

## COMPETITION BILL

Order for Second Reading read.

**The Senior Minister of State for Trade and Industry (Dr Vivian Balakrishnan):** Mr Speaker, Sir, I beg to move, "That the Bill be now read a Second time."

Sir, competition is a key tenet of Singapore's economic strategy. Market competition spurs firms to be more efficient, innovative, and responsive to consumer needs. Consumers would enjoy more choices, lower prices, and better products and services. The economy as a whole benefits from greater productivity gains and more efficient resource allocation. Therefore, wherever appropriate, Singapore has opened up sectors of the economy to market competition.

In February 2003, the Economic Review Committee (ERC) noted that whilst we have rules against anti-competitive behaviours in specific sectors like energy and telecommunications, there is no generic competition law that covers all sectors. It thus recommended that a generic competition law be enacted to create a level playing field for businesses, big and small, to compete on an equal footing. This will make for a more conducive business environment.

The Government accepted the ERC's recommendation, as competition law will help to reinforce our pro-enterprise and pro-competition policies, enhance the efficiency of our markets, and strengthen our economic competitiveness.

MTI subsequently studied the competition legislation of various jurisdictions, including the UK, Australia, Ireland, the United States and Canada. It also held two rounds of public consultations on a draft Competition Bill in April and July this year, and conducted several briefings for businesses through the Singapore Business Federation.

The Bill before the House is largely modelled on the UK's Competition Act 1998. The Bill adopts international best practices, and yet takes into account our specific economic characteristics and requirements, in particular, the fact that we are a small open economy. It also incorporated relevant feedback and suggestions from the public consultation exercises. I would like to thank everyone who provided feedback during these exercises.

Sir, the objective of the Bill is to promote the efficient functioning of our markets and hence enhance the competitiveness of our economy. The Bill seeks to prohibit anti-competitive activities that unduly prevent, restrict or distort competition. We recognise that any regulatory intervention in the market may impose costs.

Therefore, we need to balance regulatory and business compliance costs against the benefits from effective competition. Instead of attempting to catch all forms of anti-competitive activities, our principal focus will be on those that have an appreciable adverse effect on competition in Singapore or that do not have any net economic benefit. In assessing whether an action is anti-competitive, we will also give due consideration to whether it promotes innovation, productivity or longer-term economic efficiency. This approach will ensure that we do not inadvertently constrain innovative and enterprising endeavours.

#### *Establishment of a new statutory body and prohibited activities*

Parts I and II of the Bill establish a new statutory body, the Competition Commission of Singapore. This Commission will administer and enforce the competition law. Part III sets out the three main prohibited activities under the Bill.

First, anti-competitive agreements, decisions and practices. Clause 34 of the Bill prohibits agreements, decisions and practices which prevent, restrict or distort competition in Singapore. These include agreements between competing firms to fix prices, reduce the quantity of the goods and services sold, or to share markets. The provisions of any agreement or any decision that infringes this prohibition will be rendered void on or after the date the section 34 prohibition comes into force to the extent of the infringement.

Clause 36 empowers the Minister to make an order, following the recommendation of the Commission, to exempt certain categories of agreements from this prohibition. This is provided that they improve production or distribution, or promote technical or economic progress, without imposing undue restrictions or substantially eliminating competition.

Second, abuse of a dominant position. The Bill does not prohibit dominance or substantial market power per se - firms can continue to increase market power through offering cheaper or more innovative products. However, clause 47 prohibits firms from abusing market power in ways that are anti-competitive and

which work against the long-term economic efficiency, eg, predatory behaviour towards competitors.

Third, mergers and acquisitions which substantially lessen competition. Sir, not all mergers and acquisitions (M&As) have anti-competitive effects. Being a small open economy, highly-concentrated markets are sometimes inevitable in Singapore. Thus, only M&As which substantially lessen competition and have no offsetting efficiencies are prohibited under clause 54. Firms are not mandated to seek approval or to notify the Commission of any merger, but those that wish to seek the Commission's guidance or decision can do so on a voluntary basis under clauses 57 and 58.

For mergers involving public interest considerations, clause 58 provides that the Minister will decide whether such matters may be exempted from this prohibition. The Minister's decision is final.

Clause 61 provides that the Commission may publish guidelines on how it will interpret and give effect to the provisions of Part III of the Bill. The Commission will set out its analytical framework and implementation approach in its guidelines, which will enhance transparency and give businesses greater certainty. As a practice, the Commission will conduct public consultation before finalising its guidelines.

Let me move on to the scope of application. The Bill will apply to commercial and economic activities carried on by private sector entities in all sectors, regardless of whether the undertaking is owned by a foreign entity, a Singapore entity, the Government or a statutory body. However, as the intent of competition law is to regulate the conduct of market players, it will not apply to the Government, statutory bodies or any person acting on their behalf.

As a small open economy, we are vulnerable to anti-competitive activities from entities operating overseas. Consequently, clause 33 thus provides for the extra-territorial effect of this competition law.

Clauses 35, 48 and 55 exclude matters or mergers specified in the Third and Fourth Schedules from the prohibitions of the Bill.

Some of these are based on public interest considerations such as national security, defence and other strategic interests. The other exclusions are for sectors or activities which already have sectoral competition frameworks. These sectors are in transition from a previously monopolistic situation to a more competitive environment today. And in such circumstances, more active market regulation and intervention is needed. Moreover, there are considerable technical

matters affecting competition in these areas. Hence, the sectoral regulators, with their industry knowledge and expertise, are in a better position to handle such issues. However, cross-sectoral competition issues will be dealt with by the Commission, in consultation with the sectoral regulators.

The sectoral exclusions listed in the Third and Fourth Schedules are not intended to be permanent. After the competition law has been in force for some time, we will review the need for such sectoral exclusions, taking into account market developments at that point in time.

*Powers to investigate, adjudicate and sanction; and rights of private action*

The Commission will have powers to investigate and adjudicate anti-competitive activities, as set out in clauses 62 to 68. Clause 69 empowers the Commission to impose sanctions, such as requiring the offender to modify or terminate the agreement or conduct, pay a financial penalty, and carry out structural remedies. Structural remedies will be calibrated based on the redress needed to stop the anti-competitive activity in question.

Besides financial penalties, violators of the competition law are liable to be sued by parties who suffered loss or damage directly as a result of the infringement. Clause 86 provides for such rights of private action, after the Commission has made its determination and the appeal process exhausted. This will serve as an additional deterrent.

*Appeal process*

Part IV of the Bill covers the appeal process. A Competition Appeal Board will be established to hear appeals against the decisions of the Commission. The Board will be an independent body comprising members appointed by the Minister. Only parties which the Commission has made a decision against may appeal to the Board. They may make further appeals against the decisions of the Board to the High Court, and thereafter to the Court of Appeal, but only on points of law and the amount of the financial penalty.

*Phased implementation approach*

Sir, we will implement the competition law in phases. The phased approach will allow time for the Commission and for businesses to prepare for the implementation of the law. In the first phase which will commence on 1st January 2005, only the provisions establishing the Commission will come into force. There will then be a 12-month transition period before the provisions on anti-competitive agreements, decisions and practices; abuse of dominance; enforcement; appeals processes; and the other miscellaneous areas which will take

effect on 1st January 2006. This would be the second phase. In the third phase, which is likely to be 12 months thereafter, the remaining provisions relating to mergers and acquisitions, which are more complex and technical, will come into force. During the transitional period, the Commission will carry out more outreach programmes to raise the level of awareness and understanding of the law.

Sir, our economic strategy over the years has been founded on a strong adherence to free market principles and international best practices adapted to our local conditions. With the enactment of the Competition Bill, we will create an even more conducive environment for businesses, foster greater dynamic competition, and promote more efficient and innovative markets. This will benefit both enterprises and consumers, as well as ultimately strengthen Singapore's overall economic competitiveness.

Sir, I beg to move.

Question proposed.

**Mr Leong Horn Kee (Bishan-Toa Payoh):** Mr Speaker, Sir, the Competition Bill is one of the key recommendations of the Economic Review Committee. This Bill gives teeth to the Government's announced policy of curbing any predatory practices of dominant industry players and encouraging more open competition, which forces companies to be innovative and responsive to market pressures and demands. As a result, consumers will benefit from lower prices, more variety and choices and better services,. The economy as a whole will gain. Sir, therefore, I wish to express my firm support for this Competition Bill. In fact, it is long in coming. Nevertheless, it is heartening that Singapore is finally going to have a competition law.

Being a new initiative, there are many aspects of this Bill which are not clear and may need some fine-tuning over time. I would like to take this opportunity to raise a few queries on this Bill.

The Competition Bill exempts various sectors that have their own regulatory authorities and laws. This can create uneven standards on competition policy between this Competition Bill and the regulators of the exempted sectors. Moreover, these other regulators may be motivated and governed more by their sectoral interests and controls, and not focused on ensuring competition.

Let me cite an example. Recently, there was an announcement on the proposed merger of SPH and MediaCorp. I read that the governing media body has approved the merger. But is the approval accorded based on the financial benefits accruing to the two entities to be merged or based on the potential benefits to customers and the industry?

