DREW & NAPIER

COMPETITION LAW QUARTERLY UPDATE

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WELCOME MESSAGE

In this issue we bring you the major developments in competition law both in the region and abroad, from the first quarter of 2015.

We have also attached a special feature article, which takes a timely look at "Data Protection in the Context of Competition Law Investigations", written by our Directors Mr Lim Chong Kin and Ms Charmian Aw.

In other news, the second edition of the Singapore Academy of Law's "Competition Law and Policy in Singapore" has now been published and is available **here**.

Co-written by our own Mr Cavinder Bull, SC and Mr Lim Chong Kin, along with the renowned expert in competition law Emeritus Professor Richard Whish, the book provides a consolidated and complete reference to Singapore Competition Law.

Our team is making sure to stay abreast of developments in the competition world. Our Mr Lim Chong Kin and Mr Scott Clements recently attended the ABA's Antitrust Spring Meeting in April this year – an event attended by more than 3000 competition lawyers and economists. Chong Kin also recently attended the International Competition Network's annual conference as a non-governmental advisor.

Drew & Napier's next competition law seminar – "Lessons From a Blocked Merger - Navigating Merger Control in Singapore" will be held on 21 May 2015 (Thursday). A limited number of seats are still available, so please let us know if you are interested in attending and we will save a place for you. We look forward to seeing you all then.

For more details on the Drew & Napier Competition Law and Regulatory Practice, please click **here**.

IN THE NEWS: AT A GLANCE

SINGAPORE

Competition Commission of Singapore blocks proposed healthcare merger

The Competition Commission of Singapore announced that it would not give clearance to the proposed acquisition of RadLink-Asia Pte Ltd by Parkway Holdings Ltd. For more details, please click **here**.

Competition Commission of Singapore opens market enquiry into retail petrol industry

The Competition Commission of Singapore has asked four petrol companies – namely, Shell, Chevron, ExxonMobil, and Singapore Petroleum Company – to provide information regarding adjustments in pump prices. The matter is proceeding as a market inquiry and not as an investigation. For more details, please click **here**.

AROUND THE WORLD

Update on Malaysian competition law

The Malaysia Competition Commission recently appointed a new Chief Executive Officer and issued letters to four professional bodies requiring them to dismantle their scale of fees *"in order to uphold the spirit of competition law"*. For more details of these updates on Malaysian Competition Law, please click **here**.

Taiwan introduces broad changes to competition law legislation

The Taiwan Legislative Yuan introduced significant amendments to the Taiwan Fair Trade Act ("**TFTA**") in its most extensive change to the TFTA since it was first enacted in 1992. For more details, please click **here**.

Competition authorities clamp down on misconduct in financial markets

Competition regulators on both sides of the Atlantic have moved to clamp down on anti-competitive behaviour in financial markets. The European Commission has imposed a fine of €14.9m (S$21.6m) on UK broker ICAP for facilitating cartels in their manipulation of the Japanese Yen – London Interbank Offered Rates submissions, while UBS has elected to settle for US$135m (S$185m) in the face of allegations of the manipulation of prices on the foreign exchange market. For more details, please click **here**.

German Federal Cartel Office acts against "best price" clauses used by hotel booking portals

Germany's Federal Cartel Office has raised issues against the use of "best price" clauses by hotel booking portals in several investigation and enforcement actions. For more details, please click **here**.

Italian Competition Authority fines maritime operators €14m for breaching their commitments

The Italian Competition Authority imposed a €14m (S$20.7m) penalty on nine maritime transport operators and a trade association for violating commitments provided in a previous investigation for price-fixing in 2009. For more details, please click **here**.

German regulator finds factory outlet's non-compete clause overly restrictive

The German Federal Cartel Office ("**FCO**") found a factory outlet's non-compete clause to be overly restrictive. The clause in question prohibited tenants of retail space in the factory outlet from establishing other outlets within a 150km radius. The FCO was of the view that clauses of this nature would be allowed only insofar as they do not exceed 50km in radius and five years in duration. For more details, please click **here**.

Turkish competition authority closes Coca-Cola probe

The Turkish Competition Board issued a decision finding that the Coca-Cola Sales and Distribution Inc.'s commercial practices did not infringe Turkish Competition Law. For more details, please click **here**.

