



WHAT YOU CAN DO TO PROTECT YOUR BUSINESS





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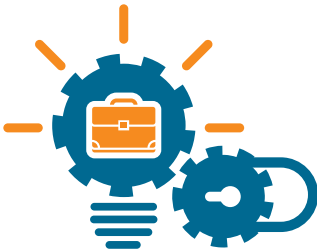




HOW CAN COMPETITION COMPLIANCE PROGRAMME (“CCP”) HELP YOUR BUSINESS?

A robust competition law regime helps to ensure a level playing field where businesses can compete fairly based on their own merits free of distortions and impediments created by anti-competitive conduct. It gives all businesses a fair chance to grow and succeed.

In the course of competing to thrive and grow, you need to steer clear from engaging in anti-competitive conduct. You need to be aware of the risks of infringing competition law and learn how to protect your business by developing a compliance strategy that helps you mitigate the risks. To this end, CCS encourages businesses to adopt and maintain an effective Competition Compliance Programme (“CCP”) that best suits their circumstances.



SAFER & SMARTER BUSINESS

Your business may be exposed to many competition risks. Unknown to you, staff may engage in anti-competitive practices such as bid rigging, exchange of commercially sensitive information or price fixing. As the financial penalty for breaching competition law is ultimately borne by the business, staff may be tempted to engage in anti-competitive practices, especially if doing so leads to personal gains. A business may also suffer loss of reputation, goodwill as well as heavy financial losses if it is found to have breached competition law.

A successful CCP makes your business smarter and safer when it comes to knowing your rights and responsibilities. When effectively implemented, it helps your business identify possible infringements early, and nip it in the bud by allowing your business to take appropriate remedial action swiftly. This minimises the risk of infringing the Competition Act and the corresponding sanctions imposed as a result of the infringement.



BETTER BUSINESS

Rivalry with competitors is part and parcel of doing business. Managing your risks with an

effective CCP means having a better business process for your company. This enhances your competitive edge. A CCP is a formalised internal framework to ensure that your business (both management and employees) complies with competition law. It can be part of an overall corporate compliance framework.

Good knowledge of competition law and a good competition compliance culture also help your staff to be alert to any potential anti-competitive conduct by other businesses and raise this to CCS. This protects your business from falling prey to anti-competitive activities by other businesses such as your business rivals or counterparts.





WHAT IS A CCP?



A CCP demonstrates the commitment of a business to comply with the provisions of the Competition Act by putting in place a formal internal framework to ensure that management and employees comply with competition law. The elements of a CCP may include a simple “do’s and don’ts” checklist for staff, continual review of staff conduct by management, and regular staff training to raise awareness of competition law.

A CCP can be either standalone or a part of a broader regulatory compliance framework, and can be organised at the levels of local offices or global headquarters. It is also useful as a part of good corporate governance.

WHY IS A CCP IMPORTANT FOR YOUR BUSINESS?

Your business may run the risk of infringing the competition law when your junior staff or sales staff breaches the law, unknown to senior management. Under Singapore’s Competition Act, the business is liable to pay financial penalties for its employees’ actions.

A successful CCP minimises the risk of your business infringing competition law, and helps in detecting any possible infringements at an early stage, so as to allow timely remedial action (such as making a leniency application to CCS). Good knowledge of competition law also helps you identify anti-competitive practices by your competitors or suppliers and consequently enable you to lodge a complaint to CCS if your business is adversely affected.

Having an effective CCP in place may also reduce the amount of financial penalties should there be a finding of an infringement by CCS. First, an effectively implemented CCP can be a mitigating factor in determining the extent of penalties levied on infringing companies. Second, timely termination of anti-competitive practices would shorten the duration of infringement, which is a key factor for calculating the penalty amount. Third, early detection of cartel is particularly crucial as immunity or up to 100% discount from financial penalties may be granted to the first cartelist who comes forward and provides CCS with the evidence of the cartel under the CCS Leniency Programme.





HOW ABOUT SMALL AND MEDIUM ENTERPRISES (“SMEs”)?

Compliance is important for all businesses regardless of their size. While some businesses might cite high costs of developing and implementing such compliance programmes, individual businesses, including SMEs, must keep in mind the potential costs of non-compliance and note that having an effective competition compliance programme in place goes towards good corporate governance as well.

