



## **MEDIA RELEASE**

**1 November 2016**

### **CCS Revises Guidelines to Foster a Level Playing Field for businesses**

1. Competition law strives to foster a level playing field amongst businesses by promoting a vibrant market place through innovation and productivity, so as to create opportunities and choices for businesses and consumers in Singapore.
2. The Competition Commission of Singapore (“CCS”) issued its first set of Guidelines in 2007. The Guidelines outline how CCS will administer and enforce the provisions under the Competition Act and the current set of revised Guidelines reflects the first comprehensive revision to the Guidelines since then, taking into account 10 years of experience and enforcement by CCS.
3. CCS has completed the review of its Guidelines and the public consultation on the proposed changes to the Guidelines. The revised Guidelines, which take into account international best practices, will make it easier for businesses, consumers and other stakeholders to understand how CCS will administer and enforce the Competition Act.
4. Having reviewed the comments received from the consultation, CCS has revised and published the following Guidelines (collectively, the “revised Guidelines”) which will come into effect on 1 December 2016:
  - a. CCS Guidelines on the Substantive Assessment of Mergers 2016;
  - b. CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016;
  - c. CCS Guidelines on the Section 34 Prohibition 2016<sup>1</sup>;
  - d. CCS Guidelines on the Section 47 Prohibition 2016<sup>2</sup>;
  - e. CCS Guidelines on Filing Notifications for Guidance or Decision with respect to the Section 34 Prohibition and Section 47 Prohibition 2016;
  - f. CCS Guidelines on the Appropriate Amount of Penalty 2016;
  - g. CCS Guidelines on the Powers of Investigation 2016;
  - h. CCS Guidelines on Enforcement 2016; and
  - i. CCS Guidelines on the Major Prohibitions 2016.

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<sup>1</sup> Section 34 of the Competition Act prohibits 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 within Singapore.

<sup>2</sup> Section 47 of the Competition Act prohibits any conduct on the part of one or more undertakings, which is an abuse of a dominant position, in any market in Singapore.

5. In addition, CCS has introduced a new procedure called the Fast Track Procedure, which is detailed in the Practice Statement on Fast Track Procedure for Section 34 and Section 47 Cases.
6. The key benefits for businesses brought about by the revision are:
  - a. **New Fast Track Procedure for shorter and faster investigation process:** The new Fast Track Procedure allows businesses under investigation to enter into an agreement with CCS where they will admit their liability early by acknowledging their participation in an anti-competitive activity. In return, they will receive a reduction on the financial penalty to be imposed. The purpose of introducing this Fast Track Procedure is to allow, in appropriate cases, for CCS to increase the efficiency of its investigation and enforcement process, thereby shortening the time taken to issue a decision.
  - b. **More clarity and guidance on how CCS will calculate financial penalties:** One of the key amendments is to calculate the financial penalty based on the financial year preceding the date when the undertaking's participation in the infringement ended, rather than basing it on the financial year preceding the issuance of CCS's decision. This provides greater certainty to businesses under investigation as the relevant financial year will no longer depend on when CCS issues its decision. The quantum of the financial penalty would therefore be more proportionate to the turnover earned by parties when they had engaged in the infringing conduct.
  - c. **Processes simplified to save businesses time:** Changes have been made to the Guidelines to simplify processes and clarify CCS's approach in assessing various conduct. This includes the simplification of various notification forms and procedures. Businesses will also know upfront what to expect and what will be required by CCS during the investigation process.
7. From the public consultation, CCS received a total of 14 submissions from law firms, the business community, academia, professional consultancies, bar associations, government departments as well as members of the public. The feedback was largely supportive of the changes. More details can be found in the summary of the feedback which also contains CCS's responses on the feedback received ("*Summary of Feedback and CCS's Responses*").
8. The revised Guidelines and Fast Track Procedure will come into effect on 1 December 2016. This is to give businesses and other stakeholders time to familiarize themselves with the revised Guidelines. The *Summary of Feedback and CCS's Responses* and more details on the revised Guidelines, including a summary of the key changes<sup>3</sup> which are detailed in the public consultation documents, are available on the CCS website at [www.ccs.gov.sg](http://www.ccs.gov.sg).

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<sup>3</sup> Refer also to **Annex A** for an outline of the key changes.

## **About The Competition Commission of Singapore (CCS)**

CCS is a statutory board established under the Competition Act (Chapter 50B) on 1 January 2005 to administer and enforce the Act. It comes under the purview of the Ministry of Trade and Industry. The Act empowers CCS to investigate alleged anti-competitive activities, determine if such activities infringe the Act and impose suitable remedies, directions and financial penalties. For more information, please visit [www.ccs.gov.sg](http://www.ccs.gov.sg).

