CCS GUIDELINE ON MERGER PROCEDURES

Draft as of 20 October 2006

Competition Commission of Singapore

GUIDELINE FOR MERGER PROCEDURES

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Note:
This guideline is subject to the passing of the Amendment Bill by Parliament.

1 INTRODUCTION

1.1 The proposed merger provisions of the Competition Act ('Act') will apply to a merger that infringes the section 54 prohibition and to an anticipated merger that, if carried into effect, will infringe the section 54 prohibition, unless they are excluded or exempt in accordance with the provisions of Part III of the Act. It is intended that these proposed provisions will come into force on 1 July 2007.

1.2 Some aspects of the proposed merger regime will require amendment of the Act. Where references are made to the section numbers of the Act, they will, where applicable, refer to the proposed amended sections as set out in the Draft Amendment Bill.

1.3 The Competition Commission of Singapore ('CCS') has published the following guidelines:

- *CCS Guideline on the Substantive Assessment of Mergers* – which sets out some of the factors and circumstances which the CCS may consider in determining whether mergers have resulted, or may be expected to result, in a substantial lessening of competition; and

- *CCS Guideline on Merger Procedures* – which sets out the notification procedures for an anticipated merger or merger and CCS' investigation procedures.

Interested parties should read both guidelines to better understand the CCS' merger framework. The CCS has consulted the Securities Industry Council and is awaiting their input.

1.4 This guideline is not a substitute for the Act, the regulations or orders. It may be revised should the need arise. The examples in this guideline are for illustration. They are not exhaustive, and do not set a limit on the investigation and enforcement activities of the CCS. In applying this guideline, the facts and circumstances of each case will be considered. Persons in doubt about how they and their commercial activities may be affected by the Act may wish to seek legal advice.

1.5 A glossary of terms used in this guideline is attached.

2 SUMMARY OF MERGER PROCEDURAL FRAMEWORK

Definition of Mergers

2.1 The Act provides that a merger occurs where:

- two or more undertakings, previously independent of each other, 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 of the assets, or a substantial part of the assets, of another undertaking is to place the first undertaking in a position to replace or substantially replace the second undertaking in the business or the part concerned of the business in which that undertaking was engaged immediately before the acquisition.

The Act's provisions apply to both anticipated mergers and mergers. For ease of reference, the term 'merger situation' is used in this guideline to refer to 'anticipated mergers and mergers'.

2.2 Please refer to Chapter 2 of the *CCS Guideline on the Substantive Assessment of Mergers 2007* for more details of mergers that fall under the Act.

Self-assessment

2.3 In considering whether to notify a merger situation to the CCS for a decision, merger parties should refer to this guideline as well as to the CCS' Regulations. Notification is voluntary. Merger parties are strongly encouraged to conduct a self-assessment to ascertain if an application is necessary. In doing so, they should also refer to Chapter 6 of this guideline, to determine if their merger is excluded under the Fourth Schedule of the Act, and the *CCS Guideline on Substantive Assessment of Mergers 2007*. They may also wish to seek legal advice if necessary.

Notifications for Decision

2.4 Sections 56 to 58 of the Act provide for businesses to notify and apply to the CCS for a decision on their merger situations. Under the Act, undertakings are not required to do so, but they may do so if they have serious concerns as to whether the merger situation has resulted, or may be expected to result, in a SLC.

2.5 Parties may notify an anticipated merger to the CCS after knowledge of it is in the public domain (under section 57) or wait until the anticipated merger has been carried into effect (as a merger under section 58). After the CCS conducts its assessment, the CCS will make a decision

- for an anticipated merger, whether, if carried into effect, it will infringe the section 54 prohibition; or

- for a merger, whether it infringes the section 54 prohibition. In such a situation, the CCS may require the merger to be 'unwound'.

2.6 The CCS adopts a two-phase approach in evaluating notified merger situations. In general, upon receipt of a notification (where the information is complete), the CCS will carry out a preliminary assessment (Phase 1 review), which is expected to be completed within 30 working days. This approach allows for a quick review of merger situations, which clearly do not infringe the section 54 prohibition, and will allow such merger situations to proceed without undue delay. If the CCS is unable to form this view on the basis of all available information at Phase 1, the CCS will proceed to carry out a more detailed assessment (Phase 2 review). A Phase 2 merger assessment is likely to be more complex. The CCS expects to complete a Phase 2 review within 120 working days.

2.7 Sections 59A and 60 of the Act provide that once the CCS has issued a favourable decision, the CCS will not take further action unless the CCS has reasonable grounds for suspecting that information on which it had based its decision was materially incomplete, false or misleading. Anticipated mergers in respect of which the CCS has issued a favourable decision should in general be put into effect within one year of the decision. Parties that require more time will have to apply to the CCS for an extension.

2.8 Parties who wish to notify the CCS of their merger should refer to Chapter 3 of this guideline, for more details on the notification procedures.

Powers of Investigation and Enforcement

2.9 Under section 62 of the Act, the CCS may conduct an investigation if there are reasonable grounds for suspecting that a merger situation infringes the section 54 prohibition.

2.10 The CCS may impose interim measures under section 67 of the Act if it has reasonable grounds for suspecting that a merger situation infringes the section 54 prohibition, and considers that it is necessary to impose interim measures to prevent any action that may prejudice the investigations or the ability of the CCS to impose the appropriate remedies. Interim measures may also be imposed as a matter of urgency to prevent serious, irreparable damage to a particular person or category of persons, or to protect the public interest.

2.11 Where the CCS has made an unfavourable decision, section 69 of the Act provides that the CCS may issue directions to persons as it considers appropriate, to undertake such remedies to eliminate the harmful effects arising from the merger situation.

Commitments

2.12 Section 60A of the Act states that the CCS may, at any time before making a decision as to whether a merger situation infringes the section 54 prohibition, accept commitments to remedy, mitigate or prevent the competition concerns arising from the merger. Where the CCS has accepted a commitment, the CCS will make a favourable decision.

3 NOTIFICATIONS

3.1 This part provides a more detailed account of the notification process. It first explains how merger parties should notify their merger situation to the CCS. It then describes the CCS' powers in relation to the gathering of supplementary information from the merger parties, and the process for verifying that information with third parties. The decision-making process and publication requirements are then explained.

3.2 Parties may notify an anticipated merger to the CCS after knowledge of the anticipated merger is in the public domain. Parties to a merger may notify that merger at anytime. Whilst an anticipated merger or a merger is being considered by the CCS, parties may carry into effect an anticipated merger or with further integration of a merger at their own commercial risk.

Notification Thresholds

3.3 Merger situations that do not raise any real concerns of infringement of the section 54 prohibition should not be notified. As an indication to merger parties on whether their mergers should be notified, their attention is drawn to paragraph 5.14 of the *CCS Guideline on the Substantive Assessment of Mergers 2007*. CCS is generally unlikely to intervene in a merger situation if it falls below these concentration thresholds:

- the merged entity will have a market share of 40%; or

- the merged entity will have a market share of between 20% and 40%, and the post-merger combined market share of the three largest firms (CR3) is 70% or more.

3.4 If a merger situation meets or exceeds either of these thresholds, merger parties are encouraged to consider notifying their merger situation, as the CCS is likely to give further consideration to the merger situation before being satisfied that it does not infringe the section 54 prohibition. However, since market concentration is but one of various factors considered in assessing the merger situation, it does not mean that a merger situation meeting these thresholds would be presumed to lessen competition substantially. Conversely, Applicants may wish to notify a merger situation that does not meet the thresholds, but which, in the Applicants' view, could raise competition concerns.

