

An interview with Toh Han Li

Faaez Samadi
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Having overseen rapid developments at the Competition Commission of Singapore in the past year, chief executive Toh Han Li speaks to Faaez Samadi about the young enforcer's development and the challenges ahead

You've been chief executive of the CCS for just over a year. How have you found your time in charge so far?

2014 has been a very busy year. We had our first two international cartel cases and also the highest number of mergers notified in a year. We had 10 mergers, which doesn't sound like much, but a lot of them came in the second half of the year; it was almost one every three weeks. We are also a voluntary regime, so the mergers that are notified have already been self-assessed by parties and their lawyers and are not straightforward ones; like *Seek/Jobstreet*, our first

behavioural commitments case in Singapore. Also, I didn't include the airline joint venture notifications in the merger figures, which are not formerly mergers but are almost the same in effect. One of the interesting airline cases (which was in fact a merger) was *Singapore Airlines/Tiger*. That was the first time we made a finding in a case under the 'failing firm' argument.

How has the CCS evolved during your time at the agency?

I've been here since 2009 (at that time I was the assistant chief executive). When I first came in, we only had one enforcement case: a bid-rigging matter by pest control companies. Since then we've taken a number of decisions, domestic and international. In the early years, especially when we had the first few appeals, it was important to make sure we were not overruled on the basis of having made bad decisions as this would have a profound impact on a young competition authority. Of course, adjustments of penalties happen, and that's fine, but we didn't want to be overruled on liability, for instance, because our evidence was sound enough. We also wanted to establish legal precedents for Singapore. We've now had a range of appeal decisions and that has set the groundwork for subsequent decisions.

In the earlier years there were some leniency applications but a lot of the conduct notified took place before the Competition Act came into force in 2006, so it wasn't possible to do anything about it. We had a small leniency-based domestic cartel case in 2010 – regarding electrical works – but the main two cases were last year's freight forwarding and bearings cartel matters. The leniency docket is quite healthy; we have nine active cases. Of course we have to prioritise based on resources, but we will still look at both domestic and international cartels.

Also, the end of last year marked the retirement of our first and only chairman, Mr Lam Chuan Leong, so I would like to acknowledge his contributions to the CCS. He was formerly chairman of the telecoms regulator as well as the permanent secretary of the Ministry of Trade & Industry, so he came with a wealth of experience of how markets work. His guidance has been invaluable.

Despite being a younger agency in a small country, the CCS has a sterling international reputation. What do you think is the secret to its success?

Rather than saying we've been a success, I think it more appropriate to say that we've made steady progress in the past 10 years. We've made sure decisions are carefully thought through and reasoned. These reasons are made public to show that our interventions are not taken lightly.

I think we've been lucky too because of the cooperation between competition authorities in global networks like the ICN. One bit of very good advice given to us in the early days was from then chairman Takeshima of Japan's Fair Trade Commission, one of the ICN stalwarts, who said we should join the ICN because it will allow us to plug into a lot of materials and best practices. So we did and it helped a lot. That said, it's also important to take best practices and apply them in your own context. Every country's economic context is different and nobody is there to tell others what to do. It's up to everybody to decide how they want to implement their own law given their specific circumstances.

For example, Singapore is a small domestic market, so one issue that is unique to us is the number of players that can operate in this market. Sometimes small markets don't regenerate as well as big markets like the US, so you need to take that into consideration. Recently, for example, we looked at the *Seek/JobStreet* merger. A number of the large job portals overseas didn't think the market here was big enough, so that affected new entry, which is why we felt a need for commitments from the merging parties. One of the arguments made was, 'There are a lot of big players who can come in'; but if a market is not big enough they won't come. So you need to take that into consideration, which means you have to tolerate higher concentration than larger markets. One needs to manage these things.

Do you think the CCS model for developing a competition authority could be followed by other young agencies around the world?

As I say, every country needs to consider international best practices but eventually develop its own path. I think the sharing at international forums like the ICN is very helpful, but at the end of the day you need to take it back and decide for yourself what you want to do.

Does the CCS benefit from Singapore's system of government, in that long-term plans can be put into action and seen through to the end, given the stability of the ruling party?

Long-term planning is good for any agency; every agency (competition authority or not) should be doing it. Singapore has enjoyed a stable government but it still needs to be alive to domestic considerations. I don't think it's as if you can plan long-term without keeping an eye on what's happening on the ground. For example, as a city state with no hinterland, the cost of living is an issue as Singapore develops economically. That isn't solely a competition issue, but we do what we can to see if prices have been affected by anti-competitive behaviour or market structures. We started a new policy and markets division in 2013, and one

of its tools is to conduct market studies to see whether high prices can be linked to markets not functioning as well as they should be, at the same time falling short of anti-competitive conduct.

Fundamentally, when you're talking about competition, you're talking about things like choice. When you look at markets and ask yourself, 'Why are there only one or two players in this market?' these are competition questions. Singapore is fortunate in that we are very open, so we can source globally or regionally for whatever we want. But there are non-tradeable things too, like many services, so then we need to look more carefully at these markets to see whether there are any competition issues.

What are the CCS's main priorities?

Last year we did a long-term plan for up to 2030. The whole idea was to review our mission and vision, which was appropriate at our 10-year mark. The current mission is championing competition for growth and choice. We are looking at something more outcome-based. We hope to launch our new mission and vision this year.

Our senior minister of state last year gave a speech at a conference in which he mentioned two things where there is room for improvement. One is intensity of local competition – we were ranked 19 in the World Economic Forum global competitiveness report 2013–2014. The other is private sector business sophistication – we ranked 17. So these are two areas we will continue to work on. The problem for some of it is the size of the market; private sector business sophistication improves quicker if your market is bigger. With intensity of local competition, there is an argument made around business culture in Asia being more prone to collusion than competition, but I don't think this is unique to Asia. Generally speaking, businesses flee from competition for good and bad reasons. A good reason is innovation; a bad reason is a cartel. We want people to flee from competition for good reasons!

