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The Pursuit of a Happy Practice

Every year for the last 11 years since 2003, the Law Society names one of our members to receive the C C Tan award. The award is given to a member who exemplifies the virtues of the legal profession — honesty, fair play and personal integrity.

This year’s award was presented to Mr George Lim, SC at the Law Society’s Dinner & Dance on 15 November 2013. George’s credentials for the award are well summed up by Vice-President Thio Shen Yi’s citation at the award ceremony thus:

George has the reputation of a senior lawyer possessed with integrity, fairness and wisdom, combined with an engaging and amicable temperament, qualities required of a top class mediator. We all know that George is a passionate evangelist of mediation. In 1997, he helped to set up the Singapore Mediation Centre (“SMC”), and in 2013, George was identified by the International Who’s Who of Commercial Mediation as being among the world’s leading commercial mediators.

George sits on the Board of the SMC, and has been mediating cases regularly at the Centre since 1997. I can personally attest to his effectiveness as he has often cajoled, harangued or sweet talked what I considered intractable clients into settling. He has, through the SMC, trained lawyers and judges in mediation, sharing his expertise with, inter alia, the Philippine Judicial Academy; Malaysian Bar Council; Thai Judiciary; Ministry of Labour, Fiji; and the High Court of Nigeria.

George will not be an unfamiliar face on the stage. In 2012, he was appointed the Law Society’s fifth Pro Bono Ambassador – a role he was eminently suited for with his unwavering conviction in ensuring access to justice.

George, together with some lawyers, founded the Law Society’s Criminal Legal Aid Scheme (“CLAS”). Not satisfied with starting CLAS, he also volunteered and took on its first assignment as well – a shoplifting offence, which was withdrawn after his representations.

George also chaired the Law Society’s Law Awareness Committee from 1993 to 1996 and is currently a member of the Law Society’s Pro Bono Management Committee.

George, of course, does possess the good qualities of courteous, honest and effective lawyering in great abundance and is a worthy recipient of the award. But what also impressed me was George’s professional journey getting to where he is today; a journey he took with three classmates that was to play out into an enduring professional partnership and an enriching friendship for well over 20 years. George’s journey reassures us that a satisfying and happy practice in the law does not necessarily have to be found in a large or international practice. It really does not. It encourages us to find the friends who can best walk the journey with us, men and women whom we trust enough for us to mutually shape each other’s values and principles and to share each other’s hopes and aspirations. It encourages us to do the small things right. It reminds us that even in the aggressive and unrelentless arena of dispute resolution, slaying your opponents or their clients isn’t necessarily the goal all the time. George’s well-known commitment to mediation reminds us of this. The lawyer’s role isn’t diminished nor is his client’s interest compromised when one searches for a solution to a bad situation through mediation. When a lawyer truly seeks a mediated resolution, he isn’t being chicken. He is trying to be a peacemaker.

Reproduced below is George Lim’s acceptance speech for the C C Tan Award 2013:

Some of you may know my personal story.

I grew up in a poor family. I was the sixth and youngest child in my family, and my mother passed away when I was three. My father remarried and had five other children. So you can imagine the challenges we faced. It was a difficult childhood. I struggled through law school with the help of my siblings, and had to give tuition to pay for my fees.
The Law Society of Singapore

President
Mr Lok Vi Ming, SC

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The Law Society of Singapore
An Official Publication of The Law Society of Singapore

Contents

President’s Message
The Pursuit of a Happy Practice

News
Diary and Upcoming Events
Council and Committee Updates
Annual General Meeting 2013
Annual Elections 2013
26th LawAsia Conference

Features
Sharing Sensitive Information with Competitors: The Importance of Knowing the Limits
Competition Law: Its Impact on Business and Legal Practice
Acquisition of Minority Shareholdings and Interlocking Directorates: Can These be Reviewed by Competition Regulators?

Columns
Tea with the Law Gazette — Interview with Mr Toh Han Li
Chief Executive, Competition Commission of Singapore
Ethics in Practice — Withdrawal Symptoms and Remedy
Spotlight — Conversation with Ahmad Nizam, Chairperson of the Muslim Law Practice Committee

Lifestyle
Alter Ego — The Personal Space
Travel — Four Ducks and a Wall in Beijing

Notices
Professional Moves
Information on Wills

Appointments

The Singapore Law Gazette

The Law Society of Singapore

The Law Society’s Mission Statement
To serve our members and the community by sustaining a competent and independent Bar which upholds the rule of law and ensures access to justice.

Additional contents information:

- Articles on legal and ethical practice
- Updates on upcoming events and professional developments
- Interviews and discussions with legal professionals
- Information on Wills
- Professional Moves
- Information on the Muslim Law Practice Committee

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Distribution:
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Singapore Law Gazette

November 2013
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It has not been an easy journey for me. So it means a lot to me to stand here, and be recognised by you, my peers. Thank you, Law Society, and my gratitude to all of you.

I would like to share the honour of this award with some people who have helped me along my legal journey.

- Harry Elias, SC, for being my pupil master 32 years ago;
- Joe Grimberg, SC, for helping me to appreciate the best traditions of the Bar.

One of the highlights of my legal career was to appear as Joe’s junior in a case at the Privy Council. Many of you have read the judgments of Lord Diplock. Well, Joe and I had the privilege of appearing before him, and submitting to him and two other law lords! At least Joe did; I merely carried the bags.

The other group of persons I would like to acknowledge are my colleagues from Wee Tay & Lim. I would like to specially thank Pan Lee, Keow Ming and Alex, who have been my partners for the past 26 years, and who were my classmates in law school.

We have very different personalities, and like many other partners, have different views on how to manage the firm. But somehow, thankfully, we have managed to keep together all these years.

One of the most difficult ethical decisions we had to make as a firm was in 1988, when we were asked to act in the controversial case of Chng Suan Tze v Minister of Home Affairs & Others, which is now a landmark public law case. Not many lawyers wanted to act in that case, but we felt that we would be letting the profession down, and reneging on the oaths that we took as lawyers, if we did not do so. Acting in that case took a few years off each of our lives, but looking back now, I suppose it helped to bind us together. Sometimes, taking on a case for reasons other than money can have unexpected rewards!

The practice of law in Singapore has evolved greatly in the past three decades. When I started practice, a large firm meant 30 lawyers. Today, our large law firms each have more than 300 lawyers. With time billing, the practice of law has become much more business-like.

Many of us worry about the future of the profession. While change is inevitable, how do we ensure that law remains accessible to the ordinary Singaporean? While money needs to be made, are we able to remember that acting in the best interests of our clients is paramount?

Last month, I met a group of young law graduates undergoing their Part B course. They were a really nice bunch – smart and idealistic. The eager young minds of tomorrow. But I learnt from them that many firms were working their trainee lawyers very hard – up to 10, 11 pm, some even 1am – every night!

Please do not get me wrong. I too believe in the value of hard work. But the focus during a training contract ought to be to teach the trainee. My personal plea to the profession is this – please do not burn out our young lawyers to meet billing targets. Instead, take time to talk to them, nurture them, and imbibe in them the best traditions of the Bar.

Recently, I conducted a mediation involving a young boy who had been involved in an accident and was in a vegetative state. Three parties were involved and the case was headed for a full-blown trial lasting more than two weeks on the issue of liability alone.

The boy’s parents came to the mediation, and their grief was evident. We were all affected, and I think nobody wanted to make them go through the ordeal of a trial if possible. We arrived at a settlement that evening, and I must say I was really proud to see the lawyers representing the three parties work so hard together to carve out a settlement agreement. This was a classic case of lawyers acting in the best interests of their clients.

Each year, thousands of students apply for a place in law, but only a small fraction of those who apply are given places. Practising law today may not be easy. But let’s remember that it is a privilege to be a lawyer.

Not all of us who graduate and get called will turn out to be brilliant lawyers. However, all of us can try to practise law with a conscience.

Well said, George. And congratulations for having pursued and found a Happy Practice.

Lok Vi Ming, Senior Counsel
President
The Law Society of Singapore
Criminal Law Conference
16 & 17 January 2014
Supreme Court Auditorium

Registration is Now Open!
Please visit http://www.lawsociety.org.sg/conference/clc2014/
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Public CPD Points:
6.0 Points - Day 1, 16 Jan 2014
5.5 Points - Day 2, 17 Jan 2014

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THE LAW SOCIETY
SINGAPORE
SINGAPORE ACADEMY OF LAW
Diary

22 October 2013
Annual Election of Council
8.00am-6.30pm
The Law Society of Singapore

11 October 2013
Mandatory Ethics Programme 2013 (For Newly-Qualified Lawyers)
8.30am-10.30am
Supreme Court Auditorium

18 October 2013
Annual General Meeting
6.00pm
NTUC Centre

27-30 October 2013
26th LAWASIA Conference
Organised by the Law Society of Singapore and the Law Association for Asia and the Pacific (LAWASIA)
Suntec International Convention & Exhibition Centre

Upcoming Events

16 & 17 January 2014
Criminal Law Conference 2014

6 & 7 March 2014
Litigation Conference Workshop
Council and Committee Updates

Golden Shoe Carpark Office Renovations

Council noted that the Law Society will take possession of the 10th floor office unit at the Golden Shoe Carpark Office on 1 November 2013. The Society has leased the office space for a period of three years for use by part of the Pro Bono Services Office which has been facing a shortage of office space at its current premises at the Subordinate Courts.

Lawyers’ Guide on Complaints Handling and Disciplinary Process

Council approved the draft guide which has since been disseminated to members via eJus News and which is also available on the Society’s website www.lawsociety.org.sg > Members’ Library > Regulatory Matters > Complaints Process.

Representation on the Board of the Insolvency Practitioners Association of Singapore

Council approved the proposal of the Insolvency Practice Committee to rotate representation on the Board of the Insolvency Practitioners Association of Singapore (the “Board”), in order to allow other equally capable representatives to serve on the Board.

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Annual General Meeting 2013

The Law Society held its Annual General Meeting on 18 October 2013 at the NTUC Business Centre which was attended by about 40 members. At the start of the meeting, a video was screened to members present, showing the events and activities of the Society held over the past year, including seminars and conferences; visits by various delegations; social and sports events; and pro bono activities.

President Mr Lok Vi Ming, SC gave a presentation on the key initiatives and programmes of the Society, including the CPD events and seminars held, public consultations that the Society participated in, activities and projects undertaken by the Society’s standing committees, and the number of pro bono initiatives and parties who have benefited from the pro bono schemes such as the Criminal Legal Aid Scheme, Community Legal Clinics, Project Law Help, Project Schools and other outreach programmes. The Society’s Treasurer, Mr Kelvin Wong presented the key financial highlights to members. For more information on the Society’s activities and financial statements, please refer to the Annual Report available at the Society’s website www.lawsociety.org.sg > About Us > Annual Report. The minutes of the meeting are available at the Members’ Library > Society Matters > General Meetings.
Annual General Meeting
The Law Society held its annual elections of Council on 22 October 2013. Elections were held for the Senior and Junior categories. The three elected members of Council for the Senior category for a term of two years (January 2014 to December 2015) are Mr Steven Lam Kuet Keng, Mr Lok Vi Ming, SC and Mr Thio Shen Yi, SC. The two elected members for the Junior category are Mr Grismond Tien De Ming and Mr Paul Tan Beng Hwee.

As there were no nominations for members in the middle category, three members in this category will be appointed pursuant to s 53(1) Legal Profession Act.
The 26th LawAsia Conference jointly organised by the Law Society and LawAsia, was held in Singapore from 27-30 October 2013. The conference, with the theme “Beyond the Law, Beyond the Call of Duty and Beyond Boundaries” boasted many ground-breaking and current topics such as independence and diversity in the boardroom; a new dawn for alternative dispute resolution in Asia; law firm management; safeguarding M&A deals across different cultures; review of the death penalty; environmental law and sustainable cities; life after the practice of law; forensic investigation; family, children and succession; pro bono and the State; corruption and extraterritorial law.

The keynote address at the opening of the conference was delivered by The Honourable The Chief Justice Sundaresh Menon following addresses by both the President of LawAsia, Ms Malathi Das, and President of the Law Society, Mr Lok Vi Ming, SC. The second day of the conference included a keynote address by Mr K Shanmugam, Minister for Foreign Affairs and Minister for Law. The conference, attended by over 250 local and international delegates, closed with the 8th LawAsia International Moot Competition.
Minister for Foreign Affairs and Minister for Law, Mr K Shanmugam, delivering the keynote address on the second day.

Mr Wong Meng Meng, SC, Chairman of the organising committee, with Ms Malathi Das.
LawAsia Conference
Information sharing between competitors is not a new activity and has only been facilitated by today’s connected world. Knowing when information sharing may result in a breach of the law is crucial. Apart from potentially hefty fines and other criminal or administrative sanctions, the reputational impact from such a breach may be difficult to contain. It is crucial for companies to embrace a compliance culture and train its employees to know the limits of information sharing, especially when dealing with competitors. This article explores recent global and local cases involving information sharing and what it means to your company.

Sharing Sensitive Information with Competitors: The Importance of Knowing the Limits

Information Exchange – A Global Preoccupation

The Manipulation of the LIBOR

Over the course of the past 12 months, the financial world has been tainted by the manipulation of the London InterBank Offered Rate (“LIBOR”) and the Euro Interbank Offered Rate (“EURIBOR”), benchmark interest rates which are used globally and which are frequently pegged to large volumes of swaps and futures contracts, commercial and personal consumer loans, home mortgages and other transactions. LIBOR is determined based on rate submissions from a select panel of major banks and is supposed to reflect the cost of borrowing unsecured funds in the London interbank market. EURIBOR is calculated in a similar fashion as well and measures the cost of borrowing in the Economic and Monetary Union of the European Union.

In June 2012, a major financial institution headquartered in London entered into a settlement agreement with regulators and paid a fine of £290 million. Other banks were also fined amounts of up to US$1.5 billion. As recent as September 2013, ex-employees of a brokerage were charged by the UK Justice Department for allegedly conspiring to manipulate the LIBOR. The brokerage was also fined £55 million.

How Information Sharing Led to the Rigging

According to the press releases issued, certain traders in a bank had requested that the bank’s LIBOR and EURIBOR submitters contribute rates that would benefit financial
positions held by them. These requests had been made via various communication modes such as electronic messages and telephone conversations. As a result, the bank’s submissions had affected the LIBOR and EURIBOR setting process on some occasions. Certain traders had also communicated with traders from other financial institutions to request for LIBOR or EURIBOR submissions that would be favourable to either of their trading positions. As a consequence, the bank’s rate submissions were false and misleading when such submissions were taken into account by rate submitters.

The attempts by the bank to manipulate included its traders asking other banks to assist in manipulating the EURIBOR, as well as the bank’s aiding attempts by other banks to manipulate the US Dollar LIBOR and EURIBOR. For example, one trader had stated in an e-mail to a submitter: “We have another big fixing tomorrow and with the market move I was hoping we could set [certain] Libors as high as possible”. The press release also indicated that the traders’ requests were frequently accepted by the bank’s submitters, who e-mailed responses such as “always happy to help”, “for you, anything”, or “Done...for you big boy”, thus resulting in false submissions by the bank to the British Banker’s Association and European Banking Federation.