Pre-notification Discussions

3.5 It is in the interests of both the CCS and the merger parties that notifications are as complete as possible at the time of submission.

Therefore, merger parties intending to submit a notification may approach the CCS for pre-notification discussions, to facilitate their preparation for notification and expedite the review process. These discussions help to identify the information needed to provide a complete submission, as well as additional useful information that might accelerate the CCS' review of a merger situation. While the CCS is prepared to enter into pre-notification discussions for anticipated mergers that have not been made public, the CCS will not entertain discussions on speculative or hypothetical transactions.

3.6 Merger parties should submit a request to the CCS in writing if they wish to request for a pre-notification discussion. They should provide sufficient information to show their good faith intention to proceed with the anticipated merger. The information provided should include details of the merger situation, such as a brief background of the merger situation, a brief description of the relevant market(s) and sector(s) involved, and the likely impact of the merger situation on competition in those markets and sectors in general terms. For merger situations that are already in the public domain, the submission should also provide relevant documentation of the public announcement. If the CCS agrees to the discussion, a draft Application should be provided where possible, prior to the discussion.

3.7 Where possible, the CCS will endeavour to provide indications on any potential competition concerns that are apparent from the information provided by the merger parties. However, as the CCS will not have complete information and would be unable to consider third-party views, merger parties should note that any such indications are not legally binding on the CCS, and could change after receipt of the formal notification. For the same reason, the CCS would not be able to provide indications on whether a merger situation is likely to be allowed to proceed. In general, any discussion will be useful to the extent that relevant information is made available to the CCS.

Submitting a Notification

Form 1

3.8 Applications for decision (under sections 57 and 58 of the Act) should be made by submitting the relevant Forms to the CCS. The Forms (at **Annex A**) may be varied from time to time, with an updated copy being available on the CCS website.

3.9 An Application for decision is deemed as having been made when the CCS receives a Form 1 that meets all the requirements in connection with the filing, and the relevant fees. Applicants should note that the Phase 1 review period commences only when an application for decision is deemed to have been made.

3.10 The CCS may refuse to accept an Application if it is incomplete, if it is not accompanied by the relevant supporting documents, if it is not accompanied by the appropriate fees, or if it does not comply with any requirement under the Act or any regulations made thereunder. The receipt of an application by the CCS does not in any way indicate that the application is correct or complete.

Form 2

3.11 The information required by Form 2 is more detailed. Applicants submitting Form 1 may, if they so choose, also submit Form 2 to the CCS at the same time. This will speed up the process in more complex cases.

3.12 If the CCS is of the view that it is necessary to proceed to Phase 2 review, it will request for Form 2 (if not already submitted), as well as further fees to be submitted within a specified time frame. Applicants who believe that they will not be able to comply with the specified timeframe should submit a request early for an extension to be considered by the CCS. Applicants should also note that the Phase 2 review period commences only when the CCS has received a Form 2 that meets all the requirements in connection with filing, as well as the relevant fees.

3.13 In some cases, it may be possible for the CCS to dispense with the obligation to submit any particular information specified in Form 1 or 2, where the CCS considers that such information is unnecessary for the assessment.

3.14 Where the substantive information provided by the Applicants in Form 1 or Form 2 is incorrect or incomplete, the CCS will notify the Applicants as soon as possible. In notifying the Applicants, the CCS will specify a time frame for the Applicants to revert to the CCS with the outstanding information. Applicants who believe that they will not be able to comply with the specified timeframe should submit a request early for an extension to be considered by the CCS. If the Applicants fail to revert with the outstanding information within this time frame (or within any extensions granted), the Application may be deemed as not having been made.

Additional Information

3.15 If the CCS is of the view that further information is required, the CCS may require Applicants to provide such further information even if the Applicants have already submitted Form 1 or Form 2 to the CCS. This depends on the circumstances of each application. The CCS may request for additional information that is not required under Form 1 or Form 2, for the purpose of considering the notification. In this event, the CCS may require the Applicants to furnish the additional information within such time frame as the CCS considers appropriate.

If the Applicants fail to revert with the information within the time frame (or any extensions given), the CCS may "stop the clock" with respect to the indicative timeframe for merger review (see paragraphs 3.40 and 3.43), and/or determine the Application by not giving a decision, as the case may be.

Who should Notify

3.16 The CCS encourages all relevant parties involved in the merger situation to jointly submit Form 1 (and Form 2, where relevant), as a joint Application will allow for a speedier consideration of the merger situation. Alternatively, the Forms can be submitted by any party to the merger situation. In this case, Applicants are required to take all reasonable steps to notify all other parties to the merger situation that an Application has been made. The written notification to these parties must be given within 7 working days from the date on which the Application is lodged with the CCS. If the Applicants are unable, despite the exercise of due diligence, to contact the other parties to the merger situation, they may instead publish the notice in such newspapers specified by the CCS.

3.17 In submitting the Application, the Applicants are required to submit one master copy, two photocopies and one soft copy (in CD Rom) of the following:

- Form 1 and its supporting documents, including any ancillary agreements which are being notified;
- a public version of Form 1 and its supporting documents, with confidential information removed; and
- where applicable, Form 2 and its supporting documents, as well as a public version of Form 2 and its supporting documents with confidential information removed.

The soft copies of Forms 1 and 2 (and public versions of Forms 1 and 2) must be in Microsoft Word format. It would also be helpful to the CCS if the supporting documents accompanying Forms 1 and 2 are in a format which allows for cutting and pasting of text. Public versions need not be filed if the Applicants are of the view that the Forms and supporting documents can be posted on the CCS website in their entirety.

3.18 The Applicants may engage legal assistance to file the application on their behalf, subject to the inclusion of a letter of authorisation signed by the Applicants. If a joint Application is submitted, a joint representative should be appointed. Where the joint Applicants have appointed separate representatives, Applicants should explain why a joint representative could not be appointed. The declaration in Form 1

(and Form 2, where relevant) must be signed by the Applicant(s) or by the joint representative, where one has been appointed.

Applicant's Obligations as to Accuracy of Information

3.19 The Applicants must conclude Form 1 (and Form 2, where relevant) with a declaration 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. The declaration must be signed by, or on behalf of, all the Applicants. Unsigned applications will not be accepted.

3.20 The Applicants have a continuing obligation to inform the CCS of any material changes in the information contained in the application which may occur after the application has been made.

Confidentiality & Secrecy

3.21 The public versions of Forms 1 and 2 and their supporting documents may be shared with third parties, whether by publishing on the CCS website for public viewing or through other means. Any confidential information removed from the public versions should be replaced by square brackets containing the word "CONFIDENTIAL" [1]. The Applicants must then furnish a separate annex to the Form(s) containing reasons as to why the information is confidential.

3.22 The CCS may seek further clarification on these reasons. If the CCS rejects the explanation with regards to any piece of information, it may require the Applicants to re-submit the public version of the relevant Form or document with the relevant information included. CCS may treat a failure by the Applicant to do so within the timeframe stipulated by the CCS as failure to file a complete Form 1 or 2, as the case may be.

3.23 Similarly, any subsequent correspondence and documents sent by the Applicants to the CCS should be accompanied by a public version, except for those where the Applicants are of the view that they can be freely disclosed in their entirety. The CCS may share the public versions of such correspondence or documents with third parties, either by publishing them on the CCS website or through other means. Applicants should extend the treatment for confidential information mentioned in paragraph 3.21 to all such correspondence or documents.

