

# CCCS GUIDELINES ON THE POWERS OF INVESTIGATION IN COMPETITION CASES 2016

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# 1 INTRODUCTION

- 1.1 The Competition Act (Chapter 50B) (“the Act”) gives the Competition and Consumer Commission of Singapore (“CCCS”) various powers to investigate suspected anti-competitive behaviour, which may infringe the section 34<sup>1</sup> prohibition, section 47<sup>2</sup> prohibition or section 54<sup>3</sup> prohibition under the Act (“section 34, 47 or 54 prohibition” respectively). These guidelines describe these powers of investigation.
- 1.2 Under the Act, CCCS has power to:
  - require the production of specified documents or specified information;<sup>4</sup>
  - enter premises<sup>5</sup> without a warrant;<sup>6</sup> and
  - enter and search premises with a warrant.<sup>7</sup>
- 1.3 Parts 3 to 6 of these guidelines describe when each of these powers can be used, the extent of each power and the procedures that must be followed. The limitations on the use of these powers are described in Part 7 of these guidelines. The offences committed by a person who fails to comply when these powers are exercised are described in Part 8.
- 1.4 These guidelines are not a substitute for the Act, the regulations and orders. They may be revised should the need arise. The examples in these guidelines are for illustration. They are not exhaustive, and do not set a limit on the investigation and enforcement activities of CCCS. In applying these guidelines, the facts and circumstances of each case will be considered. Persons in doubt about how they and their commercial activities may be affected by the Act may wish to seek legal advice.
- 1.5 A glossary of terms used in these guidelines is attached in **Annex A**.

# 2 CIRCUMSTANCES UNDER WHICH CCCS WILL USE ITS POWERS OF INVESTIGATION

- 2.1 Section 62 of the Act provides that CCCS may conduct an investigation if there are reasonable grounds for suspecting that the section 34, 47 or 54 prohibition has been infringed. The formal powers of investigation outlined in these guidelines can be used only where this requirement is met.
- 2.2 CCCS will assess the information available in each case to ascertain if there are reasonable grounds for suspicion that a prohibition has been infringed. Examples of information that may be a source of reasonable grounds for suspicion include information provided by disaffected members of a cartel, statements from employees or ex-employees, or a complaint.
- 2.3 Where an agreement may infringe the section 34 prohibition but enjoys the benefit of an exemption, CCCS will conduct an investigation only if it is of the view that there are reasonable grounds for suspecting that the circumstances are such that it could exercise its power to cancel the exemption for that agreement under section 37(2) of the Act.

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<sup>1</sup> Agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition. Further information can be found in the *CCCS Guidelines on the Section 34 Prohibition 2016*.

<sup>2</sup> Conduct on the part of one or more undertakings which amounts to the abuse of a dominant position. Further information can be found in the *CCCS Guidelines on the Section 47 Prohibition 2016*.

<sup>3</sup> Mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods or services. Further information can be found in the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

<sup>4</sup> Section 63 of the Act.

<sup>5</sup> Section 2 of the Act.

<sup>6</sup> Section 64 of the Act.

<sup>7</sup> Section 65 of the Act.

- 2.4 CCCS may conduct an investigation of mergers which come to its attention whenever there are reasonable grounds for suspecting that a merger has infringed, or that an anticipated merger if carried into effect will infringe the section 54 prohibition.<sup>8</sup> *The Guidelines on Merger Procedures 2012* provide more details in relation to own-initiative investigations by CCCS.
- 2.5 Parts 3 to 6 of these guidelines describe CCCS's formal powers of investigation. It should be noted that CCCS may also obtain information about undertakings,<sup>9</sup> agreements, practices and markets through informal enquiries, either before or during the course of an investigation. Such enquiries may be made at a meeting, in written correspondence or in a telephone conversation. They may be made in addition to, or instead of, using the formal powers of investigation set out in the Act. Undertakings are encouraged to cooperate.
- 2.6 The timeframe for an investigation will depend largely on the nature and complexity of each case. CCCS will endeavour to complete its investigation as soon as it is practically possible.

