

Competition Bill

Bill No. /2004.

Read the first time on 2004.

THE COMPETITION ACT 2004

(No. of 2004)

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A BILL

i n t i t u l e d

An Act to make provision about competition and the abuse of a dominant position in the market; and to establish the Competition Commission of Singapore, to provide for its functions and powers and for matters connected therewith.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Competition Act 2004 and shall come
5 into operation on such date as the Minister may, by notification in the
Gazette, appoint.

Interpretation

2.—(1) In this Act, unless the context otherwise requires —

“appointed day” means —

10 (a) in relation to this Act, the date of commencement of this Act;
and

(b) in relation to a particular provision of this Act, the date of
commencement of that particular provision;

“block exemption” has the meaning assigned to it in section 36(5);

15 “block exemption order” has the meaning assigned to it in section
36(3);

“Board” means the Competition Appeal Board established under
section 72;

20 “Chairman” means the Chairman of the Commission and includes any
temporary Chairman of the Commission;

“Chief Executive” means the Chief Executive of the Commission
appointed under section 10 and includes any person acting in that
capacity;

25 “Commission” means the Competition Commission of Singapore
established under section 3;

“Deputy Chairman” means the Deputy Chairman of the Commission
and includes any temporary Deputy Chairman of the Commission;

“document” includes information recorded in any form;

30 “goods” includes buildings and other structures, ships, aircraft and
hovercraft, and gas and electricity;

“information” includes estimates and forecasts;

“investigation officer” has the meaning assigned to it in section 64(1);

“inspector” means an inspector appointed by the Commission to conduct any investigation under section 62;

5 “member” means a member of the Commission;

“merger” means the acquisition or establishment, direct or indirect, by one or more persons or undertakings, whether by purchase or lease of shares or assets, by amalgamation or by combination or otherwise, of control over the whole or a part of a business of a competitor, supplier, customer or other undertaking;

10 “party involved in a merger” includes the merged entity;

“person” includes any undertaking;

“premises” does not include domestic premises unless —

15 (a) they are used in connection with the affairs of an undertaking;
or

(b) documents relating to the affairs of an undertaking are kept there,

but includes any vehicle;

20 “public interest consideration” means national or public security, defence and such other considerations as the Minister may, by order in the *Gazette*, prescribe;

“section 34 prohibition” means the prohibition referred to in section 34;

25 “section 47 prohibition” means the prohibition referred to in section 47;

“section 54 prohibition” means the prohibition referred to in section 54;

“service” means a service of any description whether industrial, trade, professional or otherwise;

30 “undertaking” means any person being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services.

(2) The fact that to a limited extent the section 34 prohibition does not apply to an agreement, because of an exclusion provided by or under this Act, does not require those provisions of the agreement to which the exclusion relates to be disregarded when considering whether the agreement infringes the prohibition for other reasons.

(3) For the purposes of this Act, the power to require information, in relation to information recorded otherwise than in a legible form, includes power to require a copy of it in a legible form.

(4) Any power conferred on any person by this Act to require information includes power to require any document which he believes may contain that information.

PART II

COMPETITION COMMISSION OF SINGAPORE

Division 1 — Establishment, Incorporation and Constitution of Commission

Establishment and incorporation of Competition Commission of Singapore

3. There is hereby established a body to be known as the Competition Commission of Singapore which shall be a body corporate with perpetual succession and shall, by that name, be capable of —

- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of property, both movable and immovable; and
- (c) doing and suffering such other acts or things as bodies corporate may lawfully do and suffer.

Common seal

4.—(1) The Commission shall have a common seal and the seal may from time to time be broken, altered or made anew as the Commission thinks fit.

(2) All deeds and other documents requiring the seal of the Commission shall be sealed with the common seal of the Commission.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to any document and shall presume that it was duly affixed.

Constitution of Commission

- 5 **5.—**(1) The Commission shall consist of the following members:
- (a) a Chairman; and
 - (b) such other members, not being less than 2 or more than 16, as the Minister may from time to time determine.
- (2) The First Schedule shall have effect with respect to the Commission,
10 its members and proceedings.

Division 2 — Functions, Duties and Powers of Commission

Functions and duties of Commission

- 6.—**(1) Subject to the provisions of this Act, the functions and duties of the Commission shall be —
- 15 (a) to maintain and enhance efficient market conduct and promote overall productivity, innovation and competitiveness of markets in Singapore;
 - (b) to eliminate or control practices having adverse effect on competition in Singapore;
 - 20 (c) to promote and sustain competition in markets in Singapore;
 - (d) to promote a strong competitive culture and environment throughout the economy in Singapore;
 - (e) to act internationally as the national body representative of Singapore in respect of competition matters;
 - 25 (f) to advise the Government or other public authority on national needs and policies in respect of competition matters generally; and
 - (g) to exercise any other functions and duties conferred on the Commission by or under any other written law.
- 30 (2) In discharging the functions and duties imposed on it by subsection (1), the Commission shall have regard to —

- (a) the differences in the nature of various markets in Singapore;
- (b) the economic, industrial and commercial needs of Singapore; and
- (c) maintaining the efficient functioning of the markets in Singapore.

5 (3) The Commission may undertake such other functions as the Minister may assign to the Commission and in so doing, the Commission shall be deemed to be fulfilling the purposes of this Act, and the provisions of this Act shall apply to the Commission in respect of such functions.

10 (4) Nothing in this section shall be construed as imposing on the Commission, directly or indirectly, any form of duty or liability enforceable by proceedings before any court to which it would not otherwise be subject.

Powers of Commission

15 7.—(1) Subject to this Act, the Commission may carry on such activities as appear to the Commission to be advantageous, necessary or convenient for it to carry on for or in connection with the discharge of its functions and duties under this Act or any other written law and, in particular, the Commission may exercise any of the powers specified in the Second Schedule.

20 (2) This section shall not be construed as limiting any power of the Commission conferred by or under any other written law.

(3) The Commission shall furnish the Minister information with respect to its property and activities in such manner and at such times as the Minister may require.

Directions by Minister

25 8. The Minister may give such general directions, not inconsistent with the provisions of this Act, relating to the policy the Commission is to observe in the performance of its functions and duties and the exercise of its powers as the Minister considers necessary, and the Commission shall
30 give effect to any such directions.

Appointment of committees and delegation of powers

9.—(1) The Commission may, in its discretion, appoint from among its own members or persons who are not members such number of

committees as it thinks fit consisting of members or other persons or members and other persons for purposes which, in the opinion of the Commission would be better regulated and managed by means of such committees.

5 (2) The Commission may, subject to such conditions or restrictions as it thinks fit, delegate to any such committee or the Chairman, all or any of the powers, functions and duties vested in the Commission by this Act or any other written law, except the powers to make regulations, prescribe or levy dues and rates and borrow money and the power of delegation
10 conferred by this subsection.

(3) The Commission may, subject to such conditions or restrictions as it thinks fit, delegate to any employee of the Commission or any person all or any of its powers, functions and duties vested in the Commission by this Act or any other written law, except the powers to make regulations,
15 prescribe or levy dues and rates and borrow money and the power of delegation conferred by this subsection; and any power, function or duty so delegated may be exercised or performed by the employee or person in the name and on behalf of the Commission.

(4) The Commission may continue to exercise a power conferred upon
20 it, or perform a function or duty under this Act or any other written law, notwithstanding the delegation of the power, function or duty under this section.

Division 3 — Provisions Relating to Staff

Appointment of Chief Executive and other employees, etc.

25 **10.**—(1) The Commission shall, with the approval of the Minister, appoint a Chief Executive on such terms and conditions as the Commission may determine.

(2) The Chief Executive shall —

- 30 (a) be known by such designation as the Commission may determine;
- (b) be responsible to the Commission for the proper administration and management of the functions and affairs of the Commission in accordance with the policy laid down by the Commission; and
- (c) not be removed from office without the consent of the Minister.

(3) The Minister shall consult the Public Service Commission before granting his approval under subsection (1) or before giving his consent under subsection (2)(c).

5 (4) If the Chief Executive is temporarily absent from Singapore or temporarily incapacitated by reason of illness or for any other reason temporarily unable to perform his duties, another person may be appointed by the Commission to act in the place of the Chief Executive during any such period of absence from duty.

10 (5) The Commission may, from time to time, appoint and employ on such terms and conditions as the Commission may determine such officers, employees, consultants and agents as may be necessary for the effective performance of its functions.

Division 4 — Financial Provisions

Financial year

15 **11.** The financial year of the Commission shall begin on 1st April of each year and end on 31st March of the succeeding year, except that the first financial year of the Commission shall begin on the appointed day and end on 31st March of the succeeding year.

Annual estimates

20 **12.—(1)** The Commission shall, in every financial year, prepare or cause to be prepared and shall adopt annual estimates of income and expenditure of the Commission for the ensuing financial year.

(2) Supplementary estimates may be adopted by the Commission at any of its meetings.

25 (3) A copy of all annual estimates and supplementary estimates shall, upon their adoption by the Commission, be sent immediately to the Minister.

(4) The Minister may approve or disallow any item or portion of any item shown in the estimates, and shall return the estimates as amended by him to the Commission, and the Commission shall be bound thereby.

30

(5) Notwithstanding any provision of this section, the Commission may transfer all or any part of moneys assigned to one item of expenditure to

any item under the same head of expenditure in any estimates approved by the Minister.

Moneys recovered or collected by Commission

5 **13.**—(1) All moneys recovered or charges or composition sums collected under this Act, other than financial penalties, shall be paid into and form part of the moneys of the Commission.

(2) All financial penalties collected under this Act shall be paid into the Consolidated Fund.

Grants-in-aid

10 **14.** For the purpose of enabling the Commission to carry out its functions under this Act, the Minister may, from time to time, make grants-in-aid to the Commission of such sums of money, as the Minister may determine, out of moneys to be provided by Parliament.

Power to borrow

15 **15.** For the discharge of its functions or duties under this Act or any other written law, the Commission may, from time to time, raise loans from the Government or, with the approval of the Minister for Finance, raise loans from banks or other financial institutions (whether in Singapore or elsewhere) by —

- 20 (a) mortgage, overdraft or otherwise;
- (b) charge, whether legal or equitable, on any property vested in the Commission or on any other revenue receivable by the Commission under this Act or any other written law; or
- (c) the creation and issue of debentures or bonds.

Issue of shares, etc.

25 **16.** As a consequence of the vesting of any property, rights or liabilities of the Government in the Commission under this Act, or of any capital injection or other investment by the Government in the Commission in accordance with any written law, the Commission shall issue such shares

30 or other securities to the Minister for Finance as that Minister may, from time to time, direct.

Bank account

17.—(1) The Commission shall open and maintain an account with such bank as the Commission thinks fit.

5 (2) Every such account shall be operated by such person as may, from time to time, be authorised in that behalf by the Commission.

Application of moneys

10 18. The moneys of the Commission shall be applied only in payment or discharge of the expenses, obligations and liabilities of the Commission and in making any payment that the Commission is authorised or required to make.

Investments

19. The Commission may invest any of its funds available for investment in such shares, funds, securities or investments as may be authorised by the Minister.

Accounts

20 20. The Commission shall keep proper accounts and records of its transactions and affairs and shall do all things necessary to ensure that —

(a) all payments out of its moneys are correctly made and properly authorised; and

20 (b) adequate control is maintained over the assets of, or in the custody of, the Commission and over the expenditure incurred by the Commission.

Audit of accounts

25 21.—(1) The accounts of the Commission shall be audited by the Auditor-General or such other auditor as may be appointed annually by the Minister in consultation with the Auditor-General (referred to in this Act as the auditor).

30 (2) A person shall not be qualified for appointment as an auditor under subsection (1) unless he is a public accountant who is registered or deemed to be registered under the Accountants Act (Act 4 of 2004).

(3) The Commission shall, as soon as practicable after the close of each financial year, prepare and submit the financial statements in respect of that year to the auditor who shall audit and report on them.

(4) The auditor shall in his report state —

- 5 (a) whether the financial statements show fairly the financial transactions and the state of affairs of the Commission;
- (b) whether proper accounting and other records have been kept, including records of all assets of the Commission whether purchased, donated or otherwise;
- 10 (c) whether the receipts, expenditure and investment of moneys and the acquisition and disposal of assets by the Commission during the financial year were in accordance with the provisions of this Act; and
- (d) such other matters arising from the audit as he considers
15 necessary.

(5) The auditor shall, as soon as practicable after the accounts have been submitted for audit, send a report of his audit to the Commission.

(6) The auditor shall submit such periodical and special reports to the Minister and to the Commission as may appear to him to be necessary or
20 as the Minister or the Commission may require.

Powers of auditor

22.—(1) The auditor or any person authorised by him shall be entitled at all reasonable times to full and free access to all accounting and other records relating, directly or indirectly, to the financial transactions of the
25 Commission.

