

CCS DRAFT GUIDELINE ON FILING NOTIFICATIONS FOR GUIDANCE OR DECISION

**NOTIFICATIONS FOR GUIDANCE (UNDER SECTIONS 43 & 50 OF THE ACT)
OR DECISION (UNDER SECTIONS 44 & 51 OF THE ACT)**

CONTENTS

PART		PAGE
1	INTRODUCTION	3
2	HOW AN APPLICATION FOR GUIDANCE OR FOR A DECISION IS TO BE MADE	4
3	OTHER MATTERS WHICH APPLICANTS SHOULD NOTE	7
4	INSTRUCTIONS ON HOW TO COMPLETE FORM 1	9
5	INSTRUCTIONS ON HOW TO COMPLETE FORM 2	11
6	APPENDIX A – FORM 1	13
7	APPENDIX B – FORM 2	22

1. INTRODUCTION

- 1.1. Section 34 of the Competition Act (No. 46 of 2004) (“the Act”) prohibits agreements, decisions by associations of undertakings and concerted practices which have the object or effect of preventing, restricting or distorting competition in Singapore. Section 47 of the Act prohibits conduct by one or more undertakings amounting to the abuse of a dominant position in any market in Singapore.
- 1.2. As of 1 January 2006, an undertaking may apply to the Competition Commission of Singapore (‘the CCS’) for:
 - 1.2.1. guidance as to whether, in the CCS’ view,
 - an agreement (note that section 34(4) of the Act extends the term ‘agreement’, with the necessary modifications, to encompass a decision by an association of undertakings as well as a concerted practice) to which the undertaking is a party is likely to infringe the section 34 prohibition, and if so, whether the agreement is likely to fall under a block exemption (see section 43 of the Act); or
 - whether conduct by the undertaking is likely to infringe the section 47 prohibition (see section 50 of the Act); or
 - 1.2.2. a decision as to whether
 - the agreement has infringed the section 34 prohibition (see section 44 of the Act); or
 - the conduct has infringed the section 47 prohibition (see section 51 of the Act).
- 1.3. The CCS has issued these guidelines to assist undertakings seeking to notify an agreement or conduct to the CCS for guidance or for a decision.
- 1.4. Undertakings are not required to notify their agreements or conduct and apply for guidance or a decision. However, they may do so if they have serious concerns as to whether they are infringing the Act’s prohibitions.
- 1.5. The CCS wishes to inform undertakings that they should not notify agreements or conduct that do not raise any real concerns of possible infringement of the Act. Where applications of such nature are received, the CCS may determine the application by exercising its discretion not to give guidance or make a decision.
- 1.6. Notification cannot be made in respect of prospective agreements (*i.e.* agreements where the parties have yet to enter into the agreement) or prospective conduct.

2. HOW AN APPLICATION FOR GUIDANCE OR FOR A DECISION IS TO BE MADE

2.1. Applications for guidance or decision must be made by submitting Form 1 to the CCS. Form 1 requires information relating to, amongst other things:

- 2.1.1. The Applicant and the other parties to the agreement or conduct;
- 2.1.2. The purpose of the application;
- 2.1.3. Details of the agreement or conduct; and
- 2.1.4. The groups to which the parties to the agreement or conduct belong.

Form 1 is found in Appendix A to these guidelines.

2.2. After the Applicant has submitted Form 1, the CCS may further require the Applicant to submit Form 2 to the CCS. Where the CCS requires Form 2 to be submitted, it will endeavour to notify the Applicant of this requirement within 3 months after the CCS' receipt of Form 1. In notifying the Applicant, the CCS will specify a time frame within which the Applicant is to submit Form 2 to the CCS. If the Applicant fails to submit Form 2 within this time frame, the application will be deemed as not having been made.

2.3. Form 2 requires information relating to, amongst other things:

- 2.3.1. The relevant product and geographic market(s);
- 2.3.2. The position of the relevant undertakings in the relevant product market(s); and
- 2.3.3. Market entry and potential competition in the relevant product and geographic market(s).

Form 2 is found in Appendix B to these guidelines.

