



**MAERSK SEALAND**

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14<sup>th</sup> May 2004

Attention : Mr. Daniel Tan

**Subject : Public Consultation on the draft Competition Bill**

We have reviewed the Competition Bill and the Consultation Paper. Generally the Bill is well drafted and in line with international competition law. There are nevertheless avenues that we do like to propose for changes, as part of the contributions from the shipping industry.

We prefer that this be submitted under the scope of SSA, along with the feedbacks from the other members. Assume that the Association would have also received comments from other member and we appreciate receiving a summary of the contributions for our reference.

Here are our comments and suggestions on the draft Bill.

**Financial Provisions (Section 13)**

According to Section 13, the Commission is largely to finance itself by the fines they levy. This could endanger the objectivity of the Commission.

**Propose that the fines go to the general budget of the Singapore government that in turn finance the Commission.**

**Anti-Competitive Agreements (Section 34)**

It is possible to exempt agreements restricting competition from Section 34's prohibition if the agreements fulfil the Section 41 criteria of improving production or distribution and promoting technical or economic progress without imposing undue restrictions on the parties or affording the parties the possibility of substantially eliminating competition. The exemption can be granted either by individual or block exemptions. Furthermore, Section 34 does not apply in the circumstances mentioned in the Bill's third schedule and as such for instance does not apply to cargo terminal operations as it is regulated under the Maritime and Port Authority of Singapore Act.

**Shipping is not excluded from Section 34. It is essential that conference, discussion and consortia agreements to be excluded as it will otherwise be considered to violate Section 34.**

**Suggest for exemption under block exemptions (Section 38) since shipping agreements fulfil the Section 41 criteria.** This will be in line with international law (see the UNCTAD Code of Conduct for liner conferences of Geneva, 6 April 1974) as well as national law in for example the US (see the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1988), the EU (see EU Regulation 4056/86), Australia (see the Trade Practices Act 1974 Part X), China (see the Regulation of International Maritime Transport promulgated by Decree No.335 21/12/2001) and Japan (see the Marine

Transportation Law as modified by the Law for the Adjustment of the Immunity System from the Anti-Monopoly Act Law No.54 of 1947)

### **Abuse of Dominance**

Section 47 stipulates that a dominant position means a dominant position "within Singapore or elsewhere".

We propose that dominance has to be in a market **"including Singapore "** instead.

### **Power to enter premises without warrant (Section 64)**

### **Power to enter premises under warrant (Section 65)**

An investigation officer or inspector may enter premises without a warrant and without notice, if he has reason to believe that the premises are or have been occupied by an undertaking which is being investigated for anti-competitive agreements, abuse of dominance or a merger that will substantially lessen competition. This means the majority of searches can/will be conducted without a warrant and without notice. **We are not in agreement with this.**

**We propose that Section 64, subsection 3 is to be deleted so that inspections without warrant can only take place with notice and inspections without notice can only take place with a warrant as provided for in Section 65.**

Section 64 (g) and Section 65 (2) (b) (viii) provides that the inspectors can remove "any article which has a bearing on the investigation".

Section 65 (2) (iv) (A) authorizes taking away original documents.

**Both articles should be deleted and the authorities should be limited to take away copies of documents as provide for in Section 64 (5) (e) and Section 65 (2) (iii). This will be in line with for example the EU.**

Appreciate the Association will arrange for submission within the deadline and please keep me posted.

Thank you,

Yours sincerely,

***Peter Koh***

Maersk Singapore Pte. Ltd.

