



IMPORTANT  
 TOTAL WELFARE  
 SPUR ECONOMIC GROWTH  
 MAXIMISE CONSUMER WELFARE  
 WELL-FUNCTIONING MARKETS  
 ALTERNATIVE POLICY OPTION  
 IDENTIFY AND MITIGATE COMPETITION CONCERNS  
**GOVERNMENT INTERVENTION**  
 IMPACT  
 BENEFITS  
**GOVERNMENT**  
**COMPETITION**  
**TOOLKIT**  
 PRINCIPLES  
 BEST OUTCOMES  
 RESPONSIBILITIES  
 RATIONALE  
 CORRECT MARKET FAILURES  
 SEEKING ADVICE FROM CCS  
 COMPETITION IMPACT ASSESSMENT  
**FRAMEWORK**  
 POWERS  
 ROLES  
 REVIEW

# GOVERNMENT AND COMPETITION

A TOOLKIT FOR  
GOVERNMENT AGENCIES






## How Do I Use This Toolkit?

If you are a public officer in Singapore who proposes, reviews, or implements government policies and initiatives, this toolkit will be useful to you.

This toolkit aims to assist government agencies and public officers in identifying and assessing the likely competition impact of your agency's proposed policies. It is written in a non-technical way and does not assume any specialised understanding of economics and competition law.



You do not have to read this Toolkit from cover to cover. Each section in this toolkit is designed to be self-explanatory. If you:

- Want to find out more about the Competition and Consumer Commission of Singapore (“CCCS”) and the Competition Act, refer to Section I and Annex A;
  - Want to understand more about the importance of competition and why government participates in markets, refer to Section II;
  - Are thinking about implementing a policy where the government will be a seller or supplier, refer to Section III (a);
  - Are involved in public procurement, refer to Section III (b);
  - Are thinking about implementing regulations in a market, refer to Section III (c);
  - Are thinking about influencing the market e.g. through industry cooperation and self-regulation, refer to Section III (d);
  - Are thinking about implementing taxes or subsidies, refer to Section III (e);
  - Want to understand how to undertake Competition Impact Assessment of your policy generally, refer to Section IV;
  - Want further suggestions on how to mitigate competition concerns, refer to Section IV;
  - Want to approach CCCS for advice, refer to Section V and Annex B.
- 

# TABLE 1: COMPETITION IMPACT ASSESSMENT CHECKLIST

If the answer is "yes" to any of the questions below, the policy will benefit from a competition impact assessment which can flag out any competition concerns early in the policy formulation process.

In affected markets identified, does the proposed policy:



For example, does the proposed policy:

- Grant exclusive rights to a seller for the provision of a product (for example, divestment of government-owned assets)?
- Involve procurement from a single or restricted group of sellers?
- Create a form of licensing scheme for sellers?
- Significantly raise the cost of entry or exit for a seller?

For example, does the proposed policy:

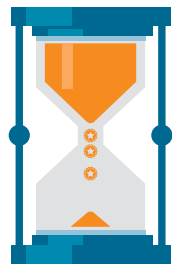
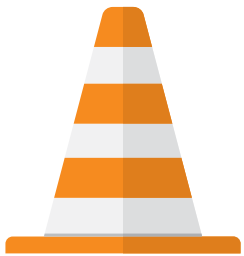
- Control or substantially influence product price, quality or choice, for example,
  - o Issue a schedule to standardise product price, quality or choice across sellers?
  - o Set product or quality standards that (i) advantage some sellers over others or (ii) are unnecessarily high relative to consumers' needs?
  - o Limit ability of sellers to introduce new products or supply existing products in new ways?
  - o Limit the geographic area in which a seller can operate or types of customers it can serve?
- Limit the freedom to advertise or market products?
- Raise the costs of some sellers relative to others?

For example, does the proposed policy:

- Facilitate market players to set rules or engage in practices that reduce the need for them to compete under the pretext of self-regulation?
- Require or encourage the exchange of commercially sensitive information between sellers (for example, prices, output, sales or cost) which may facilitate collusion?
- Facilitate the sharing of resources between sellers that constitute a key cost component of their businesses?
- Restrict the ability of sellers to grow the size of their business?

