THE MERGERS & ACQUISITIONS REVIEW

Thirteenth Edition

Editor
Mark Zerdin

THE LAWREVIEWS

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PREFACE

2018 was the year of the mega-deal, with an unprecedented number of big-ticket mergers taking place across a range of jurisdictions and sectors. In the first six months of 2018, global deal value rose by 59 per cent compared to 2017, despite volumes falling by 12 per cent. Although there was a considerable drop off in activity in the second half of the year, 2018 nonetheless saw robust overall performance by market participants, with global activity in 2018 exceeding US$3 trillion for the fifth consecutive year.

The United States remained the most targeted and acquisitive region globally in 2018; however, the deal-making landscape in the US for the remainder of 2019 presents a mixed picture. On the one hand, tax reform, a more relaxed US regulatory climate and growing cash reserves present a favourable environment for investors. On the other, dealmakers are likely to be concerned by the trade dispute between the US and China – which is already threatening economic growth and, at the time of writing, shows no sign of abating – and the ongoing uncertainty regarding antitrust policies, which may lead to increased scrutiny of M&A deals.

In Europe, after a record-breaking start to the year, the prolonged uncertainty caused by stuttering Brexit negotiations and wider political tensions across the continent finally caught up with dealmakers in the second half of 2018. In line with a softening of the global economy, the value of European deals in H2 plummeted to its lowest level since 2013, and the volume of transatlantic deals between North America and Europe also fell by 29 per cent year-on-year.

One of the main disruptors to M&A activity over the past 12 months has been the rise in political intervention in cross-border deals. In particular, concerns over national security have led to the tightening of foreign investment regimes and antitrust regulations, coupled with more active enforcement by regulators. This growth in protectionism is likely to remain one of the main obstacles facing dealmakers in the near future.

Nevertheless, looking forwards into the remainder of 2019, there is certainly cause for optimism: private equity continues to enjoy record-breaking levels of dry powder, and developments in technology are driving both the sector itself and the facilitation of deals more broadly. Finally, and perhaps most importantly, the past 12 months have highlighted the resilience of companies and private equity firms in their navigation of global political uncertainty and economic shifts.

I would like to thank the contributors for their support in producing the 13th edition of *The Mergers & Acquisitions Review*. I hope the commentary in the following 47 chapters will provide a richer understanding of the shape of the global markets, and the challenges and opportunities facing market participants.

Mark Zerdin
Slaughter and May
London
July 2019

Chapter 39

SINGAPORE

Sandra Seah, Marcus Chow and Seow Hui Goh[1]

I OVERVIEW OF M&A ACTIVITY

In 2018, Singapore continued apace with a robust volume of 688 M&A deals valued at about US$99 billion, buoyed by outbound sovereign wealth fund deals.[2] Outbound deals accounted for a greater share of deal value at approximately 82 per cent, up from 72 per cent in 2017.[3] Domestic and inbound deals accounted for 10 and 8 per cent of total deal value, respectively.[4] In total, 458 cross-border deals were consummated at an approximate value of US$89 billion.[5] Private equity (PE) and venture capital (VC) investments numbered a collective 154 deals registering approximately US$6.6 billion.[6]

Overall, the Singapore economy grew a healthy 3.2 per cent in 2018, falling within the higher of the initial forecasts of between 1.5 and 3.5 per cent.[7]

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

i Statute and common law

Under Singapore's common law system, sources of law include legislation, subsidiary legislation and judge-made case law. Legislation and subsidiary legislation are passed by Parliament and interpreted by the courts. The principles of contract law govern the validity and interpretation of agreements.

Key Singapore legislation relevant to M&A transactions include the Companies Act and the Securities and Futures Act (SFA), and their respective subsidiary legislation. The Companies Act is the principal legislation governing Singapore-incorporated companies, be they private or public. The Companies Act contains, among other things, provisions that regulate the criteria and processes by which share transfers, schemes of arrangement, amalgamations and compulsory acquisitions are effected.[8] The SFA regulates, among other things, offers of securities, notifications when a substantial interest is acquired and market conduct rules, including those relating to insider trading and market manipulation.[9]

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1 Sandra Seah, Marcus Chow and Seow Hui Goh are partners at Bird & Bird ATMD LLP.

