

# The ripple effect

The confidence of Singapore's competition commission typifies the island's optimism. But, explains JAMES CLASPER, the hard work lies ahead

**P**lastered to the walls of Singapore's Competition Commission are posters informing visitors of its core values. Forget timeworn mantras about 'competition not competitors'. Singapore's fledgling watchdog stands for respect, initiative, people, professionalism, learning and excitement – or 'RIPPLE'. The commission's vim is typical of Singapore's renewed confidence and ambition. A sustained boom has seen its economy outpace its south-east Asian rivals, prompting elder statesman Lee Kuan Yew to predict a 'golden age' for the tropical city-state.

Singapore is motoring past its neighbours on the competition front, too. The island's competition law came into force on 1 January 2006. Almost a carbon copy of the UK's law, it also boasts a smattering of Irish, Canadian and Indian legislation. But it isn't a patchwork quilt. "Singapore did its homework and figured out whose laws work best", says Rizwi Wun, head of IP and technology at Khattar Wong, and head of the firm's competition practice. Indeed, regulators racked up air miles in search of the ideal competition law, consulting enforcers around the world, before returning home to fine-tune their own law.

Still, much will depend on the statute's application and interpretation. "The legislation differs very slightly from UK and EU competition legislation", explains David Chong of Shook Lin & Bok. "The key will be how the commission applies the law – and it has repeatedly said it will apply it within a local context."

The commission was created in 2004 when Singapore passed its competition law. So far the signs have been encouraging. Lawyers say the commission has attracted smart, competent and well-informed staff. "They hired the best and the brightest", says Cavinder Bull of Drew & Napier. "They are also prepared to listen."

In particular, lawyers praise the watchdog's pro-business philosophy. Singapore's merger control provisions kicked in this July and, in its two clearance decisions so far, the commission has displayed a reassuringly 'enlightened' touch, sources say.

"The speed of the decisions indicated that the commission can clear global mergers quickly and effectively", says Chong Kin Lim of Drew & Napier. "That's important because it reassures companies that Singapore's merger control laws won't stifle business efficiency."

Fundamental to the commission's pro-business approach is its embrace of modern, economics-based analysis. After consulting enforcers at the US Department of Justice and the European Commission, the commission developed the view that economics-based analysis should underpin Singaporean competition enforcement. But, says Lim, it's hardly surprising that the commission embraced economics-based analysis. "It merely drew on the experience of the other sectoral regulators, who had already given economic analysis a high profile."

The commission boasts a healthy stock of economists, too – including Australian academic Robert Ian McEwin, who joined as chief economist, and Lam Chuan Leong, its chairman. Indeed, twice as many economists as lawyers are said to be employed by the commission. Where it has led, Singapore's nascent competition bar has followed. At least two practices have already installed full-time competition economists – both poached from the commission – while a third is strongly considering hiring one too.

So far, the commission's work has been impressive. Its conclusions have been well-reasoned and clearly thought through, sources say. "There haven't been any snap decisions", says Rizwi Wun.

Even so, some lawyers grumble that some of the staff are young and naive. "Clients who have gone before the Japanese authorities or the DoJ immediately pick up on their inexperience, like their adherence to procedure, particularly in adversarial situations", reports one lawyer. But the staff are keen to learn: many have been seconded for additional training to the European Commission's competition directorate or to the UK's Department of Trade and Industry.

## CLOUDS ON THE HORIZON

Several hurdles stand between Singapore's competition commission and the success

it craves. One is the limited understanding of competition law in the city-state. The majority of multinational companies understand the role of competition law, thanks to their experience in other jurisdictions. But many local firms don't. When the competition commission queried alleged coordinated prices among local cinema operators, the businesses claimed they were 'only' fixing prices. Furthermore, many Singaporean businesses have traditionally clubbed together to agree prices and carve up markets. "Competition law has made traditional local business practices, such as price coordination, illegal overnight", says Susan de Silva of Alban Tay Mahtani & de Silva.

Business 'Singapore-style' may even thwart the commission's efforts to unearth cartels. The law includes whistleblowing and leniency provisions. But, says one lawyer, "it's not in the Chinese culture to blow the whistle on business rivals." The commission's chairman, Lam Chuan Leong, disagrees. "I don't think we have that problem," he says. "Our economy is modelled on western practices. Many of the companies operating in Singapore are multinational companies who know the rules of the game. They're used to leniency programmes and seeking immunity in other countries."

The commission has been working hard to explain the new law to the press and public, organising roadshows and talking to the media. But it will have to work harder to convince people that it is neither a consumer protection agency nor a price regulator.