I notice that when there are two existing competing media providers, the consumers get more variety of TV channels, newspapers and more innovation in terms of service level and product variety. Once the media merger is implemented, we naturally expect to see the closing of some newspapers and TV channels. Would the merger therefore be good for competition and provide more services and variety to consumers? Perhaps not.

This media merger could well be the first test case for our Competition Commission. Should the Competition Commission intervene to object to the merger of SPH and MediaCorp?

There is a provision in clause 87 of the Bill which enables the Competition Commission to enter into cooperation agreement and mutual consultation with the exempted regulatory bodies. However, I feel that such cooperation or mutual consultation may not be sufficient. In some instances, the regulatory bodies of the exempted sector may decide to ignore the advice or the views of the Competition Commission. I would like to suggest that the Bill should enable the Competition Commission to have an "over-arching authority" on matters concerning the promotion of competition and the avoidance of the creation of a dominant or monopolistic player. Hence, in the event that there are differing stances with regard to competition, the Competition Bill should prevail. I would like to ask the Minister whether this is possible or advisable.

My second comment on this Bill is with regard to what is deemed as "abuse of dominant position" of a major player. It is hard to police and define. A major player can decide to drop prices because it is more efficient, cost-effective and innovative. This tactic is ultimately beneficial to consumers. Therefore, why

should the Competition Commission rule it as an abuse of dominant position? And why should the Authority disallow it? A weaker competitor can use this competition law to complain against the pricing tactics of a dominant player but, in actual fact, it could be that it is the weaker competitor who is not price-competitive. In such instances, how could the Competition Commission or the court decide and define what are the "losses" suffered by this minor player?

In fact, on the converse, it is the consumers who will gain arising from the lower prices that they have to pay.

Sir, I would like to seek clarification from the Minister on another point. Why is it that the proposed Bill proposed to form a new statutory board called the Competition Commission of Singapore? As the Minister has said earlier, the stated principle is to incur low regulatory cost, which means to be very cost-efficient. But the creation of a new statutory board means that there is a need for higher expenses in relation to new offices, a new CEO with his staffing needs and expenses relating to formation of a statutory board. Did the Ministry consider constituting the Competition Commission as a department or a section within the Ministry of Trade and Industry? The Commission can be serviced by a secretariat. This approach could be equally effective without incurring higher costs.

Sir, finally, I wish to express my strong support for this Competition Bill. I am pleased to note that the Bill will guard against predatory behaviour towards competitors and the abuse of dominant position. I am sure this Bill would be helpful to our local start-ups and the small and medium enterprises (SMEs), as they seek to find a footing when competing in Singapore. I am, therefore, pleased that the Bill will be applicable to all companies operating in Singapore, including GLCs and MNCs. This Bill will ensure that there will be a certain degree of level playing field which promotes fair competition for all.

Sir, I support the Bill.

**Mr Speaker:** Order. I propose to take the break now. I suspend the Sitting and will take the Chair again at 4.25 pm.

*Sitting accordingly suspended  
at 4.02 pm until 4.25 pm.*

*Sitting resumed at 4.25 pm*

**[Mr Speaker in the Chair]**

## **COMPETITION BILL**

Debate resumed.

**Mr S Iswaran (West Coast):** Mr Speaker, Sir, thank you for allowing me to join in this debate.

Sir, this Bill is worthy of support from this House. I say that because I think its objectives are laudable. It seeks to protect and promote the competitiveness of the Singapore economy as a whole. This will ensure efficient allocation of resources, productivity and ultimately higher economic growth for Singapore. At the same time, through this process, it will also accrue benefits to the consumers and businesses in Singapore.

At the outset, Sir, I think we need to be clear. Competitiveness does not equate with competition. The key element here is in facilitating a competitive economy, the critical ingredient is what some have called "contestability". In other words, whether there is one, a few or many players in a given market, it is the potential and actual competition. In other words, the competition from the existing players in the market and also the potential for new entrants to come in and lead really ensure a competitive framework. And it is important that, in that regard, when we look at any market-related issues and competition, this be borne in mind. Ultimately, the objective is fair competition and it is not to protect individual players or competitors in the market.



Therefore, Sir, I support the Bill both in spirit and in principle. However, it is important to ensure that such a Bill, with all its good intentions, does not increase uncertainty and costs to businesses. The Minister has made this point. I wish to elaborate on it.

The fact of the matter is the establishment of a Competition Commission, which will administer the Competition Act if this Bill is passed, will create a new regulatory hurdle for all businesses. The Competition Commission will administer the Act, and it is important that its rulings and decisions are precise, unambiguous and timely, because all this has an impact on the way businesses are run and the costs and uncertainties they have to bear. Otherwise, the very objective of promoting Singapore as an attractive place to do business will be frustrated.

From that perspective, Sir, of needing to ensure that businesses have greater certainty, and this Bill does not impose undue costs, I would like to comment on a few aspects of this Bill. The first pertains to the scope of the Bill.

Clause 5 of the Third Schedule excludes sectors which are covered by any other written law, or code of practice related to competition and which gives another regulatory authority jurisdiction in the matter. There is a similar provision in the Fourth Schedule. The Schedule, in particular clause 5, does not explicitly state which sectors are, in fact, excluded. But I presume, and I think it can be reasonably inferred, that it applies to sectors such as telecommunications where competition is governed by, I think, the Telecommunications Code (the short form) which IDA administers; electricity and gas where you have the Electricity Act and Gas Act administered by EMA, if I am not mistaken; then the media industry where there is a code which MDA administers, and so on.

Sir, the question, in principle, is: should there be exclusions from the Competition Act for any sector? The competition law that we are promulgating here is a generic law. It has principles which are generic in application and these are principles that should apply to all sectors and be applied with consistency. That being the case, if we allow for exclusions of sectors which will have their own bodies administering, their own interpretation of what is fair competition, albeit in the context of

technical areas, the scope for inconsistency and differential interpretations is quite significant, and that is going to lead to potential conflicts. Allow me to illustrate just by giving a couple of examples where the Competition Bill and the Telecommunications Code differ. One is in the area of just penalties. The maximum financial penalty of up to 10% of the infringing party's annual turnover in Singapore is what is provided for under the Competition Bill. So if you are found to have fallen afoul of the Act, then that is the maximum penalty. In the Telecommunications Code, the maximum financial penalty is S\$1 million per contravention. So the scope for disparity is great. And, naturally, the applicant or the plaintiff might feel aggrieved if the party against whom he is making a claim gets off with a lighter penalty.

Similarly, the right or process of appeal differs as well. In the case of the Telecommunications Code, the appeals are to IDA and then to the Minister. In the case of the Competition Bill, the decision of the Commission can be appealed to the Competition Appeal Board. So there is again a different process. So the greyness of the scope is compounded by the fact that certain parts of the Bill appear to suggest that the Competition Bill will still apply to excluded sectors, and I will give you a couple of examples of that.

Clause 33(2) suggests that portions of the Bill will apply to industries and sectors which nevertheless have specific competition laws regulating them. And clause 61(3) suggests that the Competition Commission can prescribe guidelines applicable to specific regulated industries and sectors. So I think we need greater clarity on this matter. The first question is a question of principle. Should these sectors be excluded in the first place? My own view is that we should not, and the reason is what I have articulated earlier, which is these are common principles, they should hold true regardless of the sector, and they should be applied with consistency across all groups of industries. Given that we have gone for the second best solution, which is that we have existing bodies and we are trying to manage it, then the question is: if they are to be excluded, we should state very clearly which sectors are being excluded and for how long, and what would be the threshold conditions which would compel the Ministry and, subsequently, perhaps Parliament to review these exclusions?

Also, given that the Ministry has opted for this intermediate approach where there will be some sectors that are excluded and the rest administered under the

Competition Act, I think there must be certain very clear arrangements in place in the interim. These include, one, a harmonisation of the provisions in the sectoral codes vis-a-vis the Competition Act. This is to ensure that there is no gaming in the system and things are clearly established, and it will pave the way towards eventual integration. The second is coordination between the Competition Commission and the sectoral bodies. Why? This is to ensure that businesses do not have to go to two different parties to undertake two parallel processes which might have quite different outcomes. So it is important that, when an appeal is lodged, whether it is to the sectoral body or to the Competition Commission, they are brought together and processed as one appeal and given one outcome. And, thirdly, I would urge the Ministry to review this exclusion and perhaps bring it forward even at a faster pace. I think the Ministry of Trade and Industry has said 18 months or so, and it has given some indication.

Sir, I think we are not alone in this, lest I would be interpreted as being too critical. The UK also has got sectoral regulators having concurrent powers with the UK Competition Act, the Director-General of Fair Trading, and they work together and there are arrangements in place to make sure that they are closely coordinated. So it is not without precedent. I think the key element here is execution so that businesses have certainty.

