COMPETITION & CONSUMER COMMISSION SINGAPORE

# BUSINESS COLLABORATION GUIDANCE NOTE: A SUMMARY

Enabling businesses to work together with greater confidence

# CONTENTS





## INTRODUCTION

The Business Collaboration Guidance Note sets out how CCCS typically assesses common types of horizontal collaborations, and clarifies the conditions under which competition concerns are less likely to arise. The note also sets out guidance for trade associations in relation to association activities and collaborations. Businesses and trade associations can use the information to collaborate with greater confidence in compliance with section 34 of the Competition Act.

The examples set out in the guidance note are illustrative and are not exhaustive. The guidance note should not be understood as limiting CCCS's enforcement or assessment under the Competition Act. Businesses and trade associations which require more legal certainty can approach CCCS for guidance or decision or seek independent legal advice.

Read the full Guidance Note here.

# 1.

# INFORMATION SHARING

Exchange of both price and non-price information among businesses



## 1. INFORMATION SHARING

1.1 Information sharing[1] between businesses may often help them to understand the market and plan their individual strategies.

### Information sharing can be pro-competitive

1.2 Information that does not impede independent decision-making or is not commercially sensitive may often be shared without raising competition concerns. Examples include the sharing of historical, aggregated or publicly available information. Risks of competition concerns are further reduced if independent third parties collated and aggregated the information. Information may also be shared publicly or directly to consumers to allow consumers to be better aware about quality differences in products or to reduce information asymmetry between businesses and consumers. Generally, making information available to the public does not harm competition.

### Scenarios where competition concerns may arise

1.3 Information sharing may be anti-competitive when it impedes independent competitive decision-making, such as when it reduces uncertainty and the competitive pressure between competitors.

1.4 Generally, the more commercially sensitive or the more recent or current the information shared, or the more frequent the sharing, the more likely that the information sharing is anti-competitive.

### Price and non-price information sharing

1.5 The sharing of both price and non-price variables, such as output, quality, future business strategies or other important variables that are important to a business' decision on how to compete,[2] can raise competition concerns.

### Price recommendation by trade associations

1.6 Recommendations or guidelines by trade associations on prices to be charged by its members (including surcharges or discounts) can act as focal points for competitors to co-ordinate or fix prices (even if non-binding) and therefore, are generally considered to be anti-competitive.

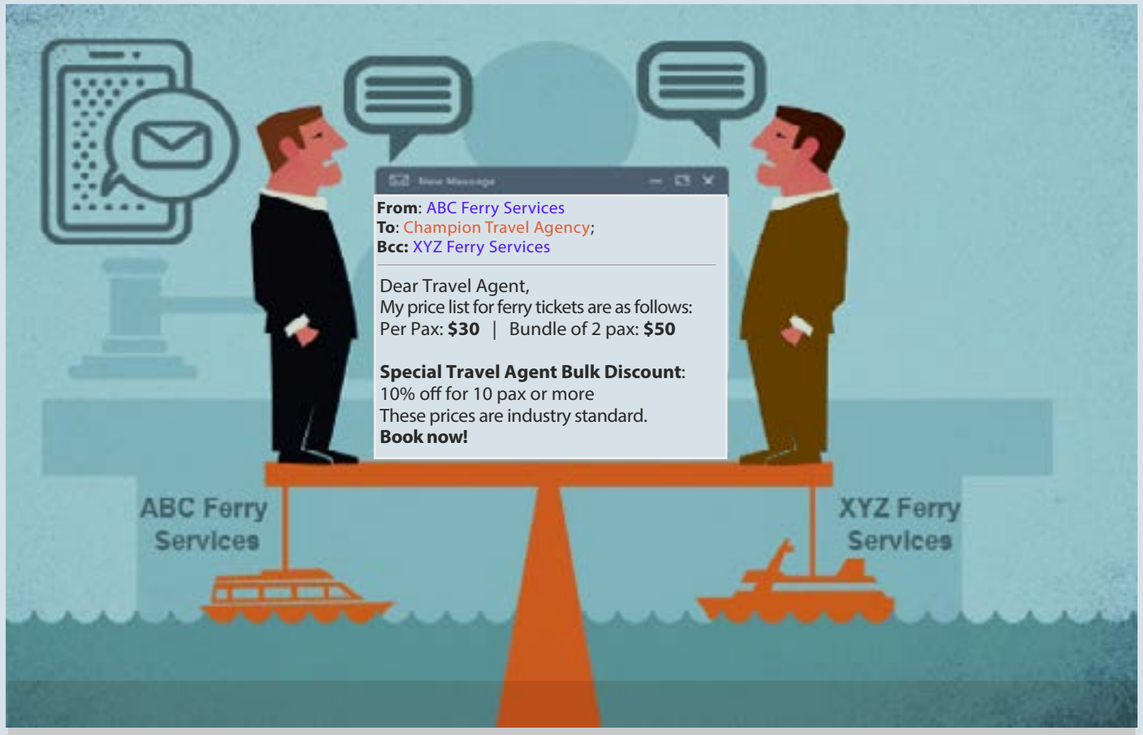
### Unilateral disclosures of information

