

CCS ISSUES PROPOSED INFRINGEMENT DECISION AGAINST SISTIC FOR ABUSE OF DOMINANCE

1. SINGAPORE'S largest ticketing service provider Sistic.com Pte Ltd (“Sistic”) is being probed for anti-competitive practices by abusing its dominant position in the ticketing service market through various exclusive agreements.
2. The Competition Commission of Singapore (“CCS”) has today issued a Proposed Infringement Decision (“PID”) against Sistic, relating to Sistic’s suspected abuse of its dominant position.
3. Where a firm is dominant within any market in Singapore, Section 47 of the Competition Act (Cap. 50B) prohibits the dominant firm from abusing its dominant position in Singapore through anti-competitive conduct. One example of an abuse of dominance may occur where a dominant firm prevents its customers from buying the same product from its competitors.
4. The CCS said in a statement on Tuesday that Sistic (which handles ticketing for more than 90 per cent of all events staged in Singapore) has separate agreements with The Esplanade and the Singapore Sports Council 'which contain explicit restrictions requiring all events held at the Esplanade and the Singapore Indoor Stadium respectively to use Sistic as the sole ticketing service provider.' The CCS revealed that Sistic also had 17 other agreements with event organisers that contained explicit restrictions requiring the event organisers concerned to use Sistic as the sole ticketing service provider for all their events. CCS also noted that Sistic raised its booking fees for ticket buyers by 50 per cent to \$3 per ticket in January 2008.
5. Before issuing a final decision, the CCS typically issues a PID to the parties concerned. The PID contains factual information gathered by the CCS during the course of its investigations, and the reasoning as to why a breach of the Competition Act is suspected to have occurred. Whilst the PID does not represent a formal decision of the CCS, it is highly indicative of the CCS’ views at this point in time. The CCS’ final decision will be subject to the responses, counterarguments and relevant facts put forth by Sistic for CCS’ consideration. Sistic is given eight weeks from today to make such representations.
6. Commenting on the implications of this PID on businesses in Singapore, **Lim Chong Kin**, Director and Co-Head of Drew & Napier’s Competition Law Practice Group, observed, “This PID is the first of its kind relating to Section 47 of the Competition Act, but we know that this is not the first alleged abuse of dominance that CCS has investigated. While we had earlier successfully defended a client against CCS investigations into a breach of Section 47, the CCS has continued to investigate other alleged abuses of dominance, culminating in this Proposed Infringement Decision.”

7. **Ng Ee Kia**, Director and head of Drew & Napier's Competition Economics Department, adds that, "Firms that hold a dominant position are subject to additional duties under the Competition Act, by virtue of their dominance. Such firms must exercise greater care in conducting their business activities to minimise the risk of infringing Section 47."
8. Two conditions must be satisfied before the CCS will find that Section 47 has been infringed:
 - (a) the company concerned must *hold* a dominant position in a relevant market; and
 - (b) the position of dominance has been abused.

Holding a dominant position

9. In general, a company is more likely to be dominant if it has a high market share in the relevant market. As a starting point, the CCS regards a market share of 60% or higher as indicating dominance. However, other relevant facts should also be considered in assessing dominance.

Abuse of dominant position

10. Generally speaking, conduct which seeks to foreclose the market from other competitors or undermine the competitive process, is likely to give rise to concerns. Some examples include:
 - Exclusive dealing -where a dominant firm prohibits its customers from buying the same product from its competitors;
 - Predatory pricing – where a dominant firm deliberately sets its price at a loss-making level to eliminate competitors, and then raises its price to reap profits;
 - Tying- where a dominant firm sells its product on condition that its customers must also buy another product from the dominant firm;
 - Refusal to deal- where a dominant firm refuses to sell an essential input product to any downstream firm other than its own affiliated company.
11. Infringing Section 47 can have grave consequences for businesses. The CCS may impose fines of up to 10 per cent of the turnover of the business of the undertaking in Singapore for each year of infringement, up to a maximum 3 years. In addition, there may be cessation and/or modification orders by CCS, reputational losses and private actions by third parties which have suffered loss/damage directly as a result of the infringement.
12. To limit potential exposure to competition law risks under Section 47, firms that are able to exercise substantial market power (e.g. with 50% to 60% market share) in

particular are encouraged to carry out regular compliance audits. A compliance audit typically forms part of a compliance programme that is designed not only to review the current status of a company's existing agreements and business conduct, but also provide the company and its staff with the knowledge and tools to ensure that it continues to be "competition-compliant", through the use of training sessions and periodic self-assessment.

13. Smaller firms may consider making complaints to the CCS if they believe themselves to be victims of an abuse of dominance by any significant player in the market.
14. For more information on the legal implications of market dominance, please refer to Drew & Napier LLC's Practical Guide to Market Dominance in Singapore. (Available at http://www.drewnapier.com/publications/Market_Dominance.pdf)
15. If you wish to discuss how this update may potentially affect you, or simply wish to find out more about competition law compliance, please feel free to contact the Competition Law Practice Group.

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