Sir, another point I want to raise is the issue of lack of clarity in the meanings and definitions of key terms that are used in the context of this Bill. Sir, the Bill prohibits anti-competitive behaviour and agreements, abuse of dominant positions, M&As that substantially lessen competition, etc. But the key terms need elaboration and definition. For example, dominant position. How is dominant position calibrated? Is it by market share or market power? Are there thresholds? All of these obviously have problems and, clearly, there is an element of subjective outcome and decision-making. And this will reside primarily in the hands of the CEO or Director-General of the Competition Commission. But the players in the market must know when they are approaching the boundaries that are likely to test the limits of what the Competition Commission considers to be acceptable. What constitutes abuse? As Mr Leong Horn Kee mentioned earlier, what constitutes abuse of dominant position? If a key player in the market leads by price reductions, is that abuse? Or is that beneficial practice which will bring benefits to all consumers? And also, there is a question of substantially lessening competition. Again, it begs the question: what is the test of reducing competition?

Sir, if I could give an example. If there is an exclusive business arrangement between a Singapore company and a product service provider from overseas covering Singapore's territory, is that an activity that will be prohibited under the Bill? And I think the test is, as the Minister alluded to, this concept of appreciable adverse effect on competition of the Singapore market. And, again, I have to say that the Bill itself does not use the term "appreciable adverse effect" in any part of it. I believe there is a passing reference to it in the Explanatory Statement. But the crux of the matter is, I think, most of us are none the wiser as to what actually would constitute "appreciable adverse effect". The Bill is general. It leaves much to the discretion of the Competition Commission, and I presume that it is intended to be the case. But the converse impact is that businesses are in the dark. The UK Competition Act also does not say much about these terms, to be fair. But in mitigation, first, soon after the Act was passed in 1998, I believe, the UK Office of Fair Trading developed rules, statutory guidance and advice to businesses. So they were better informed as to how this new Act would affect their business decisions. Equally, the UK also could resort to case law from the European Commission and that serves as another point of reference.

In our case, we do not have this reference to any case law. Because the Ministry has said that the Commission will issue guidelines on this matter, and I hope this can be done. And in doing so, may I make three specific requests. First, I would appreciate it if the Commission works on this fast, and not allow it to take 12 months or 18 months, but the sooner the better. Second, the process of formulating such guidelines should meaningfully include the business sector, because definitions of what constitute competition, anti-competitive behaviour, etc, are fundamental to the way many of these businesses are going to be run. And, thirdly, guidelines ultimately are non-binding. In other words, today, if a guideline is enacted, the Commission may choose to abide by it, but it may review it from time to time and that, indeed, is I think the intent. However, certain core principles that will underpin these guidelines should be embedded in the Bill. If we feel that today, we do not have enough experience in case laws to do so, I would urge the Ministry to revisit this over the space of the next two to three years to make sure that we do come back and amend this Act to embed certain key principles so that these are not open to interpretation.

Another aspect, Sir, is the retrospective effect that this Bill has on businesses. Clause 34(5) says that prohibition of these activities would apply to agreements entered into before, on or after the appointed day. "Appointed day" means in relation to a particular provision, the date of commencement of that

particular provision. So this seems unfair or inequitable, because what it means is that the Bill would apply to agreements entered into in good faith even before this Bill was contemplated by the Government. So the question is: why are we having such an all-inclusive retrospective provision in this Bill? And this was not just a conceptual point as it means, first, businesses would incur substantial costs, because the moment the Act comes into force or certain provisions come into force, businesses would have to review all their agreements to see if they are in compliance and, if not, how they need to be readjusted. Similarly, it is going to create uncertainty for the businesses in case they are challenged or wondering whether they are going to be challenged. So the question I have is: why not restrict applicability to agreements that are signed after this Bill has been passed, or when this Bill was first tabled for public consultation which, I believe, was in April this year? At least, the market had first wind of what is happening and any action thereafter could be deemed to have been done with this knowledge.

The key point I want to make here is that we must restrict it in some manner and not let this retrospective application be extended without any end point. And I think if the Ministry is concerned that there may be some historical agreements that are blatantly unfair or anti-competitive, then those egregious cases could still be brought up on appeal or when a complaint is raised, the Competition Commission and the Ministry can decide whether it is worthy of attention. But, in principle, it should not be a blanket application.

Finally, Sir, one specific comment is on the availability of safeguards to prevent frivolous or vexatious claims. Sir, it is quite well-known that, in some instances in business, they use anti-trust or such competition Acts and the processes and appeal methods available to them through these Acts as a business tactic to appeal so as to stall the business agreements that they feel would be against their best interests or to possibly even frustrate and stump it altogether. The question is: should there not be provisions in this Bill to protect against frivolous or vexatious claims? The provisions could be in the form of a compensation to be paid to the party against whom a complaint is lodged, if it turns out that the complaint was frivolous and vexatious. I know there is a policy concern that we do not want to deter *bona fide* complaints. But perhaps the way to deal with this is to ensure that such costs are only payable if it is assessed by the Commission that the complaint has, in fact, been frivolous or vexatious.

Sir, I hope the Minister would consider these points because this is an important Bill. It is going to change the complexion of the way we do business in Singapore. And I think it will certainly set the standard, in terms of what we are looking to achieve, but at the same time, we must make sure that, at the micro level, businesses are not disadvantaged and the outcomes run contrary to our very intent in passing this Bill.

**Mr Chiam See Tong (Potong Pasir):** Sir, as I listen to the speakers, many of them spoke with certain background of the business world. But my speech is purely from the reading of the Bill itself. Sir, I support the Bill in principle, but I cannot support the

Bill as it stands because of the wide powers given to the Minister for allowing him not to accept relevant provisions in the Bill. The relevant provisions in the Bill are contained in clause 34 which disallows agreements preventing, restricting and distorting competition; clause 47 which prohibits any practice of abuse of a dominant position in any market in Singapore; and clause 54 which prevents mergers which may result in the lessening of competition.

I cannot agree with the provisions in the Third Schedule of the Bill. They are far too wide and too pervasive. The Third Schedule, to my mind, is wide enough to annul the intent and purpose of this Bill itself. Let us look at paragraph 1 of the Third Schedule:

"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."

This clause is so wide-ranging that it can cover the activities of any Government entity, Government-linked company, or any company which the Government has an interest in, or activities of a statutory body or Government-owned company.

Paragraph 2 of the Third Schedule is equally wide-ranging in taking away the effects of sections 34 and 47 prohibitions as long as an agreement complies with a legal requirement. And, as we all know, really, all Government-owned entities are the creatures of statute. Therefore, they are not caught by this competition law.

Sir, the economic development of Singapore is a recent history. We all know that Singapore was first built up as a socialist state. The early political philosophy of the PAP was democratic socialism. Therefore, the infant capitalist system was not encouraged, but the public sector, by policy, was cultivated and built up. We see the Government controlled by one dominant political party and had a free hand in accumulating massive capital. The Government in Singapore, the richest sector in the economy, was soon the biggest landowner in Singapore. The Singapore Government now finds itself in an awkward position in a wholly-changed world from the 1960s and 1970s. Now we are in an era of fierce competition from the other so-called emergent nations, in particular, the People's Republic of China and the other neighbouring states. Singapore's strategy or way out of this changed situation is to enter into Free Trade Agreements with other countries, some of which are mature capitalist countries where the early infant vibrant competition in their markets has turned some of their companies into monopolies, which are anathema to the capitalist system.

We have read of Bill Gates of Microsoft having to pay millions of dollars in fines when its company abused its dominant position in the software business. So competition laws are necessary in America and other mature capitalist countries to break up the monopolies that are being formed there. We in Singapore started by not encouraging private enterprise but concentrated on growing the public sector. The public sector now dominates the whole of Singapore's economy. This is Singapore's dilemma. Now, we need to enact this competition law to unravel that dilemma and meet with other international obligations.

One important question comes to mind. I would like to ask the Minister whether exclusions contained in the Third Schedule are a permanent feature or whether there is a time-frame to remove them, including other provisions in the Bill giving the Minister power to avoid the prohibitions and against monopolies as well as the above dominant positions and mergers as contained in clauses 34, 47 and 59 of the Bill.

Sir, as regards the Bill itself, I would only like to have a clarification on one point from the Minister. I notice that the District Court shall have the jurisdiction to try any offence under the Act and shall have power to impose full penalties or punishment in respect of the offence. As regards punishment, clause 83 imposes a fine not exceeding \$10,000 or imprisonment for a term not exceeding 12 months. I have no quarrel with this punishment or penalty because they are within the jurisdiction of a District Court. But we see that under clause 69(4) of the Bill, the Commission can impose a financial penalty up to 10% of the turnover of the defaulting business. Nowadays, some businesses in Singapore have a yearly turnover of hundreds of millions of dollars, and a financial penalty of 10% of its turnover can easily exceed the quantum allowed under the jurisdiction of the District Court which, I believe, is to be only about \$250,000. I stand corrected. If that is so, then the District Court has no jurisdiction to impose such a large financial penalty under the said clause 69(4). The Minister might like to comment on this provision of the Bill.

**Mr Inderjit Singh:** Mr Speaker, Sir, I would like to express my appreciation to the Ministry of Trade and Industry for finally presenting this Competition Bill for passage through Parliament. I have a personal interest in this Bill, because it was first proposed by the sub-committee which I chaired, ie, the Government in Business Sub-Committee, which was part of Minister Raymond Lim's Committee on Entrepreneurship and Internationalisation.

