
Singapore Competition Bill 2004

SUBMISSION BY STARHUB PTE LTD
TO THE MINISTRY OF TRADE AND INDUSTRY

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A. Introduction

- 1.1 StarHub Pte Ltd ("**StarHub**") welcomes the opportunity to comment again, on the introduction of generic competition legislation in Singapore.
- 1.2 This submission is in response to the draft bill for the proposed Competition Act 2004 issued by the Ministry of Trade and Industry ("**MTI**") for a second round of public consultation on 26 July 2004 ("**Competition Bill**").
- 1.3 StarHub's submission is structured as follows:
- **Part A** contains this introduction;
 - **Part B** contains an executive summary of StarHub's submission;
 - **Part C** contains StarHub's statement of interest;
 - **Part D** contains StarHub's detailed submissions
 - **Part E** contains the conclusion
- 1.4 References in this submission to section numbers or schedules are references to sections or schedules of the Competition Bill, unless specified otherwise.

B. Executive Summary of Key Points

- 1.1 StarHub is glad to have the further opportunity to comment on the establishment of the competition framework in Singapore as proposed in the Competition Bill.
- 1.2 StarHub welcomes the changes adopted by MTI based on public feedback from the first consultation, such as the listing of the criteria for the appointment of Commissioners and the increase in the maximum tenure of the office for the Commissioners from 3 years to 5 years.
- 1.3 StarHub strongly believes that the telecommunications industry should be subject to the Competition Bill. Although the telecommunications industry has been specifically excluded, StarHub remains interested in the development of the generic competition framework in Singapore firstly, to address serious inconsistencies arising out of the proposed exclusion of the telecommunications sector; and secondly, as it may still be subject to the Competition Bill arising out of the Commission's jurisdiction over cross-sectoral competition issues over excluded sectors.
- 1.4 StarHub proposes that the key issues that would still need to be addressed in the Competition Bill are :
 - **Inconsistencies between competition regime under Competition Bill and Telecom Competition Code** - StarHub strongly believes that the competition regime under the Telecommunications Act and Telecom Competition Code needs to be strengthened and brought in line with the stronger and more robust regime proposed under the Competition Bill.
 - **Potential duplication arising from Competition Commission's jurisdiction over cross-sectoral competition issues** –the extent of the Competition Commission's jurisdiction over these issues should be clarified. Any duplication with sectoral regulators could increase regulatory burdens as businesses under the excluded sectors may be subject to 2 very different competition regimes.

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- **Co-operation and co-ordination between Competition Commission and other regulatory authorities** - the Competition Commission would have the responsibility to ensure that the competition regime in Singapore is consistently and uniformly developed across all sectors of the economy, including the excluded sectors.
 - **Review of exclusions within specified timeframes** – In order to provide certainty to operators, it is critical for MTI to specify when the excluded sectors will be reviewed for inclusion in the Competition Act.
 - **Review of exclusions to be subject to public consultation** - StarHub proposes that Section 92 is amended to reflect the policy intention that any proposed amendments to the Third and Fourth Schedules would be subject to public consultation.

C. Statement of Interest

- 1.1 StarHub Pte Ltd is a Facilities Based Operator (“**FBO**”) in Singapore, having been awarded a licence to provide public basic telecommunications services (“**PBTS**”) by the Telecommunications Authority of Singapore (“**TAS**”) (the predecessor to the IDA) on 5 May 1998.
- 1.2 StarHub Mobile Pte Ltd is a wholly-owned subsidiary of StarHub Pte Ltd. StarHub Mobile Pte Ltd was issued a licence to provide public cellular mobile telephone services (“**PCMTS**”) by the TAS on 5 May 1998. StarHub launched its commercial PBTS and PCMTS services on 1 April 2000.
- 1.3 StarHub acquired CyberWay (now StarHub Internet Pte Ltd) for the provision of Public Internet Access Services in Singapore on 21 January 1999. In July 2002, StarHub Pte Ltd completed a merger with Singapore Cable Vision Ltd to form StarHub Cable Vision Ltd.
- 1.4 This submission represents the views of the StarHub group of companies, namely, StarHub Pte Ltd, StarHub Mobile Pte Ltd, StarHub Internet Pte Ltd and StarHub Cable Vision Ltd.

