

# International **Comparative** Legal Guides



Practical cross-border insights into cartels & leniency

## Cartels & Leniency **2023**

**16<sup>th</sup> Edition**

Contributing Editors:

**Matthew Readings & Elvira Aliende Rodriguez**  
Shearman & Sterling LLP

**ICLG.com**

# Expert Analysis Chapter

1

**Recent EU Courts Developments – the *Scania*, *Deutsche Telekom* and *Optical Disc Drive* Cases**  
Elvira Aliende Rodriguez, Ruba Noorali & Alexandre Köhler, Shearman & Sterling LLP

## Q&A Chapters

6

**Argentina**  
Beccar Varela: Camila Corvalán & Mariano Plaza

12

**Austria**  
Preslmayr Rechtsanwälte OG: Mag. Dieter Hauck

20

**Brazil**  
CAMINATI BUENO ADVOGADOS: Eduardo Caminati Anders, Marcio C. S. Bueno, Luiz Fernando S. L. Coimbra & Giuliana M. F. Gonçalves e Requena

27

**Canada**  
Cassels Brock & Blackwell LLP: W. Michael G. Osborne

35

**China**  
Shanghai Everbright Law Firm: Qixin Chen, Xiang Lin & Rui Xing

43

**European Union**  
Shearman & Sterling LLP: Elvira Aliende Rodriguez & Ruba Noorali

55

**Finland**  
Borenus Attorneys Ltd.: Ilkka Aalto-Setälä & Henrik Koivuniemi

63

**Germany**  
Shearman & Sterling LLP: Mathias Stöcker

75

**India**  
Cyril Amarchand Mangaldas: Avaantika Kakkar & Vijay Pratap Singh Chauhan

84

**Japan**  
Miura & Partners: Masayuki Atsumi & Haruka Otaki

90

**Malaysia**  
Rahmat Lim & Partners: Azman bin Othman Luk & Penny Wong Sook Kuan

97

**Nigeria**  
Olaniwun Ajayi LP: Anuoluwapo Balogun, Jonathan Aluju & Wonuola Abioye

103

**Portugal**  
Morais Leitão, Galvão Teles, Soares da Silva & Associados: Luís do Nascimento Ferreira & Inês Gouveia

117

**Singapore**  
Drew & Napier LLC: Lim Chong Kin & Dr. Corinne Chew

125

**Slovenia**  
Zdolšek – Attorneys at law: Irena Jurca & Katja Zdolšek

132

**Switzerland**  
Bär & Karrer Ltd.: Mani Reinert

138

**Turkey/Türkiye**  
ELIG Gürkaynak Attorneys-at-Law: Gönenç Gürkaynak & Öznur İnanılır

149

**United Kingdom**  
Shearman & Sterling LLP: Matthew Readings & Ruba Noorali

158

**USA**  
Paul, Weiss, Rifkind, Wharton & Garrison LLP: Joseph J. Bial

# Singapore

Drew & Napier LLC



Lim Chong Kin



Dr. Corinne Chew

## 1 The Legislative Framework of the Cartel Prohibition

### 1.1 What is the legal basis and general nature of the cartel prohibition, e.g. is it civil and/or criminal?

Competition law in Singapore is governed by the Singapore Competition Act 2004 (the “**Act**”) and is enforced by the Competition and Consumer Commission of Singapore (the “**CCCS**”).

Currently, there is no criminal liability in respect of competition law violations, and penalties are monetary in nature. The CCCS can also issue directions to bring the violation to an end and, where necessary, require action to be taken to remedy, mitigate or eliminate any adverse effects of the violation and to prevent recurrence. However, criminal liability can arise in circumstances where undertakings or individuals obstruct the CCCS in the performance of its duties or refuse to provide information requested pursuant to the CCCS’s statutory powers, etc.

### 1.2 What are the specific substantive provisions for the cartel prohibition?

Cartel activities are prohibited by section 34 of the Act (the “**Section 34 Prohibition**”), which provides that:

*“...[A]greements 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 are prohibited...”*

Section 34(2) of the Act provides examples of the types of arrangements that may fall within the ambit of this prohibition. Specifically, section 34(2) of the Act states that agreements, decisions or concerted practices may have the object or effect of preventing, restricting or distorting competition within Singapore if they:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, markets, technical development or investment;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

The illustrative list in section 34(2) of the Act is not intended to be exhaustive, and the CCCS has specified in the *CCCS*

*Guidelines on the Section 34 Prohibition* (the “**Section 34 Guidelines**”) that other types of arrangements may have the effect of preventing, restricting or distorting competition (e.g., information sharing agreements).