2.4. The information required by Form 2 is more detailed and requires more effort to collate as compared to that in Form 1. As the CCS does not wish to place any undue burdens on the Applicant, the submission of Form 1 may suffice. In some cases, Form 2 will be required when the CCS is of the view that the information contained therein is necessary for examining the agreement or consideration of the conduct in question.

2.5. An Applicant submitting Form 1 may, if it so chooses, also submit Form 2 to the CCS at the same time.

- 2.6. In some cases, it may be possible for the CCS to dispense with the obligation to submit any particular information specified in Form 1 or 2 where the CCS considers that such information is unnecessary for examining the agreement or the consideration of the conduct in question.
- 2.7. Conversely, if the CCS is of the view that further information is required, the CCS may require an Applicant to provide such further information even if the Applicant has already submitted Form 1 or Form 2 to the CCS. Whether the CCS makes such a request will depend on the circumstances of each application.
- 2.8. Apart from filing the requisite Form, the Applicant must also pay a prescribed fee for the application.
- 2.9. An application for guidance (under sections 43 or 50 of the Act) or for a decision (under sections 44 or 51 of the Act) is deemed as having been made only after:

- 2.9.1. Form 1 is received by the CCS; **and**

- 2.9.2. the CCS receives the prescribed fee payable by the Applicant in respect of the application.

Applicants are reminded that in the case of notified agreements, the provisional immunity conferred by section 43(4) and 44(3) of the Act only arises after the application has been made.

- 2.10. Where the information provided by the Applicant in Form 1 (or Form 2, where required) is incorrect or incomplete, the Applicant will be notified of this fact by the CCS. The CCS will endeavour to notify the Applicant within 3 months after the CCS' receipt of the relevant Form. In notifying the Applicant, the CCS will specify a time frame within which the Applicant is to revert to the CCS with the outstanding information. If the Applicant fails to revert with the outstanding information within this time frame, the application will be deemed as not having been made.
- 2.11. The CCS will acknowledge receipt of all applications by returning the Acknowledgement of Receipt found in Form 1 (and Form 2, where it has been filed), if this is completed by the Applicant. The Acknowledgement of Receipt does not in any way indicate that the application is correct or complete.
- 2.12. Before attempting to complete Form 1 or 2, Applicants should refer to these guidelines as well as to the CCS' Regulations ("the Regulations").
- 2.13. The Applicant is also required to take all reasonable steps to notify all

other parties to the agreement or conduct (as the case may be), of whom he is aware, that the application has been made and whether it is for guidance or a decision. The notification to such other undertakings must be made in writing and given within 7 working days from the date on which the Applicant receives acknowledgment of receipt of his application by the CCS. If the Applicant is unable, despite the exercise of due diligence, to contact the other parties to the agreement or conduct, he may instead publish the notice in such newspapers as may be specified by the CCS.

- 2.14. The Applicant is also required to submit a soft copy of the completed Form 1 (and Form 2, where required), in Microsoft Word format, to the CCS.

3. OTHER MATTERS WHICH APPLICANTS SHOULD NOTE

Applicant's Obligations as to Accuracy of Information

- 3.1. The Applicant must conclude Form 1 (and Form 2, where required) with the declaration 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. The declaration must be signed by or on behalf of all the Applicants. Unsigned applications are invalid. Where the Form is signed by a solicitor or other representative, written proof of authority to act on behalf of the Applicant(s) must be provided.
- 3.2. 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.

Removal of Immunity

- 3.3. Applicants are also reminded that any immunity conferred by guidance of the nature specified in section 45(1) or 52(1) of the Act may be removed if:
 - 3.3.1. the CCS has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance;
 - 3.3.2. the CCS has reasonable grounds for suspecting that the information on which it based its guidance was incomplete, false or misleading in a material particular;
 - 3.3.3. a complaint about the agreement or conduct has been made to the CCS (in the case of agreements, the complaint is to come from a person who is not a party to the agreement); or
 - 3.3.4. (in the case of agreements) one of the parties to the agreement applies to the CCS for a decision in respect of the agreement, under section 44 of the Act.
- 3.4. Similarly, any immunity conferred by a decision of the nature specified in sections 46(1) or 53(1) may be removed if:
 - 3.4.1. the CCS has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
 - 3.4.2. the CCS has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or

misleading in a material particular.