### 3 POWER TO REQUIRE THE PRODUCTION OF DOCUMENTS AND INFORMATION

- 3.1 Where CCCS has reasonable grounds for suspecting that the section 34, 47 or 54 prohibition has been infringed, it may, under section 63 of the Act, require a person to produce specified documents or to provide specified information, which relates to any matter relevant to the investigation. This power is exercised by service of a written notice, the contents of which are described in paragraph 3.8 below.
- 3.2 The section 63 power may be used before CCCS carries out an inspection of premises (described in Parts 5 and 6 of these guidelines) or, either during or after an inspection to clarify facts that have emerged.
- 3.3 A person may receive a notice requiring the production of documents or information on more than one occasion during the course of an investigation. For example, CCCS may require a person to produce further information after considering the documents produced in response to an earlier notice under section 63.

#### Scope of the Power

- 3.4 CCCS or an inspector appointed by CCCS can require any person to produce documents or information that it considers relate to any matter relevant to the investigation. CCCS is not limited to approaching the undertakings suspected of infringement and/or their officers (past or present). For example, the notice may be addressed to third parties such as complainants, suppliers, customers and competitors.
- 3.5 The term "document" includes "information recorded in any form".<sup>10</sup> This definition includes records, such as invoices or sales figures, stored in any form, electronic or otherwise, for example, on a computer. "Specified" means documents or information that are specified or described in a written notice or that fall within a category which is so specified or described in a written notice under section 63<sup>11</sup> (described in paragraph 3.8 below). The documents required to be produced may include, for example, invoices, agreements and minutes of meetings.

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<sup>8</sup> Sections 62(1)(c) and (d) of the Act.

<sup>9</sup> Section 2 of the Act.

<sup>10</sup> Section 2 of the Act.

<sup>11</sup> Section 63(5) of the Act.

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- 3.6 When requiring a person to produce a document, CCCS can:
- take copies of or extracts from any document produced;
  - require the person served with a notice to produce the document (or any past or present officer or employee of that person) to provide an explanation of the document produced or require the person to provide a translation of the document produced if it is in a language other than the English language; and
  - if the document is not produced, require the person served with a notice to produce the document to state, to the best of that person's knowledge or belief, where the document can be found.
- 3.7 Under the power relating to the production of specified information, CCCS can require the information to be compiled and produced if it is not already in recorded form. For example, a person may be asked to provide market share information or to provide a description of a particular market using his knowledge and experience or the knowledge and experience of his staff.

### The Procedure

- 3.8 The power to require the production of documents or information using section 63 of the Act is exercised by serving a written notice. The written notice must:
- state the subject matter and purpose of the investigation;
  - specify or describe the documents or information, or categories of documents or information, required; and
  - set out the nature of the offences that may be committed if a person fails to comply when the powers of investigation are exercised (described in Part 8 of these guidelines).
- 3.9 The written notice may also state the time and place at which a document or information must be produced and the manner and form in which it is to be produced. For example, a person may be required to produce the documents or information at a specified address on a designated date at a particular time. If information is provided, it may be recorded or reduced into writing by the investigating officer or inspector. The person providing the information will be given the opportunity to amend, add to or delete from the written record and will be asked to sign against the record. If a document is produced, CCCS may require that an explanation of the document be provided. A person required by CCCS to provide information or an explanation of a document may be accompanied by a legal adviser.
- 3.10 The written notice will be delivered personally or sent by pre-paid post to the last known address of the person.
- 3.11 When setting the appropriate time limit for the production of documents or information, CCCS will consider the amount and complexity of the information required, the resources available to the individual or undertaking and the urgency of the case.
- 3.12 The written notice may be addressed to individuals or undertakings. Where a written notice is addressed to an undertaking, the appropriate person to respond is the person who is authorised by the undertaking to respond on the undertaking's behalf. Where a written notice is addressed to an individual, that individual must respond, and it is not acceptable for another person to respond on that individual's behalf. This does not prevent an individual from obtaining legal advice in relation to a notice.
- 3.13 CCCS will not ask for more documents or information than what it believes is necessary for the investigation as at the date of the written notice.

