Application of Competition Laws to Government in Asia: The Singapore Story

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Abstract

This article considers the application of the Competition Act of Singapore to the Government and its activities to assess whether the Act is likely to create a level playing field for market participation. It concludes that while many government market activities are caught by the Act, and while the Competition Commission of Singapore seems willing to enforce the Act against government bodies, there are some gaps in the coverage. It also raises competition issues related to the structure of the Singapore economy which cannot be addressed by the Act alone.

Key Words: Competition Law, Singapore, Application to Government, Markets, Competition, Exemptions, Efficiency, Competition Commission of Singapore, Independence, Enforcement, Barriers to Entry

Ⅰ. Introduction

Singapore has an established competition law, the Competition Act,[1] based on its unique political economy. This article considers the Singapore Competition Act and its application to the Government to determine whether it is capable of creating a level playing field for government and private sector market participation. It is generally accepted that competition law should apply to all market participants to prevent market distortion and that exemptions should be limited and well justified. The Singapore Government is heavily involved in the economy as a regulator and as a market participant through its government departments, statutory bodies and ownership or control of commercial entities so the issue is one of importance for the jurisdiction. The likelihood of enforcement of the Competition Act against government is also a key issue in determining its potential effectiveness. To this end, the independence and behaviour of the Competition Commission of Singapore are relevant and will also be examined briefly.

The article asks three questions: firstly, does the Competition Act appropriately deal with government activities in Singapore? Secondly, is the Competition Council of Singapore (CCS) equipped and likely to take action against the Singapore Government and its entities for breaches of the Act? Thirdly, can the Competition Act address all competition concerns which might be raised about government and markets in Singapore?

Ⅱ. Competition Law and Government: The Principles

Most developed and many developing jurisdictions have competition laws.[2]

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1. Singapore Competition Act, 2004, Cap. 50B (Rev. Ed. 2006).

2. All Organization for Economic Cooperation and Development (“OECD”) countries, for example, have competition laws. *See* OECD, Annual Report (2007), *available at* http://www.oecd.org/dataoecd/1/53/38484866.pdf (last visited Aug. 12, 2012) ; International Competition Network, Member Directory, *available at* OECD International Competition Network < http://www.internationalcompetitionnetwork.org/members/member-directory.aspx. (last visited Aug. 12, 2012); UNCTAD, *Directory of Competition Authorities*, U.N. Doc. TD/B/COM.2/CLP/56 (2007), *available at* http://www.unctad.org/en/docs/c2clpd56_en.pdf. (last visited Aug. 20, 2012).

At its most basic, competition law "consists of rules that are intended to protect the process of competition in order to maximize consumer welfare."[3] The theory behind competition law is that market competition leads to efficiency in the delivery of goods or services which benefits consumers, increases output and assists economic growth. Competition is at its best when all market participants operate on a level playing field and compete to supply goods and services to others.[4] These principles are consistently supported by diverse international authority. The United Nations Conference on Trade and Development (UNCTAD), for example, recommends that competition law should be a law of general application, applying in all sectors and to all economic agents engaged in the commercial production and supply of goods and services, concluding:

> *In this regard, both private and public (i.e. State) owned and operated enterprises should be subject to the same treatment.*[5]

The Organisation for Economic Co-operation and Development (OECD) Competition Assessment Toolkit takes a similar approach, championing market-wide coverage and noting that most strategies for exemptions are not compelling.[6] In this article, all derogations from the application of competition law, including its non-application to government activities, are referred to as "exemptions". In another influential commentary, the US Antitrust Modernization Review in 2007 made the following comments on the impact of exemptions from competition law:

> *Typically antitrust exemptions create economic benefits that flow to small concentrated interest groups, while the costs of the exemption*

3. Richard Whish, *Competition Law* 1 (6th ed., Oxford University Press 2009).
4. Alison Jones & Brenda Sufrin, *EC Competition Law: Text, Cases, and Materials* 2 (4th ed., Oxford University Press 2011).
5. R. Shyam Khemani, *Application of Competition Law: Exemptions and Exceptions* 5, United Nations Conference on Trade and Development, U.N. Doc. UNCTAD/DITC/CLP/Misc.25 (2002).
6. OECD, 1 Competition Assessment Toolkit Version 2.0 (2011), at 36, *available at* http://www.oecd.org/document/48/0,3746,en_2649_37463_42454576_1_1_1_37463,00.html (last visited Aug. 20, 2012). Exemptions are relevant to the discussions in this paper because they involve derogations from the across the board application of competition laws.

> *are widely dispersed, usually passed on to a large population of consumers through higher prices, reduced output, lower quality and reduced innovation.*[7]

The overwhelming view is, therefore, that a competition law should apply to all market participants. Where competition laws do not apply to government market conduct or there are other derogations or exemptions, there is an impact on the ability of the market to function efficiently and diminishes benefits to the community.

Anti-competitive conduct occurs in a market in a number of distinct ways. Firstly, private firms engage in conduct which restricts competition by way of arrangements between competitors (horizontal arrangements) or arrangements between suppliers and their customers (vertical arrangements) or by misuse of their market power. Private firms may accumulate undue market power by acquiring other businesses in order to distort competition. Conduct falling within each of these categories is the subject of most competition laws.

Governments engage in anti-competitive conduct in a number of ways, some of which are enabled by the role of regulator and rule maker. Governments restrict competition by implementing regulation which benefits them or their private business supporters. This has been described in the following way:

> *The state is potentially the best friend of the would-be monopolist. The state can erect and enforce entry barriers. The state can enact legislation that hampers the ability of competitors to vie for crucial inputs or the business of big customers. The antitrust cases have many examples of private parties who enlisted or attempted to enlist the aid of the state in supporting an anti-competitive scheme. In other examples, antitrust defendants have attempted to justify their conduct by claiming that a state or the federal government authorized it.*[8]

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7. Antitrust Modernization Commission, Report (April 2007) 335, *available at* http://govinfo.library.unt.edu/amc/report_recommendation/amc_final_report.pdf (last visited Aug. 20, 2012).

8. Keith N. Hylton, *Antitrust Law: Economic Theory and Common Law Evolution* 347-64 (Cambridge University Press 2003); *id*. at 353, (citing Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* (The Free Press 1978)).

In addition, the business conduct of the government itself or the entities which it owns or controls may distort competition in a similar way to private business entities. In this context, the OECD has stated:

> *Governments may create an uneven playing field in markets where [a State-owned enterprise ("SOE")] competes with private firms, as they have a vested interest in ensuring that state-owned firms succeed. Accordingly, despite its role as regulator the government may, in fact, restrict competition through granting SOEs various benefits not offered to private firms. While in some areas this preferential treatment will be direct and obvious, there may also be indirect preferential treatment through other means.*[9]

The impact of government business conduct was underscored in Australia by the influential Hilmer Review of Competition Law, which considered the role of all market participants and their capacity to impact competition within the jurisdiction. The Hilmer Review concluded that:

> *by far the most systematic distortions appear to arise when government businesses participate in competitive markets. In particular, government businesses were often seen as enjoying a unique set of competitive advantages by virtue of their ownership, including exemption from tax.*[10]

Methods of ensuring that government bodies do not obtain an advantage over private enterprises include the application of competition law to government businesses, effective governance, improving independence, accountability and disclosure, and privatisation of government businesses.[11] The applica-

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9. *See* Antonio Capobianco & Hans Christiansen, *Competitive Neutrality and State-Owned Enterprises: Challenges and Policy Options*, OECD Corporate Governance Working Papers No. 1 (OECD Publishing 2011), *available at* http://www.oecd.org/dataoecd/29/43/46452890.pdf (last visited Aug. 20, 2012).

10. Frederick G. Hilmer et al., National Competition Policy 293 (Australian Government Publishing Service 1993), *available at* http://ncp.ncc.gov.au/docs/National%20Competition%20Policy%20Review%20report%2C%20The%20Hilmer%20Report%2C%20August%201993.pdf (last visited Aug. 20, 2012).

11. *See* Capobianco & Christiansen, *supra* note 9.

tion of competition law to government businesses is a particularly important tool to ensure a level playing field between the government and private sector in the marketplace. Private businesses are also rightly unhappy about the advantages which may accrue to government businesses in the absence of these initiatives.

Clearly the broad issue of how competition law applies to the government is acute in economies where the government plays a significant role, as it does in Singapore. Logically, the larger the role of the government in the economy, the greater the scope for distortions in the market if government activities are not appropriately covered by competition laws and addressed by other competition policy mechanisms. Robust competition law will apply to the market activities of the government in the same way it applies to the private sector.

None of this means that there is a bias against government involvement in business. It does, however, mean that if the government does compete in the market, its businesses should not be advantaged by way of exemptions or other special rights or priorities granted merely by virtue of its ownership.

Ⅲ. Government and Competition Law in Other Jurisdictions

From an economic viewpoint, ill-considered, broad or inappropriate exemptions encourage misallocation of resources, leading to inefficiency, which impedes the competitive process and detracts from the economic benefits which should ensue from competition law. There is economic recognition that steps such as exemption or administrative approval may occasionally be required to correct market failure and hence that competition law should not be applicable to some market participants to that extent. Market failure occurs when markets do not work efficiently for a number of reasons such as: asymmetric information; agency relationships; moral hazard; externalities; free-riding and public goods. In some circumstances, remedying market failure constitutes a public benefit and should be considered in that light by allowing limited exemptions.[12] It is generally agreed, however, that any exemptions granted should be individual in nature and granted on a transparent basis weighing up

12. S.G. Corones, *Competition Law in Australia*, 19 (5th ed. Lawbook Co 2010).

the anti-competitive detriment and the public benefit to ensure proper justification and implementation in the least anti-competitive way.