Australian Competition and Consumer Commission loses abuse of dominance case

The Australian Competition and Consumer Commission ("**ACCC**") lost its case in the Federal Court of Australia against Pfizer Australia Pty Ltd

("**Pfizer**"). The ACCC was bringing an action for an alleged misuse of market power and exclusive dealing by Pfizer in respect of its supply of atorvastatin (a drug used to treat cholesterol) to pharmacies. For more details, please click **here**.

European probe of Google continues

More than four years after the European Commission ("**EC**") commenced investigations into Google's alleged abuse of dominance in the European online search market, the EC looks set to press formal antitrust charges against Google soon. This follows three unsuccessful attempts at reaching a settlement agreement. Meanwhile, the Russian Federal Antimonopoly Service ("**FAS**") has become the first antitrust regulator to commence formal investigations into Google's Android operating system. For more details, please click **here**.

Competition Commission of India dismisses abuse of dominance case against Volkswagen

The Competition Commission of India ("**CCI**") dismissed a complaint by Bhasin Motors (India) Private Limited against Volkswagen Group Sales India Pte Ltd alleging that the latter had abused its dominant position, after the CCI came to the conclusion that the issues raised were not competition law matters. For more details, please click **here**.

SINGAPORE COMPETITION LAW WATCH

Score Board	Number	Status	
		Concluded	Pending
Notified Agreements or Conduct	**15**	**14**	**1**
Notified Mergers or Anticipated Mergers	**49**	**48**	**1**
Infringement Decisions	**10**	**10**	**0**
Appeals	**11**	**10**	**1**

Table 1: Singapore Competition Law Watch Scoreboard (Accurate as at 23 Apr 2015)

ARTICLES & COMMENTARIES: UPDATES FROM AROUND THE WORLD

REGULATORY UPDATES

Update on Malaysian Competition Law

Change of leadership at Malaysia Competition Commission

Dr Mohd Khalid Abdul Samad has been appointed the new Chief Executive Officer ("**CEO**") of the Malaysia Competition Commission ("**MyCC**") with effect from 6 January 2015.

According to a press release by MyCC, Dr Samad has worked in various capacities at several ministries and government agencies such as the Ministry of Finance, National Institute of Public Administration, Ministry of International Trade and Industry, Ministry of Information, Culture and Communications and the Public Service Department.

Dr Samad's predecessor, Ms Shila Dorai Raj, was the first CEO of MyCC, and has been widely credited with establishing the competition regime in Malaysia and developing MyCC into a highly credible and active competition law enforcer since the Malaysian Competition Act 2010 came into force on 1 January 2012.

MyCC tells professional bodies to remove scale of fees

MyCC published a media release in March 2015 stating that it had issued letters to four professional bodies requiring them to dismantle their scale of fees "in order to uphold the spirit of competition law".

According to the press release "MyCC takes the view that scales of fees fixed by professional bodies are contrary to the provision of [the] Competition Act 2010". MyCC also stated that one professional body, the Malaysian Institute of Arbitrators, has since dismantled its scale of fees.

In Singapore:

*In 2008, the Institute of Estate Agents ("**IEA**") applied for guidance from the Competition*

*Commission of Singapore ("**CCS**") on whether the IEA's "Professional Fees/Commission for Real Estate Agents/Agencies" ("**IEA Guidelines**") were likely to have the object or effect of restricting competition in the real estate agency market in Singapore, in contravention of section 34 of the Competition Act (Cap. 50B) ("**Act**"). CCS found that the Guidelines were likely to infringe the Act. CCS noted, in the executive summary of its decision, that "[p]rice recommendations tend to signal a focal point for fees/fee structures to converge. In this instance, the fee payable by sellers of all types of properties is couched as a "minimum" fee. Such minimum fee scales generally discourage price competition below the recommended rate. More efficient agents, who are able to charge lower fees, will have little incentive to do so and will tend to follow the minimum fee, if they believe others will do so."*

*Similarly, in 2009, CCS received a formal application from the Singapore Medical Association ("**SMA**") for a decision on whether its own Guidelines on Fees ("**GOF**") would infringe the Act. CCS found that the GOF would contravene the Act, reiterating that, "[i]n general, price recommendations by trade or professional associations are harmful to competition because they create focal points for prices to converge, restrict independent pricing decisions and signal to market players what their competitors are likely to charge."*

Taiwan introduces broad changes to its competition law

On 22 January 2015, the Taiwan Legislative Yuan passed the most extensive amendments to the Taiwan Fair Trade Act ("**TFTA"**) since the TFTA was first enacted in 1992. The amendments came into force on 4 February 2015.