2 Duff & Phelps Transaction Trail Annual Issue 2018.

3 Ibid.

4 Ibid.

5 Ibid.

6 Ibid.

7 Ministry of Trade and Industry.

8 Section 126, Section 210, Section 215A and Section 215 of the Companies Act, respectively.

9 Section 240, Section 135, Section 218 and Section 198 of the Securities and Futures Act, respectively.

Aside from the above statutes, which are of general applicability, companies in certain sectors are additionally subject to sector-specific legislation. For instance, insurance companies, banks and publishing companies are regulated by the Insurance Act, the Banking Act and the Newspaper and Printing Presses Act, respectively.

ii The Singapore Code on Takeovers and Mergers

The Singapore Code on Takeovers and Mergers (Code) is issued by the Monetary Authority of Singapore, pursuant to the SFA.[10] The Code governs the conduct, timing, approach and documentation in relation to takeovers and mergers of corporations with a primary listing of their equity securities, business trusts with a primary listing of their units in Singapore and real estate investment trusts.[11] Unlisted public companies and unlisted registered business trusts with more than 50 shareholders or unitholders, as the case may be, and net tangible assets of S$5 million or more, must also observe the letter and spirit of the Code, wherever possible and appropriate.[12]

The Code is administered and enforced by the Securities Industry Council (SIC) which, pursuant to the SFA, has the power to investigate any dealing in securities that is connected with a takeover or merger transaction.[13] While the Code itself does not have the force of law, a breach could result in sanctions imposed by the SIC.[14] Such sanctions include a private reprimand, public censure or, in a flagrant case, further action as the SIC deems fit, including actions designed to deprive the offender temporarily or permanently of its ability to enjoy the facilities of the securities market.[15]

iii The SGX-ST Listing Rules

SGX-listed entities are further subject to compliance with the SGX-ST Listing Rules (Listing Rules) contained in the SGX-ST Listing Manual (Listing Manual). The Listing Manual comprises the Mainboard Rules, which apply to companies listed on the Mainboard of the SGX-ST; and the Catalist Rules, which apply to companies listed on the Catalist Board of the SGX-ST. In the context of M&A transactions, the Listing Rules applicable to Mainboard and Catalist listed companies are broadly similar. Listed companies are required to disclose or obtain shareholders' approval (or both) for transactions such as acquisitions and realisations that meet certain thresholds relating to, among other things, net asset value, net profits, aggregate consideration and number of consideration shares issued.[16] Where as a consequence of an acquisition the public shareholdings of the listed company fall below 10 per cent, the company may be subject to delisting.[17]

10 The Singapore Code on Takeovers and Mergers: Introductory Paragraph.
11 Ibid.
12 Ibid.
13 Ibid.
14 Ibid.
15 Ibid.
16 SGX-ST Mainboard Listing Rules: Rule 1006.
17 SGX-ST Mainboard Listing Rules: Rule 724.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

i Securities and Futures Act

Wide-ranging amendments to the SFA took effect from October 2018, including a stronger enforcement regime against market misconduct. Among the amendments relating to misconduct was a clarification that disclosures that are false or misleading in a material particular, and likely to have an effect on the market price of securities, securities-based derivatives contracts or collective investment scheme units, are prohibited regardless of whether the effect on price is significant or otherwise.[18]

To buttress prosecution of insider trading crimes, a further amendment was made to the SFA to provide for the term 'persons who commonly invest' to mean 'a Section of the public that is accustomed, or would be likely, to deal in any securities of that kind'. This wider definition permits a more flexible test in assessing the effect of price sensitivity on common investors.

In view of these amendments, parties working on the acquisition of a listed company should be careful to maintain confidentiality and to ensure that no false or misleading statements are released or made.

ii The Companies Act

In August 2018, amendments to the Companies Act came into effect seeking to reduce the regulatory burden on companies and improve the ease of doing business in Singapore.