[1] For example, if a document accompanying Form 1 or 2 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 public version of the document and square brackets containing the word "CONFIDENTIAL" inserted over the blanked out portion. The public version of the document will therefore read: "the turnover of the Applicant is $[CONFIDENTIAL] dollars".

3.24 The CCS may seek further clarification on the reasons for the claims of confidential treatment for these correspondence or documents. If the CCS rejects the explanation with regard to any piece of information or document, and is of the view that it is necessary to disclose the information or document to third parties in the interests of determining the notification, the Applicants may then be given the option of either allowing the CCS to disclose the information or document, or to withdraw their Application.

3.25 Section 89 of the Act imposes a general duty on the CCS to preserve secrecy, although there are a number of exceptions to this duty. For example, communication is allowed where, subject to certain considerations, disclosure is needed to enable the CCS to give effect to certain provisions of the Act. Please refer to paragraphs 10.1-10.4 of the *CCS Guideline on The Major Provisions 2005* for how the CCS handles confidential information.

Ancillary Restrictions

3.26 Under the Third Schedule, ancillary restrictions that are "directly related and necessary to the implementation" of a merger are excluded from the section 34 prohibition and the section 47 prohibition. Ancillary restrictions are agreements, arrangements or provisions concluded in conjunction with a merger, but which are not integral to the merger itself.

3.27 As in the case of a merger, merger parties should conduct a self-assessment on whether any such agreements, arrangements or provisions qualify as ancillary restrictions. For merger parties who require more legal certainty, the Act provides for such agreements, arrangements or provisions to be notified to the CCS if merger parties wish to do so. This can be done in two ways:

- Merger parties may notify the agreements, arrangements or provisions as part of a merger notification, and provide the necessary information in the Forms. The CCS will consider these agreements, arrangements or provisions in the review of the merger situation. Merger parties should bear in mind that the CCS may seek third party views on these agreements, arrangements and provisions, as part of the merger review process; or

- In the event that merger parties do not notify the merger situation itself because they are of the view that the merger situation raises no cause for competition concern, they can choose to file a separate notification on whether the agreements, arrangements or provisions are excluded from the section 34 prohibition and the section 47 prohibition under the Third Schedule. In this case, the agreements, arrangements or provisions can be notified to the CCS for guidance under sections 43 or 50 of the Act, or decision under sections 44 or 51 of the Act, as the case may be. Merger parties

should follow the procedures laid out in the *CCS Guideline on Filing Notifications for Guidance or Decision 2005* in submitting such notifications. In filing such notifications, parties should provide the following:

- details of each ancillary restriction;
- an explanation as to why each ancillary restriction is directly related and necessary to the implementation of the merger situation; and
- an explanation of why each restriction may infringe the section 34 prohibition and/or the section 47 prohibition.

3.28 The CCS will make a decision as to whether the agreements, arrangements or provisions notified qualify as ancillary restrictions. Those that the CCS determines as ancillary will be excluded from the section 34 prohibition and the section 47 prohibition. If the relevant merger situation is subsequently found to infringe the section 54 prohibition, the CCS may take further action in respect of such ancillary restrictions even if the CCS has previously given guidance or a decision that the ancillary restrictions are likely to be or are excluded from the section 34 prohibition and the section 47 prohibition.

Information Gathering Powers

3.29 The CCS, after considering all the information available to it at the outset of a notification, may require additional, or more comprehensive, information. The CCS will issue such a request as soon as it is clear that a request is necessary. Applicants are encouraged to comply with such requests quickly, so that the CCS can endeavour to complete the merger assessment as early as possible. The deadlines for such requests of information are therefore likely to be short. Failing to meet these deadlines could result in a delay in the assessment process or the notification may be deemed as not having been made.

3.30 It is important that Applicants in receipt of a request for information discuss with the CCS at an early stage their likely timetable for responding, the extent to which the requested data or information is available, and the form in which it is available. Such discussions may enable the CCS to vary the information request or the stipulated response date.

Third Parties

3.31 The CCS is empowered under section 7A of the Act to request for additional information or documents from third parties. Generally, the CCS will invite comments from interested third parties on any merger situation that is notified to the CCS. This will be done through a notice of notification on the CCS website.

3.32 The CCS may also target consultations more specifically, by approaching applicants' main customers, suppliers and/or competitors. Information on the appropriate parties to approach will be obtained from the Application or from the merger parties. The CCS may also contact other government bodies for their views on the merger situation. These bodies may carry out their own public consultation before providing comments to the CCS.

3.33 The CCS encourages all interested third parties to submit their comments and views as early as possible, to enable the CCS to have sufficient time to give due consideration to their submissions. When providing submissions to, or otherwise corresponding with, the CCS, third parties should:

- if the submission and/or correspondence contains any confidential information, provide the CCS with a public version of the submission and/or correspondence. The CCS may share the public versions with the Applicants or other third parties, either by publishing on the CCS website or through other means. Third parties should extend the treatment for confidential information mentioned in paragraph 3.21 to the public version of their submission and/or correspondence; and

- explain why the information identified as confidential should be treated as such.

False or Misleading Information

3.34 There are penalties for both Applicants and third parties who provide false or misleading information to the CCS. Section 77(1) of the Act makes it an offence to knowingly or recklessly provide false or misleading information to the CCS, an investigating officer or an inspector or any person authorised to assist the 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.

3.35 Applicants are also reminded that the CCS may review its favourable decisions if the CCS has reasonable grounds to suspect that the information on which the CCS based its decisions was incomplete, false or misleading. The CCS may also remove any immunity conferred under section 59A(3) or 60(3) of the Act.

Review Process

3.36 Upon receipt by the CCS, a notification will first be assessed on the following:

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

- whether the transaction is excluded under paragraph 1 of the Fourth Schedule of the Act; and

- whether all the necessary information in Form 1 has been provided.

3.37 Where the CCS considers that the transaction does not fall within the meaning of the Act, or is excluded under paragraph 1 of the Fourth Schedule of the Act, or where Form 1 is incomplete, the CCS will inform the Applicants as soon as possible.

Publication of Notification

3.38 After the CCS accepts a notification and receives the relevant fees, the CCS will publish a notice of the accepted notification on the CCS public register. The notice, provided by the Applicants, will contain the following information:

- names of the undertakings involved in the merger situation;

- relevant industries and business activities of the undertakings;

- short description of the transaction; and

- reasons provided by the Applicants as to why the merger situation does not infringe the section 54 prohibition.

Phase 1 Review

3.39 On the date the CCS accepts the notification and receives the appropriate fees, a Phase 1 review commences. The purpose of this phase is to allow for a quick review of merger situations which clearly do not infringe the Act, and allow such merger situations to proceed without undue delay. Please refer to the *CCS Guideline on the Substantive Assessment of Mergers 2007* for details of how the CCS will conduct the assessment.

3.40 The CCS expects to complete a Phase 1 review within **30** working days. By the end of this period, the CCS will determine whether to issue a favourable decision and allow the merger situation to proceed, or proceed to a Phase 2 review. The CCS' decision will be communicated to the Applicants in writing. In exceptional circumstances, the CCS may extend the Phase 1 review period upon informing the Applicants in writing.

Phase 2 Review

3.41 If the CCS, on the basis of all information before it, is unable to form the view at the Phase 1 review that the merger does not infringe the Act, the CCS will proceed to a more extensive review, i.e. a Phase 2 review. In making this determination, the CCS will inform the Applicants and merger parties of its decision.

