CCS GUIDELINES ON MERGER PROCEDURES

Competition Commission SINGAPORE

MERGER PROCEDURES

CONTENTS

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1 INTRODUCTION

1.1 The merger provisions of the Competition Act ('Act') will apply to mergers that have infringed, or anticipated mergers that if carried into effect will infringe, the section 54 prohibition, unless they are excluded or exempt under the Act. A merger infringes the section 54 prohibition if it has resulted, or may be expected to result, in a substantial lessening of competition ("SLC").

1.2 For ease of reference, the term "merger situation" is used in these guidelines to refer to both mergers and anticipated mergers.

1.3 The Competition Commission of Singapore ('CCS') has published the following guidelines in respect of the merger framework:

- *CCS Guidelines on the Substantive Assessment of Mergers*:

  These set out some of the factors and circumstances which the CCS may consider in determining whether a merger has infringed, or an anticipated merger if carried into effect will infringe, the section 54 prohibition; and

- *CCS Guidelines on Merger Procedures*:

  These set out the procedures for notifying a merger situation to the CCS for a decision and for investigations of merger situations by the CCS.

Interested parties should read both guidelines to better understand the merger framework.

1.4 These guidelines are not a substitute for the Act, the regulations or orders. They may be revised should the need arise. The examples in these guidelines are for illustration. They are not exhaustive, and do not set a limit on the investigation and enforcement activities of the CCS. In applying these guidelines, the facts and circumstances of each case will be considered. Persons in doubt about how they and their commercial activities may be affected by the Act may wish to seek legal advice.

1.5 A glossary of terms used in these guidelines is attached.

2 SUMMARY OF MERGER PROCEDURAL FRAMEWORK

Definition of Mergers

2.1 Section 54(2) of the Act provides that a merger occurs where:

- two or more undertakings, previously independent of one another, merge;

- one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or

- one undertaking acquires the assets (including goodwill), or a substantial part of the assets, of another undertaking, with the result that the

acquiring undertaking is placed in a position to replace or substantially replace the second undertaking in the business (or the part concerned of the business) in which the second undertaking was engaged immediately before the acquisition.

2.2 Please refer to the relevant paragraphs of the *CCS Guidelines on the Substantive Assessment of Mergers* for more details of merger situations that fall under the purview of the Act.

Applications and Self-Assessment

2.3 There is no mandatory requirement for merger parties to notify their merger situations to the CCS. Merger parties are nevertheless allowed under sections 56 to 58 of the Act to notify their merger situations to the CCS and apply for a decision as to whether the section 54 prohibition has been or will be infringed by the merger situation ("Application").

2.4 In considering whether to make an Application, merger parties are strongly encouraged to conduct a self-assessment to ascertain if an Application is necessary. They should refer to the relevant CCS guidelines (in particular Part 6 of these guidelines to determine if the merger situation is excluded under the Fourth Schedule of the Act and the *CCS Guidelines on the Substantive Assessment of Mergers*) as well as to the relevant regulations. They may also wish to seek legal advice if necessary. Merger parties should make an Application only if they have serious concerns as to whether the merger situation has resulted, or may be expected to result, in a SLC.

Application Procedures

2.5 Merger parties may make an Application under section 57 in respect of an anticipated merger which may be made known to the public. Alternatively, merger parties may wait until the anticipated merger has been carried into effect before making an Application in respect of the merger under section 58. After conducting its assessment, the CCS will make a decision as to whether:

- (in the case of an anticipated merger) the section 54 prohibition will be infringed; or
- (in the case of a merger) the section 54 prohibition has been infringed.

A decision that a merger has infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition (i.e. "an unfavourable decision") may result in the CCS requiring that the anticipated merger be stopped or that the merger be 'unwound'.

2.6 The CCS adopts a two-phase approach in evaluating Applications. In general, upon receipt of a complete Application, the CCS will carry out a preliminary assessment (Phase 1 review) which is expected to be completed within 30 working days. Phase 1 review entails a quick review and allows merger situations that clearly do not raise any competition concerns under the section 54 prohibition to proceed without undue delay. If the CCS is unable during the

Phase 1 review to conclude that the merger situation does not raise competition concerns, it will proceed to carry out a more detailed assessment (Phase 2 review). As a Phase 2 review is more complex, the CCS will endeavour to complete it within 120 working days.

2.7 Sections 59 and 60 of the Act provide that once the CCS has issued a favourable decision, it will not take further action unless it has reasonable grounds for suspecting that:

- information on which it had based its decision (which may include information on the basis of which it accepted a commitment) was materially incomplete, false or misleading;
- a party who provided a commitment has failed to adhere to one or more terms of the commitment; or
- where a favourable decision was given for an anticipated merger to proceed, the merger so effected, is materially different from the anticipated merger.

2.8 Merger parties who wish to make an Application should refer to Part 3 of these guidelines for more details on the Application procedures.

Powers of Investigation

2.9 Under section 62 of the Act, the CCS may conduct an investigation if there are reasonable grounds for suspecting that a merger has infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition.

Interim Measures

2.10 Prior to completing its assessment of an Application or an investigation, the CCS may impose interim measures to prevent any action that may prejudice the CCS' ability to investigate the merger situation or its ability to impose the appropriate remedies. Interim measures may also be imposed as a matter of urgency to prevent serious, irreparable damage to persons or to protect the public interest.

Commitments

2.11 Section 60A of the Act states that the CCS may, at any time before making a decision as to whether the section 54 prohibition has been or will be infringed, accept commitments that remedy, mitigate or prevent the SLC arising from the merger. Where the CCS has accepted a commitment, the CCS will make a favourable decision.

Directions

2.12 Where the CCS has made an unfavourable decision, section 69 of the Act provides that the CCS may issue directions to persons as it considers appropriate, to undertake such remedies to eliminate the adverse effects arising from the merger situation.

3 APPLICATIONS

3.1 This part provides a more detailed account of the Application process, explaining how merger parties should make an Application to the CCS. It also describes the CCS' powers to gather supplementary information from the Applicant, and the process for obtaining information from third parties. The decision-making process and publication requirements are also explained.

3.2 To allow third-party views to be sought, an Application may be made in respect of an anticipated merger only after the anticipated merger may be made known to the public. In the case of mergers, an Application may be made at any time.

3.3 Whilst an anticipated merger or a merger is being considered by the CCS, merger parties may carry the anticipated merger into effect or proceed with further integration of the merger, as the case may be, at their own commercial risk.

Market Share Thresholds

3.4 Applications should not be made in respect of merger situations that do not raise any real concerns of infringement of the section 54 prohibition. To get an indication as to whether an Application should be made, merger parties are advised to refer to the *CCS Guidelines on the Substantive Assessment of Mergers*. Generally, the CCS is unlikely to intervene in a merger situation unless:

- the merged entity will have a market share of 40% or more; or
- the merged entity will have a market share of between 20% to 40% and the post-merger combined market share of the three largest firms (CR3) is 70% or more.

3.5 The term 'merged entity' referred to in the preceding paragraph should be read in the context of the merger situation.

3.6 If a merger situation meets or exceeds either of these thresholds, merger parties are encouraged to consider making an Application, as the CCS is likely to give further consideration to the merger situation before being satisfied that it does not raise any competition concerns under the section 54 prohibition. However, since market concentration is but one of the factors considered in assessing the merger situation, it does not mean that a merger situation meeting these thresholds will be presumed to lessen competition substantially. Conversely, merger parties may wish to make an Application in respect of a merger situation that does not cross the thresholds but which, in the merger parties' views, could raise competition concerns.

Pre-Notification Discussions ("PNDs")

3.7 It is in the interests of both the CCS and the merger parties that Applications are as complete as possible at the time of submission. Therefore, merger parties intending to make an Application may approach the CCS for a PND, to facilitate their preparation for the Application and expedite the review process. The PND

helps merger parties to identify the information needed to provide a complete submission, as well as any additional useful information that might expedite the CCS' review of a merger situation. While the CCS is prepared to enter into PNDs for anticipated mergers that may not, as yet, be made known to the public, the CCS will not entertain discussions on speculative or hypothetical transactions.

3.8 Merger parties seeking a PND should submit a request to the CCS in writing. The information provided should include details of the merger situation, such as a brief background of the merger situation, a brief description of the relevant market(s) and sector(s) involved, and the likely impact of the merger situation on competition in those markets and sectors in general terms. In the case of anticipated mergers, the request should provide sufficient information to show the good faith intention of the merger parties to carry the anticipated merger into effect. For merger situations that are already in the public domain, the request should also provide relevant documentation of the public announcement or public knowledge about the merger. If the CCS agrees to the discussion, a draft Application should be provided prior to the discussion.

3.9 Where possible, the CCS will endeavour to indicate any potential competition concerns that are apparent from the information provided by the merger parties. However, as the CCS will not have complete information and will not be able to seek or consider third-party views, merger parties should note that any such indications are not legally binding on the CCS, and are subject to change after receipt of the formal Application. For the same reason, the CCS will not be able to provide any indications on whether a merger situation is likely to be allowed to proceed. In general, any discussion will be useful to the extent that relevant information is made available to the CCS.

