

Competition Law Issues Affecting Intellectual Property Transactions

Tuesday, 17 October 2006, 1.45pm to 5.30pm

Who Should Attend

- Lawyers who practise competition law or intellectual property law
- In-house counsel/Legal Officers who deal with competition or intellectual property law issues

About this Seminar

This seminar, presented by the Law Society's Intellectual Property Committee, aims to provide a timely discussion on the implications of the competition law regime on intellectual property transactions. Starting with a quick introduction to the key provisions of the Competition Act 2004, the session then delves in greater detail into the application of the Competition Act to intellectual property rights, as well as discusses the concept of market definition in the context of intellectual property with reference to some recent cases. There would then be a detailed examination of the Microsoft Case in the EU and the application of EU competition laws to intellectual property issues, before the seminar rounds off with a panel discussion cum question & answer session.

Time	Topic
1.45 to 2.00pm	Registration and Refreshments
2.00 to 2.10pm	Introduction by Chairperson <i>Mr. Daniel Koh – Partner, M/s Rajah & Tann</i>
2.10 to 2.30pm	Introduction to Key Provisions of the Competition Act <i>Ms. Yew Woon Chooi – Partner, M/s Rodyk & Davidson</i>
2.30 to 3.15pm	The Application of the Competition Act 2004 to Intellectual Property Rights: To what extent do the statutory prohibitions against anti-competitive conduct in the <i>Competition Act 2004</i> apply to the commercial transactions of IP owners? This presentation will outline the impact of the Act and the Guideline issued by the CCS on various aspects of IP ownership and exploitation - including intellectual property licensing agreements, patent pools, and refusals to licence intellectual property rights. Participants are encouraged to submit sample licensing agreements and standard contractual clauses relating to intellectual property issues to the organisers ahead of the presentation for discussion and evaluation purposes. <i>Assistant Professor Burton Ong – Faculty of Law, National University of Singapore</i>
3.15 to 3.30pm	Break
3.30 to 4.15pm	Market Definition: 1. Market definition in general 2. Market definition and intellectual property 3. Is market definition really different for high tech industries? 4. Leading cases involving intellectual property - did market definition make a difference? <i>Dr. Ian McEwin – Chief Economist of the Competition Commission of Singapore; Adjunct Professor of Law, National University of Singapore</i>
4.15 to 5.00pm	Case Study – Microsoft Case in the EU and Application of EU Competition Laws to Intellectual Property Issues: After a five-year investigation the European Commission delivered its Decision in the case COMP/C-3/37.792 Microsoft, finding that the US software company has violated the EU Treaty's Competition Rules by abusing its near monopoly in the PC operating system market. The European Commission held that Microsoft has been abusing its dominant position in the PC operating system market by refusing to supply competitors (in the work group server operating system market) interface information, necessary for their products to interoperate with Windows, and hence to compete viably in the market. Based on this findings the Decision ordered Microsoft to disclose, within 120 days, complete and accurate interface information, which would allow rival vendors to interoperate with Windows and to make that information available on reasonable terms. In addition the European Commission found that Microsoft has been abusing its market power by tying the Windows Media Player (WMP) - a product facing competition - in its ubiquitous Windows operating system. At present this Decision is on appeal to the Court of First Instance. The order to disclose complete and accurate interface information leads to some interesting questions about the interface between EU Competition Law (particularly article 82 lit.b EC) and Intellectual Property Law. This presentation will mainly focus on three questions: 1. Has Microsoft actually infringed article 82 EC by refusing to supply communication protocols to competitors and to allow the use of that proprietary technology in competing work group server operating systems? 2. Is a Decision imposing limitations to intellectual property rights of dominant firms an appropriate remedy? 3. Is this Decision fully consistent with the Community's international obligations, in particular with those resulting from the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)? The basic concepts of the EU Competition Law like "relevant market", "dominant position", "network effect", "applications barrier to enter" etc. will be discussed and the relevant decisions of the European High Court of Justice (e.g. Commercial Solvents, Telemarketing, Magill) will be presented. <i>Dr. Arnold Gerscha – Gerscha RechtsanwaltsGmbH</i>
5.00 to 5.30pm	Question & Answer <i>Moderator: Mr. Edward Tay – Director, Nanyang Law LLC</i>

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About the Speakers (in speaking order)

Ms. Yew Woon Chooi – Partner, M/s Rodyk & Davidson

Yew Woon Chooi is a partner in Rodyk & Davidson's Intellectual Property and Technology Department. She is also a member of Rodyk's Competition Law Practice.

