

AMENDMENTS TO THE COMPETITION ACT

27 February 2018

Introduction

Between 21 December 2017 and 11 January 2018, the Competition Commission of Singapore (“CCS”) conducted a public consultation in respect of proposed changes to Competition Act, Cap. 50B (“the Act”). A total of 4 submissions were received from law firms, the business community, and bar associations.

We are grateful to all contributors for their comments, most of which were supportive of the proposed amendments to Act. CCS has reviewed the submissions carefully in finalising the draft Competition (Amendment) Bill. This document outlines the reasons why some suggestions have or have not been adopted.

Proposed changes to empower CCS to accept binding and enforceable commitments for cases involving section 34 and section 47

There were comments and clarifications sought on the process by which CCS would accept commitments under sections 60A(1A) and 60A(1B) of the Act, including suggestions that CCS set out in greater detail within the Act how it intends to give effect to the provisions and how the new provisions will operate. CCS highlights that the proposed amendments are intended as empowering provisions and the operational details, procedures and processes are, or will be set out in the CCS Guidelines. In this regard, CCS highlights that the practice will be similar to how commitments are currently accepted in merger cases, i.e. commitments may be offered by the Parties concerned and accepted by CCS if they adequately address the competition concerns identified by CCS.

More information on CCS’s approach to commitments and remedies can be found in the *CCS Guidelines on the Substantive Assessment of Mergers 2016* and *CCS Guidelines on the Merger Procedures 2012*, which is available on CCS’s website. CCS will consult on and update the relevant Guidelines on the section 34 and section 47 prohibitions to include this in due course.

Proposed amendments to empower CCS to conduct general interviews during inspections and searches under section 64 and section 65

There were comments that the proposed amendments were a significant procedural change insofar as written notices are currently served on each individual to be interviewed, and CCS would have pre-identified the individuals to be interviewed. In doing away with the additional section 63 notices, there were concerns whether the occupants of the premise would be sufficiently informed and equipped to answer the general interview questions and whether CCS officers would go beyond the subject matter or scope of the investigation.

In this regard, CCS has highlighted that the aim of the proposed amendments is to streamline the process of service of the documents during inspections and searches under section 64 or section 65 of the Act. CCS does not in all cases “pre-identify” individuals during inspections and searches and therefore it is not always the case that section 63 notices are served on such pre-identified individuals. In fact, CCS will typically serve a section 63 notice on the occupier of the premises to be inspected or searched, and the occupier would then direct CCS to the

relevant persons who would be able to assist with the investigations. These relevant persons would be subject to the legal obligations under sections 75 to 78 of the Act. In the event that these persons are unable to provide any information requested by CCS, they would be able to rely on the statutory defences under sections 75(2) and 75(3) of the Act. The streamlining and simplification of the interview process during an inspection will allow CCS to conduct its inspections in a more efficient manner, thereby minimising any potential disruption to businesses. The proposed amendments are therefore focused on the form rather than the substance of CCS's investigative powers.

The proposed amendments under section 63(4A) of the Act do not empower CCS officers to conduct interviews with persons on the premises that would go beyond the subject matter or purpose of the investigation. The persons to be interviewed will be persons who appear to be acquainted with the facts and circumstances relevant to the investigation that is being carried out and the subject matter and purpose of each investigation will continue to be set out in the section 64 notice and the warrant issued by the court, pursuant to section 65 of the Act, which has to be served on the occupier of the premises to be inspected or searched.

Further, and as mentioned above, the operational details, procedures and processes are, or will be set out in the CCS Guidelines.

Proposed amendments to allow for confidential advice on anticipated mergers as a statutory process

There were comments seeking greater clarity on whether the advice will still be provided by CCS on a confidential basis as this is not apparent from section 55A of the Act. To address the concern and clarify that there will be no change to existing practice, the word "Confidential" has been inserted to the header of section 55A of the Act. Further, CCS has highlighted that the new provision should be read together with the *CCS Guidelines on Merger Procedures 2012*. There is therefore no change in how CCS intends to administer the procedure for giving advice, which will continue to be provided by CCS on a confidential basis.

There were also comments that the new provision is a departure from CCS's existing policy requiring that information in relation to the anticipated merger is not in the public domain. While section 55A(2) of the Act allows for CCS to give the advice where information about the anticipated merger enters the public domain *after* CCS accepts an application for confidential advice, CCS will only do so if Parties provide good reasons why they are not applying for a decision under section 57 of the Act. Where information about an anticipated merger is already in the public domain, CCS will not entertain requests for confidential advice. There are thus, no changes to CCS's current practices and procedures which, as highlighted earlier, are clearly set out in the CCS Guidelines.

Next steps

The Competition (Amendment) Bill 2018 has been amended to take in some of the suggestions arising from the public consultation and has been read in Parliament for the first time. The Second Reading is scheduled to take place in March 2018.