Merger control

When considering if a transaction has crossed the merger notification thresholds and therefore needs to be mandatorily notified, the Taiwan Fair Trade Commission ("**TFTC**") will now consider the turnover and shareholding of the companies affiliated with the merging parties (*eg* companies that are, together with the merging parties, under common control). Previously, the TFTC only considered the turnover and shareholding of, amongst others, parties to the transaction and companies that the parties have controlling relationships over.

The period for a merger to be reviewed by the TFTC has also been extended. From an initial period of 30 days with a possible extension of another 30 days, the TFTC may now extend the period of additional review for up to 60 days.

Unusually, the TFTC is also empowered under the new amendments to stipulate different turnover notification thresholds for different industries.

Cartels

Under the new amendments, a cartel agreement may be presumed to exist on the basis of circumstantial evidence. The TFTC may, for example, look at the characteristic of the products or services, market structure, economic rational of the conduct, and cost and profit considerations, in determining if a cartel agreement exists.

Resale price maintenance

Under the new amendments, resale price maintenance arrangements are now classified as competition law violations instead of unfair competition violations. Accordingly, where they were previously per se illegal, resale price maintenance arrangements will now be assessed under a rule of reason approach.

Investigations

The TFTC is now empowered under the amendments to suspend an investigation if the entity being investigated commits to ceasing the conduct under investigation and takes corrective measures.

Notably, the proposal to grant the TFTC additional powers to conduct dawn raids and seizures did not receive approval by the Taiwan Legislative Yuan.

Penalties

The maximum amount of fines that may be imposed for anti-competitive infringements has been doubled. Entities that infringe competition laws for the first time may be subject to a fine from NT$100,000 (S$4,400) to NT$50m (S$2.18m), while repeat infringers may be fined NT$200,000 (S$8,800) to NT$100m (S$4.36m). The maximum cap on the level of fines still remains at 10% of the infringing entities' sales revenue in the last fiscal year.

ANTI-COMPETITIVE AGREEMENTS

Competition authorities clamp down on misconduct in financial markets

Competition authorities on both sides of the Atlantic have recently turned their attention to financial markets and potential misconduct therein. In Europe, the European Commission ("**EC**") has fined UK broker ICAP €14.9m (S$21.6m) for facilitating cartels which were found to have manipulated the Japanese Yen ("**JPY**") and London Interbank Offered Rate ("**LIBOR**") benchmark interest rate.

The EC imposed fines totalling approximately €670m (S$971m) on UBS, RBS, Deutsche Bank, Citigroup, JP Morgan, and RP Martin in December 2013 for their involvement in one or more cartels in the Yen interest rate derivatives sector. The anti-competitive conduct in question involved discussions among traders of the participating banks on JPY-LIBOR submissions, as well as the exchange of commercially sensitive information relating either to trading positions or to future JPY-LIBOR submissions. The aforementioned companies had admitted their involvement and settled with the EC. ICAP elected not to settle.

The EC found that ICAP had facilitated six of the seven cartels in the relevant market by disseminating misleading information to certain JPY-LIBOR panel banks that were not participants to the infringements, and by using its contacts with a number of such panel banks, all with the aim of influencing their JPY-LIBOR submissions. The EC also found that ICAP had served as a communications channel between a trader of Citigroup and a trader of RBS, and in so doing enabled anti-competitive activities to be carried out between them. In light of these findings, the EC considered that the fine imposed on ICAP reflected the gravity, duration and nature of ICAP's involvement as facilitator, and ensured a sufficiently deterrent effect.

In response, ICAP has issued a statement saying that it "does not accept the [EC's] decision, which it believes is wrong both in fact and in law."

Meanwhile, in the US, Switzerland's UBS has reached a settlement agreement with Hausfield, which is acting for the plaintiffs in a lawsuit concerning allegations of manipulating the foreign exchange market. The plaintiffs allege the existence of an anti-competitive scheme among UBS, Barclays, Deutsche Bank and others to manipulate benchmark prices on the foreign currencies market.

Under the settlement agreement, UBS will pay US$135m (S$185m) and offer its cooperation and assistance in Hausfield's continued investigations and claims against the remaining parties. This settlement follows a deal struck with JP Morgan to settle for US$99.5m (S$136m) in January 2015.

