



# CPI Antitrust Chronicle

## February 2012 (2)

### **A Balanced Approach to Enforcement & Outreach**

Competition Commission of Singapore

## A Balanced Approach to Enforcement and Outreach

### Competition Commission of Singapore

#### I. INTRODUCTION

Competition policy is somewhat analogous to healthcare policy. The underlying policy objective is to foster public health (competitive markets). As an essential part of its execution, the policy maker establishes healthcare institutions (a competition authority) to treat patients when they fall sick (enforce competition law against anticompetitive practices that adversely affect markets). However, *remedial* care alone is not enough. If the general population lives unhealthy lifestyles (the market players lack a culture of competition), more people will develop diseases. This will not only put resource strains on the healthcare system, but also lead to poor outcomes of public health. Therefore, an increasing emphasis is being put on *preventive* care, recognizing that the most effective way of staying healthy is to have a strong immune system.

Similarly, the Competition Commission of Singapore (“CCS”) does not limit our role to the enforcement of the Competition Act. It is equally important, if not more, to prevent anticompetitive practices from taking place in the first instance. Accordingly, we have been devoting substantial resources to advocacy and outreach to our stakeholders. For clarity, the term “advocacy” in this article refers to the engagement of government agencies to advocate pro-competitive policy making and regulation, while “outreach” refers to the engagement of the business community and general public to increase awareness and acceptance of the benefits of competition. Both are integral parts of CCS’ strategy in preventive care.

From experience, we have identified three key factors leading to a successful execution of our advocacy and outreach plans—strategic direction, mobilization of resources, and innovative communication.

#### II. STRATEGIC DIRECTION

Having a clear strategic direction is vital to the success of any mission. Without doing the right things, it is meaningless to do things right. In this regard, we have developed a “4E” framework of desired outcomes—*Enlightened* competition legislation, *Effective* enforcement, *Enhanced* voluntary compliance, and *Educated* stakeholders. All four Es carry equal weight in guiding our work priorities and resource planning.

Promoting voluntary compliance helps companies avoid the cost and inconvenience caused by an involuntary transgression. Equally important is that a compliance program can count as a mitigating factor in the event of a breach of competition law. There are overseas cases (such as in the United Kingdom) where discounts on financial penalties have been granted on this basis. The key considerations at the end are whether the leadership is strongly committed to upholding a compliance program and effectively implementing it throughout the organization.

In terms of educating stakeholders, we find it important to not only create *awareness*, but also gain *acceptance*. For instance, price guidelines are often viewed favorably by various stakeholder groups—consumers like transparency, businesses like certainty, and policy makers like fairness. However, some forms of price guidelines may be anticompetitive, especially those involving a recommendation by a group of sellers as to what constitutes a “reasonable” price level for their products. In the worst form, price guidelines may be a convenient tool for cartelists to stop competing and jointly overcharge their customers.

When reaching out to stakeholders, we are mindful not to carry a mentality of one-way messaging, but, instead, to engage in two-way dialogues and exchanges. It is important to hear from the ground, and continuously fine tune the outreach strategy as well as the messaging. For example, widening income divide and rising business costs are the recent concerns of many stakeholders. Accordingly, it will be more effective for us to communicate the benefits of competition policy in terms of the opportunities it creates for better social mobility, or the positive impact it has on lowering costs for companies through more competitive sourcing and procurement options. It is also important to pitch competition as a “win-win” paradigm, rather than a “win-lose” game as commonly perceived by stakeholders.

### III. MOBILIZATION OF RESOURCES

In order for advocacy and outreach to be effective, staff must be equipped with the necessary skills to perform their job. While most CCS officers are highly-educated professionals, many of them are specialists. Lawyers and economists may not be the best persons to convey competition messages in layman terms to small- and medium-sized enterprises and the general public. They will need to make a conscious effort to switch out of “jargon mode” to explain competition policy and law to a general audience.

Recognizing the need for a more comprehensive yet targeted approach towards advocacy and outreach, we have re-organized our resources to address the challenge of reaching out to different audiences in a more nuanced way. The Policy and Economic Analysis Division was re-organized into a new Business and Economics Division to reinforce the critical importance

#### ***What is a Competition Compliance Programme (CCP)?***

A CCP involves the proactive efforts of an enterprise to comply with the provisions of the Competition Act. When the enterprise takes certain necessary and concrete steps to ensure that knowingly or unknowingly it does not infringe the competition law, it can be regarded as maintaining a CCP.

