DRAFT REVISED CCS GUIDELINES ON MERGER PROCEDURES

MERGER PROCEDURES

PART

1 INTRODUCTION

1.1 These guidelines describe CCS' procedures for the application of the Competition Act (Chapter 50B) ("the Act") to mergers.

1.2 The merger provisions of the Act apply to completed mergers that have infringed (or anticipated mergers that, if implemented, will infringe) the section 54 prohibition, unless they are excluded or exempt under the Act. A merger infringes the section 54 prohibition if it has resulted, or may be expected to result, in a substantial lessening of competition ("SLC"). The focus of CCS' analysis is on evaluating the impact of the merger on Singapore and how the competitive incentives of the merger parties and their competitors may change as a result of the merger.

1.3 For ease of reference, the term "merger situation" is used in these guidelines to refer to both completed mergers and anticipated mergers.

1.4 In addition to these Guidelines, the following CCS guidelines are also relevant to the framework for merger control:

- *CCS Guidelines on the Substantive Assessment of Mergers*: These set out some of the factors and circumstances which CCS may consider in determining whether or not a merger situation infringes the section 54 prohibition.
- *CCS Guidelines on Market Definition*: These explain the methodology CCS may use to define the relevant product market and geographic market.
- *CCS Guidelines on the Powers of Investigation*: These explain CCS' use of its statutory powers to investigate suspected anticompetitive behaviour under the Act. These powers also apply to merger situations pursuant to section 62 of the Act.
- *CCS Guidelines on Enforcement*: These explain CCS' powers to give directions and to impose financial penalties. These powers also apply to merger situations.

1.5 The following regulations and orders are also relevant to CCS' assessment of mergers:

- *The Competition Act (Chapter 50B) Competition (Notification) Regulations 2007*: these regulations relate, among other things, to applications to CCS for a decision in respect of merger situations.
- *The Competition Act (Chapter 50B) Competition (Fees) Regulations 2007*: these regulations state, among other things, the fees that are payable in respect of merger situations that are notified to CCS for decision.
- *The Competition Act (Chapter 50B) Competition (Financial Penalties) Order 2007* and *The Competition Act (Chapter 50B) Competition (Financial Penalties)(Amendment) Order 2010*: these orders relate, among other things, to the calculation of the level of any fine that CCS can impose, including in the context of merger situations.

1.6 All of the above guidelines, regulations and orders are available on CCS' website. Interested parties should read the relevant guidelines, regulations and orders to better understand the merger framework. CCS' previous merger decisions, which

are also available on CCS' website, also provide useful information on how it has assessed mergers in the past.

1.7 The guidelines are not a substitute for the Act, the regulations or orders. They may be varied from time to time in accordance with legislative provisions. In applying the guidelines, the facts and circumstances of each case will be considered. The examples in the guidelines are for illustration. They are not exhaustive and do not set a limit on the investigation and enforcement activities of CCS. Persons who are in doubt about how they and their commercial activities may be affected by the Act may wish to seek legal advice.

1.8 A glossary of terms used in these guidelines is attached at Annex B.

2 OVERVIEW OF PROCEDURAL FRAMEWORK

Definition of a Merger

2.1 Section 54(2) of the Act provides that a merger occurs if:

- two or more undertakings, previously independent of one another, merge;
- one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or
- the result of an acquisition by one undertaking (the first undertaking) of the assets (including goodwill), or a substantial part of the assets, of another undertaking (the second undertaking) is to place the first undertaking in a position to replace or substantially replace the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition.

In addition, Section 54(5) of the Act provides that the creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity shall constitute a merger.

2.2 Please refer to the relevant paragraphs of CCS *Guidelines on the Substantive Assessment of Mergers* for more details of merger situations that fall under the Act.

Voluntary regime

2.3 Singapore has a voluntary merger notification regime. This means that there is no obligation, or mandatory requirement, for merger parties to notify their merger situations to CCS, either before or after implementation of the merger. However, under sections 56 to 58 of the Act, merger parties have the option of notifying their merger situation to CCS and to apply for a decision as to whether the merger situation infringes, or will infringe, the section 54 prohibition ("application" or "notification"). Parties should carry out their own assessment to determine whether or not notification may be appropriate.

2.4 Not notifying a merger situation that raises competition concerns under the Act carries risks since CCS can investigate mergers on its own initiative ("own-initiative investigations"). When it does so, and finds that the merger situation

leads to an SLC, CCS has powers to give directions to remedy the SLC. For example, CCS can require the merger to be dissolved or modified and can impose financial penalties. For further information on whether or not to notify a merger situation to CCS, see Part 3 below. Parties may wish to seek legal advice if necessary.

Applications

2.5 Merger parties may make an application to CCS under section 57 of the Act in respect of an anticipated merger which has been made known to the public[1]. Alternatively, merger parties may wait until the anticipated merger has been carried into effect before making an application in respect of the merger under section 58. In these situations, merger parties are encouraged to notify as soon as possible after completion. After conducting its assessment, CCS will make a decision as to whether the section 54 prohibition has been or will be infringed.

2.6 CCS also has a process whereby merger parties can obtain confidential advice from CCS as to whether or not a merger raises concerns (see Part 3 below).

CCS procedure for review

2.7 As a matter of administrative practice, CCS adopts a two-phase approach in evaluating applications. In general, upon receipt of a complete application, CCS will carry out an assessment (Phase 1 review) which is expected to be completed within 30 working days. A Phase 1 review entails a quick assessment and allows CCS to give a favourable decision with regard to merger situations that clearly do not raise any competition concerns under the Act.

2.8 If CCS is unable during the Phase 1 review to conclude that the merger situation does not raise competition concerns, it will provide the applicant(s) with a summary of its key concerns and, upon the filing of a complete Form M2 and response to the Phase 2 information request, CCS will proceed to carry out a more detailed assessment (Phase 2 review). A Phase 2 review is more complex; CCS will endeavour to complete it within 120 working days.

2.9 Although CCS will endeavour to meet the 30 and 120 working days administrative timelines, CCS may suspend the timetable (known as 'stopping the clock') for a variety of reasons, for example if the merger parties do not respond to CCS' requests for information within the stipulated time period or if commitments are being considered.

2.10 Merger parties who wish to make an application should refer to Part 4 of these guidelines for further details relating to the application procedure.

Powers of Investigation

2.11 Under section 62 of the Act, CCS may conduct an investigation if there are reasonable grounds for suspecting that a merger situation infringes the section 54 prohibition. When conducting an investigation, CCS' powers are as follows:

[1] Regulation 3 of the *Competition (Notification) Regulations 2007*.

- to require the production of specified documents or information (pursuant to section 63 of the Act);

- to enter premises without a warrant (pursuant to section 64 of the Act); and

- to enter and search premises with a warrant (pursuant to section 65 of the Act).

2.12 The Act also sets out a number of criminal offences which may be committed where an undertaking fails to comply when these powers are exercised[2], as well as limitations on the use of CCS' powers of investigation[3]. For further information, please refer to the relevant paragraphs of CCS *Guidelines on the Powers of Investigation* pertaining to the exercise of CCS' powers of investigation and Part 5 below.

Interim Measures

2.13 Prior to completing its assessment of an application or an own-initiative investigation, CCS may impose interim measures to prevent any action that may prejudice CCS' ability to investigate the merger situation or its ability to impose appropriate remedies[4]. Interim measures may also be imposed as a matter of urgency for the purpose of preventing serious, irreparable damage to a particular person or category of persons or of protecting the public interest[5]. For further information, see Part 6 below.

Commitments

2.14 Section 60A of the Act states that CCS may, at any time before making a decision as to whether the section 54 prohibition has been or will be infringed, accept commitments that remedy, mitigate or prevent the SLC or any adverse effect arising from the merger situation. Where CCS has accepted a commitment, CCS will make a favourable decision[6]. For further information, see Part 6 below.

Directions

2.15 Where CCS has made an unfavourable decision, section 69 of the Act provides that CCS may give directions as it considers appropriate to remedy, mitigate or eliminate any adverse effects arising from the merger situation. Such directions may include the imposition of financial penalties[7]. For further information, Part 6 below.

3 SELF-ASSESSMENT: DECIDING WHETHER OR NOT TO NOTIFY

3.1 This part provides guidance on the circumstances in which it may be appropriate for merger parties to notify their merger situation to CCS.

Voluntary regime

[2] Sections 75 to 78 of the Act.
[3] Sections 63 to 66 of the Act.
[4] Section 67(1A)(i) of the Act.
[5] Section 67(1A)(ii) of the Act.
[6] Section 60B(1) of the Act.
[7] Section 69(2)(d) of the Act.

3.2 Singapore has a voluntary merger regime. This means that there is no obligation, or mandatory requirement, for merger parties to notify their merger situation to CCS, either before or after implementation of the merger. However, under sections 56 to 58 of the Act, merger parties have the option of notifying their merger situation to CCS and to apply for a decision as to whether the merger situation infringes, or will infringe, the section 54 prohibition.

3.3 Section 54 provides that mergers that have resulted, or may be expected to result in an SLC within any market in Singapore for goods or services are prohibited. CCS becomes aware of mergers not only via notifications but also through its market intelligence function and complaints. It can investigate mergers on its own initiative (i.e. where the parties have decided not to notify), where it considers that there are reasonable grounds to suspect that the section 54 prohibition has been or will be infringed[8]. In those circumstances it can carry out an investigation using its statutory powers (see Part 5 below).

Circumstances when it would be appropriate to notify CCS

3.4 Merger parties should assess if an application to CCS is appropriate for their merger situation, bearing in mind that mergers that give rise to an SLC within any market in Singapore are prohibited under section 54 of the Act. The following paragraphs explain in more detail when notification may be appropriate. In general, merger situations should be notified to CCS if the merger parties think the merger may result in an SLC within any market in Singapore.

3.5 CCS considers that competition concerns are unlikely to arise in respect of mergers that only involve small companies. Therefore, where the turnover in Singapore[9] 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, notification is unlikely to be required.

3.6 CCS considers that competition concerns are unlikely to arise in respect of mergers where the activities of the parties do not overlap (i.e. the merger parties or joint venture parents are not actual or potential competitors in Singapore) and one does not purchase goods or services from the other (i.e. the merger parties or joint venture parents do not have a vertical supply relationship). However, where merger parties supply goods or services of the same description to customers in Singapore, and their combined share of supply of those goods or services in Singapore exceeds 40%, the merger parties are strongly encouraged to notify their merger situation to CCS.

3.7 For the purpose of deciding whether or not to notify a merger, there is no need to carry out an extensive economic assessment to define the relevant market. Instead, merger parties may carry out a two-step analysis to determine if notification is appropriate. The first step is to determine if the merger parties supply goods or services of the same description to customers in Singapore. The second step is to determine if the merger parties' combined share of the supply of the overlapping goods or services in Singapore exceeds 40%.

[8] Section 62 of the Act.
[9] Singapore turnover in this context refers to turnover booked in Singapore as well as turnover from customers in Singapore.

3.8 In relation to determining if the merger parties supply goods or services of the same description in Singapore, the merger parties should have regard to the narrowest reasonable description of goods or services.

3.9 In relation to determining whether or not the 40% share is met, the parties can refer to sales by value, volume, number of (retail) outlets, number of bids won, etc. If the 40% share is exceeded on any basis, merger parties are strongly encouraged to notify.

3.10 The overlapping goods or services identified by the parties for the purpose of determining whether or not to notify may not correspond to the economic market (also referred to as relevant market) that the CCS may use in its substantive assessment of the competitive effects of the merger.

3.11 This notification guideline based on share of the overlapping goods or services in Singapore does not apply to vertical or conglomerate mergers because in those situations, the merger parties do not supply goods or services of the same description. Such merger situations should be notified to CCS if the merger parties think the merger may result in an SLC within any market in Singapore.

