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English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Global Forum on Competition**

**THE RELATIONSHIP BETWEEN COMPETITION AUTHORITIES  
AND SECTORAL REGULATORS**

**Contribution from Singapore**

-- Session II --

*This contribution is submitted by Singapore under Session II of the Global Forum on Competition to be held on 17 and 18 February 2005.*

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## SINGAPORE'S COMPETITION ACT 2004

### 1. Background

1. Singapore enacted its Competition Act 2004 which came into effect on 1 January 2005. The law was passed in the Singapore Parliament on 19 October 2004. It was drafted taking into account feedback received from two rounds of public consultation. The consultation documents and submissions received can be found at the website of the Competition Commission of Singapore ([www.ccs.gov.sg](http://www.ccs.gov.sg)).

### 2. Key Features of the Competition Act

2. In the formulation of the law, Singapore was conscious to incorporate international best practices but to take into account that the Singapore economy is small and open.

3. The law establishes a new statutory body, the Competition Commission of Singapore ("CCS"), under the purview of the Ministry of Trade & Industry, to administer and enforce the competition law. The main provisions of the law cover the following areas:

- prohibited activities;
- scope of application;
- enforcement;
- appeals; and
- offences.

4. Prohibited activities: The law prohibits the following:

- Anticompetitive practices and agreements – Section 34 of the law prohibits practices and agreements which prevent, restrict or distort competition in Singapore. The section contains an illustrative list of such agreements, including agreements between competing firms to fix prices, reduce the quantity of the goods and services sold, or share markets. The CCS, in enforcing section 34, will focus principally on agreements that have an appreciable adverse effect on competition in Singapore.
- Abuse of dominance – The law does not prohibit firms from being dominant, including monopolies. The law, however, prohibits dominant firms from abusing their dominance in ways that are anticompetitive and which work against long-term economic efficiency (section 47).
- Mergers and acquisitions (M&As) – Not all M&As have anticompetitive effects. Being a small open economy, highly-concentrated markets are at times inevitable. Thus, only M&As which substantially lessen competition and have no offsetting efficiencies are prohibited (section 54). There is no requirement for prior notification of M&As.

5. Scope of application: The law does not apply to the Singapore Government or its statutory boards or any other entity acting on their behalf. The intent of competition law is to regulate the conduct of market players, and not fetter the discretion of Government in its policy-making and performance of public functions. Thus, the law will only apply to commercial and economic activities carried out by private sector entities in all sectors, regardless whether the entity is foreign-owned, Singapore-owned or Government-owned.

6. There are however several exclusions from the law, as set out in the Third and Fourth Schedules of the law:

- services of general economic interest;
- compliance with legal requirements;
- avoidance of conflict with international obligations;
- on grounds of public policy;
- vertical agreements;
- goods and services regulated by other competition law; and
- mergers approved under any other law relating to competition.

7. Specifically, the following activities are excluded: supply of piped potable water; supply of wastewater management services; supply of scheduled bus services; supply of rail services; cargo terminal operations; provision of armed security services; media sector; clearing house activities; provision of gas and electricity services; provision of telecommunications services; and supply of ordinary letter and postcard services.

8. Some of these exclusions are based on public interest considerations such as national security and defence interests. The other exclusions are for sectors or activities which already have sectoral competition frameworks. Many of these sectors have only been recently liberalised and in transition to a more competitive market environment. The regulation of these sectors – which involve technical matters and require industry knowledge and expertise – is better done by the respective sectoral regulators at this point of time. Cross-sectoral competition issues will however be dealt with by the CCS, in consultation with the sectoral regulators.

9. The scope of the sectoral exclusions will be reviewed, taking into account market developments, after the law has come into force for some time years.

10. Enforcement: The CCS will have the following powers:

- Power to investigate – The CCS may conduct an investigation if there are reasonable grounds to suspect an infringement of the law. The CCS will have the necessary powers to gather evidence.
- Power to adjudicate – Upon completing its investigation, the CCS may make a decision as to whether the law has been infringed. The CCS will notify the parties affected by its decision and provide opportunity for the parties to make representations.

- Power to sanction – The law provides for sanctions ranging from financial penalties to structural remedies. Financial penalties up to a maximum amount of 10% of the turnover of the Singapore business of the party that infringed the law can be set. This is necessary so as to act as a strong deterrent.

11. Rights of private action: Besides financial penalties, parties who infringed the law are liable to be sued by parties who suffered loss or damage directly as a result of the infringement. They can only do so after the CCS has made its determination and the appeal process exhausted. This serves as an additional deterrent. Normal court practices would apply, and the onus would be on the parties seeking damages to show that actual losses had resulted from the prohibited activities.

12. Appeal process: The law provides for an independent appeal process. A separate body, the Competition Appeal Board (CAB) will be established to hear appeals against the decisions of the CCS. The CAB will be an independent body comprising members appointed by the Minister for Trade & Industry. Parties may make further appeals against decisions of the CAB to the High Court, and thereafter to the Court of Appeal, but only on points of law and the amount of the financial penalty.

