



PROPOSED AMENDMENTS TO THE CCCS GUIDELINES

A CCCS Consultation

10 September 2020

FOREWORD

Introduction

The Competition and Consumer Commission of Singapore (“CCCS”) has conducted a review of the CCCS Guidelines and intends to amend six (6) of the Guidelines.¹ The CCCS now seeks comments and views on the proposed amendments.

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

Responding to this consultation

CCCS welcomes responses to this consultation draft from all sources, including law firms, consultancy firms, the business community, government departments as well as members of the public. Persons responding to the consultation should give an indication of any organisation(s) or interest(s) they represent.

The consultation period begins on 10 September 2020 and ends on 8 October 2020.

Please submit your response by way of the Public Consultation Feedback Form linked in each Annex. Alternatively, you may submit your response via email to CCCS_consultation@cccs.gov.sg. Respondents that wish to provide submissions via email on more than one Guideline should ensure that individual submissions are made in relation to each Guideline. Where relevant, respondents should identify, within each submission, the specific paragraph of the draft revised Guideline on which they are providing comments and views.

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

- (i) Cover page
- (ii) Table of contents

¹ Consequential amendments following from the proposed amendments may be made to other CCCS Guidelines.

- (iii) Statement of interest
- (iv) Summary of major points
- (v) Comments and responses to questions
- (vi) Conclusion

All submissions should be clearly and concisely written and should provide a reasoned explanation for any proposed revisions to either the Guidelines or CCCS's proposed amendments to the Guidelines. Any supporting material for the submission sent may be annexed. CCCS invites respondents to include, within their submissions, their views on CCCS's proposed amendments to the Guidelines, including whether they have concerns with the proposed amendments and the reasons for their views.

In the interests of transparency, CCCS 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 confidential or commercially sensitive be kept confidential. Any such information should be clearly marked when sent to CCCS. Where CCCS agrees with the request, it will consider the information but will not publicly disclose it. If CCCS rejects the request, it will not consider the information.

Next steps

Following this consultation, CCCS will review the responses provided and the amendments to be made to the CCCS Guidelines. It is expected that the revised CCCS Guidelines, as well as a document summarising the key comments to this consultation, will be published in due course.

Annexes

- Annex A : Review of the CCCS Guidelines on the Treatment of Intellectual Property Rights
- Annex B : Review of the CCCS Guidelines on Market Definition
- Annex C : Review of the CCCS Guidelines on the Section 47 Prohibition
- Annex D : Review of the CCCS Guidelines on the Substantive Assessment of Mergers
- Annex E : Review of the CCCS Guidelines on Merger Procedures
- Annex F : Review and renaming of the CCCS Guidelines on Enforcement

PROPOSED CHANGES TO THE CCCS GUIDELINES ON THE TREATMENT OF INTELLECTUAL PROPERTY RIGHTS

Overview

The purpose of the *CCCS Guidelines on the Treatment of Intellectual Property Rights* (the “*IP Guidelines*”) is to explain how CCCS expects the Competition Act (Chapter 50B) (the “*Act*”) to operate in relation to agreements and conduct which concern intellectual property rights (“*IPRs*”). The *IP Guidelines* set out how CCCS views the interface between IPRs and competition law, and explains non-exhaustively some of the factors and circumstances that CCCS may consider when assessing agreements and conduct which concern IPRs.

The proposed changes are mainly to update the *IP Guidelines* which have not been updated since they were first published in 2005 and to clarify/elaborate on existing concepts. The key proposed changes are:

1. To update the *IP Guidelines* to take into account all current legislative sources of IP rights in Singapore; for example, to insert references to the Trade Marks Act (Chapter 332) and the Geographical Indications Act 2014 (No.19 of 2014).
2. To clarify/elaborate on the meaning of certain concepts/terms such as “patents”, “copyrights”, “trade marks”, “registered designs” and “technology market”.
3. To provide hypothetical examples in order to provide more guidance on how CCCS may apply competition analysis to certain agreements/conduct involving IPRs.
4. To explain how certain IP-related agreements - for example “pay for delay” agreements, agreements which restrict a licensee’s ability to exploit its own technology rights and agreements which include post-expiration royalty charges - may give rise to competition concerns.
5. To state that agreements which prevent the lawful parallel importation of a product may give rise to competition concerns.
6. To clarify that the legitimate exercise of an IPR *per se* by a dominant undertaking will not usually amount to an abuse when limited to the specific product that is protected by the IPR, but that competition concerns may arise in circumstances where the dominant undertaking attempts to exercise its market power beyond the scope of legal monopoly granted by the IPR.
7. To set out that the refusal by a Standard Essential Patent (SEP) holder to license its technology on Fair, Reasonable And Non-Discriminatory (FRAND) terms may give rise to competition concerns.
8. To explain how CCCS will analyse whether a refusal to provide access to data is likely to give rise to competition concerns.

The proposed changes to the *IP Guidelines* are highlighted:

[CCCS Guidelines on the Treatment of Intellectual Property Rights](#)

Consultation Questions

In addition to inviting comments on the proposed amendments to the *IP Guidelines*, specific questions for the public consultation are set out below.

1. As set out above, the objectives of the *IP Guidelines* are to set out how CCCS views the interface between IPRs and competition law, and to explain some of the factors and circumstances that CCCS may consider when assessing agreements and conduct which concern IPRs. Do you consider that the stated objectives have been met with the proposed amendments? If not, please explain why.
2. Do you consider the hypothetical examples in the *IP Guidelines* useful in providing guidance for your business/legal practice?
3. Are there any areas in the *IP Guidelines* which you think CCCS should provide further clarifications or consider additional changes? If so, please describe these further clarifications and/or additional changes.

You may wish to submit your response in relation to the *IP Guidelines* via our Public Consultation Feedback Form accessible [here](#).

PROPOSED CHANGES TO THE CCCS GUIDELINES ON MARKET DEFINITION

Overview

Purpose of the CCCS Guidelines on Market Definition:

The purpose of the *CCCS Guidelines on Market Definition* is to provide the analytical framework for how the CCCS may define markets when investigating conduct to assess possible infringements of the section 34 or 47 prohibition under the Act. The *CCCS Guidelines on Market Definition*, read together with the *CCCS Guidelines on the Substantive Assessment of Mergers*, also provide guidance on how the CCCS may approach market definition in the context of the section 54 prohibition.

CCCS' E-commerce Platforms Market Study:

CCCS has observed a growing trend of e-commerce platforms that compete in multiple market segments offering distinct products and/or services in Singapore and the South East Asian region. In order to better understand the growth of such e-commerce platforms, including their business strategies and the competitive dynamics within which they operate, CCCS embarked on a market study on e-commerce platforms (the “**E-commerce Platforms Market Study**”) that have the following core characteristics:

- a) The business operates at least one multi-sided platform;
- b) The platform facilitates e-commerce as its primary activity; and
- c) The platform business operates in more than one market segment in Singapore, offering distinct products and/or services

The report setting out the findings and recommendations from the E-commerce Platforms Market Study (the “**Report**”) was published on 10 September 2020 and is available at this [link](#).

Key Proposed Changes:

Chapter VI of the Report discusses the features of multi-sided platforms, and the challenges that these features may raise for market definition in the context of such platforms.

In addition, the trend of e-commerce platforms competing in multiple market segments offering distinct products and/or services raises questions as to how the market should be defined in cases involving such market players. Chapter VI of the Report also contains a discussion on how it may be appropriate to define a market for a product ecosystem comprising a mix or range of distinct products and/or services.

Taking into account the findings from the E-commerce Platforms Market Study, CCCS has proposed changes to the *CCCS Guidelines on Market Definition* to provide greater clarity on issues related to market definition for cases involving multi-sided platforms and/or digital platform companies.

Further, amendments have been proposed to the *CCCS Guidelines on Market Definition* to reflect CCCS's experiences and practices in past cases, and to bring the *CCCS Guidelines on Market Definition* into closer alignment with international practices in competition law.