In Singapore:

*The Monetary Authority of Singapore ("**MAS**") commenced investigations into potential market manipulation of the Singapore Interbank Offered Rate ("**SIBOR**") in 2012. In June 2013, MAS indicated that it had completed its year-long review of the processes relating to banks' benchmark submissions. Twenty banks were found to have deficiencies in the governance, risk management, internal controls and surveillance systems for their involvement in benchmark submissions and a total of 133 traders were found to have engaged in several attempts to inappropriately influence the benchmarks. There was, however, no conclusive finding that SIBOR, Swap Offer Rates and the Foreign Exchange Benchmarks had been successfully manipulated. MAS indicated that based on available information and evidence, no criminal offence under Singapore law appeared to have been committed.*

In a press release on 29 July 2014, MAS proposed to introduce a regulatory framework for financial benchmarks, under which the manipulation of any financial benchmark in Singapore will be made liable to criminal and civil sanctions under the Securities and Futures Act (Cap. 289), and administrators and submitters of financial benchmarks will be subject to regulation, including licensing requirements.

German Federal Cartel Office acts against "best price" clauses used by hotel booking portals

On 2 April 2015, Germany's Federal Cartel Office ("**FCO**") issued a statement of objections against Germany's largest hotel booking portal, Booking.com Deutschland GmbH, raising issues about the company's use of "best price" clauses in its contracts with hotels in Germany.

This follows the Düsseldorf Higher Regional Court's confirmation of the FCO's 20 December 2013 decision prohibiting hotel booking portal,

Hotel Reservation Services ("**HRS**"), from implementing "best price" clauses in its contracts and terms and conditions with hotels on 9 January 2015.

Such "best price" clauses require hotels that want to be listed on hotel booking portals to offer the lowest prices, maximum room capacity, and most favourable cancellation and booking conditions that consumers can obtain online.

In the original FCO decision against HRS, the FCO determined that "best price" clauses removed the economic incentives for hotel booking portals to offer lower commissions to the hotels, because there was no need to compete with other hotel booking portals for the best prices and most favourable conditions. "Best price" clauses therefore had a similar effect to direct collusion between hotel booking portals.

It also assessed that "best price" clauses made market entry more difficult as potential competing hotel booking portals were prevented from gaining access to cheaper room rates, even if they charged lower commissions to hotels.

The FCO declined to grant an individual exemption to the "best price" clauses because it determined on balance that the possible positive effects of the "best price" clauses, if any, is slight at best and did not outweigh their anti-competitive effects.

While the FCO determined on the facts that these "best price" clauses restricted competition by effect, it left open the question whether they may also constitute a restraint of competition by object as well.

Of late, such "best price" clauses have been receiving scrutiny by competition authorities in the European Union. For example, the UK Office of Fair Trading accepted commitments by Booking.com and Expedia in January 2014 not to enforce their "best price" clauses in certain situations. Germany's FCO also has ongoing proceedings against hotel booking portal Expedia for utilising similar "best price" clauses.

In Singapore:

*"Best price" clauses are likely to be considered "vertical arrangements" because they involve agreements between parties that operate at different levels of the production or distribution chain, eg hotel booking portals and hotels. Under Singapore's Competition Act (Cap. 50B) ("**Act**"), vertical agreements are excluded from the general prohibition against anti-competitive agreements contained in section 34 of the Act. However, the Competition Commission of Singapore ("**CCS**") has not made any public statement with regard to how best price clauses are to be considered, and the CCS Guidelines do not discuss the approach to the assessment of such clauses.*

Italian Competition Authority fines maritime operators €14m for breaching their commitments

On 10 February 2015, the Italian Competition Authority ("**ICA**") imposed a penalty of €14m (S$20.7m) on ten parties, including nine maritime transport operators and a trade association, the Neapolitan Association of Cabotage Ship-owners ("**ACAP**"), for breaching the behavioural commitments they provided to the ICA in a previous investigation for price-fixing in 2009.

The nine maritime transport operators, namely, NLG, Alilauro, Alicost, Alilauro Gruson, Medmar Navi, SNAV, SMLG, CLMP, and Gescab, are companies from Campania that operate in the Gulfs of Naples and Salerno.

