

Cartel Regulation

Getting the fine down
in 41 jurisdictions worldwide

2011

Contributing editor: Martin Low QC



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Singapore

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Legislation and jurisdiction

1 Relevant legislation

What is the relevant legislation and who enforces it?

Competition law in Singapore is governed by the Singapore Competition Act (Cap 50.B) (the Act), which is enforced by the Competition Commission of Singapore (the CCS). The CCS is a statutory body established under part II of the Act. Its current chief executive officer is Ms Yena Lim Hua Yen, and its assistant chief executive and head of legal and enforcement is Mr Toh Han Li.

Cartel activities are prohibited by section 34 of the Act (the Section 34 Prohibition), which provides:

...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 within Singapore are prohibited...

The Section 34 Prohibition became effective on 1 January 2006, and since its introduction the CCS has issued three enforcement decisions in respect of the prohibition, relating to:

- (i) bid rigging in the provision of termite control services in Singapore, 9 January 2008 (the *Pest-Busters Case*);
- (ii) price fixing in the provision of coach tickets for travelling between Singapore and destinations in Malaysia, 3 November 2009 (the *Express Bus Case*); and
- (iii) bid rigging in electrical and building works, 4 June 2010 (the *Electrical Works Case*).

2 Proposals for change

Have there been any recent changes or proposals for change to the regime?

There have been no changes, nor any proposed changes, to the substantive operation of the Section 34 Prohibition since its introduction; however, there have been recent changes to the CCS's leniency programme. With effect from 12 January 2009, the CCS introduced two measures designed at improving the leniency regime in Singapore and increasing its effectiveness. The two changes were the introduction of a 'marker system' and the 'leniency plus system'.

Prior to the introduction of the marker system, an applicant for leniency would need to fulfil certain evidentiary thresholds in order to be granted total immunity or reductions of up to 100 per cent of the financial penalty. A consequence of meeting this evidentiary threshold was that an applicant might ultimately be 'beaten to the post' by another party with the necessary evidence more readily at hand. The marker system preserves the position of applicant in the 'leniency queue', pending its ability to support its application with evidence, within a period specified by the CCS.

The leniency plus system provides incentives for cartel members to furnish information about another, separate cartel arrangement that they may be participating in or may be aware of. For instance,

where a party is being investigated in respect of its involvement in Cartel A, if that party was to provide information in respect of Cartel B it may not only stand to benefit from lenient treatment in respect of Cartel B, but also further reductions in penalties in respect of Cartel A (over and above any reductions they might already stand to benefit from). Further details relating to the leniency plus system are provided at question 24.

Other recent amendments to the Singapore competition law landscape include the ability of the Competition Appeal Board ('the CAB'), which hears the first level of appeals from CCS decisions, to impose interest on fines imposed or confirmed by it. Furthermore, the CCS also now has the ability to accept the payment of financial penalties in instalments, subject to a specified formula. These amendments were introduced by way of the Competition (Financial Penalties) (Amendment) Order 2010.

3 Substantive law

What is the substantive law on cartels in the jurisdiction?

As stated in question 1, section 34 of the Act prohibits 'agreements, decisions by associations of undertakings, and concerted practices', which have as their 'object or effect' the 'prevention, restriction or distortion' of competition in Singapore. Section 34(2) of the Act provides specific examples of the types of arrangements that may fall within the ambit of section 34. Specifically, section 34(2) provides that agreements, decisions or concerted practices may, in particular, have the object or effect of preventing, restricting or distorting competition within Singapore if they:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, markets, technical development or investment;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

The illustrative list in section 34(2) is not intended to be exhaustive, and the CCS has specified in its Guidelines to the Section 34 Prohibition (the Section 34 Guidelines) that many other types of arrangements may have the effect of preventing, restricting or distorting competition (including, inter alia, information-sharing agreements in some circumstances).

The CCS has also stated that agreements, decisions and concerted practices will fall within the ambit of the Section 34 Prohibition only where they have an 'appreciable' effect on competition. The Section 34 Guidelines at paragraph 2.19 provide further details

on when an arrangement might give rise to an appreciable effect on competition. Arrangements involving price fixing, bid rigging, market sharing or output limitation will always be considered, by their very nature, to have an appreciable effect on competition such that it is not incumbent on the CCS to proceed to analyse the actual effects of such arrangements.