1.7 A one-way disclosure of information on commercially sensitive information such as pricing plans or intentions, by one business to its competitor may also restrict competition where the latter requests it, or accepts it.

1 Information sharing includes direct and indirect forms, such as sharing conducted through an intermediary like a consultant.

2 Depending on the specific product or service, such factors may also include customer lists, production costs, turnovers, sales, capacities, inventories, stocks, marketing plans, trading terms, strategic risks and investment options.

DISCUSSIONS ABOUT TICKET PRICES




In one of its infringement decisions, CCCS found that two ferry operators had shared sensitive and confidential price information in relation to ferry tickets sold to corporate clients and travel agents. One of the ferry operators had blind copied the other operator in an email to a travel agent (a corporate customer) regarding such commercially sensitive information. The one-way flow of information from one ferry operator to another was anti-competitive, even though there was no reciprocal sharing. Such conduct in a duopolistic market was particularly restrictive of competition. Read more about the case here.

### What to do when anti-competitive information is shared

1.8 To show that a business did not participate in an anti-competitive sharing of information, the business should publicly distance itself. This means that the business needs to take clear and unambiguous steps to denounce the conduct at the meeting, including having their objections noted down in the minutes or before leaving the meeting if the sharing continues. Businesses should also not attend subsequent meetings involving similar information sharing, and make market decisions independently.



## SUMMARY

Competition concerns are less likely to arise when:

01

Information is publicly available or is not related to price or other important factors that impact how businesses compete; OR


02

Information is historical, aggregated (especially by independent third parties) and cannot be attributed to individual businesses; OR


03

The market has a large number of players with frequent entry and exits, and the relevant goods or services are highly differentiated or changes rapidly (on condition that the information shared does not facilitate price-fixing, bid-rigging, market sharing or output limitation); OR

04

Where commercially sensitive and individual information is needed, only information strictly necessary to implement the collaboration is shared and there are safeguards to ringfence commercially sensitive information so that businesses are unable to access information affecting competition between them.

Even if the above conditions are not met, the collaboration may not necessarily result in appreciable anti-competitive effects.

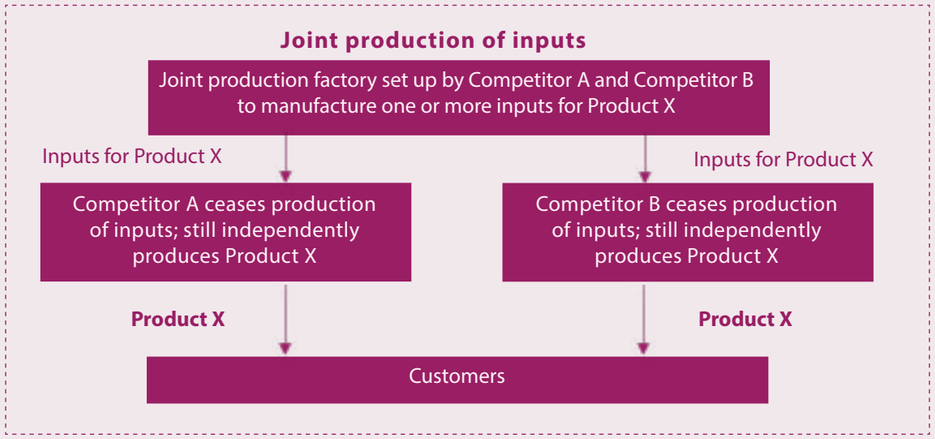
# 2. JOINT PRODUCTION

Collaboration to jointly produce a product, share production capacity or subcontract production



## 2. JOINT PRODUCTION

2.1 Businesses may agree to set up a jointly controlled company to produce required inputs that the businesses then use to produce competing products.




