

The *Law Gazette* talks to Mr Toh Han Li, the newly appointed Chief Executive of the Competition Commission of Singapore (“CCS”), on the latest happenings and initiatives undertaken by the CCS and the challenges that it is facing, both locally and abroad.

Interview with Mr Toh Han Li Chief Executive, Competition Commission of Singapore



1. **Congratulations on your recent appointment as Chief Executive of the Competition Commission of Singapore (“CCS”) effective 1 October 2013. Prior to this you were the Assistant Chief Executive (Legal & Enforcement). How has the transition been?**

Thank you very much. As you have noted, I was the Assistant Chief Executive (Legal & Enforcement) of CCS since 2009. I took over as Chief Executive from Ms Yena Lim, who is from the Administrative Service and had completed her three-year term. The vantage point from the Chief Executive’s chair is certainly much wider as it goes beyond legal work and involves strategy and policy as well. Fortunately, I inherited an excellent team of professionals from Yena and we are well placed to move CCS into the next phase. By 1 January 2015, CCS will be 10 years old and this marks a significant milestone in its relatively young history as an agency.

2. **Since your previous interview in July 2010 in your capacity as Assistant Chief Executive (Legal & Enforcement) of CCS, what has been happening at CCS?**

- a. ***Significant Casework***

Since July 2010, much has happened. Shortly after my interview with the *Singapore Law Gazette*, on 19 August 2010, CCS issued its decision in the Singapore Medical Association’s (“SMA”) case on SMA’s Guidelines on Fees. The ramifications of CCS’s decision in the SMA case are far reaching as it impacts all sorts of scale fees and fee recommendations by trade associations and professional bodies in Singapore. For instance, in 2009, the Law Society of Singapore had started the ball rolling when it removed the Conveyancing Fee Guidelines and stated in its media release that: “[t]he Council believes that all fees should be freely negotiated between solicitors and their clients without Guidelines from the Council”.

More recently, in the case of *Lim Mey Lee Susan v Singapore Medical Council*,¹ the Court of Three Judges observed that CCS’s approach in the SMA decision achieved “a practical balance between the proscription of overcharging on the one hand and the need to ensure appropriate remuneration for doctors’ services on the other hand”. CCS’s approach included enhancing price transparency by referencing Ministry of Health’s (“MOH”) initiatives such as: (i) requiring all private medical clinics **to display their common charges** thereby increasing pricing transparency for consultations; (ii) publishing individual hospital bill sizes on the MOH’s website and requiring hospitals to provide financial counselling to patients; and (iii) requiring medical bills given to patients to be itemised.

Just last month, CCS notes and welcomes Parkway Healthcare Group’s (“Parkway”) decision to publish the prices of over 30 common procedures at its hospitals. This improves price transparency in the marketplace (as opposed

to recommended price guidelines) and allows consumers to make better informed choices. In Parkway's case, its price data is historical and aggregated from several sources and does not seek to affect the individual pricing decisions of the specialists. Hence they do not serve as fee guidelines or recommendations.

To date CCS has issued eight infringement decisions, defended seven appeals before the Competition Appeal Board (an independent specialist body constituted to hear appeals from CCS's decisions on a full merits basis), issued 24 notifications for decision and guidance, cleared 36 merger applications and completed 13 market studies. We have also handled 93 preliminary enquiries/investigations and issued 38 competition advisories to government agencies in their respective policy and regulatory areas.

As a result of the Competition Appeal Board's published decisions in the *Express Bus Operators*,² *SISTIC*³ and *Modelling services*⁴ appeals the law on anti-competitive agreements, abuse of dominance and financial penalties have been clarified.

In 2012, we decided to streamline the merger notification process with the publication of its revised Guidelines on Merger Procedures 2012 ("Guidelines") which came into effect on 1 July 2012. The revised Guidelines incorporated suggestions and feedback from the business community that were received during an earlier public consultation exercise held by CCS as well as our experience in merger control over five years. The revisions were intended to bring about three key benefits for businesses:

1. CCS commenced a new confidential advice service to merger parties who wish to keep their mergers confidential for the time being, but yet wish to get an indication from CCS on whether or not their mergers would infringe the Competition Act (the "Act").
2. It made it clear that CCS is unlikely to investigate a merger situation that involves only small businesses if their turnovers in Singapore in the financial year preceding the transaction are each below S\$5 million and the transacting parties' combined worldwide turnover in the financial year preceding the transaction is below S\$50 million. This was intended to give greater certainty to SMEs.
3. The Guidelines provide clearer instructions on what information is needed in making a merger notification filing to CCS. The application form was revised for greater clarity and comprehensiveness to make it more efficient from a business perspective.

