

CONNECTING THE DOTS – INTEGRATING NETWORK EFFECTS IN SINGAPORE COMPETITION LAW

1. On 1 February 2022, the Competition and Consumer Commission of Singapore (“**CCCS**”) updated its guidelines on the Section 34 and Section 47 Prohibitions (“**New Guidelines**”). In this article, we will briefly introduce the Section 34 and 47 Prohibitions, discuss CCCS’ clarification on network effects in relation to these Prohibitions as well as the impact of the clarification on your business.

Network Effects

2. The network effect arises where a user’s valuation of a network increases as more users join the network. For example, a user’s valuation of a social network (e.g., Facebook), will increase as more users join the network, as the network will then connect the user to more friends and acquaintances.

The Section 34 Prohibition

3. Section 34 of the Competition Act (“**CA**”) prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore. In this regard, CCCS considers whether the agreement will have an appreciable adverse effect on competition, which in turn depends on (among other things) the market power of the parties to the agreement.

The Section 47 Prohibition

4. In general, Section 47 of the CA prohibits conduct by undertakings that amounts to an abuse of their dominant position in a market. This requires that the undertaking: (i) enjoys a dominant position; and (ii) abuses such a dominant position. In assessing whether an undertaking occupies a dominant position, a crucial element is whether it enjoys substantial market power.

CCCS clarifications on the role of network effects

5. The New Guidelines on Section 34 expressly state that the strength of network effects is a factor when assessing whether an undertaking possesses market power.
6. The New Guidelines on Section 47 elaborate on the role of network effects in determining whether an undertaking is dominant in the relevant market. Where network effects are strong, an undertaking is more likely to be deemed to be

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For any queries relating to this article, please contact:

Tan Tee Jim, S.C.

tanteejim@leenlee.com.sg

Jasper Lim

jasperlim@leenlee.com.sg

Authors:

Tan Tee Jim, S.C.

Jasper Lim

Lee & Lee

25 North Bridge Road

Level 7

Singapore 179104

Tel: +65 6220 0666

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dominant. This is because competitors are less likely to be able to enter the market to gain market share at the expense of a dominant undertaking seeking to sustain prices above competitive levels.

7. The New Guidelines also clarify that indirect network effects may be taken into consideration in determining whether an undertaking is dominant and whether an undertaking possesses market power, respectively.
8. Indirect network effects arise in multi-sided platforms (e.g., eBay, Carousell) which connect two or more groups of users (e.g., buyers and sellers). A user's valuation of the multi-sided platform increases with the increase in the number of users on the other side of the platform. The New Guidelines state that the strength of such indirect network effects would depend on number of users on the other side of the platform, the quality of users and the intensity of their usage, prevalence of multi-homing and switching costs.

Conclusion

9. Businesses that enjoy network effects should incorporate network effects into their analysis on whether any action will offend the Section 34 or Section 47 Prohibition. They should thread carefully and seek legal advice before entering into agreements with competitors in their industry and taking corporate actions if they are in a dominant position.
10. Network effects are often observed in digital platforms that facilitate interactions or transactions between users or users of different groups. Nonetheless, businesses must be cognisant that network effects may exist beyond such platforms. For example, network effects may arise if your business forms a "peer support" group on Telegram or WhatsApp, which is only open to your customers.
11. If you have any question on any aspect of the New Guidelines, please contact our Mr. Tan Tee Jim, S.C. (tanteejim@leenlee.com.sg) or Mr. Jasper Lim (jasperlim@leenlee.com.sg).

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kwakimli@leenlee.com.sg

Quek Mong Hua
Litigation & Dispute Resolution
quekmonghua@leenlee.com.sg

Owyong Thian Soo
Real Estate
owyongthiansoo@leenlee.com.sg

Tan Tee Jim, S.C.
Intellectual Property
tanteejim@leenlee.com.sg

Adrian Chan
Corporate
adrianchan@leenlee.com.sg

Louise Tan
Banking
louisetan@leenlee.com.sg