

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Implications of E-commerce for Competition Policy - Note by Singapore****6 June 2018**

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More documents related to this discussion can be found at www.oecd.org/daf/competition/e-commerce-implications-for-competition-policy.htm

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1. Introduction

1. The Competition and Consumer Commission of Singapore (“CCCS”)¹ welcomes the opportunity to share its experience with the OECD Competition Commission, on the roundtable topic of “*Implication on E-commerce for Competition Policy*” at the 129th OECD Competition Committee Meeting on 6 June 2018.
2. Beyond its enforcement regime, CCCS works closely with domestic government agencies, regional competition authorities as well as research institutions to study the issues arising in the E-commerce sphere and their implications on competition policy and law, and consumer protection. To further CCCS’s understanding of how E-commerce markets operate, it has collaborated with government agencies overseeing areas such as personal data protection, intellectual property rights, and the use of data and artificial intelligence (“AI”).
3. This paper provides an overview of the E-commerce landscape in ASEAN, including Singapore, and discusses CCCS’s enforcement experiences and market studies efforts in the area of E-commerce to-date.

2. Overview of E-commerce in ASEAN

4. E-commerce, which generally refers to the sale and purchase of goods and services through electronic networks and the internet, encompasses a broad range of commercial activities. E-commerce also covers activities throughout the entire value chain of the transaction process, including payment systems and logistics for the delivery of goods and services.² There are different types of E-commerce business models; for example between businesses and consumers (“B2C”); amongst businesses (“B2B”); between government and businesses (“G2B”); and amongst consumer which make use of third-party E-commerce platforms (“C2C”).
5. In a study on E-commerce and Competition in ASEAN commissioned by CCCS in 2017³, it was found that E-commerce markets have grown significantly within ASEAN over recent years. In the six largest economies within ASEAN (Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam, here referred to as the ASEAN6), retail E-commerce has a total market size of US\$7 billion in 2015, of which Singapore has the

¹ With effect from 1 April 2018, CCCS expanded its role to undertake the consumer protection function, with the key mandate to administer and enforce both the Competition Act (Cap. 50B) (the “Act”) and the Consumer Protection (Fair Trading) Act (the “CPFTA”), so as to ensure that markets work well, and opportunities and choices are created for businesses and consumers in Singapore.

² Source: CCS Handbook on E-Commerce and Competition in ASEAN, page 16

³ <https://www.cccs.gov.sg/media-and-publications/publications/in-house-publications/asean-ecommerce-handbook>

highest market size per capita at US\$309.09. This growth is largely driven by the high internet penetration rates in the economies. Since 2015, the number of internet users in ASEAN6 has risen from 244 million to 283 million, and this growth is projected to continue at an annual rate of 17.7% until 2020.⁴ Notwithstanding the high level of growth, there remains room for further expansion in the E-commerce markets across ASEAN. Singapore, Malaysia, Thailand, Indonesia, Vietnam and the Philippines all currently generate less than 4% of their retail sales online, a much lower proportion than other E-commerce markets such as the Republic of Korea (16%) and China (7%).⁵

6. In many ASEAN economies, a broadband divide still exists between the richer metropolitan cities and more rural locations. To achieve the full potential of E-commerce market in ASEAN, critical improvements in the areas of technological infrastructure and regulatory and legal environment in which the E-commerce firms operate across ASEAN, including addressing cyber security concerns to build trust among consumers to provide their banking details online, will be necessary. Greater harmonisation of regulations and competition law across the region will also further support the development of E-commerce markets within ASEAN.⁶

