Draft Revised CCS Guidelines on Merger Procedures dated 20 February 2012

(the "Guidelines")

A CCS Consultation

Responses by DBS Bank Ltd.

S/No.	Reference	Comments
1.	Clause 2.8 on page 9 of the Guidelines (CCS procedure for review)	Clause 2.8 of the Guidelines provides as follows: *"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."* We note that Clause 4.2 of the Guidelines provides that for anticipated mergers, an application can only be made once the merger has been made public. If that is the case, query how the 120 working days timeframe required for CCS' Phase 2 Review would apply to or fit in the timetable for general offers under the Singapore Code on Take-overs and Mergers (the "**Code**"), i.e. would the normal takeover (tight) timeline prescribed under the Code be suspended/ over-ridden by CCS' timeline, if a Phase 2 Review occurs?
2.	Clause 3.5 on page 11 of the Guidelines (Circumstances when it would be appropriate to notify CCS)	Clause 3.5 of the Guidelines provides as follows: *"CCS considers that competition concerns are unlikely to arise in respect of mergers that only involve small companies. Therefore, where the turnover in Singapore in the financial year preceding the transaction of each of the parties is below S$5 million and the worldwide turnover of each of the parties is below S$10 million, notification is unlikely to be required."* The turnover thresholds for notification, i.e. S$5 million in Singapore and S$10 million worldwide are too low, which in most cases would be easily exceeded and hence

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		notifications would be required. Would the CCS consider a practical and higher threshold number for each? If otherwise, could the CCS consider that these thresholds be for exemptions instead, such that any transaction below these said thresholds will not require any notification, as opposed to "notification is unlikely to be required"?
3.	Clause 3.6 on page 11 of the Guidelines (Circumstances when it would be appropriate to notify CCS)	Clause 3.6 of the Guidelines provides as follows: *"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."* Can the CCS clarify that in the event that the thresholds in Clause 3.5 are breached but not the thresholds in Clause 3.6 (in the case of the combined share supply of goods and services in Singapore exceeding 40%) or vice versa, (i) which clause should take precedence and in that event (ii) whether a notification to CCS is mandatory or one in which the merger parties are "strongly encouraged to notify"?
4.	Clause 3.7 on page 11 of the Guidelines (Circumstances when it would be appropriate to notify CCS)	Clause 3.7 of the Guidelines provides as follows: *"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*

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		supply of the overlapping goods or services in Singapore exceeds 40%." Could the CCS be more prescriptive of the factors to be taken in consideration in determining whether the threshold of 40% of the share of the supply of the overlapping goods or services in Singapore is exceeded? In addition, to what extent must the entire economic market be identified? Would be sufficient, for example, if the merger parties took into account a certain percentage share or the number of the top suppliers and/or participants in the relevant economic market?
5.	Clause 3.11 on page 12 of the Guidelines (Circumstances when it would be appropriate to notify CCS)	Clause 3.11 of the Guidelines provides as follows: *"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."* The first sentence of Clause 3.6 of the Guidelines (reproduced above) appears to provide that competition concerns are more likely to arise in, and the Guidelines would apply to, merger parties which have a vertical supply relationship. However, Clause 3.11 of the Guidelines appears to provide for the opposite, i.e. that the notification guideline does not apply to vertical mergers because in such situations, the merger parties do not supply goods or services of the same description. Please clarify.
6.	Clause 3.15 on page 12 of the Guidelines (Circumstances when it would be appropriate to notify CCS)	Clause 3.11 of the Guidelines provides as follows: *"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*

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		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." Clause 3.15 makes reference to a threshold in which merger parties having a combined market share of 20% or more would trigger concerns that the Section 54 prohibition under the Competition Act, Chapter 50B of Singapore, has been breached. This appears to be inconsistent with the threshold provided under Clause 3.7 of the Guidelines (reproduced above), which is where the merger parties have a combined market share of 40%. Please clarify.