
INFORMATION NOTE

Supplementary information on competition policies in selected jurisdictions

1. Background

1.1 The Panel on Economic Development (Panel) held a working meeting on 14 June 2010 to discuss the draft research report entitled "Competition policies in selected jurisdictions"¹. After deliberating the major findings of the report, the Panel requested the Research and Library Services Division (RLSD) to provide additional information in relation to the following aspects:

- (a) exemptions and exclusions:
 - (i) a list of bodies that have been granted exemptions and exclusions on different grounds by the selected jurisdictions studied, which are the United Kingdom (UK), the European Union (EU), the United States (US) and Singapore;
 - (ii) whether any one of the selected governments has exempted its trade promotion body, which is comparable to the Hong Kong Trade Development Council², from the respective competition law; and
 - (iii) whether the National Trades Union Congress³ and the Temasek Holdings⁴ of Singapore are exempted from competition law;

¹ The final research report, RP02/09-10, was published on 25 June 2010 for the meeting of the Panel held on 28 June 2010.

² The Hong Kong Trade Development Council is a statutory body playing the role of the international marketing arm for Hong Kong-based traders, manufacturers and service providers. It organizes trade fairs and business missions to connect companies with opportunities in Hong Kong and on the mainland, while disseminating information on trade-related subjects via trade publications, research reports and online.

³ The National Trades Union Congress is the sole national trade union centre in Singapore. It currently has over 60 affiliated unions, 12 social enterprises covering the areas of recreation and leisure, insurance, supermarkets, media and healthcare, and four related organizations, which are the Singapore Labour Foundation, the Ong Teng Cheong Labour Leadership Institute, the Consumers' Association of Singapore and the Employment and Employability Institute.

⁴ The Temasek Holdings is an investment company owned by the Singaporean government through the Minister for Finance.

- (b) measures taken by the selected jurisdictions to allay the concerns of small and medium-sized enterprises (SMEs) on the implementation of competition law;
- (c) pros and cons of phased implementation of competition law as adopted in Singapore;
- (d) enforcement of competition law; and
- (e) studies evaluating the impact of competition law on foreign direct investment.

2. Exemptions and exclusions

List of bodies that have been granted exemptions and exclusions on different grounds

2.1 RLSD has requested the authorities responsible for enforcing competition law in the selected jurisdictions studied to provide a list of bodies that have been granted exemptions and exclusions on various grounds. However, as at the publication of this information note, RLSD has not been able to obtain such materials. In particular, the UK and the US have replied that they do not have any list of bodies that have been granted exemptions and exclusions.

Whether any one of the selected government has exempted its trade promotion body, which is comparable to the Hong Kong Trade Development Council, from the respective competition law

2.2 In all the jurisdictions studied, trade promotion activities are organized, in co-operation with private companies, by government departments/agency, which are:

- (a) the EU: the Directorate General for Trade of the European Commission;
- (b) the UK: the Trade and Investment under the Minister of State for Trade;
- (c) the US: the International Trade Administration under the Department of Commerce; and

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- (d) Singapore: the International Enterprise Singapore⁵ under the Ministry of Trade and Industry.

2.3 Being part of the government, the government departments/agency concerned are exempted from competition law. Nevertheless, since the mode of operation in these jurisdictions is different from the case in Hong Kong, it may not be appropriate to make a direct comparison with the Hong Kong Trade Development Council. Further, RLSD has not been able to obtain any information on criticisms about the operation of the trade promotion authorities of the jurisdictions covered, similar to those about the Hong Kong Trade Development Council⁶.

Whether the National Trades Union Congress and Temasek Holdings of Singapore are exempted from competition law

2.4 Singapore has provided certain competition law exemptions on grounds of economic benefit and public policy. According to the Third Schedule to the *Competition Act*, any undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing government monopoly are exempted from competition law. The Third Schedule specifies such exempted activities to be those related to:

- (a) entrusting with the operation of services of general economic interest;
- (b) arising from exceptional and compelling reasons of public policies such as national security, defence and other strategic interests; and
- (c) having sector-specific competition frameworks.