One important qualification on the application of the Section 34 Prohibition is that it does not apply to arrangements that give rise to net economic benefit (an exclusion that is provided for at paragraph 9 of the third schedule to the Act). In order to qualify for the exclusion, it must be shown that the arrangement:

- contributes to improving production or distribution, or promoting technical or economic progress;
- does not impose on the undertakings concerned restrictions that are not indispensable to the attainment of those objectives; and
- does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

4 Industry-specific offences and defences

Are there any industry-specific offences and defences?

Certain liner shipping agreements are exempted from the application of section 34 in Singapore, by way of a Block Exemption Order (BEO). The BEO initially took effect on 1 July 2006 for a period of five years, and its extension till 2015 was granted by the minister for trade and industry on 16 December 2010. The liner shipping BEO is the only BEO that has been granted in Singapore since the introduction of competition law.

Some other specific activities and industries are excluded from the application of the Section 34 Prohibition, as specified in paragraphs 5, 6 and 7 of the third schedule to the Act. In particular, the Section 34 Prohibition will not apply to:

- any agreement or conduct that relates to any goods or services to the extent to which any other written law, or code of practice issued under any written law relating to competition, gives another regulatory authority jurisdiction in the matter;
- the supply of ordinary letter and postcard services by a person licensed and regulated under the Postal Services Act (Cap.237A);
- the supply of piped potable water;
- the supply of wastewater management services, including the collection, treatment and disposal of wastewater;
- the supply of scheduled bus services by any person licensed and regulated under the Public Transport Council Act;
- the supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act (Cap.236A);
- cargo terminal operations carried out by a person licensed and regulated under the Maritime and Port Authority of Singapore Act (Cap.170A);
- the clearing and exchanging of articles undertaken by the Automated Clearing House established under the Banking (Clearing House) Regulations; or
- any activity of the Singapore Clearing Houses Association in relation to its activities regarding the Automated Clearing House.

Most of the exclusions were made on the basis that the specified activities would be subject to robust sector specific regulation. Full explanations can be found within Annex B of the CCS's Second Consultation Paper on the Draft Competition Bill (available at http://app.ccs.gov.sg/PC_Archived_2ndRoundl.aspx).

5 Application of the law

Does the law apply to individuals or corporations or both?

Section 34 applies in respect of 'undertakings', defined in section 2 of the Act as 'any person, being an individual, a body corporate,

an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services'. Where employees engage in conduct that would be contrary to the Section 34 Prohibition, liability would be imputed and assessed in respect of the employing undertaking.

6 Extraterritoriality

Does the regime extend to conduct that takes place outside the jurisdiction?

Yes. Section 33 of the Act specifically states that conduct that takes place outside of Singapore will also be prohibited by the Section 34 Prohibition if it has the object or effect of preventing, restricting or distorting competition within Singapore. More specifically, section 33 of the Act specifies that section 34 of the Act may apply notwithstanding that:

- an agreement referred to in section 34 has been entered into outside of Singapore;
- any party to such agreement is outside Singapore; or
- any other matter, practice or action arising out of such agreement is outside Singapore.

Investigation

7 Steps in an investigation

What are the typical steps in an investigation?

In the usual course, parties generally become aware that they are being investigated for a potential contravention of the Section 34 Prohibition in one of two ways. On the one hand, the CCS may issue a formal notice, pursuant to section 63 of the Act, requiring the production of information or documents. This notice will set out the details of the potential contravention that the CCS has reasonable grounds for suspecting has occurred. On the other hand, the CCS may conduct unannounced searches (dawn raids) of business premises (under a warrant and pursuant to section 65 of the Act) where they have reasonable grounds for believing that there are relevant documents on the premises that would be concealed, removed, tampered with or destroyed if requested by formal notice. The CCS may also enter a premises without a warrant under section 64 of the Act; however, in such cases the CCS does not have the ability to actively search the premises.

