

COMPETITION LAW UPDATE

2 April 2013

SINGAPORE FINES 12 MOTOR VEHICLE TRADERS FOR BID-RIGGING AT PUBLIC AUCTIONS

On 28 March 2013, the Competition Commission of Singapore (“**CCS**”) handed down fines totalling S\$179,071 on 12 motor vehicle traders for bid-rigging at public motor vehicle auctions held by various government agencies.¹

The 12 motor vehicle traders (“**parties**”) were found to have infringed section 34 of the Competition Act (Cap. 50B) which prohibits agreements or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore.

CCS found that the 12 traders suppressed bids at the agencies’ public auctions of motor vehicles by entering into an agreement to refrain from bidding against each other over a period of three years from January 2008 to March 2011

BACKGROUND AND FACTS OF CASE

The affected government agencies regularly conduct public auctions to dispose of decommissioned motor vehicles and other vehicles taken into custody for reasons such as unpaid taxes. With the exception of two government agencies which switched to online

auctioning (“**online auctions**”) after May 2010, these auctions are held at hotel ballrooms or at the agencies’ premises (“**physical auctions**”). The auctions are conducted by agency-appointed auction houses and are open to the general public.

Individuals who make a bid at the physical auctions will be identifiable by everyone else present at the physical auctions because the bidder has to either raise his hand or an allocated number tag to indicate his bid. In contrast, the identities of bidders in the online auctions are not known to other bidders because each online bid is anonymised.

After investigations, CCS concluded that there was sufficient evidence to show that there was an agreement or concerted practice amongst the parties to forebear from bidding against each other for vehicles at these public auctions.

At the physical public auctions, CCS found that a sole bidder would bid for the vehicles under the bid-rigging agreement. After the public auction, the motor vehicle traders would meet to conduct their own “private” auctions for the vehicles. At the “private” auctions, the bids will open at the price paid at the public auction. The difference in the bid price of the vehicles for the public auctions and the “private” auctions would be put into a common pool which would subsequently be shared (“**rebates**”) amongst those present at the “private” auction and did not bid at the public auction. Apart from sustaining the bid-rigging agreement by incentivising parties not to bid at the public auctions through the use of such rebates, some parties informed CCS that they were “scolded” when they entered a competing bid in the public auctions.

With regard to bid-rigging in the online auctions, CCS observed a pattern amongst four of the cartelists, Pang’s Motor, Kiat Lee, Minsheng and Tim Bock, not to enter competing bids against each other. Along with an incriminating statement provided by one of the parties, CCS concluded that there was a “deliberate agreement and/or concerted practice” amongst four parties to forebear from bidding against each other.

CCS stated that about 700 motor vehicles were won by the cartelists during 53 physical and online auctions at bids ranging from S\$10 to S\$35,000. In total, the quantum of the winning bids for the

¹ The affected agencies included the Singapore Civil Defence Force (“**SCDF**”), Land Transport Authority (“**LTA**”), National Environment Agency (“**NEA**”), Singapore Customs and Singapore Police Force (“**SPF**”).

vehicles at the public auctions amounted to slightly more than S\$1.2 million. However, CCS' view is that this was likely to be an underestimation of the true market value of these vehicles due to the artificially suppressed bids. As a result of the collusive activities, members of the public would have suffered lower sales proceeds for vehicles sold by the government agencies on their behalf. Auction houses could have received lower commission fees as a result of the suppressed bids.

FINANCIAL PENALTIES IMPOSED

In determining the level of financial penalties to impose, CCS highlighted two main aggravating factors that it took into consideration: (1) whether the party acted as the leader or instigator of the infringement; and (2) the number of infringements committed by each party. For the latter, CCS increased the penalties imposed by multiples of 5% for each infringement committed.

In imposing the highest fine of S\$50,733 on Pang's Motor Trading, CCS considered that it acted as a leader in the infringements by coordinating and playing a lead role in the "private" auctions as well as being responsible for handling the auction documentation and disbursement of the common pool monies to the other participants. It also committed the most number of infringements and had its penalty increased by 255%. There were no mitigating factors for all the other parties with the exception of Tim Bock, who cooperated with CCS in its investigation.

