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**CCS GUIDELINES ON FILING
NOTIFICATIONS FOR GUIDANCE OR
DECISION WITH RESPECT TO THE
SECTION 34 PROHIBITION AND THE
SECTION 47 PROHIBITION**

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FILING NOTIFICATIONS FOR GUIDANCE OR DECISION WITH RESPECT TO THE SECTION 34 PROHIBITION AND SECTION 47 PROHIBITION

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INTRODUCTION

- 1.1 Section 34 of the Competition Act (Chapter 50B) (“the Act”) prohibits agreements, decisions by associations of undertakings and concerted practices which have the object or effect of appreciably preventing, restricting or distorting competition in Singapore. Section 47 of the Act prohibits conduct by one or more undertakings amounting to the abuse of a dominant position in any market in Singapore.
- 1.2 ~~As of 1 January 2006, an~~An undertaking may apply to the Competition Commission of Singapore (“~~the~~CCS”) for:
- a. guidance as to whether, in ~~the CCS’~~CCS’s view,
 - i. an agreement (note that section 34(4) of the Act extends the term “agreement”, with the necessary modifications, to encompass a decision by an association of undertakings as well as a concerted practice) to which the undertaking is a party is likely to infringe the section 34 prohibition or whether the agreement is likely to fall under a block exemption (see section 43 of the Act) or is excluded; ~~and/or~~
 - ii. whether conduct by the undertaking is likely to infringe the section 47 prohibition (see section 50 of the Act); or
 - b. a decision as to whether
 - i. the agreement has infringed the section 34 prohibition (see section 44 of the Act); ~~and/or~~
 - ii. the conduct has infringed the section 47 prohibition (see section 51 of the Act).
- 1.3 ~~The~~CCS has issued these guidelines to assist undertakings seeking to notify an agreement or conduct to ~~the~~ CCS for guidance or for a decision.
- 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 ~~the~~CCS. 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 Undertakings are not required to notify their agreements or conduct and apply for guidance or a decision. However, they may do so if they have serious concerns as to whether they are infringing the Act’s prohibitions.
- 1.6 ~~The~~CCS wishes to inform undertakings that they should not notify agreements or conduct that do not raise any real concerns of possible infringement of the Act. Where applications of such nature are received, ~~the~~CCS may exercise its discretion to not give guidance or make a decision.

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Where this discretion is exercised, ~~the~~ CCS will notify the Applicant that ~~the~~ CCS has determined the application by exercising its discretion not to give guidance or a decision.

- 1.7 Notification cannot be made in respect of prospective agreements (i.e. agreements where the parties have yet to enter into the agreement) or prospective conduct.

2 HOW AN APPLICATION FOR GUIDANCE OR FOR A DECISION IS TO BE MADE

- 2.1 Applications for guidance or decision must be made by submitting Form 1 to ~~the~~ CCS. Form 1 requires information relating to, amongst other things: ~~;~~

~~a. The purpose of the application;~~

~~a.b. The Applicant and the other parties to the agreement or conduct;~~

~~b. The purpose of the application;~~

~~c. The relevant product and geographic markets; and~~

~~e. Details of the agreement or conduct; and~~

~~d. The groups to which the parties to the agreement or conduct belong.~~

Form 1 is found in Appendix A to these guidelines.

- ~~2.2~~ Before completing Form 1, Applicants should refer to these guidelines as well as to the various Regulations made under the Act (“the Regulations”). They may also wish to consider the self-assessment criteria in Form 1 and conduct a self-assessment to ascertain if their application is necessary. Applicants may ~~further~~ wish to seek legal advice:

~~2.3~~ ~~2.2~~ if they consider it helpful. An application for guidance (under sections 43 or 50 of the Act) or for a decision (under sections 44 or 51 of the Act) is deemed as having been made only after the requirements in connection with the filing of Form 1 are met. Fees are payable. ~~Applicants are reminded that, in accordance with Regulation 9 of the case of notified agreements, Competition (Notification) Regulations 2007. The quantum of fees payable to CCS are specified in the provisional immunity conferred by sections 43(4) and 44(3) Second Schedule of the Act only arises after the application is deemed as having been made. Competition (Fees) Regulations 2007.~~

