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Developments in Competition Law and Policy—Singapore

Teo Wee Guan
Competition Commission of Singapore

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I. INTRODUCTION

Singapore has consistently been ranked among the world's most competitive economies. Since it was founded, Singapore has relied on a set of sound economic policies focusing on trade openness, human capital development, and infrastructure development.

Singapore started developing a generic competition law following the recommendations of the Economic Review Committee in 2003 to create a pro-competitive business environment that would be more conducive for large and small businesses. This would serve as an extension of existing policies to create an open business and trade regime in Singapore, with an emphasis on continued market innovation and productivity.

II. GRADUAL IMPLEMENTATION OF COMPETITION LAW

For many years, Singapore relied upon sectoral regulation to ensure competitive markets. The set of policy tools expanded with the enactment of the Singapore Competition Act (“the Act”) on Oct 19, 2004, and the establishment of the Competition Commission of Singapore (“CCS”) on January 1, 2005 to enforce the Act. The law was enacted with the aim to ensure businesses compete on an equal footing and create a more conducive business environment in Singapore. It was also designed to help to reinforce our pro-enterprise and pro-competition policies, enhance the efficiency of our markets, and strengthen our economic competitiveness. CCS was set up to look after competition matters, and does not cover consumer issues or perform economic regulatory functions. It does not perform the role of a price regulator.

CCS adopted a phased implementation of the Competition Act. On January 1, 2006, the provisions on anticompetitive practices (the section 34 prohibition) and abuse of dominance (the section 47 prohibition) came into force. The section 34 prohibition prohibits agreements, decisions, and practices, which prevent, restrict, or distort competition in Singapore. These include agreements among competitors to fix prices, rig bids, limit outputs, or share markets (a.k.a. cartels). Adopting a pragmatic approach, CCS has made clear that it will focus mainly on anticompetitive business practices that have an “appreciable adverse effect” on competition, or that do not have net economic benefit. The section 47 prohibition prohibits firms from abusing market power in anticompetitive ways and which work against longer-term economic efficiency; for example, predatory behavior towards competitors.

At the same time, powers relating to CCS' enforcement and investigation powers also came into force.

In July 2007, the prohibition on mergers and acquisitions that substantially lessen competition and have no offsetting efficiencies came into force. To avoid imposing excessive administrative and compliance costs for businesses, CCS has adopted a voluntary notification

¹ Director, Strategic Planning, Competition Commission of Singapore

system that allows merging parties the flexibility to conduct a self-assessment of their transaction and decide whether or not to notify CCS.

III. ENSURING A LEVEL PLAYING FIELD FOR ALL

To ensure a level playing field, the Act covers all commercial and economic activities carried out by private-sector entities (apart from sectors which already have an existing competition regulator in place). This is regardless of the entity's ownership. In other words, government-owned or linked companies would be subject to the same rules as all other companies.

IV. ENHANCEMENTS TO THE COMPETITION ACT AND ITS IMPLEMENTATION

To enhance the effectiveness of the leniency program, CCS added a marker system and a leniency plus system in January 2009. The leniency program has proven to be an effective one, with our first leniency case concluded in June 2010 (i.e. bid-rigging in electrical and building works). In fact, we now have several other leniency applications in the pipeline.

In April 2010, CCS amended the Competition (Financial Penalties) Order to provide for the payment of financial penalties in installments, the charging of interest on these installment payments, and late payment of financial penalties.

In July 2012, CCS revised our *Guidelines on Merger Procedures* to introduce a new service whereby merger parties can obtain confidential advice as to whether a merger raises competition concerns. Essentially, businesses that intend to keep their mergers confidential for the time being, but nevertheless wish to get an indication from CCS on whether or not their mergers would infringe the Competition Act, could approach CCS for confidential advice. At the same time, new turnover guidelines to provide greater certainty to SMEs were implemented. The new guidelines make clear that CCS is unlikely to investigate a merger situation involving only small businesses. For greater clarity, this is set as turnover in Singapore in the financial year preceding the transaction of each of the parties below SGD 5 million, and a combined worldwide turnover in the financial year preceding the transaction of all of the parties below SGD 50 million.

As part of CCS' ongoing efforts to operate an effective and efficient competition regime in Singapore, CCS will continuously update and review the existing competition legislation and guidelines to ensure they are robust, relevant, and business-friendly.

V. KEY DECISIONS

Since its establishment, CCS has issued a total of seven infringement decisions; assessed over 30 merger notifications spanning various industries including manufacturing, electronic, food and beverage, transport, and healthcare, among others; and investigated 140 cases, with more in the pipeline. Over SGD 3 million in financial penalties have been imposed on infringing companies, and, as of end 2012, an eighth proposed infringement decision against motor vehicle traders had been issued. The following table lists the infringement decisions that CCS has issued since its establishment:

Date of Infringement Decision	Case	Total penalties (SGD)
Jan 9, 2008	Collusive Tendering (Bid-rigging) for Termite Treatment/Control Services by Certain Pest Control Operators in Singapore	262,759
Nov 3, 2009	Price fixing of coach bus services for travelling between Singapore and destinations in Malaysia from 2006 and 2008	1,135,170
June 4, 2010	Collusive Tendering (Bid-rigging) in Electrical and Building Works	187,592
June 4, 2010	Abuse of Dominant Position by SISTIC.com Pte Ltd	769,000
Sept 30, 2011	Price fixing of monthly salaries of new Indonesian Foreign Domestic Workers by Employment Agencies	152,563
Nov 23, 2011	Price fixing of rates of modeling services in Singapore by Modeling Agencies	361,596 (Outcome of appeals pending)
July 18, 2012	Exchange and provision of sensitive and confidential price information for ferry tickets	286,766

A recent case involved an appeal by SISTIC.com Pte Ltd (“SISTIC”) against CCS’ infringement decision. CCS found that SISTIC had abused its dominant market position by requiring key venue operators and event promoters in Singapore to use its ticketing services exclusively. The Competition Appeal Tribunal eventually upheld CCS’ infringement decision. This concluded the first abuse of dominance case that CCS had successfully handled. Apart from ceasing its exclusive dealing arrangements, SISTIC had to pay a financial penalty that was the largest imposed by CCS on a single entity to date. Of special note, SISTIC is a government-linked company and the case demonstrates how CCS will not hesitate to move against companies that infringe the Competition Act, regardless of their ownership.