In 2009, the ICA closed an investigation into the parties after they provided behavioural commitments not to share and exchange confidential business information and to stop their illegal coordination of ticket prices. However, in 2013, after receiving numerous complaints from consumers, the ICA decided to re-open the case. According to an official ICA press release, this is the first time the ICA has exercised its power to re-open an investigation which closed with commitments made previously by the companies involved.

During this new investigation, the ICA, in collaboration with the Italian Finance Police, discovered that the operators had not only breached the commitments, but continued to coordinate amongst themselves and behave in a way which was liable to constitute an infringement. This systematic exchange of sensitive information resulted in operators being able to collude on all major commercial and operational aspects and preserve the cartel that had existed in some form since 1998.

Further, the ICA discovered that the operators had implemented a horizontal anti-competitive agreement which restricted competition in the market for the maritime transport of passengers by ferries and crafts.

In Singapore:

*In July 2012, the Competition Commission of Singapore ("**CCS**") fined two ferry operators (Batam Fast Ferry Pte Ltd and Penguin Ferry Services Pte Ltd) for engaging in the unlawful exchange of price information with regard to certain competing ferry transport services.*

To date, there has not been a case in Singapore where parties have been fined for failing to adhere to undertakings or commitments provided to CCS.

German regulator finds factory outlet's non-compete clause overly restrictive

In a decision announced on 3 March 2015 by the German Federal Cartel Office ("**FCO**"), the operator of Wertheim Village Factory, VR Franconia GmbH ("**Franconia**"), has been prohibited from using radius clauses in its leases with factory outlet proprietors. Radius clauses operate to forbid proprietors from establishing outlets within a certain radius of the factory outlet for a period of time.

The FCO held that such clauses will only be allowed insofar as they do not exceed 50km in radius, and five years in duration.

Franconia's clauses set out a non-compete radius of 150km. The FCO took the view that this clause, as applied, was neither functionally necessary for implementing the contracts, nor proportionate to achieving the purpose of the contracts as claimed by Franconia, and that the chief aim of the clause was to restrict competition.

In Singapore:

*Section 34 of the Competition Act (Cap. 50B) ("**Act**"), which prohibits anti-competitive agreements between undertakings, does not apply to vertical agreements. Vertical agreements, for the purposes of section 34, refer to agreements which are entered into between two or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain.*

*To date, the Competition Commission of Singapore ("**CCS**") has not made any public statement about the validity of radius clauses, nor do the CCS Guidelines make reference to how such clauses should be considered.*

It is important to note that radius clauses may also be considered as restraint of trade clauses, which are prima facie void under Singapore law.

ABUSE OF DOMINANCE

Turkish competition authority closes Coca-Cola probe

On 6 March 2015, the Turkish Competition Board issued a decision finding that the Coca-Cola Sales and Distribution Inc.'s ("**CCSD**") commercial practices did not infringe Turkish Competition Law.

This concludes its investigations against the company, which commenced in early 2014, to inspect allegations that CCSD had breached Articles 4 and 6 of the Turkish Competition Law, which prohibit anti-competitive agreements and abuses of dominance respectively. In particular, it was alleged that CCSD had used *de facto* exclusivity clauses in its vertical agreements with its distributors.

The Board also found that CCSD had complied with a previous ruling in 2007, in which it had ordered CCSD to remove exclusivity clauses from its agreements with distributors.

In Singapore:

*In 2013, the Competition Commission of Singapore ceased investigations into Coca-Cola Singapore Beverages Pte. Ltd.'s ("**CCSB**") supply agreements with its on-premise retailers, following CCSB's voluntary amendment of its supply agreements to remove potentially anti-competitive provisions and its undertaking to refrain from imposing exclusivity restrictions or granting loyalty-inducing rebates on its on-premise retailers.*

Australian Competition and Consumer Commission loses abuse of dominance case

On 25 February 2015, the Australian Competition and Consumer Commission ("**ACCC**") lost its case in the Federal Court of Australia against Pfizer Australia Pty Ltd ("**Pfizer**"). The ACCC took action against Pfizer for an alleged misuse of market power and exclusive dealing practices by Pfizer in respect of its supply of atorvastatin (a drug used to treat cholesterol) to pharmacies.

