

Information exchange between ferry operators infringed the section 34 prohibition

July 1, 2012

On 18 July 2011, the Competition Commission of Singapore (the "CCS"), completed its investigations (as a result of a complaint filed) and published an infringement decision against two ferry operators which operated ferry services from Harbourfront ferry terminal in Singapore to Batam. Batam Fast Ferry Pte Ltd ("Batam Fast") and Penguin Ferry Services Pte Ltd ("Penguin") were found to have infringed section 34 of the Competition Act, Chapter 50B of Singapore (the "Competition Act") as they had exchanged sensitive and confidential price information which the CCS considered to be harmful to competition. This decision is noteworthy as this is the first time that the CCS had considered the act of exchanging information of itself to be an infringement. Previous decisions by the CCS in respect of the Section 34 Prohibition involved elements of information exchange as supportive evidence to price-fixing or bid-rigging arrangements.

Batam Fast and Penguin had exchanged sensitive and confidential price information on ferry tickets sold to corporate clients and travel agents for passenger routes between Harbourfront ferry terminal and Sekupang ferry terminal, and Harbourfront ferry terminal and Batam Centre ferry terminal. Batam Fast and Penguin were the only two ferry operators that provided services in the relevant market defined, and therefore operated in a highly concentrated duopolistic market where their interactions affected each other significantly.

The CCS took the position that Batam Fast and Penguin entered into a concerted practice in relation to their ferry tickets which required assessment under the Section 34 Prohibition. In the respect, the CCS decided that Batam Fast and Penguin had substituted practical cooperation between them in place of competition and the risk that competition entails. In making such assessment, the CCS again reiterated its strict position it took in its earlier decisions that liability for a party to an agreement or concerted practice is presumed even if the party is merely a passive recipient of sensitive and confidential information. Such liability is presumed unless the recipient distances itself from the unlawful initiative.

In relation to the exchange of the prices, the CCS decided that such behaviour removed the uncertainty between Batam Fast and Penguin in relation to the prices they would be charging. The CCS considered price to be an important parameter to competition and the uncertainty upon which each party would set its future prices would be removed if exchanges of future price information took place between them. The removal of such uncertainties would be particularly damaging on competition in this case since Batam Fast and Penguin were in a highly concentrated duopolistic market where, in the event one party discloses the prices that it would be charging a customer, the other party would be the only other competitor which may provide an alternative price to the customer.

As a result of the infringement, the CCS imposed financial penalties of S\$117,906 and S\$113,860 respectively on Batam Fast and Penguin. Apart from financial penalties, there was also a significant amount of financial resources as well as time and effort by senior management spent by both Penguin and Batam Fast during the investigation. Businesses in Singapore can learn from this decision that the CCS would not hesitate to act of complaints and that the Section 34 Prohibition would apply even in situations where it seems common business sense and should therefore be careful in their conduct vis-à-vis their competitors. Businesses in Singapore should ensure that all staff

should be educated on such competition law risks to ensure that they comply with the Competition Act.

Section 34 of the Competition Act prohibits any agreements, decisions or concerted practices which have the effect of preventing, restricting or distorting competition in Singapore (the "Section 34 Prohibition").

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