Despite the views of diverse international sources including those referred to above which consistently confirm these views, the laws of many countries contain exemptions which are neither logically nor economically sound.[13] A brief consideration of the approach of competition law in relation to the government in a selection of jurisdictions with well-established competition laws follows, to determine how the Singapore approach compares, before considering its unique political economy.

A. European Union ("EU")

A number of provisions are relevant when considering the application of EU laws to the government and its activities. All 'undertakings' are caught by the law, and this includes public authorities, municipalities and other entities entrusted with regulatory or administrative functions when they are engaged in 'economic activity'. 'Economic activity' does not necessarily require a profit motive or economic purpose.[14] Non-economic or non-commercial activities, or public authorities exercising their powers, are not generally caught. An entity may be an 'undertaking' for part of its functions, however, and not for others.[15] Entities engaged in activities which are categorised by the law as involving 'solidarity', such as social security, pensions or health care not provided in a market context are not 'undertakings'. Where these services are provided in a market context, however, the entities or providers are 'undertakings' for the purposes of the law.

The obligations of EU Member States under The Treaty on the Functioning of the European Union, including the extent to which they may be liable under Art. 101 (anticompetitive arrangements) and Art. 102 (abuse of dominance) for granting special and exclusive rights to 'undertakings', are not entirely clear.[16] The ability of Member States to grant special or exclusive

13. Khemani, *supra* note 5.

14. Associations of football clubs may be undertakings despite the fact that some of the member clubs are in fact amateur. *See* Whish, *supra* note 3, 83 (referring to Piau v. Commission T-193/02, [2005] E.C.R. II-209).

15. So, for example, a public authority may have power to adopt by-laws on parking and also to run a commercial car park. Only the latter would be caught. *See* Whish, *id*. 83.

16. 25 March 1957, 2010 O.J. C 83/199 (last amended 2010), *available at* http://eur-lex.eu-

rights to an entity it owns or controls (or otherwise places in a privileged position) is constrained by various Treaty provisions. While the TFEU applies to SOEs, the numbers of which have recently decreased markedly in Europe due to a number of significant reforms, there are exemptions from the general application of the provisions where services are "of general economic interest" or where revenue-producing monopolies are involved and the application of competition rules would obstruct the performance of particular assigned tasks. A competition test applies.[17] State aids provisions also prohibit the grant of aid which distorts competition and affects inter Member State trade because they are incompatible with the internal market (Art. 107(1)). There are some exceptions and the European Commission also has broad discretion to declare that certain aid is incompatible with the market (Art. 107(3)). In summary, most commercial activities of SOEs are subject to the competition provisions of the TFEU. Other provisions may restrict the extent to which Members grant special or exclusive rights to SOEs (or other entities). State aid which distort competition are also likely to be prohibited.

B. United States

Historically, the government has rarely been involved in business in the United States, so the question of anti-competitive conduct of the government is not so important within the context of the US. However, contrasting the roles of government in the US and Singapore serves to underscore the significance of the issue for Singapore. The Antitrust Modernization Commission reviewed antitrust law in 2007, noted above,[18] and concluded that statutory exemptions should be granted rarely, and in accordance to the recommendations of the OECD and the UNCTAD, noted above. Despite this, US antitrust law contains a wide range of exemptions implemented or implied under laws and by courts, and limitations on the full application of antitrust law as a consequence of industry regulation. The recommendations of the Antitrust Modernization Commission were ignored.

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ropa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF [hereinafter *TFEU*].

17. *Id*. art. 106(2). *See also*, Corbeau, C-320/91 [1993] E.C.R. I-2533; [1995] 4 C.M.L.R. 621.

18. *See supra* note 7.

C. Australia

The overall philosophy and application of Australian competition law was considered in depth in a significant review in 1993.[19] The outcome of the Hilmer Review of Competition Law (the Hilmer Review) recognized the critical market impact of existing exemptions for government bodies:

> *[M]any of the current exemptions… including some government-provided services such as electricity and port services and private professional services [involve undertakings] which are largely sheltered from international competition, yet provide key inputs to businesses that must contend with domestic and international competition.*[20]

While recognising that some markets contained features which meant that competitive market conduct was not likely to maximize economic efficiency, the Hilmer Review was clear that the TPA (now the Competition and Consumer Act 2010 (CCA)) should apply to all market participants as a matter of policy, and any exemptions should be granted only on demonstrated public interest grounds and following a transparent process of review and justification.[21] All government bodies are now caught under the CCA to the extent that they are carrying on business activities.[22] Carrying on business has been interpreted broadly in this context. In the important case of NT Power Generation Pty Ltd v Power and Water Authority, [23] the High Court considered the position of an entity which had been previously exempt under competition law, in circumstances where a powerful government incumbent was engag-

19. At that time, the Australian economy had stalled and there was a general recognition that a whole range of regulation needed review.

20. Hilmer, *Review of Competition Law*, *supra* notes 10, 86. The Review set out "Agreed Principles" for application of the then Trade Practices Act 1974 (Cth.) and reviewed each of the current exemptions against them.

21. Hilmer, Review of Competition Law, *supra* note 10. The approach of this Committee was endorsed by a subsequent review of the legislation in 2003:. Sir Daryl Dawson, Curt Rendall & Jillian Segal, Trade Practice Review Committee, *Review of the Competition Provisions of the Trade Practices Act* 1 (Canprint Communications 2003). *See also*, Ray Steinwall, *The Dawson Committee on Competition*, Economic Efficiency, *Universality and Public Policy*, 26 U.N.S.W.L.J. 226 (2003).

22. Competition and Consumer Act, sec. 2A, 2B.

23. NT Power Generation Pty Ltd. v Power and Water Authority, [2004] HCA 48 (NT Power).

ing in anti-competitive conduct to maintain its market position. Power and Water Authority (PAWA) was a statutory authority set up under a special law and subject to directions of the Minister. It generated and purchased electricity from other generators; it transported electricity from generation sites to distribution points, and then distributed the electricity to customers. It issued a licence to NT Power to sell power to customers. NT Power could not do so without access to the electricity transmission and distribution infrastructure owned by PAWA. It asked for access and PAWA refused. The High Court considered whether PAWA was carrying on business in refusing the use and thus was subject to the (now) CCA. PAWA had never allowed anyone access to its power lines but this was now possible because of industry restructuring. PAWA argued that it was not carrying on business in refusing access to the power lines, for reasons which included the fact that it was not in the business of supplying its infrastructure to others for commercial purposes. The High Court found that PAWA was indeed carrying on business and using the infrastructure as a significant part of its business. PAWA had an express duty under its legislation to act in a commercial manner, and it described its transmission and distribution facilities as "business products" in its documentation. The refusal was found to be conduct that advanced PAWA's business and a decision to supply would have had a negative impact in the short term on its business of selling electricity. The High Court found that PAWA had breached section 46, Misuse of Market Power, of the CCA.[24]

Ⅳ. The Singapore Economy in Snapshot

Singapore is a republic with a unicameral system of government headed by a President elected for a fixed term of six years. The Prime Minister is the head of the political party with the majority of seats in Parliament, and is appointed by the President, as are Cabinet members, who are appointed on his advice.[25] The economy is innovation driven and recently ranked second in the

24. The High Court overruled the decisions of the Federal Court and the Full Federal Court on appeal.

25. *See* Constitution of the Republic of Singapore, art 25 (1999 Rev. Ed.).

world for competitiveness,[26] moving up from third position in 2010.[27] Singapore is ranked very highly for efficiency in goods and labour markets, leads the world in financial market development, and has been described as having impeccable infrastructure. Its strong focus on education is an important feature of the economy.[28] Singapore's Gross Domestic Product ("GDP") per capita is above most other advanced economies.[29] With the slow economic growth after the 1997-1998 Asian currency crises, the Government set up an Economic Review Committee (ERC) to review Singapore's economic policy and strategies (ERC Report).[30] The ERC Report reviewed economic policy as a whole, while an Entrepreneurship and Internationalisation Subcommittee (Entrepreneurship Committee) focused particularly on the role of GLCs and statutory boards.[31]

While Singapore was the hardest hit of the Association of Southeast Asian Nations ("ASEAN") countries by the global crisis of 2008-9, because it was the "most open economy" out of all the ASEAN members, it recovered more rapidly than most other ASEAN countries.[32] Its institutions have been ranked first worldwide for their lack of corruption and their efficiency.[33]

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26. Klaus Schwab, *The Global Competitiveness Report 2011-2012*, (World Economic Forum, 2011), *available at* http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf (last visited Aug. 20, 2012).

27. *Id*.

28. *Id*. 11-2.

29. *Id*. 316.

30. Economic Review Committee, Ministry of Trade and Industry, Republic of Singapore, *New Challenges, Fresh Goals – Towards a Dynamic Global City* (February 2003), at 49, *available at* http://www.mti.gov.sg/ResearchRoom/Documents/app.mti.gov.sg/data/pages/507/doc/1%20ERC_Main_Committee.pdf (last visited Aug. 20, 2012).

31. Economic Review Committee, Ministry of Trade and Industry, Republic of Singapore, Report of the Entrepreneurship and Internationalisation Subcommittee (September 2002), *available at* http://www.mti.gov.sg/ResearchRoom/Documents/app.mti.gov.sg/data/pages/507/doc/6%20ERC_EISC.pdf (last visited Aug. 20, 2012).