SIBOR

Closer to home, the Singapore Interbank Offered Rates (“SIBOR”), Swap Offered Rates (“SOR”) and the Foreign Exchange spot benchmarks that are commonly used to settle Non-Deliverable Forward FX contracts (“FX Benchmarks”) have also been embroiled in a similar issue. The SIBOR is set by a panel of 12 participating banks whereby each bank submits the interest rate at which it could borrow Singapore Dollars in the interbank market. The rates are collated and ranked and the six submitted interest rates in the middle of the range are averaged to determine the official SIBOR. The rates at the bottom and top end of the range are not included in the computation of SIBOR.

The Monetary Authority of Singapore (“MAS”) commenced investigations into the potential rigging of the SIBOR in 2012. In June 2013, the MAS indicated that it had completed its year-long review of the processes relating to banks’ benchmark submissions. Twenty banks were found to have deficiencies in the governance, risk management, internal controls and surveillance systems for their involvement in benchmark submissions and a total of 133 traders were found to have engaged in several attempts to inappropriately influence the benchmarks. There was, however, no conclusive finding that SIBOR, SOR and the FX Benchmarks had been successfully manipulated. MAS indicated that based on available information and evidence, no criminal offence under Singapore law appeared to have been committed.

Information Exchange under the Spotlight in Singapore

Although no criminal offences appear to have been committed by the traders, it is possible that if there was any exchange of competitive information in the course of the attempted manipulation of the benchmarks, this may raise competition law issues in Singapore. The Competition Commission of Singapore (“CCS”) has already fined parties for anti-competitive information exchanges.

In July 2012, the CCS fined ferry operators, Batam Fast Ferry and Penguin Ferry Services Ltd, for engaging in an anti-competitive information exchange (the “Ferries Decision”). The CCS considered that the exchange of future pricing information relating to ferry tickets amounted to a “concerted practice” whose “object” was the restriction of competition, in contravention of s 34 of the Competition Act.

Background

Following a complaint received by the CCS in 2009 from a member of the public, CCS launched a formal investigation into the provision of passenger ferry services between Singapore and Batam. The affected market related to ferry routes between Singapore (HarbourFront) – Sekupang and Singapore (HarbourFront) – Batam Centre. The parties were the only two providers of ferry services of the said routes. As such, the affected market was essentially a duopoly.

Amongst other factual findings, CCS found that passenger ticket pricing was solely at the commercial discretion of the parties. CCS took the view that under normal market conditions where there is intense competition in respect of strategic price information, such sensitive information would be kept strictly confidential. As such, Batam Fast’s acts of informing Penguin of changes in its future prices to customers reduced or removed uncertainty between the parties in relation to prices that Batam Fast would be charging its corporate client.

Given that the case concerned the exchange and provision of sensitive and confidential price information between competitors, and that in light of the economic circumstances including the fact that the parties were competitors in a market duopoly, CCS was of the view that the parties were involved in a concerted practice with the object of preventing, restricting or distorting competition.
The CCS imposed a financial penalty of S$172,906 on Batam Fast and a financial penalty of S$113,860 on Penguin.

**Analysis**

**Concerted practice**

CCS came to the view that the parties had entered into a concerted practice in this case. There is a concerted practice if parties, even if they do not enter into an agreement, knowingly substitute the risks of competition with practical cooperation between them. It was also emphasised that the concept of a concerted practice must be understood in light of the principle that “each economic operator must determine independently the policy it intends to adopt on the market”. CCS also reiterated its position that it may not be necessary to characterise the conduct in question as exclusively an agreement or a concerted practice – the important distinction would be whether the behaviour is collusive or not. Should a party seek to prove that it was not involved in the collusive behaviour, active steps should be taken to distance itself from the unlawful conduct. This is because where a unilateral disclosure of strategic and sensitive information is involved, such disclosure may be indicative of an agreement or concerted practice and recipients of such information would be presumed to be liable unless they had clearly distanced themselves from the same. A party’s complicity would be regarded as a passive form of participation in the infringement and a tacit approval of the unlawful conduct.

**Information sharing**

There is no prohibition against companies adapting themselves intelligently to the existing or anticipated conduct of their competitors. However, what is prohibited is “any direct or indirect contact between competitors, the object or effect of which would be to create conditions of competition which do not correspond to normal competitive conditions of the market in question”, taking into account the nature of the relevant market, undertakings, products and services in question.

As such, any contact between competitors which has the object or the effect of which is to influence a competitor’s conduct on the market would be anti-competitive. In particular, disclosure of strategic pricing information which is not readily accessible helps eliminate or reduce competitive uncertainty and conversely facilitates the creation of a climate of certainty between parties. Such information exchange would be deemed to be facilitating collusion capable of removing market uncertainty and would, therefore, be anti-competitive. Further, exchanges between parties at a single or a selective basis in relation to a one-off alteration in the market is sufficient to establish liability.

In the context of a highly concentrated market (as this case was), uncertainty in respect of pricing policy would likely be the main driving force of competition. It would, therefore, be likely that exchange of price information under such circumstances would have the object of restricting competition. It should also be noted that even where a party does not intend to implement or adhere to the agreement, the agreement would still fall foul of the prohibition.

**Discussion**

This is a significant development for companies active in Singapore for a number of reasons:

1. This is the first time that the CCS has imposed a fine for anti-competitive information exchange.

2. The CCS adopted a wide interpretation of “concerted practice” so as to catch the flow of competitively sensitive information between the ferry companies even though there may have been no actual agreement between the companies to fix prices at a certain level. Companies can, therefore, find that their arrangements fall within the scope of competition law even though there may be no explicit agreement in place. This closely resembles EU competition law under which even a one-off and unsolicited “exchange” of information has been regarded as amounting to illegal collusion. Indeed, the CCS decision makes it very clear that companies that receive sensitive information (even if unsolicited) will need to take action so as to avoid being implicated in an anti-competitive arrangement. We set out below some practical guidance on how companies can distance themselves from an illegal information exchange arrangement below.

3. The CCS characterised “pure” information exchange as anti-competitive by “object”, meaning that it did not need to show that the arrangement had actually produced an anti-competitive effect on the market or that any specific arrangement had even been implemented by the parties. This approach mirrors the position under EU competition law which has been controversial because, once an agreement has been characterised as anti-competitive by object, it is in practice very difficult (if at all possible) for companies to rebut the presumption of anti-competitive effect.
4. The CCS investigation stemmed from a complaint from a customer. This suggests that even in markets dominated by a few companies that have been following similar practices for a long time, there remains a very real risk of detection.

Of course, not every exchange of information between competitors is illegal under competition law. Information exchange between competitors (eg benchmarking) may well have pro-competitive effects for consumers. It is critical to be able to identify when information exchanges may give rise to concerns such that it should not take place or should only take place with appropriate safeguards.

The Ferries Decision, therefore, underlines the need for companies in Singapore to have effective competition law compliance programmes in place – especially because there are many contexts (quite aside from the facts of the ferry case) in which information exchange can take place, including M&A discussions; due diligence; and within trade associations. In particular, the Competition Appeal Board has recently released its decision in respect of two separate but related appeals involving modelling agencies price fixing in a trade association context.  

Competition authorities in other jurisdictions have scrutinized information exchange in all of these contexts. It is only with compliance guidance and training (tailored to the company and written in practical, commercial language) that employees will be able to identify when information exchange is permissible and where it may raise concerns so that they can seek advice. Compliance guidelines can also explain what needs to be done when a company receives competitively sensitive information in error or unsolicited.

Global Enforcement Trends

On 18 September 2013, the European Commission proposed a set of new rules to prevent the rigging of interest rates and commodity prices, in response to the LIBOR manipulation. The proposal sought to improve governance and controls over the benchmark process and ensure that contributors to benchmarks are subject to adequate controls. Benchmarks would be regulated for the first time at the European level, but enforced by individual countries’ authorities.

In June 2013, MAS proposed a new regulatory framework for financial benchmarks which, amongst others, introduces specific criminal and civil sanctions for manipulation of any financial benchmark as well as subjecting the setting of key financial benchmarks to regulatory oversight.

From the anti-trust angle, the CCS’s decision to tackle illegal information exchange is certainly consistent with a wider trend which sees anti-trust agencies in major jurisdictions scrutinising information exchange between competitors as well as seemingly unilateral announcements of commercial strategy.

1. The European Commission’s guidelines on “horizontal cooperation” between companies contains a generally helpful chapter dedicated to information exchange – but also a potentially wide and concerning statement about when seemingly unilateral conduct might be characterised as collusion with competitors.

2. Within the individual Member States of the EU, there is no shortage of enforcement against information exchange. The UK OFT recently fined a bank £28.5 million in respect of a one way and unsolicited passing of generic but competitively sensitive information. Competition authorities in a number of Member States have also begun to investigate the indirect exchange of information between competitors through a common supplier (so called “hub and spoke” information exchange). “Newer” anti-trust jurisdictions also appear to favour the strict EU approach (eg Malaysia).

3. The US antitrust agencies have opposed information exchanges between competitors in the past and in a recent consent order imposed more restrictions on the exchange of information where the parties had failed to comply with the “safety zone” set forth in the agencies’ health care guidelines.

Legislation introduced in Australia to police unilateral announcements which amount to price signaling. The rules are confined to the banking sector – at least for now.

What This Means for You

Ensure that an effective competition compliance programme is in place: The CCS has clarified that the fact that a company employee is not authorised to enter into specific discussions or agreements with other parties does not relieve the company of its liability. After all, liability for infringement of s 34 of the Act applies to companies and not individuals. As such, it is critical to have an effective programme in place so that employees are trained on how to stay competitive but without putting the company at risk of financial penalties and adverse publicity.

In general, the five key elements of a competition compliance programme are:
1. Leadership and the support of senior management: Unambiguous support from senior management is vital as an indicator of the company’s commitment to complying with competition rules. This support must be visible, active and regularly reinforced.

2. Risk assessment: The company should identify its key competition law risks. This will depend of course on a variety of factors including the nature of its industry; its size and market power; the nature and frequency of interactions with competitors; and the type of sales and purchase contracts it enters into. The company must then identify the level of those risks. The risk of illegal information exchange is obviously a lot higher in industries where there is frequent competitor contact, for example, through trade associations, benchmarking surveys and use of price reporting agencies.

3. Standards and controls: A manual, handbook or compliance policy document is an effective way to inform staff about key competition law legislation; the company’s commitment to compliance; and the procedures which have been established within the company. An effective competition compliance programme will also place a duty on employees to conduct their business dealings in accordance with all relevant laws. A framework should also be provided to employees to seek advice on whether or not a particular activity complies with particular rules, and report any activity which they suspect infringes the law. This includes providing practical guidelines on, amongst others, the nature and type of discussions (including those with competitors) which are permissible and those which are not.

4. Training: Training on competition law compliance should be offered as part of the induction process for new staff and should then be offered on a continuing basis in order to reinforce the compliance message and keep staff updated with changes in the law. The training must be tailored to the company’s business activities in order to be seen as relevant and retain the interest of employees. It can be delivered in a variety of ways including seminars, video presentations, role play and corporate internet. Checklists, guidelines and standard wording can be developed to deal with specific danger areas. A record should be kept of all training that is given. Beyond training, communicating the ethics and compliance message can be accomplished through conferences, bulletins, websites, and similar tools, all of which goes hand-in-hand with a strong leadership tone.

5. Evaluation: A compliance programme needs to be evaluated on a regular basis in order to be effective. Evaluation is essential not only as a means of ensuring that the programme is working properly, but also to enable areas of risk to be identified and addressed. The evaluation element should include, amongst others, testing employees’ knowledge of the law, policy and procedures, putting in place mechanisms for the reporting of actual or potential infringements to senior management, and carrying out formal audits of sales and procurement processes.

Monitor contact (direct or indirect) with competitors very closely. It is commonplace amongst many industries for competitors to meet at various forums for various purposes, including trade associations and social gatherings. Meeting or communicating with your competitors is not necessarily illegal. However, what you say to each other may have legal
implications where the information exchanged relates to sensitive or strategic information regarding your company. This may include future prices, terms and conditions of sales, sales volumes etc. Do also remember that as long as any sensitive or strategic information has been clearly and unequivocally communicated, how the communication took place is not essential. Trade association participation should be assessed and monitored and employees should be given, as part of a company compliance programme, a practical set of ‘do’s and don’ts’ regarding information exchange with competitors in all relevant contexts. Audits on a regular basis in respect of trade association participation is recommended to ensure that the company is aware of the dealings that its employees have with its competitors. Without an oversight mechanism in place, this may unnecessarily put a company at risk where sensitive or strategic information is exchanged, even if it is a single employee attending or where such information received is not acted upon.

Understand how to distance your company from any potentially anti-competitive arrangements. Compliance processes need to be in place within the company so that if employees become aware of any potentially anti-competitive discussions, this is reported to legal or compliance personnel immediately. Where there is sufficient concern regarding any anti-competitive arrangement, you should immediately consider next steps including the need to publicly and unequivocally distance yourself from the behaviour.

However, what amounts to “publicly distancing” oneself? Silence or even disagreement with the substance of a proposal at a meeting do not amount to an expression of firm and unambiguous disapproval of the unlawful initiative. Mere assertions that a party has distanced itself is insufficient. A party who receives sensitive and confidential information relating to future conduct of its competitors would be considered to be participating in a concerted practice if it fails to unequivocally distance itself from the same.

In other words, the steps taken in relation to public distancing must be shown to “have had the effect of pronouncing the relevant party’s disagreement to the other parties involved” in the anti-competitive arrangements. This may perhaps include, amongst others, a written record in the minutes of the relevant meeting that your company representative disagrees with the proposed collusion and to leave the meeting immediately, or a resignation from the trade association.

**Conclusion**

It is clear that illegal information exchange can have a profound impact on a company’s bottomline as well as reputation. Whilst such illegal information exchange may be in a clear breach of financial regulations or standards, it is now patently clear that such information exchange may also amount to a breach of competition law.

As seen from the *Ferries Decision*, the CCS has clearly taken a firm approach in dealing with the flow of competitively sensitive information even where there has been no actual agreement between the companies to fix prices at a certain level. Based on the above decision as well as its other issued decisions, the CCS also appears to follow EU competition law rather closely.

The implementation of a competition compliance programme is also highly recommended to ensure that competition compliance becomes a culture within the company, and that employees are well-trained to identify and avoid any potential anti-competitive practices. An effective compliance programme is one that is tailored to both the company’s commercial activities and the anti-trust “risk environment” in which it is active.

The involvement of a company in any anti-trust investigation can be at a great cost and add unnecessary burden on a company’s resources. Even if a company investigated is ultimately deemed to be not anti-competitive by the relevant authorities, the costs and time spent in the course of the investigations, as well as any reputational damage, would still nonetheless adversely affect the company.

**Notes**

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Competition Law: Its Impact on Business and Legal Practice*

Malaysia’s Competition Act 2010 (CA 2010) was enacted in April 2010 but implemented with effect 1 January 2012. The Act is envisioned to meet with ever-increasing demands for competition in the current era of globalisation and trade liberalisation. It also ensures that all firms that operate in the free market economy do not restrict or distort competition, preventing the market from functioning optimally.