Doubts have also surfaced about the likely treatment of so-called government-linked companies. Singapore's business circles are murky, says one source, and many firms are owned by government holding companies. Most government-linked companies are independently operated, but some lawyers query how eagerly the commission (which is part of the government) will target them. "Will it be one rule for them and another one for us?" asks one source. But others rubbish the idea and claim the commission intends to tackle anti-competitive behaviour no matter who the culprit is. Look at how the government has clamped down on corruption, they argue.

But the picture is further muddled by the argument that Singapore's competition law was enacted solely to honour obligations

triggered by a free trade agreement that Singapore signed with the United States in 2003. "There's a new regulator on the block and it is trying to sound serious", says one source. "But then you hear whispers among the business elite that the framework is merely cosmetic and that there's no intent to support it."

If so, Singapore's competition law should fizzle out fairly quickly. But sources scotch that idea. "This area is going to become very active in Singapore, much more than businesses realise", says Bull. "The authority is already moving with some vigour."

And Singapore prides itself on its open and dynamic economy and is keen to sustain its remarkable economic explosion – particularly in private finance and construction – on the back of modern and effective competition laws. "There's no doubt that the commission is here to stay and that it is serious about the law", says one lawyer.

And yet the million-dollar question is, when will Singaporean competition enforcement truly take off? The commission has already cleared two deals of the five that have been notified and it has launched several investigations of bid-rigging. (There are

rumours of a possible cartel decision soon.) It has also examined various allegations of abuse of dominance. "It's still very much a case of 'wait and see'", says one lawyer. "There's been nothing spectacular yet."

Much will depend on the first major enforcement action, which everyone agrees is likely to be sensible and measured. "The commission won't be heavy-handed or use a blunderbuss", says one lawyer. "I imagine that it will target a blatant infringement and that its first enforcement action will have a real ripple effect." A little like the commission's core values, then.

## Interview with the Competition Commission of Singapore

JAMES CLASPER talked to Lam Chuan Leong, chairman of the Competition Commission of Singapore, Foo Tuat Yien, its acting chief executive, and Robert Ian McEwin, its chief economist



Describe the structure of the commission, as well as your particular role and background.

LAM: The commission has seven members and I am the chairman. The commission's responsibility is to make decisions and set policy. The chief executive is responsible for the day-to-day running of the authority, while the chief economist, who is of course an extremely valuable adviser, looks at all of the economic issues that come before the commission. I became chairman in January 2005 and was previously the permanent secretary at the Ministry of Finance. Before that, I was permanent secretary at the Ministry of Trade and Industry.

FOO: I'm trained in law and began work at the commission in 2005 as the assistant chief executive of the legal and enforcement division. I became acting chief executive on 1 September 2007.

McEWIN: I was recruited by the Ministry of Trade and Industry five years ago, after responding to an advert in *The Economist*, and spent a couple of years there helping to formulate Singapore's competition policy ahead of the enactment of the Competition Act. I joined the commission as an adviser and am now chief economist. I provide economic input, and am a lawyer as well. I was previously the director of the Centre for Law and Economics at the Australian National University, and have worked as a partner at Case Associates in London, and also as a director at LECC.

How would you describe the first couple of years of enforcement at the commission?

LAM: It has been a satisfying experience. We built a good team of people surprisingly fast and have had cases coming before us. Fortunately we weren't overwhelmed with cases when we first launched. In the first few days we were worried that we'd be overwhelmed, although we didn't expect

many cases to come our way right from the start because Singapore's economy is very open and competitive. That gave us sufficient time to consider bigger cases and, in our second year, we introduced merger regulation. We had time to apply our minds and emerged with a very good regime. We were also extremely open-minded and looked at the best practices of other competition agencies. On the whole, we've done well and are looking forward to building on our good foundation.

Have you run into any difficulties or challenges?

LAM: In terms of cases, we haven't had any problems yet. In terms of administration and recruitment, the economy has been booming in Asia, particularly in the last year, so we've lost some good people – the private sector poaches our people because until we were created there weren't any competition lawyers or economists, so we are the best source for competition analysts. We have

the best trained people. So, in a way, if you look at it from an enlightened point of view, we're helping to train people for the private sector.

How many staff does the commission have, and how does that break down, in terms of merger analysis, cartel enforcement etc?

FOO: We now have about 47 staff. We started off small, but we're growing and hope to recruit many more staff along the way. Basically, we're divided into three main divisions; corporate affairs, which does advocacy, outreach and corporate communications; policy and economic analysis; and legal and enforcement. The policy and economic analysis division is broadly divided into three units: policy and planning; economic analysis; and mergers, which became operational this July. The legal and enforcement division focuses more on cartel-type enforcement and is responsible for the final drafting of decisions. But the structure will probably evolve and, as segmented as it may look on paper, in practice there is a lot of interaction, and we have many cross-divisional teams.

How many merger notifications have you had so far?

