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CRISIS CARTELS

Contribution from Singapore

-- Session III --

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CRISIS CARTELS

-- Singapore --

1. Governmental policies towards cartels during a crisis

1. Singapore businesses were badly affected by the recent financial crisis. As a small, open economy with heavy dependence on trade (Singapore's total trade as a percentage of GDP amounts to 282%)¹, the global reduction in trade as a result of the financial crisis resulted in Singapore's GDP growth rate plummeting from 7.5%² in 2007 to -2.1%³ in 2009.

2. Singapore's Competition Act is relatively new and was established in 2005 and is enforced by the Competition Commission of Singapore (CCS). The prohibition against cartels came into force on 1 January 2006. While the Act gives the Minister power to exempt particular anti-competitive agreements or certain type of agreements from the Act on the grounds of "exceptional and compelling reasons of public policy", this power was never exercised to afford special treatment for crisis cartels during the financial crisis. On the contrary, government policy statements made during the financial crisis clearly indicated that competition is and remains a key tenet of Singapore's economic growth. The government's position can be summed up by President S R Nathan's speech at the Opening of the Singapore Parliament on 18 May 2009 at the peak of the financial crisis where he said:

*"Our basic approach to promoting growth has been to **stay competitive**, upgrade our people, develop new capabilities, and create an outstanding pro-business environment. Then we can **rely on free markets, free trade and entrepreneurship to create wealth for individuals and the country**. This is how Singapore has consistently developed year after year, and over time totally transformed our economy and our people's lives."⁴*

3. As it is not part of Singapore's policy to allow for the development of crisis cartels, cartel enforcement by the CCS remained robust and in fact increased during the financial crisis. Having said that, CCS recognised that the financial crisis would have an effect on business' cash flow and ability to pay financial penalties imposed against them as a result of CCS' finding of infringement. As such, legislative amendments were made in 2010 to allow for the payment of financial penalties by way of instalments in appropriate cases.

¹ See Ministry of Trade and Industry (MTI) Annual Statistics, National Income and External Trade 2009, available at: <http://app.mti.gov.sg/default.asp?id=725>

² <http://www.business.gov.sg/EN/News/Jan2008/20080102Singapor.htm?TextBoxSearch=singapore+economy+grew&site=EnterpriseOne>

³ <http://www.business.gov.sg/EN/News/Jan2010/20100104Sgeconom.htm>

⁴ <http://www.istana.gov.sg/News/Address+by+President+S+R+Nathan+at+the+Opening+of+Parliament.htm>

4. Singapore's commitment to open trade, free markets and robust competition has allowed it to rapidly and successfully emerge from the financial crisis. Indeed, Singapore emerged from the financial crisis with an impressive 15% GDP growth forecasted for 2010⁵.

2. Enforcement record on cartels during the recent crisis

5. In line with government policy, CCS' enforcement philosophy has consistently been that any agreement or concerted practice which leads to a prevention, restriction or distortion of competition will constitute an infringement of the Competition Act regardless of the prevailing economic climate.

6. CCS issued its first infringement decision in early 2008 (*Pest Operators Case*). During the financial crisis CCS' cartel enforcement gathered pace, with decisions being made in a further two cases, including a price-fixing case (*Bus Operators Case*) in 2009 which resulted in heavy financial penalties totalling 1.69 million SGD and a bid-rigging case in 2010 which involved a leniency applicant. A number of dawn raids were also conducted in 2009 and 2010 and investigations relating to those raids are ongoing, all signalling to businesses that there would be no let up in CCS' enforcement stance despite the financial crisis.

3. Trade association activities and competition concerns

7. Since the 1980s, there has been a broad policy move by the government of Singapore to liberalise all sectors of the economy. While trade associations can serve a useful economic function such as the positive promotion of industry best practices, some trade associations felt that with the removal of government oversight in their sector, the association would then assume the mantle of facilitating and mobilising collective and concerted action among its members, especially in times of economic crisis. Indeed, CCS noted that a number of businesses turned to their trade associations for leadership and assistance during the financial crisis. In some cases, this resulted in the trade association facilitating anti-competitive behaviour including collective action on prices among its members. The *Bus Operators Case* was a case in point, where the members used their trade association as a front to fix coach ticket prices and fuel surcharges in order to meet the increasing fuel costs which its members faced. One of the association's stated objectives for the price-fixing arrangements was to allow the economically weaker members to survive, by fixing minimum selling prices for all members' bus tickets.

8. In addition to facilitating outright price-fixing agreements by its members, CCS also found that the issuance of price recommendations by trade and professional associations to be a common feature in Singapore. This was probably a legacy from the past when the government had promulgated and encouraged the use of fixed price schedules, and with the abolition of these price schedules, associations felt that it was their role to issue price recommendation to its members to fill that lacuna. For instance, the Law Society of Singapore issued voluntary fee guidelines for conveyancing transactions after the abolition of the scale fees in 2003, as there was feedback from its members that some form of fee guidelines would be useful in making the transition from the regime of scale fees. The Law Society eventually abolished its fee guidelines in 2009 as it felt that all fees should be freely negotiated between solicitor and client.

9. CCS' views on price recommendations by trade associations were set out in a decision issued against the Singapore Medical Association (SMA) in 2010⁶. In this case, CCS found that the anti-competitive effects of the price guidelines (which were in effect price recommendations by the professional association) outweighed any pro-competitive effects that the guidelines were claimed by the association to have. The association had claimed that the price recommendations were good for consumers

⁵ http://app.mti.gov.sg/data/article/23503/doc/PR_3Q2010_ESS.pdf.

⁶ See <http://app.casebank.ccs.gov.sg/>.

and dealt with information asymmetry problems which were especially acute in the healthcare industry. In its decision, CCS found that there were better measures in place that were not anti-competitive to improve information asymmetry and information gaps for patients.

10. CCS followed up on the SMA decision by issuing a policy statement on price recommendations encouraging other trade and professional associations to review their price recommendations and remove them. Business were also encouraged to set their prices independently without recourse to price recommendations issued by their trade or professional associations and not to use price recommendations as a form of justification for charging higher prices to consumers. Instead of immediately investigating trade and professional associations that we were aware had price recommendations in place, CCS took proactive measures to contact these associations and through advocacy convince them to discontinue issuing the recommendations. This is an ongoing process.

4. Competition advocacy on cartel-related matters

11. CCS has extensive and innovative advocacy programmes and these have continued apace during the financial crisis. CCS regularly engages other government agencies as well as to external parties and the messaging is to reiterate the dangers of crisis cartels, for example by referring to historical examples such as the damaging economic effects of legalised cartels during the New Deal era of the Roosevelt Administration.

5. Conclusion

12. In summary therefore, CCS did not have to make any exception in the enforcement against the operations of cartels during the last financial crisis. CCS maintained a consistent stand that cartels are harmful to competition and continued with its enforcement actions. CCS also placed the activities of trade associations under increasing scrutiny to ensure that the trade association does not become a front for cartel activities among its members or allow the trade associations to issue anti-competitive price recommendations to its members.