(2) The auditor or any person authorised by him may make copies of, or extracts from, any such accounting or other records.

(3) The auditor or any person authorised by him may require any person to furnish him with such information in the possession of that person or to
30 which that person has access as the auditor or any duly authorised person considers necessary for the purposes of his functions under this Act.

(4) Any officer of the Commission who —

- (a) refuses or fails, without any reasonable cause, to allow the auditor or any person authorised by the auditor access to any

accounting and other records of the Commission in his custody or power;

(b) refuses or fails, without any reasonable cause, to give any information possessed by him as and when required by the auditor or person authorised by the auditor; or

(c) hinders, obstructs or delays the auditor or any person authorised by the auditor in the performance of his functions and duties or the exercise of his powers,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$100 for every day or part thereof during which the offence continues after conviction.

Presentation of financial statements and auditor's report to Parliament

23.—(1) The Commission shall, as soon as its accounts and financial statements have been audited in accordance with the provisions of this Act, send to the Minister a copy of the audited financial statements, signed by the Chairman, together with a copy of the auditor's report.

(2) Where the Auditor-General is not the auditor of the Commission, a copy of the audited financial statements and any report made by the auditor shall be forwarded to the Auditor-General at the same time they are submitted to the Commission.

(3) The Minister shall, as soon as practicable, cause a copy of the audited financial statements and of the auditor's report referred to in subsection (1) to be presented to Parliament.

Division 5 — Transfer of Assets, Liabilities and Employees

Transfer to Commission of property, assets and liabilities of XXX

24.—(1) As from the appointed day, such movable and immovable property vested in the Government as may be determined by the Minister for Finance and used or managed by XXX and all assets, interests, rights, privileges, liabilities and obligations of the Government relating to XXX shall be transferred to and shall vest in the Commission without further assurance, act or deed.

(2) If any question arises as to whether any particular property, asset, interest, right, privilege, liability or obligation has been transferred to or vested in the Commission under subsection (1), a certificate under the hand of the Minister for Finance shall be conclusive evidence that the
 5 property, asset, interest, right, privilege, liability or obligation was or was not so transferred or vested.

(3) Any immovable property to be transferred to and vested in the Commission under subsection (1) shall be held by the Commission upon such tenure and subject to such terms and conditions as the President may
 10 determine.

(4) Every agreement relating to any of the transferred properties to which the Government was a party immediately before the appointed day, whether or not of such nature that the rights and liabilities thereunder could be assigned, shall have effect as from that day as if —

- 15 (a) the Commission had been a party to such an agreement; and
- (b) for any reference to the Government there was substituted in respect of anything to be done on or after the appointed day a reference to the Commission.

Transfer of employees

20 **25.**—(1) As from the appointed day, such persons or categories of persons as the Minister may determine who, immediately before that day, were employed by the Government and posted to XXX shall be transferred to the service of the Commission on terms no less favourable than those enjoyed by them immediately prior to their transfer.

25 (2) If any question arises as to whether any person or any category of persons has been transferred to the service of the Commission under subsection (1), a certificate under the hand of the Minister shall be conclusive evidence that the person or category of persons was or was not so transferred.

30 (3) Until such time as terms and conditions of service are drawn up by the Commission, the scheme and terms and conditions of service in the Government shall continue to apply to every person transferred to the service of the Commission under subsection (1) as if he were still in the service of the Government.

Service rights, etc., of transferred employees to be preserved

26.—(1) The terms and conditions to be drawn up by the Commission shall take into account the terms and conditions of service (including salaries and accrued rights to leave) enjoyed by the persons transferred to the service of the Commission under section 25 while in the employment of the Government.

(2) Any term or condition relating to the length of service with the Commission shall recognise the length of service of the persons so transferred while in the employment of the Government to be service with the Commission.

(3) Nothing in the terms and conditions of service to be drawn up by the Commission shall adversely affect the conditions that would have been applicable to persons transferred to the service of the Commission as regards any pension, gratuity or allowance payable under the Pensions Act (Cap. 225).

(4) Where a person has been transferred to the service of the Commission under section 25, the Government shall be liable to pay to the Commission such portion of any pension, gratuity or allowance payable to the person on his retirement as the same shall bear to the proportion which the aggregate amount of his pensionable emoluments during his service with the Government bears to the aggregate amount of his pensionable emoluments during his service under both the Government and the Commission.

(5) Where any person in the service of the Commission, whose case does not fall within the scope of any pension or other schemes established under this section, retires or dies in the service of the Commission or is discharged from such service, the Commission may grant to him or to such other person wholly or partly dependent on him, as the Commission thinks fit, such allowance or gratuity as the Commission may determine.

No benefits in respect of abolition or reorganisation of office

27. Notwithstanding the provisions of the Pensions Act, no person who is transferred to the service of the Commission under section 25 shall be entitled to claim any benefit under that Act on the ground that he has been retired from the public service on account of abolition or reorganisation of office in consequence of the establishment and incorporation of the Commission.

Existing contracts

28. All deeds, contracts, schemes, bonds, agreements, instruments and arrangements, subsisting immediately before the appointed day to which the Government is a party and relating to XXX or to any person transferred to the service of the Commission under section 25 shall continue in force on and after that day and shall be enforceable by or against the Commission as if the Commission had been named therein or had been a party thereto instead of the Government.

Continuation and completion of disciplinary proceedings and other legal proceedings

29.—(1) Where, on the appointed day, any disciplinary proceedings were pending against any employee of the Government transferred to the service of the Commission, the proceedings shall be carried on and completed by the Commission.

(2) Where, on the appointed day, any matter was in the course of being heard or investigated or had been heard or investigated by a committee acting under due authority but no order, ruling or direction had been made thereon, the committee shall complete the hearing or investigation and shall make such order, ruling or direction as it could have made under the authority vested in it before that day.

(3) Any order, ruling or direction made by a committee under this section shall be treated as an order, a ruling or a direction of the Commission and have the same force or effect as if it had been made by the Commission pursuant to the authority vested in the Commission under this Act.

(4) Any proceedings or cause of action pending or existing immediately before the appointed day by or against the Government, or any person acting on its behalf, in relation to —

(a) XXX;

(b) any portion of the property, assets, interests, rights, privileges, liabilities and obligations transferred to the Commission under section 24; or

(c) any employee transferred to the service of the Commission under section 25,

may be continued, completed and enforced by or against the Commission.

Misconduct or neglect of duty by employee before transfer

30. The Commission may reprimand, reduce in rank, retire, dismiss or punish in some other manner a person who had, whilst he was in the employment of the Government, been guilty of any misconduct or neglect of duty which would have rendered him liable to be reprimanded, reduced in rank, retired, dismissed or punished in some other manner if he had continued to be in the employment of the Government, and if this Act had not been enacted.

Division 6 — General

10 **Annual report**

31.—(1) The Commission shall, as soon as practicable after the end of each financial year, cause to be prepared and transmitted to the Minister a report dealing generally with the activities of the Commission during the preceding financial year and containing such information relating to the proceedings and policy of the Commission as the Minister may, from time to time, direct.

(2) The Minister shall, as soon as practicable, cause a copy of every such report to be presented to Parliament.

Symbol or representation of Commission

20 32.—(1) The Commission shall have the exclusive right to the use of such symbol or representation as the Commission may select or devise and thereafter display or exhibit such symbol or representation in connection with its activities or affairs.

25 (2) Any person who uses a symbol or representation identical with that of the Commission, or which so resembles the Commission's symbol or representation as to deceive or cause confusion, or to be likely to deceive or to cause confusion, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both, and in the case of a continuing offence, to a further fine not exceeding \$250 for every day or part thereof
30 during which the offence continues after conviction.

PART III

COMPETITION

*Division 1— General***Application of Part**

5 **33.**—(1) Notwithstanding that —

- (a) an agreement referred to in section 34 has been entered into outside Singapore;
- (b) any party to such agreement is outside Singapore;
- 10 (c) any undertaking abusing the dominant position referred to in section 47 is outside Singapore;
- (d) a merger referred to in section 54 has taken place outside Singapore;
- (e) any party to such merger is outside Singapore; or
- 15 (f) any other matter, practice or action arising out of such agreement, dominant position or merger is outside Singapore,

this Part shall apply to such party, agreement, abuse of dominant position or merger if such agreement, abuse or merger has infringed, or is likely to infringe, any prohibition in this Part.

20 (2) Insofar as this Part applies to an industry or a sector of industry that is subject to the regulation and control of another regulatory authority —

- (a) the exercise of powers by that other regulatory authority shall not be construed as derogating from the exercise of powers by the Commission; and
- 25 (b) the exercise of powers by the Commission shall not be construed as derogating from the exercise of powers by that other regulatory authority.

30 (3) The Minister may make regulations for the purpose of co-ordinating the exercise of powers by the Commission under this Part and the exercise of powers by any other regulatory authority referred to in subsection (2), and may, in particular, make regulations to provide for the procedure to be followed —

- (a) in determining in a particular case or class of case whether the Commission should exercise its powers under this Part or the other regulatory authority should exercise its powers; and
 - (b) where the Commission and the other regulatory authority may exercise their respective powers concurrently or conjunctively.
- (4) Nothing in this Part shall apply to any activity carried on by, any agreement entered into or any conduct on the part of —
- (a) the Government;
 - (b) any statutory body; or
 - (c) any person acting on behalf of the Government or that statutory body, as the case may be, in relation to that activity, agreement or conduct.
- (5) Notwithstanding subsection (4), this Part shall apply to —
- (a) such statutory body or person acting on behalf of such statutory body; or
 - (b) such activity carried on, agreement entered into or conduct engaged in, by a statutory body or person acting on behalf of the statutory body in relation to such activity, agreement or conduct,
- as the Minister may, by order published in the *Gazette*, prescribe.
- (6) In this section, “statutory body” means a body corporate established by or under any written law.

*Division 2 — Agreements, etc., Preventing, Restricting or
Distorting Competition*

Agreements, etc., preventing, restricting or distorting competition

- 34.**—(1) Subject to section 35, agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore are prohibited unless they are exempt in accordance with the provisions of this Part.
- (2) For the purposes of subsection (1), agreements, decisions or concerted practices may, in particular, have the object or effect of

preventing, restricting or distorting competition within Singapore if they

-
- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - 5 (b) limit or control production, markets, technical development or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
 - 10 (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

15 (3) Any agreement or decision which is prohibited by subsection (1) is void on or after the appointed day to the extent that it infringes that subsection.

(4) Unless the context otherwise requires, a provision of this Act which is expressed to apply to, or in relation to, an agreement is to be read as

20 applying, with the necessary modifications, equally to, or in relation to, a decision by an association of undertakings or a concerted practice.

(5) Subsection (1) shall apply to agreements, decisions and concerted practices implemented before, on or after the appointed day.

Excluded agreements

25 **35.** The section 34 prohibition shall not apply to such matter as may be specified in the Third Schedule.

Block exemptions

36.—(1) If agreements which fall within a particular category of agreements are, in the opinion of the Commission, likely to be agreements

30 referred to in section 41, the Commission may recommend that the Minister make an order specifying that category for the purposes of this section.

(2) The Minister may make an order giving effect to such a recommendation —

(a) in the form in which the recommendation is made; or

(b) subject to such modifications as he considers appropriate.

5 (3) An order made under this section is referred to in this Part as a block exemption order.

(4) An agreement which falls within a category specified in a block exemption order shall be exempt from the section 34 prohibition.

10 (5) An exemption under this section is referred to in this Part as a block exemption.

Block exemption orders

37.—(1) A block exemption order may impose conditions or obligations subject to which a block exemption shall have effect.

(2) A block exemption order may provide —

15 (a) that breach of a condition imposed by the order shall have the effect of cancelling the block exemption in respect of an agreement as from such date as the Commission may specify;

(b) that if there is a failure to comply with an obligation imposed by the order, the Commission may, by notice in writing, cancel the
20 block exemption in respect of the agreement as from such date as the Commission may specify; and

(c) that if the Commission considers that a particular agreement is not one to which section 41 applies, it may cancel the block exemption in respect of that agreement as from such date as the
25 Commission may specify.

(3) A block exemption order may provide that the order shall cease to have effect at the end of a specified period.

(4) In this section, “specified” means specified in a block exemption order.

30 Opposition to block exemptions

38.—(1) A block exemption order may provide that a party to an agreement which does not qualify for the block exemption created by the

order, but satisfies specified criteria, may notify the Commission of the agreement for the purposes of subsection (2).

(2) An agreement which is notified under any provision included in a block exemption order by virtue of subsection (1) shall be treated, as from the end of the notice period, as falling within a category specified in a block exemption order unless the Commission —

(a) is opposed to it being so treated; and

(b) gives notice in writing to the party concerned of its opposition before the end of that period.