2.5 Specifically, the Third Schedule to the *Act* provides a list of exclusions: the supply of ordinary letter and postcard services; piped potable water; wastewater management services; scheduled bus services; rail services; cargo terminal operations; and clearing house activities.

⁵ The International Enterprise Singapore, a government agency, was set up in 2002 to replace the Singapore Trade Development Board.

⁶ The Hong Kong Trade Development Council, receiving recurrent government subvention, has been criticized for competing for profits with private companies. There are views that it promotes business and commercial activities on behalf of the Government while, at the same time, it operates convention and exhibition business in pursuit of profits under the pretext of being a self-financing organization.

2.6 Hence, according to the *Act*, the National Trades Union Congress, being a trade association, does not meet the exemption requirements and thus is subject to the competition law. On the other hand, the Temasek Holding is exempted from the *Act* on the basis of it being a government entity. According to section 33(4) of the *Act*, competition law will not apply to any activity or agreement entered into or conducted on the part of the government or statutory bodies created by the Parliament or any person acting on behalf of the government or statutory bodies in relation to that activity, agreement or conduct.

3. Measures taken by the selected jurisdictions to allay the concerns of small and medium-sized enterprises on the implementation of competition law

3.1 In the jurisdictions studied, the regulatory authorities have not provided specific competition law exemptions for SMEs. Nonetheless, as stated in the final research report, issues relating to SMEs have not been a major concern. The regulatory authorities prioritize their work and tend to take action against infringements involving major companies. In any event, they have undertaken educational programmes to help small businesses avoid anti-competitive practices.

3.2 It is a common practice in the jurisdictions studied to identify and exempt conduct that is of minor economic significance and thus unlikely to be anti-competitive. This practice is intended to help small businesses reduce the costs of complying with competition law. Other than these measures, RLSD has not been able to obtain any additional information on this aspect.

4. Pros and cons of phased implementation of competition law adopted in Singapore

4.1 A phased approach was adopted for the implementation of the *Competition Act* in Singapore. The main phases were:

- (a) Phase 1: the provisions establishing the Competition Commission of Singapore to administer and enforce the *Act* in January 2005;
- (b) Phase 2: the provisions on anti-competitive agreements and conduct (section 34) and the abuse of a dominant position (section 47) effective in January 2006; and

- (c) Phase 3: the provisions on mergers and acquisitions (section 54) and the remaining provisions enforced in July 2007.

4.2 The Singaporean government has not performed any review on the phased approach and there is limited public discussion on the pros and cons of the approach. Meanwhile, the Competition Commission of Singapore has stated the benefits of adopting the phased approach are to allow more time for it to build up the resources and capabilities, and for businesses to prepare for the implementation of the *Act*. Based on the submissions received in response to the public consultation of the draft *Competition Bill* in 2004, the business community shared the government's view, welcoming the adoption of a phased implementation of the competition law.⁷

5. Enforcement of competition law

5.1 Among the jurisdictions studied, RLSD has been able to obtain detailed information on the enforcement of competition law in the UK and Singapore. In effect, the procedures of enforcing the respective competition law in the two jurisdictions are similar, which are illustrated below.

United Kingdom

5.2 When an individual or a business suspects that a company has infringed competition law, they may contact the Office of Fair Trading⁸ by filing a complaint via the enquiries and reporting centre, the hotline or e-mail. If the complainant has specific concerns about disclosure of his or her identity or any commercially sensitive information, he or she should notify the Office when submitting the complaint. The Office aims to keep the identity of the complainant confidential.

5.3 As regards simpler complaints, the Office is committed to giving an initial response within 10 working days of receipt of such complaints, whereas for complicated cases which often involve cartels, the Office gives a substantive response within 30 working days of receipt. Generally, the Office keeps the complainant informed of the progress of the complaint and the expected time schedule for handling the case.

