

For information

**Bills Committee on
Competition Bill**

**Supplementary Information to the Responses
Discussed at the Meeting on 25 January 2011**

Purpose

Further to the Administration's responses to follow-up questions raised at the meeting on 17 January 2011 (LC Paper No. CB(1)1133/10-11(04)), this paper provides supplementary information on case law examples in relation to market definition and maximum pecuniary penalties under the competition laws of G-20 economies.

Case law examples in relation to market definition

2. Defining the market consists of identifying the relevant product and geographical dimensions of a particular conduct/agreement so as to assess the impact of such conduct/agreement on competition. However, market definition will depend on the actual facts of each case, and there is no single formula by which market definition analysis will be conducted. To facilitate Members' understanding of this key concept, we have selected the following cases in overseas competition jurisdictions to illustrate the factors that a competition authority will consider in defining the relevant market.

(a) Market for cooking oils

3. In 2009, Indonesia's competition authority, the Commission for the Supervision of Business Competition (KPPU), initiated an investigation into cooking oil producers on the suspicion that they had agreed to fix prices in breach of Indonesia's competition law.

4. KPPU defined the relevant markets as “bulk cooking oil” and “branded cooking oil” rather than the broader market of “cooking oil”, because (i) based on the highly visible product characteristics, there are significant differences between bulk cooking oil and branded cooking oil. Branded cooking oil came in smaller plastic bottles whilst “bulk” cooking oil came in large drums; and (ii) the customer base varied between the two products. Customers consuming bulk cooking oil were generally from lower incomes brackets whilst those consuming branded cooking oil were from higher income brackets (this was supported by data from a Nielson study).

5. On geographic boundary of the market, KPPU was of the view that it would be the whole of Indonesia, noting that the producers were able to sell their product outside the province in which the product was produced owing to the availability of a good transport distribution system in Indonesia.

6. Based on the identified relevant markets, KPPU was able to assess the impact of the price-fixing on consumers and apply remedies including fines.

(b) Market for insecticide

7. In 2007, the Competition Commission of Singapore (CCS) received information indicating that 6 pest control operators (namely Aardwolf Pestkare (S) Ptd Ltd; Alliance Pest Management Pte Ltd; Elite Pest Management Pte Ltd; Killem Pest Pte Ltd; PestBusters Pte Ltd; and Rentokil Initial (S) Pte Ltd) engaged in price-fixing through collusive tendering in the provision of termite control and treatment services using Agenda (a termiticide).

8. To define the product dimension of the market, it was necessary to decide whether three other termiticides that were approved for use by the colluding firms in Singapore should be considered as potential substitutes for the Agenda product.

9. Based on their various characteristics, the four types of pesticide could be split into two groups: repellent and non-repellent. The CCS considered that each group of pesticides were poor substitute for each other because –

- (i) Repellent termiticides kill termites on contact and act as a

repellent barrier preventing termites from re-entering a treated area. Due to soil movement, gaps may appear, breaking the barrier, allowing termites to gain entry through the gaps and leading to recurrence of termite infestations;

- (ii) Non-repellent termiticides (also known as colony management termiticides), on the other hand, do not kill or repel termites immediately upon contact. These termiticides have a slower reacting effect and work by allowing termites passing through the treated area to come into contact with the termiticide and return to the termite nest/colony to transfer the termiticide to other termites in the nest/colony before dying, leading to colony elimination.

10. The CCS went on to consider whether the two products within the “non-repellent” group, namely Agenda and another product called ‘Premise’, were close substitute of each other. Having taken into account a number of factors including the technique of application, manufacturer’s warranty and the existence of exclusive distribution agreements, the CCS considered that Premise and Agenda were not good substitutes and hence favoured the narrow approach of defining the relevant market as “termite control services using Agenda”.

Maximum pecuniary penalties

11. We have provided in LC Paper No. CB(1)1133/10-11(04) information on maximum pecuniary penalties under the competition laws of some of the G-20 economies. Relevant information on the remaining G-20 economies is set out in **Appendix**.

Advice sought

12. Members are invited to note the contents of the paper.

**Commerce and Economic Development Bureau
February 2011**

Appendix

Maximum pecuniary penalties under the competition laws of selected G-20 jurisdictions

I. Based on the turnover of the undertaking's global operation

<u>Jurisdiction</u>	<u>Maximum pecuniary penalty as % of turnover</u>
Brazil	30% of gross pre-tax revenue in the latest financial year.
India	For cartel conduct, three times the profits made or 10% of turnover for each year of the continuance, whichever is greater.

II. Based on the turnover of the undertaking's local operation

<u>Jurisdiction</u>	<u>Maximum pecuniary penalty as % of turnover</u>
Mexico	10% of annual sales during the previous fiscal year or 10% of the value of assets, whichever is greater.
Russia	15% of the violator's proceeds in the market where the violation occurred.
South Africa	10% of the firm's annual turnover in South Africa plus value of exports from South Africa in preceding financial year.
Turkey	10% of Turkish turnover in the preceding financial year.

III. Other arrangement

<u>Jurisdiction</u>	<u>Brief description</u>
Argentina	Fines of between 10,000 pesos and 150,000,000 pesos (about HK\$19,400 to HK\$291 million).
Indonesia	Penalties of up to 100 billion rupiah (about HK\$ 88 million) and 6-month imprisonment.
Saudi Arabia	Fines of no more than Saudi Riyals five million (SR 5,000,000 or about HK\$10.4 million), although the fine may be extended to no more than SR 10,000,000 (about HK\$20.8 million) if the violator has previously been convicted under the Competition Law.