7. In Singapore, the largest sectors impacted by E-commerce are travel, fashion and beauty, entertainment and lifestyle, IT and electronics, and general insurance. Key drivers of growth in these sectors are high internet penetration (78%) and smartphone adoption, strong financial infrastructure and good logistical facilities.⁷ Although many consumers still prefer the convenience of shopping in traditional brick-and-mortar stores in Singapore, online retail adoption are expected to grow with the introduction of new initiatives to improve logistics solutions and last mile delivery such as the implementation of the nationwide “federated locker system” to allow buyers and sellers greater flexibility to delivery and pick up their products, and Changi Airport’s E-commerce AirHub facility, which is designed to speed up processing of parcels flown in from abroad to reduce time taken to deliver online purchases to final customers.⁸

3. Enforcement in E-commerce Sector

8. In Singapore, CCCS administers and enforces the Act which prohibits:
1. Agreements, decisions and concerted practices that restrict, prevent and distort competition within Singapore (“**Section 34 prohibition**”);
 2. Abuse of a dominant position in any market in Singapore (“**Section 47 prohibition**”); and
 3. Mergers and acquisitions that substantially lessen competition in Singapore (“**Section 54 prohibition**”).

⁴ Source: CCS Handbook on E-Commerce and Competition in ASEAN, page 22 and 23

⁵ Source: CCS Handbook on E-Commerce and Competition in ASEAN, page 23

⁶ Source: CCS Handbook on E-Commerce and Competition in ASEAN, page 4

⁷ Source: CCS Handbook on E-Commerce and Competition in ASEAN, page 25

⁸ Source: CCS Handbook on E-Commerce and Competition in ASEAN, page 26

9. Over the period of 2009 to 2014, many B2C and C2C online businesses entered the markets in Singapore. New online platforms providing innovative products and services also emerged in specific sectors, generating new challenges to the enforcement of competition law in Singapore. The following sections set out CCCS's past experiences in enforcing the Act within the E-commerce sector.

3.1. Case Study 1: Agreement to pressurise competitor to withdraw online offer in the life insurance market

10. In 2016, CCCS issued an Infringement Decision against ten financial advisers in Singapore, who were found to have infringed the Act by engaging in an anti-competitive agreement to pressure one of their competitors, iFast, to withdraw its offer of a 50% commission rebate on competing life insurance products on its website, Fundsupermart.com ("**FundsUPERmarket Offer**"). Financial penalties of between S\$5,000 and S\$405,114 were imposed on the infringing parties.

11. **Background.** Rather than investing in their own websites to distribute investment products to their customers, financial advisers typically outsource the administrative and operational support requirements to external intermediaries such as iFast. iFast, which is both a securities dealer and a financial adviser, distributes investment products, mainly unit trusts, directly to investors through its online public portal, Fundsupermart.com. The ten financial advisers' use of iFast's distribution platform collectively contributed significantly to iFast's revenues in Singapore.

12. **Infringing conduct.** On 30 April 2013, iFast launched the Fundsupermart offer. The ten infringing parties which were members of the Association of Financial Advisers (Singapore) agreed to appoint one of them, Financial Alliance, as their representative to contact and pressurise iFast into withdrawing the Fundsupermart Offer. From 2 May 2013 to 3 May 2013, Financial Alliance, together with two other financial advisers continually pressurised iFast to withdraw its Fundsupermarket Offer. iFast withdrew the Fundsupermarket Offer on 3 May 2013, four days after its launch.

13. **Innovative product offering.** E-commerce provides opportunities for businesses to offer new innovative products and choices to consumers. In this case, iFast had leveraged on its online platform with a wide marketing reach to expand from distributing unit trusts to life insurance products. This allowed iFast to cut out the middleman costs by having potential clients approach them directly, and in turn enabled iFast to pass on the cost savings to customers in the form of commission rebates. This was not offered by any other financial advisers previously. However, the pressurising tactics of the ten financial advisers quickly removed such innovative product offering. Had the Fundsupermart offer remained on the market, the other competitors (including the ten infringing parties) would likely have to make similar or new offers to respond to this competitive threat, thereby shifting the market to a more competitive state.

