



# COMPETITION ACT AT A GLANCE





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## LEGISLATION & JURISDICTION

### THE LAW

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## WHAT IS THE COMPETITION ACT?

The Competition Act prohibits (1) anti-competitive agreements (also known as the “Section 34 prohibition”); (2) abuse of a dominant position (also known as the “Section 47 prohibition”); and (3) mergers that substantially lessen competition (also known as the “Section 54 prohibition”).

The Competition Act and the relevant regulations/orders are available at [www.cccs.gov.sg](http://www.cccs.gov.sg) (under Legislation).

A set of guidelines has been published by the Competition and Consumer Commission of Singapore (“CCCS”) to provide greater clarity and certainty on how it will enforce the Competition Act. These are available at [www.cccs.gov.sg](http://www.cccs.gov.sg).

### WHY DO WE NEED THE COMPETITION ACT?

The Competition Act seeks to promote efficient functioning of markets so that they will work well to create opportunities and choices for businesses and consumers in Singapore. Anti-competitive activities that unduly prevent, restrict or distort competition in any market in Singapore are therefore prohibited.



### WHO DOES THE COMPETITION ACT APPLY TO?



The Competition Act applies to commercial and economic activities carried out by private sector entities regardless whether they are owned by a foreign entity or a local entity, or whether they are government-linked companies. Examples include companies, partnerships, trade or professional bodies, non-profit organisations and individuals operating as professionals

or sole proprietors. The Competition Act only seeks to regulate the conduct of market players, but not to fetter the discretion of the government in its policy-making and performance of public functions. As such, it will not apply to the Government or statutory bodies or any entities acting on their behalf.

### WHEN DID THE COMPETITION ACT COME INTO FORCE?

The Competition Act was passed by Parliament in 2004. It was implemented in phases starting from 1 January 2005, and fully came into force on 1 July 2007.



The Competition Act also provides for certain exclusions/exemptions as follows:

Applicable prohibition(s)	Exclusions/Exemptions
<p><b>Section 34 prohibition</b></p>	<p>Vertical agreements</p> <p>Agreements with net economic benefit</p> <p>Agreements which fall within the scope of block exemptions ordered by the Minister</p>
<p><b>Section 34 and Section 47 prohibitions</b></p>	<p>Undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly</p> <p>Agreements/conduct made in order to comply with requirements imposed by or under any written law</p> <p>Agreements/conduct which are necessary to avoid conflict with international obligations of Singapore, and so ordered by the Minister</p> <p>Agreements/conduct made on grounds of public policy, and so ordered by the Minister</p> <p>Agreements/conduct which relate to any goods and services regulated by other competition law (e.g. telecommunications, electricity, gas, media)</p> <p>Activities of clearing houses</p> <p>Agreement/conduct directly related and necessary to the implementation of a merger</p> <p>Agreement/conduct that results in a merger</p>



Applicable prohibition(s)	Exclusions/Exemptions
<p><b>Section 54 prohibition</b></p>	<p>Mergers approved by the Minister or any regulatory authority under any written law</p> <hr/> <p>Mergers under the jurisdiction of any other regulatory authority under any written law relating to competition, or code of practice relating to competition issued under any written law</p> <hr/> <p>Mergers with net economic efficiencies</p> <hr/> <p>Mergers exempted upon application to the Minister on grounds of public interest considerations</p>
<p><b>Section 34, Section 47 and Section 54 prohibitions</b></p>	<p>Specified activities covering:</p> <ul style="list-style-type: none"> <li>• Supply of ordinary letter and postcard services</li> <li>• Supply of piped potable water</li> <li>• Supply of wastewater management services</li> <li>• Supply of scheduled bus services</li> <li>• Supply of rail services</li> <li>• Cargo terminal operations</li> </ul>

## THE AUTHORITY

### WHO IS THE ENFORCEMENT AUTHORITY?

The Competition Commission of Singapore (“CCS”) was established as a statutory board on 1 January 2005 to administer and enforce the Competition Act (the “Act”) (Chapter 50B). On 1 April 2018, CCS was renamed the Competition and Consumer Commission of Singapore (“CCCS”) and took on an additional function of administering the Consumer Protection (Fair Trading) Act (Chapter 52A).

In relation to the Act, CCCS has the power to investigate and adjudicate anti-competitive activities, issue directions to stop and/or prevent anti-competitive activities and impose financial penalties. Besides enforcing the Act, CCCS also advises the government on competition matters and acts internationally as the representative of Singapore for competition matters.





## PROCEDURE



## INVESTIGATIONS


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### WHAT ARE THE INVESTIGATION POWERS OF CCCS?

