

Publication Date:  
31 August 2017

Main Contact:  
Daren Shiau, PBM  
+65 6890 7612  
daren.shiau@allenandgledhill.com

## CAB upholds financial penalty imposed by CCS and dismisses appeal by financial adviser for pressurising competitor to withdraw offer from life insurance market

The Competition Appeal Board (“**CAB**”) has dismissed the appeal of a financial adviser (“**appellant**”) who was involved with nine other financial advisers (collectively, the “**Parties**”) in a conduct which pressurised a securities dealer and financial adviser (“**Company**”) to withdraw its offer of a 50% commission rebate on life insurance products on the Fundsupermart.com website (“**Fundsupermart Offer**”) in 2013. In dismissing the appeal, CAB ordered the appellant to pay the financial penalty imposed by the Competition Commission of Singapore (“**CCS**”) together with interest and costs of the appeal.

By way of background, in March 2016, CCS issued an infringement decision against the Parties for infringing section 34 of the Competition Act which prohibits business entities from entering into any agreement with the object or effect of preventing, restricting or distorting competition within Singapore. The appellant then appealed to CAB on various grounds seeking a substantial reduction in the financial penalty imposed by CCS.

An article about the about CCS’ infringement decision was featured in a previous issue of the Allen & Gledhill Legal Bulletin (March 2016). To read the article entitled “*CCS penalises 10 financial advisory companies for pressuring the withdrawal of a competing life insurance offer*”, please click [here](#).

### Appellant’s main arguments and CAB’s decision

Once CCS confirms an infringement under the Competition Act, it may impose a financial penalty which is subject to a statutory maximum amount and this is set at 10% of the turnover of the business of the infringing party in Singapore for each year of infringement, up to a maximum of three years.

In its appeal before CAB, the appellant advanced four main arguments to support the contention that the financial penalty imposed by CCS should be substantially reduced. Set out in the table below is a summary of the appellant’s arguments and CAB’s decision.

No.	Appellant’s main arguments to reduce financial penalty	CAB’s decision
1.	The relevant turnover used to calculate the financial penalty should only include new policies and not existing policies entered into before financial year 2014.	<ul style="list-style-type: none"><li>CAB’s view was that the appellant’s arguments hinged on the notion that it should only be penalised for the turnover derived from its anti-competitive conduct. CAB disagreed with this proposition because it was contrary to the established case law in this regard and it could not be correct as a matter of public policy.</li></ul>

Allen & Gledhill LLP  
One Marina Boulevard #28-00  
Singapore 018989  
T +65 6890 7188  
F +65 6327 3800  
E enquiries@allenandgledhill.com

No.	Appellant's main arguments to reduce financial penalty	CAB's decision
		<ul style="list-style-type: none"> <li>• CAB found that it was impossible to ascertain with precision the turnover that was actually affected by the infringement in the present case. The impact of the infringement was not necessarily restricted to the new policies entered into in financial year 2014.</li> <li>• The object of financial penalties should not be based on a disgorgement of the gains received from the infringing conduct, assuming that such gains can even be calculated with certainty in the first place.</li> <li>• CAB dismissed this argument.</li> </ul>
2.	The starting percentage imposed by CCS was too high.	<ul style="list-style-type: none"> <li>• CAB agreed in principle with the appellant's primary argument that its conduct was less serious than price-fixing and bid-rigging offences. However, CAB did not mean to discount in any way the undeniable gravity of the infringement and the adverse effect it had on competition and this was evident from the fact that the infringement restricted competition by object.</li> <li>• As a result of the Parties' conduct (including the appellant), the Fundsupermart Offer which was originally slated to be made available "permanently" was withdrawn with remarkable speed and never reintroduced. It was only in August 2015, more than two years after the infringing conduct, that the Company re-launched life insurance products in a modified form.</li> <li>• CAB found that the starting percentage imposed by CCS was neither excessive nor unjustified in light of the nature of the appellant's conduct.</li> </ul>
3.	The duration of the infringement should be rounded down to one month with a duration multiplier of 0.083.	<ul style="list-style-type: none"> <li>• CAB looked at the infringing conduct in context and noted that the objective of the Parties to the agreement was clearly to pressure the Company to withdraw the Fundsupermart Offer and to "stop the project immediately". The agreement came to an end within such a short period of time only</li> </ul>

No.	Appellant's main arguments to reduce financial penalty	CAB's decision
		<p>because of the prompt manner in which the objective of the agreement came to fruition when the Company acceded to the Parties' requests.</p> <ul style="list-style-type: none"> <li>• CAB agreed with CCS that the short duration of the infringement should not be credited to the appellant as doing so would mean rewarding the appellant for its fast and effective implementation of the agreement.</li> </ul>
4.	CCS failed to consider mitigating factors such as the appellant operating in a high turnover, low profit industry and the genuine uncertainty as to whether there had been an infringement of the Competition Act.	CAB found that the appellant failed to demonstrate that it operated in a high turnover, low margin industry and that there was no uncertainty that the appellant's conduct was in breach of section 34 of the Competition Act.

#### Reference materials

The following materials are available on the CCS website [www.ccs.gov.sg](http://www.ccs.gov.sg):

- [Media release](#)
- [CAB decision \(dated 29 June 2017\)](#)

For further information, please contact:

Daren Shiau, PBM  
+65 6890 7612  
[daren.shiau@allenandgledhill.com](mailto:daren.shiau@allenandgledhill.com)

Elsa Chen  
+65 6890 7663  
[elsa.chen@allenandgledhill.com](mailto:elsa.chen@allenandgledhill.com)

Scott Clements  
+65 6890 7632  
[scott.clements@allenandgledhill.com](mailto:scott.clements@allenandgledhill.com)

This was first published in the Allen & Gledhill Legal Bulletin (Vol 29, No 8 August 2017). It is intended to provide general information. Although we endeavour to ensure that the information contained herein is accurate, we do not warrant its accuracy or completeness or accept any liability for any loss or damage arising from any reliance thereon. The information herein should not be treated as a substitute for specific legal advice concerning particular situations. If you would like to discuss the implications of these legal developments on your business or obtain advice, please do not hesitate to approach your usual contact at Allen & Gledhill LLP or you may direct the inquiry to [enquiries@allenandgledhill.com](mailto:enquiries@allenandgledhill.com).