This contribution is submitted by Singapore under session I of the Global Forum on Competition to be held on 17 and 18 February 2011.
CROSS-BORDER MERGER CONTROL: CHALLENGES FOR DEVELOPING AND EMERGING ECONOMIES

-- Singapore --

1. Introduction

1.1 What is a cross-border merger?

1. A cross-border merger broadly refers to a merger where some or all of the parties or assets involved in the merger are registered in different countries. Globalisation - the increasing economic integration of the world\(^1\) - has led to increasing cross-border mergers around the world.\(^2\) As a small, open economy, Singapore too has been frequently exposed to cross-border mergers where some or all of the merger parties are situated outside Singapore but where the merger has an effect on Singapore’s economy.

1.2 Cross-border mergers and Singapore

2. Singapore has always been an open economy, founded on trade. With its small size, limited domestic population and lack of natural resources, the country’s very survival depends on it.\(^3\) In 2009, Singapore’s total trade\(^4\) as a percentage of GDP came up to 282%.\(^5\)

3. Given Singapore’s large exposure to international trade and the strong presence of multinational corporations (MNCs) in Singapore, cross-border mergers are particularly relevant to Singapore. Of the 22 mergers notified to CCS since the merger control regime began on 1 July 2007, 17 had a cross-border element.\(^6\)

1.3 Singapore’s merger control regime and challenges for small economies

4. Singapore has a voluntary merger regime where merger parties may, of their own accord, apply to the Competition Commission of Singapore (“CCS”) for a decision if they think their merger situation could raise competition concerns. This regime was put in place in recognition that, in a small and open

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\(^4\) Total trade is taken as the sum of exports and imports, where exports include domestic exports and re-imports.


economy, the competition authority has limited resources\(^7\), while most merger transactions involve tradable goods that do not typically raise competition concerns. A smaller authority forced to review too many transactions may have little or no resources left to pursue other important enforcement priorities, including cartel enforcement.\(^8\)

5. As part of its voluntary merger regime, CCS encourages parties to consider making an application where:

a) the merged entity will have a market share of 40% or more; or

b) the merged entity will have a market share of between 20% to 40% and the post-merger combined market share of the three largest firms is 70% or more.

6. With such a voluntary notification system together with notification thresholds set in place for merger review, Singapore has avoided having a notification system that is unduly burdensome and instead achieved a reasonably effective and efficient one.

7. The operative provision in the Singapore Competition Act that regulates mergers is Section 54, which prohibits mergers or anticipated mergers that substantially lessen competition (“SLC”) or are likely to substantially lessen competition (“the Section 54 Prohibition”).

8. Merger situations which take place outside of Singapore or which involve parties who are not in Singapore may also be caught by the Section 54 Prohibition, as long as the merger gives rise to a SLC in Singapore. This ‘effects’ doctrine allows CCS to exercise jurisdiction over the extraterritorial activities which produce economic effects within Singapore. Indeed, many of the merger notifications CCS has received thus far are from MNCs, rather than local companies. There are no exemptions or special provisions for cross-border mergers.

9. Given the small size of the local market relative to that of the overall transaction, it has been discussed in the literature that for cross-border mergers, particularly for foreign-to-foreign mergers, competition agencies of small economies may face difficulties in taking effective enforcement actions undermining the merger or imposing commitments against mergers which raise competition concerns.\(^9\) However, this issue has not led to an undesirable outcome in Singapore to date. It is interesting to make a comparison between two cross-border mergers that have been handled by CCS. In one merger, there was some form of interdependence among various competition agencies as the competition issues were common across jurisdictions and Singapore could follow the lead of the larger agencies. In the second merger, the competition matters involved were specific to Singapore and hence it was necessary for Singapore to look at these matters independently even though it was a cross-border merger and other competition authorities’ approvals were also sought.

\(^7\) In enforcing competition law, small economies may need to invest comparatively more resources than in larger economies; a small competition authority’s budget to GDP ratio may be higher than that of a larger authority’s.


2. CCS’ experience with cross-border mergers

2.1 Case study #1: Thomson-Reuters merger

10. This case involved a merger between the Thomson Corporation (“Thomson”) and Reuters Group PLC (“ Reuters”) (collectively referred to as “the parties”), both of whom are global providers of financial information products and services. Thomson and Reuters complement each other in terms of the nature of their respective businesses, and the geographical regions in which they operate. CCS reviewed the merger based on the following market definition: segmenting the financial solutions offered into discrete content sets (i.e., aftermarket broker research, earnings estimates and fundamentals).

11. This was a global merger which was reviewed by the European Commission (“EC”) and the United States Department of Justice (“US DOJ”), amongst other jurisdictions. During CCS’ period of assessment, it was announced that the US DOJ and the EC had approved the merger, subject to commitments offered by the parties to the US DOJ and the EC. CCS’ assessment indicated that the merger might have resulted in a SLC in Singapore. However, as the commitments to the DOJ and the EC would essentially create another competitor that could supply its products worldwide, CCS considered that the commitments would have worldwide effect, and was of the view that any competition concerns arising in Singapore would be sufficiently mitigated by the commitments offered to the US DOJ and the EC. The feedback received by CCS from market inquiries in respect of the commitments was also largely positive. The merger was eventually cleared by CCS on the basis of the accepted commitments.