## 4 POWER TO ENTER PREMISES FOR INSPECTION

- 4.1 If CCCS has reasonable grounds for suspecting that the section 34, 47 or 54 prohibition has been infringed, it may conduct an investigation. It has the power to enter into any premises to carry out inspections, either with or without a warrant. These powers enable CCCS to enter premises and to gain access to documents relevant to an investigation.
- 4.2 "Premises"<sup>12</sup> generally refers to business premises and does not include domestic premises unless they are used in connection with the affairs of an undertaking or where documents relating to the affairs of an undertaking are kept there. "Premises" also includes any vehicle.
- 4.3 When entering any premises for inspection, the investigating officer, authorised person, inspector or person required by the inspector shall produce evidence of his identity together with evidence of due authority to enter or the inspector's appointment at the point of entrance.

## 5 POWER TO ENTER PREMISES WITHOUT WARRANT

- 5.1 The power to enter premises without a warrant<sup>13</sup> is described in this Part of the guidelines. The power to enter and search premises under warrant<sup>14</sup> is described in Part 6 of these guidelines.

### When the Power can be Used

- 5.2 Depending on the circumstances, entry into premises without a warrant may be effected with or without giving an occupier of the premises at least two (2) working days written notice of the intended entry.

### Entry of Premises with Prior Written Notice

- 5.3 An investigating officer, authorised person, inspector or person required by the inspector may enter any premises in connection with an investigation without a warrant if the occupier of the premises has been given at least two (2) working days' written notice of the intended entry. The occupier of the premises need not be suspected of an infringement. For example, the premises of a supplier or customer may be entered using this power.

### Entry of Premises without Prior Written Notice

- 5.4 An investigating officer, authorised person, inspector or person required by the inspector may enter any premises in connection with an investigation without warrant and without notice if:
- CCCS has reasonable grounds for suspecting that the premises are or have been occupied by an undertaking that is being investigated in relation to an infringement of the section 34, 47 or 54 prohibition; or
  - the investigating officer or inspector has been unable to give written notice to the occupier despite taking all reasonably practicable steps to do so.

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<sup>12</sup> Section 2 of the Act.

<sup>13</sup> Section 64 of the Act.

<sup>14</sup> Section 65 of the Act.

## Scope of the Power

- 5.5 An investigating officer, authorised person, inspector or person required by the inspector entering any premises without a warrant may require:
- any person on the premises to produce any document that the investigating officer, authorised person, inspector or person required by the inspector considers relates to any matter relevant to the investigation. For example, an employee may be asked to produce minutes of any meetings with competitors, the diaries of specified directors, sales data or invoices. Copies of, or extracts from, any such documents produced can be taken by the investigating officer, authorised person, inspector or person required by the inspector;
  - any person on the premises to provide an explanation of any document produced. For example, an employee may be requested to provide an explanation of the entries or codes on an invoice or spreadsheet;
  - any person to state, to the best of that person's knowledge and belief, where any document that the investigating officer, authorised person, inspector or person required by the inspector considers relates to any matter relevant to the investigation can be found;
  - any information, which is stored in any electronic form and is accessible from the premises, and which the investigating officer, authorised person, inspector or person required by the inspector considers relates to any matter relevant to the investigation, to be produced in a form in which it can be read and can be taken away; and
  - take any other steps which appear necessary in order to preserve the documents or prevent interference with them. This includes requiring that the premises (or any part of the premises, including offices, files and cupboards) be sealed for such time as is reasonably necessary to enable the inspection to be completed. This time period will not be for longer than seventy-two (72) hours, except where an undertaking consents to a longer time or where access to documents is unduly delayed, such as by the unavailability of a person who can provide access.
- 5.6 An investigating officer, authorised person, inspector or a person required by the inspector, may take with him any equipment that he deems necessary when entering any premises under this power. For example, he may take portable computer equipment and tape recording equipment.

