



CASE STUDY 09

SEPTEMBER 2013

SISTIC.com Pte Ltd vs. Competition Commission of Singapore (Case of Abuse of Dominant Position in Singapore)

FORUM:

Competition Commission of Singapore (CCS)

&

Competition Appeal Board of Singapore (CAB)

LEGISLATIVE PROVISIONS REFERRED:

Competition Act 2004 of Singapore (herein after referred to as "the Act")

Section 47: prohibits any conduct of the part of one or more undertakings which amounts to the abuse of a dominant position in any market in Singapore.

Section 33 (4): excludes, amongst others, any agreement entered into or any conduct on the part of the Government, a statutory body, or any person acting on behalf of the Government or that statutory body in relation to that activity, agreement or conduct, from the prohibitions under the Act.

PARTIES TO THE CASE:

Appellants: SISTIC.com Pte Ltd (SISTIC)

Respondent: Competition Commission of Singapore

BRIEF FACTS OF THE CASE:

SISTIC, set up in 1991 under the Singapore Sports Council (SSC), acts as a ticket service provider Company in Singapore. SISTIC known as the largest ticketing service provider in Singapore, acted as a middleman between event promoters and the ticket buyers by providing a platform to buy and sell tickets for events like providing a platform to buy and sell tickets for events.

Between the period of 2006 to 2009, SISTIC entered into exclusive agreements with 17 event promoters and 2 venue operators to sell tickets through SISTIC, as a result event promoters who wished to hold their events at key venues such as the Esplanade and Singapore Indoor Stadium had no choice but to sell their tickets through SISTIC. So the ticket buyers who

wish to attend those events have no choice but to buy tickets through SISTIC.¹

In October 2007, a complaint referred to CCS concerning the restrictions under the Exclusive Agreements is harmful to competition. They restricted event promoters "choice of ticketing service providers, which violated section 47 (artificially perpetuate SISTIC's dominant position), and afford SISTIC the ability to charge ticket buyers higher prices. In January 2008, after a preliminary enquiry, CCS decided that there were reasonable grounds for suspecting that a possible infringement of section 47 prohibition of the Act with regard to ticketing services in Singapore had occurred.

ISSUES INVOLVED AND FINDINGS OF CCS & CAB:

CCS in its preliminary enquiry found that SISTIC has contravened section 47 via a series of Exclusive Agreements. Those were (1) The Application Service and Ticketing Agreement ("ASTA") between SISTIC and The Esplanade Co. Ltd ("TECL") which contains explicit restrictions requiring that all events held at the Esplanade venues use SISTIC as the sole ticketing service provider (2) The Agreement for Ticketing Services ("ATS") between SISTIC and Singapore Sports Council ("SSC") which contains explicit restrictions requiring that all events held at the Singapore Indoor Stadium ("SIS") use SISTIC as the sole ticketing service provider; and (3) Seventeen other agreements that contain explicit restrictions requiring the event promoters concerned to use SISTIC as the sole ticketing service provider for all their events.

ISSUE 1: Did SISTIC hold a dominant position in a market?

CCS and CAB on this issue identified the following facts as relevant in considering the issue of dominance. (1) SISTIC's large market share (90%) over

¹ Competition Commission Singapore, Abuse of a Dominant Position by SISTIC.com Pte Ltd., 4 June 2010 Case number: CCS 600/008/07.

time, although the Appeal Board recognised that market share alone was not a determinative factor. (2) SISTIC's ability to profitably sustain prices above competitive levels. The CAB relied on evidence that SISTIC had priced profitably above competitive levels for a sustained period. In particular, the CAB referred to evidence that CCS had increased its booking fee by 50% in 2008, and the fact that its fees were higher than its competitors. The CAB rejected SISTIC's case that CCS had not established that SISTIC's pricing was above a competitive level. (3) Lack of incentive to use countervailing buyer power, both the Esplanade and SSC had countervailing power, however it considered that they had weak incentives to use that power against SISTIC. The CAB, considered Irish case², where the Ticketmaster Ireland could not impose more than the 'cap' specified in its contracts with the promoters and therefore it was not unfettered in the amount it could charge end consumers, likewise SISTIC did not have a cap in its contracts with the venue operators. (4) The SISTIC's exclusive agreements acted as barriers to entry, which prevented new entry to the market, and prevented major partners such as the Esplanade and the SSC from switching providers. While both of the exclusive agreements with venue operators were terminable on a period of notice, the CAB noted that the venue operators between them held 100% of the shares in SISTIC, and held that this meant that there was a further disincentive on the operators to switch to another ticketing service provider. The issue of the venue operators' shareholdings in SISTIC was particularly interesting as the CAB (agreeing with CCS) had held that SISTIC and the venue operators were not a single economic entity and operated at arms-length and on the basis of merit.

ISSUE 2: Did SISTIC abuse its dominant position?