Confidentiality & Secrecy

- 3.5. In the case of notifications for guidance or decision, Applicants are requested to put any information which is confidential in a separate annex to the application marked “confidential information” and give reasons why the information is confidential.
- 3.6. Section 89 of the Act imposes a general duty on the CCS to preserve secrecy, although there are a number of exceptions to this duty¹. For example, communication is allowed where this is necessary for performance of functions and discharge of duties under the Act or where, subject to certain considerations, disclosure is needed to enable the CCS to give effect to any provision of the Act.

Timeframe for Completion by the CCS

- 3.7. The time taken by the CCS to furnish guidance or decisions will depend very much on the nature and complexity of the application, as well as on the volume of applications which have been filed at that point in time.

¹ Section 89(6) of the Act states that before disclosing any information in order to give effect to any provision of the Act, the Commission shall have regard to:

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

4. INSTRUCTIONS ON HOW TO COMPLETE FORM 1

4.1. The following paragraphs explain how Applicants are to complete Form 1.

Information about the Undertaking(s) Submitting the Application and the Other Parties to the Agreement

4.2. For the purposes of Forms 1 and 2 and of these guidelines, the term “agreement” bears the same meaning as that ascribed to it by section 34(4) of the Act.

4.3. For the purposes of Forms 1 and 2 and of these guidelines, the term “undertaking” bears the same meaning as that ascribed to it by section 2 of the Act.

4.4. The submission of a joint application on behalf of two or more parties to the agreement or conduct is encouraged as it is useful to have the views of all the parties concerned at the same time. Where a joint application has been submitted,—the Applicants are required to appoint a joint representative to act on behalf of all the Applicants.

Purpose of the Application

4.5. Applicants are required to show why they consider that the notified agreement or conduct raises questions of compatibility with the Act’s prohibitions.

4.6. The section 34 prohibition does not apply unless the agreement has an appreciable adverse effect on competition in Singapore or if it lacks any net economic benefit. Hence, Applicants should demonstrate why an agreement does not have an appreciable effect on competition in Singapore or why it has net economic benefit. Certain agreements, such as those relating to price fixing, will be regarded as having an appreciable adverse effect. Further information on what may amount to an appreciable effect can be found in the relevant portions of the CCS’ Guideline on the *Section 34 Prohibition*.

4.7. In determining whether a net economic benefit exists, the CCS will look at, amongst other things, whether the agreement contributes to improving production or distribution or promoting technical or economic progress in a way which does not impose restrictions which are not indispensable to the attainment of those objectives and which would not afford the possibility of eliminating competition substantially. It would be helpful if Applicants could give details of any studies or documents which have been produced to assess the feasibility of operation of the agreement and the benefits likely

to result from the agreement. Applicants should also state whether these studies or documents give estimates of the savings and efficiencies likely to result and produce a copy of these studies or documents.

- 4.8. Where there is genuine uncertainty about whether an agreement or conduct is likely to infringe the section 34 or section 47 prohibitions, Applicants may wish to include counter arguments that are relevant to the assessment of whether there is infringement.
- 4.9. It would be helpful if Applicants could refer in their application to any principles laid down by any foreign jurisdictions which they consider may be of relevance to the determination of their application.

Details of the Agreement or Conduct

- 4.10. The form requires Applicants to state the types of provisions or aspects of the conduct which may restrict the parties in their freedom to take independent commercial decisions or to act on those decisions. In this regard, Applicants should refer to the relevant parts of the CCS' Guidelines on the *Section 34 Prohibition* for examples of anti-competitive agreements, as well as to the relevant parts of the CCS' Guidelines on the *Section 47 Prohibition* for examples of conduct that amounts to an abuse of a dominant position.

Information on the Parties to the Agreement or Conduct and the Group to which they belong

- 4.11. Applicants are requested to provide copies of annual reports and accounts. These must be copies of the most recent audited annual reports and accounts unless the undertakings concerned are exempted from the requirement to file audited accounts.

Supporting Documents

- 4.12. Supporting documents submitted as part of Form 1 must either be originals or certified copies.

