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**Source:** *The Straits Times*, pA24
**Date:** 20 April 2018

# The limits of competition policy

**CCCS isn't the only regulator in the ride-hailing market. While it looks into competition issues, other policy considerations can be taken care of by the sectoral regulator, LTA.**

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For The Straits Times

Much ink has been spilled on how regulators should address the competition concerns raised by Uber's proposed sale of its South-east Asian business to rival Grab.

Recently, some commentators have commended the interim measures taken by the Competition and Consumer Commission of Singapore (CCCS) to ensure that the market remains open and contestable while CCCS completes its investigations, while others question their effectiveness.

Less attention has been paid to the difficulties the CCCS faces in assessing the competitive effects of the proposed merger between Uber and Grab. Putting aside the difficulties associated with defining the relevant market, this is no easy task.

Under the Competition Act, the CCCS will have to examine whether the merger would result in a "substantial lessening of competition" if it were allowed to proceed. Like all competition authorities around the world, CCCS does not have the benefit of hindsight; and it will have to come up with hypothetical, probabilistic assessments as to what would happen if the merger were to take place.

Nevertheless, this analysis is not conducted in the abstract; it has to be made in reference to a benchmark where the merger does not take place. Known as a "counterfactual" analysis, a competition authority usually compares the levels of competition in this hypothetical situation with pre-existing levels of competition (the counterfactual benchmark) in determining whether a merger should be countenanced under competition law.

In a given typical merger considered by competition authorities, the counterfactual benchmark used is simply the status quo. However, this form of analysis is not suitable for the Grab-Uber merger.

After all, Uber plans to exit the South-east Asian ride-hailing market after experiencing substantial losses, and is likely to do so regardless of the CCCS' final decision. The status quo is no longer the appropriate benchmark for comparison, as pre-existing conditions of competition between Uber and Grab would not prevail, whether or not the merger is prohibited.

A second complication follows from the possibility that the pre-existing conditions of competition between Uber and Grab are unsustainable in the long run. With numerous discount codes on top of already low fares, it is no surprise that Uber has been said to have lost almost US$200 million (S$262 million) a year in its battle with Grab for riders.

Thus, even if Uber had decided not to leave the market, it is unlikely that strong price competition between Uber and Grab in the ride-hailing market would have continued indefinitely.

If the historical pricing strategies of both firms are to be interpreted as costly bids for market dominance, an argument could be made that both firms would be forced to soften this price competition – by reducing promotions, and raising prices to riders – if they want to coexist in the market in a sustainable manner long term.

But when would prices increase to their sustainable levels? And to what levels would they rebound?

With historical pricing being of little relevance to future sustainable levels of pricing, modern industrial economics gives us few clear-cut predictions as to how long-run pricing will pan out. Again, CCCS faces major difficulties in defining the appropriate counterfactual benchmark.

Given the difficulties in assessing the competitive effects of the proposed merger, how best might the CCCS proceed to safeguard consumers' interests?

Given the rapid developments in the ride-hailing market, it is anyone's guess how market conditions will actually evolve over time. What regulators can do for consumers is to ensure that market conditions are favourable for competition to develop. This would explain the CCCS' interim measures thus far that require Grab to maintain and not raise its pre-merger pricing for rides and commissions for drivers, a move that protects consumers' ride prices and drivers' earnings.

The other measures are to prevent Grab from tying drivers down exclusively to its platform, and to prevent "Uber's operational data from being used by Grab to enhance its market position". Both these measures aim to reduce barriers to entry for future new entrants to the market.

But whatever CCCS does can only provide the conditions for contestability; it cannot ensure the realisation of robust competition. This might explain why the conversation so far has largely focused on maintaining the contestability and competitive structure of the ride-hailing market.

This brings us to another more fundamental observation on the limits of competition policy in achieving certain policy outcomes.

Commentators have suggested that the proposed merger between Uber and Grab has raised numerous competition concerns. But the mere existence of these concerns that adversely affect consumers and drivers alike does not necessarily warrant the intervention of competition law.

There is a general consensus among legislators, jurists and practitioners that it would be impracticable for competition law to prohibit rational responses to the structure of the market.

While it may be optimal for both drivers and riders to have Uber continue its operations in Singapore, it is not within the remit of competition law to stop Uber from making a calculated business decision to exit the market.

As early as last year, Mr Toh Han Li, the current chief executive of CCCS, raised the notion that in certain situations, "players in the market may not have infringed the law, but there are some features in that market which are not making it work as well as it should be".

The regulatory framework of competition policy encompasses all markets, but the CCCS cannot be expected to step in every time a market does not "work as well as it should". It is probably more apt to leave other policy considerations that are industry-specific to sectoral regulators.

Competition is not the only important consideration in the market for ride-hailing services; regulators have to address concerns of general affordability while also maintaining standards of public safety and security for both drivers and consumers.

In any case, our sectoral regulators have never been shy to step in to intervene in the market when they have deemed it expedient to do so – the Land Transport Authority (LTA) has already suggested more aggressive forms of regulation in the form of licensing regimes or even price regulation that would balance such countervailing objectives.

The CCCS, in other words, is not the only regulator at play in the ride-hailing market. If LTA's licensing regime or other such regulatory solutions come into force, it is clear a post-merger Grab would still face constraints in its market behaviour vis-a-vis both drivers and consumers.

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