For example, does the proposed policy:

- Limit the ability of consumers to decide which seller to purchase from?
- Increase the cost (or inconvenience) of switching sellers for consumers?
- Reduce or limit information important for consumers to make purchase decisions effectively?





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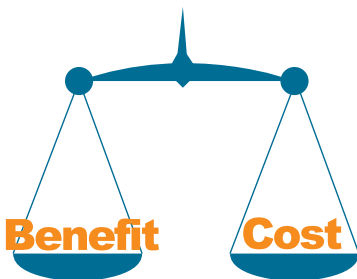
# EXECUTIVE SUMMARY

Markets allocate resources to various competing uses, serving as platforms for the exchange of goods and services between buyers and sellers. Well-functioning markets maximise consumer welfare and total welfare, and ultimately spur economic growth.



However, markets, when left on their own, may not always deliver the best outcomes for consumers, businesses and the government. For example, the 2008 global financial crisis highlighted the need for governments to take on a greater role in markets to prevent and correct market failures. The government plays an important role in markets by providing the requisite legal and institutional frameworks for businesses and consumers to operate in, and may intervene in markets to achieve other policy objectives such as the provision of public goods and services.

The government can participate in markets directly (for example as a seller or buyer) or indirectly (for example through regulation or taxes and subsidies). The way in which the government chooses to participate in markets can bring about different impact on competition in affected markets. Failure to recognise the possible impact of government participation on competition may unnecessarily reduce competition among firms in affected markets, leading to unintended negative impact on businesses and consumers. If a proposed mode of government participation is likely to have significant adverse impact on competition in affected markets, it may be advisable to consider alternative policy options that are less restrictive of competition. Further, some government policies and initiatives may unwittingly cause private sector firms or associations to infringe the Competition Act and these policies and initiatives would then need to be reviewed accordingly.



It can be challenging to identify or measure the impact to competition as such impact may not be immediately apparent or felt in the affected markets. This toolkit is therefore designed to provide an introduction to competition principles, as well as to explain how government agencies can use the Competition Impact Assessment ("CIA") framework or work with CCCS to assess the potential impact of their policies or initiatives on competition in affected markets when conducting cost-benefit analyses.





This toolkit is organised as follows:

## **SECTION I: INTRODUCTION**

07

This section describes the roles, responsibilities and powers of the CCCS and the objective of this toolkit.

## **SECTION II: PRINCIPLES**

10

This section outlines the broad benefits of competition and the rationale for government participation in markets.

## **SECTION III: GOVERNMENT INTERVENTION**

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This section explores the common ways in which government participates in markets, and discusses how competition may be affected.

## **SECTION IV: COMPETITION IMPACT ASSESSMENT**

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This section provides a general framework for conducting a CIA.

This section also provides suggestions to identify and mitigate competition concerns by choosing an alternative policy option that is least restrictive of competition.

## **SECTION V: SEEKING ADVICE FROM CCCS**

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This section explains the process for government agencies seeking advice from the CCCS.





# I. INTRODUCTION

07

## (A) COMPETITION AND CONSUMER COMMISSION OF SINGAPORE

- 1.1 The Competition Commission of Singapore ("CCS") was established on 1 January 2005 to administer and enforce the Competition Act (the "Act") (Chapter 50B). On 1 April 2018, CCS was renamed the Competition and Consumer Commission of Singapore ("CCCS") and took on an additional function of administering the Consumer Protection (Fair Trading) Act (Chapter 52A). In relation to the Act, besides investigating and enforcing against practices that have an adverse effect on competition in Singapore, CCCS also represents Singapore in respect of competition matters in the international arena. In addition, CCCS has a statutory duty to advise the government or other public authority on national needs and policies in respect of competition matters generally.
- 1.2 CCCS's mission is to make markets work well to create opportunities and choices for businesses and consumers in Singapore. Competition spurs businesses to be more efficient, innovative and responsive to consumer needs. This results in more effective use of resources and productivity gains for the economy. The benefits are, in turn, cascaded to consumers who will enjoy more choices, competitive prices and better products.
- 1.3 There are three types of prohibited activities under the Act: (a) Anti-competitive agreements which prevent, restrict or distort competition in Singapore ("the section 34 prohibition"); (b) Abuse of a dominant position ("the section 47 prohibition"); and (c) Mergers and acquisitions that substantially lessen competition in Singapore ("the section 54 prohibition"). Annex A provides a summary of the three prohibitions of the Act.