Submitting an Application

Form M1

3.10 An Application (under section 57 or 58 of the Act) should be made by submitting the relevant Forms to the CCS. The Forms (at **Annex A**) may be varied from time to time, with an updated copy being available on the CCS website.

3.11 The indicative timeframe of 30 working days for Phase 1 review commences only when the CCS accepts a complete Form M1 that meets all the applicable filing requirements and receives the relevant fee.

3.12 The CCS may refuse to accept an Application if it is

- incomplete;
- not accompanied by the relevant supporting documents;
- not substantially in the prescribed form;
- not accompanied by the appropriate fee, or

- not in compliance with any requirement under the Act or any regulations made thereunder.

The receipt of an Application by the CCS does not in any way indicate that the Application is complete. In the event that the CCS refuses to accept an Application, it will inform the Applicant of the non-conformity as soon as is practicable. The 30 working day indicative timeframe for Phase 1 review will not commence until the Applicant has filed an Application with the non-conformity rectified.

Form M2

3.13 If the CCS is of the view that it is necessary to proceed to Phase 2 review, it will notify the Applicant accordingly. The indicative timeframe of 120 working days for Phase 2 review commences only when the CCS:

- notifies the Applicant that the merger situation has proceeded to a Phase 2 review, and

- receives a complete Form M2 that meets all the applicable filing requirements.

The indicative timeframe will not commence before both events have occurred. In any case, the Phase 2 review period will commence no earlier than after the expiry of the indicative timeframe of 30 working days for Phase 1 review.

3.14 In more complex cases where Form M2 is expected to be required, Applicants may submit Form M2 to the CCS at the same time that Form M1 is submitted. In such a case, should the CCS decide to proceed to a Phase 2 review, the indicative timeframe of 120 working days for Phase 2 review will commence immediately after the expiry of the indicative timeframe of 30 working days for Phase 1 review (assuming that Form M2 that has already been submitted is complete and meets all the applicable filing requirements).

3.15 The information required by Form M2 is more detailed. Where Form M2 has not been furnished by the Applicant previously, the CCS will stipulate a deadline within which the Applicant is to submit Form M2. Applicants who believe that they will not be able to comply with the deadline should submit a request for extension of time to the CCS as soon as possible. Applicants should note that it is in their interests to submit Form M2 promptly, as the indicative timeframe of 120 working days for Phase 2 review does not commence until a complete Form M2 that complies with all the applicable filing requirements is received. If the Applicant fails to submit Form M2 within the deadline stipulated by the CCS (and any extensions which may have been granted), the CCS may determine the Application by not giving a decision.

3.16 Where the substantive information provided by the Applicant in Form M2 is:

- incomplete;

- not accompanied by the relevant supporting documents;

- not substantially in the prescribed form; or
- not in compliance with any requirement under the Act or any regulations made thereunder,

the CCS will notify the Applicant of the non-conformity as soon as is practicable. In notifying the Applicant, the CCS will specify a deadline within which the Applicant is to rectify the non-conformity. Applicants who believe that they will not be able to do so within the specified deadline should submit a request for extension of time to the CCS as soon as possible. Applicants should note that it is in their interests to rectify all instances of non-conformity promptly, as the 120 working day indicative timeframe for Phase 2 review will not commence until the Applicant has done so. If the Applicant fails to rectify the non-conformity within the deadline stipulated by the CCS (and any extensions which may have been granted), the CCS may determine the Application by not giving a decision.

3.17 In some cases, it may be possible for the CCS (at the Applicant's request) to dispense with the obligation to submit any particular information specified in Forms M1 or M2, where the CCS considers that such information is unnecessary for the assessment.

Additional Information

3.18 Even where the Applicant has already submitted complete Forms M1 or M2, the CCS may require the Applicant to provide additional information. Depending on the circumstances of the Application, information over and above that which is required under Forms M1 or M2 may be necessary in order for the CCS to properly assess the merger situation. In the event that such additional information is needed, the CCS will require the Applicant to furnish the additional information by such deadline as the CCS considers appropriate. If the Applicant is unable to revert with the information within the deadline, the Application should submit a request for extension of time to the CCS as soon as possible. Even if the CCS agrees to extend the deadline, it may (depending on the nature of the additional information) "stop the clock" for the period between the date on which the original deadline and the subsequent point where the Applicant reverts with the additional information. If the Applicant fails to revert with the additional information within the deadline (and any extensions which may have been granted), the CCS may determine the Application by not giving a decision.

Publication of Application on the Register

3.19 Upon acceptance of the Application and receipt of the relevant fee, the CCS will publish the details of the merger situation furnished by the Applicant in Part 5 of Form M1 on the public register. The CCS may also publish the non-confidential versions of Form M1 and any accompanying documents furnished by the Applicant to the CCS.

3.20 The non-confidential versions of any subsequent documents (including Form M2) and/or correspondence sent by the Applicant to the CCS may also be published on the public register.

Giving Notice of the Application to Non-Applicant Merger Parties

3.21 The CCS encourages all parties involved in the merger situation to jointly make the Application, as a joint Application allows for speedier assessment of the merger situation. If the Application is made by one or only some of the merger parties, the Applicant(s) must give written notification to all the other merger parties that the Application has been made. The written notification to these parties must be given within 2 working days from the date on which the Application is lodged with the CCS. If the Applicant is unable, despite the exercise of due diligence, to contact the other merger parties, the CCS may require the Applicant to notify the other merger parties in such mode and manner as may be specified, e.g. by publishing the notice.

Procedure for Submitting Application Materials to the CCS

3.22 In submitting the Application, the Applicant is required to submit one master copy, six photocopies, and one soft copy (in CD-ROM) of the following:

- Form M1 and its supporting documents (including any ancillary agreements which are the subject of the Application), with any confidential information in the Form or documents clearly identified;
- a non-confidential version of Form M1 and its supporting documents, with confidential information removed;
- where desired;
  - Form M2 and its supporting documents, with any confidential information in the Form or documents clearly identified, and
  - a non-confidential version of Form M2 and its supporting documents with confidential information removed; and
- a separate annex to the non-confidential version of each Form or document, identifying the confidential information and furnishing reasons as to why the information should be treated as confidential.

The soft copies of Forms M1 and M2 (and the non-confidential versions thereof) are to be in Microsoft Word format. Supporting documents accompanying Forms M1 and M2 must where possible also be in a format which allows for cutting and pasting of text. Non-confidential versions need not be filed if the Applicant is of the view that the relevant Form or document can be shared with third parties, either by publishing them on CCS website or through other means, in its entirety.

3.23 If the Applicant engages legal assistance to file the Application on the Applicant's behalf, the CCS should be furnished with a letter of authorisation signed by the Applicant. If a joint Application is submitted, a joint representative should be appointed. Where the joint Applicants have appointed separate representatives, the Applicants should explain why a joint representative could not be appointed.

Confidentiality & Secrecy

3.24 The non-confidential versions of Forms M1 and M2 and their supporting documents may be shared with third parties, whether by publishing on the CCS website for public viewing or through other means. Any confidential information removed from the non-confidential versions should be replaced by square brackets containing the word "CONFIDENTIAL"[1]. As stated above, the Applicant is to submit a separate annex to the non-confidential version of each Form or document identifying the confidential information and furnishing reasons as to why the information should be treated as confidential.

3.25 The CCS may seek further clarification as to these reasons. If the CCS rejects the reasons given with regard to any item of information, it may require the Applicant to re-submit the non-confidential version of the relevant Form or document with that item of information included ("the appropriately-revised non-confidential version"), by such deadline as the CCS considers appropriate. If the Applicant is unable to revert with the appropriately-revised non-confidential version within the deadline, the Applicant should submit a request for extension of time to the CCS as soon as possible. The CCS may (depending on the nature of the information concerned) "stop the clock" for the period between the date on which the CCS required the Applicant to re-submit the non-confidential version and the subsequent point where the Applicant reverts with the appropriately-revised non-confidential version. If the Applicant fails to revert with the appropriately-revised non-confidential version within the deadline (and any extensions which may have been granted), the CCS may determine the Application by not giving a decision.

3.26 Similarly, any subsequent correspondence and documents sent by the Applicant to the CCS should be accompanied by a non-confidential version, except those where the Applicant is of the view that they can be freely disclosed in their entirety. The CCS may share the non-confidential versions of such correspondence or documents with third parties, either by publishing them on the CCS website or through other means. Applicants should extend the treatment for confidential information in paragraph 3.24 to all such correspondence or documents. Paragraph 3.25 also applies to such correspondence or documents.

3.27 Even if the CCS allows any information to be treated as confidential, it may at any subsequent point in time require the Applicant to re-submit the non-confidential version of the relevant Form, document or correspondence with that item of information included. This may happen when it becomes necessary for the CCS to share the information with third parties in order to properly assess the merger situation. Under such circumstances, paragraph 3.25 will apply.

3.28 Please refer to the relevant paragraphs of the *CCS Guidelines on the Major Provisions* pertaining to how the CCS handles confidential information.

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[1] For example, if a document accompanying Forms M1 or M2 contains the statement "the turnover of the Applicant is 1 billion dollars" and the turnover figure is confidential, the confidential portion should be blanked out from the non-confidential version of the document and square brackets containing the word "CONFIDENTIAL" inserted over the blanked out portion. The non-confidential version of the document will therefore read: "the turnover of the Applicant is [CONFIDENTIAL] dollars".

