

10 Jan 08

DREW & NAPIER LLC

LEGAL UPDATE

A DREW & NAPIER PUBLICATION

COMPETITION LAW UPDATE

CCS HANDS DOWN FIRST INFRINGEMENT DECISION

Yesterday, the Competition Commission of Singapore (the “**CCS**”) issued its decision to fine 6 pest control companies for bid-rigging and collusive tendering.

The decision is the first of its kind in Singapore and the first infringement decision of the CCS following its creation in 2005. It marks the conclusion of an investigation that has run from October 2006 following the complaint of a procurement officer and the discovery of an incriminating email.

It seems unlikely that any of the parties are likely to challenge the finding as no such challenges were made to the CCS' more interim findings of October 2007, at which time representations from the parties were requested.

The Facts and Investigation

The investigation revealed that collaboration had taken place between the 6 companies in respect of the supply of pest control chemicals on particular projects.

The companies colluded in respect of tenders for pest control chemicals in relation to certain treatment projects. As such, the outcome of the tenders was essentially manufactured rather than the result of a true competitive process.

The investigation showed that collusion took place in relation to 6 projects, of which 4 were won by the ‘agreed’ party. The other 2 were won by parties not involved in the collusion, suggesting that the collusive prices may well have been artificially high – or at least higher than competitive levels.

The Financial Penalties

In addition to the adverse publicity and public perception that the finding will create, the parties to the collusive tendering were also fined a total of S\$262,759.66. The fines ranged from S\$4,332 to S\$92,634.

The penalties were calculated by factoring in the turnover of the companies, the duration of the infringement and its severity (which in this case was considered to be high). A few other aggravating and mitigating factors were considered and, in particular, the CCS noted that the levels of the fines were tempered by the extent to which the individual companies cooperated with the CCS.

As the decision is the first of its kind, the fines may also be somewhat conservative.

The Lessons

The decision is a stark reminder to all industries that competition law is real and that business practices need to be sensitive to such laws or face serious consequences.

All businesses should be proactive to prevent any risks of being found in breach of competition law. As highlighted in this case, the consequences can be severe in respect of wasted management hours, financial penalties and negative publicity.

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Businesses should also be conscious of the willingness of the CCS to use its dawn raid powers in order to carry out its investigations. Such powers were used in this case and are likely to be used again in the near future. It is imperative that businesses have procedures to deal with these situations should the need ever arise.

Further, the decision highlights the importance and prudence of cooperation of businesses with the CCS in the course of their investigations. This is a factor that the CCS acknowledges may act in mitigation of any penalty.

Ensuring That You Are Compliant

On 31 January 2008, Drew & Napier LLC is hosting a competition law compliance seminar targeted at informing you and your business on the practical steps that can be taken to ensure current and ongoing compliance with competition law. Details are as follows:

Competition Law in Singapore: Practical Insights for Compliance

31 January 2008 • Thursday • 13 00 – 17 00

Level 3 Ballroom II & III, Singapore Marriott Hotel, 320 Orchard Road Singapore 238865

We extend a warm invitation to all of our friends and clients to attend. To register, please email complaw@drewnapier.com. Kindly RSVP by 15 January 2008.

If you would like more information about this decision or wish to discuss how it may potentially affect you or your business, please feel free to contact our Competition Law business group:

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Cavinder handles complex litigation spanning a wide area of corporate and commercial matters. One of his areas of expertise is competition law where he has represented various clients in investigations by competition law regulators both in Singapore and overseas. Cavinder previously practised anti-trust law in New York, working on cases like the Microsoft anti-trust litigation, and obtaining US Department of Justice approval for the merger between Grand Metropolitan and Guinness in one of the, then, world's largest mergers. Cavinder graduated from Oxford University with First Class Honours in Law. He worked for the Chief Justice of Singapore as a Justices' Law Clerk. Cavinder also has a Masters in Law from Harvard Law School which he attended on a Lee Kuan Yew Scholarship.

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Chong Kin practises corporate law with strong emphasis in the specialist area of competition law. Chong Kin played a key role in the development of sectoral competition regulation in the telecommunications, media and print industries in Singapore. Chong Kin regularly advises a number of large international clients on competition law, and was involved in the first merger notification filing to the Competition Commission of Singapore in 2007. He was cited in *Who's Who Legal – Singapore 2008* as a leading competition and regulatory communications lawyer.

The contents of this update are only intended to provide general information on the subject covered. Nothing in this publication should be treated as specific professional legal advice concerning any particular business, operational or other situations with which you might be faced. Drew & Napier LLC accepts no liability for, and does not guarantee the accuracy of, the information contained in this publication, and does not accept any liability for any loss or damage arising from any reliance thereon.

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