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CCS PRACTICE STATEMENT ON THE FAST TRACK PROCEDURE FOR SECTION 34 AND SECTION 47 CASES

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1. INTRODUCTION

- 1.1 This procedural note sets out a framework to incentivise parties to co-operate with the Competition Commission of Singapore (“CCS”) to “fast track” proceedings where a decision of an infringement of section 34 and/or section 47 of the Competition Act (Chapter 50B) (“the Act”) may be made. Under the fast track procedure, parties who admit liability for their infringement of the Act will be eligible for a fixed percentage reduction in the amount of financial penalty they are directed to pay pursuant to section 69(2)(d) of the Act.¹
- 1.2 The purpose of the fast track procedure is to assist CCS to more effectively and efficiently enforce the Act.
- 1.3 In considering which cases may be appropriate for the fast track procedure, CCS may take into account the number of parties concerned in the investigation, the number of parties who have proactively indicated their willingness to engage in a fast track discussion, foreseeable divergences in the parties’ relative positions, possibility of parties’ contradicting positions regarding the attribution of liability, as well as the predicted margin for argument and extent to which facts may be contested.
- 1.4 The fast track procedure can be initiated by CCS prior to or after a provisional infringement decision (“PID”) but not after an infringement decision (“ID”) has been issued. However, CCS envisages that in general, the fast track procedure will be initiated by CCS prior to a PID being issued.
- 1.5 The fast track procedure consists of the following stages: initiation, discussion, agreement and acceptance. Throughout the process, CCS retains a broad margin of discretion as to whether to continue with the fast track procedure. Should the fast track procedure be discontinued, e.g. each party decides after discussion with CCS not to opt for the fast track procedure, CCS will notify the relevant party(s) that the fast track procedure no longer applies. Any information or documents provided in the course of the fast track procedure by a party, who subsequently is no longer in the fast track procedure, will be deemed to be withdrawn. Such information and documents cannot be used as evidence by CCS against any of the parties to the proceedings.

¹ *CCS Guidelines on the Appropriate Amount of Penalty* provides general advice and information about the basis on which CCS will calculate financial penalties for infringements of the section 34 or 47 prohibition.

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- 1.6 Parties to any fast track procedure may not disclose to any third-party any information received during the fast track procedure unless they have prior explicit authorisation by CCS. Unauthorised disclosure by a party of any information received during the fast track procedure may result in the fast track procedure being discontinued and/or may be regarded as a lack of co-operation within the meaning of *CCS Guidelines on the Appropriate Amount of Penalty*.

2. INITIATION OF THE FAST TRACK PROCEDURE

- 2.1 Where CCS is of the view that a case may, in principle, be suitable for the fast track procedure, CCS will send a letter to each party whom it contemplates issuing a PID or ID (as appropriate given the stage of proceedings), asking each party to indicate in writing their interest in engaging in discussions under the fast track procedure. Parties will have to indicate their interest to CCS within a short stipulated time frame.
- 2.2 An undertaking under investigation that consists of two or more parties, e.g. parent and subsidiary, if willing to engage in discussions under the fast track procedure, shall be represented jointly by a single representative.
- 2.3 Where CCS initiates the fast track procedure, parties will not be obliged to enter into discussions with CCS or utilise the fast track procedure. While CCS will initiate the fast track procedure, the fast track procedure will only apply where a party responds to CCS indicating that it wishes to utilise the fast track procedure. In general, where there is more than one party under investigation in a case, CCS will only apply the fast track procedure when all parties under investigation in a case indicate their interest to utilise the fast track procedure.

3. DISCUSSION OF THE FAST TRACK PROCEDURE

Nature of discussions

- 3.1 During the discussion phase, CCS and each party involved in the fast track procedure will discuss the following:
- (a) Scope and gravity of the conduct, including identifying the infringements upon which CCS contemplates making a PID/ID; and
 - (b) The possible range and/or quantum of financial penalties calculated according to *CCS Guidelines on the Appropriate Amount of Penalty*.
- 3.2 Parties taking part in the fast track procedure may also, where appropriate, be informed by CCS of the following:

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- (a) The evidence used to determine the scope of the contemplated infringement; and
 - (b) Non-confidential versions of key documents that CCS determines are necessary to enable the party to ascertain its position regarding the contemplated infringements.
- 3.3 Each party taking part in the fast track procedure will be allowed to express its views on essential elements of the contemplated infringement such as the alleged facts, classification of the infringement, the gravity and duration of the infringement and the liability of the party for its involvement in the infringing conduct. Any views expressed should be supported by evidence.
- 3.4 The key aims of the discussions are to allow each party and CCS to evaluate the benefits of the fast track procedure from their respective perspectives and make an informed choice between the fast track procedure and the ordinary investigation process. These discussions, which take the form of one or more rounds of bilateral discussions between CCS and each party, will be undertaken on a “without prejudice” basis.
- 3.5 When the discussion leads to some common understanding between CCS and each party regarding the scope of the potential infringements and the range of likely financial penalties to be imposed, and CCS is of the view that procedural efficiencies are likely to be achieved with the fast track procedure, each party will be given a set timeframe to express to CCS its willingness to utilise the fast track procedure. Each party will indicate this by way of a submission to CCS (“the Fast Track Procedure Submission”).
- 3.6 In the Fast Track Procedure Submission, each party will have to:
- Unequivocally admit its liability to the infringement and to an agreed set of facts;
 - State that it has been sufficiently informed of CCS’s proposed decision and that it has been given sufficient opportunity to be heard during discussions with CCS; and
 - State that it will not make extensive written representations, request to make oral representations to CCS or request to inspect the documents and evidence in the CCS’s file, but it could provide a concise memorandum identifying any material factual inaccuracies in the PID.
- The above will then be set down as part of the terms of a Fast Track Procedure Agreement, described below.
- 3.7 CCS envisages that the fast track procedure will generally only be used where all parties who are contemplated to be addressees of any decision agree to the fast track procedure. However depending on the facts and circumstances of the case, even if

