

COMPETITION ENFORCEMENT AGENCIES

HANDBOOK 2019

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ELIG Gürkaynak Attorneys-at-Law

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Competition Enforcement Agencies Handbook 2019

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Competition Enforcement Agencies Handbook 2019

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Global Competition Review's 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

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Questions and answers

How long is the head of agency's term of office?

The Ministry of Trade and Industry appoints members to the Competition and Consumer Commission of Singapore (CCCS), including the chairman. Each term of office is no less than three years and no more than five years, and the ministry may reappoint CCCS members for a new term.

When is he or she due for reappointment?

The chairman was appointed for three years beginning 1 January 2015. The term has been renewed for an additional three years beginning 1 January 2018.

Which posts within the organisation are political appointments?

As of February 2019, the CCCS has eight commission members. This is within the number stipulated in the Competition Act, which states that the CCCS shall consist of a chairman and other members, not being less than two or more than 16, as determined by the Ministry of Trade and Industry.

The CCCS's members are appointed by the Ministry of Trade and Industry. They are not full-time employees of the CCCS, except for the chief executive. The CCCS is supported by executive staff who are full-time employees. Employees are not political appointments.

What is the agency's annual budget?

The total approved operating budget for the 2018 fiscal year was approximately S\$17.6 million.

How many staff are employed by the agency?

The CCCS has about 73 staff as of 1 January 2019.

To whom does the head of the agency report?

The chairman of the CCCS is appointed by the Ministry of Trade and Industry. The CCCS decides on cases independently. Appeals against the decisions of the CCCS go to an independent Competition Appeal Board.

For corporate accountability, the CCCS is required to submit a copy of its audited financial statements and an auditor report to the ministry for presentation to parliament.

Do any industry-specific regulators have competition powers?

Yes. Some sectors, such as energy, media and telecommunications, have jurisdictions over matters relating to competition in those sectors.

If so, how do these relate to your role?

When the Competition Act came into force, a number of sectors and activities were excluded from the act for two main reasons:

- public interests considerations (for example, national security, defence, to ensure security takes precedence over economic considerations); and
- sectors in transition from a monopoly to a liberalised market.

Sectoral regulators, with their greater domain knowledge and expertise, are deemed to be better placed to address and balance competition issues with other policy concerns using their own competition frameworks.

Where there are cross-sectoral competition issues, they will be dealt with by the CCCS in consultation with the relevant sectoral regulators.

Do politicians have any right to overrule or disregard the decisions of the authority?

Under the Competition Act, the decisions of the CCCS are independent and not subject to the scrutiny of politicians. Parties have the right to appeal against the CCCS's decisions to an independently appointed Competition Appeal Board. They can also appeal against a decision of the Competition Appeal Board to the High Court and Court of Appeal on a point of law arising from a decision of the board, or from any decision of the board as to the amount of a financial penalty. There are also rights of private action provided for under the Competition Act.

Does the law allow non-competition aims to be considered when taking decisions?

In enforcing the Competition Act, the CCCS takes into consideration harm on the competitive process in a market caused by a particular conduct. However, the Competition Act also allows for exemptions or exclusions for certain practices and conduct based on public interest or policy considerations, net economic benefit or net efficiencies arguments.

Which body hears appeals against the agency's decisions? Is there any form of judicial review beyond that mentioned above? If so, which body conducts this?

Appeals against the CCCS's decisions are made to the Competition Appeal Board, an independent and specialist tribunal. Further appeal on points of law or on the amount of the financial penalty may be made to the High Court and, in limited cases, to the Court of Appeal.

Has the authority ever blocked a proposed merger?

Yes.

Has the authority ever imposed conditions on a proposed merger?

Yes. One example involves a merger involving book distributors. The CCCS conditionally approved the merger of book distributors entering into an exclusive distribution agreement after accepting commitments from the merged entity. The merged entity committed to supply third-party retailers the full range of books by the publishers on a fair, reasonable and non-discriminatory basis during the period of exclusive distribution.

Has the authority conducted a Phase II investigation in any of its merger filings?

Yes.

Has the authority ever pursued a company based outside your jurisdiction for a cartel offence?