(a) anti-competitive agreements which prevent, restrict or distort competition in Singapore ("the section 34 prohibition")



(b) abuse of a dominant position ("the section 47 prohibition")



(c) mergers and acquisitions that substantially lessen competition in Singapore ("the section 54 prohibition")





- 1.4 The Act empowers CCCS to investigate allegations of anti-competitive activities and determine if such activities infringe the Act. When there are reasonable grounds for suspecting that the section 34, 47 or 54 prohibition under the Act has been infringed (or that the section 54 prohibition will be infringed if an anticipated merger is carried into effect), CCCS can enter into certain premises to search for relevant documents and to also require any person to produce documents or information that it considers relevant to its investigations. Further details of CCCS's powers of investigation can be found in *CCCS Guidelines on the Power of Investigation in Competition Cases 2016*.<sup>1</sup>
- 1.5 The Act also gives CCCS enforcement powers to impose interim measures during its investigation when CCCS has reasonable grounds to suspect that the section 34, 47 or 54 prohibitions have been infringed (or that the section 54 prohibition will be infringed if an anticipated merger is carried into effect) and when CCCS considers that it is necessary for it to act urgently either to prevent serious, irreparable damage to a particular person or category of persons, or to protect the public interest.<sup>2</sup>
- 1.6 When the investigation is completed and CCCS has decided that an infringement has taken place, it may replace the interim measures direction with a final direction. The Act also provides that CCCS may impose a financial penalty for an infringement of any prohibition under the Act provided that the infringement has been committed negligently or intentionally. The amount of penalty imposed may be up to 10 percent of turnover of the business of the undertaking in Singapore for each year of the infringement, up to a maximum of three years. CCCS also has the powers to issue directions requiring infringing undertakings to stop or modify their business activity or conduct.

<sup>1</sup> *Competition and Consumer Commission of Singapore, Guidelines on the Powers of Investigation in Competition Cases 2016*

<sup>2</sup> *When CCCS has reasonable grounds to suspect that the section 54 prohibition has been infringed by a merger or will be infringed if an anticipated merger is carried into effect, interim measures directions may also be imposed for the purpose of preventing any actions that may prejudice CCCS's investigations or its ability to impose remedies.*



## (B) OBJECTIVE OF THE TOOLKIT

- 1.7 Other than specific exclusions from the section 34 and section 47 prohibitions contained in the Third Schedule to the Act ("Third Schedule") as well as the exclusions to the section 54 prohibition contained in the Fourth Schedule to the Act ("Fourth Schedule"), section 33(4) of the Act provides that the Act shall not apply to any activity carried on by, any agreement entered into or any conduct on part of (a) the government; (b) statutory body; or (c) any person acting on behalf of the government or that statutory body, as the case may be, in relation to the activity, agreement or conduct.
- 1.8 Accordingly, the activities, agreements and conduct of the government and its statutory bodies are generally excluded from the Act. The reason for the exclusion is because the intent of competition law is to regulate conduct of market players, and not the government and statutory bodies that perform public and statutory functions.
- 1.9 In relation to whether a person is acting on behalf of the government or a statutory body so as to fall within the exclusion of section 33(4)(c), a case-by-case assessment will have to be made based on the facts of the case. It should be noted that mere approval by a public authority of the actions of any person is usually insufficient for this purpose.
- 1.10 Notwithstanding the above, CCCS encourages government agencies to carefully assess the competition impact of their policies or initiatives on the affected markets as part of their policy formulation process. CCCS is keen to engage and advise government agencies in this regard.
- 1.11 This toolkit is meant to assist government agencies in identifying and assessing the likely competitive impact of their proposed policies. It is written in a non-technical way and does not assume any specialised understanding of economics and competition law.





