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# Competition Bill Consultation

## Singapore

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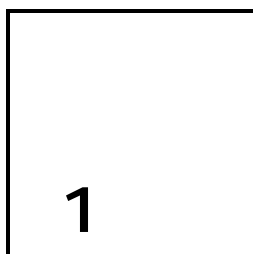
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## Contents

1. EXECUTIVE SUMMARY .....	I
2. STATEMENT OF INTEREST .....	III
3. COMMENTS .....	IV
4. CONCLUSION .....	VIII



## EXECUTIVE SUMMARY

NERA Economic Consulting welcomes plans by the Ministry of Trade and Industry (MTI) to introduce national competition law in Singapore.

As an economic consulting firm, we limit ourselves to commenting on the economic aspects of the Competition Bill.

The Competition Bill encompasses three broad classes of anti-competitive behaviour: (i) anti-competitive agreements, (ii) abuse of market power, and (iii) anti-competitive mergers.

As regards agreements, the general distinction between horizontal and vertical agreements is useful and practical. The proposal for (individual and block) exemptions is also sensible. As regards vertical agreements, there are some cases, e.g. where a manufacturer fixes prices to be set by retailers, that should not, in our view, be excluded from the application of cl. 34.

As regards abuse of dominance, we support that cl. 47 encompasses dominance by a single economic undertaking as well as by a group of undertakings.

As regards mergers, we consider that the test of a “substantial lessening of competition” (cl. 54) provides a good framework in which the competition policy and antitrust economics of mergers can be assessed.

In examining effects on competition it is appropriate to consider countervailing effects such as cost savings and efficiencies.

We share the view that intellectual property (IP) protection is broadly compatible with competition law. In considering whether in a particular case the protection of IP rights inhibits competition, the practice in other jurisdictions is to treat IP rights in the same

way as other property rights.

Any guidance from the Competition Commission in relation to substantive issues as well as procedure, to help businesses to prepare for the new rules, must be welcomed.

We have sympathy with the desire to take into account the specific circumstances of the Singapore economy in formulating Singapore's competition legislation. In this context we do however consider that it should not automatically be assumed that the relevant geographic market is restricted to Singapore. If firms in Singapore face significant constraints from abroad, the market should be viewed as wider than Singapore, and in such a context high concentration in Singapore would not pose competition concerns.

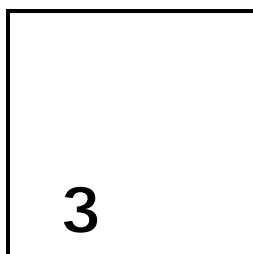
2

## STATEMENT OF INTEREST

NERA Economic Consulting is an international firm of economists who understand how markets work. Our clients include corporations, governments, law firms, regulatory agencies, trade associations and international agencies. Our global team of 500 professionals operates in 16 offices across North and South America, Europe, Asia and Australia. NERA Economic Consulting focuses *inter alia* on competition policy and antitrust issues. We have advised on competition policy matters in Singapore, governed by the sectoral rules.

NERA economists devise practical solutions to highly complex business and legal issues arising from competition, regulation, public policy, strategy, finance and litigation. Our more than 40 years of practical experience creating strategies, studies, reports, expert testimony and policy recommendations reflects our specialization in industrial and financial economics. Because of our commitment to deliver unbiased findings, we are widely recognized for our independence. Our clients come to us expecting integrity; they understand this sometimes calls for their willingness to listen to unexpected or even unwelcome news.

NERA Economic Consulting, founded in 1961 as National Economic Research Associates, is a Marsh & McLennan company. Marsh & McLennan Companies (MMC) is a global professional services firm with annual revenues exceeding \$11 billion. It is the parent company of Marsh Inc., the world's leading risk and insurance services firm; Putnam Investments, one of the largest investment management companies in the United States; and Mercer Inc., a major global provider of consulting services. More than 60,000 employees provide analysis, advice, and transactional capabilities to clients in over 100 countries. Its stock (ticker symbol: MMC) is listed on the New York, Chicago, Pacific, and London stock exchanges. MMC's website address is [www.mmc.com](http://www.mmc.com).



## COMMENTS

We refer to the consultation document issued in April 2004, “Competition Bill Consultation Paper”. This response has been prepared by NERA Economic Consulting. As we are an economic consulting firm, we restrict our observations to the economic aspects of the Competition Bill. Our response does not contain confidential information.

### Competition Law

NERA Economic Consulting welcomes the proposed introduction of general competition legislation in Singapore. We support the aim of promoting and protecting the interests of consumers throughout Singapore, and recognise the need to ensure that markets are competitive and operating effectively.

It is further important to put the necessary organisational structure in place and to equip the relevant agencies with appropriate powers and resources to allow them to perform their duties under the law.

We welcome the endeavour to obtain stakeholders’ views on the new rules and to provide transparency in the process of policy-making.

### International Guidance and International Convergence

While the importance of competition has been recognised for a very long time, formal competition policy and antitrust legislation was first introduced in North America towards the end of the 19<sup>th</sup> century. By now, in excess of a hundred countries have put in place national competition legislation.