32. Marn-Heong Wong et al., Lee Kuan Yew School of Public Policy, Asia Competitiveness Institute, *ASEAN Competitiveness Report 2010*, at 8 (Asia Competitiveness Institute 2011), *available at* http://www.spp.nus.edu.sg/docs/ASEAN_Competitiveness_Report_2010.pdf (last visited Aug. 20, 2012). *See also generally*, Mark Williams, *The Lion City and the Fragrant Harbor: The Political Economy of Competition Policy in Singapore and Hong Kong Compared*, 54 Antitrust Bulletin 517 (2009).

33. Mam-Heong Wong, *id.*, at 11.

Ⅴ. The Role of the Government in the Political Economy of Singapore

The Singapore Government is involved in the economy of Singapore in a number of ways aside from its primary role. Government entities in Singapore can be categorized by their method of establishment and governance. "Traditional" government is identified as government departments and "other organs of state" such as the Judiciary, Parliament and the Public Service Commission.[34] These bodies are not involved in business activities other than the business of running the country and are unlikely to have a direct impact on the market as participants, although they clearly have an impact on policy and regulation.[35]

Statutory boards are autonomous government agencies established under specific Singapore Acts of Parliament which establish them as separate legal entities and specify their purpose and their powers. Statutory boards are thus separate from the formal traditional government structures described above, and do not generally enjoy the privileges and immunities of government departments. Their activities are overseen by a Government Minister who represents Parliament on the board of the entity and represents the board of the entity before Parliament. Directors of statutory boards in Singapore are usually senior civil servants, business people, and professionals. Many statutory boards are expected to generate their own funds,[36] and their employees are not civil servants. The relationship between the Government, its statutory boards and their subsidiaries is set out in the Singapore Constitution.[37] There are some 64 statutory boards which range from those running polytechnics

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34. *See* Singapore Government Directory, *available at* http://www.sgdi.gov.sg (last visited Aug. 20, 2012).

35. These activities may, however, be the subject of other competition policy initiatives to moderate their impact on competition within the jurisdiction. *See,* for example, the Hilmer Review, *supra* note 10, which recommended implementation of other initiatives such as Competitive Neutrality Policy and a system of regular regulatory review.

36. *See Singapore: A Country Study,* in Statutory Boards (Barbara Leitch Lepoer, ed., Washington: GPO For the Library of Congress , Washington1989), *available at* http://countrystudies.us/singapore (last visited Aug. 20, 2012).

37. *See* Singapore Constitution, *supra* note 1, for example, Part V - The Government, particularly s. 22A *et seq*. For a full description of statutory boards s*ee also* David Seth Jones, *Financial Reforms of Statutory Bodies in Singapore: Control and Autonomy in a Centralized State,* 6 Public Organization Review 259 (2006).

to regulatory authorities such as the Casino Authority, the Energy Market Authority and the Competition and Consumer Commission of Singapore ("CCS"). Other statutory boards regulate professions and industries, such as family physicians and estate agents. Brief analysis of their described activities suggests that they do not, in the main, carry on business activities, although there is no reason, for example, why the polytechnics could not compete with private colleges or educational institutions fulfilling the same educational functions.[38] Whether those statutory boards which regulate particular industries or professions act as "gatekeepers" for their members and impose regulations which are more onerous than necessary to minimize new entrants who might compete against incumbents, or are merely regulators who provide reasonable minimum standards or filters on entrants is an important question worthy of consideration at some stage.

A brief analysis of the activities of statutory boards reveals that many of these bodies have commercial subsidiaries: for example, the Singapore Sports Council has a commercial subsidiary, SISTIC.com Pty Ltd, which is discussed in more detail in the context of enforcement below.[39] This existence of commercial subsidiaries immediately raises questions about the appropriateness of the control of a significant commercial business by a statutory board. Other statutory boards appear to be engaged in very wide ranging commercial entrepreneurial activities themselves. JTC Corp, for example, is Singapore's "leading industrial infrastructure specialist spearheading the planning, promotion and development of a dynamic industrial landscape."[40] While no doubt some JTC Corp initiatives are governmental in nature, the breadth and number of these activities appear to be more like those of a large-scale prop-

38. *See generally*, Ian Thynne, *Statutory Boards: How Distinctive and In What Ways?*, 6 Public Organization Review 171 (2006).

39. Where this is the case, the statutory board presents consolidated financial accounts for the Group. Although there is some financial explanation of the subsidiary activities, there is apparently no requirement for disclosing transactions and balances of related party transactions. *See*, for example, Singapore Sports Council, Annual Report (2008/2009), at 70 (Note 12 to Financial Accounts), *available at* http://www.ssc.gov.sg/publish/Corporate/en/about/financial_information/annual_report_05_060.html (last visited Aug. 20, 2012).

40. *See* JTC, *available at* http://www.jtc.gov.sg/Pages/Default.aspx (last visited Aug.20, 2012). JTC Corp was formerly the Jurong Town Corporation and was originally engaged in building houses for workers. *See also*, activities of the Agency for Science, Technology and Research, *available at* http://www.a-star.edu.sg/Industry/CollaboratioOpportunities/tabid/224/Default.aspx. (last visited Aug. 20, 2012).

erty developer than a traditional government-linked agency.

The Entrepreneurship and Internationalisation Subcommittee (the Entrepreneurship Subcommittee) mentioned earlier [41] considered the role of GLCs and statutory boards in the Singapore economy in some detail.[42] In addition to recommending the implementation of a generic competition law, Entrepreneurship Subcommittee recommended that is should apply to "all sectors of the economy and all enterprises, including MNCs, GLCs and SMEs."[43] Specifically in relation to statutory boards the Entrepreneurship Subcommittee observed:

> *In carrying out their missions, many statutory boards have also set up enterprises. These are technically not GLCs, but are nonetheless fully or majority owned by statutory boards to either address certain market failures, or instil commercial discipline in some of the statutory board's functions. There must however be rules governing the setting up of enterprises under statutory boards. If not done properly this can give rise to a conflict of interest and economic distortions.*[44]

The Entrepreneurship Subcommittee recommended specific rules for the setting up of enterprises under statutory boards, identifying a number of practical ways to minimise conflicts of interest and their impact on the market.[45] The suggested rules included the following:

> *Do not set up enterprises to provide services that the private sector can provide*
> ...
> *Do not corporatize or privatise regulatory functions*
> ...
> *Make a conscious effort to divest enterprises owned by statutory boards.*
> ...

41. *Supra* note 3.
42. *Id.* at 22.
43. *Id.* at 17.
44. *Id.* at 22.
45. *Id.*

> *Do not grant best-of-both-worlds deal*
> *...the enterprise should not enjoy a moratorium on its domestic business from the government while at the same time being allowed to compete with the private sector in that market segment.* [46]

This statement indicates that the Entrepreneurship Subcommittee was well aware of the potential of Singapore's statutory boards and their subsidiaries to distort markets through their commercial behaviour.

The Government also has ownership and involvement in many industries in Singapore and overseas through its Government Linked Companies ("GLCs"). Ownership is mainly held by two unlisted companies, Government of Singapore Investments Co ("GIC") and Temasek Holdings Pte. Ltd ("Temasek"). Obtaining detailed financial information on either of these bodies is difficult,[47] but a brief discussion of their activities serves to underscore the important role of the government in Singapore's business sector.

GIC was set up in response to the perceived need for an entity dedicated to the task of investing Singapore's growing reserves for better long-term returns in what "in retrospect, was the prototype Sovereign Wealth Fund."[48] Former President and Founding Chairman of GIC, Mr. Lee Kuan Yew stated recently in a speech at the 30th Anniversary Dinner for GIC that the reasons GIC is "vital to the national economy" are:

> *First, Singapore is highly exposed to the vagaries of the global economy. Our national reserves are a buffer or shock absorber for Singapore in downturns like that of 2009. Second, a strong national balance sheet fosters investor confidence and hence enhances the stability of the Singapore dollar. Third, income from our reserves supplements government's revenues.*[49]

GIC manages funds on behalf of the Singapore Government in a fund own-

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46. *Id*.

47. Garry Rodan, *Do Markets Need Transparency? The Pivotal Cases of Singapore and Malaysia*, 7 New Political Economy 23, 28 (2002).

48. Government of Singapore Investment Corporation Pte Ltd., Report on the Management of the Government's Portfolio for the Year 2010/11, 4, *available at* http://www.gic.com.sg/data/pdf/GIC_Report_2011.pdf (last visited Aug. 20, 2012).

49. *Id*. at 6.

er/fund manager relationship. The GIC Report, which is the annual report of the fund, contains information about asset mix, location of investments and 20-year rate of return on investments. Investments are outside of Singapore as a rule. The GIC Report does not, however, give any specific information about individual investments, including financial information.[50] GIC's accounts are consolidated into the Government's accounts, independently audited and presented to the President.[51] As a matter of principle, 50% of the long-term expected real return on the reserves of GIC and the Monetary Authority of Singapore may be taken into the Government's annual budget. As of March 2011, the portfolio's 20-year rate of return in excess of global inflation was 3.9%. Investments include real estate, private equity, infrastructure, and a variety of funds under the control of external managers. Investments are worldwide, with a growing trend of investing in Asia and South America.[52]

Temasek, the second government fund investment vehicle, has been described as "a behemoth, comparable with some of the world's largest conglomerates, such as General Electric (GE) of the United States and Germany's Siemens AG (SI)."[53] It has S$193b under investment as at 2011.[54] The Government's role in Temasek is that of a shareholder but Temasek is accountable to the President as a Fifth Schedule company under the *Singapore Constitution*, and appointment or removal of a board member or the Chief Executive Officer requires the approval of the President of Singapore at his discretion. In addition, Temasek is able to use Singapore's reserve funds. A 2004 constitutional amendment allows the Government to transfer reserves to key statutory boards and companies with the approval of the President.[55] While the responsibility for commercial performance of Temasek lies with

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50. *Id.*

51. *See Singapore, Overview of United States (USSFTA), available at* http://www.fta.gov.sg/fta_ussfta.asp?hl=13 (last visited Aug. 20, 2012) (Sing.) .

