



Asia-Pacific
Economic Cooperation

2006/SOM1/CPDG/011

Agenda Item: 7 (2)

Competition Act 2004

Purpose: Information
Submitted by: Singapore



Competition Policy and Deregulation Group
Ha Noi, Viet Nam
24 February 2006



Competition Act 2004

Briefing to APEC-CPDG
24 Feb 2006

Overview

- Introduction: Why enact a competition law?
- The CCS
- Framework of Competition Act
- Implementation Approach

Introduction: Why?

- Competition Policy:
 - pro-competition economic policies
 - firms more efficient, innovative, responsive
 - consumers benefit
 - productivity gains, efficient resource allocation
 - free and open markets

Introduction: Why?

- **Competition Law Will Improve Our Efficiency & Competitiveness**
 - development of pro-enterprise environment
 - enhances efficient functioning of markets
 - strengthens competitiveness in face of intensifying international competition

Phases of Implementation

- Enacted in Oct 2004
- Phased implementation:
 - **Phase I: Jan 2005** – Establishment of the CCS
 - **Phase II: Jan 2006** – Provisions on anti-competitive agreements and abuse of dominance come into force
 - **Phase III:** M&A provisions to come into force at least 12 months after Phase II

The CCS

- Competition Commission of Singapore (CCS)
 - to implement and enforce the competition law
 - statutory body under Ministry of Trade and Industry, Singapore
- Powers of the CCS
 - investigate any infringement
 - make decisions
 - impose sanctions

Mission and Value of the CCS

Mission: To promote healthy competitive markets that will benefit the Singapore economy.

Value: The Commission's approach will be based on sound economic principles applied objectively and consistently.

Organisation Structure



Framework of Competition Act

- Prohibited Activities
- Scope of Application
- Enforcement
- Appeal Process

Framework: Prohibited Activities

- Anti-competitive Agreements (s. 34)
 - e.g. fix prices, limit or control production, share markets...
 - Provision for block exemption & exclusion based on net economic benefit
- Abuse of Dominant Position (s. 47)
 - prohibit firms with substantial market power from abusing such power in ways that are anti-competitive and which work against long-term economic efficiency
 - e.g. predatory behaviour ...

Framework: Prohibited Activities

- Anti-competitive Mergers & Acquisitions (M&As) (s.54)
 - M&As may be necessary for market rationalisation
 - Prohibits those that substantially lessen competition in Singapore and do not have off-setting efficiency benefits
 - no requirement for prior notification

Framework: Scope of Application

- Applies to all undertakings
 - s. 2(1) "undertaking" means:
 - "any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods and services"
 - e.g. individuals operating as sole traders, businesses, companies, firms, partnerships, societies, co-operatives, business chambers, trade associations, non-profit organisations...
 - regardless of ownership

Framework: Scope of Application

- Does NOT apply to:
 - Government, statutory bodies ... (s. 33(4))
 - exclusions in the *3rd Schedule*
 - activities relating to services of general economic interest
 - activities are needed to comply with legal requirements; or avoid conflict with international obligations
 - exceptional and compelling reasons of public policy
 - ✓ safeguard national interest

Framework: Scope of Application

- Does NOT apply to:
 - vertical agreements (s34 only)
 - pro-competitive benefits outweigh anti-competitive impact
 - Agreements with net economic benefit (s34 only)

Framework: Scope of Application

- Does NOT apply to:
 - Sectors & activities in which sectoral competition and/or regulatory frameworks exist
 - considerable technical matters and other policy concerns (e.g., telecoms services; electricity & gas; media)

Framework: Appeal Process

- Competition Appeal Board
 - hears appeals against decisions of the CCS
 - independent body from the CCS
 - further appeal to the High Court on points of law and the amount of the financial penalty
 - further right of appeal on the decisions of the High Court to the Court of Appeal

Framework: Rights of Private Action

- Rights of Private Action (s. 86)
 - parties who have suffered a loss or damage directly arising from a prohibited activity can sue for compensation
 - after the CCS has made a decision and the appeals process has been exhausted
 - additional deterrence

Transitional Provisions

- Taking into account that competition law is a new area of law in Singapore
 - businesses given 1 year window to amend their agreements to comply with the Act
 - 6 more months given from Jan – Jun 2006 following public feedback
- Undertakings can apply for additional transitional periods of up to 1 year for complex agreements made before 31 July 2005

Preparation work

- Capacity Building
- Education and Outreach
 - Conferences
 - Seminars
 - Website: www.ccs.gov.sg
- Development of Guidelines

The CCS Guidelines

- **CCS Guideline On:**
 - The Major Provisions (Summary Guideline)
 - The Section 34 Prohibition
 - The Section 47 Prohibition
 - Market Definition
 - The Powers Of Investigation
 - Enforcement
 - Lenient Treatment For Undertakings Coming Forward With Information On Cartel Activity Cases
 - Filing Notifications For Guidance Or Decision
 - Transitional Arrangements
 - The Appropriate Amount Of Penalty
 - The Treatment Of Intellectual Property Rights