Businesses may also form agreements to share resources (e.g. production capacity) or subcontract.[3]

### Joint production agreements can be pro-competitive

2.2 Joint production agreements can generate efficiency gains, allowing businesses to achieve cost savings in production, or utilise more efficient technologies. Joint production agreements may also help businesses achieve economies of scale by expanding production at a lower cost per unit.

### Common competition concerns

2.3 Joint production agreements must not be used to facilitate market sharing, bid-rigging, price-fixing or output limitation. In certain circumstances, joint production agreements which involve setting of prices to be charged between the producers or agreement on the total output to be produced may not restrict competition by object, e.g. where the price setting or agreement on output is necessary for the joint production and other parameters of competition are not eliminated.

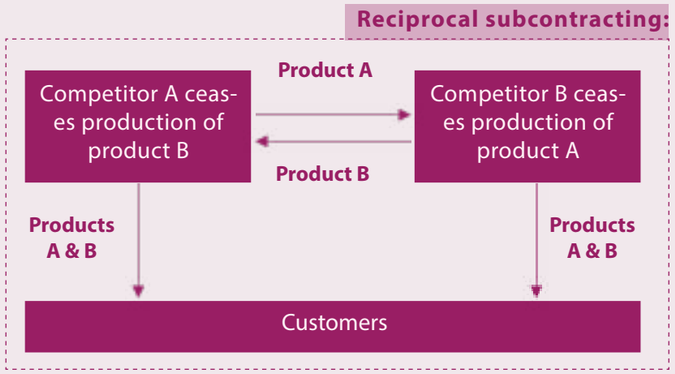
2.4 Subcontracting agreements to expand production are less likely to raise competition concerns compared to reciprocal subcontracting and unilateral subcontracting arrangements.

3 This guidance note and more generally the Competition Act does not apply to pure vertical agreements between businesses which are operating at different levels of the production or distribution chain for the purposes of the agreement.

## Subcontracting Agreements

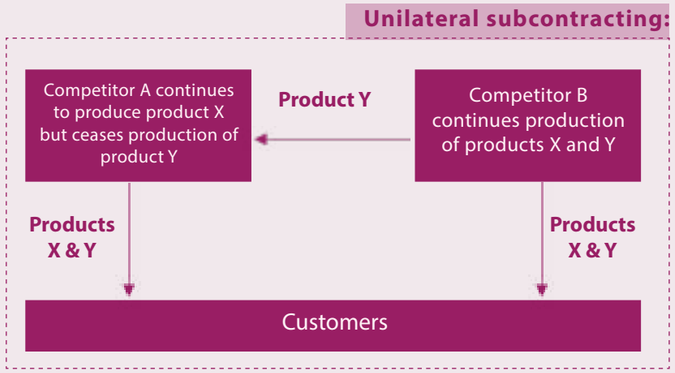
**a. Reciprocal sub-contracting agreements:**

Where two or more competing businesses agree, on a reciprocal basis, to fully or partly cease production of certain products and to purchase them from the other businesses in the agreement.




**b. Unilateral (one-way) subcontracting agreements:**

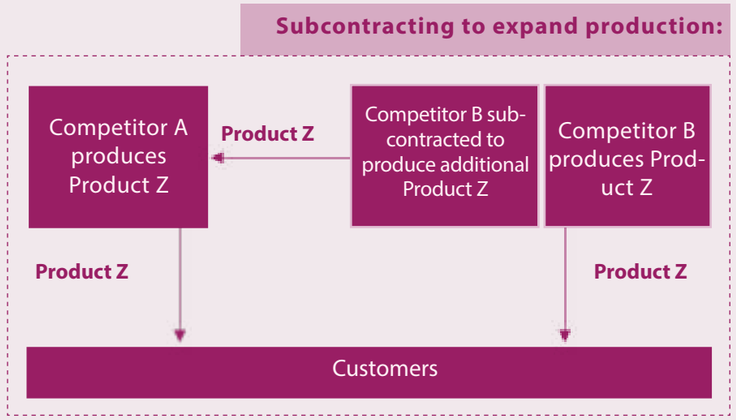
Where between two competing businesses, one business agrees to fully or partly cease production of certain products and to purchase them from the other business.




**Reciprocal subcontracting and unilateral subcontracting:** lead to an overall decrease in the production or production capacity.

**c. Subcontracting agreements to expand production:**

Where a contractor entrusts a competing subcontractor with the production of a product, but the contractor does not cease or limit its own production of the same product in question.




**Subcontracting to expand production:** keeps the same number of competitors while allowing them to optimise production resources as necessary.



