Mr Toh Han Li is the Chief Executive and a Commissioner of the Competition and Consumer Commission of Singapore (CCCS). He has served as a Justices' Law Clerk to the Chief Justice of Singapore, Deputy Public Prosecutor and State Counsel in the Attorney-General's Chambers, Senior Assistant Registrar at the Supreme Court, and as Registrar and Principal District Judge of the State Courts. He also serves on various tribunals including the Military Court of Appeal, the Copyright Tribunal, the Foreign Manpower Appeal Board, and the Appeals Advisory Panel to the Monetary Authority of Singapore.

In Conversation with
Mr Toh Han Li

He is currently one of the Vice-Chairs of the International Competition Network's Steering Group. Mr Toh read law at Cambridge University, obtained a Masters of Law from the University of Chicago and a Masters in Public Management from the Lee Kuan Yew School of Public Policy. He attended the Stanford Executive Programme at its Graduate School of Business and is admitted to practice law in Singapore, England and New York."

1. The Competition and Consumer Commission of Singapore (CCCS) administers and enforces the Competition Act (Cap. 50B) which empowers CCCS to investigate and take action against anti-competitive activities, including financial penalties. At the same time, CCCS also administers the Consumer Protection (Fair Trading) Act (Cap. 52A) or CPFTA which protects consumers against unfair trade practices in Singapore.

Given that the above Acts give CCCS the power to literally throw the book on errant businesses, how would you describe CCCS's working relationship with the market? Specifically, is moral suasion an effective means of engaging businesses? Or is the force of the law (including the threat of punitive measures) often more effective?

CCCS statutory role is to enforce the Competition Act, which sets out various forms of prohibitions against business conduct, for example anti-competitive agreements, abuse of a dominant position, and mergers that substantially lessen competition.

In enforcing the Competition Act, CCCS employs a number of tools such as financial penalties, behavioural directions with regard to business practices or structural directions which affect market structure, such as divestment of assets.

CCCS also believes in advocating for a strong competition culture, whether it is by businesses or government policies. This advocacy role should not be equated with moral suasion, if the latter means the mere cajoling of businesses towards desired forms of conduct through exhortation without any enforcement or policy levers.

Advocacy backed by enforcement is a powerful advocacy tool. At the same time, enforcement alone is insufficient, partly because investigations require significant time and resources, and partly because the law merely corrects wrongdoings — it does not educate the businesses and positively make the market work better. Therefore, enforcement and advocacy must complement each other to be effective.

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Under the Competition Act and the CPFTA, businesses have the option of offering commitments and Voluntary Compliance Agreements (VCAs) respectively, that would create a legal obligation to change their behaviour in compliance with the law. Where a commitment or a VCA is accepted

because it fully addresses all concerns, there would be no financial penalties or injunction against the business that is willing to change its behaviour to comply with the law.

It is also important to remember that CCCS's interventions not only protect the man on the street, it also protects businesses which may be victims of anti-competitive practices such as paying higher prices for inputs because of cartel conduct, an anti-competitive merger, and being excluded from markets due to exclusionary behaviour by a dominant entity. CCCS can correct errant behaviours and restore the level playing field to give a fair chance for all businesses to compete on merit.

2. It is often said that laws are effective when people internalise them, to the extent that we obey these laws even when not compelled to do so. A case in point would be Singapore's ban on the sale of chewing gum (we can't remember the last time we developed a craving to chew gum even when travelling out of the country).

Given that CCCS is still a relatively young entity in Singapore (established in 2005 and renamed from CCS to CCCS in 2018 to reflect its new role in consumer rights), how do you see the culture of competition and compliance among Singaporean businesses? Do we still have a long way to go in becoming a more "competition-aware" country aligned with international best practices?

When CCCS was first established in 2005, considerable advocacy efforts were made to inform businesses about the Competition Act and to provide guidance on CCCS's approach. To this end, 13 CCCS Guidelines were drafted and these have been revised from time to time. The last revision, that took into account international best practices, was in 2016. More recently the Competition Act itself was amended in 2018.

Singaporean businesses have steadily been growing in their awareness of the Competition Act. This is due to CCCS's advocacy efforts and the consistently strong enforcement action it has taken over the years. To date, a total of $83 million in financial penalties has been meted out by CCCS. For example, in

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2018, CCCS issued three infringement decisions (Capacitors, Chicken Suppliers and Grab/Uber) and three proposed infringement decisions (Grab/Uber, Wilhelmsen/Drew Marine, Hotels). The growing awareness of businesses can be seen in the stakeholder perception survey that CCCS generally conducts every two years. In 2017, 98% of the businesses surveyed said that they had heard of CCCS or the Competition Act compared to 59% in 2014. CCCS also regularly conducts outreach to business and trade associations to create awareness and promote understanding of competition law.

