

CASE UPDATE



13 CHICKEN DISTRIBUTORS ROASTED WITH A S\$26.9 MILLION FINE

18 September 2018

Introduction

1. The Competition & Consumer Commission of Singapore (the “**CCCS**”) recently issued an Infringement Decision (“**ID**”) against 13 fresh chicken distributors (the “**Chicken Distributors**”). The ID relates to Section 34 of the Competition Act (Cap. 50B) (the “**Act**”), which prohibits anti-competitive agreements in Singapore.
2. In this case update, we summarise the ID and analyse its significance to your business.

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Background

3. On 12 September 2018, the CCCS issued an ID against the Chicken Distributors for agreeing not to compete with each other and for coordinating the amount and timing of price increases of fresh chicken products. The CCCS commenced its investigations after receiving a complaint about the anti-competitive conduct.
4. Most of the Chicken Distributors are family-run companies which have been in the business for decades. The personnel of the Chicken Distributors knew their counterparts in other companies well. Their representatives met frequently for social activities and cooperated through the Poultry Merchants’ Association. At the material time, the combined market share of the Chicken Distributors was estimated to be above 90%.
5. The parties’ anti-competitive conduct began in the wake of a bird flu outbreak, which impacted the industry negatively.
6. The CCCS noted that the Chicken Distributors’ anti-competitive discussions were organized flexibly without any written minutes or notes. These discussions were mostly casual and took place at social gatherings. The agreements to not compete and the coordination of price increases were enforced through informal sanctions in the event of non-compliance (e.g. by scolding a non-compliant party over a phone call).
7. After their investigations, the CCCS found that there was an uninterrupted infringement between 2007 and 2014. Following this finding, the CCCS imposed a record financial penalty on the Chicken Distributors totaling S\$26,948,639 and directed the Chicken Distributors to provide a written undertaking that they will stop using the Association as a platform for anticompetitive activities.

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Commentary

8. Businesses, in particular family-run businesses, should have checks in place to avoid anti-competitive behaviour. As in this case, companies may be in the same business for decades. As a result, their employees may know their counterparts in other companies well. In particular, in industries dominated by family-run businesses, the families running the competing businesses may grow closer over time. This increases the risk of parties reaching anti-competitive agreements when the industry faces hard times.
9. Businesses should be aware that a lack of a paper trail would not prevent the CCCS from uncovering anti-competitive activity. In this case, whilst the anti-competitive activity was not documented and was conducted in informal social settings, the CCCS was able to establish liability through, amongst others, interviews with the managing directors, sales staff, ex-directors and customers of the Chicken Distributors.
10. Businesses should thread carefully and seek legal advice before taking collective action to remedy the effects of a crisis in their industry. Such an agreement to resolve a crisis may be regarded as having as its object the restriction of competition.
11. Businesses should note that cooperation with the CCCS is taken into account in determining the amount of financial penalty imposed for anti-competitive conduct. The CCCS considers cooperation as a mitigating factor and will adjust the penalty downwards depending on the extent of cooperation by each party.
12. Finally, the penalty of S\$26.9 million imposed in this case broke the previous record of a S\$19.5 million fine imposed recently. These record fines indicate that the CCCS takes a firm stand against anti-competitive conduct in Singapore.
13. 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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