- ~~2.4~~ The CCS ~~may refuse to accept an Application if it is incomplete, if it is not accompanied by the relevant supporting documents, if it is not substantially in the prescribed form or if it does not comply with any requirement under the Act or the Regulations. The receipt of an application by the CCS does not in any way indicate that the application is correct or complete.~~

- ~~2.5~~ An Applicant submitting Form 1 may, if it so chooses, also submit Form 2 to

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~~the CCS at the same time. This will speed up the process in more complex cases.~~

~~2.3 The information required by Form 2 is more detailed and may not be required in all cases. As the~~ Where the information provided by the Applicant in Form 1 is incomplete, CCS will notify the Applicant after receipt of the Form and specify a time frame for the Applicant to provide CCS with the outstanding information. If the Applicant fails to do so within this time frame (or within any extensions granted), then the application will be deemed as not having been made. In addition, with regard to the section 34 prohibition, the provisional immunity referred to in sections 43(4) and 44(3) of the Act will not apply. Where the outstanding information is submitted, the application shall be deemed to be made on the date on which CCS receives all such information.

~~2.6 CCS does not wish to place any undue burdens on the Applicant, reserves the right to require the submission of Form 1 may suffice in some cases. Form 2 will be required when the CCS is of the view that the information contained therein is necessary for examining the agreement or consideration of 2, including relevant supporting documentation during the conduct in question.~~

~~2.4 Where the course of its assessment of a notification for guidance or decision, Where CCS requires the Applicant to submit Form 2 providing additional information, it will endeavour to notify the Applicant of this requirement within 2 months after receiving Form 1. The CCS will specify a time frame for the submission of Form 2 to the CCS. If~~

~~2.7~~ 2.5 Where the Applicant fails to submit Form 2 within ~~this~~ the specified time frame (or within any extensions granted), or the substantive information provided by the Applicant in Form 2 is incomplete and the Applicant fails to provide the outstanding information within the time frame specified by CCS (or within any extensions granted), then in the case of an application with regard to the section 34 prohibition, the application will be deemed as not having been made, whereupon the provisional immunity referred to in sections 43(4) and 44(3) of the Act will not apply. In the case of an application with regard to the section 47 prohibition, the CCS may determine the application by not giving guidance or a decision.

~~2.8~~ 2.6 Form 2 requires information relating to, amongst other things:

~~e. The relevant product and geographic market(s);~~

- a. The position of the relevant undertakings in the relevant product and geographic market(s); and
- b. Market entry and potential competition in the relevant product and geographic market(s).

Form 2 is found in Appendix B to these guidelines.

~~2.7~~ Where the substantive Applicants should note that where information provided by required in Form 2 is submitted as part of Form 1, CCS reserves the right

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to require the Applicants to submit Form 2, notwithstanding that such information has already been submitted but is above that required in Form 1.

2.8 An Applicant in Form 1 (submitting Form 1 may, if it so chooses, also submit Form 2 to CCS at the same time. This will speed up the process in more complex cases.

2.9 CCS may within 2 months from the date of filing of Form 2 by an Applicant, give notice to the Applicant: (a) requiring the applicant to pay the appropriate further fee; and (b) specifying the time limit as CCS considers appropriate for such further fee to be paid to CCS.

2.10 In determining whether the further fee ought to be imposed, CCS will, amongst other things, consider (i) the complexity of the case including but not limited to the time spent and resources allocated; and (ii) whether one or Form 2) is incorrect more of the applicants are SMEs.

2.11 None of the factors are determinative and CCS will assess the entire facts and circumstances of each case in exercising its discretion on the imposition of the further fee. Applicants should refer to the Second Schedule of the Competition (Fees) Regulations 2007 for the further fees payable for notifications for guidance or decision under the Act.

2.92.12 CCS may refuse to accept an Application if it is incomplete, the CCS will notify the Applicant. if it is not accompanied by the relevant supporting documents, if it is not substantially in the prescribed form or if it does not comply with any requirement under the Act or the Regulations. The CCS will endeavour to do so within 2 months after receipt of the Form. In notifying the Applicant, the CCS will specify a time frame for the Applicant to revert to the CCS with the outstanding information. If the Applicant fails to revert with the outstanding information within this time frame (or within any extensions granted), the an application will be deemed as not having been made, whereupon the provisional immunity referred to in sections 43(4) and 44(3) of the Act will not apply. by CCS does not in any way indicate that the application is correct or complete.