52. GIC Report, *supra* note 48, at 9.

53. Ho Khai Leong, *Corporate Governance Reform and the Management of GLCs: Pressures, Problems, and Paradoxes*, in *Reforming Corporate Governance in Southeast Asia: Economics, Politics, and Regulations* 269, 276 (Ho Khai Leong ed., Institute of Southeast Asian Studies 2005) (Sing.).

54. Temasek Int'l Ltd., Temasek Review (2011), at 6, *available at* http://www.temasekreview.com.sg/2011/downloads/full_temasek_review_2011.pdf (last visited Aug. 20, 2012).

55. *See* Ho Khai Leong, *supra* note 53, at 278.

the corporation itself, the Ministry of Finance reviews and approves corporate plans of the holdings.[56]

Temasek and Temasek-linked companies constitute the bulk of Singapore's GLCs. GLCs are responsible for most telecommunications, power, water and gas services, port operations, and the development of industrial estates and housing. They also compete in sectors such as travel agencies, food supplies, property development, heavy industries; as defence, construction, engineering and trading firms.[57] Approximately 75% of Temasek's holdings are Singapore-based.[58] Temasek is not the sole shareholder in all its investments. It owns 100% of MediaCorp Pte Ltd, Singapore Press Holdings, Singapore Power Limited, Mapletree Investments Pte Ltd, Surbana Corporation, for example, but only 55% of Singapore Telecommunications, Singapore Airlines Limited and SMRT Corporation Ltd. It does, however, have a "golden share" in Singapore Airlines Limited.[59]

Temasek-linked companies are managed under the guidance of boards of directors and, if listed, are subject to the rules of disclosure of the Singapore Stock Exchange. Temasek itself is an exempt private company with the Ministry of Finance as shareholder. It is not a listed company, which means it is not subject to the same rules of financial disclosure as a listed company. It has published financial data about consolidated accounts in the *Temasek Review* since 2004.[60] The *Temasek Review* provides information about Temasek's structure and investments but "omit[s] flows between subsidiary investments".[61] Singapore has investments in more than 500 entities with Annual Revenue or Total Assets of more than S$50m, excluding investments made by GIC.[62] Foreign investment in some GLCs is subject to restrictions, depending upon their industry sector. As of December 2007, it was estimated

56. *Id*. 279.

57. *See* USSFTA, *supra* note 51.

58. *See* Williams, *supra* note 32, at 526.

59. All of these companies are listed as "Major Portfolio Companies" in the Temasek Review (2011), *supra* note 54, at 83 *et seq.*

60. *Id.*

61. WTO Secretariat Report, *Trade Policy Review: Singapore*, WT/TPR/S/202/Rev.1, (June 5uly 24, 2012), at 21, *available at* http://www.wto.org/english/thewto_e/countries_e/singapore_e.htm. (last visited Aug. 20, 2012).

62. *USSFTA, supra* note 51, calculation based on "Other information" therein. *See also*, clause 12.3(g) (Sept. 30, 2009), *available at* http://www.fta.gov.sg (last visited Aug. 20, 2012).

that the top six Singapore-listed GLCs accounted for 20% of the total capitalisation of the Singapore Exchange.[63]

The Entrepreneurship Subcommittee was quite clear that the proposed generic competition law should apply to GLCs. It also recommended that "the government should be involved in business only where it achieved strategic objectives."[64] Legitimate strategic objectives for GLCs identified were the management of critical resources, public policy objectives and the development of new growth engines. The Entrepreneurship Subcommittee also called for the rejection of "subsidies and special privileges" for GLCs, and also of performance of "national service" by GLCs, national service being defined as "any project or activity that they would not have done if it was evaluated on a purely commercial basis." [65] Finally, the Subcommittee called for divestiture of non-strategic GLCs.[66]

The role of government in business in Singapore has also raised concerns in international trade negotiations, with steps taken to address the issue by the content of some negotiated agreements. Under the Free Trade Agreement ("FTA") with the US, for example, Singapore is obliged to ensure that its government enterprises act in accordance with commercial considerations in their purchases and sales of goods, and will not enter into agreements (including dealings with parent, subsidiaries or enterprises with common ownership) which "restrain competition on price or output or allocate customers for which there is no plausible efficiency justification".[67] The FTA requires government enterprises to agree that they will not engage in exclusionary practices that substantially lessen competition in a market in Singapore to the detriment of consumers. The Government may not act directly or indirectly to influence decisions of government enterprises, except within the ambit of the FTA. Interestingly, under the FTA, Singapore agrees to continue reducing its aggregate ownership and other interests that confer effective influence in entities organized under the laws of Singapore.[68]

All of these requirements impose constraints on the way in which the Sin-

63. *See* WTO Report, *supra* note 611, at 56.

64. *See Entrepreneurship Subcommittee Report, supra* note 31, at 18.

65. *Id*. at 19.

66. *Id*.

67. USSFTA, *supra* note 51, art. 12.3, cl. 2(d)(ii)(A).

68. *Id*. art. 12.3, cl. 2(f).

gapore government and its entities can engage in conduct which might impact competition in the jurisdiction.

Importantly, another term of the FTA with the US (and the FTA with Australia) requires Singapore to enact general competition legislation covering government enterprises by 2005, which it has done.[69]

Others have commented about the degree of influence the Government has over GLCs, one commentator stating that:

> *Issues concerning market access as well as a perception that the playing field is tilted in favour of GLCs are matters that have concerned both domestic and overseas competitors as regards the domestic Singapore market.*[70]

More detailed concerns arising from the operations of GLCs in Singapore have been identified as follows:

- GLCs habitually recruit the majority of the talent pool so that the private sector is "exhausted of able managers and employees";
- GLCs crowd out the private sector;
- GLCs are given preferential treatment in tenders along with multinational corporations at the expense of local companies;
- GLCs have been half hearted in their divestment exercise;
- Issues linked to transparency such as fostering trust in GLCs, the government and Temasek;

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69. *Id*. art. 12.2, cl. 1, n. 12-1. Under art. 12.3 of the USSFTA, Singapore is also obligated to make public a consolidated report for various entities setting out the percentage of shares and voting rights that the government and its enterprises cumulatively own (clause 2(g)(i)(A)), "a description of any special shares or special voting rights" (clause 2(g)(i)(B)), details of government officials serving as officer or board members (clause 2(g)(i)(C)), and the annual revenue or total assets of the organisation (clause 2(g)(i)(D)). The definition of "covered entity" includes Singapore entities in which "effective influence exists, or there is a rebuttable presumption that it exists, whose annual revenue or total assets are greater than SGD 50 million": *see* clause 1(b) of art. 12.8 of the USSFTA. This requirement excludes government entities which invest the reserves of the Government of Singapore or holding investments of that entity, and Temasek Holdings (Pte) Ltd: *see* USSFTA, art. 12.8, cl. 1(d).

70. *See* Williams, *supra* note 32, (citing U.S., Dep't of Commerce, *Singapore*, 3 (2008) (raising government procurement issues), *available at* http://singapore.usembassy.gov/uploads/images/uWEK7j2J2BM0mCVrI2DqRg/NTE_2008_Singapore.pdf (last visited Aug. 20, 2012).

- Political appointments; and
- The dual role of the state as owner and regulator.[71]

Even prior to the report of the Economic Review Committee in 2003,[72] there were calls to increase privatisation of GLCs to increase their flexibility and accountability. The Singapore Democratic Party in 2001 proposed the scaling back and privatisation of GLCs, stating:

> *Scale back the GLCs. Pretend as they might, GLCs cannot provide, much less sustain, economic development in Singapore. They must be dismantled and, in their place, local private companies must be allowed to surface and be given the chance to compete internationally, with the government playing only a supporting role.*[73]

By way of contrast with commonly held views about the role of GLCs and advantages they may receive because of their government links, however, some evidence suggests that GLCs are not given preferential treatment and operate on a commercial basis.[74] This has been demonstrated recently in two high-profile cases regarding land site tenders for the large integrated resort projects at Sentosa Island and Marina Bay, where GLCs such as Capitaland competed against private sector enterprises and were unsuccessful in the bidding process.[75]

Clearly the pervasive nature of statutory boards and GLCs in the Singapore economy suggests at least that particular attention should be given to the way they are treated under the Singapore Competition Act.

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71. *See* Ho Khai Leong, *supra* note 53, at 280 *et seq* (quote taken from 281).
72. *Supra* note 30.
73. *Id.* at 297 (citing the Singapore Democratic Party's "5-Point Economic Plan for Singapore") (link given no longer available online).
74. *See* Williams, *supra* note 32, at 528 (citing Fang Feng, Qian Sun & Wilson H.S. Tong, *Do Government–Linked Companies Underperform?,* 28 J. Banking & Fin. 2461 (2004)).
75. *See* WTO Report, *supra* note 61, at 56.

