Dear MTI,

Overview

Thank you for the opportunity to give industry feedback on the draft competition law.

This feedback paper makes a case that (a) focusing the competition law on the conditions that enable anti-competitive behaviors & symptoms is more effective & efficient than (b) the current draft law just targeting the symptoms of undesirable conduct.

If some seminal conditions are problematic, why not manage those once rather than continually monitor for eventual suspicious behaviors?

Another practical reason: to make any new law effective that focuses on undesirable symptoms, case study will need to be build from scratch-- this can take decades before some conditions could be identified & corrected. Other reasons are itemized & described in this paper.

Opportunity

Tactically, no one wants competition—being competitive is hard work; only in aggregate does competition make the pie bigger and enable most efficient companies to grow their share of this larger pie.

It's ironic that:

- Singapore's prime economic advantage is its reputation for open competition, along with transparency, governance, & general market efficiency,
- but Singapore has never had explicit competition legislation to support this reputation for open competition.

So this is a great opportunity for Singapore to evolve from the current ad hoc situation to a rigorous & codified context & process to turn this reputation into a reality and therefore further strengthen our economic advantage.

MTI's solicitation for comments on such a topic demonstrates Singapore's confidence & maturity to leverage its superlative commercial position further in the region & in the world.

Situation

We fully appreciate that total, open, & universal competition isn't practical or desirable; there are valuable roles that selected monopolies need to play. As these monopolies are identified, their distortion to the market needs to be appropriately contained.

This introduces some grey-areas that policy would need to control without excessive regulatory burden & economic friction.

Anti-competitive Symptoms:

a. predatory pricing: Predatory pricing is clearly market distorting, but proving that products are "like" is virtually impossible.

b. bundling competitive products with monopoly products,

c. cross-funding monopoly business to subsidize related or unrelated competitive business Cross-funding is also hard to manage—one would need to adequately ring-fencing funding & implementation—a regulator's nightmare.

d. cross-marketing monopoly business to distort market: ring-fencing valuable market data would rely on complex processes & associated continual audits of those processes.

Therefore, it's ineffective, or at best inefficient, to focus competition law on symptoms.

Recommendations

We recommend that the competition law focuses primarily on several causal anti-competitive "conditions" rather than the resultant Byzantine symptoms. Why try to discern "abuse of dominant position conduct", when this dominant position should be precluded in the first place?

Anti-competitive Conditions:

a. Government agency granting "waiver of competition" is definitely a red-flag, but
b. Virtually any government contract—whether tendered or waived—is an opportunity for market-distorting abuse.

In addition to managing new anti-competitive situations, there are also historical legacy situations that need to be reasonably remedied.

For maximum positive effect quickly, explicitly detailing more situations in the competition law would be productive.

Anti-competitive Examples:

a. Would it be OK for the contractor that operates the ERP gantries to set ERP prices and also sell petrol at .05/litre? Argument for—there are alternatives available for competitors; people don't need to drive; they can walk to work-- so ERP isn't really a monopoly or even a privilege service? Let Shell & Mobil compete by selling shoes?
b. Suppose there is a company had monopoly contract to register vehicles for LTA. This company would know which customers bought which vehicles & then could start an "independent" business to market premium vehicles to the crème of this industry—leveraging powerful customer data that existing vehicle distributors had no access to.
c. Trade, Port Management, & Customs are strategic sectors for Singapore. Could monopoly vendors providing strategic infrastructure services also use this unique market access to strategic raw data to compete against global logistics companies?

Besides low prices, companies compete with market data & market access. A monopoly could distort a market by leveraging its privileged data regardless of its pricing.

Anti-competitive Red-Flags & constructive law to manage:

For every project where a waiver of competition is requested, there should be public review of this waiver & an opportunity to:

a. challenge the need for the competition waiver,
b. suggest how the project can be partitioned to minimize the portion that requires monopoly,
c. suggest appropriate restrictions on direct or indirect business activities by eventual contract winner. Standalone, the waiver may make perfect sense—but with market leverage from the contract, the vendor could distort market.

d. Because sometimes relevant technology can change the context of the original review, there should be opportunity to periodically re-review the original justification for competition waiver—with pre-agreed appropriate time-limits to protect investment from current contractor,

e. For every special privilege allowed, should be balanced by considered burden. This would allow those seeking privilege to weigh these against benefits of seeking the privilege.

A single-source government contract is not the only potentially anti-competitive privilege; there are also explicit market exclusions for competition in government treaties & free-trade agreements (FTAs).

Recent USSFTA, annex8B, explicitly grants "collection & administration of government information" as excluded & privileges GLC-CrimsonLogic as suggested monopoly vendor:

> *"Singapore reserves the right to adopt or maintain any measure relating to the collection and administration of proprietary government information gathered by entities such as CrimsonLogic."*

Whether there is such an competition-exclusion measure, there could be a measure, therefore any business granted this monopoly business—especially specifically named CrimsonLogic—should be burdened by not being allowed to compete in any direct or indirect business that could it could thereby distort. Having this right is as much a market distorting privilege as exercising this right.

Would any vendor want to cooperate with this monopoly service effective for the benefit of Singapore, if it could be terrorized by the monopoly using its monopoly service as a market distorting advantage bundling the monopoly with its competing services—such as services that use that monopoly submission network? The privileged doesn't even need to use predatory pricing, its CEO could hold quarterly cocktail parties with selected monopoly customers & use this monopoly access to push competitive services, with exclusive data of which no other vendor has access.

Is it efficient-- or desirable for a government-- to allow (encourage) a company with explicit government business privileges to use that as a bundle with competitive services to compete with related services against companies without privileges?"

If CrimsonLogic or other government-privileged company highlighted by FTA/treaty doesn't want the appropriate burden associated with the privilege, it would have to apply for exemption from privilege.

Conclusion

We recommend that instead of concentrating on the symptoms of anti-competitive behaviors, the law should more effectively focus on the control of the conditions that allow & encourage these illegal behaviors.

Competitive economies can all trace their roots to archaic 6th century BC Athens and the evolution from the tyrants to the lawgivers. From M.I.Finley's, "The Ancient Greeks":

> *"The laws ... had to be fixed and codified if the community were to emerge from its embryonic state, in which a handful of families controlled all the resources and all the sanctions ('bribe-devouring judges', as Hesiod called them). There were no precedents to fall back on either. ... This situation of compulsory originality, ...*
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> *"Solon, ... 'I gave to the common people such privilege as is sufficient'. ... As to those in power, 'I saw to it that they should suffer no injustice. I stood covering both parties with a strong shield, permitting neither to triumph unjustly.'"*

MTI now launches Singapore's first draft of its first codification of competition law. MTI's solicitation for comments on such a topic demonstrates Singapore's confidence & maturity to leverage its superlative commercial position further in the region & in the world.

Thank you for this opportunity to submit feedback.

– Brooks Magruder, Creative Software Pte. Ltd.

Relevant Law sections

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. 25

(2) Subsection (1) applies, in particular, to agreements, decisions or practices which —

(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) sh are 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.

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) 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.