5. INSTRUCTIONS ON HOW TO COMPLETE FORM 2

- 5.1. The following paragraphs explain how Applicants are to complete Form 2, should Form 2 be required by the CCS.

The Relevant Product and Geographic Markets

- 5.2. In supplying and explaining the definition of the relevant product and geographic, Applicants are reminded to refer to the relevant portions of the CCS' Guideline on *Market Definition*.
- 5.3. It would be helpful if Applicants could refer to the alternative market definitions and explain why one definition might be more appropriate than another.
- 5.4. Applicants are required to provide details of the level of concentration in the markets. Applicants are also required to give details of the nature and extent of vertical integration (*i.e.* the degree to which undertakings operate at more than one level of the production process, combining, for example, production, distribution or retail).

The Position of the Undertakings in the Relevant Product Markets

- 5.5. Applicants are required to furnish information relating to the parties to the agreement or conduct and other undertakings belonging to the same group of undertakings as the parties to the agreement or conduct. Applicants should include all the undertakings identified as being in the relevant group.
- 5.6. Applicants also have to provide estimates of market share. Market shares may be calculated on the basis of value or volume. However, if market share calculated by the alternative method would differ by 5 per cent or more, then both sets of figures should be provided.
- 5.7. It should be reiterated here that an agreement will only infringe the section 34 prohibition if it has as its object or effect an *appreciable* prevention, restriction or distortion of competition in Singapore or no net economic benefit. Please see paragraph 4.6.
- 5.8. The market share estimates given by the parties will also be taken into account in assessing whether an undertaking has a dominant position within the meaning of section 47 of the Act. Applicants should refer to the relevant parts of the CCS' Guideline on the *Section 47 Prohibition* for guidance on what constitutes dominance.

Market Entry and Potential Competition in the Relevant Product and Geographic Markets

- 5.9. Form 2 also requests Applicants to describe the barriers to entry which exist in the relevant product and geographic markets identified. Applicants should refer to the relevant parts of the CCS' Guidelines on the *Section 47 Prohibition* for more detail on entry barriers.

APPENDIX A**FORM 1****INFORMATION REQUIRED FOR APPLICATIONS FOR GUIDANCE UNDER
SECTIONS 43 OR 50 OR FOR DECISION UNDER SECTIONS 44 OR 51 OF
THE COMPETITION ACT (NO. 46 OF 2004)****PART 1
INTRODUCTION**

This Form lists the information and supporting documents which must be provided when making an application for guidance under sections 43 or 50 or an application for a decision under sections 44 or 51 of the Act.

If the undertaking submitting the application ("the Applicant") considers that the Commission would find any part of the information submitted under this Form to be confidential, the Applicant must set out that part of the information in a separate annex to this Form marked "confidential information" and provide a written explanation as to why the information is confidential.

FORM 1**PART 2****INFORMATION TO BE PROVIDED BY THE UNDERTAKING(S) MAKING THE APPLICATION****1. Information about the Applicant(s) and the Other Parties to the Agreement**

- 1.1. Please give the full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available) of the Applicant(s) and a brief description of the nature of its business. If the Applicant(s) is a partnership, sole proprietor or other unincorporated body trading under a business name, give the name(s) and address(es) of the partners or proprietor(s). Please quote any reference which should be used.
- 1.2. Please give the full name, address, telephone and fax numbers and e-mail address (where available) of any representative(s) who has been authorised to act for the Applicant(s), indicating whom they represent and in what capacity (e.g. a solicitor).
- 1.3. Where the declaration to be made in the form set out in Part 2A 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.
- 1.4. If a joint application is being submitted, state the full name of the joint representative, his address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available).
- 1.5. Please describe the goods or services involved as fully and accurately as possible.
- 1.6. Please give the full names, addresses (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers, nature of business, and brief description of the other parties to the agreement and any other persons engaging in the conduct which is the subject of the application, together with the name of a contact at each undertaking concerned, their address, telephone and fax numbers and details of their position in the undertaking.