Following on from the above, it is not uncommon for multiple formal notices (for the provision of information and documents, or both) to be issued by the CCS to either the infringing parties or any other parties that might have information that is relevant to the investigation. In requesting such information, it is open to the CCS under section 63(3) of the Act to specify the time, place, manner and form of the provision of such, and it is not uncommon that parties are required to attend formal interviews to provide the information or explain documents.

Upon completion of the investigation, and where the CCS is proceeding to take enforcement action, the CCS will give notice to the infringing parties of the directions it intends to impose. These directions will be encapsulated within a proposed infringement decision (PID), which will set out the facts on which the CCS relies and its reasons for the proposed decision. Upon receipt of the PID parties are given an opportunity (usually within six to eight weeks) to make written representations to the CCS on the findings in the PID. Parties, and their authorised representatives, are also afforded a reasonable opportunity to inspect the documents in the CCS's file relating to the matters referred to in the notice. Parties may also request the ability to make oral representations to elaborate on the written representations, once made.

Thereafter, and having regard to the written representations, the CCS will issue its final infringement decision.

8 Investigative powers of the authorities

What investigative powers do the authorities have?

Refer to question 7 relating to investigation steps.

International cooperation**9 Inter-agency cooperation**

Is there inter-agency cooperation? If so, what is the legal basis for, and extent of, cooperation?

The CCS has the ability to, under section 88 of the Act and with the approval of the minister for trade and industry, enter into arrangements with any foreign competition body under which each party may:

- furnish information to the other party information in its possession if the information is required by that other party for the purpose of performance by it of any of its functions; and
- provide such other assistance to the other party as will facilitate the performance by that other party of any of its functions.

In entering into any such arrangement, the CCS is also required under section 88 of the Act to take certain precautions (including obtaining an undertaking from the relevant counterparty) relating to the subsequent disclosure of any information provided.

It has been publicly acknowledged by the CCS that, to date, there has been at least one occasion where dawn raids performed by the CCS in respect of a potential violation of the Section 34 Prohibition have been coordinated with overseas competition authorities.

10 Interplay between jurisdictions

How does the interplay between jurisdictions affect the investigation, prosecution and punishment of cartel activity in the jurisdiction?

Competition law in Singapore is still at a relatively early stage of its introduction, and it is too early to draw any meaningful conclusions relating to how the interplay between jurisdictions affect the investigation, prosecution and punishment of cartel activity in Singapore. In relation to the three enforcement decisions made by the CCS to date in respect of the Section 34 Prohibition, such cases have not involved infringements of competition laws in other jurisdictions.

11 Adjudication

How is a cartel matter adjudicated?

Cartel matters are investigated, and prosecuted, by the CCS, which has the ability to impose fines up to a statutory maximum or to make other directions it deems fit to bring the infringement to an end. Appeals of CCS decisions can be made to the CAB, and then subsequently to the High Court and the Court of Appeal. Further information on the appeal process is set out in question 12.

12 Appeal process

What is the appeal process?

Appeals of CCS decisions are made to the CAB, which is an independent body established under section 72 of the Act. The CAB comprises 30 members including lawyers, economists, accountants, academics and other business people. In the usual course, a panel of five members will be appointed to hear an appeal. The CAB's powers and procedures are set out primarily in section 73 of the Act and the Competition (Appeals) Regulations.

Appeals are made by lodging a notice of appeal, in accordance with the Competition (Appeals) Regulations, within two months from the date of the CCS's infringement decision. Thereafter, the CCS has six weeks to file its defence. The procedure and timetabling of the appeal may be determined at any time during the proceedings by the CAB, usually through holding a case management conference

with the parties. The CAB has broad powers to make directions it thinks fit in order to determine the just, expeditious or economic conduct of the appeal proceedings.

Parties may appeal CAB decisions, in accordance with section 74 of the Act, to the High Court on a point of law arising from a decision of the CAB, or in respect of any decision made by it as to the amount of the financial penalty. Appeals are brought by way of originating summons, and the procedure governing the appeal is set out in order 55 of the Rules of Court (Cap.322, R 5, 2006 Rev ed).

Parties may also appeal High Court decisions to the Court of Appeal under section 74 of the Act. Such appeals are governed by the same procedure as all other civil appeals in Singapore. There is no further appeal right from the Court of Appeal.

