



THE STATUTES OF THE REPUBLIC OF SINGAPORE

COMPETITION ACT 2004

2020 REVISED EDITION

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Competition Act 2004

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An Act to make provision about competition and the abuse of a dominant position in the market; and to establish the Competition and Consumer Commission of Singapore, to provide for its functions and powers and for matters connected therewith.

[10/2018]

[1 January 2005: Parts I and II and the First and
Second Schedules;
1 September 2005: Part IV;
1 January 2006: Divisions 1, 2, 3 and 5 of Part III and
Parts V and VI and the Third Schedule]

PART 1
PRELIMINARY

Short title

1. This Act is the Competition Act 2004.

Interpretation

- 2.—(1) In this Act, unless the context otherwise requires —

“anticipated merger” means an arrangement that is in progress or contemplation and that, if carried into effect, will result in the occurrence of a merger referred to in section 54(2);

“block exemption” has the meaning given by section 36(5);

“block exemption order” has the meaning given by section 36(3);

“Board” means the Competition Appeal Board established under section 72;

“Chairperson” means the Chairperson of the Commission and includes any temporary Chairperson of the Commission;

“Chief Executive” means the Chief Executive of the Commission, and includes any individual acting in that capacity;

“Commission” means the Competition and Consumer Commission of Singapore established by section 3;

“Deputy Chairperson” means the Deputy Chairperson of the Commission and includes any temporary Deputy Chairperson of the Commission;

“document” includes information recorded in any form;

“goods” includes —

- (a) buildings and other structures;
- (b) ships, aircraft and hovercraft;
- (c) gas and electricity; and
- (d) choses in action;

- “information” includes estimates and forecasts;
- “inspector” means an inspector appointed by the Commission to conduct any investigation under section 62;
- “investigating officer” has the meaning given by section 64(1);
- “member” means a member of the Commission;
- “party involved in a merger” means a person or an undertaking specified in section 54(2) and includes the merged entity;
- “party to an anticipated merger” means a person or an undertaking which would be a person or an undertaking specified in section 54(2) if the anticipated merger were carried into effect;
- “person” includes any undertaking;
- “premises” does not include domestic premises unless —
- (a) they are used in connection with the affairs of an undertaking; or
 - (b) documents relating to the affairs of an undertaking are kept there,
- but includes any vehicle;
- “public interest consideration” means national or public security, defence and any other considerations that the Minister may, by order in the *Gazette*, prescribe;
- “section 34 prohibition” means the prohibition referred to in section 34(1);
- “section 47 prohibition” means the prohibition referred to in section 47(1);
- “section 54 prohibition” means the prohibition referred to in section 54(1);
- “service” means a service of any description whether industrial, trade, professional or otherwise;
- “undertaking” means any person, being an individual, a body corporate, an unincorporated body of persons or any other

entity, capable of carrying on commercial or economic activities relating to goods or services.

[23/2007; 5/2018; 10/2018]

(2) The fact that to a limited extent the section 34 prohibition does not apply to an agreement, because of an exclusion provided by or under this Act, does not require those provisions of the agreement to which the exclusion relates to be disregarded when considering whether the agreement infringes the prohibition for other reasons.

(3) For the purposes of this Act, the power to require information, in relation to information recorded otherwise than in a legible form, includes the power to require a copy of it in a legible form.

(4) Any power conferred on any person by this Act to require information includes the power to require any document which the person believes may contain that information.

PART 2

COMPETITION AND CONSUMER COMMISSION OF SINGAPORE

[10/2018]

Division 1 — Establishment, incorporation and constitution of Commission

Establishment and incorporation of Competition and Consumer Commission of Singapore

3. A body called the Competition and Consumer Commission of Singapore is established, which is a body corporate with perpetual succession and is by that name capable of —

- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of property, both movable and immovable; and
- (c) doing and suffering any other acts or things that bodies corporate may lawfully do and suffer.

[10/2018]

Common seal

4.—(1) The Commission must have a common seal and the seal may be broken, changed, altered or made anew as the Commission thinks fit.

(2) All deeds and other documents requiring the seal of the Commission must be sealed with the common seal of the Commission.

(3) All courts, judges and persons acting judicially are to take judicial notice of the common seal of the Commission affixed to any document and presume that it was duly affixed.

Constitution of Commission

5.—(1) The Commission consists of the following members:

- (a) a Chairperson;
- (b) such other members, not being less than 2 or more than 16, as the Minister may determine.

(2) The First Schedule has effect with respect to the Commission, its members and proceedings.

Division 2 — Functions, duties and powers of Commission

Functions and duties of Commission

6.—(1) Subject to the provisions of this Act, the functions and duties of the Commission are —

- (a) to maintain and enhance efficient market conduct and promote overall productivity, innovation and competitiveness of markets in Singapore;
- (b) to eliminate or control practices having adverse effect on competition in Singapore;
- (c) to promote and sustain competition in markets in Singapore;
- (d) to promote a strong competitive culture and environment throughout the economy in Singapore;

- (e) to act internationally as the national body representative of Singapore in respect of competition matters and consumer protection matters;
- (f) to promote fair trading practices among suppliers and consumers and enable consumers to make informed purchasing decisions in Singapore;
- (g) to prevent suppliers in Singapore from engaging in unfair practices;
- (h) to administer and enforce the Consumer Protection (Fair Trading) Act 2003;
- (i) to advise the Government, any public authority or any consumer protection organisation on national needs and policies in respect of competition matters and consumer protection matters generally; and
- (j) to perform such other functions and discharge such other duties as may be conferred on the Commission by or under any other written law.

[10/2018]

(2) In performing the functions and discharging the duties imposed on it by subsection (1), the Commission must have regard to —

- (a) the differences in the nature of various markets in Singapore;
- (b) the economic, industrial and commercial needs of Singapore; and
- (c) maintaining the efficient functioning of the markets in Singapore.

(3) The Commission may undertake such other functions and duties as the Minister may assign to the Commission and in so doing, the Commission is deemed to be fulfilling the purposes of this Act, and the provisions of this Act apply to the Commission in respect of such functions and duties.

(4) Nothing in this section imposes on the Commission, directly or indirectly, any form of duty or liability enforceable by proceedings before any court to which it would not otherwise be subject.

Powers of Commission

7.—(1) Subject to the provisions of this Act, the Commission may carry on any activities as appear to the Commission to be advantageous, necessary or convenient for it to carry on for or in connection with the performance of its functions and the discharge of its duties under this Act or any other written law and, in particular, the Commission may exercise any of the powers specified in the Second Schedule.

(2) This section does not limit any power of the Commission conferred by or under any other written law.

(3) The Commission must provide the Minister information with respect to its property and activities in such manner and at such times as the Minister may require.

Directions by Minister

8. The Minister may give to the Commission any direction under section 5 of the Public Sector (Governance) Act 2018.

[5/2018]

Appointment of committees and delegation of powers

9.—(1) The Commission may appoint from among its own members or persons who are not members any number of committees that it thinks fit consisting of members or other persons or members and other persons for purposes which, in the opinion of the Commission, would be better regulated and managed by means of those committees.

(2) The Commission may, subject to any conditions or restrictions that it thinks fit, delegate to any such committee or to the Chairperson all or any of the powers, functions and duties vested in the Commission by this Act or any other written law, except the powers to prescribe or levy dues and rates and borrow money.

[5/2018]

(3) The Commission may, subject to any conditions or restrictions that it thinks fit, delegate to any employee of the Commission or any person all or any of the powers, functions and duties vested in the Commission by this Act or any other written law, except the powers

to prescribe or levy dues and rates and borrow money; and any power, function or duty so delegated may be exercised, performed or discharged by the employee or person in the name and on behalf of the Commission.

[5/2018]

Division 3 — Provisions relating to staff

Chief Executive, officers and employees, etc.

10.—(1) There must be a Chief Executive of the Commission, whose appointment, removal, discipline and promotion must be in accordance with the Public Sector (Governance) Act 2018.

[5/2018]

(2) The Commission may, subject to the Public Sector (Governance) Act 2018, appoint an individual to act temporarily as the Chief Executive during any period, or during all periods, when the Chief Executive —

(a) is absent from duty or Singapore; or

(b) is, for any reason, unable to perform the duties of the office.

[5/2018]

(3) The Commission may, subject to the Public Sector (Governance) Act 2018, appoint and employ, on such terms and conditions as it may determine, such other officers, employees, consultants and agents as may be necessary for the effective performance of its functions.

[5/2018]

Division 4 — Financial provisions

Financial year

11. The financial year of the Commission begins on 1 April of each year and ends on 31 March of the succeeding year.

Minister's approval of estimates

12.—(1) A copy of all annual estimates of revenue and expenditure and supplementary estimates must, upon their adoption by the Commission, be sent without delay to the Minister.

[5/2018]

(2) The Minister may approve or disallow any item or portion of any item shown in the annual estimates or supplementary estimates.

[5/2018]

(3) The Minister must return the annual estimates or supplementary estimates as amended under subsection (2) to the Commission, and the Commission is bound by the Minister's decision.

[5/2018]

(4) However, the Commission may transfer all or any part of moneys assigned to one item of expenditure to any item under the same head of expenditure in any estimates approved by the Minister.

[5/2018]

Moneys recovered or collected by Commission

13.—(1) All moneys recovered or charges or composition sums collected under this Act, other than financial penalties, must be paid into and form part of the moneys of the Commission.

(2) All financial penalties collected under this Act must be paid into the Consolidated Fund.

Grants-in-aid

14. For the purpose of enabling the Commission to perform its functions and discharge its duties under this Act, the Minister may make grants-in-aid to the Commission of such sums of money, as the Minister may determine, out of moneys to be provided by Parliament.

Power to borrow

15.—(1) For the performance of its functions or discharge of its duties under this Act or any other written law, the Commission may raise loans from the Government or, with the Minister's approval, raise loans within or outside Singapore from such source as the Minister may direct by —

- (a) mortgage, overdraft or other means, with or without security;
- (b) charge, whether legal or equitable, on any property vested in the Commission or on any other revenue receivable by the Commission under this Act or any other written law; or
- (c) the creation and issue of debentures, bonds or any other instrument as the Minister may approve.

(2) For the purposes of this section, the power to raise loans includes the power to make any financial agreement whereby credit facilities are granted to the Commission for the purchase of goods, materials or things.

Issue of shares, etc.

16. As a consequence of —

- (a) the vesting of any property, rights or liabilities of the Government in the Commission under this Act; or
- (b) any capital injection or other investment by the Government in the Commission in accordance with any written law,

the Commission must issue such shares or other securities to the Minister for Finance as that Minister may direct.

Bank account

17.—(1) The Commission must open and maintain an account with such bank as the Commission thinks fit.

(2) Every such account must be operated by such person authorised to do so by the Commission.

Application of moneys

18. The moneys of the Commission must be applied only in payment or discharge of the expenses, obligations and liabilities of the Commission and in making any payment that the Commission is authorised or required to make.

Investment

19. The Commission may, subject to the general or special direction of the Minister —

- (a) invest its moneys in such manner as it thinks fit; and
- (b) engage in any financial activity or participate in any financial arrangement for the purpose of managing or hedging against any financial risk that arises or is likely to arise from such investment.

20. [*Repealed by Act 5 of 2018*]

Audit of accounts

21. The auditor must submit such periodical and special reports to the Minister and to the Commission as may appear to the auditor to be necessary or as the Minister or the Commission may require.

22. [*Repealed by Act 5 of 2018*]

23. [*Repealed by Act 5 of 2018*]

*Division 5 — Transfer of property, assets, liabilities and employees***Transfer to Commission of property, assets and liabilities**

24.—(1) As from 1 January 2005, such movable and immovable property vested in the Government as may be determined by the Minister for Finance and used or managed by the Market Analysis Division of the Ministry of Trade and Industry (called in this Division the transferred Division) and all assets, interests, rights, privileges, liabilities and obligations of the Government relating to the transferred Division are transferred to and vest in the Commission without further assurance, act or deed.

(2) If any question arises as to whether any particular property, asset, interest, right, privilege, liability or obligation has been transferred to or vested in the Commission under subsection (1), a certificate under the hand of the Minister for Finance is conclusive evidence that the property, asset, interest, right, privilege, liability or obligation was or was not so transferred or vested.

(3) Any immovable property to be transferred to and vested in the Commission under subsection (1) is held by the Commission upon such tenure and subject to such terms and conditions as the President may determine.

(4) Every agreement relating to any of the transferred properties to which the Government was a party immediately before 1 January 2005, whether or not of such nature that the rights and liabilities under the agreement could be assigned, has effect as from that date as if —

- (a) the Commission had been a party to such an agreement; and
- (b) for any reference to the Government there was substituted in respect of anything to be done on or after 1 January 2005 a reference to the Commission.

Transfer of employees

25.—(1) As from 1 January 2005, such persons or categories of persons as the Minister may determine who, immediately before that date, were employed by the Government and posted to the transferred Division are transferred to the service of the Commission on terms no less favourable than those enjoyed by them immediately prior to their transfer.

(2) If any question arises as to whether any person or any category of persons has been transferred to the service of the Commission under subsection (1), a certificate under the hand of the Minister is conclusive evidence that the person or category of persons was or was not so transferred.

(3) Until such time as terms and conditions of service are drawn up by the Commission, the scheme and terms and conditions of service in the Government continue to apply to every person transferred to the service of the Commission under subsection (1) as if he or she were still in the service of the Government.

Service rights, etc., of transferred employees to be preserved

26.—(1) The terms and conditions to be drawn up by the Commission must take into account the terms and conditions of service (including salaries and accrued rights to leave) enjoyed by the

persons transferred to the service of the Commission under section 25 while in the employment of the Government.

(2) Any term or condition relating to the length of service with the Commission must recognise the length of service of the persons so transferred while in the employment of the Government to be service with the Commission.

(3) Nothing in the terms and conditions of service to be drawn up by the Commission adversely affects the conditions that would have been applicable to persons transferred to the service of the Commission as regards any pension, gratuity or allowance payable under the Pensions Act 1956.

(4) Where a person has been transferred to the service of the Commission under section 25, the Government shall be liable to pay to the Commission such portion of any pension, gratuity or allowance payable to the person on the person's retirement as the same bears to the proportion which the aggregate amount of the person's pensionable emoluments during the person's service with the Government bears to the aggregate amount of the person's pensionable emoluments during the person's service under both the Government and the Commission.

(5) Where any person in the service of the Commission, whose case does not fall within the scope of any pension or other schemes established under this section, retires or dies in the service of the Commission or is discharged from such service, the Commission may grant to him or her or to such other person wholly or partly dependent on him or her, as the Commission thinks fit, such allowance or gratuity as the Commission may determine.

No benefits in respect of abolition or reorganisation of office

27. Despite the provisions of the Pensions Act 1956, a person who is transferred to the service of the Commission under section 25 is not entitled to claim any benefit under that Act on the ground that he or she has been retired from the public service on account of abolition or reorganisation of office in consequence of the establishment and incorporation of the Commission.

Existing contracts

28. All deeds, contracts, schemes, bonds, agreements, instruments and arrangements subsisting immediately before 1 January 2005 to which the Government is a party and relating to the transferred Division or to any person transferred to the service of the Commission under section 25 continue in force on and after that date and are enforceable by or against the Commission as if the Commission had been named therein or had been a party thereto instead of the Government.

