

NAVIGATING COMPETITION-LAW ISSUES RELATING TO ENVIRONMENTAL SUSTAINABILITY COLLABORATIONS IN SINGAPORE - A BRIEF OVERVIEW

Introduction

1. There is tension between Singapore's sustainability goals and competition laws. Whilst the Competition and Consumer Commission of Singapore (CCCS) recognises that achieving Singapore's sustainability goals may involve businesses engaging in collaboration,¹ such collaboration between businesses may attract liability if they are found to be anti-competitive.
2. In the circumstances, the CCCS published a guidance note that aims to *"afford greater clarity to businesses on how CCCS will assess collaborations pursuing environmental sustainability objectives, so that such collaborations may be pursued in a manner that does not harm competition"*.
3. This article leverages on CCCS' guidance note and provides a brief framework to address three issues you should consider before entering an environmental sustainability collaboration.

Would your business collaboration be considered one that is "carried out in pursuit of environmental sustainability objectives"?

4. In determining whether a business collaboration is carried out in pursuit of environmental sustainability objectives, the CCCS will consider crux or main activity of the collaboration. This in turn depends on factors such as the starting point and the main focus of the collaboration. Examples of such collaborations include joint research and development, joint production and joint purchasing, where the collaboration is necessary to obtain the environmental sustainability objective.²

Would your business collaboration, carried out in pursuit of environmental sustainability objectives, offend Singapore's competition laws?

5. The CCCS has identified several collaborations which are unlikely to raise competition concerns, including the following:

14 May 2024

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¹ [1.1] of the Guidance Note on Business Collaborations Pursuing Environmental Sustainability Objectives (the "Guidance Note").

² Guidance Note at [2.2]

- (a) Agreements that do not affect factors of competition, such as price, quantity, quality, choice or innovation of goods and services supplied.³
 - (b) Agreements which none of the parties can do independently.⁴
 - (c) Vertical agreements. Generally, these are agreements entered into between undertakings which operate, for the purposes of the agreement, at a different level of the production or distribution chain.⁵
6. On the other hand, agreements which are likely to raise competition concerns include the following:
 - (a) Collaborations with the purpose of price-fixing, bid-rigging, market-sharing or imposing limitation on output.⁶
 - (b) Collaborations that have the effect of an appreciable prevention, restriction or distortion of competition. Generally, collaborations would not have an appreciable adverse effect on competition if the combined market share of the parties do not exceed 20% of the markets affected by the agreement, or where each party involved is a small or medium enterprise.⁷
7. Finally, even if the environmental sustainability collaboration gives rise to competition concerns, it may qualify for an exclusion, if there is Net Economic Benefit. Where a Net Economic Benefit is found, the collaboration would not contravene Singapore's competition laws.
8. Briefly, the criteria of this exclusion are as follows⁸:
 - (a) The agreement leads to economic benefits that outweigh the negative competition effects; and
 - (b) These economic benefits cannot be achieved without the agreement and any restrictions in it; and
 - (c) Competition is not eliminated in a substantial part of the market.
9. Where collaborations pursue environmental sustainability objectives, the CCCS indicated that it will take into account economic benefits accruing to Singapore as a whole, where appropriate. This departs from the general position that benefits from such collaborations would be assessed within the confines of the relevant markets.⁹ The practical effect is that it may be easier for environmental sustainability collaborations to qualify for the Net Economic Benefit exclusion.

³ Guidance Note at [2.5]

⁴ Guidance Note at [2.6]

⁵ Guidance Note at [2.8]

⁶ Guidance Note at [2.13]

⁷ Guidance Note at [2.13]

⁸ Guidance Note at [2.14]

⁹ Guidance Note at [2.17]

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The options to progress your business collaboration if you are unsure whether it offends Singapore's competition laws.

10. There are three options:

- (a) First, you could conduct a self-assessment to determine whether the planned environment sustainability collaboration will raise any competition concern and, if so, whether it will qualify for any exclusions, such as the Net Economic Benefit Exclusion.
- (b) Second, you could notify the collaboration to the CCCS, and seek its guidance or decision. In this regard, there is no legal requirement for businesses to notify such collaborations to the CCCS. Nonetheless, should you decide to notify the CCCS, we highlight that the CCCS has adopted a streamlined process for the assessment of agreements pursuing environmental sustainability objectives. Under the streamlined process, the CCCS may be able to reach a decision on simple cases within 30 working days.¹⁰
- (c) Third, you could seek independent legal advice.

11. Please do not hesitate to reach out to us if you have any questions.

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