



The Chemical Company

Ministry of Trade and Industry
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The Treasury
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Attn: Director, Market Analysis Division

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SECOND PUBLIC CONSULTATION ON THE DRAFT COMPETITION BILL

Dear Sirs,

We thank the Ministry for the opportunity to offer feedback on the proposed Competition Act (the "Act"). We would like to offer our comments on the revised draft of the Competition Bill which was released by the Ministry on 26 July 2004.

SUMMARY OF KEY POINTS

1. Undertakings belonging to the same group: Transactions carried out within the same group of undertakings should be excluded.
2. Retrospective application of competition law: Transactions which were in place before a certain cut-off time should be allowed to subsist after the Act comes into force.
3. Competition Commission Guidelines: Guidelines should be made binding.

STATEMENT OF INTEREST

BASF, as the chemical company, has an interest in the promotion of fair competition in all parts of the world in which it undertakes its business. Fair competition is a core tenet of our values and principles, and we welcome the opportunity to contribute our views as part of our social responsibility.

COMMENTS

1. As currently drafted, the definition of undertakings under the Act would include companies operating under the same economic entity (eg. affiliated group companies). Dealings within or between affiliated group companies often involve additional considerations which do not typically apply to dealings between unrelated parties. At times, such dealings may technically infringe the provisions of the Act.

Requiring dealings between affiliated group companies to comply with the Act may have an adverse impact on the way these companies carry on their business. This may require unwinding existing arrangements, re-organising group structures as well as fundamentally altering internal business processes and structures. In extreme cases, affiliated group companies may well find it impossible to operate. In any case, such changes in turn will mean additional costs and expenses, both one-off as well as continuing in nature. We submit that this would not be in accordance with the Ministry's stated position that regulatory costs should be kept to a minimum

and that the Act should not lead to businesses facing undue regulation and unnecessary business costs.

We are also fortified in our view that other jurisdictions with developed competition laws offer a similar exclusion to intra-group dealings, such as in the European Union.

Given that dealings between members of a group and a third party would be subject to the Act, and the special considerations that apply in intra-group dealings as outlined above, we respectfully submit that dealings between affiliated group companies should be excluded under the Act.

2. We note that the Act will apply to all past and existing arrangements between and among undertakings. We are of the view that this imposes an onerous burden on businesses to unwind previously legitimate business arrangements and also gives rise to potentially difficult issues if existing (or past) arrangements are held to be void under the Act. This is especially prejudicial since these arrangements were entered into at a time when the arrangements were completely legal.

A review of all past and existing arrangements will mean potentially substantial additional one-off costs. Also, if such arrangements are called into question or held to be void, it may allow certain parties an easy opportunity to escape binding commitments which were previously negotiated and agreed on a commercial basis.

Accordingly, we submit that the Act should not apply retrospectively and that it should apply only to arrangements made or entered into after the enactment of the Act.

3. The draft Competition Bill provides that the Guidelines will not be binding on the Competition Commission. Given the extensive powers of the Commission and the potentially substantial impact of the Commission's findings on businesses, we propose that the Guidelines should be made binding on the Commission. This will also contribute to providing a degree of certainty for businesses in planning and undertaking their business activities.

CONCLUSION

While we note that the Act is intended to provide a general framework under which the Competition Commission will operate and that greater detail and guidance will be provided in the Guidelines to be issued by the Competition Commission in 2005, we feel that framing the Act too widely and generally gives rise to unnecessary uncertainty and potential disruption in the business community within and outside Singapore. Accordingly, we look forward to due consideration by the Ministry of our as well as others' comments, who have a common interest in preserving the vibrant and thriving nature of Singapore's economy. Finally, we also look forward to offering our comments on the future draft Guidelines.

Yours sincerely,
BASF South East Asia Pte Ltd