We're also looking at creating a case selection and prioritisation framework. We have finite resources and an increasing caseload with more complex cases. For ASEAN, we chair the advocacy group in the ASEAN Experts Group on Competition, and there remains a lot of work to be done regarding advocacy. At the broader level, you're talking about things like non-tariff barriers and non-discrimination against foreign investment. This is part of the ASEAN Economic Community 2015's vision. We have now arrived at 2015; we need to keep working at it.

What are your thoughts on the other ASEAN nations and the developments of their competition regimes?

ASEAN has committed to a 'single market' and production base, which competition policy and law promotes. There is a big free trade agreement, the RCEP [Regional Comprehensive Economic Partnership], which is the 10 ASEAN nations plus trading partners Australia, India, China, New Zealand, Japan and South Korea. That's a huge bloc and there is a competition chapter within RCEP that we are chairing. Negotiations are ongoing, but we hope it will be a high-quality agreement.

In terms of having competition laws, currently only five of the 10 ASEAN countries have one. The Philippines has a few more administrative hurdles to clear and I hope this can be cleared before the end of the year. Realistically, I don't think we will have 100 per cent completion on this before the end of 2015, but hopefully one or two more will come on board. Myanmar is moving very fast: it has a draft law and the rate

of liberalisation is impressive; for example, it has issued a host of foreign bank licences, which is amazing considering where it was even five years ago.

How much of a leadership role do you think the CCS holds for the ASEAN region in helping other nations with their fledging regimes and international representation?

Cambodia is the chair of the AEGC this year; we chair the RCEP working group. So I don't want to say it's just the CCS. Everybody is trying to do something.

The CCS had a landmark year in 2014 by bringing its first two infringement decisions in international cartel cases. How was it making the transition from investigating small local cartels to huge complex international conspiracies?

Leniency was very helpful; both cases had a lot of leniency applicants. It's very helpful if someone comes in and admits the conduct! It really gives you a big leg-up. I guess it's tricky too because when a company is deciding whether to come in for leniency, it is also wondering whether it can get away with it. So you do need to show some enforcement credibility to attract leniency.

Leniency also really helps because in these cross-border investigations, gathering evidence can be very hard to secure; sometimes the witnesses are overseas. So in a leniency case, the counsel is willing to cooperate and actually fly in the witnesses to give evidence. So that's a key success factor. In the first case – ball bearings – there was only one appeal out of four parent companies and that is only with regard to penalties. In the Freight Forwarding case, we are still waiting to see if there will be appeals as the decision only came out in December.

Are we to expect more international cartel decisions in the near future?

Some of our leniency cases are international cartel cases. We will announce those when we are ready to do so.

What would you say to those who suggest the CCS has been too cautious in its development and could perhaps have moved faster to tackle larger matters?

After last year that's no longer the case. But as I said, in the first few years we needed to be clear about what the law was and establish a credible track record of enforcement. There was a need to build confidence in the organisation. If you take on huge, complicated cases early on and lose them it's not very good for the morale of the commission. Sistic was our first abuse of dominance case and we won; more importantly, that legal precedent has clarified the law and facilitated a lot of subsequent investigations.

How do you balance the need for strict competition law enforcement with the desire for Singapore to remain an open, business-friendly market for investors?

People have asked us why we have a press conference when we issue infringement decisions. This is because every enforcement decision comes with an educational message for the market. We try to explain why anti-competitive behaviour is bad for the market, for businesses and consumers. It's still quite a new law, so we use the enforcement decisions as a tool to educate.

The other tool we're trying to use is post-enforcement studies. We have published two: one on the bus cartel, in which the finding was that prices did fall post-enforcement; the other is the Sistic case, where there are now two market players instead of one. The airline joint venture study showed that prices didn't fall much but passengers increased, so there is some benefit. These are important tools to show that the interventions have had a good result.

Do you believe you could achieve more as an enforcer with greater resources, particularly now that the CCS is taking on bigger cases?

Things always expand to fill the vacuum. We try to make do with what we have. I don't think we're under-resourced, though of course it's always good to have more. But it just means that we're at a stable state of 63 people. If you look at smaller jurisdictions overseas, they tend to have less than 100 people.

In which area do you believe the CCS needs to develop most?

One area we're looking at now is government advocacy, which I feel is a challenge for all competition authorities. A competition authority has to be independent in enforcement, but it also advises the government on policy. Of course, policy is within the purview of the government, but when policy affects markets, the competition authority is well-placed to advise.

Something that has been in the news recently is Uber, the taxi booking service. We have been working with the Land Transport Authority on this. We did a taxi study and gave them a report on how these apps operate, and they have now developed a regulatory framework. Of course, they have to take other things into consideration, but we have given our input. So this is an example of how an existing market can accommodate innovation and become better. These are the sorts of things we're trying to get more involved with, because they signal whether you are an economy open to innovation. As we build up our technical expertise, we will be in a better position to help.

It is the 10th anniversary of the CCS this year. Where do you think the CCS will be in another decade?

The revised mission will pave our way for the next 10 years. I've given some hints as to what we're looking at and I think it will help guide us better. Also, to make markets better, sometimes you have to work with other agencies; you can't do it alone. I don't think we'll get much bigger, based on our population. Some sectors are governed by regulators who continue to enforcer competition in those sectors; I don't know whether in the future there will be some consolidation on that front. In the case of ASEAN, we will definitely see more coordination between agencies in the region.