

Creating a level playing field - An article contributed by Mr Teo Eng Cheong, Chief Executive of CCS, to Business Times Weekend

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Competition in the market place lies at the core of a vibrant economy. But laws must also be in place to protect the competition process from manipulation

Teo Eng Cheong

Chief executive

Competition Commission of Singapore

The principles of competition are not new to Singapore. Businesses in Singapore have been subject to global competition for decades because of our open trade and investment policies. Our businesses know that to succeed, they must be prepared to face competition from the best in the world.

So when the government decided to enact the Competition Act, it was not out of character with what Singapore had done. But to some, it was and still is a surprise. Why do we need a Competition Act when we are already embracing the principles of competition fully?

The Competition Act can be seen as one of the latest moves to institutionalise our competition policy. While the government has traditionally not adopted a policy of sheltering companies from global competition, there has been no generic law to protect consumers and businesses from anti-competitive practices of private entities.

We should recognise that businesses are formed with an objective to maximise profits for their owners. In striving for profits, competing firms must become better in their products and services in order to win customers - there is nothing wrong with this. The flipside is that there is an inherent incentive for them to create challenges in the market for their competitors or potential new entrants, sometimes through anti-competitive means. The Competition Act's aim is to protect consumers and businesses from such anti-competitive practices.

Anti-competitive practices

In essence, these are practices by companies which are conducted not to satisfy customers, improve the products or increase the efficiency of the production, but which are conducted with an aim to drive out rivals or potential new entrants. By removing competition in this fashion, anti-competitive practices make it easier for companies to exploit customers. The ultimate aim of such practices is to allow the companies to have larger market share or higher profit margins than they otherwise would be able to attain if they were to compete on an equal footing.

There are three main types of anti-competitive practices. The most obvious type is agreements by rival companies not to compete with each other. Instead, they may agree to fix prices, or not compete with one another for projects, or divide the market among themselves. Such cartel activities are clearly detrimental to consumers and are prohibited under the Competition Act.

A second type of anti-competitive practice relates to abuse of market dominance by companies. For these practices to be considered anti-competitive, there are two conditions.

First, the company in question must be dominant in the relevant market. Dominance in a market may arise from a large market share or other reasons such as unique access to infrastructure or to a critical raw material in the production process. Merely being dominant is in itself not an issue. The company can adopt an aggressive growth strategy so long as it conducts its business in a reasonable manner.

Second, the company must have abused its dominance. While there are many possible ways to abuse its dominance, invariably these are practices that prevent potential competitors from getting a larger share in the market through methods unrelated to making better products or delivering better services. An example of abuse is when a dominant company insists on exclusive arrangements with customers, for no reason other than to exclude potential competitors from having access to those customers. Such practices allow the dominant company to maintain its hold over customers, even where its prices, products or services may not necessarily be better than those of its rivals.

Such practices may not raise any eyebrows for a non-dominant company without significant influence over its customers. However, they may not be acceptable when conducted by a dominant company because of the influence it has on customers and the consequent dampening effect on competition. Such practices are also prohibited under the Competition Act.

The third and final type of anti-competitive practice is mergers or acquisitions which substantially lessen competition. When a merger or acquisition leads to a market dominated by one or very few players, it is not a desirable situation. Markets dominated by a few players are more likely to have exploitative or cartel activities. Hence, such mergers and acquisitions form the third category of activities prohibited under the Competition Act.

Pragmatic perspective

The Competition Commission of Singapore (CCS) is the authority to administer the Competition Act. In doing so, we adopt a pragmatic, outcome-oriented and long-term perspective.

A common misperception of competition law is that it implies a mindless commitment to free market principles and complete deregulation. This is not true. Competition law is not incompatible with government regulation. We fully recognise that markets may fail for a variety of reasons and government regulations may at times be necessary.

However, we are also conscious that regulations should as far as possible not lead to a reduction of competition in the market place. More importantly, it should not result in an uneven playing field among competitors. CCS therefore provides input to other government agencies on their policies to highlight to them potential issues which may affect competition in the market place.

Another concern is that competition law may over-intervene in the functioning of the market to the detriment of the free market. In this regard, CCS is outcome-oriented. We will only intervene if we believe that we can achieve a better outcome and solve the problem we have identified. Sometimes, this requires us to penalise the parties which have engaged in anti-competitive practices. At other times, we may have to work with other government agencies to lower the barriers to entry. Whatever the approach, we are looking for viable solutions to make the market more competitive and ensure that competition works in the interest of our society.

CCS is well-aware that over-intervention may have the opposite effect of what we aim to do, which is to promote competition. If companies are able to attain and maintain market power through innovations and constant improvements, then it is reasonable for them to reap the benefits. That is the incentive for innovation and efficiency. We should therefore not inadvertently discourage competition by taking away the prize of winning the competition.

With competition, businesses have to constantly improve and innovate in response to changes in the market. This may lead to short-term fluctuations in prices and quality. This is a necessary by-product in a vibrant economy where 'creative destruction' must take place to bring new products and companies into existence. In return, the industry will become stronger and consumers will benefit in the longer term.

Competition in the market place lies at the core of a vibrant economy. It is necessary to drive productivity growth, economic resilience and consumer choice. CCS, in enforcing the Competition Act, protects the competition process by ensuring that it is free from manipulation by businesses out to gain greater market share or profits through anti-competitive means.