

# DRAFT GUIDELINES CONSULTATION PAPER

## INTRODUCTION

1. The Competition Act ("Act") was passed in Parliament on 19 October 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. These include agreements between competing firms to fix prices, fix tender bids, reduce the quantity of goods and services sold, or to share markets. The provisions of any agreement that infringe this prohibition will be rendered void on or after 1 January 2006 to the extent of the infringement.
- b. *Section 47* prohibits firms from abusing their dominance in ways that are anti-competitive and which work against longer term economic efficiencies. However, it does not prohibit dominance or substantial market power per se – firms can, and should, seek to increase or maintain their market positions through offering better quality, more competitive pricing or wider range of goods at higher quality of service standards.
- c. *Section 54* prohibits mergers and acquisitions ('M&As') which substantially lessen competition in Singapore. Not all M&As have anti-competitive results. Being a small open economy, highly concentrated markets are at times inevitable. Thus, only M&As which substantially lessen competition in Singapore and have no offsetting efficiencies will be prohibited.

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 invites comments from the public on the first set of 3 draft guidelines:

- a. *The section 34 prohibition – Agreements, etc, Preventing, Restricting or Distorting Competition;*
- b. *The section 47 prohibition – Abuse of Dominant Position; and*
- c. *Market definition.*

5. The other draft guidelines will be released for public consultation in stages in the ensuing months. The CCS aims to complete the public consultation and publish the guidelines in the *Gazette*, by November 2005.

#### **GUIDING PRINCIPLES AND FRAMEWORK OF THE DRAFT GUIDELINES**

6. The guidelines are intended to provide the conceptual, analytical and procedural approach that the CCS will take in its enforcement activities. 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.

7. Guiding Principles: In preparing the draft guidelines, the CCS took into account the following:

- a. The primary consideration is the promotion of healthy competitive markets in Singapore. Section 6 of the Act also provides that the CCS shall, in performing its functions, have regard to the differences in the nature of the various markets in Singapore, and the economic, industrial and commercial needs of Singapore. In drafting the guidelines, we have taken into account our specific needs and circumstances, in particular that we are a small, open economy.
- b. The CCS should prioritise its enforcement and target those that are clearly more harmful and warrant regulatory intervention.
- c. Rather than being prescriptive and detailed, the guidelines should outline the conceptual, analytical and procedural framework, within which the CCS will investigate and assess complaints and undertake enforcement. This is also in line with the approach of competition authorities elsewhere. The guidelines can only provide a general analytical framework on how the CCS will administer and enforce the Act; the guidelines are not intended to be individual firm- or sector-specific rules. The application of the guidelines will depend on the facts of each case. The CCS will apply its guidelines in a consistent and coherent manner.

8. A brief outline of the three draft guidelines follows:

#### **DRAFT GUIDELINE ON THE SECTION 34 PROHIBITION**

9. This draft guideline sets out some of the factors and circumstances which the CCS will consider in determining whether agreements are anti-competitive. The CCS will focus principally on anti-competitive activities that have an appreciable adverse effect on markets in Singapore except where there is a net economic benefit.

10. Agreements or concerted practices between undertakings at different levels of the production and distribution chain, for example manufacturers and retailers; or dealers and retailers, are excluded from the *section 34 prohibition* (Third Schedule). Hence, only anti-competitive agreements or concerted practices between undertakings at the same level (competitors), for example manufacturers; or dealers, as amongst themselves, are prohibited. In practice most anti-competitive agreements and concerted practices occur between competitors, i.e. who compete in the same market(s).

#### **DRAFT GUIDELINE ON THE SECTION 47 PROHIBITION**

11. This draft guideline sets out some of the factors and circumstances which the CCS will consider in determining whether an undertaking has engaged in conduct amounting to an abuse of a dominant position in a market. It indicates the manner in which the CCS will interpret and give effect to the provisions of the Act when assessing abuse of dominance.

#### **DRAFT GUIDELINE ON MARKET DEFINITION**

12. This draft guideline provides the analytical framework on how the CCS will define markets when investigating possible infringements of the *section 34 and 47 prohibitions*. Market definition guidelines for mergers will be released for public consultation prior to the implementation of the prohibition on anti-competitive mergers.

13. Market definition and the measurement of market shares are important in the process of determining:

- a. whether agreements, decisions between associations of undertakings or concerted practices have as their object or effect an appreciable prevention, restriction or distortion of competition *in a market* ('the *section 34 prohibition*') or
- b. whether an undertaking with substantial market power amounting to a dominant position *in a market* has abused its market power ('the *section 47 prohibition*').

14. Once the relevant market has been defined, market shares can be measured. The other aspects of competition analysis, including the potential for new entry into the market, will then be considered. In cases where it may be apparent that an activity is unlikely to have an appreciable adverse effect on competition, or that the undertaking under investigation does not possess substantial market power within any sensible market definition, it would not be necessary to formally establish a definition of the market.

#### **NEXT STEPS**

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

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

#### **MODE OF CONSULTATION**

17. Written comments may be sent through the following means:

Email:	CCS_Draftguidelines@ccs.gov.sg
Post/Courier:	Competition Commission of Singapore 5 Maxwell Road #13-01 Tower Block MND Complex Singapore 069110 Attn: Director, Policy/Mergers & Acquisitions
Fax:	(65) 6224 6929

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

- a. cover page (including the information specified in paragraph 20 of this consultation document);
- b. table of contents;
- c. summary of major points;
- d. statement of interest;
- e. comments; and
- f. conclusion.

19. 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.

20. All submissions should be made on or before **12 noon, 13 May 2005**. Submissions must be submitted 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.

21. The CCS reserves the right to make public<sup>1</sup> 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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<sup>1</sup> The consultation documents will be posted on the CCS website [www.ccs.gov.sg](http://www.ccs.gov.sg) and will also be available at the Government Online Consultation Portal [www.feedback.gov.sg](http://www.feedback.gov.sg)