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# CNPUPDATE

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## Competition Commission Acts Against Contractors' Collusion

On 11 March 2010, the Competition Commission of Singapore ("CCS") issued a Proposed Infringement Decision ("PID") against fourteen electrical and building works companies for breach of Section 34 of the Competition Act (Cap. 50B) ("Act").

The CCS has uncovered bid-rigging practices by these fourteen companies for numerous projects in the electrical and building works market between 2007 and 2009. These companies, most of which are small enterprises with offices in the heartland, allegedly sought to increase their chances of winning bids for maintaining the electrical systems of buildings by conspiring with the others. A firm that wanted to win a particular bid would submit a low quote, while its 'partner' would submit a high one. This increased the first company's chances of winning the bid.

CCS took a serious view of such anti-competitive conduct by the companies involved, especially given the number of projects and companies involved. An essential feature of a tender process is that tenderers prepare and submit bids independently, so any tenders submitted as a result of collusion or co-operation between tenderers would, by their very nature, be regarded as restricting competition appreciably. Section 34 of the Act prohibits bid rigging or collusive tendering as such arrangement has as its object or effect the appreciable prevention or restriction of competition within Singapore. The CCS Guidelines on Section 34 further clarified that an agreement involving bid-rigging would always have an appreciable adverse effect on competition, regardless the market shares of the parties involved.

The PID is a written notice setting the basis on which CCS arrives at the proposed decision. Following the issue of the PID, the affected electrical companies have six weeks from the receipt of the PID to put forth their responses, counter-arguments and relevant facts for CCS' consideration. CCS will then consider the merits of the parties' representations before finalising its decision on whether there has been an infringement of the Act.

One of the companies involved has been granted total immunity from financial penalty under the CCS Leniency Programme. It has voluntarily reported the unlawful activities to the CCS. The CCS Leniency Programme is intended to encourage whistleblowing on cartel and

other unlawful activities, under which the CCS may grant total financial immunity or a reduction of the penalties to the first leniency applicant. Subsequent leniency applicants may be considered for the same penalty reduction.

The PID issued against the electrical companies is the second PID issued by the CCS for bid-rigging or collusive tender arrangements. In 2008, the CCS had, after a year long probe, issued a notice of infringement decision against six pest companies for rigging bids on contracts worth at least S\$2.5 million annually. The companies were fined between S\$4,300 and S\$92,600, with a total of S\$267,759.66.

Financial penalty aside, a breach of the Competition Act can be very damaging to companies. The potential non-financial exposure includes loss of reputation and the goodwill of consumers and the public, stoppage of operations, and claim from third parties that have suffered losses as a result of any breach of the Competition Act. Companies should put in place a sound compliance programme, which should feature appropriate written policies and procedures, regular training for employees on anti-competitive practices; and regular evaluation on the programme to ensure effectiveness.

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