PROTECT YOUR BUSINESS.

Know The Dos & Don'ts Of The Competition Act.

Competition Commission
Singapore
The Competition Act prohibits three types of business conduct:

1. Anti-competitive agreements.
2. Abuse of a dominant position, where companies with substantial market power prevent others from competing in the market.
3. Mergers that create a player with so much market power that competitors are driven out from the market.

This brochure provides you with information about anti-competitive agreements. For more information on the other two forms of anti-competitive practices, please visit CCS’ website at www.ccs.gov.sg
THE COMPETITION ACT

There is an inherent temptation for businesses to create challenges for existing or potential market competitors through anti-competitive practices. These practices are not driven to satisfy customers, improve the products or to increase efficiency, but to drive out rivals. The Competition Act seeks to protect all from such anti-competitive practices.

ENFORCER OF THE COMPETITION ACT

The Competition Act is administered and enforced by the Competition Commission of Singapore (CCS), a statutory board established under the purview of the Ministry of Trade and Industry to maintain and promote healthy competitive markets.

The cornerstone of economic growth and consumer protection is a competitive market. Anti-competitive behaviour will harm other firms in the industry, suppliers and consumers. Hence, CCS needs to stand firm in its enforcement against such anti-competitive practices.
WHY COMPANIES SHOULD BE FAMILIAR WITH THE DOs AND DON’Ts OF THE COMPETITION ACT

Companies can suffer serious consequences when they breach the Competition Act. They may suffer the loss of reputation and goodwill as well as heavy financial losses.

BREACHING THE
COMPETITION ACT
CAN HURT YOUR COMPANY

Breach of the Competition Act can hurt Your Company in Several Ways:

1. **Reputation Affected**
   Your company will suffer from the loss of its reputation and the goodwill of its consumers and the public.

2. **Business Affected**
   Your company may have to stop operations or modify its activities or conduct.

3. **Company Fined**
   Your company will be fined up to 10% of its turnover in Singapore for each year of breach, for a maximum of up to three years.

4. **Company Sued**
   Your company may face third-party claims from any party that has suffered losses as a result of any breach of the Competition Act.
THE DON’Ts
OF COMPETITION LAW

Avoid engaging in discussions that may be viewed as anti-competitive in nature. Any form of communication with your competitors on any anti-competitive agreements puts you at RISK.

Steer your company to safety by staying clear of treacherous waters.
What discussions can get me into trouble?

Psst! Shall we agree to charge the same price? This way, we won’t have to compete among ourselves on prices?

Hey, what if we all decide who should win this tender and at what price? This way, we can make sure that the tender is awarded at a high price.

Shall we just share out the market by deciding who gets which customer? Then we won’t have to work so hard to win customers.

And instead of producing so much and letting the consumers decide how much they want to pay, how about we keep supply low, and jack up the price?
FOR A CLEARER IDEA OF ANTI-COMPETITIVE AGREEMENTS

• Direct or Indirect Fixing of the Prices of Goods and Services
  Competitors can directly agree to increase or maintain prices. They can also indirectly fix prices by, for example, agreeing to offer the same discounts or credit terms. Both direct and indirect arrangements breach the Competition Act. When price-fixing occurs in any market, the companies (purchasers) and customers will end up without having a choice of lower-priced goods and services.

• Sharing of Marketing Information
  Competitors may be guilty of breaching the Competition Act when they share or exchange information on decisions and tactics related to pricing, profits or marketing. This includes sharing on present or future pricing, promotions, discounts, pricing policies, and the terms and conditions of sale. When competitors do these, they are effectively agreeing to price fix by offering the same price, discounts, promotions or pricing policies. Once again, the consequence is that consumers are left without a choice in terms of lower-priced goods and services, or better sales terms. As companies are also purchasers of products and services, they also have had their options reduced as a result of this practice.
• **Fixing the Tender**
  The most common form of tender manipulating (or bid rigging) is when competitors agree on who should win a tender. To support the designated winner, the other bidders may agree to refrain from bidding, withdraw their bid, or submit bids with higher prices or on unacceptable terms. Other bid-rigging agreements involve subcontracting part of the main contract to the losing bidders, or forming a joint venture to submit a single bid.