3.12 Merger parties should refer to the following guidelines in their assessment:

- Part 7 of these guidelines to determine if the merger situation is excluded under the Fourth Schedule of the Act; and
- *CCS Guidelines on the Substantive Assessment of Mergers* to determine the nature and extent of any possible concerns that CCS may have.

3.13 Merger parties may wish to seek legal advice if necessary.

Risks of not notifying

3.14 Merger parties should note that under section 62 of the Act, CCS may conduct an investigation if there are reasonable grounds for suspecting that a merger has infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition.

3.15 CCS considers that there may be reasonable grounds to suspect that the section 54 prohibition has been or will be infringed, for example, where there are consistent complaints, or one or more substantiated complaints, from third parties; where there are preliminary indications that the combined market share of the merger parties is more than 20% and the post-merger CR3 is 70% or more; where customers in Singapore appear, post-merger, to have limited choice, or – for vertical mergers - where there is a possibility of competitors being foreclosed. The examples given are not exhaustive.

3.16 When CCS has reasonable grounds to suspect that the section 54 prohibition has been or will be infringed, it is empowered under section 63 of the Act, to require from any person (including the merger parties and third parties) specified information or documents that CCS considers related to any matter relevant to the investigation into the merger situation.

3.17 If CCS carries out an own-initiative investigation and ultimately identifies an SLC, this could have two consequences. First, CCS may direct the merged entity to remedy the SLC, for example by divesting all or part of the business[10]. Second, CCS has the power to impose financial penalties on merger parties that implement a merger that gives rise to an SLC[11]. For further information on directions that may be imposed by CCS, please refer to Part 6 below.

CCS' market intelligence function

3.18 CCS considers that a market intelligence function is an integral part of its voluntary merger notification regime. As part of its statutory remit in the context of merger control, CCS keeps markets under review to ascertain which mergers and acquisitions are taking place. Where it identifies transactions that it considers may potentially raise concerns under the merger provisions of the Act, it approaches the merger parties to gather further information about the transaction and its effect on competition. It may also approach third parties in this regard. Parties and third parties are encouraged to respond promptly and comprehensively to any information requests.

3.19 In order to elicit information about particular mergers, CCS may publish a notice on its website indicating that it is considering whether or not a completed or anticipated merger that has not been notified to it may raise concerns under the merger provisions of the Act.

3.20 If the response of the parties or third parties to CCS' enquiries, or any other information available to CCS, indicates that there are reasonable grounds to suspect that the section 54 prohibition has been or will be infringed, CCS may use its statutory powers to investigate mergers that have not been notified to it.

Third party complaints

3.21 If any interested parties wish to make CCS aware of a merger that it considers might raise concerns under the merger provisions of the Act, they are encouraged to make use of the Complaint Form on CCS' website in order to register the complaint. Complainants should try to provide all the information requested in the form. CCS endeavours to keep complaints and the identity of complainants confidential.

3.22 It should be noted that there is no obligation on CCS to follow-up or investigate complaints relating to non-notified mergers as this would undermine the benefits of the voluntary regime. CCS will not investigate a merger simply because a complaint has been made to it; each complaint will be judged on its merits taking into account, among other things, the strength of any supporting evidence.

Obtaining confidential advice from CCS

3.23 As noted above, merger parties are required to carry out their own assessment to decide whether or not to notify their merger situation to CCS. However, to assist with planning and consideration of future mergers, in particular at the stage when

[10] Section 69(2)(e)(ii) of the Act provides that where CCS has made a decision that the merger situation has infringed the section 54 prohibition, it can require the merger party(s) to dispose of such operations, assets or shares in such manner as may be specified by CCS.
[11] Section 69(2)(d) of the Act.

the merger parties are concerned to preserve the confidentiality of the transaction, CCS is prepared to give confidential advice on whether or not a merger is likely to raise competition concerns in Singapore with the necessary qualification that such advice is provided without having taken into account third party views. Confidential advice is only available in certain circumstances, and at the absolute discretion of CCS, so that its resources may be managed appropriately.

Circumstances when confidential advice may be requested

3.24 Following self-assessment, merger parties may approach CCS for confidential advice in the following circumstances.

3.25 First, the merger must not be completed but there must be a good faith intention to proceed with the transaction, as evidenced to the satisfaction of CCS by the party or parties requesting the confidential advice.

3.26 Second, the merger must not be in the public domain. In exceptional circumstances, CCS may consider giving confidential advice in relation to mergers that are no longer confidential, but the requesting party or parties must provide good reasons why they wish to receive confidential advice.

3.27 Third, the merger situation must raise a genuine issue relating to the competitive assessment in Singapore, so there must be some doubt as to whether or not the merger situation raises concerns such that notification may be appropriate. For example, there may be a genuine issue if there is a lack of relevant precedents and therefore CCS' approach to the merger situation is genuinely in doubt. On the other hand, there would be no genuine issue if, for example, both merger parties have an insignificant market presence in Singapore.

Process for confidential advice

3.28 The process for obtaining confidential advice is as follows. As a first step, the party or parties wishing to request the advice should contact the CCS hotline on 1800-325 8282, or email CCS at the following email address: ccs_feedback@ccs.gov.sg. In first instance, they should provide basic information about the merger, such as the merger parties' names, sector, overlapping goods or services, timing, evidence of good faith intention to proceed with the merger and reasons for seeking the confidential advice. A provisional timeline for the submission of full information by the requesting party (or parties) and the provision of the advice by CCS can then be agreed. CCS expects to be able to provide advice within 14 working days of receipt of all the required information.

3.29 The requesting party is expected to provide information similar to that required in Form M1 in order for CCS to begin its assessment. Since the process is confidential, no third party enquiries will be carried out and third party contact details do not need to be provided. In addition, CCS does not expect to request further information by way of written questions to the requesting party. In light of this, it is very important that a full and frank account of the likely competitive effect of the merger in Singapore is provided in the submission to CCS[12].

[12] Note that pursuant to section 77 of the Act, it is an offence to provide false or misleading information to CCS.

3.30 Based on the information provided, CCS will carry out an internal assessment of the merger. A meeting may be arranged with the requesting party (or parties), providing an opportunity for CCS to ask questions and for the requesting party to state its views on the competitive effect of the merger orally. At the end of the process, CCS will provide a letter to the requesting party stating whether it considers that the merger is likely to raise competition concerns in Singapore and whether notification is required.

Caveats and conditions for confidential advice

3.31 The following conditions and caveats apply.

- In all cases where confidential advice is given, CCS reserves the right to investigate the merger situation where the statutory test for doing so is met. Confidential advice does not amount to a decision under section 57 or 58 of the Act.

- The requesting party or parties are expected to keep CCS informed of significant developments in relation to the merger situation in respect of which confidential advice was obtained, for example, completion date or abandonment of the merger.

4 APPLICATIONS

4.1 This part provides a more detailed account of the application process, explaining how merger parties should make an application to CCS for a decision regarding a merger situation. It also describes CCS' powers to gather supplementary information from the applicant and the process for obtaining information from third parties. The Phase 1 and Phase 2 processes and CCS' publication policy are also explained.

4.2 For anticipated mergers, an application can only be made once the merger has been made public. This is to allow CCS to seek third party views[13]. Parties to an anticipated merger should exercise due caution when exchanging commercially sensitive information (such as prices and customer details) in the context of the merger negotiations and the application and review process. The exchange of such information may infringe the section 34 prohibition of the Act where it has the object or effect of restricting competition within Singapore.

4.3 In the case of completed mergers, an application may be made at any time, although parties are encouraged to notify as soon as possible after completion.

4.4 Merger parties can implement an anticipated merger while it is being considered by CCS, but they do so at their own risk. In the case of a completed merger, the merger parties may also proceed with further integration of the merger at their own risk.

Notification Guidelines

[13] Paragraph 3 of the *Competition (Notification) Regulations 2007* provides that only such anticipated mergers as may be made known to the public may be notified to CCS under section 57 of the Act.

4.5 The circumstances in which notification is encouraged are outlined in Part 3, paragraphs 3.4 – 3.13.

Pre-Notification Discussions

4.6 Merger parties are strongly encouraged to contact CCS at an early opportunity to discuss the content and timing of their notifications. These discussions are generally referred to as Pre-Notifications Discussions ("PNDs"). PNDs do not attract a fee.

4.7 As a first step, merger parties wishing to engage in PNDs should contact the CCS hotline on 1800-325 8282, or email CCS at the following email address: ccs_feedback@ccs.gov.sg.

4.8 While CCS encourages PNDs for anticipated mergers that may not yet be in the public domain, PNDs are not intended to relate to purely speculative or hypothetical transactions. At the point when parties approach CCS for PNDs, they should be in a position to show that there is a good faith intention to proceed with the transaction. Generally, CCS considers that there is a good faith intention to proceed with the transaction when, for example, a draft sale and purchase agreement is in place.

4.9 PNDs can be informal and brief, or more formal and prolonged, depending on the preference of the merger parties, the complexity of the transaction and the concerns that the merger may raise. PNDs are most useful for the parties where they can provide CCS with a draft form M1 prior to, or in the course of, the discussions.

4.10 PNDs are useful because they permit the merger parties to ascertain what information CCS is likely to require in order to assess their transaction. Wherever possible, CCS will indicate gaps in the information provided in the draft Form M1. Where Form M1 stipulates the provision of information that is not relevant to the particular transaction under consideration, the PND provides an opportunity for parties to point this out to CCS. For mergers involving more complex products or raising some competition issues, effective PNDs can help minimise the risk that the merger cannot be cleared in Phase 1. The more information that is provided at PND stage, the more useful the process will be. PNDs also help CCS to plan its work and therefore facilitate an expeditious merger review process.

4.11 In the context of PNDs, CCS does not give views on whether a merger situation would be likely to require a Phase 2 assessment, or if it would lead to an SLC. However, merger parties may approach CCS for confidential advice on a merger in certain circumstances; see Part 3, paragraphs 3.23 - 3.31 for further details.

Submitting an Application

Form M1

4.12 An application under section 57 or 58 of the Act must be made by submitting Form M1 to CCS[14]. The Form (at Annex A) may be varied from time to time, with an updated copy being available on CCS' website.

[14] Regulation 6(1)(b) of the *Competition (Notification) Regulations 2007*.

4.13 When it receives an application, CCS will first determine whether Form M1 is complete and if the Application otherwise meets all the requirements. If so, the indicative timeframe of 30 working days for Phase 1 review commences on the day of receipt of the application.

4.14 CCS may refuse to accept an Application if it is:

- incomplete;
- not accompanied by the relevant supporting documents;
- not substantially in the prescribed form[15];
- not accompanied by the appropriate fee, or
- not in compliance with any requirement under the Act or any regulations made thereunder.

4.15 If the Application is satisfactory in all respects, CCS will notify the merger parties accordingly in writing. In the event of non-conformity, CCS will inform the applicant as soon as practicable. The 30 working day indicative timeframe for Phase 1 review will not commence until the applicant has filed an Application with the non-conformity rectified.

4.16 Merger parties are required to provide a non-confidential version of Form M1, in addition to a confidential version and a written statement explaining why the information is confidential[16]. This is to facilitate CCS' discussions and meetings with third parties. Where CCS considers that the confidentiality claims made by the parties are excessive or unreasonable, it may stop the clock, suspending the 30 working day indicative timeframe, until the applicant files a non-confidential version of Form M1 that meets CCS' requirements. For further information on confidentiality claims, see paragraphs 4.30 – 4.35.

Form M2 and information requirements for commencement of Phase 2

4.17 If CCS is of the opinion that it is necessary to proceed to a Phase 2 review, it will notify the applicant accordingly. The indicative timeframe of 120 working days for Phase 2 review commences when CCS:

- notifies the applicant that the merger situation has proceeded to a Phase 2 review; and
- receives a complete Form M2 and a response to the Phase 2 information request that CCS deems satisfactory. CCS may, by giving notice to the applicant, dispense with the obligation to submit any particular information or document forming part of Form M2 if it considers that such information or document is unnecessary for the examination of the merger situation[17].