The ACCC alleged that Pfizer offered significant discounts to pharmacies and the payment of rebates conditional on pharmacies acquiring a minimum volume of up to 12 months' supply of Pfizer's generic atorvastatin product. The ACCC saw the strategy as a way for Pfizer to fend off increasing competition from other generic atorvastatin products, and ultimately considered that the practice would be in breach of the Competition and Consumer Act 2010 ("**CCA**"). Specifically, under section 46 of the CCA corporations that have substantial market power are prohibited from taking advantage of that power for certain prescribed purposes (such as eliminating or damaging a competitor, or preventing new entrants into a market, *etc*).

In dismissing the case, the Federal Court found that whilst Pfizer had taken advantage of its market power by engaging in the alleged conduct, Pfizer's market power was no longer "substantial" at the time the offers were made in January 2012. The Court also determined that the ACCC had failed to establish that Pfizer had pursued its conduct for the proscribed purpose of deterring or preventing competitors from engaging in competitive conduct or for the purpose of substantially lessening competition.

It was announced in March that the ACCC intends to appeal the decision to the Full Federal Court.

In Singapore:

*Section 47 of the Singapore Competition Act (Cap.50B) ("**Act**") prohibits the abuse of a dominant position. To date, the Competition Commission of Singapore ("**CCS**") has only issued one infringement decision in respect of an abuse of dominance (against SISTIC.com Pte. Ltd. in respect of its exclusive contracts with event promoters and venue operator partners).*

A minimum purchase requirement could potentially amount to an abuse of dominance in Singapore, depending on all of the factors of the case. The key consideration for CCS would be whether the practice has a substantial exclusionary effect (foreclosure effect) on competition within a relevant market.

European probe of Google continues

It has been reported in early April 2015 that the European Commission ("**EC**") is ramping up its current probe of Google.

The previous chief of the EC, Joaquín Almunia, had tried and failed three times to reach a settlement with Google. The most recent attempt failed when Almunia's proposed terms for a settlement drew strong criticism from various companies and some member states. The new chief of the EC, Margrethe Vestager, has cautioned that settlements "should not be a habit," and that the EC is "willing to go to court if that is the right thing to do." Vestager has since met with Google, and the complainants in the present matter.

It has been reported that some complainants are currently working with the EC to remove confidential information from previously submitted evidence against Google. This is taken to suggest that the EC may issue a Statement of Objections ("**SO**") against Google soon. An SO formally sets out the charges, and provides access to the evidence which has been adduced to the party involved. If Google receives an SO, it will have two months to submit a written response and/or request an oral hearing. The option is still open to the EC and Google to agree a settlement after the issue of the SO.

Meanwhile, Justice Roth of the Chancery Division of the High Court of the UK has delayed the start of a civil lawsuit against Google after having received letters from the EC about overlaps between its investigations and the lawsuit in question. Justice Roth noted that "[i]t seems reasonable to anticipate that the [EC] will have progressed its investigation" by the early autumn.

Google has consistently denied that it has engaged in any anti-competitive behaviour. While the nature of the complaints has not been released, the complaints are thought to relate to an allegation that Google has used its online search market to promote its other services such as Google Maps and Google Shopping at the expense of rival providers of these services.

Russia's Federal Antimonopoly Service ("**FAS**") has, meanwhile, opened a formal investigation of Google's Android operating system. This was in response to a complaint filed by Russian Internet company Yandex. Regulators have so far mainly focused on the alleged abuses of dominance arising from Google's search results.

The FAS has a deadline of three months within which to complete investigations, with a possible extension of up to six months. This is in contrast to the open-ended investigations of the EC, which

have yet to be concluded four years since the case was formally opened.

In Singapore:

The Competition Commission of Singapore does not have stipulated timelines within which it must, or strive to, complete investigations into cases of alleged or suspected prohibited conduct.

Competition Commission of India dismisses abuse of dominance case against Volkswagen

On 11 February 2015, the Competition Commission of India ("**CCI**") issued a decision dismissing a complaint by Bhasin Motors (India) Private Limited ("**Bhasin Motors**") against Volkswagen Group Sales India Pte Ltd ("**Volkswagen**") alleging that the latter had abused its dominant position, after coming to the conclusion that the issues raised were not competition law matters, and accordingly, no case was made out.

Bhasin Motors, an authorised dealer of Volkswagen cars for the territory of Delhi/National Capital Region, alleged that Volkswagen, a subsidiary of Volkswagen AG, had breached the terms of a dealership agreement between the parties by appointing Frontier Automobile Pvt Ltd ("**Frontier**") in the same geographical area of Bhasin Motors' showroom, despite the fact the parties had agreed upon clearly demarcated territories in the agreement.

It was also alleged that Volkswagen had abused its dominant position in the market and exploited Bhasin Motors by forcing it to sign a unilateral agreement which contained "unfair and one-sided" clauses that excluded Volkswagen from any obligation and liability. A further allegation was that Volkswagen had acted in a discriminatory fashion by setting different sales targets for Bhasin Motors and Frontier, and that Volkswagen had reneged its prior agreement to extend a line of credit to Bhasin Motors to place orders for Volkswagen cars, by failing to disburse the funds.

Bhasin Motors claimed that the occurrence of the abovementioned issues resulted in a reduction in sales, which was exacerbated further when several of Bhasin Motors' employees left and joined Frontier. Subsequently, Volkswagen unilaterally terminated the dealership agreement with Bhasin Motors.

In considering the allegations, the CCI came to the view that the issues arising from the complaint did not indicate any competition concerns, and dismissed the complaint pursuant to section 26(2) of the Indian Competition Act (No. 12 of 2003). Section 26(2) empowers the CCI to dismiss complaints where a *prima facie* case cannot be made out.

The CCI found that Volkswagen had a "very negligible share" in the market, which it defined to be the passenger car segment in India, and that the market was dominated by a number of other players, such as Maruti, Hyundai and Tata. In this regard, the CCI considered that Volkswagen could not be said to be a dominant player and as such the question of abuse of dominance did not arise.

In Singapore:

In assessing whether a practice is an abuse of dominance in Singapore, the Competition Commission of Singapore will also undertake the preliminary analysis of whether a dominant position is held. Where the entity in question does not hold a dominant position, then no case of abuse of dominance can be made.

Mergers & Acquisitions

Competition Commission of Singapore blocks proposed health merger

On 11 March 2015, the Competition Commission of Singapore ("**CCS**") announced that it would not give clearance to the proposed acquisition of RadLink-Asia Pte Ltd ("**RadLink**") by Parkway Holdings Ltd ("**Parkway**"). CCS considered that the acquisition would result in a substantial lessening of competition in the market for the supply of radiopharmaceuticals and also in the market for the provision of radiology and imaging services, and would therefore be prohibited under section 54 of the Singapore Competition Act (Cap.50B) ("**Act**").

The decision came following a "Phase 2" review by CCS. Such reviews are normally conducted for difficult or problematic cases.

Whilst CCS's full written reasons for its decision are yet to be released, it has been announced that CCS had concerns that the merged entity would be the only commercial supplier of

radiopharmaceutical products in Singapore. Moreover, CCS did not find any potential radiopharmaceutical suppliers ready and willing to enter the market in the near future. With respect to radiology and imaging services, CCS was concerned that the acquisition would remove competition between two close competitors that service private outpatients in Singapore. CCS was also concerned that the merged entity would have a substantial market share, and that there would not be sufficient countervailing power on the part of customers post-merger. Another factor taken into consideration was that the barriers to entry into the market were assessed to be high.

In assessing whether mergers, or proposed mergers, would likely lead to a substantial lessening of competition, CCS's focus is generally on whether the merged entity would face sufficient competitive constraint, such that it would not be in a position to increase price or decrease quality. CCS will also consider whether the merger would likely increase the risk of collusive behaviour arising in respect of the relevant markets.

CCS has the ability at any time to consider behavioural or structural commitments designed to alleviate competition concerns, however, it has been reported that the proposed merger has since been abandoned as of 13 March 2015.

The decision to block the proposed merger is only the second such decision made by CCS in respect of a merger notification. The first was made in the context of the application by Greif International Holding B.V. and GEP Asia Holdings Pte Ltd in relation to the creation of a joint venture company, Greif Eastern Packaging Pte Ltd. In that case, CCS made the provisional decision to block the arrangement, however, a subsequent increase in capacity by an existing market participant alleviated CCS's competition concerns, and the merger was therefore ultimately approved.

OTHER NEWS

Competition Commission of Singapore opens market inquiry into retail petrol industry

The Competition Commission of Singapore ("**CCS**") has asked four petrol companies – namely, Shell, Chevron, ExxonMobil, and Singapore Petroleum Company ("**SPC**") to provide information relating to recent revisions in petrol prices. This follows publicised statements made by the Consumers Association of Singapore ("**CASE**") suggesting that the price increases could be profiteering.

All four companies had raised their pump prices a day after the Government announced hikes in petrol duty rates, in its Budget statement on 23 February 2015. The duty for premium grade petrol was raised by S$0.20 per litre (to S$0.64 per litre), while that of intermediate grade petrol was increased by S$0.15 per litre (to S$0.56 per litre), with effect from their date of announcement.

On 24 February 2015, pump prices for the four companies were reportedly raised by up to S$0.25 per litre for 98-octane-grade petrol, and as much as S$0.18 for 95-octane-grade petrol. CASE sent letters to all four companies asking them to justify the price adjustments, and subsequently stated that it found the replies received from SPC and Chevron provided valid reasons for the increase.

Previously, in May 2011, CCS published a market study report titled "An Inquiry into the Retail Petrol Market in Singapore", which examined the dynamics and competitiveness of Singapore's retail petrol market.

While the study found that the structure of Singapore's retail petrol market contained risks of collusion or coordination between competitors, it also concluded that the regulatory regime was generally pro-competitive, and that petrol prices in Singapore over the period of the market inquiry appeared to be competitive by international comparison.

CCS also stated that it will continue to monitor developments in the sector and will initiate an investigation if material new information suggests that petrol players have infringed the Competition Act (Cap. 50B).

The Drew & Napier Competition Law Team

For more information on the Competition Law Practice Group, please click **here**.

Cavinder Bull, SC • Director (Dispute Resolution)

Cavinder handles complex litigation spanning a wide area of corporate and commercial matters. Cavinder has successfully defended companies being investigated for abusing a dominant position in Singapore, and filed the first appeal to the Competition Appeal Board in respect of a CCS infringement decision. Cavinder previously practised antitrust law in New York, working on cases like the Microsoft antitrust litigation and obtaining US Department of Justice's approval for the merger between Grand Metropolitan and Guinness, one of the world's largest mergers then. Cavinder graduated from the University of Oxford with First Class Honours in Law. He clerked 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. Cavinder is consistently recognised as one of the leading litigators in Singapore. *Chambers Asia 2014 lists Cavinder as a leading individual, "Excellent when it comes to litigation matters: very sharp, very reliable and very reassuring"*.

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Lim Chong Kin • Director (Competition & Regulatory)

Chong Kin played a key role in the development of competition regulation in the telecommunications, media and postal industries in Singapore, before moving on to undertake general competition work when the Competition Act was enacted in 2005. His diverse client portfolio spans the Competition Commission of Singapore, the sectoral competition regulators, and private sector companies. He undertakes a whole range of competition law matters including cartel investigations, merger filing, decisions and guidance, complex market studies, drafting competition legislation and enforcement work. Chong Kin has been widely acknowledged as the leading competition law expert in Singapore by major ranking publications. *Chambers Asia-Pacific 2015* ranks Chong Kin as a Band 1 Competition/Antitrust lawyer. *Asia Pacific Legal 500: 2015* recognises him as a competition and regulatory specialist. *AsiaLaw Profiles 2015 recognises* Chong Kin for his expertise in Competition Law. *Who's Who Legal: Competition 2008 – 2014, Regulatory Communications Lawyers 2008 – 2013* and *Telecoms 2014* all recognise Chong Kin for his strength in regulatory and competition advisory work.

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Scott Clements • Deputy Head, Competition & Regulatory

Scott is the Deputy Head of Drew & Napier's Competition and Regulatory Practice Group. Scott has extensive experience in all areas of competition law, including anti-competitive agreements, abuse of dominance, and mergers and acquisitions. Scott recently assisted SISTIC.com Pte. Ltd. in its appeal before the Competition Appeal Board in relation to the first and only abuse of dominance infringement finding made to date by CCS, and secured a 20% reduction in the financial penalty imposed. Scott was previously a senior investigator with the New Zealand Commerce Commission and was involved in leading investigations and analysing competition law and economic issues, including leading a number of high profile investigations into mergers and acquisitions. Scott was also involved in numerous investigations involving electricity matters. Scott was a key member of the team commissioned by the ASEAN Secretariat to conduct a review of competition law and policy in the ASEAN region and to propose best practices for the implementation of competition law in ASEAN. Scott has been recognised by *Chambers 2015* as an Up and Coming lawyer with clients declaring that he *"is able to understand the business model very clearly and provide advice that is precise and to the point."*

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