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Building Up A Young Competition Agency: The Competition Commission of Singapore's Experience

Competition Commission of Singapore

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I. INTRODUCTION

Singapore has been consistently ranked among the world's most competitive economies by renowned reports such as the *World Economic Forum's Global Competitiveness Report*. As an open economy constantly subject to global market forces, Singapore's strong ranking has been the result of sound competition policy in areas ranging from trade openness, human capital development, and infrastructure investment.

Hence when Singapore's Competition Act came into force in stages between 2006 and 2007,[1] it was an extension of Singapore's competition policy. It was envisaged then that the Competition Act would help to boost market innovation and productivity, thus sharpening Singapore's competitiveness in the process.

The Competition Commission of Singapore (CCS) was established to administer and enforce the Competition Act. As staying globally competitive is key to Singapore's economic vibrancy, CCS had to be built up speedily so that Singapore could reap the benefits of competition law as quickly as possible.

Faced with this urgency to build up a new and young competition agency, CCS went about this assiduously with a four-pronged strategy:

- Rigorous Enforcement: Taking Our Time Swiftly
- Effective Advocacy: Innovating Routinely
- Relevant Capabilities: Building the Future Now
- Active International Relations: Going Regional and Global

II. RIGOROUS ENFORCEMENT: TAKING OUR TIME SWIFTLY

As a young agency, building up a strong enforcement track record was an immediate priority. At the same time, the need for speed had to be balanced with the need to ensure that sufficient time, effort, and rigor were dedicated to our investigations and decisions.

The outcome of striking this delicate balance is that in the short span of about 4 years, CCS has issued two Infringement Decisions with fines totalling close to USD 1.45[2] million against a price fixing cartel[3] and a bid-rigging cartel.[4] At the same time, we have two Proposed Infringement Decisions (similar to Statement of Objections) ongoing. One of these is our first Abuse of

[1] The competition law prohibitions against price-fixing and bid-rigging, and abuse of market power came into effect in 2006, while the merger regime prohibiting mergers that result in a substantial lessening of competition was effected in 2007 .

[2] Based on current SIN-US exchange rate of SGD1:USD1.384 (12 May 2010)).

[3] For more information on the price fixing case, please refer to link: http://www.ccs.gov.sg/NewsEvents/PressReleases/2009/Coach+Operators+Fined.htm .

[4] For more information on the bid rigging case, please refer to link: http://www.ccs.gov.sg/NewsEvents/PressReleases/2008/Pest+Control+Operators+Fined.htm.

Dominance infringement,[5] while the other is a bid-rigging case that will likely involve the most number of infringing parties in CCS' bid-rigging cases so far.[6] CCS has also received 18 merger notifications to date. These merger notifications have involved both international and local mergers, covering a wide range of industries including aviation, electronics, food, financial news/data, and semiconductors.

These cases form just a subset of the 112 cases that CCS has initiated so far. Out of these 112 cases, 87 of them have been completed. The table below summarises the various types of cases started and completed between January 1, 2006 and March 31, 2010:

Classifications of Cases	Cases Started	Cases Completed
Preliminary Enquiries & Investigations	59	48
Notification for Guidance [7]	11	5
Notification for Decision	4	2
Mergers (from July 2007)[8]	18	16
Leniency	6	4
Competition Advisories[9]	14	12
Total	112	87

[7] The Notification for Guidance or Decision is a non-mandatory system that allows businesses to notify their agreements or conduct to CCS, if they have serious concerns as to whether they are infringing the antitrust prohibitions.
[8] CCS has a voluntary merger notification system and merger parties may notify CCS for a decision as to whether their anticipated merger will, if carried into effect, infringe, or whether their merger has infringed, the antitrust prohibitions.
[9] CCS provides confidential advice and inputs to government agencies on competition matters early in the policy-formulation process as government policies can have a significant impact on competition.

CCS has been able to build up this track record swiftly because, from the outset, it had formed a good team of case officers and implemented policies and procedures based on international best practices.

When CCS was set up, CCS was staffed by officers from the Singapore Government's well-regarded Legal Service and Economist Service. CCS also recruited police investigators with white-collar enforcement background. These officers were subsequently trained by more experienced competition agencies to better understand the practical aspects in antitrust investigations.

[5] For more information on the Abuse of Dominance Proposed Infringement Decision, please refer to link: http://www.ccs.gov.sg/NewsEvents/PressReleases/2009/PID+against+SISTIC.htm.
[6] For more information on the Bid Rigging Proposed Infringement Decision, please refer to link: http://www.ccs.gov.sg/NewsEvents/PressReleases/PID+Against+Electrical+Companies.htm.

