

# PUBLIC CONSULTATION ON CHANGES TO THE CALCULATION OF FINANCIAL PENALTIES

8 June 2016

## FOREWORD

### Introduction

The Competition Commission of Singapore (“CCS”) conducted public consultations between 25 September 2015 and 27 November 2015 (“First Public Consultation”) on the proposed amendments to the CCS Guidelines, *viz*:

- a. Amendments to CCS Guidelines on indicative dominance threshold by removing the reference to the need for “strong evidence of dominance” to establish dominance at a lower market share (below 60%);
- b. Introduction of a new “Fast Track” Framework and update the existing Leniency Framework.
- c. Provision of more detailed information on the calculation of penalties.

The details are in the consultation paper which is available on the CCS website at this [link](#). Arising from the feedback received from the consultation, CCS is proposing further amendments to the *CCS Guidelines on the Appropriate Amount of Penalty* (“Penalty Guidelines”) and *CCS Guidelines on Enforcement* (“Enforcement Guidelines”). CCS is conducting public consultations for these from 8 June 2016 to 8 July 2016.

### Proposed Changes to Guidelines

During the 2015 public consultations on the proposed amendments to the CCS Guidelines, CCS received feedback that CCS should consider amending the Penalty Guidelines. CCS has considered the feedback and proposes that the calculation of financial penalties be based on the financial year preceding the date when the undertaking’s participation in the infringement ended. This would bring CCS’s practices in line with those in the European Union (“EU”) and the United Kingdom (“UK”).

CCS does not propose to change the financial year used to calculate the statutory maximum penalty, which is prescribed under section 69(4) of the Competition Act Cap. 50B (“the Act”) and determined having regard to the *Competition (Financial Penalties) Order 2007*.

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

## Submission of feedback

CCS welcomes responses 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 8 June 2016 and ends on 8 July 2016.

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. Harikumar Pillay, Director (Enforcement)
  
- (ii) **Email:** [ccs\\_feedback@ccs.gov.sg](mailto: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 revised guidelines 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 CCS Guidelines.

### **Annexes**

Annex A : *CCS Guidelines on the Appropriate Amount of Penalty; and CCS Guidelines on Enforcement*

## REVIEW OF THE CCS GUIDELINES ON THE APPROPRIATE AMOUNT OF PENALTY AND CCS GUIDELINES ON ENFORCEMENT

### Overview of main changes

#### *Amendments to the CCS Guidelines on the Appropriate Amount of Penalty*

In relation to the calculation of the base penalty, or Step 1 of the penalty calculation, CCS has been relying on the relevant turnover of the undertaking's last business year in the financial year preceding the year when the **decision is issued**. CCS now proposes to use the figures from the financial year preceding the year the **infringement ended**, which would align with the practices adopted in the EU and the UK, and also better reflect the actual value accrued as a result of the undertaking's infringing conduct. The main changes are:

- i. Amendments made to paragraphs 2.1, 2.5 and 2.6 and Glossary of the guidelines to clarify that the undertaking's relevant turnover refers to the undertaking's turnover, for the relevant product and geographical markets affected by the infringement, in the financial year preceding the year when the infringement ended.
- ii. Clarifying at revised paragraph 2.19 that the total turnover of the business of the undertaking in Singapore, for the purposes calculating the statutory maximum amount of penalties under section 69(4) of the Act, refers to the applicable turnover for the business year preceding the date on which the decision of the CCS is taken, or if figures are not available for that business year, the previous business year.

For completeness, the proposed changes will mean that relevant turnover will be calculated based on an undertakings' turnover for the business year preceding the year when the infringement ended. Whereas, the statutory maximum penalty will be calculated having regard to an undertakings' turnover for the business year preceding the date on which the infringement decision of CCS is taken.

#### *Amendments to the CCS Guidelines on Enforcement*

CCS has also reviewed its process with regard to the issuance of the PID, and proposes to clarify at paragraph 4.18 of the *CCS Guidelines on Enforcement* that, in line with CCS's practice, the proposed amount of financial penalty will be set out in the PID so as to permit addressees of the PID to make written and oral representations to CCS on matters of liability as well as penalty.

Marked up in blue in the attached Penalty Guidelines and Enforcement Guidelines are the textual changes proposed in CCS's First Public Consultation. Marked up in blue and highlighted in yellow highlight are the proposed textual changes the subject of this second public consultation. CCS is inviting feedback on these yellow highlighted changes.

## Questions for Consultation

### *CCS Guidelines on the Appropriate Amount of Penalty*

The objective of the change to adopt the year preceding the year when the infringement ended for relevant turnover in the *CCS Guidelines on the Appropriate Amount of Penalty* is to better capture the value accrued as a result of the undertaking's infringing conduct. There will also be greater certainty in terms of the financial figures against which a penalty will be calculated since the determination of relevant turnover is no longer dependent on when CCS completes its investigation and moves to issue a PID and where appropriate, subsequently ID. This amendment will also bring the method of penalty calculation in line with the practices of established competition authorities, such as the European Commission and the United Kingdom's Competition and Markets Authority.

CCS proposes that its transitional practice will be to apply the amended *CCS Guidelines on the Appropriate Amount of Penalty*, in relation to the new method of penalty calculation at Step 1, for all cases that move to PID after the date on which the amended *CCS Guidelines on the Appropriate Amount of Penalty* come into force.

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?
3. Do you have any comments on the proposed transitional practice?

### *CCS Guidelines on Enforcement*

The objective of the changes to the *CCS Guidelines on Enforcement* is to clarify the procedure and process in relation to the imposition of a financial penalty in the PID and ID. Such a practice allows addresses of PIDs to make a holistic assessment of whether they should make representations, and if so, the scope of such representations.

1. Do you have any feedback on the proposed changes to the *CCS Guidelines on Enforcement*?