an overall impression that the environmental benefit of the product is more than what it actually is; and
- (c) Simple language should be used as much as possible. If technical jargon is employed, there should be explanations of its meaning or implication.

## *SIR Act Requirements for Investors*

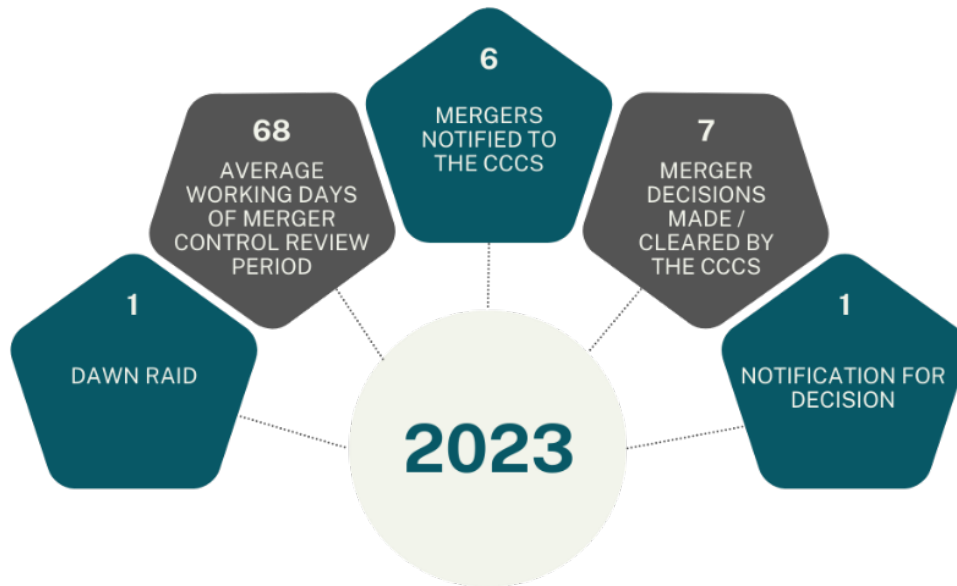
In anticipation of the SIR Act coming into force this year, investors into critical entities in Singapore should take note of the following:

- (a) **Check if the target is designated under the SIR Act:** As part of its due diligence process, investors should take time to check whether the entity in which its direct or indirect acquisition of shareholding interests and/or control over the voting power relates is a "designated entity". Under the SIR Act, the Minister has the power to designate any entity which: (i) is incorporated, formed or established in Singapore; (ii) carries out activities in Singapore; or (iii) provides goods or services to persons in Singapore, if the Minister considers that the designation is necessary in the interest of Singapore's national security (**Designated Entity**). The list of Designated Entities will be published in the Government Gazette once the SIR Act comes into force.
- (b) **Ownership and control related requirements:** If the target is a Designated Entity, there are certain ownership and control related notification and approval requirements that prospective acquirers and sellers of Designated Entities, as well as Designated Entities themselves, are subject to, including:
  - (i) Various ownership and control related notification / approval requirements based on pre-determined thresholds;
  - (ii) Approval requirements for the appointment of key officers;
  - (iii) Approval requirements to undertake a voluntary winding-up or dissolution; and
  - (iv) Remedial directions under certain circumstances. For example, an acquirer of a Designated Entity which has breached its conditions of approval may be ordered to transfer or dispose of its interest in the Designated Entity.
- (c) The SIR Act applies to all investors, both local and foreign, as the regime is focused on managing investments into critical entities from the perspective of safeguarding Singapore's national security interests and not screening foreign investments *per se*.

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<sup>12</sup> More details are available [here](#).

## Key Statistics of 2023



If you would like information or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership whom you normally work with or any of the following Partners:



**Ameera ASHRAF**

Head – Antitrust & Competition

d: +65 6416 8113

e: [ameera.ashraf](mailto:ameera.ashraf@wongpartnership.com)

[@wongpartnership.com](mailto:ameera.ashraf@wongpartnership.com)

Click [here](#) to view Ameera's CV.



**CHAN Jia Hui**

Partner – Antitrust & Competition

d: +65 6416 2794

e: [jiahui.chan](mailto:jiahui.chan@wongpartnership.com)

[@wongpartnership.com](mailto:jiahui.chan@wongpartnership.com)

Click [here](#) to view Jia Hui's CV.



**Clarissa KOH**

Partner – Antitrust & Competition

d: +65 6517 8685

e: [clarissa.koh](mailto:clarissa.koh@wongpartnership.com)

[@wongpartnership.com](mailto:clarissa.koh@wongpartnership.com)

Click [here](#) to view Clarissa's CV.



# WPG MEMBERS AND OFFICES

- [contactus@wongpartnership.com](mailto:contactus@wongpartnership.com)

## SINGAPORE

-

WongPartnership LLP  
12 Marina Boulevard Level 28  
Marina Bay Financial Centre Tower 3  
Singapore 018982  
t +65 6416 8000  
f +65 6532 5711/5722

## CHINA

-

WongPartnership LLP  
Shanghai Representative Office  
Unit 1015 Link Square 1  
222 Hubin Road  
Shanghai 200021, PRC  
t +86 21 6340 3131  
f +86 21 6340 3315

## INDONESIA

-

Makes & Partners Law Firm  
Menara Batavia, 7th Floor  
Jl. KH. Mas Mansyur Kav. 126  
Jakarta 10220, Indonesia  
t +62 21 574 7181  
f +62 21 574 7180  
w [makeslaw.com](http://makeslaw.com)

## MALAYSIA

-

Foong & Partners  
Advocates & Solicitors  
13-1, Menara 1MK, Kompleks 1 Mont' Kiara  
No 1 Jalan Kiara, Mont' Kiara  
50480 Kuala Lumpur, Malaysia  
t +60 3 6419 0822  
f +60 3 6419 0823  
w [foongpartners.com](http://foongpartners.com)

[wongpartnership.com](http://wongpartnership.com)

## MIDDLE EAST

-

Al Aidarous Advocates and Legal Consultants  
Abdullah Al Mulla Building, Mezzanine Suite 02  
39 Hameem Street (side street of Al Murroor Street)  
Al Nahyan Camp Area  
P.O. Box No. 71284  
Abu Dhabi, UAE  
t +971 2 6439 222  
f +971 2 6349 229  
w [aidarous.com](http://aidarous.com)

-

Al Aidarous Advocates and Legal Consultants  
Oberoi Centre, 13th Floor, Marasi Drive, Business Bay  
P.O. Box No. 33299  
Dubai, UAE  
t +971 4 2828 000  
f +971 4 2828 011

## PHILIPPINES

-

Gruba Law  
27/F 88 Corporate Center  
141 Valero St., Salcedo Village  
Makati City 1227, Philippines  
t +63 2 889 6060  
f +63 2 889 6066  
w [grubalaw.com](http://grubalaw.com)