



PROPOSED AMENDMENTS TO THE COMPETITION REGIME OF SINGAPORE

A CCS Consultation

25 September 2015

FOREWORD

Introduction

The Competition Commission of Singapore (“CCS”) has reviewed the CCS Guidelines. Certain amendments have been proposed to the CCS Guidelines and CCS now seeks comments and views of the proposed amendments.

This document includes an overview of the proposed amendments and questions for interested parties to reflect and respond to. The draft guidelines containing the proposed amendments can be accessed through the links in Annexes below.

Responding to this consultation

CCS welcomes responses to this consultation draft from all sources, including law firms, the business community, government departments as well as members of the public. Where appropriate, persons responding to the consultation should give an indication of the organisation(s) or interests they represent.

The consultation period begins on 25 September 2015 and ends on 6 November 2015.

You may wish to submit your response via our Public Consultation Online Form at <https://www.ccs.gov.sg/public-register-and-consultation/public-consultation/public-consultation-online-form>.

Alternatively, you may also write or email your response to:

- (i) **Post/Courier:**
Competition Commission of Singapore
45 Maxwell Road
#09-01, The URA Centre
Singapore 069118
Attention: Mr. Lee Jwee Nguan, Director (Legal & Enforcement)



- (ii) **Email:** ccs_feedback@ccs.gov.sg

It would be useful if persons that submit responses could organise their submissions as follows:

- (i) Cover page
- (ii) Table of contents
- (iii) Statement of interest
- (iv) Summary of major points
- (v) Comments and responses to questions
- (vi) Conclusion

Supporting material may be annexed. All submissions should be clearly and concisely written and should provide a reasoned explanation for any proposed revisions. Where feasible, respondents should identify the specific paragraph of the proposed fast track procedure on which they are commenting.

In the interest of transparency, CCS proposes to publish a summary of the key comments to this consultation. Respondents may request that any part of the submission that they believe to be proprietary, confidential or commercially sensitive be kept confidential. Any such information should be clearly marked. Where CCS agrees with the request, it will consider the information but will not publicly disclose it. If CCS rejects the request, it will not consider the information and will return the information to the submitting party.

Next steps

Following this consultation, CCS will review the responses provided and take them into account in considering the amendments to be made to the guidelines.



Annexes

- Annex A : Review of the CCS Guidelines on the Substantive Assessment of Mergers
- Annex B : Fast Track Procedure for Section 34 and Section 47 Cases
- Annex C : Review of the CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity
- Annex D : Review of the CCS Guidelines on the Section 34 Prohibition
- Annex E : Review of the CCS Guidelines on the Section 47 Prohibition
- Annex F : Review of the CCS Guidelines on Filing Notifications for guidance or Decision with respect to the Section 34 Prohibition and Section 47 Prohibition
- Annex G : Review of the CCS Guidelines on the Appropriate Amount of Penalty; the CCS Guidelines on the Powers of Investigation; and the CCS Guidelines on Enforcement
- Annex H : Review of the CCS Guidelines on the Major Prohibitions

PROPOSED CHANGES TO THE CCS GUIDELINES ON THE SUBSTANTIVE ASSESSMENT OF MERGERS

Overview of main changes

In order to strike the balance between reviewing potentially anti-competitive mergers and minimise regulatory costs through unnecessary merger filings, CCS administers a voluntary merger regime. This means that businesses can conduct their own assessment as to whether their merger or acquisition is likely to raise competition issues.

As part of efforts to continually streamline the merger filing process, the *CCS Guidelines on Merger Procedures* was revised in 2012 to include new initiatives such as confidential advice for mergers as well as a “safe harbour” for small and medium enterprises below a certain turnover threshold.

The purpose of the *CCS Guidelines on the Substantive Assessment of Mergers* (the “SAM Guidelines”) seeks to provide as much guidance as possible to businesses to help them conduct their own self-assessment.

