

LEGAL UPDATE

A DREW & NAPIER PUBLICATION

COMPETITION LAW UPDATE

COMPETITION LAW IN SINGAPORE: DAWN RAIDS

Introduction

Singapore has now had competition law in force for nearly two years. The restrictions on anti-competitive agreements, decisions, and practices (section 34 of the Competition Act) (the “**Act**”) and the prohibitions of abuse of dominance (section 47 of the Act) have been in force since 1 January 2006, while the merger provisions (section 54 of the Act) came into force on 1 July this year.

The Competition Commission of Singapore (the “**CCS**”) has the responsibility of enforcing the provisions of the Act. Businesses in Singapore face the real possibility of being investigated and prosecuted by the CCS for alleged anti-competitive conduct.

The CCS has the ability to conduct searches of business premises without prior notice. Around the world, this is commonly referred to as a “dawn raid”. This update considers some recent dawn raids conducted by overseas competition regulators and how businesses can best protect themselves in the event that the CCS comes knocking on the door.

The CCS’ Powers

The CCS has, in connection with its duties to investigate breaches of competition law, extensive powers to enter premises and to seize documents which are relevant to its investigation. In certain circumstances, the CCS may provide two working days’ notice that it intends to enter a business premises. However, the CCS need not always provide advance notice because it may prefer to take advantage of the element of surprise. Such searches are commonly referred to as “dawn raids” and are carried out with no prior warning.

Before proceeding with a dawn raid, the CCS must make an application to the District Court. In issuing a warrant, the court must be satisfied that there are reasonable grounds for suspecting that there are, within the premises to be searched, documents which:

- (a) have not been produced, although the CCS has required production thereof, either by written notice or in the course of an inspection without a warrant;
- (b) an investigating officer could have required to be produced in the course of an inspection without a warrant, but was unable to effect entry into the premises; or
- (c) would be concealed, removed or tampered with or destroyed, if the CCS were to require their production by written notice. This last ground is the only means by which the CCS is able to carry out an inspection of any premises with a warrant without first using one of its other powers of investigation.

Overseas Experiences

Competition authorities around the world regularly use dawn raids as an investigative tool to quickly obtain valuable evidentiary information. Dawn raids are most often employed in investigating alleged price-fixing or cartel activities. This is because it is extremely difficult to detect cartel behaviour due to the secretive nature of such activities.

In March 2007, the Office of Fair Trading (the "OFT"), the United Kingdom's competition authority, issued two press releases relating to its ongoing investigation of alleged bid rigging in the construction industry. The OFT stated that, for the last two years, it had been conducting an investigation into bid rigging by construction companies in England. During its investigation, the OFT conducted 57 dawn raids. The investigation and dawn raids uncovered evidence of bid rigging in thousands of tenders with a combined estimated value approaching £3 billion.

In February 2006, the European Commission's officials dawn-raided the offices of some of the world's largest air cargo carriers. This unannounced inspection was part of a coordinated worldwide investigation of a possible cartel for the fixing of surcharges for fuel. British Airways, Cathay Pacific, Lufthansa, Air-France-KLM and Luxembourg's Cargolux were amongst the airline companies subjected to dawn raids. Simultaneous dawn raids were also carried out in the United States by the Department of Justice and the Federal Bureau of Investigation, and in Asia where Japan Airlines and two South Korean airlines were also raided.

In 2004, the Irish Competition Authority conducted a dawn raid on the Irish Medical Organisation's (the "IMO's") offices in Dublin. Following the dawn raid and the investigation, the Irish Competition Authority found that the IMO had, during the course of a fee dispute, coordinated the behaviour of its member general practitioners. The "coordination" undertaken by the IMO included the direction or recommendation of fees that the general practitioners were to charge, eg., fees for medical examination reports. The investigation also concluded that the IMO had directed or recommended to general practitioners not to provide medical examination reports unless life insurance companies paid the recommended fees. Clearly, professional associations are not spared when it comes to dawn raids.

When the CCS Comes Knocking – Practical Tips for Dealing with a Dawn Raid

While the CCS has yet to conduct a dawn raid in Singapore, many believe that it is only a matter of time before the CCS conducts its first surprise inspection. In order to prepare your company for a dawn raid, we recommend that your company has clear internal guidelines in the unfortunate event of a dawn raid.

The internal guidelines should identify the procedures for the three crucial stages of a dawn raid:

- (a) the arrival of the investigators;
- (b) actions to be taken during the raid itself; and
- (c) actions to be taken after the conclusion of the dawn raid.

Dawn raid guidelines should also have clear instructions on important issues such as legal privilege and self-incrimination.

It is crucial that those in the front lines of the office immediately know who to contact. In almost all cases this will be the company's general counsel. At the same time, specialist external competition lawyers should also be contacted to assist with the dawn raid.

Comment

Dawn raids are an important tool for a competition authority, and the outcome of such a raid will have a significant impact on the investigation. As long as the company and its staff are well prepared for a raid, it should demonstrate to the CCS that the company has nothing to hide by extending its full cooperation during the raid. By making advance preparations and being informed beforehand of one's rights and obligations during a dawn raid, the company will be able to go through the raid confidently, and this will set the stage for a positive engagement with the regulator whilst at the same time protecting the company's rights in a highly charged adversarial environment.

If you would like more information about this update or wish to discuss how to prepare your company for a dawn raid or to prepare dawn raid guidelines, please feel free to contact either of the following dispute resolution lawyers in our Competition Law practice group:

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In the event that a dawn raid is conducted before or after office hours and you would like us to assist, please phone Drew & Napier's 24 hour Number: +65 9726 0573

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