The key proposed changes are:

1. To clarify that competition analysis usually begins with the identification of the potential competition concerns, and appropriate theories of harm. Market definition is a useful tool that provides the framework for this competition analysis through identifying the competitive constraints acting on a seller (or groups of sellers) of a given product.
2. To clarify CCCS's approach to market definition in relation to multi-sided platforms.
3. To include digital markets as an example of markets characterised by innovation where market definition may evolve over time.
4. To clarify that CCCS may also take into consideration synergies that may apply on the buyer side in assessing whether the focal product for assessment may be a product ecosystem² comprising the distinct products and/or services sold by the same seller.
5. To include a definition of "multi-sided platform" within the Glossary of the *CCCS Guidelines on Market Definition*.
6. To clarify the various purposes served by the market definition exercise, and to reflect CCCS's existing practice in respect of the application of the market definition exercise.
7. To clarify that businesses seeking to establish the existence of chains of substitution between the focal product and the substitute product should provide actual evidence of the existence of such chains of substitution.
8. To explain that substitution between two products may not necessarily be symmetric, and that there may be cases of asymmetric substitution where substitution only occurs in one direction and not the other (e.g. substitution from a first product to the second product, but not the other way around).
9. To explain that even where the geographic market is wider than Singapore, the competitive constraints considered should generally only reflect those that impact competition in Singapore specifically.
10. To clarify the appropriate price to be used as the benchmark price when assessing:
 - a. whether an agreement is anti-competitive under the section 34 prohibition; and
 - b. the effects on competition from anti-competitive conduct by a dominant entity.

² A complete discussion about the concept of a product ecosystem is found in Chapter VI of the Report.

11. To clarify CCCS's approach to market definition for after markets, by setting out details of relevant considerations.

The proposed changes to the *CCCS Guidelines on Market Definition* are highlighted:

[CCCS Guidelines on Market Definition](#)

Consultation Questions

In addition to inviting comments on the proposed amendments to the *CCCS Guidelines on Market Definition*, specific questions for the public consultation are set out below.

1. Do the proposed amendments to the *CCCS Guidelines on Market Definition* better assist in your understanding of how the market definition exercise may be adapted to consider specific features of digital platforms (including multi-sided platforms)? If not, please explain why and highlight the areas where further clarification may be useful.
2. Do the proposed amendments to the *CCCS Guidelines on Market Definition* provide additional clarity on the factors that the CCCS may consider in assessing whether the focal product may be a product ecosystem comprising the distinct products sold by the same seller? If not, please explain why and highlight the areas where further clarification may be useful.
3. Do you foresee any difficulties with having to provide actual evidence of the existence of chains of substitution between the focal product and the substitute product?
4. Are there any areas in the *CCCS Guidelines on Market Definition*, including on how geographic markets in cross-border cases should be defined, which you think CCCS should provide further clarifications or consider additional changes? If so, please describe these further clarifications and/or additional changes?

You may wish to submit your response in relation to the *CCCS Guidelines on Market Definition* via our Public Consultation Feedback Form accessible [here](#).

PROPOSED CHANGES TO THE CCCS GUIDELINES ON THE SECTION 47 PROHIBITION

Overview

Purpose of the CCCS Guidelines on the Section 47 Prohibition:

The *CCCS Guidelines on the Section 47 Prohibition* set out the factors and circumstances which CCCS may consider in determining whether an undertaking has engaged in conduct amounting to an abuse of a dominant position in a market, and have thereby infringed the section 47 prohibition of the Act.

Key Proposed Changes:

Chapter VII of the E-commerce Platforms Market Study report (the “**Report**”)³ discusses the characteristics of e-commerce platforms that may raise challenges in the assessment of their market power. It also elaborates on certain theories of harm that may be more prevalent with the rise of e-commerce platforms that compete across multiple market segments offering distinct products and/or services.

Taking into account the findings in the Report, CCCS considers it opportune to update the *CCCS Guidelines on the Section 47 Prohibition* to provide greater clarity to businesses on issues relating to the assessment of market power and types of potentially abusive conduct in the digital era.