- 1.7. Please provide details of the steps taken or to be taken to notify all the other parties to the agreement or conduct which is the subject of the application of whom the Applicant(s) is aware that the application is being submitted. Indicate whether those parties have received a copy of the application and if so, whether confidential information was included in the copy of the application. If the Applicant(s) considers that it is not practicable to notify the other parties of the application, please give the reasons why it is not practicable.
- 1.8. Please identify the groups to which each party to the agreement or conduct which is the subject of the application belongs. For the purposes of the information required by this Form, a group relationship exists where one undertaking:
 - 1.8.1. owns more than half the capital or business assets of another undertaking;
 - 1.8.2. has the power to exercise more than half the voting rights in another undertaking;
 - 1.8.3. has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking; or
 - 1.8.4. has the right to manage the affairs of another undertaking.

Where relevant, information on other undertakings, which are related or connected in any other way to a party to an agreement or conduct may be required. This information is not required to be submitted as part of Form 1 but it may be requested by the CCS after Form 1 has been filed.
- 1.9. An undertaking which is jointly controlled by several other undertakings (e.g. a joint venture) forms part of the group of each of these undertakings.

2. Purpose of The Application

- 2.1. Specify whether the application is being made in relation to the section 34 prohibition, the section 47 prohibition or both.
- 2.2. Specify whether the application is for guidance or a decision.
- 2.3. State which provisions or effects of the agreement or conduct which is the subject of the application might in the Applicant's view raise

questions of compatibility with the section 34 prohibition and/or the section 47 prohibition, and give reasons for that view.

- 2.4. If the agreement or conduct which is the subject of the application is considered to benefit from any exclusion from the section 34 prohibition and/or section 47 prohibition, specify the exclusion and give reasons why the Applicant(s) is unsure whether the agreement or conduct is covered by the exclusion and why the application is considered appropriate.

3. Details of the Agreement or Conduct

- 3.1. Please provide a brief description of the agreement or conduct which is the subject of the application (including the nature, content, purpose, date(s) and duration).
- 3.2. If the application is made in relation to a written agreement, attach either an original of the most recent text of that agreement, or a copy certified by the Applicant to be a true copy of the original. If the application is made in relation to an agreement which is not written, provide a full description of the agreement. If the application is made in relation to conduct, provide a full description of that conduct.
- 3.3. Identify any provisions in the agreement or aspects of the conduct which may restrict the parties in their freedom to take independent commercial decisions or to act on those decisions.
- 3.4. If the application relates to standard form terms and conditions, indicate the number of agreements expected to be entered into on those terms and conditions.

4. Information on the Parties to the Agreement or Conduct and the Groups to Which They Belong

- 4.1. Please give the applicable turnover in the last business year of each party to the agreement or conduct which is the subject of the application and the consolidated applicable turnover for the group (within the meaning of 1.8) to which each party belongs. Please attach one copy of the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and of the most recent annual report and accounts for the ultimate parent company of these undertakings.

- 4.2. Please list the product and/or services market(s) in which each party to the agreement or conduct and each member of the groups (within the meaning of 1.8) to which they belong are active.

5. Other Information

- 5.1. Please give any other information which the Applicant(s) considers may be helpful. In particular, if you believe that an agreement:

5.1.1. does not have an appreciable adverse effect on competition in Singapore please state your reasons and provide evidence. Note, however, that certain agreements, such as those relating to price-fixing, will be regarded as having an appreciable adverse effect (This is further covered in the relevant portions of the CCS' Guideline on the *Section 34 Prohibition*);

5.1.2. has net economic benefits that would not be achieved except for the agreement. In determining whether a net economic benefit exists, the CCS will look at, amongst other things, whether the agreement contributes to improving production or distribution or promoting technical or economic progress in a way which does not impose restrictions which are not indispensable to the attainment of those objectives and which would not afford the possibility of eliminating competition substantially. Applicants should provide details of any studies or documents which have been produced to assess the feasibility of operation of the agreement and the benefits likely to result from the agreement.

- 5.2. Please specify how the fee payable for this application has been paid and complete the details on the relevant payment slip at Part 5 of this Form.

