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# Is South East Asia's young competition regime ready to claim its place on the global antitrust stage? A review of the Competition Commission of Singapore's Decisions in 2009

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Until 2009, relatively few decisions had been made by the Competition Commission of Singapore ("CCS"). Its only cartel infringement decision[1] back in January 2008 involved a number of pest control firms participating in a blatant bid-rigging arrangement. The resultant fine amounted to a miniscule sum, which was clearly not intended to act as a deterrent towards any would-be cartelists.[2] Additionally, since Singapore's merger control regime is voluntary in nature, only 15 transactions have been notified since merger control took effect in July 2007, with no prohibition decision issued to-date.

Nevertheless, the CCS appears to have taken a number of steps over the last year to assist it in gaining a reputation as an authority to be reckoned with on the global antitrust stage. Not only did the CCS impose a fine of S$1.69 million (US$1.21 million) on coach operators and their trade association for price-fixing, but it has also recently proposed an infringement decision against Singapore's largest ticketing company for allegedly abusing its dominant position in the ticketing market. In addition, the CCS has commenced a Phase 2 review for the second time in Singapore's merger control history.

This short update will give a brief introduction to Singapore's young competition regime, and look at how these recent developments mark a clear turning point for the CCS.

Singapore's Competition Regime

The Competition Act 2004 ("the Act") was introduced pursuant to commitments made under the FTA entered into between Singapore and the United States on 6 May 2003. The Act was passed in October 2004 and implemented in three phases, completing with merger control on 1 July 2007.[3] While the Act is largely modeled on the UK Competition Act 1998, it contains a number of notable differences, and in practice the CCS looks to international best practices in general.[4] The objective of the Act is to promote the efficient functioning of Singapore's markets and enhance the competitiveness of the economy.

Developments in Merger Control (Section 54 of the Act)

While merger control is considered to be the most active area of Singapore's competition regime so far, 13 of the cases filed have been cleared at Phase 1, with two progressing to a Phase 2 review.[5] The first case to reach Phase 2 was the international Thomson Reuters merger in 2007/8[6] (which the CCS approved some months after leading antitrust authorities in Europe and the US had already done so). Currently, a joint venture between Greif International Holding B.V. and GEP Asia Holdings Pte. Ltd. is also subject to the Phase 2 review process.[7]

Anti-competitive Agreements (The Section 34 Prohibition)

In November 2009, the CCS found that 16 coach operators and their trade association, the Express Bus Agencies Association ("EBAA"), had engaged in the price-fixing of coach tickets,[8] infringing the Section 34 Prohibition.[9] The CCS thereby imposed its highest fine so far, amounting to S$1.69 million (US$1.21 million), with a number of individual penalties reaching over S$300,000 (US$214,886).

The 206 page decision illustrates that the CCS' investigation revealed the coach operators, together with the EBAA, had agreed to fix the prices of coach tickets for travelling between Singapore and destinations in Malaysia between 2006 and 2008. Through meetings arranged regularly under the auspices of EBAA, the coach operators agreed to fix the coach prices by establishing:

(i) Minimum Selling Prices ("MSP") of the coach tickets sold; and
(ii) Fuel & Insurance Charges ("FIC") imposed across the board to mark-up ticket prices.

In relation to MSPs, the decision provides that an agreement was reached on 1 June 2005. The introduction of the MSP was premised on an intention to prevent any price war and minimise any slashing of coach ticket prices amongst competitors. As a result, the coach operators adjusted ticket

prices to either at or above the MSP, resulting in higher ticket prices. This agreement continued after 1 January 2006, when the Competition Act came into effect in Singapore.

Having established a price floor via MSPs, subsequent price increases were also undertaken via the mechanism of the FIC, which was started in 2005 and revised upwards on various occasions after implementation. The CCS observes that mark-ups by EBAA members on the FIC were at least 300 per cent. Such FIC increases were accompanied by "authorization letters" issued by the EBAA, which gave the impression that they were fully justified to the public.

