

Antitrust and Investment Screening in Singapore – Key Developments in Q1 2024

As we round up the first quarter of 2024, we summarise below the key developments in the antitrust and investment screening landscape in Singapore. The start of the year has seen:

- (a) The Competition and Consumer Commission of Singapore (**CCCS**) issuing, for the first time, *pre-emptive* Interim Measures Directions (**IMDs**) in response to reports of a potential acquisition by Grab Holdings Inc. (**Grab**) of the Foodpanda business;
- (b) A protracted review undertaken by the CCCS since November 2020 of a series of related transactions in the aviation industry which was finally cleared with commitments in March 2024;
- (c) The passage and coming into force of the Significant Investments Review Act (**SIR Act**), which is aimed at ensuring the continuity of entities critical to Singapore’s national interests and complements other existing sectoral legislation. This was followed closely by the introduction of the Transport Sector (Critical Firms) Bill (**Transport Bill**) in Parliament on 3 April 2024, which is intended to introduce similar requirements to critical firms in the air, land and sea transport sectors in Singapore;
- (d) The CCCS’ issuance of new guidelines on business collaborations pursuing environmental sustainability objectives; and
- (e) The introduction of new leadership at the CCCS, with Mr Alvin Koh appointed as the new Chief Executive and Commission Member.

We explore each development below.

CCCS Sets Tone for 2024 with Active Interventions and Strategic Clearances

The CCCS has set a strong tone for 2024 with a series of active interventions and strategic clearances.

Issuance of IMDs to prevent potential merging parties from integration

On 2 February 2024, the CCCS issued its first “pre-emptive” (i.e., prior to the signing of any transaction agreement) set of IMDs to Delivery Hero SE, Foodpanda GmbH (Germany) and Delivery Hero (Singapore) Pte. Ltd. (collectively, **Delivery Hero**), as well as Grab, in relation to the possible acquisition by Grab of the whole or part of Delivery Hero’s business in Southeast Asia, including Singapore (**Possible Transaction**). As at 23 February 2024, the Possible Transaction was abandoned and the IMDs accordingly ceased to be in effect. Despite this, the matter serves as a helpful indication of the CCCS’ enforcement appetite and its willingness to take pre-emptive action to preserve the competitive *status quo* where potential transactions may present significant and irreversible risks of adverse competitive effects, if completed.

At the commencement of its investigation into the Possible Transaction in January 2024, the CCCS indicated that it had reason to suspect that the Possible Transaction could result in a substantial lessening of competition in the market for the supply of online food ordering and delivery (**OFOD**) services in Singapore, given that the market is characterised by a few large players, high entry barriers and strong network effects. In this regard, the IMDs issued were intended to proactively ensure that the market remained open and

contestable until the conclusion of the CCCS' investigation, and required the parties to refrain from taking or omitting any action which could cause or contribute to any of the following in the OFOD services in Singapore:

- (a) The integration of the parties' OFOD services businesses in Singapore;
- (b) The effecting of any agreement between the parties (or their related entities) that would materially impair the ability or incentive of either party to compete independently in the OFOD services in Singapore; or
- (c) Any material impact on the viability and saleability of Delivery Hero's Foodpanda businesses in Singapore such as to prejudice CCCS' ability to subsequently direct a divestment, if necessary.

The issuance of these IMDs shows the CCCS' willingness to take pre-emptive measures to prevent any potential substantial lessening of competition in a relevant market, and contrasts with the previous set of IMDs issued in the Grab-Uber Merger in 2018, where the merger had been completed prior to notification to the CCCS. In that context, given the digital nature of the market, and the fact that Uber had already left the market, attempts to unwind the transaction were unlikely to have been fruitful, and therefore, the CCCS' IMDs were instead focused on opening the market by e.g., removing exclusivity obligations placed on drivers on Grab's platform.

With this in mind, businesses contemplating transactions which may raise similar concerns of a substantial lessening of competition in the relevant market should be aware of the possibility of such pre-emptive IMDs being issued by a proactive CCCS, and plan their transaction timelines accordingly. They should also have contingency plans in place to respond to the CCCS should such IMDs be issued.

Conditional clearance with commitments

Following a protracted review of a series of related transactions (**Airline Transactions**) involving Air India Limited (**Air India**), Singapore Airlines Ltd (**SIA**), and Tata SIA Airlines Ltd (a joint venture between Tata Sons Private Limited (**Tata Sons**) and SIA, operating under the name Vistara), the CCCS issued conditional clearance of the Airline Transactions after accepting the commitments offered by the parties.