There are two Acts to govern generic competition issues in the country; namely the Competition Commission Act 2010 and the CA 2010. The Competition Commission Act 2010 establishes the Malaysia Competition Commission (“MyCC”), which is made up of the Chairman and nine other Commissioners.*

The Competition Commission Act 2010 empowers MyCC to carry out functions in the implementation and enforcement of the CA 2010. The MyCC is under the purview of the Ministry of Domestic Trade, Cooperatives & Consumerism. However, it functions as an independent body in its decision-making process.

The MyCC is empowered to carry out various roles that include: Advocacy, Investigation and Enforcement, Market Review, Exemption & Compliance and Leniency.

Update on the progress of MyCC:

1. Since its establishment, MyCC has organised 75 advocacy programmes throughout Malaysia. However, a recent survey carried out shows that the awareness level is very low. In the states of Malacca and Perlis, it is zero. This trend is indeed a concern.

2. In terms of investigation and enforcement, we have received 33 complaints where 24 cases are either under investigation or under assessment, eight cases were closed and one case has been settled.

3. For market review, one has been conducted (the Broiler Market Review) and to date MyCC has assessed three out of four exemption cases where one exemption case is still under review.

4. As regards compliance and leniency, preparations are underway to formulate new guidelines which will be released soon.
Substantive Legislation on Competition and Its Provisions

The preamble to the Competition Act 2010 states it to be "An Act to promote economic development by promoting and protecting the process of competition, thereby protecting the interests of consumers and to provide for matters connected therewith" and the Act also contains provisions on prohibitions, the penalties for non-compliance and powers of investigations.

When it was passed by the Parliament in April 2010, businesses were given 18 months’ grace to comply with the Act before it came into force in January 2012.

The scope of the law applies to all commercial activities, both within and outside Malaysia which have an effect on competition in any market in Malaysia.

Examples of the scope of activities that are not included would cover:

1. Any activity, directly or indirectly in the exercise of governmental authority, eg provision of medical services in hospitals;

2. Any activity conducted based on the principle of solidarity, eg EPF and SOCSO; and

3. Any purchase of goods or services not for the purposes of offering goods and services as part of an economic activity, eg Government procurement activities.

Certain types of commercial activities are expressly excluded by the Act; ie those under the Communications and Multimedia Act 1998 as well as the Energy Commission Act 2001.

In addition, it also excludes:

1. Agreement or conduct that comply with any legislative requirement;

2. Collective bargaining for employment; and

3. Services of general economic interest or having the character of a revenue-producing monopoly.

It is important to understand the scope of the law and what the objectives are. The Act prohibits enterprises from engaging in two forms of conduct:

1. Section 4 – Anti-competitive agreements; and

2. Section 10 – Abuse of dominant position (mergers and acquisition are excluded as they are not in the CA 2010 yet).

As regards anti-competitive agreements that are prohibited, there are exemptions (under s 5) that the Commission may grant on the following grounds:

1. Significant identifiable technological, efficiency or social benefits;

2. Benefits could not be provided without the anti-competitive agreement;

3. The detrimental effect of the agreement is proportionate to the benefit; and

4. Competition is not eliminated completely.

To obtain this relief, all the four conditions above must be fulfilled.

Impact of the Law on Business

As at 2011, Malaysia has more than 46,600 companies in various industries including agriculture, services, construction and technology. Despite its high number and our targeted advocacy efforts, the surveys from 2011 and 2012 still show very low levels of awareness among local businesses as regards the CA 2010.

This is even so when MyCC’s outreach is focused on associations to reach out to the local businesses. There is certainly a gap in disseminating information and much need to be improved.
With such a large number of businesses, there is a need to strengthen our collective efforts to give greater emphasis on the implications that the competition law has among our businesses in Malaysia.

Let us now look at what is happening in the ASEAN region. The implementation of competition law in the ASEAN region is not at a uniform pace. The introduction of a nation-wide competition policy and law by 2015 is a pre-requisite for the ASEAN Member States in fulfilment of the goals of the 2007 ASEAN Economic Blueprint.

So far, five ASEAN member countries have implemented Competition Law. They include Indonesia, Singapore, Thailand, Vietnam and Malaysia. The remaining five ASEAN countries will have until 2015 to do so.

The development of competition law is not unique in this region. Around the world, about 140 countries worldwide are already implementing the law. As the business landscape is going borderless, our domestic players must prepare to move away from their comfort zones and gear themselves up for a more dynamic and competitive environment. As such, local businesses that intend to go regional and trade with these member countries must start to equip themselves with knowledge on competition law.

The MyCC has constantly been asked to relook at the status of SMEs and to grant exemptions in their favour. Although their position as SMEs may not be material to MyCC where dominant position is concerned, the law in any jurisdiction is clear – it prohibits anti-competitive agreements. Persons doing business in these jurisdictions with such laws in place should ensure compliance thereof.

**What is the Impact of the Competition Act 2010 in General to All Businesses?**

Section 4 of the Act expressly prohibits a horizontal and vertical agreement that has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.

Horizontal agreements are agreements between enterprises operating at the same level.

- For example, the chicken producers or between sugar manufacturers in the production level.
- Another example is the agreement in the distribution chain between retailers or between wholesalers.

Before competition law came into place, businesses could operate by committing to such agreements. However, these fall within the scope of anti-competitive agreements.

On the other hand, there is another type of anti-competitive agreement called "Vertical Agreements" that denote different levels of production or distribution chains.

Such agreements between firms at different levels of the supply chain comprise the agreement between the
manufacturer with the wholesaler or the wholesaler with the retailer.

Other examples of anti-competitive agreement includes price fixing, limiting or controlling (production, market outlet or market access, technical or technological development, investment), market sharing and bid rigging.

It is important for businesses to understand competition law. There are companies who have been penalised for anti-competitive behaviour.

A case in point is that of a Malaysian company that was found to have been unlawfully fixing prices between 2001-2006 by the Australia Competition and Consumer Commission (“ACCC”). ACCC is a commission which has similar functions to MyCC.

It is also interesting to note that this company has a risk management division and compliance programme on anti-trust or competition but yet when they operated outside Malaysia, they had engaged in such anti-competitive practices.

On the other hand, s 10 in the law refers to the Abuse of Dominant Position. This normally occurs when a dominant firm in a market (or a dominant group of firms) engages in conduct that is intended to eliminate or discipline a competitor or to deter future entry by new competitors.

Under the Act, being dominant means one or more enterprises has significant market power. An example of an abuse of dominant position is a US microprocessor company which has about 80 per cent of market power. Its dominant position can seriously damage its main rival.

Examples of abuse of dominant position behaviour include setting unfair purchase or selling prices or unfair trading conditions, predatory behaviour, applying different conditions with other trading partners and refusing to supply or limiting or controlling production without reasonable commercial justification. Unless there is reasonable commercial justification or response, such conduct is defined as “abuse”.

Impact of the Law on Legal Practices

So what should the legal profession do? Firstly, they need to enhance their knowledge of the CA 2010. This will promote greater understanding on the business needs to support lawyers. This would have to include knowledge on economics and generally how businesses operate.

Competition law is a unique piece of legislation. It contains a combination of legal and economic principles. Thus, developing greater understanding of the economics behind competition law is also important. The law is designed to support the economic perspectives of competition, especially if it is an effects case or an abuse of dominant case.

Before advising clients, lawyers must be familiar with the types of agreements prohibited under the Act. It is not only used to advise clients but legal firms should also understand that this Act includes commercial activities that the legal firms can offer.

Last but not least, the legal profession should have a deep knowledge of compliance to the law in order to advise clients. Firms should be familiar with the powers of the Commission, take heed of their investigative powers, advise clients on what they should do when there is a raid by the MyCC and what the obligations are of clients if they are being investigated by MyCC.

Challenges

What are the challenges which businesses and the legal profession face?

First is to build knowledge and capacity building for the company, which is not easy.

Nevertheless due to globalisation, there is a need to review the existing ways of doing business and relook at the rules and regulations as some may have an impact on the competition process.

The legal profession should also review its business model to compete in the global market, and ensure the profession and services they offer remain relevant.

Responsibilities of the Company

Companies will have to ensure that their business practices are within the permitted boundaries of competitive conduct. It may be necessary to conduct a comprehensive review on all existing agreements and practices to ensure compliance with competition law.

From a commercial point of view, doing so will retain the trust and loyalty of its shareholders and customers. From a legal point of view, failure to do so could render affected arrangements with its business partners unenforceable.

In addition, contravention of competition laws will result in heavy fines imposed on any company found guilty. Often, civil remedies are also available to consumers and parties adversely affected by anti-competitive conduct. In some jurisdictions, the quantum of civil damages awarded can be quite high and in the UK for example, it is even more serious
stimulating a broader range of products and services. There would be occasions where lawyers would also be consumers for certain types of services. Competition also ensures value-for-money by ensuring the firms compete on price and quality. In any form of businesses, innovation and production motivate firms to create new products and reduce cost in order to win customers. Along with other benefits, competition is seen to support economic growth by promoting choice, value, innovation and productivity.

### Conclusion

Competition can be both a sword and a shield.

Like ancient warriors, a sword can be utilised to attack anti-competition practices of business rivals. Simultaneously, the shield can be used to protect against allegations of anti-competitive behaviour.

It is apt for this article to conclude with this resounding message from the Hon Prime Minister in 2010 when tabling the 10th Malaysia Plan.

“Healthy competition is needed to make the economy more efficient and dynamic. For this, the Competition Law will be introduced to provide a regulatory framework against market manipulation and cartel practices that may affect market efficiency …”

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**Benefits of Competition**

What do businesses and the legal profession gain from competition? Among others, it increases choice by for it may also invoke jail terms and disqualification from directorships.

Under the CA 2010, the financial penalty shall not exceed 10 per cent of the worldwide turnover of an enterprise during the period of infringement.

Once an investigation has begun, there is no way to refrain from giving the necessary documents and any confidential documents which are needed.

To know the law, companies should educate employees on the rationale of competition law, how competitive markets benefit society, which types of conduct are prohibited and how the legal prohibitions apply to the activities of your company.

Self-assessment is encouraged as the MyCC does not give any advice to businesses. Companies should establish periodic competition audits and senior management should agree on the course of action (to comply) if the company is found to be in breach of CA 2010.

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**Tan Sri Siti Norma Yaakob**

Malaysia Competition Commission

* This article is adapted from a paper presented by Tan Sri Siti Norma Yaakob at the Malaysian Legal and Corporate Conference 2013 organised by Current Law Journal.

** The writer was appointed Chairman of the Commission by the Prime Minister on 1 April 2011 whilst the other nine members were appointed one month later. Four of the nine members are nominees of the Government whilst the remaining five are drawn from individuals who have experience and knowledge in matters relating to business, industry, commerce, law, economics, public administration, competition, consumer protection or any other suitable qualification as the Minister may determine.
The fourth edition of Evidence and the Litigation Process will be an extremely helpful resource in understanding the principles of the law of evidence and the operation of the litigation process for practitioners. Highly acclaimed in and out of Singapore since it was first published 21 years ago, this book covers four years of critical legal developments since the third edition was published in 2010. They include recently introduced legislation such as the completely revamped Criminal Procedure Code, the wide-ranging amendments to the Evidence Act and new procedural processes. The greatly expanded body of case law is also carefully analysed.

The book also provides a balance between analytical discussion of the principles and the practical application of the law and includes numerous illustrations and practice-related situations for this purpose. It offers practitioners an intensely detailed and integrated portrait of the litigation process (including procedure and advocacy) and is therefore a vital source of reference. The book recognises that this subject is particularly difficult primarily because of the difficulties inherent in the Evidence Act (a significant part of which remains in the state it was enacted in 1893), and the tension between this statute and the constantly developing common law. No effort is spared in tackling these problems and examining all applicable sources of law. This highly successful publication has already sold thousands of copies in the course of the first three editions.

Table of Contents

Chapter 1 Principles and preliminary issues in the law of evidence
Chapter 2 Facts in issue and relevant facts
Chapter 3 Similar facts
Chapter 4 Hearsay
Chapter 5 Evidence from parties: assertions and related issues
Chapter 6 General exceptions to the hearsay rule
Chapter 7 Judgments
Chapter 8 Opinion evidence
Chapter 9 Character
Chapter 10 Judicial discretion to exclude evidence
Chapter 11 Modes of proof
Chapter 12 Burden and standards of proof
Chapter 13 Corroboration
Chapter 14 Legal professional privilege
Chapter 15 Privilege and immunity
Chapter 16 Foundations
Chapter 17 Selection and organisation of the evidence
Chapter 18 Opening the case
Chapter 19 Evidence-in-chief
Chapter 20 Cross-examination
Chapter 21 Re-examination
Chapter 22 Closing address
Chapter 23 Overview of the trial process

About the Author

Jeffrey D Pinsler LLB (L’pool); LLM (Cantab); LLD (L’pool) is a Professor specialising in civil justice, civil and criminal evidence, procedure and ethics. He is an advocate and solicitor, barrister-at-law, Fellow of the Singapore Institute of Arbitrators, a Principal Mediator of the Singapore Mediation Centre, a member of the Rules of Court Working Party and of various professional committees of legal and governmental institutions including the Singapore Academy of Law, the Supreme Court and Ministry of Home Affairs. He has appeared as amicus curiae before the Court of Appeal, and has spoken at, and contributed to, conferences and reform programmes in various countries. He has produced 17 major text books and reference works to date in his capacity as Author and/or Editor in Chief or Consultant Editor, as well as multiple articles. His books and articles are regularly cited by lawyers and frequently relied upon by Judges. He was appointed Senior Counsel in 2008.

Foreword to the Fourth Edition of the Book

"I congratulate Professor Pinsler on this remarkable work and I warmly welcome it. There is no doubt that providing a coherent overview of the law of evidence, the process of litigation and the art of advocacy whilst interfacing the old with the new is a daunting task. Thankfully it is one which Professor Pinsler has undertaken with characteristic clarity and insightfulness."

- The Honourable the Chief Justice Sundaresh Menon
Both the acquisition of non-controlling minority shareholdings and interlocking directorates raise similar concerns from a competition perspective. This article sets out the main issues identified by competition authorities with regards to certain situations (indicated below) and how competition authorities deal with them in various jurisdictions in ASEAN and beyond.

Acquisition of Minority Shareholdings and Interlocking Directorates: Can These be Reviewed by Competition Regulators?

Overview

A recent public consultation ("Consultation") launched by the European Commission ("EC") raises the issue of whether the EU Merger Regime ("ECMR") should apply to the acquisition of non-controlling minority shareholdings. The Consultation essentially suggests extending the scope of the ECMR to the review of the acquisition of minority shareholdings. This also mirrors the EC staff working document (European Commission Staff Working Document "Towards more effective EU merger control", issued on 25 June 2013) which advocates the importance of the ability of competition authorities to intervene in cases where the acquisition of a non-controlling stake in a company would result in competitive harm. Separately from the Consultation, a concern that often comes up, sometimes as a result of the acquisition of minority shareholdings, is the issue of interlocking directorates, ie for example, a situation in which an individual sits at the boards of competing companies or at the board of companies.

Both non-controlling minority shareholdings and interlocking directorates ("Structural Links") raise similar concerns from a competition perspective. This article sets out the main
issues identified by competition authorities with regards to such situations and how competition authorities deal with them in various jurisdictions in ASEAN and beyond.

