CLIENT NOTE

MANUFACTURERS OF CAPACITORS INCAPACITATED BY RECORD FINANCIAL PENALTY

19 January 2018

For any queries relating to this article, please contact:

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

Jasper Lim
Associate, Intellectual Property
Department and Competition Practice
DID: 6557 4884
jasperlim@leenlee.com.sg

Authors:
Tan Tee Jim, *S.C.*
Jasper Lim

Introduction

1. The Competition Commission of Singapore ("**CCS**") recently imposed financial penalties amounting to about S$19.5 m against 5 manufacturers of aluminum electrolytic capacitors (the "**Parties**") for engaging in agreements which contravened section 34 of the Competition Act (the "**Act**"). The agreements included price fixing and exchange of confidential sales, distribution and pricing information for aluminum electrolytic capacitors (the "**AECs**").

2. In this Client Note, we summarise the salient aspects of the case and comment on their significance to businesses in Singapore.

Section 34 of the Act

3. Section 34 of the Act prohibits anti-competitive agreements in Singapore, specifically *"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. To attract liability under the Section 34 Prohibition, an important consideration by the CCS is whether the agreement or arrangement in question has the object or effect of preventing, restricting or distorting competition *within* Singapore.

Infringement Decision

5. In its Infringement Decision issued on 5 January 2018, the CCS found that the Parties, who were close competitors, had been holding regular meetings in Singapore since 1997 during which they

   (a) exchanged confidential information and commercially sensitive business information such as customer quotations, sales volumes, production

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.

For more legal updates, please visit the News & Publication Section of Lee & Lee's website at www.leenlee.com.sg or follow Lee & Lee's facebook page at www.facebook.com/leenlee.com.sg/

capabilities, business plans and pricing strategies;

(b) discussed and agreed on sales prices, including various price increases; and

(c) agreed to collectively reject customers' requests for reduction in prices of AECs sold to them.

6. The CCS was of the view that these protected the Parties' profitability and market shares from competition, to the detriment to their customers, and that, if not for the agreements, each of the Parties would have been under greater competitive pressure and would not have been able to sustain a price increase without losing market share as customers could switch to another AEC supplier. Accordingly, the CCS ruled that the Parties had committed a serious infringement of the Act.

7. In levying the penalties on the Parties, CCS considered

(a) the relevant sales turnover of each of the Parties in Singapore for the year preceding the end of its infringement;

(b) the nature and duration of the infringement; and

(c) aggravating and mitigating factors (such as leniency applications).

Commentary

8. Businesses should note the following aspects of the CCS's Infringement Decision.

9. First, the total penalty of about S$19.5 m represents the highest financial penalty levied by the CCS to-date. This reflects its strong stance against anti-competitive conduct in Singapore. As its Chief Executive said in a press release,

> *"[c]artels among suppliers cause serious harm to competition in the market, leaving businesses and end-consumers in a poorer bargaining position and facing less competitive prices. This is CCS's third case involving a global cartel and Singapore being such an open market, can be impacted by such cross-border cartels. CCS will continue to take strong enforcement action to ensure that cartels do not negatively impact Singapore markets and its competitiveness."*

10. Secondly, the CCS reduced the penalties for those Parties which applied for leniency. In accordance with the Act, it granted total immunity to one of the Parties who first came forward with information concerning the Parties' anti-competitive activities and a reduction of up to 50% for three other Parties who subsequently made leniency applications. The difference in penalty between the first and second applicants was S$4.7m. Hence, the lesson for businesses is that they should apply for leniency as soon as they realise that they may have been involved in anti-competitive activities.

11. Thirdly, as indicated above, the sales turnover of a business is a relevant factor in considering the quantum of penalty payable. In the case, one of the Parties submitted that its turnover attributable to customers in Singapore which were in fact the customers of its parent company should not be taken into account. This was because it was the parent company which negotiated the prices with the customers and it was merely acting as the logistics agent of the parent company. The CCS however did not accept the submission because it noted that the sales were invoiced by the Party and reflected in its accounts.

About Lee & Lee

Lee & Lee is one of Singapore's leading law firms being continuously rated over the years amongst the top law firms in Singapore. Lee & Lee remains committed to serving its clients' best interests, and continuing its tradition of excellence and integrity. The firm provides a comprehensive range of legal services to serve the differing needs of corporates, financial institutions and individuals. For more information: visit www.leenlee.com.sg.

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