6. Supporting Documents

Please ensure that the Applicant(s) has attached the following documents (where relevant) to the application:

- 6.1. if 1.3 applies, written proof of the representative's authority to act on the Applicant(s)' behalf;
- 6.2. if 3.2 applies with regard to a written agreement, either an original or certified copy, of the most recent version of the text of the agreement which is the subject of the application; and

- 6.3. one copy of the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and of the most recent annual report and accounts for the ultimate parent company of these undertakings (see 4.1).

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 the Form 1 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 1**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 Commission

Received on:

Registered under reference number:

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

FORM 1**PART 4****INFORMATION FOR THE COMMISSION'S PUBLIC REGISTER
(TO BE COMPLETED BY THE APPLICANT(S))**

1. Please give the full names of the parties to the agreement(s) or conduct which is the subject of the application.
2. Please provide a short summary which does not contain any confidential information (no more than 250 words) of the nature and objectives of the agreement(s) or conduct which is the subject of the application.
3. Please describe the relevant good(s) or service(s) involved as fully and accurately as possible.

FORM 1**PART 5
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:

APPENDIX B**FORM 2****FURTHER INFORMATION REQUIRED FOR APPLICATIONS FOR GUIDANCE
UNDER SECTIONS 43 OR 50 OR FOR DECISION UNDER SECTIONS 44 OR
51 OF THE COMPETITION ACT (NO. 46 OF 2004)****PART 1
INTRODUCTION**

This document lists the further information (and supporting documents) which may be required by the Commission after Form 1 has been filed.

If the Applicant(s) considers that the Commission would find any part of the information submitted under this Form to be confidential, the Applicant must set out that part of the information in a separate annex to this Form marked "confidential information" and provide a written explanation as to why the information is confidential.

FORM 2**PART 2****FURTHER INFORMATION TO BE PROVIDED BY THE UNDERTAKING(S)
MAKING THE APPLICATION****1. The Relevant Product and Geographic Market(s)**

- 1.1. Please supply and explain the definition of the relevant product market(s) which in the Applicant(s)'s opinion should form the basis of the analysis of the application. State the specific products or services directly or indirectly affected by the agreement or conduct which is the subject of the application and other goods or services that may be viewed as substitutable. Give reasons for all assumptions or findings.
- 1.2. Please supply and explain the definition of the relevant geographic market(s) which in the Applicant(s)'s opinion should form the basis of the analysis of the application. Please identify the geographic scope of the relevant market(s), with reasons. Give reasons for all assumptions or findings.
- 1.3. For each of the relevant product and geographic market(s) identified in 1.1 and 1.2, give details (where applicable) of:
 - 1.3.1. the level of concentration in the markets;
 - 1.3.2. the nature and extent of vertical integration;
 - 1.3.3. the direction and extent of trade within Singapore and/or between Singapore and abroad;
 - 1.3.4. the prevailing methods of distributing goods and services, including the extent of the involvement of undertakings which are not party to the agreement or conduct which is the subject of the application (i.e. third parties), and their significance;
 - 1.3.5. the prevailing service networks (for example for repair and maintenance), including the extent to which these services are provided by third parties;
 - 1.3.6. the significance of customer preferences, in terms of brand loyalty, product differentiation and the provision of a full range of products;

1.3.7. the categories and relative strengths of different types of customer, including private and public sector purchasers; and

1.3.8. the extent to which customers have long-term relationships with suppliers.

Where available, please provide a copy of the most recent long-term market studies (produced by the Applicant(s) in-house or commissioned by the Applicant(s) from outside consultants) which assess and/or analyse the relevant product market(s) and/or the relevant geographic market(s). Please supply references to any external published studies of the relevant product market(s) and/or the relevant geographic market(s) or, where available, please supply a copy of each such study with the application.

1.4. For each of the parties to the agreement or conduct which is the subject of the application, provide a list of all undertakings belonging to the same group (within the meaning of 1.8 in Form 1) which are active in the relevant product market(s) identified in 1.1, and those active in markets neighbouring the relevant product market(s) - that is, active in products and/or services which are regarded by the consumer as imperfect and partial substitutes for those products and/or included in the relevant product market(s) as defined in 1.1. Such undertakings must be identified even if they sell the product or service in question in geographic areas other than those in which the parties to the agreement or conduct which is the subject of the application operate. Please list the name, place of incorporation, exact product manufactured and the geographic scope of operation of each member of the group.