Before the antitrust prohibitions came into force, CCS also issued a set of 12 guidelines ("CCS Guidelines")[10]on how CCS would interpret and give effect to the provisions in the Competition Act. In this connection, CCS scrutinized international best practices on antitrust processes and guidelines in other jurisdictions, and conducted public consultations on the proposed CCS Guidelines to take into account views from businesses, academia, and competition practitioners, before issuing the CCS Guidelines. The CCS Guidelines on Competition Impact Assessment for Government Agencies[11] was also drawn up and issued to government agencies to assist them in identifying and assessing the likely competitive impact of their proposed policies, so that they would in turn develop pro-competition public policies.

Internal procedure manuals were prepared on the proper use of our investigation powers and to ensure that officers were familiar with our investigation process. A case work-flow was also designed to monitor the investigation process, to ensure robust and rigorous investigations and decisions.

With good case investigators, procedures aligned to international best practices, two Infringement Decisions, and two ongoing Proposed Infringement Decisions, CCS is on track to building up a strong enforcement track record that will help to keep markets competitive and vibrant.

III. EFFECTIVE ADVOCACY: INNOVATING ROUTINELY

Advocacy is the complementary pillar to CCS' enforcement efforts. CCS aspires to be innovative in our advocacy initiatives, as innovation will enhance the effectiveness of these initiatives.

An important thrust so far has been to make the Competition Act more accessible and easily understood, particularly to businesses and the general public. Towards this end, CCS has developed a segmented approach to serve the needs of our stakeholders:

- Graphic novels and comics[12] provide a quick guide for a general understanding of CCS'

work for both the public and businesses;

[10] Please refer to link: http://www.ccs.gov.sg/Guidelines/index.html for the full list of issued CCS Guidelines.

[11] For more information on the "CCS Guidelines on Competition Impact Assessment for Government Agencies," please refer to link: http://www.ccs.gov.sg/NR/rdonlyres/A67B68FC-DB6F-415B-9DF1-5A97FC6855A9/22338/GuidelineOnCompetitionAssessmentcleanv1_14Oct08rev.pdf.

[12] Please refer to links to view our comics "Fixed!": http://www.ccs.gov.sg/NR/rdonlyres/0B35E9F6-04CD-42C2-9F8C-C454C1217602/25329/FixedManga.pdf.

- "Dos and Don'ts" Guides[13] give businesses simple and clear directions on what they can and cannot do under the Competition Act; and
- CCS Casebank,[14] a micro-website, allows stakeholders to easily explore in depth everything they would like to know about CCS.

This segmented approach has proven to be effective. Both public and private sector organizations have requested for copies of our graphic novels and "Dos and Don'ts" guides for their own in-house training and compliance programmes. And CCS Casebank has been able to engage the web visitors more interactively— web visitors spend twice the amount of time on the site than they would spend normally.

Segmenting our stakeholders also makes it easier for CCS to innovate in advocacy. CCS' corporate trailer video on cartels,[15] for example, has utilized a creative "reversible script" that turns the businesses' typical arguments (when defending themselves on why they participate in cartels) against them, illustrating the harms and ills of cartels in the process. Many competition agencies have requested for copies of this corporate trailer, and the trailer was recently recognized by the International Competition Network as one of the Best Antitrust Films.[16]

This corporate trailer was in fact launched as part of an innovative public education event. In what was arguably a first for a public sector agency, CCS tapped into pop culture and Hollywood appeal to hold a movie premiere of the movie "The Informant!" for three hundred of CCS' key stakeholders. The public education event was well-received, especially by the top management of business and trade associations, and was also covered in a regional marketing publication[17] for its innovative approach.

To further engage the competition law community in Singapore, CCS organizes the Distinguished Speaker Series. To date, Mr. Peter Freeman (Chairman of the U.K. Competition Commission), Mr. Philip Collins (Chairman of the U.K. Office of Fair Trading), Mr. William E Kovacic (then Chairman of the U.S. Federal Trade Commission), and Mr. Graeme Samuel (Chairman of Australia Competition and Consumer Commission) have shared their insights and perspectives of global competition law developments.

CCS also actively organizes outreach programs through partnering with other government organizations and business chambers to reach out to the public and private sectors. These include quarterly workshops and seminars, as well as monthly courses for government procurement officers to educate them on the telltale signs of bid-rigging.

When public and private sector organizations step forward to offer to work with CCS on longer term collaborations, and when they make requests for copies of CCS' advocacy materials for their own in-house use and purposes, it is an encouraging sign that CCS' innovations in advocacy have been effective and are bearing fruit.