To date, CCS has reviewed 49 mergers (with one merger notification pending CCS’s decision at the time when this document was prepared). As such, CCS is of view that it is timely to revisit and revise the SAM Guidelines, taking into consideration CCS’s experience in the previous merger assessments and feedback from practitioners in the course of these assessments, in order to better inform businesses and practitioners on CCS’s merger assessment framework for the purpose of conducting self-assessments and merger notifications.

CCS proposes changes to the SAM Guidelines to better reflect CCS’s current practice of assessing mergers and acquisitions and to take into consideration developments internationally. The main changes are:

- i. Clarify when the acquisition of minority shareholdings may lead to decisive influence, resulting in a reviewable merger.
- ii. Clarify what is meant by a “substantial” lessening of competition in assessing a merger.
- iii. Explain the different types of market power that a merger or acquisition may create or enhance.
- iv. Explain the factors considered when assessing a merger or acquisition between buyers.
- v. Explain that the approach for assessing vertical mergers (where merger parties operate on different levels of the supply chain) is the same as that for assessing horizontal mergers (where merger parties operate in the same level of the supply chain), i.e. CCS will develop theories of harm,

identify relevant markets and will assess the competition issues against a relevant counterfactual.

- vi. Explain the efficiencies that are considered in assessing whether a merger increases rivalry such that it prevents a substantial lessening of competition occurring.
- vii. Clarify when a merger or acquisition is likely to result in a substantial lessening of competition.
- viii. Clarify what happens when a merger or acquisition results in a substantial lessening of competition, namely the types of efficiencies and remedies that can be considered.

As the number of proposed changes to the SAM Guidelines is significant, changes are not tracked but highlighted. A table setting out the summary of some of the major proposed changes to the current SAM Guidelines is attached to this annex along with the draft revised SAM Guidelines.

[Draft CCS Guidelines on the Substantive Assessment of Mergers](#)

Questions for Reflection and Consultation

The objective of the changes to the SAM Guidelines is to provide user-friendly guidelines for businesses undertaking a self-assessment of their merger and to assist businesses in providing feedback to CCS on mergers and acquisitions that affect their businesses.

1. Do you consider the revised SAM Guidelines to be user-friendly?
2. Do the revised SAM Guidelines better assist in your understanding of when a merger or acquisition would need to be notified to CCS?
3. Do the revised SAM Guidelines better assist in your understanding of when a merger or acquisition could result in a substantial lessening of competition?
4. Do the revised SAM Guidelines better assist in your understanding when and the types of economic efficiencies CCS may consider in assessing a merger or acquisition?
5. In relation to CCS's assessment of mergers and acquisitions, are there any areas where you think CCS should provide further clarification or consider additional changes?

Do you have any further feedback on the proposed changes to the SAM Guidelines?

INTRODUCTION OF NEW FAST TRACK PROCEDURE FOR SECTION 34 AND SECTION 47 CASES

Overview of the new procedure

In administering and enforcing the Act, CCS has the power to investigate anti-competitive activities and make directions to bring the anti-competitive activities to an end, including the imposition of financial penalties on infringing parties.

When the investigations reveal that there is or has been an infringement of the Act, CCS will issue the infringing party(s) with a Proposed Infringement Decision (“PID”). CCS then allows the recipient(s) of the PID a reasonable opportunity to inspect the documents and evidence in CCS’s file and make written representations. Recipients of the PID may also request a meeting with CCS for the purpose of making oral representations to elaborate on the written representations made. After considering the written and/or oral representations (if any) and the conduct of any further investigations (if necessary), CCS decides whether to issue an Infringement Decision (“ID”).

CCS is exploring the possible benefits of introducing a fast track procedure for appropriate cases with a view to increase the efficiency of CCS’s investigation and enforcement process and shorten the time taken to issue a PID/ID.