While Singapore's competition law and policy framework is continually reviewed to ensure that it is aligned with international best practices, there is still work to be done in building the awareness of businesses, particularly SMEs, to understand the "do's and don'ts" of the Competition Act. Still, we have come a long way from the level of understanding in 2005 when the Competition Act was first introduced.

3. CCCS adopts a two-pronged approach anchored on enforcement and advocacy to build a pro-competition environment in Singapore.

While the enforcement aspect is clear, since it draws power from the respective Acts, can you share more on CCCS's advocacy role? Specifically, does it focus more on educating consumers to make informed purchasing decisions and to report anti-competitive behaviour, thus instilling market discipline through consumers serving as the eyes and ears on the ground? We ask this question because businesses are inherently profit-driven. Hence, it is hard to imagine how they can be persuaded to allow a level playing field for rivals, which erodes their own market position.

Advocacy and enforcement go hand-in-hand. Without enforcement powers, advocacy is seen to have no bite, and without advocacy, CCCS faces an uphill task of spreading the message of competition solely through our one or two enforcement decisions per year. Over the years, CCCS has published

several infringement decisions with accompanying media releases and media conferences, to reach out to the general public to (i) raise their awareness of CCCS's work and (ii) help CCCS to look out for potential anti-competitive conduct in the markets. As for the business community, CCCS actively engages with them throughout the course of our work, whether via business associations, trade associations, or even engaging businesses one-on-one to educate them on the prohibitions under the Competition Act, as well as CCCS's work. Businesses appreciate CCCS's efforts because it provides more clarity to them in terms of their operations, and CCCS also helps to create a level playing field for new entrants to the market. One example would be the craft beer industry where CCCS secured commitments from a dominant player to cease outlet-exclusivity conditions. In the market study involving automotive parts, CCCS reached out to and worked with major car dealers to amend warranty terms that restricted competition for car servicing and repairs.

Beyond consumers and businesses, CCCS also plays an advocacy role to other government agencies. This is an important role because, while enforcement targets anti-competitive activities by businesses, the policies and regulations of government agencies can also impact market competition. CCCS regularly advises other government agencies in this respect, encouraging them to take into account the impact of their actions on competition, and to consider alternatives policies that meet their objectives with less adverse impact on competition. In an advisory to the Housing and Development Board (HDB), CCCS suggested improving competition in the process of establishing a panel of contingency weighbridge operators, like including good practices to mitigate the risk of collusion among potential suppliers during procurement. CCCS had also provided advice to the Singapore Tourism Board (STB) on improvements to the publication of hotel industry information. Another way that CCCS does this is through market studies. For example, we studied

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the formula milk industry and made recommendations to government agencies to lower the barriers to entry and improve the level of price competition, particularly between manufacturers. CCCS's recommendations were broadly accepted by the relevant government agencies resulting in the formation of a ministerial taskforce to implement the key measures.

On a related note, is enforcement and work to promote a vibrant economy inherently at odds with each other? Specifically, how do you ensure that the threat of punitive measures do not discourage firms from engaging in product development like research and development work, or by extension discourage large foreign firms from establishing a presence in Singapore?

Enforcing competition law and promoting a vibrant economy are not at odds with each other. In fact, what we hope to see from enforcing competition law is a vibrant economy. By stopping and deterring anti-competitive activities, we want to ensure that markets work well to provide businesses and consumers with opportunities and choices. This enables resources to be put to good use, and encourages businesses to be productive and innovative. Monopolistic markets mean highest prices for consumers and fewer options for workers.

Financial penalties are only imposed on companies that infringe competition law intentionally or negligently. Firms that develop new products or innovate through R&D are not at risk of infringing competition law. Even for collaborative R&D agreements between competing businesses, they would not generally raise competition concerns, and may even give rise to efficiencies.

MNCs are used to operating in an environment where competition law is in force. Currently, around 130 countries have put in place competition laws and companies operating across different countries (including within ASEAN) are most likely to be aware of the need to comply with the domestic competition law. Businesses, whether large or small, foreign or local, want a conducive business environment where they can compete on a level playing field. Competition law helps to ensure that the prices they pay are not artificially inflated, and that access to customers and suppliers are not unfairly restricted by competitors.

4. Since anti-competitive behaviour is often detected through firms' pricing or bidding practices, how feasible is it for CCCS to intervene on an *ex-ante* instead of an *ex-post* basis?