3.2. Case study 2: Exclusive agreements by online food delivery provider

14. In 2016, CCCS investigated a potential infringement of section 47 of the Act in relation to the exclusive contracts imposed by an online food delivery service provider with certain restaurants in Singapore, which prevented the restaurants from using other service providers.

15. The online food delivery industry has grown tremendously over the past years. While online food delivery services provide consumers the convenience to have their meals delivered to them within a short time, it also serves as a marketing channel for restaurants to reach a wider pool of customers and generate additional revenue source, without the costs of expanding their dine-in services.

16. **Assessment on Dominance and Abuse.** As the online food delivery industry is still a nascent sector, with different well-funded players jostling for market share, any market power gained can be temporary. Interventions by CCCS has to carefully balance between premature intervention in a developing market and ensuring the market remains open and contestable.

17. Through its investigation, CCCS found that while the current market share of the infringing party crossed the indicative threshold of 60%, it had been decreasing over the past few years. Major new entrants were able to expand significantly within a short period, and there was a general decrease in the rates charged by the online food delivery service providers. As CCCS found that the exclusive agreements had not harmed competition and the industry was competitive, it closed the investigation.

18. However, during the investigation period, CCCS also noted that while an online food delivery service provider stopped introducing exclusive agreements with restaurants, at the same time, other service providers were using such agreements to gain market shares. CCCS therefore issued a media release regarding this investigation and highlighted to the industry that it will continue to monitor the market, and that CCCS could take enforcement action against exclusive agreements imposed by the dominant service provider that harm competition. The purpose of the media release was to keep the industry on their toes and at the same time, raise awareness among businesses in other E-commerce sectors of the need to be mindful of such anti-competitive practices.

3.3. Case study 3: Alleged price fixing by sellers on C2C E-commerce platform

19. In 2014, CCCS received a complaint alleging an agreement between fourteen businesses and/or individuals to fix prices of power bank products on an online C2C trading platform in Singapore. Despite not knowing the other sellers personally, the leader of the cartel identified thirteen other sellers of the similar power bank products and contacted them through the trading platform to seek their agreement to concurrently raise the price of the power bank products on a particular day and not to engage in a price war. Within less than a day, the leader of the cartel contacted the members to call off the pricing arrangement, as the platform administrator was alerted to this cartel by a complaint and proceeded to ban his account from the platform.

20. **Whether the cartel members are “undertakings”.** The first issue considered by CCCS was whether the cartel members can be regarded as “undertakings” under the Act. As the online trading platform caters mainly to C2C transactions, CCCS noted that the cartel members may be either natural persons or incorporated entities. Given that the Act has defined “undertaking” widely⁹, CCCS took the view that the fourteen sellers constitute “undertakings” for the purposes for the section 34 prohibition.

⁹ Section 2 of the Act defines an “undertaking” to mean “any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services.”

21. **Education in lieu of enforcement to raise awareness.** CCCS noted that the impact of the price fixing agreement was likely to be limited given that the price-fixing agreement lasted for a short duration (less than a day) and the market shares of the cartel members were negligible. Further, such price fixing arrangement was unlikely to be sustainable given that there were over hundreds of sellers of similar power bank products on the online trading platform. CCCS noted that the relevant turnovers of the cartel members and corresponding financial penalties if imposed, would be low.

22. In view of the limited impact of the price fixing agreement, CCCS accordingly closed the investigation. However, in light of the growing importance of E-commerce, CCCS ensured that the leader of the cartel understood that the agreement was illegal and the consequences of such activity. CCCS also engaged the platform administrator to increase the company's understanding of competition law and explore ways in which anti-competitive activities on the platform could be notified to CCCS in future.

3.4. Case study 4: Merger between online recruitment advertising services company

23. On 20 February 2014, CCCS received a notification of a proposed acquisition of JobStreet Corporation Berhad (“**Jobstreet**”) by SEEK Asia Investment Pte. Ltd. (“**SEEK Asia**”)¹⁰ in the supply of online recruitment services in Singapore. The transaction, was ultimately, cleared with both structural and behavioural commitments.