After taking into account the number of infringements committed by the other parties as an aggravating factor, the remaining 11 motor vehicle traders were fined accordingly:

No.	Trader	Fine Imposed (S\$)
1.	Tim Bock Enterprise	37,795
2.	Kiat Lee Machinery Pte Ltd	17,566
3.	Yong Soon Heng Auto Parts	8,977
4.	Auto & Carriage Engineering	8,000
5.	Gold Sun Motor Vehicle Charter & Rental	8,000

No.	Trader	Fine Imposed (S\$)
6.	Hup Lee Second Hand Auto Parts	8,000
7.	Kiat Lee Scrap Vehicles Centre Pte Ltd	8,000
8.	Minsheng Agencies	8,000
9.	PKS Scrap Vehicle Centre	8,000
10.	Seng Guan Auto Parts	8,000
11.	Seng Hup Huat Second Hand Auto Parts	8,000

INVESTIGATIONS AND EVIDENCE

Use of identification evidence

Notably, this Infringement Decision expressed for the first time the principles that CCS will adopt when relying on identification evidence. In the course of interviews with several individuals involved in the bid-rigging, CCS showed these interviewees photographs of other individuals and asked the interviewees to identify whether the individuals in the photographs were similarly involved in the bid-rigging.

In using the evidence, CCS noted the need to be cautious before establishing liability based on identification evidence, and adopted the principles laid down in *Thomas Heng Aik Ren v PP* [1998] 3 SLR 465 regarding the use of identification evidence. Specifically, in deciding whether to use identification evidence to indict an individual, CCS adopted the 3-step test as follows:

- (a) Step 1: CCS should consider whether the case against the accused depends wholly or substantially on the correctness of the identification evidence.
- (b) Step 2: If so, CCS should consider if the identification evidence is of good quality, taking into account the circumstances in which the identification by the witness was made.
- (c) Step 3: Where the quality of the identification evidence is poor, CCS should go on to ask if there is any other evidence that goes to support the correctness of the identification.

In determining if the evidence is of good quality (i.e. step 2), a non-exhaustive list of factors that

CCS will consider includes the length of time that the witness observed the accused, the distance at which the observation was made, the number of times the witness saw the accused, and the presence of any special reasons for the witness to remember the accused.

On the facts, CCS determined that the identification evidence was of good quality and could be relied on because the interviewees saw the people they identified on a frequent basis over an extended period of time, the observations were made at close range at the auctions, and because the interviewees operated within the same trade as those identified and would have known each other for a period of time.

Cooperating with CCS' investigation

It also bears mention that while CCS sent section 63 notices to various individuals to request for them to produce specific document and to be interviewed by CCS, three individuals failed to respond to the notices. Separately, three parties, Auto & Carriage, Gold Sun and Seng Hup Huat, did not respond to CCS' section 63 notice requesting for information on their financial information. In response to the latter breach, CCS conducted a dawn raid of these parties' premises to obtain the requested information.

It is emphasized that companies and individuals are obliged to cooperate with CCS in their conduct of any investigation, including complying with any CCS request for documents and information.

A failure to do so may result in CCS exercising its powers under section 64 of the Competition Act to enter a company's premise without a warrant to obtain any such requested documents. Further, the company may also be liable on conviction for a fine not exceeding S\$10,000. Additionally, if the non-compliance by the company is proven to have been committed with the consent or connivance of a company officer or is attributable to neglect on his part, this person is also liable to a fine not exceeding S\$10,000 or to imprisonment for a term not exceeding 12 months or to both.

Similarly, individuals who refuse to provide information, provide false or misleading information, destroy or falsify documents, or generally obstruct CCS officers from conducting investigations may be liable to a fine not exceeding

S\$10,000 or to imprisonment for a term not exceeding 12 months or to both.

CONCLUDING REMARKS

Companies are reminded that any agreement to refrain from bidding against other parties in an auction is still considered a form of bid-rigging and therefore constitutes a breach of section 34 of the Competition Act. Even if the bids are conducted online, CCS has demonstrated that the supposed anonymity of an online bid is not a barrier to its investigations and a finding of an anti-competitive agreement.

Companies and individuals are also reminded to co-operate with the CCS in its investigations. Otherwise, CCS may obtain such information through a surprise dawn raid, while criminal liability may also attach to the non-cooperating individual or company.

For more information on this matter or if you require any assistance with making a submission to CCS on the Revised Guidelines, please contact Drew and Napier LLC's **Competition Law and Regulatory Practice Group**:



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