Pursuant to the amendments, the timelines for holding annual general meetings (AGMs) and filing annual returns are now aligned with a company's financial year-end. Prior to the amendments coming into force, a company had to hold its AGM within 15 months of its last AGM, and its annual return would have to be filed within 30 days after such AGM. From 31 August 2018, the timeline for holding an AGM is within six months from the financial year-end of a private company and within four months from the financial year-end of a listed company.[19] Annual returns must be filed within seven months and five months of the financial year-end for private and listed companies, respectively.[20]

With effect from 31 August 2018, private companies are exempted from holding AGMs if they send their financial statements to members within five months of the financial year-end.[21] However, private companies must still hold an AGM if any shareholder so requests not later than 14 days before the expiry of six months after the financial year-end.[22] A further safeguard requires private companies to hold a general meeting to lay out their financial statements if any shareholder or auditor so requests not later than 14 days after the financial statements are sent out.[23] Private companies retain the option to dispense with the holding of AGMs, and the threshold of shareholder approval required to approve such dispensation remains unchanged.[24]

18 Section 199 of the Securities and Futures Act.
19 Section 175 of the Companies Act.
20 Section 197 of the Companies Act.
21 Section 175A(1) of the Companies Act.
22 Section 175A(4) of the Companies Act.
23 Section 203(4A) of the Companies Act.
24 Section 175(1) of the Companies Act.

Such changes to Singapore's corporate regulatory regime are expected to reduce compliance costs for private companies exempted from holding AGMs, and to reduce the administrative burden on both private and listed companies with simplified timelines for holding AGMs. These amendments are expected to enhance the attractiveness of the Singapore corporate entity and may encourage relevant corporate actions (including acquisitions).

iii The Listing Manual

In June 2018, SGX-ST approved changes to its Listing Rules to allow for the primary listing of dual class share companies on the Mainboard. Dual class share companies have two classes of voting shares: shares in one class carry one vote per share, while shares in another class carry multiple votes per share. The multiple voting shares now permitted to be listed on the Mainboard are capped at 10 votes per share.[25] Corporate governance safeguards are in place to restrict the additional voting rights attached to multiple voting shares from being exercised on key matters. Such matters include the appointment and removal of independent directors and auditors, a variation of rights attached to any class of shares, a reverse takeover and a winding up or delisting.[26]

The opening of Singapore's *bourse* to dual class share companies means that new economy tech-based companies, which often have share classes with different voting rights, will gain access to fund raising via initial public offerings (IPOs) in Singapore. The advent of dual class listings may see IPOs becoming a more popular exit strategy for venture capitalists, over M&A exits, in Singapore.

The revised Code provides that where an offer is made for a dual class share company, a comparable offer must be made for each class of shares, save for when an offer is only made for non-voting shares.[27] This approach provides a safeguard for ordinary voting shareholders by ensuring that any premium paid to multiple voting shareholders is also paid to ordinary voting shareholders.

iv The Takeover Code

Exemption of connected fund managers and principal traders

Under the Code, certain categories of persons are presumed to be acting in concert. Such categories include parent companies, subsidiaries, fellow subsidiaries, associated companies, and fund managers and principal traders connected to a financial or other professional adviser on a deal.[28] Acquisitions exceeding certain thresholds will trigger an obligation on the part of acquirers to make a mandatory general offer, for all the target's shares, under the Code.[29] For the purpose of calculating whether such thresholds are met, the shareholdings of the acquirer's concert parties are taken into account.[30]

Since 1 May 2018, connected fund managers and principal traders can apply for exemptions from the restrictions, prohibitions and obligations arising out of their status as concert parties, on an annual renewable basis or per transaction basis, under a new exempt

25 SGX-ST Mainboard Listing Rules: Rule 210(10).

26 SGX-ST Mainboard Listing Rules: Rule 730B.

27 The Singapore Code on Takeovers and Mergers: Rule 18.

28 The Singapore Code on Takeovers and Mergers: Definitions.

29 The Singapore Code on Takeovers and Mergers: Rule 14.

30 Ibid.

status regime.[31] Under the Code, fund managers and principal traders from the same financial group as the financial or other professional adviser of a takeover offer are presumed to be concert parties of such adviser and its client.[32] As a result, the dealings of connected fund managers and principal traders in the securities of the offeree company are restricted and subject to certain prohibitions and obligations under the Code.

A fund manager or principal trader exempted under the exempt status regime will not be regarded as acting in concert with the relevant offeror or offeree and will not be subject to the connected person restrictions under the Code. The exempt status applies only where the sole reason for the presumed connection with the offeror or offeree is that the fund manager or principal trader is in the same group as the financial or other professional adviser that is advising the offeror or offeree company.

