

Competition & Antitrust and Trade

CCCS Announces Plans for General Business Collaboration Guidance Note to Replace its Guidance Note on Collaboration During COVID-19

Introduction

In July 2020, to deal with the effects of the COVID-19 pandemic, the Competition & Consumer Commission of Singapore ("**CCCS**") issued a Guidance Note on Collaborations between Competitors in response to the COVID-19 Pandemic ("**COVID-19 Guidance Note**") to provide clarity to businesses on how CCCS would treat collaborations between competitors during these exceptional times, as well as examples of collaborations that would fall under the COVID-19 Guidance Note. The COVID-19 Guidance Note, however, is due to expire 31 July 2021.

We covered the COVID-19 Guidance Note in our earlier Client Update titled "*Treatment of Collaborations During COVID-19: CCCS Guidance*", available [here](#).

On 23 July 2021, CCCS confirmed that the COVID-19 Guidance Note will no longer apply from 31 July 2021. Interestingly, however, CCCS announced its intention to consult on an upcoming draft General Business Collaboration Guidance Note to provide businesses with more clarity on common collaborations between competitors.

Section 34 Criteria – Evaluation of Collaboration After 31 July 2021

On 23 July 2021, CCCS confirmed the expiry of the COVID-19 Guidance Note on 31 July 2021. For collaborations that end after the COVID-19 Guidance Note expires, CCCS will evaluate them using the criteria applicable under normal circumstances to assess whether they would infringe section 34 of the Singapore Competition Act ("**Act**").

Section 34 of the Act prohibits agreements between businesses which have as their object or effect the prevention, restriction or distortion of competition within Singapore. However, agreements and collaborations which generate net economic benefits ("**NEB**") are excluded. The three criteria to satisfy the NEB exception are:

1. the collaboration improves production or distribution of goods and services;
2. the agreement or restriction must be indispensable to achieving such improvements; and



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3. the collaboration does not eliminate competition in respect of a substantial part of the good/service.

Upcoming Public Consultation on General Business Collaboration Guidance Note

To allow businesses to collaborate in compliance with competition law with added assurance, CCCS stated its intentions to issue a public consultation shortly to obtain feedback on a General Business Collaboration Guidance Note to provide businesses with more clarity on common collaborations between competitors.

The provision of clarity to businesses and trade associations on what might constitute acceptable collaborative agreements under a Guidance Note is certainly welcome. It is hoped that CCCS can provide more clarity on specific examples of collaboration that would clearly satisfy the NEB criteria, as well as set out more procedural and substantive information on how CCCS would assess collaborative agreements between competitors.

As a reference point, in September 2018, CCCS issued a Guidance Note for Airline Alliance Agreements in recognition of the increasing number of airline alliance agreements notified to CCCS for decision. The Airline Alliance Guidance Note provided information on both procedural matters – such as when airlines should file a notification in relation to their alliance, the basic information which CCCS would require for its assessment, and the option to request for a streamlined process for the assessment of airline alliance agreements that fall within the streamlined process framework – as well as the substantive matters, such as CCCS' route-by-route approach to market definition for airline alliance agreements and CCCS' approach towards the consideration of arguments regarding benefits to Singapore's aviation hub. Whilst this was focused on one industry, the General Business Collaboration Guidance Note is intended to have wider application.

The General Business Collaboration Guidance Note, when issued for consultation, is something that businesses must review closely and provide feedback on as this will impact their business dealings with competitors in the future.

If you have any queries or wish to find out more about this development, please feel free to contact our team below.

Visit our [COVID-19 Resource Centre](#) for views from our lawyers across the region on common issues and legal implications brought about by COVID-19. For specific inquiries, please reach out to your relationship partner or send an email to our [COVID-19 Legal Team](#).

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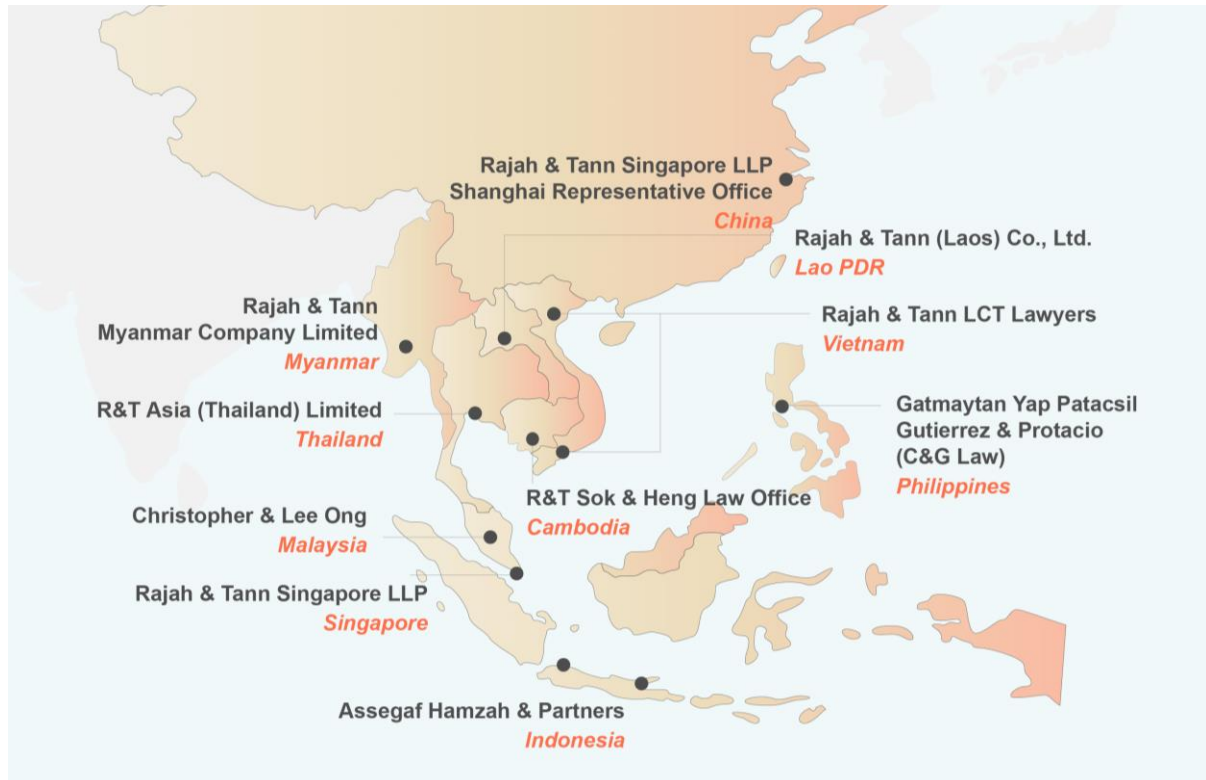
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Client Update: Singapore

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