Arrangements involving price-fixing, bid-rigging, market sharing or output limitation are considered by the CCCS to always have an appreciable effect on competition such that it is not necessary for the actual effects of such arrangements to be analysed before an infringement is found.

One important qualification on the application of the Section 34 Prohibition is that it does not apply to arrangements that give rise to net economic benefit (an exclusion that is provided for in paragraph 9 of the Third Schedule to the Act). In order to qualify for the exclusion, it must be demonstrated that the arrangement:

- contributes to improving production or distribution, or promoting technical or economic progress;
- does not impose on the undertakings concerned restrictions that are not indispensable to the attainment of those objectives; and
- does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

Additionally, the Section 34 Prohibition does not apply to vertical agreements unless the Minister otherwise specifies by order (paragraph 8 of the Third Schedule to the Act). To date, the Minister has not specified any vertical agreement to which the Section 34 Prohibition will apply.

### 1.3 Who enforces the cartel prohibition?

Competition law in Singapore is enforced by the CCCS, a statutory body established under Part 2 of the Act. The CCCS has the ability to investigate suspected violations of competition law and to impose sanctions in respect of such violations.

### 1.4 What are the basic procedural steps between the opening of an investigation and the imposition of sanctions?

The CCCS has the power to conduct an investigation under section 62(1)(a) of the Act if it has “*reasonable grounds for suspecting that the section 34 prohibition has been infringed by any agreement*”. Any investigation will be carried out by either the CCCS or a duly appointed inspector (section 62(2) of the Act).

Following investigations, if the CCCS proposes to make a decision that the Section 34 Prohibition has been infringed, regulation 7 of the Competition Regulations 2007 requires the CCCS to first give the parties involved notice via a proposed infringement decision (“**PID**”), which will set out the reasons

for the CCCS's proposed decision and the facts that it has relied on. The parties will have the opportunity to make written and oral representations and to inspect the CCCS's file. The PID is confidential and is only issued to the parties that are subject to the proposed enforcement action.

Thereafter, and upon consideration of the representations, the CCCS will issue its infringement decision, imposing sanctions as determined by the CCCS. Following the 2018 amendments to the Act, which empowered the CCCS to accept binding commitments in respect of the Section 34 Prohibition, the CCCS has also introduced amendments to its guidelines, which provide clarity on the timelines and processes for commitment proposals. In particular, the amendments clarify that while the CCCS can accept commitments at any time before making a decision pursuant to an investigation, where an undertaking seeks to offer a commitments proposal, the CCCS will generally stipulate a deadline and if the deadline is missed, the CCCS will proceed with the issuance of a PID.

### 1.5 Are there any sector-specific offences or exemptions?

Certain liner shipping agreements are exempt from the application of the Section 34 Prohibition, by way of a Block Exemption Order ("BEO"). The BEO initially took effect on 1 January 2006 for a period of five years, and its extension until 2015 was granted by the Minister for Trade and Industry on 16 December 2010. The BEO was subsequently extended by the Minister to 31 December 2020. A further extension, granted on 26 August 2020, extended the BEO to 31 December 2021. Upon the recommendation of the CCCS and pursuant to the Competition (Block Exemption for Liner Shipping Agreements) (Amendment) Order 2021, the BEO has been extended for another three years, from 1 January 2022 to 31 December 2024, in respect of vessel sharing agreements for liner shipping services and price discussion agreements for feeder services. The liner shipping BEO remains the only BEO that has been granted in Singapore since the introduction of competition law.

Other specific activities and industries excluded from the application of the Section 34 Prohibition are specified in paragraphs 5, 6 and 7 of the Third Schedule to the Act, and include postal services, the supply of bus and rail services and the supply of piped potable water, amongst others.

### 1.6 Is cartel conduct outside your jurisdiction covered by the prohibition?

Yes, section 33 of the Act specifically states that conduct that takes place outside of Singapore will also be prohibited by the Section 34 Prohibition if it has the object or effect of preventing, restricting or distorting competition within Singapore.

## 2 Investigative Powers

### 2.1 Please provide a summary of the general investigatory powers in your jurisdiction.

Table of General Investigatory Powers

Investigatory power	Civil / administrative	Criminal
Order the production of specific documents or information	Yes	N/A

Investigatory power	Civil / administrative	Criminal
Carry out compulsory interviews with individuals	Yes	N/A
Carry out an unannounced search of business premises	Yes*	N/A
Carry out an unannounced search of residential premises	Yes* (but limited)	N/A
Right to "image" computer hard drives using forensic IT tools	Yes	N/A
Right to retain original documents	Yes (in certain circumstances)	N/A
Right to require an explanation of documents or information supplied	Yes	N/A
Right to secure premises overnight (e.g., by seal)	Yes	N/A

**Please note:** \* indicates that the investigatory measure requires the authorisation by a court or another body independent of the competition authority.