Applicants' Obligations as to Accuracy of Information

3.29 Each Applicant and the joint representative (where one has been appointed) must sign the declaration in Form M1 (and Form M2, where relevant) stating that the information submitted is correct to the best of the knowledge and belief of the person signing the declaration, and that all estimates are best estimates based on the underlying facts. Applications which lack the requisite signatures will not be accepted.

3.30 The Applicant has a continuing obligation to inform the CCS of any material changes in the information contained in the Application which may occur after the Application has been made.

Application Procedures for Ancillary Restrictions

3.31 Ancillary restrictions are agreements, arrangements or provisions that are "directly related and necessary to the implementation" of a merger. Ancillary restrictions are excluded from the section 34 prohibition and section 47 prohibition under the Third Schedule of the Act.

3.32 As with the merger situation, merger parties should conduct a self-assessment as to whether any agreements, arrangements or provisions which are not integral to the merger, but which are concluded in conjunction with the merger, qualify as ancillary restrictions. For merger parties seeking greater legal certainty, the Act allows for ancillary restrictions to be notified to the CCS in two ways:

- Merger parties may notify the ancillary restrictions as part of the Application and provide the necessary information in the Forms. The CCS will consider these ancillary restrictions in the review of the merger situation. Merger parties should bear in mind that as part of the merger review process, the CCS may seek third-party views on these ancillary restrictions; or

- In the event that the merger parties do not make an Application in respect of the merger situation itself, they can choose to file a separate notification for guidance (under sections 43 or 50 of the Act) or a decision (under sections 44 or 51 of the Act) as to whether the agreement, arrangement or provision concerned constitutes an ancillary restriction. Merger parties should follow the procedures laid out in the *CCS Guidelines on Filing Notifications for Guidance or Decision with respect to the Section 34 Prohibition and Section 47 Prohibition* in submitting such notifications. In filing such notifications, merger parties should provide the following:

    - details of each ancillary restriction;

    - an explanation as to why each ancillary restriction may infringe the section 34 prohibition and/or the section 47 prohibition but for the exclusion of ancillary restrictions from these prohibitions; and

- an explanation as to why each ancillary restriction is directly related and necessary to the implementation of the merger situation.

The CCS will then make a decision as to whether the agreements, arrangements or provisions which have been notified qualify as ancillary restrictions.

3.33 Even if the CCS gives guidance or a decision to the effect that an agreement, arrangement or provision is likely to qualify as an ancillary restriction, this does not prevent the CCS from taking further action in respect of the ancillary restriction if the CCS finds that the underlying merger has infringed, or the underlying anticipated merger if carried into effect will infringe, the section 54 prohibition, or if the underlying anticipated merger is not subsequently effected.

The CCS' Information Gathering Powers

Information from the Applicants

3.34 The CCS, after considering all the information available to it at the outset of an Application, may require additional, or more comprehensive, information. The CCS will issue such a request as soon as it is clear that the information is necessary. Applicants are encouraged to comply with such requests quickly, so that the CCS can complete the merger assessment as early as possible. The deadlines for such requests of information are therefore likely to be short. Failing to meet these deadlines could result in a delay in the assessment process or the Application may be deemed as not having been made.

3.35 Applicants receiving a request for information from the CCS may wish to discuss with the CCS at an early stage their likely timetable for responding, the extent to which the requested information is available, and the form in which it is available. Such discussions may enable the CCS to vary the information request or the stipulated response date.

Information from Third Parties

3.36 As stated above, details of Applications accepted by the CCS will be published on the public register. All interested third parties (including non-Applicant merger parties) may then provide comments to the CCS in relation to the Application.

3.37 In general, all interested third parties should submit their comments within 10 working days after the Applications are published on the public register so that the CCS will have sufficient time to give due consideration to their submissions.

3.38 When providing submissions to, or otherwise corresponding with, the CCS, third parties should, if the submission and/or correspondence contains any confidential information, provide the CCS with a non-confidential version of the submission and/or correspondence. The CCS may share the non-confidential versions with the Applicant or other parties, either by publication on the CCS website or through other means. Third parties should extend the treatment for confidential information in paragraph 3.24 to the non-confidential version of their submission and/or correspondence. It is important to obtain the responses of the

Applicant and other players in the market to any information which interested third parties may voluntarily furnish to the CCS, in order to test the veracity or reliability of the information. As such, while the CCS appreciates any confidentiality concerns which third parties may raise, the CCS may not be able to give much weight to the information furnished by these third parties if excessive confidentiality claims made over the information prevents the CCS from verifying the information with third parties.

3.39 The CCS may also approach specific third parties, such as the Applicant's main customers, suppliers and/or competitors, for information. The CCS may also contact other government bodies for their views on the merger situation. Where any of the merger parties are regulated by another government authority, the CCS will, in general, seek inputs from these authorities. These bodies may carry out their own public consultation before providing their comments to the CCS.

3.40 The CCS is also empowered under section 61A of the Act to, when it has reasonable grounds to suspect that the section 54 prohibition has been or will be infringed, require from any person information or documents that would assist the CCS in its assessment of the Application.

Consequences of False or Misleading Information

3.41 There are penalties for both Applicants and third parties who provide false or misleading information to the CCS. Section 77(1) of the Act makes it an offence to knowingly or recklessly provide false or misleading information to the CCS, an investigating officer or an inspector or any person authorised to assist the CCS, investigating officer or inspector in connection with their functions or duties. The penalty for breaching this provision is a fine of up to $10,000 or imprisonment of up to 12 months, or both.

3.42 Applicants are also reminded that the CCS may review its favourable decisions if, *inter alia*, the CCS has reasonable grounds to suspect that the information on which the CCS based its decision was incomplete, false or misleading.

The Review Process

Preliminary Thresholds

3.43 Upon accepting a complete Form M1 that meets all the applicable filing requirements, the CCS will first determine:

- whether the transaction falls within the meaning of a 'merger' or 'anticipated merger' as defined in the Act; and

- whether the transaction is excluded under paragraph 1 or 2 of the Fourth Schedule of the Act.

Where the CCS considers that the transaction does not fall within the meaning of a merger or an anticipated merger as defined in the Act, or is excluded under paragraph 1 or 2 of the Fourth Schedule of the Act, the CCS will inform the Applicant as soon as is practicable.

Phase 1 Review

3.44 A Phase 1 review entails a quick review and allows merger situations that clearly do not raise competition concerns under the section 54 prohibition to proceed without undue delay. Please refer to the *CCS Guidelines on the Substantive Assessment of Mergers* for details of how the CCS will conduct the assessment.

3.45 The CCS expects to complete a Phase 1 review within **30** working days. By the end of this period, the CCS will determine whether to issue a favourable decision and allow the merger situation to proceed, or to carry on to a Phase 2 review. The CCS' decision will be communicated to the Applicant in writing. In exceptional circumstances, the CCS may extend the Phase 1 review period upon informing the Applicant in writing in advance.

3.46 If the CCS, on the basis of all information before it, is unable to form the conclusion during the Phase 1 review that the merger situation does not raise competition concerns under the section 54 prohibition, the CCS will proceed to a more extensive review, i.e. a Phase 2 review. In making this determination, the CCS will inform the Applicant and merger parties of its decision.

Phase 2 Review

3.47 While the principles of substantive assessment for Phase 2 review are the same as that for Phase 1 review, Phase 2 review entails a more detailed and extensive examination of the merger situation. As such, the CCS will require access to detailed information regarding the merger parties and the markets in question.

3.48 As the Phase 2 review is more complex, the CCS will endeavour to complete a Phase 2 review within **120** working days, by the end of which the CCS will determine whether to issue a favourable or unfavourable decision. In exceptional circumstances, the CCS may extend the Phase 2 review period upon informing the Applicant in writing in advance.

Interim Measures

3.49 Merger parties may choose to carry an anticipated merger into effect, or proceed with further integration of a merger, without making an Application. Merger parties who have made an Application may also proceed with their anticipated merger or with further integration of their merger, as the case may be, at their own risk, before the CCS issues a decision.

3.50 Section 58A of the Act allows the CCS to impose interim measures, i.e., directions as it considers appropriate, to prevent the merger parties from taking any action that might prejudice the CCS' ability to consider the merger situation further and/or to impose the appropriate remedies. Such directions may also be issued as a matter of urgency to prevent serious, irreparable damage to persons or to protect the public interest.

3.51 Interim measures may, for example, comprise of directions that:

- impose on any person or undertaking obligations as to the carrying on of any activities or as to the safeguarding of any assets; or

- provide for the carrying on of any activities or the safeguarding of any assets by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the directions) or in any manner.

3.52 In the case of an anticipated merger, the CCS may give a direction prohibiting merger parties from acquiring control or equity interests without the CCS' consent before the CCS has completed its review of the Application. In considering any such request for consent, the CCS will take into account the need to prevent the acquiring undertaking from increasing its level of control over the target undertaking.

3.53 In situations where the merger situation does not involve the acquisition of shares, the CCS may give a direction to require the merged entity not to proceed further with the transaction or take further steps to integrate the merger until the Application has been determined.