Non-controlling Minority Shareholdings

Harm to be Protected

The recent EC Consultation highlights the significant harm to competition and consumers that may arise [...] from structural links. In particular, the Consultation identifies three main ways in which structural links may result in competitive harm, namely:

1. By reducing competitive pressure between competitors ("horizontal unilateral effects");

2. By substantially facilitating coordination among competitors ("horizontal coordinated effects");

3. In the case of vertical structural links, by allowing companies to hamper competitors' access to inputs or customers ("vertical effects").

The concerns highlighted above are not new to competition authorities. To illustrate, in a contribution to the 2008 OECD Roundtable on Minority Shareholdings, the EC stated that:

First, in some instances, structural links of this kind (minority shareholdings and interlocking directorates) may facilitate collusion or the unilateral exercise of market power by serving as a means by which market-sensitive information can be passed between competing enterprises.

Second, the incentives of competing firms to compete vigorously – incentives which are generally assumed to be driven by the motive of profit maximisation – may be altered if one holds a significant stake in the other. If company A holds a significant share in its rival B it may have an incentive to replace unrestrained competition by collusion or at least “peaceful” coexistence, in order to maximise profits. If B also holds shares in A (so-called “cross-shareholdings”) this effect may be further strengthened. Likewise, if company A holds shares in both competitors B and C, it may have an incentive to lessen competition between the latter two firms. It is in general likely that these kinds of effects will be more pronounced in markets which are highly concentrated, or entry to which is particularly difficult. In these scenarios, the adverse impact on the level of competition may be even greater if there are interlocking directorships which provide competitors with an opportunity to access strategic commercial information concerning each other’s business strategies, which can facilitate collusive behaviour or the unilateral exploitation of market power.

Thirdly, the acquisition of a minority stake may be regarded as anti-competitive if it seems likely to have been made in pursuit of a strategy to deter entry to a market, or to have that effect. This may be the case, for example, if the acquiring firm’s stake in a competitor makes it significantly more difficult for a third firm to enter the market via acquisition, or if it makes it less likely that the investing firm will itself enter the market where the target firm is operating.

Current Position

Under the current European competition rules, the acquisition of minority shareholdings can be reviewed under the ECMR only if and when it leads to acquisition of control, i.e in limited situations only. Further, whilst arts 101 and 102 of the TFEU (which prohibit respectively anti-competitive agreements and abuse of dominance) may, in some instances, apply to structural links, these substantive provisions would, in any event, only apply a posteriori rather than ex ante. This is because it is recognised by the EC and the European Courts that “the acquisition by one company of an equity interest in a competitor does not in itself constitute conduct restricting competition”.

This is borne out by the old European Court of Justice (“ECJ”) 1987 case of British-American Tobacco Company Ltd and R.J. Reynolds Industries Inc. vs Commission of the European Communities, where the following observations were made:

Although the acquisition by one company of an equity interest in a competitor does not in itself constitute conduct restricting competition, such an acquisition may nevertheless serve as an instrument for influencing the commercial conduct of the companies in question so as to restrict or distort competition on the market on which they carry on business.

That will be true in particular where, by the acquisition of a shareholding or through subsidiary clauses in the agreement, the investing company obtains legal or de facto control of the commercial conduct of the other company or where the agreement provides for commercial cooperation between the companies or creates a structure likely to be used for such cooperation.
That may also be the case where the agreement gives the investing company the possibility of reinforcing its position at a later stage and taking effective control of the other company. *Account must be taken not only of the immediate effects of the agreement but also of its potential effects and of the possibility that the agreement may be part of a long-term plan.*

Finally, every agreement must be assessed in its economic context and in particular in the light of the situation on the relevant market’. …

‘It [the EC] must consider in particular whether an agreement which at first sight provides only for a passive investment in a competitor is not in fact intended to […] establish cooperation between the companies with a view to sharing the market. *Nevertheless, in order for the Commission to hold that an infringement of Article 85 has been committed, it must be able to show that the agreement has the object or effect of influencing the competitive behaviour of the companies on the relevant market.* (emphasis added)

The lack of powers of the EC with regards to acquisition of structural links under the merger rules is further illustrated by the EU General Court in its decision in *Case T-411/07 Aer Lingus v Commission* [2010]:

The bounds of the powers invested in the Commission for the purposes of merger control would be exceeded if it were accepted that the Commission may order the divestment of a minority shareholding on the sole ground that it represents a theoretical economic risk when there is a duopoly, or a disadvantage for the attractiveness of the shares of one of the undertakings making up that duopoly.

The position is currently the same in a number of countries in the region, including Singapore, Indonesia and Vietnam for instance. In these countries, the acquisition of a non-controlling minority shareholding does not fall within the ambit of the applicable merger regime.

**Comparative Position in Other Countries, Including Singapore**

In Singapore, the definition of “Merger” in s 54 of the Competition Act means that the Competition Commission of Singapore (“CCS”) can only review the acquisition of a minority shareholding in an undertaking if it results in the acquisition of a decisive influence with regard to the activities of this undertaking. In other words, the acquisition of a non-controlling minority interest may only be reviewed under s 34 or s 47 of the Competition Act, which prohibit anti-competitive agreements and abuse of dominance respectively. Similarly, s 17 of Vietnam’s Law on Competition only prohibits acquisition of shareholdings when they result in control being acquired. In Indonesia, the implementing regulations issued in relation to mergers do not allow the regulator to review the acquisition of a minority shareholding.

The approach is different in the UK and in Australia, which merger regimes allow for the review of acquisition of minority shareholdings under the merger regime.

In the UK, a merger situation can arise where “material influence” can be exercised. The Merger Assessment Guidelines jointly issued by the Office of Fair Trading (“OFT”) and the Competition Commission refer to the ability to exercise material influence as “the lowest level of control that may give rise to a relevant merger situation. In assessing material influence in the context of the Act, the Authorities will conduct a case-by-case analysis, focusing on the overall relationship between the acquirer and the target and on the acquirer’s ability materially to influence policy relevant to the behaviour of the target entity in the marketplace. The policy of the target includes its strategic direction and its ability to define and achieve its commercial objectives”.

In Australia, s 50 of the Competition and Consumer Act prohibits acquisitions of shares or assets that would, or would likely have the effect of substantially lessening competition in a market in Australia. Section 50, therefore, applies to the acquisition of non-controlling interest which may result in a substantial lessening of competition. In its Merger Guidelines, the Australian Competition and Consumer Commission (“ACCC”) thus expressly states that “a level of ownership less than a controlling interest that nevertheless alters the incentives of all parties may give rise to a contravention of s. 50 of the Act. The Act does not refer to control but rather to the effect on competition”.

**Quick Status Overview**

As illustrated above, whilst it is generally recognised that non-controlling minority shareholdings may raise important competition concerns, there is no single approach to the acquisition of minority non-controlling shareholdings. From a business perspective, and where merger notification is compulsory, an obligation to notify each and every acquisition of a non-controlling minority shareholding may represent a significant burden. As such, the results of the Consultation are worth monitoring as these may well have an impact on
merger regimes in the region in the near future. It is indeed possible that the competition authorities of ASEAN countries will eventually want to be granted the power, not only under the provisions prohibiting anti-competitive agreements or abuse of dominance, but rather under their merger regimes “to investigate and, if necessary, intervene against anti-competitive structural links”.

Interlocking Directorates

**Overview**

The concept of “interlocking directorates” refers to a number of situations including, for example, cross-directorship (one individual sitting at the Board of two competing companies), the situation in which the top executive of a company sits at the Board of one of its competitors or a close relative or family member of a director of one company is a top executive of this company’s competitor. In this article, the reference to “interlocking directorates” only addresses the situation in which a director or a top executive of one company is also a member of the board of a competing company.

**The Competitive Harm**

With regards to interlocking directorates in competing companies, there appears to be a consensus amongst competition authorities that they may lead to a restriction in competition and facilitate collusion. The fairly recent OECD’s study on “Minority Shareholdings” highlights that “from an antitrust perspective, these arrangements could lead to horizontal co-ordination of the business conduct of competing firms, through the exchanges of information, parallel behaviour, foreclosure of rivals, or a number of other activities that might affect competition adversely to the detriment of consumers’ welfare”.

In the economic report *Minority Interests in Competitors* commissioned by the UK OFT, which was published in May 2010, the authors found that:

1. Like minority shareholdings, interlocking directorships (“IDs”) can affect the incentives of firms to compete more or less aggressively. To the extent that the effectiveness of corporate governance varies across the firms that share directors, the decision to compete less aggressively may be taken even if this harms the shareholders of one firm (though benefits those of the other).

2. Concerns about the competition effects of IDs are perhaps strongest in relation to the contribution of IDs towards the increased likelihood and effectiveness of collusion as a result if an improved flow of information, which would facilitate reaching a collusive outcome and monitoring compliance with it.

3. The scope for efficiencies is greater, and the threat of anticompetitive behaviour is weaker in relation to vertical IDs than horizontal IDs. Thus, vertical interlocks, insofar as they do not create indirect interlocking directorships among horizontal competitors are likely to be pro-competitive as they could generate a number of efficiency gains without raising significant concerns about unilateral or coordinated effects.

As a result of the concerns set out above, some countries do prohibit ex ante interlocking directorates in competing companies. This is the case in the US where s 8 of the Clayton Act prohibits (with certain exceptions for banks and financial institutions in particular) one person from serving as a director or officer of two competing corporations if certain thresholds linked to the capital of the companies and their turnover are met. This is also the case in Indonesia where art 26 of the Indonesian competition laws prevent a person “who serves as the director or commissioner of a company […] from concurrently being the director or commissioner at other enterprises”, if the enterprises are competitors or active in closely related markets.

**Lack of Prohibition in Various Countries, Including Singapore**

There is no such prohibition under the Competition Act in Singapore or under the generic competition laws in Malaysia, Thailand or Vietnam: as far as general competition law is concerned, interlocking directorates are not ex ante prohibited in those countries. This does not mean, however, that interlocking directorates are exempt from any scrutiny from the competition regulators. In fact, if it is established in a specific case that the interlocking directorates have as its object or effect the co-ordination of the competitive behaviour of two competitors, it will be possible for the competition authority to intervene.
The position is succinctly put, in May 1997, by the then Chairman of the Australian Competition and Consumer Commission:

Interlocking directorships are not likely to raise concerns under the competition provisions of the Trade Practices Act unless it can be demonstrated that it is being used, directly or indirectly, as a conduit for information or other anti-competitive purposes. While there may be benefits of multiple directorships, the links which are created between companies will continue to be monitored by the Commission for signs of collusion or other anticompetitive behaviour.

Likewise, in the European Union (“EU”), interlocking directorates in competing undertakings or acquisition of minority shareholdings are not deemed to be anti-competitive either. They have nevertheless been reviewed by the EC in instances where an agreement was notified for clearance.

To illustrate, in the 1994 EC decision in Case No IV/34.410 – Olivetti – Digital, the EC reviewed a co-operation agreement between two competitors, Olivetti and Digital, in the field of computer systems under the provision prohibiting anti-competitive agreements. The co-operation agreement provided, inter alia, for the acquisition by Digital of eight per cent of Olivetti shares and the proportional representation of Digital on Olivetti’s Board. In assessing whether the co-operation agreement was anti-competitive, the EC specifically reviewed the interlocking directorates. In deciding that the interlocking directorates did not have as their object or effect the restriction of competition between Digital and Olivetti, the EC took into account the following:

The Parties claim and show evidence that the board of directors of Olivetti has delegated all of its operative functions to Olivetti’s Chairman and General Manager.

The board meets only four times per year, to review financial matters (approval of the balance sheet, of emoluments and of the half-yearly financial statement to be provided to the Italian securities authority) or to discuss general issues. With the exception of the Chairman, the Vice-Chairman and the Managing Director of Olivetti, none of the board members has an operational function at Olivetti.

According to the Parties, Olivetti’s board is not involved in decisions on the development of new products or their pricing. [...] There are no operating issues that have to be approved by the whole board of Olivetti.

As a consequence, the Commission is of the opinion that, in so far as the functions of Olivetti’s board of directors were confined to those described above, it is unlikely that Digital’s representation on Olivetti’s board of directors would have led to a coordination of
competitive behaviour or to an exchange of competitive information.

Similarly, in the 1996 EC decision Case No IV/35.617 – Phoenix/GlobalOne, the EC, in reviewing the investment of France Telecom (“FT”) and Deutsche Telecom (“DT”) in Sprint, a US telecommunications group under the equivalent of the s 34 prohibition stated:

The Commission and the Court of Justice do not consider Article 85 (1) of the EC Treaty applicable to agreements for the sale or purchase of shares unless these agreements affect the competitive behaviour of the parties to the transaction. The Commission analysed whether the appointment of DT and FT representatives to Sprint’s board and subsequent access to confidential business data could give rise to coordination of the competitive behaviour of all three undertakings.

The Commission found that (i) the investment agreement signed on 31 July 1995 does not afford DT and FT the possibility of exercising a controlling influence over Sprint and (ii) United States corporate and antitrust laws are designed to prevent access to and misuse of Sprint’s confidential information by DT and FT.

Sprint and DT, and Sprint and FT, respectively, set out an additional prohibition to misuse such information in two investor confidentiality agreements signed on 31 January 1996.

The Commission therefore concludes that DT and FT’s investment in Sprint falls outside the scope of Articles 85 (1) of the EC Treaty and 53 (1) of the EEA Agreement.

What can be seen from the two cases above is that the conclusion with regards to the effect of the interlocking directorates was only made based on an in-depth review of the specific facts. Both the ability to influence the decision making process as well as the risk resulting from the sharing of commercially sensitive information were examined. In this regard, whilst interlocking directorates themselves do not give rise to a competition law violation, information exchange that could result from cross-directorship may well be viewed by competition authorities as a violation of the prohibition of anti-competitive agreements.

**Added Problem of Information Exchange**

It is important to note that competition authorities increasingly see information exchange between competitors as stand-alone anti-competitive agreements. In the CCS Case CCS-500/006/09-Batam Fast Ferry Pte Ltd and Penguin Ferry Services Pte Ltd, the CCS imposed a financial penalty on two ferry operators who had exchanged price-related information in relation to certain services they provided. The CCS found that this exchange of information amounted to a concerted practice having the object of restricting competition. In reaching this conclusion, the CCS referred to the EU Commission Guidelines on the applicability of art 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements. The EU guidelines state that:

Information exchanges between competitors of individualised data regarding intended future prices or quantities should therefore be considered a restriction of competition by object. In addition, private exchanges between competitors of their individualised intentions regarding future prices or quantities would normally be considered and fined as cartels because they generally have the object of fixing prices or quantities. [...] (Emphasis added by the CCS)

Guidelines issued by the Malaysia Competition Commission (“MyCC”) in relation to anti-competitive agreements suggest that the exchange of price information between competitors may amount to a restriction by object:

Exchanging current price information may facilitate price fixing and thus would be deemed to be significantly anti-competitive.

Hence, whilst there have been no cases in Singapore, in Malaysia, in Vietnam or in Thailand so far expressly dealing with the application of the prohibition of anti-competitive agreements to interlocking directorates, it is likely that the competition authorities in this region, including Singapore, at the very least will not hesitate to take action if it appears that an interlocking directorship between competitors resulted in a flow of commercially sensitive information between competitors, which influenced the competitive conduct of the competing companies.