## II. PRINCIPLES

### Summary:



Effective competition brings about benefits such as lower prices, better quality, innovation and greater choice for businesses and consumers.



However, markets, when left on their own, may not necessarily deliver the best outcomes. Government participation may be necessary to establish rules to allow markets to function effectively, or to influence outcomes in markets which exhibit market failure.



Government participation can take different forms, depending on the rationale for participating in market(s) and the particular characteristics of the affected market(s).



Government participation often impacts market competition. It may unwittingly causes firms to infringe the Competition Act. Government agencies are encouraged to assess the impact of their policies or initiatives on competition in affected markets as part of their policy formulation process.



Government agencies should consider ways to mitigate any adverse impact on competition.





## (A) WHY EFFECTIVE COMPETITION IS IMPORTANT

- 2.1 Competition is often described as the process of rivalry between sellers seeking to win the business of buyers. Competition is usually assumed to be in terms of pricing. However, sellers also compete in other ways such as improving the quality of their products or introducing new goods and services. In the process, competition improves total welfare within the society and ultimately spurs economic growth.
- 2.2 Competition delivers benefits in four distinct ways. First, competition incentivises businesses to improve their internal efficiency and reduce costs. In the face of competition from rivals, businesses may be forced to look for more cost-effective inputs, better methods of production or more efficient organisation of their operations. Cost reduction allows businesses to charge lower prices to customers for the same goods and services, in order to compete for their continued patronage.
- 2.3 Secondly, competition incentivises businesses to innovate and adopt new technologies. If businesses adopt new technology or production methods, they can reduce their costs. In addition, innovation can help to improve the quality of their existing products and services; for example, innovation may result in faster processors or more efficient ways of purchasing a product or service, in order to win over customers from their rivals. Businesses also invest in research and development efforts so as to develop new products and services that cater to the evolving tastes and preferences of their customers.
- 2.4 Thirdly, the entry and exit of businesses is also an important feature of competition. Competition drives out inefficient or outdated businesses while allowing new competitors to enter the market, offering better and more innovative products. This in turn forces existing businesses to improve.
- 2.5 Lastly, over the longer term, competition ensures that businesses continue to improve their efficiency. As innovation takes place in the different markets, productivity in the overall economy will increase, leading to faster economic growth and higher total welfare.
- 2.6 Competition in Singapore's domestic markets also increases the competitiveness of Singapore's exports internationally. This occurs when:
  - i. Sellers engaging in exports are forced to become more efficient if they face competition in the markets for traded goods and services in Singapore.
  - ii. Competition spurs innovation and efficiency for goods and services which are not directly traded, which in turn provide important inputs for other firms. Consequently, costs for exporting businesses are reduced.
  - iii. Competition in domestic markets helps to attract investment from overseas, bringing in technical know-how and capital.
- 2.7 There are many examples of increased competition creating better outcomes within specific markets around the world, including Singapore. Case studies A and B set out such examples in the European aviation market and Singapore's telecommunications industry respectively.



## A: EU AVIATION MARKET



Until the 1990s, the aviation market in Europe was characterised by heavy regulation and dominance of national carriers such as United Kingdom’s British Airways and France’s Air France. This was the result of bilateral agreements between European Union (“EU”) Member States. These agreements (intended as a form of trade protectionism) were restricting competition as they did not allow for more competing airlines to ply the same routes that the national carriers were serving.

Pro-competition reforms were introduced in the 1990s. One of the reforms allowed an airline with operating licence from any EU Member State to operate freely on any route within the EU. As a result, low-cost carriers such as Ryanair and EasyJet entered the market, injecting more competition with their business models.

Consumers benefitted from lower prices (lowest nominal non-sale fares fell by 66% between 1992 and 2002) and improved frequencies of flights (frequency increased by 78% between 1992 and 2002). As the low-cost carrier business model favours smaller regional airports rather than the established airports, this also brought about growth in the locality of the regional airport. Lastly, safety records did not worsen even when flight frequencies increased.