As a result of CCS’ intervention, we have seen increased competition in the ticketing industry in Singapore with a new entrant. Existing small ticketing service providers are now also able to ticket for events held at key venues, which was not previously possible. In addition, the ticketing service industry has witnessed the introduction of some new and innovative services, including leveraging on new distribution channels, where competitors attempt to differentiate themselves from each other. CCS’ decisions should always help to derive a better competitive outcome for the industry and consumers and this case has shown how our intervention has changed things in the ticketing industry for the better.

More recently in 2012, CCS issued an infringement decision against two ferry operators for exchanging commercially sensitive and confidential price information on ferry tickets—another illustration of the significance we place on going after anticompetitive practices in Singapore.

VI. OUR ADVOCACY STRATEGY

CCS recognizes it is inadequate to rely solely on enforcement efforts to establish a pro-competition environment in Singapore. Advocacy activities aimed at educating relevant stakeholders on competition issues are just as important as rigorous enforcement of competition law. In this regard, to achieve our mission and vision, CCS has adopted a two-pronged approach with rigorous enforcement as one pillar, and proactive advocacy as the other.

To improve awareness of competition issues by businesses, CCS conducts regular sessions with trade and business chambers such as the Singapore Chinese Chamber of Commerce and Industry (“SCCCI”) as well as individual companies. Apart from providing CCS an opportunity to increase awareness of competition issues and encourage compliance from the business community, such outreach sessions allow us to directly engage businesses and obtain feedback on competition-related concerns, which helps us in our enforcement efforts as well. CCS has also embarked on producing a series of informative television segments focusing on competition issues to reach out to those in the business community who may not have been reachable through our regular outreach sessions.

As the general public may find the subject of competition technically complex, we make sure that messages targeted at them are communicated in a simple and straightforward manner, without the use of jargon and technical terms. Riding on the social media bandwagon, we have embarked on Facebook to reach out to the general public and to educate them on CCS’ work and competition-related activities. One of our recent initiatives was to organize a digital animation film contest, in which contestants were challenged to create digital animation films to illustrate issues on competition law. The objective of the film contest was to develop captivating content on videos and trailers that could be posted on social media platforms, so as to reach out to a wider audience.

In addition, CCS has produced various easy-to-read collaterals to illustrate basic concepts and issues on competition. For example, we developed a series of manga comics to supplement our handbooks on competition matters. There are three titles to date, which illustrate the harm of price-fixing, abuse of dominance, and describe CCS’ leniency program, respectively. These publications help to convey messages in a simple and entertaining way, as the subject of competition can be rather technical in nature. We have also created a blog on competition issues to reach out to the competition community in Singapore.

VII. THE ROAD AHEAD

CCS has made good progress over the past eight years. However, moving ahead, Singapore will be operating in a challenging economic environment, with the outlook for the year ahead being highly uncertain and GDP growth expected to be between 1 percent and 3 percent. Being an open economy, we recognize that one of our key challenges is to manage increased economic volatility in a low growth environment.

Singapore is also facing rising competition at the industry and city levels. Our competitors are not just from Asia, but also from other parts of the world. We are competing to attract new industries as well as talent to fuel these new industries. However, the same drivers

that are leading to increased competition are also giving rise to new opportunities for Singapore. For example, the growth of the Asian middle-class is creating demand for high value-added products and services that Singapore is well-positioned to offer.

Domestically, Singapore's resource constraints are intensifying. We will have to be more judicious about land use. Our foreign worker intake is being significantly reduced and this impacts the costs of doing businesses, in particular, for SMEs.

These challenges suggest it is all the more important for Singapore to have a robust and enlightened competition regime in place, which will form an enabling framework to grow a vibrant economy with competitive markets and innovative businesses. This will help Singapore strengthen its overall economic competitiveness by enhancing the ability of our companies to compete globally. It will also attract fair-dealing foreign businesses to enter our market with the assurance and confidence that they will be competing on a level playing field.

CCS will continue to play an important role in maintaining and enhancing efficient market conduct and in promoting overall productivity, innovation, and competitiveness of markets in Singapore. We are committed to our cause of championing competition for growth and choice, by adopting a two-pronged approach of ensuring enforcement and advocacy. We endeavor to be a credible and respected competition authority, striking a balance between being business-friendly and consultative while maintaining our professional integrity.

VIII. CONCLUSION

It is against a backdrop of uncertain global economic conditions that we enter our 9th year of establishment. We remain unwavering in our commitment towards our vision of a vibrant Singapore economy with competitive markets and innovative businesses. Feedback is of utmost importance to us, and we will continue to work actively with our stakeholders to create a more conducive business environment for Singapore, so as to ensure sustained economic growth for Singapore. CCS will also continue to play an active role at various international and regional platforms, with an eye on collaborating more closely with our overseas counterparts.