



SINGAPORE ACADEMY OF LAW

19 August 2004

LAW REFORM COMMITTEE

Comments on the revised COMPETITION BILL 2004

1. The Committee's general comments on the revised draft Competition Bill and consultation paper are summarised below:

- (a) *Para 6(a) of consultation paper* – The amendments are intended to enhance the independence of the Commission. The Committee considered that this objective would not be met if the Minister has the power to revoke the appointment of any member of the Commission on the discretionary and subjective grounds set out in paragraph 5 of the First Schedule. The Committee recommends that the tenure of the members should be fixed and that the Minister should only have power to revoke an appointment during the term if there is misconduct.
- (b) *Para 6(c) of consultation paper* – In the interest of promoting greater transparency, the general directions given by the Minister should be published and gazetted. Such publication would assure the business community and the public that the Government is not interfering with individual cases handled by the Commission.
- (c) *Para 22 of consultation paper* – Clause 69 of the Bill is currently ambiguous as to whether the financial penalty cap would be limited to the immediately 3 preceding years. The time period should be made clearer to reflect the Ministry's intention.
- (d) *Clause 40(4) of draft Bill* – Clause 40(4) provides that the "block exemption order" can take effect retrospectively. At the same time, clause 40 only deals with variation and revocation of block exemption orders. The Committee considered that it is not clear whether the sub-clause is meant to apply to variations or the block exemption order (when it was

first granted). The Committee further noted that the clauses pertaining to block exemption order were renumbered in the current draft.

- (e) *Clause 73 of the draft Bill* – If the intention is to give the Competition Appeal Board power to award costs, this should be made clear for the avoidance of any future dispute. The Committee also suggests that the Board should have power to order costs against either party to the appeal.
- (f) *Clause 82 of the draft Bill* – The Committee queries whether the offence should be a strict liability offence. The Committee thinks that it would be more appropriate to include a *mens rea* element, as in the case of clause 81.

2. The Committee's suggestions on the drafting of the Bill are summarised below:

- (a) The definition of 'goods' should include choses in action.
- (b) With respect to clause 15, the term 'functions and duties' used in clauses 6 and 7 appears as 'functions or duties' for no apparent reason. Also, it may be better to say 'perform a function and discharge a duty' or 'perform a function and duty' rather than 'discharge a function and duty'. In clause 78, the term used changes to 'duties and functions' again for no apparent reason.
- (c) With respect to clause 22(4)(b) which uses the term 'information possessed by him', this term is inapt in relation to information that is not in writing. Strictly, one cannot possess information not reduced to writing. One can be aware of or have knowledge of it, but the term 'possession' strictly is conceived of in terms of tangible things.
- (d) The term 'information in his or its possession' is also used in clause 77. In clause 78 the expression used is 'information that may come to his or its knowledge'. This kind of uneven terminology may give rise to arguments that 'information in his or its possession' is confined to written information.
- (e) Clause 22(4)(b) is also too wide and should state that the obligation arises when the information is necessary for the purposes of performance of the auditor's functions, i.e. under sub-clause (3).
- (f) With respect to clause 66, it is not enough to say 'A person shall not be required'. To match section 128 of the Evidence Act, clause 66 should state 'A person shall not be permitted' to ensure that he may not disclose privileged communications even if he is willing to do so.

- (g) With respect to clause 82, it is sufficient to state that the information must be required in connection with any function of the Commission, as in section 44 of the UK Competition Act 1998. The function in question is primarily the function of investigating infringements of the clause 34 etc prohibitions. The reference to duty could be misleading.

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