Additionally, changes have been proposed to the *CCCS Guidelines on the Section 47 Prohibition* for consistency with the proposed amendments to the *CCCS Guidelines on the Treatment of Intellectual Property Rights*, as well as for greater internal consistency.

The key proposed changes are:

1. To align the discussion on market definition in the *CCCS Guidelines on the Section 47 Prohibition* with the proposed amendments to the *CCCS Guidelines on Market Definition*.
2. To clarify that market shares, by themselves, may not necessarily be a reliable guide to assessing market power in markets characterised by innovation and rapidly changing competition dynamics. CCCS may consider other determinants of competition such as barriers to entry, the degree of innovation, the control or ownership of key inputs⁴ and the strength of network effects.
3. To elaborate on how CCCS may assess the strength of network effects (in the context of multi-sided platforms) and the control or ownership of key inputs in the assessment of market power.

³ For additional information about CCCS’s E-commerce Platforms Market Study and access to the E-commerce Platforms Market Study, please refer to Annex B.

⁴ Such key inputs could include data. For a more detailed discussion on the importance of data as an input in Chapter IX of the Report.

4. To clarify that other measures of market share, including but not limited to the number of monthly active users, number of transactions and gross merchandise value, may be used in the calculation of market shares, depending on the facts of each case.
5. To elaborate on how factors such as the limited access to key inputs such as data, economies of scope, network effects, consumption synergies, multi-homing may affect barriers to entry.
6. To elaborate on how CCCS may assess a case involving a dominant undertaking engaging in self-preferencing, and when such conduct could give rise to competition concerns.
7. To clarify that the refusal by a dominant undertaking to provide access to key inputs such as physical assets, proprietary rights or data may constitute an abuse of dominance.
8. To provide examples on when conduct by SEP holders may raise competition concerns, in alignment with the proposed amendments to the *CCCS Guidelines on the Treatment of Intellectual Property Rights*.
9. To elaborate on how CCCS may assess tying and bundling conduct, and when such conduct could give rise to competition concerns.

The proposed changes to the *CCCS Guidelines on the Section 47 Prohibition* are highlighted:

[*CCCS Guidelines on the Section 47 Prohibition*](#)

Consultation Questions

In addition to inviting comments on the proposed amendments to the *CCCS Guidelines on the Section 47 Prohibition*, specific questions for the public consultation are set out below.

1. Are there other measures of market power, aside from the examples proposed in the amended *CCCS Guidelines on the Section 47 Prohibition* that you consider to be useful to be included as an example? If so, please elaborate on the additional example(s), and explain why it will be useful to be included as an example.
2. Do the proposed amendments to the *CCCS Guidelines on the Section 47 Prohibition* better assist in your understanding of how the CCCS may assess market power in cases involving digital platforms (including multi-sided platforms)? If not, please explain why and highlight the areas where further clarification may be useful.
3. Do the proposed amendments to the *CCCS Guidelines on the Section 47 Prohibition* provide sufficient clarity on how CCCS may take into account factors such as the limited access to key inputs such as data, economies of scope, network effects, consumption synergies, multi-homing in assessing barriers to entry? If not, please explain why and highlight the areas where further clarification may be useful.

4. Do the proposed amendments to the *CCCS Guidelines on the Section 47 Prohibition* assist in your understanding of when self-preferencing may give rise to competition concerns? If not, please explain why and highlight the areas where further clarification may be useful.
5. Do the proposed amendments to the *CCCS Guidelines on the Section 47 Prohibition* assist in your understanding of when tying and bundling may give rise to competition concerns? If not, please explain why and highlight the areas where further clarification may be useful.
6. Are there any areas in the *CCCS Guidelines on the Section 47 Prohibition* which you think CCCS should provide further clarifications or consider additional changes? If so, please describe these further clarifications and/or additional changes.

You may wish to submit your response in relation to the *CCCS Guidelines on the Section 47 Prohibition* via our Public Consultation Feedback Form accessible [here](#).

