ANNEX A

PROHIBITED ACTIVITES

ANTI-COMPETITIVE AGREEMENTS

1. Not all anti-competitive agreements have harmful effects. Some have beneficial outcomes. We should only focus on anti-competitive agreements that have appreciable adverse effect on markets in Singapore. There are in general two categories of anti-competitive agreements.

2. Horizontal agreements are made between undertakings at the same level of the value chain[1], and may be agreements on price-fixing, limit or control of production, and market sharing agreements. Horizontal agreements that have as their object or effect the prevention, restriction or distortion of competition in markets within Singapore will be prohibited. However, there are provisions to allow for exclusions (*cl. 35*).

3. Vertical agreements are agreements between undertakings along the same value chain, for example, between manufacturer and distributor. In general, vertical agreements should be allowed as firms in such agreements have a mutual interest in ensuring that as many goods and services are sold to consumers as possible. Relative to horizontal agreements, most vertical agreements have pro-competitive effects that more than outweigh the potential anti-competitive effects. Therefore, vertical agreements will in the first instance be excluded from the scope of competition law (*paragraph 8, Third Schedule*).

4. However, there may be cases of vertical agreements where the potential anti-competitive effects outweigh the pro-competitive effects. In such cases, the Minister may issue an order to declare that the competition law will apply to a certain type of vertical agreement (i.e. such types of agreement will now be subject to the law).

5. Vertical agreements involving a dominant undertaking, or an undertaking with a high degree of market power, also have potential for abuse. Agreements involving such undertakings will be covered by the prohibition against abuse of dominance (*cl. 47)*.

6. Exemptions: *Cl. 36 and 38* empower the Competition Commission to grant exemptions for anti-competitive agreements if they improve production or distribution or promote economic and technical progress without unduly restricting competition (*cl. 41*). Exemptions may be granted for specified periods. The Competition Commission may also attach certain conditions to the exemptions.

---

[1] For example, agreements between manufacturer and manufacturer; or distributor and distributor. This contrasts with vertical agreements (see paragraph 3 of this Annex).

7. Void agreements: Any agreement that is prohibited will be automatically void (*cl. 34(3)*). The possibility that their agreements may turn out to be unenforceable could be a more effective deterrent for undertakings than any sanction under the competition law.

ABUSE OF DOMINANCE

8. The draft Bill does not prohibit dominance or market power. However, it prohibits dominant undertakings from abusing such dominant position to adversely impact competition in the market. Such abusive activities would include predatory pricing, where a dominant undertaking sets prices at such a low level to sacrifice profits in the short-run, in order to eliminate competition and raise prices and profits in the longer term.

9. *Cl. 47* takes into account situations where more than one undertaking enjoy dominance collectively.

MERGERS & ACQUISITIONS (M&AS)

10. Undertakings may decide to merge so that the newly merged undertaking could exercise market power and abuse its market power, or to reduce the number of undertakings in the industry such that it facilitates collusive behaviour. Such M&As could substantially lessen competition in Singapore and should be prohibited.

11. Being a small open economy, highly concentrated markets are at times inevitable, due to economies of scale and scope. M&As may be necessary for market rationalisation. Therefore, only M&As that substantially lessen competition and do not have off-setting efficiency benefits will be prohibited.

12. *Cl. 54 – 60* cover mergers. The Competition Commission will issue guidelines on what types of M&As it will consider to be of concern. The guidelines will be developed after the enactment of the competition law. As an indication, some considerations could be market contestability (i.e. whether there are high or low barriers of entry to the market); size of companies; and, size of market shares.

. . . . . .