[15] Regulation 7(10) of the *Competition (Notification) Regulations 2007*.
[16] Regulation 8(1) of the *Competition (Notification) Regulations 2007*.
[17] Regulation 6(4) of the *Competition (Notification) Regulations 2007*.

4.18 The indicative timeframe for Phase 2 will not commence before both events have occurred. In any case, the Phase 2 review period will commence no earlier than after the expiry of the indicative timeframe of 30 working days for Phase 1 review.

4.19 If the applicant fails to submit a complete Form M2, or a satisfactory response to the Phase 2 information request within the deadline stipulated by CCS (and any extensions which may have been granted), CCS may commence its own investigation into the merger using its statutory powers (see Part 5).

Additional Information and stopping the clock

4.20 In both Phase 1 and Phase 2, CCS may from time to time ask the applicant to provide additional information. CCS will require the applicant to furnish the additional information by such deadline as CCS considers appropriate[18]. If the applicant is unable to provide the requested information by the deadline, the applicant should submit a request for extension of time to CCS as soon as possible.

4.21 CCS may request the information in writing on an informal basis, or it may use its statutory powers under section 61A of the Act[19].

4.22 Even if CCS extends the deadline, it may (depending on the nature of the additional information that is required) "stop the clock" for the period between the date of the original deadline and the date on which the applicant reverts with the requested information. If the applicant fails to revert with the additional information within the deadline (and any extensions which may have been granted), CCS may determine the application by not giving a decision[20], but may then commence its own investigation into the merger using its statutory powers (see Part 5).

Publication of Application on the Register and invitations to comment

4.23 Upon acceptance of a satisfactory Application, CCS will publish the details of the merger situation furnished by the applicant in Part 5 of Form M1 on the public register on its website[21]. The entry will be updated if CCS is considering whether or not to accept commitments, if the merger proceeds to a Phase 2 review and once CCS takes a decision under section 54 of the Act.

4.24 Third parties are invited to comment on the merger via an invitation to comment on CCS' website and when CCS consults on commitments.

Giving Notice of the Application to Non-applicant Merger Parties

4.25 If the application is made by one or only some of the merger parties, the applicant(s) must give written notification to all the other merger parties that the Application has been made. The written notification to these parties must be given within 2 working days from the date on which the Application is submitted to CCS and a copy of the written notification must be provided to CCS (on the

[18] Regulation 7(7) of the *Competition (Notification) Regulations 2007*.
[19] In the context of own-initiative investigations, CCS may use its power under Section 63 of the Act to obtain information.
[20] Regulation 7(6) of the *Competition (Notification) Regulations 2007*.
[21] Regulation 30(1)(b) of the *Competition Regulations 2007*.

same day that the Application is submitted if written notice was given prior to that, or otherwise within 2 working days of the submission of the Application). If the applicant is unable, despite the exercise of due diligence, to contact the other merger parties, CCS may require the applicant to notify the other merger parties in such mode and manner as may be specified, e.g. by publishing the notice[22].

Requirements for Submitting Materials to CCS

4.26 The applicant is required to submit one master copy, five photocopies, and one soft copy (on CD-ROM) of Form M1 and its supporting documents (including any agreements containing restrictions which may be ancillary to the merger and which are the subject of the Application), with any confidential information in the Form or documents clearly identified. The same applies to Form M2 and any information requests made by CCS during Phase 1 and Phase 2.

4.27 The applicant is also required to submit one master copy and one soft copy (in CD-ROM) of the non-confidential version of Form M1 and its supporting documents. This should be accompanied by a separate annex identifying the confidential information and furnishing reasons as to why the information should be treated as confidential. The same applies to Form M2 and any information requests made by CCS during Phase 1 and Phase 2.

4.28 The soft copies of Forms M1 and M2 (and the non-confidential versions thereof) are to be in Microsoft Word format. Supporting documents accompanying Forms M1 and M2 must, where possible, also be in a format which allows for cutting and pasting of text. Non-confidential versions need not be filed if the applicant is of the view that the relevant Form or document can be shared with third parties.

4.29 If the applicant engages legal assistance to file the application on the applicant's behalf, CCS should be furnished with a letter of authorisation signed by the applicant. If a joint Application is submitted, a joint representative should be appointed[23].

Confidentiality

4.30 Applicants and third parties are required to provide both confidential and non-confidential versions of any submissions made to CCS. CCS requires non-confidential versions for the purpose of facilitating discussions and meetings with third parties and to enable it to publish a non-confidential version of its decision without delay. The manner in which confidential information should be identified is set out below.

- In the <u>confidential versions</u> of submissions, confidential information must be marked by enclosing it in square brackets.

- In the <u>non-confidential version</u> of submissions, redactions must be marked by square brackets containing the word "CONFIDENTIAL"[24]. As explained

[22] Regulations 5(3), 5(4), 5(5), 5(6) and 5(7) of the *Competition (Notification) Regulations 2007*.
[23] Regulation 4(3) of the *Competition (Notification) Regulations 2007*.
[24] For example, if a document accompanying Forms M1 or M2 contains the statement "the turnover of the applicant is 1 billion dollars" and the turnover figure is confidential, the confidential portion should be blanked out from the non-confidential version of the document and square brackets containing the word "CONFIDENTIAL"

above, the applicant must submit a separate annex with the non-confidential version of any submissions identifying the confidential information and giving reasons why the information should be treated as confidential.

4.31 CCS cautions against blanket or overly wide confidentiality claims. Confidentiality should only be claimed over information that can reasonably be considered to be commercially sensitive or relating to the personal affairs of an individual. Section 89(6)(b) of the Act and Regulation 2 of the *Competition (Notification) Regulations 2007* provide that confidential information means (a) commercial information the disclosure of which would, or might, in the opinion of CCS, significantly harm the legitimate business interests of the undertaking to which it relates; (b) information relating to the private affairs of an individual the disclosure of which would, or might, in the opinion of CCS, significantly harm the individual's interests; or (c) information the disclosure of which would, in the opinion of CCS, be contrary to the public interest. The following classes of information are not generally considered to be confidential by CCS:

- Information that relates to the business of any of the merger parties but is not commercially sensitive in the sense that disclosure would cause harm to the business;

- Information that reflects the merger parties' views of how the competitive effects of the merger could be analysed. This type of information can be produced by any reasonably well informed market participants, trade analysts or legal/economic advisors.

- Information that is general knowledge within the industry, or is likely to be readily ascertainable by any reasonably diligent market participant or trade analyst.

4.32 Where CCS considers that the confidentiality claims made in respect of Form M1, Form M2 or any other submission are excessive or unreasonable, it may stop the clock until such time as the applicant files a non-confidential version that meets CCS' requirements.

4.33 It is CCS' policy to keep confidential those aspects of applicants' submissions in respect of which legitimate confidentiality claims have been made. In exceptional circumstances it may be necessary to disclose confidential information, for example in the context of third party inquiries or in order to explain the reasoning of CCS in its final decisions or to establish a point of precedent[25]. In these circumstances, CCS will consider the extent to which the disclosure is necessary for the purposes for which CCS is proposing to make the disclosure[26] and liaise with the parties in advance to consider how any detriment to the merger parties could be minimised.

4.34 Before CCS decides to publish a merger decision, it may give the applicant an opportunity to review the draft decision in order to determine whether or not it contains confidential information and to check the accuracy of factual statements relating to, or supplied by, the applicant. In the interest of transparency, it is

inserted in the blanked out portion. The non-confidential version of the document will therefore read: "the turnover of the applicant is [CONFIDENTIAL] dollars".

[25] Section 89(5) of the Act.

[26] Section 89(6)(c) of the Act.

common practice for CCS to safeguard confidentiality by replacing market share figures with ranges in the public version of the decision. This approach may also be used for other numeric information. Moreover, wherever possible, confidentiality claims of third parties are respected by anonymising and/or aggregating their responses.

4.35 While CCS will treat all parties' submissions on confidentiality seriously, pursuant to section 89 of the Act and Regulation 20(5) of the *Competition (Notification) Regulations 2007*, CCS will have the final discretion to decide whether or not information is confidential.

Applicants' Obligations as to Accuracy of Information

4.36 Each applicant and the joint representative (where one has been appointed) must sign the declaration in Form M1 (and Form M2, where relevant) stating that the information submitted is correct to the best of the knowledge and belief of the person signing the declaration, and that all estimates are best estimates based on the underlying facts. Applications which lack the requisite signatures will not be accepted. The applicant has a continuing obligation to inform CCS of any material changes in the information contained in the Application which may occur after the Application has been made.

4.37 Section 77 of the Act provides that it is an offence to recklessly or intentionally provide false or misleading information. This applies to applicants as well as third parties who provide information to CCS in the course of its work.

Application Procedure for Ancillary Restrictions

4.38 Ancillary restrictions (also referred to as ancillary restraints) are restrictive agreements, arrangements or provisions that are directly related and necessary to the implementation of a merger. Ancillary restrictions are excluded from the section 34 prohibition and the section 47 prohibition by virtue of paragraph 10, Third Schedule of the Act.

4.39 Merger parties should assess whether any restrictive agreements, arrangements or provisions which are concluded as part of the merger qualify as ancillary restrictions. For merger parties seeking greater legal certainty, the Act allows for ancillary restrictions to be notified to CCS in two ways:

- Merger parties may notify the restrictions as part of the application and provide the necessary information in Form M1. CCS will consider these restrictions in the review of the merger situation and decide whether or not they are ancillary restrictions. Merger parties should bear in mind that as part of the merger review process, CCS may seek third-party views on these restrictions. Applicants should note that CCS only has jurisdiction to determine whether a restriction is ancillary to a merger in respect of its effect in Singapore.

- In the event that the merger parties do not make an application in respect of the merger situation itself, they can file a separate notification for guidance (under sections 43 or 50 of the Act) or a decision (under sections 44 or 51 of the Act) as to whether the agreement, arrangement or provision concerned constitutes an ancillary restriction. Merger parties should follow the

procedures laid out in CCS *Guidelines on Filing Notifications for Guidance or Decision with respect to the Section 34 Prohibition and Section 47 Prohibition* in submitting such notifications. In filing such notifications, merger parties should provide the following:

- details of each restriction;
- a explanation as to why each restriction may infringe the section 34 prohibition and/or the section 47 prohibition but for the exclusion of ancillary restrictions from these prohibitions; and
- a explanation as to why each restriction is directly related and necessary to the implementation of the merger situation.

CCS will then make a decision as to whether the restrictive agreements, arrangements or provisions which have been notified qualify as ancillary restrictions.

4.40 Even if CCS gives guidance or a decision to the effect that a restrictive agreement, arrangement or provision is likely to qualify as an ancillary restriction, this does not prevent CCS from taking further action in respect of a restriction which is implemented if CCS finds that the underlying merger has infringed, or the underlying anticipated merger if carried into effect will infringe, the section 54 prohibition, or if the underlying anticipated merger is not subsequently implemented.

CCS' Information Gathering Powers

Information from the applicants

4.41 CCS, after considering all the information available to it, may decide that it requires additional, or more comprehensive, information. To this end, CCS will issue requests for information when it is clear that the information is necessary. Applicants are encouraged to comply with information requests promptly, so that CCS can complete the merger assessment within the relevant timeline. The deadlines for requests of information are likely to be short and, depending on the nature of the information, may range from 3 to 5 working days. CCS may also hold meetings with applicants in both Phase 1 and Phase 2.

4.42 Applicants receiving a request for information from CCS may wish to discuss with CCS at an early stage their likely timetable for responding, the extent to which the requested information is available, and the form in which it is available. Any request for an extension of time to respond should be made promptly as CCS is unlikely to grant any extension of time requested just prior to the stipulated response date.

