

Competition (Amendment) Bill

Bill No. /2018.

Read the first time on .

A BILL

i n t i t u l e d

An Act to amend the Competition Act (Chapter 50B of the 2006 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Competition (Amendment) Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 **Amendment of section 44**

2. Section 44 of the Competition Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) Subject to sections 60A(1A) and 60B(1A), on an application under this section, the Commission may make a
10 decision as to —

- (a) whether the section 34 prohibition has been infringed;
and
- (b) if it has not been infringed, whether that is —
 - (i) because of the effect of an exclusion;
 - 15 (ii) because the agreement is exempt from the prohibition; or
 - (iii) because a commitment has been accepted pursuant to section 60A(1A).”.

Amendment of section 51

20 3. Section 51 of the Competition Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) Subject to sections 60A(1B) and 60B(1B), on an application under this section, the Commission may make a
25 decision as to —

- (a) whether the section 47 prohibition has been infringed;
and
- (b) if it has not been infringed, whether that is —
 - (i) because of the effect of an exclusion; or
 - 30 (ii) because a commitment has been accepted pursuant to section 60A(1B).”.

New section 55A

4. The Competition Act is amended by inserting, immediately after section 55, the following section:

“Advice by Commission on anticipated mergers

5 **55A.**—(1) A party to an anticipated merger may apply to the Commission for its advice as to whether the view of the Commission is that the anticipated merger, if carried into effect, is likely to infringe the section 54 prohibition.

10 (2) The Commission may issue the advice mentioned in subsection (1) if —

- (a) subject to subsection (5), no information relating to the anticipated merger is in the public domain; and
- (b) the Commission is satisfied that all the parties to the anticipated merger intend to carry into effect the merger.

15 (3) Despite subsection (2), the Commission may refuse to issue the advice mentioned in subsection (1) [if the Commission is not satisfied that the anticipated merger raises a genuine issue as to whether the anticipated merger, if carried into effect, is likely to infringe the section 54 prohibition].

20 (4) In considering whether the anticipated merger raises a [genuine issue] mentioned in subsection (3), the Commission may take into account any one or more of the following factors:

- 25 (a) whether the matter raises any novel issue, and the existence of any precedent in Singapore;
- (b) the likely impact of the anticipated merger, if carried into effect, on the relevant market in Singapore;
- (c) any other factor that the Commission considers relevant.

30 (5) Where information relating to the anticipated merger is in the public domain, the Commission may issue the advice mentioned in subsection (1) if the Commission considers that the advice is necessary to guide the parties to the anticipated merger

as to whether any party should make an application under section 57 for a decision in respect of the anticipated merger.

(6) Advice issued by the Commission under this section is not binding on the Commission.

- 5 (7) The Minister may by regulations provide —
- (a) that the Commission may issue advice under this section in relation to only such anticipated mergers as are prescribed; and
 - (b) for the procedure to be followed —
 - 10 (i) by any party making an application under this section; and
 - (ii) by the Commission, in considering such an application.”.

Amendment of section 57

- 15 **5.** Section 57(2) of the Competition Act is amended —
- (a) by deleting the words “sections 60A and 60B” and substituting the words “sections 60A(1) and 60B(1)”; and
 - (b) by deleting the words “section 60A” in paragraph (b)(iii) and substituting the words “section 60A(1)”.

20 **Amendment of section 58**

- 6.** Section 58(2) of the Competition Act is amended —
- (a) by deleting the words “sections 60A and 60B” and substituting the words “sections 60A(1) and 60B(1)”; and
 - (b) by deleting the words “section 60A” in paragraph (b)(iii) and substituting the words “section 60A(1)”.
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Amendment of section 60A

- 7.** Section 60A of the Competition Act is amended —
- (a) by inserting, immediately after subsection (1), the following subsections:

5 “(1A) The Commission may, at any time before
 making a decision pursuant to an application under
 section 44 or an investigation under section 62(1)(a) as to
 whether the section 34 prohibition has been infringed by
 an agreement, accept from such person as the Commission
 thinks appropriate, a commitment to take or refrain from
 taking such action as the Commission considers
 appropriate for the purpose of remedying, mitigating or
 preventing, as the case may be, the restriction or distortion
 10 of competition which has resulted or may be expected to
 result from the agreement.

15 (1B) The Commission may, at any time before making
 a decision pursuant to an application under section 51 or
 an investigation under section 62(1)(b) as to whether the
 section 47 prohibition has been infringed by any conduct,
 accept from such person as the Commission thinks
 appropriate, a commitment to take or refrain from taking
 such action as the Commission considers appropriate for
 the purpose of remedying, mitigating or preventing, as the
 case may be, the abuse of a dominant position which has
 20 resulted or may be expected to result from the conduct.”;
 and

25 (b) by deleting the words “subsection (1)” in subsections (3)
 and (4) and substituting in each case the words
 “subsection (1), (1A) or (1B), whichever is applicable”.

Amendment of section 60B

8. Section 60B of the Competition Act is amended —

- 30 (a) by deleting the words “section 60A” in subsection (1) and
 substituting the words “section 60A(1)”;
- (b) by inserting, immediately after subsection (1), the following
 subsections:

“(1A) Where the Commission has accepted a
 commitment under section 60A(1A), and subject to
 subsection (2), the Commission must make a decision that

the section 34 prohibition has not been infringed by an agreement.

5 (1B) Where the Commission has accepted a commitment under section 60A(1B), and subject to subsection (2), the Commission must make a decision that the section 47 prohibition has not been infringed by any conduct.”; and

(c) by inserting, immediately after the words “subsection (1)” in subsections (2) and (3), the words “, (1A) or (1B)”.

10 **Amendment of section 63**

9. Section 63 of the Competition Act is amended by inserting, immediately after subsection (4), the following subsections:

15 “(4A) For the purposes of an investigation under section 62, a person who is empowered to enter any premises under section 64(1), or who is authorised under a warrant issued under section 65 to enter premises specified in the warrant, may —

20 (a) orally examine any person on the premises who appears to be acquainted with the facts and circumstances relevant to the investigation that is being carried out (a relevant person); and

(b) require the relevant person to answer any question relating to the investigation.

25 (4B) Any information provided verbally by a person under subsection (1), or any answer given by a relevant person or any statement made by a relevant person under subsection (4A), must be —

(a) reduced in writing;

(b) read over to the person providing the information or to the relevant person (as the case may be);

30 (c) if the person providing the information or the relevant person (as the case may be) does not understand English, be interpreted for the person or relevant person

(as the case may be) in a language that the person or relevant person (as the case may be) understands; and

- (d) after correction (if any), signed by the person providing the information or the relevant person (as the case may be).”.

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Amendment of section 64

10. Section 64 of the Competition Act is amended —

- (a) by deleting the word “he” in subsection (5)(b)(i) and substituting the words “the investigating officer, authorised person, inspector or person required by the inspector, as the case may,”;

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- (b) by deleting the words “any such document” in subsection (5)(c) and substituting the words “any document mentioned in paragraph (b)(i)”;

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- (c) by inserting, immediately after subsection (5), the following subsection:

“(6) The power to require any person on the premises to produce any document under subsection (5)(b) includes the power to require that person to produce the document at such time and place, and in such form and manner, as may be required by the investigating officer, authorised person, inspector or person required by the inspector.”.

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Amendment of section 65

11. Section 65(2) of the Competition Act is amended by inserting, immediately after paragraph (vi), the following paragraph:

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- “(via) to require any person on the premises to produce any document of the relevant kind at such time and place, and in such form and manner, as the named officer, the officer or person as the Commission has authorised in writing to accompany the named officer, the inspector or such other person required by the inspector, may require;”.

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Amendment of section 75

12. Section 75(3) of the Competition Act is amended by inserting, immediately after the word “information” in paragraph (a), the words “or answer any question posed to him”.

5 **Repeal and re-enactment section 90**

13. Section 90 of the Competition Act is repealed and the following section substituted therefor:

“Protection from personal liability

10 **90.** No liability shall lie personally against any of the following persons who, acting with good faith and with reasonable care, does or omits to do anything in the execution or purported execution of this Act:

- (a) the Chief Executive;
- 15 (b) any member, officer, employee or agent of the Commission;
- (c) any member of the Board or any person authorised, appointed or employed to assist the Board;
- (d) any person who is on secondment or attachment to the Commission;
- 20 (e) any person authorised, appointed, employed or directed by the Commission to exercise the Commission’s powers, perform the Commission’s functions or discharge the Commission’s duties or to assist the Commission in the exercise of the Commission’s powers, the performance of the Commission’s functions or the discharge of the Commission’s duties under this Act; or
- 25 (f) any inspector or any person authorised, appointed or employed to assist the inspector in connection with any function or duty of the inspector under this Act.”
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EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

Note 1:KA. Competition (Amd) Bill 2018 – v09.06 (clean)