Essentially, a fast track procedure will enable undertakings under investigation in a case to enter into an agreement with CCS where they will admit their liability by acknowledging their participation in an anti-competitive activity and in return, they will receive a reduction on the financial penalty to be imposed. Undertakings will also benefit from a shorter, expedited investigative timeframe. In drafting its proposal, CCS has drawn on the experience of other jurisdictions that have introduced similar procedures such as the European Commission and the Competition Markets Authority of the United Kingdom.

Key features of the proposed fast track procedure are as follow:

- i. The fast track procedure initiated by CCS will be available in appropriate cases that will be determined by CCS on a case by case basis.
- ii. Parties under investigations in an appropriate case and who wish to benefit from the fast track procedure will have to admit their liability in having participated in an anti-competitive activity.
- iii. A reduction of 10% in the amount of financial penalty that will otherwise be imposed according to the *CCS Guidelines on the Appropriate Amount of Penalty*. This reduction will be applied at the end of the penalties calculation and will be in addition to the leniency reduction conferred on an undertaking if it satisfies the requirements for lenient treatment set out in the *CCS Guidelines on Lenient Treatment for*

Undertakings Coming Forward with Information in Cartel Activity.

- iv. CCS will initiate the fast track procedure either before or after issuing a PID but not after an ID has been issued.
- v. Parties under investigations are under no obligation to agree to the fast track procedure initiated by CCS. To allow parties under investigations to determine whether they wish the fast track procedure to take effect, discussion will take place with CCS regarding the scope and gravity of the conduct, including identifying the infringements upon which CCS contemplates making a decision, how the reduction in financial penalty for fast track procedure will be applied; and the possible range and quantum of financial penalties calculated according to *CCS Guidelines on the Appropriate Amount of Penalty*.
- vi. If parties under investigations agree to the fast track procedure applying, parties will send a Fast Track Procedure Submission to CCS and enter into a Fast Track Agreement.
- vii. CCS envisages that in general, the fast track procedure will be applied only when all parties under investigations in the appropriate case agree to the fast track procedure.

[Draft CCS Practice Statement on the Fast Track Procedure for Section 34 and Section 47 Cases](#)

Questions for Reflection and Consultation

In addition to inviting any comments on the proposed fast track procedure, specific questions for the public consultation are set out below. CCS also welcomes suggestions on how to improve the proposed fast track procedure.

1. Do you think CCS should introduce a fast track procedure for appropriate cases?
2. Should CCS make the fast track procedure available for both section 34 and section 47 investigation cases? Or should it only be applied to section 34 cartel investigation cases only? Please give reasons explaining your view.
3. What criteria do you think should be applied for CCS to determine cases that are “appropriate” for the fast track procedure?
4. What information do you think is necessary for parties to determine whether they wish to go through the fast track procedure?

ANNEX B

5. At which stage of the investigation and enforcement should CCS initiate the fast track procedure for parties under investigation? Please give reasons explaining your view.
6. Do you think CCS should apply a fast track procedure even where all the parties concerned do not agree to the fast track procedure? Please give reasons explaining your view.
7. Do you think a reduction of 10% in financial penalties is sufficient incentive for parties to want a fast track procedure to apply? Please give reasons and state what you believe the appropriate level of reduction in penalties for cases under the fast track procedure should be.

Please provide any other comments you have on the proposed fast track procedure.

PROPOSED CHANGES TO THE CCS GUIDELINES ON LENIENT TREATMENT FOR UNDERTAKINGS COMING FORWARD WITH INFORMATION ON CARTEL ACTIVITY

Overview of main changes

The proposed changes mainly concern procedural steps to outline in greater detail what an applicant can expect in applying for immunity or leniency. The changes are to make the process of applying for leniency clearer and more efficient. The changes will provide added certainty to applicants on what they can expect and what will be required from them by CCS during the process.

The key proposed changes reflected in the draft revised *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with information on Cartel Activity* (“Leniency Guidelines”) are both substantive and procedural. The proposed changes in the draft revised guidelines are marked out in blue.