*Source: Office of Fair Trading (2009), ‘Government in Markets. Why Competition Matters – A Guide for Policymakers’*

## B: SINGAPORE TELECOMMUNICATIONS INDUSTRY



The Telecommunication Authority of Singapore (“TAS”) was the government monopoly provider of telecommunications and postal services in Singapore. Against a backdrop of improving technology, global competition, and deregulation overseas, the service provision arm of TAS was corporatised in 1992, and was listed in 1993 to become Singapore Telecommunications Ltd (“Singtel”).

Competition was gradually introduced from 1997, into various parts of the telecommunications market, ranging from paging and mobile services to fixed line services. The introduction of competition into the telecommunications market has brought about significant benefits such as:

- Lower prices and innovative services. International telephone rates and international leased line rates fell by up to 90% and 95% respectively since 2000. Innovative services such as Voice over Internet Protocol have also become easily available in recent years.
- Higher adoption rates. Mobile phone penetration rate and residential wired broadband penetration rate was 148% in 2014 and 103.2% in 2015.
- Higher revenue and more jobs. Total info-communications industry revenue increased by 125% between 2008 and 2014 and total employed manpower increased by 4.1% between 2012 and 2014.

*Source: IDA Singapore, Full Competition in Singapore’s Telecommunications Sector*



## (B) WHY GOVERNMENT PARTICIPATES IN MARKETS

- 2.8 While competition can bring about benefits to businesses and consumers, markets, when left to their own, may not necessarily deliver the best outcomes. The government may need to participate in markets to:
- Set rules for markets to function effectively; and
  - Influence markets to deliver desirable outcomes.

### Government Sets Rules for Markets to Function Effectively

- 2.9 The government is responsible for creating the underlying frameworks of rules and regulations to govern the way market players and consumers behave. For example, competition rules have been put in place, by CCCS and the respective sectoral competition regulators<sup>3</sup>, to achieve competitive and well-functioning markets.
- 2.10 Competition rules prevent businesses from entering into agreements which restrict competition (i.e., anti-competitive agreements); prevent dominant firms from abusing their market positions to alter market conditions to their own advantage; and restrict mergers and acquisitions that substantially reduce competition in affected markets. Without competition rules prohibiting such anti-competitive business activities, consumers, businesses and even the government may suffer by paying more for poor quality products and services.

### Government Influences Market Outcome

- 2.11 Even after the establishment of competition rules, markets may still not deliver the desired outcomes due to market failures. The government may also seek to achieve other policy objectives that cannot be achieved through the market mechanism, for example, changing behaviour of consumers to improve public order or promoting cohesion and integration of diverse ethnic groups within the country.

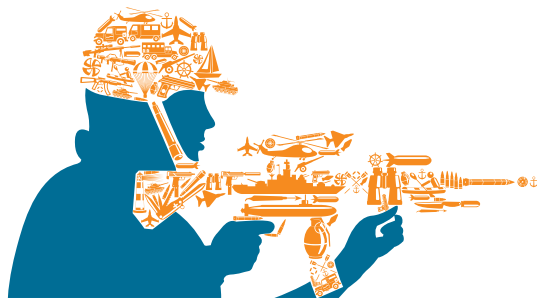


<sup>3</sup> Ministry of Trade and Industry, 2015, *Sectoral Exclusions*



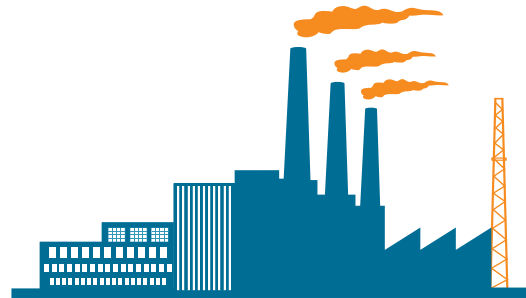
## Market Failure

2.12 Market failure occurs when the market mechanism does not provide the necessary goods and services, or does not provide them in the “right” quantities. This may occur due to the following reasons:



### Public goods

The market mechanism typically fails to provide public goods without government participation in markets. Public goods are goods which have the characteristics of non-rivalry and non-excludability. Taking the example of national defence, an individual who enjoys the security and safety provided by a country's armed forces does not reduce the security and safety enjoyed by another individual (non-rivalry). In addition, it is impossible to prevent individuals who do not pay for national defence from enjoying the benefits of national defence (non-excludability). As a result, no buyers will be willing to pay for national defence as they can free-ride on others once the national defence has been paid for. In turn, no sellers will provide national defence because no buyers will pay for it. Hence, the government will have to step in to provide the public good.