**Feature**

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The Law Gazette talks to Mr Toh Han Li, the newly appointed Chief Executive of the Competition Commission of Singapore (“CCS”), on the latest happenings and initiatives undertaken by the CCS and the challenges that it is facing, both locally and abroad.

Interview with Mr Toh Han Li
Chief Executive, Competition Commission of Singapore

1. Congratulations on your recent appointment as Chief Executive of the Competition Commission of Singapore (“CCS”) effective 1 October 2013. Prior to this you were the Assistant Chief Executive (Legal & Enforcement). How has the transition been?

Thank you very much. As you have noted, I was the Assistant Chief Executive (Legal & Enforcement) of CCS since 2009. I took over as Chief Executive from Ms Yena Lim, who is from the Administrative Service and had completed her three-year term. The vantage point from the Chief Executive’s chair is certainly much wider as it goes beyond legal work and involves strategy and policy as well.

Fortunately, I inherited an excellent team of professionals from Yena and we are well placed to move CCS into the next phase. By 1 January 2015, CCS will be 10 years old and this marks a significant milestone in its relatively young history as an agency.

2. Since your previous interview in July 2010 in your capacity as Assistant Chief Executive (Legal & Enforcement) of CCS, what has been happening at CCS?

a. Significant Casework

Since July 2010, much has happened. Shortly after my interview with the Singapore Law Gazette, on 19 August 2010, CCS issued its decision in the Singapore Medical Association’s (“SMA”) case on SMA’s Guidelines on Fees. The ramifications of CCS’s decision in the SMA case are far reaching as it impacts all sorts of scale fees and fee recommendations by trade associations and professional bodies in Singapore. For instance, in 2009, the Law Society of Singapore had started the ball rolling when it removed the Conveyancing Fee Guidelines and stated in its media release that: “[t]he Council believes that all fees should be freely negotiated between solicitors and their clients without Guidelines from the Council”.

More recently, in the case of Lim Mey Lee Susan v Singapore Medical Council,1 the Court of Three Judges observed that CCS’s approach in the SMA decision achieved “a practical balance between the proscription of overcharging on the one hand and the need to ensure appropriate remuneration for doctors’ services on the other hand”. CCS’s approach included enhancing price transparency by referencing Ministry of Health’s (“MOH”) initiatives such as: (i) requiring all private medical clinics to display their common charges thereby increasing pricing transparency for consultations; (ii) publishing individual hospital bill sizes on the MOH’s website and requiring hospitals to provide financial counselling to patients; and (iii) requiring medical bills given to patients to be itemised.

Just last month, CCS notes and welcomes Parkway Healthcare Group’s (“Parkway”) decision to publish the prices of over 30 common procedures at its hospitals. This improves price transparency in the marketplace (as opposed...
to recommended price guidelines) and allows consumers to make better informed choices. In Parkway's case, its price data is historical and aggregated from several sources and does not seek to affect the individual pricing decisions of the specialists. Hence they do not serve as fee guidelines or recommendations.

To date CCS has issued eight infringement decisions, defended seven appeals before the Competition Appeal Board (an independent specialist body constituted to hear appeals from CCS's decisions on a full merits basis), issued 24 notifications for decision and guidance, cleared 36 merger applications and completed 13 market studies. We have also handled 93 preliminary enquiries/investigations and issued 38 competition advisories to government agencies in their respective policy and regulatory areas.

As a result of the Competition Appeal Board’s published decisions in the Express Bus Operators, SISTIC and Modelling services appeals the law on anti-competitive agreements, abuse of dominance and financial penalties have been clarified.

In 2012, we decided to streamline the merger notification process with the publication of its revised Guidelines on Merger Procedures 2012 (“Guidelines”) which came into effect on 1 July 2012. The revised Guidelines incorporated suggestions and feedback from the business community that were received during an earlier public consultation exercise held by CCS as well as our experience in merger control over five years. The revisions were intended to bring about three key benefits for businesses:

1. CCS commenced a new confidential advice service to merger parties who wish to keep their mergers confidential for the time being, but yet wish to get an indication from CCS on whether or not their mergers would infringe the Competition Act (the “Act”).

2. It made clear that CCS is unlikely to investigate a merger situation that involves only small businesses if their turnovers in Singapore in the financial year preceding the transaction are each below S$5 million and the transacting parties’ combined worldwide turnover in the financial year preceding the transaction is below S$50 million. This was intended to give greater certainty to SMEs.

3. The Guidelines provide clearer instructions on what information is needed in making a merger notification filing to CCS. The application form was revised for greater clarity and comprehensiveness to make it more efficient from a business perspective.

As regards recent notable mergers that were cleared by CCS were the merger of Nippon Steel Corporation and Sumitomo Metal Industries, Ltd for steel products and the acquisition of TNT Express N.V. by United Parcel Service, Inc, another major logistics service supplier. An acquisition that was close to Singaporeans’ hearts was Heineken International B.V.’s acquisition of Asia Pacific Breweries Limited (“APB”), a major local beer manufacturer in Singapore’s domestic beer market that owned locally recognised traditional household beer brands like Tiger, Anchor and ABC Extra Stout, at an estimated aggregate consideration of $8.1 billion.

We recognise that there may be some forms of collaboration or joint ventures between or among competitors that can have pro-competitive effects with benefits to consumers, and that is the purpose of our Notification system, to give peace of mind to the parties through a decision or guidance from CCS. CCS has received an aggregate of 24 such applications since the Act came into force and would encourage businesses to make such applications for certainty in their business dealings that the conduct will not infringe the Act.

Most recently, CCS issued its decision in the Notification for Decision received from Visa Worldwide regarding its Multilateral Interchange Fee (“MIF”) system after a careful review of the facts and evidence and an extensive consultation with the relevant stakeholders including merchants, banks and payment processors and cardholders in Singapore.

In the increasingly competitive airline industry, we have seen a number of joint ventures between airlines seeking CCS’s clearance to proceed with the joint venture. The notifications are filed in respect of conduct in Singapore either as an origin or destination. There will be prima facie competition concerns as the joint ventures usually relate to the need to coordinate on network, scheduling, pricing, marketing, purchasing, customer service, resourcing decisions and frequent flyer programmes. CCS will then examine whether these concerns can be offset by net economic benefits to Singapore passengers and is, therefore, excluded from the s 34 prohibition of the Act. In this regard, CCS noted that the presence of low cost carriers on routes can generally increase the level of competitiveness through better connectivity, increased capacity and reduced prices from existing airlines on these routes. Emirates and Qantas Airways Limited made a particularly interesting application for decision by providing a voluntary undertaking to provide a fixed capacity on each of the Singapore-Melbourne and Singapore-Brisbane routes. CCS conducted a public consultation and received feedback from the Civil Aviation Authority of Singapore, Changi Airport Group, Vital.Org,
Air France, Thai Airway, Singapore Aircargo Agents Association and SIA Cargo. CCS concluded that their voluntary undertaking resulted in a net economic benefit and did not find their alliance objectionable under the Act.

b. Outreach and Advocacy

Advocacy is a critical plank in our efforts to ensure a healthy competition culture. CCS has been tireless in encouraging the business community to increase voluntary compliance with Competition Laws and regulations. In 2012, CCS launched two new initiatives to help Small and Medium Enterprises (“SMEs”) comply with the Act. First, an e-learning tool “Competing on Merit: Getting to Know the Act” was developed to help businesses understand the essentials of the Act. Second, a handbook titled Better Business with Competition Compliance Programme was produced to highlight to businesses how competition compliance can help them compete on a level playing field and expand their footprints beyond the local market. Each year, CCS holds an annual Digital Animation Contest to generate public interest with the message of competition which allows us to generate digital animation collaterals which have proven popular during outreach programmes and are much sought after for corporate in-house training. There were even exceptional entries by 10-year-olds in the Digital Animation Contest!

We have collaborated with Channel NewsAsia (“CNA”) to produce two episodes for their Money Mind programme. The programme focused on the benefits of competition law and the cases handled by CCS. These two episodes were aired on 27 January and 3 February 2013.

A particularly innovative approach we took to reaching the business community was to assign “relationship managers” to different industries. The job of the relationship manager is to get to know all the key players in an industry and likewise for them to get to know him/her. This sensitises CCS to ground developments and deepens our understanding of the driving forces acting on an industry, especially the challenges that may pressure some companies to adopt anti-competitive behaviour. We are also allocating more resources to doing business analytics and market research.

3. CCS has indeed been keeping busy. At your previous interview, you were asked whether CCS’s Leniency Programme was starting to bear fruit. After the passage of three years, are you seeing the Leniency Programme contributing an increasing amount of cases to CCS?

CCS’s Leniency Programme is designed to incentivise undertakings that are involved in cartel activities to come forward to and cooperate with CCS through the provision of full disclosure and evidence of such cartel activities in exchange for either immunity from or a reduction in financial penalties. The “First-to-the-Door” would get the benefit of full immunity from financial penalties subject to certain terms and conditions. This concept of total immunity for a party involved in unlawful conduct may appear unique in the context of enforcement in Singapore but, in fact, leniency programmes are widely accepted and established among competition authorities worldwide. It is a recognition of the fact that cartels are generally secretive and hard to detect and an effective leniency programme can destabilise such cartels and become a tremendous help to cartel enforcement.

In addition, CCS has the Leniency Plus system to encourage cartel members under investigations to report their involvement in another cartel activity so as to secure reduced financial penalties for the first cartel activity.

There has been a healthy case load resulting from our Leniency Programme. As of end September 2013, CCS already has over 18 current leniency applications and this number is still growing. At present, we have a number of cross-border leniency investigations. I find this encouraging and an indication that CCS’s Leniency Programme is actually effective in improving the detection of cartels and CCS will continue to refine our Leniency Programme to increase its practical effectiveness.

4. Competition law has been in force since 1 January 2006. How much progress has been made in instilling a compliance culture in the business community?

Businesses should take the view that competition compliance is an integral part of good corporate governance along with the need to comply with other regulations and laws. We hope that businesses want to be known as ethical businesses in that they comply with the law and have measures to ensure compliance. Businesses should integrate competition compliance into their corporate governance framework so that it is embraced by employees at all levels as part of their corporate culture. The old adage “prevention is better cure” is still the best approach for businesses, especially since liability under the Act is at the enterprise and not individual level.

In a recent survey of stakeholders, about 42 per cent of business respondents indicated that their top leadership strongly advocated compliance with competition law in Singapore. However, only 37 per cent had complied instructions on compliance for their employees, and 32 per cent regularly conducted training on this aspect. Therefore, it appears that much remains to be done on the ground to educate businesses about the competition regime and that
competition law is there to protect businesses from anti-competitive behaviour by their competitors and to level the commercial playing field.

In this regard, both in-house counsel and external counsel have an important role to play in properly advising clients, whether it is in a merger and acquisition situation, on how to implement a successful compliance programme, or on how to handle a “dawn raid” by CCS. A “dawn raid” refers to a surprise inspection by CCS officers on business premises which may also involve the use of search warrants.

5. I can tell that local issues have been keeping CCS busy. How about the international front?

Under s 6(1)(e) of the Act, one of CCS’s functions and duties is to act internationally as the national body representative of Singapore in respect of competition matters. In this respect, CCS has continued to strengthen CCS’s links with other competition authorities and institutions, like the International Competition Network, the Organisation of Economic Co-operation and Development and the Global Competition Review, as these have been invaluable resources for CCS’s growth.

In particular, CCS recognises the increasing profile of competition law in the Association of South East Asian Countries ("ASEAN"). The ASEAN Economic Community Blueprint acknowledges the importance of competition policy and law in promoting economic development and integration and ASEAN Member States ("AMSS") are endeavouring to introduce competition laws by 2015.

The AEGC (ASEAN Expert Group on Competition), with the support of ASEAN Secretariat, plays an important role of building ties and capacities among government agencies, increasing the engagement and interaction between ASEAN countries, and facilitating the development and implementation of competition laws among ASEAN member countries. CCS will continue to play an active role in the AEGC to develop sound competition policies and best practices for the region.

6. What do you see as the future challenges for CCS? Are you able to share your views on what you think will be keeping you busy for the next three years?

Our cases are getting increasingly more complex and challenging. We have seen lawyers filing sophisticated, detailed complaints on behalf of clients as opposed to the past where complainants were largely in person. More cross-border considerations will arise as ASEAN moves towards the ASEAN Economic Community Cartels today have international dimensions and this entails more leniency applications and the need to coordinate efforts and responses among competition authorities. Mergers will increasingly involve multi-jurisdictional filings and co-operation and information sharing with competition authorities from other jurisdictions will become increasingly more important.

In Singapore, sectorial regulators regulate competition in their own industries. Where competition enforcement is undertaken by a sectorial regulator, there is a need to harmonise approaches because a licensee’s conduct may well extend outside the regulated sector and come under CCS’s purview. In recognition of this need, CCS hosted the inaugural meeting of the Community of Practice of Competition and Market Regulators ("COPCOM") in 2011. COPCOM is an informal dialogue platform for government agencies, particularly the sectoral regulators, to discuss various market and cross-sectoral competition regulation issues in Singapore and share the experiences, learning points and developments in their respective sectors.

Finally, s 86 of our Act allows persons who have suffered loss or damage as a result of a competition infringement to bring an action in Court provided certain preconditions in s 86 are satisfied. As we have now had a number of cases which have satisfied these preconditions, lawyers will need to be aware both for the plaintiff and defendant that this can happen and advise their clients accordingly. In the UK, it took a while but we are now seeing a number of private actions arising after competition enforcement by the competition authorities.
The Ethics Committee, a committee of the Council of the Law Society, is tasked with providing guidance to members on their ethical obligations. Members can submit a written enquiry to the Committee through the Representation and Law Reform Department at represent@lawsoc.org.sg. For detailed guidelines for enquiries to the Committee, please refer to the Council’s Practice Direction 2 of 2009 which can be found on the Legal Ethics section of the Law Society’s website at www.lawsociety.org.sg.

This article discusses, generally, the circumstances upon which an advocate and solicitor may discharge themselves from acting on behalf of a client and the reasonable care to be taken upon the advocate and solicitor’s withdrawal, including how the advocate and solicitor may satisfy the requirement of giving due notice of the discharge to the client.

The Committee has omitted from the article facts that the Committee considered not crucial to the ethical obligations of the lawyer in question or to the guidance given.

A member who encounters difficulty in a specific case and needs guidance should write to the Committee for a specific opinion. The Committee and the Law Society are not liable to any member who does or omits to do anything based on this article.

Withdrawal Symptoms and Remedy
Discharge from Acting and Reasonable Care to be Taken

The Ethics Committee was informed by a lawyer in a certain law practice that she was acting for a client who subsequently became uncontactable. A letter of demand has been sent on behalf of the client to the solicitors of the opposing party but no writ had yet been filed in Court in respect of this matter. The lawyer earlier understood from the client that he was homeless. The lawyer had attempted calling the client via his mobile number on several occasions but was routed to voice mail informing that the number was no longer in service. The lawyer had also tried writing to the client at his last known address (per his IC record) but had received no response.