4.43 Failure to meet the deadlines for response may result in a delay in the assessment process. In the event of any delay, CCS may decide to stop the clock, thereby extending the relevant timeline. The clock will be restarted once the requested information has been provided.

4.44 Finally, CCS is empowered under section 61A of the Act, when it has reasonable grounds to suspect that the section 54 prohibition has been or will be infringed, to

require from any person specified information or documents that would assist CCS in its assessment of the application. CCS may use this power in appropriate circumstances to request information from applicants.

Information from Third Parties

4.45 Information provided by third parties plays an important role in CCS' assessment of mergers. CCS obtains relevant information from third parties via public consultation and by contacting them directly. Wherever possible, CCS will respect confidentiality claims, subject to any overriding considerations relating to transparency and rights of defence.

4.46 As stated above, details of applications accepted by CCS will be published on the public register. All interested third parties (including non-applicant merger parties) are invited to submit their views on the Application. All interested third parties should submit their comments within 10 working days after the Applications are published on the public register so that CCS will have sufficient time to give due consideration to their submissions.

4.47 CCS also approaches third parties, such as the applicant's main customers (end customers and intermediate customers), suppliers and/or competitors, for information. CCS may also contact other government bodies for their views on the merger situation. Where any of the merger parties are regulated by another government authority, CCS will, in general, seek inputs from these authorities. These bodies may carry out their own public consultation before providing their comments to CCS. CCS may hold meetings with third parties in Phase 1, as well as in Phase 2.

4.48 When providing submissions to, or otherwise corresponding with CCS, third parties should indicate which information is confidential. CCS may share the non-confidential versions of submissions with the applicant or other parties, either by publication on CCS website or through other means, for example when it provides access to the file in Phase 2. In the event that CCS considers it necessary to publish or otherwise disclose confidential information, it will liaise with the provider of the information. Part 4, paragraph 4.31 sets out further details regarding the type of information that CCS is likely to regard as confidential.

4.49 Finally, CCS is empowered under sections 61A and 63 of the Act, when it has reasonable grounds to suspect that the section 54 prohibition has been or will be infringed, to require from any person specified information or documents that would assist CCS in its assessment of the application. CCS may use this power in appropriate circumstances to request information from third parties.

Consequences of providing False or Misleading Information

4.50 There are penalties for both applicants and third parties who provide false or misleading information to CCS. Section 77(1) of the Act makes it an offence to knowingly or recklessly provide false or misleading information to CCS, an investigating officer or an inspector or any person authorised to assist CCS, investigating officer or inspector in connection with their functions or duties. The

penalty for breaching this provision is a fine of up to $10,000 or imprisonment of up to 12 months, or both[27].

4.51 Applicants are also reminded that CCS may review its favourable decisions if, among other things, CCS has reasonable grounds to suspect that the information on which CCS based its decision was incomplete, false or misleading.

The Review Process

Preliminary Thresholds

4.52 Upon accepting a complete Form M1 that meets all the applicable filing requirements, CCS will first determine:

- whether the transaction falls within the meaning of a 'merger' or 'anticipated merger' as defined in the Act[28]; and

- whether the transaction is excluded under paragraph 1 or 2 of the Fourth Schedule of the Act[29].

4.53 Where CCS considers that the transaction does not fall within the meaning of a merger or an anticipated merger as defined in the Act, or is excluded under paragraph 1 or 2 of the Fourth Schedule of the Act, CCS will inform the applicant as soon as is practicable.

Phase 1 Review

4.54 A Phase 1 review entails a quick review and allows merger situations that do not raise competition concerns under the section 54 prohibition to proceed without undue delay. Please refer to CCS *Guidelines on the Substantive Assessment of Mergers* for details of the assessment CCS conducts.

4.55 CCS expects to complete a Phase 1 review within **30** working days, where day 1 is the date of receipt of the complete notification. In exceptional circumstances, CCS may extend the Phase 1 review period upon informing the applicant in writing in advance. In Phase 1, CCS will determine whether to issue a favourable decision and allow the merger situation to proceed, or to carry on to a Phase 2 review.

4.56 In Phase 1, the case team will gather information about the competitive effect of the merger situation from the applicant and from third parties, such as customers, competitors and, in some cases, suppliers, as well as other regulatory bodies and government departments, where relevant. The case team may hold meetings with the parties or third parties.

4.57 In the event that the case team identifies competition concerns in Phase 1 that indicate that a favourable decision at Phase 1 cannot be issued, and hence a Phase 2 review may be appropriate, it will communicate those concerns to the applicant in writing, setting out the main competition concerns that have been

[27] Section 83 of the Act.
[28] Section 54(2) of the Act.
[29] Please refer to the relevant paragraphs of CCS *Guidelines on the Substantive Assessment of Mergers* for more details of merger situations that fall under the purview of the Act.

identified. The applicant will be given an opportunity to respond to the issues letter. The deadline for response will be quite short. The response to the issues letter will provide an opportunity for the applicant to put forward commitments if it wishes. The consideration of commitments is likely to extend the timetable for Phase 1. If the commitments are not accepted, CCS will require submission of Form M2 and the Phase 2 information request within a specified timeframe. If the commitments are accepted then CCS will issue a favourable decision.

4.58 CCS will give notice of the decision to the applicant and announce the decision on the public register. If CCS intends to publish the text of the decision, the merger parties (and, where relevant, third parties) will be given an opportunity to indicate whether or not there is any confidential information in the decision. If CCS agrees with the confidentiality claim, the confidential information will be redacted before the decision is published.

Phase 2 Review

4.59 If CCS, on the basis of all information before it, is unable to form the conclusion during the Phase 1 review that the merger situation does not raise competition concerns under the section 54 prohibition, CCS will proceed to a Phase 2 review.

4.60 While the principles of substantive assessment for Phase 2 review are the same as those for Phase 1, a Phase 2 review entails a more detailed and extensive examination of the effects of the merger situation. As such, CCS will require detailed information regarding the businesses of the merger parties and the markets in question.

4.61 Phase 2 reviews are more complex and CCS endeavours to complete them within **120** working days. At the end of this period CCS will decide whether to issue a favourable or unfavourable decision. In exceptional circumstances, CCS may extend the Phase 2 review period upon informing the applicant in writing in advance.

4.62 If, towards the end of Phase 2, CCS reaches a preliminary view that the merger situation is likely to give rise to a substantial lessening of competition, it will issue a Statement of Decision (Provisional) to the applicant[30]. The Statement of Decision (Provisional) will state the facts on which CCS relies, as well as the reasons why CCS has reached the preliminary view that the merger is likely to give rise to a substantial lessening of competition. The Statement of Decision (Provisional) will also outline any commitments or directions that CCS considers may be appropriate.

4.63 CCS will give the applicant an opportunity to make written representations to CCS and it may permit the merger parties to make oral representations to CCS. The applicant will be permitted to inspect the documents in CCS' file. Internal CCS documents and information, and confidential information provided by third parties will not be available for inspection as part of access to the file[31]. The applicant's written response to the Statement of Decision (Provisional) will also be an opportunity for the applicant to propose commitments.

[30] Regulation 10(2) of the *Competition (Notification) Regulations 2007.*
[31] Regulation 11 of the *Competition (Notification) Regulations 2007*.

4.64 Once CCS has issued a notice setting out its preliminary views, the merger parties can apply in writing to the Minister for Trade and Industry for the merger situation to be exempted on public interest considerations[32]. The parties should provide a copy of their submissions to the Minister to CCS.

4.65 Having taken into account any oral and written representations made by the applicant in response to the Statement of Decision (Provisional), CCS will take a final decision on the merger. It will then give notice of the decision to the merger parties and announce the decision on the public register. If CCS intends to publish the text of the decision, the merger parties (and, where relevant, third parties) will be given an opportunity to indicate whether or not there is any confidential information in the decision. If CCS agrees with the confidentiality claim, the confidential information will be redacted before the decision is published.

Interim Measures

4.66 Since the merger regime is voluntary, merger parties who have made an application may proceed with their anticipated merger or with further integration of their completed merger, as the case may be, at their own risk before CCS issues a decision.

4.67 However, section 58A allows CCS to impose interim measures, that is, directions it considers appropriate to prevent the merger parties from taking any action that might prejudice CCS' ability to consider the merger situation further and/or to impose appropriate remedies. Such directions may also be issued as a matter of urgency to prevent serious, irreparable damage to persons or to protect the public interest.

4.68 Interim measures may, for example, comprise of directions that (i) stop the acquiring party from implementing the merger; (ii) prohibit the transfer of staff; or (iii) set limits on the exchange of commercially sensitive information such as customer lists and prices. In the case of anticipated mergers, CCS may give a direction prohibiting the merger parties from acquiring control or equity interests. In situations where the merger situation does not involve the acquisition of shares, CCS may give a direction to require the merged entity not to proceed further with the transaction or take further steps to implement the merger until the Application has been determined.

4.69 Section 58A(1) of the Act provides that interim measures may be imposed when CCS has reasonable grounds for suspecting that the merger situation under consideration has resulted, or may be expected to result, in an SLC within the meaning of section 54 of the Act. Section 67(1A) allows CCS to impose interim measures in similar circumstances in relation to mergers that have not been notified to it but that are under investigation. As a matter of practice, however, CCS is unlikely to use this power unless it believes that there is a real possibility that the merger situation will give rise to an SLC. The fact that CCS has imposed interim measures does not rule out eventual clearance of the merger situation.

[32] Section 57(3) and Section 58(3) of the Act; Regulation 11(d) of the *Competition (Notification) Regulations 2007.*

4.70 Once interim measures have been imposed, CCS will consider any reasoned requests for waiver to provide the parties with the flexibility required to run their business.

4.71 CCS may publish interim measures that it imposes on its website.

Procedure for Imposing Interim Measures

4.72 Under section 58A, CCS must give prior written notice to the persons to whom it proposes to give the relevant direction (usually the merged entity in the case of a completed merger, or the acquirer in the case of an anticipated merger), indicating the nature of the proposed direction and the reasons for it. Such persons will be given an opportunity to make representations to CCS. They can also appeal against CCS' directions[33].

4.73 *CCS Guidelines on Enforcement* provide further information on the procedure for directions imposing interim measures.

Enforcement of Directions Imposing Interim Measures

4.74 If a direction imposing interim measures has not been complied with, CCS may apply to register the direction with a District Court in accordance with Order 97 of the Supreme Court of Judicature Act (Cap. 322, R5) Rules of Court. Any person who fails to comply with a registered direction without reasonable excuse may be found to be in contempt of court. The normal sanctions for contempt of court will apply, i.e. the court may impose a fine or imprisonment[34].

4.75 Reference should be made to the relevant paragraphs of CCS *Guidelines on Enforcement* pertaining to the enforcement of directions on interim measures.

CCS Decisions

Favourable Decisions

4.76 A favourable decision is a decision by CCS that a merger has not infringed, or that an anticipated merger if carried into effect will not infringe, the section 54 prohibition. A favourable decision may be issued at the end of Phase 1 or Phase 2. Where CCS makes a favourable decision, it will give notice of the decision to the merger parties. CCS may also publish the text of the decision on the public register. Before publishing the decision, the merger parties (and, where relevant, third parties) will be given an opportunity to indicate whether or not there is any confidential information in the decision. If CCS agrees with the confidentiality claims, the confidential information will be redacted before the decision is published.

4.77 Sections 59 and 60 of the Act provide that once CCS has issued a favourable decision, it will not take further action unless it has reasonable grounds for suspecting that:

[33] Section 71(3) of the Act.
[34] Section 58A(5) and Section 85 of the Act.