D. Detailed Submissions on Telecommunications Exclusion

1 Inconsistencies between competition regime under Competition Bill and Telecom Competition Code

- 1.1 International precedent supports the inclusion of the telecommunications sector under the Competition Bill such that the Competition Commission as the generic competition regulator, has “ex post” regulation of the telecommunications sector, with IDA, as the telecommunication sectoral regulator, retaining “ex ante” regulation under the Telecom Competition Code.
- 1.2 This is the regime in Canada, the US and Italy. It is consistent with the finding of the Organisation for Economic Co-operation and Development¹ as well as the United Nations Model Law on Competition.²
- 1.3 Having ex post regulation by the Competition Commission in the telecommunications sector will ensure greater consistency in the application of competition principles with other sectors of the Singaporean economy, while leaving sector specific issues that require more specialist industry knowledge to the IDA.
- 1.4 This would also bring about the benefits that arise from a single cross-sectoral regulator with jurisdiction over most sectors of the economy such as :-
 - Increase in regulatory certainty as there would be consistency across all sectors thus establishing a coherent framework
 - Increase in investment as businesses will have greater confidence in a consistent and predictable regime

¹ OCED, Competition and Regulation Issues in telecommunications, DAFTE/COMP (2002) 6, at page 8.

² Model Law on Competition, UNCTAD series on Issues in Competition Law and Policy, (2000)
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- Reduces costs of regulatory compliance, particularly for firms with operations over multiple sectors and this would be consistent with the MTI's Guiding Principles for the framework of the Competition Bill

1.5 Nevertheless, many sectors including the telecommunications sector remain excluded. StarHub is concerned that this would give rise to a series of different competition regimes that is not feasible in a small and open economy such as Singapore's. This can only serve to complicate the legal and regulatory landscape for businesses in Singapore and is contrary to the Guiding Principles set out in paragraph 3 of MTI's Consultation Paper.

1.6 As it is, there are already major inconsistencies between competition regime under the Competition Bill and the Telecom Competition Code. As pointed out in our previous submission³, some key areas of discrepancies between the competition regime under the Telecom Competition Code/Telecommunications Act include :

- **Penalties** – the Competition Bill provides for maximum financial penalties of up to 10% of the infringing party's annual turnover in Singapore (for up to 3 years). The size of this penalty is consistent with international best practice and is a potent deterrent. In contrast, the Telecommunications Act caps the maximum financial penalty at S\$1 million per contravention. For comparative purposes, it can be noted that 10% of the annual turnover of SingTel's operations in Singapore for the last 3 years is approximately S\$1,370 million and the maximum fine of S\$1million under the Telecommunications Act is 0.073% of this amount.
- **Private rights of enforcement** – The Competition Bill provides for a private right of enforcement if the Competition Commission has determined that an infringement has occurred and any person that suffers loss or damage may seek injunctive or declaratory relief, damage or such other

³ Please refer also to Part F of StarHub's response to MTI's first consultation paper on the proposed Competition Bill.

relief as the court thinks fit. In contrast, the Telecommunications Act does not make such provision.

- **Appeal Rights to an Independent Competition Appeals Board** – The Competition Bill provides that most decisions of the Competition Commission can be appealed to the Competition Appeals Board. However, under the Telecommunications Act, appeals are to the IDA and then to the Minister. We believe that it is inappropriate to have a situation in which enforcement actions for breaches of the general competition law are subject to independent review by a specialist body, but enforcement actions for breaches of similar provisions in the telecommunications regime are not.

1.7 All these factors culminate in the competition regime in telecommunications sector being significantly **weaker** than the sectors of the economy under the scope of the Competition Bill. We see no economic justification for this. On contrary, international best practice supports stronger, not weaker, regulation of the telecommunications sector given the :

- (i) natural advantages to incumbent operators in the telecommunications sector (eg control of essential facilities, vertical economies etc);
- (ii) market structure and characteristics of the telecommunications industry;
- (iii) critical importance of the telecommunications sector to a small and open economy such as Singapore.