## The Procedure

### Entry of Premises with Prior Written Notice

- 5.7 Where an investigating officer or inspector gives written notice of at least two (2) working days of his intended entry into the premises without a warrant, the written notice shall state:
- the subject matter and purpose of the investigation; and
  - the nature of the offences that may be committed should any person choose not to comply or co-operate when the powers of investigation are exercised (described in Part 8 of these guidelines).
- 5.8 On entering the premises, the investigating officer, authorised person, inspector or person required by the inspector will produce evidence of his identity together with evidence of his due authority to enter or the inspector's appointment. Apart from evidence of his right to enter, he will also hand over a separate document which sets out the powers of the investigation.

### Entry of Premises without Prior Written Notice

- 5.9 If a prior written notice is not required to be given under the Act and the investigating officer, authorised person, inspector or person required by the inspector is entering the premises without a warrant, he may enter only upon production of (i) evidence of his identity together with evidence of his due authority to enter or the inspector's appointment; and (ii) a document indicating the subject matter and purpose of investigation and the nature of offences that may be committed should any person choose not to comply or co-operate when the powers of investigation are exercised (described in Part 8 of these guidelines). He will also hand over a separate document which sets out the powers of investigation.
- 5.10 The investigating officer, authorised person, inspector or person required by the inspector will normally arrive at the premises during office hours. Where possible, the person in charge at the premises should designate an appropriate person to be a point of contact for the investigating officer, authorised person, inspector or person required by the inspector during the inspection. The investigating officer, authorised person, inspector or person required by the inspector will provide a list of documents and extracts from documents of which copies have been taken at the end of the inspection as far as practicable and in any event, not later than three (3) working days from the end of the inspection.

### Access to Legal Advice

- 5.11 Where the investigating officer, authorised person, inspector or person required by the inspector considers it reasonable in the circumstances to grant a request to allow the occupier of the premises a reasonable time for the occupier's legal adviser to arrive at the premises before the investigation continues, he may impose such conditions as he considers appropriate. The conditions could include sealing of cabinets, keeping business records in the same state and places as when entry into the premises was effected, suspending external email and allowing the investigating officer, authorised person, inspector or person required by the inspector to remain in occupation of selected offices.
- 5.12 The exercise of the right to consult a legal adviser must not unduly delay or impede the inspection. Any delay must be kept to a strict minimum. If an undertaking has an in-house legal adviser on the premises, the investigating officer, authorised person, inspector or person required by the inspector will not wait for an external legal adviser to arrive. If an undertaking has been given notice of the inspection, the investigating officer, authorised person, inspector or person required by the inspector will not wait for the legal adviser to arrive.

## 6

## POWER TO ENTER AND SEARCH PREMISES UNDER WARRANT

- 6.1 An application can be made to a District Court for a warrant for an inspector or officer of CCCS named in the warrant ("named officer")<sup>15</sup> and other persons required by the inspector or authorised in writing by CCCS ("accompanying officers")<sup>16</sup> to enter and search any premises.

### When the Power can be Used

- 6.2 The Act identifies three circumstances in which the court may issue a warrant to authorise a named officer and any other accompanying officers to enter and search the premises specified in the warrant. The court must be satisfied that there are reasonable grounds for suspecting that within the premises to be searched, there are documents:
- which have not been produced, although CCCS has required production, either by written notice (section 63 of the Act) or in the course of an inspection without a warrant (section 64 of the Act);
  - which an investigating officer, authorised person, inspector or person required by the inspector could have required to be produced in the course of an inspection without a warrant (section 64 of the Act), but was unable to effect entry into the premises; or
  - which would be concealed, removed or tampered with or destroyed, if CCCS were to require their production by written notice (section 63 of the Act). This last ground is the only means by which CCCS is able to carry out an inspection of any premises with a warrant without using one of the other investigatory powers first.

### Scope of the Power

- 6.3 The warrant will authorise a named officer, and any other accompanying officers to enter the premises. Such accompanying officers could include persons such as computer technicians or industry experts who may carry out specific tasks under supervision of the named officer.
- 6.4 The named officer and any other accompanying officers entering premises under a warrant may take with them such equipment as they deem necessary. This will include equipment that can be used to enter the premises using reasonable force (for example, equipment that can be used to break locks) as well as equipment that can be used to facilitate the search (for example, computer equipment).