12. It is important to note that although the acceptance of commitments in overseas jurisdictions may be relevant in CCS’ assessment of the competitive impact of the merger in Singapore, commitments accepted by overseas competition authorities do not necessarily imply that CCS will allow the merger to proceed in Singapore. Any overseas commitments must be viewed in light of the facts and circumstances of the case, to see if they are capable of addressing competition concerns arising within Singapore, if any.

2.2 Case study #2: Prudential-AIA merger

13. This joint notification was made on 23 April 2010 in relation to a proposed acquisition by Prudential plc (“Prudential”) of AIA Group Limited (“AIA”) (collectively referred to as “the parties”). The relevant good/service involved was the provision of insurance products in the life and health insurance business in Singapore.

14. In this merger, the only overlap between AIA’s and Prudential’s business was in Asia. This acquisition would allow Prudential to improve its strategic position in Asia and develop the market in Asia, which was seen as a strong growth market. Sources reported that a takeover of AIA by Prudential would make the company the biggest foreign insurer in Asia by far. For AIA, the transaction would help AIG, the parent company, to raise funds to finance a bailout by the US government during the financial crisis in

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2008. As the merging parties’ business in Singapore was mature, Singapore was an important market to the parties. As such, CCS’s approval was integral to the parties’ merger transaction.

15. The parties had sought antitrust approvals from various jurisdictions/authorities. Clearance was received from the KFTC on 13 April 2010. CCS assessed that the competition matters arising from the merger would be specific to Singapore because the relevant product/good was not homogeneous across countries. Life insurance is catered uniquely to each individual country’s needs. Further, there are also regulatory requirements that are specific to individual countries. In Singapore, insurance companies are required to be registered with the Monetary Authority of Singapore (MAS) – Singapore’s financial and insurance regulator - to conduct any insurance business there. Approval from the Ministry of Health (MOH) is also required for any life insurance business providing certain health insurance policies.

16. In the end, the merger did not proceed as it was rejected by the Prudential shareholders and the application to CCS was withdrawn.

2.3 Comparison of case studies #1 and #2

17. In case study #1 (Thomson-Reuters merger), the competition issues identified were not Singapore-specific, but common to the various jurisdictions affected by the merger as the relevant product was fairly homogeneous and the issues were relatively global in nature. Therefore, the remedies imposed by the larger competition agencies (the US DOJ and the EC), which had more leverage to assert their authority, would have helped to resolve similar concerns in other markets like Singapore. As a result, CCS could follow the lead of the US DOJ and the EU and similarly hold that there was no SLC caused by the merger in view of the commitments provided by the parties to the US DOJ and the EC.

18. In case study #2 (Prudential-AIA merger), the competition matters identified were specific to Singapore. As such, other jurisdictions’ assessment of the merger (such as the KFTC’s clearance of the merger) or their proposed commitments, if any, would not have been applicable in Singapore’s context. It was therefore necessary for CCS to independently assess the Singapore-specific facts and circumstances. Similarly, had it got to the stage where proposed remedies were to be considered necessary, any proposed remedies considered by CCS would not have been directly applicable to the other Asian jurisdictions. Nevertheless, given the merging parties’ large business presence in Singapore, CCS’s assessment of this merger could have given other authorities in Asia some reference on the type of concerns and remedies they could consider when doing their own merger assessment.

3. International and regional cooperation on cross-border mergers

19. CCS has regular discussions with overseas competition authorities on mergers and believes that ongoing international and regional cooperation among competition authorities is very important. This is so especially in light of the common difficulties that competition authorities of small economies may face, in terms of requesting for information from overseas companies, or imposing commitments against foreign-to-foreign mergers which raise competition concerns locally.

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20. CCS is also open to cooperating and coordinating with other national competition authorities in the discussion of appropriate remedies and enforcement actions for cross-border mergers, should such a situation arise in future.

3.1 International cooperation

21. Singapore has ongoing cooperation with overseas competition authorities and international competition networks. A recent example is CCS’ participation in the 2010 International Competition Network (ICN) Merger Workshop in Rome where CCS was a moderator at the conference hosted by the Italian Competition Authority.

3.2 Regional cooperation

22. In addition, together with other ASEAN member states, Singapore endeavours to develop a regional platform to facilitate cooperation between competition regulatory bodies. This is highlighted by the unveiling of the Handbook on Competition Policy and Law in ASEAN for Business and the ASEAN Regional Guidelines on Competition Policy during the 1st ASEAN Experts Group on Competition (AEGC) Business Forum in Singapore in November 2010. CCS was both the inaugural Chair of AEGC in 2008, as well as the Chair of the working group on Regional Guidelines. CCS also participated actively as a member of the Handbook working group. The forum in Singapore was jointly organised by the AEGC, the ASEAN Secretariat and CCS, and supported by InWEnt – Capacity Building International, Germany – and German Federal Foreign Office.

4. Conclusion

23. As a small and open economy with a strong presence of multinational corporations and sizeable external trade, Singapore’s economic activities are highly sensitive to international merger activities. Due to its small size, a voluntary merger regime with notification thresholds is adopted for effective and efficient merger control. Singapore actively cooperates with other competition authorities to learn from one another and strengthen these inter-agency ties.

24. Small jurisdictions, like Singapore, can learn from larger competition agencies in cases of cross-border mergers where competition concerns are similar globally, and where major jurisdictions have greater influence and resources to negotiate commitments from the parties.

25. Nevertheless, it is also possible, and at times necessary, for small competition authorities to work independently in cross-border merger cases where there is a substantial lessening of competition in these small economies but not in the larger ones, and where the competition concerns, and hence remedies, are specific to the individual countries.