Feedback on the Draft Competition Bill

Submitted by Parkway Holdings Ltd
No. 1 Grange Road
#11-01 Orchard Building
Singapore 239693

Tel : 67960628
Fax no. : 67960634

Contact persons :
Ms June Tay (jtay@gleneagles.com.sg)
Ms Elaine Leong) (eleong@gleneagles.com.sg)
Dr Chan Boon Kheng
(Boon_Kheng_Chan@gleneagles.com.sg)

15 June 2004

STATEMENT OF INTEREST

A listed company on the Singapore Exchange, Parkway Holdings Ltd ("PHL") is an integrated healthcare services provider with a network of private hospitals and healthcare facilities in Singapore and Asia.

PHL views the enactment of the Competition Act with interest, in the light of the nature of the healthcare services sector in Singapore.

Whilst we believe and welcome a business environment that promotes competition, we are concerned about the lack of clarity in the proposed legislation, and also broad exemptions and powers of exemptions that can be seen in the first draft of the Competition Bill.

COMMENTS

1. Exemption of the Government and statutory bodies from Part III

Section 33(4) exempts the following parties from the effect of Part III :-
(a) the Government;
(b) any Statutory body; or
(c) any person carrying out or performing any activity undertaken by the Government or any statutory body on behalf of the Government or that statutory body, as the case may be, in relation to the carrying out or performance of that activity.

We feel that such parties should in fairness, not be exempted if they are engaged in "for- profit" business. Section 33(4)(c) in particular, poses serious concerns to us, and we recommend its deletion or qualification.

The public cluster hospitals and healthcare establishments which are our greatest competition, are already enjoying a monopoly over the subsidized healthcare market, and are also serious contenders for private patients, both domestic and foreign. The public clusters who operate as economic enterprises, must be equally subject to the Competition law, which should not give unfettered power for the Government to exclude certain activities of the public clusters from the Competition law.

The healthcare sector in Singapore is unique in the sense that MOH, the healthcare sector regulator, is also the dominant service provider, albeit indirectly, through the 2 public healthcare clusters. With this linkage, and MOH's ability to apply broad exclusions from the competition law at its discretion, a conflict of interest is inevitable.

2. Third Schedule – Paragraph 1

Paragraph 1 of the Third Schedule providing for the exemption of "any undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly" should be also be deleted.

It is incomprehensibly vague and wide, and would appear to echo Section 33(4)(c), for which we have expressed our concerns above.

Paragraph 1 of the Third Schedule has left it open on who "entrusts", and it is not apparent what "general economic interest" encompasses, or why services of a "revenue-producing monopoly" deserve exemption.

3. Other comments

Our other concerns and comments have already been raised in numerous submissions from other entities. We shall list them briefly to indicate our support for review:-

a) Single economic entity rule
The legislation should be specific whether arrangements between related companies will be caught by Part III or exempted. We believe it should be exempted as group companies are really operating as a single economic entity.

b) Appreciable Adverse Effect test
Since it appears from the Consultation paper that not all anti-competitive behaviour is intended to be caught by the Competition law, but only that which has "appreciable adverse effects" on the market, then it must be this test be included and enunciated in the the Act itself.

c) Section 34(3) – "Void"
It would seem too draconian and uncertain for businesses if an entire agreement caught by S. 34 is simply declared void. Perhaps only the infringing portions of the agreement should be made void from the date the Act comes into effect.

d) Section 47 – "Abuse of a Dominant position"
We would appreciate guidance on what constitutes a player "dominant". The concern is that "dominance" is left open to subjective determination by a complainant or the commission. A clear definition would be useful for certainty and compliance. Businesses need to know with confidence whether they are regarded by the law as dominant or not - whether they can market themselves as " market leaders" or a "premier" service provider without fear of self admission. (It is our position that a market leader is not necessarily a dominant player, and we hope the law or practice notes should reassure that this is the case).

It seems an anomaly that a non-dominant player can legitimately undertake activity that is not prohibited by S. 34 (e.g. vertical agreements), and yet the same activity taken by dominant players could be prohibited by virtue of S.47. What becomes of say, a legitimate vertical agreement entered into by a non-dominant business which subsequently becomes dominant ?
S. 47 could have the regrettable effect of punishing businesses for having become "dominant".

<u>CONCLUSION</u>

PHL is thankful for the opportunity to comment on the Bill. We would be happy to discuss with MTI any clarifications sought on our submission.