CASE UPDATE

CCS REINFORCES FIRM STAND AGAINST ANTI-COMPETITIVE BEHAVIOUR IN SINGAPORE

Introduction

1. The Competition Commission of Singapore ("**CCS**") recently issued a Proposed Infringement Decision ("**PID**") against 13 fresh chicken distributors and an Infringement Decision ("**ID**") against 10 financial advisory companies. The PID and ID both relate to Section 34 of the Competition Act ("**Act**"), which prohibits anti-competitive agreements in Singapore.

2. In this case update, we summarise the PID and ID, and analyse their significance to your business.

Case Study 1: Fresh chicken distributors accused of price fixing and market sharing

3. On 8 March 2016, the CCS issued a PID against 13 fresh chicken distributors (collectively, the "**Chicken Distributors**") for allegedly entering into anti-competitive agreements to coordinate the amount and timing of price increases ("**Co-ordinated Price Increases**") and agreeing not to compete for each other's customers ("**Non-Aggression Pact**") in the market for the supply of fresh chicken products in Singapore.

4. Collectively, the Chicken Distributors supply more than 90% of the fresh chicken products in Singapore, and have a total turnover amounting to approximately half a billion dollars annually.

5. CCS commenced its investigation after receiving a complaint on the allegedly anti-competitive conduct. Upon completion of its investigation, CCS has provisionally found that the Parties had, from at least 2007 to 2014, engaged in discussions in furtherance of the Coordinated Price Increases and the Non-Aggression Pact.

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For any queries relating to this article, please contact:

Jeremiah Chew

jeremiahchew@leenlee.com.sg

Authors:

Tan Tee Jim, *S.C.*
Head, Intellectual Property Department and Competition Practice
DID: 6557 4615
tanteejim@leenlee.com.sg

Jeremiah Chew
Senior Associate, Intellectual Property Department and Competition Practice
DID: 6557 4889
jeremiahchew@leenlee.com.sg

Author(s):
Tan Tee Jim, *S.C.*
Jeremiah Chew

Lee & Lee
50 Raffles Place, #06-00
Singapore Land Tower,
Singapore 048623
T : (65) 6220 0666

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6. Further, CCS has stated that the Coordinated Price Increases and Non-Aggression Pact were aimed at distorting the prices of fresh chicken products in Singapore, thereby reducing customer choice and creating a less competitive landscape.

7. Under the statutory regime set out in the Act, the Chicken Distributors are entitled to make representations to CCS in respect of the PID, after which the CCS will issue its final decision in respect of the matter.

8. We will keep you updated as to the CCS's final decision.

Case Study 2: CCS imposes financial penalties totalling S$909,302 on 10 financial advisory companies

9. On 17 March 2016, the CCS issued an ID against 10 financial advisory companies ("**the Financial Advisory Companies**") for contravening Section 34 of the Act in relation to the distribution of individual life insurance products in Singapore. The aggregate market share of the Companies at the material time was estimated to be between 20-30%.

10. The CCS found that the Financial Advisory Companies had entered into an agreement and/or concerted practice to pressurize a competitor, iFast[1], into withdrawing an innovative offer ("**Offer**") from the market. The Offer allowed consumers to enjoy a 50% commission rebate on buying the Financial Advisory Companies' individual life insurance products, thereby reducing the consumer's costs of purchasing such products.

11. Two days after the launch of the Offer, representatives of several of the Financial Advisory Companies voiced their unhappiness on the Offer at a meeting. The representatives agreed to collectively pressurise iFast into withdrawing the Offer. Subsequently, a series of correspondences ensued between the Financial Advisory Companies and iFast.

12. Following the correspondence, the lifespan of the Offer was cut short abruptly. Three days after the Offer was introduced to the public, the duration of the Offer was reduced to one month. It was thereafter withdrawn with immediate effect later that afternoon.

13. A complaint to the CCS and media attention surrounding the sudden withdrawal of the Offer triggered an investigation by the CCS, which uncovered that the Financial Advisory Companies had breached Section 34 of the Act by pressurising iFast into withdrawing the Offer.

14. The CCS has imposed financial penalties on the Financial Advisory Companies amounting to S$909,302.

[1] iFast Corporation Ltd and/or its related entities, including iFast Financial Pte Ltd.

Commentary

15. The two abovementioned cases indicate that the CCS is continuing to take a firm stand against anti-competitive activity in Singapore.

16. Businesses should take note that they may be found to have breached Section 34 of the Act even if they enter into an agreement with the best intentions. It is noteworthy that some of the Financial Advisory Companies argued that they had intended to protect the interests of consumers. This argument was not accepted by the CCS. Once an agreement and/or concerted practice is established to have an anti-competitive object or effect, the intention of the parties is irrelevant to the CCS's finding that Section 34 of the Act has been breached.

17. On a practical note, businesses should also avoid knee-jerk reactions when faced with new and/or direct competition from other market players. As a general rule, businesses should avoid entering into any agreement or understanding with other competitors in response to such new and/or direct competition.

18. Businesses should note that a relatively short period of infringement may still attract substantial financial penalties. In the case of the Financial Advisory Companies, the agreement and/or concerted practice only lasted for 3 days. However, in deciding on the quantum of the financial penalties, the CCS treated the infringement as having occurred for 1 full year, as the effect of the infringement lasted for significantly longer than the duration of the agreement and/or concerted practice.

19. Please do not hesitate to contact us if you have any queries relating to this case update, or require any advice on complying with competition law in Singapore.

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The following partners lead our departments:

Kwa Kim Li
Managing Partner
kwakimli@leenlee.com.sg

Quek Mong Hua
Litigation & Dispute Resolution
quekmonghua@leenlee.com.sg

Owyong Thian Soo
Real Estate
owyongthiansoo@leenlee.com.sg

Tan Tee Jim, S.C.
Intellectual Property
tanteejim@leenlee.com.sg

Adrian Chan
Corporate
adrianchan@leenlee.com.sg

Louise Tan
Banking
louisetan@leenlee.com.sg