## Contents

n

n e is

			Page
Foren	ord to th	ne Second Edition	vii
			ix
Prefa			xi
	of Cases		XXV
	e of Legis	station	xxxvii
		Referred To	xlvii
Cha	pter 1	s solution Referred To  Competition Policy and Law	1
		Bull SC, Lim Chong Kin and Ng te Kia	
Α.	Introd	luction	1
2 2.		Benefits of competition	1
		Objectives of competition policy and law	3
		Scope of compension law	4
		State of development of competition law	5
В.	Singa	pore's approach towards competition	6
C.		competition law in Singapore?	7
		Free trade agreements	7
	2.	Recommendations by the Economic Review Committee	8
D.	Objec	ctives and scope of the Competition Act	10
E.		d implementation of the Competition Act	13
F.		Competition Commission of Singapore	14
	1.	Structure of the Competition Commission of Singapore	14
	2.	Functions and duties	15
	3.	Investigator, adjudicator and enforcer	16
	4.	Government adviser	17
	5.	Competition advocate	18
	6.	Administrative priorities	18
G.	The (	Competition Commission of Singapore enforcement	
		sophy	19
	1.	Focus on anti-competitive activities with appreciable	
		adverse effect on competition	19

			Page
	2.	Tor her economic	
		benefit/efficiencies	20
	3.	out wehate of society	20
	4.	Emphasis on self-assessment and compliance	
		(a) Publication of guidelines and the Competition	22
		Commission of Singapore's website	22
		(b) Formal notification mechanism	22
	5.	Balancing advocacy with enforcement	
	6.	Close co-operation across sectors	23
	7.	Balancing interests of different stakeholders	24
	8.	Independent appeal mechanism	24 25
Cł	apter	2 Market Definition	20
			27
By	Ng Le	Kia and Scott Clements	
A.	Int	roduction	
	1.	Purpose of market definition in competition assessment	27
B.	Bas	sic principles of market definition	28
	1.	The hypothetical monopolist test	34
	2.	Steps to applying the hypothetical monopolist test	34
		(a) The general approach	35
		(b) A small but significant non-transitory increase in	35
		price?	
		(c) Practical limitations	36
	3.	Product and geographic dimensions	36
		(a) Product market	37
		A.V. Seed B. Gode	38
		(i) Demand-side substitution (ii) Price discrimination (iii) Chains of substitution (iv) Supply-side substitution (b) Geographic market	38
		(iii) Chains of substitution	42
		(iv) Supply-side substitution	43
		(b) Geographic market	45
		(i) Demand-side substitution	48
		(ii) Supply-side substitution	48
		(iii) Imports	49
	4.	Temporal markets	50
	5.	Customer markets	51
	6.	Two-sided markets	52
C.	Othe	er issues when defining market	52
	1.	Differentiated products	54
	2.	Bundling	54
	3.	Indirect substitution	56
	4.	Market definition for after markets	56
	5.	Conduct markets versus affected markets	58
	6.	Innovation markets	60
		THAT THAT NEW	61

					Page
D.	Comr	non p	roblem	ns when defining the market	61
D.	1.			competitive price	61
	.,	(a)		ellophane fallacy	62
		(b)		ving the cellophane fallacy	63
	2.	Narro	ow mar	ket definitions for after markets	65
	3.	Relia	nce on	previous cases	66
	4.	Defin	ing ma	arkets independent of competition issue	67
	5.	Marg	inal co	nsumers versus majority consumers	67
	6.	Lack	of mar	ket data	68
E.	Sumr	nary			68
Char	oter 3		Anti-	competitive Agreements	71
By Ri	chard \	Whish	QC		
A.	Intro	auctic	n		71
В.			chapte	er	73
C.				i-competitive agreements	74
2	1.		ertakin	- 193	76
		(a)	Basic	meaning of "undertaking"	77
		(b)		for "functional approach" to undertaking	
			term		77
		(c)	EU la	w: Non-economic activities	78
			(i)	Exercise of public powers	78
			(ii)	Solidarity	81
			(iii)	Purchase of goods or services for purpose of	
				carrying out non-economic activity	81
		(d)	The "	single economic entity" doctrine	83
	2.	Agre	ements	s, decisions and concerted practices	86
		(a)	Agree	ements	86
			(i)	Agreement requires concurrence of wills	87
			(ii)	Concept of "single overall agreement"	88
			(iii)	Risks of attending meetings with	
				competitors	90
			(iv)	Termination of an agreement	91
		(b)	Decis	ions by associations of undertakings	92
		(c)		erted practices	94
	3.	7.0		ffect of preventing, restricting or distorting	
		com	petitio		97
		(a)		ect or effect" to be read disjunctively	97
		(b)	"Obje		98
		(c)	"Effe		100
		(d)		ment on "object or effect" distinction	101
		(e)		eciable adverse effect on competition	102
		(f)	Excli	usions, in particular of vertical agreements	105