CCS recognises that businesses may adopt different methods of ensuring compliance, depending on their size. For example, smaller businesses may choose not to implement a sophisticated compliance programme, but employees must still be educated on the importance of competition compliance and be made aware of the implications of breaching the Competition Act.



COMPETITION TOOLKIT FOR SMEs

The International Chamber of Commerce (“ICC”) has designed a competition law compliance toolkit targeted at SMEs. ICC is a world business organisation, whose fundamental mission is to promote open trade and investment and help business meet the challenges and opportunities of an increasingly integrated world economy. The guide contains easy-to-digest information for SMEs and their employees to better understand competition law and its benefits for their business and practical tips to improve their competition compliance programme. Visit <http://www.iccwbo.org/Data/Documents/Competition/ICC-SME-Toolkit/> for more information on the toolkit.





An effective CCP must be tailored to the particular circumstances of your business. Your business may consider seeking professional advice from a legal adviser or a compliance specialist.

Putting a CCP in place should be seen as the start of a continual process. The programme must be ongoing and sufficiently flexible to adapt to the changing requirements of the business. The CCP framework should be regularly reviewed to ensure that it stays relevant to your business.

SUCCESSFUL COMPLIANCE STARTS FROM THE TOP

Senior management support for the CCP is important. It signals the importance your business accords to competition compliance to external stakeholders and deters other businesses from engaging your business in anti-competitive practices. Strong management support will also encourage more junior employees to adhere to the programme and actively follow its principles. Senior management support must be visible, active and persistent. This can be achieved in a number of ways, such as:

- the most senior individual in the organisation sending a personal message to staff stating his or her commitment to the CCP;
- making reference to the CCP in your business-mission statement or code of behaviour and ethics;
- making adherence to the CCP one of the overall objectives of your organisation; and/or
- designating a member of the Board of Directors or the senior management team to take on overall responsibility to ensure that the CCP is functioning correctly and to report to the Board at regular intervals on it.





GUIDELINES TO A CCP

The features of a CCP should ultimately be a management decision based on your business circumstances. However, the following are common features in many CCPs:

- Appropriate policy and procedures
- Active implementation
- Training
- Regular evaluation



Appropriate policy and procedures

An effective policy should contain at least the following elements:

- an overarching commitment to comply with competition law;
- placing a duty on all employees and directors to conduct their business dealings in compliance with this overarching policy, for example by including adherence to the CCP in the employee handbook;
- disciplinary action to be taken against employees/directors who intentionally or negligently involve the firm in anti-competitive practices – this is essential if the programme is to be taken seriously; and
- adherence to CCP as a consideration in performance appraisals.

A framework should be provided to enable employees to:

- seek advice on whether or not a particular transaction complies with competition law;
- report activities that they suspect infringe competition law; and
- an effective whistle-blowing programme to protect employees who report suspicious anti-competitive conduct.

It is essential that employees are informed of the business' policy and procedures on compliance in an appropriate way.

Active implementation

A CCP goes further than a verbal or written commitment to comply with competition law. It must be actively implemented and promoted through the operation of appropriate policies and procedures. Active implementation of a CCP could include, for example, a complete review by an independent party, of all existing contracts/agreements the business has signed, from a competition angle (e.g. exclusive clauses, sales rebate terms and conditions, etc), as well as an internal or external audit of existing standard operating procedures for staff, such as sales and marketing staff or staff involved in bid preparation. A well-designed and effective CCP could include putting in place procedural safeguards such as ensuring that all contracts/agreements be cleared through the legal department, which would include competition law as a consideration in their review.





Training

Training forms a crucial part of an effective CCP and is essential for all employees. Training should be provided on competition law and the business' CCP. Such training can be offered as part of the induction programme for new staff and also on a continuing basis in order to reinforce the compliance message and keep staff updated with changes in the law. One can deliver the training in a variety of ways – e.g. informal seminars, video presentations and role-play. Ideally the training should be related in some way to the business activities so that employees are better able to identify competition issues in their everyday work. In addition, it might be useful to identify employees or business units that are likely to be more exposed to competition law risks. These might include the following:

- senior management;
- sales and marketing staff;
- staff in charge of purchasing and procurement;
- strategic planning staff who plan potential mergers or acquisitions;
- staff involved in negotiating of contracts with customers or distributors;
- staff involved in pricing policy or loyalty programmes/rebates;
- staff who hold concurrent positions in trade associations; and
- staff who have contact with competitors.