- information on which CCS has based its decision (which may include information on the basis of which a commitment was accepted) was materially incomplete, false or misleading;

- a party who provided a commitment failed to adhere to one or more terms of the commitment; or

- where a favourable decision was given for an anticipated merger to proceed, the merger so effected, is materially different from the anticipated merger.

Should any of these circumstances occur, the favourable decision may be revoked and CCS may commence investigations into the merger.

4.78 CCS may, at the time of issuing a favourable decision for an anticipated merger, specify the validity period of the decision within which the anticipated merger must be carried into effect[35]. CCS will not take further action if the anticipated merger is effected within the validity period, unless any of the circumstances stated in paragraph 4.77 occurs. In specifying the validity period, CCS considers that one year will generally be sufficient for merger parties to act on the favourable decision and carry the anticipated merger into effect. However, CCS will take account of the circumstances of each merger situation when specifying the duration of any validity period.

4.79 If the applicant is unable to carry the anticipated merger into effect within the validity period, the applicant may make a request to CCS to extend the validity period. If the Application had been jointly made by more than one applicant, any request for extension must be jointly made by all of them[36]. The applicant(s) requesting for extension must notify all other parties to the anticipated merger about the request for extension within 2 working days from the date on which the request is made.

4.80 A request for extension must be made to CCS in writing, and must contain the following:

- an explanation as to why the anticipated merger cannot be effected within the validity period;

- a statement as to the duration of extension sought and an explanation as to why this duration is necessary;

- an explanation as to how the competitive environment has changed since the favourable decision was issued and how it may be expected to change further within the period of extension sought;

- an explanation as to how the competitive impact of carrying the anticipated merger into effect within the period of extension will differ from that if it had been carried into effect within the initial validity period.

All explanations should be clear and accompanied by relevant supporting documents.

[35] Section 57(7) of the Act.
[36] Section 57(8) of the Act.

4.81 Requests for extensions will be considered by CCS on a case-by-case basis. Extensions may also be granted subject to conditions imposed by CCS. Generally, CCS is more likely to grant an extension if there is no material change in the competitive environment since the favourable decision was granted and the competitive impact from carrying the anticipated merger into effect within the period of extension sought will not be materially different than if the merger is carried into effect within the initial validity period. If the determination of whether the validity period should be extended requires significant analysis of the competitive impact of the merger situation, the request for extension is unlikely to be acceded to. In such instances, the merger parties may wish to consider making a fresh Application in respect of the anticipated merger instead.

Unfavourable Decisions

4.82 An unfavourable decision is a decision by CCS that a merger has infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition. In other words, the merger has resulted, or may be expected to result, in an SLC within the meaning of the Act. An unfavourable decision is only issued at the end of Phase 2.

4.83 If, towards the end of Phase 2, CCS reaches a preliminary view that the merger situation is likely to give rise to a substantial lessening of competition, it will issue a notice to the merger parties. The notice will state the facts on which CCS relies, as well as the reasons why CCS has reached the preliminary view that the merger is likely to give rise to a substantial lessening of competition[37]. The notice will also outline any commitments or directions that CCS considers may be appropriate.

4.84 CCS will give the merger parties an opportunity to make written representations to CCS and to inspect the documents in CCS' file relating to the proposed unfavourable decision. Where appropriate, CCS will allow the merger parties to make oral representations to CCS. Internal CCS documents and information, and confidential information provided by third parties will not be available for inspection as part of access to the file[38].

4.85 Once CCS has issued a notice setting out its Statement of Decision (Provisional), the merger parties can apply in writing to the Minister for Trade and Industry for the merger situation to be exempted on public interest considerations. The parties should provide a copy of their submissions to the Minister to CCS[39].

4.86 Should the application to the Minister for Trade and Industry not be successful and having taken into account any oral and written representations made by the merger parties, CCS will take a final decision on the merger. If CCS makes an unfavourable decision, it will give notice of the decision to the merger parties and publish the decision on the public register. Before publishing the decision, the merger parties (and, where relevant, third parties) will be given an opportunity to indicate whether or not there is any confidential information in the decision. If

[37] Regulations 10(2) and 11 of the *Competition (Notification) Regulations 2007*.
[38] Regulation 11 of the *Competition (Notification) Regulations 2007*.
[39] Section 57(3) and Section 58(3) of the Act; Regulation 11(d) of the *Competition (Notification) Regulations 2007*.

CCS agrees with the confidentiality claim, the confidential information will be redacted before the decision is published.

4.87 CCS may also issue directions to remedy, mitigate or eliminate the adverse effects arising from the merger situation[40]. Reference should be made to the relevant paragraphs of *CCS Guidelines on Enforcement* pertaining to the enforcement of directions.

Competing Bids

4.88 Where there are competing bids for the same undertaking, CCS will try to consider them simultaneously. However, this may not be possible when the bids have been made or notified to CCS at different times, or where they raise different issues. If one of the bids has progressed to a Phase 2 review, it does not necessarily follow that the other bid(s) will follow suit. As in the case of a single bidder, each case must be considered on its own merits.

5 OWN-INITIATIVE MERGER INVESTIGATIONS

5.1 CCS may obtain information about merger situations through complaints from third parties or via its market intelligence function. CCS may conduct an investigation of mergers which come to its attention in this way whenever there are reasonable grounds for suspecting that a merger has infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition[41].

5.2 Apart from the manner in which the merger situation comes to CCS's attention and the use of statutory powers to gather information, the process relating to own-initiative investigations is the same as that in relation to notified merger situations.

5.3 The procedure for making complaints and the use of statutory powers to gather information are set out below.

Complaints about Merger Situations

Procedure for Complaints

5.4 In order to make a complaint about a merger situation to CCS, complainants may make use of the Complaint Form on CCS' website. Alternatively, complainants may file a written complaint by emailing ccs_feedback@ccs.gov.sg. The complaint should include the following details:

- a description of the relationship between the complainant and the merger parties or merged entity;
- a concise explanation of the reasons for, and details of, the complaint, including details of the merger situation to which the complaint relates, when and how the complainant became aware of the merger situation, and (where possible) the relative market positions of the parties named in the complaint; and

[40] Section 69(1)(c) and (d) of the Act.
[41] Section 62(c) and (d) of the Act.

- available evidence directly related to the facts set out in the complaint, including appropriate copies of relevant correspondence, statistics or data which relate to the facts set out in the complaint (in particular, where they show developments in the market).

5.5 CCS may also contact the complainant to seek further information or clarifications.

5.6 CCS will consider each complaint on its merits to determine if an investigation is warranted. It should be noted that there is no obligation on CCS to follow-up or investigate complaints relating to non-notified mergers, as this would undermine the benefits of the voluntary regime. CCS will not investigate a merger simply because a complaint has been made to it; each complaint will be judged in context and on its merits taking into account, among other things, the strength of any supporting evidence.

Confidentiality Claimed by Complainants

5.7 If a complainant does not wish to be identified publicly as a complainant, this should be made clear to CCS at the earliest opportunity. CCS will consider the complainant's reasons for wanting his identity to be kept confidential. However, potential complainants should note that it is sometimes necessary to reveal information which may identify the source of a complaint for the effective handling of the complaint. Additional steps which may be required to protect the identity of the complainant may also hamper investigations.

5.8 When providing information or documents to CCS, complainants should provide a non-confidential version of the complaint and of any other information or documents which the complainant may furnish. Please refer to Part 4, paragraphs 4.20 – 4.35 for further details regarding confidentiality claims.

5.9 CCS recognises the importance of complainants voluntarily supplying information and also their interest in maintaining confidentiality. If CCS considers it necessary in the interest of transparency to disclose any of the information over which confidentiality has been claimed, it will, to the extent that it is practicable to do so, consult the complainant who has provided the information.

Powers of Investigation

5.10 CCS' powers of investigation include the power to:

- require the production of specified documents or information (pursuant to section 63 of the Act);
- enter premises without a warrant (pursuant to section 64 of the Act); and
- enter and search premises with a warrant (pursuant to section 65 of the Act).

5.11 In the context of own-initiative merger investigations, CCS may, for example, use its powers under section 63 of the Act to require the production of specified documents or information either from the merger parties or from third parties. The section 63 notice will specify which documents or information are required and state a deadline for response.

5.12 The Act sets out a number of criminal offences which may be committed where an undertaking fails to comply or cooperate when these powers are exercised, as well as limitations on the use of CCS' powers of investigation. Please refer to the relevant paragraphs of CCS *Guidelines on the Powers of Investigation* pertaining to the exercise of CCS' powers of investigation.

6 REMEDIES: COMMITMENTS AND DIRECTIONS

6.1 Remedies may be implemented either by CCS' acceptance of commitments which address competition concerns arising from a merger situation, or by directions issued by CCS.

6.2 CCS may accept commitments at any time during a Phase 1 review or during a Phase 2 review or during an investigation before a final decision on whether or not a merger situation infringes the section 54 prohibition has been taken[42]. Commitments are generally proposed by the merger parties and may be accepted by CCS if they meet certain criteria.

6.3 CCS may give directions when it has made a decision that a merger situation infringes the section 54 prohibition[43]. Directions are therefore only relevant following the issuance of an unfavourable decision as a result of a Phase 2 review. Directions may consist of a prohibition of the merger, or an order that the parties take certain steps to address the competition concerns[44]. Directions may also relate to the imposition of financial penalties.

6.4 Both commitments and directions are binding on the parties on whom they are imposed and can be enforced by CCS via the courts[45].

Commitments

6.5 Commitments offered to CCS must be aimed at remedying, mitigating or preventing the competition concerns which have been identified as arising from the merger situation. Before accepting any commitments, CCS must be confident that they are necessary and sufficient to clearly address the competition concerns and are proportionate to them. If the concerns identified are not clear-cut, or the effectiveness and proportionality of the commitments is in doubt, then commitments may not be appropriate.

6.6 Commitments can either be structural or behavioural. CCS considers that structural commitments are preferable to behavioural commitments as the latter generally require more monitoring. If commitments require monitoring, then the parties must be prepared to meet the costs of engaging a monitoring trustee who will, for example, have the task of submitting regular reports on compliance to CCS. Commitments must also be capable of prompt implementation. In other jurisdictions, commitments have typically been used where there is an SLC in an overlap area that is relatively small in the context of the merger situation. Commitments must also not give rise to new competition concerns.

[42] Section 60A of the Act.
[43] Sections 69(1)(c) and (d) of the Act.
[44] Section 69(2)(ba) and (c) of the Act.
[45] Section 85 of the Act.

6.7 Please refer to the relevant paragraphs of CCS *Guidelines on the Substantive Assessment of Mergers* for a more detailed discussion on commitments.

Procedures for Commitments

6.8 Merger parties are encouraged to take the initiative to propose commitments which they think can appropriately resolve competition concerns that they foresee arising from the merger situation. They can do so at any time during the review process. Section 60A provides that CCS may accept commitments at any time before making a decision on a merger.

6.9 In the event that the case team identifies competition concerns in Phase 1 that indicate that a Phase 2 review may be appropriate, it will communicate those concerns to the applicant in writing. The letter will set out the main competition concerns that have been identified. The response to these competition concerns will provide the last opportunity for the applicant to put forward commitments to address these concerns if it wishes.

6.10 If, towards the end of Phase 2, CCS reaches a preliminary view that the merger situation is likely to give rise to an SLC, it will issue a Statement of Decision (Provisional) to the merger parties. The Phase 2 Statement of Decision (Provisional) will state the facts on which CCS relies, as well as the reasons why CCS has reached the preliminary view that the merger is likely to give rise to a substantial lessening of competition. The Statement of Decision (Provisional) may outline remedies that CCS considers may be appropriate. CCS will give the merger parties an opportunity to make written representations to CCS. The applicant's written response to the Statement of Decision (Provisional) will be the last opportunity for the applicant to propose commitments, or give its views on the remedies proposed by CCS. However, even if merger parties propose commitments, CCS may consider and impose alternative remedies.