FOO: We've had four notifications and they are all on our website. Two have been cleared, both at phase one, and two are pending. Our merger regime is essentially a voluntary one. We adapted our thresholds from Australia and it's up to parties to assess whether they feel that they need to notify us if they are merging. If they believe there are competition concerns and would like more certainty, it is their responsibility to notify the deal to us, in order to minimise the cost.

McEWIN: Another important point which needs to be made, particularly to local competition lawyers, is that one of the difficulties in a small regime is that many submissions tend to be those that are made in Brussels, London or the US. They're not tailored to Singapore's particular circumstances, and we've had to repeatedly go back to them to say: 'We want to know what's happening in Singapore. We're not really worried about effects somewhere else.'

What is the commission doing to detect and investigate cartel behaviour?

FOO: We've put in place a leniency programme and we see our enforcement efforts as being complemented by our advocacy role. We realise from the experience

of other competition authorities that the public has to be aware of competition law and to understand it, so that we will receive informed complaints. And we have had some complaints and some leads, which we're following. Some haven't led us to much because sometimes the public thinks we do price regulation. They have a misconception about that. There are some other leads we're following, though we haven't made any infringement decisions yet.

## “Singapore's entire economic and government philosophy is based on competition”

Lam Chuan Leong

Are there any cultural impediments to the efficacy of the leniency programme? In other words, will Singaporean businesses be comfortable blowing the whistle on fellow cartel members?

LAM: I don't think we have that problem. Our economy is modelled on western practices. Many of the companies operating in Singapore are multinational companies that know the rules of the game. They're used to leniency programmes and seeking immunity in other countries. So I don't think that the cultural factor exists. It's more of a legal question of how we will handle leniency applications – and we're very transparent.

FOO: We know that in some jurisdictions that have implemented a leniency programme, much of its success depends on how outsiders perceive it, and on the competition agency's enforcement philosophy. There must be a track record of enforcement. We're well aware of that and realise that it may take some time to get started. But that's the challenge and it shouldn't be viewed any differently.

McEWIN: The Australian Trade Practices Act came into effect in 1974, but it wasn't

for another 20 years that it really started to sink into people's consciousness and that practitioners started to develop high-level expertise. I'd say it took longer in Europe and perhaps even longer in the United States. On the cultural question, I agree entirely. In fact, there's a very strong public consciousness in Singapore about doing things in the national interest.

What sort of things is the commission doing to promote the leniency programme and the competition law in general?

LAM: We're putting a lot of emphasis on education and outreach, because the public hadn't come across competition law until three years ago. They need to understand what the law is and isn't about. The Competition Act and the commission don't exist to regulate the economy, only to ensure that competition occurs. We've done a lot, but much more could be done in terms of reaching out to all the communities, including lawyers, professionals, managers of companies and the 'man in the street'. It's an ongoing challenge. That said, Singapore's entire economic and government philosophy is based on competition. This is one of the freest economies in the world. For example, we have an open-skies agreement that allows anyone to fly to Singapore regardless of whether we get air rights to the other country. Singapore is a tiny country of only four million people, of which about a million are foreigners. It's a very open economy and is highly dependent on trade. When a country is as dependent on trade as we are, and has a very open economy, a protectionist policy just doesn't work. With that sort of economic background, we have much less need to promote competition with other government agencies. It makes our job much easier than it would be in other countries.

FOO: Since we implemented the Competition Act, we've had a very active outreach programme. We do outreach with our stakeholder partners, such as the Singapore Business Federation, which is an umbrella organisation for businesses. We have had an outreach programme with the chambers of commerce, with some trade associations and also some of those who have been more concerned about the law have invited us to speak at their meetings and to respond to more focused questions. We have also spoken to some small and medium-sized enterprise groups. And, looking at it from another angle, there's the issue of bid-rigging, collusion and collusive tendering, so we're thinking of doing something along the lines of 'tips and pointers for procurement officers'. Indeed, the advocacy of competition issues

generally within government is important, and we've created policy guidelines and we hope to set up very soon with the Civil Service College a training programme on competition issues for government agencies, so that when they formulate policy they will be aware of competition issues and will take it into account.

LAM: We've also found that government agencies approach us proactively before they implement a new policy to ensure that it complies with the competition laws – so much so, in fact, that we actually started a course to teach all the agencies that are sending people to attend these courses.

Which other national competition agencies do you talk to and seek advice from?

LAM: We talk more to those whose working language is English, as well as those in economies of similar size, like Ireland. We don't talk as much to huge competition agencies such as the European Commission, because the scale of the problems and issues they face are different from ours. The competition agencies in Australia, New Zealand, the UK and Ireland have been a great help to our staff who go there for a couple of weeks, to work alongside their agency officers.

Why is so much prominence given to competition economics at the commission? It's more common in advanced competition regimes.