## SUMMARY

Competition concerns are less likely to arise when:

**01**

The collaboration does not facilitate price-fixing, bid-rigging, output limitation and market sharing; AND


**02**

Collaborating businesses do not have market power, e.g., they have aggregate market shares of less than 20%; AND

**03**

The collaboration does not result in collaborating businesses having a significant proportion of common costs (which makes it easier for them to collude) unless there is significant cost reduction that outweighs the potential harm arising from such common costs; AND

**04**

The collaboration does not raise concerns in relation to the types of information sharing or contain safeguards to minimise concerns with information sharing (refer to section on Information Sharing).

Even if the above conditions are not met, the collaboration may not necessarily result in appreciable anti-competitive effects.

3.

# JOINT COMMERCIALISATION

Collaboration in the selling, distribution or promotion of a product, including jointly bidding in a tender.



## 3. JOINT COMMERCIALISATION

### Joint commercialisation can be pro-competitive

3.1 Like joint production collaborations, joint commercialisation arrangements enable competitors to collaborate to achieve efficiencies that may not be attained individually.

### Common competition concerns

3.2 There is a wide spectrum of collaborations possible under joint commercialisation agreements depending on the specific functions that the collaboration intends to cover. Collaboration agreements covering more functions are more likely to limit the extent of each party's independent decision making. Competition is also more likely to be adversely affected when competitors' independent decision making (such as determination of price) is limited or when their commercial interests become more aligned i.e. the incentives to not compete with each other become more pronounced for example through a reciprocal distribution agreement as detailed in the diagram below.

3.3 Commercialisation agreements must not be used to facilitate collusion, e.g. restrictions involving price-fixing, bid-rigging, market-sharing and output limitation.

**Reciprocal distribution agreement**

A to distribute and sell all item BX in the west;
B to distribute and sell all item AX in the east.

A produces and sells its brand of product X (item AX) largely in the West, but also has some presence in the East

B produces and sells its brand of product X (item BX) largely in the East, but also has some presence in the West


A now distributes both AX and BX in the west and determines prices for both (possibly in consultation with B)

B now distributes both AX and BX in the east and determines prices for both (possibly in consultation with A)


There is no more incentive for A or B to compete against each other as each have their own comfortable geographic area of control

### Joint advertising agreements

3.4 An agreement to jointly advertise, promote or market products is less likely to restrict competition as the parties usually do not need to coordinate on commercially sensitive terms as part of the agreement.

### Joint distribution agreements

3.5 For joint distribution agreements where each party remains free to set commercial terms such as price and quantity independently with the distributor, such agreements are less likely to raise competition concerns even though there may be coordination on other non-commercially sensitive terms between the parties to maintain the agreement. However, reciprocal distribution agreements, where horizontal competitors agree to distribute each other's competing products on a reciprocal basis, may raise greater concerns, especially when these competitors allocate different market segments (geographically) or fix prices amongst themselves.

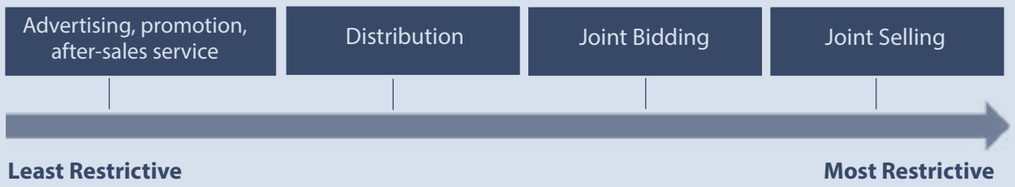
### Joint-bidding agreements

3.6 Businesses may also collaborate on joint bids in a tender. Where the businesses in the joint bid are not actual or potential competitors to each other for that particular tender contract, such joint-bidding agreements are unlikely to raise competition concerns. They are not considered actual or potential competitors for a particular tender contract if, for instance, they are objectively unable to take on the entire project individually.

### Joint-selling agreements

3.7 In circumstances where a joint-selling agreement between competitors contains restrictions relating to prices and quantities to sell to customers, it would be considered as restricting competition by object and would infringe the section 34 prohibition, unless they fulfil the Net Economic Benefit ("NEB") exclusion.[4]

**How likely will the various collaborations restrict competition?**




4 These are agreements which contribute to improving production or distribution or promoting technical or economic progress but which only impose restrictions necessary to attain such benefits and does not eliminate substantial competition.



