

Competition (Amendment) Bill

Bill No. /2007.

Read the first time on 2007.

A BILL

intituled

An Act to amend the Competition Act (Chapter 50B of the 2006 Revised Edition).

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

Short title and commencement

1. This Act may be cited as the Competition (Amendment) Act 2007 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 2

2. Section 2(1) of the Competition Act is amended —

(a) by inserting, immediately before the definition of “block exemption”, the following definition:

10 ““anticipated merger” means an arrangement that is in progress or contemplation that, if carried into effect, will result in the occurrence of a merger referred to in section 54(2);” and

(b) by deleting the definition of “merger”.

New section 7A

15 3. The Competition Act is amended by inserting, immediately after section 7, the following section:

“Power to require documents or information

20 7A.—(1) For the purposes of discharging its functions and duties under this Act, the Commission may, by notice in writing to any person, require the person to produce to the Commission a specified document, or to provide the Commission with specified information, which the Commission considers relates to any matter relevant to such purposes.

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

25 (a) the purpose for which the specified document or specified information is required by the Commission; and

(b) the nature of the offences created by sections 75 to 78.

(3) The Commission may specify in the notice —

30 (a) the time and place at which any document is to be produced or any information is to be provided; and

(b) the manner and form in which it is to be produced or provided.

(4) The power under this section to require a person to produce a document includes the power —

(a) if the document is produced —

(i) to take copies of it or extracts from it; and

5 (ii) to require such person, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document; or

(b) if the document is not produced, to require such person to state, to the best of his knowledge and belief, where it is.

10 (5) In subsection (1), “specified” means —

(a) specified or described in the notice; or

(b) falling within a category which is specified or described in the notice.”.

Amendment of section 33

15 **4.** Section 33 of the Competition Act is amended by deleting subsection (1) and substituting the following subsection:

“(1) Notwithstanding that —

(a) an agreement referred to in section 34 has been entered into outside Singapore;

20 (b) any party to such agreement is outside Singapore;

(c) any undertaking abusing the dominant position referred to in section 47 is outside Singapore;

(d) an anticipated merger will be carried into effect outside Singapore;

25 (e) a merger referred to in section 54 has taken place outside Singapore;

(f) any party to such anticipated merger or merger is outside Singapore; or

30 (g) any other matter, practice or action arising out of such agreement, dominant position, anticipated merger or merger is outside Singapore,

this Part shall apply to such party, agreement, abuse of dominant position, anticipated merger or merger if —

- (i) such agreement or abuse infringes or has infringed any prohibition in this Part;
 - 5 (ii) such anticipated merger, if carried into effect, will infringe the section 54 prohibition; or
 - (iii) such merger infringes or has infringed any prohibition in this Part,
- as the case may be.”.

10 **Amendment of section 45**

5. Section 45 of the Competition Act is amended —

(a) by deleting subsection (2) and substituting the following subsection:

15 “(2) The Commission shall take no further action in relation to the section 34 prohibition with respect to an agreement to which this section applies, unless —

- (a) in the case of any such agreement —
 - 20 (i) it has reasonable grounds for suspecting that any information on which it based its guidance was incomplete, false or misleading in a material particular;
 - (ii) one of the parties to the agreement applies to it for a decision under section 44 with respect to the agreement; or
 - 25 (iii) a complaint about the agreement has been made to it by a person who is not a party to the agreement;
- (b) in the case of any such agreement other than an agreement referred to in paragraph 10(b) of the Third Schedule, it has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance; and
- 30 (c) in the case of any such agreement that is an agreement referred to in paragraph 10(b) of the Third Schedule

in relation to an anticipated merger, the anticipated merger is subsequently not carried into effect.”; and

(b) by deleting subsection (5) and substituting the following subsection:

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

(a) any information on which it based its guidance, and which was provided to it by a party to an agreement, was incomplete, false or misleading in a material particular; or

(b) the circumstances referred to in subsection (2)(c) have arisen,

the date specified in the notice under subsection (4)(c) may be earlier than the date on which the notice is given.”.

15 **Amendment of section 46**

6. Section 46 of the Competition Act is amended —

(a) by deleting subsection (2) and substituting the following subsection:

20 “(2) The Commission shall take no further action in relation to the section 34 prohibition with respect to an agreement to which this section applies, unless —

(a) in the case of any such agreement, it has reasonable grounds for suspecting that any information on which it based its decision was incomplete, false or misleading in a material particular;

(b) in the case of any such agreement other than an agreement referred to in paragraph 10(b) of the Third Schedule, it has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; and

(c) in the case of any such agreement which is an agreement referred to in paragraph 10(b) of the Third Schedule in relation to an anticipated merger, the

anticipated merger is subsequently not carried into effect.”; and

(b) by deleting subsection (5) and substituting the following subsection:

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

(a) any information on which it based its decision, and which was provided to it by a party to an agreement, was incomplete, false or misleading in a material particular; or

10 (b) the circumstances referred to in subsection (2)(c) have arisen,

the date specified in the notice under subsection (4)(c) may be earlier than the date on which the notice is given.”.