3.42 While the principles of substantive assessment for Phase 2 review are the same as that for Phase 1 review, the CCS will conduct a more detailed and extensive examination of the merger situation. As such, the CCS will require access to detailed information regarding the merger parties and the markets in question. The CCS will request for Applicants to submit a completed Form 2, if it has not been submitted earlier, as well as the relevant fees.

3.43 Phase 2 review commences on the date the CCS accepts the Form 2 and receives the appropriate fees. As the merger assessment is likely to be more complex, the CCS expects to complete a Phase 2 review within **120** working days, by the end of which the CCS will determine whether to issue a favourable decision and allow the merger situation to proceed, or to make an unfavourable decision. In exceptional circumstances, the CCS may extend the Phase 2 review period upon informing the Applicants in writing.

Interim Measures

3.44 Notification is voluntary. Merger parties may choose to carry into effect an anticipated merger, or further integration of a merger, without notifying the CCS. Merger parties who have notified their merger situation may choose to proceed with their anticipated merger or with further integration before the CCS has issued a decision.

3.45 However, while the CCS is still assessing the merger situation, it may impose directions as it considers appropriate, including suspending a merger situation, in order to prevent merger parties taking actions that would prejudice the CCS' ability to consider the merger situation further and/or to impose appropriate remedies. Such interim measures may also be imposed as a matter of urgency to prevent serious, irreparable damage to a particular person or category of persons, or to protect the public interest. These directions may take the form of:

- imposing on any person or undertaking concerned obligations as to the carrying on of any activities or the safeguarding of any assets; or

- providing for the carrying on of any activities or the safeguarding of any assets by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the directions) or in any manner.

3.46 In situations of an anticipated merger, the CCS may give a direction to prohibit the parties from acquiring control or equity interests during the review period without the CCS' consent. In considering any request for consent to do so, the CCS will take into account the need to prevent the acquiring undertaking from increasing its level of control over the target undertaking.

3.47 In situations where the merger situation does not involve the acquisition of shares, the CCS may give a direction to require the merged entity not to proceed further with the transaction or take further steps to integrate the businesses until the outcome of the notification has been determined.

3.48 These interim measures may be imposed as soon as the CCS has reasonable grounds for suspecting that a merger situation infringes the section 54 prohibition. As a matter of practice, however, the CCS is unlikely to use these powers unless the CCS believes that the possibility of serious competition concerns arising from the merger situation is very real. The fact that the CCS has imposed interim measures does not rule out eventual clearance by the CCS. Parties to whom directions are given can make representations against the CCS' decision to impose interim measures, and appeal against such a decision.

Procedures for Interim Measures

3.49 Before giving a direction on interim measures, the CCS must give written notice to the person(s) to whom it proposes to give the direction, indicating the nature of the direction it proposes to give and the reasons for deciding to give it. Such person(s) will be given an opportunity to make representations to the CCS.

3.50 The procedures as outlined in paragraphs 3.9 to 3.11 of the *CCS Guideline on Enforcement 2005* apply for interim measures issued with respect to a merger situation.

Enforcement of Directions relating to Interim Measures

3.51 If there is non-compliance with a direction on interim measures, the CCS may apply to register the direction with a District Court in accordance with the Rules of Court (Cap. 322, Rule 5). Any person who fails to comply with a registered direction without reasonable excuse will be in contempt of court. The normal sanctions for contempt of court will apply, i.e., the court may impose a fine or imprisonment.

3.52 Paragraphs 2.7 to 2.8 of the *CCS Guideline on Enforcement 2005* apply in respect of the enforcement of directions on interim measures issued with respect to a merger.

Publication of Decision

Favourable Decision

3.53 Where the CCS determines that a merger situation does not infringe the section 54 prohibition, it will make a favourable decision. The CCS will inform all Applicants of its decision, and may publish its decision on the CCS public register.

3.54 The CCS will not take further action once a favourable decision has been issued, unless:

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

- the CCS has reasonable suspicion that a party failed to adhere to one or more of the terms of a commitment.

Should any of these circumstances occur, the favourable decision earlier issued may be revoked. Where a favourable decision has been made in respect of an anticipated merger, the CCS may exercise any of its powers under the Act if the merger that is carried into effect is materially different from the anticipated merger in respect of which the favourable decision was issued.

3.55 The CCS may, at the time of issuing a favourable decision, specify the validity period of the decision. The CCS considers that one year will be generally sufficient for parties to act on the decision, but will take into account the circumstances of each merger situation when specifying the validity period, if any. The CCS will consider requests for extension of time on a case-by-case basis.

Unfavourable Decision

3.56 Where the CCS determines that the merger situation infringes the section 54 prohibition, and has not been excluded under the Fourth Schedule of the Act, it may make an unfavourable decision. In this regard, it will inform the Applicants and any other parties to the merger situation in writing of its proposed unfavourable decision and the basis for arriving at this decision. The CCS will allow the parties receiving the notice an opportunity to make written representations and a reasonable opportunity to inspect the documents in the CCS' file relating to the proposed unfavourable decision. The parties receiving the written notice may request in their written representations for a meeting with the CCS to make oral representations to elaborate on the written representations.

3.57 When an unfavourable decision is made, the CCS will notify the merger parties, and will publish the decision and the basis for the decision on

the public register on the CCS' website. The CCS may issue directions to the parties concerned, or to such persons as it considers appropriate, for the purposes of remedying, mitigating or preventing the competition concerns. Paragraphs 2.7 to 2.8 of the *CCS Guideline on Enforcement 2005* apply in respect of the enforcement of directions issued with respect to a merger situation.

Competing Bids

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

4 INVESTIGATIONS

4.1 The CCS may be informed of merger situations through complaints by third parties, or through other means, such as the media. The CCS may investigate such merger situations to determine whether they infringe the section 54 prohibition.

Complaints on Anti-competitive Mergers

Procedure

4.2 As of 1 July 2007, the CCS will accept complaints alleging competition concerns about a merger situation. Complainants are strongly encouraged to use the CCS complaint form available on the CCS website in making their complaints.

4.3 Complainants should endeavour to provide all the information requested in the complaint form. The information in the complaint form relates to, amongst other things:

- the relationship between the complainant and the merger parties or merged entity complained about;

- a concise explanation of the reasons for, and details of, the complaint, including details of the merger situation that allegedly infringes the section 54 prohibition (and where possible, the relative market positions of the parties named in the complaint), when and how the complainant became aware of the merger; and

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

4.4 The CCS will consider each complaint on its merits to see if it warrants an investigation. The CCS may pursue the case (and may need to seek further information from the complainant) if it gives the CCS reasonable grounds for suspecting that the merger situation infringes the section 54 prohibition. If the CCS decides that a merger situation infringes the section 54 prohibition, appropriate enforcement action may be taken.

Confidentiality

4.5 If the CCS decides to pursue a complaint, it will usually seek further information from the merger parties which is the subject of the complaint. If a complainant does not want to be identified to these parties, it should make this clear at the earliest opportunity. However, for the effective handling of complaints, it must be noted that it is

sometimes necessary to reveal information which may identify the source of the complaint. When providing information or documents to the CCS, complainants should:

- clearly identify any confidential information;
- provide this information in a separate annex clearly marked ”confidential information”, and
- explain why this information should be treated as confidential.

4.6 The CCS recognises the importance of complainants voluntarily supplying information and also recognises their interest in confidentiality. If the CCS proposes to disclose any of the information in the confidential annexes, it will, to the extent that is practicable to do so, consult the person who provided the information.