13. Offences: The law also provides for criminal sanctions for parties failing to comply with a requirement of the CCS in an investigation, or to destroy documents, or to provide false information.

## **2.1 Phased Implementation**

14. The law is implemented in a phased approach:

- Phase I: On 1 January 2005, only the provisions establishing the CCS came into force.
- Phase II: On 1 January 2006, the provisions on anticompetitive practices and agreements, abuse of dominance, enforcement, appeal process and other miscellaneous areas will come into force.
- Phase III: The remaining provisions, i.e. those relating to M&As, will be gazetted to come into force at a later date (likely 2007).

15. This will allow the CCS time to build up its resources and capabilities.

## **2.2 Press release on launch of the CCS**

16. The press release issued by the Ministry of Trade & Industry on the launch of the CCS is attached for information.

**PRESS RELEASE**  
**MINISTRY OF TRADE AND INDUSTRY LAUNCHES**  
**COMPETITION COMMISSION**

1. A new statutory board, the Competition Commission of Singapore (CCS), will be set up on 1 January 2005, under the Ministry of Trade and Industry, to administer and enforce the Competition Act 2004.
  2. The functions and duties of the CCS shall be to:
    - (a) remove or limit practices that have adverse effect on competition in Singapore;
    - (b) maintain and enhance efficient market conduct and promote competition in markets in Singapore;
    - (c) act internationally as the national body representative of Singapore in respect of competition matters; and
    - (d) advise the Government or other public authority on national needs and policies in respect of competition matters generally.
- The CCS will have powers to investigate and adjudicate anticompetitive activities. It will also have the powers to impose sanctions.
3. The prohibition provisions in the Competition Act 2004 will come into effect in phases, starting from 1 Jan 2006. This is to allow time for the CCS to build up its resources and capabilities to perform its enforcement duties when the prohibition provisions come into effect.
  4. The board members of the CCS are in the enclosed list. Mr Lam Chuan Leong, who is the Second Permanent Secretary (Special Projects), Ministry of Finance, will be the Chairman of the CCS. Mr Ng Wai Choong, Deputy Secretary (Industry), Ministry of Trade and Industry, will concurrently hold the position of Chief Executive Officer of the CCS.
  5. For more information, please visit CCS' website at <http://www.ccs.gov.sg>.

**Ministry of Trade and Industry**  
**30 December 2004**

**APPOINTED MEMBERS OF THE  
COMPETITION COMMISSION OF SINGAPORE**

- a. Mr Lam Chuan Leong - Chairman  
Second Permanent Secretary (Special Projects)  
Ministry of Finance
- b. Mr Ng Wai Choong - Chief Executive Officer  
Deputy Secretary (Industry)  
Ministry of Trade & Industry
- c. Mr Lee Seiu Kin  
Second Solicitor-General  
Attorney-General's Chambers
- d. Assoc Prof Tan Cheng Han  
Dean, Faculty of Law  
National University of Singapore
- e. Mr Edward Robinson  
Principal Economist, Monetary Policy Division  
Monetary Authority of Singapore
- f. Dr Phang Sock Yong  
Associate Dean, School of Economics and Social Sciences  
Singapore Management University
- g. Mr Bobby Chin Yoke Choong  
Managing Partner - KPMG Singapore  
Member of KPMG Asia Pacific Board and KPMG International  
Council

**LAM CHUAN LEONG**  
**CHAIRMAN, COMPETITION COMMISSION OF SINGAPORE**

Lam Chuan Leong, 56, is also the Second Permanent Secretary (Special Projects) at the Ministry of Finance, a post he assumed on 1 January 2004. He began his career in the Administrative Service in 1970.

He has held several senior appointments in the civil service, including as Permanent Secretary in the then Ministry of Communications and Information, Ministry of Trade and Industry, Ministry of National Development, and the then Ministry of the Environment.

He was awarded the Public Administration Medal (Gold) in 1990.

A President's Scholar, Mr Lam has a Masters in Business Administration/Studies from Harvard University, USA.

**NG WAI CHOONG**  
**CHIEF EXECUTIVE OFFICER, COMPETITION COMMISSION**  
**OF SINGAPORE**

Ng Wai Choong, 39, is currently the Deputy Secretary (Industry), Ministry of Trade and Industry, having held this appointment since 2002. He began his career in the civil service in 1991.

Mr Ng first worked in the Ministry of Finance and subsequently in the Ministry of National Development before being posted to the Ministry of Trade and Industry. Presently, he is a member of the Board of the Health Sciences Authority and the Singapore-MIT Alliance Governing Board. He also holds directorships in several other organisations.

In 1990, he graduated with a Bachelor of Economics from the University of Tokyo, Japan.