15 **Amendment of section 52**

7. Section 52 of the Competition Act is amended —

(a) by deleting subsection (2) and substituting the following subsection:

20 “(2) The Commission shall take no further action in relation to the section 47 prohibition with respect to the conduct, unless —

(a) in the case of any such conduct —

(i) it has reasonable grounds for suspecting that any information on which it based its guidance was incomplete, false or misleading in a material particular; or

(ii) a complaint about the conduct has been made to it;

30 (b) in the case of any such conduct other than conduct referred to in paragraph 10(b) of the Third Schedule, it has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance; and

(c) in the case of any such conduct referred to in paragraph 10(b) of the Third Schedule in relation to an anticipated merger, the anticipated merger is subsequently not carried into effect.”; and

5 (b) by deleting subsection (5) and substituting the following subsection:

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

10 (a) any information on which it based its guidance, and which was provided to it by an undertaking engaging in the conduct, was incomplete, false or misleading in a material particular; or

(b) the circumstances referred to in subsection (2)(c) have arisen,

15 the date specified in the notice under subsection (4)(c) may be earlier than the date on which the notice is given.”.

Amendment of section 53

8. Section 53 of the Competition Act is amended —

20 (a) by deleting subsection (2) and substituting the following subsection:

“(2) The Commission shall take no further action in relation to the section 47 prohibition with respect to the conduct, unless —

25 (a) in the case of any such conduct, it has reasonable grounds for suspecting that any information on which it based its decision was incomplete, false or misleading in a material particular;

30 (b) in the case of any such conduct other than conduct referred to in paragraph 10(b) of the Third Schedule, it has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; and

(c) in the case of any such conduct referred to in paragraph 10(b) of the Third Schedule in relation to

an anticipated merger, the anticipated merger is subsequently not carried into effect.”; and

(b) by deleting subsection (5) and substituting the following subsection:

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

(a) any information on which it based its decision, and which was provided to it by an undertaking engaging in the conduct, was incomplete, false or misleading in a material particular; or

(b) the circumstances referred to in subsection (2)(c) have arisen,

the date specified in the notice under subsection (4)(c) may be earlier than the date on which the notice is given.”.

15 **Amendment of section 54**

9. Section 54 of the Competition Act is amended —

(a) by deleting paragraph (b) of subsection (2); and

(b) by deleting subsection (5) and substituting the following subsection:

20 “(5) The creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity shall constitute a merger falling within subsection (2)(c).”.

Repeal and re-enactment of sections 56 and 57

25 **10.** Sections 56 and 57 of the Competition Act are repealed and the following sections substituted therefor:

“Requests for Commission to consider anticipated mergers and mergers

30 **56.**—(1) Section 57 provides for an anticipated merger to be considered by the Commission on the application of a party to that anticipated merger who thinks the anticipated merger, if carried into effect, may infringe the section 54 prohibition.

(2) Section 58 provides for a merger to be considered by the Commission on the application of a party to that merger who thinks the merger may infringe the section 54 prohibition.

(3) The Minister may by regulations provide —

- 5 (a) that only such anticipated mergers as are prescribed may be notified to the Commission under section 57; and
- (b) for the procedure to be followed —
- (i) by any party making an application under section 57 or 58; and
- 10 (ii) by the Commission, in considering such an application.

Notification of anticipated merger

57.—(1) A party to an anticipated merger of the relevant type which applies for the anticipated merger to be considered under this section shall —

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

(2) Subject to subsections (3) and (5) and sections 60A and 60B, on an application under this section, the Commission may make a decision as to —

- 20 (a) whether the anticipated merger, if carried into effect, will infringe the section 54 prohibition; and
- (b) if the anticipated merger, if carried into effect, will not infringe the section 54 prohibition, whether it is —
- (i) because of the effect of an exclusion which will apply if
- 25 the anticipated merger is carried into effect;
- (ii) because the anticipated merger, if carried into effect, is exempted from the application of the prohibition under subsection (3); or
- (iii) because a commitment has been accepted pursuant to
- 30 section 60A.

