

PUBLIC CONSULTATION ON DRAFT GUIDELINE

INTRODUCTION

1. The Competition Act ("Act") was passed in Parliament on 19 October 2004 and assented to by the President on 4 November 2004. The Act provides for three main prohibited activities:

- a. *Section 34* prohibits agreements, decisions and concerted practices that prevent, restrict or distort competition in Singapore.
- b. *Section 47* prohibits firms from abusing their dominance in ways that are anti-competitive and which work against longer term economic efficiencies.
- c. *Section 54* prohibits mergers and acquisitions which substantially lessen competition.

2. The *section 34 and 47 prohibitions* will come into force on 1 January 2006. The *section 54 prohibition* will come into force at least 12 months thereafter.

3. *Section 61* of the Act provides for the Competition Commission of Singapore ("CCS"), with a view to enabling any person to order his affairs in compliance with the Act, to publish guidelines in the *Gazette* indicating the manner in which the CCS will interpret, and give effect to, the provisions of the Act. The CCS will conduct public consultations before finalising the guidelines. The guidelines will be reviewed from time to time to ensure their continued relevance, taking into account market changes and the decisions of the Competition Appeal Board and the courts.

4. The CCS has issued the first set of three guidelines which are available on our website.¹ The CCS is reviewing the second² and third³ sets of draft guidelines.

5. The CCS invites comments from the public on draft guideline covering the treatment of intellectual property rights ("IPRs"). The draft guideline can be found on our website www.ccs.gov.sg. The deadline for submission of comments is 24 October 2005.

6. The CCS aims to complete the public consultation and publish the guidelines in the *Gazette*, by November 2005.

¹ These are the CCS guidelines on: (i) *The section 34 prohibition*; (ii) *The section 47 prohibition*; and (iii) *Market definition*.

² The second set of CCS guidelines are on (i) *Powers of investigation*; (ii) *Enforcement*; (iii) *Lenient treatment for undertakings coming forward with information on cartel activity cases*; and (iv) *Filing notifications for guidance or decision*.

³ The third set of CCS guidelines are on i) *Transitional arrangements* and ii) *Appropriate amount of penalty*.

GUIDELINES

7. Guidelines are intended to provide some guidance to the conceptual and procedural approach that the CCS will take. The determination and outcome of each case will depend on the specific facts and circumstances of each case. The CCS would abide by the guidelines as far as possible, even though they are not binding on the CCS under *section 61(4)* of the Act. Should there be instances where the CCS deviates from the guidelines, it would explain such deviation and the basis for it.

8. A brief outline of the draft guideline follows:

DRAFT GUIDELINE ON THE TREATMENT OF INTELLECTUAL PROPERTY RIGHTS

9. While both intellectual property law and competition law share the same basic objective of promoting economic efficiency and innovation, in the shorter run, they may seem to be at odds because of the tension between the need to provide incentives to encourage innovation, and maintaining effective competition. This draft guideline sets out how the CCS views the interface between IPRs and competition law, and outlines some of the factors and circumstances that the CCS may consider when assessing agreements and conduct which concern IPRs.

NEXT STEPS

10. Public Consultation: The CCS seeks feedback on the draft guideline. CCS will review the submissions and make the appropriate changes accordingly.

11. Outreach Programmes: The CCS will work with the Singapore Business Federation (SBF) to conduct outreach programmes for the business community. This will include seminars to explain the intent and approach in the draft guideline. Seminar details are available on the SBF website at: www.sbf.org.sg. Interested parties may also contact the SBF at events@sbf.org.sg or call 6827 6877 for further details.

MODE OF CONSULTATION

12. Written submissions are to be sent to the CCS:

Email: CCS_Draftguidelines@ccs.gov.sg

AND

Post/Courier: Competition Commission of Singapore
5 Maxwell Road
#13-01, Tower Block
MND Complex
Singapore 069110
Attn: Director, Economics
Fax: (65) 6224 6929

13. Parties that submit comments should organise their submissions as follows:

- a. cover page (including the information specified in paragraph 15 of this consultation document);
- b. table of contents;
- c. summary of major points;
- d. statement of interest;
- e. comments; and
- f. conclusion.

14. Supporting material may be placed in an annex. All submissions should be clearly and concisely written, and should provide a reasoned explanation for any proposed revision to the draft guidelines. Where feasible, parties should identify the specific paragraph of the draft guidelines on which they are commenting. In any case in which a party chooses to suggest revisions to the text of the draft guidelines, the party should state clearly the specific changes to the text that they are proposing.

15. All submissions should be made on or before **noon, 24 October 2005**. Submissions must be made in both hard and soft copies (in Microsoft Word format). Parties submitting comments should include their personal/company particulars as well as their correspondence address, contact numbers and email addresses on the cover page of their submissions.

16. The CCS reserves the right to make public⁴ all or parts of any written submission and to disclose the identity of the source. Commenting parties may request confidential treatment for any part of the submission that the commenting party believes to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If the CCS grants confidential treatment, it will consider but will not publicly disclose the information. If the CCS rejects the request for confidential treatment, it will return the information to the party that submitted it and will not consider the information as part of its review. As far as possible, parties should limit any request for confidential treatment of information submitted. The CCS will not accept any submission that requests confidential treatment of all, or a substantial part, of the submission.

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⁴ The consultation documents will be posted on the CCS website www.ccs.gov.sg and will also be available at the Government Online Consultation Portal www.feedback.gov.sg