## SUMMARY

Competition concerns are less likely to arise when:

01

The collaboration does not facilitate price-fixing, bid-rigging, output limitation and market sharing; AND


02

Collaborating businesses do not have market power, e.g., they have aggregate market shares of less than 20%; AND

03

The collaboration does not result in collaborating businesses having a significant proportion of common costs unless there is significant cost reduction that outweighs the potential harm arising from such common costs; AND

04

The collaboration does not raise concerns in relation to the types of information sharing or contain safeguards to minimise concerns with information sharing (refer to section on Information Sharing).

Even if the above conditions are not met, the collaboration may not necessarily result in appreciable anti-competitive effects.

4.

# JOINT PURCHASING

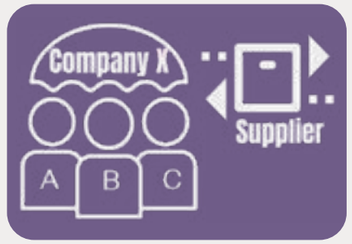
Collaboration to jointly purchase from one or more suppliers



## 4. JOINT PURCHASING

4.1 A joint purchasing agreement can be:

**A formal arrangement**, through a company formed by a group of businesses; or




**An informal arrangement**, where businesses collectively purchase through a buying group, alliance or trade association; or


**Collective bargaining,** where businesses jointly negotiate prices with suppliers for the purpose of joint purchasing.


### Joint purchasing can be pro-competitive

4.2 Joint purchasing agreements allow businesses greater bargaining power to enjoy efficiencies such as volume discounts, or to share delivery and distribution costs by combining their purchases.

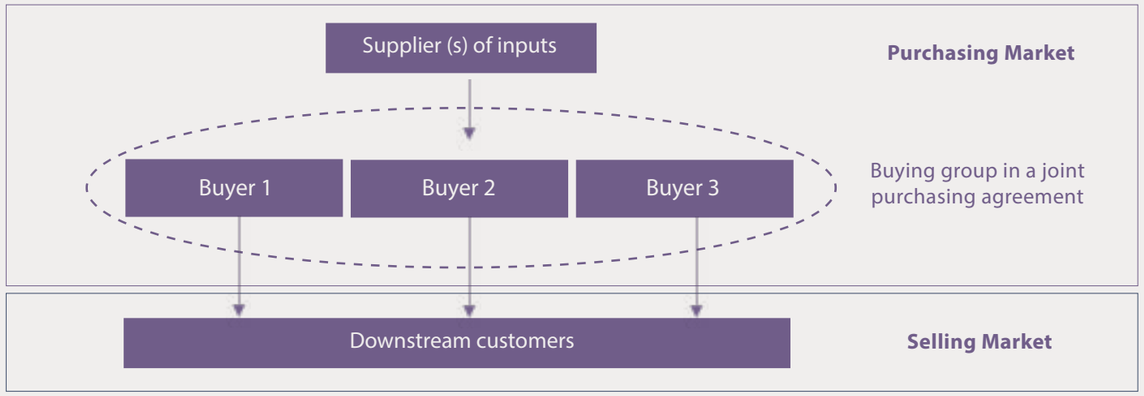
### Common competition concerns

4.3 Joint purchasing agreements must not be used to facilitate harmful collusive outcomes in the market. Restrictions relating to price-fixing, bid-rigging, market-sharing and output limitation, which restrict competition by object, are likely to be considered anti-competitive. However, the joint determination of purchase prices by buyers in the context of a joint purchasing collaboration would not be considered as a restriction by object, unless the joint purchasing collaboration is used as a front to collude on purchase prices. Instead, this would be taken into consideration as part of the overall assessment of the effects of the joint purchasing collaboration.