⁷ Ministry of Trade and Industry (2009a).

⁸ The Office of Fair Trading is the primary regulatory body for competition law enforcement.

5.4 For complicated complaints, if the Office provisionally decides that it has sufficient information to carry out a formal investigation and the company under investigation has infringed competition law, the Office may reveal to the company concerned the identity of the complainant where it determines that the company cannot properly respond to the allegations in the absence of such disclosure. However, before disclosing a complainant's identity or any of the related information, the Office will discuss the matter with the complainant and obtain the consent before revealing his or her identity.

5.5 In some cases, the Office will send the company being investigated a case initiation letter setting out brief details of the anti-competitive conduct that it is looking into, the relevant legislation and the indicative time-scale of the investigation. In other cases, it will not be appropriate to issue a case initiation letter at the start of a case which may prejudice the investigation, such as prior to unannounced inspections or witness interviews.

5.6 When conducting a formal investigation, the Office is empowered to:

- (a) ask for any required documents for the investigation;
- (b) obtain information not only from the company suspected of committing an infringement but also from other parties such as competitors, customers or suppliers; and
- (c) require past or present officers or employees of the company under investigation to give an explanation of any document produced.

5.7 The time allowed for the parties involved in the case to respond depends on the amount and complexity of the information required, and is typically within two to four weeks from receipt of the notice. If a recipient of the notice does not respond or refuses to produce the required information, he or she may be guilty of a criminal offence which is punishable by an imprisonment of up to two years or a fine.

5.8 The Office may also enter business or domestic premises with a warrant issued by the High Court in England and Wales, the High Court in Northern Ireland or the Court of Session in Scotland. Once the Office has gained the access, its officers are empowered to:

- (a) search the premises for relevant documents;

- (b) require anyone present to produce any documents such as invoices, minutes, diaries and travel records that are relevant to the investigation;
- (c) take copies of, or extracts from, any document produced;
- (d) ask for information on a computer to be reproduced in a form that can be read and taken away;
- (e) compel any person to answer questions relevant to the investigation; and
- (f) take any necessary steps to preserve or prevent interference with documents.

5.9 After conducting a preliminary investigation, if the Office suspects that competition law may have been infringed by the company concerned, the former will write to the latter to explain the case against it and give it a chance to respond, in writing or by meeting with officers of the Office.⁹ When the Office subsequently decides that there has been a breach of competition law, it will notify the infringing company and publish the decision on its website. The Office may issue directions, including ordering the company to change or terminate the offending agreement or stop the offending conduct. If the company fails to comply with the directions, the Office will seek a court order to enforce them. Non-compliance with such an order is a contempt of court punishable by a maximum fine of up to 10% of an undertaking's average annual turnover in the UK for three years and/or an imprisonment of up to five years.

5.10 Alternatively, the Office may conclude that there are no grounds for action. In this case, the Office will notify those concerned and publish the decision to this effect on its website.

5.11 Addressees of the Office's appealable decisions and third parties with a sufficient interest in the appealable decisions have a right to appeal to the Competition Appeal Tribunal¹⁰. Appealable decisions include decisions as to whether there has been a competition law infringement, interim measures decisions and decisions on the imposition of, or the amount of, a penalty.

⁹ In certain urgent circumstances, for example, where there is a real danger of serious permanent harm to a particular business, the Office may require a business to comply with a temporary order, known as interim measures decisions, to stop certain conduct while it is conducting the investigation.

¹⁰ The Competition Appeal Tribunal is responsible for hearing appeals against competition law decisions of the Office, the sector regulators and the Competition Commission, which is an independent public body responsible for approving proposed mergers.

Singapore

5.12 The Competition Commission of Singapore handles complaints alleging violation of competition law. Complainants are encouraged to use the complaint form, setting out all the required information for an investigation, available on its website.