Continuation and completion of disciplinary proceedings and other legal proceedings

29.—(1) Where, on 1 January 2005, any disciplinary proceedings were pending against any employee of the Government transferred to the service of the Commission, the proceedings must be carried on and completed by the Commission.

(2) Where, on 1 January 2005, any matter was in the course of being heard or investigated or had been heard or investigated by a committee acting under due authority but no order, ruling or direction had been made on the matter, the committee must complete the hearing or investigation and must make such order, ruling or direction as it could have made under the authority vested in it before that date.

(3) Any order, ruling or direction made by a committee under this section is treated as an order, a ruling or a direction of the Commission and has the same force or effect as if it had been made by the Commission pursuant to the authority vested in the Commission under this Act.

(4) Any proceedings or cause of action pending or existing immediately before 1 January 2005 by or against the Government, or any person acting on its behalf, in relation to —

- (a) the transferred Division;
- (b) any portion of the property, assets, interests, rights, privileges, liabilities and obligations transferred to the Commission under section 24; or

- (c) any employee transferred to the service of the Commission under section 25,

may be continued, completed and enforced by or against the Commission.

Misconduct or neglect of duty by employee before transfer

30. The Commission may reprimand, reduce in rank, retire, dismiss or punish in some other manner a person who had, whilst the person was in the employment of the Government, been guilty of any misconduct or neglect of duty which would have rendered the person liable to be reprimanded, reduced in rank, retired, dismissed or punished in some other manner if the person had continued to be in the employment of the Government, and if this Act had not been enacted.

Division 6 — General

- 31.** [*Repealed by Act 5 of 2018*]

Symbol or representation of Commission

32.—(1) The Commission has the exclusive right to the use of such symbol or representation as the Commission may select or devise and to display or exhibit that symbol or representation in connection with its activities or affairs.

(2) A person who —

- (a) uses a symbol or representation identical with that of the Commission; or
- (b) uses a symbol or representation which so resembles the Commission's symbol or representation as to deceive or cause confusion, or to be likely to deceive or to cause confusion,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$250 for every day or part of a day during which the offence continues after conviction.

PART 3

COMPETITION

*Division 1 — General***Application of Part**

33.—(1) Despite the fact that —

- (a) an agreement referred to in section 34 has been entered into outside Singapore;
- (b) any party to such agreement is outside Singapore;
- (c) any undertaking abusing the dominant position referred to in section 47 is outside Singapore;
- (d) an anticipated merger will be carried into effect outside Singapore;
- (e) a merger referred to in section 54 has taken place outside Singapore;
- (f) any party to an anticipated merger or any party involved in a merger is outside Singapore; or
- (g) any other matter, practice or action arising out of such agreement, such dominant position, an anticipated merger or a merger is outside Singapore,

this Part applies to such party, agreement, abuse of dominant position, anticipated merger or merger if (as the case may be) —

- (h) such agreement infringes or has infringed the section 34 prohibition;
- (i) such abuse infringes or has infringed the section 47 prohibition;
- (j) such anticipated merger, if carried into effect, will infringe the section 54 prohibition; or
- (k) such merger infringes or has infringed the section 54 prohibition.

(2) Insofar as this Part applies to an industry or a sector of industry that is subject to the regulation and control of another regulatory authority —

- (a) the exercise of powers by that other regulatory authority must not be construed as derogating from the exercise of powers by the Commission; and
- (b) the exercise of powers by the Commission must not be construed as derogating from the exercise of powers by that other regulatory authority.

(3) The Minister may make regulations for the purpose of coordinating the exercise of powers by the Commission under this Part and the exercise of powers by any other regulatory authority referred to in subsection (2), and may, in particular, make regulations to provide for the procedure to be followed —

- (a) in determining in a particular case or category of cases whether the Commission should exercise its powers under this Part or the other regulatory authority should exercise its powers; and
- (b) where the Commission and the other regulatory authority may exercise their respective powers concurrently or conjunctively.

(4) Nothing in this Part applies to any activity carried on by, any agreement entered into or any conduct on the part of —

- (a) the Government;
- (b) any statutory body; or
- (c) any person acting on behalf of the Government or that statutory body (as the case may be) in relation to that activity, agreement or conduct.

(5) Despite subsection (4), this Part applies to —

- (a) such statutory body or person acting on behalf of such statutory body; or

- (b) such activity carried on, agreement entered into or conduct engaged in, by a statutory body or person acting on behalf of the statutory body in relation to such activity, agreement or conduct,

as the Minister may, by order in the *Gazette*, prescribe.

(6) In this section, “statutory body” means a body corporate established by or under any written law.

Division 2 — Agreements, etc., preventing, restricting or distorting competition

Agreements, etc., preventing, restricting or distorting competition

34.—(1) Subject to section 35, agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore are prohibited unless they are exempt in accordance with the provisions of this Part.

(2) For the purposes of subsection (1), agreements, decisions or concerted practices may, in particular, have the object or effect of preventing, restricting or distorting competition within Singapore if they —

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) Any provision of any agreement or any decision which is prohibited by subsection (1) is void on or after 1 January 2006 to the extent that it infringes that subsection.

(4) Unless the context otherwise requires, a provision of this Act which is expressed to apply to, or in relation to, an agreement is to be read as applying, with the necessary modifications, equally to, or in relation to, a decision by an association of undertakings or a concerted practice.

(5) Subsection (1) applies to agreements, decisions and concerted practices implemented before, on or after 1 January 2006.

Excluded agreements

35. The section 34 prohibition does not apply to such matter as may be specified in the Third Schedule.

Block exemptions

36.—(1) If agreements which fall within a particular category of agreements are, in the Commission's opinion, likely to be agreements referred to in section 41, the Commission may recommend that the Minister make an order specifying that category for the purposes of this section.

(2) The Minister may make an order giving effect to such a recommendation —

- (a) in the form in which the recommendation is made; or
- (b) subject to such modifications as the Minister considers appropriate.

(3) An order made under this section is referred to in this Part as a block exemption order.

(4) An agreement which falls within a category specified in a block exemption order is exempt from the section 34 prohibition.

(5) An exemption under this section is called in this Part a block exemption.

Block exemption orders

37.—(1) A block exemption order may impose conditions or obligations subject to which a block exemption has effect.

(2) A block exemption order may provide —

(a) that breach of a condition imposed by the order has the effect of cancelling the block exemption in respect of an agreement as from such date as the Commission may specify;

(b) that if there is a failure to comply with an obligation imposed by the order, the Commission may, by written notice, cancel the block exemption in respect of the agreement as from such date as the Commission may specify; and

(c) that if the Commission considers that a particular agreement is not one to which section 41 applies, it may cancel the block exemption in respect of that agreement as from such date as the Commission may specify.

(3) A block exemption order may provide for a block exemption to have effect from a date earlier than that on which the order is made.

(4) A block exemption order may provide that the order ceases to have effect at the end of a specified period.

(5) In this section, “specified” means specified in a block exemption order.

Opposition to block exemptions

38.—(1) A block exemption order may provide that a party to an agreement which does not qualify for the block exemption created by the order, but satisfies specified criteria, may notify the Commission of the agreement for the purposes of subsection (2).

(2) An agreement which is notified under any provision included in a block exemption order by virtue of subsection (1) is treated, as from the end of the notice period, as falling within a category specified in a block exemption order unless the Commission —

(a) is opposed to it being so treated; and

(b) gives written notice to the party concerned of its opposition before the end of that period.

(3) If the Commission gives notice of its opposition under subsection (2), the notification under subsection (1) is treated as a notification under section 44.

(4) In this section —

“notice period” means such period as may be specified with a view to giving the Commission sufficient time to consider whether to oppose under subsection (2);

“specified” means specified in a block exemption order.

Procedure for block exemptions

39.—(1) Before making a recommendation under section 36(1), the Commission must —

(a) publish details of its proposed recommendation in such a way as the Commission thinks most suitable for bringing it to the attention of those likely to be affected; and

(b) consider any representations made to the Commission regarding its proposed recommendation.

(2) If the Minister proposes to give effect to such a recommendation subject to modifications, the Minister must inform the Commission of the proposed modifications and take into account any comments made by the Commission.

Variation and revocation of block exemption orders

40.—(1) If, in the opinion of the Commission, it is appropriate to vary or revoke a block exemption order, the Commission may make a recommendation to that effect to the Minister.

(2) Section 39 applies to any proposed recommendation under subsection (1).

(3) Where there has been no recommendation under subsection (1), the Minister must, before exercising the Minister’s power to vary or revoke a block exemption order —

- (a) inform the Commission of the proposed variation or revocation; and
- (b) take into account any comments made by the Commission.

Criteria for block exemptions

41. Section 36 applies to any agreement which contributes to —

- (a) improving production or distribution; or
- (b) promoting technical or economic progress,

but which does not —

- (c) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
- (d) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

Requests for Commission to examine agreements

42.—(1) Sections 43 and 44 provide for an agreement to be examined by the Commission on the application of a party to the agreement who thinks that it may infringe the section 34 prohibition.

(2) The Minister may make regulations to provide —

- (a) for the procedure to be followed —
 - (i) by any person making an application under subsection (1); and
 - (ii) by the Commission, in considering such an application; and
- (b) as to the application of sections 43 to 46 and the procedure referred to in paragraph (a), with such modifications (if any) as may be prescribed, in cases where the Commission —
 - (i) has given a direction withdrawing an exclusion; or
 - (ii) is considering whether to give such a direction.

Notification for guidance

43.—(1) A party to an agreement who applies for the agreement to be examined under this section must —

- (a) notify the Commission of the agreement; and
- (b) apply to it for guidance.

(2) On an application under this section, the Commission may give the applicant guidance as to whether or not, in its view, the agreement is likely to infringe the section 34 prohibition.

(3) If the Commission considers that the agreement is likely to infringe the section 34 prohibition if it is not exempt, its guidance may indicate whether the agreement is likely to be exempt from the prohibition under a block exemption.

(4) If an agreement to which the section 34 prohibition applies has been notified to the Commission under this section, no penalty may be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period —

- (a) beginning with the date on which the notification was given; and
- (b) ending with such date as may be specified in a written notice given to the applicant by the Commission when the application has been determined.

(5) The date specified in a notice under subsection (4)(b) must not be earlier than the date on which the notice is given.

Notification for decision

44.—(1) A party to an agreement who applies for the agreement to be examined under this section must —

- (a) notify the Commission of the agreement; and
- (b) apply to it for a decision.

(2) On an application under this section, the Commission may make a decision as to —

- (a) whether the section 34 prohibition has been infringed; and

- (b) if it has not been infringed, whether that is —
- (i) because of the effect of an exclusion;
 - (ii) because the agreement is exempt from the prohibition; or
 - (iii) because a commitment has been accepted pursuant to section 60A(2).

[15/2018]

(3) If an agreement to which the section 34 prohibition applies has been notified to the Commission under this section, no penalty shall be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period —

- (a) beginning with the date on which the notification was given; and
- (b) ending with such date as may be specified in a written notice given to the applicant by the Commission when the application has been determined.

(4) The date specified in a notice under subsection (3)(b) must not be earlier than the date on which the notice is given.

Effect of guidance

45.—(1) This section applies to an agreement if the Commission has determined an application under section 43 by giving guidance that —

- (a) the agreement is unlikely to infringe the section 34 prohibition, regardless of whether or not it is exempt; or
- (b) the agreement is likely to be exempt under a block exemption.

(2) The Commission must not take any further action in relation to the section 34 prohibition with respect to an agreement to which this section applies, unless —

- (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance;

- (b) it has reasonable grounds for suspecting that the information on which it based its guidance was incomplete, false or misleading in a material particular;
- (c) one of the parties to the agreement applies to it for a decision under section 44 with respect to the agreement; or
- (d) a complaint about the agreement has been made to it by a person who is not a party to the agreement.

[23/2007]

(3) No penalty may be imposed under this Part in respect of any infringement of the section 34 prohibition by an agreement to which this section applies.

(4) The Commission may remove the immunity given by subsection (3) if —

- (a) it takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
- (b) it considers that it is likely that the agreement will infringe the section 34 prohibition; and
- (c) it gives written notice to the party on whose application the guidance was given that it is removing the immunity as from the date specified in its notice.

(5) If the Commission has reasonable grounds for suspecting that information —

- (a) on which it based its guidance; and
- (b) which was provided to it by a party to the agreement,

was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

Effect of decision that section 34 prohibition has not been infringed

46.—(1) This section applies to an agreement if the Commission has determined an application under section 44 by making a decision that the agreement has not infringed the section 34 prohibition.

(2) The Commission must not take any further action in relation to the section 34 prohibition with respect to the agreement unless —

- (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
- (b) it has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.

[23/2007]

(3) No penalty may be imposed under this Part in respect of any infringement of the section 34 prohibition by an agreement to which this section applies.

(4) The Commission may remove the immunity given by subsection (3) if —

- (a) it takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
- (b) it considers that it is likely that the agreement will infringe the section 34 prohibition; and
- (c) it gives written notice to the party on whose application the decision was made that it is removing the immunity as from the date specified in its notice.

(5) If the Commission has reasonable grounds for suspecting that information —

- (a) on which it based its decision; and
- (b) which was provided to it by a party to the agreement,

was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

*Division 3 — Abuse of dominant position***Abuse of dominant position**

47.—(1) Subject to section 48, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in any market in Singapore is prohibited.

(2) For the purposes of subsection (1), conduct may, in particular, constitute such an abuse if it consists in —

- (a) predatory behaviour towards competitors;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

(3) In this section, “dominant position” means a dominant position within Singapore or elsewhere.

Excluded cases

48. The section 47 prohibition does not apply to such matter as may be specified in the Third Schedule.

Requests for Commission to consider conduct

49.—(1) Sections 50 and 51 provide for conduct of a person to be considered by the Commission on the application of that person who thinks the conduct may infringe the section 47 prohibition.

(2) The Minister may make regulations to provide for the procedure to be followed —

- (a) by any person making an application under subsection (1);
and
- (b) by the Commission, in considering such an application.

Notification for guidance

50.—(1) A person who applies for conduct to be considered under this section must —

- (a) notify the Commission of the conduct; and
- (b) apply to it for guidance.

(2) On an application under this section, the Commission may give the applicant guidance as to whether or not, in its view, the conduct is likely to infringe the section 47 prohibition.

Notification for decision

51.—(1) A person who applies for conduct to be considered under this section must —

- (a) notify the Commission of the conduct; and
- (b) apply to it for a decision.

(2) On an application under this section, the Commission may make a decision as to —

- (a) whether the section 47 prohibition has been infringed; and
- (b) if it has not been infringed, whether that is —
 - (i) because of the effect of an exclusion; or
 - (ii) because a commitment has been accepted pursuant to section 60A(3).

[15/2018]

Effect of guidance

52.—(1) This section applies to conduct if the Commission has determined an application under section 50 by giving guidance that the conduct is unlikely to infringe the section 47 prohibition.

(2) The Commission must not take any further action in relation to the section 47 prohibition with respect to the conduct to which this section applies, unless —

- (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance;

- (b) it has reasonable grounds for suspecting that the information on which it based its guidance was incomplete, false or misleading in a material particular; or
- (c) a complaint about the conduct has been made to it.

[23/2007]

(3) No penalty may be imposed under this Part in respect of any infringement of the section 47 prohibition by conduct to which this section applies.