Substantive Changes

- i. Under the current Leniency Guidelines, coercers and initiators of cartel activity are not eligible for immunity or leniency. The draft revised Leniency Guidelines enable coercers and initiators of a cartel activity to apply for leniency and receive a reduction of financial penalty of up to 50%. This is to encourage and incentivise all undertakings that are participants in a cartel to come forward and seek leniency.
- ii. The draft revised Leniency Guidelines specify that all leniency applicants must unconditionally admit the conduct for which leniency is sought and detail the extent to which this conduct had an impact in Singapore by preventing, restricting or distorting competition.
- iii. The draft revised Leniency Guidelines specify that CCS requires a leniency applicant to grant a waiver of confidentiality for CCS to communicate with other competition authorities in other jurisdictions where the applicant has likewise sought leniency, as well as any other regulatory authority for which it has informed of the conduct.

Procedural Changes

The draft revised Leniency Guidelines provide further guidance and clarity on the process when applying for leniency and the conditions under which leniency will be granted. Changes are proposed for: applying for a marker; the conditions required for perfecting a marker; grant of conditional immunity and conditional leniency; and how information leniency applicants will be retained and used by CCS. Specifically:

- i. A request for a marker must be accompanied by information from the applicant defining the market(s) in Singapore affected by the cartel activity for which immunity or leniency is sought and must detail the

impact of the conduct on the identified relevant market(s) in Singapore.

- ii. Once a marker has been granted, CCS will stipulate a deadline for the leniency applicant to perfect a marker. Extensions of time will be considered on a case by case basis and will be at CCS's discretion.
- iii. The threshold of the information required from an applicant to perfect a marker is that the information is sufficient to allow CCS to exercise its formal powers of investigation.
- iv. Where a leniency applicant has perfected its marker for full immunity or leniency from financial penalties of up to 100%:
 - a. CCS will issue a letter to the applicant confirming the perfection of the marker and the grant of conditional immunity or conditional leniency. The letter will outline what conditions the applicant must fulfil before immunity or leniency is finalised. Conditional immunity or conditional leniency will be revoked if the applicant fails to comply with the obligations stated therein.
 - b. The grant of total immunity or leniency from financial penalties of up to 100% will occur when a Provisional Infringement Decision is issued.
- v. In the event that the application for leniency is rejected or withdrawn, a leniency applicant may withdraw the information submitted for the purposes of its application or still provide the information to CCS and request that CCS consider a mitigating reduction in financial penalties.

The draft revised Leniency Guidelines also sets out CCS's procedure regarding oral corporate statements provided as part of the leniency application. In certain instances CCS may require applicants to furnish oral corporate statements as a document to CCS. Leniency applicants will also generally be required to provide CCS with material that is in the public domain or is general market information in a document.

[Draft CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity](#)

Questions for Reflection and Consultation

In addition to inviting any comments the proposed changes in the draft revised Leniency Guidelines, specific questions for the public consultation are set out below.

1. Do you consider the proposed changes to the Leniency Guidelines useful in enhancing the overall certainty, efficiency and clarity of the leniency application process? If not, please explain why and outline what you consider might be a better approach.

2. Do you consider that the proposed leniency reduction of up to 50% of financial penalties available to coercers and initiators of a cartel activity is appropriate, too high or too low? Please provide reasons for your answer.
3. Do you think that the requirement for leniency applicants to admit the cartel activity in which they were engaged will discourage leniency applicants from coming forward? Please provide reasons for your views.
4. What are your views of CCS's processes in relation to oral corporate statements and documents provided by a leniency applicant?
5. Are the conditions, requirements and process of obtaining a marker and its subsequent perfection clear? If not, where and how do you think it can be improved?
6. What are your views on the ability of a leniency applicant to withdraw their information in the event the leniency application is rejected or withdrawn?

Are there any areas where you think CCS should provide further clarification or consider additional changes?