### 2.2 Please list any specific or unusual features of the investigatory powers in your jurisdiction.

The power to search premises is generally limited to business premises and vehicles. However, the CCCS does have limited power to search residential premises where they are used in connection with the affairs of an undertaking, or when documents relating to the affairs of an undertaking are kept there.

### 2.3 Are there general surveillance powers (e.g. bugging)?

No such power is expressly afforded to the CCCS under the Act.

### 2.4 Are there any other significant powers of investigation?

There is nothing of particular note.

### 2.5 Who will carry out searches of business and/or residential premises and will they wait for legal advisors to arrive?

Searches are carried out by officers of the CCCS, and such other officers or persons as the CCCS has authorised in writing to accompany the investigating officer. Inspectors and other such persons as the inspector requires may also be involved.

If the CCCS intends to conduct an unannounced search of a premises, but there is no one currently in the premises, the CCCS is required under section 65(10) of the Act to take reasonable steps to inform the occupier of the intended entry, and if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

Regulation 20 of the Competition Regulations 2007 also provides that an officer shall grant an occupier's request to allow



a reasonable time for the occupier's professional legal advisor to arrive at the premises before continuing investigations, but only if the officer considers it reasonable in the circumstance to do so and is satisfied that any conditions that he considers appropriate to impose in granting the occupier's request will be complied with.

Finally, the *CCCS Guidelines on the Powers of Investigation in Competition Cases 2016* (the “**Investigation Guidelines 2016**”) specifies that the right to consult a legal advisor must not unduly delay or impede the inspection. Where an undertaking has in-house legal advisors on the premises at the time of inspection, the search will not be postponed, in order to allow for external legal advisors to arrive. Further, a search will not be delayed for legal advice where the undertaking has been given prior notice of inspection.

## 2.6 Is in-house legal advice protected by the rules of privilege?

Section 66(3) of the Act provides that a professional legal advisor is not required to disclose or produce privileged communications made by them in that capacity. In-house legal advice is also protected by legal professional privilege under section 128A of the Evidence Act 1893. The Investigation Guidelines 2016 also state that “*communications with in-house lawyers, in addition to lawyers in private practice including foreign lawyers, can benefit from the privilege*”.

## 2.7 Please list other material limitations of the investigatory powers to safeguard the rights of defence of companies and/or individuals under investigation.

Under section 66(2) of the Act, there is a saving provision in respect of statements that might tend to incriminate individuals. Where an individual claims, in advance of making any statement, that the information disclosed may incriminate him, that statement is then not admissible in evidence against him in criminal proceedings, other than in respect of the obstruction offences as set out in question 2.8 below. However, these statements must still be disclosed and can be used by the CCCS in its investigations. They are also admissible as evidence in civil proceedings; for instance, in appeals before the Competition Appeal Board (the “**CAB**”).

Similarly, parties cannot refuse to provide information or documents on the basis that they are confidential. However, parties are permitted to claim confidentiality over any information that they furnish to the CCCS, and section 89 of the Act protects such confidential information by requiring the CCCS's officers and other specified parties handling such information to preserve and aid in the preservation of secrecy, including all matters relating to the business, commercial or official affairs of any person.

## 2.8 Are there sanctions for the obstruction of investigations? If so, have these ever been used? Has the authorities' approach to this changed, e.g. become stricter, recently?

Criminal liability can arise in the context of cartel investigations where a person:

- refuses to provide information pursuant to a requirement on him or her to do so;
- destroys or falsifies documents;
- provides false or misleading information; or
- obstructs an officer of the CCCS in the discharge of his or her duties.

Offences are punishable by a prison sentence not exceeding 12 months, a fine not exceeding S\$10,000, or both. To date, there have been no such criminal sanctions imposed in Singapore.

## 3 Sanctions on Companies and Individuals

### 3.1 What are the sanctions for companies?

The CCCS, under section 69 of the Act, can make such directions as it considers appropriate to bring an infringement to an end, or to remedy, mitigate or eliminate any adverse effect of the infringement.

While section 69 provides a general discretion to the CCCS in making directions, the provision provides specific examples of the directions that the CCCS may make, including a direction:

- requiring parties to the agreement to modify or terminate the agreement or conduct;
- to pay to the CCCS such financial penalty in respect of the infringement as the CCCS may determine (where it determines that the infringement has been committed intentionally or negligently), but not exceeding 10 per cent of such turnover of the business of the undertaking in Singapore for each year of infringement for such period, up to a maximum of three years;
- to enter such legally enforceable agreements as may be specified by the CCCS and designed to prevent or lessen the anti-competitive effects that have arisen;
- to dispose of such operations, assets or shares of such undertaking in such manner as may be specified by the CCCS; and
- to provide a performance bond, guarantee or other form of security on such terms and conditions as the CCCS may determine.