(3) Where the Commission proposes to make a decision that an anticipated merger, if carried into effect, will infringe the section 54 prohibition, the Commission shall give written notice to the party

who applied for the anticipated merger to be considered and the party may, within 14 days of the date of the notice, apply to the Minister for the anticipated merger, if carried into effect, to be exempted from the section 54 prohibition on the ground of any public interest consideration.

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

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

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

(7) Subject to subsection (8), where the Commission makes a decision that an anticipated merger, if carried into effect, will not infringe the section 54 prohibition, the Commission may, if it thinks fit, state that the decision shall be valid only for the period it specifies therein.

(8) Before the expiry of the period referred to in subsection (7), if any, any parties who notified the anticipated merger to the Commission under this section may apply to the Commission for that period to be extended.

(9) In this section, “an anticipated merger of the relevant type” means an anticipated merger of the type prescribed by regulations made under section 56(3)(a).”.

Amendment of section 58

11. Section 58 of the Competition Act is amended —

- (a) by inserting, immediately after the words “subsections (3) and (5)” in subsection (2), the words “and sections 60A and 60B”;
- (b) by deleting the word “or” at the end of subsection (2)(b)(i);
- (c) by deleting the full-stop at the end of sub-paragraph (ii) of subsection (2)(b) and substituting the word “; or” and by inserting, immediately thereafter, the following sub-paragraph:

“(iii) because a commitment has been accepted pursuant to section 60A;” and

(d) by deleting the section heading and substituting the following section heading:

5 **“Notification of merger”.**

Repeal and re-enactment of section 59 and new section 59A

12. Section 59 of the Competition Act is repealed and the following sections substituted therefor:

“Interim measures in relation to notifications of anticipated mergers and mergers

10 **59.—**(1) If, in respect of an application under section 57 or 58, the Commission has reasonable grounds for suspecting that —

(a) an anticipated merger, if carried into effect, will infringe the section 54 prohibition; or

15 (b) a merger infringes the section 54 prohibition,

but has not completed its consideration of the matter, and the Commission considers that it is necessary for it to act under this section —

20 (i) for the purpose of preventing any action that may prejudice —

(A) the consideration of the anticipated merger or merger; or

(B) the giving of any direction under section 69; or

(ii) as a matter of urgency for the purpose —

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

(B) of protecting the public interest,

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

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

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

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

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

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

10 (5) Sections 69(2)(ba)(i) and (c)(i) and 85 shall also apply to directions given under this section.

Effect of decision that anticipated merger, if carried into effect, will not infringe section 54 prohibition

15 **59A.**—(1) This section shall apply to an anticipated merger in respect of which the Commission has determined an application under section 57 by making a decision that the anticipated merger, if carried into effect, will not infringe the section 54 prohibition.

20 (2) The Commission shall take no further action under this Part with respect to the anticipated merger (including where the anticipated merger has been carried into effect within the period for which the decision is valid) unless —

25 (a) it has reasonable grounds for suspecting that any information on which it based its decision (which may include information on the basis of which it accepted a commitment) was incomplete, false or misleading in a material particular; or

(b) it has reasonable grounds for suspecting that a party to a commitment has failed to adhere to one or more of the terms of the commitment.

30 (3) Action that may be taken in respect of the circumstances referred to in subsection (2) may include the revocation of the decision that the anticipated merger, if carried into effect, will not infringe the section 54 prohibition.

(4) No penalty may be imposed under this Part in respect of any infringement of the section 54 prohibition by the anticipated merger to which this section applies, if carried into effect.

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

- (a) it takes action under this Part with respect to one of the circumstances referred to in subsection (2);
- (b) it considers that it is likely that the anticipated merger, if carried into effect, will infringe the section 54 prohibition; and
- (c) it gives notice in writing to the party on whose application the decision was made that it is removing the immunity as from the date specified in its notice.

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

- (a) any information on which it based its decision (which may include information on the basis of which it accepted a commitment), and which was provided to it by a party involved in the anticipated merger was incomplete, false or misleading in a material particular; or
- (b) a party to a commitment has failed to adhere to one or more of the terms of the commitment,

the date specified in a notice under subsection (5)(c) may be earlier than the date on which the notice is given.

(7) Where a merger that has been carried into effect is materially different from the anticipated merger notified under section 57, in respect of which anticipated merger the Commission has made a decision that the anticipated merger, if carried into effect, will not infringe the section 54 prohibition, nothing in this section shall prevent the Commission from taking any action under this Part in respect of the merger so carried into effect.”.

Amendment of section 60

13. Section 60 of the Competition Act is amended —

- (a) by deleting subsection (2) and substituting the following subsections:

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

- 5 (a) it has reasonable grounds for suspecting that any information on which it based its decision (which may include information on the basis of which it accepted a commitment) was incomplete, false or misleading in a material particular; or
- 10 (b) it has reasonable grounds for suspecting that a party to a commitment has failed to adhere to one or more of the terms of the commitment.

15 (2A) Action that may be taken in respect of the circumstances referred to in subsection (2) may include the revocation of the decision that the merger does not infringe the section 54 prohibition.”;

- (b) by deleting subsection (5) and substituting the following subsection:

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

- 25 (a) any information on which it based its decision (which may include information on the basis of which it accepted a commitment), and which was provided to it by a party involved in the merger, was incomplete, false or misleading in a material particular; or
- (b) a party to a commitment has failed to adhere to one or more of the terms of the commitment,

the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.”; and

- 30 (c) by deleting the section heading and substituting the following section heading:

“Effect of decision that merger does not infringe section 54 prohibition”.

New Division 4A of Part III

5 **14.** The Competition Act is amended by inserting, immediately after section 60, the following Division:

“Division 4A — Commitments

Commitments

60A.—(1) The Commission may, at any time before making a decision as to whether —

10 (a) an anticipated merger, if carried into effect, will infringe the section 54 prohibition; or

(b) a merger infringes the section 54 prohibition,

15 accept from such person as it thinks appropriate, a commitment to take or refrain from taking such action as it considers appropriate for the purpose of remedying, mitigating or preventing the substantial lessening of competition or any adverse effect which —

(i) may be expected to result from the anticipated merger, if carried into effect; or

(ii) has resulted or may be expected to result from the merger.

20 (2) A commitment shall come into force on the date specified by the Commission when it is accepted.

(3) The Commission may, at any time when a commitment is in force, accept from the person who gave the commitment —

(a) a variation of the commitment; or

25 (b) another commitment in substitution,

for the purpose referred to in subsection (1).

(4) A commitment may be released by the Commission where it has reasonable grounds for believing that the commitment is no longer necessary or appropriate for the purpose referred to in subsection (1).

(5) Before accepting, varying, substituting or releasing a commitment, the Commission shall, except in exceptional circumstances, consult with such person as it thinks appropriate.

Effect of commitments

5 **60B.**—(1) Where the Commission has accepted a commitment under section 60A, and subject to subsection (2), the Commission shall make a decision that —

 (a) an anticipated merger, if carried into effect, will not infringe the section 54 prohibition; or

10 (b) a merger does not infringe the section 54 prohibition, as the case may be.

(2) Nothing in subsection (1) shall prevent the Commission from revoking the decision already made, commencing or continuing any investigation, or making a decision or giving a direction where —

15 (a) it has reasonable grounds for suspecting that any information on the basis of which it accepted a commitment was incomplete, false or misleading in a material particular; or

20 (b) it has reasonable grounds for suspecting that a party to a commitment has failed to adhere to one or more of the terms of the commitment.

(3) If the Commission revokes a decision referred to in subsection (1), the commitments are to be treated, unless otherwise stated, as released from the date of that revocation.

25 (4) The Commission may review the effectiveness of commitments it has accepted under section 60A in such circumstances as it considers appropriate.”.

Amendment of section 62

30 **15.** Section 62 of the Competition Act is amended by deleting subsection (1) and substituting the following subsection:

 “(1) The Commission may conduct an investigation if there are reasonable grounds for suspecting that —

- (a) the section 34 prohibition has been infringed by any agreement;
- (b) the section 47 prohibition has been infringed by any conduct;
- 5 (c) the section 54 prohibition will be infringed by any anticipated merger if it is carried into effect; or
- (d) the section 54 prohibition has been infringed by any merger.”.

Amendment of section 64

10 **16.** Section 64 of the Competition Act is amended —

- (a) by deleting the words “and any inspector” in subsection (1) and substituting the words “, any inspector and such other person as the Commission has authorised in writing to accompany an investigating officer or inspector (authorised person)”;
- 15 (b) by deleting the words “or inspector” in subsections (2), (3)(a), (3)(b) and (5) (1st line) and substituting in each case the words “, inspector or authorised person”;
- (c) by inserting, immediately before the words “a merger” in subsection (3)(a)(iii), the words “an anticipated merger, or”; and
- 20 (d) by inserting, immediately after the words “an investigating officer” in subsection (4)(a), the words “or authorised person”.

Amendment of section 67

17. Section 67 of the Competition Act is amended —

- (a) by deleting paragraph (a) of subsection (1) and substituting the following paragraph:
 - 25 “(a) has reasonable grounds for suspecting that the section 34 prohibition or the section 47 prohibition has been infringed but has not completed its investigations into the matter; and”;
- 30 (b) by inserting, immediately after subsection (1), the following subsection:
 - “(1A) If the Commission has reasonable grounds for suspecting that —

(a) an anticipated merger, if carried into effect, will infringe the section 54 prohibition; or

(b) a merger infringes the section 54 prohibition,

but has not completed its investigations into the matter, and considers that it is necessary for it to act under this section —

(i) for the purpose of preventing any action that may prejudice —

(A) the investigations; or

(B) the giving of any direction under section 69; or

(ii) as a matter of urgency for the purpose —

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

(B) of protecting the public interest,

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

(c) by inserting, immediately after the words “subsection (1)” in subsection (4), the words “or (1A)”; and

(d) by deleting subsection (7) and substituting the following subsection:

“(7) In the case of a suspected infringement of the section 54 prohibition (including in relation to an anticipated merger, if carried into effect), sections 69(2)(ba)(i) and (c)(i) and 85 shall also apply to directions given under this section.”.

Amendment of section 68

18. Section 68 of the Competition Act is amended —

(a) by deleting the words “the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has been infringed” in the 7th, 8th and 9th lines of subsection (1) and substituting the words “the section 34 prohibition has been infringed by any agreement, the section 47 prohibition has been infringed by any conduct, the section 54 prohibition will be infringed by an

anticipated merger, if carried into effect, or the section 54 prohibition has been infringed by any merger”;

- (b) by deleting subsections (2) and (3) and substituting the following subsections:

5 “(2) Subject to subsections (3) and (5), upon considering any representation made to the Commission under subsection (1)(ii), the Commission may, as it thinks fit, make a decision that —

10 (a) the section 34 prohibition has been infringed by any agreement;

 (b) the section 47 prohibition has been infringed by any conduct;

 (c) the section 54 prohibition will be infringed by any anticipated merger, if carried into effect; or

15 (d) the section 54 prohibition has been infringed by any merger.

(3) Where —

20 (a) in relation to an anticipated merger, the Commission proposes to make a decision that the anticipated merger, if carried into effect, will infringe the section 54 prohibition; or

 (b) in relation to a merger, the Commission proposes to make a decision that the merger infringes the section 54 prohibition,

25 and the Commission has given written notice under subsection (1)(i) to the parties involved in the anticipated merger or the merger, as the case may be, any such party may, within 14 days of the date of the notice, apply to the Minister for the anticipated merger, if carried into effect, or merger to be

30 exempted from the section 54 prohibition on the ground of any public interest consideration.”;

- (c) by deleting subsection (5) and substituting the following subsection:

“(5) Where the Minister exempts an anticipated merger or a merger under subsection (3), the Commission may make a decision that —

(a) the anticipated merger, if carried into effect, will not infringe the section 54 prohibition; or

(b) the merger does not infringe the section 54 prohibition.”; and

(d) by inserting, immediately after the words “the exemption of” in subsection (6), the words “an anticipated merger or a”.

10 **Amendment of section 69**

19. Section 69 of the Competition Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) Where the Commission has made a decision that —

(a) any agreement infringes the section 34 prohibition;

(b) any conduct infringes the section 47 prohibition;

(c) any anticipated merger, if carried into effect, will infringe the section 54 prohibition; or

(d) any merger infringes the section 54 prohibition,

the Commission may give to such person as it thinks appropriate such directions as it considers appropriate to bring the infringement or the circumstances referred to in paragraph (c) to an end and where necessary, requiring that person to take such action as is specified in the direction to remedy, mitigate or eliminate any adverse effects of such infringement or situation and to prevent the recurrence of such infringement or situation.”;

(b) by inserting, immediately after paragraph (b) of subsection (2), the following paragraph:

“(ba) where the decision is that any anticipated merger, if carried into effect, will infringe the section 54 prohibition —

- (i) prohibiting the anticipated merger from being carried into effect;
- (ii) requiring any parties to any agreement that is directly related and necessary to the implementation of the anticipated merger to modify or terminate the agreement, notwithstanding the agreement is excluded under paragraph 10(*b*) of the Third Schedule or the Commission has given guidance or a decision under section 45 or 46, as the case may be, that the agreement does not infringe the section 34 prohibition; and
- (iii) requiring any person concerned with any conduct that is directly related and necessary to the implementation of the anticipated merger to modify or cease that conduct, notwithstanding the conduct is excluded under paragraph 10(*b*) of the Third Schedule or the Commission has given guidance or a decision under section 52 or 53, as the case may be, that the conduct does not infringe the section 47 prohibition;”;
- (c) by deleting paragraphs (c) and (d) of subsection (2) and substituting the following paragraphs:
- “(c) where the decision is that any merger infringes the section 54 prohibition —
- (i) requiring the merger to be dissolved or modified in such manner as the Commission may direct;
- (ii) requiring any parties to any agreement that is directly related and necessary to the implementation of the merger to modify or terminate the agreement, notwithstanding the agreement is excluded under paragraph 10(*b*) of the Third Schedule or the Commission has given guidance or a decision under section 45 or 46, as the case may be, that the agreement does not infringe the section 34 prohibition; and

- 5 (iii) requiring any person concerned with any conduct that is directly related and necessary to the implementation of the merger to modify or cease that conduct, notwithstanding the conduct is excluded under paragraph 10(b) of the Third Schedule or the Commission has given guidance or a decision under section 52 or 53, as the case may be, that the conduct does not infringe the section 47 prohibition;
- 10 (d) where the decision is that any agreement infringes the section 34 prohibition, any conduct infringes the section 47 prohibition or any merger infringes the section 54 prohibition, to pay to the Commission such financial penalty in respect of the infringement as the Commission may determine; and
- 15 (e) in any case, requiring the party to an agreement that infringes the section 34 prohibition, any person whose conduct infringes the section 47 prohibition, any person involved in an anticipated merger which, if carried into effect, will infringe the section 54 prohibition or any party involved in a merger that infringes the section 54 prohibition —
- 20 (i) to enter such legally enforceable agreements as may be specified by the Commission and designed to prevent or lessen the anti-competitive effects which have arisen;
- 25 (ii) to dispose of such operations, assets or shares of such undertaking in such manner as may be specified by the Commission; and
- 30 (iii) to provide a performance bond, guarantee or other form of security on such terms and conditions as the Commission may determine.”; and
- 35 (d) by deleting the words subsection (2)(d)(iii) in subsection (3) and substituting the words “subsection (2)(d)”.

Amendment of section 71

20. Section 71 of the Competition Act is amended —

(a) by inserting, immediately before the words “a merger” in subsection (1), the words “an anticipated merger or”;

5 (b) by inserting, immediately after the word “section” in subsection (1A), “59,”; and

(c) by deleting subsection (3) and substituting the following subsection:

10 “(3) In subsection (1), “decision” means a decision of the Commission as to —

(a) whether the section 34 prohibition has been infringed by any agreement;

(b) whether the section 47 prohibition has been infringed by any conduct;

15 (c) whether the section 54 prohibition will be infringed by any anticipated merger, if carried into effect; or

(d) whether the section 54 prohibition has been infringed by any merger,

20 and includes a direction given under section 59, 67 or 69 (including the imposition of any financial penalty under section 69 or as to the amount of any such financial penalty) and such other decision as may be prescribed.”.

Amendment of section 75

25 **21.** Section 75(1) of the Competition Act is amended by deleting the words “section 63” and substituting the words “section 7A, 63”.

Amendment of section 76

22. Section 76 of the Competition Act is amended by deleting the words “section 63” and substituting the words “section 7A, 63”.

Repeal and re-enactment of section 85

30 **23.** Section 85 of the Competition Act is repealed and the following section substituted therefor:

“Enforcement of directions of Commission and commitments in District Court

5 **85.**—(1) For the purposes of enforcement of any direction made by the Commission under section 59, 67 or 69, or any commitment accepted by the Commission under section 60A which it has not released, the Commission may apply for the direction or commitment to be registered in a District Court in accordance with the Rules of Court and the District Court shall register the direction or commitment in accordance with the Rules of Court.

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

(3) A District Court shall have jurisdiction to enforce any direction or commitment in accordance with subsection (2) regardless of the monetary amount involved and may, in enforcing such direction or commitment, make any order —

20 (a) to secure compliance with the direction or commitment; or

(b) to require any person to do any thing to remedy, mitigate or eliminate any effects arising from —

(i) any thing done which ought not, under the direction or commitment, to have been done; or

25 (ii) any thing not done which ought, under the direction or commitment, to have been done,

which would not have occurred had the direction or commitment been complied with.”.

Amendment of section 93

30 **24.** Section 93 of the Competition Act is amended —

(a) by deleting paragraph (d) of subsection (2) and substituting the following paragraph:

“*(d)* the form and manner in which complaints that the section 34 prohibition has been infringed by any

5 agreement, the section 47 prohibition has been infringed by any conduct, the section 54 prohibition will be infringed by any anticipated merger, if carried into effect, or the section 54 prohibition has been infringed by any merger, are to be submitted to the Commission;” and

- (b) by deleting the words “a merger” in sub-paragraph (iii) of subsection (2)(f) and substituting the words “an anticipated or a merger, as the case may be”.

10 **Amendment of Second Schedule**

25. The Second Schedule to the Competition Act is amended —

- (a) by deleting paragraph 2; and
 (b) by inserting, immediately after the words “research and” in paragraph 5, the words “ studies and to”.

15 **Amendment of Third Schedule**

26. The Third Schedule to the Competition Act is amended by inserting, immediately after paragraph 9, the following paragraph:

“Anticipated mergers, mergers and provisions directly related and necessary to the implementation of a merger

20 10. The section 34 prohibition and the section 47 prohibition shall not apply to —

- (a) any anticipated merger or merger; or
 (b) any agreement or conduct that is directly related and necessary to the implementation of an anticipated merger or a merger.”.

25 **Amendment of Fourth Schedule**

27. The Fourth Schedule to the Competition Act is amended —

- (a) by deleting paragraph 1 and substituting the following paragraph:

“1. The section 54 prohibition shall not apply to any merger —

- 30 (a) approved by any Minister or regulatory authority (other than the Commission) under any written law; or

- (b) under the jurisdiction of any regulatory authority (other than the Commission) under any written law relating to competition, or code of practice relating to competition under any written law.”; and
- 5 (b) by inserting, immediately after paragraph 2, the following paragraph:
- 10 “3. The section 54 prohibition shall not apply to any merger if the economic efficiencies arising or that may arise from the merger outweigh the adverse effects due to the substantial lessening of competition in the relevant market in Singapore.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Competition Act (Cap. 50B) for the following purposes:

- (a) to extend Part III of the Act to an anticipated merger which, if carried into effect, will result in the occurrence of a merger, as defined in this Act. The Act presently applies only to mergers, where control has passed to an acquiring party. The amendments will permit voluntary statutory notifications of certain anticipated mergers to be made to the Competition Commission of Singapore (the Commission) for decision;
- (b) to exclude from the section 34 prohibition and the section 47 prohibition ancillary restrictions, being additional arrangements that may not be integral to an anticipated merger or a merger, but which are directly related and necessary to its implementation. A non-infringement decision made by the Commission in respect of ancillary restrictions that are notified separately from the anticipated merger or merger to which they relate may be revisited if the merger is subsequently not effected;
- (c) to replace the criterion for a joint venture to be considered as a merger, namely, that such a joint venture must perform on ‘an indefinite basis’ all the functions of an autonomous economic entity, with the criterion that the functions be performed on ‘a lasting basis’;
- (d) to remove notifications for guidance in respect of the section 54 prohibition;
- (e) to permit the Commission, where it has not completed its consideration of a matter, to make interim directions in respect of notifications and investigations of anticipated mergers and mergers to prevent any action that may prejudice further consideration or investigations, or the giving of any final directions under section 69, or where it is necessary to act to prevent serious, irreparable damage to particular persons or to protect the public interest. The power may be exercised where the Commission has reasonable

grounds for suspecting that an anticipated merger, if carried into effect, will infringe, or a merger infringes, the section 54 prohibition;

- (f) to permit the Commission to accept, vary, substitute or release commitments. A non-infringement decision made because of the acceptance of a commitment may be revoked if any term of the commitment is not adhered to. The Commission will, except in exceptional circumstances, consult with any relevant third party before accepting, varying, substituting or releasing any commitment;
- (g) to expand the Commission's powers to compel the furnishing of information or documents for the purposes of discharging its functions and duties;
- (h) to permit persons authorised by the Commission to enter premises for investigation under section 64 of the Act;
- (i) to clarify that the section 54 prohibition does not apply to mergers that are subject to the approval of any Minister or regulatory authority (other than the Commission) under any written law and mergers where the resultant economic efficiencies outweigh any adverse effects from the substantial lessening of competition arising from the merger; and
- (j) to clarify, in respect of the section 34 prohibition and the section 47 prohibition, that when the Commission gives guidance or makes a decision that the section 34 prohibition is not likely to have been, or has not been, infringed, this will not preclude an investigation by the Commission into a possible infringement of the section 47 prohibition, and vice versa.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to define an "anticipated merger" and delete the definition of a "merger".

Clause 3 inserts a new section 7A to empower the Commission to require any person to produce documents or provide information to the Commission for the purposes of discharging of its functions and duties. Failure by the person to do so is to be an offence (see clause 21).

Clause 4 amends section 33 to include references to anticipated mergers.

Clause 5 amends section 45 to provide for what further action the Commission may take in respect of an ancillary restriction where it has given guidance under section 43 that the ancillary restriction is unlikely to infringe the section 34 prohibition. It also clarifies that a guidance that any agreement is unlikely to infringe the section 34 prohibition does not preclude an investigation by the Commission into a suspected infringement of the section 47 prohibition.

Clause 6 amends section 46 to provide for what further action the Commission may take in respect of an ancillary restriction where it has made a decision under section 44 that the ancillary restriction does not infringe the section 34 prohibition. It also clarifies that a decision that any agreement does not infringe the section 34 prohibition does not

preclude an investigation by the Commission into a suspected infringement of the section 47 prohibition.

Clause 7 amends section 52 to provide for what further action the Commissioner may take in respect of an ancillary restriction where it has given guidance under section 50 that the ancillary restriction is unlikely to infringe the section 47 prohibition. It also clarifies that a guidance that any conduct is unlikely to infringe the section 47 prohibition does not preclude an investigation by the Commission into a suspected infringement of the section 34 prohibition.

Clause 8 amends section 53 to provide for what further action the Commission may take in respect of an ancillary restriction where it has made a decision under section 51 that the ancillary restriction does not infringe the section 47 prohibition. It also clarifies that a decision that any conduct does not infringe the section 47 prohibition does not preclude an investigation by the Commission into a suspected infringement of the section 34 prohibition.

Clause 9 amends section 54 by deleting section 54(2)(b) as section 54(2)(c) would include section 54(2)(b). It also amends subsection (5) to restate the test for joint ventures constituting mergers as those of a 'lasting' basis rather than those of an 'indefinite' basis.

Clause 10 repeals and re-enacts sections 56 and 57 to allow for the filing for notifications for decision in respect of certain anticipated mergers, and to include references to the acceptance of commitments by the Commission.

Clause 11 amends section 58 to include references to the acceptance of commitments by the Commission.

Clause 12 repeals and re-enacts section 59 and inserts a new section 59A. The new section 59 permits the Commission to make interim directions in respect of notified anticipated mergers and mergers. The new section 59A limits the power of the Commission to take further action in respect of an anticipated merger where it has made a decision under section 57 that the anticipated merger, if carried into effect, will not infringe the section 54 prohibition.

Clause 13 amends section 60 to cater for situations where a non-infringement decision is made upon the acceptance of a commitment.

Clause 14 inserts a new Division 4A to Part III of the Act. The new Division provides for the Commission's acceptance of commitments offered by the merger parties, as well as the variation, substitution, or release of accepted commitments. The new Division also provides that the Commission shall make a non-infringement decision upon acceptance of a commitment.

Clause 15 amends section 62(1) to provide for the investigation of anticipated mergers which, if carried into effect, will infringe the section 54 prohibition.

Clause 16 amends section 64 to permit persons authorised by the Commission to enter premises without a warrant.

Clause 17 amends section 67 to include references to the investigation of anticipated mergers and allows the Commission to impose interim measures during investigations

for the purpose of preventing any action that may prejudice the investigations or the giving of any final directions under section 69.

Clause 18 amends section 68 to include references to anticipated mergers.

Clause 19 amends section 69 to include references to anticipated mergers.

Clause 20 amends section 71 to include references to anticipated mergers.

Clause 21 makes a consequential amendment to section 75 arising from the insertion of new section 7A by clause 4.

Clause 22 makes a consequential amendment to section 76 arising from the insertion of new section 7A by clause 4.

Clause 23 repeals and re-enacts section 85 to allow commitments that have been accepted by the Commission to be registered with the District Court and enforced as if it were an order of court, and empowers the District Court to make appropriate orders to secure compliance with the registered direction or to remedy, mitigate or eliminate effects arising from the non-compliance.

Clause 24 amends section 93 to include references to the anticipated mergers.

Clause 25 amends the Second Schedule to the Act to —

- (a) delete paragraph 2 relating to the power of the Commission to obtain returns and information, as this is now covered under the new section 7A; and
- (b) clarify the Commission's powers with respect the conduct of research and studies.

Clause 26 amends the Third Schedule to the Act to exclude mergers and ancillary restrictions from the section 34 prohibition and the section 47 prohibition.

Clause 27 amends the Fourth Schedule to the Act to exclude from the section 54 prohibition mergers that are subject to the approval of any Minister or regulatory authority (other than the Commission), and mergers with economic efficiencies that outweigh any adverse effects from the substantial lessening of competition arising therefrom.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.