An interview with Yena Lim

Yena Lim, chief executive of the Competition Commission of Singapore, has led the authority since 2010. **David Vascott** spoke with her in Singapore

What is your background and how did you become chief executive of the competition commission? Does your background influence your work at the commission?

I was appointed chief executive of the Competition Commission of Singapore (CCS) in October 2010. My background is in economics and I have over 20 years of experience in the Singapore public service, having worked in a number of ministries and statutory boards. I was involved in the liberalisation of the electricity and gas markets, as well as the industrial land market structure when I was in the Ministry of Trade and Industry. I was in charge of reviewing the market structure for bus and rail transport, and also oversaw the move of the taxi sector towards greater liberalisation when I worked in the Ministry of Transport. My previous work experiences have given me a good understanding of the considerations in regulating such markets that have often proven challenging in many competition regimes. This has been helpful in formulating strategies and generating options for moving issues in the CCS.

What is your role in the day-to-day running of the commission?

The chief executive of the CCS is appointed by the minister in consultation with the Public Service Commission. It is a full-time position and I am responsible for setting the agenda for the CCS and ensuring it is effective in delivering results. This covers setting strategies, determining priorities, overseeing the progress of investigations, securing and allocating resources, and ensuring processes are efficient and responsive to the needs of businesses. The chief executive does not decide on cases, as case decisions

are taken by the commission as set out in the Competition Act. Commission members are part-time appointments.

What do you regard as the most important decisions you have taken at the commission?

CCS took its first infringement decision in January 2008. The case involved six pest control companies offering termite treatment and control services that were involved in collusive bid rigging. The collective financial penalty amounted to S$263,000 (US$209,000). This was a significant decision because it signalled to the business community how the CCS would approach a violation and how it would process a case and establish its rationale for finding an infringement. The CCS ensured that the legal and economic reasoning was robust and provided detailed written grounds of decision. It established a process of publishing all its decisions on its corporate website for public record.

Another important decision concerned an abuse of dominance prohibition involving sistic.com, which engaged in exclusionary conduct in the ticketing services industry. It was the CCS's first abuse of dominance case, and the economic analysis had to be sufficiently detailed and rigorous to support the effects-based approach that was adopted to determine whether there had been an infringement. It was also the first case involving a state-owned enterprise. The commission imposed a financial penalty of S$989,000 (US$785,000) on SISTIC in June 2010 and the case is currently on appeal to the Competition Appeal Board.

[Editor's note: since this interview was carried out, the Competition Appeal Board has upheld the CCS's decision against SISTIC, but reduced the penalty to S$769,000 (US$600,000)].

Which were the most difficult ones?

A particularly difficult case for the commission involved an application by the Singapore Medical Association (SMA) to be allowed to issue fee guidelines to the medical profession. It was not uncommon for professional and trade associations to issue various forms of price recommendations to their members. The public had accepted such fee recommendations under the impression that it would set a ceiling on fees and protect them against overcharging. They did not realise the impact of fee recommendations in undermining competition within a profession and distorting price signals. Recognising that such practices were fairly entrenched in different sectors, the CCS conducted a market study of the health services sector and examined overseas precedents on fee recommendations.

After a detailed examination, the CCS issued a decision stating that the SMA's proposal did not contribute towards achieving better outcomes, and was instead anti-competitive. It noted that the effort by the Ministry of Health to improve pricing transparency was more effective, unrestrictive and unbiased in dealing with issues of information asymmetry, over-charging and optimal consumption of health-care services. It asked the SMA to encourage its members to support greater transparency in health-care charges by publishing their actual fees for their services, broken down or itemised in a meaningful way, instead of issuing fee guidelines. As provided under the Competition Act, the SMA applied to the minister for an exemption of the fee recommendations on the grounds of public interest, but it failed on this ground.

This case helped to signal to the market that the CCS would in general not be in favour of professional and trade associations issuing price guidelines to their members. The CCS took pains to explain that such conduct harmed the competitive process through the distortion of independent pricing decisions. It would have a pernicious influence as sellers would be induced to cluster their prices around the recommended levels, irrespective of their individual business profiles such as costs, service standards and target customers. There was also the danger of price guidelines hardening into price-fixing conduct over time.

What are your objectives for the future of the commission?

I hope to see the CCS maturing into an effective and constructive regulator, to give confidence to the business community that the competition regime will ensure that they have access to open and competitive markets, supported by relevant, fair and clear laws and regulations.

The CCS has the responsibility to play an economic value-adding role. It provides a robust and enlightened competition regime that forms the enabling framework to grow a vibrant economy with competitive markets and innovative businesses. This will strengthen the ability of domestic companies to compete in the international market. It will also attract fair-dealing foreign businesses to enter the Singapore market because they know that they will compete on a level playing field.

