ANNEX C

THE RELATIONSHIP BETWEEN COMPETITION LAW AND INTELLECTUAL PROPERTY RIGHTS

1. Our intellectual property (IP) laws[1] may provide inventors, creators, IP owners and undertakings with market power over a newly created product, process, work, mark or design during which the IP can be exclusively exploited. For example, Singapore's Patents Act provides for a 20-year period from the date of filing for the patent holder to exclude others from making, using or selling his patented invention.

2. The objective of the IP laws is to provide greater incentive for innovation and to allow an efficient transfer of that knowledge to others. Intellectual property rights (IPR) allow the inventor or creator to recover the resources and investments made while developing the IP. For some types of IPR, the grant of the right is given in exchange for making the innovation public. For example, a patent holder discloses his know-how in the patented invention publicly, and the invention is free for all to use and build upon once the patent period expires. Without IP laws, many new inventions would not be disclosed, let alone invented. The pharmaceutical industry is a good example of how IP laws can encourage the discovery of new medicines.

TENSIONS BETWEEN IP LAW AND COMPETITION LAW

3. IP laws and competition law can affect each other. Often there are tensions, which relate to market power and dynamic efficiency[2].

4. As stated earlier, IPR can convey some degree of market power to the IP developers. However, competition law is designed to constrain the use of market power. If competition law reduces the use to which IPRs can be put, then the rewards from exploiting the IPR can be lessened. Research and innovation could be reduced as a result and so dynamic efficiency (i.e. efficiency over time) will suffer.

5. However, situations can also arise where undertakings abuse their IPR for unfair commercial advantage that is detrimental to overall market efficiency. As an illustration, a patent holder of a new drug could, for example, insist as a condition for the licence, that the licensee

[1] IP laws refer to the Patents Act, Copyright Act, Trade Marks Act, Registered Designs Act, Layout Designs of Integrated Circuits Act, Geographical Indications Act and the common law protection of Confidence.

[2] Dynamic efficiency is contrasted with allocative efficiency. Allocative efficiency is concerned with optimal efficiency in a static situation. Dynamic efficiency is concerned with optimal efficiency over time.

must purchase ordinary packaging material from its sister company at a marked-up price. By doing so, the IP rights holder could have adversely affected competition in another market by unfairly leveraging on his IPR.

6. Singapore's IP laws provide some safeguards to the possible anti-competitive effects arising from an abuse of IPR. Section 51 of the Patents Act, for example, prohibits certain restrictive licensing conditions such as prohibiting the licensee from using a competitor's patented product/process. Anti-competitive behaviour is prohibited in the Layout Designs for Integrated Circuits Act. The Copyright Tribunal, set up under the Copyright Act[3], has the mandate to arbitrate between licensors and licensees.

TREATMENT OF IP UNDER COMPETITION LAW

7. IP laws and competition law are not necessarily inconsistent; rather they can work together to help develop Singapore into a knowledge economy. Competition law, by helping to promote efficient markets, ensures that undertakings innovate to the extent dictated by consumers and other market pressures. The rewards to innovation provided by IPR should thus be maintained. The specific rights provided by IP laws, and the business advantages these confer, would thus not in any way be circumscribed by competition law.

8. However, IPR is a reward to innovation for a specific invention or creation, and should not become a tool for engaging in anti-competitive activities. Where the exercise of the IPR is anti-competitive, it would be subject to competition law.

9. In considering whether a business activity involving the exercise of IPR would have any competition concerns, the Competition Commission would adopt an "economics-based cost-benefit analysis" or "rule of reason" approach. This means that the Competition Commission would take a holistic view and look at the overall net welfare effects of the activity to decide whether a particular use of an IPR reduces welfare in Singapore.

10. To help provide further clarity, the Competition Commission will develop guidelines after the enactment of the competition law on how it would view IPR-related business activities.

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[3] Patents Act 2002 s.51 (1), Copyright Act Part VII, Layout-Designs of ICs Act, s.27(1).