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not all parties are agreeable to entering into discussions, CCS may still proceed with the fast track procedure in limited circumstances. For example, CCS may still consider it to be appropriate to use the fast track procedure if all parties to the cartel agree to the fast track procedure except for one party that is under judicial administration or has been ordered by the Court to be wound up.

- 3.8 A party can request an extension of the deadline in which to submit its Fast Track Procedure Submission, but must furnish reasons for its request. If any party fails to submit its Fast Track Submission within the deadline stated or any extension that has been granted by CCS, the fast track procedure will be deemed to have lapsed and CCS may revert to the original investigative procedure.

4. AGREEMENT TO ACCEPT FAST TRACK PROCEDURE OFFER

- 4.1 In the agreement phase, it is envisaged that each party that has provided a Fast Track Procedure Submission, will sign an agreement with CCS containing the terms in their Fast Track Procedure Submission as well as other terms agreed at the conclusion of each party's discussions with CCS ("the Fast Track Procedure Agreement"). The agreement shall be in writing.

- 4.2 The agreement will include the following terms:

- (a) An acknowledgement of the party's liability for the infringement and of its involvement in it (including for example object or effect, duration, main facts of the case and legal assessment, etc);
- (b) An agreement to cooperate throughout CCS's investigation;
- (c) An indication of the maximum amount of the financial penalties each party would accept to be imposed. This maximum amount would include the application of any leniency discount and the fast track procedure discount;
- (d) CCS reserves the right: (i) to adjust the figures in applying the penalties, provided that the final penalty does not exceed the maximum amount of financial penalties the party has indicated, and (ii) to make further adjustments that may reduce the final penalty without further notice to the party;
- (e) Confirmation of the party's request pursuant to their Fast Track Procedure Submission to use the fast track procedure;
- (f) Confirmation by the party that it has been sufficiently informed of the contemplated infringements and that it has been given the opportunity to be heard;
- (g) Confirmation by the party that it will not make extensive written representations, request to make oral representations in response to any PID or request to inspect the documents and evidence in the CCS's file, but it can provide a concise memorandum identifying any material factual inaccuracies in the PID; and

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(h) An acknowledgement that should the party bring appeal proceedings before the Competition Appeal Board (“CAB”) in respect of CCS’s decision, CCS reserves the right to make an application to the CAB for a penalty amount that differs from that calculated in its ID; and may require them to pay CCS’s full costs of the appeal regardless of the outcome of the appeal.

4.3 Until the Fast Track Procedure Agreement has been signed by a party, that party will not be committed to accept the fast track procedure. A party will only be deemed to have accepted the fast track procedure when a party enters into a Fast Track Agreement with CCS.

5. ACCEPTANCE AND CCS’S DECISION

5.1 Following the Fast Track Procedure Agreement being signed, CCS will issue a PID or ID depending on the stage at which CCS has initiated the fast track procedure. CCS will adopt a streamlined PID or ID (as appropriate) reflecting the content agreed between CCS and each party in the Fast Track Agreement. Where a PID is issued based on the Fast Track Procedure Agreement, each party will have a limited time period set by CCS in which to make representations. CCS’s ID will take into account representations received following the issuance of the PID.

5.2 The PID and/or ID will provide for a reduction of 10% on the financial penalty that would otherwise be imposed on the party if it had not agreed to the fast track procedure. This discount will be applied in Step 6 of the penalty calculation framework, as set out in *CCS Guidelines on the Appropriate Amount of Penalty*.

5.3 Where a leniency applicant is also a party that has been emplaced on the fast track procedure, the reduction in any financial penalty granted for the fast track procedure will be added cumulatively to the leniency reduction conferred as set out in *the CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information in Cartel Activity Cases*. For example, if a party is granted a 40% reduction in financial penalties due to leniency and a further 10% reduction due to the fast track procedure, the party will receive an overall reduction of 50% in financial penalties.

5.4 CCS retains the right to issue a PID or ID that departs from the position that is agreed to between itself and any party in the fast track procedure. Should CCS do so, it will inform the party(s) concerned that the fast track procedure is no longer available in the form that was agreed and that the normal investigatory procedure will apply.

Figure 1. Flowchart of Fast Track Procedure