2. The Position of the Undertakings in the Relevant Product Market(s)

2.1. Please provide the following information in respect of each of the previous three calendar or financial years, as available:

2.1.1. the Applicant(s)'s best estimates of the market shares of each party to the agreement or conduct which is the subject of the application, in the goods or services in the relevant product market(s) on the relevant geographic market(s), as identified in 1.1 and 1.2;

2.1.2. identify the five main competitors of each party to the agreement or conduct which is the subject of the application in the relevant product and geographic market(s), and give the Applicant(s)'s best estimates of their market shares in

the goods or services in the relevant product and geographic market(s); provide each competitor's name, address, telephone and fax numbers, and, where possible, a contact name;

2.1.3. identify the five main customers of each party to the agreement or conduct which is the subject of the application, in the relevant product and geographic market(s), giving the customer's name, address, telephone and fax numbers, and, where possible, a contact name; and

2.1.4. details of each party to the agreement or conduct's interests in, and agreements with, any other undertakings competing in the relevant product and geographic market(s), together with the Applicant(s)'s best estimates of those other undertakings' market shares in the goods or services in the relevant product and geographic market(s), if known.

Information requested in this section must be provided for the group to which each party to the agreement or conduct which is the subject of the application belongs (within the meaning of 1.8 in Form 1) and not in relation to the individual undertakings which are party to the agreement or conduct which is the subject of the application.

Justification for the figures provided in response to the above must be given. Thus, for each answer to 2.1.1, 2.1.2 and 2.1.4, total market value or volume must be stated, together with the sales or turnover of each of the undertakings in question. The source or sources of the information should also be given and one copy should be provided of any document, where available, from which information has been taken.

3. Market Entry and Potential Competition in the Relevant Product and Geographic Market

3.1. For each of the relevant product and geographic market(s) identified in 1.1 and 1.2, describe:

3.1.1. the factors influencing entry in product terms into the relevant product market(s); that is, the barriers which exist to prevent undertakings not presently manufacturing goods or providing services within the relevant product market(s) from entering the market(s), taking account of, in particular but not exclusively, the extent to which:

- entry is influenced by the requirements of government authorisation or standard-setting, in any form, and any legal or regulatory controls on entry to the market(s);
- entry is influenced by the availability of raw materials;
- entry is influenced by the length of contracts between an undertaking and its suppliers and customers; and
- research and development and licensing patents, know-how and other intellectual property rights are important; and

3.1.2. the factors influencing entry in geographic terms into the relevant geographic market(s); that is, the barriers which exist to prevent undertakings already manufacturing and/or marketing goods or providing services within the relevant product market(s) outside the relevant geographic market(s) from extending sales into the relevant geographic market(s), taking account of, in particular but not exclusively, the importance of:

- trade barriers imposed by law;
- local specifications or technical requirements;
- procurement policies;
- the existence of adequate and available local distribution and retailing facilities;
- transport costs; and
- strong consumer preference for local brands or products.

3.2. Estimate the amount of time required for entry into the relevant product and geographic market(s), taking account of the individual barriers to entry referred to in the answer to 3.1.

3.3. State whether any new undertakings have entered the relevant product market(s) in geographic areas where the parties to the agreement or conduct which is the subject of the application sell, during the last three years. Identify these undertakings by full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers

and, where possible, a contact name. Please give the Applicant(s)'s best estimates of the market shares of each such undertaking in the goods or services in the relevant product and geographic market(s).

4. Supporting Documents

Please ensure that the Applicant(s) has attached the following documents (where relevant) to the application:

- 4.1. where available, one copy of the most recent long-term market studies which assess and/or analyse the relevant market(s) (in-house studies produced by the Applicant(s) or commissioned by the Applicant(s) from outside consultants) (see 1.3);
- 4.2. where available, one copy of any external studies of the relevant product and/or the relevant geographic market(s) (see 1.3); and
- 4.3. where available, one copy of any document from which information has been taken and provided in answer to 2.1.

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 the Form 2 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 2**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 Commission

Received on:

Registered under reference number:

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