4.4 CCCS assesses the effects of any joint purchasing agreement in two relevant markets:

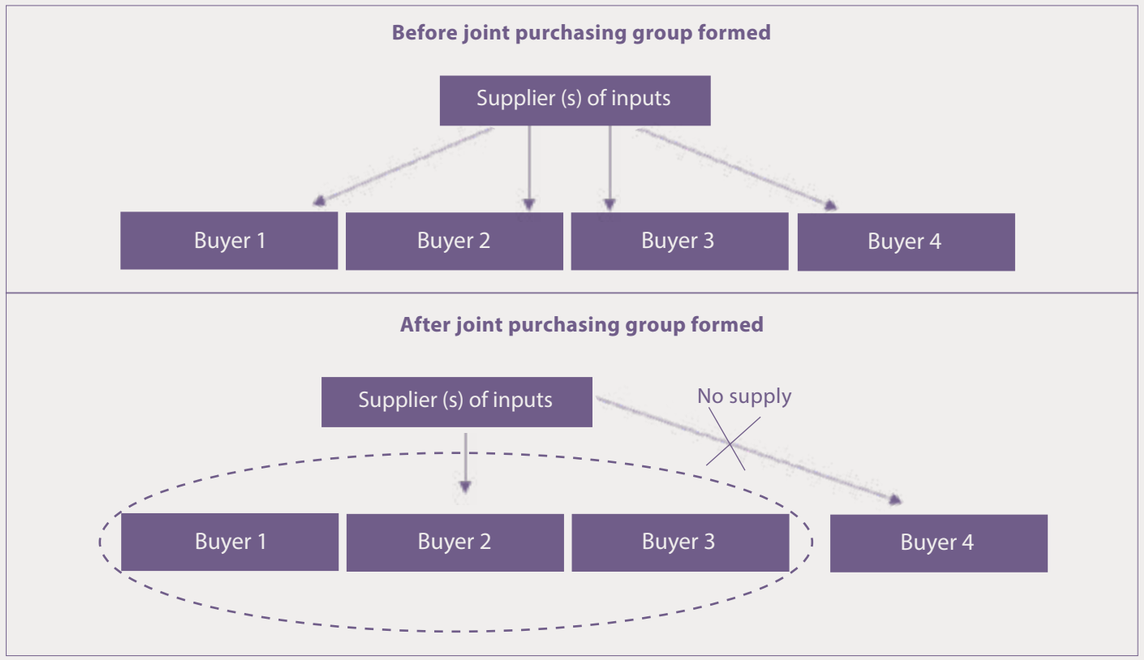
- Purchasing market – where the joint purchasing businesses interact with the suppliers, i.e. the market with which the joint purchasing agreement is directly concerned.
- Downstream selling market – where the joint purchasing businesses are active as sellers, specifically where the joint purchasing businesses are actual or potential competitors.

**The two markets in joint purchasing**




4.5 The fewer the number of upstream suppliers and the more limited the supply in the purchasing market, the higher the likelihood that businesses competing with the joint purchasing businesses in the purchasing market may find it difficult to obtain supplies. This is due to suppliers selling mostly or only to the joint purchasing businesses, thereby making it harder for these businesses to compete. Similarly, if the joint purchasing businesses have significant market power in the selling market(s), then it is likely that any potential savings from the joint purchasing agreement will not translate into downstream efficiencies such as lower prices or increased output. It would also be a concern if the jointly purchased inputs form a significant portion of the costs of the final good or service, or if the joint purchase results in a high commonality of variable costs, or if other commercially sensitive information such as purchase volume or margins are shared as part of the agreement.

**Example of competing purchaser losing access to supplies**






## SUMMARY

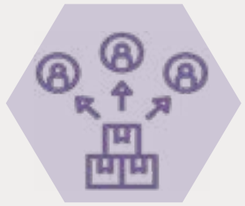
Competition concerns are less likely to arise when:

**01**

The collaboration does not facilitate price-fixing, bid-rigging, output limitation and market sharing; AND


**02**

Collaborating businesses (a) do not have buyer power in the purchasing market, e.g. they have aggregate market shares of less than 20% and (b) do not have market power in the selling market(s), e.g. they have aggregate market shares of less than 20%; AND



**03**

The available supply in the purchasing market is not limited and other competing purchasers continue to be able to obtain supplies from suppliers; AND

**04**

The collaboration does not result in collaborating businesses having a significant proportion of common costs unless there is significant cost reduction that outweighs the potential harm arising from such common costs; AND

**05**

The collaboration does not raise concerns in relation to the types of information sharing or contain safeguards to minimise concerns with information sharing (refer to section on Information Sharing).

Even if the above conditions are not met, the collaboration may not necessarily result in appreciable anti-competitive effects.

5.

# RESEARCH AND DEVELOPMENT

Collaboration in R&D activities



## 5. RESEARCH AND DEVELOPMENT

5.1 Research and Development ("R&D") agreements between businesses can be on existing products or technology, or innovation for new products.

### R&D agreements can be pro-competitive

5.2 R&D collaborations can lead to efficiencies such as newer or improvements in products or technologies, or quicker developments as a result of the sharing of technical information, know-how, resources and complementary skillsets. For example, if a small business with the necessary know-how but lacking in resources collaborated with another company with the resources but does not currently produce or have the ability to produce similar products in the same category, there is no concern about any loss in competition as both businesses are not considered to be actual or potential competitors.