Revisions to the Code to clarify its application to dual class share companies

On 24 January 2019, on the advice of the SIC and incorporating feedback from a public consultation exercise, the Monetary Authority of Singapore revised the Code to clarify its application to SGX-listed dual class share companies. Unlike single class share companies, the voting rights in dual class share companies are not proportionate to shareholding.

The Code amendments provide relief for shareholders who trigger a mandatory general offer. Under the revised Code, where the obligation to make a mandatory offer is triggered due to a conversion of multiple voting shares to ordinary voting shares or a reduction in the number of voting rights per multiple voting share, the requirement to make a mandatory offer under the Code will be waived if certain conditions are met.[33] Such conditions include that the shareholder is independent of the conversion or reduction event, and has not acquired any additional voting rights in the company from the date he or she becomes aware that the conversion or reduction is imminent.[34] In the event that such shareholder is not independent of the conversion or reduction event, the mandatory offer requirement will still be waived if he or she obtains the approval of independent shareholders to waive their right to a mandatory offer within a specified time, or reduces his or her voting rights to below the mandatory offer thresholds.[35]

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

Transactions with a foreign element accounted for the lion's share of Singapore's M&A investments in 2018, at 90 per cent of total deal value.[36] The profile of cross-border deals continued to be dominated by outbound investments made by sovereign wealth funds GIC Pte Ltd (GIC) and Temasek Holdings Pte Ltd (Temasek). In particular, GIC's outbound investments constituted most of the year's highest-valued deals with its consortium investment in Thomson Reuters Corp (F&R Business), valued at US$17 billion.[37] In total, outbound

31 Practice Statement on the Exemption of Connected Fund Managers and Principal Traders under the Singapore Code on Takeovers and Mergers.

32 The Singapore Code on Takeovers and Mergers: Definitions.

33 The Singapore Code on Takeovers and Mergers: Rule 14

34 Ibid.

35 Ibid.

36 Duff & Phelps Transaction Trail Annual Issue 2018.

37 Ibid.

deals accounted for 69 per cent of all cross-border M&A transactions in Singapore. Despite the financial crisis, banking, financial services and insurance (BFSI) was the top sector for outbound investments.[38]

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

The BFSI sector had a strong showing in 2018, propelled by two large outbound deals: the US$17 billion investment in Thomson Reuters Corp (F&R Business) by GIC (together with its consortium partners), and the US$14 billion investment in Ant Financial Services Co Ltd by a GIC-led consortium that included Temasek.[39] BFSI overtook real estate as the top sector for 2018, representing 32.9 per cent of total deal value.[40] The real estate sector fell to second place ahead of the materials sector, each capturing 20.6 and 13.4 per cent of total deal value, respectively.[41] Together, the top three sectors accounted for approximately 70 per cent of total M&A deal values in Singapore for 2018.[42]

Other notable M&A transactions for 2018 included GIC's US$12.5 billion consortium acquisition of Akzo Nobel NV's Specialty Chemicals business, and its US$5.4 billion consortium investment in hotel real estate company, AccorInvest.[43] Notable PE and VC transactions included the US$2.45 billion investment in Grab Holdings by Toyota Motor Corp and other consortium investors.[44] The technology sector continued to be a significant driver of M&A activity. Aside from the *Grab/Toyota* deal, other transactions in the technology start-up space included the US$272 million inbound investment in Bigo Technology Pte Ltd by Chinese video-streaming app maker YY Inc and other consortium investors.[45]

Singapore continued to be a key contributor to M&A and PE and VC deal activity in the region[46] for 2018, with more than 10 deals valued at more than US$1 billion apiece.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

In 2018, M&A transactions continued to be financed by the usual sources of internal financing, bank and financial institution loans and PE. In particular, local and major international banks and financial institutions were the most common source of financing for M&A deals in Singapore. At a combined 154 investments accounting for US$6.6 billion in 2018, PE and VC funding in Singapore remained fairly active.[47] The top-valued M&A deals in 2018 involved investments by sovereign wealth funds GIC and Temasek, together with their various consortium partners.[48]

For offers governed by the Code, additional requirements may apply. Where the offer is for cash or cash alternatives, the offer document as well as the announcement of a firm

38 Ibid.
39 Ibid.
40 Ibid.
41 Ibid.
42 Ibid.
43 Ibid.
44 Ibid.
45 Ibid.
46 Singapore, Malaysia and Indonesia.
47 Ibid.
48 Ibid.

intention to make an offer should include confirmation from a financial adviser that the offeror has enough cash resources to satisfy full acceptance of the offer.[49] Where external financing is to be availed of, the terms of such financing must satisfy the requirements of the financial adviser.