Investigations

4.7 Under the Act, the CCS may conduct an investigation if there are reasonable grounds to suspect that a merger situation has resulted, or may be expected to result, in a SLC. In such circumstances, the CCS has power to:

- require the production of specified documents or information;
- enter premises without a warrant; and
- enter and search premises with a warrant.

4.8 The CCS may also invite comments from interested third parties on the merger through a notice on the CCS website.

4.9 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 the limitations on the use of powers of investigation.

4.10 The *CCS Guideline on the Powers of Investigation 2005* applies to the exercise of CCS’ powers of investigation with respect to a merger.

Interim Measures

4.11 Under section 67 of the Act, the CCS may give such directions as it considers appropriate to prevent merging parties from taking any action which might prejudice the CCS’ investigations and/or to impose appropriate remedies. Such interim measures may also be imposed as a matter of urgency to prevent serious, irreparable damage to a particular person or category of persons, or to protect the public interest.

4.12 For more details on interim measures, please refer to paragraphs 3.44 to 3.52 in Chapter 3 on Notifications.

Publication of Decisions

4.13 Paragraphs 3.53, 3.56 and 3.57 apply in respect of decisions made upon the completion of investigations.

5 COMMITMENTS & REMEDIES

Commitments

5.1 The CCS may accept commitments when a merger situation raises competition concerns to be addressed. Any commitment must be aimed at remedying or preventing the adverse competition effects identified. In considering any such commitments, the CCS will seek to achieve commitments that are sufficient to address clearly the identified adverse competition effects and are proportionate to them.

5.2 Before it accepts any commitments, the CCS must be confident that the competition concerns identified can be resolved through the commitments. Commitments are therefore appropriate only where the competition concerns raised by the merger situation and the commitments proposed to address them are clear-cut, and those commitments are capable of ready implementation. It is for this reason that commitments have typically been used in merger situations in other jurisdictions where a substantial lessening of competition arises from an overlap in markets that is relatively small in the context of the merger situation. Further, the commitments must not give rise to new competition concerns or require substantial monitoring by the CCS.

5.3 Commitments can either be structural or behavioural. The CCS considers that structural commitments are preferable to behavioural commitments. Please refer to paragraphs 9.15 to 9.19 of the *CCS Guideline on the Substantive Assessment of Mergers 2007* for a more detailed discussion on commitments.

Procedures on Commitments

5.4 Merger parties are encouraged to take the initiative to propose suitable commitments if they think that commitments may be appropriate to meet any competition concerns that they foresee. Alternatively, the CCS may invite merger parties to consider whether they wish to offer commitments where the CCS believes that it is, or may be, the case that a merger situation may raise competition issues potentially warranting investigation or a finding that the merger situation has resulted, or may be expected to result, in a SLC and which seems amenable to remedy by commitments. However, even if the parties do propose commitments, the CCS may consider alternative remedies. The CCS may consider commitments at any point during the review process before it issues a decision.

5.5 Where the CCS concludes that the commitments proposed are a suitable remedy to the adverse effects arising from the merger situation which have been identified, the CCS will generally consult third parties before it accepts the commitments, except in exceptional circumstances. This is to ensure that third parties' concerns are adequately considered and addressed.

5.6 Once a commitment has been accepted, the CCS is also empowered to accept a variation of the commitment or another commitment in substitution. A commitment may also be released by the CCS. Before carrying out any of these actions, the CCS will generally consult with third parties as it thinks appropriate.

Timeframe for Negotiation of Commitments

5.7 Until negotiations are concluded and the commitments are accepted by the CCS, the indicative timeframe for the merger review will be stopped during the period of negotiation between the Applicants and the CCS. It is therefore in the merger parties' interests to submit proposals for commitments to the CCS as early in the review process as possible. The CCS expects that the need for an extension of the review period will be reduced if commitments are proposed in the Applicants' initial notifications. The CCS reserves the right to terminate any negotiations and proceed to make a decision if commitments cannot be agreed upon within a reasonable timeframe.

Publication of Commitments

5.8 For merger situations where commitments have been accepted, the CCS will issue a favourable decision indicating that, but for the commitments, the merger situation has resulted, or may be expected to result, in a SLC. The CCS may revoke the favourable decision if any of the commitments are breached. The CCS will publish the details of all commitments as part of the decision on the merger situation, in a public register on the CCS website.

Remedies

5.9 If the CCS concludes that a merger situation has resulted, or may be expected to result in a SLC, the CCS may give such directions as it considers appropriate for the purpose of remedying, mitigating or preventing the substantial lessening of competition.

5.10 In such an instance, a direction may be made under section 69(2) of the Act to require that the merger situation be not further proceeded with, or to be dissolved or modified in such manner as the CCS may direct. This may include requiring any party involved in the merger situation to:

- enter into such legally-enforceable agreements as may be specified by the CCS and designed to prevent or lessen the anti-competitive effects which have arisen;

- dispose of such operations, assets or shares of such undertaking in such manner as may be specified by the CCS;

- pay to the CCS such financial penalty as the CCS may determine; or

- provide a performance bond, guarantee or other form of security on such terms and conditions as the CCS may determine.

5.11 Please refer to the *CCS Guideline on the Substantive Assessment of Mergers 2007* for more information on the CCS' consideration of appropriate remedies for mergers.

Procedures

5.12 The directions must be in writing and may be given to such person(s) as the CCS considers appropriate. If the CCS proposes to make an unfavourable decision, it must give the affected persons a written notice setting out the facts on which the CCS relies, the objections raised by the CCS, the action it proposes to take and the reasons for the decision. Such person(s) will be given an opportunity to make representations to the CCS.

5.13 The procedures as outlined in paragraphs 2.4 to 2.6 of the *CCS Guideline on Enforcement 2005* apply for directions issued for a merger situation that has resulted, or may be expected to result in a SLC.

Enforcement of Directions

5.14 If there is non-compliance with a direction, the CCS may apply to register the direction with a District Court in accordance with the Rules of Court (Cap. 322, Rule 5). Any person who fails to comply with a registered direction without reasonable excuse will be in contempt of court. The normal sanctions for contempt of court will 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 any thing to remedy, mitigate or eliminate any effects arising from non-compliance with the direction.

5.15 Paragraphs 2.7 to 2.8 of the *CCS Guideline on Enforcement 2005* apply in respect of the enforcement of directions issued for a merger situation that has resulted, or may be expected to result, in a SLC.

Financial Penalties

5.16 If the CCS concludes that a merger situation infringes the section 54 prohibition, section 69 of the Act provides that the CCS may impose a financial penalty. A financial penalty not exceeding 10% of the turnover of the relevant party to the merger in Singapore for each preceding year for a maximum period of 3 years may be imposed.

5.17 Generally, the CCS prefers the imposition of structural, and to a lesser degree, behavioural, remedies to restore the competitive conditions in the market. However, in exceptional circumstances, financial penalties may be imposed to reflect the seriousness of the SLC and to deter future actions which may result in a SLC.

5.18 The financial penalty imposed by the CCS under section 69 of the Act will be calculated taking into consideration the following:

- 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;
- how long merger parties have been taking steps to put into effect merger situations that would SLC and/or how long the merged entity has been in place;
- other relevant factors, e.g. deterrent value; and
- any further aggravating or mitigating factors.

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

- intentionally: the merger parties are aware, or could not have been unaware, that the merger infringed the section 54 prohibition; or
- negligently: the merger parties ought to have known that the merger will, or is reasonably likely to, infringe the section 54 prohibition if it is carried into effect.