Generally speaking, a CCP involves a formal internal framework for ensuring that management and employees comply with competition law. It may include elements such as the training of staff to raise awareness of the competition law, the use of checklists to ensure competition compliance by individual staff and strong support from senior management.

#### ***The Importance of a CCP for Businesses***

A successful CCP not only minimises the risk of a business infringing competition law, but also helps detecting any infringements early on, allowing timely remedial action. This is crucial in the case of cartels, because under the CCS Leniency Programme, up to 100% immunity from financial penalties may be granted to the first cartel member to report to CCS. Further, if employees understand competition law well, they will also be able to recognise when their business falls victim of anti-competitive practices, and be better-placed to lodge a reasoned complaint to CCS.

A CCP cannot completely indemnify a business from wrongdoing if it was found to have infringed the law. However, a business may receive a reduction in financial penalties should it have a CCP that is effectively implemented.

#### ***Implementing an Effective CCP***

For a CCP to be effective, it must be tailored to a business' particular circumstances. There is no standard programme that will apply universally. Businesses may consider seeking professional advice from a legal adviser or a compliance specialist.

Putting a compliance programme in place should be seen as the start of an ongoing process, rather than an end in itself. The programme must be ongoing and sufficiently flexible to adapt to the changing requirements of the business. The regular evaluation process should ensure that the compliance programme continues to be relevant to the company's business.

that we attach to understanding and reaching out to businesses and industries. The responsibilities for engaging various stakeholder groups have been clearly identified and assigned to different parts of CCS (please see table below). A number of officers have been re-deployed between divisions to facilitate cross-fertilization of expertise and experiences.

<b>Division</b>	<b>Stakeholder Groups</b>
Business and Economics	Business community, government agencies, academia
Corporate Affairs	Internal CCS community
Legal and Enforcement	Legal fraternity (judges, private practitioners, corporate counsels, academics, etc.)
Strategic Planning	Consumers, media, general public

There are often synergies between enforcement, advocacy, and outreach when they are internalized within a division. For example, an enforcement officer may have acquired deep knowledge of a particular industry and established good contacts through case work. He can become a valuable resource for subsequent outreach activities to this target audience. Alternatively, an officer who is actively involved in outreach may tap into feedback that could aid market surveillance and an early detection of anticompetitive practices.

#### **IV. INNOVATIVE COMMUNICATION**

CCS is always mindful of the need to be innovative and interesting in communicating the message on the importance of competition. We want our audience to hear us, to understand us, and to remember us. We also find that the use of electronic and social media provide an excellent avenue to supplement our communication strategy in the more mainstream channels.

We totally revamped our corporate website to design it with the end-users in mind, instead of focusing on organizing and pushing out information in a format that appeared more logical to us. We took special care to speak with frequent users of the website to understand what they needed and how they preferred to navigate and access information. With the new website, it has become easier to share an article with a friend or provide feedback to us with just one click. We are trying to actively run our news on the CCS Facebook and move towards using YouTube for more participative communication.

CCS has gone back to the drawing board to develop captivating content on videos and trailers that could be posted on new social media platforms. We recently launched a Digital Animation Film Contest. Contestants are challenged to create stories about issues related to competition law through digital animation films. They stand to win generous cash prizes, and have the opportunity to showcase their work to an international audience.

We developed a series of manga comics as an entertaining medium to supplement our educational handbooks. The three titles to date are *FIXED!*—illustrating the harm of price-fixing, *FOILED!*—illustrating the abuse of dominance, and *FREED!*—describing the Leniency Programme. These issues are much loved by stakeholders.

On another entertaining occasion, we sponsored the Singapore premiere of the movie *The Informant*, directed by Steven Soderbergh and starred Matt Damon, depicting a whistle blower in a price-fixing conspiracy. The event was welcomed by stakeholders as a nice break from the conventional seminar setting filled with presentations and intellectual discussions.

## **V. CONCLUSION**

This article highlights the importance of a balanced approach between enforcement and advocacy/outreach. We recognize that the two functions are complementary rather than cannibalising. Without advocacy and outreach, enforcement alone cannot positively ensure competitive markets. Without a strong enforcement track record, advocacy and outreach efforts alone will not be effective, because stakeholders will not take competition policy and law seriously. We are fully committed to both remedial and preventive care, to enable a vibrant market environment for businesses to thrive in.