Additional customised training might be made available for these categories of staff. Training records should be kept and management should ensure that the training content is up-to-date.

Regular evaluation

Even if the above three elements are present, a CCP is unlikely to be successful unless its effectiveness is regularly evaluated. Evaluation is essential not only as a means of ensuring that the CCP is working properly but also to enable areas of risk to be identified and addressed. The evaluation element should include some or all of the following:

- ensure that the CCP is kept up-to-date in relation to developments in competition law;
- maintain formal audits of sales and procurement processes, by appointment or unannounced, to check for actual or potential infringements; and
- review mechanisms for reporting actual or potential infringements to senior management, and for taking steps to put right the problem and limiting the risk of recurrence.

The evaluation process should be carried out as openly as possible as an indicator to employees that their conduct is constantly subject to review against the terms of the CCP.





CCS'S LENIENCY PROGRAMME

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WHAT IS THE LENIENCY PROGRAMME?

CCS administers a leniency programme for applicants who report and provide evidence of cartel activities.

CCS's Leniency Programme is only available to businesses that are part of a cartel agreement or concerted practice or trade associations that participate in or facilitate cartels.

Cartel agreements are the most serious type of anti-competitive agreements. They are generally secretive by nature and hence, difficult to detect. Cartel members may be reluctant to come forward and report on their activities. International experience has shown that leniency programmes are effective in incentivising businesses that have participated in cartel activities, to come forward to CCS with information and evidence about the cartel.

To qualify for leniency, the applicant must:



i) come forward with all the information and documents relating to the cartel activity as well as render full, complete and continuous cooperation to CCS until the conclusion of any action arising as a result of the investigation;



ii) refrain from further participation in the cartel from the time of disclosure to CCS, unless otherwise directed by CCS; and



iii) not have been the initiator of the cartel and not have taken steps to coerce other parties to participate in the cartel.





Depending on the time at which the leniency applicant comes forward to the CCS, the evidence already in the CCS's possession and the quality of information provided by the applicant, the applicant may be granted total immunity from or a reduction in the amount of financial penalty which may be imposed.

Applications for leniency may be made either orally or in writing. Initial contact can be made by telephone to the Assistant Chief Executive or a Director of the Legal and Enforcement Division of CCS.

CCS has a **marker system** in place for leniency applicants to obtain immunity or a reduction of up to 100% in financial penalties. A marker protects an applicant's place in the queue for a given period of time and allows it to gather necessary information on the cartel activity while maintaining its place in the queue for leniency.

If your business is part of a cartel, make a leniency application to CCS as soon as possible. Even if you do not currently have substantial information or evidence of the cartel, you may still apply for a leniency marker on behalf of your business. You can thereafter collect the information or evidence required to support your application.

If your business meets the relevant criteria and is the first to notify CCS, it may be granted immunity from financial penalties (if CCS has not commenced investigations yet) or a reduction of up to 100% of the financial penalties (if CCS has already commenced investigations).





LENIENCY PLUS PROGRAMME

CCS also administers a **Leniency Plus Programme** where an applicant who is cooperating with CCS in a cartel investigation ("first cartel") is the first to provide CCS with information on another completely separate cartel that the applicant is involved in ("second cartel").

Under this programme, the applicant may be granted immunity from or a reduction in the amount of financial penalty for the second cartel the applicant is involved in, in addition to a further reduction in financial penalty which he would have received for his cooperation in the investigation of the first cartel.



To qualify, you have to show that:



- the information and evidence provided relating to the cartel in the second market, is in fact a completely separate cartel from the cartel in the first market; and



- your business is the first to come forward to CCS with information and evidence about the cartel in the second market.

If your business meets the relevant criteria, it may be granted leniency (either immunity or a reduction of up to 100% of the financial penalty) in relation to the cartel in the second market. In addition, your business remains eligible for any reduction in financial penalty it would have received for its cooperation in the investigation in the cartel in the first market.





PROCEDURES FOR A LENIENCY APPLICATION

Your leniency application is deemed to have been made only after your identity is revealed and you have furnished CCS with either all the evidence available to you relating to the cartel, or at least a list of the evidence to be disclosed by you at a later point in time. It is therefore in your interest to satisfy these requirements as soon as possible, since the reduction in the amount of financial penalty for which you may be eligible will depend on whether your leniency application was the first one to be made and the evidence already in the CCS's possession.