One example could be where merger parties who, after the CCS has given an unfavourable decision on an anticipated merger, proceed with an allegedly different merger, which is simply a sham restructuring of the merger notified for decision.

Procedures and Enforcement of Financial Penalties

5.20 The CCS, in imposing a financial penalty, will inform the relevant undertakings of its reasons. If an undertaking fails to pay a penalty within the date specified in the direction, and it has not brought an appeal against the imposition or amount of the penalty within the time allowed or such an appeal has been made and the penalty upheld, the CCS may register the direction to pay a penalty 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.

Rights of Private Action

5.21 Parties suffering loss or damage directly arising from a merger that has resulted, or may be expected to result, in a SLC are entitled to commence a civil action against the relevant undertakings seeking relief. Such rights of private action shall only arise after the CCS has

made an unfavourable decision, and in the event the decision is subject to an appeal, upon expiry of the appeal period or upon determination of the appeal if an appeal is brought.

5.22 Paragraphs 14.5-14.7 of the *CCS Guideline on The Major Provisions 2005* apply to the rights of private action with respect to a merger that has resulted, or may be expected to result, in a SLC.

Publication of Directions

5.23 The CCS' will publish the details of all directions imposed under the Act in a public register on the CCS website.

6 EXCLUSIONS & EXEMPTIONS

Exclusions in the Fourth Schedule

6.1 The merger provisions of the Act do not apply to the matters specified in the Fourth Schedule to the Act by virtue of section 55. These are:

- Any merger approved:

  (a) By any Minister or regulatory authority under any written law[2]; or

  (b) Under the jurisdiction of another regulatory authority under any written law relating to competition, or code of practice related 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 from the merger outweigh the adverse effects due to the substantial lessening of competition in the relevant market(s) in Singapore.

Exemption under Public Interest Considerations

6.2 Under sections 57(3), 58(3) and 68(3) of the Act, where the CCS proposes to make an unfavourable decision, the CCS shall give written

[2] Examples of such mergers include mergers between banks (Minister for Finance's approval is required under section 14, 14A-C of the Banking Act), acquisition of effective control in an insurer (Monetary Authority of Singapore's approval is required under section 27 to 29 of the Insurance Act) and acquisition of substantial control of a casino operator (Minister for Home Affair's approval is required under section 65 of the Casino Control Act 2006)

notice of its 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. The decision of the Minister for the exemption will be final.

6.3 The Minister may revoke the granted exemption of a merger situation 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

6.4 Under the Third Schedule of the Act, ancillary restrictions are excluded from the section 34 and section 47 prohibitions of the Act. A merger situation need not be notified to the CCS to benefit from the exclusion. However, agreements entered into by and the conduct of the merged entity are still subject to the Act.

7 APPEALS

Appeals

7.1 There will be a right of appeal to the Competition Appeal Board against a decision, interim measure or direction imposed by the CCS. Such an appeal may be made by any party involved in the merger situation in respect of which the CCS has made a decision, or imposed an interim measure, or any person to whom the CCS has given an interim measure or direction under section 59, 67 or 69 of the Act. An appeal must be brought within the specified time period in the Competition Appeal Board Regulations.

7.2 Paragraphs 2.9 to 2.11 of the *CCS Guideline on Enforcement 2005* apply for appeals against directions issued by the CCS. Paragraphs 4.26 to 4.28 of the same guideline apply for appeals against a penalty decision issued by the CCS.

7.3 Parties may not appeal against the CCS' decision not to accept commitments offered, but may appeal against the CCS' decision not to vary, substitute or release parties from commitments.

ANNEX A

FORM 1

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 ("Act").

If the undertaking submitting the application ("the Applicant") considers that the Commission should treat any part of the information submitted under this Form as confidential, the Applicant must set out that part of the information in a separate annex to this Form marked "confidential information" and provide a written explanation as to why the information is confidential.

FORM 1

PART 2A
GENERAL INFORMATION AND CONTACT DETAILS

1. Summary information regarding the Application

1.1. Please state if the notifying party (or parties) is an acquiring person, an acquired person, or both.

1.2. Please state if the notified merger has or has not been completed.

1.3. Please state if the notified merger is a cash tender offer.

1.4. Please state if the notified merger is a result of bankruptcy of one of the merging parties.

1.5. Please state if the notified merger is subject to filing requirements of a local or foreign authority other than the CCS. If yes, please state the country and authority to which the filing is made/to be made.

1.6. Please state whether ancillary restrictions are notified as part of this application.

2. General contact information

2.1. For each undertaking making the Application, all other parties to the merger[3], the joint representative of the parties (where appointed) in a joint application, and/or separate representatives for the parties to the merger (where appointed), please provide the following:

2.1.1. full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available) of the undertakings;

2.1.2. full name, address, telephone and fax numbers and email address of, and designation or position held by a contact person; and

2.1.3. address for service to which documents and, in particular, CCS' correspondences may be delivered, as well as the full name, telephone number and email address of a person at each address who is authorised to accept service.

2.2. For each Applicant and party to the merger:

[3] This includes the target company in the case of a contested bid, in which case the details should be completed as far as possible.

2.2.1. indicate if each undertaking is a partnership, sole proprietorship or other unincorporated body trading under a business name.

2.2.2. provide a brief description of the nature of each undertaking's business;

2.2.3. provide the full name(s) and address(es) of the partners or proprietor(s), quoting any reference which should be used;

2.3. Where any representative(s) has been authorised to act for the Applicant(s), and the relevant parties to the merger, please indicate clearly whom the representatives represent and in what capacity (e.g. a solicitor). Where separate representatives have been appointed in a joint Application, please explain why a joint representative could not be appointed.

2.4. Where the declaration set out in Part 3 of the Form 1 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 position of the persons granting such authority.

3. General information on the merger

3.1. Describe the nature of the notified merger. In doing so, state:

3.1.1. parties to the merger;

3.1.2. nature of the merger, for example, whether the merger is an anticipated or completed merger, an acquisition of sole or joint control, a full-function joint venture or a contract or other means of conferring direct or indirect control;

3.1.3. the value of the transaction (the purchase price or the value of all the assets involved, as the case may be);

3.1.4. for each of the parties to the merger, the areas of activity and turnover worldwide and in Singapore for the last financial year;

3.1.5. whether the whole or parts of parties are subject to the merger;

3.1.6. the markets on which the merger will have an impact (including the main reportable markets as explained in section 6 of the Form);

3.1.7. a brief explanation of the economic and financial structure of the merger;

3.1.8. whether any public offer for the securities of one party by another party has the support of the former's supervisory

boards of management or other bodies legally representing that party;

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

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

3.2. Describe the strategic and economic rationale of the merger and why the merger should be allowed to proceed.

4. Information on the groups to which parties to the merger belong

4.1. Please provide a list of all undertakings belonging to the same group as each party to the merger, specifying the nature and means of control for each undertaking (including any preferential or special rights). This list should include all undertakings or persons controlling each of the parties to the merger, directly or indirectly.

4.2. The information sought in section 4.1 may be illustrated by the use of organisation charts or diagrams. Applicants who are unable to submit such information required of other parties to the merger, should provide reasons why this is so.