### Externalities

Free markets may produce too much or too little of a particular good or service from society's perspective. This occurs when the benefits or costs to businesses or individuals do not include the benefits or costs that are imposed on the rest of society, which are known as externalities. For example, if businesses do not take into account the harmful effects of pollution on the rest of society, that is, the damage to the environment and the health of individuals, they will not consider adopting cleaner methods of production or reducing production, leading to overproduction from society's point of view. Conversely, individuals may not factor in the benefits to the rest of society when deciding on the level of education to pursue, leading to a lower general level of education than what is desirable to the society. The government will have to intervene in such circumstances to ensure that the market produces the “right” or desired quantity of good or service.



### Information problems

Information problems occur when consumers are unsure about the quality of a good or service before making purchasing decisions. With this uncertainty, consumers may not be willing to pay a higher price that is necessary to cover the higher costs that sellers incur in delivering higher quality goods/services. In extreme cases, the existence of these markets may even be threatened if consumers choose not to purchase at all. As such, the government will need to intervene to remove these information problems. For example, the government launched MoneySENSE, a national financial education program in 2003, to improve financial literacy, so that consumers can better understand financial products for their banking, insurance and investment needs<sup>4</sup>.



### Market power and natural monopolies

Market power can generally be thought of as the ability to profitably sustain prices above competitive levels or restrict output or quantity below competitive levels. Businesses with market power may also have the ability and incentive to harm the process of competition in other ways, for example by weakening existing competition, raising entry barriers or slowing down innovation. As the exercise of market power by businesses may be to the detriment of the business landscape and consumers, competition law prevents businesses from abusing their market power. However, there are markets where it is more efficient for a single firm to produce all the goods/services. This typically occurs in markets where very high start-up cost is required for the infrastructure needed to produce or deliver the good or service i.e. natural monopolies. An example is the electricity grid. In such cases, the government may need to regulate the behaviour of dominant firms through other regulatory tools such as price controls.

<sup>4</sup> MoneySENSE website

### Other Policy Objectives

2.13 The government may also participate in markets to achieve other policy objectives such as:

- Changing behaviour of consumers to alleviate undesirable effects on society or the individual. For example, the Liquor Control (Supply and Consumption) Act which was passed in January 2015 imposes penalties on individuals who consume alcohol in public places between 10.30 p.m. and 7 a.m. every day. This legislation was passed after the Ministry of Home Affairs received feedback from the public on law and order concerns and dis-amenities arising from liquor consumption and drunkenness in public places<sup>5</sup>.
- Cohesion and integration of diverse ethnic groups within the country. For example, the Housing & Development Board ("HDB") has an ethnic integration policy to promote racial integration and harmony. The HDB ensures that there is a balanced ethnic mix amongst the various ethnic communities living in public housing estates<sup>6</sup>.

<sup>5</sup> Ministry of Home Affairs, 2015, *Liquor Control (Supply and Consumption) Act to take effect from 1 April 2015*