There are provisions in the law prohibiting anticompetitive agreements from being entered into outside Singapore, or if a party to such agreement is located outside Singapore, provided the agreement has as its object or effect the prevention, restriction or distortion of competition within Singapore. To date, the CCCS has three cases involving global cartel.

In May 2014, the CCCS issued an infringement decision against four Japanese bearings manufacturers and their Singapore subsidiaries. The companies were found to have infringed section 34 of the Competition Act (Cap 50b) by engaging in anticompetitive agreements and unlawful exchange of information in respect of the price of ball and roller bearings sold to customers in Singapore. Both the Japan parent and Singapore subsidiary companies were found to be jointly and severally liable for the infringement. Subsequently, in December 2014, the CCCS issued an infringement decision against 11 freight companies and their Singapore subsidiaries and affiliates for collectively fixing certain fees and surcharges, and exchanging price and customer information in relation to the provision of air freight forwarding services for shipments from Japan to Singapore. Both the Japan and related Singapore companies were found to be jointly and severally liable for the infringement.

In January 2018, the CCCS issued an infringement decision against five capacitor manufacturers for engaging in price-fixing and the exchange of confidential sales, distribution and pricing information for capacitors. Among the companies that were found to have infringed the Competition Act, one involved both its Malaysian and Singapore subsidiary.

Do you operate a leniency programme? Whom should potential applicants contact?

The CCCS has a leniency programme as part of its enforcement strategy. It is targeted at businesses that have participated in cartel activities and are therefore liable to have infringed the Competition Act, but that would nevertheless like to cease their cartel involvement and provide the CCCS with the evidence of the cartel activity. Successful leniency applicants that meet the conditions of the programme may be granted 100 per cent immunity from financial penalties.

Potential applicants can reach CCCS via the following methods:

- filling in the online form at <https://www.cccs.gov.sg/approach-cccs/making-complaints/complaint-online-form>;

- downloading and completing the CCCS Leniency Application Form, and emailing the completed form together with the supporting documents to cccs_leniency@cccs.gov.sg;
- completing the CCCS Leniency Application form and submitting it by post; or
- arranging to meet the CCCS in person, by calling our hotline to set up an appointment.

Is there a criminal enforcement track? If so, who is responsible for it?

No.

Are there any plans to reform the competition law?

On 16 May 2018, the Competition (Amendment) Act came into effect. Among the main changes to the act are:

- changes to empower the CCCS to accept legally binding and enforceable commitments for anti-competitive conduct relating to sections 34 and 47 prohibitions so as to address and resolve the competition concerns arising from the conduct;
- streamlining and simplifying the interview process by allowing the CCCS to conduct general interviews during inspections and searches under section 64 and section 65 of the act; and
- to provide more certainty to businesses and stakeholders by providing for confidential advice for anticipated mergers under the act.

When did the last review of the law occur?

Please refer to above.

Do you have a separate economics team? If so please give details.

Economists are in the Business and Economics (BE) Division and the Policy and Markets (PM) Division.

The BE Division provides expert economics inputs and analysis to investigations and competition cases.

The PM Division works closely with other government agencies to engage and advise them on national

competition matters. In addition, the PM Division conducts market studies and collaborates with academic and research institutions and think tanks on suitable areas of research on competition policy and law.

Has the authority conducted a dawn raid?

Yes.

Has the authority imposed penalties on officers or directors of companies for offences committed by the company?

No.

What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?

Not applicable. Singapore has a voluntary merger regime.

Are there any restrictions on minority investments?

In general, the CCCS considers that a merger is unlikely to reduce in a substantial lessening of competition (SLC) and hence is unlikely to investigate unless:

- the merged entity will have a market share of 40 per cent or more; or
- the merged entity will have a market share of between 20 and 40 per cent, and the post-merger combined market share of the largest firms (concentration ratio of 3) is 70 per cent or more.

These thresholds are only indicative, and if necessary, the CCCS can carry out an assessment to determine whether a merger will substantially lessen competition. In an SLC test, the CCCS will evaluate the prospects for competition in the future with and without the merger, and to consider efficiency arguments where available.

Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?

No.

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