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More documentation related to this discussion can be found at: oe.cd/mktcomp.

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Using market studies to tackle emerging competition issues

- Contribution from Singapore -

1. Introduction

1. For some years now, there has been an unstoppable trend towards digitalisation. A 2018 study commissioned by Microsoft found that by 2021, the pace of digital transformation across Asia's economies would surge to around 60% of Asia GDP by 2021.¹ Based on the study, digital transformation would add an estimated USD1.16 trillion to Asia Pacific's GDP² (not accounting for COVID-19's impact on the global economy). COVID-19 has turbo-charged the heightened digitalisation of industries, as businesses navigate this unprecedented environment caused by the pandemic by seizing on the opportunity to revamp and redesign their business models for greater customer reach and engagement. The trends in digitalisation have in turn led to increased attention on whether infringements of competition and consumer protection laws, or novel competition issues, arise in related markets.

2. The Competition and Consumer Commission of Singapore ("CCCS") conducts market studies primarily to understand how markets work and the effects of a market feature (or combination of features) on competition in connection with the supply or acquisition of any goods or services in Singapore. The purpose of market studies is therefore to complement CCCS's enforcement actions in at least three ways:

- First, market studies allow CCCS to better understand a market. CCCS may undertake a market study to understand emerging markets, including the players in the market, how they operate and common business practices. CCCS may also look further into a market in respect of which it may have received complaints from the public or feedback from government agencies, but for which there may not be evidence of any specific anti-competitive agreement or conduct in the first instance;
- Second, market studies are an avenue to identify causes of ineffective or lackluster competition in the market, but which do not amount to any sort of anti-competitive behavior. Such market studies may typically be conducted as a follow-up from investigations which do not result in an infringement decision, but where the market still suffers from ineffective competition. In this regard, market studies help identify other causes of competition problems (e.g. market failure, information asymmetry, regulatory barriers etc.), so that appropriate solutions may be formulated to address the root of these problems;

¹<https://news.microsoft.com/apac/2018/02/21/digital-transformation-to-contribute-more-than-us1-trillion-to-asia-pacific-gdp-by-2021-ai-is-primary-catalyst-for-further-growth/>

² Ibid.

- Third, market studies help CCCS ascertain whether a particular market practice which is occurring overseas, is also occurring in Singapore or has an adverse impact on Singapore. Such concerns typically arise where there are recurring investigations into a specific product market overseas. Through market studies, CCCS may seek to understand market practices in that specific market in Singapore and explore whether similar anti-competitive activities are occurring in the domestic market and/or whether the anti-competitive activities overseas have any impact in Singapore.

2. Studies into technology markets and key outcomes

3. In the context of technology-related products and services, various market studies and research papers have been conducted by CCCS in collaboration with other agencies including the Infocomm Media Development Authority (“**IMDA**”), the Intellectual Property Office of Singapore (“**IPOS**”), and the Personal Data Protection Commission (“**PDPC**”). These have been published to help industry understand the agencies’ thinking at a whole-of-government level on emerging issues like big data and data portability, as well as possible approaches on novel issues so that businesses are better informed. To illustrate:

2.1. Study on E-commerce (2015)³

4. When the study was carried out, it was at the start of the wave of e-commerce activities in Singapore. E-commerce holds significant potential for the Singapore market as it helps to bypass traditional limitations, such as high rental cost, manpower shortages, and small domestic market size. As a result, both new and existing companies were utilising online sales channels to grow their businesses. Evolving business models were also changing the nature of competition between traditional and new businesses, as well as between local and foreign businesses.

5. In light of the above trend and the potential competition issues arising from the increase in e-Commerce activities, CCCS commissioned a research report to understand the development and characteristics of e-Commerce, the specific competition issues that e-Commerce activities can give rise to and the implications for competition policy and law in Singapore. For example, in rapidly changing markets, any market power gained may be temporary and interventions by competition authorities may risk stifling long-term innovation and investment. Interventions should be targeted and made on a case-by-case basis, balancing potential competition concerns with efficiency benefits and the risk of creating market distortions. The findings from the study also helped CCCS, other government agencies and businesses better understand related issues such as how market definition and market power assessment are carried out, barriers for e-Commerce activities and what to look out for in maintaining a level e-playing field in Singapore.

³ [“E-Commerce in Singapore - How it affects the nature of competition and what it means for competition policy”](#), published on 2 December 2015.

2.2. Study on Big Data (2017)⁴

6. With the increasing awareness of the value and use of big data, CCCS collaborated with PDPC and IPOS on a research paper to look into the implications on competition policy and law, personal data protection and intellectual property rights, despite its benefits. Through the joint study, it was recognised that the accumulation, sharing, and analysis of data can bring about a wide range of benefits. For Singapore, the ability to capitalise on data analytics and data sharing provides a new avenue to promote economic growth through innovation and improvement in productivity. Consumers also benefit from reduced information asymmetry and search costs, and improved customer experience with more customised offerings. Beyond the economic benefits, there are also social benefits that can arise, including better-informed government policies through data analytics. However, it was also recognised that these benefits may not be fully realised if businesses engage in anti-competitive conduct, or misuse personal data. In this regard, each agency has a crucial role to play in the efficient and innovative use of Big Data – competition law ensures that businesses and consumers are protected from harmful anti-competitive conduct; personal data protection law ensures that an individual’s personal data is safeguarded and businesses are able to leverage on personal data for legitimate use and innovation; while intellectual property rights provides incentives for individuals and businesses to innovate and conduct research.

7. Through the Big Data Paper, CCCS worked with PDPC and IPOS to reach certain understanding and positions on related issues, which were then published to guide businesses as they capitalise on data gathering, analytics and sharing.