3.54 These interim measures may be imposed as soon as the CCS has reasonable grounds for suspecting that a merger has infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition. As a matter of practice, however, the CCS is unlikely to use these powers unless it believes that there is a real possibility of the merger situation raising serious competition concerns. Furthermore, the fact that the CCS has imposed interim measures does not rule out eventual clearance of the merger situation.

3.55 Apart from the Application context, interim measures may also be imposed by the CCS when it has commenced its own investigations into merger situations. This is discussed further below.

Procedures for Interim Measures

3.56 Before giving a direction imposing interim measures, the CCS must give written notice to the persons to whom it proposes to give the direction, indicating the nature of the direction it proposes to give and the reasons for deciding to give it. Such persons will be given an opportunity to make representations to the CCS. They can also appeal against the CCS' directions.

3.57 Reference should be made to the relevant paragraphs of the *CCS Guidelines on Enforcement* pertaining to the procedure governing the giving of directions on interim measures.

Enforcement of Directions Imposing Interim Measures

3.58 If a direction imposing interim measures has not been complied with, the CCS may apply to register the direction with a District Court in accordance with the Rules of Court (Cap. 322, Rule 5). Any person who fails to comply with a

registered direction without reasonable excuse may be found to be in contempt of court. The normal sanctions for contempt of court will apply, i.e., the court may impose a fine or imprisonment.

3.59 Reference should be made to the relevant paragraphs of the *CCS Guidelines on Enforcement* pertaining to the enforcement of directions on interim measures.

Issue of Decisions After Assessing an Application

Favourable Decisions

3.60 A favourable decision is a decision by the CCS that a merger has not infringed, or that an anticipated merger if carried into effect will not infringe, the section 54 prohibition. Where the CCS makes a favourable decision, it will give notice of the decision to the merger parties. The CCS may also publish the favourable decision on the public register.

3.61 Once a favourable decision has been made, the CCS will not take further action unless:

- the CCS has reasonable grounds for suspecting that information on which it has based its decision (which may include information on the basis of which a commitment was accepted) was materially incomplete, false or misleading; or

- the CCS has reasonable grounds for suspecting that a party failed to adhere to one or more terms of a commitment.

Should any of these circumstances occur, the favourable decision may be revoked.

3.62 Section 59(7) of the Act also allows the CCS to take further action if the merger resulting from a purported carrying into effect of the anticipated merger in respect of which the favourable decision was issued is materially different from that anticipated merger.

3.63 The CCS may, at the time of issuing a favourable decision for an anticipated merger, specify the validity period of the decision within which the anticipated merger must be carried into effect. The CCS will not take further action if the anticipated merger is effected within the validity period, unless any of the circumstances stated in paragraph 3.61 occurs. In specifying the validity period, the CCS considers that one year will generally be sufficient for merger parties to act on the favourable decision and carry the anticipated merger into effect. However, the CCS will take account of the circumstances of each merger situation when specifying the duration of any validity period.

3.64 If the Applicant is unable to carry the anticipated merger into effect within the validity period, the Applicant may make a request to the CCS for an extension of the validity period. If the Application had been jointly made by more than one Applicant, any request for extension must be jointly made by all of them. The Applicant(s) requesting for extension must notify all other parties to the

anticipated merger about the request for extension within 2 working days from the date on which the request is made.

3.65 A request for extension must be made to the CCS in writing, and must contain the following:

- An explanation as to why the anticipated merger cannot be effected within the validity period;
- A statement as to the duration of extension sought and an explanation as to why this duration is necessary;
- An explanation as to how the competitive environment has changed since the favourable decision was issued and how it may be expected to change further within the period of extension sought;
- An explanation as to how the competitive impact of carrying the anticipated merger into effect within the period of extension will differ from that if it had been carried into effect within the initial validity period.

All explanations should be clear and accompanied by relevant supporting documents.

3.66 Requests for extensions will be considered by the CCS on a case-by-case basis. Extensions may also be granted subject to conditions imposed by the CCS. Generally, the CCS is more likely to grant an extension if there is no material change in the competitive environment since the favourable decision was granted and the competitive impact from carrying the anticipated merger into effect within the period of extension sought will not be materially different than if the merger is carried into effect within the initial validity period. If the determination of whether the validity period should be extended requires significant analysis of the competitive impact of the merger situation, the request for extension is unlikely to be acceded to. In such instances, the merger parties may wish to consider making a fresh Application in respect of the anticipated merger instead.

Unfavourable Decisions

3.67 Where the CCS is proposing to issue an unfavourable decision, it will issue a notice of the proposed unfavourable decision to the merger parties. The notice will state the facts on which the CCS relies upon, as well as the objections which the CCS proposes to take. The merger parties will have the opportunity to apply to the Minister for the merger situation to be exempted on public interest considerations. The CCS will also give the merger parties an opportunity to make written representations to the CCS and to inspect the documents in the CCS' file relating to the proposed unfavourable decision. Where appropriate, the CCS will allow the merger parties to make oral representations to the CCS.

3.68 When the CCS makes an unfavourable decision, it will give notice of the decision to the merger parties and will also publish the decision on the public register. The CCS may also issue directions to remedy, mitigate or eliminate the adverse

effects arising from the merger situation. Reference should be made to the relevant paragraphs of the *CCS Guidelines on Enforcement* pertaining to the enforcement of directions.

Competing Bids

3.69 Where there are competing bids for the same undertaking, the CCS will try to consider them simultaneously. However, this may not be possible when the bids have been made or notified to the CCS at different times, or where they raise different issues. If one of the bids has progressed to a Phase 2 review, it does not necessarily follow that the other bid(s) will follow suit. As in the case of a single bidder, each case must be considered on its own merits.

4 INVESTIGATIONS

4.1 Apart from Applications, the CCS may also obtain information about merger situations through complaints from third parties, or through other means, such as the media. The CCS may conduct an investigation if there are reasonable grounds for suspecting that a merger has infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition.

Complaints about Merger Situations

Procedure for Complaints

4.2 In making complaints about merger situations to the CCS, complainants are strongly encouraged to use the CCS mergers complaint form which is available on the CCS website.

4.3 Complainants should provide all the information requested in the mergers complaint form. The mergers complaint form requests for, amongst other things:

- a description of the relationship between the complainant and the merger parties or merged entity;
- a concise explanation of the reasons for, and details of, the complaint, including details of the merger situation to which the complaint relates, when and how the complainant became aware of the merger situation, and (where possible) the relative market positions of the parties named in the complaint; and
- evidence directly related to the facts set out in the complaint, including appropriate copies of relevant correspondence, statistics or data which relate to the facts set out in the complaint (in particular, where they show developments in the market).

The CCS may also ask the complainant for further information or clarifications.

4.4 The CCS will consider each complaint on its merits to determine if an investigation is warranted. If the CCS decides to pursue the complaint, it will seek further information from the merger parties.

Confidentiality Claimed by Complainants

4.5 If a complainant does not wish to be identified, this should be made clear to the CCS at the earliest opportunity. However, potential complainants should note that it is sometimes necessary to reveal information which may identify the source of a complaint where this is necessary for the effective handling of the complaint.

4.6 When providing information or documents to the CCS, complainants should provide a non-confidential version of the complaint and of any other information or documents which the complainant may furnish. In this regard, complainants should extend the treatment in paragraph 3.24 to the non-confidential version of their complaint, information or documents. The CCS may then share the non-confidential version with the parties against whom the complaint is directed or other third parties.

4.7 The CCS recognises the importance of complainants voluntarily supplying information and also their interest in maintaining confidentiality. If the CCS proposes to disclose any of the information over which confidentiality has been claimed, it may in appropriate cases and to the extent that it is practicable to do so, consult the complainant who has provided the information.

Powers of Investigation

4.8 The CCS' powers of investigation include the power to:

- require the production of specified documents or information;
- enter premises without a warrant; and
- enter and search premises with a warrant.

4.9 The Act sets out a number of criminal offences which may be committed where an undertaking fails to comply or cooperate when these powers are exercised, as well as limitations on the use of the CCS' powers of investigation. Please refer to the relevant paragraphs of the *CCS Guidelines on the Powers of Investigation* pertaining to the exercise of the CCS' powers of investigation.

4.10 The CCS may also invite comments from interested third parties on the merger situation being investigated through a notice on the CCS website.

Interim Measures

4.11 Section 67 of the Act allows the CCS to issue directions imposing interim measures when it has yet to conclude its investigations into a merger situation. Specifically, section 67 allows the CCS to give such directions as it considers appropriate to prevent the merger parties from taking any action that might prejudice the CCS' ability to investigate the merger situation and/or to impose the appropriate remedies in the event that the merger situation is found to raise competition concerns. Such directions may also be imposed as a matter of

urgency to prevent serious, irreparable damage to persons or to protect the public interest.

4.12 For more details on interim measures, please refer to paragraphs 3.49 to 3.59 in Chapter 3 on Applications, above.

Issue of Decisions on Conclusion of Investigations

4.13 Paragraphs 3.60 – 3.61 apply in respect of favourable decisions, while paragraphs 3.67 – 3.68 apply in respect of unfavourable decisions, made upon the conclusion of investigations.

