

Bid Riggers found to have infringed Singapore's Competition Act

Introduction

1. The Competition & Consumer Commission of Singapore (the "CCCS") recently issued an Infringement Decision ("ID") in relation to the infringement of Section 34 of the Competition Act 2004 (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.

Background

3. The ID was issued against the Rei Securitie Pte. Ltd. ("Rei") and Soh Chee Keong ("Soh") for entering into agreements and/or concerted practices involving collusive tendering or bid-rigging in relation to Ngee Ann Polytechnic's tenders for the procurement of software licences.
4. In 2020, Rei was contracted by Ngee Ann Polytechnic for the procurement of a software licence. Soh provided support services in relation to the software. The licence was due to expire in early 2021.
5. On 25 September 2020, Ngee Ann Polytechnic contacted Rei, seeking a fee quote for the procurement of a new licence. When Rei responded with a quote, Ngee Ann Polytechnic informed Rei that it required at least 3 quotes and asked Rei if it could provide contacts for other suppliers that could provide the quotes.
6. Rei's director approached Soh for help to look for two other suppliers. Soh told Rei's director that he would provide a quote through a shell company that he had incorporated. Soh also approached Rei's accountant, who incorporated another shell company.
7. There was a "gentleman's agreement" between Rei and Soh that the bids submitted by the two shell companies would correspond to the quote provided to Ngee Ann Polytechnic earlier. Subsequently, Rei and the two shell companies provided their quotes to Ngee Ann Polytechnic, with Rei submitting the lowest bid.
8. On 26 March 2021, the contract was awarded to Rei. Rei and Soh repeated the arrangement in 2022 and 2023 and Rei was awarded with the contracts.

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9. The CCCS found that the parties' conduct distorted the competitive process that Ngee Ann Polytechnic's tenders were meant to achieve, by creating "an illusion of competition". Further, such conduct amounts to cover-bidding, which deprived Ngee Ann Polytechnic of genuine competition in respect of the tenders and also precluded it from obtaining more competitive bids.

Commentary

10. Businesses, in particular businesses providing niche services, may be placed in a difficult position when their customers ask for their help to, effectively, inform their competitors of a business opportunity and invite them to compete for the same. Businesses should resist the temptation of following Rei and Soh's footsteps.
11. Businesses which contract for services through tenders need to be alert to the possibility of bid-rigging by the participants. A potential way to detect bid-rigging may be to conduct audits on the value of the services provided. In this case, Ngee Ann Polytechnic paid Rei between S\$63,000 to S\$65,000 per year for the procurement of the licenses, which cost S\$24,000 only. The arrangement may well be detected sooner if audits were conducted. In fact, Rei's director admitted that the support required under the services provided was "minimal work" that required 12 man hours for one whole year.
12. This is the first instance of the CCCS issuing an infringement decision against an undertaking in his individual capacity.¹ Individuals should be aware that individuals can be liable under the Competition Act and be subjected to a financial penalty for anti-competitive behaviour, if they fulfil certain requirements.
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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¹ See media release (<https://www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/cccs-penalises-company-and-ex-director-for-rigging-bids>)

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