### 3.2 What are the sanctions for individuals (e.g. criminal sanctions, director disqualification)?

There are no sanctions imposed on individuals in respect of cartel conduct or competition law violations. In relation to obstruction offences, please refer to question 2.8 above.

### 3.3 Can fines be reduced on the basis of 'financial hardship' or 'inability to pay' grounds? If so, by how much?

The CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases (the “**Penalties Guidelines**”) state that, in setting the level of a financial penalty, the “*size and financial position of the undertaking in question*” may be a relevant consideration.

However, in *Maintenance Services for Swimming Pools, Spas, Fountains and Water Features* (the “**Swimming Pools Case**”) the CCCS noted that under EU case law, the mere finding of an adverse financial situation or loss-making situation alone is not sufficient to justify a reduction in financial penalties, as that would confer an unfair competitive advantage on less efficient undertakings.

### 3.4 What are the applicable limitation periods?

In relation to a breach of a substantive provision of the Act, there is no limitation period within which enforcement proceedings must be brought by the CCCS.

### 3.5 Can a company pay the legal costs and/or financial penalties imposed on a former or current employee?

This is not applicable. There are no sanctions imposed on individuals in respect of cartel conduct or competition law violations.

### 3.6 Can an implicated employee be held liable by his/her employer for the legal costs and/or financial penalties imposed on the employer?

As far as we are aware, and based on publicly available information, the position is currently untested in Singapore.

### 3.7 Can a parent company be held liable for cartel conduct of a subsidiary even if it is not itself involved in the cartel?

A parent company may be held liable even if it is not itself involved in the cartel conduct of its subsidiary.

Where the subsidiary participating in the cartel is wholly owned or effectively controlled by the parent company, the CCCS presumes that the parent company exercises decisive influence over its subsidiary, and will regard the parent company as jointly and severally liable for the payment of the fine imposed on its subsidiary, unless the parent company can adduce sufficient evidence to demonstrate that its subsidiary acts independently on the market or that the parent company and subsidiary do not act as a single economic entity.

## 4 Leniency for Companies

### 4.1 Is there a leniency programme for companies? If so, please provide brief details.

Yes. The CCCS's leniency programme is described in detail in *the CCCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016* (the "**Leniency Guidelines 2016**").

Where a party provides sufficient information to the CCCS to establish the existence of cartel activity before the CCCS has opened an investigation, that party may benefit from full immunity from financial penalties ("**full immunity leniency applications**"), provided that the CCCS does not already have sufficient information to establish the existence of the alleged cartel activity. To earn full immunity, the applicant must also ensure that it:

- is the first to provide the CCCS with evidence of the cartel activity;
- provides the CCCS with all the information, documents and evidence available to it regarding the cartel activity;
- grants an appropriate waiver of confidentiality to the CCCS in respect of other jurisdictions and regulatory authorities that have been notified of the conduct and/or from whom leniency has been sought;
- unconditionally admits liability to the conduct for which leniency is sought;
- maintains continuous and complete cooperation throughout the investigation and until the conclusion of any action by the CCCS arising as a result of the investigation;
- refrains from further participation in the cartel activity from the time of disclosure of the cartel activity to the CCCS (except as may be directed by the CCCS);
- must not have been the one to initiate the cartel; and
- must not have taken any steps to coerce another undertaking to take part in the cartel activity.

After the CCCS has opened an investigation, the first party that provides information to the CCCS about the cartel that is sufficient for it to issue an infringement decision can benefit from lenient treatment by way of a reduction of up to 100 per cent in the level of the financial penalties ("**100 per cent reduction leniency applications**"). Subsequent applicants may benefit from a reduction in financial penalties of up to 50 per cent.

The leniency programme is also supplemented by the existence of the marker system and the Leniency Plus system.

### 4.2 Is there a 'marker' system and, if so, what is required to obtain a marker?

Yes. As set out in the Leniency Guidelines 2016, the CCCS provides a marker system for full immunity leniency applications and 100 per cent reduction leniency applications (please see question 4.1 for details about the types of applications). If the applicant is unable to immediately submit sufficient evidence to enable the CCCS to establish the existence of the cartel activity, the applicant will be given a limited time to gather sufficient information and evidence in order to perfect the marker. If the applicant fails to perfect the marker within the given time, the next applicant in the marker queue will be permitted to perfect its marker to obtain immunity or a 100 per cent reduction in financial penalties. Once the marker has been perfected, the other applicants in the marker queue will be informed that they no longer qualify for full immunity or a 100 per cent reduction in financial penalties.