5 REMEDIES

5.1 Remedies may be implemented either by the CCS' acceptance of commitments which address any competition concerns arising from the merger, or by directions issued by the CCS.

Commitments

5.2 Any commitments offered to the CCS must be aimed at remedying or preventing the competition concerns which have been identified as arising from the merger situation.

5.3 Before accepting any commitments which have been proposed, the CCS must be confident that the commitments are sufficient to clearly address the adverse effects to competition which have been identified and are proportionate to them. Commitments are appropriate only if they, and the competition concerns which they are intended to address, are clear-cut. As such, they should not require substantial monitoring by the CCS. Commitments must also be capable of ready implementation. In overseas jurisdictions, commitments have thus typically been used where the SLC is attributable to an overlap in markets that is relatively small in the context of the merger situation. Commitments must also not give rise to new competition concerns.

5.4 Commitments can either be structural or behavioural. The CCS considers that structural commitments are preferable to behavioural commitments. Please refer to the relevant paragraphs of the *CCS Guidelines on the Substantive Assessment of Mergers* for a more detailed discussion on commitments.

Procedures on Commitments

5.5 Merger parties are encouraged to take the initiative to propose suitable commitments which they think can appropriately resolve any competition concerns that they foresee arising from the merger situation. The CCS may also invite merger parties to consider offering commitments if it believes that there is a prospect of the competition concerns raised by the merger situation being addressed by the appropriate commitments. However, even if merger parties propose any commitments, the CCS may consider alternative remedies. The CCS may consider commitments at any point during its review of the merger situation prior to the issue of its decision.

5.6 Where the CCS concludes that the commitments which have been proposed are a suitable remedy to address any adverse effects which have been identified as arising from the merger situation, the CCS will generally consult with such persons as it thinks appropriate before accepting the commitments (unless exceptional circumstances exist).

Timeframe for Negotiation of Commitments

5.7 In dealing with Applications, the CCS may "stop the clock" when it receives a proposal for commitments. The indicative timeframe for review of the merger may then be suspended for the duration of any negotiations between the CCS and the merger parties over the commitments, up to the point where the negotiations have been concluded (e.g. by the CCS determining whether to accept the commitments proposed or by the withdrawal of the commitment proposal). In this regard, the CCS will determine whether to accept the commitments as soon as is practicable. It is therefore in the merger parties' interests to submit proposals for commitments to the CCS as early in the review process as possible. The CCS expects that the need for an extension of the review period will be reduced if commitments are proposed in the Applicant's initial Application. The CCS reserves the right to terminate any negotiations and proceed to make a decision if commitments cannot be agreed upon within a reasonable timeframe.

Issue of Favourable Decision Upon Acceptance of Commitment

5.8 Where commitments have been accepted, the CCS will issue a favourable decision. The CCS will publish the details of all commitments as part of its decision on the merger situation on the public register.

5.9 The CCS may revoke the favourable decision if any of the commitments are breached.

Applications to Vary, Substitute or Release a Commitment

5.10 Where the CCS has accepted a commitment, the party who provided the commitment may apply to the CCS to vary, substitute or release that commitment. The party must notify all other merger parties about the application for variation, substitution or release within 2 working days from the date on which the application is made.

5.11 The application for variation, substitution or release must be made to the CCS in writing, and must contain the following:

- A statement as to whether the party is applying for a variation, substitution or release;
- In the case of a variation or substitution, a description of the terms of the proposed varied or substitute commitment;

- An explanation as to whether the competition concerns sought to be addressed by the commitment which the party is seeking to vary, substitute or release still exist; and

- An explanation as to the impact which the variation, substitution or release of the commitment will have on the competition concerns, if they still exist.

All explanations should be clear and accompanied by relevant supporting documents.

5.12 Before varying, substituting or releasing a commitment, the CCS will generally consult with such persons as it thinks appropriate (unless exceptional circumstances exist).

Directions

5.13 If the CCS concludes that the section 54 prohibition has been infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition, the CCS may give such directions as it considers appropriate to remedy, mitigate or prevent the adverse effects to competition caused by the merger situation.

5.14 Section 69(2) of the Act provides examples of directions which may be issued by the CCS. These include directions:

- prohibiting an anticipated merger from being carried into effect or requiring a merger to be dissolved or modified in such manner as the CCS may direct;

- requiring the merger parties to enter into such legally-enforceable agreements as may be specified by the CCS to prevent or lessen the anti-competitive effects which have arisen;

- requiring the merger parties to dispose of such operations, assets or shares of such undertaking in such manner as may be specified by the CCS; and

- providing a performance bond, guarantee or other form of security on such terms and conditions as the CCS may determine.

5.15 Please refer to the relevant paragraphs of the *CCS Guidelines on the Substantive Assessment of Mergers* for more information on the CCS' consideration of appropriate remedies for mergers.

Procedures for Issue of Directions

5.16 The directions must be in writing and may be given to such person(s) as the CCS considers appropriate.

5.17 Please refer to the relevant paragraphs of the *CCS Guidelines on Enforcement* pertaining to the procedures which govern the issue of directions.

Enforcement of Directions

5.18 If a direction has not been complied with, the CCS may apply to register the direction with a District Court in accordance with the Rules of Court (Cap. 322, Rule 5). Any person who fails to comply with a registered direction without reasonable excuse may be found to be in contempt of court. The normal sanctions for contempt of court apply, i.e. the court may impose a fine or imprisonment. The court may also make orders to secure compliance with the direction, or to require any person to do any thing to remedy, mitigate or eliminate any effects arising from non-compliance with the direction.

5.19 Please refer to the relevant paragraphs of the *CCS Guidelines on Enforcement* pertaining to the enforcement of directions.

Directions as to Financial Penalties

5.20 Under section 69 of the Act, the CCS may impose a financial penalty if a merger has infringed the section 54 prohibition and the infringement was committed intentionally or negligently. A financial penalty may be up to 10% of the turnover of each relevant merger party in Singapore for each year of infringement for a maximum period of 3 years.

5.21 Generally, the CCS prefers structural and (to a lesser degree) behavioural remedies over financial penalties, for restoring the competitive conditions in the market. However, in exceptional circumstances, financial penalties may be imposed to reflect the seriousness of the infringement and to deter future infringements.

5.22 In determining the financial penalty imposed under section 69 of the Act, the CCS will take the following factors into consideration:

- the seriousness of the SLC;
- the turnover of the relevant parties in Singapore for the relevant product and relevant geographic markets where competition is substantially lessened;
- the time the merger parties took to carry the infringing merger into effect and how long the merged entity has been in place; and
- other relevant factors, e.g. deterrent value, the presence or absence of any aggravating or mitigating factors.

5.23 The CCS may impose financial penalties only if it is satisfied that the section 54 prohibition has been infringed intentionally or negligently:

- Infringement is intentional if the merger parties were aware, or could not have been unaware, that the merger infringed the section 54 prohibition.

- Infringement is negligent if the merger parties ought to have known that the merger would, or was reasonably likely to, infringe the section 54 prohibition.

An example of where the CCS may possibly impose a financial penalty is where merger parties, after having received an unfavourable decision from the CCS in respect of an anticipated merger, proceed with an allegedly different merger which is simply a sham restructuring of the anticipated merger.

5.24 Should the CCS issue a direction requiring an undertaking to pay a financial penalty, it will inform the undertaking of the CCS' reasons for doing so. If an undertaking fails to pay the penalty within the date specified in the CCS' direction and the undertaking has either not appealed against the imposition or amount of the penalty or such an appeal has been made and the penalty upheld, the CCS may register the direction with a District Court in accordance with the Rules of Court. The effect of registration is that the imposition of the penalty shall have the same force and effect as if it had been an order originally obtained in the District Court and can be executed and enforced accordingly, for example, by writ of seizure and sale.

5.25 The CCS' will publish the details of all directions imposed under the Act on the public register.

Rights of Private Action

5.26 Parties suffering loss or damage directly arising from a merger that has infringed the section 54 prohibition are entitled to commence a civil action seeking relief against the relevant undertakings. Such rights of private action shall only arise after the CCS has made a decision that a merger has infringed the section 54 prohibition and the appeal period has expired or, where an appeal has been brought, upon determination of the appeal.

5.27 Reference should be made to the relevant paragraphs of the *CCS Guidelines on the Major Provisions* pertaining to the rights of private action.

6 EXCLUSIONS & EXEMPTIONS

Exclusions in the Fourth Schedule

6.1 The section 54 prohibition does not apply to the mergers specified in the Fourth Schedule to the Act, namely:

- Any merger:
    - approved by any Minister or regulatory authority pursuant to any requirement for such approval imposed by any written law[2];

[2] Examples of such mergers include mergers between banks (Minister for Finance's approval is required under section 14, 14A-C of the Banking Act), acquisition of effective control in an insurer (Monetary Authority of Singapore's approval is required under section 27 to 29 of the Insurance Act) and acquisition

- approved by the Monetary Authority of Singapore pursuant to any requirement for such approval imposed under any written law; or

- Under the jurisdiction of another regulatory authority under any written law relating to competition, or code of practice relating to competition issued under any written law.