24. **Market Definition.** One key question which CCCS considered in defining the relevant market was whether the online recruitment advertising services were in the same relevant market as the traditional print recruitment advertising and offline non-print recruitment advertising services¹¹. While the Parties submitted that recruiters and employers typically use all viable platforms to advertise their job openings, similarly for jobseekers which peruse both online and offline platforms for job opportunities, this was contrary to third party submissions by the employers and jobseekers themselves. Specifically, CCCS found that:

1. Offline non-print recruitment advertising service providers (e.g., recruitment agencies) compete in a separate market and, at best, would be complementary to online advertising services;
2. Print advertisements are more complementary to, rather than in competition with, online advertisement; and
3. Print media is unlikely to be a strong and effective competitive constraint on online recruitment advertising services given that online advertisements provide for more current and detailed information, lower costs of advertising (in fact free on some portals), shorter lead time of publication, amongst other factors.

25. CCCS also noted that there were four general categories of online recruitment services, namely (i) generalist portals, (ii) specialised job portals, (iii) social media platforms (e.g. LinkedIn), and (iv) aggregator sites. CCCS noted from market inquiries that each category of online platforms had a different focus to some extent but in totality

¹⁰ SEEK Asia similarly offers online recruitment services in Singapore through JobsDB Singapore Pte. Ltd. (“JobsDB Singapore”) via its portal www.jobsDB.com.sg.

¹¹ Examples include recruitment agencies, referrals, customer direct channels etc.

were able to exert competitive constraints to each other. Accordingly, CCCS assessed that the relevant market was the provision of online recruitment advertising services by online job portals in Singapore.

26. **Competition Assessment.** Network effects are a barrier to entry, commonly present in multi-sided markets involving E-commerce. In this case, CCCS noted that barriers to entry and expansion were high given the high sunk costs relating to technology investment and marketing. However, indirect network effects were likely to be dampened by the existence of multi-homing as evidence showed that jobseekers used or were aware of more than five web sites on average when searching for a job; similarly, recruiters advertised on more than one platform to increase the exposure and reach of their job advertisement. Furthermore, continued growth of aggregator sites appeared to be an avenue for smaller job portals to overcome the indirect network effects and compete with the larger portals.

27. However, CCCS found the Parties to be the two largest generalist portals with a combined market share marginally above 40% in Singapore, although the market shares figures were observed to be fluctuating over time.

28. In addition, the Parties, which were each other's closest competitor, had a good depth of jobseeker databases, good brand recognition, and high service levels, which other service providers lagged behind.

29. Furthermore, customers' countervailing buyer powers appeared limited against the Parties which had the incentives and ability to lock in customers using exclusive contracts, bundled and/or tied products. In turn, this would further prevent customers from being able to switch to competing service providers, and enable the merged party to impose price increases post-merger.

30. **Decision.** SEEK subsequently offered voluntary behavioural and structural commitments to address CCCS's concerns. In consultation with the customers and competitors, CCCS concluded that the commitments would sufficiently address CCCS's concerns, while taking into account the dynamic nature of the market. The commitments included:

- Behavioural commitment which required the Parties to maintain current pricing of their services capped at present day rates or negotiated prices, subject to inflation rate variations based on the Consumer Price Index;
- Behavioural commitment which restricted the Parties from entering into exclusive agreements with employers and recruiters, would facilitate the current practice of multi-homing. This in turn helped to lower barriers to entry and expansion to encourage new entry into the market for online recruitment advertising services;
- The duration of the behavioural commitments was set at three years, to take into account the dynamic nature of the market, as shown through the fluctuating market shares, high degree of innovation, evidence of shifting business models with the introduction of mixed recruitment advertising models and the growth of aggregators; and
- Divestiture of SEEK's aggregator site, which would have given SEEK the incentive and ability to leverage off its strong position as a job portal to limit growth of other aggregators. Given the role of aggregators in limiting the extent of indirect network effects, the divestiture would maintain the pre-merger competitive environment by allowing smaller job portals to compete more

effectively with larger job portals with the aid of increased visibility of their listings through aggregators.

4. Market Studies in E-commerce Sector

31. Besides administering and enforcing the Act, CCCS also proactively conducts market studies to better understand the structure and the workings of different markets, and to identify areas where market competition can be improved to benefit both consumers and businesses.

32. The travel sector is one sector that has experienced a significant growth in E-commerce activities in Singapore. Singaporeans are increasingly well-travelled and with the rise of the digital economy, the role of brick and mortar travel agents is diminishing in Singapore, as more consumers make their travel booking online through the websites of the service providers (e.g., hotels and airlines), online travel agencies (e.g., Expedia) and web aggregators (e.g., Trivago).

33. CCCS has recently announced that it will be embarking on a market study this year to understand the industry landscape relating to the online provision of flight tickets and hotel accommodation to Singapore consumers, including the contractual arrangements and practices adopted by the online travel booking platforms. This includes for example whether online travel booking platforms adopt tying and bundling practices and price parity clauses in commercial contracts as well as other practices such as drip pricing or imposing of false claims on limited promotions and rooms/flight availability to mislead consumers. The objective of the study is for CCCS to better understand and raise awareness of prevalent issues in the online travel booking sector, and their implications on competition policy and law, and consumers. This will also serve as a useful reference point for CCCS to administer and enforce the Act and CPFTA in the E-commerce sector.

5. Other Regulatory Efforts in E-commerce Sector

34. In August 2017, CCCS, together with the Personal Data Protection Commission (“PDPC”) and Intellectual Property Office of Singapore (“IPOS”), published a research paper which looked into the data landscape in Singapore, and explored the implications of the proliferation of data analytics and data sharing on competition policy and law, personal data protection regulation and intellectual property law in Singapore. As part of the research, CCCS observed that the digital media sector displays a high level of data analytics maturity, where there are active efforts to glean insights from customers’ online behavior patterns to allow online advertising platforms better target advertisements and connect customers to businesses. While the logistics sector has been slower in the adoption of data analytics, the rise of E-commerce retailers has increased the demand for delivery services, and correspondingly stimulated the use of data analytics within the logistics sector. Potential competition concerns relating to sharing of data, algorithmic pricing and collection of personal data were also discussed. On balance, CCCS has assessed that existing analytical frameworks are sufficiently flexible and robust to deal with competition issues that may arise in data-driven industries.

35. This year, CCCS will collaborate with PDPC to study the consumer protection, competition and personal data protection issues which could arise if data portability¹² requirement is introduced in Singapore, so as to enhance the ability of consumers to choose between the service providers and facilitates consumer switching between service providers, which in turn foster competition and encourages service providers to innovate and develop new services for consumers. This is particularly important in the E-commerce sector, where consumers' personal data are provided to enable online transactions and services.

36. To ensure AI systems and processes are implemented responsibly, CCCS is part of a working group (consisting of different public agencies and sector regulators with an interest in the development of AI) that aims to come up with a framework to provide a clear and consistent approach towards formulating desirable industry practices involving AI activities.

6. Conclusion

37. With this paper, CCCS has sought to provide an overview on the E-commerce landscape in ASEAN, particularly Singapore, and to share its enforcement experiences and market studies efforts in the area of E-commerce. While Singapore's current competition policy and law are largely adequate to address the competition challenges brought about by the emergence and growth of E-commerce, there is a need to stay abreast of latest development to ensure that CCCS's competition assessment framework continues to evolve and remains robust in light of the dynamic nature of the sector.

¹² Refers to the right for individual consumers to request and receive personal data which they provide to a service provider, in a format which is structured, commonly used and machine-readable.