The Airline Transactions generally involved:

- (a) A set of mergers:
 - (i) Starting from the acquisition of all shares and voting rights of Air India by Talace Private Limited (**Talace**, a subsidiary of Tata Sons) from the Government of India, along with Air India's shareholdings in other aviation-related entities, namely its 100% interest in Air India Express Limited, and 50% interest in Air India SATS Airport Services Private Limited (**First Transaction**);
 - (ii) Followed by the merger of Talace and Vistara into Air India (i.e., Air India as the surviving entity: **Integrated Entity**); and
 - (iii) Concluding with SIA acquiring 25.1% of the Integrated Entity (i.e., the second transaction); and
- (b) A proposed commercial cooperation agreement (**Commercial Cooperation**) between SIA and the Integrated Entity to cooperate in the provision of flights between Singapore and India.

The CCCS found that the parties involved in the Airline Transactions possessed the majority of the market shares for carriers offering certain flights between Singapore and India (**Affected Routes**). It also observed that the parties managed to sustain their market shares in recent years despite the existence of a number of

competing airlines. Against this backdrop, the CCCS found that the Airline Transactions would allow for price and capacity coordination between the parties, which would in turn significantly restrict competition on the Affected Routes. Accordingly, the CCCS allowed the Airline Transactions to proceed only after the parties provided commitments to, among others, maintain pre-COVID-19 capacity (i.e., calendar year 2019 levels) on the Affected Routes and to ensure compliance through the appointment of independent auditors for monitoring adherence, to ensure that competition on the Affected Routes would not be restricted by the transactions.

Also notable is the extensive review period, with the first iteration of the Commercial Cooperation being notified on 30 November 2020, and the First Transaction being notified on 14 December 2021. With the approval for the Airline Transactions only being provided on 5 March 2024, this marks the longest merger review period to date, and is in line with our previous observations of increasingly protracted review timelines – although it is also likely that the subsequent revisions to the transactions may also have impacted the review period.

Given the proactive stance taken by the CCCS in intervention, coupled with increasingly protracted review timelines, it remains vital that businesses plan appropriately and provision sufficient time to gather data and prepare a comprehensive merger control notification, to increase the likelihood of achieving shorter review timelines for their transactions and avoiding unnecessary delays.

New Legislation Enhances Singapore's Investment Screening Regime

SIR Act comes into force

The SIR Act, which introduces a new investment management regime for Singapore, came into force on 28 March 2024.

The SIR Act is intended to complement Singapore's existing suite of sectoral safeguards to ensure the continuity of critical entities which are not currently adequately covered under other existing sectoral legislation. For more information on the SIR Act, please see our [November 2023 update](#).

As previously indicated, an Office of Significant Investments Review (**OSIR**), under the purview of the Ministry of Trade and Industry, has been established to administer, facilitate and operationalise the SIR Act and to serve as a dedicated one-stop touchpoint for all stakeholders. In this vein, the OSIR's website¹ has been launched and is intended to provide, among others, the list of designated entities, as well as other relevant guidance such as the Guidelines on Fit and Proper Criteria, which prospective acquirors, or controllers and their associates must satisfy in order to have their transactions in respect of designated entities approved – although it should be noted that these have yet to be made available as of the date of this update. The OSIR's website also provides helpful infographics that summarise various processes under the SIR Act, such as the overview of ownership and control obligations under the SIR Act, acquisitions of the business / equity / voting power or the appointment of key officers in a designated entity, and reconsideration and appeal processes under the SIR Act.

Introduction of Transport Bill

Relatedly, the Ministry of Transport (**MOT**) introduced the Transport Bill in Parliament on 3 April 2024. The Transport Bill is intended to complement the SIR Act, and seeks to strengthen the resilience of key firms in the air, sea and land transport sectors in Singapore and safeguard their provision of essential transport services

¹ The OSIR website can be accessed [here](#).

by amending four Acts: the Bus Services Industry Act 2015, the Civil Aviation Authority of Singapore Act 2009, the Maritime and Port Authority of Singapore Act 1996, and the Rapid Transit Systems Act 1995. This approach of amending existing legislation as opposed to bringing firms under the SIR Act umbrella was likely adopted given the existence of sectoral legislation for the transport sectors concerned.

Similar to the SIR Act, the Transport Bill aims to establish a designated entities regime, allowing the relevant regulatory authorities to designate key entities involved in the provision of essential transport services in Singapore, and to subject them to a targeted set of controls over ownership, management appointments and require them to notify the relevant sectoral statutory boards of changes in key operational and resourcing arrangements.

The MOT has indicated that industry representatives have already been consulted on the Transport Bill and its potential impact on businesses and investors in the affected transport sectors in Singapore, and that the relevant authorities will be approaching entities to be designated for engagement on compliance with the requirements of the Transport Bill, if approved by Parliament.

CCCS Issues Sustainability Guidelines

In March 2024, after a public consultation,² the CCCS issued its [Guidance Note on business collaborations pursuing environmental sustainability objectives \(Sustainability Guidelines\)](#). As its name suggests, the Sustainability Guidelines aim to give businesses clarity on how to navigate competition concerns in their pursuit of collaborations with such objectives. That said, it is important to note that the Sustainability Guidelines are intended to provide additional guidance on the application of section 34 of the Competition Act 2004 (**Competition Act**) relating to anti-competitive agreements, and are not intended to be a substitute for the Competition Act or its related subsidiary legislation and guidelines.

The Sustainability Guidelines largely track the draft version published by the CCCS, which we had previously examined.³ However, some notable revisions were made to the Sustainability Guidelines following the CCCS' public consultation. These include, in particular:

- (a) **Definition of “environmental sustainability objectives”:** Moving away from terms such as “environmentally friendly” or “climate change goals” adopted in the draft version of the Sustainability Guidelines, the Sustainability Guidelines now provide a standardised defined reference to “environmental sustainability objectives”. This is defined as objectives relating to reductions in negative environmental externalities (e.g., climate change mitigation measures), improving air and water quality, efficient use of natural resources, and biodiversity preservation. With this move, the Sustainability Guidelines closely align with definitions adopted by competition authorities in other jurisdictions in their respective guidelines on environmental sustainability collaborations⁴ which aim to also introduce greater clarity.
- (b) **Assessment of potential benefits from collaboration:** The CCCS has acknowledged that, in assessing net economic benefits, it would take into account situations where collaboration is necessary to achieve those results more rapidly, or on a larger scale when assessing the potential benefits of a collaboration, even if it were possible for businesses to achieve similar benefits independently at a slower rate, or on a smaller scale.

² See our [update on the CCCS' Public Consultation on the Sustainability Guidelines dated 7 August 2023](#).

³ See our [update](#) referred to in footnote 2 above.

⁴ See footnote 3 of the Sustainability Guidelines.

- (c) **Enforcement and the Sustainability Guidelines:** As a further incentive to adopt the Sustainability Guidelines, the CCCS highlighted that, in the event of any enforcement action against a collaboration pursuing environmentally sustainability objectives, it would take into consideration the extent to which the businesses involved had incorporated the guidance set out in the Sustainability Guidelines in the design and implementation of their collaborations.

The Sustainability Guidelines are accompanied by a helpful [summary brochure](#). While the CCCS has indicated its intentions to develop similar guidelines on environmental claims that could amount to unfair practices under the Consumer Protection (Fair Trading) Act 2003,⁵ these guidelines are still in progress and have not been issued yet.

CCCS Appoints New Chief Executive

Mr Alvin Koh has assumed the position of Chief Executive and Commission Member of the CCCS as of 1 April 2024, taking over from Ms Sia Aik Kor, who served in the same role since 1 October 2019. Returning to the CCCS, where he was previously Director (Legal & Enforcement), Mr Koh brings over two decades of public service experience across various legal and regulatory roles. In line with what we understand to be the CCCS' present areas of focus, Mr Koh has indicated that he aims to focus on digital markets, price transparency, and supporting Singapore's green transition, maintaining the CCCS' commitment to fair competition and consumer protection.

If you would like information and/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](https://www.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](https://www.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](https://www.wongpartnership.com)

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

 [Connect with WongPartnership.](#)

⁵ Competition and Consumer Commission Singapore, [Study on Greenwashing in Online Marketing Funded by CCCS Finds Use of Vague Environmental Claims and Confusing Technical Jargon](#) (Nov. 16, 2023).

WPG MEMBERS AND OFFICES

- 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

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

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

-

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

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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