COMPETITION COMMISSION OF SINGAPORE FINES CAPACITOR MANUFACTURERS FOR PRICE FIXING AND INFORMATION EXCHANGE

On 5 January 2018, the Competition Commission of Singapore (CCS) issued an Infringement Decision and imposed a record-breaking fine of over SGD19.5 million (approximately USD15 million) against five capacitor manufacturers for engaging in anti-competitive agreements and/or concerted practices to fix prices and exchange information in relation to the sale of Aluminium Electrolytic Capacitors (AECs) in Singapore, thereby infringing section 34 of the Competition Act (the Act).

Key issues

- The Competition Commission of Singapore issued a record-breaking fine of over SGD19.5 million to five capacitor manufacturers for infringing section 34 of the Competition Act by entering into anti-competitive agreements and exchanging commercially sensitive information with each other from 2006 to 2013.
- This decision provides useful guidance on the interpretation of section 34 and on the assessment of penalties.
- It also reflects the CCS's inclination to impose greater penalties in order to deter commercial enterprises from engaging in anti-competitive agreements and concerted practices.

BACKGROUND

The CCS commenced its investigation on 29 May 2014 into anti-competitive agreements and/or concerted practices in respect of the sale, distribution and pricing of AECs (which are components used in electrical devices including computers and a variety of domestic appliances) in Singapore following information received from leniency applicant Panasonic Industrial Devices Singapore and Panasonic Industrial Devices Malaysia Sdn Bhd (Panasonic).

The CCS found that the five capacitor manufacturers, ELNA Electronics (S) Pte Ltd (ELNA), Nichicon (Singapore) Pte Ltd (Nichicon), Panasonic, Rubycon Singapore Pte Ltd (Rubycon), and Singapore Chemi-con (Pte) Ltd (SCC) (collectively the "Parties"), were close competitors and held regular meetings in Singapore where they:

- Exchanged confidential and commercially sensitive business information such as customer quotations, sales volumes, production capacities, business plans and pricing strategies;
- Discussed and agreed on sales prices, including various price increases; and
- Agreed to collectively reject customers' requests for reduction in prices of AECs sold to them.

Consequently, the CCS concluded that the Parties infringed section 34 of the Act, which prohibits any agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object

or effect the prevention, restriction or distortion of competition within Singapore.

The CCS has directed the Parties to pay over SGD19.5 million (approximately USD15 million) in penalties (with no penalty imposed on Panasonic as it was the immunity applicant).

ANTI-COMPETITIVE AGREEMENTS

Section 34 of the Act prohibits "agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore".

In line with the approach previously accepted by the Competition Appeal Board, the CCS looked to UK and EU case law in providing the following guidance in respect of section 34 of the Act:

- It is not necessary to prove that there is an actual plan to make out a concerted practice – an informal cooperation, without any formal agreement or decision, suffices.
- It is also not necessary for the purposes of finding an infringement to characterise conduct as exclusively an agreement or a concerted practice.
- Passive participation in meetings at which anti-competitive agreements are concluded can infringe the section 34 prohibition, unless the undertaking expressly disapproves of the conduct or distances itself from the cartel. However, the CCS noted that the extent to which the undertaking participated in the agreement might influence the severity of the penalty.
- There is a presumption that an agreement and/or concerted practice continues to be in operation until the contrary is shown. In respect of termination of participation in a cartel, an undertaking must: (i) denounce the objectives of the cartel clearly and unequivocally to the other cartel members; (ii) not attend any further meetings; and (iii) be able to prove that its subsequent conduct on the market was determined independently.
- An infringement of section 34 can result not only from a single act but also from a series of acts or continuous conduct. In order for a series of acts or continuous conduct to constitute a single continuous infringement, it must be shown that: (i) the various acts were all in pursuit of the same common objective(s); (ii) each party intended to contribute by its own conduct to the common objective(s) of the single overall infringement; and (iii) each party was aware of or could reasonably have foreseen actual conduct planned or put into effect by other parties in pursuit of the common objective(s).
- In order to ascertain that coordination between undertakings restricts competition by object, such coordination needs to reveal in itself a sufficient degree of harm to competition, having regard to the economic and legal context. Once a restriction of competition by object has been established, the CCS need not proceed further to analyse or demonstrate anti-competitive effects.

The CCS noted that it views price-fixing and the exchange of information, which has as its objective the prevention, restriction or distortion of competition on the market concerned, to be a restriction of competition by object.

THE PARTIES' CONDUCT

The CCS concluded that the Parties had engaged in a single continuous infringement in pursuit of a common overall objective to fix, raise, maintain and/or prevent the reduction of prices of the sale of AECs to customers in Singapore so as to maintain each Party's market share, profits and sales.

In particular, the Parties through regular, organised meetings, as well as through ad hoc meetings, email correspondence, and telephone conversations, came to the following agreements and exchanged the following information:

- **Agreements and information exchanges on price increases for AECs between 2006-2008:** these agreements were made during formal meetings between competitors. Apart from general agreements in price increases, evidence also showed that the Parties used the meetings to discuss and plan price increases for specific customers, and to facilitate negotiations with the customers affected.
- **Agreements to resist price reduction requests from customers:** the Parties cooperated to collectively resist requests from customers to reduce prices, and collectively agreed during meetings not to lower prices of AECs. This allowed the Parties to maintain their prices to customers as well as maintain their market share.
- **Exchange of information on customers' Request for Quotations (RFQ):** the Parties discussed the percentage price increases of AECs that they intended to quote to customers when there was an RFQ and/or their intention or decision not to grant a price reduction to specific customers.

The CCS found that the above conduct supported a finding of a single continuous infringement of the section 34 prohibition by object, as the conduct was in pursuit of a common overall objective to maintain profits and market shares through fixing, raising, maintaining and/or preventing the reduction in prices of AECs to customers in Singapore.

PENALTIES

The CCS imposed an overall record-breaking penalty of over SGD19.5 million, stemming from the fact that the Parties held more than two-thirds of the share of the market for the sale of AECs in Singapore and the long duration of the cartel's conduct (with the longest period of infringement running from 2006 to 2013).

The Parties were directed to pay the following financial penalties:

Party	**Financial Penalty (SGD)**
ELNA	$853,227
Nichicon	$6,987,262
Panasonic	NIL
Rubycon	$4,718,170
SCC	$6,993,805
Total	**$19,552,464**

In line with the CCS's Guidelines on the Appropriate Amount of Penalty, each Party's penalty consisted of:

- A base penalty, which took into account the seriousness of the infringement and the relevant turnover of each Party;

- The duration of the infringement (the base penalty is multiplied by the duration of the infringement);
- Aggravating and mitigating factors;
- Other relevant factors (i.e. to achieve the CCS's policy objective); and
- Adjustment for leniency.

Panasonic was granted total immunity from financial penalties for being the immunity applicant. ELNA, Rubycon and SCC were also awarded a discount further to their application for leniency under the CCS Leniency Programme.

In particular, the CCS considered the fact that Nichicon had a compliance programme in place since 2002 to be a mitigating factor. Nichicon had in place competition compliance measures during the period of infringement which included a Code of Conduct and clear instructions regarding its policy of prohibiting employees from engaging in conduct that may be seen to obstruct or restrict fair competition.

Practically, the penalties imposed by the CCS reflect the importance of ensuring that your company's internal compliance is monitored, and taking proactive action to report suspected cartel conduct under the CCS Leniency Programme and/or to otherwise fully cooperate if investigated, depending on the particular facts involved.

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