2.102.13 In some cases, it may be possible for the CCS to dispense with the obligation to submit any particular information specified in FormForms 1 or 2 where the CCS considers that such information is unnecessary for examining the agreement or consideration of the conduct in question.

2.112.14 Conversely, if the CCS is of the view that further information is required, the CCS may require an Applicant to provide such further information even if the Applicant has already submitted Form 1 or Form 2 to the CCS. This depends on the circumstances of each application. The CCS may request for additional information that is not required under FormForms 1 or Form-2, for the purpose of considering the notification. In this event, the CCS may require the Applicant to furnish the additional information within such time frame as the CCS considers appropriate. If the Applicant fails to revertprovide CCS with the information within the time frame (or within any extensions granted), the CCS may determine the application by not giving

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guidance or a decision, as the case may be.

2.122.15 The Applicant is required to take all reasonable steps to notify all other parties to the agreement or conduct (as the case may be) that an application has been made and state whether it is for guidance or decision. The written notification to these parties must be given within 7 working days from the date on which the application is lodged with ~~the~~ CCS. If the Applicant is unable, despite the exercise of due diligence, to contact the other parties to the agreement or conduct, ~~the~~ CCS may require him to publish the notice in such newspapers as it may specify.

2.132.16 Three copies of the completed Form 1 (and Form 2, where provided) and accompanying documents, as well as a soft copy of Form 1 (and Form 2, where provided) in Microsoft Word format are to be submitted to ~~the~~ CCS. Supporting documents accompanying Forms 1 and 2 must, where possible, also be in a format which allows for cutting and pasting of text.

2.142.17 Any confidential information in the Form or documents must be clearly identified. AA confidential as well as a non-confidential version of Form 1 (and Form 2, where provided) and its supporting documents, with confidential information removed and replaced by square brackets containing the word "CONFIDENTIAL"¹ should be submitted to ~~the~~ CCS. A separate annex should accompany the non-confidential version of each Form or supporting document, identifying the confidential information and furnishing reasons as to why the information should be treated as confidential. A non-confidential version (and the accompanying annex) need not be filed if the Applicant is of the view that the relevant Form or document can be posted on ~~the~~ CCS website in its entirety.

2.152.18 The Applicant may get his lawyers to file the application on his behalf, subject to the inclusion of a letter of authorisation signed by the Applicant. However, the declaration in Form 1 (and Form 2, where provided) must be signed by the Applicant(s) ~~or~~ and by the Applicant's lawyers or joint representative (where one has been appointed).

3 OTHER MATTERS WHICH APPLICANTS SHOULD NOTE

Applicant's Obligations as to Accuracy of Information

3.1 The Applicant must conclude Form 1 (and Form 2, where provided) with the declaration that the information submitted is correct to the best of the knowledge and belief of the person signing the declaration, and that all estimates are best estimates based on the underlying facts. The declaration must be signed by ~~or on behalf of all the Applicants as well as by the lawyers~~ for all the Applicants. Unsigned applications are invalid.

¹ For example, if a document accompanying Forms 1 or 2 contains the statement "the turnover of the Applicant is 1 billion dollars" and the turnover figure is confidential, the confidential portion should be blanked out from the non-confidential version of the document and square brackets containing the word "CONFIDENTIAL" inserted over the blanked out portion. The non-confidential version of the document will therefore read: "the turnover of the Applicant is [CONFIDENTIAL] dollars".

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- 3.2 The Applicant has a continuing obligation to inform ~~the~~ CCS of any material changes in the information contained in the application which may occur after the application has been made.

