

COMPETITION LAW UPDATE

Recommended Increase In School Bus Fares Raises Competition Concerns

The Concerns of the Competition Commission of Singapore (the “CCS”)

Recommended price increases of scheduled school bus services have been targeted by the CCS as constituting potentially anti-competitive behaviour, according to its press statement released last Friday, which is available at <http://www.ccs.gov.sg/NewsEvents/PressReleases/SSTA+takes+remedial+action.htm>.

The CCS took issue with the recommendations of the Singapore School Transport Association (the “**Association**”) that its members increase the price of scheduled school bus services by S\$10 to S\$15 per month, in the light of escalating diesel prices.

In its press release, the CCS stated that “*price recommendations or guidelines tend to restrict independent pricing decisions. The circulation of such recommended prices by a trade association, even if it is non-binding, is likely to prompt industry players to cluster their prices around, if not exactly matching, the recommended prices. This is not helpful to free competition*”.

In particular, the CCS rejected the argument that price recommendations prevent over-charging by informing customers what the “market rate” should be. The CCS believed that it is better for customers to select the most suitable deal for themselves based on their own research rather than depending on pricing guidelines issued by associations which, in reality, do not prevent errant sellers from over-charging.

The CCS has since met with the Association on this issue. The Association had been advised to take appropriate remedial action.

The Lessons

This is the first time that the CCS has publicly taken action on price recommendations made by an association. This follows the completion of a study into the effects of price recommendations by trade and professional associations last year which was undertaken by a consortium led by Drew and Napier LLC.

Section 34 of the Competition Act prohibits agreements between companies, decisions by associations or concerted practices which have, as their object or effect, the prevention, restriction or distortion of competition within Singapore. Generally, agreements, decisions by associations or concerted practices that fix prices (or components of prices) are deemed to infringe section 34 of the Competition Act (the “**Section 34 Prohibition**”).

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In the CCS' Guidelines on the Section 34 Prohibition, the CCS states that “[r]ecommendations of a trade association in relation to price or collective price fixing or price coordination... may be considered to be price fixing, regardless of the form it takes”.

The issue of price recommendations first came into the public spotlight in April 2007 when the Singapore Medical Association (the “SMA”) withdrew its Guideline on Fees after receiving advice from several of its legal advisers that it may breach the Section 34 Prohibition. The CCS issued a press release on this subject on 3 April 2007. A copy of the press release is available at <http://www.ccs.gov.sg/NewsEvents/PressReleases/2007/Press+Statement+on+SMA+GOF.htm>.

The CCS publicly endorsed the SMA's move as it felt that this would give medical practitioners greater flexibility to set their own fees in relation to their business costs. The CCS also encouraged medical practitioners to display their consultation fees so that consumers could make informed decisions and benefit from greater transparency and competition of prices. The chairman of the CCS noted, in particular, that “guidelines set administratively stifle market forces and harm consumers by reducing choice. They can become a signal to market players and result in prices clustered around a narrow range even if it is not tantamount to hardcore price fixing. More efficient players have little incentive to offer lower prices. The CCS favours the adoption of independently set prices to reflect the costs of each business... [and] a transparent system of letting consumers know the prices charged for each service. This would enable consumers to make an informed choice as to where they can seek value for money for their payments”.

In the present case involving the school transportation sector, the CCS reiterated its position that price recommendations, even if they are non-binding, could distort the level of pricing that may have otherwise resulted had all the bus operators been left to determine their own fare increases. This is because price recommendations have the potential of creating market conditions that are favourable to price coordination amongst the market players. The CCS, however, clarified that it has no objections to fare increases *per se*, so long as these are decided independently by individual bus operators.

Proponents of price recommendations commonly argue that pricing guidelines benefit customers by apprising them of the “market rate” and protecting them from overcharging. It seems clear, however, that the CCS does not consider such arguments sufficiently persuasive. In particular, the CCS is of the view that price recommendations issued by associations in reality do not prevent errant sellers from over-charging.

The message from the CCS appears to be unequivocal: associations should generally be wary of taking any action (including issuing recommendations) relating to the prices, terms and conditions at or on which their members offer goods and services.

If you wish to discuss how this topic may potentially affect you, please feel free to contact:

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