PROPOSED CHANGES TO THE CCS GUIDELINES ON THE SECTION 34 PROHIBITION

Overview of main changes

The proposed changes mainly concern setting out with greater clarity the various concepts and terms used in assessing anti-competitive agreements, as well as to align the Guidelines to the legal position adopted in other leading competition jurisdictions. The main changes to the *CCS Guidelines on the Section 34 Prohibition* are:

Paragraphs 2.12, 2.13, 2.14 and 2.19 of the draft revised *CCS Guidelines on the Section 34 Prohibition* (“draft revised *Guidelines*”)

- i. To provide an explanation of the key elements of the definition of ‘vertical agreements’ and to clarify that parties being in a vertical relationship with each other does not preclude the finding of a horizontal agreement or concerted practice between them;

Paragraphs 2.22, 2.24, 2.25, and 3.2 of the draft revised *Guidelines*

- ii. To set out the disjunctive nature of the object/effect restriction on competition. The amendments specifies that apart from the hardcore four type agreements (price-fixing, bid-rigging, market sharing or output limitations), once an agreement is found to have as its object the restriction of competition, it will also be regarded as restrictive of competition to an appreciable extent and consequently, there is no need to prove appreciable adverse effects on competition. The draft revised Guidelines will also clarify that in general, any provision and/or exchange of information, including price or non-price information, with the objective of restricting competition on the market will be considered as a restriction of competition by object;

Paragraph 2.23 and footnote 3 of the draft revised *Guidelines*

- iii. To amend the definition of a small or medium sized enterprise (“SME”) to reflect the new definition of SME by SPRING Singapore and to provide that while a SME is unlikely to be capable of conduct that has an appreciable adverse effect on competition in Singapore, CCS will assess each case on its own facts and merits;

Paragraphs 3.20 to 3.22 and 3.25 of the draft revised *Guidelines*

- iv. To clarify that CCS will undertake a competitive assessment of information sharing by undertakings, including the position that a unilateral disclosure of strategic information may in itself be indicative of an agreement or concerted practice, and that parties receiving the information will be presumed to be liable unless they distance themselves with sufficient clarity. Further, the draft revised guidelines

highlight that any information exchange with the objective of restricting competition on the market will be treated as a restriction of competition by object; and

Paragraph 3.5 of the draft revised *Guidelines*

- v. To provide that in general, price recommendations by trade or professional associations may be harmful to competition because they create focal points for prices to converge, restrict independent pricing decisions and signal to market players what their competitors are likely to charge.

The proposed changes in the draft revised guidelines are marked out in blue.

[Draft CCS Guidelines on the Section 34 Prohibition](#)

Questions for Reflection and Consultation

The amendments in the draft revised Guidelines have been made to clarify the following objectives:

- i. the interpretation of the meaning vertical agreements;
- ii. unilateral disclosure of strategic information may in itself be indicative of an agreement or concerted practice;
- iii. any agreement which has as its object the restriction of competition will be regarded as restrictive of competition to an appreciable extent;
- iv. in general, any provision and/or exchange of (price or non-price) information with the objective of restricting competition on the market will be considered as a restriction of competition by object; and
- v. in general, price recommendations by trade or professional associations may be harmful to competition.

Do you consider that these objectives have been met? If not, please explain why and outline what might be a better approach.

In relation to anti-competitive agreements, are there any other areas where you are of the view that CCS should provide further clarification or consider additional changes?

PROPOSED CHANGES TO THE CCS GUIDELINES ON THE SECTION 47 PROHIBITION

Overview of main changes

The proposed changes mainly concern setting out with greater clarity the various concepts and terms used in assessing the abuse of a dominant position. The main changes to the *CCS Guidelines on the Section 47 Prohibition* are:

- i. Amending paragraph 3.8 to highlight that a finding of dominance can be established at a market share below the indicative threshold of 60%.
- ii. Amending paragraph 3.9 on the definition of a small or medium sized enterprise (“SME”) to reflect the new definition of SME by SPRING Singapore and to provide that subject to CCS’s assessment, in general, an undertaking which is a SME is unlikely to be capable of conduct that has an appreciable adverse effect on competition in Singapore.
- iii. Deleting paragraphs 3.16 and 3.17 and replacing them with new paragraphs 3.16 to 3.21 on collective dominance to clarify what constitutes a collective entity and a collective dominant position.
- iv. Amending paragraph 4.4 to clarify the legal test for section 47 cases, in light of the Competition Appeal Board’s (“CAB’s”) decision in the *SISTIC* appeal. Essentially, an abuse will be established where CCS demonstrates that a practice has, or is likely to have, an adverse effect on the process of competition.¹
- v. Inserting a new paragraph 4.8 to explain the role of counterfactuals in the effects-based assessment of section 47 cases.
- vi. Inserting new paragraphs 8.2 and 8.3 on CCS’s considerations for remedial actions in abuse of dominance cases.

The proposed changes in the draft revised guidelines are marked out in blue.

[Draft CCS Guidelines on the Section 47 Prohibition](#)

Questions for Reflection and Consultation

1. In relation to abuse of dominance, are there any areas where you think CCS should provide further clarification or consider additional changes?
2. In relation to paragraph 3.8, is a 60% indicative threshold for dominance suitable for companies operating in Singapore?

¹ *Re Abuse of a Dominant Position by SISTIC.com Pte Ltd* [2012] 1 SGCAB 1 at [290] to [291].

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

Overview of main changes

Apart from a textual redraft, the main changes reflected in the draft revised CCS Guidelines on Filing Notifications for Guidance or Decision with respect to the Section 34 Prohibition and Section 47 Prohibition (“Notification Guidelines”) are:

- i. The revised Form 1 Part 2 and Form 2 Part 2 simplify the notification process under Form 1 and require more substantial information to be provided under Form 2 where circumstances of the notification necessitate the filing of Form 2;
- ii. The revised Form 1 Part 2 requires brief information on market definition and market shares;
- iii. The revised Form 2 Part 2 requires the provision of information necessary for an effects analysis, including whether an agreement would bring about a net economic benefit; and
- iv. The revised Notification Guidelines, Forms 1 and 2 clarify that where information has been submitted but which is deemed by the Commission to be more than that required in Form 1, CCS may require such information to be submitted with Form 2, together with any supporting documentation and payment of further fees in accordance with Regulation 9 of the Competition (Notification) Regulations 2007.

The proposed changes in the main text of the draft revised guidelines are marked out in blue. However, as the proposed changes to Forms 1 and 2 are significant, to facilitate ease of reading, the changes have not been marked out but are set out in detail in the respective tables following each draft revised Form.

[Draft CCS Guidelines on Filing Notifications for Guidance or Decision with Respect to the Section 34 Prohibition and the Section 47 Prohibition](#)

[Draft Form 1](#)

[Draft Form 2](#)

Questions for Reflection and Consultation

In addition to inviting any comments on the current Notification Guidelines and the proposed changes in the revised Notification Guidelines, specific questions for consultees are set out below:

1. What are your views on the information requirements in the revised Forms 1 and 2? Please provide details if you consider that some

information requested for in Form 1 and/or Form 2 may not be relevant.

2. Are there any areas where you think CCS should provide further clarification or consider additional changes?

REVIEW OF THE CCS GUIDELINES ON THE APPROPRIATE AMOUNT OF PENALTY; CCS GUIDELINES ON THE POWERS OF INVESTIGATION; AND CCS GUIDELINES ON ENFORCEMENT

Overview of main changes

Amendments to the CCS Guidelines on the Appropriate Amount of Penalty

CCS proposes changes to the *CCS Guidelines on the Appropriate Amount of Penalty* to reflect the 6-step process adopted by CCS for the purposes of calculating financial penalties. The main changes are:

