

Competition (Amendment) Bill

Bill No. 8/2018.

Read the first time on 27 February 2018.

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 is the Competition (Amendment) Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Amendment of section 44

2. Section 44 of the Competition Act is amended by deleting subsection (2) and substituting the following subsection:

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

- 10 (a) whether the section 34 prohibition has been infringed;
and
- (b) if it has not been infringed, whether that is —
- (i) because of the effect of an exclusion;
- 15 (ii) because the agreement is exempt from the prohibition; or
- (iii) because a commitment has been accepted pursuant to section 60A(1A).”.

Amendment of section 51

20 3. Section 51 of the Competition Act is amended by deleting subsection (2) and substituting the following subsection:

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

- (a) whether the section 47 prohibition has been infringed;
and
- 25 (b) if it has not been infringed, whether that is —
- (i) because of the effect of an exclusion; or
- (ii) because a commitment has been accepted pursuant to section 60A(1B).”.

New section 55A

4. The Competition Act is amended by inserting, immediately after section 55, the following section:

“Confidential advice by Commission on anticipated mergers

5

55A.—(1) A party to an anticipated merger may apply to the Commission for its advice as to whether the view of the Commission is that the anticipated merger, if carried into effect, is likely to infringe the section 54 prohibition.

(2) Subject to regulations made under subsection (5), the Commission may issue the advice under subsection (1) if the Commission is satisfied —

10

(a) that all parties to the anticipated merger intend to carry into effect the anticipated merger;

(b) that no information relating to the anticipated merger is in the public domain at the time that the application under subsection (1) is made; and

15

(c) if information relating to the anticipated merger enters the public domain after the application under subsection (1) is made, that there are good reasons for the applicant not notifying the Commission of the anticipated merger and not applying to the Commission for its decision, under section 57.

20

(3) Despite subsection (2), the Commission may refuse to issue the advice mentioned in subsection (1) if the Commission is of the view that, given the facts and circumstances of the anticipated merger, the parties to the anticipated merger are able to assess whether an application under section 57 in respect of the anticipated merger should be made without the advice.

25

(4) Advice issued by the Commission under this section is not binding on the Commission.

30

- (5) The Minister may make regulations to provide —
- (a) that the Commission may issue advice under this section in relation to only such anticipated mergers as are prescribed; and
 - (b) for the procedure to be followed —
 - (i) by any party making an application under this section; and
 - (ii) by the Commission, in considering such an application.”.

Amendment of section 57

5. Section 57(2) of the Competition Act is amended —

- (a) by deleting the words “sections 60A and 60B” and substituting the words “sections 60A(1) and 60B(1)”; and
- (b) by deleting the words “section 60A” in paragraph (b)(iii) and substituting the words “section 60A(1)”.

Amendment of section 58

6. Section 58(2) of the Competition Act is amended —

- (a) by deleting the words “sections 60A and 60B” and substituting the words “sections 60A(1) and 60B(1)”; and
- (b) by deleting the words “section 60A” in paragraph (b)(iii) and substituting the words “section 60A(1)”.

Amendment of section 60A

7. Section 60A of the Competition Act is amended —

- (a) by inserting, immediately after subsection (1), the following subsections:

“(1A) The Commission may, at any time before making a decision pursuant to an application under section 44 or an investigation under section 62(1)(a) as to whether the section 34 prohibition has been infringed by an agreement, accept from such person as

the Commission thinks appropriate, a commitment to take or refrain from taking such action as the Commission considers appropriate for the purpose of remedying, mitigating or preventing the prevention, restriction or distortion of competition which has resulted or may be expected to result from the agreement.

5

(1B) The Commission may, at any time before making a decision pursuant to an application under section 51 or an investigation under section 62(1)(b) as to whether the section 47 prohibition has been infringed by any conduct, accept from such person as the Commission thinks appropriate, a commitment to take or refrain from taking such action as the Commission considers appropriate for the purpose of remedying, mitigating or preventing the abuse of a dominant position in a market which has resulted or may be expected to result from the conduct.”;

10

15

- (b) by deleting the words “subsection (1)” in subsection (3) and substituting the words “subsection (1), (1A) or (1B), whichever is applicable, and any reference to a commitment accepted under any of those subsections includes a reference to a commitment varied or substituted under this subsection”; and
- (c) by deleting the words “subsection (1)” in subsection (4) and substituting the words “subsection (1), (1A) or (1B), whichever is applicable”.

20

25

Amendment of section 60B

8. Section 60B of the Competition Act is amended —

- (a) by deleting the words “section 60A” in subsection (1) and substituting the words “section 60A(1)”;

30

(b) by inserting, immediately after subsection (1), the following subsections:

5 “(1A) Where the Commission has accepted a commitment under section 60A(1A) in relation to an agreement, and subject to subsection (2), the Commission must make a decision that the section 34 prohibition has not been infringed by the agreement.

10 (1B) Where the Commission has accepted a commitment under section 60A(1B) in relation to any conduct, and subject to subsection (2), the Commission must make a decision that the section 47 prohibition has not been infringed by the conduct.”; and

15 (c) by inserting, immediately after the words “subsection (1)” in subsections (2) and (3), the words “, (1A) or (1B)”.

Amendment of section 63

9. Section 63 of the Competition Act is amended by inserting, immediately after subsection (4), the following subsections:

20 “(4A) For the purposes of an investigation under section 62, a person who is empowered to enter any premises under section 64(1), or who is authorised under a warrant under section 65 to enter the premises specified in the warrant, may —

25 (a) orally examine any individual on the premises who appears to be acquainted with the facts and circumstances relevant to the investigation that is being carried out; and

(b) require the individual to answer any question relating to the investigation.

30 (4B) Any information provided verbally by an individual under subsection (1), or any answer given or statement made by an individual under subsection (4A), must —

(a) be reduced to writing;

- (b) be read over to the individual;
- (c) if the individual does not understand English, be interpreted for the individual in a language that the individual understands; and
- (d) after correction (if any), be signed by the individual.”. 5

Amendment of section 64

10. Section 64 of the Competition Act is amended —

- (a) by deleting the word “he” in subsection (5)(b)(i) and substituting the words “the investigating officer, authorised person, inspector or person required by the inspector”; 10
- (b) by deleting the words “any such document” in subsection (5)(c) and substituting the words “any document mentioned in paragraph (b)(i)”; and
- (c) by inserting, immediately after subsection (5), the following subsection: 15

“(6) The power to require any person on the premises to produce any document under subsection (5)(b) includes the power to require that person to produce the document at such time and place, and in such form and manner, as may be required by the investigating officer, authorised person, inspector or person required by the inspector.”. 20

Amendment of section 65

11. Section 65(2) of the Competition Act is amended by inserting, 25 immediately after paragraph (vi), the following paragraph:

“(via) to require any person on the premises to produce any document of the relevant kind at the time and place, and in the form and manner, required by the named officer or other officer or person whom the Commission has authorised in writing to accompany the named officer, or by any other 30

person required under paragraph (b) by an inspector;”.

Amendment of section 75

5 **12.** Section 75(3) of the Competition Act is amended by inserting, immediately after the word “information” in paragraph (a), the words “or answer any question posed to him”.

Repeal and re-enactment of section 90

13. Section 90 of the Competition Act is repealed and the following section substituted therefor:

10 **“Protection from personal liability**

90. No liability shall lie personally against any of the following persons for anything done or purported to be done, or omitted to be done, in good faith and with reasonable care in the performance or purported performance of any function of the Commission or the exercise or purported exercise of any power of the Commission under this Act or any other written law:

- (a) the Chief Executive;
- (b) any member, officer, employee or agent of the Commission;
- 20 (c) any member of the Board or any person authorised, appointed or employed to assist the Board;
- (d) any person who is on secondment or attachment to the Commission;
- 25 (e) any person authorised, appointed, employed or directed by the Commission to exercise the Commission’s powers, perform the Commission’s functions or discharge the Commission’s duties or to assist the Commission in the exercise of the Commission’s powers, the performance of the Commission’s functions or the discharge of the Commission’s duties;
- 30

- (f) any inspector or any person authorised, appointed or employed to assist the inspector in connection with any function or duty of the inspector.”.

Transitional provision

14. Sections 2, 3 and 7 apply to the following respectively, whether made or commenced before, on or after the date of commencement of this Act:

5

- (a) an application under section 44 or 51;
- (b) an investigation under section 62(1)(a) or (b).

EXPLANATORY STATEMENT

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

- (a) to empower the Commission (as defined in section 2 of the Act) to accept commitments under section 60A for cases involving —
 - (i) agreements, decisions or concerted practices that may have the object or effect of preventing, restricting or distorting competition within Singapore; or
 - (ii) conduct on the part of one or more undertakings that may amount to abuse of a dominant position in any market in Singapore;
- (b) to empower the Commission to issue confidential and non-binding advice on the likely effect of an anticipated merger, if carried into effect;
- (c) to empower enforcement officers entering any premises for the purposes of an investigation to conduct interviews with persons on the premises without having to issue a notice under section 63 to any of such persons;
- (d) to make certain technical amendments.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 44(2) to allow the Commission to make a decision that the section 34 prohibition has not been infringed by an agreement, undertaking or concerted practice because a commitment has been accepted by the Commission pursuant to the new subsection (1A) of section 60A inserted by clause 7(a).

Clause 3 amends section 51(2) to allow the Commission to make a decision that the section 47 prohibition has not been infringed by any conduct on the part of one or more undertakings because a commitment has been accepted by the Commission pursuant to the new subsection (1B) of section 60A inserted by clause 7(a).

Clause 4 inserts a new section 55A which allows the Commission (in the circumstances set out in that section) to issue advice, upon an application by any party to an anticipated merger, as to whether the view of the Commission is that the anticipated merger, if carried into effect, is likely to infringe the section 54 prohibition. No advice issued by the Commission under the new section 55A is binding on the Commission.

Clauses 5 and 6 amend the references in sections 57(2) and 58(2), respectively, to replace “sections 60A and 60B” with “sections 60A(1) and 60B(1)” and “section 60A” with “section 60A(1)”. This is a consequence of the insertion (by clause 7(a)) of new sections 60A(1A) and (1B) and 60B(1A) and (1B), which are not intended to be covered by sections 57(2) and 58(2).

Clause 7(a) amends section 60A by inserting new subsections (1A) and (1B) to allow the Commission to accept commitments for cases involving infringements or potential infringements of the section 34 prohibition and the section 47 prohibition.

Clause 7(b) makes a consequential amendment to section 60A(3) to refer to commitments accepted under new subsections (1A) and (1B), and provides that any reference to a commitment accepted under section 60A(1), (1A) or (1B) includes a commitment varied or substituted under section 60A(3).

Clause 7(c) makes a consequential amendment to section 60A(4) to refer to commitments accepted under new subsections (1A) and (1B).

Clause 8(a) amends section 60B(1) to restrict the reference to section 60A to only section 60A(1), as a consequence of the insertion by clause 7(a) of new subsections (1A) and (1B) of section 60A.

Clause 8(b) inserts new subsections (1A) and (1B) of section 60B to require the Commission to make a decision that the section 34 prohibition or section 47 prohibition has not been infringed where the Commission has accepted a commitment under, as the case may be, new section 60A(1A) or (1B) (inserted by clause 7(a)).

Clause 9 amends section 63 to allow any person who is empowered to enter any premises under section 64(1), or authorised under a warrant issued under section 65, for the purposes of an investigation to orally examine any individual on the premises and to require the individual to answer any question relating to the matter being investigated, and sets out the procedure that must be followed.

Clause 10 amends section 64 to clarify that the power to require the production of any document under subsection (5)(b) includes the power to require that the document be produced at such time and place, and in such form and manner, as may be required, and to make other technical amendments of a clarifying nature.

Clause 11 amends section 65 to empower a named officer mentioned in section 65(2) to require any person on the premises entered under a warrant issued by a court under section 65 to produce any document of the relevant kind at such time and place, and in such form and manner, as may be required.

Clause 12 amends section 75(3) to extend the defences to an offence under section 75(1) by providing that it is a defence to a person charged with an offence under section 75(1), in respect of a requirement to answer any question posed to that person, to prove that that person had a reasonable excuse for failing to comply with the requirement.

Clause 13 repeals and re-enacts section 90 (Protection from personal liability) for consistency with the standard provision found in other Acts.

Clause 14 sets out the transitional provision.

EXPENDITURE OF PUBLIC MONEY

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