Removal of Immunity

- 3.3 Applicants are also reminded that any immunity conferred by guidance of the nature specified in section 45(1) or 52(1) of the Act may be removed if:
- a. ~~the~~ CCS has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance;
 - b. ~~the~~ CCS has reasonable grounds for suspecting that the information on which it based its guidance was incomplete, false or misleading in a material particular;
 - c. a complaint about the agreement or conduct has been made to ~~the~~ CCS (in the case of agreements, the complaint is to come from a person who is not a party to the agreement); or
 - d. (in the case of agreements) one of the parties to the agreement applies to ~~the~~ CCS for a decision in respect of the agreement, under section 44 of the Act.
- 3.4 Similarly, any immunity conferred by a decision of the nature specified in sections 46(1) or 53(1) of the Act may be removed if:
- a. ~~the~~ CCS has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
 - b. ~~the~~ CCS has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.

Confidentiality & Secrecy

- 3.5 The non-confidential versions of Forms 1 and 2 and their supporting documents, or any information within them, may be shared with third parties, whether by publishing on the CCS website for public viewing or through other means.
- 3.6 ~~The~~ CCS may seek further clarification as to the reasons supplied in the explanatory annex justifying the claim of confidentiality. If ~~the~~ CCS rejects the reasons given with regard to any item of information, it may require the Applicant to re-submit the non-confidential version of the relevant Form or document with that item of information included (“the appropriately revised non-confidential version”), by such deadline as ~~the~~ CCS considers appropriate. If the Applicant is unable to revert with the appropriately-revised non-confidential version within the deadline, the Applicant should submit a request for extension of time to ~~the~~ CCS as soon as possible. If the Applicant fails to revert with the appropriately-revised non-confidential version within the

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timeframe (or within any extensions granted), ~~the~~ CCS may determine the Application by not giving guidance or a decision.

- 3.7 Similarly, any subsequent correspondence and documents sent by the Applicant to ~~the~~ CCS should be accompanied by a non-confidential version, except those where the Applicant is of the view that they can be freely disclosed in their entirety. ~~The~~ CCS may share the non-confidential versions of such correspondence or documents, or any information within them, with third parties, either by publishing them on the CCS website or through other means. ~~Applicants should extend the treatment for confidential information in paragraph 3.5 to all such correspondence or documents.~~ Paragraph 3.6 also applies to such subsequent correspondence or documents.
- 3.8 Even if ~~the~~ CCS allows any item of information to be treated as confidential, it may, at any subsequent point in time, require the Applicant to re-submit the non-confidential version of the relevant Form, document or correspondence with that item of information included. This may happen when it becomes necessary for ~~the~~ CCS to share the information with third parties in order to properly assess the notification. Under such circumstances, paragraph 3.6 will apply.
- 3.9 Section 89 of the Act imposes a general duty on ~~the~~ CCS to preserve secrecy, although there are a number of exceptions to this duty. For example, communication is allowed where, subject to certain considerations,² disclosure is needed to enable the CCS to give effect to certain provisions of the Act.

Timeframe for Completion by the CCS

- 3.10 The time taken by ~~the~~ CCS to furnish guidance or decisions will depend very much on the nature and complexity of the application, as well as on the volume of applications which have been filed at that point in time.

4 INSTRUCTIONS ON HOW TO COMPLETE FORM 1

- 4.1 The following paragraphs ~~explain how~~highlight what Applicants ~~are to complete~~should take note of when completing Form 1.

² Section 89(6) of the Act states that before disclosing any information in order to give effect to any provision of the Act, the Commission shall have regard to:

- a. the need for excluding, so far as is practicable, information the disclosure of which would in its opinion be contrary to the public interest;
- b. the need for excluding, so far as is practicable,
 - i. commercial information the disclosure of which would, or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates; or
 - ii. information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interest; and
- c. the extent to which the disclosure is necessary for the purposes for which the Commission is proposing to make the disclosure.