When my committee studied the role of Government and its companies in encouraging or stifling entrepreneurship, it was obvious that what Singapore lacked was a generic competition law which would, in an indirect way, encourage the emergence of entrepreneurial companies in Singapore. When the committee looked at this, our vision of the competition law envisioned these few things.

(1) We needed to create a level-playing field so that no one company has an undue advantage, particularly the Government-owned companies;

(2) Anti-competitive business practices needed to be eliminated or banned, and these include practices like collusion, bid-rigging, price fixing, which involved coordinated action by direct competitors;



(3) The abuse of dominance needs to be eliminated. Abuse of dominance includes action by any single dominant player. Monopolies will not be banned, but abuse of market dominance should be. For example, the use of predatory pricing to exclude new entrants; and

(4) Companies intending to do mergers and acquisitions should pre-notify the competition authorities for transactions above a certain market value, eg, one-quarter for each company or one-third for a merged entity, with certain turnover thresholds. The competition authorities may approve the M&A deal with certain conditions attached.

Some other issues that we wanted the competition law to address include:

(1) There must be a serious attempt to prohibit exclusive deals between the Government or its agencies and any of the GLCs;

(2) We did realise that certain exemptions might have to be included, especially in sensitive areas of the economy, but the number of exclusions needed to be limited;

(3) All companies will have equal access to the national infrastructures, and these should not be given on a silver platter to any Government-linked companies;

(4) Whatever law is enacted should not add to the costs and, hence, compliance costs should be minimised for these companies; and

(5) An independent competition authority should be set up to formulate the policies and rules and to rule on cases violating the law.

So, how has the Ministry fared against the expectations of the committee on this competition law? I would like to say that they have scored seven out of 10, and I am very happy with the outcome. Seven out of 10, coming from me, is actually a big compliment!

Let me say that in targeting large companies, especially GLCs, the intent was not to dismantle the dominant positions that these companies have, but to restrict them from using their dominant position to stifle competition. So, we were mindful that we should not destroy the value of big and well-run companies, but to prevent them from allowing other companies from also competing successfully with them. As an example, if a large company uses predatory pricing to eliminate smaller players, this should not be allowed. Similarly, should a large company set rules of business together with the Government by giving feedback where only they will benefit and smaller companies find it difficult to comply, this is also an uncompetitive behaviour.

Sir, I have a few specific points on this Bill to discuss.

First, the exclusions, and many Members have raised these. By virtue of the Third Schedule and the many clauses in the Bill which exempt certain sectors from inclusion in the competition law, we have in fact excluded many of the sectors of our economy which were originally intended to be governed by a competition law. It is a pity that so many sectors have been protected under the law. I see no reason to, for example, protect the telecommunication, postal, media and transport industries and specified parts of the banking industry. In fact, we could also have been more aggressive in including even certain parts of the energy industry in this competition law. An argument made by the Ministry is that there are already laws regulating these industries. I feel that the competition law should have been a senior law, ahead of all other sectoral regulations.

Presently, the Bill enables many sectors that already have these regulatory commissions to oversee competition within their relevant sectors. In effect, this law becomes a secondary law for these sectors, only to be enacted if the industry

players cross over into a non-regulated sector. This has the potential to cause a bit of confusion, in my opinion. With this, each commission will have to have its own definition of dominant position, predatory pricing, undertakings and what constitutes anti-competitive behaviour.

By making the competition law a higher authority in Singapore, it will help unify and streamline definitions and guidelines. The different regulatory commissions will fall under this law, but provisions can be accorded to provide the relevant authorities to exercise flexibility to regulate and allow sectors to be more competitive. An added benefit of this would be to have an avenue for companies within their respective sectors to have a higher avenue of appeal in cases of dispute with their regulatory authorities.

A case in point is our FTA with the USA, which provides for judicial review of regulatory decisions. Article 9.11(3) of the USSFTA provides for the right of judicial review of a regulatory decision. It clearly sets forth that any aggrieved party in the telecommunications industry in particular must have the opportunity to have this review of a decision by a regulatory body. As it stands, the Code of Practice for Competition in the Provision of Telecommunications Services by the IDA does not allow this to happen. So, therefore, we do not fully meet the obligations of this bilateral agreement.

I also note that in its submissions to the Ministry of Trade and Industry, Temasek Holdings encourages these sectors to be also included without any excessive protection, stating that "Companies should be allowed to grow and thrive on sound commercial principles, unfettered by bureaucratic impositions or non-commercial Government directions." If Temasek, which has a vested interest in and owns most of the companies in the excluded sectors, feels that these companies should compete unfettered by any protection, there is, in my opinion, no need for the Government to provide these companies any further protection.

Sir, the second issue is one of establishment of the Competition Commission of Singapore. It is important that the competition law must operate in a fair and

transparent manner. Concern should arise from parties involved in commercial disputes about the objectivity and independence of this Commission.

MTI has a number of statutory boards, some of whose senior executives sit on the Boards of Directors of corporate entities, particularly the Government-linked companies. Additionally, some of these statutory boards also have ownership and interest in GLCs that would be subject to the Competition Act. I hope that the Minister would help keep the integrity of the Commission clean by not having too many civil servants, whether directly or indirectly, who have connections with the GLCs being regulated under this law to sit in this Commission. Otherwise, it will defeat the purpose and it will make implementation of the law ineffective and people will lose confidence. Strict independence and clear goals of encouraging competition without vested interests to protect certain Government-owned companies should be the order of the day with this law and with the Commission.

Sir, the third issue is on the scope of the Bill. In general, an effective competition regulatory regime will aim for a consistent and broad application. The application of competition law to all business entities, regardless of ownership, industry or function, is important in establishing a culture of competition within any economy. But it is noted that the Bill has wide extra-territorial applications. For example, clause 47(3) defines a dominant position to include a dominant position within Singapore and also elsewhere. However, it is not clear why the Bill should be concerned about a firm's dominant position in some market outside Singapore if it does not also have a dominant position within Singapore. In other words, if a firm does not have a market power in Singapore or in a

geographic market that includes Singapore, it is not clear how it could use that market power to harm its competition in the Singapore market. I would like to recommend that this section be revised to make it clear that the Bill covers foreign firms with a dominant position in Singapore but not firms with a dominant position in overseas market, but not in the Singapore market.

I also note that in clause 33 of the Bill, it provides that as long as an "agreement, abuse of dominant position ... or merger infringes or has infringed [or likely to infringe] any prohibitions in this Part [III]", it does not matter whether the agreement has been entered into outside Singapore or the abuse of dominant

position is outside Singapore. This means that agreements made entirely between foreign undertakings and decisions by associations of foreign undertakings or concerted parties will be caught by the Act as long as it can be shown that its effect is to prevent, restrict or distort competition within our shores.

Sir, the UK Competition Act, in contrast, provides that the Chapter I prohibition against agreements applies only if the agreement, decision or practice is implemented in the United Kingdom.

Such broad extra-territorial application will put unnecessary strain, in my opinion, on the Competition Commission, as it would have to help to assess the impact of this abuse or violation in the various economies that may not necessarily be in Singapore. I think this is not a necessary thing.

Sir, in conclusion, let me once again say that the real intent of a competition law should be to create a level playing field, to eliminate, if possible, or, at least, to drastically reduce practices which stifle competition in Singapore. While historically the Government favoured certain companies, making them dominant players in our economy, this historical reality should not result in these big Government-owned companies or even private-owned companies abusing their position of dominance. The Government has already done enough for them in the past and now they should no longer be in a position to unfairly benefit from the old favours that they may have got.

What we would like to see accomplished is a healthy environment where there is a true form of competition, and where a large number of our enterprises and industries are highly competitive. If it is an important part of our overall plan to make SMEs a dominant force of our economic growth and, indeed, to turn our economy from being one where we attract only large companies to one of an entrepreneurial one, a decision needs to be made to soften the perception. We should not be half-hearted about this. As our large companies will only benefit and not lose from this new landscape of less protection and more competition as they try to compete globally, they would also welcome this new law. And with this prevailing chasm on the restructuring efforts, it must be noted

that, depending on the approach that we take on this competition law, we have the potential of this being a keystone in Singapore's economic restructuring initiative.

Sir, I am very happy to support the Bill. It is something that we have been waiting for a very long time.

Column No : 890

## COMPETITION BILL

Debate resumed.

**Mr Ang Mong Seng (Hong Kah)** (*In Mandarin*): Mr Speaker, Sir, with Singapore's economy developing and maturing, with our market moving towards the trend of internationalisation, and in order that we would be in line with international best practices, the enactment of a fair competition law is absolutely necessary so as to protect the interests of our consumers. In fact, some ASEAN countries such as Indonesia and Thailand have already enacted their fair competition laws.

This Bill will help our Government to effectively and fairly regulate the supply and demand of goods and services in the market, and make sure that goods and services are provided at reasonable prices. This will help the new enterprises, inspire innovation and creativity, so that our market will be more flexible and competitive. With this new Bill to regulate and control the market, more foreign companies will be attracted to invest here, thereby creating more job opportunities to resolve our unemployment problem and, in the process, bring about economic prosperity.