VII EMPLOYMENT LAW

With effect from 1 April 2019, all employees (regardless of rank and salary) fall under the protection of the Employment Act (1 April Amendment), Singapore's main labour legislation.[50]

This means that in the case of a business sale, all employees employed in the seller's business will be automatically transferred to the buyer by operation of law.[51] Under the automatic transfer provisions, all transferring employees are entitled to preserve their existing terms and conditions of employment and have the length of their service counted towards their period of employment with the buyer.[52] Prior to the transfer, the seller is required to inform and consult with affected employees on the transfer process.[53] If the affected employees are members of a trade union, the union must also be involved in the information and consultation process.[54]

Any dispute or disagreement arising from a transfer of employment may have the effect of blocking or delaying the business sale. The Ministry of Manpower will be the arbiter of these disputes and will in many circumstances act as the conciliator.

Prior to the 1 April amendment, the automatic transfer provisions only applied to a certain employee population (the rank and file, and managers and executives earning less than S$4,500 per month). The buyer had freedom to agree on new terms of employment for other employees, and had more selection control over the number and type of employees it wanted to hire from the seller. Under the current laws, buyers have less leeway in terms of employee transfers.

VIII TAX LAW

In general, the legal obligation to pay stamp duty in an acquisition falls on the buyer in a transaction.[55] However, as a practical matter, parties are free to negotiate, as a contractual term, who should bear the costs of paying stamp duty. Stamp duty relief may be available for qualifying share acquisitions in connection with M&A transactions.[56] Stamp duty relief may also be available for the transfer of a company's business undertaking or shares in connection with its reconstruction or amalgamation.[57]

49 Rule 3.5, Takeover Code.
50 Section 2 of the Employment Act.
51 Section 18A(1) of the Employment Act.
52 Section 18A(4) of the Employment Act.
53 Section 18A(5) of the Employment Act.
54 Ibid.
55 Third Schedule, Stamp Duties Act.
56 M&A Scheme, Inland Revenue Authority of Singapore.
57 Stamp Duties (Relief from Stamp Duty upon Reconstruction or Amalgamation of Companies) Rules.

At present, transfers of immovable properties and shares are usually effected by way of physical documentation such as sale and purchase agreements and share transfer instruments. If such instruments of transfer were executed in Singapore, or if they were received in Singapore and relate to property situated in Singapore, they are chargeable with stamp duty under the Stamp Duties Act.[58] The proliferation of digital technology offers increasing opportunities for transactions to be effected electronically instead of with physical documentation.

In October 2018, the Ministry of Finance brought into effect amendments to the Stamp Duties Act that aim to ensure that Singapore's stamp duty regime keeps pace with digitalisation. The key amendment provides for stamp duty to be levied on electronic records that effect a transfer of interest in immovable properties and shares.[59]

i The M&A scheme

The M&A scheme (scheme) was introduced by the government in 2010 to encourage companies to undertake M&A as a growth and internationalisation strategy.[60] To qualify for the scheme, certain transaction-related thresholds must be met. The scheme is currently valid up until 31 March 2020 and comprises the following benefits:

a a tax allowance of 25 per cent of the acquisition value, subject to a maximum deduction of S$10 million for each year of assessment;

b stamp duty relief for qualifying share acquisitions, subject to a relief cap of S$80,000 per financial year; and

c double tax deduction on transaction costs incurred in respect of qualifying share acquisitions, subject to a cap of S$100,000 on acquisition costs.

IX COMPETITION LAW

i Consumer protection and competition

The Competition Commission of Singapore is the agency tasked with administering and enforcing the Competition Act, and was renamed the Competition and Consumer Commission of Singapore (CCCS) after taking on an additional function of administering the Consumer Protection (Fair Trading) Act (CPFTA) with effect from April 2018.

After this change, the mediation of complaints against errant retailers through the Consumers Association of Singapore will continue to be the first port of call to assist consumers. Errant retailers who persist in unfair trade practices will then be referred to the CCCS for investigation. The CCCS has already obtained a court order in mutual agreement with one such errant undertaking, the SG Vehicles group of companies, and their director, which takes effect from 18 April 2019, requiring SG Vehicles to cease various unfair trade practices including ceasing misleading or deceptive practices and ceasing the making of any false claims as to any guaranteed delivery date of any vehicles, and also to install a prominent sign outside their shops stating the full text of the court order.