13 Burden of proof

With which party is the burden of proof?

In establishing that an infringement of competition law has occurred (ie, that the Section 34 Prohibition has been infringed) the evidential burden of proof is borne by the CCS. However, in establishing the application of a statutorily provided exclusion, exemption or other defence (ie, that the arrangement in question gives rise to 'net economic benefit' and thus should be excluded through the application of paragraph 9 of the third schedule to the Act) the onus would fall on the party alleging the application of the exclusion, exemption or defence.

In appeals, the onus would fall on the applicant to establish its case on the balance of probabilities in the usual course.

Sanctions**14 Criminal sanctions**

What criminal sanctions are there for cartel activity? Are there maximum and minimum sanctions?

Currently, involvement in cartel activity does not give rise to criminal liability in Singapore. Notwithstanding that cartel participation is not currently a criminal offence, criminal prosecutions may arise in the context of cartel investigations where a person:

- refuses to provide information pursuant to a requirement on him or her to do so;
- destroys or falsifies documents;
- provides false or misleading information; or
- obstructs an officer of the CCS in the discharge of his or her duties.

A offence of a nature described above is punishable by a prison sentence not exceeding 12 months, a fine not exceeding S\$10,000, or both. To date, there have been no such criminal sanctions imposed in Singapore.

15 Civil and administrative sanctions

What civil or administrative sanctions are there for cartel activity?

The CCS, under section 69 of the Act, can make such directions as it considers appropriate to bring an infringement to an end, or to remedy, mitigate or eliminate any adverse effect of the infringement. While section 69 provides a general discretion to the CCS in making directions, the section provides specific examples of the directions that the CCS may make, including:

- requiring parties to the agreement to modify or terminate the agreement;
- to pay to the Commission such financial penalty in respect of the infringement as the Commission may determine (where it determines that the infringement has been committed intentionally or negligently), but not exceeding 10 per cent of such turnover

- of the business of the undertaking in Singapore for each year of infringement for such period, up to a maximum of three years;
- to enter such legally enforceable agreements as may be specified by the Commission and designed to prevent or lessen the anti-competitive effects which have arisen;
 - to dispose of such operations, assets or shares of such undertaking in such manner as may be specified by the Commission; and
 - to provide a performance bond, guarantee or other form of security on such terms and conditions as the Commission may determine.

16 Civil and administrative sanctions

Where possible sanctions for cartel activity include criminal and civil or administrative sanctions, can they be pursued in respect of the same conduct? If not, how is the choice of which sanction to pursue made?

As discussed in question 14, there are currently no criminal sanctions for cartel activities in Singapore. It is open to the CCS to impose multiple administrative sanctions where it considers that such sanctions are necessary to bring the infringement to an end, a financial penalty, or both.

17 Private damage claims and class actions

Are private damage claims or class actions possible?

Parties may bring private actions for a breach of competition law under section 86 of the Act, which provides that any person who suffers loss or damage directly as a result of an infringement (including, *inter alia*, of the Section 34 Prohibition) shall have a right of action for relief in civil proceedings.

Such rights are predicated on an infringement finding by the CCS, and may only be brought within two years following the expiry of any applicable appeal periods. Third parties do not have standing to bring such claims in other circumstances, or to lodge an appeal with the CAB.

Class actions are not available. The only form of group litigation recognised in Singapore is representative action (under order 15, rule 12 of the Rules of Court). However, notwithstanding that representative actions may be brought, it would still be necessary for parties to establish that they have suffered direct loss, as required by section 86 of the Act.

18 Recent fines and penalties

What recent fines or other penalties are noteworthy? What is the history of fines? How many times have fines been levied? What is the maximum fine possible and how are fines calculated? What is the history of criminal sanctions against individuals?

The CCS has issued three infringement decisions relating to contraventions of the Section 34 Prohibition since it became effective on 1 January 2006, as outlined above in question 1 (the *Pest-Busters* Case, the *Express Bus* Case, and the *Electrical Works* Case).

In the *Pest Busters* Case, the fines levied totaled S\$262,760 across six parties, with the highest individual fine being S\$92,634.