5.3 Whether the businesses are considered actual or potential competitors in the relevant R&D market(s) depends on objective factors such as whether the businesses are in the midst of independent R&D on the same product or technology and whether the businesses have the separate and necessary capabilities to conduct the full R&D process independently. Even where the businesses are competitors, R&D collaborations can still lead to pro-competitive outcomes, e.g. the sharing of knowledge may result in better quality products for both businesses, and may disseminate knowledge that in turn spurs greater innovation.

## Common competition concerns

### Existing product or technology

5.4 Competition concerns may arise when:

- the businesses are actual or potential competitors in the R&D market for an existing product or technology and have some market power, or
- a potential maverick[5] from the market is removed, as this may reduce incentives to compete and have negative effects on prices, output, quality or variety.

### New product or technology

5.5 Competition concerns may arise if the collaboration reduces the level of competition to innovate, for example, by reducing the number of competing innovators significantly or by removing a potential maverick, which will have an impact on the quality and variety of new future products or technologies and on the speed of innovation.

5 Mavericks can be defined as businesses which may exert a disproportionate competitive effect in markets where they compete for example if it threatens to disrupt markets with a new technology or business model or if it has otherwise resisted prevailing industry norms in terms of how it competes.




**SUMMARY**

Competition concerns are less likely to arise when:

01

The collaboration is between businesses that are not actual or potential competitors or does not remove a maverick competitor from the market; OR


02

Where the collaborating businesses are actual or potential competitors for existing products or technologies, they do not have market power, e.g. their aggregate market share is less than 20%; OR

03

Where the collaboration is on new products or technologies, there are multiple viable, on-going alternative R&D projects undertaken by competing innovators that can produce close substitutes to the collaborators' resulting product or technology.

Even if the above conditions are not met, the collaboration may not necessarily result in appreciable anti-competitive effects.

6.

# STANDARDS DEVELOPMENT

Setting of industry or technical standards



## 6. STANDARDS DEVELOPMENT

6.1 Standards often cover grades, sizes, product or technical specifications. Standards are usually established by standard-setting organisations although standard-setting can also be undertaken on an industry-level by individual businesses and trade associations.

### Standards can be pro-competitive

6.2 Standardisation or standards development helps to reduce information asymmetry, and fosters trust in the market. Standards benefit businesses and consumers, by enabling businesses to lower costs, facilitate innovation and production, improve quality and promote technical progress in the market.

### Common competition concerns

6.3 There are three main potential areas of concern:

**Foreclosure of innovation**

Standards may limit technical development and innovation when competing technologies are excluded during the standard setting process.

**Exclusion or discrimination on use of the standards**

After the establishment of a standard, certain businesses may be prevented from obtaining licences or effective access to the standardised technology.

**Elimination or reduction of competition**

Businesses may engage in anti-competitive discussions, for example agree to decrease quality collectively on the pretext of meeting standards, during the standard-setting process.

6.4 CCCS will generally assess standardisation processes based on their effect on competition:

- **Whether the standards were established objectively** – Where all stakeholders that are likely to be affected by the eventual, established standards have the unrestricted right to participate or provide feedback during the standard-setting and adoption process. This will help to ensure that the standard-setting process is clear and transparent, the standard is established objectively and does not discriminate against any business or stakeholder.
- **Whether access to the standard through licensing/licenses or otherwise is provided fairly** – The established standards are not used to discriminate or exclude certain interested businesses. There should not be any restrictions for members to develop alternative standards or products, which help to provide room for competition.
- **Availability of alternatives in the market** – For industries where existing competition to the standards is present, competition concerns are less likely to arise.

7.

# STANDARD TERMS AND CONDITIONS IN CONTRACTS

Use of standard terms by competitors in contracts with customers.



## 7. STANDARD TERMS AND CONDITIONS

### Standard terms and conditions can be pro-competitive

7.1 Standard terms can benefit both businesses and consumers. Standard terms may help to lower business costs for businesses, and can also help customers compare across competing offers more easily, improve efficiency in the sales process and facilitate switching.

### Common competition concerns

7.2 Competition concerns may arise under certain conditions:

- **Prescriptive standard terms that define the scope of a product or service become industry norm** - The incentive to deviate and offer a more competitive and differentiated product offering may be reduced.
- **Where standard terms relate to or prescribe prices** – This reduces incentives for businesses in the industry to compete in terms of prices, especially when a majority of the industry adopts the prices or pricing components under the standard terms.

