UNPACKING THE CCCS ENVIRONMENTAL GUIDELINES: INSIGHTS ON COMPETITION AND SUSTAINABILITY IN SINGAPORE

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Authors: ***John Mark Chen, Harnek Singh Shergill***

Sustainability and Competition Law

Singapore's environmental efforts have become more urgent as it works toward net-zero emissions by 2050 under the Paris Agreement. These efforts include collaborations between private companies to pursue various environmental objectives which may give rise to competition law concerns during such cooperation. To support private companies in tackling climate change, conserving resources and promoting green innovation, the Competition and Consumer Commission of Singapore ("**CCCS**") on 1 March 2024, issued the "*Environmental Sustainability Collaboration Guidance Note*" to supplement the parameters in which companies can collaborate without infringing on the Competition Act. In response to an application made under the streamlined process for environmental collaborations announced in the Guidance Note, the CCCS issued its first positive guidance on 3 January 2025. This first positive guidance represents an important milestone in allowing companies to work together for environmental objectives without raising undue competition concerns.

The CCCS recognises that Singapore's whole-of-nation approach to sustainability may require collaborations between market participants, who may otherwise be competitors. Many of these collaborations arise because individual companies may lack the scale, technical know-how, or market reach to tackle large sustainability undertakings alone. Joint research and development, shared distribution systems, or pooled resources for green manufacturing could be necessary to expedite solutions, achieve economies of scale, or overcome the "first mover disadvantage" in relation to sustainability initiatives. However, under Section 34 of the Competition Act (the "**Section 34 Prohibition**"), such collaboration may be prohibited as they may fall within the definition of an anti-competitive agreement, a decision made by an association, or a concerted practice designed to or with the effect of restricting competition within Singapore. Environmental initiatives do not benefit from automatic exemption from the Section 34 Prohibition just because they pursue positive societal outcomes. Genuine environmental benefits must be balanced against potential harm to competition. The CCCS will determine if agreements eliminate or impede competition, or if they are exempt.

Parties contemplating sustainability collaborations should be aware of the approach laid out by the CCCS to ensure that such collaborative efforts/agreements do not qualify as conduct that raises competition concerns. Examples of conduct which generally do not raise concerns include straightforward information-sharing on industry best practices, or purely vertical arrangements between businesses operating at different levels of the supply chain. The CCCS may also consider whether the collaboration involves "by object" infringements, such as obvious restrictions like price-fixing, market division, or bid-rigging. Environmental aspirations cannot excuse blatant cartel conduct. Any agreement that sets uniform prices, imposes output restrictions, or allocates geographical markets among competing players will attract stringent scrutiny under the Section 34 Prohibition. Therefore, a fact-specific approach is used to decide if

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an agreement violates the Competition Act. This approach considers the collaboration's initial purpose, primary focus, and the effectiveness of its parts in achieving the environmental goal. Consequently, businesses facing uncertainty about these factors should seek legal advice.

One key exclusion to the Section 34 Prohibition is the Net Economic Benefit ("**NEB**") exclusion. Under the NEB exclusion, an otherwise infringing agreement may still be permissible, if: (i) the resulting economic benefits outweigh the agreement's negative effects on competition, (ii) these benefits cannot be achieved without the agreement, and (iii) competition is not eliminated in a substantial part of the market. In the context of sustainability, the CCCS interprets "economic benefits" broadly to encompass environmental benefits such as reductions in carbon emissions or more efficient use of raw materials because these benefits can confer objective economic value to Singapore as a whole.

While economic benefits ordinarily need to arise in the relevant market where the agreement takes effect, the CCCS recognises that some environmental benefits may extend beyond that specific market (for instance, reduced greenhouse gas emissions benefiting Singapore overall). In these circumstances, a restriction on competition in one market could be justified if the broader benefits to Singapore, like mitigating pollution or accelerating the adoption of greener technology, are sufficiently significant.

It is important to note, however, that the NEB exclusion has three limbs which have to be satisfied. Therefore, it shall only apply where the claimed benefits are both substantial and cannot be achieved (or cannot be achieved as quickly or at the same scale) without the agreement. The claimed benefits must also be directly linked to the collaboration and cannot be readily replicated by the parties unilaterally. Even if the agreement meets these criteria, the NEB exclusion still requires that competition is not eliminated in a substantial part of the market. As highlighted by the CCCS, competition is not considered "eliminated" if participants continue to compete on at least one important parameter, such as price, before and after the agreement. If these conditions are satisfied, broader positive externalities (e.g., lower greenhouse gas emissions, cleaner air or water, or technology spillovers) may amount to objective efficiencies that justify invoking the NEB exclusion to allow such collaborations.

Importantly, businesses should ensure that any collaboration agreement genuinely serves a sustainability aim rather than concealing anti-competitive behaviour. Provisions in such agreements should specify how each potential restriction to the competitiveness of the market is indispensable to achieving the stated environmental goals and confirm that competition on key parameters remains strong. To prevent anti-competitive behaviour, periodic reviews of these arrangements are recommended.

While there is no general legal requirement to notify the CCCS of environmental collaborations, the statutory board offers a streamlined two-phase approach for parties unsure about their compliance. Phase 1 comprises a 30 working-day review for relatively straightforward cases, and Phase 2 may extend up to 120 working days for more complex scenarios. During this period, the CCCS will not impose penalties as long as the parties cooperate fully.

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The streamlined process recently yielded its first positive guidance from the CCCS. This was in relation to the creation of BCRS Ltd. by Coca-Cola Singapore Beverages, F&N Foods, and Pokka. BCRS Ltd. is licenced by the National Environment Agency to launch a beverage container return initiative under the Resource Sustainability Act 2019. A fully refundable S$0.10 deposit will apply to pre-packaged plastic and metal beverage containers of between 150 millilitres and 3 litres upon the return by customers of such empty containers to designated collection points. The CCCS concluded that the joint establishment and operation of BCRS Ltd. is unlikely to infringe Section 34. The CCCS' approval of this arrangement confirms that well-structured environmental collaborations with adequate safeguards for commercially sensitive information can align with Singapore's competition framework.

Ultimately, these developments underscore the importance of aligning private-sector innovation with national sustainability objectives in a competition-compliant manner. When executed transparently and proportionately, environmental collaborations can speed up Singapore's green ambitions without undermining market competition. As Singapore's regulatory landscape continues to evolve, businesses should remain vigilant when structuring and documenting such green initiatives. Successful collaborations require a clear articulation of sustainability benefits, robust safeguards against anti-competitive effects, and proactive and early engagement with the CCCS.

Singapore Green Plan 2030

CCCS Issues Positive Guidance in First Case Under Streamlined Process for Collaborations Pursuing Environmental Sustainability Objectives

The Competition and Consumer Commission of Singapore (Guidance Note on Business Collaborations Pursuing Environmental Sustainability Objectives)

Section 34, Competition Act 2004

The Competition and Consumer Commission of Singapore's Guidelines on the Section 34 Prohibition

Advisory to NEA on its Beverage Container Take-back Scheme

Should you require any further information, please do not hesitate to contact John Mark Chen:

Tel: +65 6349 8727 *E-mail: jmchen@cnplaw.com*

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