In the *Express Bus* Case, the fines totaled S\$1.7 million across 17 parties, with the highest individual fine being S\$518,167. However, it is noted that three separate appeals in this case were brought before the CAB in June 2010, and remain pending. All three appeals challenged, *inter alia*, the CCS's financial penalty calculation. In the *Electrical Works* Case, the total fines levied were S\$187,592 across 14 parties (one of which benefited from full immunity under the CCS's leniency programme). The highest individual fine in that case was S\$44,889.

In relation to the maximum fine that can be imposed, section 69(4) of the Act specifies that a fine cannot exceed 10 per cent of the turnover of the business of an undertaking in Singapore for each

year of infringement for such a period, up to a maximum of three years.

Fines are generally calculated first by the establishment of a base amount, which is a percentage (from zero to 10 per cent) of relevant turnover. The percentage chosen varies depending on the CCS's assessment of the severity of the offence and the need for deterrence. Relevant turnover is based on the observed practice of the CCS, generally calculated as the gross turnover for each undertaking in the relevant market in Singapore (relevant turnover). However, it is noted that the CCS is not limited to the use of relevant turnover to calculate the base amount, and could in theory use total turnover in an appropriate case. The base amount is then multiplied by the duration of the offence in years, up to a maximum of three years (for instance, an infringement which lasted 2.5 years would result in the base amount being multiplied by 2.5). Adjustments are then made to this amount to reflect aggravating and mitigating circumstances.

Sentencing

19 Sentencing guidelines

Do sentencing guidelines exist?

As participation in cartel activities is not a criminal offence in Singapore, there are no sentencing guidelines.

20 Sentencing guidelines and the adjudicator

Are sentencing guidelines binding on the adjudicator?

Not applicable.

21 Leniency and immunity programmes

Is there a leniency or immunity programme?

The CCS has operated a leniency programme, which encompasses the prospect of full immunity in certain circumstances, since the enforcement of the Section 34 Prohibition began in 2006. The CCS's leniency programme is described in detail in its Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity Cases 2009 (the Leniency guidelines). The Leniency Guidelines were revised in 2009 to include the leniency plus system and marker system initiatives described in question 2.

22 Elements of a leniency or immunity programme

What are the basic elements of a leniency or immunity programme?

Where a party provides information to the CCS about a cartel before the CCS has opened any investigation into such, it may benefit from full immunity from financial penalties imposed by the CCS in respect of such. The grant of immunity is subject to the fulfilment of a number of conditions that are specified in question 23.

Where a party provides information to the CCS about a cartel after the CCS has opened its investigation the party cannot benefit from immunity, but may nonetheless benefit from lenient treatment by way of a reduction of up to 100 per cent in the level of the financial penalties imposed by the CCS. Subsequent applicants may benefit from a reduction in financial penalties of up to 50 per cent.

The leniency programme is also supplemented by the existence of the marker system and the leniency plus system (see question 2).

23 First in

What is the importance of being 'first in' to cooperate?

The party that is 'first in' benefits from full immunity from financial penalties, or may otherwise benefit from a reduction in financial penalties of up to 100 per cent. Subsequent applicants may only benefit from a reduction of up to 50 per cent of the financial penalties.

Paragraph 2.2 of the Leniency Guidelines states that an undertaking will benefit from full immunity from financial penalties if all of the following conditions are satisfied:

- the undertaking is the first to provide the CCS with evidence of the cartel activity before an investigation has commenced, provided that the CCS does not already have sufficient information to establish the existence of the alleged cartel activity; and
- the undertaking:
 - provides the CCS with all the information, documents and evidence available to it regarding the cartel activity;
 - maintains continuous and complete cooperation throughout the investigation and until the conclusion of any action by the CCS arising as a result of the investigation;
 - refrains from further participation in the cartel activity from the time of disclosure of the cartel activity to the CCS (except as may be directed by the CCS);
 - must not have been the one to initiate the cartel; and
 - must not have taken any steps to coerce another undertaking to take part in the cartel activity.

