

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Competition Issues in Aftermarkets - Note from Singapore**

**21-23 June 2017**

*This document reproduces a written contribution from Latvia submitted for Item 4 of the 127th OECD Competition committee on 21-23 June 2017.*

*More documents related to this discussion can be found at*

*[www.oecd.org/daf/competition/aftermarkets-competition-issues.htm](http://www.oecd.org/daf/competition/aftermarkets-competition-issues.htm)*

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## Singapore

### 1. Introduction

1. The Competition Commission of Singapore (“CCS”) welcomes the opportunity to share its experience with the OECD Competition Committee at its roundtable on “Competition Issues in Aftermarkets” in June 2017.
2. As noted by the OECD Secretariat, aftermarkets are widespread across the economy and examples are ubiquitous.<sup>1</sup> Competition issues involving aftermarket products can therefore arise in all types of competition cases. In CCS’s experience, more complex assessment of aftermarkets is required in cases when market power or dominance needs to be determined, for example, in an abuse of dominance or merger case. Besides enforcement work, CCS also conducts market studies that can at times focus on aftermarket products.
3. This paper provides an overview of CCS’s framework and experience in dealing with competition issues in aftermarkets in Singapore.

### 2. Framework to assess competition issues in aftermarkets in Singapore

4. As in many jurisdictions, the Competition Act (Cap. 50B) in Singapore (“**the Act**”) prohibits three types of anti-competitive conduct/situation, namely (i) anti-competitive agreements, (ii) abuses of dominance, and (iii) mergers that substantially lessen competition. The Act does not define aftermarkets or specify how aftermarkets should be dealt with. Accordingly, as with other types of markets, CCS deals with competition issues in aftermarkets using the general framework for assessing the three types of prohibitions under the Act. Nonetheless, given the link between primary and secondary products when assessing aftermarkets, special care sometimes may be needed in assessing aftermarkets.
5. In particular, as noted by the OECD Secretariat, defining the relevant market(s) in competition cases involving aftermarkets can be a crucial step.<sup>2</sup> Sellers of durable products sometimes have a monopoly or high market share in the supply of secondary products or services and might be perceived as exploiting this dominant position in the secondary market. However, as any exploitation of a seller’s market power in the secondary market could affect its position in the primary market, the secondary market alone may not be the relevant market.

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<sup>1</sup> DAF/COMP(2017)2 OECD Directorate for Financial and Enterprise Affairs, Competition Committee, Competition Issues in Aftermarkets, Background note by the Secretariat, 28 April 2017 (“the OECD Background Note”) at Paragraph 2.

<sup>2</sup> DAF/COMP(2017)2 OECD Directorate for Financial and Enterprise Affairs, Competition Committee, Competition Issues in Aftermarkets, Background note by the Secretariat, 28 April 2017 (“the OECD Background Note”) at Paragraph 51.

6. CCS determines the market for secondary products on a case-by-case basis.<sup>3</sup> CCS considers that there are three possible market definitions when assessing aftermarkets, namely:

- i) A system market – including the primary and secondary products;
- ii) Multiple markets – where there is one market for the primary product but separate markets for secondary products for each brand of primary product; and
- iii) Dual markets – one for the primary and one for all brands of secondary product.

7. A system market may be appropriate when buyers take into account the whole-life cost of the product before buying or when reputation effects mean that setting a supra competitive price for the secondary product would significantly harm a seller's profits on future sales of its primary product.

8. Some of the factors that influence a buyer's decision to consider the whole-life cost of the product include:

- Price proportion: Buyers are more likely to adopt a whole-life costing approach if the secondary product is a higher proportion of the primary product's price.
- Size of purchase: Large companies may be better able to do whole-life costing than smaller companies or final consumers.
- Availability of information: Whole-life costing will be more difficult if buyers lack specialised information on the costs of spare parts and servicing, and the reliability of products.
- Uncertainty: It would be difficult to adopt a whole-life costing approach if there is uncertainty about how often spare parts or servicing would be required.