To enhance the synergies between competition and consumer protection, the CCCS' powers under the CPFTA work hand in glove with its powers under the Competition Act. Specifically, the CCCS' powers under the CPFTA can build on the existing market studies

58 Section 4, Stamp Duties Act.

59 Section 60A, Stamp Duties Act.

60 https://www.mof.gov.sg/Policies/Tax-Policies/Corporate-Income-Tax/Mergers-and-Acquisitions.

that the CCCS had already been conducting to test the effectiveness of markets in specific sectors in Singapore. Market studies are already being undertaken to study the impact of developments in data protection and the online travel booking sector.

ii Amendments to Competition Act

Following a public consultation on the proposed changes to the Competition Act, changes were made to the Act with effect from May 2018, including:

a codification of the CCCS' process for providing confidential advice on anticipated mergers: the CCCS already has a process under its Guidelines on Merger Procedures 2012 for businesses to seek confidential and non-binding advice on anticipated mergers. This is now given statutory effect under the new Section 55A of the Competition Act. The advice will be given strictly on the veracity of the information provided by the merging entities: the CCCS will not request information from third parties or conduct any public consultation to make a comprehensive assessment. As such, the advice issued under Section 55A of the Competition Act will not be binding on the CCCS;

b businesses under investigation may offer legally binding commitments: Sections 60A and 60B of the Competition Act now allow the CCCS to accept binding and enforceable commitments for cases involving anticompetitive agreements and the abuse of a dominant position. Investigations will cease if the CCCS accepts the offered commitments. Previously, such commitments were only available in relation to mergers or acquisitions that substantially lessen market competition; and

c the CCCS is empowered to conduct general interviews during inspections and searches: CCCS officers are now empowered to ask general questions in relation to the same investigation without first serving a written notice when conducting inspections or searches of premises. Previously, occupants of the premises were only required to provide an explanation of the documents produced or seized on the premises or information uncovered during inspections. It is critical that corporations now have a dawn raid response procedure in place to ensure that they fulfil their legal obligations while safeguarding their own legal rights.

iii M&A

In the past 12 months, there have been 11 notifications and one investigation on the public register, with two withdrawn or abandoned and one undergoing Phase II review.

Mergers that result in, or may be expected to result in, a substantial lessening of competition in Singapore are prohibited under Section 54 of the Competition Act (Section 54 prohibition). Merger notification is voluntary under the Competition Act, but parties to a M&A transaction should conduct self-assessments against the guidelines published by the CCCS to determine if there may be a substantial lessening of competition and a merger notification is necessary.

The CCCS has set out the following indicative thresholds that when crossed will likely require further review to determine if there is a substantial lessening of competition: the post-merger market share of the top three undertakings is at least 70 per cent, and the market share of the merged undertaking is at least 20 per cent; or the merged undertaking has a market share of at least 40 per cent. The assessment of whether there is a substantial lessening of competition is qualitative and factual and may be undertaken even if the indicative thresholds are not met. The CCCS will consider various factors in this assessment, including barriers to entry, market transparency and countervailing buyer power.

Failure to adhere to merger control procedures may result in financial penalties of up to 10 per cent of the merger parties' turnover (for up to three years) in addition to other remedies such as the dissolution of the merger or subsequent divestments.

On 24 September 2018, the CCCS issued an infringement decision imposing financial penalties in excess of S$13 million and directions on Uber Technologies, Inc (Uber) and Grab Inc (Grab) entities to lessen the impact of the sale of Uber's Southeast Asian business to Grab for a 27.5 per cent stake in Grab. The directions included the removal of Grab's exclusivity arrangements with drivers and taxi fleets, maintenance of Grab's pre-merger pricing algorithm and commission rates, and the sale of Uber's rental fleet to potential competitors if an offer is made based on fair market value.

The infringement decision revealed that the parties had failed to notify the CCCS of the merger despite letters having been sent by the CCCS. Further, the CCCS noted that the parties did not merely provide for antitrust penalties but had 'precisely' apportioned such antitrust penalties suggesting they had given consideration to the likelihood that the transaction would breach antitrust rules and result in financial penalties. Accordingly, the CCCS found that they had 'intentionally, or negligently, infringed the Section 54 prohibition'.