If the undertaking cannot meet the criteria for immunity specified above, it may still benefit from lenient treatment through a reduction of its financial penalty by up to 100 per cent. The extent to which any financial penalty would be reduced in such circumstances depends on the stage at which the undertaking comes forward, the evidence already in the CCS's possession and the quality of the information provided by the undertaking.

Ultimately, the importance of being 'first in' is that a party stands to benefit by up to a 50 per cent reduction in financial penalties over and above subsequent applicants.

24 Going in second

What is the importance of going in second? Is there an 'immunity plus' or 'amnesty plus' option?

As explained in question 23, the undertaking that is 'second in' may benefit from a reduction in financial penalties of up to 50 per cent. While the Leniency Guidelines do not specifically identify the likely reductions in financial penalties with respect to subsequent applications, it does specify that the CCS will take into account the stage at which the undertaking comes forward, the evidence already in the CCS's possession and the quality of the information provided by the undertaking.

A leniency plus system, whereby a party may benefit from further reductions in financial penalties in respect of one cartel investigation by providing information to the CCS in respect of another cartel, is available in Singapore. To benefit from this programme, the CCS states in its Leniency Guidelines that the following conditions must be met:

- the evidence provided by the undertaking relates to a completely separate cartel activity. The fact that the activity is in a separate market is a good indicator, but not always decisive; and
- the undertaking would qualify (in accordance with the usual qualification criteria for leniency applications) for total immunity from financial penalties or a reduction of up to 100 per cent in the amount of the financial penalty in relation to its activities in the second market.

If a party can satisfy the above conditions, then it could benefit from a reduction in financial penalties in respect of the first cartel, which is in addition to any reduction that it already stood to receive in respect of the first cartel.

25 Approaching the authorities

What is the best time to approach the authorities when seeking leniency or immunity?

Immunity may only be sought from the CCS before it commences an investigation. Accordingly, such applications should be made as soon as possible. The introduction of the marker system has facilitated such early approaches, as there is now no need for an applicant to ensure that it has all of the evidence collated and ready for submission to the CCS at the time it makes its application.

While applications for leniency may be made after the CCS has commenced its investigation, the earlier the party makes such an application and the higher up the leniency queue they are, the more likely that the information provided will be of value to the CCS and the more likely that the party will stand to benefit from lenient treatment.

26 Confidentiality

What confidentiality is afforded to the leniency or immunity applicant and any other cooperating party?

The Leniency Guidelines provide, at paragraph 8.1, that the CCS will 'endeavour to the extent consistent with its obligations to disclose or exchange information, to keep the identity of such undertakings confidential throughout the course of the investigation, until the CCS issues a written notice (under section 68(1) of the Act) of its intention to make a decision that the Section 34 Prohibition has been infringed'.

To the extent that information is provided to the CCS in the course of making a leniency application, responding to a notice of the CCS to provide information or in otherwise cooperating with the CCS, the providing party can request confidential treatment in respect of such information, or the relevant parts thereof, in accordance with section 89(3) of the Act.

27 Successful leniency or immunity applicant

What is needed to be a successful leniency or immunity applicant?

See question 23.

28 Plea bargains

Does the enforcement agency have the authority to enter into a 'plea bargain' or a binding resolution to resolve liability and penalty for alleged cartel activity?

As there are no criminal sanctions applicable to contraventions of the Section 34 Prohibition in Singapore, there is no applicable 'plea bargain' concept. However, it is noted that in appropriate cases, the CCS may seek to resolve contraventions through issuing warnings rather than taking enforcement proceedings. An example was the CCS's decision in April 2008 to warn four ceremonial-cake manufacturers to not engage in a proposed arrangement that would likely contravene the Act if implemented.

29 Corporate defendant and employees

What is the effect of leniency or immunity granted to a corporate defendant on its employees?

Contraventions of the Section 34 Prohibition by employees would be considered contraventions by their employing undertaking in Singapore. In this regard, and given that employees cannot be potentially subject to criminal proceedings for engaging in activity in breach of the Section 34 Prohibition, there is no distinction between an undertaking and its employees from the perspective of a leniency or immunity application.

30 Cooperation

What guarantee of leniency or immunity exists if a party cooperates?

Continuous and complete cooperation throughout the investigation and until the conclusion of any action by the CCS arising as a result of the investigation is a requirement of the grant of leniency or immunity.