5. Supporting Documents

5.1. Please ensure that the following documents (where relevant) are included in the Application:

5.1.1. if section 2.3 of this Form applies, written proof of the representative's authority to act on the Applicant(s)' behalf;

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

5.1.3. in 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;

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

5.1.5. copies of all analyses, reports, studies, surveys, and any comparable documents prepared by or for any member(s) of the board of directors (or equivalent) or to whom such functions have been delegated or entrusted, or the

shareholders' meeting, for the purpose of assessing or analysing the merger with respect to market shares, competitive conditions, competitors (actual and potential), the rationale of 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, the name and title of each individual who prepared each such document; and

5.1.6. copies of all business plans for each party to the merger for the current year and the preceding 5 years.

FORM 1

PART 2B
INFORMATION ON MARKETS

6. Market definition

6.1. Identify all "reportable markets". Reportable markets consist of all relevant product and geographic markets, as well as plausible alternative relevant product and geographic markets, on the basis of which:

6.1.1. two or more of the parties to the merger are engaged in business activities in the same relevant market (horizontal relationships); or

6.1.2. one of more of the parties to the merger are engaged in business activities in a product market, which is upstream or downstream of a market in which any other party to the merger is engaged, regardless of whether there is or is not any existing supplier/customer relationship between the parties to the merger (vertical relationships).

6.2. Applicants are encouraged to refer to the principles outlined in the *CCS Guideline on the Substantive Assessment of Mergers*, paragraphs 5.2 to 5.4 on Market Definition, in identifying the relevant product and geographic markets.

7. Information on groups to which parties to the merger belong

7.1. Please provide a list of all undertakings active on each reportable market identified in section 6 above, that are controlled, directly or indirectly, specifying the nature and means of control for each undertaking (including any preferential or special rights):

7.1.1. by each of the parties to the merger; and

7.1.2. by any other undertaking identified in section 4.

7.2. With respect to the parties to the merger and each undertaking or person identified in response to section 4 and 7.1, please provide:

7.2.1. a list of all other undertakings that participate in the reportable markets in which the undertakings or persons of the group hold, individually or collectively, 5% or more of the voting rights, issued share capital or other securities. In each case, also identify the holder and state the percentage held;

7.2.2. a list for each undertaking, of the members of their boards of directors (or equivalent) who are also members of the boards

of directors (or equivalent) of any other undertakings in the reportable markets. In each case, also identify the other undertaking and the positions held by the members of the boards of directors;

7.2.3. a list for each undertaking, acquisitions of undertakings in the reportable markets made during the last three years.

7.3. Information may be illustrated by the use of organisation charts or diagrams to give a better understanding.

8. Information on markets

8.1. Provide, for each reportable market:

8.1.1. an estimate of the total size of the market in terms of sales value (in Singapore dollars) and volume (units[4]), for the preceding year. Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations;

8.1.2. the sales in value and volume for the preceding year, as well as an estimate of the market shares, of each of the parties to the merger. Indicate if there have been significant changes to the sales and market shares for the last three years;

8.1.3. an estimate of the market share that the merged entity is likely to have. For completed mergers, provide the sales value and volume and market share before and after completion of the merger; and

8.1.4. estimates of the market shares in value (and where appropriate, volume) for the preceding year of the three largest competitors, suppliers and customers, including the basis for the estimates. Provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions, and in cases where there is no such person, then the chief executive) for these entities.

[4] The value and volume of a market should reflect output less exports plus imports for the geographic areas under consideration where possible.

PART 2C
ADDITIONAL INFORMATION (WHERE APPLICABLE)

9. Cooperative effects of a joint venture (To be completed if the transaction is a joint venture as defined under the Act)

9.1. Do two or more parents retain activities in the same market or in a market which is upstream or downstream from that of the joint venture, or in a neighbouring market closely related to this market?

9.2. If yes, provide for each of the markets referred to:

9.2.1. the activities retained by the parents;

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

9.2.3. the market share of each parent.

9.3. If yes, please provide reasons 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.

10. Ancillary Restrictions (To be completed if ancillary restrictions are included in the notification)

10.1. Provide the following:

10.1.1. Details of each ancillary restrictions;

10.1.2. An explanation as to why each ancillary restriction is directly related and necessary to the implementation of the merger; and

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

10.2. Please provide copies of each notified ancillary agreement.

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 the Form 1 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 1

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 the Commission

Received on:

Registered under reference number:

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

FORM 1

PART 5
INFORMATION FOR THE COMMISSION'S PUBLIC REGISTER
(TO BE COMPLETED BY THE APPLICANT(S))

1. Please give the full names of the Applicants.

2. Please provide a short summary which does not contain any confidential information (no more than 250 words) of the description of the merger and the supporting reasons why the merger should be allowed to proceed. Please note that this summary will be open to viewing by the public.

3. Please describe the relevant good(s) or service(s) involved as fully and accurately as possible.

FORM 1

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
5 Maxwell Road
#13-01, Tower Block
MND Complex
Singapore 069110

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 2

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

PART 1
INTRODUCTION

This document lists the further information (and supporting documents) which may be required by the Commission after Form 1 has been filed.

If the Applicant(s) considers that the Commission should treat any part of the information submitted under this Form as confidential, the Applicant must set out that part of the information in a separate annex to this Form marked "confidential information" and provide a written explanation as to why the information is confidential.

FORM 2

PART 2
FURTHER INFORMATION TO BE PROVIDED BY THE UNDERTAKING(S) MAKING THE APPLICATION

1. Other markets in which the notified merger may have a significant impact

1.1. Please describe the product and geographic scope of markets, other than the reportable markets identified in Section 6 of Form 1, in which the notified merger may have a significant impact, i.e, where:

1.1.1. any of the parties to the merger has a market share larger than 20% and any party to the merger is a potential competitor into that market. A party may be considered a potential competitor, in particular, where it has plans to enter a market, or has developed or pursued such plans in the past two years;

1.1.2. any of the parties to the merger has a market share larger than 20% and any other party to the merger holds important intellectual property rights for that market; or

1.1.3. any of the parties to the merger is present in a product market, which is a neighbouring market closely related to a product market in which any other party to the merger is engaged, and the individual or combined market shares of the parties in any one of these markets is 20% or more. Product markets are closely related neighbouring markets when the products are complementary to each other or when they belong to a range of products that is generally purchased by the same set of customers for the same end use[5].

1.2. Applicants are invited to submit the information under in sections 2 and 3 of this Form.

2. Information on significant reportable markets

2.1. For purposes of information required in Form 2, significant reportable markets consist of reportable markets identified in section 6 of Form 1 where:

2.1.1. two or more of the parties to the merger are engaged in business activities in the same reportable market and where the merger will lead to a combined market share of 20% or more. These are horizontal relationships;

[5] Examples of products belonging to such a range would be whisky and gin sold to bars and restaurants and different materials for packaging a certain category of goods sold to producers of such goods.

2.1.2. one or more of the parties to the merger are engaged in business activities in a market, which is upstream or downstream of a reportable market in which any other party to the merger is engaged, and any of their individual or combined market shares at either level is 25% or more, regardless of whether there is any existing supplier/customer relationship between the parties to the merger. These are vertical relationships.