- Any merger involving any undertaking relating to any of the following specified activity as defined in paragraph 6(2) of the Third Schedule of the Act:

  - The supply of ordinary letter and postcard services by a person licensed and regulated under the Postal Services Act (Chapter 237A);

  - The supply of piped potable water;

  - The supply of wastewater management services, including the collection, treatment and disposal of wastewater;

  - The supply of scheduled bus services by any person licensed and regulated under the Public Transport Council Act (Chapter 259B);

  - The supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act (Chapter 263A); and

  - Cargo terminal operations carried out by a person licensed and regulated under the Maritime and Port Authority of Singapore Act (Chapter 170A).

- Any merger with net economic efficiencies where the economic efficiencies arising from the merger outweigh the adverse effects due to the SLC.

Exemption under Public Interest Considerations

6.2 Under sections 57(3), 58(3) and 68(3) of the Act, where the CCS proposes to make an unfavourable decision, it shall give written notice of the proposed unfavourable decision to the merger parties. The merger parties may, within 14 days of the date of the notice, apply to the Minister for the merger situation to be exempted on the ground of any public interest consideration. The decision of the Minister for the exemption will be final.

6.3 The Minister may revoke any exemption of a merger situation which has been granted if he has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

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of substantial control of a casino operator (Minister for Home Affair's approval is required under section 65 of the Casino Control Act 2006)

Other Exclusions

6.4 Under the Third Schedule, ancillary restrictions are excluded from the section 34 prohibition and section 47 prohibition (please see paragraph 3.31). However, agreements by and conduct of the merged entity are still subject to the Act.

7 APPEALS

7.1 There will be a right of appeal to the Competition Appeal Board against any decision by the CCS in respect of a merger situation or any direction (including interim measures) imposed by the CCS. An appeal against the CCS' decision in respect of a merger situation may be made by any merger party, while an appeal against a direction may be made by the person to whom the CCS gave the direction. An appeal must be brought within the time period specified in the *Competition (Appeals) Regulations*.

7.2 Reference should be made to the relevant paragraphs of the *CCS Guidelines on Enforcement* pertaining to appeals against directions (including directions as to financial penalties) issued by the CCS.

7.3 There is no right of appeal against the CCS' refusal to accept any commitments offered, but parties may appeal against the CCS' refusal to vary, substitute or release existing commitments.

ANNEX A

FORM M1

INFORMATION REQUIRED FOR APPLICATION FOR DECISION UNDER SECTIONS 57 AND 58 OF THE COMPETITION ACT (CAP 50B)

PART 1
INTRODUCTION

This Form lists the information and supporting documents which must be provided when making an application for decision under sections 57 and 58 of the Competition Act ("Act").

If the undertaking submitting the application ("the Applicant") considers that the CCS should treat any item of information submitted under this Form as confidential, the Applicant must provide a non-confidential version of this Form with that item of information removed. The non-confidential version should also contain an annex marked "confidential information" identifying each item of information which has been removed from the non-confidential version and providing a written explanation as to why the information should be treated as confidential. The same treatment should also be extended to supporting documents accompanying this Form containing any information that the Applicant considers should be treated as confidential.

FORM M1

PART 2A
GENERAL INFORMATION AND CONTACT DETAILS

1. Summary information regarding the Application

1.1. Please state if the notifying party (or parties) is an acquiring person, an acquired person, or both.

1.2. Please state if the notified merger has or has not been completed.

1.3. Please state if the notified merger is a cash tender offer and, if not, the mode of payment for the merger transaction.

1.4. Please state if the notified merger is a result of bankruptcy or insolvency of one of the merger parties.

1.5. Please state if the notified merger is subject to filing requirements of a local or foreign authority other than the CCS. If yes, please state the country and authority to which the filing is made/to be made, and all decisions and/or directions issued by the local or foreign authorities in respect of the notified merger.

1.6. Please state whether ancillary restrictions are notified as part of this application.

2. General contact information

2.1. For each undertaking making the application, all other merger parties[3], the joint representative of the merger parties (where appointed) in a joint application, and/or separate representatives for the merger parties (where appointed), please provide the following:

- full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers,y and e-mail address (where available) of the undertakings;

- full name, address, telephone and fax numbers and email address of, and designation or position held by a contact person; and

- address for service to which documents and, in particular, CCS' correspondences may be delivered, as well as the full name, telephone number and email address of a person at each address who is authorised to accept service.

2.2. For each Applicant and merger party:

- indicate if each undertaking is a partnership, sole proprietorship or other unincorporated body trading under a business name.

[3] This includes the target company in the case of a contested bid, in which case the details should be completed as far as possible.

- provide a brief description of the nature of each undertaking's business;

- provide the full name(s) and address(es) of the partners or proprietor(s) or director(s), quoting any reference which should be used;

2.3. Where any representative(s) has been authorised to act for the Applicant(s), and the relevant merger parties, please indicate clearly whom the representatives represent and in what capacity (e.g. a solicitor). Where separate representatives have been appointed in a joint application, please explain why a joint representative could not be appointed.

2.4. Where the declaration set out in Part 3 of Form M1 is signed by a solicitor or other representative of the Applicant(s), please provide written proof of that representative's authority to act on the Applicant(s)'s behalf. The written proof must contain the name and position of the persons granting such authority.

3. General information on the merger

3.1. Describe the nature of the notified merger. In doing so, state:

- the merger parties;

- the nature of the merger, for example, whether the merger is an anticipated merger, an acquisition of sole or joint control, a full-function joint venture or a contract or other means of conferring direct or indirect control;

- the value of the transaction (the purchase price or the value of all the assets involved, as the case may be);

- for each of the merger parties, the areas of activity and turnover worldwide and in Singapore for the last financial year;

- whether the whole or parts of the business of parties are subject to the merger;

- the markets on which the merger will have an impact (including the main reportable markets as explained in section 6 of the Form);

- a brief explanation of the economic and financial structure of the merger;

- whether any public offer for the securities of one party by another party has the support of the former's supervisory boards of management or other bodies legally representing that party;

- the proposed, expected or past dates of major events designed to bring about the completion of the merger; and

- any financial or other support received from any source (including public authorities) by any of the parties and the nature and amount of this support.

3.2. Describe the strategic and economic rationale of the merger and why the merger should be allowed to proceed.

4. Information on the groups to which merger parties belong

4.1. Please provide a list of all undertakings belonging to the same group to which each merger party belongs, specifying the nature and means of control for each undertaking (including any preferential or special rights). Undertakings belong to the same "group" when one undertaking controls another or when the undertakings concerned are under common control. Please refer to the Competition Act and the relevant paragraphs of the *CCS Guidelines on the Substantive Assessment of Mergers* on how control is defined. This list should include all undertakings or persons controlling or controlled by each of the merger parties, directly or indirectly.

4.2. The information sought in section 4.1 may be illustrated by the use of organisation charts or diagrams. Applicants who are unable to submit such information pertaining to the other merger parties, should provide reasons for the inability to do so.

5. Supporting Documents

5.1. Please ensure that the following documents (where relevant) are included in the application:

- if section 2.3 of this Form applies, written proof of the representative's authority to act on the Applicant(s)' behalf;
- copies of the final or most recent version of all documents bringing about the merger, whether by agreement between the merger parties, acquisition of a controlling interest or a public bid;
- in the case of a public bid, a copy of the offer document; if it is unavailable at the time of notification, it should be submitted as soon as possible and not later than when it is posted to shareholders;
- copies of the most recent annual report and accounts (or equivalent for unincorporated bodies) for all the merger parties;
- copies of all analyses, reports, studies, surveys, and any comparable documents prepared by or for any member(s) of the board of directors (or equivalent) or other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders' meeting, for the purpose of assessing or analysing the merger with respect to market shares, competitive conditions, competitors (actual and potential), the rationale of the merger, potential for sales growth or expansion into other product or geographic markets, and/or general market conditions. For each of these documents, indicate (if not contained in the document itself) the date of preparation and the name and title of each individual who prepared the document; and

- copies of all business plans for each merger party for the current year and the preceding 5 years.

PART 2B
INFORMATION ON MARKETS

6. Market definition

6.1. Identify all "reportable markets". Reportable markets consist of all relevant product and geographic markets, as well as plausible alternative relevant product and geographic markets, on the basis of which:

- two or more of the merger parties are engaged in business activities in the same relevant market (horizontal relationships); or

- one of more of the merger parties are engaged in business activities in a product market, which is upstream or downstream of a market in which any other merger party is engaged, regardless of whether there is or is not any existing supplier/customer relationship between the merger parties (vertical relationships).

6.2. Applicants are encouraged to refer to the principles outlined in the relevant paragraphs of the *CCS Guidelines on the Substantive Assessment of Mergers* and of the *CCS Guidelines on Market Definition*, in identifying the relevant product and geographic markets.

7. Information on groups to which merger parties belong

7.1. Please provide a list of all undertakings active on each reportable market identified in section 6 above, that are controlled, directly or indirectly, by:

- each of the merger parties; and

- any other undertaking identified in section 4,

specifying the nature and means of control for each undertaking (including any preferential or special rights).

7.2. With respect to the merger parties and each undertaking or person identified in response to section 4 and 7.1, please provide:

- a list of all other undertakings that participate in the reportable markets in which the undertakings or persons of the group hold, individually or collectively, 5% or more of the voting rights, issued share capital or other securities. In each case, also identify the holder and state the percentage held;

- a list for each undertaking, of the members of their boards of directors (or equivalent) who are also members of the boards of directors (or equivalent) of any other undertakings in the reportable markets. In each case, also identify the other undertaking and the positions held by the members of the boards of directors;

- a list for each undertaking, acquisitions of undertakings in the reportable markets made during the last three years.

7.3. Information may be illustrated by the use of organisation charts or diagrams to give a better understanding.

8. Information on markets

8.1. Provide, for each reportable market:

- an estimate of the total size of the market in terms of sales value (in Singapore dollars) and volume (units[4]), for the preceding year. Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations;

- the sales in value and volume for the preceding year, as well as an estimate of the market shares, of each of the merger parties. Indicate if there have been significant changes to the sales and market shares for the last three years;

- an estimate of the market share that the merged entity is likely to have. For completed mergers, provide the sales value and volume and market share before and after completion of the merger; and

- estimates of the market shares in value (and where appropriate, volume) for the preceding year of the three largest competitors, suppliers and customers, including the basis for the estimates. Provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions, and in cases where there is no such person, then the chief executive) for these entities.

[4] The value and volume of a market should reflect output less exports plus imports for the geographic areas under consideration where possible.

PART 2C
ADDITIONAL INFORMATION (WHERE APPLICABLE)

9. Cooperative effects of a joint venture (To be completed if the transaction is a joint venture as defined under the Act)

9.1. Do two or more parent businesses/companies retain activities in the same market as the joint venture or in a market which is upstream or downstream from that of the joint venture, or in a neighbouring market closely related to this market?

9.2. If yes, provide for each of the markets referred to:

- the activities retained by the parents;
- the turnover of each parent company in the preceding financial year, and the expected turnover of the joint venture; and
- the market share of each parent company.

9.3. If yes, please provide reasons why, in your view, the creation of the joint venture does not lead to coordination between independent undertakings that restricts competition within the meaning of section 34 of the Act.

10. Ancillary Restrictions (To be completed if ancillary restrictions are included in the notification)

10.1. Provide the following:

- Details of each ancillary restriction;
- An explanation as to why each ancillary restriction is directly related and necessary to the implementation of the merger; and
- An explanation of why each ancillary restriction may infringe the section 34 and/or 47 prohibitions.

10.2. Please provide copies of each agreement in which the ancillary restriction may be contained.

11. Any other information

11.1. Please provide any other information which may be relevant to the application. Supporting documents should be included where relevant.

FORM M1

PART 3
DECLARATION

Under section 77 read with section 83 of the Act, it is an offence, punishable by a fine or imprisonment or both to provide information which is false or misleading in a material particular if the undertaking or person providing it knows that it is false or misleading, or is reckless as to whether it is. If the undertaking or person is a body corporate, its officers may be guilty of an offence under section 81 of the Act.

Declaration
The undersigned declare and confirm that all information given in this Form and all pages annexed hereto are correct to the best of their knowledge and belief, and that all estimates are identified as such and are their best estimates based on the underlying facts.

Signature(s)

Name(s) (in block capitals):
Designation(s):
Date:

FORM M1

PART 4
ACKNOWLEDGEMENT OF RECEIPT

This acknowledgement of receipt will be returned to the address inserted below if the Applicant(s) provides the information requested below.

To be completed by the Applicant(s)

To: (name and address of Applicant(s))

Re: The application dated (date of application) concerning (brief description of subject matter) involving the following undertakings: (names of undertakings) [and others]

To be completed by the CCS

Received on:

Registered under reference number:

Please quote this reference number in all correspondence with the CCS.

FORM M1

PART 5
INFORMATION FOR THE CCS PUBLIC REGISTER
(TO BE COMPLETED BY THE APPLICANT(S))

1. Please give the full names of the Applicants.

2. Please provide a short summary which does not contain any confidential information (no more than 250 words) of the description of the merger and the supporting reasons why the merger has not infringed, or (where applicable) why the anticipated merger if carried into effect will not infringe, the section 54 prohibition. Please note that this summary will be open to viewing by the public.

3. Please describe the relevant good(s) or service(s) involved as fully and accurately as possible.

FORM M1

PART 6
PAYMENT DETAILS FOR FEES PAYABLE

All payments are to be made by cheque payable to the "Competition Commission of Singapore".

To: Finance Department
Competition Commission of Singapore
5 Maxwell Road
#13-01, Tower Block
MND Complex
Singapore 069110

I enclose herewith (bank and cheque no.) for the amount of ($x) being the fees payable.

Signature

Name (in block capitals):
Address (in block capitals):
Date:

FORM M2

FURTHER INFORMATION REQUIRED FOR APPLICATION FOR DECISION UNDER SECTIONS 57 AND 58 OF THE COMPETITION ACT (CAP 50B)

PART 1
INTRODUCTION

This Form lists the further information and supporting documents which may be required by the CCS after Form M1 has been filed.

If the Applicant(s) considers that the CCS should treat any item of information submitted under this Form as confidential, the Applicant must provide a non-confidential version of this Form with that item of information removed. The non-confidential version should also contain an annex marked “confidential information” identifying each item of information which has been removed from the non-confidential version and providing a written explanation as to why the information should be treated as confidential. The same treatment should also be extended to supporting documents accompanying this Form containing any information that the Applicant considers should be treated as confidential.

FORM M2

PART 2
FURTHER INFORMATION TO BE PROVIDED BY THE UNDERTAKING(S) MAKING THE APPLICATION

1. Other markets in which the notified merger may have a significant impact

1.1. Please describe the product and geographic scope of markets, other than the reportable markets identified in Section 6 of Form M1, in which the notified merger may have a significant impact, i.e, where:

- any of the merger parties has a market share larger than 20% and any merger party is a potential competitor into that market. A party may be considered a potential competitor, in particular, where it has plans to enter a market, or has developed or pursued such plans in the past two years;

- any of the merger parties has a market share larger than 20% and any other merger party holds important intellectual property rights for that market; or

- any of the merger parties is present in a product market, which is a neighbouring market closely related to a product market in which any other merger party is engaged, and the individual or combined market shares of the parties in any one of these markets is 20% or more. Product markets are closely related neighbouring markets when the products are complementary to each other or when they belong to a range of products that is generally purchased by the same set of customers for the same end use[5].

1.2. Sections 2 and 3 below seek certain information in relation to significant reportable markets. Applicants are invited to submit this information in relation to the markets identified under Section 1.1 of this Form as well, so as to enable the CCS to consider, from the outset, the competitive impact of the merger in these markets.

2. Information on significant reportable markets

2.1. For purposes of information required in Form M2, significant reportable markets consist of reportable markets identified in section 6 of Form M1 where:

- two or more of the merger parties are engaged in business activities in the same reportable market and where the merger will lead to a combined market share of 20% or more. These are horizontal relationships;

- one or more of the merger parties are engaged in business activities in a market, which is upstream or downstream of a reportable market in which any other merger party is engaged, and any of their individual or

[5] Examples of products belonging to such a range would be whisky and gin sold to bars and restaurants and different materials for packaging a certain category of goods sold to producers of such goods.

combined market shares at either level is 25% or more, regardless of whether there is any existing supplier/customer relationship between the merger parties. These are vertical relationships.

2.2. Please provide the following for each significant reportable market, for each of the last three years:

- an estimate of the total size of the market in terms of sales value (in Singapore dollars) and volume (units[6]). Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations;

- the sales in value and volume, as well as an estimate of the market shares, of each of the merger parties, and the basis for these estimates;

- an estimate of the market share in value (and where appropriate, volume) of all competitors (including importers) having at least 5% of the market under consideration, and the basis for these estimates;

- the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) for competitors identified above;

- an estimate of the total value and volume and source of imports from outside Singapore and the basis for these estimates, and identify:

    - the proportion of such imports that are derived from the groups to which the merger parties belong (as defined in section 4 of Form M1), and the basis for these estimates;

    - an estimate of the extent to which any quotas, tariffs or non-tariff barriers to trade, affect these imports, and the basis for these estimates; and

    - an estimate of the extent to which transportation and other costs affect these imports, and the basis for these estimates;

- the manner in which the merger parties produce, price and sell the products and/or services; for example, whether they manufacture and price locally, or sell through local distribution facilities; and

- the nature and extent of vertical integration of each of the merger parties compared with their largest competitors.

[6] The value and volume of a market should reflect output less exports plus imports for the geographic areas under consideration. If readily available, please provide disaggregated information on imports and exports by country of origin and destination, respectively.

3. Market conditions in significant reportable markets

Structure of supply in significant reportable markets

3.1. Identify the five largest independent[7] suppliers to the merger parties and their individual shares of purchases from each of these suppliers (of raw materials or goods used for purposes of producing the relevant products) in each significant reportable market. Provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) for each of these suppliers.

3.2. Explain the distribution channels and service networks that exist in the significant reportable markets. In so doing, take account of the following where appropriate:

- the distribution systems prevailing in the market and their importance, as well as the extent that distribution is performed by third parties and/or undertakings belonging to the same group as the merger parties (as defined in section 4 of Form M1); and

- the service networks (such as maintenance and repair) prevailing and their importance in these markets, as well as the extent that such services are performed by third parties and/or undertakings belonging to the same group as the parties (as defined in section 4 of Form M1).

3.3. Provide an estimate of the total Singapore-wide capacity for the last three years for each significant reportable market, including the proportion of this capacity that is accounted for by each of the merger parties, and their respective rates of capacity utilisation. Include the basis for this estimate. If applicable, identify the location and capacity of the manufacturing facilities of each of the merger parties in significant reportable markets.

3.4. Specify whether any of the merger parties or any of the competitors have "pipeline products" i.e. products likely to be brought to market in the near term, or plans to expand (or contract) production or sales capacity. If so, provide an estimate of the projected sales and market shares of the merger parties over the next three to five years, and the basis for this estimate.

3.5. Please specify any other supply-side considerations that the Applicant(s) considers to be relevant for the purpose of assessing the notification.

Structure of demand in significant reportable markets

3.6. Identify the five largest independent customers of the merger parties in each significant reportable market and their individual share of total sales for such products accounted for by each of those customers. Provide the name, address,

[7] That is, suppliers who are not subsidiaries, agents or undertakings forming part of the group of the party in question. In addition to those five independent suppliers the notifying parties can, if they consider it necessary for a proper assessment of the case, identify the intra-group suppliers. The same applies in section 3.6 in relation to the term "independent customers".

telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) for each of these customers.

3.7. In each significant reportable market, explain the structure of demand in terms of:

- phases of the markets, e.g. take-off, expansion, maturity and decline, and a forecast of the growth rate of demand;
- customer preferences, for example in terms of brand loyalty, the provision of pre- and after-sales services, the provision of a full range of products, or network effects;
- product differentiation in terms of attributes or quality, and the extent to which the products of the merger parties are close substitutes;
- switching costs (in terms of time and expense) for customers when changing from one supplier to another;
- the degree of concentration or dispersion of customers;
- the different groups of customers with a description of the "typical customer" of each group;
- the importance of exclusive distribution contracts and other types of long-term contracts; and
- the extent to which the public sector is a source of demand.

Market entry

3.8. Please specify any significant entry into any significant reportable markets over the last five years. Identify such entrants and provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) and an estimate of the current market share of each such entrant. If any of the merger parties entered any significant reportable market in the past five years, provide an analysis of the barriers to entry encountered.

3.9. Identify undertakings (including those at present operating only outside Singapore) that in the opinion of the Applicants, are likely to enter any of the significant reportable markets. If so, please identify such entrants and provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive). Explain why such entry is likely and provide an estimate of the time within which such entry is likely to occur.

3.10. Describe the various factors influencing entry into significant reportable markets, examining entry from both a geographical and product viewpoint, taking into account of the following where appropriate:

- the total costs of entry (R&D, production, establishing distribution systems, promotion, advertising, servicing, and so forth) on a scale equivalent to a significant viable competitor, indicating the market share of such a competitor;
- any legal or regulatory barriers to entry, such as government authorisation or standard setting in any form, as well as barriers resulting from product certification procedures, or the need to have a proven track record;
- any restrictions created by the existence of patents, know-how and other intellectual property rights in these markets and any restrictions created by licensing such rights;
- the extent to which each of the merger parties are holders, licensees or licensors of patents, know-how and other rights in the significant reportable markets;
- the importance of economies of scale for the production or distribution of products in the significant reportable markets; and
- access to sources of supply, such as availability of raw materials and necessary infrastructure.

Research and development

3.11. Explain the importance of research and development to a firm's long term competitiveness in the significant reportable markets.

3.12. Explain the nature of the research and development in significant reportable markets carried out by the merger parties. In doing so, take account of the following, where appropriate:

- trends and intensities of research and development[8] in these markets and for the merger parties;
- the course of technological development for these markets over an appropriate time period (including developments in products and/or services, production processes, distribution systems, and so on);
- the major innovations that have been made in these markets and the undertakings responsible for these innovations; and
- the cycle of innovation in these markets and where the merger parties are in this cycle of innovation.

[8] Research and development intensity is defined as research development expenditure as a proportion of turnover.

Cooperative agreements

3.13. Describe the prevalence of cooperative agreements (horizontal, vertical, or other) in the significant reportable markets.

3.14. Provide details of the important cooperative agreements engaged in by the merger parties in the significant reportable markets, such as research and development, licensing, joint production, specialisation, distribution, long term supply and exchange of information agreements. Where deemed useful, provide a copy of these agreements.

4. Effects of the merger

4.1. Explain, in the Applicant's view, the changes that would likely occur in each of the significant reportable markets as a result of the merger, in particular with respect to the details submitted in sections 2 and 3.

5. Overall market context and efficiencies

5.1. Describe the world wide context of the merger, indicating the position of each of the merger parties outside of Singapore in terms of size and competitive strength.

5.2. State, in the Applicant's view, how efficiency gains[9] generated by the merger, if any, are likely to enhance the ability and incentive of the merged entity to act pro-competitively and how they will be sufficient to outweigh any anti-competitive detriments caused by the merger. Please provide a description of, and supporting documents relating to, each efficiency (including cost savings, new product introductions, and service or product improvements) that the merger parties anticipate will result from the merger relating to any relevant product. For each claimed efficiency, provide:

- a detailed explanation of how the merger will allow the merged entity to achieve the efficiency. Specify these steps that the merger parties anticipate taking to achieve the efficiency, and the risks, time and costs involved;

- where reasonably possible, a quantification of the efficiency and the basis for the quantification. Where relevant, provide an estimate of the significance of efficiencies related to new product introductions or quality improvements. For efficiencies that involve cost savings, state also the one-time fixed cost savings, recurring fixed cost savings, and variable cost savings; and

- why the efficiency cannot be achieved to a similar extent by means other than through the merger, and in a manner that is not likely to raise competition concerns.

[9] For more information on the assessment of efficiencies, please refer to the *CCS Guidelines on the Substantive Assessment of Mergers*.

6. Failing Firm/Division (Where applicable)

6.1. If applicable, state whether one or more merger parties is a failing firm/division and if so, provide justification as to why the merger should be allowed to proceed on this basis[10].

7. Supporting Documents

7.1. Please ensure that the following documents (where relevant) have been included in the Form:

- All relevant documents to support the claims made in the Form; and
- For section 6 above, all relevant documents to support the claims, including documents demonstrating that:
  - the firm/division concerned is indeed about to fail imminently under current ownership (this should include evidence that trading conditions and performance are unlikely to improve);
  - all re-financing options have been explored and exhausted, and
  - there are no other credible bidders in the market, and that all possible options have been explored.

[10] For more information on the assessment of the failing firm/division defence, please refer to the *CCS Guidelines on the Substantive Assessment of Mergers*.

PART 2A:
DECLARATION

Under section 77 read with section 83 of the Act, it is an offence, punishable by a fine or imprisonment or both to provide information which is false or misleading in a material particular if the undertaking or person providing it knows that it is false or misleading, or is reckless as to whether it is. If the undertaking or person is a body corporate, its officers may be guilty of an offence under section 81 of the Act.

Declaration
The undersigned declare and confirm that all information given in this Form and all pages annexed hereto are correct to the best of their knowledge and belief, and that all estimates are identified as such and are their best estimates based on the underlying facts.

Signature(s)

Name(s) (in block capitals):
Designation(s):
Date:

FORM M2

PART 3
ACKNOWLEDGEMENT OF RECEIPT

This acknowledgement of receipt will be returned to the address inserted below if the Applicant(s) provides the information requested below.

To be completed by the Applicant(s)

To: (name and address of Applicant(s)

Re: The application dated (date of application) concerning (brief description of subject matter) involving the following undertakings: (names of undertakings) [and others]

To be completed by the CCS

Received on:

Registered under reference number:

Please quote this reference number in all correspondence with the CCS.

ANNEX B

9 GLOSSARY OF TERMS

Act	Competition Act (Chapter 50B)
Ancillary restriction	Agreement, arrangement or provision which is "directly related and necessary to the implementation" of the merger. Ancillary restrictions are excluded from the section 34 prohibition and section 47 prohibition under the Third Schedule of the Act.
Anticipated merger	Arrangement that is in progress or in contemplation that, if carried into effect, will result in the occurrence of a merger referred to in section 54(2) of the Act.
Applicant(s)	Merger party(ies) who have filed an Application.
Application	Application for a decision in relation to a merger situation, by way of notification under section 57 or 58 of the Act.
CCS	Competition Commission of Singapore
CR3	Concentration ratio (i.e. the aggregate market share) of the three largest firms in the market.
Favourable decision	Decision that a merger has not infringed, or that an anticipated merger if carried into effect will not infringe, the section 54 prohibition.
Merger	A merger as defined in section 54(2) of the Act.
Merger parties	Parties to an anticipated merger, or parties involved in a merger
Merger situation	Refers to both mergers and anticipated mergers.
Parties involved in a merger	Persons or undertakings specified in section 54(2) of the Act and includes the merged entity
Parties to an anticipated merger	Persons or undertakings which would be persons or undertakings specified in section 54(2) if the anticipated merger were carried into effect
SLC	Substantial lessening of competition in the relevant market in Singapore.

Unfavourable decision	Decision that a merger has infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition.