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**FIGHTING CORRUPTION AND PROMOTING COMPETITION**

**Contribution from Singapore**

-- Session I --

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## FIGHTING CORRUPTION AND PROMOTING COMPETITION

### -- Singapore --

#### 1. Singapore's Economic Development

1. Singapore is a small<sup>1</sup> city-state with limited natural resources. With a population of about 5.4 million<sup>2</sup>, Singapore's domestic market is limited in size and has relied on an open economy with trade as a key engine of growth where the value-added from Singapore's exports of goods and services in 2010 was estimated to account for about two-thirds of its Gross Domestic Product ("GDP")<sup>3</sup>. An open economy necessitates Singapore to benchmark its competitiveness globally with the recognition that market pricing should be applied to optimise the allocation and utilisation of resources.<sup>4</sup>

2. In the early years of Singapore's economic history, Singapore's government invested in numerous sectors via government linked companies ("GLCs") where the private sector was unwilling or unable to enter due to their high risk profile, long gestation periods or a lack of expertise.<sup>5</sup> These GLCs eventually grew in size, strength and technological depth, which led to complaints from the private sector that the playing field was no longer level as GLCs were crowding out private sector players. In 2002, Deputy Prime Minister Lee Hsien Loong (as he then was) announced the government's objective in Parliament<sup>6</sup> to expand the private sector's (including GLCs) share<sup>7</sup> of Singapore's GDP whilst keeping the government's share of the GDP as small as possible.<sup>8</sup> The Singapore government acknowledged the recommendations of the Michael Fam Report in 1987 to divest 41 GLCs over a 10-year period, especially those with no potential for international growth or with no strategic value. It was also decided that a generic competition law would be enacted to ensure that competition by private sector players (including GLCs) was through fair market practices. This announcement was welcomed and endorsed by the

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<sup>1</sup> Approximately 710 square kilometres.

<sup>2</sup> As at June 2013. See <http://www.singstat.gov.sg/>

<sup>3</sup> [http://www.mti.gov.sg/ResearchRoom/SiteAssets/Pages/Economic-Survey-of-Singapore-Third-Quarter-2012/FA\\_3Q12.pdf](http://www.mti.gov.sg/ResearchRoom/SiteAssets/Pages/Economic-Survey-of-Singapore-Third-Quarter-2012/FA_3Q12.pdf)

<sup>4</sup> Committee on Singapore's Competitiveness, Executive Summary (1998) paragraphs 28, 40, 50 and 55. [http://www.mti.gov.sg/ResearchRoom/Documents/app.mti.gov.sg/data/pages/885/doc/NWS\\_CSC.pdf](http://www.mti.gov.sg/ResearchRoom/Documents/app.mti.gov.sg/data/pages/885/doc/NWS_CSC.pdf)

<sup>5</sup> See also Report of the Economic Committee, The Singapore Economy: New Directions (February 1986) paragraphs 41, 88 and 90. <http://www.mti.gov.sg/ResearchRoom/Documents/app.mti.gov.sg/data/pages/885/doc/econ.pdf>

<sup>6</sup> Motion on Temasek Charter and EISC's Recommendations on Government in Business – Speaking Points for DPM's Round-up Speech, 28 August 2002. [http://www.mti.gov.sg/ResearchRoom/Documents/app.mti.gov.sg/data/pages/507/doc/EISC\\_Govt\\_in\\_Biz\\_Recommendations.pdf](http://www.mti.gov.sg/ResearchRoom/Documents/app.mti.gov.sg/data/pages/507/doc/EISC_Govt_in_Biz_Recommendations.pdf)

<sup>7</sup> GLCs contribute to 13% of Singapore's GDP and the remaining private sector contributes to 78% of Singapore's GDP at that time.

<sup>8</sup> The government's share was 9% of Singapore's GDP at that time.

Economic Review Committee<sup>9</sup> The eventual enactment of Singapore’s generic competition law would be discussed below at paragraph 11.

## 2. The Eradication of Corruption – A Matter of National Survival

3. The enactment of a corruption law has a longer history and has been in existence even before Singapore’s independence from the United Kingdom. The primary legislation governing corruption laws in Singapore is the Prevention of Corruption Act (Cap. 241) (“PCA”).

4. The PCA was presented before the Parliament at the time when corruption was a recognised problem in the Singapore public service. The then Minister of Home Affairs emphasised that a corrupt-free Government was critical to its legitimacy and survival:<sup>10</sup>

*“The Government is deeply conscious that a Government cannot survive, no matter how good its aims and intentions are, if corruption exists within its ranks and its public service on which it depends to provide the efficient and effective administrative machinery to translate its policies into action.”*

5. During the Parliamentary debates on the Bill leading to the enactment of the PCA, Parliament made clear its “zero tolerance policy” towards corruption and recognised that public service bureaucracy was vulnerable to exploitation by corrupt public service officers for the purposes of extracting personal benefits:

*“We are determined to eradicate corruption. Previously, in the eyes of the people of Singapore, the public service was a corrupt and inefficient bureaucratic machinery. Because of this, bureaucracy is just a by-product of corruption. Whenever someone went to the Government office, more often than not they experienced some unnecessary difficulty and trouble. Sometimes the dishonest public servants referred them to some other department instead of their own department, and said that such a thing was not workable. Therefore, the people under those circumstances had to offer bribes so that everything could be solved.”<sup>11</sup>*

6. The PCA criminalises<sup>12</sup> both public sector as well as private sector corruption. However, corruption involving the public sector is generally considered more egregious and would be an aggravating factor for the purposes of sentencing in a criminal conviction.<sup>13</sup> There are specific provisions that allow the Singapore courts to mete out enhanced imprisonment terms of up to seven years if the corrupt offence relates to a contract or proposal to contract with the government<sup>14</sup>, an offer of inducement to withdraw from a government tender with the intention of obtaining a contract with the government<sup>15</sup> or a bribe for a member of a public body as an inducement or reward for the performance of an official act or the grant of a contract.<sup>16</sup> When a person is convicted of accepting corrupt gratifications under the PCA, that person will

<sup>9</sup> Report of Economic Review Committee, *New Challenges, Fresh Goals – Towards a Dynamic Global City* (February 2003) pages 118 and 129.

<sup>10</sup> Singapore Parliamentary Debates, Official Report (13 February 1960) vol 12 at cols 375–378 (Mr Ong Pang Boon, Minister for Home Affairs).

<sup>11</sup> Singapore Parliamentary Debates, Official Report (13 February 1960) vol 12 at cols 383–384 (Mr Ong Chang Sam, Member of Parliament for Choa Chu Kang, speaking in Mandarin).

<sup>12</sup> Section 5 and 6 PCA.

<sup>13</sup> *Chua Tiong Tiong v Public Prosecutor* [2001] 2 SLR(R) 515.

<sup>14</sup> Section 7 PCA.

<sup>15</sup> Section 10 PCA.

<sup>16</sup> Section 12 read with section 2 PCA.

also be required to disgorge that gratification by way of a penalty payment.<sup>17</sup> The PCA also has extra-territorial jurisdiction over Singapore citizens who commit offences under the PCA outside Singapore.<sup>18</sup>

7. Judicial pronouncements at the highest level emphasised this “zero tolerance policy” towards corruption in Singapore:<sup>19</sup>

*“I accepted the grave issue of public interest at stake in the present case. Eradicating corruption in our society is of primary concern, and has been so for many years. This concern becomes all the more urgent where public servants are involved, whose very core duties are to ensure the smooth administration and functioning of this country.*

...

*On my part, I have sought to deter corruption through harsher punishment for lawbreakers in this area, ...”*

8. The Corrupt Practices Investigation Bureau (“CPIB”) is the agency that investigates offences under the PCA. CPIB is under the charge of the Prime Minister’s office and headed by a Director who is directly responsible to the Prime Minister. To further entrench CPIB’s independence, there are provisions in the Constitution that allow the President of Singapore to:

- refuse to appoint or to revoke the appointment of the Director of CPIB if the Elected President disagrees with the recommendations of the Cabinet. If such refusal by the Elected President is contrary to the recommendation of the Council of Presidential Advisers, Parliament may overrule the decision of the President by a resolution passed by not less than two-thirds majority;<sup>20</sup> and
- give concurrence for the Director of CPIB to make inquiries or carry out investigations into any information received, touching upon the conduct of any person or any allegation or complaint made against any person, notwithstanding that the Prime Minister has refused to give such consent.<sup>21</sup>

9. The Global Competitiveness Report 2013-2014 described Singapore’s public administration as, “one of the world’s least corrupt and most efficient”.<sup>22</sup> The Corruption Perception Index by Transparency International ranked Singapore as the 5<sup>th</sup> least corrupt country in the world for two consecutive years in 2012 and 2013. The culture against corruption is well entrenched in Singapore as highlighted by Prime Minister Lee Hsien Loong:<sup>23</sup>

*“...incorruptibility has become ingrained into the Singapore psyche and into our culture. Singaporeans expect to see, and demand to be delivered, a clean system.”*

10. This success has been credited to the clear and unbending political will to weed out corruption particularly in Singapore’s public service. Firm action is taken against the corrupt regardless of their social status, political affiliation, colour or creed. Examples of high level public office holders who had been

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<sup>17</sup> Section 13 PCA.

<sup>18</sup> Section 37 PCA.

<sup>19</sup> ***Chua Tiong Tiong v Public Prosecutor*** [2001] 2 SLR(R) 515 at 519 and 520 paragraphs 17, 18 and 19 per the Honourable Chief Justice Yong Pung How.

<sup>20</sup> Article 22(1)(n) of the Constitution of the Republic of Singapore and Section 3(1) PCA.

<sup>21</sup> Article 22G of the Constitution of the Republic of Singapore.

<sup>22</sup> The Global Competitiveness Report 2013-2014, World Economic Forum, at page 32.

<sup>23</sup> Speech by Prime Minister Lee Hsien Loong at CPIB’s 60th Anniversary Celebrations, 18 September 2012.

investigated, charged and convicted of corruption offences under the PCA include a Minister of State<sup>24</sup> and a Commissioner of the Singapore Civil Defence Force.<sup>25</sup>

### 3. Enactment of Competition Laws

11. Singapore was able to largely mitigate the competition problems caused by its small domestic market by being one of the most open markets in the world. Singapore had been described as a “competitiveness champion”<sup>26</sup> and was ranked 2<sup>nd</sup> for the past three consecutive years by the Global Competitiveness Index.<sup>27</sup>

12. Prior to the enactment of the generic Competition Act (Cap. 50B) (“Competition Act”) in 2004, sectors which had a high chance of market failure were already regulated by sectorial regulators (Telecommunications, Energy, Water) which had their own competition codes.

13. The Competition Act contains three prohibitions relating to:

- Agreements, decisions and concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore (“Prohibited Anti-Competitive Agreements”),<sup>28</sup>
- Abuse of dominance in any market in Singapore (“Abuse of Dominance”),<sup>29</sup> and
- Mergers that have resulted or may be expected to result in substantial lessening of competition within any market in Singapore for goods or services (“Prohibited Mergers”).<sup>30</sup>

14. These Prohibitions have extra-territorial reach to agreements, parties and mergers outside Singapore<sup>31</sup> as it was recognised that Singapore, being a small open economy, is vulnerable to anti-competitive activities from entities operating overseas.<sup>32</sup> The extra territorial reach of the laws was demonstrated in December 2013; the Competition Commission of Singapore (“CCS”) issued a Proposed Infringement Decision against Japanese parent companies and their subsidiaries for price fixing the price of ball bearings.

<sup>24</sup> *Wee Toon Boon v Public Prosecutor* [1974-1976] SLR(R) 0761.

<sup>25</sup> *Public Prosecutor v Peter Benedict Lim Sin Pang* [2013] SGDC 192.

<sup>26</sup> The Global Competitiveness Report 2013-2014, World Economic Forum, at page 32.

<sup>27</sup> The Global Competitiveness Report 2013-2014.

<sup>28</sup> Section 34 Competition Act.

<sup>29</sup> Section 47 Competition Act.

<sup>30</sup> Section 54 Competition Act.

<sup>31</sup> Section 33(1) Competition Act which expressly states that infringements under Section 34, Section 47 and Section 54 are captured notwithstanding that the agreements are entered outside Singapore, the parties or undertakings are outside Singapore, or the merger will or has taken place outside Singapore.

<sup>32</sup> Singapore Parliamentary Debates, Official Report (19 October 2004) vol 78 at cols 865-867 (Mr Vivian Balakrishnan, Senior Minister of State for Trade and Industry).

#### 4. Interaction between Anti-Competitive Behaviour and Corruption

15. Since Singapore's independence, it was determined that the eradication of corruption was a matter of national survival. How public services are administered have a direct impact on the development and competitiveness of a country. As noted by Minister Mentor Lee Kuan Yew (as he then was):<sup>33</sup>

*"...one "X" factor remains a key differentiator, especially for developing countries, that is ethical leadership. In the Third World a clean, efficient, rational and predictable government is a competitive advantage."*

16. It was judicially recognised that corruption will negatively distort the efficient operation of market forces by preventing competitive force from functioning properly as noted by the Honourable Justice of Appeal V K Rajah:<sup>34</sup>

*"40 I take the view that there is a firm need for the courts to set the correct moral tone for business. There are different, and sometimes overlapping, theories as to what makes bribery morally wrong and therefore worthy of criminalisation (see generally Stuart P Green, "What's Wrong with Bribery", in *Defining Crimes, Essays on the Special Part of the Criminal Law* (R A Duff and Stuart P Green eds) (Oxford University Press, 2005) at p 143). P Alldridge, "The Law Relating to Free Lunches" (2002) 23 *Company Lawyer* 264, has suggested (at p 267) **that the harm of private sector corruption lies in the distortion of the operation of a legitimate market, preventing competition in the market from functioning properly, to the detriment of the eventual consumer, who will have to bear the cost of the bribe.** ...*

*41 Both these perspectives are persuasive, and, in my opinion, there is clearly a public interest in the private sector maintaining a reputation for being corruption free, with business being conducted in a fair and transparent manner so as to ensure that the public's legitimate expectations of bona fides, commercial evenhandedness and economic welfare are not prejudiced, and **the efficient operation of the market is not disrupted.** These being key factors in attracting and keeping both domestic and foreign investment in our country, the health and stability of the wider economy would be harmed if a culture of corruption was allowed to take root here (see Paolo Mauro, "Corruption and Growth" (1995) 110 *Quarterly Journal of Economics* 681, and Paolo Mauro, "The Persistence of Corruption and Slow Economic Growth" (*International Monetary Fund, IMF Working Paper, WP/02/213*))."*

[Emphasis in bold added]

17. On the other hand, the Competition Act in Singapore is relatively "modern", as compared to corruption law, being modelled after United Kingdom's Competition Act 1998<sup>35</sup>. By adopting a modern piece of legislation, Singapore was able to adopt international best practices as well as take into account Singapore's specific economic characteristics and requirements.<sup>36</sup>

18. As stated earlier, corruption laws were a necessity for "national survival". On the other hand, competition laws were a necessity for "sustainable economic development" of Singapore's evolving economic landscape. The Singapore approach could be described as containing corruption as the first and fundamental priority in order to establish an efficient and effective public administrative machinery to translate its economic policies into tangible results. Thereafter, as the next phase, competition laws were

<sup>33</sup> Address by Minister Mentor Lee Kuan Yew at the Asian Strategy and Leadership Institute's "World Ethics and Integrity Forum 2005" at Kuala Lumpur on 28 April 2008 (1<sup>st</sup> paragraph).