6.11 In both Phase 1 and Phase 2, where CCS considers that the commitments which have been proposed by the merger parties are a suitable remedy, CCS will issue an invitation to comment on its website. Third parties may also be approached on an individual basis for their views on the commitments. Having obtained third party views, CCS will decide whether or not the commitments are appropriate and may be accepted. Where commitments have been accepted, CCS will issue a favourable decision. CCS may publish the details of all commitments as part of its decision on the merger situation on the public register. Section 60B(2) provides that CCS may revoke the favourable decision if any of the commitments are breached.

6.12 In order to accommodate the commitments procedure in Phase 1, it is likely to be necessary to extend the indicative timeline by 20 working days or more, at the discretion of CCS. CCS reserves the right to terminate the commitments process at any time. An extension of time may also be required in Phase 2.

Applications to Vary, Substitute or Release a Commitment

6.13 Where CCS has accepted a commitment, the party who provided the commitment may apply to CCS to vary, substitute or release that commitment[46].

[46] Section 60A(3) and (4) of the Act.

6.14 The application for variation, substitution or release must be made to CCS in writing, and must contain the following:

- A statement as to whether the party is applying for a variation, substitution or release;
- In the case of a variation or substitution, a description of the terms of the proposed varied or substitute commitment;
- An explanation as to whether the competition concerns sought to be addressed by the commitment which the party is seeking to vary, substitute or release still exist; and
- An explanation as to the impact which the variation, substitution or release of the commitment will have on the competition concerns, if they still exist.
- Full contact details of the main competitors, customers and clients of the party that is subject to the commitment.

All explanations should be clear and accompanied by relevant supporting documents.

6.15 Before varying, substituting or releasing a commitment, CCS will generally consult with such persons as it thinks appropriate (unless exceptional circumstances exist) by publishing a notice on its website.

Directions

6.16 If CCS concludes that the section 54 prohibition has been infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition, section 69 of the Act provides that CCS may give such directions as it considers appropriate to remedy, mitigate or prevent the adverse effects to competition caused by the merger situation.

6.17 Section 69(2) of the Act provides examples of directions which may be issued by CCS. These include directions:

- prohibiting an anticipated merger from being carried into effect or requiring a merger to be dissolved or modified in such manner as CCS may direct;
- requiring the merger parties to enter into such legally-enforceable agreements as may be specified by CCS to prevent or lessen the anti-competitive effects which have arisen;
- requiring the merger parties to dispose of such operations, assets or shares of such undertaking in such manner as may be specified by CCS; and
- providing a performance bond, guarantee or other form of security on such terms and conditions as CCS may determine.

6.18 Please refer to the relevant paragraphs of CCS *Guidelines on the Substantive Assessment of Mergers* for more information on CCS' consideration of appropriate remedies for mergers.

Procedures for Directions

6.19 The directions must be in writing and may be given to such person(s) as CCS considers appropriate.

6.20 Please refer to the relevant paragraphs of CCS *Guidelines on Enforcement* pertaining to the procedures which govern the issue of directions.

Enforcement of Directions

6.21 If a direction has not been complied with, CCS may apply to register the direction with a District Court in accordance with Order 97 of the Supreme Court of Judicature Act (Cap. 322, R5) Rules of Court. Any person who fails to comply with a registered direction without reasonable excuse may be found to be in contempt of court. The normal sanctions for contempt of court apply, i.e. the court may impose a fine or imprisonment. The court may also make orders to secure compliance with the direction, or to require any person to do anything to remedy, mitigate or eliminate any effects arising from non-compliance with the direction.

6.22 Please refer to the relevant paragraphs of CCS *Guidelines on Enforcement* pertaining to the enforcement of directions.

Directions as to Financial Penalties

6.23 Under section 69 of the Act, CCS may impose a financial penalty if a merger has infringed the section 54 prohibition and the infringement was committed intentionally or negligently. A financial penalty may be up to 10% of the turnover of each relevant merger party in Singapore for each year of infringement for a maximum period of 3 years.

6.24 Generally, CCS prefers structural and (to a lesser degree) behavioural remedies over financial penalties in order to restore the competitive conditions in the market. However, in exceptional circumstances, financial penalties may be imposed, for example to reflect the seriousness of the infringement or to deter future infringements.

6.25 In determining the financial penalty imposed under section 69 of the Act, CCS will take the following factors into consideration:

- the seriousness of the SLC;
- the turnover of the relevant parties in Singapore for the relevant product and relevant geographic markets where competition is substantially lessened;
- the time the merger parties took to carry the infringing merger into effect and how long the merged entity has been in place; and
- other relevant factors, e.g. deterrent value, the presence or absence of any aggravating or mitigating factors.

6.26 CCS may impose financial penalties only if it is satisfied that the section 54 prohibition has been infringed intentionally or negligently:

- Infringement is intentional if the merger parties were aware, or could not have been unaware, that the merger infringed the section 54 prohibition.

- Infringement is negligent if the merger parties ought to have known that the merger would, or was reasonably likely to, infringe the section 54 prohibition.

An example of where CCS may possibly impose a financial penalty is where merger parties, after having received an unfavourable decision from CCS in respect of an anticipated merger, proceed with an allegedly different merger which is simply a sham restructuring of the anticipated merger.

6.27 Should CCS issue a direction requiring an undertaking to pay a financial penalty, it will inform the undertaking of CCS' reasons for doing so. If an undertaking fails to pay the penalty within the date specified in CCS' direction and the undertaking has either not appealed against the imposition or amount of the penalty or such an appeal has been made and the penalty upheld, CCS may register the direction with a District Court in accordance with the Rules of Court. The effect of registration is that the imposition of the penalty shall have the same force and effect as if it had been an order originally obtained in the District Court and can be executed and enforced accordingly, for example, by writ of seizure and sale.

6.28 CCS will publish the details of all directions imposed under the Act on the public register.

Rights of Private Action

6.29 Parties suffering loss or damage directly arising from a merger that has infringed the section 54 prohibition are entitled to commence a civil action seeking relief against the relevant undertakings. Such rights of private action shall only arise after CCS has made a decision that a merger has infringed the section 54 prohibition and the appeal period has expired or, where an appeal has been brought, upon determination of the appeal[47].

6.30 Reference should be made to the relevant paragraphs of CCS *Guidelines on the Major Provisions* pertaining to the rights of private action.

7 EXCLUSIONS & EXEMPTIONS

Exclusions in the Fourth Schedule

7.1 The section 54 prohibition does not apply to the mergers specified in the Fourth Schedule to the Act, namely:

- Any merger:
    - approved by any Minister or regulatory authority pursuant to any requirement for such approval imposed by any written law;
    - approved by the Monetary Authority of Singapore pursuant to any requirement for such approval imposed under any written law; or

[47] Section 86 of the Act.

- under the jurisdiction of another regulatory authority under any written law relating to competition, or code of practice relating to competition issued under any written law.

- Any merger involving any undertaking relating to any of the following specified activity as defined in paragraph 6(2) of the Third Schedule of the Act:

  - The supply of ordinary letter and postcard services by a person licensed and regulated under the Postal Services Act (Chapter 237A);

  - The supply of piped potable water;

  - The supply of wastewater management services, including the collection, treatment and disposal of wastewater;

  - The supply of scheduled bus services by any person licensed and regulated under the Public Transport Council Act (Chapter 259B);

  - The supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act (Chapter 263A); and

  - Cargo terminal operations carried out by a person licensed and regulated under the Maritime and Port Authority of Singapore Act (Chapter 170A).

- Any merger with net economic efficiencies where the economic efficiencies arising or that may arise from the merger outweigh the adverse effects due to the SLC in the relevant market in Singapore.

Exemption under Public Interest Considerations

7.2 Under sections 57(3), 58(3) and 68(3) of the Act, where CCS proposes to make an unfavourable decision, it shall give written notice of the proposed unfavourable decision to the merger parties. The merger parties may, within 14 days of the date of the notice, apply to the Minister for the merger situation to be exempted on the ground of any public interest consideration. Section 2 of the Act specifically provides that "public interest considerations" for the purposes of the Act means "national or public security, defence and such other considerations as the Minister may, by order published in the Gazette, prescribe." Hence, for a matter of matter of public interest to qualify as a "public interest consideration" that may be relied on by the Minister when granting an exemption from section 54 of the Act, such a matter will have to first be gazetted. As of the date of publication of these Guidelines, the Minister has not exercised his power to gazette any other matters as "public interest considerations" under section 2 of the Act. The Minister's consideration of an application for a merger situation to be exempted on the ground of any public interest consideration is hence limited to matters of national or public security and defence, unless other matters are gazetted as such. The decision of the Minister for the exemption will be final.

7.3 The Minister may revoke any exemption of a merger situation which has been granted if he has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

Other Exclusions

7.4 Under the Third Schedule, restrictions which are directly related to and necessary for the merger are excluded from the section 34 prohibition and section 47 prohibition (please see paragraph 3.31). However, agreements by and conduct of the merged entity are still subject to the Act.

8 APPEALS

8.1 There is a right of appeal to the Competition Appeal Board against any decision by CCS in respect of a merger situation or any direction (including interim measures) imposed by CCS[48]. An appeal against CCS' decision in respect of a merger situation may be made by any merger party, while an appeal against a direction may be made by the person to whom CCS gave the direction. An appeal must be brought within the time period specified in the *Competition (Appeals) Regulations*. Third parties can apply to the courts for review.

8.2 Reference should be made to the relevant paragraphs of CCS *Guidelines on Enforcement* pertaining to appeals against directions (including directions as to financial penalties) issued by CCS.

8.3 There is no right of appeal against CCS' refusal to accept any commitments offered, but parties may appeal against CCS' refusal to vary, substitute or release existing commitments.

[48] Section 71 of the Act.

ANNEX A

FORM M1

INFORMATION REQUIRED FOR APPLICATION FOR DECISION UNDER SECTIONS 57 AND 58 OF THE COMPETITION ACT (CAP 50B)

PART 1

INTRODUCTION

This Form lists the information and supporting documents which must be provided when making an application for decision under sections 57 and 58 of the Competition Act ("the Act").

If the undertaking submitting the application ("the applicant") considers that the CCS should treat any item of information submitted under this Form as confidential, the applicant must provide a non-confidential version of this Form with that item of information removed. The non-confidential version should also contain an annex marked "confidential information" identifying each item of information which has been removed from the non-confidential version and providing a written explanation as to why the information should be treated as confidential. The same treatment should also be extended to supporting documents accompanying this Form containing any information that the Applicant considers should be treated as confidential.

FORM M1

PART 2

NOTES

(i) In completing this form, applicants are encouraged to refer to the principles outlined in the relevant paragraphs of the CCS *Guidelines on the Substantive Assessment of Mergers* and the CCS *Guidelines on Market Definition.*

(ii) Please ensure that all the answers are comprehensive and, where relevant, supported by reasons, evidence (where possible from independent sources) and pertinent examples.

GENERAL INFORMATION AND CONTACT DETAILS

1. Please provide the names and the following contact details of each merger party:

    (i) address of registered office; and

    (ii) full name, designation, address (if different from that set out in (i)), direct telephone number, fax number and email address of contact person.

2. Please provide the name of applicant(s) and contact details, if different from above.

3. Please provide the full name, designation, address, direct telephone and fax number and email address of the applicant's (or applicants') legal representative(s), if any, to whom CCS' correspondence in relation to the notification may be sent.

4. Where the declaration set out in Part 3 of Form M1 is signed by a solicitor or other representative of the applicant(s), please provide written proof of that representative's authority to act on the applicant(s)'s behalf. The written proof must contain the name and designation of the persons granting such authority.

5. Which competition agencies in other jurisdictions have been (or will be) notified of the merger? Please indicate the date and status of each notification. Parties are requested to notify CCS of any material change in status (for example, approval, unfavourable decision, negotiation of commitments, etc.) in relation to any of the notifications to the overseas competition agencies.