9. Where the conditions for a system market do not apply, a multiple markets or a dual markets definition may be appropriate. A multiple markets definition is likely where, having purchased a primary product, buyers are locked in to using only a restricted number of secondary products that are compatible with the primary product. A dual markets definition is appropriate where secondary products are compatible with all primary products (and are so perceived by buyers).

10. Another factor to consider is how often the primary product is to be replaced and whether there are any costs involved from changing sellers. If replacement is infrequent or switching costs are high, there may be a significant number of secondary product buyers who are captive. Depending on the relative size of the primary market, the seller may find it profitable to exploit these captive buyers, even though new buyers may take a whole-life approach in evaluating the cost of the product. This would thus imply that secondary products would be in a separate market.

### 3. Recent examples of CCS cases involving aftermarkets

11. CCS has looked into several cases involving aftermarkets, some of which are still on-going. Two recent examples are described in this paper to illustrate CCS's approach in practice.

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<sup>3</sup> Paragraph 6 of the CCS Guidelines on Market Definition sets out how CCS defines the market for secondary products.

### 3.1. Refusal to supply lift spare parts

12. CCS has been investigating allegations that several companies were refusing to supply lift spare parts<sup>4</sup> in Housing & Development Board (“HDB”)<sup>5</sup> estates. These spare parts are required for the maintenance, servicing and repairs of lifts installed in HDB estates.

13. In Singapore, town councils are required to carry out regular lift maintenance for lifts installed in HDB estates. There are, typically, multiple brands of lifts installed in each HDB estate. Town councils can choose to either appoint the original lift installers of the respective brands to undertake the maintenance services, or to call for a tender to invite companies, including third-party lift maintenance contractors to provide lift maintenance services for all the lift brands of lifts within the estate. There could potentially be cost savings in engaging a third-party lift maintenance contractor for multiple brands as compared to having to procure lift maintenance services from each original lift installer. Lift contractors that wish to tender for lift maintenance projects, which include multiple lift brands, would require brand-specific lift spare parts.

14. Town councils select their lift maintenance contractors based on many factors. Aside from price, town councils also consider the technical competency of the contractors especially the understanding of maintenance and upkeep of safety features and operating system, availability of genuine spare parts (as this may affect safety and normal operation), response time, relevant experience of service personnel and track record of the company. If the third-party lift maintenance contractors cannot obtain the lift spare parts for each lift brand, town councils would be reluctant to choose third-party lift maintenance contractors as compared to the original lift installer.

15. In its investigations, CCS considered whether lift installation, lift maintenance and the supply of lift spare parts formed separate markets or one system market. As described above, when defining the market for secondary products, CCS looked into the factors such as whether buyers of lifts considered the whole-life costs of the lifts, whether lifts are switched frequently and whether there are brand-specific spare parts that are essential for lift maintenance. The market definition of secondary products in this case is important to understand whether the supplier for each brand of lift was dominant in the supply of lift spare parts for that brand, and therefore would be in a position to abuse such a dominance in refusing to supply lift spare parts.

16. While CCS has not concluded its investigations, the information that CCS received did raise concerns that the supply of proprietary lift spare parts for each brand of lift may be in a separate market, and consequently that the supplier for each brand of lift could be abusing its dominance by refusing to supply proprietary lift spare parts. To address CCS’s concerns, one of the parties<sup>6</sup> under investigation came forward to provide commitments to CCS to supply BLT<sup>7</sup> lift spare parts in Singapore to third-party lift

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<sup>4</sup> These are proprietary spare parts such as electronic controllers and control boards.

<sup>5</sup> HDB is Singapore’s public housing authority.

<sup>6</sup> E M Services Pte. Ltd.

<sup>7</sup> BLT is a brand of lift.

maintenance contractors in Singapore.<sup>8</sup> CCS accepted the commitments following a public consultation, and is continuing its investigations in relation to other brands of lifts.