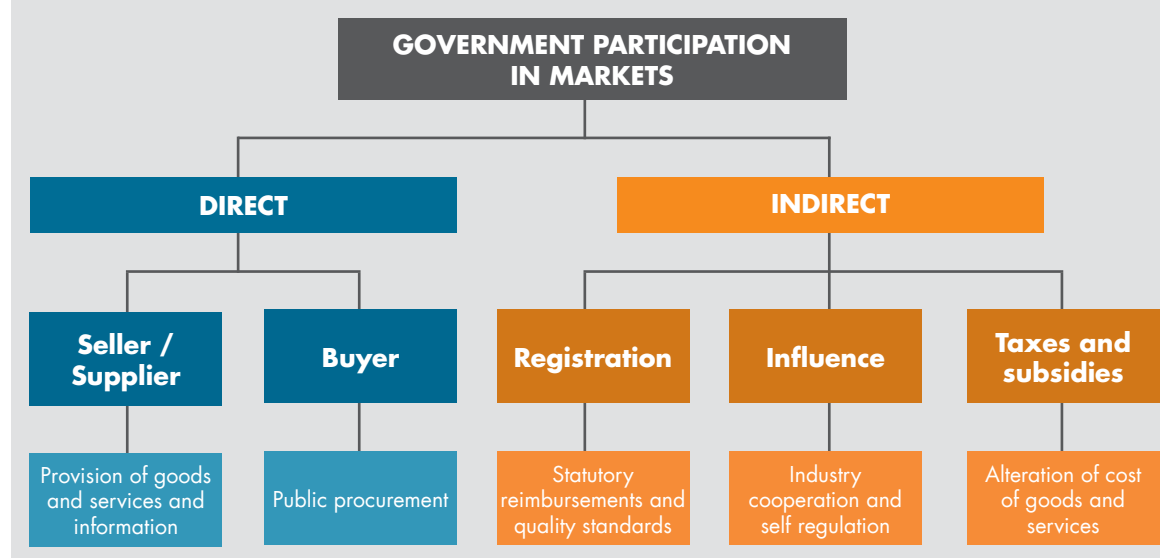
<sup>6</sup> Housing & Development Board, 2015, *Ethnic Integration Policy & SPR Quota*



## (C) WAYS GOVERNMENT PARTICIPATES IN MARKETS

2.14 The ways that the government chooses to participate in markets depends on the rationale for its participation and the particular characteristics of the markets concerned. The nature of government participation can be broadly classified as direct or indirect as set out in Figure 1 below.

**FIGURE 1: GOVERNMENT PARTICIPATION IN MARKETS**



2.15 There are benefits and costs associated with government participation in the markets. It is important for government agencies to consider a wide range of costs and benefits (and not just those directly under their purview) before selecting the most appropriate mode of government participation. This will mitigate unintended and unnecessary economic costs and spillover effects to other sectors in the economy, which in turn can deliver better outcomes for the government and ultimately for consumers. If a proposed mode of government participation is likely to have significant adverse impact on competition in affected markets, it is advisable to consider alternative policy options that are less restrictive of competition. It is also critical for government agencies to ensure that their policies and initiatives do not require or encourage these firms or associations to adopt a specific course of actions that would unwittingly infringe the Competition Act. Government agencies should also consider how effective competition can help to achieve policy objectives. Progress or review checks should be scheduled at appropriate intervals to evaluate the impact of the chosen mode of government participation.

2.16 This toolkit discusses the potential impact on competition arising from government participation in markets. It also discusses how government agencies can assess and mitigate negative impact on competition using the CIA framework. Common ways of government participation in markets are further elaborated upon in the Section III. A general framework for CIA, as well as possible measures to mitigate the adverse impacts on competition, are discussed in Section IV.



# III. TYPES OF GOVERNMENT PARTICIPATION AND THEIR IMPACT ON COMPETITION

## (A) DIRECT PARTICIPATION: GOVERNMENT AS A SELLER OR SUPPLIER

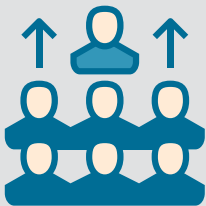
### Summary:



The government sometimes participates in the market by supplying goods and services directly, partnering with the private sector, or allocating private sector the right to supply these goods and services through competitive tendering.



Government agencies need to be mindful of the costs of “crowding out” the private sector should the government compete alongside the private sector.



Government agencies should assess whether it is possible for the government to withdraw from markets that it has traditionally been involved in. Divestments of companies or assets held by the government to the private sector, or competitive allocation of resources or rights to the private sector can have a significant impact on the structure of the industry concerned.



Government agencies should also consider the impact on competition when designing and awarding tender to sellers in private sector to supply goods and services as such tenders can have an impact on the overall prices and the range of products available in markets.