Woon Chooi graduated from the National University of Singapore. Prior to coming into private practice, she was working in the Legal Service as an Assistant Registrar in the Registry of Trade Marks and Patents, and at the Official Assignee and Public Trustee's Office. Her practice includes advice on commercial transactions, exploitation and protection of intellectual property (including copyright, trade marks, designs, patents and trade secrets) throughout the world, franchising, licensing and technology transfer, with particular emphasis on cross border transactions. She also advises on legal issues in relation to information technology, telecommunications, bio-technology and e-commerce. She is a member of the Law Society's Intellectual Property Committee, and the Chairman of the Competition Sub-Committee within the Intellectual Property Committee.

Woon Chooi has given numerous talks, and published numerous articles relating to intellectual property. She is recognized as a leading IP Practitioner in the Asialaw Leading Lawyers' survey 2006, and the International Who's Who of Trade Mark lawyers.

Mr. Burton Ong – Assistant Professor, Faculty of Law, National University of Singapore

Burton Ong, LL.M. (Harv.), BCL (ECL) (Oxon), LL.B. (NUS), is a member of the Faculty of Law at the National University of Singapore, where he teaches Contract Law, Intellectual Property Law and Competition Law. The recipient of a Lee Kuan Yew Gold Medal from the NUS Law Faculty and the Vinerian Scholarship from Oxford University, where he was also awarded the Monckton Chambers Prize for Competition Law and the Ralph Chiles CBE Prize in Intellectual Property, his current research interests include the anti-competitive consequences of expanding intellectual property protection to include industry standards and other new subject matter.

He is a Fellow of the Singapore IP Academy where he teaches Patent Law and Antitrust Law in its Graduate Certificate in Intellectual Property (GCIP) Programme, and has given public seminars to civil servants, legal professionals and non-lawyers in and around Singapore. One of his current projects is a chapter in a book, to be published shortly by Cambridge University Press, entitled "The Interface between Competition Law and Intellectual Property Law in Singapore".

Dr. Ian McEwin – Chief Economist of the Competition Commission of Singapore; Adjunct Professor of Law, National University of Singapore

Ian McEwin is currently Chief Economist of the Competition Commission of Singapore and Adjunct Professor of Law, National University of Singapore. Prior to that he was Principal Economist, Economics Division, Ministry of Trade and Industry, Singapore where he advised on the policy, design, drafting and implementation of Singapore's new competition law. He has been a Director, Law and Economics Consulting Group (LECG) and a Partner in Case Associates (London). He has been an expert witness in major competition and other litigation in Australia and New Zealand.

He has a Ph.D in Economics and a Bachelor of Laws (1st Class Honours), both from the Australian National University and is admitted as a lawyer in the Australian Capital Territory. He has been a Member of the International Antitrust and Foreign Competition Law Committee of the American Bar Association, the Trade Practices Committee of the Business Law Section of the Law Council of Australia, the Law Committee of the Australian Institute of Company Directors and the Advisory Group of the Australian Law Reform Commission's Reference on the Adversarial System. Ian has been recognised as a leading competition economist by Global Competition Review.

Dr. Arnold Gerscha, M.B.L.-HSG – Gerscha RechtsanwaltsGmbH

Dr. Arnold Gerscha, M.B.L.-HSG was born in Graz, Styria, Austria, and has picked up a law degree from Karl-Franzens University in Graz and the master degree in International and European Business Law from the University St. Gallen, Switzerland. Furthermore he passed courses at the Academy of Administration in Vienna, the École Nationale D'Administration in Paris and the Harvard Conflict Management Group in Harvard.

His professional journey took him from working as a civil servant for the Republic of Austria (Supreme Administrative Court, Ministry for Economic Affairs, Attorney General Chambers) to being a senior partner with an international law firm. From 2002 to 2004 he was posted in Singapore as managing partner of the Singapore Office. In 2004 he set up Gerscha RechtsanwaltsGmbH in Vienna, in 2006 argelaw Pte. Ltd., a foreign law firm in Singapore.

Dr. Gerscha is admitted to the Austrian Bar and as a foreign lawyer in Singapore. Moreover he undertakes to disseminate the knowledge and competence he has acquired by giving lectures at, among others, the Academy of Administration in Vienna, also being a member of the board of examiners at the Chancellor's Office, the University of Applied Arts in Vienna and the Tongji University in Shanghai. Dr. Gerscha is author of many commentaries and publications, dealing with EC Law, WTO Law, Trade Law, M&A etc. The main areas of his practice are Competition Law, Business Law, M&A, EC Law, WTO Law, Public Procurement, State Aid and Subsidies, Litigation and Arbitration, Constitutional and Administrative Law and State Liability.