Corporations should be alert to competition law concerns that may arise in their commercial dealings or even in industry gatherings, bearing in mind that that the CCCS is empowered to and does conduct investigations into un-notified mergers and that offenders will suffer both financial and reputational losses.

X OUTLOOK

Officially, Singapore's economic outlook is positive with forecasts by the Ministry of Trade and Industry in February projecting growth of between 1.5 to 3.5 per cent.[61] However, the recent escalation of the United States' trade war with China has caused market volatility and cast uncertainty on the global economic outlook. Singapore's small and open economy is reliant on trade and susceptible to the vicissitudes of the global economic climate. Cautious buyers may want to adopt more protective provisions and contractual outs in the event of any adverse change in the external environment. Conversely, cautious sellers may want to structure more punitive mechanisms, including reverse break fees, for any deal discontinuation.

61 Ministry of Trade and Industry.

Appendix 1

ABOUT THE AUTHORS

SANDRA SEAH

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Sandra is the joint managing partner of Bird & Bird ATMD LLP.

She has considerable experience in public procurement, corporate and commercial law, competition law, regulatory and environmental laws, and real estate.

Sandra has extensive experience in public projects and regulatory work in Singapore, and is the adviser to a large number of state agencies including Energy Market Authority (EMA), Building and Construction Authority (BCA), Jurong Town Corporation, Ministry of Health, Tripartite Alliance Limited, People's Association (PA) and National Arts Council. She is also experienced in anti-competitive analysis and legislative strategy and has advised clients in a number of key sectors, including energy, infrastructure and utilities, aerospace, logistics, infrastructure, tech and communications, pharmaceutical and petrochemicals.

She is an experienced transactional lawyer for large-scale infrastructure projects and tenders, being experienced in PPP, public procurements, energy regulatory work, state leasing, regulations, and technical contracts in Singapore and the Asia Pacific region.

Sandra has acted as lead coordinator for a large number of innovative public projects in Singapore, including the electricity futures market for EMA, SportsHub PPP for SportsHub, the first microgrid testbed on Pulau Ubin, the first energy performance contract template for the Singapore Green Building Council (SGBC) and BCA, the first community club in a mall for PA, the first sectoral competition appeal in the gas sector for EMA, the first tri-generation project in Singapore for Pfizer and the first LNG terminal project in Singapore for SLNG.

Sandra has spoken widely on contract, governance and competition issues. She is also the co-author of *Business Guide to Competition Law*, published by Sweet & Maxwell in 2011. She sits on the council and executive committees of industry associations such as the Sustainable Energy Association of Singapore, the Energy Studies Institute, SGBC and the Waste Management & Recycling Association of Singapore, and is a director of two local charities.

MARCUS CHOW

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Marcus is head of the corporate group at Bird & Bird ATMD LLP.

His transactional practice includes venture capital investments, private and public M&A, as well as private equity entries and exits. He has experience advising clients across a range of industries including manufacturing, retail, construction, real estate, food and beverage, banking and finance, airlines, mining, agriculture and technology.

Marcus graduated with an LLB from the National University of Singapore and an LLM from the University of Virginia. He also holds a certificate in governance as leadership from the Harvard Kennedy School of Government. Marcus is qualified to practise in Singapore and New York, USA.

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Seow Hui leads the Bird & Bird Singapore employment practice, and her practice encompasses the full range of employment issues, including HR regulatory and compliance issues. She regularly advises corporate clients on employee issues arising from business restructuring needs, mergers and acquisitions, including employment due diligence, managing employee terminations, particularly complex exit negotiations, protection of employer trade secrets and confidential information, employment contracts, executive compensation and benefits, workplace policies, employee relations, workplace grievances and investigations, workplace ethics and compliance, workplace safety and health, work injury claims, industrial relations and collective bargaining, HR personal data protection, global mobility and immigration.

Seow Hui frequently represents companies in employment disputes, and clients value her methodical approach and pragmatic advice.

Her work covers Singapore and cross-border work into the region, with a particular focus on ASEAN. Seow Hui is also experienced in managing large-scale and complex regional restructuring and integration projects.

Seow Hui is an accredited mediator with the Singapore Mediation Centre and a member of the Association of Workplace Investigators.

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