There are four ways to make a leniency application:



You can submit an online form by downloading the form at CCS's website. However, our online forms do not support attachments. If you wish to submit supporting documents, we recommend that you email to us.



If you have supporting documents, download the **CCS's Leniency Application Form** and email the completed form and supporting documents to ccs_leniency@ccs.gov.sg



You can also send the completed **CCS Leniency Application Form** together with supporting documents by post at:

Competition Commission of Singapore
45 Maxwell Road, #09-01
The URA Centre,
Singapore 069118

(Please mark 'Leniency Application' clearly on the top left hand corner of the envelope.)



In person – call our hotline at **1800-325-8282** to make an appointment, and ask to speak to the Assistant Chief Executive (Legal & Enforcement) or a Director (Legal & Enforcement) with regard to leniency matters. You can also approach CCS through a law firm, who can speak to CCS on your behalf.

WILL CCS KEEP MY IDENTITY CONFIDENTIAL IF I APPLY FOR LENIENCY?

CCS shall endeavour to keep your identity confidential throughout the course of our investigations, until CCS issues a written notice that the section 34 prohibition has been infringed.





CCS'S WHISTLE-BLOWING (REWARD SCHEME) PROGRAMME

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CCS is interested to hear from persons with useful information on cartel activity in Singapore. If you are aware of cartel activities and wish to provide the information, you may write or email us or call the CCS hotline at **1800-325-8282** to provide such information. If you wish to remain anonymous or obtain a reward for providing such information, your call will be forwarded to our specially trained officers.

WHEN SHOULD YOU CONTACT CCS

You should contact CCS as early as possible because:

- CCS officers can discuss with you what information is most useful to us;
- CCS officers can advise on how to minimise the risks in obtaining the information; and
- Current information relating to competition infringements is likely to be more useful.

Notwithstanding the above, you should contact CCS only if you have direct or, at the very least, indirect access to **inside** information surrounding the cartel activity. Hearsay information e.g. an overheard conversation from unknown third-parties is unlikely to be useful to CCS.

Examples of useful information include:

- Companies/businesses who are part of the cartel;
- Origins of the cartel;
- The nature of the industry where the cartel is operating; and
- Documents or other information evidencing the agreements, decisions or practices of the cartel e.g. minutes of meetings, text messages and/or emails etc.



CCS undertakes to keep strictly confidential your identity and any information that may lead to your identification. Only a limited number of CCS officers will know your identity and the process of providing information will, as far as possible, be facilitated by an assigned officer.

In appropriate cases, a monetary reward can be paid to informants for information that leads to CCS issuing an infringement decision against the cartel members. The reward will be paid within one month of the issuance of an infringement decision. The amount of reward is capped at SGD120,000 and the actual amount paid out is determined at the sole discretion of CCS. CCS may also reject offers of information without giving reasons for doing so.

The exact amount of reward that an informant who seeks a monetary reward will get is known only after CCS has assessed the value of the information given just before the issuance of the infringement decision. Where the cartel activity is already under investigation by CCS, no reward will be paid out to the informant.





SEEKING GUIDANCE AND DECISION FROM CCS

Businesses need not notify CCS of their agreements or conduct. However, there may be occasions when they have serious concerns as to whether they are infringing or likely to infringe the Competition Act.

In such situations, they may find it useful to take independent legal advice on these matters. Where relevant, they may also apply to CCS for:

- **Guidance** from CCS as to whether the agreement or conduct is likely to infringe section 34 (anti-competitive agreements/conduct) or section 47 (abuse of dominance) of the Competition Act; or
- **Decision** by CCS as to whether the agreement or conduct does in fact infringe section 34 (anti-competitive agreements/conduct) or section 47 (abuse of dominance) of the Competition Act.

When applying to CCS for guidance or decision, businesses should make sure that these are existing agreements or conduct. CCS is unable to accept applications relating to a proposed agreement or conduct that has not been concluded or taken place as it will have to assess the agreement or conduct in its entirety and the surrounding circumstances.



Notification forms for guidance or decision from CCS can be found on CCS website (www.ccs.gov.sg, under **Approach CCS > Seeking Guidance and Decision**).

GUIDANCE

DECISION





GUIDANCE VS. DECISION: WHICH ROUTE TO TAKE?