				Pag			
	4.	, <sub>/</sub>	Vithin Singapore"	100			
	5.	Se	Section 34(2): Statutory examples of anti-competitive				
	C	ag	reements	106			
	6.	-	dditional examples of anti-competitive agreements in				
		se	ction 34 Guidelines	107			
		(a	or maneetly fixing prices	107			
		(b (c)	7	108			
		(d	0	109			
		(e)	8 - Street of the production of investment	109			
		(f)	o onardons	110			
		(g)	5 I Sching	110			
		(h)	O	110			
		(i)	8 8 Price miorination	111			
		(j)	Exchanging non-price information Restricting advertising	112			
		(k)	Setting technical or design at 1	112			
	7.	(90) (50)	Setting technical or design standards ences of intellectual property rights	113			
		(a)	The Competition Commission of G	113			
			The Competition Commission of Singapore's "General Framework for Assessing Licensing				
			Agreements"				
		(b)		114			
		(c)	Application of the section 34 prohibition to	115			
			particular licensing restraints or arrangements	5 972			
			(i) Autonomy of licensees to engage in	117			
			independent R&D	365			
			(ii) Grantbacks	117			
			(iii) Territorial and field-of-use restrictions	118			
			(iv) Licensing agreements involving exclusivity	118			
			(v) Technology pools	119			
	8.	Sect	ion 33(2) and other regulatory regimes	119			
	9.	Sect	ion 34(3): Voidness of anti-competitive agreements	120			
D.		usions		121			
	1.		usions	121			
		(a)	Services of general economic interest	121			
		(b)	Compliance with legal requirements	122			
		(c)	Avoidance of conflict with international				
		7.15	obligations	123			
		(d)	Public policy	123			
		(e)	Goods and services regulated by other				
		76	competition law	123			
		(f)	Specified activities	124			
		(g)	Clearing houses	125			
		(h)	Vertical agreements	125			

					Page
			(i)	"For the purposes of the agreement"	126
			(ii)	Licences of intellectual property rights	127
		(i)		ements with net economic benefit	127
		(-)	(i)	"Contributes to improving production or	
			377	distribution; or promoting technical or	
				economic progress"	128
			(ii)	"But which does not impose on the	
				undertakings concerned restrictions which	
				are not indispensable to the attainment of	
				those objectives"	129
			(iii)	"Afford the undertakings concerned the	
				possibility of eliminating competition in	
				respect of a substantial part of the goods or	
	./	0		services in question"	129
	o	, ,	(iv)	Paragraph 9 in practice	130
	C	(j)	Agre	eements directly related and necessary to	
C	•		impl	ementation of mergers	130
•		(k)	Merg	gers	130
	2.	Secti	on 2(2	2) of the Competition Act	130
	Bloc	k exer	nption	ns	131
	Noti			guidance and/or decision	133
	1.			on for guidance	133
	2.			on for decision	134
			_	rohibition in practice	135
	1.		-	ent decisions	135
		(a)		Control Services	135
		(b)		Services	136
		(c)		usive Tendering (Bid-rigging) in Electrical and	107
				ding Works	137
		(d)		ng of Monthly Salaries of New Indonesian Foreign	197
		92 60		kers in Singapore	137
		(e)		e-fixing in Modelling Services	137
		(f)		e of Ferry Tickets between Singapore and Batam	137
		(g)		Rigging by Motor Vehicle Traders at Public	137
		71. 1		tions of Motor Vehicles	138
		(h)		ply of Ball and Roller Bearings	130
		(i)		freight forwarding services for shipments from	138
	0	Out		an to Singapore erventions	138
	2.				138
		(a)	Fa g		139
		(b)	SST IEA		139
		(c) (d)		gapore Medical Association – Guideline on	100
		(a)	Fee		140
			T.CC.	9	A. A. O.

				Page
	3.	Fi	ndings of net economic benefit	140
		(a	) Qantas & British Airways restated joint services	
			agreement	140
		(b	Cooperation agreement	141
		(c	) Japan Airlines and American Airlines	143
		(d		
		193. 9	Nippon Airways	144
		(e)	Zuridio i ili ways	144
		(f)	Jewaii mii ways	145
		(g)	Scoot Pte Ltd and Tiger Airways Singapore Pte Ltd	145
		(h)	Singapore Airlines and Air New Zealand	1000000
	4.	$Cl\epsilon$	earance decisions	145
		(a)	Application for Decision by Singapore Airlines Ltd and	146
			Virgin Australia Airlines Pty Ltd	146
		(b)	Application for Decision by Singapore Airlines Ltd and	1.40
			Scandinavian Airlines System	146
		(c)	Notification for Decision by Visa Worldwide Pte Ltd of	140
			Its MIF System as Formalised in the Visa Rules	147
			The factorial state of the stat	147
Cha	pter 4	1	Abuse of a Dominant Position	149
By R	Cichard	Whish	h QC	113
A.	Intro	oducti	fon	
В.			is chapter	149
C.				151
D.	Mea	ning e	of "dominant position"	152
	1.	Don	gipange and sub-task it is	152
	2.	Asse	ninance and substantial market power essing dominance Existing competitors Potential competitors	153
	277	(a)	Existing competitors	154
		(b)	Potential competitors	154
		(c)	Other factors	156
	3.	4.00	ective dominance	158
2.	Abus		ood o dominance	159
	1.		nples of conduct that may amount to abuse	160
		(a)	Predatory behaviour	162
			(i) Average variable cost	163
			(ii) Average total cost	163
			(iii) Recoupment	164
		(b)	Discounts	164
		(c)	Price discrimination	165
		(d)	Margin squeeze	167
		(e)	Vertical restraints	167
		12.15		169

					Page
		(f)	Refus	als to supply	171
		(g)		excessively high prices be abusive?	171
	2.	Defe			173
	3.			lated markets	174
	4.			ominance and intellectual property rights	174
-		isions	or ac	1 1 / 0	175
F.	Notif	icatio	n for o	uidance and/or decision	176
G. H.	The	section	n 47 pr	ohibition in practice	177
1.1.					170
	pter 5		Merg		179
By L	im Cho	ng Kin	and C	orinne Chew	
A.	Intro	ducti	on		179
В.				ti-competitive mergers	180
100		Mer		*	180
	<sub>2</sub> C	(a)		ers between previously independent	
1336		Vx-		ertakings	181
	5	(b)	Acqu	isition of control	181
P	<b>y</b>	2 2	(i)	Legal control	182
			(ii)	De facto control	183
			(iii)	Exceptions	184
		(c)	1.50	ventures	185
			(i)	Joint control	185
				(A) Equal voting rights or appointment to	
				decision-making bodies	186
				(B) Veto rights	186
				(C) Joint exercise of voting rights	187
			(ii)	Performing functions of autonomous	
				economic entity	188
			(iii)	Lasting basis	189
	2.	Sub	stantia	l lessening of competition test	189
		(a)		oduction to substantial lessening of	
		80.15		petition	189
		(b)		of substantial lessening of competition –	
			The	appropriate counterfactual	190
			(i)	Market definition	193
			(ii)	Merger effects on market power	199
			(iii)	그 그 그 전에 가는 그 그 그 그 그 그 그 그 그 그 그 그 그 그 그 그 그 그	193
		(c)	Fact	ors in assessing substantial lessening of	
		(400000)		petition in horizontal mergers	19
			(i)	Non-coordinated effects	19
			(ii)	Co-ordinated effects	19.

					Page
		(d)	Factor	rs in assessing substantial lessening of	
				etition in non-horizontal mergers	196
			(i)	Vertical mergers	196
				(A) Foreclosure risks	196
				(B) Other competitive harms associated	
				with vertical mergers	197
			(ii)	Substantial lessening of competition in	
				conglomerate mergers	197
		(e)		s which could mitigate substantial lessening	
				npetition effects arising from a merger	198
			(i)	Ease of entry of new firms and expansion of	
			3	existing firms	199
				Countervailing buyer power	200
			(iii)	Efficiencies that increase rivalry	200
			(iv)	Failing firm/division defence	201
C.	Exc			emptions	202
	1.			n the Fourth Schedule	202
	2.	Exe	nption υ	ınder public interest considerations	205
	3.	Noti	fied and	illary restrictions	205
D.	Not		n of mer		207
	1.	Mer	ger and a	anticipated mergers	207
	2.	Con	ments o	n Singapore's voluntary notification system	209
	3.	Glob	oal merge	ers and the need to notify in Singapore	210
E.	Not	ificatio	n		212
	1.	Mer	ger notif	ication process	219
		(a)	Pre-no	tification discussions	212
		(b)	Confid	ential advice on mergers	214
		(c)	Submis	ssion of completed merger notification	1
			applica		216
		(d)	Compe	etition Commission of Singapore's request	
			for add	litional information	217
	2.	Com	petition	Commission of Singapore's decision	218
		(a)		able decisions	219
		(b)		urable decisions	220
F.	Rem	iedies f	or dealir	ng with prohibited mergers and anticipated	
	mer			and the second s	221
	1.	Struc	tural and	d behavioural remedies	221
	2.			g remedies – Directions and commitments	222
		(a)	Direction		222
		(b)	Commi	tments	993

					Page
Chapter 6			Investigations, Enforcement and Rights of Private Action		
By Co	avinder	Bull So	C and C	hia Voon Jiet	
		duction			227
A.		tigation	ns		227
В.	1.	Invest	igation	s distinguished from preliminary inquiries	228
	2.	Comr	nencen	nent of investigation	230
	1000	(a)	Comp		230
		(b)	Whistl	e-blowers	235
		(c)	The C	ompetition Commission of Singapore	005
			initiat		235
		(d)	Overs	eas competition authorities	236
	3.	Laves	tigative	powers of the Competition Commission of	237
		Singa	ipore		237
		(a)	Produ	action of documents and information	238
- 6	6.		(i)	Documents	239
10	, ,		(ii)	Information	240
5				Written notice	242
		(b)		premises without warrant	242
			(i)	Entry with prior written notice	243
			(ii)	Entry without prior notice	245
		7 V	(iii)	Powers upon entry and search premises with warrant	246
		(c)		Form of the warrant	247
			(i)	Powers upon entry	248
		(31)	(ii)		249
		(d)		guards Legal professional privilege	249
			(i) (ii)	Privilege against self-incrimination	250
			(iii)	Confidentiality	251
			(iv)	Right to legal representation	252
		(e)	Offe	STEEL CONTROL OF THE	253
	4.			easures	255
	1.	(a)		ditions	255
		(b)		edure	257
		(c)		rmal assurances	258
	5.	21 17		application	258
		(a)		cedure	260
		(b)		ditions for leniency	261
		Nessel	(i)	First to come forward with evidence	269
			(ii)	Full disclosure and co-operation	264
		(c)		iency Plus	260
		(d)		nfidentiality	26

					Page	
C.	Enforcement					
	1.	Pr	oposed	infringement decisions	267 267	
	2.		rections		269	
		(a)	Pro	cedure	270	
		(b)	(b) Enforcement			
	3.	Penalties				
		(a)	Proc	cedure	271 272	
		(b)	Inte	ntionally or negligently	273	
			(i)	Intention	274	
			(ii)	Negligence	276	
		(c)	Amo	ount of penalty	276	
			(i)	Stage 1: Seriousness of infringement and		
				relevant turnover	279	
			(ii)	Stage 2: Duration of infringement	281	
			(iii)	Stage 3: Other relevant factors	282	
			(iv)	Stage 4: Aggravating and mitigating factors	284	
			(v)	Stage 5: Statutory limit not to be exceeded	288	
**		(d)	Liabi	lity for payment	288	
D.	Apj	peals a	gainst d	ecisions of the Competition Commission of		
	3111	gapore	3		289	
	1.			n Appeal Board	289	
		(a)		alable decisions	290	
		(b)	Proce		292	
		(c)		t of an appeal	293	
		(d)	Powe	rs of the Competition Appeal Board	293	
	0	(e)	Decis	ions of the Competition Appeal Board	295	
	2.		n Court	and Court of Appeal	296	
		(a)		Court	297	
				Amount of financial penalty	297	
		974 S		Point of law	297	
17	D: 1	(b)	Court	of Appeal	300	
E.		its of p	rivate a	ction	301	
	1.	Parti	es who	have a right of private action	301	
		(a)	Indire		302	
	0	(b)	Partie	s to anti-competitive agreements	302	
	2.	When	n right	of private action arises	303	
	3.	Rem			305	
		(a)	Damag		305	
				Restitution	305	
		/1 \		Exemplary damages	307	
	. 7	(b)		remedies	309	
	4.	Breac	en of sta	itutory duty?	309	

			Page
24	т. Л:	cial review	311
		Supervisory jurisdiction of the court in judicial review	312
	1.	Grounds of judicial review	313
	2. 3.	Standing to apply for judicial review	314
	4.	Procedure	317
	5.	Remedies	318
			319
In d	av		010