The Committee was asked to consider whether the lawyer could discharge herself from further representing the client, and if so, the procedure involved and whether the lawyer would be required to apply to Court to discharge herself when no writ had been issued.
The Ethics Committee’s guidance was as follows:

1. Rule 42 of the Legal Profession (Professional Conduct) Rules (“PCR”) provides for situations in which a solicitor may discharge himself from further representing a client. The relevant provisions are as follows:

Withdrawal

42. (1) Subject to rule 41, an advocate and solicitor may withdraw from representing a client —

a) at any time and for any reason if the withdrawal will cause no significant harm to the client’s interest and the client is fully informed of the consequences of withdrawal and voluntarily assents to it;

b) if the advocate and solicitor reasonably believes that continued engagement in the case or matter would be likely to have a serious adverse effect upon his health;

c) if a client breaches an agreement with the advocate and solicitor regarding fees or expenses to be paid by the client or regarding the client’s conduct;

d) if a client makes material misrepresentations about the facts of the case or matter to the advocate and solicitor;

e) if an advocate and solicitor has an interest in any case or matter in which the advocate and solicitor is concerned for the client which is adverse to that of the client;

f) where such action is necessary to avoid a contravention by the advocate and solicitor of the Act or these Rules or any other subsidiary legislation made under the Act; or

g) where any other good cause exists.

(2) Where an advocate and solicitor withdraws from representing a client, he shall take reasonable care to avoid foreseeable harm to the client, including —

a) giving due notice to the client;

b) allowing reasonable time for substitution of a new advocate and solicitor;

c) co-operating with the new advocate and solicitor; and

d) subject to the satisfaction of any lien the advocate and solicitor may have, promptly paying to the client any moneys and handing over all papers and property to which the client is entitled.

2. The grounds for terminating the retainer is dependent on, amongst other things, the terms of the retainer itself, as well as the rules under the PCR, in particular r 42 PCR (see: page 69 of the Guide to Professional Conduct for Advocates and Solicitors (The Law Society of Singapore, 2011));

3. As the lawyer’s client was not contactable and the lawyer had tried to contact the client through post and telephone to no avail, this would constitute “good cause” under r 42(1)(g) of the PCR; and

4. Based on the particular circumstances in this case, the Ethics Committee considered that should the lawyer decide to withdraw from representing the client, she did not need to apply to Court for an order to discharge herself since this matter was still at the pre-writ stage. It would be adequate for the lawyer to inform her client of the discharge by writing to his last known address, and to inform opposing counsel of her withdrawal as she was unable to obtain further instructions from her client.

Ethics Committee
The Law Society of Singapore
Michelle Woodworth Cordeiro from the Representation and Law Reform Department talks to Ahmad Nizam, Chairperson of the Muslim Law Practice Committee about the practice and development of Muslim law in Singapore.

Conversation with Ahmad Nizam, Chairperson of the Muslim Law Practice Committee

Michelle: Describe your experience as a practitioner in the area of Muslim Law. What are the common applications in which you are briefed?

AN: Like most of the other lawyers who practise Muslim Law in Singapore, I stumbled into this area by circumstance rather than by design. During my university holidays, I interned in a firm which handled both Civil and Muslim divorces and I was exposed to the Syariah Court. It was an eye-opener for me.

Over the years, I became more and more intrigued by jurisdictional issues, not just in divorce but in estate matters. I realised that many people, including lawyers themselves, were not familiar with the issues surrounding the applicability of Muslim Law in our secular system. I began to take a special interest in reading up on judgments in the High Court which touched on this area, especially in estate matters.

One of the limitations for a new lawyer is the dearth of reference articles on Muslim Law in Singapore. I can appreciate this as before the publication of Syariah Appeal Reports in 2012, most of us would have had to build up our own personal libraries either by visits to the Appeal Board secretariat or through the resources other lawyers had.

Knowing the difficulties new lawyers would have in setting foot into the Syariah Court and when faced with a conflict of jurisdiction issue between the Civil and Muslim Laws in the civil courts, I decided to write an article titled “The Islamic Legal System in Singapore” which was published by the Pacific Rim Law and Policy Journal of the University of Washington in its January 2012 issue. By sheer coincidence, the Syariah Appeal Reports was launched several months later, making it more conducive for practice in the Syariah Court.

Michelle: The last major change in this area of practice was the revision of AMLA in 1997. What have been the most significant developments since? Is it timely for another review of the Act?

AN: The enactment of the AMLA in 1968 did not introduce Muslim Law into our legal system. The Syariah Court had already been established in 1955 pursuant to the Muslim Ordinance. Muslim Law of inheritance had already been taken into account when disputes over wills and succession came before the civil Courts. The 1968 date is significant as it was used in various parts of the AMLA to mandate the registration of certain practices which were then prevalent in the Muslim community, such as the creation of wakafs (trusts).

The amendments in 1997 are memorable for the controversy they generated. The Muslim community was concerned over the possible dilution of the standing of the Syariah Court as one of the key amendments was on “concurrent jurisdiction”, where divorcing parties could choose to have their ancillary matters heard in either the Civil Court or the Syariah Court. I was serving in the Council of the Law Society then and was tasked to look into this area. The then President S Chandra Mohan and other members of the Council supported the idea of setting up a Muslim Law Practice Committee and we were born.

We spent hours discussing the various amendments and coming up with a position paper. Parliament eventually sent the amendments to a Special Select Committee Hearing and I was part of the Law Society team that appeared to

Singapore Law Gazette  November 2013
present our views. Eventually, modifications were made to the amendments and there was a certain sense of fulfillment that our committee’s various inputs on changes to the Syariah Court practice system were adopted. It was also a learning experience on our part as we saw up close the myriad of factors involved in policy-making and administration by the relevant ministry and bodies.

**Michelle:** There is a perception that Muslim Law in Singapore is relevant or practicable only to Muslims in the area of Family Law and Probate. What is your take on that?

**AN:** In Singapore, there is indeed a perception that Muslim Law is only relevant in Family Law and Probate. Many of us do not fully grasp how Muslim Law is applicable in Singapore and unfortunately, the misperception is fuelled by some media reports which tend to frame the issue as one under “Muslim Law versus the law of the land”. Many are unaware that the then Chief Justice Chan Sek Keong had, in a landmark 1998 Court of Appeal judgment on wakaf, stated that “Muslim Law is part of the law of the land which the Court would take cognizance of”. The High Court judgment of Judith Prakash where she ventured deep into Muslim Law and cited works of various Muslim scholars in ascertaining the validity of a wakaf is certainly worth reading.

There is an impression that the civil Courts do not recognise Fatwas issued by the MUIS Legal Committee, borne mainly on a few prominent cases which were highlighted in the media, most recently in Shafeeq’s case in 2011. In fact, the civil Courts do carefully weigh the Fatwas they come across before deciding on whether to adopt it or not, as various other laws could also be relevant. I do hope that someone will devote the time and resources to study the treatment of Fatwa by our civil Courts, an area which is intellectually stimulating and rich in jurisprudential principles.

**Michelle:** You have recently enrolled in Masters of Law programme at the Singapore Management University (“SMU”) with a specialisation in Islamic Finance. How do you see the growth of this area in Singapore?

**AN:** Enrolling in the Masters of Law in Islamic Law and Finance at SMU was a major decision for me. I was attracted by the opportunity to delve deeper into the jurisprudence of Islamic law, as hitherto, there was no similar course here, and my fear of the unknown. With no background in finance or banking, I was very apprehensive of venturing into uncharted waters.

Singapore has a world class financial system and sound international reputation yet we are not there yet when it comes to Islamic finance. I believe that a key problem is that there are not enough Islamic finance practitioners here. The lawyers with the solid background in conventional banking and finance may not find it necessary to wander into Islamic finance and most of the Muslim lawyers I have spoken to are so caught up with their present workload that they find it hard to learn something new.

In order to grow, we need to encourage more of our younger lawyers, both Muslims and non-Muslims, to acquire the knowledge and skills to practise Islamic finance. In my SMU programme, the students came from various legal backgrounds and religions, which provided for a very engaging and intellectually robust atmosphere in class.

**Michelle:** Your profile page at your law practice’s website has this quote, “Sooner murder an infant in its cradle than nurse unacted desires”. Tell us a bit more about this.

**AN:** That line is from William Blake’s *Marriage of Heaven and Hell*. At first blush, it sounds morbid but I would invite anyone to read it for himself and see how it impacts him as it did me. I have always been fascinated by introspection and dichotomy. That may explain my interest in conflict of jurisdictions.

**Michelle:** As Chairperson of the Law Society’s Muslim Law Practice Committee, how do you think Muslim Law practitioners can best contribute to Muslim Law in Singapore?

**AN:** It is a given that the practice of Muslim Law in Singapore cannot be in a vacuum and that we must be mindful of the other laws that exist. Over the past few years, there has been a move towards the harmonisation of Civil laws and Muslim Law, as evinced by the Fatwa on joint-tenancy, CPF monies and insurance. We need more lawyers to delve deep into areas of possible conflict and come up with solutions which are both Syariah-compliant as well as consistent with other laws of the land. One person whose commentaries I always look forward to reading is Ms Hairani Saban. We need more like her to think through and share their research as we move towards an even more complex world.
The Personal Space

The Wife and I would have moved into a cluster home in Upper East Coast Road for a month by the time you read this column.

It has 2,400 square feet of space stacked over four floors for the two of us who spend about 10 per cent of our waking hours at home. “It is not spacious and seems small,” was the Wife’s first complaint. I pointed out the very quiet neighbourhood, the Mediterranean exterior and the Spanish village feel within the compound. She was unimpressed. “I wish we did not have a roof top terrace and had a room in place of that.” The thought of chilling out, sipping wine and entertaining on the roof top did not cheer her up. Incidentally, we already had a list of guests waiting to dine and hang out on that roof top, even before we moved in.

Space is a very subjective thing for the both of us. It is very important to us. We were space starved during our childhood. I remember sharing living space with my two younger brothers until I was 20. So the choice for our first matrimonial home was a spacious five-room corner apartment in an HDB block right smack next to a mall and an MRT station. Our siblings used to joke that we could play hide and seek in our sparsely decorated flat. Unlike most Singaporeans, we do not believe in crowding our home with possessions.

Even when travelling, we ensure that we book spacious hotel rooms. What attracted us to the Simei housing estate nine years ago is precisely what eventually drove us out – the quiet, spacious and small housing estate had burgeoned into a very heavily populated, crowded, cramped and noisy neighbourhood. This is why I have an issue with the planned 6.9 million population growth in Singapore, even as the Tanjong Pagar and Paya Lebar areas are being cleared up. I do not think there will be sufficient living space for each one of us – if the packed MRT trains, lack of taxis, crowded supermarkets and long queues at restaurants are anything to go by.

Space affects the physical and emotional well-being of a person. It effects a sense of freedom, hope and positivity, leading to good health. It makes us more tolerant and friendly towards others. If Singapore had more living space, we would perhaps accept the influx of foreigners better. Space starved societies cause stress and social ungraciousness in its citizens. Public education does not seem to help, with the only exception being Japan.

How do people live in crowded cities? In Hong Kong and Japan, homes are so small, their citizens do not spend much time at home. They work long hours or spend a lot of time in entertainment outlets or with their friends. Singapore is becoming similar as our physical abodes start to shrink.

I like small towns and quiet cities for the same reason. I remember well two towns in the UK which I visited. Berwick-Upon-Tweed is a small town situated on the border of England and Scotland. The ownership of this town crosses the two countries. It is a quiet town with one main road and a few shops. It has a beautiful long beach with huge waves splashing onto the sand banks. There is not much to do in this town but it makes up for it by offering a peaceful ad tranquil environment, very different from the promises of the many condominium launches in Singapore. The other place I remember with much fondness is St David’s in Wales. Another quaint village, it is the smallest town in the UK in terms of size and population. It is a very walkable village.
dotted with small and interesting shops. The highlight of the town is Chapel of St Non’s and a gorge. The chapel is tiny. A small door leads to a seating area for about five people. Dead silence and an atmosphere of serenity envelopes the whole space. Even as a non-christian, I felt very close to the supreme being as I sat in the chapel lost in thought and with a sense of peace. Unwillingly I left the chapel to walk down to the gorge. It looks like a huge excavated hole in an MRT construction site. Surrounded by shrubs and wild plants, I sat down and looked into the empty space and soaked in the nature around me. Although alone, I felt comfortable with myself and in tune with the wider world. Walking down the path, I came upon a glass house. No one was living there. I physically left St David in 1995 but memories of the place still tug at me emotionally. Space and its correlation with peace, happiness and contentment cannot be artificially created. One must personally feel and experience it.

Whether I, a big city and bright lights dweller will be able to adjust and live for long in a spacious but quiet area is a question which may be capable of being answered in our new home.

Here, we are stripped of the convenience of a mall, MRT and food choices which used to be just five minutes away from our former home. All these amenities are now at least 20 minutes away. We will have space (we can even choose not to be in close proximity to each other in the same house) and quietude (we can hear a pin drop). We now have to stock up on groceries and supplies in advance. We may have to cook our meals as the neighbourhood eatery is no longer a short walk away.

Those of us who live in the East Coast area know that life there is quite like living in a different country. I had previously lived in the Siglap area for seven years but quickly became a convert to the area and promised myself I would return in the future. The whole area has a certain quietness, calm and slowness. It is not very crowded. The small shops, eateries, narrow roads, lesser traffic and mix of different housing types give it an eclectic feel. It has a bohemian feel. The nondescript Siglap Centre, the Starbucks café and the nearby East Coast Park used to provide solace to me, a refuge during difficult periods of life and sanctuaries for personal inner reflection. It still offers the same comfort and peace, a respite from the helter skelter lifestyle we experience in the central business district during the weekdays. This is why “easterners” never move away to other parts of Singapore.

What worries me is the large empty space in front of our new home. Sources say the space has been earmarked for the MRT which I welcome very much. I also hear a residential development may take over the space as well, which gives me heart palpitations. I am always running away from new residential developments. How far and how soon remains to be seen.
Four Ducks and a Wall in Beijing

When Uncle J, who was leading our trip to China, asked me what I wanted to do in Beijing, I replied without hesitation, "eat Peking Duck and visit the Great Wall of China." There was laughter all around at my mention of Peking Duck. I suppose my eating habits were quite well known. Anyway, I felt vindicated when we subsequently saw the following notice at Beijing’s famous Silk Market on the three essential things to do in Beijing:

1. Climb the Great Wall.
2. Eat Beijing duck.

In fact, Lonely Planet’s Beijing City Guide, 7th edition (2007) said that: “As fundamental to a Beijing trip as a visit to the Great Wall, the sampling of Peking duck is an absolute must – to miss out you’d have to be completely quackers”. I rest my case.

Needless to say, we also visited the other popular sights in Beijing like Tian’anmen Square (arguably the world’s largest public square), the Forbidden City (Gu Gong) and the more modern Bird’s Nest at the Beijing Olympic Village.

I was told that a Shanghai native once said that Beijing people considered everyone else peasants while Shanghai people considered everyone else (Singaporeans included) poor. We had flown into Beijing from Shanghai and I must admit that there was some truth to the statement.

