

A winning formula

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The Competition Commission of Singapore enters its 10th year in 2015, yet it has a global reputation well above an authority of its size and age. What are the key ingredients to its success and can it be replicated elsewhere? **Faaez Samadi** reports

Over the past decade, the Competition Commission of Singapore has been held up as an example of how to grow a competition regime in a new jurisdiction. Particularly in comparison with the other Association of Southeast Asian Nations members and more widely across Asia, Singapore takes significant plaudits from the global antitrust community for its approach to competition law. How has the country created such a system? From speaking to the competition bar and the enforcer itself, it seems a few fundamental factors, both external and competition-specific, have come together in harmony.

CCS leadership

A constant refrain from speaking to the competition bar is the praise and respect lawyers have for the CCS staff, in particular for the current chief executive, Toh Han Li. “The CCS is now more mature, with very good quality people across the board and excellent leadership,” say Kala Anandarajah at Rajah & Tann. “The management is great to deal with and Han Li is involved in all matters.”

Taking over as chief in October 2013, Toh has overseen arguably the most significant year in the CCS’s short history, with 2014 accounting for the enforcer’s first two international cartel cases and a record number of merger filings. For an agency that has in the past been criticised for taking too long to go after the big-ticket matters, this has been a monumental step that, as with all CCS matters, has been carefully considered and planned before being executed.

“We’ve made sure that decisions are carefully thought through and reasoned. These reasons are made public to show that our interventions are not taken lightly,” says Toh. “A wrong intervention is a bad thing for the market, so it’s important to get it right.”

This cautious approach, in the recent past viewed as a weakness of the authority, has matured into a significant strength, practitioners say. By taking its time over the past 10 years with smaller matters, the CCS has been able to establish a credible body of law through its enforcement that has built the platform to reach the larger cases. “It was a planned evolution. In the earlier years, the commission built up its jurisprudence with local cases that were closer to home and easier for consumers to understand,” says Daren Shiau at Allen & Gledhill.

Another significant string to Toh’s bow, according to several observers, is that he is the first CCS head to come from a legal background rather than a bureaucratic one. One lawyer says Toh is more “fearless” than his predecessors and has “demonstrated a genuine interest” in competition law. “A bureaucrat sees appeals as failures; a prosecutor doesn’t. It’s part of the process; it all adds to the body of law,” the source says.

This attitude of constantly adding to the CCS’s knowledge and the body of case law is reflected throughout the enforcer, lawyers say, creating a staff that “is very willing to talk and be flexible” and “has lots of really good professionals,” says Gerald Singham at Rodyk & Davidson.

“They always give you respect if you come in and deal with them honestly. Han Li understands business,” he says. This, Singham adds, is not just due to Toh but also to his predecessors.

There are, of course, areas to improve. Some say the CCS could be more transparent about where investigations are at different periods of time; it is “still a little tight-lipped”, says Singham. There is a lot of activity at the start of an investigation, but then there can be months of silence, which practitioners say is not helpful for clients. Regular updates on a case, whether it’s ongoing or on the backburner, would help.

Equally, public information when a dawn raid occurs would also be welcome, rather than attorneys having to wait until a proposed infringement decision is released to find out any official news.

But these, many admit, are somewhat minor quibbles. “The CCS is a proactive enforcer,” says Ameera Ashraf at WongPartnership, examples of this being the ongoing preliminary talks over introducing a fast-track merger process and potentially a settlement procedure.

Political stability

While the efforts within the CCS must be acknowledged, lawyers are acutely aware that Singapore’s political situation has greatly helped the growth of the competition regime. Continuity is a crucial factor for allowing new systems to develop effectively, and it does not get more continuous than a one-party government that has been in power since Singapore achieved independence in 1965.

As such, agencies can plan ahead with the next 10 years in mind, with the benefit of being able to see their plans through to the end. In other democracies, long-term plans are made only for a change in government to occur, followed by a change in policy, which sees plans revamped and new ones put in place.