(4) The Commission may remove the immunity given by subsection (3) if —

- (a) it takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
- (b) it considers that it is likely that the conduct will infringe the section 47 prohibition; and
- (c) it gives written notice to the undertaking on whose application the guidance was given that it is removing the immunity as from the date specified in its notice.

(5) If the Commission has reasonable grounds for suspecting that information —

- (a) on which it based its guidance; and
- (b) which was provided to it by an undertaking engaging in the conduct,

was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

Effect of decision that section 47 prohibition has not been infringed

53.—(1) This section applies to conduct if the Commission has determined an application under section 51 by making a decision that the conduct has not infringed the section 47 prohibition.

(2) The Commission must not take any further action in relation to the section 47 prohibition with respect to the conduct unless —

- (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
 - (b) it has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.
[23/2007]
- (3) No penalty may be imposed under this Part in respect of any infringement of the section 47 prohibition by conduct to which this section applies.
- (4) The Commission may remove the immunity given by subsection (3) if —
- (a) it takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
 - (b) it considers that it is likely that the conduct will infringe the section 47 prohibition; and
 - (c) it gives written notice to the undertaking on whose application the decision was made that it is removing the immunity as from the date specified in its notice.
- (5) If the Commission has reasonable grounds for suspecting that information —
- (a) on which it based its decision; and
 - (b) which was provided to it by an undertaking engaging in the conduct,

was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

Division 4 — Mergers

Mergers

54.—(1) Subject to section 55, mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods or services are prohibited.

[23/2007]

- (2) For the purposes of this Part, a merger occurs if —
- (a) 2 or more undertakings, previously independent of one another, merge;
 - (b) one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or
 - (c) the result of an acquisition by one undertaking (the first undertaking) of the assets (including goodwill), or a substantial part of the assets, of another undertaking (the second undertaking) is to place the first undertaking in a position to replace or substantially replace the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition.

[23/2007]

(3) For the purposes of this Part, control is, in relation to an undertaking, regarded as existing if, by reason of rights, contracts or any other means, or any combination of rights, contracts or other means, decisive influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by —

- (a) ownership of, or the right to use all or part of, the assets of an undertaking; or
- (b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.

[23/2007]

(4) For the purposes of this Part, control is acquired by any person or other undertaking if that person or undertaking —

- (a) becomes a holder of the rights or contracts, or entitled to use the other means, referred to in subsection (3); or
- (b) although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.

[23/2007]

(5) The creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity constitutes a merger falling within subsection (2)(b).

[23/2007]

(6) In determining whether influence of the kind referred to in subsection (3) is capable of being exercised, regard must be had to all the circumstances of the matter and not solely to the legal effect of any instrument, deed, transfer, assignment or other act done or made.

[23/2007]

(7) For the purposes of this Part, a merger is not to be deemed to occur if —

- (a) the person acquiring control is a receiver or liquidator acting as such or is an underwriter acting as such;
- (b) all of the undertakings involved in the merger are, directly or indirectly, under the control of the same undertaking;
- (c) control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy; or
- (d) control is acquired by an undertaking referred to in subsection (8) in the circumstances specified in subsection (9).

[23/2007]

(8) The undertaking referred to in subsection (7)(d) is an undertaking the normal activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others.

[23/2007]

(9) The circumstances referred to in subsection (7)(d) are that —

- (a) the control concerned is constituted by the undertaking's holding, on a temporary basis, securities acquired in another undertaking; and
- (b) any exercise by the undertaking of voting rights in respect of those securities, whilst that control subsists —

- (i) is for the purpose of arranging for the disposal, within the specified period, of all or part of the other undertaking or its assets or securities; and
- (ii) is not for the purpose of determining the manner in which any activity of the other undertaking, being an activity that could affect competition in markets for goods or services in Singapore, is carried on.

[23/2007]

(10) In subsection (9), “specified period” means —

- (a) the period of 12 months from the date on which control of the other undertaking was acquired; or
- (b) if in a particular case the undertaking shows that it is not reasonably possible to effect the disposal concerned within the period referred to in paragraph (a), within such longer period as the Commission determines and specifies with respect to that case.

[23/2007]

Excluded mergers

55. The section 54 prohibition does not apply to any merger specified in the Fourth Schedule.

[23/2007]

Confidential advice by Commission on anticipated mergers

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

[15/2018]

(2) Subject to regulations made under subsection (5), the Commission may issue the advice under subsection (1) if the Commission is satisfied —

- (a) that all parties to the anticipated merger intend to carry into effect the anticipated merger;

- (b) that no information relating to the anticipated merger is in the public domain at the time that the application under subsection (1) is made; and
- (c) if information relating to the anticipated merger enters the public domain after the application under subsection (1) is made, that there are good reasons for the applicant not notifying the Commission of the anticipated merger and not applying to the Commission for its decision, under section 57.

[15/2018]

(3) Despite subsection (2), the Commission may refuse to issue the advice mentioned in subsection (1) if the Commission is of the view that, given the facts and circumstances of the anticipated merger, the parties to the anticipated merger are able to assess whether an application under section 57 in respect of the anticipated merger should be made without the advice.

[15/2018]

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

[15/2018]

(5) The Minister may make regulations to provide —

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

[15/2018]

Requests for Commission to consider anticipated mergers and mergers

56.—(1) Section 57 provides for an anticipated merger to be considered by the Commission on the application of a party to that

anticipated merger who thinks the anticipated merger, if carried into effect, may infringe the section 54 prohibition.

[23/2007]

(2) Section 58 provides for a merger to be considered by the Commission on the application of a party involved in that merger who thinks the merger may infringe the section 54 prohibition.

[23/2007]

(3) The Minister may by regulations provide —

(a) that only such anticipated mergers as are prescribed may be notified to the Commission under section 57; and

(b) for the procedure to be followed —

(i) by any party making an application under section 57 or 58; and

(ii) by the Commission, in considering such an application.

[23/2007]

Notification of anticipated merger

57.—(1) A party to an anticipated merger of the relevant type which applies for the anticipated merger to be considered under this section must —

(a) notify the Commission of the anticipated merger; and

(b) apply to it for a decision.

(2) Subject to subsections (3) and (5) and sections 60A(1) and 60B(1), on an application under this section, the Commission may make a decision as to —

(a) whether the section 54 prohibition will be infringed by the anticipated merger, if carried into effect; and

(b) if it will not be infringed, whether it is —

(i) because of the effect of an exclusion which will apply if the anticipated merger is carried into effect;

(ii) because the anticipated merger, if carried into effect, is exempted from the application of the prohibition under subsection (3); or

- (iii) because a commitment has been accepted pursuant to section 60A(1).

[23/2007; 15/2018]

(3) Where the Commission proposes to make a decision that the section 54 prohibition will be infringed by an anticipated merger, if carried into effect, the Commission must give written notice to the party who applied for a decision on the anticipated merger and the party may, within 14 days of the date of the notice, apply to the Minister for the anticipated merger, if carried into effect, to be exempted from the section 54 prohibition on the ground of any public interest consideration.

[23/2007]

- (4) The decision of the Minister made under subsection (3) is final.

[23/2007]

(5) Where the Minister exempts an anticipated merger under subsection (3), the Commission may make a decision under subsection (2)(b)(ii).

[23/2007]

(6) The Minister may revoke the exemption of an anticipated merger granted under subsection (3) if the Minister has reasonable grounds for suspecting that the information on which the Minister based his or her decision was incomplete, false or misleading in a material particular.

[23/2007]

(7) Subject to subsection (8), where the Commission makes a decision that an anticipated merger, if carried into effect, will not infringe the section 54 prohibition, the Commission may, if it thinks fit, state that the decision is valid only for the period it specifies therein.

[23/2007]

(8) Before the expiry of the period referred to in subsection (7), if any, an application may be made by all parties to the anticipated merger who applied to the Commission for a decision on the anticipated merger under this section for that period to be extended.

[23/2007]

(9) Where an application for an anticipated merger to be considered has been made to the Commission in accordance with subsection (1) and the anticipated merger is carried into effect before the

Commission makes a decision under subsection (2) in respect thereof, the application relating to the anticipated merger —

- (a) may be treated by the Commission as if it were an application for the resulting merger to be considered made in accordance with section 58; and
- (b) the Commission may make a decision under section 58 in respect of the resulting merger.

[23/2007]

(10) For the purpose of subsection (9), the Commission may make a decision under section 58(2)(b)(ii) (read with section 58(5)) in respect of the merger referred to in subsection (9), even though the exemption was granted by the Minister under subsection (3) in respect of the anticipated merger.

[23/2007]

(11) Despite subsection (9), the Commission may refuse to make any decision in respect of a merger referred to therein and require any party involved in the merger to apply to the Commission for the merger to be considered under section 58(1).

[23/2007]

(12) In this section, “an anticipated merger of the relevant type” means an anticipated merger of the type prescribed by regulations made under section 56(3)(a).

[23/2007]

Notification of merger

58.—(1) A party involved in a merger which applies for the merger to be considered under this section must —

- (a) notify the Commission of the merger; and
- (b) apply to it for a decision.

[23/2007]

(2) Subject to subsections (3) and (5) and sections 60A(1) and 60B(1), on an application under this section, the Commission may make a decision as to —

- (a) whether the section 54 prohibition has been infringed; and

- (b) if it has not been infringed, whether that is —
- (i) because of the effect of an exclusion;
 - (ii) because the merger is exempted from the prohibition under subsection (3); or
 - (iii) because a commitment has been accepted pursuant to section 60A(1).

[23/2007; 15/2018]

(3) Where the Commission proposes to make a decision that the section 54 prohibition has been infringed, the Commission must give written notice to —

- (a) the party who applied for a decision on the merger; or
- (b) in a case where section 57(9) applies, the party who applied for a decision on the anticipated merger (which was carried into effect) or, where that party no longer exists, the merged entity,

and the party or merged entity so notified by the Commission may, within 14 days of the date of the notice, apply to the Minister for the merger to be exempted from the section 54 prohibition on the ground of any public interest consideration.

[23/2007]

(4) The decision of the Minister made under subsection (3) is final.

[23/2007]

(5) Where the Minister exempts a merger under subsection (3), the Commission may make a decision under subsection (2)(b)(ii).

[23/2007]

(6) The Minister may revoke the exemption of a merger granted under subsection (3) if the Minister has reasonable grounds for suspecting that the information on which the Minister based his or her decision was incomplete, false or misleading in a material particular.

[23/2007]

(7) A reference in any provision of this Act to an application or a notification under section 58 includes a reference to an application or a notification under section 57 that the Commission treats as an application or a notification under section 58 pursuant to section 57(9).

[23/2007]

Interim measures in relation to notifications of anticipated mergers and mergers

58A.—(1) If, in respect of an application under section 57 or 58, the Commission has reasonable grounds for suspecting that —

(a) the section 54 prohibition will be infringed by an anticipated merger, if carried into effect; or

(b) the section 54 prohibition has been infringed by a merger, but has not completed its consideration of the matter, and the Commission considers that it is necessary for it to act under this section —

(c) for the purpose of preventing any action that may prejudice —

(i) the consideration of the anticipated merger or merger; or

(ii) the giving of any direction under section 69; or

(d) as a matter of urgency for the purpose —

(i) of preventing serious, irreparable damage to a particular person or category of persons; or

(ii) of protecting the public interest,

the Commission may give such directions as it considers appropriate for that purpose.

[23/2007]

(2) Before giving a direction under this section, the Commission must —

(a) give written notice to the person to whom it proposes to give the direction; and

(b) give that person an opportunity to make representations.

[23/2007]

(3) A notice under subsection (2) must indicate the nature of the direction which the Commission is proposing to give and its reasons for wishing to give it.

[23/2007]

(4) A direction given under this section has effect while subsection (1) applies, but may be replaced if the circumstances permit by a direction under section 69.

[23/2007]

(5) Sections 69(2)(c)(i) and (d)(i) and 85 also apply to directions given under this section.

[23/2007]

Effect of decision that anticipated merger, if carried into effect, will not infringe section 54 prohibition

59.—(1) This section applies to an anticipated merger in respect of which the Commission has determined an application under section 57 by making a decision that the anticipated merger, if carried into effect, will not infringe the section 54 prohibition.

[23/2007]

(2) The Commission must not take any further action in relation to the section 54 prohibition with respect to the anticipated merger (including where the anticipated merger is carried into effect, or if the Commission's decision is valid for a specified period, where the anticipated merger is carried into effect within that period) unless —

- (a) it has reasonable grounds for suspecting that any information on which it based its decision (which may include information on the basis of which it accepted a commitment) was incomplete, false or misleading in a material particular; or
- (b) it has reasonable grounds for suspecting that a party who provided a commitment has failed to adhere to one or more of the terms of the commitment.

[23/2007]

(3) Action that may be taken in respect of the circumstances referred to in subsection (2) may include the revocation of the decision that the anticipated merger, if carried into effect, will not infringe the section 54 prohibition.

[23/2007]

(4) No penalty may be imposed under this Part in respect of any infringement of the section 54 prohibition by the anticipated merger to which this section applies, if carried into effect or, where the

Commission's decision is valid for a specified period, if carried into effect within that period.

[23/2007]

(5) The Commission may remove the immunity given by subsection (4) if —

- (a) it takes action under this Part with respect to one of the circumstances referred to in subsection (2);
- (b) it considers that it is likely that the anticipated merger, if carried into effect, or the resulting merger will infringe the section 54 prohibition; and
- (c) it gives written notice to the party on whose application the decision was made that it is removing the immunity as from the date specified in its notice.

[23/2007]

(6) If the Commission has reasonable grounds for suspecting that —

- (a) any information on which it based its decision (which may include information on the basis of which it accepted a commitment), and which was provided to it by a party to the anticipated merger, was incomplete, false or misleading in a material particular; or
- (b) a party who provided a commitment has failed to adhere to one or more of the terms of the commitment,

the date specified in a notice under subsection (5)(c) may be earlier than the date on which the notice is given.

[23/2007]

(7) Where —

- (a) the Commission has made a decision that an anticipated merger, if carried into effect, will not infringe the section 54 prohibition; and

- (b) the merger resulting from a purported carrying into effect of the anticipated merger is materially different from the anticipated merger,

nothing in this section prevents the Commission from taking any action in relation to the section 54 prohibition in respect of the merger.

[23/2007]

Effect of decision that merger has not infringed section 54 prohibition

60.—(1) This section applies to a merger if the Commission has determined an application under section 58 by making a decision that the merger has not infringed the section 54 prohibition.

[23/2007]

(2) The Commission must not take any further action in relation to the section 54 prohibition with respect to the merger unless —

- (a) it has reasonable grounds for suspecting that any information on which it based its decision (which may include information on the basis of which it accepted a commitment) was incomplete, false or misleading in a material particular; or
- (b) it has reasonable grounds for suspecting that a party who provided a commitment has failed to adhere to one or more of the terms of the commitment.

[23/2007]

(3) Action that may be taken in respect of the circumstances referred to in subsection (2) may include the revocation of the decision that the merger has not infringed the section 54 prohibition.

[23/2007]

(4) No penalty may be imposed under this Part in respect of any infringement of the section 54 prohibition by a merger to which this section applies.

