Singapore Joins the World In Fighting International Cartels

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On May 27, 2014, the Competition Commission of Singapore ("**CCS**") issued an infringement decision (the "**Infringement Decision**") against four Japanese ball bearings manufacturers and their Singapore subsidiaries for contravening Section 34 of the Competition Act by engaging in anticompetitive agreements and unlawful exchange of pricing information for ball and roller bearings sold to customers in Singapore. The four Japanese parent companies and their respective Singapore subsidiaries were found to be jointly and severally liable for the infringement. The CCS commenced its investigations into the alleged anticompetitive conduct in December 2011 after receiving an application for immunity under the CCS's leniency program from one of the companies involved in the cartel. Following its investigations, the CCS found that representatives of those four Japanese companies and their Singapore subsidiaries, which were competitors, met regularly in Japan and Singapore from 1980 until 2011. During those meetings, these representatives exchanged commercially sensitive information as well as discussed and agreed on their sales prices for ball bearings sold to their respective customers in Singapore.

This is the first time that the CCS has exercised the extra-territorial reach of its powers under the Act against an international cartel. The CCS imposed financial penalties totaling S$9,306,977 (US$7.4 million) on the companies involved in the Infringement Decision – this is the highest amount of financial penalty imposed by the CCS in a single infringement decision thus far, as the CCS approaches its 10th anniversary. No financial penalty was imposed on JTEKT Corporation and its Singapore subsidiary, Koyo Singapore Bearing (Pte) Ltd, which were granted immunity under the CCS's leniency program.

The Infringement Decision signals the CCS's intent to combat international cartels that have an anticompetitive impact in the Singapore market. This case demonstrated the role of the CCS's leniency program in that fight. As cartels are usually secretive and difficult to detect, it can be challenging for competition authorities to gather sufficient evidence that will allow them to sanction the cartel participants. At the same time, the participants may be deterred from coming forward to whistle-blow on the cartel because of the risk of incurring, large financial penalties, unless there is some form of immunity or reduction in penalties.

Over the years, competition authorities throughout the world, including in the EU and the US, have sought to encourage cartel participants to implicate their cartel members and thereby destabilize cartels through the use of a leniency program. Given that leniency programs in other jurisdictions have proven to be effective in incentivizing cartel participants to report cartel activity, the CCS has adopted a similar program as part of its enforcement strategy. As at end of third quarter 2013, the CCS already has more than 18 leniency applications, a number expected to increase.

In addition, the CCS has a leniency plus program, which encourages cartel members under investigation to report their involvement in another cartel activity in return for reduced financial penalties for their first cartel activity. For example, a company may be involved in cartel activity in Market A and Market B. If this company is already cooperating with the CCS's investigation into Market A, and is interested in seeking leniency for its cartel activity

in Market B, it may obtain an additional reduction in financial penalties for its involvement in the Market A cartel by cooperating with the CCS in the investigation into Market B. This is in addition to qualifying for total immunity from financial penalties in relation to Market B.

Under Section 69(4) of the Competition Act, an undertaking that has intentionally or negligently infringed the Act's prohibitions may be subject to a financial penalty of up to 10 percent of its business turnover for each year of infringement (up to a maximum of three years). Notwithstanding, the CCS's leniency program grants partial or total immunity from financial penalties to a participating undertaking that (i) provides the CCS with all the information, documents and evidence available to it regarding the cartel activity; (ii) maintains continuous and complete cooperation throughout the CCS's investigation and until the conclusion of any action by the CCS; and (iii) refrains from further participation in the cartel activity from the time of disclosure of the cartel activity to the CCS (except as may be directed by the CCS). In addition, the cartel member must not have initiated the cartel, and should not have taken any steps to coerce another into participating in the cartel activity.

A cartel member who is the first to come forward to provide information on the cartel may be granted total immunity from financial penalties if the above conditions are satisfied. Other cartel members who apply for leniency after the first applicant may have their amount of financial penalty reduced by up to 50 percent. Such partial or total immunity from financial penalties can provide a significant incentive to whistle-blow on the cartel activity, particularly if the business turnovers of the companies involved in that cartel are high, as is the case with the Infringement Decision. In fact, three out of the four companies that participated in the cartel had applied for leniency, with the first applicant being granted full immunity whilst the other two applicants were granted a reduction in their fines.

To complement its leniency program, the CCS also has in place a financial reward scheme, where it offers rewards of up to S$120,000 (US$96,000) for whistle-blowers who provide significant and reliable information relating to competition law infringements. Such whistle-blowers may be eligible for financial rewards upon the issuance of an infringement decision by the CCS. The CCS has worked to keep the identity of the whistle-blower strictly confidential, as well as any information that may lead to his or her identification. Although there have not been any reported instances of the financial reward scheme being utilized thus far, such a scheme may aid the CCS in its enforcement actions, possibly in cases of whistle-blowing by ex-employees.

Some commentators have observed that it is imperative for the CCS to make the prosecution of international cartels an enforcement priority. The handful of infringement decisions issued by CCS thus far has involved small and medium enterprises, and the fines imposed have been relatively small. By imposing larger fines against multinational corporations involved in international cartels, the CCS hopes to signal a strong deterrence against anticompetitive conduct by the business community operating in Singapore and beyond.

Finally, it is noteworthy that on April 1, 2014, the CCS issued a proposed infringement decision against 11 freight forwarding companies and their Singapore subsidiaries. The CCS contended that those freight forwarding companies have infringed Section 34 of the Act by collectively fixing certain fees and surcharges, and exchanging price and customer information in relation to the provision of air freight forwarding services for shipments from Japan to Singapore. Similar to the above Infringement Decision, the CCS commenced investigations after receiving an application for immunity under the CCS' leniency program from one of the companies involved in the alleged cartel. It remains to be seen whether the leniency applicant is successful in obtaining immunity or a reduction of fines if the case is ultimately proven against those companies. If so, it will be the second occasion that the CCS would have successfully relied on its leniency program to combat international cartels.

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