6. Would you be willing to provide CCS with a waiver allowing it to exchange confidential information with competition agencies in other jurisdictions in respect of the notified merger?

OWNERSHIP STRUCTURE

7. To which corporate group does each of the merger parties belong?

8. Please provide:

(i) an overview of the ownership structure of each of the merger parties before the merger[49]; and

(ii) an overview of the ownership structure of the merged entity.

9. Please identify and explain any links, formal or informal, between the respective merger parties (including interconnected bodies and other persons identified in the preceding question).

10. For each of the merger parties:

a. list the registered entities in Singapore;

b. provide the trading name, business name or brand names used in Singapore;

c. give a brief overview of activities worldwide;

d. give a brief overview of activities in Singapore; and

e. describe the physical presence in Singapore (for example, sales office, factory, etc).

THE TRANSACTION

11. Please describe the notified transaction by providing information relating to:

a. the nature of the transaction (for example, anticipated or completed merger; acquisition of sole or joint control; acquisition of full or partial control; full-function or other joint venture; or a contract or other means of conferring direct or indirect control);

b. whether the transaction falls within section 54(2)(a), (b), (c) or section 54(5) of the Act, providing an explanation if necessary, with references to the relevant clauses or portions of the transaction documents;

c. the structure of the transaction (for example, an acquisition of shares or assets);

d. whether the merger involves all, or only part, of the business of the merger parties;

e. the value of the transaction (for example, the purchase price or the value of the assets involved);

f. the proposed, expected or past dates of major events designed to bring about the completion of the merger;

[49] This should include details of undertakings belonging to the same group to which each merger party belongs, specifying the nature and means of control for each undertaking. When answering this question, bear in mind that CCS is only seeking information that is relevant to the competitive assessment of the notified merger. CCS does not require exhaustive details of the persons interconnected to, or associated with, the merger parties unless those interconnections or associations are relevant to CCS' consideration of the competition implications of the notified merger.

g. the expected completion date;

h. any financial or other support received from any source (including public authorities) by any of the merger parties and the nature and amount of this support; and

i. if the offer is subject to the Takeover Code, what the effective closing date is likely to be and whether the offer has been recommended by the board of directors of the acquired company.

12. What is the strategic and economic rationale for the merger? Efficiency gains (if any) should be mentioned here.

ACTIVITIES OF THE MERGER PARTIES

13. In the last financial year, what was each merger party's:

    a. total (group) worldwide turnover; and

    b. total (group) Singapore turnover;

14. Please list all the goods and/or services sold by the respective merger parties in Singapore.

15. Please list the goods and/or services sold by both (or all) of the merger parties in Singapore (the 'overlapping goods or services'). For branded goods, please indicate the brand name used in Singapore.

16. Please provide each party's turnover in respect of each of the overlapping goods or services and indicate the respective proportions of the relevant merger party's total worldwide and Singapore turnover that this represents.

17. Please identify any goods or services in respect of which the merger parties are potential competitors in Singapore.

THE INDUSTRY

18. Describe the industry(ies) affected by the merger, highlighting any characteristics that are specific to Singapore, including the following:

    a. the supply chain(s) of which the overlapping goods or services are a part;

    b. intermediate customers (for example, distributors)

    c. end-customers;

    d. the role of intellectual property rights;

    e. the role of regulation;

    f. current industry trends and developments, including the role of imports, emerging technologies and/or changes in supply and demand dynamics; and

    g. significant mergers that have occurred in this industry over the past five years.

MARKET DEFINITION

19. For each of the overlapping goods or services identified in question 15 above:

    a. give a brief description of the characteristics and intended use;

    b. state where it is produced;

    c. state to which customer group, it is supplied;

    d. identify any goods or services that might reasonably be considered as close substitutes on the demand-side (that is, substitutes from the customer's perspective);

        i. explain the reason(s) why each good or service is considered to be a close substitute;

        ii. state the price differential (if any) between the substitutes and the overlapping goods or services;

        iii. indicate whether any of the substitutes are imported into Singapore and if so, from which country.

    e. identify any goods or services that might reasonably be considered as close substitutes on the supply-side (that is, substitutes from a supplier's perspective);

        iv. explain the reason(s) for the supply-side substitutability, namely, how suppliers can switch to supplying the overlapping goods and services quickly and easily with little cost;

    f. provide details of:

        v. how far customers are willing to travel to purchase the good or service (for example, locally, nationally, regionally);

        vi. how far suppliers are willing to supply the good or service (for example, locally, nationally, regionally);

    g. provide details of the time, cost and resources required to move to a different part of the supply chain, for example, a distributor moving to retail or manufacturer moving to retail activities; and

    h. describe any differences in supplying different types of customers.

20. In respect of the overlapping goods or services identified in question 15 above:

    a. what do you consider to be the relevant product markets(s)?

    b. what do you consider to be the relevant geographic market(s)?

MARKET SHARES

21. For each relevant product and geographic market identified in question 20, please provide the following data for the last three years:

    a. total market size (value and volume);

    b. market share estimates (value and volume) for each of the merger parties (and any affiliated or connected undertakings); and

    c. market share estimates (value and volume) of competitors.

    For (a-c), please explain any significant year-on-year variations.

22. If the geographic market identified in the question 20 is wider than Singapore, please provide the following data for the last three years in Singapore:

    a. an estimate of the total value and volume of goods or services; and

    b. market share estimates (value and volume) for each of the merger parties and their competitors.

    For (a-b), please explain any significant year-on-year variations.

COMPETITIVE ASSESSMENT

Counterfactual

23. If the notified merger did not take place, describe what is likely to happen:

    a. to the business operations of each of the merger parties in the relevant the markets identified in question 20; and

    b. in the relevant industry in which the merger parties operate.

    Any arguments and evidence relating to the failing firm defence should be presented here.

Competitors

24. With specific reference to Singapore, for each of the relevant markets identified in question 20:

    a. describe and name each competitor;

    b. describe the nature of competition (for example, do firms compete on price, quality, innovation, tender process);

    c. describe the cost and the time it takes for a customer to switch between suppliers;

    d. describe and name any local or overseas firms that are not currently providing goods or services in Singapore, but which could do so relatively quickly on a material scale;

e. describe the ability of actual or potential competitors to expand or utilise existing productive capacity; and any other material factors; and

f. provide details of any shareholding, agreement, or joint ventures with existing competitors that may affect Singapore.

25. For bidding markets only, in respect of the relevant market(s), give details:

a. of any bids made by each of the merger parties in the last five years;

b. the outcomes of those bids (for example, whether the bids were won or lost) and the reasons why, if known).

Barriers to entry

26. Give an estimate of the capital expenditure required to enter the relevant market(s) identified on a scale necessary to gain a five per cent market share, both as a new entrant, and as a company that already has the necessary technology and expertise, and estimate to what extent this cost is recoverable should the firm decide to exit the market.

27. Give an estimate of the scale of annual expenditure on advertising/promotion relative to sales required to achieve a market share of five percent.

28. With specific reference to Singapore, provide details of any other factors affecting entry, for example, planning restraints, technology, R&D requirements, regulatory barriers, import restrictions (tariffs, licensing, quarantine), IP rights, availability of raw materials, length of contracts, etc.

29. Give details of instances of market entry and exit in the past five years.

30. Identify any companies that would be in a position to enter the relevant market(s) identified in the response to question 20 in a manner that would be sufficiently timely and likely and of such scope as to adequately constrain the merged entity.

Countervailing buyer power

31. For each of the relevant markets identified in the response to question 20:

a. name and describe the main business activity of each merger parties' top five customers in Singapore and worldwide (if applicable). Include brief details relating to the business relationship they have with each of the merging parties.

b. what proportion of the merger parties' total revenue in the relevant market(s) in Singapore and worldwide (if applicable) does each top five customer represent?

32. To what extent, and why, would the merged entity be constrained in its actions by the conduct of buyers in the relevant markets in Singapore? Where relevant, include:

a. details of buyers being able to self supply; and

b. details of buyers being able to switch suppliers.

Non-coordinated effects

33. Please describe the nature and extent of competition between the merger parties before the merger. Include the extent to which:

    a. customers view each merger parties' goods and services as the 'next best alternative'; and

    b. the merger parties supply differentiated goods and/or services.

34. Please give a comprehensive assessment of the competitive effects of the merger in Singapore, covering the extent to which the merged entity would be constrained, post merger, in its actions by the conduct of:

    a. existing competitors;

    b. potential entrants;

    c. buyers; or

    d. any other factors.

Coordinated effects

35. Identify and discuss the various characteristics of the relevant market(s) that you consider could either facilitate or impede coordination. How would the notified merger affect the likelihood of co-ordinated market power in those market(s)?

Vertical effects
(To be completed if there is (potentially) a vertical relationship between the merger parties)

36. Describe any vertical relationship(s) between the merger parties before and after the merger, including the following information:

    a. the extent of vertical integration before the merger and how this is created or strengthened by the merger;

    b. the merger parties' market shares in the upstream and downstream markets; and

    c. any existing supply arrangements between the merger parties.

37. In describing your competitors in question 24, provide details on the extent to which they are vertically integrated.

Cooperative effects of a joint venture
(To be completed if the transaction is a joint venture)

38. Will the joint venture function as an autonomous economic entity on a lasting basis? If so, why?

39. Do two or more parent businesses/companies retain activities in the same market as the joint venture or in a market which is upstream or downstream from that of the joint venture, or in a neighbouring market?

40. If yes, for each of the relevant markets referred to, indicate:

    a. the activities retained by the parents;

    b. the turnover of each parent company in the preceding financial year, and the expected turnover of the joint venture; and

    c. the market share of each parent company.

41. If yes, please explain why, in your view, the creation of the joint venture does not lead to coordination between independent undertakings that restricts competition within the meaning of section 34 of the Act.

ANCILLARY RESTRICTIONS
(To be completed if ancillary restrictions are included in the notification)

42. Provide the following:

    a. details of each restriction;

    b. an explanation as to why each restriction is directly related and necessary to the merger; and

    c. an explanation of why each restriction may infringe the section 34 and/or 47 prohibitions.

43. Please provide copies of any agreement(s) in which the restriction(s) is/are contained.

SUPPORTING DOCUMENTS

44. Please ensure that the following documents (where relevant) are included in the application:

    a. all relevant documents to support statements and explanations made in this Form;

    b. if section 2.3 of this Form applies, written proof of the representative's authority to act on the applicant's/applicants' behalf;

    c. copies of the final or most recent version of all documents bringing about the merger, whether by agreement between the merger parties, acquisition of a controlling interest or a public bid;

    d. in the case of a public bid, a copy of the offer document; if it is unavailable at the time of notification, it should be submitted as soon as possible and not later than when it is posted to shareholders;

    e. copies of the most recent annual report and accounts (or equivalent for unincorporated bodies) for each of the merger parties;

f. copies of all analyses, reports, studies, surveys (including consumer surveys), and similar documents prepared for the purpose of assessing, analysing or giving a view on the merger with respect to market shares, competitive conditions, competitors (actual and potential), the rationale for the merger, potential for sales growth or expansion into other product or geographic markets, and/or general market conditions. For each of these documents, indicate (if not contained in the document itself) the date of preparation and the designation of each individual who prepared the document; and

g. copies of the two most recent business plans for each merger party and, where available, a copy of the (draft) business plan for the merged entity.

h. copies of any relevant market research reports that are available to either of the merger parties. Where geographic markets are arguably wider than national, market research that focuses on areas outside of, or including, Singapore, is relevant.

CONTACT DETAILS OF THIRD PARTIES

45. For each merger party, please provide complete and current contact details for the five most significant (in terms of revenue):

    a. competitors in each of the relevant markets identified in response to question 20;

    b. if different, competitors in Singapore in each of the relevant markets; and

    c. direct customers in Singapore; if customers of either merger party are not end-users of the relevant goods or services, please <u>also</u> provide contact details of the five most significant end-users.