LAM: Yes, but it's part of the bigger picture. Although, economics is never practised in its purest form, in Singapore we probably apply economic reasoning and thinking as far as any government has gone, so that in fact all of our policies have a strong theoretical economic foundation. A major principle of the government's economic policy is to focus on efficiency, balanced with practical considerations on the social side. The policy has been carried out on a rational, economic and principled basis. Hence the strong emphasis on economics.

Let's change topic once again with a couple of policy questions. What's worse for Singapore's economy: over- or under-intervention?

LAM: Over-intervention is generally less productive than under-intervention. It is seldom possible to see the negative impact or the opportunity cost of over-intervention. Under-intervention is a self-regulating mechanism. You usually see things going wrong if people aren't competitive. Either

prices rise or somebody comes into the market because you don't have a barrier. So it's easier to correct under-intervention than it is to correct over-intervention.

Do you adhere to the Chicago school or the post-Chicago school?

McEWIN: Neither. I believe it's a total mischaracterisation of the debate to talk about Chicago and post-Chicago. There's not a great deal of difference in economic substance. What really differs is whether courts or regulators, or markets are better at improving economic outcomes and the consequences of mistakes. The consequences of making a regulatory mistake in a small economy, even when open, could be quite catastrophic in many ways.

**“As long as we're economically competitive, we don't mind whether we're Chicago or any other school”**

**Lam Chuan Leong**

LAM: We aren't doctrinaire, we're pragmatic – and we don't spend too much time worrying about whether we're Chicago or post-Chicago. It's a little like Deng Xiaoping's famous saying: “As long as the cat catches the mice, it doesn't matter whether it's white or black.” As long as we're economically competitive, we don't mind whether we're Chicago or any other school. I think we've structured the economy and done it in a way that we are self-regulating, because ultimately competition is the best self-regulator. People don't promote competition because it's a doctrine or ideology. It's on the belief that if you open and remove the barriers to competition, the market will regulate itself.

What would make your job easier?

LAM: The confidence of the public and building up specific sectoral knowledge. One of our current problems is that each time an issue arises, we may have a broad picture of what's happening in the particular industry

but, unlike the sector-specific regulators, we're less familiar with the sector and need time to understand how things actually work in it. A sector-specific regulator, such as the telecoms regulator, can respond to problems quickly because it consults with and discusses issues with telecoms operators every day. If an issue arises, we need to make decisions fairly quickly, and if it arises in an unknown industry, we have to build up our knowledge. So we need to acquire more institutional know-how and build up basic knowledge about each industry, so that whenever we're faced with a particular case we can respond more quickly. In other words, some sort of investment in intellectual capital would make our job easier.

FOO: What's also important is continuing our advocacy and outreach. The public has some awareness and understanding, but there is also some confusion about the difference between promoting competition and protecting consumers. So it's partly about managing expectations of what our proper role is within this context and explaining that competition ultimately benefits consumers, not directly in the sense of protecting them from misrepresentation, but that it does have an impact on the market. Part of our challenge is to define the messages we have for businesses and the general public.

McEWIN: I agree. One of the problems we face is the public misconception about what our role is. The reality is that there are no consumer-protection provisions in the Competition Act. They are kept separate, which I believe is a very good thing, because competition issues deal with a different market failure from consumer protection issues. Consumer protection is mostly about information asymmetries, not market power, and they should be kept quite separate. But that sometimes makes it difficult to explain to people who come to you with complaints. The other thing is, we're not a price regulator. Our equivalent of article 82 EC omitted the provisions on unfair pricing, which sends a message that we're not a price regulator and that we believe the markets will set a better price ultimately.

Finally, in what state would you like Singapore's competition regime to be in five years' time?

LAM: We would like to see people so familiar with the law that they are comfortable with the idea of competition and they will operate without much enforcement on our part. That would be the ideal situation. For such a small country, given the way it is governed, I think that it's quite feasible to achieve that.

# Singapore's competition bar

Several Singaporean law firms have launched competition groups in the past couple of years. JAMES CLASPER looks at the eight practices most likely to succeed

Since the enactment of Singapore's competition law two years ago, a number of firms have sought to distinguish themselves as market leaders. At least eight firms are jockeying for position, but distinguishing the front-runners from the chasing pack is tricky. In an emerging market, the traditional yardsticks of success – billowing partnerships, distinguished clients and noteworthy achievements – don't always apply.

Yet several factors help identify which Singaporean firms are serious about developing their competition practice. One is the presence of individuals with the drive and know-how to take the practice forward. All eight firms in this survey boast a practice leader with both a background in corporate law and experience in dealing with Singapore's various sectoral regulators, such as the telecoms watchdog.

The majority of practice leaders have also enjoyed a stint in London or Brussels with their firm's joint venture partner. That matters, because Singapore's competition law is almost a carbon copy of the UK's competition act, and anyone familiar with it – or articles 81 and 82 – is bound to be on sure footing with their domestic law.