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[13] Please refer to link to view our "Dos and Don'ts" Guide: http://www.ccs.gov.sg/NR/rdonlyres/0B35E9F6-04CD-42C2-9F8C-C454C1217602/25328/DosandDonts.pdf.

[14] Please refer to link to view our Casebank micro-website: http://app.casebank.ccs.gov.sg/.

[15] Please refer to link to view our corporate trailer: http://s-one.internet.gov.sg/ccs/cartels.wmv.

[16] Please refer to ICN blog post: http://www.icnblog.org/?p=231.

[17] Please refer to link: http://www.marketing-interactive.com/news/16669 for CCS public education coverage.

IV. RELEVANT CAPABILITIES: BUILDING THE FUTURE NOW

For a young agency, establishing the right foundation of capabilities is an important priority. In addition to building this foundation, CCS also actively ensures that our capabilities stay relevant for the future.

For example in 2009, we enhanced our CCS' Leniency Programme with two new features: Leniency Plus and a Marker System[18] even though it was just barely three years since the Leniency Programme was first introduced. The Marker system allows a potential leniency applicant to keep its place in the leniency queue for a given period of time (while CCS gathers the necessary information and evidence for the leniency application); the Leniency Plus system encourages cartel members under investigation to report on involvement in another cartel activity. These enhancements increase the effectiveness of CCS' enforcement actions against cartels, and keep the Leniency Programme relevant as businesses and markets change.

To keep in tandem with advancements in technology and investigative techniques, CCS has also set up an IT Forensics Unit. The capabilities of this IT Forensics Unit will enable CCS to better collect and interpret the electronic evidence needed for more comprehensive and robust investigations.

To ensure CCS stays abreast of industry developments, CCS has identified a number of high-priority industries and areas to build a deeper understanding in. This will help CCS to better assess the state of competition in various markets and industries, which will in turn lead to more effective enforcement and advocacy efforts.

Building a strong foundation of capabilities and keeping those capabilities relevant for the future are ultimately dependent on a competition agency's ability to attract, develop and retain talent. This is especially so for young agencies like CCS. Hence CCS has put in place a Training and Competency Framework to enhance and bridge the competencies and skills of all CCS staff.

V. ACTIVE INTERNATIONAL RELATIONS: GOING REGIONAL AND GLOBAL

Even as CCS administers and enforces the Competition Act on activities that have an effect on the Singapore economy, the open and global nature of Singapore's economy means that Singapore and CCS are inextricably tied to developments in the regional and global economy.

As a result, CCS actively participates in both regional and international fora.

Regionally, on the Association of Southeast Asia Nations ("ASEAN") front, CCS was the inaugural Chairman of the ASEAN Experts Group on Competition ("AEGC") in 2008 (the AEGC was set up as a regional forum to discuss and cooperate on competition policy and law matters amongst ASEAN member states), and successfully led the AEGC to meet the targets and milestones for that year.

In addition, the AEGC has 3 workgroups which look into capacity building, formulating Regional Guidelines, and developing a Regional Handbook. CCS chairs the Regional Guidelines Working Group on competition policy, and the Regional Guidelines, once completed, will be a common reference for all ASEAN member states on international best practices in competition law and policy implementation.

[18] For more information on "CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activities", please refer to link: http://www.ccs.gov.sg/NR/rdonlyres/A67B68FC-DB6F-415B-9DF1-5A97FC6855A9/23114/GuidelineLenienceProgramme220109final.pdf.

On the international front, CCS participates actively in international fora such as the International Competition Network ("ICN"), the Organisation for Economic Cooperation and Development ("OECD") and the Asia Pacific Economic Community ("APEC"). CCS also leads the negotiations on competition law-related matters in all of Singapore's Free Trade Agreement discussions.

VI. CONCLUSION: IMPACT MATTERS

In 2009, CCS conducted our inaugural survey to measure our stakeholders' perceptions of the benefits and relevance of the Competition Act last year. The results revealed that:

- 75 percent of businesses and consumers opined that price-fixing incidents would be reduced;
- 71 percent agreed that they would enjoy a wider choice of goods and services;
- 56 percent felt that the Competition Act would help lower prices; and
- Over 55 percent believed that there would be less abuse of dominance and that smaller companies would be better able to compete against larger companies

The ultimate test of any competition agency, whether young or established, is the impact it makes on the economy. If these survey results are any indication, they show that CCS still has room to improve. At the same time, they also indicate that CCS' efforts in rigorous enforcement, innovative advocacy, capability building, and international relations are off to a good start.