7.3 When establishing industry standard terms, businesses or organisations should not have overly extensive or prescriptive benchmarks, or standard price or non-price terms that facilitate price-fixing, bid-rigging, market sharing or output limitation. Businesses should not be compelled to adopt the standard terms and should retain the ability to come up with their own terms if they wish to.

7.4 CCCS will assess standard terms based on the following:

- **Whether there are overly prescriptive terms or terms relating to important factors of competition** – If the metrics of competition such as price, output or the scope of product including ancillary terms such as cancellation charges, after-sale service, warranty and refund policies are established as binding standard terms, individual competitors will have little incentive to deviate from the standard terms and conditions, eliminating competition in that respect.
- **Existing competition to the standard terms** – Where there are credible alternatives to the established terms, competition concerns are less likely to arise given that firms retain the choice to not follow the standard terms and remain free to adopt or adapt standard terms according to their preference.
- **How extensive the standard terms are** – Standard terms can cover a large proportion of the market when most of the terms relating to a product offering are included, or if the vast majority of businesses are using the standard terms, leaving little room for competitors to innovate or compete in other ways.

8.

# CROSS-BORDER COLLABORATIONS



## 8. CROSS-BORDER COLLABORATIONS

8.1 The Competition Act can apply to cross-border collaborations (e.g. where the agreement is made outside of Singapore or any party to the agreement is outside of Singapore) when competition in a market in Singapore is affected.

8.2 For example, a joint production collaboration between two businesses for products that are to be manufactured overseas and sold to various countries including Singapore may have an effect on competition in Singapore, and therefore need to be evaluated against the Competition Act.


8.3 Local collaborations can be subjected to competition law in affected overseas markets, including in Southeast Asia. The **website** of the Association of Southeast Asian Nations ("ASEAN") Experts Group on Competition ("AEGC") contains useful information on the competition law and regime in the various ASEAN countries. A particularly useful resource would be the Handbook on Competition Policy and Law in ASEAN for Business 2019, a copy of which can be obtained from **AEGC's website**.

9.

# ADDITIONAL INFORMATION FOR TRADE ASSOCIATIONS



## 9. ADDITIONAL INFORMATION FOR TRADE ASSOCIATIONS

9.1 Section 34 of the Competition Act also applies to decisions and guidelines by trade associations. CCCS recognises the important role that trade associations play in advancing the interests of its members, the industry and the economy.

9.2 Trade associations often drive collaborations to enhance the efficiency of their members and the industry, and may spearhead standardisation efforts on products and technologies or dissemination of good industry practices to raise quality and ensure inter-operability. Trade associations may also engage in the preparation of industry studies or the dissemination of aggregate market information to help businesses with performance benchmarking or with their discussions with government policy makers.

9.3 When supporting collaborations, trade associations can take reference from the information set out under the various types of collaborations described in this guidance note. The information highlights the conditions under which competition concerns are less likely, and what factors association members can look out for when considering collaborations. Activities that trade associations carry out to support collaborations among their members, such as discussing collaborations with government agencies, searching for possible investors, getting a consultant to carry out feasibility studies, are unlikely to raise competition concerns if information sharing, if any, follows the guidance in this note. As a further safeguard to avoid instances where members unknowingly discuss topics that infringe the competition law at association meetings, associations are encouraged to establish a clear and specific agenda before the meeting. Trade associations may also wish to remind their members ahead of and at the meetings to comply with the Competition Act. It may also be useful for trade associations to keep records of the minutes of meetings so that discussions during the meetings, including any objections, are properly documented.

## CONCLUSION

**The Business Collaboration Guidance Note** and this summary set out how CCCS assesses seven common types of collaborations, and makes clear the conditions under which competition concerns are less likely to arise. It seeks to serve as a reference to provide businesses and trade associations with the information they need to collaborate with greater confidence.

However, as noted above, if businesses and trade associations require some form of legal certainty, there is the avenue of coming to CCCS for guidance or decision or to seek independent legal advice. More information on the processes for filing a notification for guidance or decision can be found on **CCCS's website** and in the **CCCS Guidelines on Filing Notifications for Guidance or Decision with respect to the Section 34 Prohibition and Section 47 Prohibition 2016**.

For easy reference, the flowchart sets out in summary the various steps for businesses to consider in structuring or assessing their collaborations.



### TAKE THESE STEPS TO STRUCTURE OR ASSESS YOUR BUSINESS COLLABORATIONS