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<sup>15</sup> Section 65(14) of the Act.

<sup>16</sup> Section 65(2) of the Act

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6.5 The warrant will authorise a named officer and any other accompanying officers to:

- enter the premises specified in the warrant using such force as is reasonably necessary. The named officer and any other accompanying officers entering the premises will be entitled to use force only if they are prevented from entering the premises and may use only such force as is reasonably necessary for the purpose of gaining entry. Force cannot be used against any person;
- search any person on the premises if there are reasonable grounds for believing that the person has in his possession any document, equipment or article which has a bearing on the investigation;
- search the premises and take copies of or extracts from any document appearing to be of the kind in respect of which the warrant was granted (identified in paragraph 6.6 below). The named officer and any other accompanying officers can search offices, desks and filing cabinets etc. to find such documents. The named officer will, as far as it is practicable, provide a list of documents and extracts from documents of which copies have been taken at the end of the inspection. If it is not practicable to do so, the list will be provided within three (3) working days from the end of the inspection;
- take possession of any document, original or otherwise, appearing to be of the kind in respect of which the warrant was granted if such action appears to be necessary for preserving the document or preventing interference with it, or if it is not reasonably practicable to take copies of the document on the premises. Upon the reasonable request made by an occupier (or occupier's representative) for a copy of the document to be taken, such copy may, as far as it is practicable, be provided. The named officer will cause to be provided to the occupier or occupier's representative for checking a list of documents to be removed from the premises at the end of the inspection as far as practicable and in any event, not later than three (3) working days from the end of the search. Documents taken will be returned within three (3) months;
- take any other steps which appear necessary in order to preserve the documents or prevent interference with them. This includes requiring that the premises (or any part of the premises, including offices, files and cupboards) be sealed for such time as is reasonably necessary to enable the inspection to be completed. This time period will not be for longer than seventy-two (72) hours, except where an undertaking consents to a longer time or where access to documents is unduly delayed, such as by the unavailability of a person who can provide access;
- require any person to provide an explanation of any document appearing to be of the kind in respect of which the warrant was granted or to state to the best of his knowledge and belief where such document may be found;
- require any information, which is stored in any electronic form and is accessible from the premises, and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form in which it can be taken away and read; and
- remove from the premises for examination any equipment or article which relates to any matter relevant to the investigation, for example, computers or any recording devices. If the circumstances are such that the named officer may, instead of removing from the premises such equipment or article, allow them to be retained on the premises, he may impose such conditions as he deems appropriate, for example, to allow for inspection of the said article or equipment at regular intervals.

6.6 The named officer or accompanying officers may take copies (as set out in paragraph 6.5 above) of the following types of documents depending on the ground under which a warrant was obtained:

- where a warrant was granted because an undertaking failed to produce the documents which were required to be produced under section 63 or 64 of the Act, copies of those documents;<sup>17</sup>
- where a warrant was granted because there was a reasonable suspicion that documents would have been concealed, removed, tampered or destroyed if prior written notice under section 63 was given, copies of those documents;<sup>18</sup>
- where a warrant was granted because attempts to effect entry into the premises without a warrant under section 64 of the Act proved futile, copies of those documents, which could have been required to be produced upon entry into the premises.<sup>19</sup>

6.7 In addition, where a warrant is granted to enter premises where there is a reasonable suspicion that if prior written notice under section 63 was given, documents would have been concealed, removed, tampered or destroyed, then, if the court is satisfied that it is reasonable to suspect that there are also other documents relating to the investigation on the premises, the warrant will authorise the actions mentioned in paragraph 6.5 above to be taken.

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<sup>17</sup> Section 65(1)(a) of the Act.

<sup>18</sup> Section 65(1)(b) of the Act.

<sup>19</sup> Section 65(1)(c) of the Act.

## The Procedure

- 6.8 The powers set out in paragraphs 6.3 to 6.7 above may only be exercised on production of the warrant.
- 6.9 A warrant continues in force for one (1) month from the date of issue and must indicate:
- the subject matter and purpose of the investigation; and
  - the nature of the offences that may be committed if any person fails to comply or co-operate when the powers of investigation are exercised (described in Part 8 of these guidelines).
- 6.10 The named officer and any other accompanying officers will normally arrive at the premises during office hours. On entering the premises, the named officer and accompanying officers will produce evidence of their identity. The named officer will also hand over a separate document which sets out the powers of the investigation. Where possible, the person in charge at the premises should designate an appropriate person to be a point of contact for the named officer during the inspection and search.
- 6.11 If there is no one at the premises, the named officer must take reasonable steps to inform the occupier of the intended entry. If the occupier is informed, the occupier or his legal or other representative must be given a reasonable opportunity to be present when the warrant is executed. If the named officer has been unable to inform the occupier of the intended entry, he is under a duty to leave a copy of the warrant in a prominent place on the premises. On leaving premises that are unoccupied, the named officer must leave them as effectively secured as he found them.

## Access to Legal Advice

- 6.12 See paragraphs 5.11 and 5.12 above.

# 7

## LIMITATIONS ON THE USE OF POWERS OF INVESTIGATION

### Privileged Communications

- 7.1 The power to require the disclosure of information or documents under Part III of the Act does not extend to any communication:
- between a professional legal adviser and his client; or
  - made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings;

which would be protected from disclosure in proceedings in a court on grounds of privilege.

- 7.2 This will mean that communications with in-house lawyers, in addition to lawyers in private practice including foreign lawyers, can benefit from the privilege. The power to require the details of the relevant persons under section 66(4) of the Act will only be used, where necessary, to ascertain if the communications were indeed privileged.

### Self-incrimination

- 7.3 A person or undertaking is not excused from disclosing information or documents to CCCS under a requirement made of him pursuant to the provisions of the Act on the ground that the disclosure of the information or documents might tend to incriminate him.<sup>20</sup>
- 7.4 Where a person claims before making a statement disclosing information that the statement might tend to incriminate him, that statement shall be admissible in evidence against him in civil proceedings including proceedings under the Act. The statement shall not be admissible in evidence against him in criminal proceedings other than proceedings under Part V of the Act relating to ancillary offences such as providing false or misleading information.

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<sup>20</sup> Section 66 of the Act.

## Disclosure of Information

- 7.5 Section 89 of the Act imposes limits on the disclosure of information relating to the business, commercial or official affairs of any person, any matter identified as confidential by a person furnishing information and the identity of persons furnishing information to CCCS, obtained in connection with the exercise of any function and discharge of duties of CCCS under the Act (including CCCS's powers of investigation under the Act).
- 7.6 It is an offence for any specified person<sup>21</sup> to communicate any such information unless it is necessary for the performance of any function or duty of CCCS or he is lawfully required to disclose the same by any court or the Competition Appeal Board or required or permitted to do so under the Act or any other written law.
- 7.7 The Act however permits CCCS to make disclosure under certain circumstances.<sup>22</sup> For example, CCCS is permitted to disclose information for the purpose of investigations or prosecutions under the Act, giving effect to any provision of the Act or complying with prescribed provisions of an agreement with a foreign country under certain conditions.<sup>23</sup> Disclosure is also allowed with the consent of the person to whom the information relates.
- 7.8 Before making a permitted disclosure for the purpose of giving effect to certain provisions of the Act,<sup>24</sup> CCCS must have regard to three considerations:
- the need to exclude, so far as is practicable, information the disclosure of which would in its opinion be contrary to the public interest;
  - the need to exclude, so far as is practicable, commercial information the disclosure of which it thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or information relating to the private affairs of an individual the disclosure of which it thinks might significantly harm the individual's interests; and
  - the extent to which the disclosure of information is necessary for the purposes for which it is to be disclosed.<sup>25</sup>

In doing so, CCCS may redact the documents it proposes to disclose to remove information: for example, by blanking out parts of documents or by aggregating figures.

## 8

## OFFENCES RELATING TO THE POWERS OF INVESTIGATION

- 8.1 The Act sets out a number of criminal offences which may be committed where an undertaking fails to comply or co-operate when the powers of investigation set out in the Act are exercised. It is an offence to:
- fail to comply with any condition imposed under section 65(5) of the Act by a named officer who, instead of removing from the premises for examination any equipment or article which has a bearing on the investigation, allows the equipment or article to be retained on those premises;<sup>26</sup>
  - fail to comply with a requirement imposed under the powers of investigation in the Act to provide documents, information, explanation or state where a document is to be found<sup>27</sup> (subject to certain defences, see below);
  - obstruct, by refusing to give access to, assaulting, hindering or delaying, any member, officer, employee or agent of CCCS authorised to act for or assist CCCS, or any inspector or person assisting an inspector in the discharge of his duties under the Act;<sup>28</sup>

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<sup>21</sup> Section 89(8) of the Act.

<sup>22</sup> Section 89(5) of the Act.

<sup>23</sup> Section 89(7) of the Act.

<sup>24</sup> Section 89(5)(b)(ii) of the Act

<sup>25</sup> Section 89(6) of the Act.

<sup>26</sup> Section 65(6) read with section 65(5) of the Act.

<sup>27</sup> Section 75 of the Act.

<sup>28</sup> Section 78 of the Act.

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- intentionally or recklessly destroy or otherwise dispose of or falsify or conceal a document of which production has been required or cause or permit its destruction, disposal, falsification or concealment;<sup>29</sup> or
- provide information that is false or misleading in a material particular knowingly or recklessly, either to CCCS or to another person such as an employee or legal adviser, knowing that it will be used for the purpose of providing information to CCCS.<sup>30</sup>

A person who fails to comply with a requirement to produce a document under sections 63, 64 or 65 of the Act has a defence if he can prove that the document was not in his possession or control and that it was not reasonably practicable to comply with the requirement. It is a defence for a person who fails to comply with a requirement to provide information or an explanation of a document or to state where a document is to be found if he can prove that he had a reasonable excuse for failing to comply with the requirement.

- 8.2 Failing to comply with a requirement imposed under sections 63 or 64 of the Act is not an offence if CCCS has failed to act in accordance with the provision in question.<sup>31</sup>
- 8.3 Where an offence under the Act committed by a body corporate or unincorporated association is proved to have been committed with the consent or connivance of an officer or member of the governing body, as the case may be, or is attributable to his neglect, that officer or member of the governing body shall also be guilty of the offence. Where the affairs of the body corporate are managed by its members, a member is also guilty of an offence if the offence of the body corporate is proved to have been committed with the consent or connivance of the member or to be attributable to his neglect as if he were a director. Where an offence under the Act committed by a partnership is committed with the consent or connivance of a partner or person purporting to be a partner or is attributable to his neglect, the partner or purported partner, as well as the partnership, shall be guilty of the offence.
- 8.4 To enable CCCS to take steps towards the prosecution of any of the offences in paragraph 8.1 above, any CCCS officer or employee may, on the declaration of his office and production of his CCCS identification card, require:
- any person whom he reasonably believes to have committed that offence to furnish evidence of the person's identity;
  - any person to produce document or information in his possession and take copies or extracts thereof; and
  - any person who appears to be acquainted with the circumstances of the case to attend before that officer or employee by written order.<sup>32</sup>
- 8.5 Any person who, in relation to the exercise of powers under paragraph 8.4 above:
- wilfully mis-states or refuses without lawful excuse to give information or produce any document required by a CCCS officer or employee; or
  - fails to comply with the lawful demand of a CCCS officer or employee in the discharge of his duties; shall be guilty of an offence.<sup>33</sup>
- 8.6 Offences will be tried in the District Court which shall have power to impose the full penalty or punishment in respect of the offences. All offences are punishable, on conviction, with a fine, imprisonment or both.
- 8.7 The sanctions that may be imposed by the courts on a person found guilty of each offence described in paragraph 8.4 above are set out in the table in **Annex A**.
- 8.8 An offence under the Act may be compounded if it is prescribed as a compoundable offence under the Competition (Composition of Offences) Regulations.<sup>34</sup>

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<sup>29</sup> Section 76 of the Act.

<sup>30</sup> Section 77 of the Act.

<sup>31</sup> Section 75(4) of the Act.

<sup>32</sup> Section 80(1) of the Act.

<sup>33</sup> Section 80(2) of the Act.

<sup>34</sup> Section 84 of the Act.

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**TABLE OF OFFENCES & SANCTIONS PROVIDED**

Offences	Sanction on Conviction
<p>Section 65(6) – Failure to comply with any condition imposed under section 65(5) by a named officer who, instead of removing from the premises for examination any equipment or article which has a bearing on the investigation, allows the equipment or article to be retained on those premises.</p>	<p>Punishable with a fine not exceeding S\$10,000 or to imprisonment for a term not exceeding twelve (12) months or to both.</p>
<p>Section 75 – Failing to comply with a requirement imposed under the powers of investigation in the Act to provide documents, explanation or information.</p>	<p>Punishable with a fine not exceeding S\$10,000 or to imprisonment for a term not exceeding twelve (12) months or to both.</p>
<p>Section 76 – Intentionally or recklessly destroying or otherwise disposing of or falsifying or concealing a document that is required to be produced or causing or permitting its destruction, disposal, falsification or concealment.</p>	<p>Punishable with a fine not exceeding S\$10,000 or to imprisonment for a term not exceeding twelve (12) months or to both.</p>
<p>Section 77 – Providing information that is false or misleading in a material particular knowingly or recklessly, either to CCCS or to another person such as an employee or legal adviser, knowing that it will be used for the purpose of providing information to CCCS.</p>	<p>Punishable with a fine not exceeding S\$10,000 or to imprisonment for a term not exceeding twelve (12) months or to both.</p>
<p>Section 78 – Obstructing, by refusing to give access to, assaulting, hindering or delaying, any member, officer, employee or agent of CCCS authorised to act for or assist CCCS, or any inspector or person assisting an inspector in the discharge of his duties under the Act.</p>	<p>Punishable with a fine not exceeding S\$10,000 or to imprisonment for a term not exceeding twelve (12) months or to both.</p>
<p>Section 80 – Wilfully mis-stating or refusing without lawful excuse to give information or produce any document required by a CCCS officer or employee pursuant to section 80 (1) or failing to comply with the lawful demand of a CCCS officer or employee in the discharge of his duties under the Act.</p>	<p>Punishable with a fine not exceeding S\$5,000 or to imprisonment for a term not exceeding twelve (12) months or to both.</p>

## 10 GLOSSARY

<b>Authorised person</b>	Refers to any officer of CCCS who is authorised in writing to accompany the investigating officer under section 64(1) of the Act.
<b>Inspector</b>	Refers to an inspector appointed by CCCS to conduct an investigation under section 62 of the Act.
<b>Investigating officer</b>	Refers to any officer of CCCS who is authorised to exercise the power to enter premises for inspection without a warrant under section 64(1) of the Act.
<b>Officer in paragraph 8.3</b>	<ul style="list-style-type: none"> <li>a. in relation to a body corporate, refers to any director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; and</li> <li>b. in relation to an unincorporated association (other than a partnership), refers to the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of a committee and includes any person purporting to act in any such capacity.</li> </ul>
<b>Person</b>	Includes any undertaking.
<b>Specified person</b>	<p>Refers to a person who is or has been –</p> <ul style="list-style-type: none"> <li>a. a member, an officer, an employee or an agent of CCCS;</li> <li>b. a member of a committee of CCCS or any person authorised, appointed or employed to assist CCCS;</li> <li>c. an inspector or a person authorised, appointed or employed to assist an inspector; or</li> <li>d. a member of the Board or any person authorised, appointed or employed to assist Competition Appeal Board.</li> </ul>
<b>Undertaking</b>	Refers to any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services, as the context demands. Includes individuals operating as sole proprietorships, companies, firms, businesses, partnerships, co-operatives, societies, business chambers, trade associations and non-profit-making organisations.