Four Peking Ducks

Peking Duck or Beijing Kaoya is probably the most famous food of Beijing. It is actually a dish of roasted duck skin eaten wrapped in a small Chinese pancake together with spring onions and a sweet sauce rather than a dish of duck meat. But it is not ordinary duck but specially bred duck that is used in the dish. The famous Quanjude duck apparently comes from ducks specially raised using only grains as feed resulting in meat without the unpleasant smell associated with normal ducks. The meat and the rest of the duck are usually cooked in soup or fried with some vegetables. Apparently, the dish originated in the imperial household but is now popular everywhere. To separate the duck skin from the meat, I understand that air is actually blown by some chefs (or pumped by others) under the skin from an opening in the duck’s neck. The duck is then seasoned and hung for about a day before being roasted in specially constructed ovens. By tradition, the Peking Duck is brought out and the skin is cut and served in front of the diners before the rest of the duck is removed. So I guess it is also a kind of culinary performance art. Lawyers should bear in mind the duck’s
special powers as well: Henry Kissinger was reported to have said that after a meal of Peking Duck he would sign anything.

Before we left Singapore for China, we were fortunate to obtain a shortlist of highly recommended Peking Duck restaurants from Uncle J’s son-in-law, Eric, a certifiable foodie with plenty of Peking ducks under his belt. It is always helpful to get a shortlist from a reliable source so that you do not waste your food quota.

**Western Sichuan Restaurant (1 Dong Chang’an Jie, Basement 1 Oriental Plaza)**

Western Sichuan Restaurant was the only restaurant not on Eric’s shortlist. We were there because I wanted to eat Peking Duck for dinner and the restaurant was the most convenient one at that time and no reservations were required. Although it served regional Sichuan food, like many restaurants in Beijing, it also served Peking Duck. I did not have very high expectations of their Peking Duck but it turned out to be surprisingly good. The duck skin was deliciously crispy and blended well with the other ingredients of the dish. I ranked it third out of the four Peking ducks we ate.

**Quanjude Roast Duck Restaurant, Wangfujing (9 Shuaifuyuan Lane, Wangfujing Street)**

The Quanjude Roast Duck Restaurant dates back to 1864 and has been visited by famous people like George Bush and Fidel Castro. It is so old that one of its menus is part of the collection of the Capital Museum of China. The restaurant has also expanded so much that it has numerous branches in the country. It even has a franchised restaurant in Melbourne that has garnered many Australian culinary awards. This was the Peking Duck with the biggest reputation on our shortlist.

According to Lonely Planet’s *Beijing City Guide, 7th edition* (2007), the Qianmen branch of Quanjude Roast Duck Restaurant has lousy service and is geared mainly to the tourist hordes (both local and foreign) and there is a superior branch at Wangfujing Dajie. Uncle J confirmed that view. Therefore, we went to the “superior” Wangfujing...
Dajie branch. We ordered half its trademarked Peking Duck since WY and my wife were not that keen on eating so much Peking Duck.

The Quanjude Peking Duck is roasted in open ovens using wood from Chinese fruit trees like date, peach or pear to give its distinctive fruity flavour. The restaurant had a glassed section where we could see ducks hanging and ducks roasting. This really added to our anticipation.

Sad to say, the service at the Wangfujing Dajie branch was not that good and the duck was the worst Peking Duck we had in the city. I mean it was quite good but could not match the other three Peking ducks we ate.

Beijing Da Dong Kaoya Dian (22 Dongsishitiao, Dongcheng District)

Frommer’s *Beijing*, 6th Edition (2010) recommended this as Best Peking Duck in the city and said that “Chef Dong of Beijing Da Dong Kaoya Dian has made a name for himself with his light, crisp, and flavoursome duck, which comes with an array of condiments, including sugar and garlic, and new fusion dishes that don’t lose sight of the fundamentals of Chinese cooking”. According to Lonely Planet’s *Beijing City Guide*, 7th edition (2007), this restaurant is “a long-term favourite of the Peking duck scene and its hallmark is a crispy, lean duck without the usual high fat content (trimmed down from 42.38% to 15.22% for its ‘superneat’ roast duck, the brochure says), plus plum (or garlic) sauce, scallions and pancakes. Also carved up is the skin of the duck with sugar, an old imperial predilection”.

This was actually the first Peking Duck we ate in Beijing. I particularly liked the imperial way of eating duck skin with sugar at the restaurant and ate duck skin that way for the rest of the Peking ducks in the city as well. The Peking Duck here was full of flavour and a close second in my Peking Duck leaderboard.

Made in China (Grand Hyatt Beijing, 1 East Chang An Avenue [1 Dong Chang’an Jie])

According to Frommer’s *Beijing*, 6th Edition (2010), Made in China (Chang An Yi Hao) has “fantastic Peking duck” and an “equally enthralling setting – a dining room placed in the middle of an open kitchen, illuminated by the occasional leaping flame from the stove. The Peking duck is the highlight – the presentation and flavors are impeccable”.

Unlike the other restaurants we went to for Peking Duck, this was the only one in which we had to order the Peking Duck beforehand. This was also the most expensive Peking Duck and the best duck we had. My wife wanted to order one to take back to Singapore for our sons to try but they said it would not taste as good and, therefore, do not do takeaways.

The Great Wall of China (Wanli ChangCheng)

As everyone would probably know, the Great Wall of China was built to defend China from aggressive nomadic tribes from the north. Less well known is that the Great Wall was actually not a continuous wall. According to a 2009 BBC report, a study completed by the Chinese authorities (which included the use of infra-red and GPS technologies) has shown that the Wall actually spans 8,850 kilometres, significantly longer than previously thought. However, that comprises 6,259 kilometres of wall, 359 kilometres of trenches and 2,232 kilometres of natural defensive barriers such as hills and rivers. The reality is that many sections of the Wall are now in disrepair and a July 2002 issue of *Newsweek* even had an article entitled: “The Late Great Wall: A wonder of the world is vanishing, unable to resist the forces of nature and economics …”.

Since it was my first visit to the Great Wall, Uncle J suggested that we go to the Ba Da Ling section of the Great Wall, about 80 kilometres northwest of Beijing and the most visited section of the Great Wall. As Uncle J was quite familiar with
Beijing, we agreed to make our way there like most locals. This meant taking a bus from Deshengmen, one of the main bus terminuses in Beijing. The four of us took a taxi from there.

Once we got off our taxi at Deshengmen, we saw many taxis parked there and quite a number of taxi drivers came to ask us if we wanted to go to the Great Wall. Uncle J said “no thank you” and we went to look for the place to board our bus (if I remember correctly, it was Number 919 or some number like that). One persistent taxi driver (whom I shall call the Tout) stuck with us saying that it would be more convenient for us to go in his taxi as the buses are always full and very slow. Uncle J was quite firm in his “no thank you” and the Tout then pointed us to a queue where he said the bus would arrive. We joined the short queue but the Ba Da Ling bus never stopped there. Every few minutes the Tout came to reiterate that the bus is always late and crowded and other things that made the bus journey sound very unappealing.

After a long time and a growing queue, Uncle J walked around to find someone who might be able to confirm when the bus would be arriving since his guidebook said that there were regular buses to Ba Da Ling. Uncle J returned after about five minutes and told us that we were at the wrong place. Many of the people in the queue were similarly misled and we all followed Uncle J to the other side of the terminus to the correct bus stop. There were many very long queues of people and many were waiting for the Ba Da Ling bus.

We eventually got on the bus and found out from our bus conductor that a lot of taxi drivers tout for business at the terminus. Accordingly to her, many staff at the terminus were too frightened to tell people the correct place to board the bus for fear that the touts would get violent with them. Our bus conductor also said that many people actually visit the Great Wall more than once. She added that the week before there was a lady on her bus who was on her third trip to the Great Wall who was scammed on her two prior visits. Apparently, she never visited the real Great Wall on her previous visits but was brought to some fake wall instead. It seems that hers was not that unusual an experience. I later read about fake walls in *Country Driving: A Journey through China from Farm to Factory* by Peter Hessler. According to Hessler, county officials in the Sancha region commissioned the building of structures that resembled the top of the Great Wall (and these fake walls were only two and a half feet tall) to attract visitors. On the same topic of scams, Hessler’s wife, Leslie T. Chang, has described how an unscrupulous driver of a half empty bus may illegally dispose of passengers to another bus driver by paying him a set price per passenger rather than to continue on a money-losing journey, in her book *Factory Girls: From Village to City in a Changing China*. Even worse, having accepted payment for these passengers, the second bus driver may not even take the passengers to their destination as she found out to her dismay.

Ba Da Ling was very crowded with tour buses and people. It takes about half a day to walk up to the famous section of the Great Wall there because the authorities do not allow vehicles to go too close to the Great Wall. Fortunately for us, there is now a cable car operating and we took it, making the trip much easier. Uncle J and I also climbed to the highest tower while our spouses gave that a pass. It was very steep in some sections — sloping at around 60 degrees and maybe more. Paul Theroux in *Riding the Iron Rooster* said that when he saw the Great Wall it “swarmed with tourists” and they “scampered on it and darkened it like fleas on a dead snake”. It looked a lot like that to me as well.

I can say that the Great Wall is truly awesome and you should visit it at least once in your life. And remember to eat Peking Duck while you are in Beijing.

► Richard Tan Ming Kirk  
E-mail: mingkirk@yahoo.com

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Interlocutory Injunctions cover the many developments which occurred following the growth of the law in this area. In the many intervening years after the first edition was published in 1992, the law in Singapore on this topic has flourished, giving rise to many exciting changes.

The author has retained most of the structure employed in the first edition and where required, has amended the text that was meticulously prepared for the first edition, taking into account developments in case law as well as new statutory enactments. In addition to the local decisions cited in this book, there are also areas consulted and included from authorities from other parts of the Commonwealth.

While it seeks to provide a convenient guide to the practitioner that is both understandable and critical, it also contributes greatly towards the continued development of the law of interlocutory injunctions in Singapore.
New Law Practices

Ms Dawn Tan Ly-Ru (formerly of Nicholas & Tan Partnership LLP) has, with effect from 30 September 2013, commenced practice under the name and style of ADTvance Law LLC at the following address and contact numbers:

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Mr Abdul Aziz Bin Abdul Rashid (formerly of J P Dendroff & Co) has, with effect from 4 October 2013, commenced practice under the name and style of Abdul Aziz Law Practice at the following address and contact numbers:

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Dissolution of Law Practices

The law practice of JE Legal LLC dissolved on 30 September 2013.

Outstanding matters of the former law practice of JE Legal LLC have, with effect from 1 October 2013, been taken over by:

Rodyk & Davidson LLP
80 Raffles Place
#33-00 UOB Plaza 1
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Ms Janet Tan (formerly of JE Legal LLC) has joined Rodyk & Davidson LLP as Partner from 1 October 2013 and is practising at the above address and contact numbers.

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# Information on Wills

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1-3&4-8PQE

Leading international bank seeks both a junior and mid-level litigation counsel to join its Asia Pacific Litigation & Investigations team. These roles require candidates with excellent academics. Experience in commercial litigation and regulatory investigations will be a bonus. (SLG 9907 for 1-3PQE role) and (SLG 9908 for 4-8PQE role)

**ATTORNEY: TECHNOLOGY SECTOR**  
Singapore  
5-8 PQE

A US based Technology Company in Singapore, is seeking an experienced commercial lawyer that will be responsible for legal matters across Asia. You will have experience gained in-house in an international corporation with a technology or software focus. The successful candidate will have good exposure to corporate and commercial work. (SLG 9886)

**LEGAL COUNSEL: ASSET MANAGEMENT**  
Singapore  
5-8 PQE

A US based Asset Management firm is seeking a mid-level lawyer to join its dynamic organisation. This role requires advice on product development, transactions and guidance on domestic as well as cross border issues. Candidate should have worked at a leading law firm and/or in-house within funds management industry. (SLG 9833)

**DERIVATIVES LAWYER**  
Singapore  
2-5 PQE

A global bank with an established structured products team in Singapore is seeking a junior derivatives lawyer with a good knowledge of ISDA products. This is a legal advisory and risk management role in relation to various derivatives and structured products. The successful candidate must have worked in the capital market or derivatives practice of a leading firm or legal team of a top tier financial institution or commodities trading firm. (SLG 9943)

**IN HOUSE COUNSEL – FMCG**  
Bangkok  
6+ PQE

Our client is a global consumer products giant with a rapidly growing Asia Pacific Business. The legal team has a current vacancy for a senior common law qualified lawyer in Bangkok. A strong commercial law background and fluent spoken and written Thai and English are essential for this role due to client base. Working knowledge in importation, distribution, product liability and corporate governance required. (SLG 9942)

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These are a small selection of our current vacancies. If you require further details or wish to have a confidential discussion about your career, market trends, or would like salary information then please contact one of our consultants in Singapore (EA Licence: 07C5776): Lucy Twomey or Jean Teh on +65 6557 4163. To email your details in confidence then please contact us on legal.sg@alsrecruit.com.

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Asia Pacific Region Assistant General Counsel (10+ PQE), Singapore

Leader in life sciences and diagnostic equipment industry seeks a senior lawyer to set up and head its AP legal department. This individual will lead a legal team throughout the region to structure investments and establish entities across the region, advise on legal issues including employment, employee relations, regulatory and governmental licensing and approvals. The successful candidate will also work closely with management and business leaders to support and facilitate the company’s plans for robust growth, particularly in China. This is an excellent opportunity for a strong business lawyer who will enjoy playing a pivotal role in the company’s continued growth in the AP region. [S14768]

Investigations Counsel (10+ PQE), Singapore

Healthcare giant is recruiting a senior investigations counsel to manage internal investigations of potential violations by employees and business partners of relevant legislation and internal policies (including conducting interviews and reviewing documents onsite) and to provide anti-corruption, enforcement and healthcare compliance advice. You should have strong experience in litigation and in conducting complex and sensitive internal investigations. Based in Singapore, the role will involve significant travel throughout APAC. [S9937]

Associate General Counsel (7+ PQE), Singapore

Excellent opportunity for a general corporate lawyer from private practice or in-house to join a dynamic US MNC. The successful candidate will have a regional portfolio and have the opportunity to work closely with senior management on their corporate commercial matters. Strong corporate commercial experience a must to secure this role. Some travel anticipated. [S14765]

Corporate Partner (7+ PQE), Singapore

Our client, a boutique firm that is highly-recognised in its chosen area of practice, seeks an experienced corporate lawyer to head and lead its corporate practice as its clients increasingly require more corporate services. The ideal candidate would be a senior corporate lawyer with diverse transactional and corporate advisory experience, although mid-level lawyers with excellent transactional experience gained in top tier law firms will also be considered. Don’t miss this chance to shape and mould your own career and its rewards. [S6523]

Assistant/Deputy General Counsel (6-10 PQE), Singapore

Key player in the communications industry seeks a Singapore qualified lawyer to join its legal team. The candidate will be responsible for advising on the development and enforcement of local laws relating to the protection of personal data, data protection policy issues, international developments in data protection, complaints and investigations. Prior litigation experience gained in a top tier law firm is preferred. [S14722]

Regional Counsel (4-7 PQE), Singapore

Global property and infrastructure company seeks a dynamic individual to join their team in Singapore. Covering key markets in the region, the successful candidate will work closely with project management and construction business units in reviewing and identifying legal risks associated with large-scale building projects, formulating long-term mitigation strategies, leading negotiations and ensuring compliance with laws and regulations. Common law qualified lawyers with prior experience in construction law will have a distinct edge. [S9447]