[23/2007]

(5) The Commission may remove the immunity given by subsection (4) if —

- (a) it takes action under this Part with respect to the merger in one of the circumstances mentioned in subsection (2);
- (b) it considers that it is likely that the merger will infringe the section 54 prohibition; and
- (c) it gives written notice to —
 - (i) the party on whose application the decision was made; or
 - (ii) in a case where section 57(9) applies, the party who applied for a decision on the anticipated merger (which was carried into effect) or, where that party no longer exists, the merged entity,

that it is removing the immunity as from the date specified in its notice.

[23/2007]

(6) If the Commission has reasonable grounds for suspecting that —

- (a) any information on which it based its decision (which may include information on the basis of which it accepted a commitment), and which was provided to it by a party involved in the merger, was incomplete, false or misleading in a material particular; or
- (b) a party who provided a commitment has failed to adhere to one or more of the terms of the commitment,

the date specified in a notice under subsection (5)(c) may be earlier than the date on which the notice is given.

[23/2007]

Division 4A — Commitments

Commitments

60A.—(1) The Commission may, at any time before making a decision pursuant to an application under section 57 or 58 or an investigation under section 62(1)(c) or (d) as to whether —

- (a) the section 54 prohibition will be infringed by an anticipated merger, if carried into effect; or

(b) the section 54 prohibition has been infringed by a merger, accept from such person as it thinks appropriate, a commitment to take or refrain from taking such action as it considers appropriate for the purpose of remedying, mitigating or preventing the substantial lessening of competition or any adverse effect which —

(c) may be expected to result from the anticipated merger, if carried into effect; or

(d) has resulted or may be expected to result from the merger.

[23/2007]

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

[15/2018]

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

[15/2018]

(4) A commitment comes into force on the date specified by the Commission when it is accepted.

[23/2007]

(5) The Commission may, at any time when a commitment is in force, accept —

(a) a variation of the commitment; or

(b) another commitment in substitution,

for the purpose referred to in subsection (1), (2) or (3), whichever is applicable, and any reference to a commitment accepted under any of those subsections includes a reference to a commitment varied or substituted under this subsection.

[23/2007; 15/2018]

(6) A commitment may be released by the Commission where it has reasonable grounds for believing that the commitment is no longer necessary or appropriate for the purpose referred to in subsection (1), (2) or (3), whichever is applicable.

[23/2007; 15/2018]

(7) Before accepting, varying, substituting or releasing a commitment, the Commission must, except in exceptional circumstances, consult with such person as it thinks appropriate.

[23/2007]

Effect of commitments

60B.—(1) Where the Commission has accepted a commitment under section 60A(1), and subject to subsection (4), the Commission must make a decision that —

(a) the section 54 prohibition will not be infringed by an anticipated merger, if carried into effect; or

(b) the section 54 prohibition has not been infringed by a merger,

as the case may be.

[23/2007; 15/2018]

(2) Where the Commission has accepted a commitment under section 60A(2) in relation to an agreement, and subject to subsection (4), the Commission must make a decision that the section 34 prohibition has not been infringed by the agreement.

[15/2018]

(3) Where the Commission has accepted a commitment under section 60A(3) in relation to any conduct, and subject to subsection (4), the Commission must make a decision that the section 47 prohibition has not been infringed by the conduct.

[15/2018]

(4) Nothing in subsection (1), (2) or (3) prevents the Commission from revoking the decision already made, commencing or continuing any investigation, or making a decision or giving a direction, where —

- (a) it has reasonable grounds for suspecting that any information on the basis of which it accepted a commitment was incomplete, false or misleading in a material particular; or
- (b) it has reasonable grounds for suspecting that a party who provided a commitment has failed to adhere to one or more of the terms of the commitment.

[23/2007; 15/2018]

(5) If the Commission revokes a decision referred to in subsection (1), (2) or (3), the commitment is treated, unless otherwise stated, as released from the date of that revocation.

[23/2007; 15/2018]

(6) The Commission may review the effectiveness of commitments it has accepted under section 60A in such circumstances as it considers appropriate.

[23/2007]

Division 5 — Enforcement

Guidelines on enforcement of Part

61.—(1) The Commission may, with a view to enabling any person to order the person's affairs in compliance with the provisions of this Part, cause to be published in the *Gazette* guidelines indicating the manner in which the Commission will interpret, and give effect to, the provisions of this Part.

(2) For the purpose of preparing any guidelines under subsection (1), the Commission may consult with such persons as it thinks appropriate.

(3) Where the guidelines would apply to an industry or a sector of industry that is subject to the regulation and control of another regulatory authority, the Commission must, in preparing those guidelines, consult with that regulatory authority.

(4) Guidelines published under this section are not binding on the Commission.

Power to require documents or information

61A.—(1) Where the Commission —

- (a) has reasonable grounds for suspecting that any feature, or combination of features, of a market in Singapore for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Singapore; or
- (b) in considering an application for decision filed pursuant to section 44, 51, 57 or 58, has reasonable grounds for suspecting that —
 - (i) the section 34 prohibition has been infringed by any agreement;
 - (ii) the section 47 prohibition has been infringed by any conduct;
 - (iii) the section 54 prohibition will be infringed by any anticipated merger, if carried into effect; or
 - (iv) the section 54 prohibition has been infringed by any merger,

the Commission may, by written notice to any person, require the person to produce to the Commission a specified document, or to provide the Commission with specified information, which the Commission considers relates to any matter relevant to such purposes.

[23/2007]

(2) A notice under subsection (1) must indicate —

- (a) the purpose for which the specified document or specified information is required by the Commission; and
- (b) the nature of the offences created by sections 75 to 78.

[23/2007]

- (3) The Commission may specify in the notice —
- (a) the time and place at which any document is to be produced or any information is to be provided; and
 - (b) the manner and form in which it is to be produced or provided.

[23/2007]

(4) The power under this section to require a person (*P*) to produce a document includes the power —

- (a) if the document is produced —
 - (i) to take copies of it or extracts from it; and
 - (ii) to require *P*, or any person who is a present or past officer of *P*, or is or was at any time employed by *P*, to provide an explanation of the document; or
- (b) if the document is not produced, to require *P* to state, to the best of *P*'s knowledge and belief, where it is.

[23/2007]

(5) For the purposes of subsection (1)(a), any reference to a feature of a market in Singapore for goods or services is construed as a reference to —

- (a) the structure of the market concerned or any aspect of that structure;
 - (b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned; or
 - (c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services,
- and, in this subsection, “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.

[23/2007]

(6) In subsections (1) and (2), “specified” means —

- (a) specified or described in the notice; or

- (b) falling within a category which is specified or described in the notice.

[23/2007]

Power to investigate

62.—(1) The Commission may conduct an investigation if there are reasonable grounds for suspecting that —

- (a) the section 34 prohibition has been infringed by any agreement;
- (b) the section 47 prohibition has been infringed by any conduct;
- (c) the section 54 prohibition will be infringed by any anticipated merger, if carried into effect; or
- (d) the section 54 prohibition has been infringed by any merger.

[23/2007]

(2) For the purpose of subsection (1), the Commission may appoint an inspector to conduct the investigation.

Power when conducting investigation

63.—(1) For the purposes of an investigation under section 62, the Commission or the inspector may, by written notice to any person, require that person to produce to the Commission or the inspector a specified document, or to provide the Commission or the inspector with specified information, which the Commission or the inspector considers relates to any matter relevant to the investigation.

(2) A notice under subsection (1) must indicate —

- (a) the subject matter and purpose of the investigation; and
- (b) the nature of the offences created by sections 75 to 78.

(3) The Commission or the inspector may also specify in the notice —

- (a) the time and place at which any document is to be produced or any information is to be provided; and

- (b) the manner and form in which it is to be produced or provided.
- (4) The power under this section to require a person (*P*) to produce a document includes the power —
- (a) if the document is produced —
 - (i) to take copies of it or extracts from it; and
 - (ii) to require *P*, or any person who is a present or past officer of *P*, or is or was at any time employed by *P*, to provide an explanation of the document; or
 - (b) if the document is not produced, to require *P* to state, to the best of *P*'s knowledge and belief, where it is.
- (5) For the purposes of an investigation under section 62, a person who is empowered to enter any premises under section 64(1), or who is authorised under a warrant under section 65 to enter the premises specified in the warrant, may —
- (a) orally examine any individual on the premises who appears to be acquainted with the facts and circumstances relevant to the investigation that is being carried out; and
 - (b) require the individual to answer any question relating to the investigation.
- [15/2018]*
- (6) Any information provided verbally by an individual under subsection (1), or any answer given or statement made by an individual under subsection (5), must —
- (a) be reduced to writing;
 - (b) be read over to the individual;
 - (c) if the individual does not understand English, be interpreted in a language that the individual understands; and
 - (d) after correction (if any), be signed by the individual.
- [15/2018]*
- (7) In subsection (1), “specified” means —
- (a) specified, or described, in the notice; or

- (b) falling within a category which is specified, or described, in the notice.

Power to enter premises without warrant

64.—(1) In connection with an investigation under section 62 —

- (a) any officer of the Commission who is authorised by the Commission to do so (an investigating officer) and such other officers or persons as the Commission has authorised in writing to accompany the investigating officer (authorised person); and
- (b) any inspector and such other person as the inspector may require,

may enter any premises.

[23/2007]

(2) An investigating officer or inspector, and an authorised person or person required by the inspector respectively, must not enter any premises in the exercise of the powers under this section unless the investigating officer or the inspector (as the case may be) has given the occupier of the premises a written notice which —

- (a) gives at least 2 working days' notice of the intended entry;
- (b) indicates the subject matter and purpose of the investigation; and
- (c) indicates the nature of the offences created by sections 75 to 78.

[23/2007]

(3) Subsection (2) does not apply —

- (a) if the investigating officer or inspector has reasonable grounds for suspecting that the premises are, or have been, occupied by an undertaking which is being investigated in relation to —
 - (i) an agreement referred to in section 34;
 - (ii) conduct referred to in section 47; or
 - (iii) an anticipated merger, or a merger referred to in section 54; or

- (b) if the investigating officer or inspector has taken all such steps as are reasonably practicable to give notice but has not been able to do so.

[23/2007]

(4) Where subsection (3) applies, the power of entry conferred by subsection (1) must be exercised —

- (a) in the case of an investigating officer and any authorised person, upon production of —

(i) evidence of the investigating officer's authorisation and the authorisation of every authorised person accompanying him or her; and

(ii) a document containing the information referred to in subsection (2)(b) and (c); and

- (b) in the case of an inspector and any person required by the inspector, upon production of —

(i) evidence of the inspector's appointment; and

(ii) a document containing the information referred to in subsection (2)(b) and (c).

[23/2007]

(5) An investigating officer, an authorised person, an inspector or a person required by the inspector entering any premises under this section may —

- (a) take with him or her such equipment as appears to him or her to be necessary;

- (b) require any person on the premises —

(i) to produce any document which the investigating officer, authorised person, inspector or person required by the inspector considers relates to any matter relevant to the investigation; and

(ii) if the document is produced, to provide an explanation of it;

- (c) require any person to state, to the best of the person's knowledge and belief, where any document mentioned in paragraph (b)(i) is to be found;
- (d) take copies of, or extracts from, any document which is produced;
- (e) require any information which is stored in any electronic form and is accessible from the premises and which he or she considers relates to any matter relevant to the investigation, to be produced in a form —
 - (i) in which it can be taken away; and
 - (ii) in which it is visible and legible; and
- (f) take any step which appears to be necessary for the purpose of preserving or preventing interference with any document which he or she considers relates to any matter relevant to the investigation.

[23/2007; 15/2018]

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

[15/2018]

Power to enter premises under warrant

65.—(1) The Commission or any inspector may apply to a court for a warrant and the court may issue such a warrant if it is satisfied that —

- (a) there are reasonable grounds for suspecting that there are on any premises documents —
 - (i) the production of which has been required under section 63 or 64; and
 - (ii) which have not been produced as required;

- (b) there are reasonable grounds for suspecting that —
 - (i) there are on any premises documents which the Commission or the inspector has power under section 63 to require to be produced; and
 - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
- (c) an investigating officer, an authorised person, an inspector or a person required by the inspector has attempted to enter the premises in the exercise of his or her powers under section 64 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.

[23/2007]

(2) A warrant under this section must authorise a named officer, and —

- (a) in the case of an investigation conducted by the Commission, such other officers or persons as the Commission has authorised in writing to accompany the named officer; and
- (b) in the case of an investigation conducted by an inspector, such other persons as the inspector may require,

to do all or any of the following:

- (c) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (d) to search any person on those premises if there are reasonable grounds for believing that that person has in his or her possession any document, equipment or article which has a bearing on the investigation;
- (e) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (the relevant kind);

- (f) to take possession of any document appearing to be of the relevant kind if —
 - (i) such action appears to be necessary for preserving the document or preventing interference with it; or
 - (ii) it is not reasonably practicable to take copies of the document on the premises;
- (g) to take any other step which appears to be necessary for the purpose mentioned in paragraph (f)(i);
- (h) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his or her knowledge and belief, where it may be found;
- (i) to require any person on the premises to produce any document of the relevant kind at the time and place, and in the form and manner, required by the named officer or other officer or person whom the Commission has authorised in writing to accompany the named officer, or by any other person required under paragraph (b) by an inspector;
- (j) to require any information which is stored in any electronic form and is accessible from the premises and which he or she considers relates to any matter relevant to the investigation, to be produced in a form —
 - (i) in which it can be taken away; and
 - (ii) in which it is visible and legible;
- (k) to remove from those premises for examination any equipment or article which relates to any matter relevant to the investigation.

[23/2007; 15/2018]

(3) If, in the case of a warrant under subsection (1)(b), the court is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant must also authorise the actions mentioned in subsection (2) to be taken in relation to any such document.

(4) Where possession of any document is taken under subsection (2)(f) or (3), the named officer may, at the request of the person from whom possession of the document was taken, provide such person with a copy of the document.

(5) A named officer may allow any equipment or article which has a bearing on an investigation and which may be removed from any premises for examination under subsection (2)(k) to be retained on those premises subject to such conditions as the named officer may require.

[23/2007]

(6) Any person who fails to comply with any condition imposed under subsection (5) shall be guilty of an offence.

(7) A warrant issued under this section must indicate —

(a) the subject matter and purpose of the investigation; and

(b) the nature of the offences created by sections 75 to 78,

and continues in force until the end of the period of one month beginning from the day on which it is issued.

(8) The powers conferred by this section must not be exercised except upon production of a warrant issued under this section.

(9) Any person entering premises by virtue of a warrant under this section may take with him or her such equipment as appears to the person to be necessary.

(10) If there is no one at the premises when the named officer proposes to execute such a warrant, the named officer must, before executing it —

(a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

(b) if the occupier is informed, afford the occupier or the occupier's legal or other representative a reasonable opportunity to be present when the warrant is executed.

(11) If the named officer is unable to inform the occupier of the intended entry, the named officer must, when executing the warrant, leave a copy of it in a prominent place on the premises.

(12) On leaving any premises which the named officer has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he or she found them.

(13) Any document of which possession is taken under subsection (2)(f) may be retained for a period of 3 months.

(14) In this section —

“named officer” means —

(a) an officer of the Commission named in the warrant;
or

(b) the inspector named in the warrant,

as the case may be;

“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

Self-incrimination and savings for professional legal advisers

66.—(1) A person is not excused from disclosing any information or document to the Commission or (as the case may be) to an investigating officer, such officer or person as the Commission has authorised in writing to accompany the investigating officer, an inspector or a person required by the inspector, under a requirement made of him or her under any provision of this Act on the ground that the disclosure of the information or document might tend to incriminate him or her.

