

## PUBLIC CONSULTATION ON THE DRAFT GUIDELINES

### INTRODUCTION

1. The Competition Act ("Act") was passed in Parliament on 19 October 2004 and assented to by the President on 4 November 2004. The Act provides for three main prohibited activities:
  - a. *Section 34* prohibits agreements, decisions and concerted practices that prevent, restrict or distort competition in Singapore.
  - b. *Section 47* prohibits firms from abusing their dominance in ways that are anti-competitive and which work against longer term economic efficiencies.
  - c. *Section 54* prohibits mergers and acquisitions which substantially lessen competition.
2. The *sections 34 and 47 prohibitions* will come into force on 1 January 2006. The *section 54 prohibition* will come into force at least 12 months thereafter.
3. Section 61 of the Act provides for the Competition Commission of Singapore ('CCS'), with a view to enabling any person to order his affairs in compliance with the Act, to publish guidelines in the *Gazette* indicating the manner in which the CCS will interpret, and give effect to, the provisions of the Act. The CCS will conduct public consultations before finalising the guidelines. The guidelines will be reviewed from time to time to ensure their continued relevance, taking into account market changes and the decisions of the Competition Appeal Board and the courts.
4. The first set of three draft guidelines on the *sections 34 and 47 prohibitions* and market definition have been finalised and issued on 29 July 2005. The second set of four draft guidelines on how the CCS will investigate and enforce infringements of the *sections 34 and/or 47 prohibitions*, CCS' leniency programme for 'whistleblower' cartel members and the procedure for notifying agreements or conduct for guidance or decision were issued for public consultation between 26 May and 30 June 2005. The CCS is evaluating the submissions from the public.
5. The CCS invites comments from the public on the third set of two draft guidelines. These guidelines set out how the CCS will grant transitional periods and impose penalties. The two draft guidelines are issued together with this document and/or are found on our website [www.ccs.gov.sg](http://www.ccs.gov.sg)
6. The CCS aims to complete the public consultation and publish the guidelines in the *Gazette*, by November 2005.

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

7. The guidelines are intended to provide some guidance to the conceptual and procedural approach that the CCS will take. The determination and outcome of each case will depend on the specific facts and circumstances of each case.
8. A brief outline of the two draft guidelines follows:

## **DRAFT GUIDELINE ON TRANSITIONAL ARRANGEMENTS**

9. This draft guideline outlines the transitional arrangements that will be provided for in the Transitional Period Regulations. The CCS will allow parties to agreements made on or before 31 July 2005 additional time, up to 30 June 2006, to review these agreements and bring them into compliance with the Act. This will apply not only to agreements in existence for more than 5 years prior to the Act's commencement, but all agreements made on or before 31 July 2005. Parties to agreements made on or before 31 July 2005 will also be given the option to apply to the CCS, before 1 July 2006, for a longer transitional period to effectuate compliance. Where the application so merits, the CCS will generally grant a transitional period of up to one year. The CCS will not impose a financial penalty during the aforementioned time periods.

## **DRAFT GUIDELINE ON THE APPROPRIATE AMOUNT OF PENALTY**

10. This draft guideline sets out the basis on which the CCS will calculate financial penalties for infringements of the sections 34 and/or 47 prohibitions. This includes the factors that the CCS will take into consideration when imposing any financial penalty. It also sets out the policy objectives of the CCS in imposing any financial penalty.

## **NEXT STEPS**

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

## **MODE OF CONSULTATION**

13. Written submissions are to be sent to the CCS through email **and** either by post/courier or by fax:

Email: CCS\_Draftguidelines@ccs.gov.sg

**AND**

Post/Courier: Competition Commission of Singapore  
5 Maxwell Road  
#13-01, Tower Block  
MND Complex  
Singapore 069110  
Attn: Director, Legal and Enforcement

Fax: (65) 6224 6929

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

a. cover page (including the information specified in paragraph 16 of this consultation document);

b. table of contents;

c. summary of major points;

d. statement of interest;

e. comments; and

f. conclusion.

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

16. All submissions should be made on or before **noon, 16 September 2005**. Submissions must be made in both hard and soft copies (in Microsoft Word format). Parties submitting comments should include their personal/company particulars as well as their correspondence address, contact numbers and email addresses on the cover page of their submissions.

17. The CCS reserves the right to make public<sup>1</sup> all or parts of any written submission and to disclose the identity of the source. Commenting parties may request confidential treatment for any part of the submission that the commenting party believes to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If the CCS grants confidential treatment, it will consider but will not publicly disclose the information. If the CCS rejects the request for confidential treatment, it will return the information to the party that submitted it and will not consider the information as part of its review. As far as possible, parties should limit any request for confidential treatment of information submitted. The CCS will not accept any submission that requests confidential treatment of all, or a substantial part, of the submission.

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