Section 34 of the Competition Act prohibits agreements between undertakings or concerted practices which either have as their objective or effect the prevention, restriction or distortion of competition within Singapore. In other words, it is an infringement of Section 34 of the

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Competition Act when the object of the agreement is to prevent, restrict or distort competition even if the agreement eventually does not have an effect on the market. Hence, CCCS does not detect anti-competitive conduct only through observing the effects of the conduct on the markets affected (e.g. through the bidding practices or firms' pricing).

Apart from our own internal horizon scanning and cartel detection, CCCS has tools for detecting anti-competitive conduct which rely on the business community and members of the public to provide information and leads on anti-competitive business practices. Firstly, through our advocacy and outreach efforts, we encourage business competitors and the public to file complaints with CCCS. Secondly, we have a Leniency Programme to incentivise cartel members to come forward and "blow the whistle" on cartel conduct in exchange for 100% immunity from financial penalties. Thirdly, we have a Reward Scheme to provide monetary incentive for first-hand information on anti-competitive business practices. We have, in 2018, paid out monetary rewards in two cases (Cartel in the supply of fresh chicken products and Bid-rigging of F1 & GEMS Tenders).

5. Can you provide some details on the makeup of the team that assesses each case, and the review process? Specifically, how do economists (or staff with an economics background) and lawyers complement one another in assessing each case? If there are any (intended) healthy tensions between the perspectives of different team members e.g. enforcing the rule of law versus alleviating businesses' compliance cost, could you share more on what these tensions are? Any interesting anecdotes to share?

The regulation of competition in markets require officers trained in law and economics. As the legal and economic analysis required for an investigation of anti-competitive conduct will differ from an assessment of a merger and an examination of the features of a market, each case team will comprise of at least an economist and a lawyer. Each specialist brings their respective competencies to bear on the case, and the case team collectively conducts a more thorough and rigorous assessment of the competition issues. For example, the investigation of cartel cases will usually

be led by lawyers and the assessment of mergers will often be led by economists.

Over the years, CCCS has invested in its officers' professional development and allowed officers to pursue further studies with either Full-Time or Part-Time Sponsorship for a Master degree or Diploma, for example, the Post-Graduate Diploma/Masters in EU Competition Law and Postgraduate Diploma/Masters in Economics for Competition Law from King's College London. This has resulted in our officers being trained in both disciplines, law and economics, and avoided the undesirable scenario of lawyers and economists working in their respective silos and providing a one-dimensional perspective of the competition issues. One of the healthy tensions from having officers that are cross-trained is that while the lawyers and economists will remain in their respective specialist track for purpose of career advancement, each lawyer and economist is assessed on their performance and quality of work and ranked without regard to their foundational professional qualification. Hence, we have cases where a senior economist leads an investigation of a hard-core cartel for price-fixing and market-sharing (e.g. case on cartel in the supply of fresh chicken products) and a senior lawyer leads an assessment of a merger (e.g. Parkway Holding Ltd's acquisition of Radlink-Asia Pte Ltd).

6. CCCS has a five-year strategic framework that includes creating well-functioning markets, a strong competition culture, a vibrant economy, and promoting CCCS as a well-respected competition authority. What do you foresee as the next lap/framework after the five strategic thrusts are met? Or do you see these as "evergreen" targets, which will always remain relevant?

The underlying intent of the five strategic thrusts will remain relevant as it is meant to support and fulfil CCCS's mission of: 'Making markets work well to create opportunities and choices for businesses and consumers in Singapore'. We envisage that a vibrant/innovative economy, well-functioning markets, and strong competition culture may remain as 'evergreen' outcome or targets. For the next five year strategic framework, there will be more consumer-centric focus, given our additional consumer protection portfolio. The strategic thrusts and strategies will also be changed to reflect or take into account how certain emerging trends (e.g. disruptive innovation, digital economy, big data, greater consumer empowerment/active citizenry in consumer issues, etc.) will impact our operating landscape in the next five years and hence, our work — be it in enforcement, outreach and advocacy, policy and planning, international engagement or capability building.

7. On a personal note, what is the most satisfying aspect of your work? Any advice to our readers?

One of the most satisfying aspects is to see the impact of the work in daily life. When we have job applicants come to us and when we ask them why they want to join us, I am very proud to hear them say that they want to join CCCS as they had read about our cases in the media and want to make a positive impact in society by making markets work better for businesses and consumers.

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From an organisational perspective, having been here for 10 years, I had the opportunity to watch CCCS and its staff grow from strength to strength, and undertake tasks involving more and more complex cases which require deep legal and economic expertise. This includes CCCS taking on the exciting new role of consumer protection and its continued growth in this area.

To grow a strong competition and consumer culture, we need active and engaged businesses and consumers. We welcome continuous feedback on our cases when we consult on them, through self-reporting by our leniency or whistle-blower programmes. All this contributes towards a strong competitive and consumer focused ecosystem.