5.13 Upon receiving a complaint, the Commission may pursue the complaint and seek further information from the complainant, or it may consider that there are no grounds for action because it does not provide sufficient evidence for a possible breach of competition law. The Commission will consider each case on its merits to see if it warrants an investigation. If the Commission decides that there is a competition infringement, appropriate enforcement action will be taken.

5.14 If the Commission decides to pursue a complaint, it will usually seek further information from the undertaking who is the subject of the complaint. If the complainant does not want to be identified, he or she should make this clear at the earliest opportunity. Nevertheless, for effective handling of complaints, it is sometimes necessary for the Commission to reveal information which may identify the source of the complaint to the target. When providing information or documents to the Commission, the complainant is required to:

- (a) identify any confidential information clearly;
- (b) provide such information in a separate annex marked "confidential information"; and
- (c) explain why this information should be treated as confidential.

5.15 If the Commission proposes to disclose any information in the confidential annexes, it will seek the agreement of the person who provided the information.

5.16 When investigating an anti-competitive conduct, in accordance with the *Competition Act*, the Commission is empowered to:

- (a) require the production of documents and information: When there are reasonable grounds for suspecting that *Competition Act* has been infringed, the Commission can, by written notice, require any person to produce documents and information relevant to the investigation. The Commission can take copies of, or extract from, or seek an explanation of, any document produced, or if a document is not produced, to ask where it is believed to be;

- (b) enter premises without a warrant: An authorized officer of the Commission can enter any premises without a warrant after giving advance notice in writing. Prior written notice need not be given if the premises are suspected to be or have been occupied by an undertaking under investigation. The Commission officer should produce proof of identity and documents indicating the subject matter and purpose of the investigation upon entry; and
- (c) enter and search premises with a warrant: An application can be made to a District Court for a warrant for a named officer of the Commission and other authorized officers to enter premises without notice, using force as necessary, and search the premises, take possession/copies of documents, and ask the parties concerned to answer questions.

5.17 Under the *Competition Act*, if a person does not co-operate with the investigation, he or she may be liable to a fine not exceeding S\$10,000¹¹ (HK\$53,400) or imprisonment for a term not exceeding 12 months or both.

5.18 Where the Commission proposes to make a decision that the section 34 and/or 47 prohibitions under the *Competition Act* have been infringed, known as an infringement decision, or that the section 54 prohibition has been infringed by a merger or will be infringed if an anticipated merger is carried into effect, known as an unfavourable decision, it will send the parties involved a written statement.¹² The Commission will allow the parties receiving the notice an opportunity to make written representations and a reasonable opportunity to inspect the documents in the Commission's file relating to the proposed decision. The parties receiving the written notice may request in written representations a meeting with the Commission to make oral representations to elaborate on the written representations already made in this regard.

¹¹ The average exchange rate in 2009 was S\$1=HK\$5.34.

¹² The Commission is empowered to impose interim measures or directions before it has completed its investigation.

5.19 When an infringement or unfavourable decision is made, the Commission will notify the relevant parties and publish the decision on a public register on its website. The Commission may give a direction to the parties concerned, or to such persons as it considers appropriate, to bring the infringement or, in the case of an anticipated merger, the impending infringement, to an end. The Commission may register the direction as a court order to enforce the direction if a person fails to comply with it without reasonable excuse. A breach of such an order would be punishable as a contempt of court.

5.20 The *Competition Act* provides that the Commission may impose a financial penalty for an infringement of any prohibition under the *Act*. The amount of penalty imposed is up to 10% of the average annual turnover of the business of the undertaking in Singapore, or imprisonment for a term up to a maximum of three years or both.

5.21 When setting the amount of any penalty, the Commission will take into account the following factors:

- (a) the seriousness of the infringement;
- (b) the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement in the undertaking's previous business year or, in the case of an infringing merger, the turnover of the merger parties in Singapore for the relevant product and relevant geographic markets where competition is substantially lessened; and
- (c) the duration of the infringement or, for an infringing merger, the duration of time over which the merger parties took steps to carry the infringing merger into effect and over which the merged entity has been in place.