1.8 If there is no similarity in the competition regimes under the Telecom Competition Code and the Competition Bill, there may be :

- forum shopping
- efforts by businesses to structure their operations to fit into a particular regime
- distorted regulation as similar behaviour is treated in different ways in different sectors.

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- 1.9 StarHub recommends that the Telecommunications Act and Telecom Competition Code are amended to bring them in line with the stronger regime proposed under the Competition Bill.

2 Potential duplication arising from Competition Commission's jurisdiction over cross-sectoral competition issues

- 2.1 In paragraph 18 of its Consultation Paper, MTI has commented that the Competition Commission will deal with cross-sectoral competition issues that arise, even between excluded sectors. The scope of this jurisdiction is unclear particularly given the wide drafting of the exclusions in the Third and Fourth Schedules.
- 2.2 Any duplication in jurisdiction with sectoral regulators may potentially subject businesses to two very different competition regimes with different competition principles, policies, processes and penalties.
- 2.3 Given that Singapore has a small economy, this duplication would add regulatory and administrative burdens to such businesses and increase business costs.
- 2.4 StarHub believes that the Bill needs to be clarified in this respect.

3 Co-operation and co-ordination between Competition Commission and other regulatory authorities

- 3.1 For the reasons outlined above, close co-operation and co-ordination between the Commission and the sector specific regulatory authorities, will be vital to ensure the proper and consistent development of the competition regime in Singapore so that businesses would not be burdened by complicated and duplicative competition sub-regimes within a small economy.
- 3.2 The burden of obtaining the necessary co-operation from the sectoral regulators that would help bring about consistency and uniformity in competition principles and their implementation would thus fall upon the Competition Commission in line with its functions and duties provided under section 6 of the Competition Bill.
- 3.3 The Commission would have to come up with the necessary recommendations, guidelines and the co-operation from the sector specific regulators to ensure that competition principles are firstly, uniform across the different sectors of the economy and secondly, applied uniformly across the different sectors.
- 3.4 This would, in part would have to depend on the scope and extent of the Co-operation Agreements to be entered into with the various sectoral regulators, and the guidelines issued by the Competition Commission after it has been set up eg the Cross-sectoral Competition Case Management Guidelines.

4 Review of exclusions within specified timeframes

- 4.1 StarHub welcomes MTI's decision to review the exclusions after the competition law has come into force for a period of time and has had the opportunity to be established in Singapore. However, businesses need certainty as to the regimes that they operate in. If there is no set timeframe for reviewing the exclusions, this will cause frustration and uncertainty in the telecommunications industry.
- 4.2 StarHub would recommend that the review be conducted within 18 months from the commencement of the Third Schedule, and that this is clearly provided for with express provisions in the Competition Bill.

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- 4.3 The draft provision is provided in the proposed amendments to Section 92(3) below.

5 Review of exclusions subject to public consultation

- 5.1 We note MTI's assurance that any amendments to the Schedules will not be taken lightly and such amendments will first be subject to public consultation. To that end, we would recommend that this is provided for expressly under Section 92 of the Competition Bill.

- 5.2 We would suggest that Section 92 is amended to read as follows :

92-- (1) Subject to sub-section (2), the Minister may at any time, by order published in the Gazette, amend the Third Schedule and Fourth Schedule.

(2) Prior to the issue of any order for an amendment under subsection (1) above, the Minister shall provide the public with an opportunity to comment on the proposed amendments.

(3) The Minister shall cause a review of the Third and Fourth Schedules to be conducted within 18 months from date that those Schedules come into operation under section 1 of this Act. The public shall be provided with the opportunity to make submissions to the review.

E. Conclusion

- 1.1 StarHub believes that the proposed framework under the draft Competition Bill provides a good foundation on which the generic competition regime in Singapore can be developed.
- 1.2 However, the success and efficacy of the competition regime will depend very much on the guidelines relating to definitions, principles, processes and procedures which remain to be defined by the Competition Commission after it has been established. It also depends on the ability to align the generic regimes to those developed in each of the excluded sectors to prevent the development of a complicated and duplicative regime that would be burdensome in a small economy.
- 1.3 StarHub looks forward to further opportunities to comment on the development of the generic competition law in Singapore through the consultation process for the guidelines to be issued by the Competition Commission.