When there are reasonable grounds for suspecting that any of the prohibitions under the Competition Act has been infringed, CCCS can, by giving written notice, require any person to produce specified documents or information that it considers relevant to the investigation.

An authorised CCCS officer can enter any premises without a warrant after giving advance written notice. However, prior written notice need not be given if the premises are suspected to be or have been occupied by a person under investigation. The CCCS officer will produce proof of identity and documents indicating the subject matter and purpose of the investigation upon entry.

An authorised CCCS officer or other authorised officer with a court warrant can enter premises without notice, using such force as reasonably necessary, and search the premises and any person on the premises for relevant documents. The officer can also take possession of relevant documents where necessary, and remove any relevant equipment or article from the premises for examination.



## WHAT ARE THE SAFEGUARDS AVAILABLE TO THE PARTIES INVOLVED IN CCCS'S INVESTIGATIONS?



CCCS recognises the importance of maintaining the confidentiality of commercially-sensitive information and details of an individual's private affairs.

Under the Competition Act, members, officers, employees and agents of CCCS are required to preserve secrecy of:



matters relating to the business, commercial or official affairs of any person;



matters identified as confidential by a person furnishing information; and



matters relating to the identity of persons furnishing information to CCCS;

coming to their knowledge in the course of performing their duties.

However, the Competition Act also provides that disclosure of such information is authorised:

- where consent has been obtained from the person to whom the information relates;
- for the purpose of a prosecution under the Competition Act;
- for the purpose of investigating a suspected offence or enforcing a provision under the Competition Act;
- for the purpose of complying with an agreement between Singapore and a foreign state; and
- for the purpose of giving effect to any provision of the Competition Act.

Communications between a professional legal adviser and his client including those in connection with, or in contemplation of, legal proceedings or for the purpose of such proceedings are regarded as privileged documents. Such communications can be protected from disclosure on grounds of legal professional or litigation privilege.

A person is not excused from disclosing any information or document to CCCS on the grounds that the disclosure may incriminate him. However, such information provided to CCCS shall not be admissible in evidence against the person in criminal proceedings other than proceedings relating to offences under the Competition Act (such as providing false or misleading information).

## DECISION OF CCCS AFTER COMPLETING AN INVESTIGATION

After completing an investigation, where CCCS proposes to make an infringement decision, CCCS shall:

- give written notice to the person likely to be affected by such decision; and
- give such person an opportunity to make representations to CCCS.

The person will also be given a reasonable opportunity to inspect the documents in CCCS's file (excluding confidential information and internal documents) that relate to the proposed decision.



## WHAT ARE THE SANCTIONS?

Where CCCS has made an infringement finding, it may:

- **issue directions** to any person it considers appropriate to bring the infringing conduct to an end or to mitigate or eliminate its adverse effects, and to prevent the recurrence of the infringement. Infringing parties can therefore be required to:
  - i) modify agreement or conduct;
  - ii) terminate the agreement or cease the conduct;
  - iii) prohibit an anticipated merger from being carried into effect; or
  - iv) make structural or behavioural changes for mergers;
- **impose financial penalty** on an infringing party of up to 10% of its turnover in Singapore for each year of infringement, for a maximum of three years.



**Criminal sanctions** may be imposed for offences, such as where a person fails to comply with lawful requirements imposed by CCCS during investigations, destroys or falsifies documents, gives false or misleading information or obstructs CCCS officers from carrying out their duties. Such a person may be prosecuted in Court and shall be liable on conviction to a fine not exceeding SGD10,000 or to imprisonment for not exceeding 12 months or both.



## CAN CCCS'S DECISIONS BE APPEALED?

CCCS's infringement decisions and directions may be appealed to the Competition Appeal Board ("CAB") which consists of members appointed by the Minister for Trade and Industry. The CAB members are appointed on the basis of their ability and experience in industry, commerce or administration or their professional qualifications.

The CAB may confirm or set aside the decision which is the subject of the appeal, and may:

- Remit the matter to CCCS;
- Impose or revoke, or vary the amount of, financial penalty;
- Give such directions, or take such other steps, as CCCS could itself have given or taken; or
- Make any other decision which CCCS could itself have made.

Further appeals may be made to the High Court, and thereafter to the Court of Appeal, but only on points of law or the amount of the financial penalty.

**FINAL PLEA**



## RIGHTS OF PRIVATE ACTIONS

### ARE THERE PRIVATE ACTIONS FOR DAMAGES?

The Competition Act allows individuals who suffer loss or damage directly as a result of a competition law infringement to seek damages against the infringing parties for the losses incurred. A finding of competition law infringement by CCCS is necessary before any action can be brought in civil proceedings before the courts. Such action must be brought within the time-limit of two years from CCCS's decision or, in the case where parties appeal, from the determination of the final appeal made by the parties.





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