  “Tendering procedures are designed to ensure that there is sufficient competition among sellers or providers of services. An essential feature of the tender system is that tenderers prepare and submit bids independently.”

  **Teo Eng Cheong**
  *Chief Executive, the Competition Commission of Singapore*
  **9 January 2008**

• **Dividing Up of Markets**
  In a market sharing agreement, competitors agree to divide up customers either by geographical area or customer type and sell only to their allotted customers. As a result, they do not compete for each other’s customers. What this means is that customers and companies have fewer suppliers and have been prevented from shopping around for the best deals. Ultimately, this means that both customers and companies are forced to pay more for goods and services.

• **Production Control**
  Production control involves competitors agreeing to limit the quantity of goods or services available in the market. By controlling the supply or production of goods or services, competitors are able to indirectly increase prices to maximise their profits. As a result, consumers are forced to pay more for goods or services. In addition, because companies are also purchasers of goods and services, this will lead to companies paying more for the goods and services that they buy, thereby reducing their efficiency.
THE COMPETITION ACT CAN BE BREACHED ANYTIME, ANYWHERE

Communication with your competitors on anti-competitive agreements is illegal, regardless of the setting and the form that it takes. You can break the law with agreements reached via email, through a phone conversation, in the form of a ‘wink and a nod’, during meetings, or in a social setting.

Even if you are not involved in a discussion on price-fixing, your very presence or even if you remain silent in such a discussion may put your firm at risk, whatever the setting.
THE DOs

Make clear your objection to discussions on anti-competitive agreements!

Should a competitor attempt to discuss anti-competitive tactics or plans with you, end the discussion immediately. If the discussion continues, excuse yourself from the meeting. Your mere presence can be taken as approval on your part of what is being said, even if you are silent throughout the discussion.
HOW TO GUARD AGAINST TROUBLE

To help your company steer clear of trouble spots, put in place a sound compliance programme.

The compliance programme must be tailored to your company’s particular requirements. Here are some features of an effective compliance programme:

- **Appropriate policies and procedures** should be carefully designed and implemented. These may be documented in a compliance manual.

- **Senior management’s support for the compliance programme and their adherence to the programme** should be visible, active and regularly reinforced to signal the company’s commitment to the programme.

- **Training should be conducted regularly** for employees at all levels on competition law and the company’s policies and regulations regarding anti-competitive practices.

- **Regular evaluation and review** should be conducted to ensure that the compliance programme is working properly as well as to identify and address areas of possible risk.
HOW THE CCS CAN HELP YOU

CCS assists companies in three ways.

1. **By Increasing Awareness of Anti-Competitive Practices**
   CCS conducts regular workshops and seminars to raise the understanding of the Competition Act among companies so that they can avoid breaching the law unknowingly. To know more about events that you can participate, contact us directly.

2. **The Lodging of Complaints**
   CCS encourages and assists members of the public as well as companies to lodge complaints against anti-competitive conduct or practices. CCS will provide full assistance to victims of anti-competitive practices in the filing of such complaints.

3. **Applying for Leniency**
   CCS assists companies involved in anti-competitive agreements to apply for exemption from financial penalties under the Leniency Programme.
KNOW SOMEONE WHO IS BREAKING THE LAW?

If you are aware of any anti-competitive activity taking place, do approach CCS as soon as possible. If you are uncertain if a particular activity or conduct is illegal under the Competition Act, please contact us.

We keep the identity of all complainants fully confidential.

“The CCS, by itself, cannot achieve its vision of healthy competitive markets. It needs the partnership of key stakeholders such as the business community, legal profession, and consumer groups.”

Lim Hng Kiang
Minister for Trade and Industry at the Official Launch of the Competition Commission of Singapore and Competition Law Conference 2005
2 August 2005

ARE YOU AWARE OF THE LENIENCY PROGRAMME?

If you are currently involved in a price-fixing agreement with your competitors, you can approach us to seek exemption from financial penalties.

Under the Leniency Programme, the first person or company that comes forward and provides evidence of such activities before CCS starts investigation is granted full waiver of the penalty.

To find out more about the Leniency Programme, call our hotline at 1800-325 8282.