

CCCS Clears Singapore Clearing House Association's Bye-Laws Governing Use of FAST

Introduction

On 8 December 2022, the Competition and Consumer Commission of Singapore ("**CCCS**") issued a decision pursuant to an application by the Singapore Clearing House Association ("**SCHA**"), holding that a proposed Rule 27.23 of SCHA's Bye-Laws and its accompanying guidelines (collectively, the "**Proposed Rule**") concerning the admission and use of Fast and Secure Transactions ("**FAST**") by non-financial institutions will not infringe section 34 of Singapore's Competition Act 2004 ("**Competition Act**"). In particular, CCCS examined the scope of exclusion under Paragraph 7 of the Third Schedule of the Competition Act ("**Paragraph 7 Exclusion**") and concluded that the Proposed Rule falls within the scope of Paragraph 7 Exclusion and therefore, will not infringe section 34 of the Competition Act.

This decision provides guidance on CCCS' approach to the Paragraph 7 Exclusion. We briefly discuss this decision and its significance in this Update.

Key Facts of the Application

SCHA is in charge of establishing, managing and administering clearing services and facilities for cheques and debit and credit items of its members, as well as electronic funds transfer by its members. It also develops the bye-laws, regulations and conditions in connection with these services and facilities. SCHA established the Singapore Automated Clearing House ("**ACH**") which administers FAST, an electronic funds transfer system that facilitates the almost instantaneous transfer of Singapore Dollar funds between participating banks in Singapore.

The Proposed Rule governs the admission and use of FAST by non-financial institutions ("**NFIs**") by restricting FAST Users from allowing their e-wallet users to cash out funds in their e-wallets through FAST, when the funds are sourced from unsecured credit card facilities issued in Singapore ("**Restricted Funds**").



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The subject of the Application was whether the Proposed Rule will infringe section 34 of the Competition Act. Section 34 prohibits decisions by associations of undertakings which have as their object or effect the restriction of competition within Singapore ("**Section 34 Prohibition**"). However, there are exclusions to the Section 34 Prohibition, which are set out under the Third Schedule of the Competition Act.

SCHA submitted that the purpose of the Proposed Rule is to avoid potential adverse commercial and public policy implications of individuals being able to cash out Restricted Funds in their e-wallets. SCHA therefore held the view that the Proposed Rule did not have the object or effect of appreciably restricting competition in Singapore.

Application of the Paragraph 7 Exclusion

The Section 34 Prohibition is subject to exclusions set out under the Third Schedule of the Competition Act. The Paragraph 7 Exclusion provides that the section 34 prohibition does not apply to any agreement or conduct that relates to:

- (a) the clearing and exchanging of articles undertaken by ACH established under the Banking (Clearing House) Regulations; or
- (b) to any activity of SCHA in relation to its activities regarding ACH ("**Paragraph 7(b)**").

In the Application, SCHA submitted that the Paragraph 7 Exclusion did not apply to the Proposed Rule as the policy intent of the exclusion was to cover the clearing and exchanging of articles undertaken by ACH, and not NFI's use of FAST. The CCCS disagreed, and applied a purposive interpretation of the Paragraph 7 Exclusion to conclude that the phrase "[SCHA's] activities regarding ACH" under Paragraph 7(b) is broad enough to include the Proposed Rule because parliament's intention was for the exclusion to broadly cover SCHA activities regarding ACH including access to systems operated by FAST, use of the systems, and any associated conditions, fees, responsibilities or liabilities. As such, the Section 34 Prohibition does not apply to the Proposed Rule, and SCHA can therefore implement the Proposed Rule without risk of infringement.

Our Comments

This is the first time that CCCS has considered the application of the Paragraph 7 Exclusion, and it is noteworthy that a broad reading of the exemption has been adopted that covers any activity of SCHA in relation to its activities regarding ACH. While the decision clearly explains that it applies to rules governing

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access and use of FAST, it is noteworthy that ACH also operates the Singapore Dollar Cheque Clearing System, the United States Dollar Cheque Clearing System and the Interbank GIRO System. To the extent that SCHA has responsibility for making bye-laws, regulations and conditions in connection with these other services and facilities, the Paragraph 7 Exclusion could potentially also extend to such rules.