5.22 An appeal¹³ against the decision of the Commission, including a direction or imposition of a financial penalty, can be made to the Competition Appeal Board. Except in the case of an appeal against the imposition, or the amount, of a financial penalty, the appeal does not suspend the effect of the decision to which the appeal relates.

¹³ There is a fee amounting to S\$500, or HK\$2,670, for filing an appeal.

6 Studies evaluating the impact of competition law on foreign direct investment

6.1 RLSD has not been able to obtain any studies evaluating the impact of competition law on foreign direct investment. In responding to RLSD's enquiries, government officials and academics have stated that there are different factors affecting foreign direct investment simultaneously. As such, it is difficult to quantify the impact of one single factor on foreign direct investment.

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References

1. Alban Tay Mahtani & de Silva. (2005) *Quick Guide to the New Singapore Competition Act 2004*. Available from: http://atmd.com.sg/mediacentre/pdfs/0205_guidecompete.pdf [Accessed September 2010].
2. Competition Commission of Singapore. (2006) *Annual Report 2005/06*. Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/CCSAR_05_06L.pdf [Accessed September 2010].
3. Competition Commission of Singapore. (2007a) *CCS Guidelines on Enforcement*. Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/CCSGuideline_Enforcement_Jul07FINAL.pdf [Accessed September 2010].
4. Competition Commission of Singapore. (2007b) *CCS Guidelines on the Major Provisions*. Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/majorprovisions_Jul07FINAL.pdf [Accessed September 2010].
5. Competition Commission of Singapore. (2007c) *CCS Guidelines on the Powers of Investigation*. Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/CCSGuideline_Investigations_Jul07FINAL.pdf [Accessed September 2010].
6. Competition Commission of Singapore. (2009a) *Competition Bill*. Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/19Oct042ndreadingspeechFINAL.pdf [Accessed September 2010].
7. Competition Commission of Singapore. (2009b) *Promoting Healthy Competitive Markets: A Guide to the Competition Act 2004*. Available from: http://app.casebank.ccs.gov.sg/cms/user_documents/casebank/pdf/read_up/CCSBrochureOct05.pdf [Accessed September 2010].
8. Competition Commission of Singapore. (2010a) *Competition Commission of Singapore Annual Report 2008/2009: it's a matter of choice*. Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/CCS_AR_070809%20FINAL.pdf [Accessed September 2010].