(3) If the Commission gives notice of its opposition under subsection (2), the notification under subsection (1) shall be treated as a notification under section 44.

(4) In this section —

“notice period” means such period as may be specified with a view to giving the Commission sufficient time to consider whether to oppose under subsection (2);

“specified” means specified in a block exemption order.

Procedure for block exemptions

39.—(1) Before making a recommendation under section 36(1), the Commission shall —

(a) publish details of its proposed recommendation in such a way as the Commission thinks most suitable for bringing it to the attention of those likely to be affected; and

(b) consider any representations made to the Commission regarding its proposed recommendation.

(2) If the Minister proposes to give effect to such a recommendation subject to modifications, he shall inform the Commission of the proposed modifications and take into account any comments made by the Commission.

Variation and revocation of block exemption orders

40.—(1) If, in the opinion of the Commission, it is appropriate to vary or revoke a block exemption order, the Commission may make a recommendation to that effect to the Minister.

(2) Section 39 shall apply to any proposed recommendation under subsection (1).

(3) Where there has been no recommendation under subsection (1), the Minister shall, before exercising his power to vary or revoke a block exemption order —

(a) inform the Commission of the proposed variation or revocation; and

(b) take into account any comments made by the Commission.

(4) A block exemption order may provide for a block exemption to have effect from a date earlier than that on which the order is made.

Criteria for block exemptions

41. Section 36 shall apply to any agreement which contributes to —

(a) improving production or distribution; or

(b) promoting technical or economic progress,

but which does not —

(i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or

(ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

Requests for Commission to examine agreements

42.—(1) Sections 43 and 44 provide for an agreement to be examined by the Commission on the application of a party to the agreement who thinks that it may infringe the section 34 prohibition.

(2) The Minister may make regulations to provide —

(a) for the procedure to be followed —

(i) by any person making an application under subsection (1); and

(ii) by the Commission, in considering such an application; and

(b) as to the application of sections 43 to 46 and the procedure referred to in paragraph (a), with such modifications (if any) as may be prescribed, in cases where the Commission —

(i) has given a direction withdrawing an exclusion; or

5 (ii) is considering whether to give such a direction.

Notification for guidance

43.—(1) A party to an agreement who applies for the agreement to be examined under this section shall —

(a) notify the Commission of the agreement; and

10 (b) apply to it for guidance.

(2) On an application under this section, the Commission may give the applicant guidance as to whether or not, in its view, the agreement is likely to infringe the section 34 prohibition.

15 (3) If the Commission considers that the agreement is likely to infringe the prohibition if it is not exempt, its guidance may indicate whether the agreement is likely to be exempt from the prohibition under a block exemption.

20 (4) If an agreement to which the prohibition applies has been notified to the Commission under this section, no penalty shall be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period —

(a) beginning with the date on which notification was given; and

25 (b) ending with such date as may be specified in a notice in writing given to the applicant by the Commission when the application has been determined.

(5) The date specified in a notice under subsection (4)(b) shall not be earlier than the date on which the notice is given.

Notification for decision

30 **44.**—(1) A party to an agreement who applies for the agreement to be examined under this section shall —

(a) notify the Commission of the agreement; and

(b) apply to it for a decision.

(2) On an application under this section, the Commission may make a decision as to —

- (a) whether the section 34 prohibition has been infringed; and
- (b) if it has not been infringed, whether that is because of the effect of an exclusion or because the agreement is exempt from the prohibition.

(3) If an agreement to which the prohibition applies has been notified to the Commission under this section, no penalty shall be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period —

- (a) beginning with the date on which notification was given; and
 - (b) ending with such date as may be specified in a notice in writing given to the applicant by the Commission when the application has been determined.
- (4) The date specified in a notice under subsection (3)(b) shall not be earlier than the date on which the notice is given.

Effect of guidance

45.—(1) This section applies to an agreement if the Commission has determined an application under section 43 by giving guidance that —

- (a) the agreement is unlikely to infringe the section 34 prohibition, regardless of whether or not it is exempt; or
- (b) the agreement is likely to be exempt under a block exemption.

(2) The Commission shall take no further action under this Part with respect to an agreement to which this section applies, unless —

- (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance;
- (b) it has reasonable grounds for suspecting that the information on which it based its guidance was incomplete, false or misleading in a material particular;
- (c) one of the parties to the agreement applies to it for a decision under section 44 with respect to the agreement; or
- (d) a complaint about the agreement has been made to it by a person who is not a party to the agreement.

(3) No penalty may be imposed under this Part in respect of any infringement of the section 34 prohibition by an agreement to which this section applies.

(4) The Commission may remove the immunity given by subsection (3) if —

- (a) it takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
- (b) it considers it likely that the agreement will infringe the prohibition; and
- (c) it gives notice in writing to the party on whose application the guidance was given that it is removing the immunity as from the date specified in its notice.

(5) If the Commission has reasonable grounds for suspecting that information —

- (a) on which it based its guidance; and
- (b) which was provided to it by a party to the agreement,

was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

Effect of decision that section 34 prohibition has not been infringed

46.—(1) This section applies to an agreement if the Commission has determined an application under section 44 by making a decision that the agreement has not infringed the section 34 prohibition.

(2) The Commission shall take no further action under this Part with respect to the agreement unless —

- (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
- (b) it has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.

(3) No penalty may be imposed under this Part in respect of any infringement of the section 34 prohibition by an agreement to which this section applies.

(4) The Commission may remove the immunity given by subsection (3) if —

- (a) it takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
- 5 (b) it considers that it is likely that the agreement will infringe the prohibition; and
- (c) it gives notice in writing to the party on whose application the decision was made that it is removing the immunity as from the date specified in its notice.

10 (5) If the Commission has reasonable grounds for suspecting that information —

- (a) on which it based its decision; and
 - (b) which was provided to it by a party to the agreement,
- was incomplete, false or misleading in a material particular, the date
15 specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

Division 3 — Abuse of Dominant Position

Abuse of dominant position

20 **47.—**(1) Subject to section 48, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in any market in Singapore is prohibited.

(2) For the purposes of subsection (1), conduct may, in particular, constitute such an abuse if it consists in —

- (a) predatory behaviour towards competitors;
- 25 (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- 30 (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature

or according to commercial usage, have no connection with the subject of the contracts.

(3) In this section, “dominant position” means a dominant position within Singapore or elsewhere.

5 **Excluded cases**

48. The section 47 prohibition shall not apply to such matter as may be specified in the Third Schedule.

Requests for Commission to consider conduct

10 **49.**—(1) Sections 50 and 51 provide for conduct of a person to be considered by the Commission on the application of that person who thinks the conduct may infringe the section 47 prohibition.

(2) The Minister may make regulations to provide for the procedure to be followed —

- (a) by any person making an application under subsection (1); and
- 15 (b) by the Commission, in considering such an application.

Notification for guidance

50.—(1) A person who applies for conduct to be considered under this section shall —

- (a) notify the Commission of the conduct; and
- 20 (b) apply to it for guidance.

(2) On an application under this section, the Commission may give the applicant guidance as to whether or not, in its view, the conduct is likely to infringe the section 47 prohibition.

Notification for decision

25 **51.**—(1) A person who applies for conduct to be considered under this section shall —

- (a) notify the Commission of the conduct; and
- (b) apply to it for a decision.

30 (2) On an application under this section, the Commission may make a decision as to —

- (a) whether the section 47 prohibition has been infringed; and
- (b) if it has not been infringed, whether that is because of the effect of an exclusion.

Effect of guidance

5 **52.**—(1) This section applies to conduct if the Commission has determined an application under section 50 by giving guidance that the conduct is unlikely to infringe the section 47 prohibition.

(2) The Commission shall take no further action under this Part with respect to the conduct to which this section applies, unless —

- 10 (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance;
- (b) it has reasonable grounds for suspecting that the information on which it based its guidance was incomplete, false or misleading in a material particular; or
- 15 (c) a complaint about the conduct has been made to it.

(3) No penalty may be imposed under this Part in respect of any infringement of the section 47 prohibition by conduct to which this section applies.

20 (4) The Commission may remove the immunity given by subsection (3) if —

- (a) it takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
- (b) it considers that it is likely that the conduct will infringe the prohibition; and
- 25 (c) it gives notice in writing to the undertaking on whose application the guidance was given that it is removing the immunity as from the date specified in its notice.

(5) If the Commission has reasonable grounds for suspecting that information —

- 30 (a) on which it based its guidance; and
- (b) which was provided to it by an undertaking engaging in the conduct,

was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

Effect of decision that section 47 prohibition has not been infringed

5 **53.**—(1) This section applies to conduct if the Commission has determined an application under section 51 by making a decision that the conduct has not infringed the section 47 prohibition.

(2) The Commission shall take no further action under this Part with respect to the conduct unless —

- 10 (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
- (b) it has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.

15 (3) No penalty may be imposed under this Part in respect of any infringement of the section 47 prohibition by conduct to which this section applies.

(4) The Commission may remove the immunity given by subsection (3) if —

- 20 (a) it takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
- (b) it considers that it is likely that the conduct will infringe the prohibition; and
- 25 (c) it gives notice in writing to the undertaking on whose application the decision was made that it is removing the immunity as from the date specified in its notice.

(5) If the Commission has reasonable grounds for suspecting that information —

- (a) on which it based its decision; and
- 30 (b) which was provided to it by an undertaking engaging in the conduct,

was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

Division 4 — Mergers

5 **Mergers**

54.—(1) Mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods or services are prohibited.

(2) For the purposes of this Part, a merger occurs if —

- 10 (a) 2 or more undertakings, previously independent of one another, merge;
- (b) one or more persons or other undertakings who or which control one or more undertakings acquire direct or indirect control of the whole or part of one or more other undertakings;
- 15 (c) one or more persons or other undertakings acquire direct or indirect control of the whole or part of 2 or more other undertakings; or
- (d) the result of an acquisition by one undertaking (the first undertaking) of the assets (including goodwill), or a substantial part of the assets, of another undertaking (the second undertaking) is to place the first undertaking in a position to replace or substantially replace the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition.
- 20
- 25

(3) For the purposes of this Part, control, in relation to an undertaking, shall be regarded as existing if, by reason of securities, contracts or any other means, or any combination of securities, contracts or other means, decisive influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by —

30

- (a) ownership of, or the right to use all or part of, the assets of an undertaking; or

- (b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.

5 (4) For the purposes of this Part, control is acquired by any person or other undertaking if he or it —

- (a) becomes holder of the rights or contracts, or entitled to use the other means, referred to in subsection (3); or
- (b) although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.

10 (5) The creation of a joint venture to perform, on an indefinite basis, all the functions of an autonomous economic entity shall constitute a merger falling within subsection (2)(b).

15 (6) In determining whether influence of the kind referred to in subsection (3) is capable of being exercised, regard shall be had to all the circumstances of the matter and not solely to the legal effect of any instrument, deed, transfer, assignment or other act done or made.

(7) For the purposes of this Part, a merger shall not be deemed to occur if —

- 20 (a) the person acquiring control is a receiver or liquidator acting as such or is an underwriter acting as such;
- (b) all of the undertakings involved in the merger are, directly or indirectly, under the control of the same undertaking;
- 25 (c) control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy; or
- (d) control is acquired by an undertaking referred to in subsection (8) in the circumstances specified in subsection (9).

30 (8) The undertaking referred to in subsection (7)(d) is an undertaking the normal activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others.

(9) The circumstances referred to in subsection (7)(d) are that —

- (a) the control concerned is constituted by the undertaking's holding, on a temporary basis, securities acquired in another undertaking; and
 - (b) any exercise by the undertaking of voting rights in respect of those securities, whilst that control subsists —
 - (i) is for the purpose of arranging for the disposal, within the specified period, of all or part of the other undertaking or its assets or securities; and
 - (ii) is not for the purpose of determining the manner in which any activities of the other undertaking, being activities that could affect competition in markets for goods or services in Singapore, are carried on.
- (10) In subsection (9), “specified period” means —
- (a) the period of 12 months from the date on which control of the other undertaking was acquired; or
 - (b) if in a particular case the undertaking shows that it is not reasonably possible to effect the disposal concerned within the period referred to in paragraph (a), within such longer period as the Commission determines and specifies with respect to that case.

Excluded mergers

55. The section 54 prohibition shall not apply to any merger specified in the Fourth Schedule.

Requests for Commission to consider merger

- 56.—**(1) Sections 57 and 58 provide for a merger to be considered by the Commission on the application of a party to that merger who thinks the merger may infringe the section 54 prohibition.

(2) The Minister may by regulations provide for the procedure to be followed —

- (a) by any party making an application; and
- (b) by the Commission, in considering such an application.

Notification for guidance

57.—(1) A party to a merger which applies for the merger to be considered under this section shall —

- (a) notify the Commission of it; and
- (b) apply to it for guidance.