Separately, this case is a reminder that exemptions to the Section 34 Prohibition exist and can be helpful to rely on especially when businesses in the same industry intend to cooperate on certain ventures or set certain industry standards. Apart from the Paragraph 7 Exclusion that applies to clearing houses, other exclusions exist e.g. if the undertaking is entrusted with the operation of services of general economic interest, if the agreement is made in order to comply with a legal requirement, if it falls within certain specified activities such as the supply of bus or rail services.

In the event of uncertainty as to whether the exemption applies, businesses can always apply to CCCS for a guidance or decision for greater clarity. Notification of an agreement provides immunity from financial penalties from date of the notification to a date as may be specified by CCCS following its determination of the notification.

If you have any questions or comments in relation to the above development or require any assistance or advice regarding any competition concerns (including the submission of applications to CCCS), please do not hesitate to contact our team below or email us at competitionlaw@rajahtann.com.

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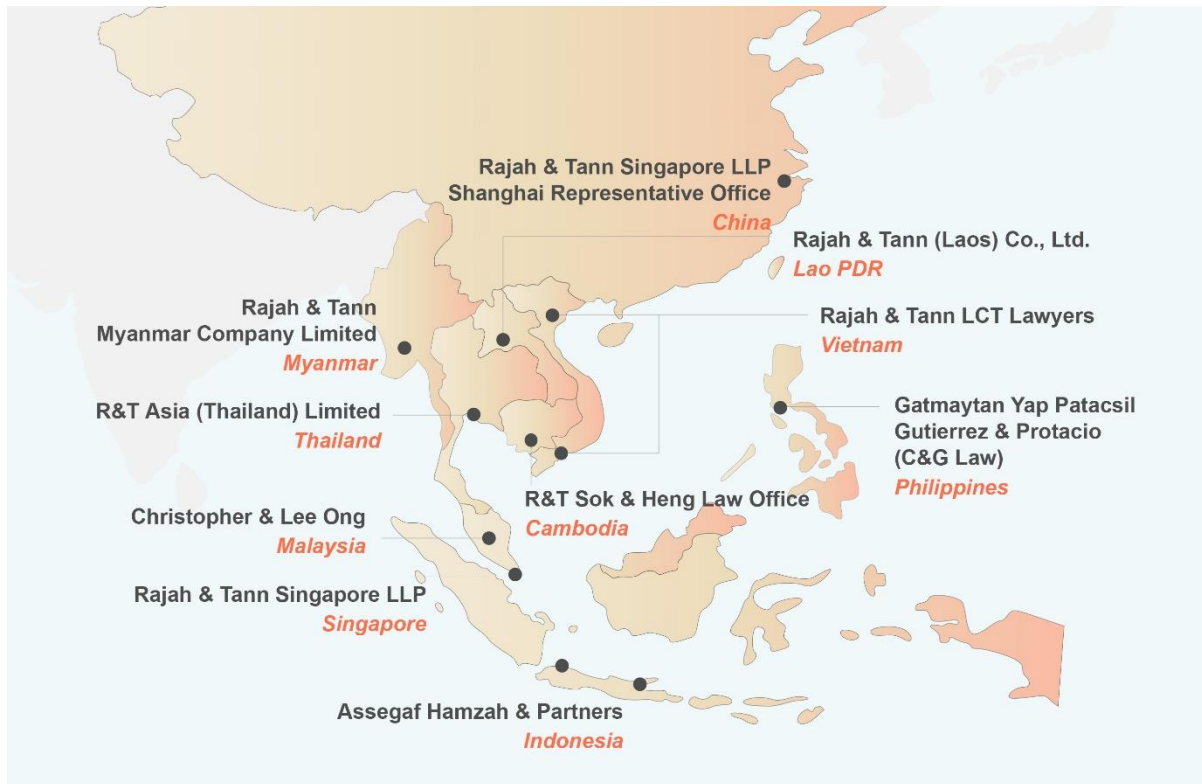
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