

## CCS IMPOSES FINANCIAL PENALTIES OF S\$9.3M ON JAPANESE BEARING MANUFACTURERS

1. On 27 May 2014, the Competition Commission of Singapore (“CCS”) issued an Infringement Decision against four Japanese bearing manufacturers and their Singapore subsidiaries (collectively, the “Parties”) for contravening section 34 of the Competition Act (Cap. 50B) (the “Act”) by entering into anti-competitive agreements and unlawful exchange of information in relation to the price and sale of ball and roller bearings in Singapore. Financial penalties amounting to S\$9.3M were imposed on the Parties by the CCS.
2. In this Client Note, we consider the scope of section 34 of the Act, in particular the prohibition against price fixing, and also summarise the salient points of the Infringement Decision.

### Section 34 of the Act

3. Section 34(1) of the Act prohibits “*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*” (the “**section 34 Prohibition**”).
4. Section 34(2) of the Act and the CCS Guidelines on the Section 34 Prohibition (“**Guidelines**”) provide a non-exhaustive list of agreements which fall within the ambit of the section 34 Prohibition. The list includes:
  - (a) Directly or indirectly fixing prices;
  - (b) Bid-rigging (collusive tendering);
  - (c) Sharing markets;
  - (d) Limiting or controlling production or investment;
  - (e) Fixing trading conditions;
  - (f) Joint purchasing or selling;
  - (g) Sharing information;
  - (h) Exchanging price information;
  - (i) Exchanging non-price information;

29 May 2014

For any queries relating to this article, please contact the following persons:

Tan Tee Jim, S.C.

Head, Intellectual Property Department and Competition Practice

DID: 6557 4615

[tanteejim@leenlee.com.sg](mailto:tanteejim@leenlee.com.sg)

Jeremiah Chew

Associate, Intellectual Property Department and Competition Practice

DID: 6557 4889

[jeremiahchew@leenlee.com.sg](mailto:jeremiahchew@leenlee.com.sg)

Author(s):

Tan Tee Jim, S.C.

Jeremiah Chew

### About us

Lee & Lee’s Competition Practice advises and represents clients on the complete range of competition law issues, and has represented clients in relation to investigations by the Competition Commission of Singapore, leniency applications and appeals to the Competition Appeal Board.

**Disclaimer:** The copyright in this document is owned by Lee & Lee. No part of this document may be reproduced without our prior written permission. The provision of the information herein does not constitute our giving legal advice and should not form the basis of any decision as to a particular course of action, as it is only intended to provide you with an

- (j) Restricting advertising; and
- (k) Setting technical or design standards.

5. The CCS has also indicated that any agreement involving price-fixing, bid-rigging, market-sharing or output limitations will **always**, by their very nature, have an appreciable adverse effect on competition, and will thereby breach the section 34 prohibition.<sup>1</sup> The CCS has described price fixing in particular as “one of the most serious infringements of the Act”.

### *Price Fixing*

6. The seriousness of price fixing is evident from the fact that the CCS has investigated and penalised several undertakings for price fixing.<sup>2</sup>
7. Businesses and corporations should therefore familiarise themselves with behaviour which constitutes price fixing. In this regard, the Guidelines indicate that price fixing may involve.
- (a) Fixing the price itself or the components of a price;
  - (b) Establishing a percentage by which prices are increased or a range outside which prices should not vary;
  - (c) Adhering to a published price list;
  - (d) Consulting competitors before quoting a price to a consumer;
  - (e) Recommended pricing by a trade association; and
  - (f) Agreements which indirectly affect prices which are charged, such as agreements on payments for additional services, discounts or allowances to be granted or formulae by which prices are to be calculated.

### **Infringement Decision against the Parties**

8. In the instant case, the CCS found that the Parties had agreed to fix prices by entering into, among others,

indication of some of the potential legal issues which you should be aware of. You must seek specific, detailed legal advice in respect of the individual requirements and circumstances applicable to you. Please note also that the information herein is based on the laws of Singapore. The position in other jurisdictions may differ.

<sup>1</sup> Paragraphs 2.20 and 3.2 of the Guidelines.

<sup>2</sup> These Infringement Decisions relate to, among others, the price fixing of coach bus services for travelling between Singapore and Malaysia, and the price fixing of rates of modelling services.

- (a) A Price List agreement setting out prices at which bearings should be sold by each individual Party in Singapore;
- (b) A minimum price agreement relating to the maximum discount percentage that could be applied to each category of bearings in the Price List agreement; and
- (c) Price increase agreements which were intended to affect the sale of bearings in the Singapore aftermarket,

in addition to exchanging sensitive pricing information and future pricing intentions.<sup>3</sup>

9. In the CCS' view, the conduct of the Parties amounted to a single continuous infringement with the object of preventing, restricting and distorting competition in the market for the sale of bearings to aftermarket customers in Singapore. By coordinating their conduct on the market, the Parties obtained knowledge of the price and non-price strategies of their competitors. This reduced the uncertainties inherent in the competitive process, as the Parties did not make their pricing strategies independently. Competition between the Parties was therefore lessened.
10. In arriving at its decision to impose fines amounting to S\$9.3M on the Parties, the CCS also considered the fact that the Parties were part of a *"secretive and sophisticated cartel where the participants engaged in covert conduct, including referring to each participant by code names"*.

### **Commentary**

11. There are three points of note from the Infringement Decision.
12. First, the heavy fines levied by the CCS, including a record S\$7.6M fine on one of the Parties, gives credence to the CCS' stance that price fixing is *"one of the most serious infringements of the Act"*.

---

<sup>3</sup> Paragraph 103 of the Infringement Decision.

13. Second, the Infringement Decision is the CCS' first reported decision relating to an international cartel involving companies based outside Singapore. This suggests that the CCS will not hesitate to take action against foreign companies as long as their conduct adversely affects competition within Singapore.
14. Third, the CCS' investigations into the Parties' conduct only commenced after one of the Parties applied for immunity under the CCS' leniency programme. This Party was granted full immunity from financial penalties, and substantial reductions in financial penalties were given to two other Parties who applied for leniency. This highlights the effectiveness of the CCS' leniency programme, which is designed to encourage cartel members to approach CCS with evidence of such activities.
15. Please do not hesitate to contact us if you have any queries relating to this client note, or require any advice on complying with competition law in Singapore.