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

Overview

CCCS administers a voluntary merger regime. Businesses consequently need to conduct their own assessment as to whether their merger or acquisition is likely to raise competition issues and ensure their compliance with section 54 of the Competition Act. The *CCCS Guidelines on the Substantive Assessment of Mergers* set out the analytical framework that CCCS applies in assessing mergers and acquisitions, and are intended to assist merger parties in conducting a self-assessment, as well as other interested parties that may be affected by a merger.

The *CCCS Guidelines on the Substantive Assessment of Mergers* were last amended in 2016. The proposed changes to the *CCCS Guidelines on the Substantive Assessment of Mergers* are intended to provide further guidance to businesses on how CCCS assesses mergers and acquisitions, including those involving digital platforms.

The key proposed changes are:

1. To clarify that data protection can be an aspect of competition on quality that CCCS may consider in its assessment;
2. To state more clearly and consistently that innovation may be harmed by a reduction in competition and to clarify that in markets where innovation is an important feature of competition, a merger involving firms that are important innovators may change the competitive dynamics even if the firms do not have a large market share;
3. To clarify that proprietary rights or data can be barriers to entry and expansion;
4. To refine the position that conglomerate mergers typically do not result in a substantial lessening of competition, and elaborate on how conglomerate mergers may be assessed by considering the ability and incentive of the merged entity to foreclose competitors through tying, bundling or other forms of exclusionary conduct;
5. To include considerations by CCCS on the use of interim measures;
6. To clarify that the assessment of countervailing buyer power is focused on whether customers have commercial significance to the suppliers; and
7. To clarify that a counterfactual for merger assessment should not involve a violation of competition law.

The proposed changes to the *CCCS Guidelines on the Substantive Assessment of Mergers* are highlighted:

[*CCCS Guidelines on the Substantive Assessment of Mergers*](#)

Consultation Questions

In addition to inviting comments on the proposed amendments to the *CCCS Guidelines on the Substantive Assessment of Mergers*, specific questions for the public consultation are set out below.

1. Do the proposed amendments provide clearer guidance on CCCS's approach for the assessment of mergers and acquisitions, including those involving digital platforms? If not, please highlight the areas where further clarification may be useful.
2. Is the elaboration on the assessment of conglomerate mergers sufficiently clear and helpful? Please explain.
3. Are the considerations by CCCS on the use of interim measures useful? Please explain.
4. Are there any areas in the *CCCS Guidelines on the Substantive Assessment of Mergers* which you think CCCS should provide further clarifications or consider additional changes? If so, please describe these further clarifications and/or additional changes.

You may wish to submit your response in relation to the *CCCS Guidelines on the Substantive Assessment of Mergers* via our Public Consultation Feedback Form accessible [here](#).

PROPOSED CHANGES TO THE CCCS GUIDELINES ON MERGER PROCEDURES

Overview

The purpose of the *CCCS Guidelines on Merger Procedures* is to explain the circumstances in which mergers should be notified to CCCS for decision and to set out CCCS' procedure for reviewing and investigating mergers.

The *CCCS Guidelines on Merger Procedures* were last amended in 2012. CCCS has since reviewed over 40 merger filings and has received feedback on ways that the merger review process can be enhanced. The proposed changes to the *CCCS Guidelines on Merger Procedures* are intended to ensure that practices which CCCS has already introduced are reflected, to reduce business costs for merger parties submitting information to CCCS, to facilitate information sharing between CCCS and other competition authorities and to provide clarity on certain procedural aspects of Singapore's merger regime.

The key proposed changes are:

1. To require materials to be provided by the applicant to CCCS electronically (dispensing with the need for physical format unless requested by CCCS) and in a manner and format to be specified on CCCS's website;
2. To start "day 1" of the indicative timeframe for Phase 1 review and Phase 2 review on the working day after the date of receipt of the complete notification (the same will apply to the indicative timeframe for confidential advice and resumption of the clock following any clock stoppage);
3. To encourage applicants to refer to the template waiver on CCCS' website in their submission of a waiver to CCCS to facilitate exchange of confidential information with other competition authorities;
4. To encourage applicants to make payments of notification fees via electronic bank transfer (instead of cheque), and to contact CCCS for alternative payment modes, if necessary; and
5. To require information to be provided on each of its top 10 (instead of 5) customers in Singapore and worldwide (if applicable) as part of Form M1.