At a couple of firms, meanwhile, the competition practice houses lawyers who specialise in intellectual property. The ability to handle both IP and antitrust is a string in any firm's bow.

Another signal of a firm's plan to build a dedicated competition practice is the presence of a competition economist. In response to the Singapore Competition Commission's embrace of modern, economics-based analysis, at least two leading firms have brought an economist on board – both poached from the watchdog, no less – while a third firm may soon follow suit.

Finally, those firms that are serious about competition law aren't afraid to say so, either by hosting seminars and roundtables for clients or through glossy marketing materials. Of course, only time will tell which firms are prepared to go the distance. This, though, is our guide to the runners and riders.

## HIGHLY RECOMMENDED

Allen & Gledhill was founded over a century ago and has grown from a partnership of two into the largest full-service law firm in Singapore. It is arguably peerless: *Who's Who Legal* – GCR's sister title – named it 'Singapore law firm of the year' in both 2006 and 2007.

The firm is divided into five practice areas: corporate and commercial; corporate real estate; financial services; intellectual property and technology; and litigation and dispute resolution. Its fledgling competition practice sits within the corporate group and is led by partner Daren Shiau, the only Singaporean competition lawyer nominated to *The International Who's Who of Competition Lawyers and Economists*. He is also one of just four lawyers appointed by Singapore's Competition Commission to meet regularly to provide feedback on its latest initiatives and policies.

## Rajah & Tann is fast-emerging as a heavyweight player in Singapore's competition market

According to rivals, Allen & Gledhill is the firm to watch: "It's Singapore's premier corporate firm, so deal flow will give it a strong platform from which to cross-sell its competition practice." Shiau says the firm was one of the first to identify lawyers who would develop competition practices. He was seconded to Linklaters' EU competition

practice in 2004 and says the firms still enjoy close ties, thanks to the joint venture they formed seven years ago.

Today, Shiau says he spends about three-quarters of his time working on competition cases and that work has exploded in the past couple of years. Initially his team helped to set up compliance programmes and audit existing agreements for clients in industries ranging from aviation and maritime to pharmaceuticals and finance. Most work is still advisory, although the group is beginning to tackle more complex questions, reflecting the growing sophistication of their clients.

In particular, Allen & Gledhill has advised on three of the five mergers notified in Singapore so far. It has also advised on a US Department of Justice investigation of the Singapore operations of a European company accused of price-fixing, a dispute before the Energy Market Authority arising from the competition provisions of the Gas Act, and an international company making a leniency application to the competition commission. The group also runs a dawn raid hotline – 1-800-CCS-RAID – which puts companies through to a lawyer at all times of the day.

A key member of Allen & Gledhill's team is senior competition economist Elsa Chen. She joined the firm earlier this year from the competition commission, where she helped draft the commission's guidelines and its block exemption order for liner shipping agreements. Another economist, Cheam Fong Hong, joined in October 2007, to "further sharpen the thrust of the practice", Shiau says.

Other members of the competition practice are corporate partners Kelvin Wong and Ta Wee Meng, and litigation partners William Ong and Christopher Anand Daniel, who worked on the only case to go to the competition commission. Ong says it ran "the whole gamut of competition litigation" and was on the verge of a full hearing before the parties settled.

Rajah & Tann is also fast-emerging as a heavyweight player in Singapore's nascent competition market. Established in the 1950s, it is one of the largest full-

service law firms in Singapore and the Asia Pacific, and boasts capabilities in corporate and commercial, dispute resolution and international arbitration, technology and telecoms, among others.

Rajah & Tann's antitrust team is led by partner Kala Anandajarah. A nominee to *Who's Who Legal: Singapore*, she has a strong reputation for corporate governance and environmental law, and handles Rajah & Tann's knowledge management. But, like her rivals at Allen & Gledhill and Drew & Napier, Anandajarah moved fast to create a competition practice. "We knew the law was coming, so we planned ahead as early as 2003 and put together a 'virtual team' of lawyers who had an interest in competition," she says. "Competition is a new and exciting area where business meets the law and which enables us to get intimately involved in the projects."

According to one rival, "deep pockets and a spread of clients gives Rajah & Tann a good chance of becoming one of Singapore's leading competition groups." The other members of Anandajarah's team are Lionel Tan, an IT and telecoms specialist who also has experience in dispute resolution; Chia Song Yeow, a specialist in admiralty and shipping; Dominique Lombardi, a French lawyer nominated to *Who's Who Legal: Singapore*; and Andrew Ong, a corporate and capital markets lawyer who joined from Drew & Napier in June. Both he and Anandajarah are members of the competition commission's 'roundtable', which meets every few months to discuss the watchdog's policies and initiatives. Ong represents the Law Society of Singapore.