In formulating a competition law framework for Singapore it is instructive to assess the lessons learned in other jurisdictions.

In addition to avoiding known pitfalls, this approach promotes international convergence and facilitates the extent to which businesses can prepare and familiarise themselves with competition provisions.

## **Substantive provisions**

The Competition Bill encompasses three broad classes of anti-competitive practices:

- (i) anti-competitive agreements;
- (ii) abuse of market power; and
- (iii) anti-competitive mergers.

### **Anti-competitive agreements**

The Competition Bill makes a general distinction between horizontal and vertical agreements. The provisions of the Bill do not apply to vertical agreements, unless the Minister prescribes otherwise by order.

The distinction between horizontal and vertical agreements makes economic sense. In economic terms, a horizontal agreement takes place at the same level of the value chain, i.e. it involves two or more firms that are likely to be actual or potential competitors. As such there is a direct mechanism whereby competition between rivals may potentially be affected.

Nevertheless there are many classes of horizontal agreements that typically do not raise competition concerns or where there are likely countervailing benefits. The provisions for individual and block exemptions therefore make sense.

Vertical agreements involve undertakings at different levels of the value chain, e.g. a manufacturer and a distributor. From an economic point of view, the parties to a vertical agreement do not supply substitutes. Rather, the parties typically produce complementary products, so that there is no direct competition which could be eliminated.

Nevertheless, vertical agreements can raise competition concerns. We accordingly would not support a categorical exemption for vertical agreements. Of course, anti-competitive vertical agreements that involve a dominant undertaking could be caught by cl. 47. Yet, this would be insufficient to cover all potential instances of anti-competitive vertical agreements; in particular, dominance is not a pre-requisite for vertical agreements with anti-competitive effects.

The Competition Bill provides that the Minister may issue an order to declare that the competition rules are applicable to certain types of vertical agreements. In addition we note that under some jurisdictions, e.g. EC law, resale price maintenance, i.e. vertical

agreements whereby manufacturers specify at which price their products are to be sold by retailers, are almost always prohibited.

### **Abuse of market power**

Market power may be enjoyed by a single firm, but also by several firms. The Competition Bill's explicit acknowledgement of "conduct on the part of one or more undertakings" provides important recognition of this.

Other jurisdictions have sometimes undergone a lengthy process before the principle of abuse by jointly dominant firms was established. It is to be welcomed that the Competition Bill is capable of catching abuse of dominance by more than one undertaking. The clear wording of cl. 47 to that effect further increases legal certainty.

### **Anti-competitive mergers**

We consider that the test of a "substantial lessening of competition" (cl. 54) provides a good framework in which the competition policy and antitrust economics of mergers can be assessed. The test is explicitly grounded in economic theory, and the Competition Commission is accordingly able to apply sound principles in its assessment of mergers.

We note that, in contrast to the approach proposed by the MTI, most jurisdictions have a system of mandatory notification of mergers (above given jurisdictional thresholds).

### **Countervailing considerations**

Countervailing considerations such as efficiency benefits are important in the assessment of effects on competition. It is appropriate to consider whether potential reductions in competition may be counter-balanced by efficiencies and cost savings, especially when consumers ultimately benefit from a greater choice of products of higher quality and at lower prices.

### **Intellectual property**

The protection of intellectual property (IP) forms an important incentive that encourages innovation and progress. Better and more efficient methods and technologies benefit customers, consumers and the economy as a whole.

We share the view that IP protection is broadly compatible with competition law. In assessing whether in a particular case the protection of IP rights inhibits competition, the general practice in other jurisdictions is to treat IP rights in the same way as other property rights.

## **Guidance documents**

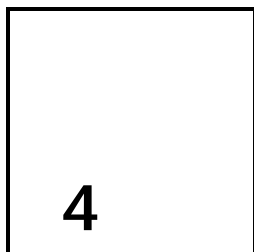
Changes in the regulatory and legislative framework often create uncertainty. We accordingly welcome any guidance from the Competition Commission in relation to substantive issues as well as procedure. This will ensure that stakeholders can prepare themselves appropriately, and that the underlying goals of the policy are better understood.

## **Specific circumstances of Singapore**

The benefits of competition are increasingly recognised across the world. Competition policy and antitrust represent general and widely applicable principles with the aim of benefiting consumers and ultimately the economy as a whole.

Yet, in order to make these general principles as effective as possible, local circumstances may need to be taken into consideration. We have sympathy with the MTI's desire to take into account the specific circumstances of the Singapore economy in formulating Singapore's competition legislation.

In this context we do however consider that it should not automatically be assumed that the relevant geographic market is restricted to Singapore. If firms in Singapore face significant constraints from abroad, the market should be viewed as wider than Singapore, and in such a context high concentration in Singapore would not pose competition concerns.



## CONCLUSION

NERA Economic Consulting welcomes the MTI's proposed Competition Bill. We support the consultation process which contributes towards the aim of adopting best practice provisions.

We look forward to contributing further in the second consultation phase.

# NERA

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