

# Comparing the hypothetical case against the **sistic** case

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# Material differences

## The TicketSling case

- The CHIPSSA was a preferential agreement
- Shiok Entertainment was a large event promoter
- There is a booking fee cap under the SUPA
- CHIPS had divested TicketSling

## The **sistic** case

- The ATS was explicitly and totally exclusive
- 17 small event promoters were involved
- No booking fee caps under any exclusive contract
- SISTIC was still 65% owned by the Singapore Indoor Stadium

# SISTIC's grounds of appeal

- Dominance:
  - The two large venues have strong countervailing power
  - High market share doesn't matter when the market is contestable
  - No entry barriers if only its competitors are good enough
  - CCS failed to prove SISTIC's ability to profitably sustain prices above competitive levels
- Abuse:
  - CCS failed to prove actual harmful effects on total welfare
  - CCS failed to prove the counterfactual
- Not contested:
  - Market definition
  - Objective justifications

# CAB's judgment (1)

## *On dominance...*

*251. Having regard to the factors which the Board has considered, namely:*

*(i) SISTIC's large market share;*

*(ii) SISTIC's **ability to profitably sustain prices above competitive levels**;*

*(iii) lack of incentive on the part of venue operators and lack of countervailing buying power on the part of event promoters and ticket buyers; and*

*(iv) the Exclusive Agreements,*

*the Board is of the opinion that SISTIC holds a dominant position in the Relevant Market*

# CAB's judgment (2)

## *On countervailing power...*

*244. The Board agrees with the conclusion stated by the CCS at [6.6.22] of the Infringement Decision:*

*“Given the above, CCS concludes that, in Singapore, the event promoters and ticket buyers have no countervailing buyer power against SISTIC. The major venue operators **do have strong bargaining power (not ‘buyer’ power)**, but they have **weak incentives to exercise their power** with respect to price, and evidence suggests that they are indeed not exercising their power.”*

# CAB's judgment (3)

## *On the relevance of shareholding connections...*

239.... *In the present issue the Board is concerned with the commercial interests that TECL and SSC have in SISTIC which are **likely affect its decision to switch** to other ticketing service providers...*

...

241.*From a practical perspective, it seems to the Board that there is **hardly any evidence to support the claim that the credible threat of TECL and SSC to terminate the ASTA and ATS and switch to another ticketing service provider is realistic and not far-fetched.***

# CAB's judgment (4)

## *On abuse of dominance...*

*303. Effectively, SISTIC by these **two Exclusive Agreements** has secured for itself a large share of the Relevant Market for a long duration and effectively foreclosed any competitor from competing for a share of the ticketing services at the Esplanade venues and at the SIS.*

*...*

*307. It should be noted that **none of the Exclusive Agreements** have been successfully contested over the years, and each of them on expiry or soon thereafter had been renewed.*

# CAB's judgment (5)

## **Conclusion...**

*317. By reason of the matters mentioned above, the Board determines that the CCS has established that the Exclusive Agreements are explicitly exclusionary in nature and have led to substantial foreclosure effects on competition in the Relevant market, all to the detriment of the consumers, as market entry, market access and growth opportunities for existing or potential competition are stifled.*

...

*319. SISTIC's strategy and conduct by way of the Exclusive Agreements are intended to effectively restrict or foreclose competition on the Relevant Market or was capable of so doing, and amounted to an abuse of dominance*



# Outcome of the SISTIC case

- The CAB upheld CCS' finding that SISTIC had abused its dominant position
- The CAB reduced the financial penalties against SISTIC from S\$989,000 to S\$769,000
  - Involvement of senior management is usual for AOD cases
  - Genuine uncertainty as this is the first AOD case in Singapore
  - SISTIC had cooperated with CCS' investigation
- SISTIC had not appealed further to the High Court



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