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~~**Information about the Undertaking(s) Submitting the Application and the Other Parties to the Agreement**~~

- ~~4.2 For the purposes of Forms 1 and 2 and of these guidelines, the term “agreement” bears the same meaning as that ascribed to it by section 34(4) of the Act.~~
- ~~4.3 For the purposes of Forms 1 and 2 and of these guidelines, the term “undertaking” bears the same meaning as that ascribed to it by section 2 of the Act.~~
- ~~4.4 The submission of a joint application on behalf of two or more parties to the agreement or conduct is encouraged as it is useful to have the views of all the parties concerned at the same time. Where a joint application has been submitted, the Applicants are required to appoint a joint representative to act on behalf of all the Applicants, unless good reason is furnished as to why joint representation is not practicable.~~

Purpose of the Application

- ~~4.54.2 Applicants are~~Applicants are required to specify whether the application is made in relation to the section 34 prohibition or the section 47 prohibition. Applicants are also required to show why they consider that the notified agreement or conduct raises questions of compatibility with the Act’s prohibitions.
- ~~4.6 The section 34 prohibition does not apply unless the agreement has an appreciable adverse effect on competition in Singapore and lacks any net economic benefit. Hence, Applicants should demonstrate why an agreement does not have an appreciable effect on competition in Singapore or why it has net economic benefit. Certain agreements, such as those relating to price fixing, will usually be regarded as having an appreciable adverse effect. Further information on what may amount to an appreciable effect can be found in the relevant portions of the *CCS Guidelines on the Section 34 Prohibition*.~~
- ~~4.7 In determining whether a net economic benefit exists, the CCS will consider whether the agreement contributes to improving production or distribution or promoting technical or economic progress in a way which does not impose restrictions which are not indispensable to the attainment of those objectives and which would not afford the possibility of eliminating competition substantially. It would be helpful if Applicants could give details of any studies or documents which have been produced to assess the feasibility of operation of the agreement and the benefits likely to result from the agreement. Applicants should also state whether these studies or documents give estimates of the savings and efficiencies likely to result and produce a copy of these studies or documents.~~
- ~~4.84.3~~Where there is genuine uncertainty about whether an agreement or conduct is likely to infringe the section 34 or section 47 prohibitions, Applicants may wish to include arguments both for and against a finding that an infringement exists

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(in the case of notifications for decision) or is likely to exist (in the case of notifications for guidance).

4.94.4 It would be helpful if Applicants could refer in their application to any principles laid down by any foreign jurisdictions which they consider may be of relevance to the determination of their application.

General Information and Contact Details of the Applicant and all Parties to the Agreement or Conduct

4.5 For the purposes of Forms 1 and 2 and of these guidelines, the term “agreement” bears the same meaning as that ascribed to it by section 34(4) of the Act.

4.6 The submission of a joint application on behalf of two or more parties to the agreement or conduct is encouraged as it is useful to have the views of all the parties concerned at the same time. Where a joint application has been submitted, the Applicants are required to appoint a joint representative to act on behalf of all the Applicants, unless good reason is furnished as to why joint representation is not practicable.

The Relevant Product and Geographic Markets

4.7 In supplying and explaining the Applicants’ views on the definition of the relevant product and geographic market(s), Applicants are reminded to refer to the relevant portions of the *CCS Guidelines on Market Definition*. It would be helpful if Applicants could refer to the alternative market definitions and explain why their preferred definition might be more appropriate than another.

4.8 Applicants are also required to provide details of the level of concentration in the relevant markets.

Details of the Agreement or Conduct

4.104.9 The form requires Applicants to state the types of provisions in the agreement, or aspects of the conduct, which may restrict the parties in their freedom to take independent commercial decisions or to act on those decisions. In this regard, Applicants should refer to the relevant parts of the *CCS Guidelines on the Section 34 Prohibition* for examples of anti-competitive agreements, as well as to the relevant parts of the *CCS Guidelines on the Section 47 Prohibition* for examples of conduct that amounts to an abuse of a dominant position.

Financial Information ~~on~~ of the Parties to the Agreement or Conduct ~~and the Group to Which They Belong~~

4.114.10 Applicants are requested to submit information on their turnover. In this respect, please provide copies of annual reports and accounts. These must be copies of the most recent audited annual reports and accounts unless the undertakings concerned are exempted from the requirement to file audited

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accounts, in which case, management accounts should be provided where available.

Exemptions and Exclusions

4.11 There is no need to notify agreements which fall within the categories of agreements specified in a block exemption order. In supplying and explaining why there is uncertainty as to whether the agreement is covered by a block exemption, Applicants are reminded to refer to the relevant portion of the CCS Guidelines on the Section 34 Prohibition, in particular, the section on "Block Exemptions".