Like their nearest rivals, Rajah & Tann's competition team began by helping clients with their compliance work. But since the introduction of the law in 2004, the firm has advised a number of high-profile clients in relation to joint venture agreements, alleged price-fixing and general competition compliance. For example, the firm successfully acted for airlines Qantas and British Airways in obtaining approval of their cooperation agreement. It also successfully represented parties in an investigation launched by the competition commission into potential bid rigging and price fixing.

Drew & Napier is the third law firm in Singapore with a rapidly-developing competition practice, thanks to its size and pedigree. Established in 1889, it has grown to become one of Singapore's largest full-service firms, with over 200 lawyers. Its core practice areas are corporate, litigation and intellectual property. The firm claims top-tier status in all three, but reckons its litigation work is pre-eminent.

Its competition law group is co-headed by Cavinder Bull and Chong Kin Lim. Bull specialises in complex commercial litigation, and has represented clients in investigations by competition agencies in Singapore and overseas. A graduate of Oxford and Harvard, he worked as an associate at Sullivan & Cromwell in New York in the 1990s.

Lim is nominated to *Who's Who Legal: Singapore*. He practises corporate law, with a strong focus on competition. Since 1999 he has played a key role in the development of sectoral competition regulation in the telecoms and media industries, advising the sectoral authorities on liberalisation, market access, competition regulation, merger reviews and enforcement issues. He helped draft the telecoms code in 2000 and 2004, and the media market conduct code in 2003, and was recently appointed to draft a code to liberalise the postal industry.

## The majority of practice leaders have enjoyed a stint in London or Brussels with their firm's joint venture partner

"We were way ahead of the curve", Lim says. "The competition act came into force in 2006, but we've been involved in the area since 1998, because of our work in sectors such as telecoms. When we started to think about the general competition law in 2004, we pooled all our regulatory resources." Bull says their experience with sectoral competition regulators was attractive to clients. "When the competition act appeared on the horizon, companies called requesting compliance advice, because they'd heard about our work with the regulators."

The third key member of Drew's team is Ng Ee Kia, the former director of economics at the competition commission. Her move typifies the growing role of economics-based analysis. "We decided to bring into

the firm the ability to do serious competition analysis," Bull says.

Since Singapore's competition law has come into force, Drew & Napier has represented clients in a wide range of competition matters. Notably, it obtained the first merger clearance, winning approval for a US\$3.6 billion joint venture between Intel, STMicroelectronics and Francisco Partners. It has also advised on Singaporean aspects of several global mergers, including AT&T/SBC. Currently the team is advising Singapore Airlines on its bid for regional carrier China Eastern Airlines.

On the litigation front, Bull has advised on the Singaporean aspects of a multi-jurisdictional cartel investigation (no action has been taken yet) and a group of companies listed on the stock exchange in relation to an abuse of dominance investigation launched by the commission.

Drew & Napier receives referrals from both Sullivan & Cromwell, thanks to Bull's stint there a decade ago, and Freshfields Bruckhaus Deringer, with whom it enjoyed a joint venture for five years, until Freshfields closed in Singapore. The team is also developing relationships with Squire Sanders & Dempsey, Arnold & Porter, RBB Economics and Case Associates among others. Drew's team also includes two New Zealand-born competition lawyers.

### ONES TO WATCH

**Alban Tay Mahtani & de Silva** was founded in 1994 – just yesterday by Singaporean standards – and has only 30 fee-earners. But thanks to a formidable reputation for intellectual property law, as well as the experience of name partner Susan de Silva, the firm is described as having "a competition practice worth watching".

A nominee to *Who's Who Legal: Singapore*, de Silva is one of only four lawyers appointed to the competition commission's 'roundtable'. Like other self-styled competition lawyers in Singapore, she launched her practice on the back of work executed for Singapore's sectoral regulators. In the late 1990s, de Silva helped to draft the electricity regulation act, working alongside lawyers at Australian firm Freehills.

"When it became clear that the government was going to promote competition law, we began to build our team," de Silva says. "And when the generic competition act came into force, we became active in terms of studying the law and participating in public consultation."

According to de Silva, the firm sent submissions to the commission in response to every single public consultation – "even esoteric ones, like liner shipping block exemptions".

Aware that Singapore's competition law was based on UK law, de Silva travelled to London to build a network of lawyers, economists and QCs who could advise her team. Since then, she says, Alban Tay has worked with barristers from Brick Court and Monckton Chambers and economists from RBB.

The other string in the firm's bow is its strength in intellectual property law. "Competition law and IP are inextricably linked and we have an advantage because of our IP practice", says Sheena Jacob, who heads the group. Much of her work is advisory, including contract review, or entails patent licensing issues.