I believe that this new Bill will receive strong support from the consumers too. They are looking forward to various benefits that will be brought about by these new measures, such as cheaper goods and better service. This would not only benefit our local citizens but will also attract more tourists and, thereby, promoting growth in the tourism industry. Such healthy competition will bring a lot of benefits to our people, for example, the intense competition among the oil companies is a good example. Recently, despite the escalation of oil prices, the

petrol companies in Singapore are giving their customers 5-10% discounts. This will help to regulate the petrol prices and, at the same time, benefit the motorists. This is an example of benefits brought about by healthy competition.

Protection of the interests of ordinary citizens is of paramount importance, particularly on basic daily necessities, such as drinking water, energy supply, housing, transportation and communications. Ordinary citizens are often exploited by unscrupulous merchants when they are not adequately informed to strike up a good bargain for themselves. For example, during the recent spell of Avian flu, eggs, which would normally cost only 15 cents each were being sold at 60 cents each, when there was a shortage of supply. The ordinary citizens are already suffering when they have no eggs to eat. Yet, the merchants are raising the price. This is like what we call, "rubbing salt into their wound", and this is a consequence of unfair competition.

The enactment of this law is an excellent policy of the Government. MTI has conducted seminars to invite suggestions by members of the public and the professionals so as to finetune and improve on the Bill. I think this kind of consultative approach is excellent.

Mr Speaker, I would like to make two suggestions on this Bill:

Firstly, I suggest that the Government enlarge the scope of regulation and control under this Bill and not to exempt certain industry sectors from the control of this Bill. As it stands, industry sectors such as telecommunications, media and energy, do not come under the control of the proposed Competition Commission of Singapore. This will result in "one policy, two systems", creating confusion to the people. These industry sectors, such as energy and communications, are daily necessities to our people. If we do not have good control over the price and service, it would result in a lot of confusion and friction that would, in turn, give rise to opportunities for the industry sectors to engage in unfair competition. I would suggest that telecommunications, media and energy companies should also come under the control of the Competition Commission.

Secondly, members of the Competition Commission should also avoid sitting in the Board of Directors of commercial companies to ensure independence and unbiased decisions when making rulings. Although the Bill does provide for

members to declare their interest as company directors and to refrain from participating in voting on any resolution which may have a conflict of interest, I feel that this is not enough. In order to avoid vicious suspicion and misunderstanding, it should be more advisable for members of the Commission to avoid taking up directorship in commercial companies.

I support the Bill.

**Dr John Chen Seow Phun (Hong Kah):** Mr Speaker, Sir, I think the Competition Act is long overdue. Other developed countries had this law much earlier than us. It is therefore important that we learn from others and do it right as soon as possible in order to maximise its benefits to our economy and society.

To me, the purpose of the competition law must not just be to prevent anti-competitive behaviour as it is the main focus of this Bill. This approach is too narrow. The purpose must be to promote competition in all areas of the economy, to lower the barrier of entry for new businesses and to ensure fair play. This will then lead to benefits at three levels - the consumers, the companies and the nation as a whole.

To the consumers, it will mean more choices and better quality of goods and services at lower prices. To the companies, free and fair competition will result in better efficiency and innovation to the country. There will be all round productive gain that will increase our national competitiveness and provide better employment opportunities for our citizens.

To achieve all these, I do not think the approach taken by the Competition Bill is good enough, which is to prohibit three activities, namely, anti-competitive agreements, abuse of dominant position and mergers and acquisitions that substantially lessen competition. Further, the Bill does not extend its powers to certain industry sectors as well as Government policies and practices that stand in the way of effective competition.



Sir, I strongly feel that such a narrow approach to this law will not serve us well. Australia started this law leaving all government activities aside. Soon, they discovered that there was a need for the Competition Commission to work with all government agencies, be it state or federal, to review all government policies and practices and lay down the principles of effective competition for all government bodies to adhere to.

What our competition law should do is to lay the overall framework for competition in Singapore, encompassing all industries and all players. The proposed Competition Commission should oversee all matters concerning competition, except those relating to national security. Any complaint regarding ineffective competition should be fully investigated by the Commission. If a complaint is related to a regulated industry sector or to a certain Government policy or practice, the Commission should work with the relevant Government body to resolve the issue.

Sir, I suggest this because each statutory board or Government department has its own objectives and functions, be it safety, infrastructural development or fiscal. They are not single-minded as far as promoting competition is concerned. Take, for instance, LTA. Its main objective is to ensure efficient transportation of people and goods. For years, Singaporeans have been paying higher prices for purchase of cars, not just because of high taxes, but also because of high profit margins earned by the authorised agents due to ineffective competition. As promoting such competition was not really the priority of LTA, it has taken LTA many years to allow parallel imports to compete. Just when it was thought that parallel importers would give authorised agents a run for their money, manufacturers and their agents found a way to exploit a Government rule to beat the competition. Since the signing of the Free Trade Agreement with the US, our Customs adopted the Customs Valuation Code (CVC) to assess the Open Market Value (OMV) of a car. Manufacturers are now using transfer pricing to give hefty discounts of their factory list price to their agents. These discounted prices lower the OMV of cars imported by authorised agents. On the other hand, in determining the OMV for parallel import cars, Customs add an uplift to the purchase price paid by parallel importers, notwithstanding that the purchase price is already higher than the OMV for cars from the authorised agents.

As a result, cars purchased from the authorised agents pay a much lower Additional Registration Fee (ARF). The ARF is 130% of the OMV. So, needless to say, what we are seeing today is there is hardly any competition from parallel

importers. Has anyone ever asked why there should be two substantially different OMVs and, therefore, ARFs, for essentially identical cars?

Another very old policy of LTA is the surcharge of \$10,000 imposed on imported used cars not more than three years old. With today's technology, such cars would not have problem meeting LTA's technical and environmental specifications, but the surcharge of \$10,000 has made import of such cars non-viable. Without the surcharge, I am sure there would be keen competition in car sales that would benefit car owners. Sir, in my view, the Competition Commission should have the preview upon industry or consumer's feedback to look into such Government policies or practices, whether they are from Customs or LTA.

In conclusion, Sir, the competition law must not be one of just preventing abuses. It must also serve to promote competition as its ultimate objective and the best way to promote competition is to lower the barriers of entry for competition. These barriers, be they from Government policies or anti-competitive behaviour of private companies, inhibit new entrants into the industry, depriving the consumers of choice, as well as a generally lowering of price through competition. The Commission should be empowered to investigate and act against practices which put up artificially high barriers of entry into the industry such as unfair pricing of certain core services or complex procedures to discourage new entrants. Companies which are strongly vertically integrated should be closely watched for these misdeeds. On top of that, there must be a proactive and coordinated review of all Government policies and practices that affect competition. Only then could we have a meaningful and useful law that would maximise the benefits of competition for Singapore and Singaporeans.

**Mr Steve Chia Kiah Hong (Non-Constituency Member):** Thank you, Mr Speaker, Sir, for allowing me to participate in this debate.

Sir, it is wonderful that Singapore is finally introducing a Bill to make provision about competition and the abuse of a dominant position with the intended effect of creating a level playing field for all participants. I have been looking forward to the introduction of this Bill since the day it was mentioned many years back because I believe that competition would bring about cheaper prices and better services by the providers. However, as I flipped through the

pages of this new Competition Bill, my fears have been confirmed. I am dismayed to learn that this Bill does not cover our political sphere. This Bill does not have any written provisions to check the monopolistic powers, anti-competitive behaviour and the abuse of a dominant position by a political party, in particular, the governing party of Singapore, against its competitors in the political market.

**[Mr Deputy Speaker (Mr Chew Heng Ching) in the Chair]**

5.19 pm

It is a well-known and recognised fact that the PAP, as the governing monopoly in Singapore, uses every resource within its dominant power to make anti-competitive practices, like the redrawing of the electoral boundaries and regrouping of weak constituencies into new and bigger GRCs, the threats to upgrading and the giving and cashing out of the New Singapore Shares one day before polling; and, more importantly, the announcement of the heavily amended electoral boundaries one day before the dissolution of Parliament.

**Dr Vivian Balakrishnan** *rose ---*

**Mr Deputy Speaker:** Order.

**Mr Steve Chia Kiah Hong:** Mr Deputy Speaker, Sir, my speech is relevant because I am saying that the Competition Bill should include all sectors, including Government services, agencies and Government service providers - parties that are seeking the mandate of the market for public support.

Sir, these are highly anti-competitive practices by a dominant player in the market for public support. If this anti-competitive behaviour is not checked and corrected in time, I fear the greater erosion of our democratic principles of equity and fairness, for which this society is built. The results of such unchecked abuse of monopolistic powers will be greater public apathy, higher disinterest in the affairs of our society and a stronger climate of fear among the populace, like what

was reported in the media last week at the feedback conference attended by our youths.

Sir, I believe that the establishment of an independent Competition Commission, with the powers to receive, review and check reports of any abuse of the dominant position of a Government political party is the first step in the right direction and would go a long way to uphold our core principal values of democracy, equity and fair play. This would definitely benefit the population, which is rightly a consumer in sore need of public protection, from the abuse of a dominant player.

Sir, I believe that expanding the role of the Competition Act to cover the political arena would help to create a more level-playing field for all interested stakeholders in the future of our country. I support this Competition Bill for now as I take it as the first step towards greater accountability and checks on all dominant players, both in the economic, social and political market.

If this Government refuses to allow the growth of genuine competition in its own political turf, then there is no moral basis for this Government to introduce this Competition Bill to affect other business providers. This Bill needs to be expanded to cover political and all other social service providers. I hope and expect the next amendment to this Act sometime later to seriously take in the said views and right the wrongs expressed herewith.

**Mr Sin Boon Ann (Tampines):** Sir, I did not know that the Non-Constituency Member has taken politics to be a business. I thought the essence of politics is to allow people the right of choice. In the nature of democracy in any election, people do have a choice. And, if people so decide that this party continues to dominate the political scene, it is a demonstration of the free will and choice of the people. And that is the reason why we are in this House, term after term, election after election. Why do you question the people's choice? Perhaps it is with the same obstinacy of failing to understand that he raises these arguments.

Sir, the contest of ideas between those who advocate free markets and those who argue for command economies was symbolically settled at the close of the

last century with the collapse of the Berlin Wall - once the symbol and the bastion of communism - and with it, its attendant association with central planning and allocation of resources. Without a doubt, the free market has prevailed and, save for one country, in this world today, no country can openly deny that they have no aspirations in promoting an open and openly competitive economy; even if they still outwardly exist in form as communist regimes.

Indeed, the free market as an ideology has prevailed. It, however, does not mean that there are no excesses associated with it. It would be folly to assume that competitive forces, the drivers of efficiency and productivity do not require regulatory oversight to prevent abuse and unfair practices. Predatory pricing, cartelling and outright muscling out of smaller competitors exemplify the sort of practices that are borne out of the excesses of the market place and for which regulations setting the rules must be introduced. For this reason, I support the timely introduction of the Competition Bill.

Although the new legislation is a welcome instrument, there are, however, a number of concerns that I wish to raise before this House.

First, I note that the Competition Commission of Singapore would be constituted as a statutory board, just like any other statutory body in Singapore. The Commission would be constituted in part by the Market Analysis Division, which is presently housed in the Ministry of Trade and Industry. It is an extension of a department of Government. This should not typically be a problem, except that there are inherent issues of perceived conflict of interest that should be dealt with.

In the eyes of the public, the Government in forming the Commission plays the part of a gamekeeper. Yet, at the same time, the Government is also in business. It may on occasions be seen to be a poacher. This is evident in the extensive and deep engagements that our GLCs have within the Singapore economy. I am fairly certain that in the nature of things, the Commission would be asked to determine questions involving some agreements or business practices of our GLCs. When it happens, the Commission would no doubt be hard put to ensure that justice is not only done, but must be seen to be done.

The Government may at times require a consolidation of strategic services and manufacturing operations to better position Singapore competitively in the world market. If such consolidations are challenged, the Commission would find itself in a rather invidious position of having to decide between the interest of the other businesses and the interest, even if indirect, of the Government.

Indeed, the framework of the present legislation on competition does not do much to allay any misgiving that one may have from an initial review of the Bill. Clauses 35 and 48 provide that the prohibitions in relation to anti-competitive agreements or abuse of dominant position do not apply to matters specified in the Third Schedule. Generally, the Schedule allows the Minister the ability to exclude any agreement from the application of clause 34 which relates to anti-competitive agreements and also to exclude, in what I find is rather bizarre, some corporate behaviour from the application of clause 47 which relates to the abuse of dominant position. If Members were to refer to clause 47, examples of such abuse include predatory behaviour towards competitors; limiting production, markets or technical development to the prejudice of consumers; and applying dissimilar conditions to equivalent transactions with the other trading partners, thereby placing them at a competitive disadvantage.

I find it strange that this legislation on creating a more competitive environment should now deem it fit for the Minister to sanction what the rule has described as unacceptable and unfair behaviour.

The Bill, if it is to inspire greater confidence in the competitive environment, Sir, could be strengthened further by removing or greatly minimising the ability of the Government to interfere in its decision making process. Rather than reconstituting a department of the Ministry to undertake the work, it could have perhaps set up a Tribunal of Experts as opposed to a commission to undertake the review process. A tribunal would presumably have a greater leeway in settling the procedures by which it is to decide. More importantly, Sir, it could and should be parked in the judicial arm of Government, thus avoiding any suspicion of conflict of interest which the present approach seems to be saddled with.

I do accept that a legislation of this nature should allow the Government some discretion to intervene in the name of national interest. However, while the necessity of such intervention is not denied, it does not mean that for the benefit of certainty in our laws, the Minister's discretion on such matters should not be fettered. Presently, there is some restraint in the Third Schedule in limiting such carve-outs to exceptional and compelling reasons. However, one would argue that such references are too vague and broad and do not give the full assurance that it may not be abused. It may be better to stick to more elaborate descriptions as to the grounds on which the Minister may exercise his power to carve out exceptions to clauses 34 and 47.

Secondly, as a corollary of the point above, I note that the Bill allows a person to appeal to the High Court or the Court of Appeal on questions of law in respect of a decision of the Commission. The issue of questions of law will lie in the interpretation of provisions of the Bill. This would include phrases like "prevention, restriction or distortion of competition", or "abuse of a dominant position in any market". Indeed, as is the experience in the other countries, much guidance on competition law will have to be given by case law.

This raises a fundamental question as to whether the courts are indeed best qualified to undertake such determinations. Judges are essentially lawyers who are trained in the analysis and application of the law. They are neither economists nor financial experts who would readily comprehend the intricacies of the market place operations. Questions on the meaning of a word within the Bill on competition would require a thorough analysis on not only the plain import of the word, but also the impact that the decision would have against the wider economy and society. Are judges, therefore, technically trained to undertake such technical analysis and review? Of course, it may be said that to overcome this limitation, judges may have the services of an *amicus curiae* or Friend of the Court in coming to a decision. This does not, however, leave one with the ideal position of having the best qualified person for the job.

To take an extreme example, this would be akin to having a lawyer undertake a surgical operation while being guided by a surgeon at the same time.

Thirdly, the Competition Bill is rather unusual in having extra-territorial reach. Clause 33 provides *inter alia* that the Act shall apply even if any of the

proscribed activity takes place outside of Singapore. Sir, I can understand that for the policy to be effective, the law must extend to activities beyond our borders. However, as the Minister would appreciate, such intent raises more issues than answers. For instance, how does one begin to take enforcement actions against parties who may not have a business presence in Singapore?

Typically, in the nature of commerce, one does not have to have a business domiciled in Singapore to do business. Coca-Cola and Nike, which are international brand names, do not need to be present to set up shop here as they deal through their distributors. It is conceivable that the Coca-Colas and the Nikes of the world may engage in restrictive trade practices or to be seen abusing their dominant market position to the detriment of consumers here in Singapore. Does it mean therefore that the Government will ban the promotion and sale of Coca-Cola and Nike products in response?

Furthermore, the extra-territorial reach of the Bill does not effectively deal with trade wars at the international level. We all know that in a globalised economy, there is an increasing tension within respective countries from affected interest groups who clamour for more protection. Outsourcing of services is one clear example of how trade issues on a global scale are increasingly coming to a head in some countries. Can a pact by a group of IT companies in response to labour union pressures to stop outsourcing IT services to Singapore be seen as a matter which comes within the ambit of our competition law? Would the restriction of sale of certain goods overseas to meet local demand by a company in one country be seen as a breach of our laws if as a result of which such goods in Singapore cost much more? No doubt, these are issues which the Commission will have to decide, and even if the Commission were to decide, would have to determine how best to enforce.

Fourthly, I note that the Bill also contemplates retrospective application. While it is fair that the Bill should apply retrospectively to any of the proscribed activities, it may perhaps be seen to be unduly harsh or unfair to the parties concerned, as such arrangements were perfectly legal and legitimate at the time when they were concluded, and this was a concern raised earlier by my colleague in this House. Retrospective application of laws should be avoided where possible as it gives rise to much uncertainty within the legal landscape. Certainly, this Bill is no joy to the businesses and people who are



affected as the Government has now placed a cloud of uncertainty on many of the common place agreements, not least of which are the joint venture agreements, pooling of resources agreements and mergers that essentially were meant to help local businesses take on regional competition. No doubt, lawyers like myself now will be having a field day busy reviewing many of these agreements. I am sure that for many, they will find an excuse to review contractual positions which are unfavourable at this moment in time. My concerns are that in applying this Act retrospectively, the Government may have unwittingly opened the Pandora's box and let the genies out for which they may have a hard time trying to put them back in. I would therefore urge the Government to tread carefully on its decision to apply this Act retrospectively.

Subject to the above comments, Sir, I support the Bill.

**Dr Vivian Balakrishnan:** Mr Deputy Speaker, Sir, with the exception of one totally irrelevant speech from a Member who has totally disappeared, I would like to thank all the many Members of this House who have shared the benefits of their wisdom and experience and their thoughts on this piece of legislation.

This is a significant step in our legislative and regulatory framework for businesses. It is one which we are taking boldly but carefully. And I was most pleased to hear Mr Inderjit give us seven out of 10. He says that by his standards, it is very good. I think seven out of 10 also illustrates the point that we are going forward but we want to make sure we evolve this and get the sequence and the pace right.

Let me now touch on the various themes that Members of this House have brought up. I was struck by Mr Iswaran's point that competition does not equal competitiveness. It is worth reflecting on this because the purpose of this piece of legislation is to ensure that we have an efficient functioning market in Singapore and, ultimately, a competitive economy with competitive firms. Merely creating the forms of competition is not sufficient. And, in fact, although this is called the Competition Act, we must remember that this is a means to an end.

The next point which I want to put to the House is that I said earlier in my speech that we are a small but open economy, and that has certain implications for us. Firstly, it means that we cannot just copy everything wholesale. Although I have said that we have modelled our legislation on the UK Act, we have had to make significant changes and modifications. Another implication of a small and open economy is this need for extra-territorial provisions. Our intent cannot be and it will be impossible to regulate the practices of big multi-national companies, big overseas firms who happen to have a small presence in Singapore. But, nevertheless, we do need to send a message that we do not want dominant firms, whether they be local or overseas firms, to engage in predatory and unfair behaviour within Singapore shores. As to the action we can take, obviously, we will have to confine our actions to the presence within Singapore.

Another point which Mr Iswaran brought up, and I think it is worth reiterating, is that regulatory cost should be kept to a minimum. Every well-intentioned piece of legislation, every well-intentioned new rule, new entity, new regulator will lead to increased cost. So I urge this House to be mindful, as we have been mindful at MTI, to make sure we balance the cost versus the benefits.

One example of this, I will discuss later, is when we talk of the need for sectoral exclusions, because we want to avoid unnecessary duplications, unnecessary cost and unnecessary confusion to the firms and businesses which have to operate under such an environment.

Mr Leong Horn Kee, Mr Iswaran, Mr Ang Mong Seng, Mr Inderjit Singh, Mr Sin Boon Ann and, in fact, practically all of them have focused a lot of attention on the exclusions. The first point which I want to put to Members with respect to exclusions is that exclusions from this Competition Act are not meant to protect the companies or the sectors so excluded. I think it is worth reiterating it. Excluding companies and undertakings from the Competition Act is not meant to protect them from competition.

Let me go through it in a little bit more detail. Clause 33(4) of the Competition Bill provides that the competition law will not apply to any activity or agreement entered into or conduct on the part of the Government or statutory bodies created

by Parliament or any person acting on behalf of the Government or statutory bodies in relation to that activity, agreement or conduct. Why do we do so? Because, unlike Mr Steve Chia's irrelevant rambling, we are trying to regulate the conduct of market players in an economy. This is not meant to fetter the discretion or indeed the obligation of the Government to make policy and to perform public functions. Hence, policies and actions taken by the Government and its statutory bodies do not and should not come under the ambit of the proposed competition law. If there are problems with the policies and the actions of the Government or its statutory bodies, the correct venue and the ultimate tribunal for this is this House, and ultimately the electorate. So, do not resort to petty tools like saying "I can use the Competition Act to regulate political and public policy objectives and actions."

Having said that, however, I have also said earlier in my speech that this Bill will apply to commercial and economic activities carried out by private sector entities in all sectors regardless of whether it is owned by a foreign entity, a local entity, Government or statutory body. So all these anxieties about Temasek-linked companies or indeed private limited companies owned by the statutory bodies are misplaced. The anxieties are misplaced because we intend that all these companies will come under the ambit of this law.

The next point is the list of exclusions set out in the Third and Fourth Schedules. Before I enumerate the sectors, let me first describe the process by which we arrived at this list. There was a lot of consultation between Ministries and regulatory agencies and with businesses. And we decided that some exclusions are needed on the basis of public interest considerations - national security, certain aspects of defence, strategic interests. The areas which have sectoral exclusions right now, let me read that out to Members - piped potable water, waste water management, scheduled bus services, rail services, cargo terminal operations, armed security services, media clearing houses activities, gas, electricity, telecommunications, ordinary letter and postcard services. If Members stop to think about this list, does it not sound very familiar? It sounds very familiar because these did not start as private sector competitive markets. These started as monopoly services provided for public good by the Government. Now, the first change that occurred to these sectors was not the Competition Act but the fact that the Government, as a matter of policy, decided that, where possible, we would introduce competition into these sectors. And the evolution of competition in these sectors occurred through liberalising these sectors and creating sector specific regulators. For instance, if we talk about

telecommunications, IDA is the regulator. For media, there is MDA. For energy, there is EMA and so on and so forth. The point is that these are highly specialised sectors with very unique and different starting points, and we were actually converting monopolies and forcing them to open up and create a competitive element.

Sir, if you are starting from that point, I think you will agree with me that there is a need for, first, much more active intervention and regulations. Secondly, there are deep and significant technical, public policy and strategic interests involved in these decisions. Hence, it would be dangerous to try to open up these sectors without sector specific regulators who know the rules of the game, who know the technical issues and who can then best manage both the competitive and the technical issues as and when they clash, as sometimes they will. So the point is we are not afraid of competition. We do want competition and we do want competition in these so-called excluded sectors. But we want to ensure that it evolves in a correct, safe and appropriate way. So please do not run away with this misconception that this Competition Act, by excluding these sectors, is meant to protect these sectors. That is absolutely not the case.

Next, I want to move on to the related issue of sectoral regulators. Many Members have brought up the issue of whether there is a danger of uneven standards, different procedures, different fines even, as Mr Iswaran brought up. Well, I would say that in an ideal state,

we would certainly want to evolve to a common standard. And I think if you accept the fact that the general direction is clear and this is a piece of legislation which is evolving and really needs to be practised and refined as it goes along, then you would agree with me not to rush this congruence, although the long-term direction must be congruence and coordination.

But there is an important sub-point related to that. If you wanted to create more confusion for the market, then you would tell, for instance, the generation companies that they are subject to both EMA and the Competition Commission. So we have deliberately decided at this point in time, to keep it quite separate so that you know who is your regulator, you know what are the fines you are exposed to, you know what are the strategic issues that the Government or the regulator is concerned about, and you have some certainty to

get on with reforming your sector and delivering your services in the most cost-effective way.

The next sub-point on this issue of exclusion I want to emphasise is that these exclusions are not permanent. As I said earlier, this is work-in-progress. In fact, if you read carefully the way we have crafted the legislation, the Competition Bill acts as a kind of a default vehicle so that if at any point in time we decide, for instance, that there is no need for regulation in telecommunications or energy, or whatever the case may be, because it will no longer be regulated under a specially created regulator under written laws, the default mode would be that it would come under the ambit of the Competition Act. So the very way we have crafted it - some Members have raised it - the wording seems to be a bit general and broad, but the intent is that eventually more and more of these sectors will come under direct regulation of the Competition Act.

I want to say a few things about abuse of dominance. We are not against big companies. We are not even against dominant companies. In the nature of a small economy like ours, some companies will grow very, very big, and will have a dominant position. What we want to prevent is abuse of that dominant position. In fact, if you look again carefully at our legislation and compare it to other jurisdictions, we have defined it in a more difficult but ultimately more useful way. I will give you an example of that.

The Competition Commission has to find that a certain anti-competitive act or certain abuse of dominant position has actually led to a distortion, reduction or elimination of competition before it finds that this activity has transgressed the provisions of this Act. Let me try to explain that in greater detail. It is much easier to craft a legislation to say that specific acts are illegal. Instead, we have said the act is illegal only if it is performed and it has impact on our local economy, which actually puts a higher onus of proof on the person or party who wants to allege that a certain company has engaged in anti-competitive behaviour, and the Commission then has to find it accordingly. So, it is not being done in a haphazard, slipshod or easy manner. It has been done very, very carefully.

I was intrigued by the fact that when we started talking about the Competition Commission, there were so many suggestions. Mr Leong Horn Kee said that it should just be a department. Mr Ang Mong Seng, Mr Inderjit Singh and Mr Sin Boon Ann all stressed the need for independence. And I think two of them said that it should be a tribunal, and they argued eloquently why it should be run by lawyers, rather than businessmen. Without getting into an ideological debate, we agree with Members that there is a need for independence, there is a need for integrity, and there is a need for integrity and impartialness to be seen as well. That is why we decided to create another statutory body. Yes, there will be some costs incurred in setting up another statutory body. But I think Members have to agree with me that we felt this was important enough to create a statutory body that whilst it may be supervised by MTI, it is not just another department or another policy arm of the Ministry of Trade and Industry. I can assure Members that we will keep it as small as possible. But we will ensure that the people who staff it are well qualified and know what they are supposed to do and will not waste time.

I also take Members' points that there is a need for this Competition Commission to make decisions in a timely way. As some Members have said, you do not want vexatious and frivolous comments or allegations to come in and keep things in limbo, and result in unnecessary friction and paralysis for the real businesses pursuing their objectives. These sentiments of this House will certainly be transmitted to this Commission when it is created and we will do our best to make sure they do. We will do our best to make sure we equip them with the staff, investigative and enforcement powers, so that they can make their decisions quickly, efficiently, but fairly.

I also take Members' point that, if you just look at this legislation as it is, people need more information. They need more definitions. They need more education. And that is why, if Members read carefully our implementation roll-out plan, on 1st January 2005, if this House approves this piece of legislation, the only thing that will come about is the Competition Commission. This Competition Commission then spends the next 12 months issuing guidelines. And it is not going to unilaterally issue guidelines but to discuss with all the stakeholders, because these are complex issues which none of us on our own have a monopoly of wisdom on. So those 12 months are meant to provide a period of intense consultation, the drawing up of guidelines so that, as Mr Inderjit Singh said, our businesses will have greater certainty as to how this law will operate.

Assuming this goes well, then on 1st January 2006, the provisions which will basically prohibit anti-competitive agreements and abuse of dominant position will come into effect. The more complex prohibition on mergers and acquisitions, we anticipate, will take two years before we put it into effect, and that is because we feel we need more time to consult and arrive at workable, sensible guidelines and *modus operandi* which the businesses understand.

There has been concern about the retrospective provisions. I think I can quite understand all lawmakers' concerns with retrospective provisions. We thought long and hard about this. One alternative would have been to just grandfather all the current agreements, but there are dangers with doing that. First, we did not want a flurry of agreements to be made because people knew they could slip it through the grandfather's net. Secondly, there may really be current agreements that do need to have their provisions relooked at and reviewed, in order to move our economy to a more competitive phase. After all, we said this is meant to move our economy up one quantum step.

As to how we are going to do it, again, the key word is "carefully". For agreements which have been in existence for more than five years before the Competition Act comes into operation, we will allow the companies to apply to the Competition Commission for more time, or a longer transitional period, so that they will have time to negotiate, renegotiate or amend those agreements so that they will comply with the requirements of the Competition Act. In any case, we are not repudiating all agreements. We are saying only those provisions which infringe the tenets of the Competition Act would, if complained about and if the Competition Commission finds against them, be held to be null and void. We are not saying everything is to be thrown away and everything has to be renegotiated. Yes, there will be a bit more work for Mr Sin Boon Ann, but I hope it will not be very much work for him.

Related to this also is Mr Iswaran's point about frivolous and vexatious complaints. Again, if you look at the way we constructed it, if someone complains to the Competition Commission, it is not the same as if he has gone to a court of law and filed an affidavit against you. Because it is the Competition Commission's own discretion to decide whether there is or there is not a *bona fide*

case that merits investigation, decision and ultimately enforcement. So, again, if we have a properly constituted, properly qualified and equipped Competition Commission, this should expeditiously filter out vexatious and frivolous complaints.

Mr Chiam was a bit confused, I am afraid, with respect to the role of the District Court and the Competition Commission. In clause 69, it refers to the sanctions which the Competition Commission can impose on businesses for infringing the prohibitions listed in the Bill, and the Bill provides that no financial penalty may exceed 10% of the annual turnover for up to a maximum of three years. Clauses 82 and 83 that Mr Chiam referred to refer to offences that would be committed by people who do not cooperate with the Commission in the course of its investigations or in its attempts to enforce its actions. So, I am afraid, they are two completely different issues. You will not get a situation of people saying, "Am I going to be fined by the District Court, or the Competition Commission can find against me?"

Perhaps it is worth reiterating the process. If the Competition Commission finds against you and if you disagree, you then have recourse to appeal to a Competition Appeal Board. Mr Sin Boon Ann will be glad to know that the chairman of the Appeal Board will have to be a lawyer who is qualified to be on the Supreme Court. I think that means he must have at least 10 or more years of practice. So the lawyers will still have a role in this process. If you disagree with the decision of the Competition Appeal Board, you can still appeal to the High Court on points of law and on the quantum of the penalty or sanction levied against you. And if you disagree with the findings of the High Court, you can then go to the Court of Appeal.

So, you can see that we have taken the trouble to set up a proper system with proper checks and balances and a right balance between business and law. But I want to conclude by saying that if you look at what other jurisdictions have done - I think in the case of the UK, it has been several decades that they have been working on competition law and evolving it, and the most recent legislation of 1998 which we have looked at - I have no illusion that this is a big first step, but it is a first step of a much longer journey, and one which we have to go into with our eyes open, clear-headed leadership, and sensible people of integrity operating the system.



**Dr John Chen Seow Phun:** Mr Deputy Speaker, Sir, the Minister has not addressed the point that I have made and, that is, to promote competition. You will discover that there are a lot of Government policies and practices which may stand in the way of effective competition. How do we handle those issues and whether there will be coordinated review of all these practices and policies?

**Dr Vivian Balakrishnan:** Thank you for that reminder. There is a big point and there is a small point in response. On the small point first. Technically, I would just like to inform this House that car dealers will be subject to the Competition Act. So there is no question about them escaping the coverage by this Bill. With regard to his specific point about why there are apparent variations in OMV valuation by LTA or MOF, I am sure LTA and MOF would quickly look into this. And if there is really a loophole, I am sure they will address it.

The bigger point is, in fact, that there are times when the goals of public policy may need to trump the market and that is why this Competition Act should not be an overarching blunderbuss law that acts to fetter all other exercises of Government or statutory bodies. So I am saying that we need to be very clear that where this is business and where this is going to lead to an efficient functioning of the market and more competitive firms, we use this more appropriately. In other circumstances where there are other policy objectives, then we do so. But when we do so, this Government is very aware that every regulation, every tax, or every new rule that we promulgate in pursuit of a public policy objective may, and very often, have market impact as well. And we need to balance the impact of that rule versus the impact on the way the market functions. And I will assure this House that this Government is ever mindful of that and we will not unnecessarily be so pig-headed about it that we will just impose a system and ignore the impact on businesses. But this is something which we will have to feel our way and cross each bridge as we come to it. So please do not treat this Bill as a panacea or as a solution for all ills, real or perceived. Otherwise, we will end up like Mr Steve Chia who thinks this Bill is going to be used to reform the political system.

**Dr John Chen Seow Phun:** Sir, my question is: will the Commission take up the issue with the relevant regulators to see that, in fact, there are greater purposes in having a certain policy at the expense of competition to satisfy themselves which is, indeed, the case?

**Dr Vivian Balakrishnan:** I think this is something which will have to be sorted out later on, especially during the process of generating the guidelines. But

the general principle is that if the Competition Commission is satisfied that there is a problem in which there is an unfair market practice, distortion or restriction of competition ---

**Dr John Chen Seow Phun:** Due to Government policy.

**Dr Vivian Balakrishnan:** --- then that dialogue must occur between the agency and the Competition Commission. But I would not accept the position that competition must trump at all costs.

**Dr John Chen Seow Phun:** I did not say that.

**Dr Vivian Balakrishnan:** There are public policy objectives which, sometimes, we must impose.

**Mr Leong Horn Kee:** Taking the point from the Minister, I would also like to ask him the question which I posed about the proposed merger of SPH and MediaCorp where, in fact, it did not give rise to competition but a monopolistic body will be formed.

**Dr Vivian Balakrishnan:** I am almost tempted to ask the Minister for MICA to answer that. Anyway, that question was asked and answered during the Question Time earlier today. Again, all I would say, at this stage, is that there are only two points. That is a sector which does not come under the ambit of the Competition Act. It is regulated by MDA. And these issues which the Member has raised should properly be resolved by MDA. But I would like to reiterate what the Minister said, which is that the Government has not reversed its position on openness to competition in the media sector.

The other point which he made, and I think is worth reiterating, is that we cannot insist on competition at all costs. Let us not forget that at the end of the day, this is a business that needs to be run and a business that needs to be viable. To blindly insist that you must keep the appearance, the form of competition at all costs even when it does not make business sense would be wrong. It would be wrong for the Government to insist on that and for the Government to impose that on listed companies.

**Mr Iswaran:** May I just ask the Minister? I appreciate the explanation given on why the Government has chosen to maintain sector-specific bodies and striking a delineation between those and the Competition Commission. But my reading of the Bill is that there are certain parts of the Bill, I think clauses 33 and 61, which

give the impression that the Commission would have certain powers to enact or prescribe codes that would impinge on those sectors. So there appears to be a contradiction there that the Government's policy intent is to decouple, but the drafting of the Bill suggests that there might actually be an overlap. So I do not know whether the Minister can give a clarification now.

**Dr Vivian Balakrishnan:** Thank you for the question. It is a good question. If you read carefully the clauses he is referring to, it provides for consultation to occur between the Competition Commission and the regulators in those sectors. And his next question should be: why is there a need for any consultation? There are two reasons. First, as a general rule, we want to ensure that we are moving forward in the same direction and aiming towards some future congruence. That is not something which we want to specify or lock ourselves into. But the other more important reason is that we have also said that where the companies in that sector get involved in cross sectoral businesses or, indeed, engage in businesses outside that sector, then the Competition Bill must apply to them. So there will be circumstances when a certain amount of coordination and dialogue is needed between the Competition Commission and the regulators of those sectors.

Question put, and agreed to.

Bill accordingly read a Second time and committed to a Committee of the whole House.

The House immediately resolved itself into a Committee on the Bill. - [Dr Vivian Balakrishnan].

Bill considered in Committee; reported without amendment; read a Third time and passed.

Column No : 919