### 3.2. Merger involving airfield lighting systems suppliers

17. CCS received a notification in 2015 in relation to a merger between two global suppliers of airfield lighting systems.<sup>9</sup> While there were numerous suppliers of airfield lighting systems worldwide, the merger parties accounted for a significant market share of more than 80% in the supply of airfield lighting systems in Singapore and may be each other's closest competitor.

18. During its phase 1<sup>10</sup> assessment, CCS identified several potential concerns that may arise from the merger, including the possibility that the merged entity could raise prices of the primary product (the airfield lighting systems) as well as raise prices and/or reduce supply of the secondary product (spare parts). There was therefore an aftermarket concern that a reduction in the competition for the primary product would at the same time reduce competition for the secondary product.

19. Importantly, in this case, CCS found that end-user customers for airfield lighting systems likely considered the cost of spare parts when procuring airfield lighting systems, i.e., they considered the whole-life cost of the product. The supply of airfield lighting systems and the supply of spare parts were therefore likely to form a systems market, whereby a reduction in competition arising from the merger would impact both the primary and secondary product as a whole.

20. The merger parties submitted commitments to address the competition concerns identified by CCS in its phase 1 review. Amongst other things, the merger parties committed to sell airfield lighting systems and spare parts at pre-merger prices<sup>11</sup>, and to continue to supply spare parts for a specified period. As the commitments addressed CCS's concerns, CCS did not find a substantial lessening of competition and cleared the merger.

## 4. Remedies in cases involving aftermarkets

21. Besides mergers, CCS's experience with cases involving aftermarkets have mainly been in relation to refusal to supply or tying conduct by a dominant entity. Accordingly, CCS has mainly relied on the standards and tools that have been developed for such cases. CCS notes that the link between primary and secondary products may require considerations of anti-competitive effects, efficiencies/objective justifications and appropriate remedies to take both primary and secondary products into account.

22. While each case will need to be assessed on its own merits, CCS notes that commitments can be useful in cases where a conduct gives rise to both harm and benefits.

<sup>8</sup> The commitments offered by E M Services Pte. Ltd. included conditions of supply relating to the qualification of the buyer, liability issues and protection of intellectual property rights.

<sup>9</sup> ADB BVBA was acquiring Safegate International AB.

<sup>10</sup> CCS first conducts a phase 1 review of merger notifications. If CCS is unable to conclude at the end of phase 1 that a merger will not result in a substantial lessening of competition, CCS may then carry out a more extensive phase 2 review if it does not receive commitments that address potential competition concerns.

<sup>11</sup> Adjusted for inflation.

As the OECD Secretariat noted, there are at times efficiencies or justifications for anti-competitive conduct involving aftermarkets.<sup>12</sup> Competition authorities may not have the information or knowledge to design remedies that rectify the harm while preserving the benefits, and commitments may be helpful in such cases to provide a more balanced solution. Moreover, in certain types of cases, for example, a refusal to supply, effective remedies may require setting of prices or sale conditions. Commitments, as they are designed by and market-tested with market players, are more likely to be effective in such cases compared to the remedies available to a competition authority. CCS has, for example, found it useful to market test commitments from E M Services Pte. Ltd. in its lift spare parts investigation. The commitments from E M Services Pte. Ltd. is also better tailored to address concerns, the protection of intellectual property rights for instance, that E M Services Pte. Ltd. had.

## 5. Conclusion

23. With this paper, CCS aimed to provide an overview of its framework and experience in dealing with competition issues in aftermarkets. Aftermarket issues do sometimes require more detailed considerations, particularly in relation to determining the market definition and market power. Overall, CCS has found established standards and tools to continue to be useful in analysing and remedying competition issues in aftermarkets.

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<sup>12</sup> DAF/COMP(2017)2 OECD Directorate for Financial and Enterprise Affairs, Competition Committee, Competition Issues in Aftermarkets, Background note by the Secretariat, 28 April 2017 (“the OECD Background Note”) at Paragraphs 84 to 88.