The proposed changes to the *CCCS Guidelines on Merger Procedures* are highlighted.

[*CCCS Guidelines on Merger Procedures*](#)

Consultation Questions

In addition to inviting comments on the proposed amendments to the *CCCS Guidelines on Merger Procedures*, specific questions for the public consultation are set out below.

1. Is CCCS's dispensing of the need for physical format helpful for merger parties? Are there any issues that are likely to arise in providing materials electronically to the CCCS?
2. Are there any issues that are likely to arise with encouraging applicants to make payment of notification fees via electronic bank transfer instead of cheque?
3. Are there any areas in the *CCCS Guidelines on Merger Procedures* which you think CCCS should provide further clarifications or consider additional changes? If so, please describe these further clarifications and/or additional changes.

You may wish to submit your response in relation to the *CCCS Guidelines on Merger Procedures* via our Public Consultation Feedback Form accessible [here](#).

PROPOSED CHANGES TO THE CCCS GUIDELINES ON ENFORCEMENT OF COMPETITION CASES

Overview

Presently, CCCS sets out its guidance on the substantive assessment and procedures relating to commitments and remedies within the *CCCS Guidelines on the Substantive Assessment of Mergers* and *CCCS Guidelines on the Merger Procedures*, as CCCS was previously only able to formally accept commitments in relation to mergers. Amendments to section 60A of the Competition Act (Cap.50B) in 2018 introduced sections 60A(1A)⁵ and (1B)⁶ which empowers CCCS to accept binding commitments offered in respect of notifications and investigations in respect of the section 34 prohibition and the section 47 prohibition, and to register with the District Court to legally enforce such commitments pursuant to section 85 of the Competition Act (Cap.50B) (“**the 2018 Amendments**”).

To reflect the expanded application of commitments and remedies brought about by the 2018 Amendments, CCCS considers it appropriate to move the substantive and procedural guidelines relating to commitments and remedies to the existing *CCCS Guidelines on Enforcement of Competition Cases*, given that the effects of accepting commitments is to similarly bring an anti-competitive conduct to an end or to mitigate its effects. To reflect the expanded coverage, the *CCCS Guidelines on Enforcement of Competition Cases* will be renamed as the *CCCS Guidelines on Remedies, Directions and Penalties*.

In addition, to provide greater certainty to companies and competition practitioners on substantive and procedural matters relating to commitments and remedies and to reflect CCCS’s practices in recent years, CCCS has proposed amendments in the *CCCS Guidelines on Remedies, Directions and Penalties* relating to timelines and processes for companies offering commitments proposals, as well as the information to be submitted for commitments proposals.⁷ Where relevant, CCCS has considered the approaches taken by overseas competition authorities in relation to the commitments process.

The key proposed changes are:

1. To remove relevant paragraphs relating to the consideration of the appropriate remedies and procedures to offer and vary commitments and remedies in the *CCCS Guidelines on the Substantive Assessment of Mergers* and *CCCS Guidelines on the*

⁵ The Commission may, at any time before making a decision pursuant to an application under section 44 or an investigation under section 62(1)(a) as to whether the section 34 prohibition has been infringed by an agreement, accept from such person as the Commission thinks appropriate, a commitment to take or refrain from taking such action as the Commission considers appropriate for the purpose of remedying, mitigating or preventing the prevention, restriction or distortion of competition which has resulted or may be expected to result from the agreement.

⁶ The Commission may, at any time before making a decision pursuant to an application under section 51 or an investigation under section 62(1)(b) as to whether the section 47 prohibition has been infringed by any conduct, accept from such person as the Commission thinks appropriate, a commitment to take or refrain from taking such action as the Commission considers appropriate for the purpose of remedying, mitigating or preventing the abuse of a dominant position in a market which has resulted or may be expected to result from the conduct.