Nevertheless, despite the CCS' observation that during the infringement period it is estimated that the coach operators pocketed over S$3.65 million (US$2.61 million) from the sale of the FIC alone, the penalty ultimately imposed appears to be relatively small in comparison.

Abuse of Dominance (The Section 47 Prohibition)

On the 15 December 2009, the CCS issued a proposed infringement decision against SISTIC.com Pte Ltd ("Sistic") in relation to abuse of its dominant position in the ticketing service market via various exclusive agreements. While not final at this stage, such a decision is the first of its kind in relation to the Section 47 Prohibition,[10] which is indicative of the experience the CCS is gaining and its growth in confidence.

Sistic is the largest ticketing service and solution provider in Singapore, controlling more than 90 per cent of the ticketing market. Ticketing service providers act as middlemen between two groups of customers: the event organisers and the ticket buyers, by providing them with a platform to buy and sell tickets.

The CCS has found that Sistic has entered into exclusivity agreements with event organisers such as The Esplanade Co. Ltd and the Singapore Sports Council, which contain explicit restrictions requiring all events held at the Esplanade (Singapore's famous "Theatres on the Bay") and the Singapore Indoor Stadium respectively, to use Sistic as the sole ticketing service provider. Furthermore, when such key venues are required to use Sistic by virtue of these agreements, third-party event organisers who wish to hold their events at these venues also have no choice but to sell tickets through Sistic.

The CCS has found 17 other agreements to contain explicit restrictions requiring the event organisers concerned to use Sistic as their sole ticketing service provider for all events. The CCS has also noted that Sistic raised its booking fees against ticket buyers by 50 per cent to S$3 (US$2.14) per ticket in January 2008.

To-date, it is understood that Sistic has confirmed receipt of the proposed

infringement decision and has until mid-February to respond in defence. If ultimately found liable, the company faces fines of up to 10 per cent of its turnover for each year of the alleged infringement for a maximum of three years. Such a penalty could further bolster the CCS' recognition on a global scale, of a young national competition authority which does not wish to be underestimated.

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[1] Collusive Tendering (Bid-rigging) for Termite Treatment/Control Services by Certain Pest-Control Operators in Singapore, CCS/600/008/06 dated 9 January 2008.
[2] The penalty amounted to S$262,759.66 (US$ 188,211). While the CCS found the total Singapore business turnover of the parties amounted to S$33.7 million (US$ 24.1 million), the Singapore business turnover of the parties attributable to the particular pest control treatment involved amounted to S$2.5 million (US$ 1.79 million). In fixing the appropriate amount of financial penalty, the CCS stated that it also took into account the co-operation rendered by the companies during the investigations.
[3] In the first phase (commencing 1 January 2005) the CCS provisions came into force. This was followed by the provisions on anti-competitive agreements, abuse of dominance and the CCS' enforcement powers (on 1 January 2006). Finally, the third phase (1 July 2007) introduced the country's merger control regime. The CCS has also published a series of detailed Guidelines to assist market players in understanding the application and procedure of the Act (although the Guidelines do not represent a full or binding statement of the law).
[4] Numerous references can be found in CCS decisions which cite European and US competition authority decisions and court rulings.
[5] While not indicative of serious competition concerns, progressing to a Phase 2 review means that on the basis of all information before it, the CCS is unable to form the conclusion during the Phase 1 review that the merger situation does not raise competition concerns under the Section 54 Prohibition.
[6] Merger between The Thomson Corporation and Reuters Group PLC, 23 May 2008, Case number: CCS 400/007/07.
[7] Greif International Holding B.V. and GEP Asia Holdings Pte. Ltd., Reference 400/003/09.
[8] Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand, 03 November 2009, Case number: CCS 500/003/08. This infringement decision followed CCS investigations which commenced in June 2008, and a proposed infringement decision issued on 16 June 2009.
[9] Section 34 of the Act prohibits any agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore.
[10] Section 47 of the Act prohibits a dominant firm from engaging in anti-competitive business practices that exclude competitors from competing in any market, resulting in harmful effects in Singapore.