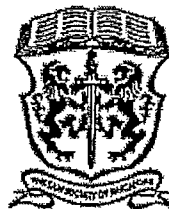


20 August 2004

~ THE LAW SOCIETY OF SINGAPORE ~

**COMMENTS ON
SECOND PUBLIC CONSULTATION ON
THE DRAFT COMPETITION BILL**



THE LAW SOCIETY
OF SINGAPORE

Contents

1	Introduction	- 2 -
2	"Persons" And "Undertakings"	- 2 -
3	Search Of Person	- 2 -
4	Relevance Of Mention Of Merger Prohibition.....	- 2 -
5	Horizontal Agreements And Joint Venture Agreements.....	- 3 -
6	Guidelines For Legal Profession.....	- 3 -
7	Guidelines To Ensure Compliance.....	- 3 -

The Law Society of Singapore

Comments on the Second Public Consultation on the Draft Competition Bill

1 INTRODUCTION

The Law Society of Singapore thanks the Ministry of Trade and Industry ("MTI") for this opportunity to provide further feedback on the Second Round of Consultation Paper and draft Competition Law Bill ("2nd Draft Bill"), which was released on 27 July 2004. The Law Society makes these representations further to the representations that it made pursuant to the Consultation Paper and draft Competition Law Bill ("Draft Bill"), which was released on 12 April 2004.

The Law Society would be happy to discuss any of the comments made here further.

2 "PERSONS" AND "UNDERTAKINGS"

The 2nd Draft Bill introduces a new definition for "persons" in section 2. Whilst this may be seen as helpful, a query arises as to whether this gives rise to a circular argument, since a "person" is defined to include any undertaking, and an "undertaking" is *inter alia* defined to include any person. Additionally, there are various provisions in the 2nd Draft Bill which use both the words "person" and "undertaking" suggesting that they are intended to cover different scopes of entities. Examples of this include its use at section 54(2)(b) and (c). It is recommended that there should be consistency in use of the terms, with the relevant provisions in the 2nd Draft Bill using either the term undertaking or person, instead of both.

3 SEARCH OF PERSON

The 2nd Draft Bill has rightly removed the power to search any person on the premises subject to an investigation as previously provided under section 64(5)(c) of the Draft Bill. However, the power continues to exist under section 65 (2)(b)(ii) of the 2nd Draft Bill. This power is too wide. It is there proposed that it should be removed. Alternatively, if it is to be retained given that the MTI views a power to search a person as being necessary, then adequate safety procedures for the respect of the individual must be put in place.

4 RELEVANCE OF MENTION OF MERGER PROHIBITION

The following words have been included in parenthesis in section 69(2)(d) of the 2nd Draft Bill: "(including any merger found to have infringed the section 54 prohibition)". It is submitted that this phrase is redundant and should be removed given that the provision already makes express reference to the "section 54 prohibition". In other words, "any merger found to have infringed the section 54 prohibition" would already have been caught by the phrase "any undertaking found to have infringed the... section 54 prohibition". In the interest of clarity and succinctness, the said phrase should be removed.

5 HORIZONTAL AGREEMENTS AND JOINT VENTURE AGREEMENTS

MTI has helpfully provided an indicative list of concerns that would be dealt with in guidelines. What is noticeably missing from the indicative list provided is guidelines for horizontal arrangements and for joint venture agreements.

It is submitted that whilst such agreements are usually entered into for economic reasons and which have substantial commercial benefits, their manner of being structured could result in violation of the competition laws. As such, there should be express guidelines on how such agreements are to be treated.

6 GUIDELINES FOR LEGAL PROFESSION

As observed by the Law Society in its submission submitted in May, it is appropriate to establish a separate set of guidelines for the legal profession. These guidelines could deal with issues of practice and provide guidance on when rules set by the relevant coordinating body, such as the Law Society, will be permissible. Such guidelines are necessary to ensure that the legal profession in complying with directions issued by the Law Society is not found to be in contravention of the competition laws, which can quite easily arise, as reflected by the examples listed here:

- A rule banning multi disciplinary practices has been found to be prima facie anti-competitive, and needed to be balanced against the rationale for the introduction of the rule, which was found to be in the interest of the public, before it was held not anti-competitive.
- A guidance provided by the Law Society on the fees that should be charged for conveyancing matters could be seen as anti-competitive price fixing. This despite the fact that there is much competition in the pricing offered by law firms to their clients,
- The Legal Profession (Professional Conduct) Rules prevents sharing of premises between a law firm and another business. Such an arrangement may also be viewed as being anti-competitive as it does distort competition and potentially increase prices as well.

In setting out the above rules, the Law Society has as its aim the betterment of the profession and the protection of the public at large. Yet, unless there are express exemptions or clear guidelines on applicability, they could potentially be struck down as anti-competitive. Any guidelines introduced thus could provide clearly whether such an arrangement is or is not permissible.

7 GUIDELINES TO ENSURE COMPLIANCE

Section 61(1) of the 2nd Draft Bill mirrors the Draft Bill. It states that the guidelines issued will not be binding on the Commission. It is submitted that the guidelines should indeed be equally binding on the Commission as it is on undertakings, to avoid leading to anomalous situations.