(2) On an application under this section, the Commission may give the applicant guidance as to whether or not, in its view, the merger is likely to infringe the section 54 prohibition.

Notification for decision

58.—(1) A party to a merger which applies for the merger to be considered under this section shall —

- (a) notify the Commission of the merger; and
- (b) apply to it for a decision.

(2) Subject to subsections (3) and (5), on an application under this section, the Commission may make a decision as to —

- (a) whether the section 54 prohibition has been infringed; and
- (b) if it has not been infringed, whether that is —
 - (i) because of the effect of an exclusion; or
 - (ii) because the merger is exempted from the prohibition under subsection (3).

(3) Where the Commission proposes to make a decision that the section 54 prohibition has been infringed, the Commission shall give written notice to the party who applied for the merger to be considered and the party may, within 14 days of the date of the notice, apply to the Minister for the merger to be exempted from the section 54 prohibition on the ground of any public interest consideration.

(4) The decision of a Minister made under subsection (3) shall be final.

(5) Where the Minister exempts a merger under subsection (3), the Commission may make a decision under subsection (2)(b)(ii).

(6) The Minister may revoke the exemption of a merger granted under subsection (3) if he has reasonable grounds for suspecting that the

information on which he based his decision was incomplete, false or misleading in a material particular.

Effect of guidance

59.—(1) This section applies to a merger if the Commission has determined an application under section 57 by giving guidance that the merger is unlikely to infringe the section 54 prohibition.

(2) The Commission shall take no further action under this Part with respect to the merger to which this section applies, unless —

- (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance;
- (b) it has reasonable grounds for suspecting that the information on which it based its guidance was incomplete, false or misleading in a material particular; or
- (c) a complaint about the merger has been made to it.

(3) No penalty may be imposed under this Part in respect of any infringement of the section 54 prohibition by a merger to which this section applies.

(4) The Commission may remove the immunity given by subsection (3) if —

- (a) it takes action under this Part with respect to the merger in one of the circumstances mentioned in subsection (2);
- (b) it considers that it is likely that the merger will infringe the prohibition; and
- (c) it gives notice in writing to the party on whose application the guidance was given that it is removing the immunity as from the date specified in its notice.

(5) If the Commission has reasonable grounds for suspecting that information —

- (a) on which it based its guidance; and
 - (b) which was provided to it by a party involved in the merger,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

Effect of decision that section 54 prohibition has not been infringed

60.—(1) This section applies to a merger if the Commission has determined an application under section 58 by making a decision that the merger has not infringed the section 54 prohibition.

5 (2) The Commission shall take no further action under this Part with respect to the conduct unless —

- (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
- 10 (b) it has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.

(3) No penalty may be imposed under this Part in respect of any infringement of the section 54 prohibition by a merger to which this section applies.

15 (4) The Commission may remove the immunity given by subsection (3) if —

- (a) it takes action under this Part with respect to the merger in one of the circumstances mentioned in subsection (2);
- 20 (b) it considers that it is likely that the merger will infringe the prohibition; and
- (c) it gives notice in writing to the party on whose application the decision was made that it is removing the immunity as from the date specified in its notice.

25 (5) If the Commission has reasonable grounds for suspecting that information —

- (a) on which it based its decision; and
 - (b) which was provided to it by a party involved in the merger,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date
- 30 on which the notice is given.

*Division 5 — Enforcement***Guidelines on enforcement of Part**

5 **61.**—(1) The Commission may, from time to time and with a view to enabling any person to order his affairs in compliance with the provisions of this Part, cause to be published in the *Gazette* guidelines indicating the manner in which the Commission will interpret, and give effect to, the provisions of this Part.

(2) For the purpose of preparing any guidelines under subsection (1), the Commission may consult with such persons as it thinks appropriate.

10 (3) Where the guidelines would apply to an industry or a sector of industry that is subject to the regulation and control of another regulatory authority, the Commission shall, in preparing those guidelines, consult with that regulatory authority.

15 (4) Guidelines published under this section shall not be binding on the Commission.

Power to investigate

62.—(1) The Commission may conduct an investigation if there are reasonable grounds for suspecting that the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has been infringed.

20 (2) For the purpose of subsection (1), the Commission may appoint an inspector to conduct the investigation.

Power when conducting investigation

25 **63.**—(1) For the purposes of an investigation under section 62, the Commission or the inspector may, by notice in writing to any person, require that person to produce to the Commission or the inspector a specified document, or to provide the Commission or the inspector with specified information, which the Commission or the inspector considers relates to any matter relevant to the investigation.

(2) A notice under subsection (1) shall indicate —

- 30 (a) the subject matter and purpose of the investigation; and
 (b) the nature of the offences created by sections 80 to 83.

(3) The Commission or the inspector may also specify in the notice —

- (a) the time and place at which any document is to be produced or any information is to be provided; and
 - (b) the manner and form in which it is to be produced or provided.
- (4) The power under this section to require a person to produce a document includes the power —
- (a) if the document is produced —
 - (i) to take copies of it or extracts from it; and
 - (ii) to require such person, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document; or
 - (b) if the document is not produced, to require such person to state, to the best of his knowledge and belief, where it is.
- (5) In subsection (1), “specified” means —
- (a) specified, or described, in the notice; or
 - (b) falling within a category which is specified, or described, in the notice.

Power to enter premises without warrant

- 64.**—(1) Any officer of the Commission who is authorised by the Commission to do so (an investigating officer) and any inspector may enter any premises in connection with an investigation under section 62.
- (2) No investigating officer or inspector shall enter any premises in the exercise of his powers under this section unless he has given the occupier of the premises a written notice which —
- (a) gives at least 2 working days’ notice of the intended entry;
 - (b) indicates the subject matter and purpose of the investigation; and
 - (c) indicates the nature of the offences created by sections 80 to 83.
- (3) Subsection (2) shall not apply —
- (a) if the investigating officer or inspector has reasonable grounds for suspecting that the premises are, or have been, occupied by an undertaking which is being investigated in relation to —
 - (i) an agreement referred to in section 34;

(ii) conduct referred to in section 47; or

(iii) a merger referred to in section 54; or

(b) if the investigating officer or inspector has taken all such steps as are reasonably practicable to give notice but has not been able to do so.

(4) Where subsection (3) applies, the power of entry conferred by subsection (1) shall be exercised —

(a) in the case of an investigating officer, upon production of —

(i) evidence of his authorisation; and

(ii) a document containing the information referred to in subsection (2)(b) and (c); and

(b) in the case of an inspector, upon production of —

(i) evidence of his appointment as an inspector; and

(ii) a document containing the information referred to in subsection (2)(b) and (c).

(5) An investigating officer or inspector entering any premises under this section may —

(a) take with him such equipment as appears to him to be necessary;

(b) require any person on the premises —

(i) to produce any document which he considers relates to any matter relevant to the investigation; and

(ii) if the document is produced, to provide an explanation of it;

(c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;

(d) take copies of, or extracts from, any document which is produced; and

(e) require any information which is stored in any electronic form and is accessible from the premises and which the investigating officer or inspector considers relates to any matter relevant to the investigation, to be produced in a form —

(i) in which it can be taken away; and

(ii) in which it is visible and legible.

Power to enter premises under warrant

65.—(1) The Commission or any inspector may apply to a court for a warrant and the court may issue such a warrant if it is satisfied that —

- 5 (a) there are reasonable grounds for suspecting that there are on any premises documents —
 - (i) the production of which has been required under section 63 or 64; and
 - (ii) which have not been produced as required;
 - 10 (b) there are reasonable grounds for suspecting that —
 - (i) there are on any premises documents which the Commission or the inspector has power under section 63 to require to be produced; and
 - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed,
 15 tampered with or destroyed; or
 - 20 (c) an investigating officer or inspector has attempted to enter the premises in the exercise of his powers under section 64 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.
- (2) A warrant under this section shall authorise a named officer, and —
- (a) in the case of an investigation conducted by the Commission, such other officers as the Commission has authorised in writing to accompany the named officer; and
 - 25 (b) in the case of an investigation conducted by an inspector, such other persons as the inspector may require,
- to do any of the following:
- (i) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
 - 30 (ii) to search any person on those premises if there are reasonable grounds for believing that that person has in his possession any document or article which has a bearing on the investigation;

- (iii) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (the relevant kind);
 - (iv) to take possession of any document appearing to be of the relevant kind if —
 - (A) such action appears to be necessary for preserving the document or preventing interference with it; or
 - (B) it is not reasonably practicable to take copies of the document on the premises;
 - (v) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (iv)(A);
 - (vi) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
 - (vii) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form —
 - (A) in which it can be taken away; and
 - (B) in which it is visible and legible; and
 - (viii) to remove from those premises for examination any article which relates to any matter relevant to the investigation.
- (3) If, in the case of a warrant under subsection (1)(b), the court is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise the actions mentioned in subsection (2) to be taken in relation to any such document.
- (4) Where possession of any document is taken under subsection (2)(iv) or (3), the named officer or inspector may, at the request of the person from whom possession of the document was taken, provide such person with a copy of the document.
- (5) An investigating officer or inspector may, instead of removing from any premises for examination any article which has a bearing on the investigation under subsection (2)(viii), allow the article to be retained on

those premises subject to such conditions as the investigating officer or inspector may impose.

(6) Any person who fails to comply with any condition imposed under subsection (5) shall be guilty of an offence.

5 (7) A warrant issued under this section shall indicate —

(a) the subject matter and purpose of the investigation; and

(b) the nature of the offences created by sections 80 to 83,

and shall continue in force until the end of the period of one month beginning from the day on which it is issued.

10 (8) The powers conferred by this section shall not be exercised except upon production of a warrant issued under this section.

(9) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

15 (10) If there is no one at the premises when the named officer proposes to execute such a warrant, he shall, before executing it —

(a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

20 (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

(11) If the named officer is unable to inform the occupier of the intended entry, he shall, when executing the warrant, leave a copy of it in a prominent place on the premises.

25 (12) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

30 (13) Any document of which possession is taken under subsection (2)(iv) may be retained for a period of 3 months.

(14) In this section —

“named officer” means —

(a) an officer of the Commission named in the warrant; or

(b) the inspector named in the warrant,

as the case may be;

“occupier”, in relation to any premises, means a person whom the
named officer reasonably believes is the occupier of those
premises.

Privileged communication

66. A person shall not be required, under any provision of this Part, to
produce or disclose —

(a) any communication —

(i) between a professional legal adviser and his client; or

(ii) made in connection with, or in contemplation of, legal
proceedings and for the purposes of those proceedings,

which in proceedings in a court would be protected from
disclosure on grounds of privilege; or

(b) any information or document which might tend to incriminate
him or make him liable to a penalty.

Interim measures

67.—(1) If the Commission —

(a) has reasonable grounds for suspecting that the section 34
prohibition, the section 47 prohibition or the section 54
prohibition has been infringed but has not completed its
investigations into the matter; and

(b) considers that it is necessary for it to act under this section as a
matter of urgency for the purpose —

(i) of preventing serious, irreparable damage to a particular
person or category of persons; or

(ii) of protecting the public interest,

the Commission may give such directions as it considers appropriate for
that purpose.

(2) Before giving a direction under this section, the Commission shall

(a) give written notice to the person to whom it proposes to give the direction; and

(b) give that person an opportunity to make representations.

(3) A notice under subsection (2) shall indicate the nature of the direction which the Commission is proposing to give and its reasons for wishing to give it.

(4) A direction given under this section has effect while subsection (1) applies, but may be replaced if the circumstances permit by a direction under section 69.

(5) In the case of a suspected infringement of the section 34 prohibition, sections 69(2)(a) and 79 shall also apply to directions given under this section.

(6) In the case of a suspected infringement of the section 47 prohibition, sections 69(2)(b) and 79 shall also apply to directions given under this section.

(7) In the case of a suspected infringement of the section 54 prohibition, sections 69(2)(c) and 79 shall also apply to directions given under this section.

Decision of Commission upon completion of investigation

68.—(1) Where —

(a) after considering the statements made, or documents or articles produced, in the course of an investigation conducted by it under this Part; or

(b) where such investigation was conducted by an inspector, after considering the report of the inspector,

the Commission proposes to make a decision that the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has been infringed, the Commission shall —

(i) give written notice to the person likely to be affected by such decision; and

(ii) give such person an opportunity to make representations to the Commission.

(2) Subject to subsections (3) and (5), upon considering any representation made to the Commission under subsection (1)(ii), the Commission may, as it thinks fit, make a decision that the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has been infringed.

(3) Where the Commission proposes to make a decision that a merger infringes the section 54 prohibition and the Commission has given written notice to the parties involved in the merger under subsection (1)(i), the parties, or either or them, may, within 14 days of the date of the notice, apply to the Minister for the merger to be exempted from the section 54 prohibition on the ground of any public interest consideration.

(4) The decision of the Minister under subsection (3) shall be final.

(5) Where the Minister exempts a merger under subsection (3), the Commission may make a decision that the section 54 prohibition has not been infringed because the merger is exempt from the prohibition.

(6) The Minister may revoke the exemption of a merger granted under subsection (3) if he has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

Enforcement of decision of Commission

69.—(1) Where the Commission has made a decision that the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has been infringed, the Commission may give to such person as it thinks appropriate such directions as it considers appropriate to bring the infringement to an end, and where necessary, requiring that person to take such action as is specified in the direction to eliminate the harmful effect of such practice and to prevent the recurrence of such infringement.

(2) A direction referred to in subsection (1) may, in particular, include provisions —

- (a) where the decision is that any agreement infringes the section 34 prohibition, requiring parties to the agreement to modify or terminate the agreement;
- (b) where the decision is that any conduct infringes the section 47 prohibition, requiring the person concerned to modify or cease the conduct;

- (c) where the decision is that any merger infringes the section 54 prohibition, requiring the merger to be dissolved or modified in such manner as the Commission may direct; and
 - (d) in any case, requiring any undertaking found to have infringed the section 34 prohibition, the section 47 prohibition or the section 54 prohibition (including any merger found to have infringed the section 54 prohibition) —
 - (i) to enter such legally enforceable agreements as may be specified by the Commission and designed to prevent or lessen the anti-competitive effects which have arisen;
 - (ii) to dispose of such operations, assets or shares of such undertaking in such manner as may be specified by the Commission;
 - (iii) to pay to the Commission such financial penalty in respect of the infringement as the Commission may determine; and
 - (iv) to provide a performance bond, guarantee or other form of security on such terms and conditions as the Commission may determine.
- (3) For the purpose of subsection (2)(d)(iii), the Commission may impose a financial penalty only if it is satisfied that the infringement has been committed intentionally or negligently.
- (4) No financial penalty fixed by the Commission under this section may exceed 10% or such other percentage of such turnover of the business of the undertaking in Singapore for each year of infringement for such period, up to a maximum of 3 years, as the Minister may, by order published in the *Gazette*, prescribe.
- (5) The Commission shall, in any direction requiring the payment of a financial penalty, specify the date before which the financial penalty is to be paid, being a date not earlier than the end of the period within which an appeal against the direction may be brought under section 71.

Notification

70. The Commission shall, within 14 days of its making any decision or direction under this Part, notify any person affected by such decision or direction.

PART IV

APPEALS

*Division 1 — General***Appealable decisions**

5 **71.**—(1) Any party to an agreement in respect of which the Commission made a decision, any person in respect of whose conduct the Commission made a decision, or any party involved in a merger in respect of which the Commission made a decision, may appeal within the prescribed period to the Board against, or with respect to, that decision.

10 (2) Except in the case of an appeal against the imposition, or the amount, of a financial penalty, the making of an appeal under this section shall not suspend the effect of the decision to which the appeal relates.

15 (3) In subsection (1), “decision” means a decision of the Commission as to whether the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has been infringed, and includes a direction given under section 67 or 69 (including the imposition of any financial penalty under section 67 or 69 or as to the amount of any such financial penalty) and such other decision as may be prescribed.

*Division 2 — Competition Appeal Board*20 **Competition Appeal Board**

72.—(1) For the purpose of hearing any appeal referred to in section 71(1), there shall be a Competition Appeal Board consisting of not more than 30 members appointed, from time to time, by the Minister.

25 (2) Members of the Board shall hold office for such period as may be determined by the Minister and shall be eligible for re-appointment.

 (3) The Minister may at any time remove any member of the Board from office without assigning any reason.

 (4) A member may resign his office by notice in writing to the Minister.

30 (5) The Minister shall appoint to be Chairman of the Board a person who is qualified to be a Judge of the Supreme Court.

(6) The Chairman of the Board shall, when present, preside at every meeting of the Board, and in his absence such member of the Board as may be chosen by the members present shall preside.

5 (7) The Minister may appoint a secretary to the Board and such other officers and employees of the Board as may be necessary.

(8) All the powers, functions and duties of the Board may be exercised, discharged and performed by any committee of the Board consisting of not less than 3 members of the Board, one of whom may be the Chairman of the Board.

10 (9) Any act, finding or decision of any such committee shall be deemed to be the act, finding or decision of the Board.

(10) The secretary shall, from time to time, summon such members of the Board as may be nominated by the Chairman, to constitute a committee of the Board for the purposes of giving effect to the provisions of this Part, and it shall be the duty of such members to attend at the times and places specified in the summons.

20 (11) Subject to subsection (12), where the Chairman is nominated under subsection (10) as a member of a committee, he shall preside at every meeting of the committee, and where the Chairman is not nominated as a member of a committee, the Chairman shall determine which member of the committee shall preside at every meeting of that committee.

25 (12) Where the Chairman or the member determined by the Chairman under subsection (11) (as the case may be) is absent at any committee meeting, such member of the committee as may be chosen by the members present shall preside.

(13) All matters coming before a committee of the Board at any sitting thereof shall be decided by a majority of votes of those members present, and, in the event of an equality of votes, the Chairman of the Board or any other member presiding shall have a second or casting vote.

30 (14) Members of the Board may receive such remuneration and such travelling and subsistence allowances as the Minister may determine.

(15) The Minister may make regulations —

- (a) prescribing the period within which appeals may be made;
- (b) prescribing the manner in which appeals shall be made to the Board;

- (c) prescribing the procedure to be adopted by the Board in hearing appeals and the records to be kept by the Board;
- (d) prescribing the places where and the times at which appeals shall be heard by the Board;
- 5 (e) prescribing the fees to be paid in respect of any appeal under this Part;
- (f) prescribing a scale of costs in respect of appeals to the Board; and
- (g) generally for the better carrying out of the provisions of this Part.

10 **Powers and decisions of Board**

73.—(1) The Board shall, by notice to the Commission and the appellant, specify the date on and the place at which the appeal shall be heard.

15 (2) The Board shall have all the powers and duties of the Commission that are necessary to carry out its functions and duties under this Act.

(3) The Board shall have the powers, rights and privileges vested in a District Court on the hearing of an action, including —

- (a) the enforcement of the attendance of witnesses and their examination on oath or otherwise; and
- 20 (b) the compelling of the production of documents.

(4) A summons signed by such member of the Board as may be authorised by the Board shall be equivalent to any formal procedure capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of documents.

25 (5) Where any person being duly summoned to attend before the Board does not so attend, that person shall be guilty of an offence.

(6) A witness before the Board shall be entitled to the same immunities and privileges as if he were a witness before a District Court.

30 (7) All appeals under this section shall be determined, having regard to the nature and complexity of the appeal, as soon as reasonably practicable.

(8) The Board may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may —

- (a) remit the matter to the Commission;
- (b) impose or revoke, or vary the amount of, a financial penalty;
- (c) give such direction, or take such other step, as the Commission could itself have given or taken; or
- 5 (d) make any other decision which the Commission could itself have made.

(9) Any decision of the Board on an appeal has the same effect, and may be enforced in the same manner, as a decision of the Commission.

- 10 (10) If the Board confirms the decision which is the subject of the appeal it may nevertheless set aside any finding of fact on which the decision was based.

(11) The Board shall notify the appellant of its decision in respect of his appeal and the reasons for its decision.

Appeals to High Court and Court of Appeal

- 15 **74.**—(1) An appeal against, or with respect to, a decision of the Board made under section 73 shall lie to the High Court —

- (a) on a point of law arising from a decision of the Board; or
- (b) from any decision of the Board as to the amount of a financial penalty.

- 20 (2) The High Court shall hear and determine any such appeal and may —

- (a) confirm, modify or reverse the decision of the Board; and
- (b) make such further or other order on such appeal, whether as to costs or otherwise, as the Court may think fit.

- 25 (3) There shall be such further right of appeal from decisions of the High Court under this section as exists in the case of decisions made by that Court in the exercise of its original civil jurisdiction.

PART V

MISCELLANEOUS

Rights of private action

5 **75.**—(1) Any person who suffers loss or damage as a result of an infringement of the section 34 prohibition, the section 47 prohibition or the section 54 prohibition shall have a right of action for relief in civil proceedings in a court under this section against any undertaking which is or which has at the material time been a party to such infringement.

(2) No action to which subsection (1) applies may be brought —

10 (a) until after a decision referred to in subsection (3) has established that the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has been infringed; and

(b) during the period referred to in subsection (4).

15 (3) The decisions which may be relied upon for the purposes of an action under this section are —

(a) the decision by the Commission made under section 69;

(b) the decision of the Board under section 73 (on an appeal from the decision of the Commission under section 71);

20 (c) the decision of the High Court under section 74 (on an appeal from the decision of the Board under that section); and

(d) the decision of the Court of Appeal under section 74 (on an appeal from the decision of the High Court under that section).

(4) The periods during which an action may not be brought under this section are —

25 (a) in the case of a decision of the Commission, the period during which an appeal may be made to the Board under section 71(1);

30 (b) in the case of a decision of the Commission which is the subject of an appeal to the Board as referred to in paragraph (a), the period following the decision of the Board during which a further appeal may be made under section 74 to the High Court; and

(c) in the case of a decision of the High Court which is the subject of a further appeal to the Court of Appeal, the period during which an appeal may be made under section 74 to the Court of Appeal.

5 (5) Where any appeal referred to in paragraph (a), (b) or (c) of subsection (4) is made, the period specified in that paragraph includes the period before the appeal is determined.

(6) No action to which subsection (1) applies may be brought after the end of 2 years after the relevant period specified in subsection (4).

10 (7) In determining a claim under this section, the court is bound by any decision referred to in subsection (3) which establishes that the prohibition in question has been infringed.

(8) The court may grant to the plaintiff in an action under subsection (1) any or all of the following reliefs:

- (a) relief by way of injunction or declaration;
- 15 (b) damages; and
- (c) such other relief as the court thinks fit.

(9) Nothing in this section shall be construed as conferring on any party to an agreement which infringes the section 34 prohibition a right of action for relief.

20 **Co-operation between Commission and other regulatory authorities on competition matters**

76.—(1) The Commission may enter into any agreement with any regulatory authority for the purposes of —

- 25 (a) facilitating co-operation between the Commission and the regulatory authority in the performance of their respective functions in so far as they relate to issues of competition between undertakings;
- (b) avoiding duplication of activities by the Commission and the regulatory authority, being activities involving the determination of the effects on competition of any act done, or proposed to be done; and
- 30 (c) ensuring, as far as practicable, consistency between decisions made or other steps taken by the Commission and the regulatory authority in so far as any part of those decisions or steps consists

of or relates to a determination of any issue of competition between undertakings.

(2) An agreement that is entered into under subsection (1) is referred to in this section as a co-operation agreement.

5 (3) A co-operation agreement may include —

- (a) a provision enabling each party to furnish to another party information in its possession if the information is required by that other party for the purpose of the performance by it of any of its functions;
- 10 (b) a provision enabling each party to forbear to perform any of its functions in relation to a matter in circumstances where it is satisfied that another party is performing functions in relation to that matter; and
- 15 (c) a provision requiring each party to consult with any other party before performing any function in circumstances where the respective exercise by each party of the function concerned involves the determination of issues of competition between undertakings that are identical to one another or fall within the same category of such an issue, being a category specified in the
20 agreement.

(4) In this section —

“issue of competition between undertakings” includes an issue of competition between undertakings that arises generally in the sector of activity in relation to which the Commission or the
25 regulatory authority may exercise powers and such an issue that falls, or could fall, to be the subject of the exercise by the Commission or the regulatory authority of powers in particular circumstances;

30 “party” means a party to a co-operation agreement and a reference to another party (whether that expression or the expression “the other party” is used) shall, where there are 2 or more other parties to the agreement, be construed as a reference to one or more of those other parties or each of them, as appropriate.

Co-operation between Commission and foreign competition bodies

77.—(1) The Commission may, with the approval of the Minister, enter into arrangements with any foreign competition body whereby each party to the arrangements may —

- 5 (a) furnish to the other party information in its possession if the information is required by that other party for the purpose of performance by it of any of its functions; and
- (b) provide such other assistance to the other party as will facilitate the performance by that other party of any of its functions.

10 (2) The Commission shall not furnish any information to a foreign competition body pursuant to such arrangements unless it requires of, and obtains from, that body an undertaking in writing by it that it will comply with terms specified in that requirement, being terms that correspond to the provisions of any written law concerning the disclosure of that
15 information by the Commission.

(3) The Commission may give an undertaking to a foreign competition body that it will comply with terms specified in a requirement made of the Commission by the body to give such an undertaking where —

- 20 (a) those terms correspond to the provisions of any law in force in the country or territory in which the body is established, being provisions which concern the disclosure by the body of the information referred to in paragraph (b); and
- (b) compliance with the requirement is a condition imposed by the body for furnishing information in its possession to the
25 Commission pursuant to the arrangements referred to in subsection (1).

(4) In this section “foreign competition body” means a person in whom there are vested functions under the law of another country or territory with respect to the enforcement or the administration of provisions of law
30 of that country or territory concerning competition between undertakings (whether in a particular sector of the economy of that country or territory or throughout that economy generally).

Duty to preserve secrecy

35 78.—(1) Subject to subsection (5), every person who is or has been a member, an officer, an employee or an agent of the Commission, a

member of the Board or of a committee of the Commission, an inspector or a person authorised, appointed or employed by an inspector to assist him, or a person appointed to assist the Commission shall preserve, and aid in the preserving of, secrecy with regard to —

- 5 (a) all matters relating to the business, commercial or official affairs of any person;
- (b) all matters that have been identified as confidential under subsection (3); and
- 10 (c) all matters relating to the identity of persons furnishing information to the Commission,

that may come to his or its knowledge in the performance and discharge of his or its duties and functions under this Act and shall not communicate any such matter to any person, except insofar as such communication —

- 15 (i) is necessary for the performance or discharge of any such duty or function; or
- (ii) is lawfully required by any court or under this Act or any other written law.

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence.

- 20 (3) Any person, when furnishing any information to the Commission, may identify information that he claims to be confidential information.

(4) Every claim made under subsection (3) shall be supported by a written statement giving reasons why the information is confidential.

- 25 (5) Notwithstanding subsection (1), the Commission may disclose any information relating to any matter referred to in subsection (1) in any of the following circumstances:

- (a) where the consent of the person to whom the information relates has been obtained;
- (b) for the purposes of —
 - 30 (i) a prosecution under this Act;
 - (ii) subject to subsection (6), enabling the Commission to give effect to any provision of this Act;

(iii) enabling the Commission, an investigation officer or an inspector to investigate a suspected offence under this Act or to enforce a provision thereof; or

5 (iv) complying with such provision of an agreement between Singapore and a country or territory outside Singapore (referred to in this section as a foreign country) as may be prescribed, where the conditions specified in subsection (7) are satisfied.

10 (6) If the Commission is considering whether to disclose any information under subsection (5)(b)(ii), the Commission shall have regard to —

(a) the need for excluding, so far as is practicable, information the disclosure of which would in its opinion be contrary to the public interest;

15 (b) the need for excluding, so far as is practicable —

(i) commercial information the disclosure of which would, or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates; or

20 (ii) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interest; and

(c) the extent to which the disclosure is necessary for the purposes for which the Commission is proposing to make the disclosure.

(7) The conditions referred to in subsection (5)(b)(iv) are —

25 (a) the information or documents requested by the foreign country are available to the Commission;

(b) unless the Government otherwise allows, the foreign country undertakes to keep the information given confidential at all times; and

30 (c) the disclosure of the information is not likely to be contrary to the public interest.

Enforcement of directions of Commission in District Court

79.—(1) For the purposes of enforcement of any direction made by the Commission under section 67 or 69, the Commission may apply for the direction to be registered in a District Court in accordance with the Rules of Court and the District Court shall register the direction in accordance with the Rules of Court.

(2) From the date of registration of a direction under subsection (1), the direction shall be of the same force and effect, and all proceedings may be taken on the direction, for the purposes of enforcement as if it had been an order originally obtained in the District Court which shall have power to enforce it accordingly.

(3) A District Court shall have jurisdiction to enforce any direction in accordance with subsection (2) regardless of the monetary amount involved.

Refusal to provide information, etc.

80.—(1) Any person who fails to comply with a requirement imposed on him under section 63, 64 or 65 shall be guilty of an offence.

(2) If a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it shall be a defence for him to prove that —

- (a) the document was not in his possession or under his control; and
- (b) it was not reasonably practicable for him to comply with the requirement.

(3) If a person is charged with an offence under subsection (1) in respect of a requirement —

- (a) to provide information;
- (b) to provide an explanation of a document; or
- (c) to state where a document is to be found,

it shall be a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) Failure to comply with a requirement imposed under section 63 or 64 shall not be an offence if the person imposing the requirement has failed to act in accordance with that section.

Destroying or falsifying documents

81. Any person who, having been required to produce a document under section 63, 64 or 65 —

- 5 (a) intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it; or
- (b) causes or permits its destruction, disposal, falsification or concealment,

shall be guilty of an offence.

False or misleading information

- 10 **82.** Any person who provides information to the Commission, an investigating officer or an inspector or any person authorised, appointed or employed to assist the Commission, investigation officer or inspector, in connection with any function or duty of the Commission, investigating officer or inspector under this Act which is false or misleading in a
- 15 material particular shall be guilty of an offence.

Obstruction of officer of Commission, etc.

- 20 **83.** Any person who refuses to give access to, or assaults, hinders or delays any member, officer, employee or agent of the Commission authorised to act for the Commission, or any inspector or person assisting an inspector, in the discharge of his duties under this Act shall be guilty of an offence.

Protection from personal liability

84. No action, suit or other legal proceedings shall lie personally against —

- 25 (a) the Commission;
- (b) any member, officer or employee of the Commission;
- (c) any member of the Board;
- (d) any person who is on secondment or attachment to the Commission;
- 30 (e) any person appointed or directed by the Commission to exercise the Commission's powers, perform the Commission's functions or duties or to assist the Commission in the exercise of its powers

or performance of its functions or duties under this Act or any other written law; or

- (f) any inspector or any person authorised, appointed or employed by an inspector to assist him in connection with any function or duty of the inspector under this Act,

for anything done (including any statement made) or omitted to be done in good faith in the course of or in connection with —

- (i) the exercise or purported exercise of any power under this Act or any other written law;

- (ii) the performance or purported performance of any function or duty under this Act or any other written law; or

- (iii) the compliance or purported compliance with this Act or any other written law.

Public servants

85. All members, officers and employees of the Commission, all inspectors and all members of the Board shall be deemed to be public servants for the purposes of the Penal Code (Cap. 224).

No costs or damages or other relief arising from seizure to be recoverable unless seizure without reasonable or probable cause

86. No person shall, in any proceedings before any court in respect of any equipment, article, book or document seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of the proceedings or to any damages or other relief other than an order for the return of the equipment, article, book or document or the payment of their value unless the seizure was made without reasonable or probable cause.

Powers of enforcement

87.—(1) In addition to the powers conferred on him by this Act or any other written law, an officer or employee of the Commission may, in relation to any offence under this Act, on declaration of his office and production to the person against whom he is acting such identification card as the Chief Executive may direct to be carried by officers or employees of the Commission —

- (a) require any person whom he reasonably believes to have committed that offence to furnish evidence of the person's identity;
- 5 (b) require any person to furnish any information or produce any book, document or copy thereof in the possession of that person, and may, without fee or reward, inspect, copy or make extracts from such book or document; and
- 10 (c) require, by order in writing, the attendance before the officer or employee of any person being within the limits of Singapore who, from the information given or otherwise obtained by the officer or employee, appears to be acquainted with the circumstances of the case.

(2) Any person who —

- 15 (a) wilfully mis-states or without lawful excuse refuses to give any information or produce any book, document or copy thereof required of him by an officer or employee of the Commission under subsection (1); or
- 20 (b) fails to comply with a lawful demand of an officer or employee of the Commission in the discharge of his duties by such officer or employee under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

Offences by bodies corporate, etc.

25 **88.**—(1) Where an offence under this Act committed by a body corporate is proved —

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on his part,
- 30 the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member

in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved —

5 (a) to have been committed with the consent or connivance of a partner; or

 (b) to be attributable to any neglect on his part,

the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

10 (4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved —

 (a) to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or

15 (b) to be attributable to any neglect on his part,

the officer or member as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

20 “officer” —

 (a) in relation to a body corporate, means any director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or

25 (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of a committee and includes
30 any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner.

(6) The Commission may, with the approval of the Minister, make regulations to provide for the application of any provision of this section, with such modifications as may be appropriate, to any body corporate or

unincorporated association formed or recognised under the law of a territory outside Singapore.

Jurisdiction of court

5 **89.** Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of the offence.

General penalties

10 **90.** Any person who is guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

Composition of offences

15 **91.**—(1) The Chief Executive may, in his discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding \$5,000.

20 (2) The Commission may, with the approval of the Minister, make regulations to prescribe the offences which may be compounded and the method and procedure by which those offences may be compounded under this section.

Amendment of Third and Fourth Schedules

92. The Minister may at any time, by order published in the *Gazette*, amend the Third Schedule and the Fourth Schedule.

25 **Regulations**

93.—(1) The Commission may, with the approval of the Minister, make regulations for any purpose for which regulations are required to be made under this Act and generally for carrying out the purposes and provisions of this Act.

30 (2) Without prejudice to the generality of subsection (1), the Commission may, with the approval of the Minister, make regulations for or with respect to all or any of the following matters:

- (a) the manner of appointment, conduct and discipline and the terms and conditions of service of the employees of the Commission;
- (b) the establishment of funds for the payment of gratuities and other benefits to employees of the Commission;
- 5 (c) the form and manner in which a notification under section 38(1) is to be made;
- (d) the form and manner in which complaints of infringements of the section 34 prohibition, the section 47 prohibition and the section 54 prohibition are to be submitted to the Commission;
- 10 (e) the form and manner in which notices of decisions and directions of the Commission are to be given, and the persons to whom such notices are to be given;
- (f) the fees to be charged in respect of anything done or any services rendered by the Commission under or by virtue of this Act, including the calculation of the amount of fees by reference to matters including —
- 15 (i) the turnover of any party to an agreement (determined in such manner as may be prescribed);
- (ii) the turnover of any person whose conduct the Commission is to consider (determined in such manner as may be prescribed); and
- 20 (iii) the turnover of any or all parties whose merger the Commission is to consider (determined in such manner as may be prescribed); and
- 25 (g) anything which may be prescribed or is required to be prescribed under this Act.

Transitional provisions

30 **94.**—(1) All acts done by XXX before the appointed day shall continue to remain valid and applicable as though done by the Commission under this Act, until such time as invalidated, revoked, cancelled or otherwise determined by the Commission.

(2) Where anything has been commenced by or on behalf of XXX before the appointed day, such thing may be carried on and completed by or under the authority of the Commission.

(3) The Minister may make regulations to provide for —

(a) the repeal or amendment of any written law which appears to him to be unnecessary having regard to the provisions of this Act or to be inconsistent with any provision of this Act; and

5 (b) such transitional, savings and other consequential, incidental and supplemental provisions as he considers necessary or expedient, including providing —

10 (i) for any transitional period (whether granted upon an application or otherwise), and any extension or early termination thereof;

(ii) for different transitional periods to apply —

(A) to different provisions of the Act; or

15 (B) to different activities, agreements or conduct or different classes of activity, agreement or conduct, to which such provisions relate; and

(iii) that any provision of the Act shall not apply, or shall apply in a modified form, during the transitional period, whether generally or in relation to any specific activity, agreement or conduct or class of activity, agreement or conduct.

FIRST SCHEDULE

Section 5(2)

CONSTITUTION AND PROCEEDINGS OF COMMISSION

Appointment of Chairman and members

- 5 1.—(1) The Chairman and other members of the Commission shall be appointed by the Minister.
- (2) The Minister may appoint the Chief Executive as a member.
- (3) The persons to be appointed under this paragraph shall be chosen for their ability and experience in industry, commerce or administration or their professional
10 qualifications or their suitability otherwise for appointment.

Appointment of Deputy Chairman

- 2.—(1) The Minister may, in his discretion, appoint any member of the Commission to be the Deputy Chairman of the Commission.
- (2) The Deputy Chairman so appointed may, subject to such direction as may be
15 given by the Chairman, exercise all or any of the powers exercisable by the Chairman under this Act.
- (3) If for any reason the Chairman is unable to act or the office of the Chairman is vacant, the Deputy Chairman may exercise all or any of the powers conferred, or the duties imposed, on the Chairman under this Act.

20 Tenure of office of members of Commission

3. A member of the Commission shall hold office on such conditions and for such term of not less than 3 years and not more than 5 years as the Minister may determine, and shall be eligible for re-appointment.

Temporary Chairman, Deputy Chairman or member

- 25 4. The Minister may appoint any person to be a temporary Chairman, Deputy Chairman or member during the temporary incapacity from illness or otherwise, or during the temporary absence from Singapore, of the Chairman, Deputy Chairman or any member, as the case may be.

Revocation of appointment

- 30 5. The Minister may, at any time, revoke the appointment of the Chairman, Deputy Chairman or any member if he considers such revocation necessary in the interest of the effective and economical performance of the functions of the Commission under this Act or in the public interest.

Resignation

6. A member may resign his office at any time by giving not less than one month's notice to the Minister.

Chairman may delegate function

- 5 7. The Chairman may, in writing, authorise any member of the Commission to exercise any power or perform any function conferred on the Chairman under this Act.

Vacation of office

8. The seat of a member shall become vacant —
- (a) on his death;
 - 10 (b) if he fails to attend 3 consecutive meetings of the Commission without sufficient cause (the sufficiency thereof to be decided by the Commission);
 - (c) if he becomes in any manner disqualified from membership of the Commission;
 - (d) if he resigns from his office; or
 - 15 (e) if his appointment is revoked.

Filling of vacancies

9. If a vacancy occurs in the membership of the Commission, the Minister may, subject to paragraph 1, appoint any person to fill the vacancy, and the person so appointed shall hold office for the remainder of the term for which the vacating member was appointed.
- 20

Disqualification from membership

10. No person shall be appointed or shall continue to hold office as a member if he —
- (a) is an undischarged bankrupt or has made any arrangement with his creditors;
 - 25 (b) has been sentenced to imprisonment for a term exceeding 6 months and has not received a free pardon;
 - (c) is incapacitated by physical or mental illness; or
 - (d) is otherwise unable or unfit to discharge the functions of a member.

Disclosure of interest by members

- 30 11.—(1) A member who is in any way, directly or indirectly, interested in a transaction or project of the Commission shall disclose the nature of his interest at the first meeting of the Commission at which he is present after the relevant facts have come to his knowledge.

(2) A disclosure under sub-paragraph (1) shall be recorded in the minutes of the meeting of the Commission and, after the disclosure, that member —

- (a) shall not take part in any deliberation or decision of the Commission with respect to that transaction or project; and
- 5 (b) shall be disregarded for the purpose of constituting a quorum of the Commission for such deliberation or decision.

(3) For the purposes of this paragraph, a member whose spouse, parent, son, adopted son, daughter or adopted daughter has an interest in the transaction or project referred to in sub-paragraph (1) shall be deemed to be interested in such transaction or project.

10 **Sealing of documents**

12.—(1) All deeds and other documents requiring the seal of the Commission shall be sealed with the common seal of the Commission in the presence of any 2 officers of the Commission duly authorised by the Commission to act in that behalf and shall be signed by those officers.

- 15 (2) Such signing shall be sufficient evidence that the common seal of the Commission has been duly and properly affixed and that the seal is the lawful common seal of the Commission.

- (3) The Commission may by resolution or otherwise appoint an officer or employee of the Commission or any other agent, either generally or in a particular case, to execute or sign on behalf of the Commission any agreement or other instrument not under seal
- 20 in relation to any matter coming within the powers of the Commission.

(4) Section 12 of the Registration of Deeds Act (Cap. 269) shall not apply to any instrument purporting to have been executed under sub-paragraph (1).

Salaries, fees and allowances payable to members of Commission

- 25 13. There shall be paid to the members of the Commission, out of the funds of the Commission, such salaries, fees and allowances as the Minister may from time to time determine.

Quorum

- 30 14.—(1) At every meeting of the Commission, one half of the number of members shall constitute a quorum.

(2) The Chairman, or in his absence the Deputy Chairman, shall preside at meetings of the Commission, and if both the Chairman and Deputy Chairman are absent from any meeting or part thereof, such member as the members present may elect shall preside at that meeting or part thereof.

- 35 (3) A decision at a meeting of the Commission shall be adopted by a simple majority of the members present and voting except that, in the case of an equality of votes, the Chairman or any other member presiding shall have a casting vote in addition to his original vote.

(4) Where not less than 4 members of the Commission request the Chairman by notice in writing signed by them to convene a meeting of the Commission for any purpose specified in the notice, the Chairman shall, within 7 days from the receipt of the notice, convene a meeting for that purpose.

5 **Vacancies**

15. The Commission may act notwithstanding any vacancy in its membership.

Procedure at meetings

10 16.—(1) The Chairman or any other officer authorised by him shall, subject to such standing orders as may be made by the Commission under sub-paragraph (2), summon all meetings of the Commission for the despatch of business.

15 (2) Subject to the provisions of this Act, the Commission may make standing orders to regulate its own procedure generally and, in particular, regarding the holding of meetings, the notice to be given of such meetings, the proceedings thereat, the keeping of minutes, the custody, production and inspection of such minutes, and the opening, keeping, closing and auditing of accounts.

Validity of act or proceeding

17. No act or proceeding of the Commission shall be questioned on the ground —

- (a) of any vacancy in, or defect in the constitution of, the Commission;
- 20 (b) of any defect in the appointment of any person acting as the Chairman or as a member;
- (c) of any omission, defect or irregularity in the procedure of the Commission not affecting the merits of the case; or
- (d) that any member has contravened paragraph 11.

SECOND SCHEDULE

Section 7(1)

POWERS OF COMMISSION

1. To conduct such investigations as may be necessary for enforcing this Act.
- 5 2. To require any person to furnish such returns and information as may be necessary for implementing the provisions of this Act.
3. To issue or make arrangements for approving codes of practice relating to competition and to give approval to or withdraw approval from such codes of practice.
- 10 4. To publish educational materials or carry out other educational activities relating to competition; or to support (financially or otherwise) the carrying out by others of such activities or the provision by others of information or advice.
- 15 5. To carry out research and conduct seminars, workshops and symposia relating to competition, or to support (financially or otherwise) the carrying out by others of such activities.
6. With the approval of the Minister, to form or participate in the formation of any company, partnership or joint venture as a shareholder or partner or in any capacity.
- 20 7. To enter into such contracts as may be necessary or expedient for the purpose of discharging its functions or duties.
8. To become a member or an affiliate of any international body, the functions, objects or duties of which are similar to those of the Commission.
- 25 9. To acquire and hold property, both movable and immovable, and to sell, lease, mortgage or otherwise dispose of the property.
10. To grant loans to officers or employees of the Commission for such purposes specifically approved by the Commission as are likely to increase the efficiency of the officers or employees.
- 30 11. To grant or guarantee loans to any officer or employee of the Commission for the purchase of a house, land or a flat or for the renovation of a house or a flat for the use or occupation of the officer or employee and his family (if any).
12. To make provision for gratuities, pensions, allowances or other benefits for employees or former employees of the Commission or its predecessors.

13. To make provision for the specialised training of any employee of the Commission and, in that connection, to offer scholarships to intending trainees or otherwise pay for the cost of the training and all expenditure incidental thereto.
- 5 14. To offer bursaries and scholarships for study at any school or institution of higher learning to members of the public and officers or employees of the Commission and members of their families.
15. To do anything incidental to any of its functions under this Act or any other written law.

THIRD SCHEDULE

Sections 35 and 48

EXCLUSIONS FROM SECTION 34 PROHIBITION AND SECTION 47 PROHIBITION

5 **Services of general economic interest, etc.**

1. Neither the section 34 prohibition nor the section 47 prohibition shall apply to any undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.

Compliance with legal requirements

2.—(1) The section 34 prohibition shall not apply to an agreement to the extent to which it is made in order to comply with a legal requirement.

(2) The section 47 prohibition shall not apply to conduct to the extent to which it is engaged in order to comply with a legal requirement.

(3) In this paragraph, “legal requirement” means any requirement imposed by or under any written law.

Avoidance of conflict with international obligations

3.—(1) If the Minister is satisfied that, in order to avoid a conflict between the provisions of Part III and an international obligation of Singapore, it would be appropriate for the section 34 prohibition not to apply to —

(a) a particular agreement; or

(b) any agreement of a particular description,

he may by order exclude the agreement, or agreements of that description, from the section 34 prohibition.

(2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.

(3) An order under sub-paragraph (1) may also provide that the section 34 prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.

(4) If the Minister is satisfied that, in order to avoid a conflict between the provisions of Part III and an international obligation of Singapore, it would be appropriate for the

section 47 prohibition not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.

(5) An order under sub-paragraph (4) may provide that the section 47 prohibition is to be deemed never to have applied in relation to specified conduct.

5 (6) An international arrangement relating to civil aviation and designated by an order made by the Minister is to be treated as an international obligation for the purposes of this paragraph.

(7) In this paragraph, “specified” means specified in the order.

Public policy

10 4.—(1) If the Minister is satisfied that there are exceptional and compelling reasons of public policy why the section 34 prohibition ought not to apply to —

(a) a particular agreement; or

(b) any agreement of a particular description,

15 he may by order exclude the agreement, or agreements of that description, from the section 34 prohibition.

(2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.

20 (3) An order under sub-paragraph (1) may also provide that the section 34 prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.

25 (4) If the Minister is satisfied that there are exceptional and compelling reasons of public policy why the section 47 prohibition ought not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.

(5) An order under sub-paragraph (4) may provide that the section 47 prohibition is to be deemed never to have applied in relation to specified conduct.

(6) In this paragraph, “specified” means specified in the order.

Goods and services regulated by other competition law

30 5. The section 34 prohibition and the section 47 prohibition shall not apply to any agreement or conduct which relates to any goods or services to the extent to which any other written law or code of practice issued under any written law relating to competition gives another regulatory authority jurisdiction in the matter.

Specified activities

35 6.—(1) The section 34 prohibition and the section 47 prohibition shall not apply to any agreement or conduct which relates to any specified activity.

(2) In this paragraph, “specified activity” means —

- (a) the supply of ordinary letter and postcard services by a person licensed and regulated under the Postal Services Act (Cap. 237A);
- (b) the supply of piped potable water;
- 5 (c) the supply of wastewater management services, including the collection, treatment and disposal of wastewater;
- (d) the supply of scheduled bus services by any person licensed and regulated under the Public Transport Council Act (Cap. 259B);
- (e) the supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act (Cap. 263); and
- 10 (f) cargo terminal operations carried out by a person licensed and regulated under the Maritime and Port Authority of Singapore Act (Cap. 170A).

Clearing houses

7. The section 34 prohibition and the section 47 prohibition shall not apply to any agreement or conduct which relates to —

- 15 (a) the clearing and exchanging of articles undertaken by the Automated Clearing House established under the Banking Act (Clearing House) Regulations (Cap. 19, Rg 1); or
- (b) any activities of the Singapore Clearing Houses Association in relation to its activities regarding the Automated Clearing House.

Vertical agreements

8.—(1) The section 34 prohibition shall not apply to any vertical agreement, other than such vertical agreement as the Minister may by order specify.

- (2) In this paragraph, “vertical agreement” means any agreement or concerted practice entered into between 2 or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services.
- 25

FOURTH SCHEDULE

Section 55

EXCLUSIONS FROM SECTION 54 PROHIBITION

1. The section 54 prohibition shall not apply to any merger approved under —
 - 5 (a) any written law; or
 - (b) any code of practice issued under any written law relating to competition.
2. The section 54 prohibition shall not apply to any merger involving any undertaking relating to any specified activity as defined in paragraph 6(2) of the Third Schedule.

EXPLANATORY STATEMENT

This Bill seeks to —

- (a) make provision about competition and the abuse of a dominant position in the market; and
- (b) establish and incorporate a new public corporation to be called the Competition Commission of Singapore (the Commission) and for the transfer of the functions, property, liabilities and employees of XXX to the Commission.

PART I

PRELIMINARY

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill.

PART II

COMPETITION COMMISSION OF SINGAPORE

Division 1 — Establishment, Incorporation and Constitution of Commission

Clause 3 establishes and incorporates the Competition Commission of Singapore.

Clause 4 relates to the common seal of the Commission.

Clause 5 (read with the First Schedule) provides for the composition of the Commission.

Division 2 — Functions, Duties and Powers of Commission

Clause 6 sets out the functions and duties of the Commission.

Clause 7 (read with the Second Schedule) sets out the powers of the Commission.

Clause 8 empowers the Minister to give general directions (which are consistent with the provisions of the Bill) relating to the policy of the Commission in the performance of its functions and duties and the exercise of its powers.

Clause 9 empowers the Commission to appoint committees and to delegate to any member, officer, employee or committee of the Commission certain of its functions, duties and powers.

Division 3 — Provisions relating to Staff

Clause 10 provides for the appointment of a Chief Executive of the Commission and other staff.

Division 4 — Financial Provisions

Clause 11 relates to the financial year of the Commission.

Clause 12 requires the Commission to prepare annual estimates and supplementary estimates for approval by the Minister.

Clause 13 provides that all moneys recovered, charges and composition sums collected under the Bill are to be paid into and form part of the moneys of the Commission, except that all financial penalties collected are to be paid to the Consolidated Fund.

Clause 14 provides for the giving of grants-in-aid to the Commission to carry out its functions.

Clause 15 empowers the Commission to raise loans.

Clause 16 empowers the Commission to issue shares and other securities to the Minister for Finance as a consequence of property, rights or liabilities of the Government vested in the Commission or as a consequence of capital injection or other investment by the Government in the Commission.

Clauses 17 and 18 embody the financial provisions applicable to the Commission.

Clause 19 deals with the power to invest by the Commission.

Clauses 20 to 23 deal with the accounts and financial statements of the Commission.

Division 5 — Transfer of Assets, Liabilities and Employees

Clause 24 provides for the transfer to the Commission of certain property vested in the Government for the purposes of XXX, and the rights and liabilities of the Government connected therewith.

Clauses 25 to 30 deal with the transfer of employees in XXX to the Commission, the protection of their terms and conditions of service on transfer, and certain other transitional matters.

Division 6 — General

Clause 31 deals with the annual report of the Commission.

Clause 32 confers on the Commission the exclusive right to use its symbol and representation.

PART III

COMPETITION

Division 1 — General

Clause 33 provides for the extra-territorial effect of this Part and the extent to which this Part will apply in Singapore

*Division 2 — Agreements, etc., preventing, restricting
or distorting Competition*

Clause 34 prohibits agreements, decisions and concerted practices between or by undertakings and associations of undertakings the purpose or effect of which is the prevention, restriction or distortion of competition in Singapore (the section 34 prohibition). This clause contains an illustrative list of such agreements. The intention is that the Commission, in enforcing this provision, will focus principally on agreements, decisions and concerted practices which have as their object or effect the appreciable prevention, restriction or distortion of competition in Singapore.

Clause 35 provides for the exclusion of matters specified in the Third Schedule from the section 34 prohibition.

Clause 36 empowers the Minister, acting on a recommendation of the Commission, to exempt, by order, categories of agreement from the section 34 prohibition (block exemption).

Clause 37 provides for various matters relating to block exemptions.

Clause 38 enables a block exemption order to provide for an agreement which does not qualify for a block exemption, but which satisfies specified criteria and has been notified to the Commission, to be treated as falling within a block exemption unless the Commission opposes its being so treated.

Clause 39 provides for the procedure which the Commission and the Minister are to follow in making block exemption orders.

Clause 40 provides for the variation and revocation of block exemption orders.

Clause 41 sets out the criteria for block exemption orders.

Clause 42 provides for clauses 43 and 44 to apply in relation to the examination of an agreement by the Commission as to whether the agreement infringes the section 34 prohibition. Clause 42 further empowers the Minister to make regulations in relation to the procedures relating to such examination.

Clause 43 enables a party to an agreement which might infringe the section 34 prohibition to notify the Commission and to apply to it for guidance. The Commission may give guidance as to whether or not the agreement is likely to infringe the section 34 prohibition, whether it is likely to be exempt under a block exemption.

Clause 44 enables a party to an agreement to apply to the Commission for a decision as to whether it infringes the section 34 prohibition and if it does not whether that is because the agreement is exempt or excluded from the prohibition.

Clause 45 limits the power of the Commission to take further action in respect of an agreement where it has given guidance under clause 43 that the agreement is unlikely to infringe the section 34 prohibition.

Clause 46 limits the power of the Commission to take further action in respect of an agreement where it has made a decision under clause 44 that the agreement does not infringe the section 34 prohibition.

Division 3 — Abuse of Dominant Position

Clause 47 prohibits the abuse of a dominant position in any market in Singapore (the section 47 prohibition). The clause contains an illustrative list of conduct which may constitute an abuse.

Clause 48 provides for the exclusion of matters specified in the Third Schedule from the section 47 prohibition.

Clause 49 provides for clauses 50 and 51 to apply in relation to the consideration of conduct by the Commission as to whether the conduct infringes the section 47 prohibition. Clause 49 further empowers the Minister to make regulations in relation to the procedures relating to such consideration.

Clause 50 enables a person to apply to the Commission for guidance as to whether conduct is likely to infringe the section 47 prohibition.

Clause 51 enables a person to apply to the Commission for a decision as to whether conduct is likely to infringe the section 47 prohibition.

Clause 52 limits the power of the Commission to take further action in respect of conduct where it has given guidance under clause 50 that the conduct is unlikely to infringe the section 47 prohibition.

Clause 53 limits the power of the Commission to take further action in respect of conduct where it has made a decision under clause 51 that the conduct does not infringe the section 47 prohibition.

Division 4 — Mergers

Clause 54 prohibits certain mergers which have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore (the section 54 prohibition).

Clause 55 provides for the exclusion of mergers specified in the Fourth Schedule from the section 54 prohibition.

Clause 56 provides for clauses 57 and 58 to apply in relation to the consideration of a merger by the Commission as to whether the merger infringes the section 54 prohibition. Clause 56 further empowers the Minister to make regulations in relation to the procedures relating to such consideration.

Clause 57 enables a person to apply to the Commission for guidance as to whether a merger is likely to infringe the section 54 prohibition.

Clause 58 enables a person to apply to the Commission for a decision as to whether a merger is likely to infringe the section 54 prohibition and empowers the Minister to exempt, on the ground of any public interest consideration, a merger which has infringed the section 54 prohibition.

Clause 59 limits the power of the Commission to take further action in respect of a merger where it has given guidance under clause 57 that the merger is unlikely to infringe the section 54 prohibition.

Clause 60 limits the power of the Commission to take further action in respect of a merger where it has made a decision under clause 58 that the merger does not infringe the section 54 prohibition.

Division 5 — Enforcement

Clause 61 enables the Commission to publish guidelines indicating the manner in which the Commission will interpret, and give effect to, the provisions of this Part. Such guidelines are not binding on the Commission.

Clause 62 specifies the circumstances in which the Commission may exercise the powers in clauses 63, 64 and 65 to conduct an investigation into suspected infringements of the section 34 prohibition, the section 47 prohibition or the section 54 prohibition. Clause 62 further empowers the Commission to appoint an inspector to conduct the investigation.

Clause 63 empowers the Commission and an inspector to require the production of specified documents and information and, in relation to the specified documents, to take copies of them, to require explanations to be given and to require information about such documents that are not produced.

Clause 64 empowers an authorised officer of the Commission and an inspector to enter premises for the purposes of an investigation and to require, *inter alia*, the production of documents and information, and for explanations of documents produced to be given.

Clause 65 empowers an authorised officer of the Commission and an inspector to obtain a warrant to enter premises (by force, if necessary), to search premises and persons, and to take copies or possession of documents that have not been produced when required under clause 63 or 64 or which he fears would be concealed, tampered with or destroyed if he required their production under those clauses. The authorised officer or inspector may require explanations of them. The clause also provides for matters supplementary to the entry of premises under a warrant, including information about the investigation to be given in the warrant, the production of the warrant and the procedure to be followed where the premises to be entered are unoccupied.

Clause 66 excludes from the powers to require the production of documents or the giving of explanations, etc., information which is subject to legal professional privilege, and the production of information or documents which would be self-incriminating. A “professional legal adviser” referred to in that clause includes an in-house counsel.

Clause 67 allows the Commission, where it has reasonable grounds for suspecting that the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has been infringed (pending completion of an investigation), to impose interim measures which it considers necessary to prevent serious, irreparable damage to a person or category of persons or to protect the public interest.

Clause 68 requires the Commission when it proposes (following completion of an investigation) to make a decision that the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has been infringed, to give notice to persons affected giving them an opportunity to make representations. In addition, where the Commission proposes to make a decision that a merger infringes the section 54 prohibition, any party to the merger may apply to the Minister for the merger to be exempted from the section 54 prohibition on the ground of any public interest consideration.

Clause 69 empowers the Commission, where it has made a decision that the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has been infringed, to give directions which it considers appropriate to bring the infringement to an end. Such directions may include the payment of a financial penalty to the Commission where the infringement was committed intentionally or negligently. The Minister may, by order published in the *Gazette*, prescribe the basis for determining the maximum amount of such penalty.

Clause 70 requires the Commission to notify persons affected by any decision or direction made by it under the Part within 14 days of its making such decision or direction.

PART IV

APPEALS

Division 1 — General

Clause 71 provides for appeals to the Competition Appeal Board (the Board) against decisions of the Commission.

Division 2 — Competition Appeal Board

Clause 72 provides for the establishment of the Board, and for the composition and procedure of the Board.

Clause 73 provides for the powers, duties, rights and privileges of the Board, and the decisions which the Board may make.

Clause 74 provides for appeals from the decisions of the Board to the High Court and to the Court of Appeal on points of law or the amount of financial penalties.

PART V

MISCELLANEOUS

Clause 75 provides for the circumstances in which any person who suffers loss or damage as a result of an infringement of the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has a right of action against any undertaking which is or which has at the material time been a party to such an infringement. Clause 75(6) provides for the limitation period within which such actions may be brought. The limitation periods provided for under any other law accordingly do not apply. Nothing in this clause is to be construed as conferring on any party to an agreement which infringes the section 34 prohibition a right of action for relief.

Clause 76 enables the Commission to enter into a co-operation agreement with any regulatory authority so as to —

- (a) facilitate co-operation between the Commission and the regulatory authority in the performance of their respective functions in so far as they relate to issues of competition between undertakings;
- (b) avoid duplication of activities by the Commission and the regulatory authority, being activities involving the determination of the effects on competition of any act done, or proposed to be done; and
- (c) ensure, as far as possible, consistency between decisions made or other steps taken by the Commission and the regulatory authority in so far as any part of those decisions or steps consists of or relates to a determination of any issue of competition between undertakings.

Clause 77 enables the Commission, with the approval of the Minister, to enter into any arrangement with any foreign competition body whereby each party to the arrangement may —

- (a) furnish to the other party information in its possession if the information is required by that other party for the purpose of performance by it of any of its functions; and
- (b) provide such other assistance to the other party as will facilitate the performance by that other party of any of its functions.

Clause 78 requires various persons to preserve, and aid in the preserving of, secrecy with regard to certain matters.

Clause 79 enables the Commission to enforce its directions by registering them in a District Court. A direction so registered shall have the same force and effect for the purposes of enforcement as if it were an order originally obtained in the District Court, and the District Court shall have power to enforce it accordingly, regardless of any monetary amount involved.

Clause 80 makes it an offence for a person to fail to comply with a requirement imposed on him in an investigation by the Commission under clause 63, 64 or 65.

Clause 81 makes it an offence to destroy or falsify documents which are required to be produced under clause 63, 64 or 65.

Clause 82 makes it an offence for a person to provide information which is false or misleading in a material particular to the Commission and certain other persons in connection with any of its or their functions and duties under the Bill.

Clause 83 makes it an offence to obstruct certain persons in the discharge of their duties under the Bill.

Clause 84 confers upon certain persons protection from action or liability for anything done in good faith for the purposes of carrying out the provisions of the Bill or other written law.

Clause 85 deems all members, officers and employees of the Commission, all inspectors and all members of the Board to be public servants for the purposes of the Penal Code (Cap. 224).

Clause 86 precludes any person, in any proceedings before any court in respect of any equipment, article, book or document seized in the exercise or purported exercise of any power conferred under the Bill, from recovering the costs of the proceedings or any damages or other relief other than the return of the equipment, article, book or document or the payment of their value, unless the seizure was made without reasonable or probable cause.

Clause 87 empowers an officer or employee of the Commission to require any person to furnish any information to him or produce to him, or provide him with copies of, any book or document in relation to any offence under the Bill.

Clause 88 provides that where an offence under the Bill is committed by a corporation with the consent or connivance of an officer or is attributable to any neglect on his part, that officer shall also be guilty of the offence. The principle also applies to partners in partnerships, and officers and members of the governing body of unincorporated associations. A person convicted under this clause shall be punished with the fine or imprisonment as prescribed in that offence-creating provision, or where there is no penalty provided, with the general penalty under clause 90.

Clause 89 confers jurisdiction on a District Court to try any offence under the Bill and to impose the full penalty or punishment in respect of any such offence.

Clause 90 provides for the penalties for offences under the Bill for which no penalty is expressly provided.

Clause 91 relates to the composition of offences under the Bill.

Clause 92 empowers the Minister to amend the Third and Fourth Schedules by order published in the *Gazette*.

Clause 93 empowers the Commission to make regulations with the approval of the Minister.

Clause 94 deals with various transitional matters, including the power of the Minister to make regulations to provide for —

- (a) the repeal or amendment of any written law which appears to the Minister to be unnecessary having regard to the provisions of the Bill, or which are inconsistent with any provision of the Bill; and
- (b) such transitional, savings and other consequential, incidental and supplemental provisions as the Minister considers necessary, including providing for a transitional period and that the provisions of the Bill will not apply, or will apply in a modified form, during the transitional period.

The First Schedule sets out the constitution and proceedings of the Commission.

The Second Schedule sets out the powers of the Commission.

The Third Schedule sets out the matters excluded from the section 34 prohibition and the section 47 prohibition.

The Fourth Schedule sets out the mergers excluded from the section 54 prohibition.

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.