2.2. Please provide the following for each significant reportable market, for each of the last three years:

2.2.1. an estimate of the total size of the market in terms of sales value (in Singapore dollars) and volume (units[6]). Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations;

2.2.2. the sales in value and volume, as well as an estimate of the market shares, of each of the parties to the merger, and the basis for these estimates;

2.2.3. an estimate of the market share in value (and where appropriate, volume) of all competitors (including importers) having at least 5% of the market under consideration, and the basis for these estimates;

2.2.4. the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) for competitors identified under 2.3;

2.2.5. an estimate of the total value and volume and source of imports from outside Singapore and the basis for these estimates, and identify:

2.2.5.1. the proportion of such imports that are derived from the groups to which the parties to the merger belong (c.f. section 4 of Form 1), and the basis for these estimates;

2.2.5.2. an estimate of the extent to which any quotas, tariffs or non-tariff barriers to trade, affect these imports, and the basis for these estimates; and

2.2.5.3. an estimate of the extent to which transportation and other costs affect these imports, and the basis for these estimates;

[6] The value and volume of a market should reflect output less exports plus imports for the geographic areas under consideration. If readily available, please provide disaggregated information on imports and exports by country of origin and destination, respectively.

2.2.6. the manner in which the parties to the merger produce, price and sell the products and/or services; for example, whether they manufacture and price locally, or sell through local distribution facilities; and

2.2.7. the nature and extent of vertical integration of each of the parties to the merger compared with their largest competitors.

3. Market conditions in significant reportable markets

Structure of supply in significant reportable markets

3.1. Identify the five largest independent[7] suppliers to the parties to the merger and their individual shares of purchases from each of these suppliers (of raw materials or goods used for purposes of producing the relevant products) in each significant reportable market. Provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) for each of these suppliers.

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

3.2.1. the distribution systems prevailing in the market and their importance, e.g. the extent that distribution is performed by third parties and/or undertakings belong to the same group as the parties (c.f. section 4 of Form 1); and

3.2.2. the service networks (such as maintenance and repair) prevailing and their importance in these markets, e.g. the extent that such services are performed by third parties and/or undertakings belonging to the same group as the parties (c.f. section 4 of Form 1).

3.3. Provide an estimate of the total Singapore-wide capacity for the last three years for each significant reportable market, including the proportion of this capacity that is accounted for by each of the parties to the merger, 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 parties to the merger in significant reportable markets.

3.4. Specify whether any of the parties to the merger 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

[7] 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. The same will apply in relation to the independent customers in section 3.6.

or sales capacity. If so, provide an estimate of the projected sales and markets shares of the parties to the merger over the next three to five years, and the basis for this estimate.

3.5. Please specify any other supply-side consideration that the Applicant(s) considers to be relevant for the purpose of assessing the notification.

Structure of demand in significant reportable markets

3.6. Identify the five largest independent customers of the parties in each significant reportable market and their individual share of total sales for such products accounted for by each of those customers. Provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) for each of these customers.

3.7. In each significant reportable market, explain the structure of demand in terms of:

3.7.1. phases of the markets, e,g, take-off, expansion, maturity and decline, and a forecast of the growth rate of demand;

3.7.2. 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;

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

3.7.4. switching costs (in terms of time and expense) for customers when changing from one supplier to another;

3.7.5. the degree of concentration or dispersion of customers;

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

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

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

Market entry

3.8. Please specify any significant entry into any significant reportable markets over the last five years. Identify such entrants and provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief

executive) and an estimate of the current market share of each such entrant. If any of the parties to the merger entered any significant reportable market in the past five years, provide an analysis of the barriers to entry encountered.

3.9. Identify undertakings (including those at present operating only outside Singapore) that in the opinion of the notifying parties, are likely to enter any of the significant reportable markets. If so, please identify such entrants and provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive). Explain why such entry is likely and provide an estimate of the time within which such entry is likely to occur.

3.10. Describe the various factors influencing entry into significant reportable markets, examining entry from both a geographical and product viewpoint, taking into account of the following where appropriate:

3.10.1. the total costs of entry (R&D, production, establishing distribution systems, promotion, advertising, servicing, and so forth) on a scale equivalent to a significant viable competitor, indicating the market share of such a competitor;

3.10.2. any legal or regulatory barriers to entry, such as government authorisation or standard setting in any form, as well as barriers resulting from product certification procedures, or the need to have a proven track record;

3.10.3. any restrictions created by the existence of patents, know-how and other intellectual property rights in these markets and any restrictions created by licensing such rights;

3.10.4. the extent to which each of the parties to the merger are holders, licensees or licensors of patents, know-how and other rights in the significant reportable markets;

3.10.5. the importance of economies of scale for the production or distribution of products in the significant reportable markets; and

3.10.6. access to sources of supply, such as availability of raw materials and necessary infrastructure.

Research and development

3.11. Explain the importance of research and development to a firm's long term competitiveness in the significant reportable markets.

3.12. Explain the nature of the research and development in significant reportable markets carried out by the parties to the merger. In doing so, take account of the following, where appropriate:

3.12.1. trends and intensities of research and development[8] in these markets and for the parties to the merger;

3.12.2. 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);

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

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

Cooperative agreements

3.13. Describe the prevalence of cooperative agreements (horizontal, vertical, or other) in the significant reportable markets.

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

4. Effects of the merger

4.1. Provide, in the Applicant's view, the changes that would likely occur in each of the significant reportable markets as a result of the merger, in particular with respect to the details submitted in sections 2 and 3.

5. Overall market context and efficiencies

5.1. Describe the world wide context of the merger, indicating the position of each of the parties to the merger outside of Singapore in terms of size and competitive strength.

5.2. State, in the Applicant's view, how efficiency gains[9] generated by the merger, if any, are likely to enhance the ability and incentive of the merged entity to act pro-competitively and 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

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

[9] For more information on the assessment of efficiencies, please refer to Chapter 6 of the CCS Guideline on the Substantive Assessment of Mergers.

(including cost savings, new product introductions, and service or product improvements) that the parties anticipate will result from the merger relating to any relevant product. For each claimed efficiency, provide:

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

5.2.2. 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

5.2.3. why the efficiency cannot not 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.

6. Failing Firm/Division (Where applicable)

6.1. If applicable, state whether one or more parties to the merger are failing firms/divisions and if so, provide justification as to why the merger should be allowed to proceed on this basis[10].

7. Supporting Documents

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

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

7.1.2. For section 6 above, all relevant documents to support the claims, including:

7.1.2.1. that the company is indeed about to fail imminently under current ownership (including evidence that trading conditions performance are unlikely to improve)

7.1.2.2. that all re-financing options have been explored and exhausted, and

[10] For more information on the assessment of failing firm/division, please refer to Chapter 6 of the CCS Guideline on the Substantive Assessment of Mergers.

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

PART 2A:
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 the Form 2 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 2

PART 3
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 the Commission

Received on:

Registered under reference number:

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

ANNEX B

Glossary of Terms

Term	Definition
Act	Competition Act (Chapter 50B)
Ancillary Restriction	Refers to an agreement, arrangement or provision concluded in conjunction with a merger, but which is not integral to the merger itself, that is "directly related and necessary to the implementation" of a merger.
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.
Application	Refers to an application for a notification for decision with regards to an anticipated merger or a merger under sections 57 and 58 respectively of the Act.
CCS	Competition Commission of Singapore
CR3	Refers to the concentration ratio (i.e. the aggregate market share) of the three largest firms in the market.
Favourable decision	Decision that an anticipated merger, if carried into effect, will not infringe the section 54 prohibition, or that a merger does not infringe the section 54 prohibition.
Merger	A merger as defined in section 54 of the Act.
Merger Situation	Refers to both anticipated mergers and mergers.
SLC	Substantial lessening of competition in the relevant markets in Singapore.
Unfavourable decision	Decision that an anticipated merger, if carried into effect, will infringe the section 54 prohibition, or that a merger infringes the section 54 prohibition.