On this issue, CCS and CAB determined the correct legal test for abuse of dominance cases under section 47 of the Act. CAB also noted that section 47 is modelled on section 18 of the UK Competition Act 1998, and therefore considered UK case law on the correct approach. It concluded that the legal test of abuse of dominance as established under UK law is that an abuse will be established where a practice has, or is likely to have, an adverse effect on the process of competition. However, if a dominant undertaking can

² Decision of the Irish Competition Authority (Case COM/107/02), Alleged excessive booking fees by Ticketmaster Ireland and its exclusive contractual relationships with MCD Promotions Limited and Aiken Promotions Limited, dated 26 September 2005 (the "ICA Ticketmaster Decision").

establish that its conduct produces countervailing benefits so that it has a net positive impact on welfare, it will not constitute an abuse of a dominant position.

Further, CAB in its decision, found that there was no legitimate justification for the exclusive agreements, and that they were intended to effectively restrict or foreclose competition or were capable of doing so. The Appeal Board further stated: (1) as a result of the exclusive agreements, SISTIC increased its share in the market and sustained persistently high market shares, (2) by the exclusive agreements with the Esplanade and the SSC, SISTIC had secured a large share of the market for a long duration and had foreclosed any competition for this share of the market. No equally efficient firm would be able to overcome the competitive restraint imposed by SISTIC through the exclusive agreements, (3) as a result of the exclusive agreements, SISTIC's competitors had been disincentivised from making adequate investments in the market, and (4) the exclusivity restrictions made no economic sense other than to foreclose competition. Finally, CAB stated that the exclusive agreements are exclusionary in nature and have led to substantial foreclosure effects on competition in the market, by stifling market entry, market access and growth opportunities for existing or potential competition.

Non-applicability of the Section 33 (4): In this case CCS, held that SISTIC was not acting on behalf of any government body in relation to the activity(s), agreement(s) or conduct(s) as specified in its Exclusive Agreements and its dominant role in ticketing service commercial activities was not a part of government activities. So CCS's decision against SISTIC shows that entering into an agreement with a statutory body does not, in itself, exclude an entity from the Competition Act.

DECISION OF THE CCS:

Competition Commission of Singapore issued an Infringement Decision, under section 47 of the Competition Act against SISTIC for abusing its dominant position. Finally, CCS found that SISTIC with market share of 85-95 % and the increase booking fee for tickets, has dominated the ticket service provider in Singapore and that proved the restrictions under the Exclusive Agreements are harmful to competition by restricting the choices of venue operators, event promoters and ticket buyers. CCS in its order has imposed a financial penalty of S\$989,000 for infringing

section 47 of the Act and also directed SISTIC to modify the Exclusive Agreements with immediate effect, to remove any clause(s) that require SISTIC's contractual partners to use SISTIC exclusively.

DECISION OF THE CAB:

On 28 May 2012, CAB delivered a landmark decision and upheld the CCS' finding that SISTIC was dominant in the market for ticketing services and had abused its dominant position, thereby infringing section 47 of the Competition Act. CAB held that SISTIC's persistently high market share over time is indicative of its dominance in the relevant market and also found that the Exclusive Agreements which SISTIC had entered into with the venue operators and promoters were a barrier to entry in the relevant market which reinforced SISTIC's dominance. Further, CAB held that the credible threat from SSC and TECL to constrain SISTIC was unrealistic as TECL's and SIS' commercial interest in SISTIC was likely to affect their decision to switch to other ticketing services providers. In respect of SSC's and TECL's incentive to exercise countervailing power against SISTIC, the CAB found that even though TECL and SIS did have strong bargaining power, they have weak incentives to exercise that power with respect to price. CAB also found that the exclusive agreements constituted a barrier to entry into the market for open ticketing services in Singapore.

Finally, CAB affirmed CCS' finding that SISTIC holds a dominant position in the market for open ticketing services in Singapore. CAB found that the exclusivity restrictions contained in the Exclusive Agreements make no economic sense other than having the effect

of foreclosing competition, was explicitly exclusionary in nature and had led to substantial foreclosure effects on competition in the relevant market, as market entry, market access and growth opportunities for existing or potential competition had been stifled. CAB also found that these Exclusive Agreements had an appreciable adverse effect on competition in Singapore and did not have any net economic benefit, other than foreclosing competition. Thus CAB upheld the CCS's direction to modify the exclusive agreements by removing clauses, and reduced the penalty from S\$989,000 to S\$769,000.

ANALYSIS OF THE ORDER:

This case was the first abuse of dominance case decided by CCS and CAB under the Singapore Competition Act 2004. As a new competition regime, the land mark judgement of CAB and CCS with huge penalty upon SISTIC is appreciated. The case is also an example of how competition law can directly impact upon a business model involved in bad practices. This decision also serves as a reminder to all other businesses to reflect their position in their market and rationale for business practices. Further, CCS and CAB action against SISTIC proved that the Competition Act applies to all the commercial and economic activities carried out by public sector, companies owned by statutory boards, foreign entity or a local entity without any discrimination. This case is an example of competition neutrality in competition era.

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