Company name	Contact details (physical address, telephone and fax number, website address)	Name and position of contact person	Email address and direct telephone number of the contact person (date of verification)	For customers: indicate proportion and value of Singapore and worldwide (group) revenue for which this customer accounts

OTHER INFORMATION

46. Please provide any other information which may be relevant to the application.

FORM M1

PART 3

DECLARATION

Under section 77 read with section 83 of the Act, it is an offence, punishable by a fine or imprisonment or both to provide information which is false or misleading in a material particular if the undertaking or person providing it knows that it is false or misleading, or is reckless as to whether it is. If the undertaking or person is a body corporate, its officers may be guilty of an offence under section 81 of the Act.

Declaration

The undersigned declare and confirm that all information given in this Form and all pages annexed hereto are correct to the best of their knowledge and belief, and that all estimates are identified as such and are their best estimates based on the underlying facts.

Signature(s)

Name(s) (in block capitals):

Designation(s):

Date:

FORM M1

PART 4

ACKNOWLEDGEMENT OF RECEIPT

This acknowledgement of receipt will be returned to the address inserted below if the applicant(s) provide(s) the information requested below.

To be completed by the applicant(s)

To: (name and address of applicant(s))

Re: The application dated (date of application) concerning (brief description of subject matter) involving the following undertakings: (names of undertakings) [and others]

To be completed by the CCS

Received on:

Registered under reference number:

Please quote this reference number in all correspondence with CCS.

FORM M1

PART 5

INFORMATION FOR CCS PUBLIC REGISTER
(TO BE COMPLETED BY THE APPLICANT(S))

Please provide a comprehensive, non-confidential summary of the merger including at least the following information:

(i) the names of the merger parties;

(ii) a description of the transaction;

(iii) a description of the business activities of the merger parties worldwide and in Singapore;

(iv) a description of the overlapping goods or services, including brand names;

(v) a description of substitute goods or services;

(vi) The applicant's views on:

a. definition of the relevant market(s);

b. the way in which competition functions in this market;

c. barriers to entry and countervailing buyer power; and

d. the competitive effects of the merger (non-coordinated, coordinated and/or vertical effects, as relevant).

FORM M1

PART 6

PAYMENT DETAILS FOR FEES PAYABLE

All payments are to be made by cheque payable to the "Competition Commission of Singapore".

To: Finance Department

Competition Commission of Singapore

45 Maxwell Road

#09-01The URA Centre

Singapore 069118

I enclose herewith (bank and cheque no.) for the amount of ($x) being the fees payable.

Signature

Name (in block capitals):

Address (in block capitals):

Date:

FORM M2

FURTHER INFORMATION REQUIRED FOR APPLICATION FOR DECISION UNDER SECTIONS 57 AND 58 OF THE COMPETITION ACT (CAP 50B)

PART 1

INTRODUCTION

This Form lists the further information and supporting documents which may be required by CCS after Form M1 has been filed.

In addition to, or instead of some of the information requested in this Form M2, CCS may request the applicant to provide certain other information before the start of Phase 2 (the Phase 2 information request).

If the applicant(s) considers that the CCS should treat any item of information submitted under this Form as confidential, the applicant must provide a non-confidential version of this Form with that item of information removed. The non-confidential version should also contain an annex marked “confidential information” identifying each item of information which has been removed from the non-confidential version and providing a written explanation as to why the information should be treated as confidential. The same treatment should also be extended to supporting documents accompanying this Form containing any information that the applicant considers should be treated as confidential.

FORM M2

PART 2

FURTHER INFORMATION TO BE PROVIDED BY THE UNDERTAKING(S) MAKING THE APPLICATION

MARKET CONDITIONS IN RELEVANT MARKETS

Structure of supply in relevant markets

1. Identify the five largest independent[50] suppliers to the merger parties and their individual shares of purchases from each of these suppliers (of raw materials or goods used for purposes of producing the relevant goods) in each relevant market. Provide current contact details as follows

Company name	Contact details (physical address, telephone, fax, website address)	Name and position of contact person	Email address and direct phone number of contact person (date of verification)	For customers: indicate proportion of Singapore and worldwide revenue for which this customer accounts.

2. Explain the distribution channels and service networks that exist in the relevant markets. In so doing, take account of the following where appropriate:

    a. the distribution systems prevailing in the market and their importance, as well as the extent that distribution is performed by third parties and/or undertakings belonging to the same group as the merger parties (as outlined in response to Form M1); and

    b. the service networks (such as maintenance and repair) prevailing and their importance in these markets, as well as the extent that such services are performed by third parties and/or undertakings belonging to the same group as the parties (as defined in Form M1).

3. Provide an estimate of the total Singapore-wide capacity for the last three years for each relevant market, including the proportion of this capacity that is accounted for by each of the merger parties, and their respective rates of capacity utilisation. Include the basis for this estimate. If applicable, identify the location and capacity of the manufacturing facilities of each of the merger parties in the relevant markets.

4. Specify whether any of the merger parties or any of the competitors have “pipeline products”, i.e. products likely to be brought to market in the near term, or plans to expand (or contract) production or sales capacity. If so, provide an estimate of the

[50] That is, suppliers who are not subsidiaries, agents or undertakings forming part of the group of the party in question. In addition to those five independent suppliers the notifying parties can, if they consider it necessary for a proper assessment of the case, identify the intra-group suppliers.

projected sales and market shares of the merger parties over the next three to five years, and the basis for this estimate.

5. Specify any other supply-side considerations that the applicant(s) considers to be relevant for the purpose of assessing the notification.

Structure of demand in relevant markets

6. In each relevant market, explain the structure of demand in terms of:

    a. phases of the markets, for example, take-off, expansion, maturity and decline, and a forecast of the growth rate of demand;

    b. customer preferences, for example, in terms of brand loyalty, the provision of pre- and after-sales services, the provision of a full range of products, or network effects;

    c. product differentiation in terms of attributes or quality, and the extent to which the products of the merger parties are close substitutes;

    d. the degree of concentration or dispersion of customers;

    e. the different groups of customers with a description of the "typical customer" of each group;

    f. the importance of exclusive distribution contracts and other types of long-term contracts; and

    g. the extent to which the public sector is a source of demand.

RESEARCH AND DEVELOPMENT

7. Explain the importance of research and development to a firm's long term competitiveness in the relevant markets.

8. Explain the nature of the research and development in the relevant markets carried out by each of the merger parties. In doing so, take account of the following, where appropriate:

    a. trends and intensities of research and development[51] in these markets and for the merger parties;

    b. the course of technological development for these markets over an appropriate time period (including developments in products and/or services, production processes, distribution systems, and so on);

    c. the major innovations that have been made in these markets and the undertakings responsible for these innovations; and

    d. the cycle of innovation in these markets and where the merger parties are in this cycle of innovation.

[51] Research and development intensity is defined as research development expenditure as a proportion of turnover.

COOPERATIVE AGREEMENTS

9. Describe the prevalence of cooperative agreements (horizontal, vertical, or other) in the relevant markets.

10. Provide details of the important cooperative agreements engaged in by the merger parties in the relevant markets, such as research and development, licensing, joint production, specialisation, distribution, long term supply and exchange of information agreements. Where deemed useful, provide a copy of these agreements.

EFFECTS OF THE MERGER

11. Explain, in the applicant's view, the changes that would likely occur in each of the relevant markets as a result of the merger, in particular with respect to the details submitted above.

EFFICIENCIES

12. State how efficiency gains[52] generated by the merger, if any, are likely to enhance the ability and incentive of the merged entity to act pro-competitively and how they will be sufficient to outweigh any anti-competitive detriments caused by the merger. Please provide a description of, and supporting documents relating to, each efficiency (including cost savings, new product introductions, and service or product improvements) that the merger parties anticipate will result from the merger relating to any relevant product. For each claimed efficiency, provide:

    a. a detailed explanation of how the merger will allow the merged entity to achieve the efficiency. Specify these steps that the merger parties anticipate taking to achieve the efficiency, and the risks, time and costs involved;

    b. where reasonably possible, a quantification of the efficiency and the basis for the quantification. Where relevant, provide an estimate of the significance of efficiencies related to new product introductions or quality improvements. For efficiencies that involve cost savings, state also the one-time fixed cost savings, recurring fixed cost savings, and variable cost savings; and

    c. why the efficiency cannot be achieved to a similar extent by means other than through the merger, and in a manner that is not likely to raise competition concerns.

FAILING FIRM

13. If relevant, state whether one or more merger parties is a failing firm and if so, provide reasons why the merger should be allowed to proceed on this basis53.

SUPPORTING DOCUMENTS

14. Please ensure that the following documents (where relevant) have been included in the Form:

[52] For more information on the assessment of efficiencies, please refer to CCS *Guidelines on the Substantive Assessment of Mergers*.
[53] For more information on the assessment of the failing firm defence, please refer to CCS *Guidelines on the Substantive Assessment of Mergers.*

a. All relevant documents to support the claims made in the Form; and

b. For question 13 above, all relevant documents to support the claims, including documents demonstrating that:

    i. the firm/division concerned is indeed about to fail imminently under current ownership (this should include evidence that trading conditions and performance are unlikely to improve);

    ii. all re-financing options have been explored and exhausted; and

    iii. there are no other credible bidders in the market, and that all possible options have been explored.

FORM M2

PART 3

DECLARATION

Under section 77 read with section 83 of the Act, it is an offence, punishable by a fine or imprisonment or both to provide information which is false or misleading in a material particular if the undertaking or person providing it knows that it is false or misleading, or is reckless as to whether it is. If the undertaking or person is a body corporate, its officers may be guilty of an offence under section 81 of the Act.

Declaration

The undersigned declare and confirm that all information given in this Form and all pages annexed hereto are correct to the best of their knowledge and belief, and that all estimates are identified as such and are their best estimates based on the underlying facts.

Signature(s)

Name(s) (in block capitals):

Designation(s):

Date:

FORM M2

PART 4

ACKNOWLEDGEMENT OF RECEIPT

This acknowledgement of receipt will be returned to the address inserted below if the applicant(s) provides the information requested below.

To be completed by the applicant(s)

To: (name and address of applicant(s)

Re: The application dated (date of application) concerning (brief description of subject matter) involving the following undertakings: (names of undertakings) [and others]

To be completed by CCS

Received on:

Registered under reference number:

Please quote this reference number in all correspondence with the CCS.

ANNEX B

9. GLOSSARY OF TERMS

Act	Competition Act (Chapter 50B)
Ancillary restriction	Agreement, arrangement or provision which is "directly related and necessary to the implementation" of the merger. Ancillary restrictions are excluded from the section 34 prohibition and section 47 prohibition under the Third Schedule of the Act.
Anticipated merger	Arrangement that is in progress or in contemplation that, if carried into effect, will result in the occurrence of a merger referred to in section 54(2) of the Act.
Applicant(s)	Merger party(ies) who have filed an Application with CCS.
Application	Application for a decision in relation to a merger situation, by way of notification under section 57 or 58 of the Act.
CCS	Competition Commission of Singapore
CR3	Concentration ratio (that is, the aggregate market share) of the three largest firms in the market.
Favourable decision	Decision that a merger has not infringed, or that an anticipated merger if carried into effect will not infringe, the section 54 prohibition.
Merger	A merger as defined in section 54(2) of the Act.
Merger parties	Parties to an anticipated merger, or parties involved in a merger
Merger situation	Refers to both completed mergers and anticipated mergers.
Parties involved in a merger	Persons or undertakings specified in section 54(2) of the Act and includes the merged entity
SLC	Substantial lessening of competition in the relevant market in Singapore.
Unfavourable decision	Decision that a merger has infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition.