

An aerial night photograph of Singapore, showing the illuminated skyline with prominent skyscrapers like the Marina Bay Sands, and the illuminated, dome-shaped structures of the Gardens by the Bay in the foreground. The image is framed by a thick orange border.

# Actual Cases and Challenges of Cross-border Enforcement and Cooperation: Singapore's experience

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# Outline

1. Overview of Competition Law in Singapore

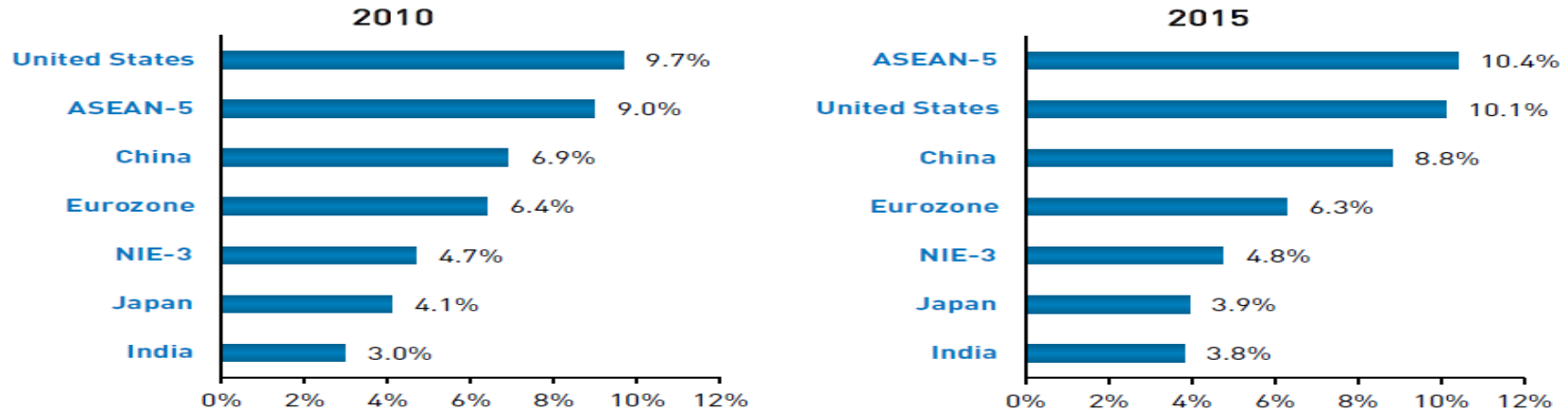
2. Examples of Cooperation

3. Challenges and Missed Opportunities

4. Some Final Thoughts

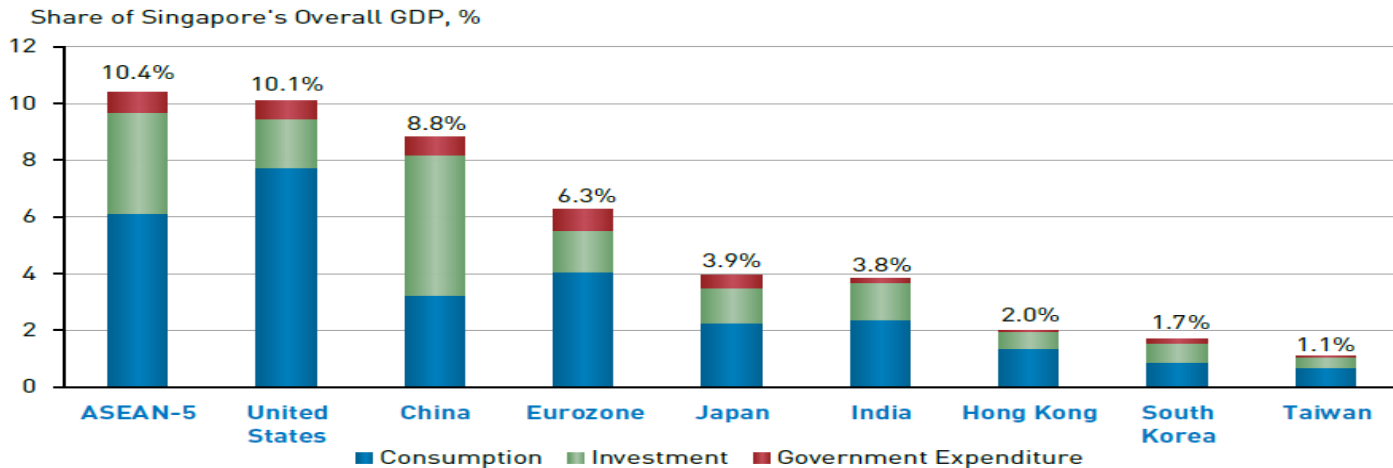
# Trends in Singapore's International Trade

*Exhibit 3: Share of Singapore's Overall GDP by Final Demand Markets (2010 and 2015)*



Source: MTI-ECD Estimates

Note: NIE-3 refers to Hong Kong, South Korea and Taiwan



Source: MTI-ECD Estimates

Note: ASEAN-5 refers to Malaysia, Indonesia, Thailand, Philippines and Vietnam

ACCC	Recent cooperation Qantas/Emirates Alliance; petrol market study proposed Guideline Amendments
MYCC	Recent cooperation on CCS's Fresh Chickens Investigation
HKCC	Recent cooperation on retail petrol market study and capacity building
TFTC	Recent cooperation capacitors investigation and on merger assessment
KFTC	Recent cooperation on merger assessment
JFTC; USDOJ	Cooperation regarding freight forwarding cartel
VCA	Recent capacity building
NZCC; EC CMA	Case specific work and consultation on recent proposed amendments to CCS's Guidelines

# Mechanisms for Cooperation

Formal Cooperation  
Agreements/MOUs

Informal Agency to  
Agency Cooperation

# CCS's Current Cooperation Arrangements

## Formal Mechanisms

- Primarily through FTAs
- Newer FTAs and those under negotiations usually have higher ambition for example TPP and ongoing RCEP
- Most EATOP members are members of either TPP and/or RCEP



**Treaties are binding in nature**

**Sets the stage for deep cooperation across 2 or more agencies**

**Entire process for treaty agreement is longer (negotiations, signing, rectification)**

**May sometimes be hard to reach consensus in multi-party setting**

# Impetus for CCS to enter MOUs

- ❖ CCS is looking into the feasibility of entering into Memorandum of Understanding (MOUs) with foreign competition agencies
- ❖ MOUs are cooperation agreements between competition agencies. While non-binding, they allow for deeper cooperation between competition and enhance relationship building
- ❖ Noted increase in number of cross-border cases
- ❖ MOUs would facilitate greater exchange of information so that case teams can discuss case-specific issues such as theories of harm, remedies etc.
- ❖ Tool that many established competition agencies (including EATOP members) are currently utilising
- ❖ CCS is considering the first-generation type of MOU

# CCS's Current Cooperation Arrangements

## Informal Mechanisms

- Conferences/workshops such as ICN events, EATOP, OECD Global Forum on Competition
- Staff attachments/exchanges
- Others such as enforcement roundtables, phone/emails exchanges



Effective tool for capacity building especially for younger agencies; simple and no paperwork; overcome other barriers such as limited timelines, different legal framework/constraints

Amount and useful of information obtained depends on contact person, not suitable for cases when more in-depth information required



# Leniency Cooperation

## Freight Forwarding Case and Capacitors Case



Contacted US DoJ; JFTC and others

Investigations in those jurisdictions already advanced

Contact assisted CCS to target its resources



Still under investigation by CCS

TFTC has already taken public action

Contact assisted CCS in terms of identifying available evidence

# Merger Cooperation – ASML / HMI

## CCS Contact with TFTC and KFTC

Proposed acquisition of ASML  
Holding N.V. of Hermes  
Microvision, Inc.

**ASML**

**HMI HERMES  
MICROVISION**

CCS contacted TFTC and KFTC regarding the progress of their assessment

Contact was helpful particularly given CCS's finding that the relevant geographic markets are worldwide in scope

# Cooperation - Qantas / Emirates Alliance

## CCS contact with ACCC

Coordination across global passenger and freight networks for initial term of 10 years including planning, scheduling, capacity, pricing, connectivity and frequent flyer programmes.



CCS found that the alliance would have the object of appreciably restricting competition on the Singapore – Melbourne and Singapore – Brisbane routes.

CCS reached out to ACCC in relation to the voluntary capacity commitments offered to CCS which mirrored the undertakings offered to the ACCC.

# Cooperation – CCS Chicken Cartel

## CCS Contact with MYCC

CCS has issued a proposed infringement decision against 13 fresh chicken distributors for price-fixing and market sharing conduct



During an early information gathering stage in this case, CCS contacted MYCC which had conducted a market study into the Broiler Market in Malaysia.

Call was helpful in terms of background market information for CCS. Including that all fresh chickens sold in Singapore are farmed in Malaysia and shipped to Singapore live for slaughtering.

Such background information assists in progressing information gathering which can reduce investigation timelines.

# Missed Opportunities

Where there is no mechanism for cooperation

Where CCS's investigation finds conduct with significant effect in another jurisdiction

Is there a mechanism for contacting that jurisdiction?

- ❖ Leniency waiver?
- ❖ Informal cooperation?
- ❖ MOU?
- ❖ Other mode of tip off?

# Missed Opportunities

## Examples

### SEEK/JobStreet Merger

- ❖ Merger notified to CCS early 2014
- ❖ Merger not notified to any other ASEAN competition agency
- ❖ Other ASEAN jurisdictions potentially affected by merger included Philippines; Vietnam; Malaysia and Indonesia
- ❖ CCS found merger likely to result in SLC but cleared on basis of structural and behavioral commitments.

### Leniency application to CCS

- ❖ Concerns cartelisation of product in ASEAN jurisdiction outside Singapore
- ❖ Product imported into Singapore
- ❖ ASEAN jurisdiction where cartelisation took place has no leniency program
- ❖ Case closed – no impact in Singapore

# Cross-border Cooperation and Enforcement Challenges

- ❖ No leniency programmes in some jurisdictions
- ❖ Inability to obtain waivers or to obtain them in a timely manner
- ❖ Different approaches to sanctioning of anti-competitive conduct means undertakings approach enforcement with different incentives
- ❖ No merger control in some jurisdictions

# General Principles and Recommendations for Effective Cooperation

- ❖ Respect each country's national law and rules
- ❖ Recognise the important interests of each country
- ❖ Protection of confidential information
- ❖ Retain constant and regular contact among agencies
- ❖ Most importantly the establishment of trust/goodwill among competition agencies which would help build faith among businesses and stakeholders





# Cooperation Among Competition Agencies

## Some final thoughts



- ❖ Increasing trend of cross-border cases both regionally and globally
- ❖ Anti-competitive behaviour/practices may impact more than one country
- ❖ Cooperation among competition agencies can help to:
  - (a) Ensure markets work well for businesses and trade/investment flows are protected;
  - (b) Ensure more efficient allocation of resources by competition authorities
  - (c) Greater deterrence for potentially infringing undertakings
  - (d) Better and more consistent outcomes for consumers

# Thank you