The other key areas of the firm are dispute resolution and corporate law. L Kuppanchetti heads the dispute resolution group and is the go-to partner for dawn raid preparation. The firm has also created programmes to help clients prepare for dawn raids. De Silva, meanwhile, is writing a book on competition law intended for businesses and in-house counsel.

Alban Tay's affiliation with firms throughout the region, via its AxcelAsia network, and its informal alliance with SJ Berwin, ought to provide the competition practice with a steady flow of any referral work. And, as the majority of the firm's clients are multinational, the practice is likely to expand, especially if it mines the interface of antitrust and IP.

Founded in 1992, **Wong Partnership** has grown to become one of the largest law firms in Singapore. Its 180 lawyers work within key practice groups including banking, corporate, dispute resolution and real estate. (Its M&A practice is widely heralded as top-tier.) Offices in Shanghai and the Middle East add to the firm's growing presence in south-east Asia.

Competition law is one of the firm's specialist practices – alongside intellectual property, tax and corporate governance. The competition group is spearheaded by Ameera Ashraf. A partner in both the competition practice and the corporate/M&A practice, Ashraf is a nominee to *Who's Who Legal: Singapore*. She spent six months on secondment to the antitrust law group of Clifford Chance in London. (Wong Partnership has had a joint venture with Clifford Chance since 2003.) Oliver Bretz, competition partner in London, describes Ashraf as first-rate. "She has a good eye for detail and a good understanding of economic and legal concepts," he says. "It's rare you find someone who proves to be immediately useful."

Today, Ashraf advises on a full range of competition issues, including merger control, restrictive practices, abuse of dominance and

compliance programmes. The majority of her clients are multinationals familiar with competition law from foreign jurisdictions, although she advises small and medium-sized Singaporean firms too.

The group also conducts biannual seminars for clients, which come from a broad range of industries, including energy, aviation, healthcare and construction. Ashraf has advised international telecoms companies on the industry code of practice. Also on her team are Ng Wai King, a corporate/M&A partner whose practice encompasses capital market transactions and financial services advisory work, and Tan Kay Kheng, a tax partner who also does dispute resolution and litigation.

**"It will be very interesting to see whether those firms with a dedicated competition practice can sustain them"**

Alone among Singapore's competition practices, **Baker & McKenzie** has a renowned global antitrust practice. It boasts more than 250 competition lawyers worldwide and advises clients on four continents. Its Singapore office was launched in 1997, when it became affiliated with a local partnership, Wong & Leow. The tie-up dissolved when Wong & Leow went solo, but relaunched in 2001 following a change in the law permitting joint ventures between foreign and domestic law firms.

Today, the bedrock of the firm's Singapore outfit is its strength in corporate law, litigation, banking and finance. The competition practice is led by Ken Chia, a nominee to *Who's Who Legal: Singapore* and one of only four lawyers appointed to the competition commission's advisory 'roundtable'. Chia spent 14 years in the UK, working first at Clifford Chance and then Hammonds. He joined Baker & McKenzie in 1999 and is a partner in the corporate and

commercial department, with an additional focus on technology.

Most of Chia's work is for long-term Baker & McKenzie clients – the majority of them blue-chip firms, he says. For example, he recently advised Shell on a joint venture and Cisco Systems and MasterCard on local competition issues. Chia also counts several petrochemical firms and computer software and hardware companies as clients.

Like several of his peers, Chia has advised Singapore's sectoral regulators on competition issues, too. He advised the telecoms regulator and is helping to write a regulatory code on behalf of Singapore's media development authority. Compliance work is ongoing too, Chia says. He provides in-house training to clients' lawyers, sales forces and management. Baker & McKenzie also does annual compliance work in Singapore for Microsoft. Chia's team includes a handful of associates, one of whom joined from Drew & Napier. In addition, the team taps the experience of Baker & McKenzie's global antitrust and competition group, which includes colleagues throughout the Asia Pacific region.

**Shook Lin & Bok** was founded in 1918 in what is now Malaysia, with its Singapore office opening in 1964. Its chief practice areas are corporate, banking, finance and technology. Competition law is housed within its regulatory practice and is handled by four partners: Philip Pillai, Suhaimi Lazim, David Chan and David Chong. Senior partner Pillai specialises in regulatory work involving financial institutions and government bodies. Chan's experience is in banking, commercial litigation and insolvency.

The key contacts are Lazim and Chong. Lazim leads the competition team and has been a partner at Shook Lin since 1997. He specialises in banking and commercial litigation, as well as restructurings of insolvent companies. Chong studied law at Cambridge and joined Denton Wilde Sapte in London in 1999. He specialised in telecoms law and moved to the firm's Hong Kong office, before joining Shook Lin as partner in Singapore in 2004.

