

## **GUIDELINES ON MERGER PROCEDURES**

### **A CCS Consultation**

20 February 2012

## **FOREWORD**

### **Introduction**

On 1 July 2007, the section 54 prohibition of the Competition Act (Chapter 50B) (“the Act”) on mergers that result in a substantial lessening of competition came into force. On that date, the Competition Commission of Singapore (“CCS”) also issued its *Guidelines on Merger Procedures* (“Guidelines”) to explain the circumstances in which mergers should be notified to CCS for decision and to set out CCS’ procedure for investigating mergers. CCS is now conducting a public consultation on the proposed revised Guidelines. There is no proposed change to the *Guidelines on the Substantive Assessment of Mergers* at this juncture.

Over the past four and a half years, CCS has gained experience in the application of the provisions of the Act to mergers in Singapore, issuing decisions for around 30 mergers, sending inquiry letters in relation to non-notified mergers, generally keeping merger activity under review as well as receiving feedback from stakeholders. CCS now wishes to revise and update its Guidelines on the basis of the practical experience it has acquired. The key aims of this review are to increase transparency of CCS’ procedures, to streamline the process of notification and review in order to minimise the burdens on businesses and to maximise the benefit of Singapore’s voluntary merger notification system.

This consultation document includes a draft of CCS’ proposed revised Guidelines on which comments are invited. Consultees are also invited to respond to some specific questions that are set out below. Documents relating to this consultation can be found on our website.

### **Overview of main changes**

Apart from a textual redraft, the main changes reflected in the draft revised Guidelines are as follows.

- There is a new section on self-assessment and deciding whether or not to notify a merger to CCS. This sets out CCS' powers in relation to non-notified mergers and outlines the risks associated with not notifying a merger that may raise concerns. It explains CCS' market intelligence function and the role of complainants.
- The draft revised Guidelines give guidance on the various types of mergers that should be notified to CCS.
  - Mergers involving two small companies with relatively low turnover in Singapore (where the turnover in Singapore in the financial year preceding the transaction of each of the parties is below S\$5 million and the worldwide turnover of each of the parties is below S\$10 million) are unlikely to raise competition concerns.
  - Where merger parties supply goods or services of the same description in Singapore, and their share of supply of those goods or services exceeds 40% of the total supply in Singapore, merger parties are strongly encouraged to notify. This means that for the purpose of deciding whether or not to notify CCS, there is no need for merger parties to consider the degree of supply and demand side substitution in order to define the relevant market(s).
- A new process is proposed whereby merger parties can obtain a confidential opinion from CCS on whether or not a merger is likely to raise concerns.
- The information requirements to be submitted in Phase 1 in the Form M1 have been refined, which will mean fewer subsequent information requests to the parties, particularly in the early stages of Phase 1. If merger parties consider that some of the requested information is not relevant to the assessment of their merger they can discuss this with CCS in pre-notification discussions.
- The purpose and benefits of pre-notification discussions with CCS are emphasised.
- The draft revised Guidelines remind merger parties that it is not appropriate to exchange commercially sensitive information prior to completion of a merger since this may amount to anticompetitive conduct and potentially infringe section 34 of the Act.
- The draft revised Guidelines clarify the role of third parties and complainants in the merger review process.
- The draft revised Guidelines set out a process whereby CCS and the merger parties can resolve competition concerns in Phase 1 by way of commitments. The Phase 2 process has also been clarified.
- The draft revised Guidelines clarify what type of information is likely to be considered confidential by CCS and how CCS deals with redactions of confidential information from the published decision.

- The Guidelines have been revised to improve ease of use by including references to legislation and other relevant CCS guidelines.

### **Questions for consultees**

In addition to inviting any comments on the current Guidelines and the proposed changes in the draft revised Guidelines, specific questions for consultees are set out below.

1. Do you consider that the proposed changes to CCS' guidance on the circumstances in which notification is likely to be appropriate will be useful to ensure that mergers that raise competition concerns in Singapore are notified to CCS? If not, please explain why and outline what might be a better approach.
2. Do you consider that the proposed turnover thresholds for mergers involving small companies is appropriate, too wide, or too narrow?
3. Do you think that confidential advice will be useful and, if so, would you or your clients be willing to pay a reasonable fee for this advice from CCS?
4. Do you think there are any risks or disadvantages associated with the confidential advice process as set out in the draft revised Guidelines and, if so, how could these be mitigated?
5. Are the conditions, caveats and the process for obtaining confidential advice clear?
6. What are your views on the information requirements in Form M1? If relevant, please explain why you consider that some information may not be required in Phase 1.
7. Are there any areas where you think CCS should provide further clarification or consider additional changes?

### **Responding to this consultation**

CCS welcomes responses to this consultation draft from all sources, including law firms, the business community and government departments. Where appropriate, persons responding to the consultation should give an indication of the organisation(s) or interests they represent. As CCS intends to publish the responses to the consultation, all responses must be provided in writing.

The consultation period begins on 20 February 2012 and ends on 20 March 2012. It may not be possible to take into account responses received after this date.

Please write or email your response (titled 'Comments on Proposed Changes to CCS' Guidelines on Merger Procedures) to:

- (i) **Post/Courier:**

Competition Commission of Singapore  
45 Maxwell Road  
#09-01, The URA Centre  
Singapore 069118

Attention: Mr Alvin Koh, Director (Legal & Enforcement)

(ii) Email: [ccs\\_feedback@ccs.gov.sg](mailto:ccs_feedback@ccs.gov.sg)

It would be useful if persons that submit comments 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
- vi. Conclusion

Supporting material may be annexed. All submissions should be clearly and concisely written and should provide a reasoned explanation for any proposed revisions. Where feasible, respondents should identify the specific paragraph of the draft revised Guidelines on which they are commenting.

In the interest of transparency, CCS proposes to publish the responses 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. If CCS rejects the request, it will not consider the information and will return the information to the submitting party.

### **Next steps**

Following this consultation, CCS will review the responses and take them into account in considering whether further amendments are warranted. It is expected that the revised Guidelines, as well as a document summarising the responses to this consultation, will be published in due course.