[23/2007]

(2) Where a person claims, before making a statement disclosing information that he or she is required to under any provision of this Act to the Commission or (as the case may be) to an investigating officer, such officer or person as the Commission has authorised in writing to accompany the investigating officer, an inspector or a person required by the inspector, that the statement might tend to incriminate him or her, that statement —

(a) is not admissible in evidence against him or her in criminal proceedings other than proceedings under Part 5; but

- (b) is, for the avoidance of doubt, admissible in evidence in civil proceedings, including proceedings under this Act.

[23/2007]

(3) Nothing in this Part —

- (a) compels a professional legal adviser to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him or her in that capacity; or
- (b) authorises the taking of any such document or other material which is in his or her possession.

(4) A professional legal adviser who refuses to disclose the information or produce the document or other material referred to in subsection (3) is nevertheless obliged to give the name and address (if the adviser knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

Interim measures

67.—(1) If the Commission —

- (a) has reasonable grounds for suspecting that the section 34 prohibition or the section 47 prohibition has been infringed but has not completed its investigations into the matter; and
- (b) considers that it is necessary for it to act under this section as a matter of urgency for the purpose —
- (i) of preventing serious, irreparable damage to a particular person or category of persons; or
- (ii) of protecting the public interest,

the Commission may give such directions as it considers appropriate for that purpose.

[23/2007]

(2) If the Commission has reasonable grounds for suspecting that the section 54 prohibition —

- (a) will be infringed by an anticipated merger, if carried into effect; or

(b) has been infringed by a merger,

but has not completed its investigations into the matter, and considers that it is necessary for it to act under this section —

(c) for the purpose of preventing any action that may prejudice —

(i) the investigations; or

(ii) the giving of any direction under section 69; or

(d) as a matter of urgency for the purpose —

(i) of preventing serious, irreparable damage to a particular person or category of persons; or

(ii) of protecting the public interest,

the Commission may give such directions as it considers appropriate for that purpose.

[23/2007]

(3) Before giving a direction under this section, the Commission must —

(a) give written notice to the person to whom it proposes to give the direction; and

(b) give that person an opportunity to make representations.

(4) A notice under subsection (3) must indicate the nature of the direction which the Commission is proposing to give and its reasons for wishing to give it.

(5) A direction given under this section has effect while subsection (1) or (2) (as the case may be) applies, but may be replaced if the circumstances permit by a direction under section 69.

[23/2007]

(6) In the case of a suspected infringement of the section 34 prohibition, sections 69(2)(a) and 85 also apply to directions given under this section.

(7) In the case of a suspected infringement of the section 47 prohibition, sections 69(2)(b) and 85 also apply to directions given under this section.

(8) In the case of a suspected infringement of the section 54 prohibition by an anticipated merger, if carried into effect, or a merger, sections 69(2)(c)(i) and (d)(i) and 85 also apply to directions given under this section.

[23/2007]

Decision of Commission upon completion of investigation

68.—(1) Where —

- (a) after considering the statements made, or documents or articles produced, in the course of an investigation conducted by it under this Part; or
- (b) in the case of an investigation conducted by an inspector, after considering the report of the inspector,

the Commission proposes to make a decision that the section 34 prohibition has been infringed by any agreement, the section 47 prohibition has been infringed by any conduct, the section 54 prohibition will be infringed by any anticipated merger, if carried into effect, or the section 54 prohibition has been infringed by any merger, the Commission must —

- (c) give written notice to the person likely to be affected by such decision; and
- (d) give such person an opportunity to make representations to the Commission.

[23/2007]

(2) Subject to subsections (3) and (5), upon considering any representation made to the Commission under subsection (1)(d), the Commission may, as it thinks fit, make a decision that —

- (a) the section 34 prohibition has been infringed by any agreement;
- (b) the section 47 prohibition has been infringed by any conduct;
- (c) the section 54 prohibition will be infringed by any anticipated merger, if carried into effect; or

- (d) the section 54 prohibition has been infringed by any merger.

[23/2007]

(3) Where —

- (a) in relation to an anticipated merger, the Commission proposes to make a decision that the section 54 prohibition will be infringed by the anticipated merger, if carried into effect; or
- (b) in relation to a merger, the Commission proposes to make a decision that the section 54 prohibition has been infringed by the merger,

and the Commission has given written notice under subsection (1)(c) to the parties to the anticipated merger or the parties involved in the merger (as the case may be) any such party may, within 14 days of the date of the notice, apply to the Minister for the anticipated merger, if carried into effect, or the merger to be exempted from the section 54 prohibition on the ground of any public interest consideration.

[23/2007]

(4) The decision of the Minister under subsection (3) is final.

(5) Where the Minister exempts an anticipated merger or a merger under subsection (3), the Commission may make a decision that —

- (a) the section 54 prohibition will not be infringed by the anticipated merger, if carried into effect; or
- (b) the section 54 prohibition has not been infringed by the merger.

[23/2007]

(6) The Minister may revoke the exemption of an anticipated merger or a merger granted under subsection (3) if the Minister has reasonable grounds for suspecting that the information on which the Minister based his or her decision was incomplete, false or misleading in a material particular.

[23/2007]

Enforcement of decision of Commission

- 69.**—(1) Where the Commission has made a decision that —
- (a) any agreement has infringed the section 34 prohibition;
 - (b) any conduct has infringed the section 47 prohibition;
 - (c) any anticipated merger, if carried into effect, will infringe the section 54 prohibition; or
 - (d) any merger has infringed the section 54 prohibition,

the Commission may give to such person as it thinks appropriate such directions as it considers appropriate to bring the infringement or the circumstances referred to in paragraph (c) to an end and, where necessary, requiring that person to take such action as is specified in the direction to remedy, mitigate or eliminate any adverse effects of such infringement or circumstances and to prevent the recurrence of such infringement or circumstances.

[23/2007]

(2) A direction referred to in subsection (1) may, in particular, include provisions —

- (a) where the decision is that any agreement has infringed the section 34 prohibition, requiring parties to the agreement to modify or terminate the agreement;
- (b) where the decision is that any conduct has infringed the section 47 prohibition, requiring the person concerned to modify or cease the conduct;
- (c) where the decision is that any anticipated merger, if carried into effect, will infringe the section 54 prohibition —
 - (i) prohibiting the anticipated merger from being carried into effect;

- (ii) requiring any parties to any agreement that is directly related and necessary to the implementation of the merger (which would result from the anticipated merger being carried into effect) to modify or terminate the agreement, even though the agreement is excluded under paragraph 10 of the Third Schedule or the Commission has given guidance or a decision under section 45 or 46 (as the case may be) that the agreement is unlikely to infringe, or has not infringed, the section 34 prohibition; and
 - (iii) requiring any person concerned with any conduct that is directly related and necessary to the implementation of the merger (which would result from the anticipated merger being carried into effect) to modify or cease that conduct, even though the conduct is excluded under paragraph 10 of the Third Schedule or the Commission has given guidance or a decision under section 52 or 53 (as the case may be) that the conduct is unlikely to infringe, or has not infringed, the section 47 prohibition;
- (d) where the decision is that any merger has infringed the section 54 prohibition —
- (i) requiring the merger to be dissolved or modified in such manner as the Commission may direct;
 - (ii) requiring any parties to any agreement that is directly related and necessary to the implementation of the merger to modify or terminate the agreement, even though the agreement is excluded under paragraph 10 of the Third Schedule or the Commission has given guidance or a decision under section 45 or 46 (as the case may be) that the agreement is unlikely to infringe, or has not infringed, the section 34 prohibition; and

- (iii) requiring any person concerned with any conduct that is directly related and necessary to the implementation of the merger to modify or cease that conduct, even though the conduct is excluded under paragraph 10 of the Third Schedule or the Commission has given guidance or a decision under section 52 or 53 (as the case may be) that the conduct is unlikely to infringe, or has not infringed, the section 47 prohibition;
- (e) where the decision is that any agreement has infringed the section 34 prohibition, any conduct has infringed the section 47 prohibition or any merger has infringed the section 54 prohibition, to pay to the Commission such financial penalty in respect of the infringement as the Commission may determine; and
- (f) in any case, requiring any party to an agreement that has infringed the section 34 prohibition, any person whose conduct has infringed the section 47 prohibition, any party to an anticipated merger which, if carried into effect, will infringe the section 54 prohibition or any party involved in a merger that has infringed the section 54 prohibition —
 - (i) to enter such legally enforceable agreements as may be specified by the Commission and designed to prevent or lessen the anti-competitive effects which have arisen;
 - (ii) to dispose of such operations, assets or shares of such undertaking in such manner as may be specified by the Commission; and
 - (iii) to provide a performance bond, guarantee or other form of security on such terms and conditions as the Commission may determine.

[23/2007]

(3) For the purpose of subsection (2)(e), the Commission may impose a financial penalty only if it is satisfied that the infringement has been committed intentionally or negligently.

[23/2007]

(4) No financial penalty fixed by the Commission under this section may exceed 10% or such other percentage of such turnover of the business of the undertaking in Singapore for each year of infringement for such period, up to a maximum of 3 years, as the Minister may, by order in the *Gazette*, prescribe.

(5) The Commission must, in any direction requiring the payment of a financial penalty, specify the date before which the financial penalty is to be paid, being a date not earlier than the end of the period within which an appeal against the direction may be brought under section 71.

(6) The Minister may, by order in the *Gazette*, prescribe the interest payable on the outstanding amount of any financial penalty imposed under subsection (2)(e) and for payment by instalment (as may be directed by the Commission in its discretion) of any financial penalty imposed under subsection (2)(e).

[4/2010]

Notification

70. The Commission must, within 14 days of its making any decision or direction under this Part, notify any person affected by such decision or direction.

PART 4

APPEALS

Division 1 — General

Appealable decisions

71.—(1) Any party to an agreement in respect of which the Commission has made a decision, any person in respect of whose conduct the Commission has made a decision, any party to an anticipated merger in respect of which the Commission has made a decision or any party involved in a merger in respect of which the Commission has made a decision, may appeal within the prescribed period to the Board against, or with respect to, that decision.

[23/2007]

(2) Any person, other than a person referred to in subsection (1), to whom the Commission has given a direction under section 58A, 67 or 69 may appeal within the prescribed period to the Board against, or with respect to, that direction.

[23/2007]

(3) Except in the case of an appeal against the imposition, or the amount, of a financial penalty, the making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.

(4) In subsection (1), “decision” means a decision of the Commission as to —

- (a) whether the section 34 prohibition has been infringed by any agreement;
- (b) whether the section 47 prohibition has been infringed by any conduct;
- (c) whether the section 54 prohibition will be infringed by any anticipated merger, if carried into effect; or
- (d) whether the section 54 prohibition has been infringed by any merger,

and includes a direction given under section 58A, 67 or 69 (including the imposition of any financial penalty under section 69 or as to the amount of any such financial penalty) and such other decision as the Minister may by regulations prescribe.

[23/2007]

Division 2 — Competition Appeal Board

Competition Appeal Board

72.—(1) For the purpose of hearing any appeal referred to in section 71(1), there is to be a Competition Appeal Board consisting of not more than 30 members appointed, from time to time, by the Minister on the basis of their ability and experience in industry, commerce or administration or their professional qualifications or their suitability otherwise for appointment.

(2) Members of the Board hold office for such period as may be determined by the Minister and are eligible for re-appointment.

(3) The Minister may at any time remove any member of the Board from office without assigning any reason.

(4) A member of the Board may resign his or her office by notice in writing to the Minister.

(5) The Minister must appoint to be Chairperson of the Board a person who is qualified to be a Supreme Court Judge.

[40/2019]

(6) The Chairperson of the Board, when present, presides at every meeting of the Board, and in the Chairperson's absence such member of the Board as may be chosen by the members present presides.

(7) The Minister may appoint a secretary to the Board and such other officers and employees of the Board as may be necessary.

(8) All the powers, functions and duties of the Board may be exercised, performed and discharged by any committee of the Board consisting of not less than 3 members of the Board, one of whom may be the Chairperson of the Board.

(9) Any act, finding or decision of any such committee is deemed to be the act, finding or decision of the Board.

(10) The secretary must, from time to time, summon such members of the Board as may be nominated by the Chairperson of the Board, to constitute a committee of the Board for the purposes of giving effect to the provisions of this Part, and it is the duty of such members to attend at the times and places specified in the summons.

(11) Subject to subsection (12), where the Chairperson of the Board is nominated under subsection (10) as a member of a committee, he or she presides at every meeting of the committee, and where the Chairperson is not nominated as a member of a committee, the Chairperson must determine which member of the committee is to preside at every meeting of that committee.

(12) Where the Chairperson of the Board or the member determined by the Chairperson under subsection (11) (as the case

may be) is absent at any committee meeting, such member of the committee as may be chosen by the members present presides.

(13) All matters coming before the Board or a committee of the Board at any sitting thereof must be decided by a majority of votes of those members present and, in the event of an equality of votes, the Chairperson of the Board or any other member presiding has a second or casting vote.

(14) Members of the Board may receive such remuneration and such travelling and subsistence allowances as the Minister may determine.

(15) The Minister may make regulations —

- (a) prescribing the period within which appeals may be made;
- (b) prescribing the manner in which appeals are to be made to the Board;
- (c) prescribing the procedure to be adopted by the Board in hearing appeals and the records to be kept by the Board;
- (d) prescribing the places where and the times at which appeals are to be heard by the Board;
- (e) prescribing the fees to be paid in respect of any appeal under this Part;
- (f) permitting the Board to order interest to be paid on any financial penalty imposed, confirmed or varied by the Board;
- (g) prescribing the award of costs of or incidental to any proceedings before the Board or the award of expenses, including any allowances payable to persons in connection with their attendance before the Board; and
- (h) generally for the better carrying out of the provisions of this Part.

[4/2010]

Powers and decisions of Board

73.—(1) The Board must, by notice to the Commission and the appellant, specify the date on and the place at which the appeal is to be heard.

(2) The Board has all the powers and duties of the Commission that are necessary to perform its functions and discharge its duties under this Act.

(3) The Board has the powers, rights and privileges vested in a District Court on the hearing of an action, including —

- (a) the enforcement of the attendance of witnesses and their examination on oath or otherwise;
- (b) the compelling of the production of documents; and
- (c) the award of such costs or expenses as may be prescribed under section 72(15).

(4) A summons signed by such member of the Board as may be authorised by the Board is equivalent to any formal procedure capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of documents.

(5) Where any person being duly summoned to attend before the Board does not so attend, that person shall be guilty of an offence.

(6) A witness before the Board is entitled to the same immunities and privileges as if he or she were a witness before a District Court.

(7) All appeals under this section must be determined, having regard to the nature and complexity of the appeal, as soon as reasonably practicable.

(8) The Board may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may —

- (a) remit the matter to the Commission;
- (b) impose or revoke, or vary the amount of, a financial penalty;
- (c) give such direction, or take such other step, as the Commission could itself have given or taken; or

(d) make any other decision which the Commission could itself have made.

(9) Any decision of the Board on an appeal has the same effect, and may be enforced in the same manner, as a decision of the Commission.

(10) If the Board confirms the decision which is the subject of the appeal it may nevertheless set aside any finding of fact on which the decision was based.

(11) The Board must notify the appellant of its decision in respect of the appellant's appeal and the reasons for its decision.

Appeals to General Division of High Court, etc.

74.—(1) An appeal against, or with respect to, a decision of the Board made under section 73 shall lie to the General Division of the High Court —

- (a) on a point of law arising from a decision of the Board; or
- (b) from any decision of the Board as to the amount of a financial penalty.

[40/2019]

(2) An appeal under this section may be made only at the instance of a person who was a party to the proceedings in which the decision of the Board was made.

(3) The General Division of the High Court shall hear and determine any such appeal and may —

- (a) confirm, modify or reverse the decision of the Board; and
- (b) make such further or other order on such appeal, whether as to costs or otherwise, as the General Division of the High Court may think fit.

[40/2019]

(4) There is such further right of appeal from decisions of the General Division of the High Court under this section as exists in the case of decisions made by the General Division of the High Court in the exercise of its original civil jurisdiction.

[40/2019]

PART 5
OFFENCES

Refusal to provide information, etc.

75.—(1) Any person who fails to comply with a requirement imposed on the person under section 61A, 63, 64 or 65 shall be guilty of an offence.

[23/2007]

(2) If a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it is a defence for the person to prove that —

- (a) the document was not in the person's possession or under the person's control; and
- (b) it was not reasonably practicable for the person to comply with the requirement.

(3) If a person is charged with an offence under subsection (1) in respect of a requirement —

- (a) to provide information or answer any question posed to the person;
- (b) to provide an explanation of a document; or
- (c) to state where a document is to be found,

it is a defence for the person to prove that the person had a reasonable excuse for failing to comply with the requirement.

[15/2018]

(4) Failure to comply with a requirement imposed under section 61A, 63 or 64 shall not be an offence if the person imposing the requirement has failed to act in accordance with that section.

[23/2007]

Destroying or falsifying documents

76. Any person who, having been required to produce a document under section 61A, 63, 64 or 65 —

- (a) intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it; or

- (b) causes or permits its destruction, disposal, falsification or concealment,

shall be guilty of an offence.

[23/2007]

False or misleading information

77.—(1) Any person who provides information to the Commission, an investigating officer or an inspector or any person authorised, appointed or employed to assist the Commission, investigating officer or inspector, in connection with any function or duty of the Commission, investigating officer or inspector under this Act shall be guilty of an offence if —

- (a) the information is false or misleading in a material particular; and
- (b) he or she knows that it is false or misleading in a material particular or is reckless as to whether it is.

(2) A person who —

- (a) provides an information to another person, knowing the information to be false or misleading in a material particular; or
- (b) recklessly provides any information to another person which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the Commission, an investigating officer or an inspector or any person authorised, appointed or employed to assist the Commission, investigating officer or inspector, in connection with any function or duty of the Commission, investigating officer or inspector under this Act, shall be guilty of an offence.

Obstruction of officer of Commission, etc.

78. Any person who refuses to give access to, or assaults, hinders or delays any member, officer, employee or agent of the Commission authorised to act for or assist the Commission, or any inspector or

person assisting an inspector, in the discharge of his or her duties under this Act shall be guilty of an offence.

No costs or damages or other relief arising from seizure to be recoverable unless seizure without reasonable or probable cause

79. No person is, in any proceedings before any court in respect of any equipment, article or document seized in the exercise or the purported exercise of any power conferred under this Act, entitled to the costs of the proceedings or to any damages or other relief other than an order for the return of the equipment, article or document or the payment of their value unless the seizure was made without reasonable or probable cause.

Powers of enforcement

80.—(1) In addition to the powers conferred on him or her by this Act or any other written law, an officer or employee of the Commission may, in relation to any offence under this Act, on declaration of his or her office and production to the person against whom he or she is acting such identification card as the Chief Executive may direct to be carried by officers or employees of the Commission —

- (a) require any person whom the officer or employee of the Commission reasonably believes to have committed that offence to furnish evidence of the person's identity;
- (b) require any person to furnish any information or produce any document or copy thereof in the possession of that person, and may, without fee or reward, inspect, make copies or extracts from such document; and
- (c) require, by written order, the attendance before the officer or employee of any person being within the limits of Singapore who, from the information given or otherwise obtained by the officer or employee, appears to be acquainted with the circumstances of the case.

(2) Any person who —

- (a) wilfully misstates or without lawful excuse refuses to give any information or produce any document or copy thereof required of him or her by an officer or employee of the Commission under subsection (1); or
- (b) fails to comply with a lawful demand of an officer or employee of the Commission in the discharge of his or her duties by such officer or employee under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

Offences by bodies corporate, etc.

81.—(1) Where an offence under this Act committed by a body corporate is proved —

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the officer's part,

the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved —

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the partner's part,

the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved —

- (a) to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or
- (b) to be attributable to any neglect on the officer's or member's part,

the officer or member as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

“officer” —

- (a) in relation to a body corporate, means any director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of a committee and includes any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner.

(6) The Commission may, with the approval of the Minister, make regulations to provide for the application of any provision of this section, with such modifications as may be appropriate, to any body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

Jurisdiction of court

82. Despite any provision to the contrary in the Criminal Procedure Code 2010, a District Court has jurisdiction to try any offence under this Act and has power to impose the full penalty or punishment for any such offence.

General penalty

83. Any person who is guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

Composition of offences

84.—(1) Any offence under —

(a) this Act; or

(b) any subsidiary legislation made under this Act,

may be compounded under this section if the offence is prescribed as a compoundable offence.

(2) For the purpose of subsection (1), the Commission may, with the approval of the Minister, make regulations —

(a) to prescribe the offences under this Act or any subsidiary legislation made under this Act as offences that may be compounded under this section;

(b) to designate the person who may compound such offences; and

(c) to specify the maximum sum for which such offence may be compounded, except that the maximum sum so specified must not exceed the lower of the following:

(i) one half of the amount of the maximum fine that is prescribed for the offence;

(ii) \$5,000.

(3) The person designated under subsection (2)(b) may compound any offence prescribed under subsection (2)(a) by collecting from a person who is reasonably suspected of having committed the offence a sum of money not exceeding the maximum sum that is specified under subsection (2)(c) in respect of that offence.

PART 6

MISCELLANEOUS

Enforcement of directions of Commission and commitments in District Court

85.—(1) For the purposes of enforcement of any direction made by the Commission under section 58A, 67 or 69, or any commitment accepted by the Commission under section 60A and which it has not released, the Commission may apply for the direction or commitment to be registered in a District Court in accordance with the Rules of Court and the District Court is to register the direction or commitment in accordance with the Rules of Court.

[23/2007]

(2) From the date of registration of any direction or commitment under subsection (1), the direction or commitment has the same force and effect, and all proceedings may be taken on the direction or commitment, for the purposes of enforcement as if it had been an order originally obtained in the District Court which has power to enforce it accordingly.

[23/2007]

(3) A District Court has jurisdiction to enforce any direction or commitment in accordance with subsection (2) regardless of the monetary amount involved and may, for the purpose of enforcing such direction or commitment, make any order —

- (a) to secure compliance with the direction or commitment; or
- (b) to require any person to do anything to remedy, mitigate or eliminate any effects arising from —
 - (i) anything done which ought not, under the direction or commitment, to have been done; or
 - (ii) anything not done which ought, under the direction or commitment, to have been done,

which would not have occurred had the direction or commitment been complied with.

[23/2007]

(4) Nothing in this section confers upon the District Court any power to order the winding up of a company.

[23/2007]

Rights of private action

86.—(1) Any person who suffers loss or damage directly as a result of an infringement of the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has a right of action for relief in civil proceedings in a court under this section against any undertaking which is or which has at the material time been a party to such infringement.

(2) No action to which subsection (1) applies may be brought —

(a) until after a decision referred to in subsection (3) has established that the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has been infringed; and

(b) during the period referred to in subsection (4).

(3) The decisions which may be relied upon for the purposes of an action under this section are —

(a) the Commission's decision under section 68;

(b) the Board's decision under section 73 (on an appeal from the Commission's decision under section 71);

(c) the decision of the General Division of the High Court under section 74 (on an appeal from the Board's decision under that section); and

(d) the decision of the appellate court under section 74 (on an appeal from the decision of the General Division of the High Court under that section).

[40/2019]

(4) The periods during which an action may not be brought under this section are —

(a) in the case of a decision of the Commission, the period during which an appeal may be made to the Board under section 71(1);

- (b) in the case of a decision of the Commission which is the subject of an appeal to the Board as referred to in paragraph (a), the period following the decision of the Board during which a further appeal may be made under section 74 to the General Division of the High Court; and
- (c) in the case of a decision of the General Division of the High Court which is the subject of a further appeal, the period during which such an appeal may be made under section 74.

[40/2019]

(5) Where any appeal referred to in paragraph (a), (b) or (c) of subsection (4) is made, the period specified in that paragraph includes the period before the appeal is determined.

(6) No action to which subsection (1) applies may be brought after the end of 2 years after the relevant period specified in subsection (4).

(7) In determining a claim under this section, the court shall accept as final and conclusive any decision referred to in subsection (3) which establishes that the prohibition in question has been infringed.

(8) The court may grant to the plaintiff in an action under subsection (1) all or any of the following reliefs:

- (a) relief by way of injunction or declaration;
- (b) damages;
- (c) such other relief as the court thinks fit.

(9) Nothing in this section confers on any party to an agreement which infringes the section 34 prohibition a right of action for relief.

Cooperation between Commission and other regulatory authorities on competition matters

87.—(1) The Commission may enter into any agreement with any regulatory authority for the purposes of —

- (a) facilitating cooperation between the Commission and the regulatory authority in the performance of their respective functions insofar as they relate to issues of competition between undertakings;

- (b) avoiding duplication of activities by the Commission and the regulatory authority, being activities involving the determination of the effects on competition of any act done, or proposed to be done; and
 - (c) ensuring, as far as practicable, consistency between decisions made or other steps taken by the Commission and the regulatory authority insofar as any part of those decisions or steps consists of or relates to a determination of any issue of competition between undertakings.
- (2) An agreement that is entered into under subsection (1) is referred to in this section as a cooperation agreement.
- (3) A cooperation agreement may include —
 - (a) a provision enabling each party to furnish to another party information in its possession if the information is required by that other party for the purpose of the performance by it of any of its functions;
 - (b) a provision enabling each party to forbear to perform any of its functions in relation to a matter in circumstances where it is satisfied that another party is performing functions in relation to that matter; and
 - (c) a provision requiring each party to consult with any other party before performing any function in circumstances where the respective exercise by each party of the function concerned involves the determination of issues of competition between undertakings that are identical to one another or fall within the same category of such an issue, being a category specified in the agreement.
- (4) In this section —

“issue of competition between undertakings” includes an issue of competition between undertakings that arises generally in the sector of activity in relation to which the Commission or the regulatory authority may exercise powers and such an issue that falls, or could fall, to be the subject of the exercise by the Commission or the regulatory authority of powers in particular circumstances;

“party” means a party to a cooperation agreement and a reference to another party (whether that expression or the expression “other party” is used) is, where there are 2 or more other parties to the agreement, a reference to one or more of those other parties or each of them, as appropriate.

Cooperation between Commission and foreign competition bodies

88.—(1) The Commission may, with the approval of the Minister, enter into arrangements with any foreign competition body whereby each party to the arrangements may —

- (a) furnish to the other party information in its possession if the information is required by that other party for the purpose of performance by it of any of its functions; and
- (b) provide such other assistance to the other party as will facilitate the performance by that other party of any of its functions.

(2) The Commission must not furnish any information to a foreign competition body pursuant to such arrangements unless it requires of, and obtains from, that body an undertaking in writing by it that it will comply with terms specified in that requirement, including terms that correspond to the provisions of any other written law concerning the disclosure of that information by the Commission.

(3) The Commission may give an undertaking to a foreign competition body that it will comply with terms specified in a requirement made of the Commission by the body to give such an undertaking where —

- (a) those terms correspond to the provisions of any law in force in the country or territory in which the body is established, being provisions which concern the disclosure by the body of the information referred to in paragraph (b); and

- (b) compliance with the requirement is a condition imposed by the body for furnishing information in its possession to the Commission pursuant to the arrangements referred to in subsection (1).

(4) In this section, “foreign competition body” means a person in whom there are vested functions under the law of another country or territory with respect to the enforcement or the administration of provisions of law of that country or territory concerning competition between undertakings (whether in a particular sector of the economy of that country or territory or throughout that economy generally).

Preservation of secrecy

89.—(1) Subject to subsection (5), every specified person must preserve, and aid in the preserving of, secrecy with regard to —

- (a) all matters relating to the business, commercial or official affairs of any person;
- (b) all matters that have been identified as confidential under subsection (3); and
- (c) all matters relating to the identity of persons furnishing information to the Commission,

that may come to his or her knowledge in the performance of his or her functions and discharge of his or her duties under this Act and must not communicate any such matter to any person, except in so far as such communication —

- (d) is necessary for the performance of any such function or discharge of any such duty; or
- (e) is lawfully required by any court or the Board, or lawfully required or allowed under this Act or any other written law.

[5/2018]

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence.

(3) Any person, when furnishing any information to the Commission, may identify information that he or she claims to be confidential information.

(4) Every claim made under subsection (3) must be supported by a written statement giving reasons why the information is confidential.

(5) Despite subsection (1), the Commission may disclose any information relating to any matter referred to in subsection (1) in any of the following circumstances:

- (a) where the consent of the person to whom the information relates has been obtained;
- (b) for the purposes of —
 - (i) a prosecution under this Act;
 - (ii) subject to subsection (6), enabling the Commission to give effect to any provision of this Act;
 - (iii) enabling the Commission, an investigating officer or an inspector to investigate a suspected offence under this Act or to enforce a provision thereof; or
 - (iv) complying with such provision of an agreement between Singapore and a country or territory outside Singapore (called in this section a foreign country) as may be prescribed, where the conditions specified in subsection (7) are satisfied.

(6) If the Commission is considering whether to disclose any information under subsection (5)(b)(ii), the Commission must have regard to —

- (a) the need for excluding, so far as is practicable, information the disclosure of which would in its opinion be contrary to the public interest;
- (b) the need for excluding, so far as is practicable —
 - (i) commercial information the disclosure of which would, or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates; or
 - (ii) information relating to the private affairs of an individual the disclosure of which would, or might,

in its opinion, significantly harm the individual's interest; and

- (c) the extent to which the disclosure is necessary for the purposes for which the Commission is proposing to make the disclosure.
- (7) The conditions referred to in subsection (5)(b)(iv) are —
- (a) the information or documents requested by the foreign country are available to the Commission;
 - (b) unless the Government otherwise allows, the foreign country undertakes to keep the information given confidential at all times; and
 - (c) the disclosure of the information is not likely to be contrary to the public interest.
- (8) In this section, “specified person” means a person who is or has been —
- (a) a member, an officer, an employee or an agent of the Commission;
 - (b) a member of a committee of the Commission or any person authorised, appointed or employed to assist the Commission;
 - (c) an inspector or a person authorised, appointed or employed to assist an inspector; or
 - (d) a member of the Board or any person authorised, appointed or employed to assist the Board.

Protection from personal liability

90. No liability shall lie personally against any of the following persons for anything done or purported to be done, or omitted to be done, in good faith and with reasonable care in the performance or purported performance of any function of the Commission or the exercise or purported exercise of any power of the Commission under this Act or any other written law:

- (a) the Chief Executive;

- (b) any member, officer, employee or agent of the Commission;
- (c) any member of the Board or any person authorised, appointed or employed to assist the Board;
- (d) any person who is on secondment or attachment to the Commission;
- (e) any person authorised, appointed, employed or directed by the Commission to exercise the Commission's powers, perform the Commission's functions or discharge the Commission's duties or to assist the Commission in the exercise of the Commission's powers, the performance of the Commission's functions or the discharge of the Commission's duties;
- (f) any inspector or any person authorised, appointed or employed to assist the inspector in connection with any function or duty of the inspector.

[15/2018]

Public servants

91. All inspectors and all members of the Board shall be deemed to be public servants for the purposes of the Penal Code 1871.

[5/2018]

Proceedings conducted by officers of Commission

91A.—(1) Proceedings in respect of an offence under this Act may, with the authorisation of the Public Prosecutor, be conducted by an officer of the Commission who is authorised in writing in that behalf by the Chief Executive.

[15/2010]

(2) Despite the provisions of any written law, a legal officer of the Commission who has been admitted as an advocate and solicitor under the Legal Profession Act 1966 may —

- (a) appear in any civil proceedings involving the Commission in the performance of its functions or duties under any written law; and

- (b) make and do all acts and applications in respect of the civil proceedings on behalf of the Commission.

Amendment of Third and Fourth Schedules

92. The Minister may at any time, by order in the *Gazette*, amend the Third and Fourth Schedules.

Regulations

93.—(1) The Commission may, with the approval of the Minister, make regulations for any purpose for which regulations are required to be made under this Act and generally for carrying out the purposes and provisions of this Act.

(2) Without limiting subsection (1), the Commission may, with the approval of the Minister, make regulations for or with respect to all or any of the following matters:

- (a) the manner of appointment, conduct and discipline and the terms and conditions of service of the employees of the Commission;
- (b) the establishment of funds for the payment of gratuities and other benefits to employees of the Commission;
- (c) the form and manner in which a notification under section 38(1) is to be made;
- (d) the form and manner in which complaints that the section 34 prohibition has been infringed by any agreement, the section 47 prohibition has been infringed by any conduct, the section 54 prohibition will be infringed by any anticipated merger, if carried into effect, or the section 54 prohibition has been infringed by any merger, are to be submitted to the Commission;
- (e) the acceptance of commitments, and the variation, substitution or release of commitments, including the parties that may apply for the variation, substitution or release of commitments and the form and manner in which applications for the variation, substitution or release of any commitment are to be submitted to the Commission;

- (f) the form and manner in which notices of decisions and directions of the Commission are to be given, and the persons to whom such notices are to be given;
- (g) the fees to be charged in respect of anything done or any services rendered by the Commission under or by virtue of this Act, including the calculation of the amount of fees by reference to matters including —
 - (i) the turnover of all or any party to an agreement (determined in such manner as may be prescribed);
 - (ii) the turnover of any person whose conduct the Commission is to consider (determined in such manner as may be prescribed);
 - (iii) the turnover of all or any party to an anticipated merger (determined in such manner as may be prescribed); and
 - (iv) the turnover of all or any party involved in a merger (determined in such manner as may be prescribed);
- (h) anything which may be prescribed or is required to be prescribed under this Act.

[23/2007]

94. [*Repealed by Act 4 of 2021*]

PART 7

TRANSFER OF UNDERTAKINGS TO COMMISSION

Interpretation of this Part

95. In this Part, unless the context otherwise requires —

“asset”, in relation to the transferor, means property of any kind (whether tangible or intangible, whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether actual or contingent) of the transferor on the eve of the transfer date and includes, without limitation, any —

- (a) legal or equitable interest in real or personal property, whether situated in Singapore or elsewhere;
- (b) chose in action;
- (c) money or securities;
- (d) plant and equipment, whether situated in Singapore or elsewhere;
- (e) intellectual property;
- (f) infrastructure, whether situated in Singapore or elsewhere;
- (g) records; and
- (h) right;

“fair trading functions” means the following functions:

- (a) promoting fair trading among suppliers and consumers and enabling consumers to make informed purchasing decisions in Singapore;
- (b) preventing suppliers in Singapore from engaging in unfair trading practices;
- (c) advising the Government, any public authority or any consumer protection organisation on fair trading matters generally;
- (d) administering and enforcing the Consumer Protection (Fair Trading) Act 2003;

“liability”, in relation to the transferor, means any liability, duty or obligation (whether actual or contingent, liquidated or unliquidated, and whether owed alone or jointly and severally with any other person) of the transferor on the eve of the transfer date;

“records”, in relation to the transferor, means registers, papers, documents, minutes, receipts, books of account and other records, however compiled, recorded or stored, of the transferor existing on the eve of the transfer date;

“right”, in relation to the transferor, means any right, power, privilege or immunity of the transferor on the eve of the transfer date;

“transfer date” means 1 April 2018;

“transferor” means the Standards, Productivity and Innovation Board established by the Standards, Productivity and Innovation Board Act (Cap. 303A, 2002 Revised Edition).

[10/2018]

Transfer of undertakings to Commission

96.—(1) On the transfer date, all the assets and liabilities of the transferor that relate solely or mainly to the fair trading functions are transferred to the Commission.

[10/2018]

(2) When any asset or liability of the transferor is transferred under subsection (1), the following provisions have effect:

- (a) the asset that is the subject of the transfer vests in the Commission by virtue of this section and without the need for any further conveyance, transfer, assignment or assurance;
- (b) the liability that is the subject of the transfer becomes by virtue of this section the liability of the Commission;
- (c) all legal or other proceedings relating to that asset or liability started before the transfer date by or against the transferor (or a predecessor of the transferor) and pending immediately before that date are taken to be proceedings pending by or against the Commission;
- (d) any legal or other proceedings relating to that asset or liability which could have been started immediately before the transfer date by or against the transferor (or a predecessor of the transferor) may be started by or against the Commission;
- (e) a judgment or order of a court or other tribunal obtained before the transfer date by or against the transferor (or a

predecessor of the transferor) relating to that asset or liability may be enforced by or against the Commission;

- (f) any document relating to legal or other proceedings relating to that asset or liability that has been served on or by the transferor (or a predecessor of the transferor) before the transfer date is taken, where appropriate, to have been served on or by the Commission;
- (g) any act, matter or thing done or omitted to be done before the transfer date in relation to that asset or liability by, to or in respect of the transferor (or a predecessor of the transferor) is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Commission;
- (h) a reference to the transferor (or a predecessor of the transferor) in any written law, any instrument made under any Act, any contract, agreement, arrangement or undertaking, or any document of any kind, to the extent to which the reference relates to that asset or liability, is taken to be, or to include, a reference to the Commission;
- (i) any agreement relating to that asset or liability and to which the transferor (or a predecessor of the transferor) is a party becomes enforceable by or against the Commission.

[10/2018]

(3) The operation of this section does not —

- (a) constitute a breach of, or default under, any Act or other law or otherwise a civil wrong or criminal wrong;
- (b) constitute a breach of duty of confidence (whether arising by contract, in equity, by custom, or in any other way);
- (c) constitute a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities or the disclosure of any information;
- (d) terminate an agreement or fulfil any condition that allows a person to terminate any agreement or obligation, or give

rise to any right or remedy in respect of any agreement or obligation;

- (e) frustrate any contract or cause any contract or instrument to be void or otherwise unenforceable;
- (f) release any surety, other obligor or other obligee wholly or in part from any obligation; or
- (g) constitute an event of breach of, or default under, any contract or other instrument.

[10/2018]

Transfer of employees to Commission

97.—(1) On the transfer date, every employee of the transferor in the Consumer Protection Weights & Measures Division who performs solely or mainly the fair trading functions —

- (a) stops being an employee of the transferor; and
- (b) is each transferred to the service, and becomes an employee, of the Commission on terms no less favourable than those enjoyed by the employee on the eve of the transfer date.

[10/2018]

(2) A certificate signed by the Minister certifying whether an individual named in the certificate has been transferred to the service of the Commission under subsection (1) is admissible in evidence in any proceedings as proof of the matters stated in the certificate.

[10/2018]

(3) The transfer of an employee of the transferor to the Commission under subsection (1) —

- (a) does not interrupt continuity of the employee's service;
- (b) does not constitute a retrenchment or redundancy of the employee's employment by the transferor; and
- (c) does not entitle the employee to any compensation or other payment or benefit merely because he or she stops being employed by the transferor.

[10/2018]

(4) Nothing in this section prevents —

- (a) any of the terms and conditions of employment of an individual transferred to the service of the Commission under subsection (1) from being altered by or under any law, award or agreement with effect from any time after the transfer date; and
- (b) an individual transferred to the service of the Commission under subsection (1) from resigning from such service any time after the transfer date, in accordance with the terms and conditions of his or her employment then applicable.

[10/2018]

(5) To avoid doubt, section 18A of the Employment Act 1968 does not apply to the transfer under this Part of any employee of the transferor to the Commission.

[10/2018]

General preservation of employment terms, etc.

98.—(1) When an employee of the transferor is transferred to the service of the Commission under section 97 (called in this section a transferred employee), the transferred employee's service with the Commission must be regarded for all purposes as having been continuous with his or her service with the transferor immediately before the transfer date.

[10/2018]

(2) On the transfer date —

- (a) a transferred employee retains all accrued rights as if his or her employment with the Commission were a continuation of employment with the transferor;
- (b) the liabilities of the transferor relating to the transferred employee's accrued rights to leave and superannuation become the liabilities of the Commission; and
- (c) a reference in the contract of employment that had effect in relation to the transferred employee immediately before the transfer date is taken to be, or includes, a reference to the Commission.

[10/2018]

(3) Until such time as the Commission draws up the terms and conditions of employment for the transferred employee, the Commission is to be regarded as employing the transferred employee on the same terms and conditions of his or her employment with the transferor on the eve of the transfer date.

[10/2018]

(4) Any term or condition of employment drawn up by the Commission relating to the length of service of the transferred employee with the Commission must recognise the length of service of that employee with the transferor (including any previous service that is taken to be service with the transferor) to be service with the Commission.

[10/2018]

(5) For any conduct of the transferred employee when he or she was employed by the transferor which would have rendered that employee liable to be reprimanded, reduced in rank, retired, dismissed or punished by the transferor, the Commission may —

- (a) start any disciplinary proceedings against the employee;
- (b) carry on and complete any disciplinary proceedings started by the transferor against that employee if those proceedings are pending on the eve of the transfer date; and
- (c) reprimand, reduce in rank, retire, dismiss or otherwise punish the employee as if the Commission were the transferor.

[10/2018]

(6) Where on the eve of the transfer date, any matter about the conduct of the transferred employee during his or her employment with the transferor concerned —

- (a) was in the course of being heard or investigated by a committee of that transferor acting under due authority; or

- (b) had been heard or investigated, but no order, ruling or direction had been made, by that committee,

that committee must complete the hearing or investigation and make such order, ruling or direction as it could have made under the authority vested in it before that date, and that order, ruling or direction is to be regarded as an order, ruling or direction of the Commission.

[10/2018]

Transfer of records

99. On the transfer date, the records of the transferor that relate solely or mainly to the fair trading functions become the records of the Commission.

[10/2018]

Confirmation of transfers

100.—(1) If any dispute arises —

- (a) as to whether an asset or a liability, or an employee or a record, is transferred under section 96, 97 or 99; or
- (b) as to whether any, or part of any, contract or document relates to an asset or a liability, or an employee or a record, transferred under section 96, 97 or 99,

the Minister charged with the responsibility for finance may determine the matter and must provide the concerned parties with written notice of that determination.

[10/2018]

(2) The determination of the Minister charged with the responsibility for finance under subsection (1) is final and binding on the transferor and the Commission.

[10/2018]

FIRST SCHEDULE

Section 5(2)

CONSTITUTION AND PROCEEDINGS OF COMMISSION

Appointment of Chairperson and members

1.—(1) The Chairperson and other members of the Commission shall be appointed by the Minister.

(2) The Minister may appoint the Chief Executive as a member.

(3) The persons to be appointed under this paragraph must be chosen for their ability and experience in industry, commerce or administration or their professional qualifications or their suitability otherwise for appointment.

Appointment of Deputy Chairperson

2.—(1) The Minister may appoint any member of the Commission to be the Deputy Chairperson of the Commission.

(2) The Deputy Chairperson so appointed may, subject to such direction as may be given by the Chairperson, exercise all or any of the powers exercisable by the Chairperson under this Act.

(3) If for any reason the Chairperson is unable to act or the office of the Chairperson is vacant, the Deputy Chairperson may exercise all or any of the powers conferred, or discharge all or any of the duties imposed on the Chairperson, under this Act.

Tenure of office of members of Commission

3. A member of the Commission holds office on such conditions and for such term of not less than 3 years and not more than 5 years as the Minister may determine, and is eligible for re-appointment.

Temporary Chairperson, Deputy Chairperson or member

4. The Minister may appoint any person to be a temporary Chairperson, Deputy Chairperson or member during the temporary incapacity from illness or otherwise, or during the temporary absence from Singapore, of the Chairperson, Deputy Chairperson or any member, as the case may be.

Revocation of appointment

5. The Minister may, at any time, revoke the appointment of the Chairperson, Deputy Chairperson or any member if the Minister considers such revocation necessary in the interest of the effective and economical performance of the functions of the Commission under this Act or in the public interest.

FIRST SCHEDULE — *continued***Resignation from office**

6. A member may resign from his or her office at any time by giving not less than one month's notice to the Minister.

Chairperson may delegate function

7. The Chairperson may, in writing, authorise any member of the Commission to exercise any power or perform any function conferred on the Chairperson under this Act.

Vacation of office

8. The office of a member becomes vacant if the member —

- (a) dies;
- (b) fails to attend 3 consecutive meetings of the Commission without sufficient cause (the sufficiency of which is to be decided by the Commission);
- (c) becomes in any manner disqualified from membership of the Commission;
- (d) resigns his or her office; or
- (e) has his or her appointment revoked.

Filling of vacancies

9. If a vacancy occurs in the membership of the Commission, the Minister may, subject to paragraph 1, appoint any person to fill the vacancy, and the person so appointed shall hold office for the remainder of the term for which the vacating member was appointed.

Disqualification from membership

10. A person must not be appointed or continue to hold office as a member if the person —

- (a) is an undischarged bankrupt or has made any arrangement with his or her creditors;
- (b) has been sentenced to imprisonment for a term exceeding 6 months and has not received a free pardon;
- (c) is incapacitated by physical or mental illness; or
- (d) is otherwise unable or unfit to discharge the functions of a member.

11. [*Deleted by Act 5 of 2018*]

FIRST SCHEDULE — *continued***Sealing of documents**

12.—(1) All deeds and other documents requiring the seal of the Commission must be sealed with the common seal of the Commission in the presence of any 2 officers of the Commission duly authorised by the Commission to act in that behalf and must be signed by those officers.

(2) Such signing is sufficient evidence that the common seal of the Commission has been duly and properly affixed and that the seal is the lawful common seal of the Commission.

(3) The Commission may by resolution or otherwise appoint an officer or employee of the Commission or any other agent, either generally or in a particular case, to execute or sign on behalf of the Commission any agreement or other instrument not under seal in relation to any matter coming within the powers of the Commission.

(4) Section 11 of the Registration of Deeds Act 1988 does not apply to any instrument purporting to have been executed under sub-paragraph (1).

Salaries, fees and allowances payable to members of Commission

13. There are to be paid to the members of the Commission, out of the funds of the Commission, such salaries, fees and allowances as the Minister may determine.

Quorum

14.—(1) At every meeting of the Commission, one-half of the number of members constitutes a quorum.

(2) The Chairperson, or in his or her absence the Deputy Chairperson, presides at meetings of the Commission, and if both the Chairperson and Deputy Chairperson are absent from any meeting or part thereof, such member as the members present may elect presides at that meeting or part thereof.

(3) A decision at a meeting of the Commission is to be adopted by a simple majority of the members present and voting except that, in the case of an equality of votes, the Chairperson or any other member presiding has a casting vote in addition to his or her original vote.

(4) Where not less than 4 members of the Commission request the Chairperson by written notice signed by them to convene a meeting of the Commission for any purpose specified in the notice, the Chairperson must, within 7 days from the receipt of the notice, convene a meeting for that purpose.

FIRST SCHEDULE — *continued***Vacancies**

15. The Commission may act despite any vacancy in its membership.

Procedure at meetings

16.—(1) The Chairperson or any other officer authorised by the Chairperson must, subject to such standing orders as may be made by the Commission under sub-paragraph (2), summon all meetings of the Commission for the despatch of business.

(2) Subject to the provisions of this Act and the Public Sector (Governance) Act 2018, the Commission may make standing orders to regulate its own procedure generally and, in particular, regarding the holding of meetings, the notice to be given of the meetings, the proceedings at the meetings, the keeping of minutes, the custody, production and inspection of the minutes, and the opening, keeping, closing and auditing of accounts.

Validity of act or proceeding

17. No act or proceeding of the Commission is to be questioned on the ground —

- (a) of any vacancy in, or defect in the constitution of, the Commission;
- (b) of any defect in the appointment of any person acting as the Chairperson or as a member; or
- (c) of any omission, defect or irregularity in the procedure of the Commission not affecting the merits of the case.

[5/2018]

SECOND SCHEDULE

Section 7(1)

POWERS OF COMMISSION

1. To conduct such investigations as may be necessary for enforcing this Act.
2. To require any person to furnish such returns and information as may be necessary for implementing the provisions of this Act.
3. To issue or make arrangements for approving codes of practice relating to competition and to give approval to or withdraw approval from such codes of practice.
4. To publish educational materials or carry out other educational activities relating to competition; or to support (financially or otherwise) the carrying out by others of such activities or the provision by others of information or advice.

SECOND SCHEDULE — *continued*

5. To carry out research and studies and to conduct seminars, workshops and symposia relating to competition, or to support (financially or otherwise) the carrying out by others of such activities.

6. With the Minister's approval, to form or participate in the formation of any company, partnership or joint venture as a shareholder or partner or in any capacity.

7. To enter into such contracts as may be necessary or expedient for the purpose of performing its functions or discharging its duties.

8. To become a member or an affiliate of any international body, the functions, objects or duties of which are similar to those of the Commission.

9. To acquire and hold property, both movable and immovable, and to sell, lease, mortgage or otherwise dispose of the property.

10. To grant loans to officers or employees of the Commission for such purposes specifically approved by the Commission as are likely to increase the efficiency of the officers or employees.

11. To grant or guarantee loans to any officer or employee of the Commission for the purchase of a house, land or a flat or for the renovation of a house or a flat for the use or occupation of the officer or employee and his or her family (if any).

12. To make provision for gratuities, pensions, allowances or other benefits for employees or former employees of the Commission or its predecessors.

13. To make provision for the specialised training of any employee of the Commission and, in that connection, to offer scholarships to intending trainees or otherwise pay for the cost of the training and all expenditure incidental thereto.

14. To offer bursaries and scholarships for study at any school or institution of higher learning to members of the public and officers or employees of the Commission and members of their families.

15. To do anything incidental to any of its functions under this Act or any other written law.

[23/2007]

THIRD SCHEDULE

Sections 35, 48, 69(2) and 92 and
paragraph 2 of Fourth Schedule

EXCLUSIONS FROM SECTION 34 PROHIBITION AND SECTION 47
PROHIBITION

Services of general economic interest, etc.

1. Neither the section 34 prohibition nor the section 47 prohibition applies to any undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly insofar as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.

Compliance with legal requirements

2.—(1) The section 34 prohibition does not apply to an agreement to the extent to which it is made in order to comply with a legal requirement.

(2) The section 47 prohibition does not apply to conduct to the extent to which it is engaged in order to comply with a legal requirement.

(3) In this paragraph, “legal requirement” means any requirement imposed by or under any written law.

Avoidance of conflict with international obligations

3.—(1) If the Minister is satisfied that, in order to avoid a conflict between the provisions of Part 3 and an international obligation of Singapore, it would be appropriate for the section 34 prohibition not to apply to —

(a) a particular agreement; or

(b) any agreement of a particular description,

the Minister may by order exclude the agreement, or agreements of that description, from the section 34 prohibition.

(2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.

(3) An order under sub-paragraph (1) may also provide that the section 34 prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.

THIRD SCHEDULE — *continued*

(4) If the Minister is satisfied that, in order to avoid a conflict between the provisions of Part 3 and an international obligation of Singapore, it would be appropriate for the section 47 prohibition not to apply in particular circumstances, the Minister may by order provide for it not to apply in such circumstances as may be specified.

(5) An order under sub-paragraph (4) may provide that the section 47 prohibition is to be deemed never to have applied in relation to specified conduct.

(6) 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 paragraph.

(7) In this paragraph, “specified” means specified in the order.

Public policy

4.—(1) If the Minister is satisfied that there are exceptional and compelling reasons of public policy why the section 34 prohibition ought not to apply to —

(a) a particular agreement; or

(b) any agreement of a particular description,

the Minister may by order exclude the agreement, or agreements of that description, from the section 34 prohibition.

(2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.

(3) An order under sub-paragraph (1) may also provide that the section 34 prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.

(4) If the Minister is satisfied that there are exceptional and compelling reasons of public policy why the section 47 prohibition ought not to apply in particular circumstances, the Minister may by order provide for it not to apply in such circumstances as may be specified.

(5) An order under sub-paragraph (4) may provide that the section 47 prohibition is to be deemed never to have applied in relation to specified conduct.

(6) In this paragraph, “specified” means specified in the order.

Goods and services regulated by other competition law

5. The section 34 prohibition and the section 47 prohibition do not apply to any agreement or conduct which relates to any goods or services to the extent to which

THIRD SCHEDULE — *continued*

any other written law, or code of practice issued under any written law, relating to competition gives another regulatory authority jurisdiction in the matter.

Specified activities

6.—(1) The section 34 prohibition and the section 47 prohibition do not apply to any agreement or conduct which relates to any specified activity.

(2) In this paragraph, “specified activity” means —

- (a) the supply of ordinary letter and postcard services by a person licensed and regulated under the Postal Services Act 1999;
- (b) the supply of piped potable water;
- (c) the supply of wastewater management services, including the collection, treatment and disposal of wastewater;
- (d) the supply of bus services by a licensed bus operator under the Bus Services Industry Act 2015;
- (e) the supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act 1995; and
- (f) cargo terminal operations carried out by a person licensed and regulated under the Maritime and Port Authority of Singapore Act 1996.

Clearing houses

7. The section 34 prohibition and the section 47 prohibition do not apply to any agreement or conduct which relates to —

- (a) the clearing and exchanging of articles undertaken by the Automated Clearing House established under the Banking (Clearing House) Regulations; or
- (b) any activity of the Singapore Clearing Houses Association in relation to its activities regarding the Automated Clearing House.

Vertical agreements

8.—(1) The section 34 prohibition does not apply to any vertical agreement, other than such vertical agreement as the Minister may by order specify.

THIRD SCHEDULE — *continued*

(2) In this paragraph, “vertical agreement” means any agreement entered into between 2 or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services and includes provisions contained in such agreements which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of the agreement and are directly related to the use, sale or resale of goods or services by the buyer or its customers.

Agreements with net economic benefit

9. The section 34 prohibition does not apply to any agreement which contributes to —

- (a) improving production or distribution; or
- (b) promoting technical or economic progress,

but which does not —

- (c) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
- (d) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

Provisions directly related and necessary to implementation of mergers

10. The section 34 prohibition and the section 47 prohibition do not apply to any agreement or conduct that is directly related and necessary to the implementation of a merger.

Mergers

11.—(1) The section 34 prohibition does not apply to any agreement (either on its own or when taken together with another agreement) to the extent that it results, or if carried out would result, in a merger.

(2) The section 47 prohibition does not apply to any conduct (either on its own or when taken together with other conduct) to the extent that it results in a merger.

[23/2007; 30/2015]

FOURTH SCHEDULE

Sections 55 and 92

EXCLUSIONS FROM SECTION 54 PROHIBITION

1. The section 54 prohibition does not apply to any merger —
 - (a) approved by any Minister or regulatory authority (other than the Commission) pursuant to any requirement for such approval imposed by any written law;
 - (b) approved by the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act 1970 pursuant to any requirement for such approval imposed under any written law; or
 - (c) under the jurisdiction of any regulatory authority (other than the Commission) under any written law relating to competition, or code of practice relating to competition issued under any written law.
2. The section 54 prohibition does not apply to any merger involving any undertaking relating to any specified activity as defined in paragraph 6(2) of the Third Schedule.
3. The section 54 prohibition does not apply to any merger if the economic efficiencies arising or that may arise from the merger outweigh the adverse effects due to the substantial lessening of competition in the relevant market in Singapore.

[23/2007]

LEGISLATIVE HISTORY

COMPETITION ACT 2004

This Legislative History is a service provided by the Law Revision Commission on a best-efforts basis. It is not part of the Act.

1. Act 46 of 2004 — Competition Act 2004

Bill	:	44/2004
First Reading	:	21 September 2004
Second and Third Readings	:	19 October 2004
Commencement	:	1 January 2005 (Parts I and II and the First and Second Schedules) 1 September 2005 (Part IV) 1 January 2006 (Divisions 1, 2, 3 and 5 of Part III and Parts V and VI and the Third Schedule)

2. Act 40 of 2005 — Competition (Amendment) Act 2005

Bill	:	32/2005
First Reading	:	17 October 2005
Second and Third Readings	:	21 November 2005
Commencement	:	1 January 2006

3. G.N. No. S 870/2005 — Competition Act (Amendment of Third Schedule) Order 2005

Commencement	:	1 January 2006
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4. Act 23 of 2007 — Competition (Amendment) Act 2007

Bill	:	11/2007
First Reading	:	9 April 2007
Second Reading	:	21 May 2007
Notice of Amendments	:	21 May 2007
Third Reading	:	21 May 2007
Commencement	:	1 January 2006 (section 23) 30 June 2007 (sections 8(1) and 24(1)) 1 July 2007 (except sections 8(1), 23 and 24(1))

5. 2006 Revised Edition — Competition Act (Chapter 50B)

Operation : 31 January 2006

6. Act 4 of 2010 — Statutes (Miscellaneous Amendments) Act 2010
(Amendments made by section 12 of the above Act)

Bill : 26/2009

First Reading : 23 November 2009

Second and Third Readings : 12 January 2010

Commencement : 17 February 2010 (section 12)

7. Act 15 of 2010 — Criminal Procedure Code 2010

(Amendments made by section 430 read with item 23 of the Sixth Schedule to the above Act)

Bill : 11/2010

First Reading : 26 April 2010

Second Reading : 18 May 2010

Third Reading : 19 May 2010

Commencement : 2 January 2011 (section 430 read with item 23 of the Sixth Schedule)

8. Act 30 of 2015 — Bus Services Industry Act 2015

(Amendments made by section 50 of the above Act)

Bill : 26/2015

First Reading : 13 July 2015

Second and Third Readings : 18 August 2015

Commencement : 22 January 2016 (section 50)

9. Act 5 of 2018 — Public Sector (Governance) Act 2018

(Amendments made by section 56 of the above Act)

Bill : 45/2017

First Reading : 6 November 2017

Second Reading : 8 January 2018

Notice of Amendments : 8 January 2018

Third Reading : 8 January 2018

Commencement : 1 April 2018 (section 56)

10. Act 10 of 2018 — Enterprise Singapore Board Act 2018
(Amendments made by section 68 of the above Act)

Bill	:	3/2018
First Reading	:	8 January 2018
Second and Third Readings	:	5 February 2018
Commencement	:	1 April 2018 (section 68)

11. Act 15 of 2018 — Competition (Amendment) Act 2018

Bill	:	8/2018
First Reading	:	27 February 2018
Second and Third Readings	:	19 March 2018
Commencement	:	16 May 2018

12. Act 40 of 2019 — Supreme Court of Judicature (Amendment) Act 2019
(Amendments made by section 28(1) read with item 26 of the Schedule to the above Act)

Bill	:	32/2019
First Reading	:	7 October 2019
Second Reading	:	5 November 2019
Notice of Amendments	:	5 November 2019
Third Reading	:	5 November 2019
Commencement	:	2 January 2021 (section 28(1) read with item 26 of the Schedule)

13. Act 4 of 2021 — Statute Law Reform Act 2021
(Amendments made by section 15(2) of the above Act)

Bill	:	45/2020
First Reading	:	3 November 2020
Second and Third Readings	:	5 January 2021
Commencement	:	1 March 2021 (section 15(2))

Abbreviations

C.P.	Council Paper
G.N. No. S (N.S.)	Government Notification Number Singapore (New Series)
G.N. No.	Government Notification Number
G.N. No. S	Government Notification Number Singapore
G.N. Sp. No. S	Government Notification Special Number Singapore
L.A.	Legislative Assembly
L.N.	Legal Notification (Federal/Malaysian Subsidiary Legislation)
M. Act	Malayan Act/Malaysia Act
M. Ordinance	Malayan Ordinance
Parl.	Parliament
S.S.G.G. (E) No.	Straits Settlements Government Gazette (Extraordinary) Number
S.S.G.G. No.	Straits Settlements Government Gazette Number

COMPARATIVE TABLE
COMPETITION ACT 2004

This Act has undergone renumbering in the 2020 Revised Edition. This Comparative Table is provided to help readers locate the corresponding provisions in the last Revised Edition.

2020 Ed.	2006 Ed.
—	9—(4) [<i>Deleted by Act 5 of 2018</i>]
—	21—(1) [<i>Deleted by Act 5 of 2018</i>]
—	(2) [<i>Deleted by Act 5 of 2018</i>]
—	(3) [<i>Deleted by Act 5 of 2018</i>]
—	(4) [<i>Deleted by Act 5 of 2018</i>]
—	(5) [<i>Deleted by Act 5 of 2018</i>]
21	(6)
60A—(2)	60A—(1A)
(3)	(1B)
(4)	(2)
(5)	(3)
(6)	(4)
(7)	(5)
60B—(2)	60B—(1A)
(3)	(1B)
(4)	(2)
(5)	(3)
(6)	(4)
63—(5)	63—(4A)
(6)	(4B)
(7)	(5)
67—(2)	67—(1A)
(3)	(2)
(4)	(3)

2020 Ed.	2006 Ed.
(5)	(4)
(6)	(5)
(7)	(6)
(8)	(7)
71—(2)	71—(1A)
(3)	(2)
(4)	(3)