Legal Counsel (3-5 PQE), Singapore

A dynamic growth company in the oil and gas industry is searching for a Legal Counsel to join its team! Reporting to the Head of Legal, you will review upstream commercial contracts and provide general corporate advice, including advising on marine insurance matters. The ideal candidate would be a mid-level lawyer who is experienced in the review and negotiation of commercial contracts, gained either with a well-ranked law firm or in an energy or shipping-related corporation. Excellent remuneration on offer. [S14809]

Legal Counsel (2-5 PQE), Singapore

A multi-strategy Asia-focused hedge fund is looking for a junior lawyer to handle derivatives and prime brokerage documentation (both master documents and transactional documents), some M&A as well as legal/regulatory/compliance issues for the fund. The role would suit someone who is commercially-minded and has an interest in the investment side of the business. Good environment and strong collegiate culture. [S2993]

Financial Regulatory Lawyer (2+ PQE), Singapore

Well regarded US MNC in the IT industry is looking for a regulatory lawyer to join its growing regulatory practice. The ideal candidate will be a lawyer with experience in financial regulatory work gained either with a top-tier private practice or bank or a regulator. Familiarity with the various laws and regulations that currently govern financial institutions in Singapore would be strongly advantageous. Excellent career prospects and rewards on offer. [S14195]

Senior Legal Counsel (7+ PQE), Singapore

Well regarded US MNC in the IT industry is looking for a senior lawyer to join their team in Malaysia. Responsibilities include drafting and negotiating various IT contracts such as outsourcing, data center and system integration agreements, advising on issues relating to intellectual property, employment and regulatory matters. Candidates called to the Malaysian Bar with strong experience in IT, IP, commercial and litigation matters from a good law firm or MNC preferred. [S3378]

Legal Counsel (8+ PQE), Shanghai, China

Our client is a US MNC and an industry leader in the IT and e-commerce services sector. To support its robust growth in the China market, it is looking to recruit a mid to senior level lawyer as their first China based in house counsel. The successful candidate will advise on legal issues arising out of daily operations, including licensing, regulatory and contractual issues, and will take an active role in vendor/customer negotiations. Additionally, the counsel will work closely with senior management on strategic investments as part of the company’s continuing growth in the market. Familiarity with FCPA and other international compliance standards would be highly valued. This role will suit a dynamic self-starter, with the requisite maturity to work independently. Attractive remuneration package is assured for the right candidate. [S14807]

We at Legal Labs seek a research associate with strong communication skills and an outgoing and energetic personality. Prior work experience in the legal industry preferred.
YOUR PROFESSION
OUR PASSION

Senior Legal Counsel – Trusts
Singapore. 8 PQE min.

This organisation is a leading institution offshore and is a rapidly expanding player in the Singapore trusts industry. They seek a seasoned legal counsel to be part of the senior management team and grow the business.

With your depth of experience in corporate trust services and/or private wealth management and trustee services, you will assist in building a full suite of corporate and private trustee services for the business. In addition to your commercial acumen, you will oversee compliance requirements and have a hands on approach to existing and new client’s corporate and/or private trust legal documentation. Experience in retirement, succession and estate planning will be valued.

A key requirement is that you can qualify as and discharge the duties and functions of a Resident Manager, as well as a resident Company Director under The Trust Companies Regulations in Singapore. You will also have excellent client services skills with a passion and drive to assist in the organic growth of new business.

Head of Legal - Oil & Gas
Singapore. 8 PQE.

This leader in the O&G industry seeks a dynamic head of legal to manage a focused team and contribute to a continuing and successful brand. Reporting to the VP Legal (based abroad), you will implement a group legal policy and have an excellent depth of knowledge in reviewing and drafting a range of contracts required in the O&G industry (subsea, EPC and upstream/downstream). Managing legal and compliance risks for entity, operations, bids and projects will also be key aspects of this role. You will be handling and mitigating potential claims, disputes and/or litigation. Where necessary, attending to corporate secretarial and compliance needs will also be part of your scope.

You will have a minimum of eight years PQE and experience as a senior legal counsel in a multinational corporation, acting in the industrial sector or in a major law firm. Individuals from an O&G background are preferred, however a background in related industries such as engineering are also welcome. This is an excellent chance to take the next step as lead of legal department.

ICSA Qualified Corporate Secretary
Singapore. All PQE levels.

We not only specialise in the placement of Partners, Associates and Legal Counsels, but also Corporate Secretaries looking to widen their career exposure. Being qualified by a recognised ICSA body, you will be suitable to join many of the companies we partner with from various industries in private and public sectors. If you think you have what it takes, contact us.

Legal Counsel - Derivatives
Singapore. 5 years PQE.

A well known offshore financial institution seeks a generalist derivatives lawyer to join a focused legal team with responsibility for coverage over Asia. You will advise, prepare and negotiate various documentation such as master agreements, ISDA + various asset classes and offer general legal support and regulatory advice. With at least five years experience undertaking similar work, either in private practice or a financial institution, you will be able to take ownership of your role. This is an excellent opportunity for regional exposure.

Paralegal – Oil & Gas (three month contract)
Singapore. 3 PQE min.

This global player in the oil & gas industry seeks efficient Paralegals on a contract basis. You will be experienced in looking at contracts and agreements, as well as with extraction of data and some experience in company secretarial work.

You will have a diploma in a law or a legal qualification. Experience with a top tier local or offshore law firm, or with a well known brand will be looked upon favourably.

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IN-HOUSE ROLES

COMMERCIAL IT COUNSEL • SINGAPORE
Excellent opportunity for an experienced commercial lawyer with IT or e-commerce experience to take up this position with an international technology company. Reporting to the GC in the UK headquarters, you will handle the commercial and IT contracts in Asia. Ref: 193551 5+ years

APAC COMPLIANCE DIRECTOR • SINGAPORE
This global financial services provider is now looking for a senior compliance director to take up a leadership position in the APAC region. You will be currently managing a team and have extensive experience in regulatory compliance, AML and insurance or financial services. Ref: 193241 10+ years

HOSPITALITY LEGAL COUNSEL • SINGAPORE
This MNC in the hospitality sector is looking for a legal counsel to join its APAC team. You will work with the general counsel to support the development and investment team and also provide advice on operational day-to-day matters for the company. Ref: 193581 5+ years

TECHNOLOGY OUTSOURCING • SINGAPORE
Opportunity to join this technology company with good track record - to lead and/or support negotiations for all high value transactions in Singapore and other countries in the Asia sub-region. Candidates should ideally have prior TMT background. Ref: 193421 5+ years

TMT • MYANMAR
Fastest growing TMT company in the region is in expansion mode. Candidates should ideally have prior regional experience in IT/Telco and be commercially astute. Opportunity to be involved in good quality transactions. Attractive benefits are on offer. Ref: 193611 3-7 years

PRIVATE PRACTICE ROLES

BANKING ASSOCIATE • SINGAPORE
Leading international law firm is seeking a mid-senior level Singapore qualified banking lawyer. Role involves a broad scope of finance transactions and the right candidate will have excellent academics and experience from a top-tier firm. Good remuneration and quality of work on offer. Ref: 193491 4-7 years

CORPORATE ASSOCIATE • SINGAPORE
This well known global firm is looking for a Singapore/Overseas qualified corporate lawyer ideally with banking/insurance/regulatory experience to join its team. You must be proactive, confident, have an international outlook and be able to work independently. Ref: 193291 3-5 years

CORPORATE REGULATORY ASSOCIATE • SINGAPORE
This reputable international law firm is seeking a Singapore qualified corporate lawyer for a non-transactional role focusing on regulatory and compliance matters. They will consider strong lawyers from a pure corporate background who are interested in moving into this field of work. Ref: 190961 1-5 years

CORPORATE REAL ESTATE • SINGAPORE
This leading property developer in Singapore is rapidly expanding regionally. You will be primarily supporting the Group in its loan financing transactions. Ideally, you should have at least 5 years of experience in private practice and in-house. Ref: 193411 5-7 years

SHIPPING
This fast growing international ship management company is now looking for a sole counsel to work with the commercial team. This role reports directly to the CEO. Ideally, you should be a US or UK-qualified lawyer with at least 5 years’ international experience in the shipping industry. Ref: 193341 5-8 years

LEGAL COUNSEL • SINGAPORE
A good opportunity for a junior lawyer looking to move in-house with this commodities trading company. You will join a team of experienced lawyers and will be expected to handle general corporate documentation for the region and support the team on their transactions. Ref: 193101 NQ-2 years

LEGAL COUNSEL, EPC • SINGAPORE
This well known MNC in the EPC sector is looking to hire a general corporate commercial lawyer. You will be part of a global team of lawyers and will look into the operational contracts of company for the region and support any cross-border transactions on local law issues. Ref: 193631 5+ years

WEALTH MANAGEMENT COMPLIANCE • SINGAPORE
Renowned investment bank currently seeks a Head of Private Wealth Management Compliance. You will head up a team of five and advise the WM Business Unit on all regulatory and Compliance matters. Securities or regulatory background preferred. Ref: 193601 10+ years

For Private Practice Roles in Singapore and South East Asia contact Alex Wiseman on +65 6420 0500 or alexwiseman@taylorroot.com
For In-House roles in Singapore and South East Asia contact Joan Oh +65 6420 0500 or joanoh@taylorroot.com
SingHealth, Singapore’s largest healthcare group, is committed to providing affordable and accessible, quality healthcare to patients. Its 2 hospitals, 5 national specialty centres and 9 polyclinics, backed by internationally qualified medical specialists and advanced diagnostic and treatment medical technology, offer a complete range of multidisciplinary and integrated medical care.

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**LEGAL COUNSEL**

(REF: SHS/LA/1113/194/SY)

Reporting to the Director, Legal, you will provide legal services to SingHealth and its institutions.

**Profile**

- A strong law degree and a member of the Singapore Bar
- 1-3 years’ post-qualification experience, preferably in a broad range of commercial and corporate matters
- Attuned to problem-solving involving data mining, analysis and developing solutions. Enjoys drafting and diversity in work
- Thrives in an environment in which teammates readily share and give support

Email us at career@singhealth.com.sg to explore taking up a legal counsel position in our Legal Department. Visit our website www.singhealth.com.sg to find out more about SingHealth.

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31 December 2013
Applicants to our China Practice should possess relevant experience in handling corporate transactions and must be reasonably proficient in Chinese. Interested applicants are invited to send in their detailed resume together with a recent photograph to joinus@wongpartnership.com. You may visit our website at wongpartnership.com for more information. Please note that only shortlisted applicants will be notified.
Stand Out With Hughes-Castell

**In-house**

**Regional Counsel | 8-12 yrs pqe**  REF: 11849/SLG
Highly regarded software company is hiring a standalone Regional Counsel for its APAC office based in Singapore. Significant experience in a similar environment ideally with a software company would be ideal. Strong Mandarin skills are a must as this senior candidate will have coverage over Greater China amongst others. Expect an excellent work environment and positive work/life balance.

**Corporate Counsel | 6-8 yrs pqe**  REF: 11654/SLG
A renowned name in the global shipping industry is expanding and seeking a Singapore-based Corporate Counsel with industry experience and the ability to aid corporate growth. This is a mid-level hire with potential for a leadership role in an established and stable environment. Singapore, UK, Australia qualified lawyers with 6-8 years’ PQE in the shipping sector are ideal for this role.

**VP Compliance | 5-8 yrs pqe**  REF: 11893/SLG
Great opportunity to join a global leader in the financial services industry as they are seeking a compliance professional to oversee the business, legal, risk and audit programs in South East Asia including Singapore. The ideal candidate will have a law/accounting/finance degree and at least 5 years of compliance experience specifically in product compliance. Substantial experience with a financial institution and in-depth knowledge of Singapore rules and regulations applicable to investment management business are required. Excellent communication skills are necessary.

**Paralegal | 5-7 yrs**  REF: 11874/SLG
One of the world’s largest energy technology corporations is seeking an experienced paralegal to support its legal department based in Singapore. The role will provide secretarial and administrative support on contracts, legal documents and secretarial files across the APAC region. The ideal candidate will have at least a Diploma with 5-7 years of relevant experience at a similar role. You should be currently based in Singapore.

**SEA Counsel | 5+ yrs pqe**  REF: 11916/SLG
This leading real estate company seeks a bright and energetic real estate counsel who is familiar with legal issues in the SEA market having done cross border acquisitions regionally. The ability to work independently and deal with stakeholders confidently is required. The successful candidate can expect to work with a strong team experienced in securitisation, listings, and acquisitions.

**Legal Counsel | 2-5 yrs pqe**  REF: 11909/SLG
Excellent opportunity for a junior-to-mid level lawyer to join this leading international financial services firm in Singapore. This regional role is responsible for corporate and general commercial matters in Asia. You must be a Singapore qualified lawyer with at least 2 years’ PQE with solid corporate skills ideally gained in a financial institution or top tier law firms.

**Private Practice**

**M&A Partner | 10+ yrs pqe**  REF: 11371/SLG
This growing international firm is looking to boost its corporate presence in Singapore with a hire of an energetic Partner with substantial experience in regional M&A matters. The successful candidate will have at least 10 years of corporate experience in a top-tier law firm and a proven track record of generating business. Interested candidates are encouraged to get in touch for a confidential conversation.

**Energy Partner | 10+ yrs pqe**  REF: 10288/SLG
This prestigious UK-based firm is seeking an established Partner to help develop and grow the energy practice in line with the firm’s international client base and strategy in Singapore. You will ideally have a client following and the firm is committed to investing in the growth of this practice. Senior lawyers with strong regional credentials and ambition to drive a practice are encouraged to apply.

**Tax/Private Wealth Management Lawyer | 5+ yrs pqe**  REF: 11159/SLG
A reputable international law firm is seeking a senior associate/counsel/junior partner with strong technical skills, polished presentation and business-building capability to join their team in Singapore. To qualify for this role, you are required to possess excellent working knowledge of UK tax law, trusts and private wealth management. Experience in UK real estate investment structures is also a bonus. Ideal for a capable senior lawyer seeking to relocate to Asia.

**Capital Markets Associate | 3-6 yrs pqe**  REF: 11789/SLG
This Magic Circle firm is seeking an independent, commercially-minded lawyer to join its established capital markets team in Singapore. You will advise both issuers and arrangers in international debt capital markets work. Candidates who have excelled in a demanding environment and have worked on top-tier transactions will have an advantage.

**Shipping Associate | 3-4 yrs pqe**  REF: 11786/SLG
This highly reputed UK/ shipping firm is seeking an experienced Shipping Associate for its Singapore office. Only UK qualified lawyers with 3 – 4 years of extensive contentious and non-contentious experience on “dry” shipping matters will be considered for the role. Candidates with good exposure to commodities work will have an advantage.

**Trademark Lawyer | 2-4 yrs pqe**  REF: 11824/SLG
This leading international law firm is looking for an IP lawyer to join its well-established contentious IP practice in the Singapore office. The ideal candidate will be a Singapore qualified lawyer with 2-4 years’ PQE in IP law. Previous experience on trademark work gained from top-tier firms would be an added advantage.

**Banking & Finance Associate | 2-3 yrs pqe**  REF: 11741/SLG
This reputable international law firm is seeking general banking and finance lawyer to join its banking and finance practice in Singapore. UK qualified with international exposure in project finance and aviation would be ideal. Great opportunity to work closely with the partners and gain exposure to a range of high-profile clients.
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