4.12 The provision for block exemptions does not apply to the section 47 prohibition.

4.13 By virtue of sections 35 and 48 of the Act, the section 34 and section 47 prohibitions respectively do not apply to matters specified in the Third Schedule to the Act ("the Third Schedule"). The section on "Exclusions" and Annex C of the CCS Guidelines on the Section 34 Prohibition, and the section on "Exclusions" and Annex D of the CCS Guidelines on the Section 47 Prohibition, further set out the analytical framework on how CCS will assess if the criteria for exclusion under the Third Schedule are met.

Supporting Documents

4.124.14 Supporting documents submitted as part of Form 1 must either be originals or certified copies. Documents, not in the English language, must be accompanied by a translation certified by a court interpreter or a translation verified by the affidavit of a qualified translator.

5 INSTRUCTIONS ON HOW TO COMPLETE FORM 2

5.1 The following paragraphs ~~explain how~~highlight what Applicants ~~are to complete~~should take note of when completing Form 2, should Form 2 be required by ~~the~~ CCS, or if Applicants choose to submit Form 2 themselves.

The Relevant Product and Geographic Markets ~~Geographical Market(s)~~

~~5.2 In supplying and explaining the Applicant's views on the definition of the relevant product and geographic market, Form 2 requires Applicants are reminded to refer to the relevant portions of the CCS Guidelines on Market Definition.~~

~~5.3 It would be helpful if Applicants could refer to the alternative market definitions and explain why their preferred definition might be more appropriate than another.~~

~~5.4 Applicants are required to provide further details of the level of concentration in the markets. Applicants are also required to give their best estimate of the nature and extent of vertical integration (i.e. the degree to which undertakings~~

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~~operate at more than one level of the production process, combining, for example, production, distribution or retail).~~

The Position of the Undertakings in the Relevant Product Markets

~~5.55.2 Applicants are required to furnish information relating to the parties to the agreement or conduct and other undertakings belonging to the same group of undertakings relation to the relevant product and geographical market(s) such as the parties to the agreement or conduct. Applicants should include all the undertakings identified goods or services that might be considered as being in the relevant group. close substitutes from both the customer and supplier perspectives.~~

~~5.65.3 Applicants also have to provide estimates of the total market size and market share. Market shares may be calculated on the basis of value or volume. However, if market share calculated by the alternative method would differ by 5 per cent or more, then both sets of figures should be provided.~~

~~5.75.4 It should be reiterated here that an agreement will only infringe the section 34 prohibition if it has as its object or effect an appreciable prevention, restriction or distortion of competition in Singapore and lacks net economic benefit. Please see paragraph 4.6.~~

~~5.85.5 The market share estimates given by the parties will also be taken into account in assessing whether an undertaking has a dominant position within the meaning of section 47 of the Act. Applicants should refer to the relevant parts of the *CCS Guidelines on the Section 47 Prohibition* for guidance on what constitutes dominance.~~

Market Entry and Potential Competition in the Relevant Product and Geographic Markets

Barriers to entry

~~5.95.6 Form 2 also requests Applicants to describe the barriers to entry which exist in the relevant product and geographic markets identified. Entry may be influenced by factors such as the requirements of government, the availability of raw materials, the length of contracts between an undertaking and its suppliers and customers etc. Applicants should refer to the relevant parts of the *CCS Guidelines on the Section 47 Prohibition* for more ~~detail~~details on entry barriers.~~

Competitors

~~5.7 Applicants are required to identify the five largest competitors, to describe and give details on the nature of competition and the best estimates of the competitors' market shares in the goods or services. Applicants are also required to provide details on bidding markets, if applicable.~~

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Countervailing buyer power

5.8 In identifying the five main customers of the parties, the Applicants are further required to provide details on the extent to which the Applicants would be constrained by the conduct of the customers.

Exclusions

5.9 Applicants are required to describe any vertical relationships between the parties and the nature and extent of such vertical integration (i.e. the degree to which undertakings operate at more than one level of the production process, combining, for example, production, distribution or retail).

5.10 Applicants are also required to describe any net economic benefits arising from the agreement or conduct and explain whether these benefits are indispensable to attaining the said benefits.