	GUIDANCE	DECISION
Outcome	Guidance is indicative as it informs an undertaking whether or not, in CCS's view, the agreement or conduct is likely to infringe section 34 or 47 prohibition of the Competition Act.	A decision is definitive as it informs an undertaking whether or not, in CCS's view, the agreement or conduct does in fact infringe the section 34 or 47 prohibition of the Competition Act.
Confidentiality	An application for guidance is usually treated confidentially, although CCS may consult with third-parties for relevant information if it allows CCS to conduct a more complete assessment.	After an application for decision is made, a summary of the non-confidential details of the application (which will be submitted by the applicant) must be published on the CCS website for public consultation.
Application cost	Initial fee: SGD3,000 Further fee: SGD20,000	Initial fee: SGD5,000 Further fee: SGD40,000
Time	Generally takes a shorter time for CCS to issue a guidance if there is no need for public consultation.	Generally CCS may take a slightly longer time to issue a decision as there is a need for public consultation.
Immunity from financial penalties	In the event that CCS issues an unfavourable guidance or decision for cases in relation to the section 34 prohibition, the notifying undertaking is immune from financial penalties during the period when CCS was considering the matter. The undertaking will then be given a short period to comply with the Competition Act. There is no immunity from financial penalties in respect to notifications of conduct that constitute an abuse of a dominant position.	
Forms	Applications for guidance or decision are made by filling out Form 1 and submitting it to CCS, together with the prescribed initial fee. Where requested by CCS, the applicant must also fill out and submit Form 2, after having submitted Form 1. The application forms can be found on CCS website (www.ccs.gov.sg), under Approach CCS > Apply for a guidance or decision .	





NOTIFYING CCS OF A MERGER OR ANTICIPATED MERGER

It is not compulsory for businesses to notify CCS of a merger or anticipated merger. However, CCS may conduct an investigation if there are reasonable grounds for suspecting that a merger has infringed the section 54 prohibition (mergers that substantially lessen competition). If CCS carries out an investigation and ultimately identifies a Substantially Lessening of Competition ("SLC") situation, there may be two consequences. First, CCS may direct the merged entity to remedy the SLC (for example by divesting all or part of the business) and secondly, CCS has the power to impose financial penalties on merger parties that implement a merger that gives rise to an SLC.



In light of the above, the merging parties should perform a self-assessment to determine if their merger would lead to an SLC. However, if they have concerns as to whether the merger has resulted or may result in an SLC, they may notify CCS and apply for a decision by CCS as to whether a merger has infringed or when carried into effect, will infringe section 54 of the Competition Act.

In the case of an anticipated merger, notification will not be accepted if the transaction is still confidential. However, businesses that wish to keep their mergers confidential for the time being, but yet wish to get an indication from CCS on whether or not their mergers would infringe the Competition Act may approach CCS for confidential advice, subject to the fulfilment of certain conditions.



**NOTIFYING A MERGER OR ANTICIPATED MERGER**

Regime	Voluntary regime
Confidentiality	After an application for decision is made, a summary of the non-confidential details of the application (which will be submitted by the applicant) must be published on the CCS website for public consultation.
Application fees	<ol style="list-style-type: none">1) Mergers involving small and medium enterprises (“SMEs”) in Singapore: SGD5,0002) Where the turnover of the target undertaking or turnover attributed to the acquired asset:<ol style="list-style-type: none">(i) is equal to or less than SGD200 million: SGD15,000;(ii) between SGD200 million and SGD600 million: SGD50,000;(iii) above SGD600 million: SGD100,000.
Time	<p>The assessment consists of “2 phases”.</p> <p>In “Phase 1” review, within an indicative timeframe of 30 working days, CCS assesses that the notification form meets all filing requirements, charges the filing fee and makes a quick assessment of the filing. This allows CCS to give a favourable decision for proposed mergers that clearly do not raise any competition concerns under the Competition Act.</p> <p>If CCS is unable to conclude that the proposed merger does not raise any competition concerns during the “Phase 1” review, CCS will provide the applicant(s) with a summary of the key concerns, and upon the filing of a complete Form M2 and response to the “Phase 2” information request, CCS will proceed to carry out a more detailed assessment (“Phase 2” review). CCS endeavours to complete “Phase 2” within 120 working days.</p>

More details on the procedures and the notification forms can be found on CCS website (www.ccs.gov.sg, under **Approach CCS > Notifying a Merger**).





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www.ccs.gov.sg