In contrast, at the end of last year the CCS completed its mission planning up until 2030. While this is certainly helpful, says one practitioner, these conditions also bring their own pressures. “Singapore agencies are very results driven; they are not allowed to be a white elephant,” the source says. Constantly proving your use is a stressful business, and Ashraf at Wong Partnership says the CCS “takes any criticism or feedback seriously”, perhaps for this reason. But the enforcer’s demonstrable progress has kept the higher powers satisfied, according to several practitioners.

Toh accepts that Singapore’s political system is certainly a benefit, but says all agencies should engage in long-term planning to be effective, regardless of politics. Equally, governments must remain “alive to domestic considerations” when implementing policy, he says, and competition ties into this alongside other domestic matters.

A small, open economy

Over the past 50 years, Singapore has cemented its position as the economic and trading hub of South East Asia. With a solid rule of law and favourable tax regime, companies looking to do business in Asia are increasingly basing regional operations out of Singapore, and it has become a nucleus for global distribution, trade and services.

The country prides itself on being a small, open economy, and the need to protect this environment is a constant governing factor in the background for all government bodies, the CCS included.

From the very beginning, says Elsa Chen at Allen & Gledhill, Singapore’s attitude to competition law has been one of economic benefit. Antitrust law came to the country following the economic review after the financial crisis in 1997; it was “prompted by a desire to improve and restructure the economy”, she says, though some note it was also insisted upon by the US as part of a free trade agreement.

In other parts of Asia, political concerns brought about competition regimes, practitioners say, but in Singapore it was less a political issue and more an economic one. This gave Singapore the flexibility to go and plan best practices.

Indeed, Singham, the Rodyk lawyer, says the government’s early awareness of using competition law in a business-friendly manner is exemplified by the fact that the CCS is under the auspices of the Ministry of Trade & Industry, rather than the Ministry of Law.

“This is a more business-oriented approach, rather than giving companies the impression that the CCS is a purely punitive agency,” he says. “Thus the CCS doesn’t just see itself as a watchdog or regulator; it sees itself as a facilitator.”

This is not to say the CCS is not serious about enforcement; the record fines in the Bearings and Freight Forwarding cartels put to rest any such argument. But the enforcer must strike the difficult balance between being a respected, effective enforcer, and preserving Singapore’s business-minded economy.

As Ashraf puts it: “Being a key business hub, Singapore is serious about being a safe pair of hands for investors. The CCS is likely to consider whether their actions deter investment in Singapore.”

For Toh, education and advocacy is the key to this balance. “Every enforcement decision comes with an educational message for the market,” he says. “We try to explain why anti-competitive behaviour is bad for the market, for businesses and consumers. It’s still quite a new law, so we use the enforcement decisions as a tool to educate.”

A template?

The combination of these key factors has seen Singapore thrive in the antitrust world. But can this model be used as a rough template for other jurisdictions looking to develop effective competition regimes?

Toh thinks not, simply because the model is unique to Singapore alone. “It’s important to take best practices and apply them in your own context,” he explains. “Every country’s economic context is different and nobody is there to tell others what to do. It’s up to everybody to decide how they want to implement their own law given their specific circumstances.”

While he accepts that international forums such as the ICN are excellent for sharing ideas and best practices – something he says was invaluable for Singapore’s development – he notes that “at the end of the day you need to take it back and decide for yourself what you want to do”.

In that context, perhaps the only country often compared with Singapore in terms of size and economic scale, however imprecisely, is Hong Kong, which has just established its own competition law system. But the stark contrast in how the two jurisdictions have gone about building their antitrust regimes highlights their individuality.

While Singapore kept things in-house in terms of populating the CCS, Hong Kong has invested heavily in external manpower and expertise from the very beginning. Renowned Canadian competition expert Stanley Wong has been brought in as chief executive, with domestic heavyweight Anna Wu Hung-yuk as chairperson, as well as two senior officials from Australia’s competition enforcer.

Singapore’s lawyers acknowledge that it is a very different approach, but to them it is also clear the right tools are there in Hong Kong. But there are undoubtedly greater political complexities too.

Only time will tell how Hong Kong will fare in comparison with Singapore. But it seems that the stars have aligned for a thriving competition regime in the “Lion City”. Together with some effective policy and leadership, its sterling reputation may well gleam even brighter in the future.