Today, Chong practises corporate finance, M&A and international finance, and has particular experience in communications, media, technology, energy and natural resources. He spent six months on secondment to Allen & Overy in Brussels. (Shook Lin has a joint venture with A&O.)

One of the full-service commercial and dispute resolution Singapore law firms that is smaller by design, Shook Lin's forte is its corporate and finance practice, and choosing to focus on its core institutional and corporate clients. "We don't want to be everything to everyone," Chong says. "In some firms

you see, say, real estate lawyers working completely separately to competition or corporate lawyers, and there's no synergy. We want to preserve that synergy amongst our various practice groups."

Its key clients are financial institutions, including major banks and financial advisers. It boasts a strong capital markets/IPO-focused practice, too, advising on two of Singapore's biggest takeovers in 2007.

The final firm with an emerging antitrust practice is **Khattar Wong**. Founded in 1974, it is now a full-service firm with offices in Singapore and Shanghai and a network of affiliate firms throughout South-East Asia.

Despite lacking a dedicated competition practice, the head of Khattar Wong's intellectual property and technology group, Wun Rizwi, is well-equipped to advise on antitrust issues. Like many of his peers, he foresaw the impact that Singapore's competition law would have on many other areas of law and decided to develop an antitrust practice.

Khattar Wong's strengths include franchising, media and bio-tech, meaning the firm is well-placed to advise on competition law – especially at the interface of intellectual property. Recently the firm has advised on the buyout of a hotel reservations company

by a larger travel company, as well as a merger involving a biochemical plant.

Furthermore, all of Khattar Wong's corporate and IP lawyers have familiarised themselves with Singapore's competition law and continue to do so. "Competition affects many issues we advise on," Rizwi says. "Almost every agreement has to be examined in light of the law." But Rizwi says it may still be premature to build up a discrete antitrust practice in Singapore. "Competition is still developing and it'll be very interesting to see whether those firms with a dedicated competition practice can sustain them."

## GCR'S PICK OF SINGAPORE'S COMPETITION PRACTICES

| Firm                                    | Head of competition             | Size of group   | Key clients                                                                                       | Most recent addition to group                                                                                                                                                                                                                                                     |
|-----------------------------------------|---------------------------------|-----------------|---------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>RECOMMENDED</b>                      |                                 |                 |                                                                                                   |                                                                                                                                                                                                                                                                                   |
| <b>Allen &amp; Gledhill</b>             | Daren Shiau                     | 2p, 3a, 2e      | Thomson Financial, Reuters, Flextronics, Solectron, Dubai Drydocks                                | Siobhan Egan (associate, joined from Sidley Austin in Brussels in May 2007)                                                                                                                                                                                                       |
| <b>Rajah &amp; Tann</b>                 | Kala Anandajarah                | 2p, 1fl, 2a,    | N/A                                                                                               | Andrew Ong (former head of competition at Drew and Napier)                                                                                                                                                                                                                        |
| <b>Drew &amp; Napier</b>                | Chong Kin Lim and Cavinder Bull | 3d, 7a (inc 2e) | Info-communications Development Authority of Singapore, Verifone, Visa, Intel, Singapore Airlines | Ng Ee Kia (ex-director of economics/international relations at Competition Commission of Singapore); Scott Clements (former senior investigator at New Zealand Commerce Commission); Teo Ai Hua (former head of economics department at a Singapore institute of higher learning) |
| <b>ONES TO WATCH</b>                    |                                 |                 |                                                                                                   |                                                                                                                                                                                                                                                                                   |
| <b>Alban Tay Mahtani &amp; de Silva</b> | Susan de Silva                  | 3p, 2a          | N/A                                                                                               | N/A                                                                                                                                                                                                                                                                               |
| <b>Wong Partnership</b>                 | Ameera Ashraf                   | 3p              | N/A                                                                                               | N/A                                                                                                                                                                                                                                                                               |
| <b>Baker &amp; McKenzie</b>             | Kenneth Chia                    | 1p, 1a          | N/A                                                                                               | Joanna Er (joined from Drew & Napier)                                                                                                                                                                                                                                             |
| <b>Shook Lin &amp; Bok</b>              | Suhaimi Lazim                   | 3p, 1fl, 1a     | Competition Commission of Singapore; Diageo; Jetstar-Valuair; Sunstart-Suisse                     | Sri Ram Chakravarthi (foreign legal consultant, joined from the Singapore Academy of Law in 2006)                                                                                                                                                                                 |
| <b>Khattar Wong</b>                     | Wun Rizwi                       | 1p              | Givaudan SA; Genentech; TDK Corporation; First Choice Holidays Plc                                | N/A                                                                                                                                                                                                                                                                               |

## KEY

|    |                |
|----|----------------|
| p  | partner        |
| a  | associate      |
| e  | economist      |
| fl | foreign lawyer |