As regards recent notable mergers that were cleared by CCS were the merger of Nippon Steel Corporation and Sumitomo Metal Industries, Ltd for steel products and the acquisition of TNT Express N.V. by United Parcel Service, Inc, another major logistics service supplier. An acquisition that was close to Singaporeans' hearts was Heineken International B.V.'s acquisition of Asia Pacific Breweries Limited ("APB"), a major local beer manufacturer in Singapore's domestic beer market that owned locally recognised traditional household beer brands like Tiger, Anchor and ABC Extra Stout, at an estimated aggregate consideration of \$8.1 billion.

We recognise that there may be some forms of collaboration or joint ventures between or among competitors that can have pro-competitive effects with benefits to consumers, and that is the purpose of our Notification system, to give peace of mind to the parties through a decision or guidance from CCS. CCS has received an aggregate of 24 such applications since the Act came into force and would encourage businesses to make such applications for certainty in their business dealings that the conduct will not infringe the Act.

Most recently, CCS issued its decision in the Notification for Decision received from Visa Worldwide regarding its Multilateral Interchange Fee ("MIF") system after a careful review of the facts and evidence and an extensive consultation with the relevant stakeholders including merchants, banks and payment processors and cardholders in Singapore.

In the increasingly competitive airline industry, we have seen a number of joint ventures between airlines seeking CCS's clearance to proceed with the joint venture. The notifications are filed in respect of conduct in Singapore either as an origin or destination. There will be *prima facie* competition concerns as the joint ventures usually relate to the need to coordinate on network, scheduling, pricing, marketing, purchasing, customer service, resourcing decisions and frequent flyer programmes. CCS will then examine whether these concerns can be offset by net economic benefits to Singapore passengers and is, therefore, excluded from the s 34 prohibition of the Act. In this regard, CCS noted that the presence of low cost carriers on routes can generally increase the level of competitiveness through better connectivity, increased capacity and reduced prices from existing airlines on these routes. Emirates and Qantas Airways Limited made a particularly interesting application for decision by providing a voluntary undertaking to provide a fixed capacity on each of the Singapore-Melbourne and Singapore-Brisbane routes. CCS conducted a public consultation and received feedback from the Civil Aviation Authority of Singapore, Changi Airport Group, Vital.Org,

Air France, Thai Airways, Singapore Aircargo Agents Association and SIA Cargo. CCS concluded that their voluntary undertaking resulted in a net economic benefit and did not find their alliance objectionable under the Act.

b. *Outreach and Advocacy*

Advocacy is a critical plank in our efforts to ensure a healthy competition culture. CCS has been tireless in encouraging the business community to increase voluntary compliance with Competition Laws and regulations. In 2012, CCS launched two new initiatives to help Small and Medium Enterprises (“SMEs”) comply with the Act. First, an e-learning tool “Competing on Merit: Getting to Know the Act” was developed to help businesses understand the essentials of the Act. Second, a handbook titled *Better Business with Competition Compliance Programme* was produced to highlight to businesses how competition compliance can help them compete on a level playing field and expand their footprints beyond the local market. Each year, CCS holds an annual Digital Animation Contest to generate public interest with the message of competition which allows us to generate digital animation collaterals which have proven popular during outreach programmes and are much sought after for corporate in-house training. There were even exceptional entries by 10-year-olds in the Digital Animation Contest!

We have collaborated with Channel NewsAsia (“CNA”) to produce two episodes for their *Money Mind* programme. The programme focused on the benefits of competition law and the cases handled by CCS. These two episodes were aired on 27 January and 3 February 2013.

A particularly innovative approach we took to reaching the business community was to assign “relationship managers” to different industries. The job of the relationship manager is to get to know all the key players in an industry and likewise for them to get to know him/her. This sensitises CCS to ground developments and deepens our understanding of the driving forces acting on an industry, especially the challenges that may pressure some companies to adopt anti-competitive behaviour. We are also allocating more resources to doing business analytics and market research.

3. **CCS has indeed been keeping busy. At your previous interview, you were asked whether CCS’s Leniency Programme was starting to bear fruit. After the passage of three years, are you seeing the Leniency Programme contributing an increasing amount of cases to CCS?**

CCS’s Leniency Programme is designed to incentivise undertakings that are involved in cartel activities to come forward to and cooperate with CCS through the provision

of full disclosure and evidence of such cartel activities in exchange for either immunity from or a reduction in financial penalties. The “First-to-the-Door” would get the benefit of full immunity from financial penalties subject to certain terms and conditions. This concept of total immunity for a party involved in unlawful conduct may appear unique in the context of enforcement in Singapore but, in fact, leniency programmes are widely accepted and established among competition authorities worldwide. It is a recognition of the fact that cartels are generally secretive and hard to detect and an effective leniency programme can destabilise such cartels and become a tremendous help to cartel enforcement.

In addition, CCS has the Leniency Plus system to encourage cartel members under investigations to report their involvement in another cartel activity so as to secure reduced financial penalties for the first cartel activity.