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## **Annex A: Summary of Key Changes**

Title of Document	Key Changes
Guidelines on the Substantive Assessment of Mergers	<ul style="list-style-type: none"> <li>▪ Clarify when the acquisition of minority shareholdings may lead to decisive influence, resulting in a reviewable merger.</li> <li>▪ Explain the factors considered in assessing a merger.</li> <li>▪ Clarify what is meant by a “substantial lessening of competition” in assessing a merger, namely the types of efficiencies and remedies that can be considered.</li> </ul>
Guidelines on Lenient Treatment for Undertakings coming forward with information on Cartel Activity	<ul style="list-style-type: none"> <li>▪ Clarify that coercers and initiators of cartels may also apply for leniency and may qualify for a 50% discount in financial penalty, but they must unconditionally admit the conduct they engaged in that may be an infringement of the Act.</li> <li>▪ Clarify that CCS requires a waiver of confidentiality from leniency applicants to communicate with other competition or regulatory authorities in other jurisdictions where the applicant has also sought leniency.</li> <li>▪ Clarify the process by which a leniency applicant can apply and perfect a marker, and the threshold of information required from a leniency applicant to perfect a marker.</li> </ul>
Guidelines on section 34 prohibition	<ul style="list-style-type: none"> <li>▪ Clarify the elements of “vertical agreements” and explain that parties in a vertical relationship with each other does not preclude the finding of a horizontal agreement or concerted practice between them.</li> <li>▪ Clarify that aside from agreements relating to price-fixing, bid-rigging, market sharing and output limitations, if an agreement is found to restrict competition, it will be similarly regarded as restrictive of competition to an appreciable extent, and there is no need to prove appreciable adverse effects on competition.</li> <li>▪ Clarify that, in general, any provision and /or exchange of information, including price or non-price information, with the objective of restricting competition, will be considered as a restriction of competition by object.</li> <li>▪ Explain that price recommendations by a trade or professional recommendations may be harmful to competition.</li> <li>▪ Amend the definition of a small or medium sized enterprise (SME) in alignment with that used by SPRING Singapore.</li> </ul>
Guidelines on section 47 prohibition	<ul style="list-style-type: none"> <li>▪ Clarify that a finding of dominance can be established at a market share below the indicative threshold of 60%.</li> <li>▪ Amend the definition of a small or medium sized enterprise (SME) in alignment with that used by SPRING Singapore.</li> <li>▪ Clarify that in general, CCS’s assesses that an undertaking which is an SME is unlikely to be capable of conduct that has an appreciable adverse effect on competition in Singapore, but CCS will assess each case based on its own facts and merits.</li> <li>▪ Clarify what constitutes a collective entity and a collective dominant position.</li> <li>▪ Clarify the legal test for section 47 cases.</li> <li>▪ Clarify that CCS may use counterfactual analysis as a tool for assessing abuse of dominance where appropriate.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Explain CCS's considerations for remedial actions in abuse of dominance cases.</li> </ul>
Guidelines on filing notifications for guidance or decision with respect to section 34 and section 47 prohibitions	<ul style="list-style-type: none"> <li>▪ Simplify the requisite forms for filing notifications for guidance or decision with respect to section 34 and section 47 prohibitions and clarify the information / documents required.</li> </ul>
Guidelines on the appropriate amount of penalty; Guidelines on the powers of Investigations and Guidelines on Enforcement	<ul style="list-style-type: none"> <li>▪ Clarify that CCS adopts a 6-step approach to determine the penalty amount.</li> <li>▪ Explain that for the purpose of calculating financial penalties, an undertaking's relevant turnover refers to the undertaking's turnover in the relevant market affected by the infringement, in the financial year preceding the year when the infringement ended.</li> <li>▪ Explain the concepts of "relevant turnover" (for the purpose of calculating the base penalty) and "total turnover" (for the purpose of calculating the statutory maximum penalty)</li> <li>▪ Clarify that CCS will not usually make an adjustment for duration in bid-rigging or collusive tendering cases, i.e. the duration multiplier will be set at 1.</li> <li>▪ Clarify the circumstances in which CCS will consider as aggravating factors at Step 3.</li> <li>▪ Clarify that CCS may impose an uplift for deterrence at Step 4, and that CCS may consider leniency or fast track procedure discount at Step 6.</li> <li>▪ Clarify that CCS may set out the proposed amount of financial penalty in the proposed infringement decision ("PID") and addressees of the PID may make representations, written and oral, to CCS on matters of liability as well as penalty.</li> <li>▪ Clarify that CCS may request updated applicable turnover figures prior to issuing an infringement decision ("ID").</li> </ul>
Practice Statement on Fast Track Procedure for section 34 and section 47 cases (New procedure)	<ul style="list-style-type: none"> <li>▪ Explain the purpose of the fast track procedure and that it may be initiated by CCS for appropriate cases either before or after issuing a PID, but not after an ID has been issued.</li> <li>▪ Clarify that the fast track and leniency policy is not mutually exclusive.</li> <li>▪ Explain that parties under investigation will have to admit their liability before being considered for the fast track procedure. Prior to agreeing to admit liability, parties may discuss with CCS on the scope and gravity of conduct and range and quantum of financial penalties to be imposed, amongst other things.</li> <li>▪ Explain that a reduction of 10% in the amount of financial penalty will be applied at the end of the penalties calculation (which will be in addition to any discount given for a leniency application).</li> <li>▪ Explain that fast track procedure will generally only be applied if all parties under investigations agree to the fast track procedure.</li> </ul>