Ⅵ. Enactment and Scope of the Singapore Competition Act

The Competition Act of Singapore was enacted in 2004 and became operative in 2006, although its merger provisions did not become operative until 2007.[76] It is based on the UK Competition Act 1998[77] which was derived from the pre-2004 EU competition law provisions. The Competition Act draws on European concepts of markets, dominance and market power, although it does not slavishly follow the UK Competition Act or other EU laws. The prohibitions are based on economic concepts and a set of guiding principles which are said to recognize international best practice in the context of Singapore's characteristics of being a small open economy with a fairly competitive domestic economy. The Act takes a relatively light-handed approach to competition regulation and the drafting recognizes that "[r]egulatory costs should be kept to a minimum", on the basis that to do otherwise would reduce Singapore's international competitiveness.[78]

The Competition Act is directed at the conduct of 'undertakings', which means that it applies to individuals or entities carrying on business, unless they are exempt under its provisions.[79] The prohibitions cover fairly standard competition law areas of horizontal agreements, abuse of dominance and mergers. Horizontal agreements are prohibited if they have the object or effect of preventing competition within Singapore. Agreements which fix prices or trading conditions, limit or control production, technical development or investment, share markets or sources of supply or impose supplementary obligations are listed as specific examples of agreements which would fall within the prohibition.[80] Block exemptions for horizontal agreements are available from the Minister on recommendation of the CCS,[81] if the agreements: (a) improve "production or distribution", or promote "technical or economic

76. *See supra* note 1.

77. Cl. 41 (U.K.).

78. *See* Ministry of Trade and Industry, Republic of Singapore, Competition Bill Consultation Paper (May 2004), at 2, *available at* http://app.mti.gov.sg/data/pages/367/doc/frm_LEG_Competition_Consultation_Paper.pdf (last visited Aug. 20, 2012).

79. Competition Act, *supra* note 1, § 2(1).

80. *Id.* § 34.

81. *Id.* § 36.

progress", and (b) do not impose "restrictions which are not indispensable to the… objectives" or which do not "afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the [relevant] goods or services".[82] Abuse of a dominant position is prohibited in Singapore markets.[83] Parties may hold the dominant position in Singapore or elsewhere.[84] Examples of abuse listed are "predatory behaviour towards competitors"; "limiting production, markets or technical development to the prejudice of consumers"; applying dissimilar conditions to similar customers and disadvantaging them; or making contracts subject to unnecessary supplementary obligations.[85] The list is not, however, exhaustive.

Mergers and acquisitions are prohibited if they result in a "substantial lessening of competition" in a market for goods or services in Singapore.[86]

There are a number of significant limitations on the application of the Act, some general and others which apply, or are more likely to apply, to government entities than to private entities. In addition, there are some exemptions which potentially apply across the board. These are all considered below.

A. Government and Statutory Boards Exempt

The major exemption relevant to this article is contained in s33 (4) of the Act. Conduct of "the Government" or a statutory board (" [bodies] corporate established… under any written law")[87] or persons acting on their behalf, are prima facie exempt.[88] This means that entities noted previously as "traditional government": government departments and other state organs, are not

82. *Id.* § 41.This provision is virtually identical to the *UK Competition Act*, *supra* note 77, § 9.

83. Competition Act, *id.* § 47.

84. This provision is very similar to UK Competition Act, *supra* note 77, § 18, except that the latter does not mention "predatory behavior" (Competition Act, *id.* § 47(2)(a)) but talks of imposing unfair prices or trading conditions.

85. Competition Act, *id.* § 47(2).

86. *Id.* § 54(1).

87. *Id.* § 33(6).

88. *Id.* § 33(4). The Minister may, however, prescribe particular activities, agreements or conduct of a statutory body by order in the Gazette and the Act will apply to it: *id.* § 33(5). The Second Reading Speech to the Competition Bill stated in this respect at 3: "... as the intent of the competition law is to regulate the conduct of market players, it will not apply to the Government, statutory bodies or any person acting on their behalf."

caught by the Act. The extent to which bodies are "the Government" is not entirely clear but the wording suggests that the activities of the Government as a Government are exempt. The position is clearer in relation to many corporatized bodies. GLCs are caught if they are carrying on business because they are 'undertakings' and are not considered part of the Government. The exemption for statutory boards has some interesting consequences which are discussed below.

B. Specified Activities[89]

The Third Schedule also provides that ss. 34 and 47 do not apply to "specified activit[ies]", which are listed[90] as follows: the supply of ordinary letter and postcard services under the *Postal Services Act*;[91] supply of water and wastewater management services; supply of scheduled bus services under the *Public Transport Council Act*;[92] supply of rail services under the *Rapid Transit Systems Act*;[93] and cargo terminal operations under the *Maritime and Port Authority of Singapore Act*.[94] The first two categories might be described as traditional activities of government. Special provisions in relation to them in competition laws are not unusual. Supply of bus and rail services and cargo terminal operations would, however, be contestable activities in many jurisdictions and competition laws would often apply to them as a matter of fact.[95]

C. Relationship with Sector Regulators

Section 33(2) deals with the relationship between the Competition Act and other industry specific regulation. In itself the provision gives neither the CCS nor competing regulatory authority precedence, such that they theoretically operate in parallel. This means that at best there is a potential splintering of regulation between the two authorities, and at worst a situation where

89. *Id.* Third Schedule, § 6.

90. *Id.* Third Schedule, § 6(2).

91. Cap. 237A, 2000 Rev. Ed. (Sing.).

92. Cap. 259B, 2000 Rev. Ed. (Sing.).

93. Cap. 263A, 2004 Rev. Ed. (Sing.).

94. Cap. 170A, 1997 Rev. Ed. (Sing.).

95. *See*, for example, bus in United Kingdom; rail in Hong Kong; cargo terminals in Australia.

the specific regulator is given precedence in circumstances where the CCS may have broader power, or an inconsistent power. The Minister, however, may make regulations to co-ordinate the exercise of the powers of the two conflicting authorities; to provide procedures for specified cases or categories and to designate whether one authority should exercise power[96] either concurrently or conjunctively.[97] The Third Schedule at s. 5 also states that, in respect of anti-competitive agreements and abuse of dominance, where there is any other written law or code of practice issued under it relating to competition giving a sector regulator jurisdiction in the matter, the sector regulator shall prevail.

Various sectors of the Singapore economy which had traditionally been monopolised by state- owned enterprises were liberalised starting in 2000, and these developments were supported by sectoral competition codes administered by sectoral regulators.[98] Both the *Electricity Act*[99] and the *Gas Act*[100], for example, contain competition provisions so these would override the Act itself. Part VII of the *Electricity Act* and Part IX of the *Gas Act* prohibit agreements which have as their object or effect the prevention, restriction or distortion of competition in the market in Singapore. Specified practices include price fixing, limiting or controlling electricity generation or gas production, technical developments or investment in the respective industries, the sharing of markets or sources of supply of electricity or gas; and the direct or indirect acquisition of shares in or the assets of an electricity licensee or gas licensee. The Electricity Market Authority may, with the approval of the Minister of Trade and Industry grant exemptions from these provisions although this has not been done to date. Large financial penalties exist for breach of these provisions. [101]

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96. Competition Act, *supra* note 1, § 33(3). *See* however Competition Act, *id.* Third Schedule, § 5. *See also* Cavinder Bull, Lim Chong Kin & Richard Whish, *Competition Law and Policy in Singapore* 107 (Academy Publishing 2009).

97. Competition Act, *id.* § 33(3).

98. Burton Ong, *The Origins, Objectives and Structure of Competition Law in Singapore*, 29(2) World Competition 269, 271-72 (2006) (Neth.).

99. Cap. 89A, 2002 Rev. Ed. (Sing.).

100. Cap. 116A, 2002 Rev. Ed. (Sing.).

101. Steps have been taken to diversify the electricity market, including divesting of various electricity suppliers by the government and the development of a national electricity market: WTO Report, *supra* note 61, at 77-78.

D. Other Exemptions

There are also a number of general exemptions from the provisions of the Act. Several of these are targeted at conduct which usually falls within the government's domain. Sections 35 and 48 exempt certain agreements specified in the Third Schedule from the prohibitions on horizontal conduct and abuse of dominance which would otherwise apply under ss. 34 and 47. Some of these have already been discussed above. These exemptions are for "[s]ervices of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking".[102] This provision is similar to the *UK Competition Act* and existing EU provisions. This provision often applies to government bodies because of the general nature of their duties and obligations, but it also applies to private market participants performing functions of this kind.

E. Agreements with Net Economic Benefit[103]

Agreements which contribute to improving production or distribution, or promoting technical or economic progress, and which do not impose restrictions which are not indispensable to the attainment of the objectives or allow the undertakings the opportunity to eliminate competition in respect of a substantial part of the goods or services concerned are not subject to s. 34. This exemption is similar to the *UK Competition Act* provisions.

F. Vertical Agreements[104]

All vertical agreements are exempted from s. 34 prohibitions unless specified by the Minister. This is said to be justified by the small size of the Singapore economy. It is also supported by changes in economic thinking which place less focus on vertical restrictions as anti-competitive conduct. Vertical restrictions agreed to or imposed by an entity with significant market power, however, can still be caught under s. 47 (abuse of dominant position) such

102. Competition Act, *supra* note 1, Third Schedule, §1.

103. *Id.* Third Schedule, § 9.

104. *Id.* Third Schedule, § 8.

that the most damaging conduct is subject to the Act.[105]

G. Excluded Mergers[106]

Laws regarding mergers do not apply to any merger approved under a written law or a code of practice issued under any written law relating to competition. It also does not apply to any entity listed in s. 6(2) of the Third Schedule, noted above under "Specified Activities".[107]

H. Compliance with Written Legal Requirements[108]

A "legal requirement" is defined as one imposed by any written law.[109] This appears to be a reasonable exemption except that bodies set up under specific laws are likely to have significant written legal requirements imposed on them so there may be a need to check, as the CCS says that it does, that anti-competitive requirements are not enshrined in legislation to by-pass the *Competition Act*.

I. Compliance with International Obligations[110]

This exemption seems sensible; however, it is not a common exemption so it would be interesting to know what motivated it – why Singapore sees a need for a general exemption when other countries do not. "An international arrangement relating to civil aviation and designated by an order made by the Minister is to be treated as an international obligation for the purposes of this [provision]."[111] This power to designate with respect to international aviation may arise because of the express aim of Singapore to be a world airline hub. It may also be directed at the conduct of Singapore Airlines, a 51% owned GLC. This goes some way to shielding arrangements it might enter from the

105. As to this, *see* the SISTIC case, *infra* note 124, discussed below as an example.

106. Competition Act, *supra* note 1, Fourth Schedule, §§ 1-2.

107. *See supra* Part VII(B).

108. *Id.* Third Schedule, § 2.

109. *Id.* Third Schedule, § 2(3).

110. *Id.* Third Schedule, § 3.

111. *Id.* Third Schedule, § 3(6).

glare of competition law, should the Minister choose to gazette any particular conduct.

J. Public Policy [112]

The Minister may by order exclude a particular agreement or any agreement or conduct of a particular description, or in particular circumstances, from the application of the provisions on horizontal arrangements or the abuse of dominance if there are "exceptional and compelling reasons of public policy" why it should not apply.[113] This is a very broad power to exempt from key prohibitions of the Act. In effect this gives the Minister carte blanche to override the application of the Act. No guidance has been given as to what these reasons might be. "Public policy" is a very broad term. "Exceptional" suggests that there is an intention that the power will not be exercised often.[114] If it is exercised very sparingly and in well-justified circumstances, it will not significantly impact the outcomes of the Competition Act, but concerns about the basis for its application remain.

K. Clearing Houses[115]

Sections 34 and 47 of the Act do not apply to agreements or conduct which relate to "clearing and exchange of articles undertaken by the Automated Clearing House established under the *Banking (Clearing House) Regulations*[116]" or "any activity of the Singapore Clearing Houses Association in relation to its activities regarding the Automated Clearing House."

Ⅶ. Enforcement of the Act by the CCS

The CCS is established under the Act as a separate legal identity.[117] It con-

112. *Id.* Third Schedule, § 4.

113. *Id.* Third Schedule, § 4(1).

114. The power to make orders is broad - they may be retrospective: *id.* Third Schedule, § 4(5).

115. *Id.* Third Schedule, § 7.

116. Cap. 19, R. 1, 2008 Rev. Ed. (Sing.).

117. Competition Act, *supra* note 1, § 3.

sists of a Chairman and between two to 16 members appointed by the Minister for a three to five year term.[118] The functions and duties of the CCS, put simply, are to promote "efficient market conduct", "overall productivity, innovation and competitiveness" in Singapore markets; eliminate anti-competitive practices; and to advise the Government and public authorities on "national needs and policies" on competition.[119] At all times the CCS must take account of Singapore markets and "the economic, industrial and commercial needs" of the country.[120]

There are a number of issues raised by the express duties of the CCS and also by its supervision by the Minister for Trade and Industry. The focus on the economic, industrial and commercial needs of the country appears to override usual assumptions that competition is the best regulator of the market. The fact that the Minister is currently the Minister for Trade and Industry also has potential for a conflict of objectives by the CCS. Another key issue in relation to the CCS has been the general feeling that it would be unlikely to "take on" the government over competition law issues, particularly given the prominence of the government and its entities in the local economy. The SISTIC case, one of the few competition cases taken to date, is thus important given that the parties involved were government entities.

A. Abuse of Dominance in Ticketing by a GLC

The SISTIC case is one of the few cases which has been determined and appealed to date under the Singapore Competition Act. It is particularly relevant to this paper for a number of reasons. It illustrates the fact that the CCS is prepared to take action against a GLC. The decision clearly discusses the application of the exemption contained in s. 33(4) for aspects of government conduct. It also illustrates an important issue in relation to government involvement in business activities – the power of a market incumbent and the creation of barriers to entry by strategic behaviour. Finally, an analysis of the parties involved, their roles and business relationships underscore the substantial involvement of government entities in the Singapore market.

On 15 December 2009 the CCS issued an infringement decision against

118. *Id.* § 5; First Schedule, §§ 1, 3.

119. *Id.* § 6(1).

120. *Id.* § 6(2).

SISTIC.com Pte Ltd ("SISTIC") for abuse of dominance under s. 47 of the *Competition Act* in relation to its exclusive agreements for ticketing services with venues. These included agreements between SISTIC and The Esplanade Co Ltd ("TECL"), and SISTIC and the Singapore Sports Council ("SSC") for the venue it owned, the Singapore Indoor Stadium ("SIS"). Each of these agreements required the venue owner to use SISTIC as the sole ticketing provider at its venues. There were 17 other similar agreements of which the complaint was made against but the identities of those other parties were surprisingly undisclosed.

B. The Parties

SISTIC was a ticketing services provider, providing ticketing services to event promoters and selling tickets to consumers with a 90% market share in the ticketing services market in Singapore, of which 60-70% related to the exclusive agreements. It was set up in 1991 as a department under the SSC to provide ticketing services. It was corporatized in 2000. At the time of the hearing before the CCS, SISTIC was owned 65% by the SSC and 35% by TECL. SISTIC was also a ticketing solutions supplier in Singapore and overseas. TECL managed several of the most important arts venues, and was a public company limited by guarantee set up as a charitable organisation and had 'Institute of Public Charter' status, meaning that it had a not-for-profit status. TECL operated on a cost recovery basis and relied on non-operating income such as grants and sponsorships for a proportion of its expenditure. 30% of events at The Esplanade venue were organized by TECL itself as event organizer. SSC was a statutory board under the oversight of the Ministry of Community Development, Youth and Sports ("MCYS") staffed by SSC officers. The Chairman of the SSC held a concurrent appointment as the Chairman of SISTIC, and another council member of the SSC was also concurrently a director of SISTIC. SIS promoted 10% of events held in it.

C. The Agreements in Question

SISTIC charged event organizers, venue operators and consumers for the provision of its services. The exclusive ticketing agreements which were the subject of these proceedings were for three or four years terminable on six months' notice, but with automatic renewal. There was also an "exclusive

use of ticketing system agreement" between SISTIC and TECL. The other 17 agreements were similar. In each agreement SISTIC offered some form of discount for exclusivity.

D. Exclusion for Government or Statutory Bodies

As previously noted in this paper, s. 33(4) of the *Competition Act* provides that the conduct of the Government or a statutory body, or a person acting on behalf of the Government or a statutory body, is excluded from the application of the Act. The nature of the bodies involved in this complaint required a thorough consideration of the application of the Act to each of them.

With respect to the first agreement, the parties were TECL and SISTIC, both corporatized government bodies. TECL was owned by the Ministry of Information Communications and the Arts ("MICA"), and SISTIC was owned by the SSC and the MICA via TECL. Neither TECL nor SISTIC was part of the Government nor were they individually a statutory body. The contractual terms were commercial. There was no suggestion that either TECL or SISTIC was acting on behalf of the Government or a statutory body. The CCS was satisfied that the s. 33(4) exclusion did not apply to SISTIC. With respect to the second agreement between SISTIC and SIS, SISTIC was a corporate entity and SIS a division under the SSC, which was in turn a body set up under s. 3 of the *Singapore Sports Council Act*[121]. This meant that SIS was part of a statutory body within s. 34(4)(b). SIS itself was therefore not caught by the Act. Since the CCS was investigating the abuse of dominance, *i.e.* the unilateral conduct of SISTIC and its imposition of terms on others, CCS found that the exclusion did not affect SISTIC's conduct.[122]

E. "Single Economic Entity" Doctrine

Arguments were made that some of the interlinked parties formed part of a single economic entity and that arrangements between them were thus not subject to the Competition Act. Looking at the first agreement, SISTIC was 65% owned by the SSC and 35% owned by TEFL. The question then was

121. Cap. 305, 1985 Rev. Ed. (Sing.).

122. If there had been an allegation of an anti-competitive agreement between the CCS and SISTIC the position may well have been different.

whether SISTIC and TECL, and SISTIC and SIS formed a single economic entity for the purposes of Competition Act. The CCS Guidelines stated that two entities form a single economic entity if the subsidiary has "no real freedom to determine its course of action… and, although having a separate legal personality, enjoys no economic independence."[123] The answer to this question will depend on the facts and circumstances of each case. The CCS considered issues such as shareholding structure, power of directors, the intention behind the provision and the intentions of the companies themselves. SISTIC's board of seven directors included two nominated by the SSC, including its Chairman, and one nominated by TECL. The other four directors were independent. The CCS concluded that the SSC had been dealing with SISTIC at arm's length, and that the two were not a single economic entity. It also reached the same conclusion in relation to SISTIC and TECL.

F. Decision on Competition Issues

The CCS found that the ticketing agreements harmed competition by restricting the promoters' choice of ticketing services providers to perpetuate SISTIC's dominant position. This allowed SISTIC to charge higher prices for tickets increasing its booking fees by 50% despite a downturn, and enabled it to offer incentives to attract and retain venue operators and event promoters as clients under its system of exclusive agreements.

The relevant market was said to be the market for the provision of open ticketing services in Singapore to promoters and ticket buyers. It was a two-sided market as there were two distinct groups of customers. Indirect network effects existed between the two groups of customers, involving the need for a matching service provider. SISTIC was dominant for a number of reasons, including the fact that its market share was around 90% throughout the relevant period. SISTIC created an artificial network effect by way of the exclusive agreements and perpetuated this through its website, outlets and customer database. It was not constrained by countervailing buyer power. Its fee increase of 50% demonstrated its ability to profitably sustain a price above competitive levels. It abused this power by unilaterally imposing its

123. *See Singapore,* CCS Guidelines on the Section 34 *Prohibition* at para. 2.7, *available at* http://app.ccs.gov.sg/cms/user_documents/main/pdf/S34_Jul07FINAL.pdf (last visited Aug. 20, 2012). *See generally* the CCS's guidelines, *available at* http://app.ccs.gov.sg/CCS_Guidelines_.aspx (last visited Aug. 20, 2012).

exclusivity restrictions on contractual partners and inducing them through individualized discounts and incentives. This prevented competitors from gaining a foothold progressively in the market by picking up residual demand. The ticketing agreements were part of its holistic strategy of concurrent foreclosures, recoupment and perpetuation of dominance.

The SISTIC decision was appealed, and SISTIC argued that it was not dominant in the market and had to maintain its relationships with venue operators because they could give ticketing contracts to its rivals or choose to do ticketing in-house. SISTIC also appealed the fine of S$989,000.[124]

G. Appeal

On appeal, SISTIC argued that its market position hinged on two large contracts with major venue operators, SIS and TECL. Loss of these contracts would mean loss of substantial market share. There was said to be a credible threat of venue operators switching to another ticketing service (including their own) and this was said to be a serious competitive constraint on SISTIC's ability to price above competitive levels, restrict output or quality. The Competition Board agreed with CCS that SISTIC's persistently high market share was indicative of its dominance, and that SISTIC had the ability to sustain prices above competitive levels. The Board accepted CCS' submission that:

Even though TECL, SSC and SISTIC are separate entities and deal with each other at arm's length in that there is no management control of SISTIC by either TECL or SSC, this does not mean that in evaluating the commercial merits of a contract with SISTIC, TECL and SSC do not take their own financial stake with SISTIC into account.[125]

The Board agreed with CCS conclusions that the event promoters had no countervailing buyer power against SISTIC and confirmed that the ticketing agreements were a barrier to market entry. For these and other reasons the CCS view that SISTIC had a dominant position was confirmed. In considering the legal test to be applied when considering abuse of a dominant position, the Board agreed with the CCS that decisions of the EU/UK courts were

124. Jessica Lim, *Sistic Challenges Fine for Abusing Market Dominance*, The Straits Times (Sing.), Sept. 27, 2011, at A1.

125. *Id.* at 239.

highly persuasive, deciding that it is sufficient to establish that the conduct of the dominant entity tends to restrict competition, or is capable of having or likely to have that effect. Once this is established, the dominant undertaking has the burden of establishing an objective justification for the conduct. Ultimately, the Board confirmed the CCS determination finding that CCS had established that the ticketing agreements were exclusionary in nature, had led to substantial detrimental effects on competition in the market and did not have any net economic benefit. The penalty was, however, reduced from $989,000 to $769,000 as the Board discounted the aggravating factors relied on by the CCS and decided that co-operation had not been taken into account as a mitigating factor.

Ⅷ. Conclusions on Coverage of Government Bodies in Singapore

The SISTIC case illustrates a number of competition issues raised in this paper, and arguably answers two of the questions posed at the outset. The decisions contain careful analysis of the application of the Competition Act to a number of government entities. The Act was rightly found to apply to SISTIC. As to whether the Competition Act appropriately deals with government activities in Singapore, arguably it does not where statutory boards are concerned. In the SISTIC case, SSC was a statutory board and expressly exempted from the Act under s. 33(4)(b). Focusing in particular on SSC, its activities relate mainly to the development of sports in Singapore, which is a broad remit but unlikely to lead to business activity in many of its manifestations. But what if the SSC were to agree with venue operators such as TEFL and others to fix a minimum “floor” price for sale of consumer tickets to, say rock concerts, which could be held at SIS and the TEFL venues, to avoid competition? Is it appropriate that the SSC could be a cartel participant but not be subject to the Competition Act? Is this fair to other private commercial entities involved in the entertainment and ticketing industries? Does this assist the Competition Act to create the level playing field for government and private business envisaged when the Act was adopted? Surely the broad-brush approach to exemption for statutory boards is too sweeping?

This author submits that application of the Competition Act should be

based on what the particular government entity or statutory board concerned is actually doing when it engages in anti-competitive conduct, not on general assumptions about its overarching nature and its purpose based on its identity. Without s33(4)(b) this would be the case. Exclusion of government bodies based on such assumptions can lead to significant anti-competitive impact, as is illustrated by the *NT Power* case in Australia, which was discussed previously.[126] In that case, PAWA was a statutory authority, constituted in a manner similar to a statutory board in Singapore. As was shown there, statutory boards from time to time engage in conduct which is very anti-competitive, particularly when they migrate from being core regulators to managing essential or other facilities which become open to access on a commercial basis following industry restructuring.

In Singapore the line between action of a statutory board as an arm of the government and as an industry participant is further blurred because, asit has been demonstrated, many statutory boards engage in commercial behaviour and/or are linked to a large number of commercial subsidiaries. If the bottom line is that commercial subsidiaries are caught by the Act while their statutory board holding companies are not, careful judgments need to be made about the roles and relationships between them lest anti-competitive conduct escapes the ambit of the Act.

A brief review of data about JTC Corp, for example, suggests that it may engage in substantial business activities in pursuing its mandate of industrial development in Singapore. While its main focus is tenders for construction, it appears to routinely provide engineering services and industrial design functions to third parties, which would be contestable in many other markets. A more detailed analysis of statutory boards, perhaps on the basis of the principles enunciated by the Entrepreneurship Subcommittee,[127] is required to assess what the impact of commercial activity by statutory bodies on the market might be. Based on the information set out above, it would not be surprising if there were significant commercial activities attributable to any number of them. Given their important role as gatekeepers to a number of commercial subsidiaries, it can be argued that their omission from coverage under the Competition Act creates potential for significant market distortion.

The SISTIC case also provides an illustration of the way the activities of

126. NT Power, *supra* note 23.

127. *Supra* note 31 and previously noted.

statutory boards and GLCs are intertwined in Singapore and the impact those connections might have on competitive conduct. In the live entertainment industry, for example, there is almost blanket coverage of government-linked bodies, from venue operator to event organizer to ticketing service provider to ticketing infrastructure provider to the ticket buying public. The finding in the SISTIC case, for example, that the ownership relationships between government entities impacted on their commercial behaviour is particularly telling in this context. It is not difficult to see how critics gain the impression that government entities dominate the sector in Singapore. Further investigation indicates that there is the well-documented propensity for government involvement throughout all levels of a number of significant industries. The SISTIC example above is just one such case. The Government's substantial holdings through Temasek in and around the aviation industry are another. From 51% of Singapore Airlines (and a golden share for the Ministry of Finance) to Singapore Airlines Cargo, to 100% of regional player Silk Air, to its stake in Tiger Airways (49% Singapore Airlines, 11% Temasek), to 90% of SIA Engineering. In June 2011 SIA Engineering Company ("SIAEC") announced that it had signed a '3+2'-year agreement with Singapore Airlines Cargo to provide comprehensive services in a move which would add S$358m revenue to its order books. This was said to be the renewal of a long-term agreement. (SIAEC emphasized, however, its client base of 80 international carriers and aerospace equipment manufacturers and stated that 89% of its revenues were derived from outside the Singapore Airlines Group).[128] Temasek also owns 100% of New Aviation; and Singapore Airlines, 100% of the Singapore Flying College. In August 2011, Singapore Airlines announced that it would be starting a new budget airline called "Scoot". The intricacies of government involvement in telecommunications with SingTel, "Asia's largest telecommunications group" which has interests in fixed, mobile, data, internet, info-communications, technology, satellite and pay TV, as well as high fibre services with distinctive applications focussing on entertainment, convergence and productivity enhancement for home and business is outside the scope of consideration here but is another example of government involvement throughout a particular sector. While activities in air

128. *See* Press Release, SIA Engineering Company, SIA Engineering Company Signs $358 million Services Agreement with SIA Cargo (June 28, 2011), http://www.siaec.com.sg/press_release/2011/28Jun2011.pdf.

transport and communications are more likely to fulfil the Entrepreneurship Subcommittee categories of legitimate strategic objectives for GLCs, it is doubtful whether all aspects of GLC involvement in those sectors would do so. Less compelling arguments can be made for the entertainment industry.

Although general competition policy issues can only be briefly discussed here, it has been suggested that the presence, scale, and scope of GLCs in the Singapore domestic economy raises the issue of "whether many markets are contestable".[129] Certainly, given the ubiquitous nature of GLCs in some domestic industries it is likely that high entry barriers exist and oligopolistic behaviour may be facilitated by the market structure, as suggested by Williams.[130] It is likely that both structural and strategic barriers to entry exist in some industries.[131] Structural barriers to entry are basic industry conditions such as cost and demand which influence economies of scale and network effect. Strategic barriers are those which are intentionally created or enhanced by the incumbent firm for the purpose of deterring entry such as exclusive dealing arrangements.[132]A small window into the web-like relationships and dealings between the Singapore statutory boards and GLCs was opened in the SISTIC case and to the credit of the regulator, the offending parties were taken to task and ultimately punished. Whether this will occur in other cases is yet to be seen.

At the outset, the question of whether the CCS was equipped and likely to take action against the Singapore Government and its entities for breaches of the Competition Act was posed. The SISTIC case answers the question in the affirmative. The SISTIC case was the first case relating to the abuse of dominance in Singapore, and the first appeal from a CCS decision. Despite fears expressed about the prospect of CCS taking action against GLCs in the context of its placement within the Ministry of Trade and Industry, along with a number of GLCs,[133] action was taken, albeit in response to a complaint from an event organizer. Fines were imposed, although their level raises questions about their potential deterrent impact on a large commercial entity. Whether

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129. *See* Williams, *supra* note 32, at 532.

130. *Id.*

131. Such as, for example, Broadcasting and Telecommunications.

132. However, in some situations exclusive dealing arrangements may be efficiency enhancing. *See* OECD, Policy Brief (2007), *Competition and Barriers to Entry, available at* http://www.oecd.org/dataoecd/9/59/37921908.pdf (last visited Aug. 20, 2012).

133. Williams, *supra* note 31, at 532.

the CCS will initiate action against a GLC absent a complaint by a third party is still to be determined. It also remains to be seen whether this case was a one-off event or the start of a general trend of even-handed enforcement of the Competition Act against government and private business entities in the jurisdiction. As an initial example, however, the case was a triumph for CCS and provides a very positive indication that government liability under the Competition Act is not illusory.

Finally in response to the question of whether the Competition Act can address all competition concerns which might be raised about government and markets in Singapore, it is clear that the Competition Act itself cannot address issues relating to structural barriers or other competition issues in the absence of overt breaches of the Competition Act. If the other competition issues raised in this article are to be dealt with, it must be done in the context of a broader review of competition policy in the jurisdiction.

References

Books

Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* (The Free Press 1978).

Cavinder Bull, Lim Chong Kin & Richard Whish, *Competition Law and Policy in Singapore* 107 (Academy Publishing 2009).

Keith N. Hylton, *Antitrust Law: Economic Theory and Common Law Evolution* 347-64 (Cambridge University Press 2003).

Alison Jones & Brenda Sufrin, *EC Competition Law: Text, Cases, and Materials* (4th ed., Oxford University Press 2011).

Richard Whish, *Competition Law* (6th ed., Oxford University Press 2009).

Articles

David Seth Jones, *Financial Reforms of Statutory Bodies in Singapore: Control and Autonomy in a Centralized State*, 6 Public Organization Review 259 (2006).

Ho Khai Leong, *Corporate Governance Reform and the Management of GLCs: Pressures, Problems, and Paradoxes*, in Ho Khai Leong, *Reforming Corporate Governance in Southeast Asia: Economics, Politics, and Regulations* 269, 276 (Ho Khai Leong ed., Institute of Southeast Asian Studies 2005) (Sing.).

Burton Ong, *The Origins, Objectives and Structure of Competition Law in Singapore*, 29(2) World Competition 269, 271-72 (2006) (Neth.).

Garry Rodan, *Do Markets Need Transparency? The Pivotal Cases of Singapore and Malaysia*, 7 New Political Economy 23, 28 (2002).

Ian Thynne, *Statutory Boards: How Distinctive and In What Ways?*, 6 Public Organization Review 171 (2006).

Mark Williams, *The Lion City and the Fragrant Harbor: The Political Economy of Competition Policy in Singapore and Hong Kong Compared*, 54 Antitrust Bulletin 517 (2009).

Reports

Agency for Science, Technology and Research, *available at* http://www.a-star.edu.sg/Industry/CollaboratioOpportunities/tabid/224/Default.aspx (last visited Aug. 20, 2012).

Antitrust Modernization Commission, Report (April 2007), *available at* http://govinfo.library.unt.edu/amc/report_recommendation/amc_final_report.pdf (last visited Aug. 20, 2012).

Antonio Capobianco & Hans Christiansen, *Competitive Neutrality and State-Owned Enterprises: Challenges and Policy Options*, OECD Corporate Governance Working Papers No. 1 (OECD Publishing 2011), *available at*

http://www.oecd.org/dataoecd/29/43/46452890.pdf (last visited Aug. 20, 2012).

Sir Daryl Dawson, Curt Rendall & Jillian Segal, Trade Practices Review Committee, *Review of the Competition Provisions of the Trade Practices Act* 1 (Canprint Communications 2003).

Economic Review Committee, Ministry of Trade and Industry, Republic of Singapore, *New Challenges, Fresh Goals – Towards a Dynamic Global City* (February 2003), *available at* http://www.mti.gov.sg/ResearchRoom/Documents/app.mti.gov.sg/data/pages/507/doc/1%20ERC_Main_Committee.pdf (last visited Aug. 20, 2012).

Economic Review Committee, Ministry of Trade and Industry, Republic of Singapore, Report of the Entrepreneurship and Internationalisation Subcommittee (September 2002), *available at* http://www.mti.gov.sg/ResearchRoom/Documents/app.mti.gov.sg/data/pages/507/doc/6%20ERC_EISC.pdf (last visited Aug. 20, 2012).

Government of Singapore Investment Corporation Pte Ltd., Report on the Management of the Government's Portfolio for the Year 2010/11, *available at* http://www.gic.com.sg/data/pdf/GIC_Report_2011.pdf/ (last visited Aug. 20, 2012).

Frederick G. Hilmer et al., National Competition Policy 293 (Australian Government Publishing Service 1993), *available at* http://ncp.ncc.gov.au/docs/National%20Competition%20Policy%20Review%20report%2C%20The%20Hilmer%20Report%2C%20August%201993.pdf (last visited Aug. 20, 2012).

International Competition Network, Member Directory, *available at* http://www.internationalcompetitionnetwork.org/members/member-directory.aspx (last visited Aug. 12, 2012).

JTC, *available at* http://www.jtc.gov.sg/Pages/Default.aspx (last visited Aug. 20, 2012).

R. Shyam Khemani, *Application of Competition Law: Exemptions and Exceptions*, United Nations Conference on Trade and Development, U.N. Doc. UNCTAD/DITC/CLP/Misc.25 (2002).

Ministry of Trade and Industry, Republic of Singapore, Competition Bill Consultation Paper (May 2004), at 2, *available at* http://www.mti.gov.sg/legislation/Documents/app.mti.gov.sg/data/pages/367/doc/frm_LEG_Competition_Submission_ssa_bmla.pdf (last visited Aug. 20, 2012).

OECD, Annual Report (2007), *available at* http://www.oecd.org/dataoecd/1/53/38484866.pdf (last visited Aug. 12, 2012).

OECD, Policy Brief (2007), *Competition and Barriers to Entry, available at* http://www.oecd.org/dataoecd/9/59/37921908.pdf (last visited Aug. 20, 2012).

OECD, 1 Competition Assessment Toolkit Version 2.0 (2011), at 36, *available at* http://www.oecd.org/document/48/0,3746,en_2649_37463_424545

76_1_1_1_37463,00.html (last visited Aug. 20, 2012).

Singapore: A Country Study, in Statutory Boards (Barbara Leitch Lepoer ed., Washington: GPO For the Library of Congress 1989), *available at* http://countrystudies.us/singapore (last visited Aug. 20, 2012).

Singapore Government Directory, *available at* http://www.sgdi.gov.sg (last visited Aug. 20, 2012).

Singapore Sports Council, Annual Report (2008/2009), *available at* http://www.ssc.gov.sg/publish/Corporate/en/about/financial_information/annual_report_05_060.html (last visited Aug. 20, 2012).

Temasek Int'l Ltd., Temasek Review (2011), *available at* http://www.temasekreview.com.sg/downloads/full_temasek_review_2011.pdf (last visited Aug. 20, 2012).

United Nations Conference on Trade and Development, Directory of Competition Authorities, U.N. Doc. TD/B/COM.2/CLP/56 (2007), *available a*t http://www.unctad.org/en/docs/c2clpd56_en.pdf (last visited Aug. 20, 2012).

Marn-Heong Wong, Rakhi Shankar & Ruby Toh, Lee Kuan Yew School of Public Policy, Asia Competitiveness Institute, ASEAN Competitiveness Report 2010 (Asia Competitiveness Institute 2011), *available at* http://www.spp.nus.edu.sg/docs/ASEAN_Competitiveness_Report_2010.pdf (last visited Aug. 20, 2012).

WTO Secretariat Report, Trade Policy Review: Singapore, WT/TPR/S/202/Rev.1 (June 5, 2012), at 21, *available at* http://www.wto.org/english/thewto_e/countries_e/singapore_e.htm (last visited Aug. 20, 2012).

Newspaper Articles

Jessica Lim, *Sistic Challenges Fine for Abusing Market Dominance*, The Straits Times (Sing.), Sept. 27, 2011, at A1.

Press Releases

Press Release, SIA Engineering Company, SIA Engineering Company Signs $358 million Services Agreement with SIA Cargo (June 28, 2011), http://www.siaec.com.sg/press_release/2011/28Jun2011.pdf.

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