### 4.3 Can applications be made orally (to minimise any subsequent disclosure risks in the context of civil damages follow-on litigation)?

Yes, leniency applications may be made orally or in writing, according to the Leniency Guidelines 2016.

### 4.4 To what extent will a leniency application be treated confidentially and for how long? To what extent will documents provided by leniency applicants be disclosed to private litigants?

The Leniency Guidelines 2016 state that the CCCS will:

*"[E]ndeavour, to the extent that is consistent with its obligations to disclose or exchange information, to keep the identity of such undertakings confidential throughout the course of the investigation, until [the] CCCS issues a written notice under section 68(1) [of the Act] of its intention to make a decision that the section 34 prohibition has been infringed."*

In accordance with section 89(3) of the Act, applicants can request confidential treatment to be granted over documents and information provided to the CCCS in the course of making a leniency application. However, confidentiality claims under section 89 of the Act are still subject to disclosure if lawfully required by any court, and this may include court-issued discovery orders in the context of private litigation.

### 4.5 At what point does the 'continuous cooperation' requirement cease to apply?

The Leniency Guidelines 2016 state that continuous cooperation must be maintained until "*the conclusion of any action by [the] CCCS arising as a result of the investigation*". Accordingly, this would likely extend to the issuance of an infringement decision by the CCCS, in respect of the conduct in question.

#### 4.6 Is there a 'leniency plus' or 'penalty plus' policy?

Yes. Under the CCCS's Leniency Plus system, where a party is being investigated in respect of its involvement in Cartel A, if that party were to provide information in respect of Cartel B, it may not only stand to benefit from lenient treatment in respect of Cartel B, but may benefit from further reductions in penalties in respect of Cartel A.

## 5 Whistle-blowing Procedures for Individuals

#### 5.1 Are there procedures for individuals to report cartel conduct independently of their employer? If so, please specify.

The CCCS currently has a whistle-blower programme, under which it offers financial rewards of up to S\$120,000 for information relating to competition infringements (subject to certain criteria and conditions as well as the discretion of the CCCS). The CCCS has indicated that whistle-blowers should have direct, or at the very least indirect, access to inside information surrounding the competition infringements. The CCCS has also indicated that hearsay information is unlikely to be useful to the CCCS.

## 6 Plea Bargaining Arrangements

#### 6.1 Are there any early resolution, settlement or plea bargaining procedures (other than leniency)? Has the competition authorities' approach to settlements changed in recent years?

The CCCS introduced the *CCCS Practice Statement on the Fast Track Procedure for Section 34 and Section 47 Cases* (the "**Practice Statement**") on 1 November 2016. The Practice Statement, which came into effect on 1 December 2016, sets out a framework to incentivise parties under investigation to cooperate with the CCCS to fast track proceedings. The fast track procedure essentially provides an avenue for parties to admit liability for infringements of the Act (and comply with various other conditions) in return for a reduction in the amount of financial penalty to be imposed.

The CCCS has confirmed that the fast track procedure exists in parallel to the leniency system and is distinct from the voluntary commitments process, which does not involve any admission of liability by the parties under investigation and any finding of infringement under the Act. That said, the CCCS has also clarified that admissions and documents provided by a party under the fast track procedure will be deemed withdrawn if the fast track procedure no longer applies.

The CCCS has further stated that it will provide parties with an indicative timetable at the start of the fast track procedure and may also request parties to provide their financial information to assist in the determination of financial penalties. This is potentially helpful to parties as it would enhance the efficiency of proceedings and assist businesses in making the necessary arrangements to cooperate with the CCCS. The Penalties Guidelines state that the CCCS will also adjust the penalty to take into account the discount applicable for an undertaking that agrees to the CCCS's fast track procedure. The discount for the fast track procedure will be in addition to any applicable leniency reductions.

The fast track procedure was recently applied by the CCCS in the *Swimming Pools Case*, in which two parties who indicated

their willingness to participate in the fast track procedure were granted a 10 per cent reduction of their financial penalties in addition to reductions already received under the leniency programme.

## 7 Appeal Process

#### 7.1 What is the appeal process?

The appeals process is set out under the Competition (Appeals) Regulations (the "**Appeals Regulations**"). A party subject to an infringement decision by the CCCS may appeal the decision by lodging a Notice of Appeal with the CAB within two months of the infringement decision (regulation 7 of the Appeals Regulations).

The CAB may hear appeals on infringement findings by the CCCS in respect of, *inter alia*, the Section 34 Prohibition. The CAB's powers and procedures are set out primarily in section 73 of the Act, and the Appeals Regulations.

