

5 Years of Competition Policy in Singapore: A Progress Report

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Overview

- A. The Competition Law regime in Singapore
- B. Key decisions by the Competition Commission of Singapore
- C. Other domestic developments related to Competition Policy in Singapore
- D. Observations and Conclusions



A. Singapore's Competition Law Regime

- *The Competition Act 2004*
 - Section 34 prohibition (Anti-competitive agreements)
 - Section 47 prohibition (Abuse of Dominance)
 - Section 54 prohibition (Mergers which SLC)
 - Accompanying Guidelines by the CCS
- Origins and objectives:
 - Market Liberalisation in the 21st Century
 - Economic Review of National Industrial Policies
 - US-Singapore Free Trade Agreement 2003

Legal Framework

- Broadly similar to Anglo-European competition law framework
- Except:
 - Blanket exemption for vertical agreements from section 34 prohibition
 - Abuse of dominance does not include imposition of "unfair selling prices", dominant position may be in a market outside of Singapore
 - Exclusions for conduct of firms regulated by other sectoral regulators (telco, media, energy etc.)

Institutional Framework

- Competition Commission of Singapore (CCS)
 - Statutory board, Ministry of Trade and Industry
 - Legal & Policy / Economic Analysis divisions
 - Quasi-legislative, executive and judicial functions
- → Competition Appeals Board → High Court
→ Court of Appeal
- Follow-on rights of action for third parties

B. Key decisions by the CCS

- Qantas/BA, Qantas/Orangestar – Airline alliance agreements
- Pest Control (Bid-rigging) Infringement decision
- Coach Operators and Association (Price-fixing) Infringement decision
- Institute of Real Estate Agents (Fee Guidelines) Notification
- Ticketing Agent Abuse of dominance investigation (pending)

Airline Alliance Agreements (2006)

- Airlines using Singapore's Changi Airport as a regional hub, notified agreements which allowed them to:
 - Fix-prices, coordinate output capacity, flight schedules into and out of Singapore
- Within the scope of the section 34 prohibition, but exempted on grounds of "net economic benefit"

Cartel Infringement decisions

- Pest control (bid-rigging) cartel (2008)
 - Anti-termite treatment services for schools, commercial and residential properties
 - Section 34 prohibition, 6 infringing parties fined a total of \approx SGD\$263,000.
- Coach Operators and Association (price-fixing) cartel (2009)
 - Express bus services between Singapore and Malaysia: recommended minimum selling prices, fuel and insurance surcharges
 - Section 34 prohibition, 16 infringing parties fined a total of \approx SGD\$1.69 million

Institute of Real Estate Agents (Fee Guidelines)

- Property agents' fees: 2% of sale price from seller, additional 1% of sale price from buyer when transaction involves public housing involved ("*de facto* industry standard")
- Notification for decision to the CCS – section 34 prohibition likely infringed because Guidelines “have the object of restricting competition in the real estate agency market”
- IEA retracted Fee Guidelines

Ticketing Agent (Abuse of dominance)

- SISTIC – ticketing agency handling 90% of all entertainment and sports events in Singapore
- Exclusive dealing arrangements with 2 major performance venues and 17 event organisers
- Investigated by CCS for abuse of dominance (exclusionary conduct) within the scope of the section 47 prohibition (pending)

C. Other Competition Policy Developments

- NETS (direct debit electronic payment services) fee hike and loyalty discount
- Price increase announcements by merchant trade associations
- Singapore Medical Association Fee Guidelines
- Exit of third player in airline ground-handling market

NETS Fee Hike and Loyalty Discounts

- NETS: Cashless payment services provider since 1985, owned by 3 local banks
 - Before June 2007, transaction fees between 0.35%-0.55%
 - After June 2007, transaction fees of up to 1.9%
- CCS: "it is not generally within the Competition Act's purview to review or regulate pricing decisions"
- NETS: Offered discounts to small merchants who did not have any other cashless payment options (credit or debit cards) – 1.05%-1.15% (vs 1.5%-1.7%)
- CCS: "unlikely to exclude NETS' competitors" because merchants allowed to offer other forms of cashless payment, except that they will have to forgo the discount

Price increase announcements by merchant trade associations

- 2007-2008: Price increase announcements made by
 - Singapore Noodle Manufacturers Association (noodles: 20-30%)
 - Singapore Bakery and Confectionery Trade Association (bread: 20%)
 - Singapore Motor Tyre Dealers Association (batteries, tyres, wheels: 10-70%)
 - Singapore School Transport Association (school bus services: 10-15%)
- Price inflation? Price-fixing? Consumers Association of Singapore alerted, but no remedial powers
- CCS alerted, advised associations to make price increase decisions independently
 - Warning given to 4 prayer-offering cake (发糕) manufacturers who announced price hikes of \$0.20-\$0.30

Singapore Medical Association Fee Guidelines

- 2007: Singapore Medical Association (SMA) advised by lawyers to withdraw its fee guidelines (first published in 1987) for medical services, CCS issues press statement welcoming the move.
- 2008: Complaints about unethical doctors overcharging patients, CCS invites SMA to formally submit guidelines for evaluation
- 2009: Notification for decision on compatibility of guidelines with section 34 prohibition (pending)

Exit of third player in airline ground-handling services market

- 2005: Swissport invited by Singapore government to be the third licensed airline ground-handling services provider at Changi Airport → ground-handling rates ↓15%
- 2009: After chalking up losses in excess of S\$50 million, Swissport announced decision to exit the market → ground-handling rates ↑30%
- Industry talk: Swissport unable to match “ridiculously low rates” charged by dominant incumbent players, over-invested in physical infrastructure, affected by slowdown in air passenger and cargo industry

D. Observations and Conclusions

- Cartel infringement decisions targeted at SMEs – no need to establish "appreciability" of anti-competitive effects on the market
- Emphasis placed on price-guidelines and recommended fee guidelines by industry associations – but no clear distinctions drawn between different sectors
- General public not well-informed about the existence/goals of the competition law regime
 - Especially SMEs and the many merchant trade associations in Singapore
 - Misapprehension about whether CCS performs/ought to perform consumer protection role (e.g. investigating price hikes)

Observations and Conclusions

- Instances where CCS has not intervened where abuse of dominance has been alleged involve large GLCs – banks, insurance providers, airport support service companies etc.
- Grounds of decisions not to intervene are not published by the CCS – difficult to assess quality of the analysis or decide if its decision should be appealed against.
- No appeals / follow-on actions by third parties so far

Thank You
Questions / Comments?
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