- i. Amending Part 2 to clarify the calculation of financial penalties as a 6-step process.
- ii. Providing at the revised paragraph 2.7 that where an undertaking is unable or refuses to provide CCS with its relevant turnover or is suspected of providing CCS with very low relevant turnover, CCS will attribute a proportionate relevant turnover to that undertaking based on a proxy formula.
- iii. Clarifying at the revised paragraphs 2.12, 2.13 and 2.14 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. However, CCS will treat as aggravating, at Step 3, every bid-rigging infringement that the undertaking participates after the first infringement.
- iv. Providing at the revised paragraph 2.14 that unreasonable failure by an undertaking to respond to a request for financial information or providing incomplete information may be treated as an aggravating factor taken into account in the calibration of penalties at step 3.
- v. Clarifying at the revised paragraphs 2.17 and 2.18 that CCS may impose an uplift to the financial penalty calculated, at Step 4, to ensure its policy objectives are achieved.
- vi. Providing at the revised paragraphs 2.21 and 2.22 that at step 6, CCS may take into account leniency and immunity reductions as well as discounts which may be applicable under the new fast-track procedure.

Amendments to the CCS Guidelines on the Powers of Investigation and CCS Guidelines on Enforcement

CCS proposes minor changes to paragraphs 2.1, 2.4 and 5.4 of the *CCS Guidelines on the Powers of Investigation* and paragraphs 1.1 and 1.3 of the *CCS Guidelines on Enforcement*. These changes reflect that CCS may exercise its powers of investigation and its powers of enforcements in respect of the Section 54 Prohibition, which is to be read together with the *CCS Guidelines on Merger Procedures 2012*.

The proposed changes in the draft revised guidelines are marked out in blue.

[Draft CCS Guidelines on the Appropriate Amount of Penalty; Draft CCS Guidelines on the Powers of Investigation and Draft CCS Guidelines on Enforcement](#)

Questions for Reflection and Consultation

CCS Guidelines on the Appropriate Amount of Penalty

The objective of the changes to the *CCS Guidelines on the Appropriate Amount of Penalty* is to provide transparency and clarity in relation to the manner by which CCS calculates financial penalties.

1. Do you consider that the stated objective has been met? If not, please explain why?
2. In relation to the calculation of financial penalties, are there any areas where you think CCS should provide further clarification or consider additional changes?

CCS Guidelines on the Powers of Investigation and CCS Guidelines on Enforcement

The objective of the changes to the *CCS Guidelines on the Powers of Investigation* and the *CCS Guidelines on Enforcement* is to clarify that CCS may exercise its powers of investigation and its powers of enforcement in respect of the Section 54 Prohibition.

Do you have any feedback on the proposed changes to the *CCS Guidelines on the Powers of Investigation* and the *CCS Guidelines on Enforcement*?

PROPOSED CHANGES TO THE CCS GUIDELINES ON MAJOR PROHIBITIONS

Overview of main changes

The *CCS Guidelines on the Major Provisions* provide an overview of the main provisions of the Act and makes reference to the various Guidelines published by CCS. In view of the amendments to the various CCS Guidelines, the following consequential amendments have to be made to the *CCS Guidelines on the Major Provisions*:

- i. Paragraph 4.5: Update the definition of small and medium enterprise (“SME”) to reflect the new definition of SME by SPRING Singapore;
- ii. Paragraph 5.8: Highlight that a finding of dominance can be established at a market share below the indicative threshold of 60% and to remove the reference to the need for “strong evidence of dominance” before dominance at a lower market share could be established;
- iii. Paragraph 5.10: State that SMEs are in general unlikely to be capable of conduct that would have an appreciable adverse effect on competition;
- iv. Paragraph 11.4: Insert the additional factor that CCS will take into account when setting the amount of financial penalty, i.e. immunity, leniency reductions and/or fast track procedure discounts.
- v. New Part 13: Insert a brief description the new Fast Track Procedure and reference to the *Guidelines on Fast Track Procedure*.

The proposed changes in the draft revised guidelines are marked out in blue.

[Draft CCS Guidelines on the Major Provisions](#)

Questions for Reflection and Consultation

Does the *CCS Guidelines on the Major Provisions* provide a useful summary on the major prohibitions against anti-competitive activities under the Act?