Following the lodgement of a Notice of Appeal, the CCCS then has six weeks in which to file its defence (regulation 14 of the Appeals Regulations). In the usual course, the rest of the process will proceed at the direction of the CAB, and may include the filing of written submissions, agreed core bundles of documents and skeletal submissions.

Thereafter, an oral hearing is held to hear the substantive arguments of the parties (regulation 21 of the Appeals Regulations).

#### 7.2 Does an appeal suspend a company's requirement to pay the fine?

Yes. Under section 71(3) of the Act, an appeal suspends any direction with respect to the payment, or amount, of the financial penalty imposed. However, an appeal does not suspend any other directions made by the CCCS (e.g., relating to the suspension of the activity in question, etc.). Accordingly, in order to suspend compliance with a direction of the CCCS (unrelated to the payment of a financial penalty pending a hearing before the CAB), it would be necessary for the party to apply to the CAB for interim relief.

#### 7.3 Does the appeal process allow for the cross-examination of witnesses?

Yes. Under regulation 19(2)(h) of the Appeals Regulations, the CAB may give directions in relation to the cross-examination of witnesses. Regulation 26(4) of the Appeals Regulations also states that the CAB may "*limit the cross-examination of witnesses to any extent or in any manner it considers appropriate*".

## 8 Damages Actions

#### 8.1 What are the procedures for civil damages actions for loss suffered as a result of cartel conduct? Is the position different (e.g. easier) for 'follow-on' actions as opposed to 'stand alone' actions?

Section 86 of the Act provides that any person who suffers loss or damage directly as a result of an infringement (including, *inter alia*, infringement of the Section 34 Prohibition) shall have a right of action for relief in civil proceedings.

Such rights are predicated on an infringement finding by the CCCS (i.e., only follow-on claims are permitted) and may only be brought within two years following the expiry of any

applicable appeal periods. Third parties do not have standing to bring such claims in other circumstances or to lodge an appeal with the CAB.

### 8.2 Do your procedural rules allow for class-action or representative claims?

The only form of group litigation recognised in Singapore is representative actions, governed by Order 4, Rule 6 of the Rules of Court 2021. However, notwithstanding the fact that representative actions may be brought, it would still be necessary for parties to establish that they have suffered loss directly.

### 8.3 What are the applicable limitation periods?

Private actions must be brought within two years from the date that the CCCS makes a decision or upon the determination of any appeal (if an appeal is brought), as provided under section 86 of the Act.

### 8.4 Does the law recognise a 'passing on' defence in civil damages claims?

The position is currently untested.

### 8.5 What are the cost rules for civil damages follow-on claims in cartel cases?

In general, "costs follow the event" for most civil actions in Singapore. This means that the costs of an action are usually awarded to the successful litigant. However, any award of costs is at the discretion of the court.

### 8.6 Have there been any successful follow-on or stand alone civil damages claims for cartel conduct? If there have not been many cases decided in court, have there been any substantial out of court settlements?

To date, there have not been any follow-on claims brought to court in respect of a violation of the Section 34 Prohibition, nor have there been any publicly available details relating to any private out of court settlements in Singapore in respect of a violation of the Section 34 Prohibition.

## 9 Miscellaneous

### 9.1 Please provide brief details of significant, recent or imminent statutory or other developments in the field of cartels, leniency and/or cartel damages claims.

Pursuant to the Competition (Amendment) Act 2018, the CCCS is empowered to accept binding and enforceable commitments for cases involving the Section 34 Prohibition.

The introduction of legally binding commitments to the Section 34 Prohibition would enable entities under investigation to offer the same to the CCCS to address the anti-competitive conduct related to the Section 34 Prohibition. A breach of such commitments will enable the CCCS to enforce the commitments immediately through the Singapore courts, which is less resource intensive than the previous framework that permitted entities to propose voluntary undertakings to address the

concerns raised by the CCCS but required the CCCS to reopen the investigation into the matter in the event of a breach of such voluntary undertakings due to their non-binding nature.

Separately, also pursuant to the Competition (Amendment) Act 2018, the CCCS is empowered to conduct general interviews during inspections and searches, which are intended to make the CCCS's evidence-gathering and investigation process more efficient and effective. These powers are not an expansion of the CCCS's powers of investigation, as the questions posed will still be limited to the subject matter or purpose of the investigation, but are intended to streamline the process of service of the various documents to occupants of the premises and to minimise any potential disruption to businesses.

