

Article Name: Second Reading Speech by Mr Lim Hng Kiang on the Competition (Amendment) Bill 2005
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**COMPETITION (AMENDMENT) BILL 2005
SECOND READING SPEECH BY MR LIM HNG KIANG,
MINISTER FOR TRADE AND INDUSTRY**

Mr Speaker, Sir, I beg to move, "That the Bill be now read a Second time."

Objective

2. Sir, the Competition Act ('the Act') was passed by this House on 19 October 2004. We are implementing the Act in phases. Under Phase One, the Competition Commission of Singapore or CCS was set up on 1st January this year. During the course of this year, CCS has been preparing for the implementation of sections 34 and 47 of the Act which will come into effect on 1st January 2006. These two sections respectively prohibit anti-competitive agreements and the abuse of a dominant position. The provisions on investigation, enforcement and appeal will also come into effect on 1st January next year. The CCS has issued ten guidelines for public consultation, which will be finalised by December this year.

3. During the course of preparation for implementation of the Act, it was found that the Act had to be amended to enable CCS to carry out its enforcement duties effectively. Let me now explain the proposed amendments.

Section 64 – Preservation of Documents

4. Clause 2 of the Bill amends section 64 of the Act to allow CCS officers to take any necessary steps to preserve evidence when entering premises without a warrant. This means that CCS officers conducting a search of premises will be allowed to secure the premises or a part of it, to prevent any persons from tampering with or destroying the evidence. This will happen only when a search cannot be finished within a day. The CCS will of course, be mindful of the need to minimise disruption to business operations.

Section 66 – Self-Incrimination and Legal Professional Privilege

5. Clause 3 of the Bill will rationalise the law relating to the privilege against self-incrimination and legal professional privilege. Clause 3 repeals section 66 of the Act and replaces it with a more comprehensive formulation based on section 153 of the Securities and Futures Act. This new section 66 will be aligned with our common law and other legislation such as the Media Development Authority of Singapore Act and the Gas Act.

6. Under the present section 66, persons are not permitted to disclose self-incriminating information or documents to CCS. This will hamper CCS investigation work as undertakings will not be able to co-operate with CCS by disclosing self-incriminating information or admit to an infringement, even if they are willing and able to do so. For example, a person may wish to disclose his own involvement in an anti-competitive activity when he is seeking leniency from CCS. However, he will not be able to do so under the present section 66 of the Act.

7. The new section 66 will facilitate CCS investigation work, by providing that a person cannot refuse to disclose information on the grounds of self-incrimination. The amendment rationalises the position under the Act with the common law and other legislation in Singapore. There is no privilege against self-incrimination in civil proceedings.

8. The new section 66 also clarifies that the self-incriminating information can still be used as evidence against the person disclosing the information, in both civil proceedings and criminal prosecutions for ancillary offences under the Act, for example obstructing investigations or giving false information to the CCS. However, such self-incriminating information cannot be used as evidence to prove any other criminal offences, thereby protecting the rights of such persons. The new section 66 also provides that a professional legal adviser cannot be compelled to disclose a document that enjoys legal professional privilege. This is a privilege which belongs to the client and only he can waive it by making the disclosure himself or allowing his professional legal adviser to do so. A professional legal adviser includes in-house legal advisers and foreign legal advisers. The power to require the details of relevant persons will only be used where necessary to ascertain if the communications are indeed privileged. Litigation privilege, which protects from disclosure, documents produced in connection with a possible court case, continues to be protected under common law.

Section 71 - Granting a right of appeal to non-infringing undertakings that are subject to directions

9. Clause 4 of the Bill amends section 71 of the Act to give a right of appeal to parties who are not infringing undertakings, but who have been given a direction by CCS. As a matter of fairness, these parties whose rights may have been affected by a CCS direction, should be given a right of appeal.

Section 91A - Allowing CCS officers to act in appeals and court proceedings on behalf of the CCS

10. Finally, clause 5 of the Bill adds a new section 91A to empower CCS legal officers to act for the CCS in proceedings before the Competition Appeal Board and the courts. Similar provisions also exist for legal officers of other agencies such as Inland Revenue Authority of Singapore (IRAS), Monetary Authority of Singapore (MAS) and Intellectual Property Office of Singapore (IPOS). This is a practical amendment to enable CCS legal officers to carry out their duties.

Conclusion

11. Sir, the operative provisions of the Act will come into force on 1 January 2006. These amendments do not have any new policy positions for which public consultation are required. They are all practical changes that will enable CCS to carry out its investigative and enforcement functions efficiently and effectively. This in turn, will help CCS fulfil its mission of promoting healthy competitive markets that will benefit the Singapore economy.

12. Mr Speaker, Sir, I beg to move.