⁷ The proposed amendments in the guidelines will also cover information to be included in an application for a variation of commitments or directions.

Merger Procedures and incorporate them into the *CCCS Guidelines on Remedies, Directions and Penalties*, while expanding their ambit to include notifications and investigations relating to the section 34 and 47 prohibitions.

2. To include general guidance that CCCS takes a dim view of offering parties that do not make genuine efforts to address all of CCCS's competition concerns upfront but attempt to frustrate the commitments process by repeatedly submitting revisions of commitments proposals with incremental changes each time. CCCS will only be minded to extend the stipulated deadlines for submission of commitments proposals in very limited circumstances. Where a commitments proposal undergoes substantial changes and requires a second market test, CCCS may reject the proposal if there is insufficient time to adequately evaluate the proposal. Further, CCCS may proceed to issue an unfavourable decision if a commitments proposal submitted within the stipulated deadlines is unable to address CCCS's competition concerns.
3. For Phase 1 merger review in relation to notifications for decision under section 57 or section 58, to clarify that:
 - a. Where CCCS identifies competition concerns in the Phase 1 review that indicate that a Phase 2 review may be appropriate, CCCS will communicate these concerns to the applicants in a Phase 1 Issues Letter, including stipulating a deadline for the submission of commitments proposal that Parties may offer to address all of CCCS's competition concerns and theories of harm stated in the Phase 1 Issues Letter;
 - b. If the commitments proposal is accepted in-principle by CCCS (i.e., CCCS is of the preliminary view that the commitments proposed may potentially address the competition concerns identified), CCCS will begin a new 50-working day administrative timeline which is separate from the indicative 30-working day Phase 1 review (and extendable by CCCS by up to another 40 working days for complex commitments proposals) for market testing of the commitments proposal and to make a final decision whether to accept the commitments proposal or proceed to a Phase 2 review; and
 - c. CCCS will proceed to a Phase 2 review if the commitments proposal is not submitted within the stipulated deadlines, or not accepted in-principle by CCCS.
4. For Phase 2 merger review in relation to notifications for decision under section 57 or section 58, to clarify that:
 - a. CCCS may conduct a state of play meeting ("**SOPM**") with applicants within the indicative 120-working day review period to provide an update on its review and the competition concerns identified. The competition concerns will also be set out formally in a Phase 2 Issues Letter, which will include a deadline for applicants to respond, including the submission of a commitments proposal;
 - b. CCCS will generally not extend the indicative 120-working day review period for the purpose of evaluating the commitments proposal if the applicants submit

the proposal by the deadline stipulated in the Phase 2 Issues Letter and it is accepted in-principle by CCCS for market testing;

- c. If the applicants submit a commitments proposal after the deadline stipulated in the Phase 2 Issues Letter, CCCS will only evaluate the proposal if there is sufficient time to do so before it issues its Statement of Decision (Provisional) (“SDP”). CCCS will not extend the indicative 120-working day review period for the purposes of evaluating a commitments proposal submitted after the stipulated deadline save in exceptional circumstances;
 - d. CCCS will generally accept a commitments proposal where only minor refinements are necessary to address concerns raised during the market testing, otherwise CCCS will proceed to issue its SDP; and
 - e. The applicants can resubmit the commitments proposal or submit a fresh proposal together with its written representations to the SDP and CCCS will “stop the clock” upon receipt of the proposal to allow it to assess the proposed commitments.
5. For notifications for decision relating to section 34 or section 47 under section 44 or section 51 respectively, to clarify that:
- a. As part of the Form 1 review process, CCCS will generally inform the applicants of its competition concerns and stipulate a deadline for the applicants to submit a commitments proposal;
 - b. If commitments proposal put forward by the stipulated deadline is accepted in-principle by CCCS, CCCS will market test and decide whether to accept the commitments proposal or proceed to a Form 2 review. CCCS will request the applicants to submit Form 2 if no commitments proposal which can be accepted in-principle has been received by the stipulated deadline;
 - c. During the Form 2 review process, CCCS may call for an SOPM with the applicants to set out its competition concerns and stipulate a deadline for the applicants to submit a commitments proposal;
 - d. If a commitment proposal received by the deadline is accepted in-principle, CCCS will market test the commitments proposal and decide whether to accept the commitments or issue a proposed/provisional unfavourable decision. Where the applicant fails to meet the stipulated deadline, CCCS may choose to consider any commitments proposal or any fresh commitment proposal resubmitted at same time as the applicant’s written representations to a proposed/provisional unfavourable decision; and
 - e. CCCS will generally accept a commitments proposal where only minor refinements are necessary to address concerns raised during the market testing, otherwise CCCS may terminate the review of commitments at any time, proceed

to request Form 2, or issue a proposed/provisional unfavourable decision or unfavourable decision as the case may be.

6. For investigations relating to any of the prohibitions within the Competition Act, to clarify that:
 - a. CCCS has the discretion to decide whether to accept commitments during investigations on a case by case basis;
 - b. CCCS is generally not inclined to accept commitments in cases involving restrictions of competition by object (e.g. bid rigging) with no accompanying net economic benefit;
 - c. Where an undertaking under investigation seeks to offer a commitments proposal, CCCS will generally stipulate a deadline for its submission. Should the undertaking fail to offer a commitments proposal which is accepted in-principle to CCCS by the stipulated deadline, CCCS will proceed with the issuance of a proposed infringement decision.
7. To introduce standard forms setting out the key information required by CCCS from parties who are offering commitment proposals or who wish to apply for variations of commitments at Annex A and Annex B of the *CCCS Guidelines on Remedies, Directions and Penalties* respectively.

The proposed changes to the *CCCS Guidelines on Remedies, Directions and Penalties* are highlighted:

[*CCCS Guidelines on Remedies, Directions and Penalties*](#)

Consultation Questions

In addition to inviting comments on the proposed amendments to the *CCCS Guidelines on Remedies, Directions and Penalties*, specific questions for the public consultation are set out below.

Commitment process relating to section 54 notifications for decision

1. Do the proposed processes and timelines for offering commitments in the context of merger notifications provide sufficient clarity and guidance on what is expected of applicants in the merger review process? If not, please explain how the processes and timelines can be improved and/or made clearer?
2. Is a 50-working day (extendable by CCCS by up to another 40-working day) timeline for CCCS to market test and undertake a robust assessment of the commitment proposals submitted during a Phase 1 review adequate? If not, please explain why.

Commitment process relating to section 34 and section 47 notifications for decision

3. Do the proposed processes for offering commitments in the context of notifications for decision in relation to the section 34 and section 47 prohibitions provide sufficient clarity and guidance on what is expected of applicants in the notification review process? If not, please explain how the processes can be improved and/or made clearer?
4. Do you think specific review timelines for commitment proposals should be set out in relation to section 34 and section 47 notifications for decision? Please explain the basis of your views and the appropriate review timelines (if relevant).

Commitments process relating to investigations

5. Do the proposed processes for offering commitments in the context of investigations provide clarity and guidance to the parties under investigation on what is to be expected in the investigation process? If not, please explain how the processes can be improved and/or made clearer?
6. Do you think specific review timelines for commitment proposals should be set out in relation to investigations? Please explain the basis of your views and the appropriate review timelines (if relevant).

Application forms for commitments and variation of commitments

7. Is there any information which should be included, removed, or further elaborated in the forms for (i) commitment proposals and (ii) application for variation of commitments? Please explain.
8. Is the proposed format of the forms for (i) commitment proposals and (ii) application for variation of commitments useful for businesses and/or competition practitioners? Are there any other ways to improve the format of these forms?

Others

9. Are there any areas in the *CCCS Guidelines on Remedies, Directions and Penalties* which you think CCCS should provide further clarifications or consider additional changes? If so, please describe these further clarifications and/or additional changes.

You may wish to submit your response in relation to the *CCCS Guidelines on Remedies, Directions and Penalties* via our Public Consultation Feedback Form accessible [here](#).