On 20 July 2020, the CCCS issued a Guidance Note on Collaborations between Competitors in Response to the COVID-19 Pandemic ("**COVID-19 Guidance Note**"). Under the COVID-19 Guidance Note, the CCCS recognised that collaborations between competitors during the COVID-19 pandemic may need to be put in place quickly to meet the demand for certain essential goods or services. As such, the CCCS will assume that collaborations that sustain or improve the supply of essential goods or services in Singapore, which was put in place from 1 February 2020 and expired by 31 July 2021, are likely to generate net economic benefits and are therefore unlikely to infringe the Act.

However, where collaborations involve price-fixing, bid-rigging, market sharing or output limitation, the CCCS will not assume that net economic benefits are generated. According to the COVID-19 Guidance Note, for such collaborations, additional factors that must be considered include the extent of the reduction in competition arising from the agreement and the competitive constraints in the market.

In view of the expiry of the COVID-19 Guidance Note, the CCCS also released the Business Collaboration Guidance Note ("**Guidance Note**") on 28 December 2021, which supplements the Section 34 Guidelines. It clarifies the CCCS's position on the common types of business collaborations and provides guidance on how it will assess such collaborations in view of the Section 34 Prohibition. The seven common types of business collaborations covered in the Guidance Note are:

- information sharing – exchange of both price and non-price information among businesses;
- joint production – collaboration to jointly produce a product, share production capacity or subcontract production;
- joint commercialisation – collaboration in the selling, tendering, distribution or promotion of a product;
- joint purchasing – collaboration to jointly purchase from one or more suppliers;
- joint research and development ("**R&D**") – collaboration on R&D activities, such as joint investment;
- standards development – setting of industry or technical standards; and
- standard terms and conditions in contracts – usage of terms shared amongst competitors establishing conditions of sale and purchase of goods and services between them and their customers.

In particular, the Guidance Note sets out factors and conditions, such as the nature and extent of the collaborations, and indicative market shares, under which competition concerns are less likely to arise from the collaborations.

On 31 December 2021, the CCCS announced the completion of its review of a number of the guidelines on the Act and introduced amendments to, *inter alia*, the *CCCS Guidelines on Market Definition* and the *CCCS Guidelines on Directions and Remedies* (renamed from the *CCCS Guidelines on Enforcement of Competition Cases 2016*). The revised guidelines came into effect from 1 February 2022.



A key change under the *CCCS Guidelines on Market Definition* is the replacement of the reference to the “current price” with the “price in the absence of the agreement” as a potential benchmark level in assessing whether an agreement is anti-competitive under the Section 34 Prohibition.

The *CCCS Guidelines on Directions and Remedies* was also revised to reflect the 2018 amendments to the Act, which permitted binding commitments to be accepted in respect of notifications and investigations under the Section 34 Prohibition and sets out a procedural framework for such commitments. Notably, the change makes clear that the CCCS is generally not inclined to accept commitments in cases involving restrictions of competition by object (e.g., price-fixing or bid-rigging) with no accompanying net economic benefit.

## 9.2 Please mention any other issues of particular interest in your jurisdiction not covered by the above.

Since the Section 34 Prohibition became effective on 1 January 2006, the CCCS has issued 16 infringement decisions:

- bid-rigging in the provision of termite control services in Singapore, 9 January 2008;
- price-fixing in the provision of coach tickets for travelling between Singapore and destinations in Malaysia, 3 November 2009;
- bid-rigging in electrical and building works, 4 June 2010;
- price-fixing of monthly salaries of new Indonesian foreign domestic workers in Singapore, 30 September 2011;
- price-fixing of modelling services in Singapore, 23 November 2011;
- information sharing in the provision of ferry services between Batam and Singapore, 18 July 2012;
- bid-rigging by motor vehicle traders at public auctions, 28 March 2013;
- price-fixing of ball and roller bearings sold to aftermarket customers, 27 May 2014;
- infringement of the Section 34 Prohibition in relation to the provision of air freight forwarding services for shipments from Japan to Singapore, 11 December 2014;
- infringement of the Section 34 Prohibition in relation to the distribution of life insurance products in Singapore, 17 March 2016;
- bid-rigging in the tenders for the provision of electrical and asset tagging services, 28 November 2017;
- price-fixing and exchange of confidential sales, distribution and pricing information for aluminium electrolytic capacitors, 5 January 2018;
- price-fixing and non-compete agreements in the supply of fresh chicken products, 12 September 2018;
- exchange of commercially sensitive information between competing hotels, 30 January 2019;
- bid-rigging of quotations by contractors for Wildlife Reserves Singapore, 4 June 2020; and
- bid-rigging in tenders for maintenance services of swimming pools and other water features, the *Swimming Pools Case*, 14 December 2020.



**Lim Chong Kin** is a Managing Director (Corporate & Finance) at Drew & Napier LLC. He heads the Telecommunications, Media & Technology Practice and co-heads the Competition Law & Regulatory Practice.