<sup>34</sup> *Public Prosecutor v Ang Seng Thor* [2011] 4 SLR 217 at 232 paragraphs 40 and 41.

<sup>35</sup> Although the competition laws of Australia, Ireland, the United States and Canada were also studied. See Singapore Parliamentary Debates, Official Report (19 October 2004) vol 78 at cols 863-864 (Mr Vivian Balakrishnan, Senior Minister of State for Trade and Industry).

<sup>36</sup> Singapore Parliamentary Debates, Official Report (19 October 2004) vol 78 at cols 863-864 (Mr Vivian Balakrishnan, Senior Minister of State for Trade and Industry).

implemented when Singapore's economy had become increasingly sophisticated with an increasingly larger private sector. In a sense, Singapore's adoption of competition law in 2004 was reflective of global phenomena embracing competition law. The International Competition Network was established in October 2001 by 16 competition agencies from around the world<sup>37</sup>. By 2013, its membership expanded to 126 competition agencies from 111 jurisdictions.<sup>38</sup>

19. The laws and enforcement actions against corrupt and anti-competitive behaviours are complementary and not mutually exclusive albeit that there may be some overlap between them. It is conceivable that a company involved in bid-rigging activities could be liable to pay financial penalties for infringing a prohibition under the Competition Act whilst its directors or officers could separately and additionally be criminally liable for committing offences under the PCA, for example, by bribing public service officers who were aware of their activities to turn a blind eye to their anti-competitive conduct or by offering a bribe to another existing tenderer to induce that tenderer to withdraw from public tender with the intention of successfully obtaining that public tender.

20. However, it is important to realise that, whilst corruption laws and competition laws are both means that can contribute synergistically to a common end of economic development, the situations where they may be an appropriate tool of choice differs from circumstance to circumstance and they should not be confused as inter-changeable substitutes of each other.

21. Efforts to combat corruption and anti-competitive behaviours cannot be on a stand-alone silo basis if they are to be effective. In cases where there are concurrently the infringements of the Competition Act and the commission of offences under the PCA, both CCS and CPIB will collaborate to handle the case with a single agency as the lead agency to handle dealings with the public. Both CCS and CPIB will keep each other updated on the developments in their respective investigations, subject to their respective statutory confidentiality obligations.

## 5. Conclusion

22. By the time the Competition Act came into force on 1 January 2006<sup>39</sup>, Singapore had already established a respectable 5<sup>th</sup> place ranking for two consecutive years in Global Competitive Index 2005-2006 and 2006-2007 rankings. Thereafter, Singapore had been steadily improving<sup>40</sup> its Global Competitive Index rankings to the 3<sup>rd</sup> place for two consecutive years (2009-2010 and 2010 - 2011) and subsequently to the 2<sup>nd</sup> place for three consecutive years (2011-2012, 2012-2013 and 2013-2014). This could be attributed to Singapore's embrace of competition policy by having open markets.

23. Governmental efforts to promote competition and fight corruption can overlap and should be considered as mutually reinforcing actions that facilitate the proper functioning of competition in and the efficient operation of the market directly or indirectly through an efficient public services with officers that serve the best interests of the country.

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<sup>37</sup> ICN Factsheet And Key Messages, April 2009, <http://www.internationalcompetitionnetwork.org/uploads/library/doc608.pdf>

<sup>38</sup> A statement by Andreas Mundt, President of the Bundeskartellamt, ICN Chair (September 2013), <http://www.internationalcompetitionnetwork.org/uploads/library/doc924.pdf>

<sup>39</sup> The Competition Act's Prohibited Mergers provisions came into effect on 1 July 2007.

<sup>40</sup> Singapore was ranked 7<sup>th</sup> and 5<sup>th</sup> in the Global Competitive Index rankings for 2007-2008 and 2008 -2009 respectively: The Global Competitiveness Report 2008-2009, World Economic Forum.