

PROPOSED AMENDMENTS TO THE COMPETITION REGIME OF SINGAPORE

A CCS Consultation

21 December 2017

FOREWORD

Introduction

1. The Competition Commission of Singapore (“CCS”) has reviewed the Competition Act (Cap. 50) (“the Act”). Amendments have been proposed to some of the provisions and CCS now seeks comments and views on the proposed amendments.
2. This document includes an overview of the key proposed amendments and questions for interested parties to reflect and respond to. These are:
 - (i) Proposed amendments to the Act to empower CCS to accept binding and enforceable commitments for cases involving the section 34 and section 47 prohibitions;
 - (ii) Proposed amendments to the Act to empower CCS to conduct general interviews during inspections and searches under section 64 and section 65; and
 - (iii) Proposed amendments to the Act for CCS to provide confidential advice on anticipated mergers as a statutory process.
3. The draft amendments containing the proposed amendments can be accessed through the links in the Annex below.

Responding to this consultation

4. 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.
5. The consultation period begins on 21 December 2017 and ends on 11 January 2018.
6. 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>.

7. 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
8. 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; and
 - (vi) Conclusion.
9. Supporting material may be annexed. All submissions should be clearly and concisely written and should provide a reasoned explanation for any proposed revisions.
10. 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.

Next steps

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

Annex - Competition Act (Amendment) Bill

PROPOSED CHANGES TO THE COMPETITION ACT TO EMPOWER CCS TO ACCEPT BINDING AND ENFORCEABLE COMMITMENTS FOR CASES INVOLVING SECTION 34 AND SECTION 47

A. Overview of changes

1. During CCS's investigations into potential infringements of sections 34 and 47 of the Act, entities under investigation may come forward to offer voluntary undertakings to address the competition concerns which are identified in the course of these investigations. Should CCS accept these voluntary undertakings, CCS would cease its investigations. However, CCS's recourse for any future breach of these undertakings is to reopen the investigation into the matter, which will be resource intensive and not allow CCS to address the harm to relevant market in a timely manner. This is because the voluntary undertakings, unlike the commitments offered for cases involving section 54 of the Act, are not binding and enforceable.
2. The proposed amendment would enable entities under investigation to offer legally binding commitments to CCS to address the anti-competitive conduct related to sections 34 and 47. Where there is a breach of such commitments, CCS can enforce forthwith the commitments through the Courts under section 85 of the Act.
3. The proposed amendments will be set out in new sections 60A(1A) and 60A(1B), which are intended to address commitments concerning the section 34 prohibition and the section 47 prohibition, respectively. Amendments to sections 44, 51, 57, 58, 60A and 60B are only for internal consistency with the new provisions.
4. The above paragraphs summarise the proposed amendments to the Act. For the full amendments to the Act, please refer to the [Annex for the draft Competition Act \(Amendment\) Bill](#).

B. Questions for Reflection and Consultation

5. The objective of the changes to the Act is to ensure that commitments offered for cases involving section 34 and 47 are made legally binding and enforceable, and also to align with the current position that commitments can be accepted under section 54 of the Act. Specific questions relating to the amendments can be found below.
 - a. Do you consider the new provisions in sections 60A(1A) and 60A(1B) of the Act to be clear?
 - b. Are there any aspects of the proposed amendments to sections 60A(1A) and 60A(1B) of the Act that require further clarification or additional changes to be made by CCS?

- c. Do you have any further feedback on the proposed amendments over and above your responses to Questions 4a and 4b above?

PROPOSED AMENDMENTS TO EMPOWER CCS TO CONDUCT GENERAL INTERVIEWS DURING INSPECTIONS AND SEARCHES UNDER SECTION 64 AND SECTION 65

A. Overview of changes

1. Currently, occupants of a premise that CCS inspects under section 64 or searches under section 65 of the Act are only required to provide an explanation of the documents produced or seized on the premises or information uncovered during the inspections. CCS is not empowered to ask general questions in relation to the same investigation without first serving a written notice under section 63. This limits the efficiency of CCS's investigation as CCS has to serve written notices on each individual to be interviewed.
2. The proposed amendments will enable CCS's evidence-gathering and investigation process to be more efficient and effective. The scope of CCS's questioning will still be limited to the subject matter or purpose of the investigation under section 64 or section 65 of the Act. The proposed amendments do not expand the powers of investigation that CCS is able to exercise prior to the amendments. Rather, the aim of the proposed amendment is to streamline the process of service of the various documents to occupants of a premise and minimise any potential disruption to businesses.
3. The proposed amendments will be made under section 63 of the Act. The new subsections under sections 63(4A) and 63(4B) also sets out in more detail the process how CCS will record statements from persons under investigations. Amendments to sections 64, 65 and 75 are only for internal consistency with the new provisions.
4. The above paragraphs summarise the proposed amendments to the Act. For the full amendments to the Act, please refer to the [Annex for the draft Competition Act \(Amendment\) Bill](#).

B. Questions for Reflection and Consultation

5. Specific questions for the public consultation are set out below.
 - a. Do you consider the amendments to section 63 to be clear?
 - b. Are there any areas in terms of CCS's power to ask general questions under section 63 that require further clarification or changes by CCS?
 - c. Please provide any other comments you have on the proposed amendments, over and above your responses to Questions 4a and 4b above.

PROPOSED AMENDMENTS TO THE ACT TO ALLOW CCS TO PROVIDE CONFIDENTIAL ADVICE ON POTENTIAL MERGERS AS A STATUTORY PROCESS

A. Overview of changes

1. Since 2012, businesses that are considering mergers and are concerned about whether these would infringe the Competition Act have been able to approach CCS for confidential advice. This process is currently provided for under the [CCS Guidelines on Merger Procedures 2012](#).
2. The proposed amendment will formalise the provision of confidential advice to businesses and provide greater assurance for businesses to consider confidential advice when assessing whether a potential merger would infringe the Competition Act. Further information on the process of seeking confidential advice from CCS, including the considerations that CCS will take into account before issuing a confidential advice, is set out in the CCS Guidelines on Merger Procedures 2012.
3. The proposed amendments will be found in a new section 55A of the Act. The new section 55A of the Act should be read together with the CCS Guidelines on Merger Procedures 2012.
4. The above paragraphs summarise the proposed amendments to the Act. For the full amendments to the Act, please refer to the [Annex for the draft Competition Act \(Amendment\) Bill](#).

B. Questions for Reflection and Consultation

5. Specific questions for the public consultation are set out below.
 - a. Do you consider the new section 55A of the Act on provision of confidential advice to be clear?
 - b. Are there any areas in terms of CCS's power to issue confidential advice under section 55A of the Act that require further clarification or changes by CCS?
 - c. Please provide any other comments you have on the proposed amendments, over and above your responses to Questions 4a and 4b above.