Chong Kin has experience in advising the sectoral competition regulators on liberalisation matters since 1999, including drafting, implementing and enforcing the competition law framework for the telecommunications, media and postal sectors, before moving onto the general Competition Act 2004.

He continues to advise both regulators and industry on competition matters under various sectoral competition codes and is widely acknowledged by peers, clients and rivals as a leading competition lawyer in Singapore.

*Chambers and Partners 2021* lists Chong Kin as a Band 1 Competition/Antitrust lawyer, while noting: "His advice is both thorough and attuned to the regulator's intentions, which is really helpful." Chong Kin is lauded by clients as an "innovative competition lawyer who is savvy and practical", and he "understands business needs and is very responsive".

**Drew & Napier LLC**

10 Collyer Quay  
10<sup>th</sup> Floor, Ocean Financial Centre  
Singapore 049315

Tel: +65 6531 4110  
Email: [chongkin.lim@drewnapier.com](mailto:chongkin.lim@drewnapier.com)  
URL: [www.drewnapier.com](http://www.drewnapier.com)



**Dr. Corinne Chew** is a Director and Deputy Head of the Competition Law & Regulatory Practice at Drew & Napier LLC. Corinne's experience extends to all areas of competition law practice, including assisting clients in the filing of merger notifications to the CCCS, leniency applications and assisting clients with CCCS investigations. Corinne has also assisted multi-national and local companies in setting up competition law compliance and audit structures, dawn raid and whistle-blowing programmes and conducting audit checks for companies in a wide range of industries in Singapore and other jurisdictions such as China, Indonesia, Malaysia, South Korea, Thailand and Vietnam. Corinne's corporate experience includes providing contractual and regulatory advice for listed and unlisted companies in a broad spectrum of industries. She has assisted in the reviewing and drafting of joint venture, shareholder, distribution, as well as sale and purchase agreements. Corinne has been ranked as a leading individual for five consecutive years in the *Asia Pacific Legal 500*, which notes clients' testimonials that "Corinne Chew is the one that holds up the competition practice and leads the team in terms of legal strategies and practical wisdom" and that she has "excellent legal knowledge and in-depth understanding of the regulator".

**Drew & Napier LLC**

10 Collyer Quay  
10<sup>th</sup> Floor, Ocean Financial Centre  
Singapore 049315

Tel: +65 6531 2326  
Email: [corinne.chew@drewnapier.com](mailto:corinne.chew@drewnapier.com)  
URL: [www.drewnapier.com](http://www.drewnapier.com)

Drew & Napier LLC's Competition Law & Regulatory Practice, established in 1999, is the oldest and largest dedicated competition law practice in Singapore. Established six years before the enactment of the Competition Act in 2005, our experience has grown in tandem with the development of both national and sectoral competition laws in Singapore. We are the preferred competition law counsel of many regional companies, multinational corporations, associations and government bodies, and regularly assist them on competition matters in Singapore and Association of Southeast Asian Nations member countries.

The Competition Law & Regulatory Practice comprises lawyers who are cross-trained in competition law and economics, highly experienced and qualified in handling competition law matters both generally under the Competition Act as well as in the carved-out telecommunications, media, energy and postal sectors.

[www.drewnapier.com](http://www.drewnapier.com)

 **DREW & NAPIER**

# ICLG.com



## Current titles in the ICLG series

Alternative Investment Funds	Franchise
Anti-Money Laundering	Gambling
Aviation Finance & Leasing	Insurance & Reinsurance
Aviation Law	International Arbitration
Business Crime	Investor-State Arbitration
Cartels & Leniency	Lending & Secured Finance
Class & Group Actions	Litigation & Dispute Resolution
Competition Litigation	Merger Control
Construction & Engineering Law	Mergers & Acquisitions
Consumer Protection	Mining Law
Copyright	Oil & Gas Regulation
Corporate Governance	Patents
Corporate Immigration	Pharmaceutical Advertising
Corporate Investigations	Private Client
Corporate Tax	Private Equity
Cybersecurity	Product Liability
Data Protection	Project Finance
Derivatives	Public Investment Funds
Designs	Public Procurement
Digital Business	Real Estate
Digital Health	Renewable Energy
Drug & Medical Device Litigation	Restructuring & Insolvency
Employment & Labour Law	Sanctions
Enforcement of Foreign Judgments	Securitisation
Environment & Climate Change Law	Shipping Law
Environmental, Social & Governance Law	Technology Sourcing
Family Law	Telecoms, Media & Internet
Fintech	Trade Marks
Foreign Direct Investment Regimes	Vertical Agreements and Dominant Firms

The International Comparative Legal Guides are published by:

**gig** global legal group