

Weighing foreclosure against pro-competitive effects and efficiencies

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Exclusive arrangements are commonplace



Exclusive Distributor



Possible benefits of exclusive dealing

- Encourage dealers to promote a manufacturer's products more vigorously
- Encourage manufacturers to help dealers by providing services or information benefiting consumers
- Mutual stability of supply, thus allowing for longer term planning
- Allow risk sharing between seller and distributor of low demand
- Allow control of distribution quality
- Prevent inter-brand free-riding
- Economies of scale and scope
- More investments and innovation
- Stronger inter-brand competition

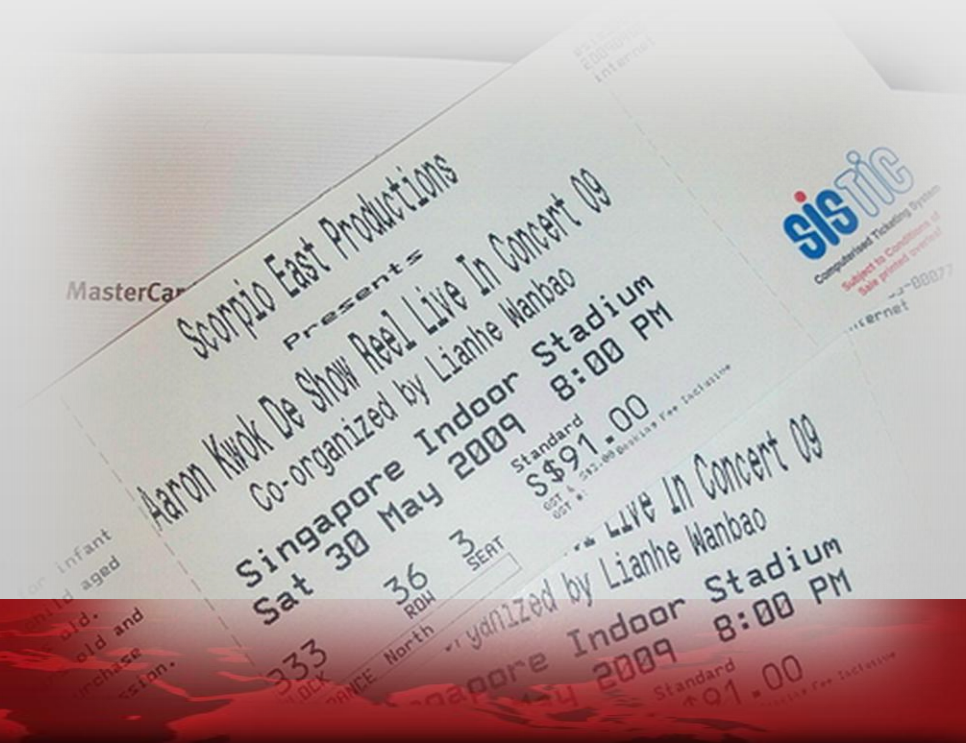
Vertical agreements exempt in Singapore

Vertical agreements

8. (1) The [section 34](#) prohibition shall not apply to any vertical agreement, other than such vertical agreement as the Minister may by order specify.
- (2) In this paragraph, “vertical agreement” means any agreement entered into between 2 or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain...
- CCS Guidelines: In general, vertical agreements have pro-competitive effects that more than outweigh the potential anti-competitive effects
 - Vertical agreements are not exempt from the section 47 prohibition against abuse of dominance

The **sistic** case

- The first and only abuse of dominance case in Singapore so far
- An exclusive dealing case involving ticketing services
- Decision upheld by the Competition Appeal Board (CAB) recently



Proof of foreclosure - the legal test

290. ...

*(a) It is sufficient for the competition authority to show a **likely effect**, and is not necessary to demonstrate an actual effect **on the process of competition**:*

*(b) If an effect, or likely effect, on restricting competition by the dominant undertaking is establish, the dominant undertaking can advance an objective justification. If it can adduce evidence to demonstrate that its behaviour produces **countervailing benefits** so that it has **net positive impact on welfare**. However, **the burden is on the undertaking to demonstrate an objective justification**.*

291. *The Board respectfully adopts this as the correct and proper test in determining the abuse of a dominant position.*

Proof of foreclosure - the economics

312.... *the Exclusive Agreements make **no economic sense** other than having the effect of foreclosing competition. The Exclusive Agreements with event promoters are not contestable... An **equally efficient firm** cannot overcome the competitive restraints generated by SISTIC's strategic conduct to compete for ticket buyers.*

...

318.*The Board finds that the Exclusive Agreements have **an appreciable adverse effect on competition** in Singapore or **do not have any net economic benefit**, other than, from SISTIC's point of view, foreclosing competition.*

- The **recoup-investment** defence
- the **customer-wants-it** defence
- the **volume-discount** defence
- the **winning-on-merit** defence
- the **natural-monopoly** defence

CCS guidelines on abuse of dominance

4.4 *In assessing cases of alleged abuse, the CCS may consider if the dominant undertaking is able to objectively justify its conduct... However, the dominant undertaking will still have to show that it has behaved in a **proportionate** manner in defending its legitimate commercial interest. It **should not take more restrictive measures than are necessary** to do so. The CCS may also consider if the dominant undertaking is able to demonstrate any benefits arising from its conduct. It will still be necessary for a dominant undertaking to show that its **conduct is proportionate to the benefits** claimed. Such conduct will not be allowed if its primary purpose is to harm competition.*



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