2.3. Study on Data Portability (2019)⁵

8. The data portability study was undertaken in the context of a new global development of introducing data portability, including in Singapore. A data portability requirement could give individuals greater control over their personal data by allowing them to request for their data held by an organisation to be transmitted to another organisation in a commonly used machine-readable format. The introduction of a data portability requirement also reduces switching costs for consumers, and could create the impetus for development of new products and services using the ported data.

9. As data portability involves an overlap between competition law and personal data protection law, CCCS partnered with the PDPC on a joint study of the competition, consumer protection and personal data protection issues that might arise if a data portability requirement is introduced in Singapore. This joint study was necessary to ensure all relevant perspectives are taken into consideration when implementing a data portability requirement and determining the optimal approach to reap maximum benefits from such a requirement while keeping the impact and compliance costs on businesses manageable. The joint study culminated in the publication of a joint discussion paper on data portability published on 25 February 2019. Subsequently, in May 2019, the PDPC commenced a public consultation on a proposed data portability requirement in Singapore; and in January 2020, the PDPC issued its response to the public feedback and its proposed positions taking into consideration comments received.

⁴ [“Data: Engine for Growth – Implications for Competition Law, Personal Data Protection, and Intellectual Property Rights”](#), published on 16 August 2017 (“**Big Data Paper**”).

⁵ [“Discussion Paper on Data Portability”](#), published on 25 February 2019.

2.4. Study on E-commerce Platforms (2020)⁶

10. Entities based on business models of operating in multiple markets and in the process creating an ecosystem of diversified products or services offerings (or “**super apps**”) are appearing in Asia. However, this is not an area that has been looked into in-depth elsewhere. It was important for CCCS to understand the motivations and business models of these entities so as to be better informed of whether the current toolkit remains relevant and sufficient to deal with the competition and consumer protection issues that can arise.

11. The market study focused on gaining an in-depth understanding of the business models and operating environment of e-commerce platforms that compete or potentially compete across multiple market segments offering distinct products and/or services. Whilst CCCS did not identify any current major competition concerns involving e-commerce platforms in Singapore and that its existing competition framework is sufficiently robust to address major competition issues that may arise from the proliferation of such e-commerce platforms, the market study identified certain areas where further clarity and guidance by CCCS could be beneficial to assist businesses in the application of the Act in the digital space. In this regard, CCCS intends to update its competition guidelines – these proposed amendments to the guidelines have been published together with the platforms market study for public consultation, and all comments received will be considered before the amendments to the competition guidelines are finalised. The study also highlighted CCCS’s current view of AI/algorithms and what companies should consider when deploying these technologies.⁷

2.5. Other key outcomes of studies into tech markets

12. Through the various market studies, CCCS has gained an updated understanding of specific competition and consumer protection issues that can arise through digitalisation. In turn, CCCS’s enforcement and market study experience have led to refinements of its policy positions and competition guidelines. For instance, whilst the Big Data Paper considered that CCCS’s current analytical framework already takes into account competition on the basis of non-price factors, such as data protection⁸, an update to the *CCCS Guidelines on the Section 47 Prohibition* (“**Section 47 Guidelines**”) was proposed, in light of the findings from the subsequent E-commerce Platforms Study, to provide greater clarity in relation to the role of data as an input, and the competition concerns that may arise from limited access to data.⁹ Another example is the position taken on AI/algorithms –in the E-commerce Platforms Study, where CCCS signalled a stronger and clearer position than in its Big Data Paper, through greater analysis of issues arising from AI/algorithms.¹⁰

⁶ “[E-commerce Platforms Market Study – Findings and Recommendations](#)”, published on 10 September 2020 (“**E-commerce Platforms Study**”).

⁷ See paragraphs 210 to 217 of the E-commerce Platforms Study.

⁸ Page 12 of the Big Data Paper.

⁹ Paragraph 216 of the E-commerce Platforms Study.

¹⁰ Paragraphs 210 to 217 of the E-commerce Platforms Study.

13. In addition, the above studies have facilitated CCCS's sharing of experiences with other domestic and international agencies on how it deals with the opportunities and challenges presented by technology-facilitated markets. In Singapore, CCCS participated in the Regulators Roundtable on AI Governance and contributed to PDPC's discussion paper on AI and personal data which was published in June 2018 as well as its Model AI Governance Framework. CCCS is also presently working with the PDPC and the International Competition Network on projects relating to the intersection of competition, consumer protection and privacy/data protection laws.

14. Closer to home, CCCS has worked with the ASEAN Experts Group on Competition ("AEGC") in preparing a handbook for competition authorities within ASEAN member states to increase the understanding of challenges emerging from the developments in e-commerce in the region. CCCS also hosted an ASEAN Workshop on Big Data and Competition Law in August 2018. The aim of the workshop was to provide guidance to competition authorities in ASEAN Member States on how to better respond to antitrust challenges arising from the use of big data and algorithms, drawing in part from studies done by participating agencies, including CCCS.

3. Conclusion

15. Market studies play a complementary role to CCCS's competition enforcement efforts and are an integral component in CCCS's work of promoting and sustaining competitive markets in Singapore. The findings and recommendations from CCCS's previous market studies have been positively received and have motivated coordinated actions amongst different government agencies. However, technology-related markets are fast evolving and more changes can be expected in the future; it is thus impossible to predict with complete certainty how the business strategies of companies involved in new and/or developing technologies, and the competition dynamics in which they operate, will continue to evolve. Given this, CCCS will continue to stay vigilant, exploring and understanding developments through market studies to ensure that its framework and toolkit remains future-ready and appropriately contextualised to address any new areas of concerns.