FORMERLY NAMED “COMPETITION COMMISSION OF SINGAPORE” TAKES ON A NEW NAME IN LIGHT OF EXPANDED CONSUMER PROTECTION ROLE

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By: Christopher S. Finnerty, Michael R. Murphy, Andre Jumabhoy, Caiti A. Zeytoonian, Sara Aparicio Hill

Last month, the Singapore Parliament passed a bill expanding the Competition Commission of Singapore's regulatory powers. [1] In addition to administering and enforcing Singapore's Competition Act, the regulatory body will now administer consumer protection and unfair trade practice laws as well. [2] As a result of the change, the formerly named Competition Commission of Singapore will be known as the Competition and Consumer Commission of Singapore ("CCCS"), signaling an expansion of the body's power over Singapore's trade practices.

With a population of roughly 5.6 million, the city-state is recognized as a thriving global financial hub and offers a worthwhile opportunity for product manufacturers looking to expand distribution into Southeast Asia. For those planning to establish distribution channels in the region, an understanding of the CCCS and Singapore's competition law is essential. This client alert aims to provide an overview of the governing competition law and the role of the CCCS in Singapore.

SINGAPORE'S COMPETITION LAW: THE COMPETITION ACT

The Competition Act (the "Act"), which was enacted in 2004, is the primary legislative instrument regulating competition in Singapore. The Act has three main statutory prohibitions: (i) the prohibition against anti-competitive agreements (The Section 34 Prohibition); (ii) the prohibition for any undertaking to abuse their dominant position within Singapore or elsewhere (The Section 47 Prohibition); and (iii) the prohibition of any mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods or services (The Section 54 Prohibition).

The CCCS is the statutory body responsible for enforcing the Act. For product manufacturers, the Section 34 and 47 prohibitions are the most relevant. These provisions were modelled after the UK's Competition Act of 1998, which in turn is modelled on Articles 101 and 102 of the Treaty on the Functioning of the European Union in the EU. Hence, when interpreting the Section 34 and Section 47 Prohibitions, the CCCS often relies on case law from the Court of Justice of the European Union and the United Kingdom. However, Singapore law has several unique advantages that make the region a viable location for product manufacturers to implement resale price maintenance ("RPM") and selective distribution policies. By adopting the strategies below, product manufacturers can effectively combat price erosion and secure control over brand equity in the marketplace.

RESALE PRICE MAINTENANCE

The Section 34 Prohibition prohibits agreements that restrict competition by object or by effect. However, with respect to issues arising from vertical agreements, such as RPM, Singapore has significantly diverged from EU and UK competition rules in the interest of maintaining an open and liberal economy.

Thus, product manufacturers in Singapore have additional freedoms that are not otherwise available in the EU and UK. For example, the Third Schedule of the Act exempts any vertical agreements [3] from the Section 34 Prohibition. Thus, while product manufacturers are prohibited from entering into arrangements with other manufacturers who operate at the same level of the distribution chain, they are free to make arrangements with retailers, distributors, and resellers.

Additionally, Singapore's law offers an exemption for agreements with a net economic benefit. [4] Overall, the Act suggests that the CCCS is open to permitting beneficial RPM practices in the market. However, it is important to note that Singapore has specific provisions prohibiting the abuse of a dominant market position. [5] These provisions are very similar to that of the EU. Section 47 of the Act prohibits "any conduct on the part of one or more undertaking which amounts to the abuse of a dominant market position in any market in Singapore.".. [6]

Thus, a dominant company engaging in RPM to protect, enhance, or perpetuate its dominant position in ways unrelated to competitive merit could be punished for abusing dominance and thus running afoul of Section 47. As of January 2018, the CCCS has conducted several investigations, which have been closed following commitments. [7] However, the CCCS issued only *one* infringement decision related to violation of Section 47, which suggests limited precedent for punishment of product manufacturers under the provision. [8]

Still, for manufacturers who are hesitant to adopt RPM, selective distribution offers a low-risk alternative means for product manufacturers to gain control over their product channels.

SELECTIVE DISTRIBUTION PROGRAMS

Selective distribution is a strategy that enables a manufacturer to sell its products to consumers through a network of authorized retailers. Through selective distribution, product manufacturers can limit which retailers sell their products. Additionally, selective distribution affords product manufacturers control over the manner in which their products are sold.

Selective distribution arrangements involve an agreement between a product manufacturer and a retailer, thus qualifying as a vertical agreement under Singapore's competition law. [9] Because vertical agreements are exempt from the anti-competition provision of the Competition Act, [10] product manufacturers are lawfully permitted to implement selective distribution programs in the region. [11] Thus, selective distribution programs are an ideal means for manufacturers to gain control over the image, quality, and reputation of their brand by prohibiting sales to nonauthorized distributors.

CONCLUSION

As a growing global hub for technology and business, Singapore offers a viable consumer market for product manufacturers who wish to establish distribution channels in Asia. By adopting flexible global distribution and pricing strategies that comply with competition regulations in Singapore and throughout the world, product manufacturers can achieve global price stability. K&L Gates' Antitrust, Competition and Trade Regulation group

has experience designing and implementing coordinated distribution strategies throughout different regions of the world, including Asia.

For more information on the firm's global antitrust and competition law practice, contact Christopher S. Finnerty (chris.finnerty@klgates.com) or Michael R. Murphy (michael.r.murphy@klgates.com).

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[1] Tiffany Fumiko Tay, *Competition watchdog gets new name, consumer protection powers,* The Straits Times (Apr. 6, 2018, 6:27 PM), available here.

[2] *Id.*

[3] *See* Competition Act, Third Schedule Exclusions, Para. 8 ("'[V]ertical agreement' means any agreement entered into between 2 or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services and includes provisions contained in such agreements which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of the agreement and are directly related to the use, sale or resale of goods or services by the buyer or its customers."), available here.

[4] *See* Competition Act, Third Schedule Exclusions, Para. 9 (Agreements with net economic benefit include any agreement that contributes to (a) improving production or distribution; or (b) promoting technical or economic progress; but which does not (i) impose on the undertakings concerned restrictions that are not indispensable to the attainment of those objectives; or (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.), available here.

[5] *See* Section 47 of the Competition Act (Ch. 50B), available here.

[6] *Id.*

[7] These investigations were mainly concerned with potentially anti-competitive exclusivity clauses or conditional rebates and refusal to supply essential goods or services.

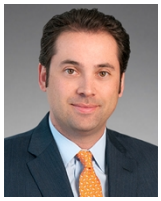
[8] Re Abuse of a Dominant Position by SISTIC.com Pte Ltd [2012] SGCAB 1

[9] Vertical agreements are those entered into "between two or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain products." *See* Clause 4.1 of the "CCS Guidelines on the Section 34 Prohibition 2016, available here.

[10] Section 34 of the Competition Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices that have as their object or effect the prevention, restriction, or distortion of competition within Singapore unless they are excluded or exempt otherwise.

[11] However, while entities may agree to regulate the terms and conditions on which products are to be supplied, an association that "imposes on its members an obligation to use common terms and conditions of sale or purchase, this may restrict competition." *See* Clause 3.13 of the "CCS Guidelines on the Section 34 Prohibition 2016," available here.

KEY CONTACTS



CHRISTOPHER S. FINNERTY
PARTNER

BOSTON
+1.617.261.3123
CHRIS.FINNERTY@KLGATES.COM

MICHAEL R. MURPHY
PARTNER

BOSTON
+1.617.261.3132
MICHAEL.R.MURPHY@KLGATES.COM