Where a party meets the required level of cooperation in support of its application, it must also meet all of the other requirements imposed upon it as set out in question 23. In the case of a request for immunity, the CCS specifies in its Leniency Guidelines that such a request will be granted if all such conditions are met. In respect of an application for leniency, and upon satisfaction of the criteria outlined above in response to question 24, the CCS has indicated that the undertaking may benefit from a reduction in financial penalties of up to 100 per cent.

31 Dealing with the enforcement agency

What are the practical steps in dealing with the enforcement agency?

Leniency or immunity applications may be made orally or in writing by an undertaking or its authorised representative. In the usual course, initial contact is made by phone and a time is arranged for the application to be made in person.

The Leniency Guidelines indicate that it is possible that anonymous enquiries can be made to the CCS to see if leniency is still available in respect of a particular matter, but that any subsequent application cannot be made anonymously.

While the introduction of the marker system has provided applicants with some flexibility over the need to immediately provide the CCS with all of the necessary information and evidence required to qualify for leniency or immunity, the Leniency Guidelines state that in order to qualify for the marker the undertaking must provide its name and a description of the cartel conduct in sufficient detail to allow the CCS to determine that no other undertaking has applied for immunity or a reduction of up to 100 per cent for such similar conduct.

In order to 'perfect the marker' and thus actually benefit from immunity or leniency, the undertaking is afforded a specific time period within which to meet the requirements as set out in question 23. The CCS states in its Leniency Guidelines that the grant of a marker is discretionary, but that it is expected to be the norm rather than the exception.

32 Ongoing policy assessments and reviews

Are there any ongoing or proposed leniency and immunity policy assessments or policy reviews?

As discussed in question 2, there have been recent changes to the leniency system in Singapore with the introduction of the leniency plus

Update and trends

One of the most notable, and important, developments in the Singapore competition law landscape for 2010 was the commencement of the first competition litigation.

The Competition Appeal Board (CAB) heard the first ever set of appeals against a CCS decision in June 2010, relating to the CCS's infringement finding price fixing in express bus services from Singapore to Malaysia and Southern Thailand. The decisions in respect of those appeals are still pending.

The activity of the CAB looks likely to increase in 2011. In particular, the CAB will hear the appeal of SISTIC.com Pte Ltd, which has appealed the CCS's infringement finding against it relating to an alleged abuse of a dominant position.

The decisions in respect of the above appeals have the ability to significantly shape the future of competition law enforcement in Singapore.

system and marker system. No other ongoing or proposed leniency or policy assessments or reviews have been publicly announced.

Defending a case**33 Representation**

May counsel represent employees under investigation as well as the corporation? Do individuals require independent legal advice or can counsel represent corporation employees? When should a present or past employee be advised to seek independent legal advice?

As stated above, cartel involvement does not give rise to criminal sanctions, and accordingly representation is at the corporation level.

34 Multiple corporate defendants

May counsel represent multiple corporate defendants?

It is possible for counsel to represent more than one party, subject to adherence to the standard professional and ethical responsibilities. Usually, in representing multiple parties, such parties must have a common interest in the proceedings.

35 Payment of legal costs

May a corporation pay the legal costs of and penalties imposed on its employees?

Penalties are imposed only at the corporation level in Singapore.

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36 Getting the fine down

What is the optimal way in which to get the fine down?

An application for leniency may result in full immunity from prosecution or in a reduction of up to 100 per cent of the financial penalty imposed. Furthermore, the use of the leniency plus system is another avenue open to parties in seeking to further reduce their penalties. For further information about the leniency programme and the leniency plus system, see questions 2 and 21 to 27.

Further to this, it is in a party's interest to cooperate during the course of the CCS's investigation. In the *Pest Busters* Case, the *Express Bus* Case and the *Electrical Works* Case, the cooperation of the investigated parties during the investigation was viewed as a mitigating factor, and in many instances parties benefited from a reduced financial penalty. It is also clear from statements of the CCS in all three of its decisions that the immediate cessation of the potentially infringing conduct at a very early stage in the proceedings might be considered, at least, a non-aggravating factor.

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