Secret market-splitting breaks the law

When competing businesses engage in market sharing, they deliberately distort open and fair competition to the detriment of consumers.

Market sharing is illegal under the Competition Ordinance. In a market sharing arrangement, competing companies may secretly agree to divide or allocate customers, suppliers or geographic areas among themselves rather than making independent decisions as to where to operate, who to source from and which customers to pursue. They may also agree not to compete for each other's customers or not to enter or expand into a competitor's market. As a result, these companies each have allotted portion of the market without facing any competition, depriving consumers of choices and the best prices or quality that should emerge in an openly competitive market.

The scourge of market sharing is not limited to any particular sector. Here we share two overseas cases in which consumers suffered because the companies involved profiteered by participating in market sharing cartels. These lawbreakers were eventually found guilty in their respective countries.

Refusal to sell to rival's clients

Between May and November 2011, two pharmacies Tomms and Lloyd's in Britain entered into a market sharing agreement not to supply prescription drugs to each other's existing customers who were care homes in areas of the northwest and southwest of England. As a result, residents in these homes were denied fairly priced prescription drugs that could have resulted from open competition.

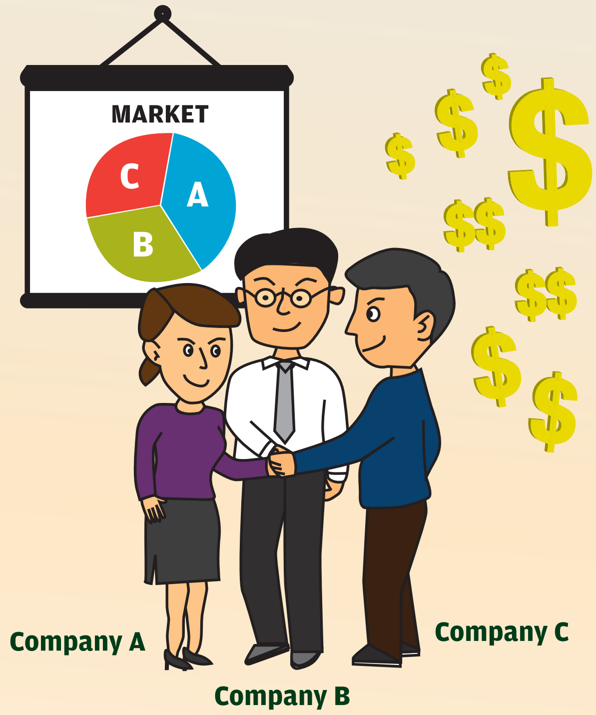
The Office of Fair Trading (OFT) in Britain was tipped off by Lloyd's about this cartel and launched an investigation into the alleged malpractice. The two companies admitted to entering into a cartel to reduce competition for supplies to care homes, which looked after some of the most vulnerable members of society. The OFT considered this type of market sharing a serious breach of competition law. Consequently, OFT fined Tomms' parent company Hamsard £387,856. Because Lloyd's informed OFT of the agreement in a leniency application, it was not fined.

Multinational market-splitting cartel

Some of the world's largest conglomerates were found guilty of illegal market allocation activities by the European Commission and were subject to fines totaling 67.6 million euros in 2009. This case is a typical market sharing cartel by geographical location. The product at the centre of the cartel is power transformer used to modify the voltage in electricity transmission networks.

The companies involved included Siemens in Germany, ALSTOMS SA in France, ABB in Switzerland and Fuji Electrics, Hitachi and Toshiba in Japan. Between 1999 and 2003, top managers from these companies met secretly in luxury hotels in different parts of the world to 'reaffirm a gentlemen's agreement', the European Commission's investigations found. Under the agreement, the cartel's Japanese members agreed not to sell their power transformers in Europe while the parties in Europe would not sell their transformers in Japan.

This market sharing arrangement not only deprived consumers and taxpayers in the relevant markets of the opportunity of using fairly priced transformers, they were also denied access to transformers that might be of superior quality to the existing ones. Siemens was treated with leniency and spared from the fines because it had informed the European Commission of the cartel. All the other companies were heavily fined.



Did you know?

Under the Competition Ordinance, the Commission has a range of investigation and compulsory evidence gathering powers including requiring a business/ person to provide documents and information as well as seeking a search warrant to enter and search premises for evidence. It may also require a person to attend before the Commission to answer questions. Failure to comply without reasonable excuse is a criminal offence punishable by fines of up to HK$200,000 and imprisonment for one year.

What happens abroad?

When carrying out a search of premises the Competition Commission can seal offices and filing cabinets in order to prevent evidence from being tampered with when the investigation team is absent e.g. at night. The European Commission (EC), the body responsible for enforcing European competition law, has similar powers. In 2008, it imposed a hefty fine of 38 million euros on E.ON, an energy company, for the breach of a plastic seal in E.ON's premises which was affixed to secure the documents collected in the course of an unannounced inspection conducted in May 2006. The EC said such decision sent a clear message to all companies that it was not worth obstructing the regulator's investigations.

Win a study trip to Singapore

Secondary four/ five students (or equivalent) and their teachers can now enter the "Don't Cheat. Compete" Advocacy Contest by forming teams to create stories that illustrate the benefits of competition law. The top three winning teams will go on a study tour to Singapore.

Act fast, registration ends on April 13, 2017.