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What are the commission's priorities?

There are four areas that the CCS will give priority to over the next few years.

First, we will be reviewing our competition legislation, guidelines and procedures to bring them in line with developments in other jurisdictions, if the changes are relevant for the Singapore economy. It has been six years since the Competition Act was enacted, so a major review is timely.

Second, we will continue to strengthen the effectiveness of the enforcement regime. The business community should be able to rely on an enforcement system that is clear and credible, and takes timely decisions to meet the needs of businesses. We will examine each part of the value chain; spanning surveillance, investigation, decision-making, and enforcement of decision; to make sure that the processes are fair, thorough, robust and timely.

Third, we will work closely with the business community to increase voluntary compliance with competition laws and regulations. We want businesses to develop and implement competition compliance programmes as an integral part of good corporate governance. The more businesses voluntarily comply, the less the CCS has to incur expenditure in enforcement, and the less the harm that will be visited on the economy.

Finally, we will be actively aiming to educate businesses about the competition regime. Businesses need help to understand how to apply and benefit from competition policy, and the CCS's role in promoting and sustaining competition in markets. It is hoped that this will reduce the incidents of businesses violating the Competition Act through ignorance or negligence.

What has the commission achieved in the seven years since it was created?

The Competition Act was implemented in stages – the prohibitions against anti-competitive agreements and abuse of dominance that substantially lessens competition took effect in January 2006, and the voluntary merger regime took effect in July 2007. To date, the commission has taken six infringement decisions, of which three have gone to appeal before the independent Competition Appeal Board. The commission has issued 14 notifications for decision and guidance, cleared 30 merger applications, handled 21 investigations, and undertaken eight market studies. The commission has also issued 20 competition advisories to advise other government agencies on how to preserve and protect competition in their respective policy and regulatory areas.

Does Singapore's business community have a culture of respect for competition law?

Competition law is still new to many companies and businesses and they need to adapt and adjust their business practices to ensure compliance. A major challenge for the CCS is to reach out proactively to help businesses to understand what they should and should not do to comply with competition legislation, in order to achieve high levels of voluntary compliance. A good outcome would be if companies integrate competition compliance into their corporate governance framework as this would then form part of the corporate culture that employees at all levels would be expected to embrace.

To what extent does the commission work with other antitrust enforcers around the world?

The CCS has cooperated with other competition authorities in investigations of international cartels. The CCS has also utilised informal cooperation mechanisms to facilitate its work in the areas of technical expertise, policy development and case work. For instance, the CCS has close links with the Australian and New Zealand competition authorities to facilitate information sharing among the agencies. These close links enable the agencies to deal with competition issues across the Asia-Pacific region more effectively through the sharing of ideas and capacity-building initiatives.

The CCS is also a regular participant at international conferences and workshops held by the OECD and the International Competition Network. In particular, the CCS sends staff at both the senior and working levels to share knowledge and build relationships with officers from other jurisdictions. The CCS also participates in ICN teleconferences discussing various topics of interest such as cartel enforcement.

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Do you think competition law in Singapore needs updating?

As the Competition Act has been in force since January 2006 it is timely to undertake a review. We regularly monitor legislative changes that are being made to the developed competition jurisdiction as well as the emerging jurisdictions, as these may reflect best practices. In the area of merger review, we currently have a public consultation paper on improving our merger procedures after receiving feedback over the years from our stakeholders. At the same time, a large part of Singapore's competition law is also evolving via case law, through the decisions of our Competition Appeal Board.

How well do you think competition law enforcement is developing in the ASEAN community? How is Singapore helping other ASEAN countries to achieve their 2015 competition goals?

Under the ASEAN Economic Community (AEC) blueprint, ASEAN member states have committed to introduce nationwide competition policy and law by 2015. This is a necessary condition to foster a culture of fair competition within the region, as well as to promote economic integration. Of the 10 countries, six have general competition laws: Indonesia, Laos, Malaysia, Singapore, Thailand and Vietnam. Two competition bills were recently proposed at the Senate of the Philippines. It has also set up the Office for Competition, under the Department of Justice as the designated agency that oversees competition. Brunei, Cambodia and Myanmar do not have competition laws at this stage.

As ASEAN member states are at different stages of development in the competition enforcement regime, an important priority over the next few years would be to establish the necessary institutional structures to make them effective. There is also a need to promote mutual understanding of the various competition regimes in ASEAN and to foster good working relationships among competition authorities. The ASEAN Experts Group on Competition (AEGC) was set up as a regional forum to discuss and cooperate in competition policy and law. It has played an instrumental role in capacity building and sourcing for technical assistance, and will continue with this effort.