There has been a healthy case load resulting from our Leniency Programme. As of end September 2013, CCS already has over 18 current leniency applications and this number is still growing. At present, we have a number of cross-border leniency investigations. I find this encouraging and an indication that CCS’s Leniency Programme is actually effective in improving the detection of cartels and CCS will continue to refine our Leniency Programme to increase its practical effectiveness.

4. **Competition law has been in force since 1 January 2006. How much progress has been made in instilling a compliance culture in the business community?**

Businesses should take the view that competition compliance is an integral part of good corporate governance along with the need to comply with other regulations and laws. We hope that businesses want to be known as ethical businesses in that they comply with the law and have measures to ensure compliance. Businesses should integrate competition compliance into their corporate governance framework so that it is embraced by employees at all levels as part of their corporate culture. The old adage “prevention is better cure” is still the best approach for businesses, especially since liability under the Act is at the enterprise and not individual level.

In a recent survey of stakeholders, about 42 per cent of business respondents indicated that their top leadership strongly advocated compliance with competition law in Singapore. However, only 37 per cent had compiled instructions on compliance for their employees, and 32 per cent regularly conducted training on this aspect. Therefore, it appears that much remains to be done on the ground to educate businesses about the competition regime and that

competition law is there to protect businesses from anti-competitive behaviour by their competitors and to level the commercial playing field.

In this regard, both in-house counsel and external counsel have an important role to play in properly advising clients, whether it is in a merger and acquisition situation, on how to implement a successful compliance programme, or on how to handle a “dawn raid” by CCS. A “dawn raid” refers to a surprise inspection by CCS officers on business premises which may also involve the use of search warrants.

5. I can tell that local issues have been keeping CCS busy. How about the international front?

Under s 6(1)(e) of the Act, one of CCS’s functions and duties is to act internationally as the national body representative of Singapore in respect of competition matters. In this respect, CCS has continued to strengthen CCS’s links with other competition authorities and institutions, like the International Competition Network, the Organisation of Economic Co-operation and Development and the Global Competition Review, as these have been invaluable resources for CCS’s growth.

In particular, CCS recognises the increasing profile of competition law in the Association of South East Asian Countries (“ASEAN”). The ASEAN Economic Community Blueprint acknowledges the importance of competition policy and law in promoting economic development and integration and ASEAN Member States (“AMSs”) are endeavouring to introduce competition policy by 2015.

The AEGC (ASEAN Expert Group on Competition), with the support of ASEAN Secretariat, plays an important role of building ties and capacities among government agencies, increasing the engagement and interaction between ASEAN countries, and facilitating the development and implementation of competition laws among ASEAN member countries. CCS will continue to play an active role in the AEGC to develop sound competition policies and best practices for the region.

6. What do you see as the future challenges for CCS? Are you able to share your views on what you think will be keeping you busy for the next three years?

Our cases are getting increasingly more complex and challenging. We have seen lawyers filing sophisticated, detailed complaints on behalf of clients as opposed to the past where complainants were largely in person. More cross-border considerations will arise as ASEAN moves towards the ASEAN Economic Community

Cartels today have international dimensions and this entails more leniency applications and the need to coordinate efforts and responses among competition authorities. Mergers will increasingly involve multi-jurisdictional filings and co-operation and information sharing with competition authorities from other jurisdictions will become increasingly more important.

In Singapore, sectorial regulators regulate competition in their own industries. Where competition enforcement is undertaken by a sectorial regulator, there is a need to harmonise approaches because a licensee’s conduct may well extend outside the regulated sector and come under CCS’s purview. In recognition of this need, CCS hosted the inaugural meeting of the Community of Practice of Competition and Market Regulators (“COPCOM”) in 2011. COPCOM is an informal dialogue platform for government agencies, particularly the sectorial regulators, to discuss various market and cross-sectoral competition regulation issues in Singapore and share the experiences, learning points and developments in their respective sectors.

Finally, s 86 of our Act allows persons who have suffered loss or damage as a result of a competition infringement to bring an action in Court provided certain preconditions in s 86 are satisfied. As we have now had a number of cases which have satisfied these preconditions, lawyers will need to be aware both for the plaintiff and defendant that this can happen and advise their clients accordingly. In the UK, it took a while but we are now seeing a number of private actions arising after competition enforcement by the competition authorities.

Singapore Law Gazette

Notes

- 1 [2013] 3 SLR 900 at 930- 931, para 53; [2013] SGHC 122.
- 2 *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand: Konsortium Express and Tours Pte Ltd, Five Stars Tours Pte Ltd, GR Travel Pte Ltd and Gunung Travel Pte Ltd* [2011] SGCAB 1 and *Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand: Transtar Travel Pte Ltd and Regent Star Travel Pte Ltd* [2011] SGCAB 2.
- 3 *Re Abuse of a Dominant Position by SISTIC.com Pte Ltd* [2012] SGCAB 1.
- 4 *Re Price-fixing in Modelling Services* [2012] SGCAB 2.