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9. Competition Commission of Singapore. (2010b) *Frequently Asked Questions*. Available from: http://www.ifaq.gov.sg/ccs/apps/fcd_faqmain.aspx# [Accessed September 2010].
 10. European Commission (2009) *About*. Available from: <http://ec.europa.eu/trade/about/> [Accessed September 2010].
 11. Hubbard, R.G. (undated) *Why the U.S. needs the Trade Promotion Authority*. Available from: http://249.pressflex.net/news/fullstory.php/aid/687/Why_the_U.S._needs_the_Trade_Promotion_Authority.html [Accessed September 2010].
 12. International Enterprise Singapore. (2010a) *About Us*. Available from: http://www.iesingapore.gov.sg/wps/portal!/ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3hnd0cPE3MfAwMDC0s3A09vR0djf1dji4sQA6B8pFm8gYWRr2-gX6CHo0Goh4ufs6mxARQQ003nkZ-bq1-QG1EOAFLzjkU!/dl3/d3/L3dDb0EvUU5RTGtBISEvWUZSdndBISEvNI8wODJNTVFOUUhBMFVIRE5DR0syMDAwMDAwMA!!/ [Accessed September 2010].
 13. International Enterprise Singapore. (2010b) *Annual Report 2008/2009*. Available from: http://www.iesingapore.gov.sg/wps/wcm/connect/f1f5cc00410f91869e7d9f3ad8984e19/IE_AR08-09_main_Sep09.pdf?MOD=AJPERES [Accessed September 2010].
 14. International Trade Administration. (undated) *U.S. Commercial Service*. Available from: <http://trade.gov/cs/> [Accessed September 2010].
 15. Legislative Council Secretariat. (2010) *Research report on Competition policies in selected jurisdictions*. LC Paper No. RP02/09-10
 16. Ministry of Trade and Industry. (2009a) *Competition Law Consultation Paper II: Feedback by SembCorp Industries Ltd*. Available from: http://app.mti.gov.sg/data/pages/90/doc/frm_LEG_2competition_submission_SembCorp.pdf [Accessed September 2010].
 17. Ministry of Trade and Industry. (2009b) *The Singapore Manufacturers' Federation's (SMA) Comments on the 2nd Draft of the MTI Draft Competition Bill*. Available from: http://app.mti.gov.sg/data/pages/90/doc/frm_LEG_2competition_submission_SMA.pdf [Accessed September 2010].
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18. National Trades Union Congress. (2010) *About NTUC*. Available from: http://uportal.ntuc.org.sg/wps/portal/!ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gjHy9vJ09LYwN3C0NTA08LD3djrzBHIwsnQ_1wkA6cKgzMDCDyBjiAo4G-n0d-bqp-QXZ2mqOjoiIASjUJfg!!/dl3/d3/L3dDb0EvU U5RTGtBISEvWUZSdndBISEvN18yTEpLQkk5MzBHOEw1MEkySzJB VUpEMU1LNA!!/ [Accessed September 2010].
 19. Office of Fair Trading. (2004a) *Enforcement*. Available from: http://www.oft.gov.uk/shared_of/business_leaflets/ca98_guidelines/oft407.pdf [Accessed September 2010].
 20. Office of Fair Trading. (2004b) *Powers of investigation*. Available from: http://www.oft.gov.uk/shared_of/business_leaflets/ca98_guidelines/oft404.pdf [Accessed September 2010].
 21. Office of Fair Trading. (2004c) *Services of general economic interest exclusion*. Available from: http://www.oft.gov.uk/shared_of/business_leaflets/ca98_guidelines/oft421.pdf [Accessed September 2010].
 22. Office of Fair Trading. (2010) *A guide to the OFT's Competition Act 1998 investigation procedures – A consultation paper*. Available from: http://www.oft.gov.uk/shared_of/consultations/oft1263con.pdf [Accessed September 2010].
 23. *Official Record of Proceedings of the Legislative Council*. (2009) 18 March.
 24. *Official Record of Proceedings of the Legislative Council*. (2009) 20 May.
 25. *Official Record of Proceedings of the Legislative Council*. (2009) 28 October.
 26. Organisation for Economic Co-operation and Development. (2005) *Singapore's Competition Act 2004*. Available from: <http://www.oecd.org/dataoecd/50/36/34286487.pdf> [Accessed September 2010].
 27. Singapore Academy Of Law. (2010) *Chapter 27: Competition Law*. Available from: <http://www.singaporelaw.sg/content/CompetitionLaw.html> [Accessed September 2010].
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28. Temasek Holdings Pte Ltd. (2007) *About Us*. Available from: http://www.temasekholdings.com.sg/about_us.htm [Accessed September 2010].
29. Temasek Holdings Pte Ltd. (2010) *Media Centre: Information Fact Sheet*. Available from: http://www.temasekholdings.com.sg/media_centre_information_factsheet.htm [Accessed September 2010].
30. Wikipedia. (2010a) *Minister of State for Trade*. Available from: http://en.wikipedia.org/wiki/Minister_of_State_for_Trade [Accessed September 2010].
31. Wikipedia. (2010b) *National Trades Union Congress*. Available from: http://en.wikipedia.org/wiki/National_Trades_Union_Congress [Accessed September 2010].
32. Wikipedia. (2010c) *UK Trade & Investment*. Available from: http://en.wikipedia.org/wiki/UK_Trade_%26_Investment [Accessed September 2010].