About the Chairperson

Mr. Daniel Koh – Partner, M/s Rajah & Tann

Daniel Koh is a partner in Rajah & Tann's Intellectual Property, Technology, Entertainment and Communications (ITEC) department. His main areas of practice are dispute resolution and intellectual property. He was called to the Singapore Bar in 1994 after graduating from the Law Faculty of the National University of Singapore. He also graduated from Columbia University with a Master of Laws degree in 1997 as a Harlan Fiske Stone scholar for superior academic performance.

Daniel teaches at the Practice Law Course conducted by the Board of Legal Education. Daniel is a member of the Law Society's Intellectual Property Committee and the Law Society's Continuing Practice Development Committee. He is also an executive committee member of the Licensing Executives Society (Singapore). Daniel is the editor of *The Law and Practice of Injunctions*



THE LAW SOCIETY
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The Law Society of Singapore's Intellectual Property Committee
Proudly Presents

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in Singapore, published by Sweet & Maxwell Asia in 2005 and has also co-authored the chapters on Intellectual Property, Defamation and Employment Disputes.

Daniel undertakes a broad range of work including advising on intellectual property, electronic commerce and communications, sports, entertainment and competition law. He has also been instructed as the lead counsel in several arbitrations including an arbitration administered by the ICC last year.

About the Moderator

Mr. Edward S Tay – Director, Nanyang Law LLC

Edward holds a Master of Business Administration degree and a Bachelor of Laws (Honours) degree, both from the National University of Singapore. Edward has more than 10 years' experience spanning across corporate finance, technology transfer and intellectual property. He has spoken at numerous conferences and seminars on a variety of topics on corporate law and corporate finance. Edward's main areas of practice are equity capital markets and corporate restructuring. He is familiar in handling joint ventures, cross-border mergers and acquisitions and venture capital investments. Since the year 2000, Edward has led negotiations in numerous mergers and acquisitions, joint venture and venture capital transactions. Among the more notable transactions he has undertaken are a US\$3.5 billion joint venture investment in a foundry in Singapore on which he worked with foreign attorneys in 2001, a US\$10 million acquisition of a spin-off company of a national research institute, a management buy-out of the Singapore subsidiary of a company listed on the New York Stock Exchange and a \$35 million initial public offering of an unlisted public company in 2002 as well as the purchase of a significant stake in a Singapore listed company and the purchase of a prestigious hotel in Vietnam, both in 2005.

Venue: FTSE Room Level 9, Capital Tower 168 Robinson Road Singapore 068912 (Registrations will begin at 1.45pm)	Fee: S\$ 63.00 (Law Society Members, SCCA Members & employees of Singapore law practices) S\$ 105.00 (others) (includes 5% GST, materials & refreshments)
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REGISTRATION FORM

Name (Dr/Mr/Mrs/Miss/Mdm): _____

Name and Address of Law Firm/Law Corporation /Organisation: _____

Date of Admission: _____ Number of years in Practice: _____

AAS No: _____ NRIC/Passport No: _____
(Law Society Members) (Law Society Associate Members & Non Law Society Members)

Position in Law Firm/Law Corporation/Organisation: _____

Tel number: _____ Fax number: _____ Email: _____
(Email required for confirmation of registration)

Mode of payment: **GIRO DDA** ☐ **Cheque** ☐ **Credit Card** ☐
(Only for law practices with GIRO accounts with the Law Society)

Credit card: Mastercard/Visa No. _____ Card Expiry Date: _____ (MM/YY)

Cardholder's Name: _____ Signature: _____
Kindly note that an administration charge of 3% is applicable for payments made via credit card.

Law Society Member ☐ **Employee of Singapore law practice** ☐ **SCCA Member** ☐ **Non-member** ☐

Cheque payments should be made payable to "The Law Society of Singapore" & arrive at our office with the completed registration form on or before the closing date, **Tuesday, 10 October 2006**:

The Training & CPD Department
The Law Society of Singapore
39 South Bridge Road (S) 058673

For further enquiries, please contact
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E-mail: cpd@lawsoc.org.sg
CPD Portal: www.lawsociety.org.sg/CPD
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REGISTRATION, REFUND & CANCELLATION POLICY

- Registrations will be confirmed upon receipt of full payment accompanied by a duly completed registration form.
- The Organisers reserve the right to refuse to register or admit any participant, and to cancel or postpone the course.
- Equivalent substitute delegates are welcomed, subject to the Organisers being notified at least 2 working days before the course of the details of the substitute delegate.
- The Organisers reserve the right to impose a cancellation fee in the event any registrant wishes to withdraw from the course after the registration closing date.
- The Organisers will not entertain any request for a refund of fees made within 24 hours before course commencement. However a confirmed registrant who has paid in full the course fees but does not turn up for the course will be entitled to collect a set of the materials provided.