- 3.1 As discussed in the preceding section, the government may decide to participate in markets due to the presence of externalities. Free markets may produce too little of a particular good or service from the society's perspective.
- 3.2 For national security and public health reasons, the government directly provides for public goods like national defence, in the form of the military and police forces, as well as emergency services via the Singapore Civil Defence Force. However, in other cases, the role of the government as a seller or supplier has been reduced for several reasons.
- 3.3 One key reason behind the privatisation of many previously state-owned enterprises is the government's view that the market mechanism is more effective at delivering desired outcomes. In early 1960s-1980s, the government took on the role as a "state entrepreneur", providing these goods and services directly to provide for much-needed jobs and spur economic growth<sup>7</sup>. Many of these state-owned enterprises were subsequently privatised and/or divested. For example, the Radio and Television of Singapore, the first television station in Singapore was corporatised and renamed the Singapore Broadcasting Corporation. It was subsequently privatised in 1994 and was renamed Television Corporation of Singapore. Television Corporation of Singapore was eventually rebranded as Media Corporation of Singapore in 1999.<sup>8</sup> Such privatisation efforts are the first steps towards eventual market liberalisation. Singapore's telecommunications industry discussed in case study B is another example of the government's market liberalisation policy.
- 3.4 With the introduction of Public Private Partnerships ("PPP"), there is an alternative to direct provision of goods by the government. The PPP programme is a long-term partnership between the public and private sectors to deliver services. Through PPP, the government seeks to bring together the expertise and resources of the public and private sectors to provide services to the public at the best value for money.<sup>9</sup> Traditionally, the public sector tends to engage the private sector merely to construct facilities or supply equipment. The government agencies will then utilise these facilities or equipment to deliver the services to the public. With PPP as an alternative form of procurement, the government will focus on acquiring services on the most cost-effective basis, rather than directly owning and operating assets. Some of the possible PPP models include joint-ventures and strategic partnerships to make better use of government assets. Some notable PPP projects include the Singapore Sports Hub and the Tuas Desalination Plant.<sup>10</sup>
- 3.5 The government may also choose to engage in competitive tendering to allocate to the private sector certain limited resources or the 'right' to supply certain goods and services. For example, the National Environment Agency ("NEA"), which manages hawker centres and markets in Singapore, carries out a monthly tender exercise during which vacant hawker stalls are offered for rent to the general public.

### The Impact of Government Agencies Providing Goods and Services on Competition

- 3.6 Government agencies need to be mindful of the costs of "crowding out" the private sector should the government compete alongside the private sector. In particular, government agencies should be mindful that the government does not exploit potential unfair advantages over the private sector, such as brand reputation. This may limit the private sector from providing more choices and innovative solutions to consumers. Case study C discusses the example of Jobs Bank, an initiative by the then Singapore Workforce Development Agency ("WDA") and the Ministry of Manpower ("MOM").

<sup>7</sup> Lawrence B. Krause, 1989, *Institute of South East Asia Studies, Management of Success: The Moulding of Modern Singapore Government as Entrepreneur*

<sup>8</sup> National Library Board, 2014, *Singapore Infopedia: Singapore's First Television Station*

<sup>9</sup> Ministry of Finance, 2012, *Public Private Partnership Handbook Version 2*

<sup>10</sup> *Ibid*



## C: JOBS BANK



Jobs Bank is an initiative by WDA and MOM to facilitate Singaporean job seekers to obtain employment. Its role in the online job advertisement industry was considered as part of CCS\*'s assessment of the acquisition by Seek Asia Investments Pte. Ltd. of the Jobstreet Business in 2014.

Jobs Bank is a public online job portal that facilitates online job matching between local job seekers and employers. The Jobs Bank initiative followed MOM's announcements in September 2013 of the new Fair Consideration Framework ("FCF") which put in place rules that require employers to consider Singaporeans fairly before hiring foreigners on an employment pass basis. Pursuant to the FCF, with effect from August 2014, employees submitting new employment pass applications must demonstrate that they have advertised those job positions on Jobs Bank for at least 14 calendar days.

Jobs Bank is a self-help platform which has some basic features similar to private job portals. Jobseekers are able to search and apply for jobs, create and post resumes on the website, receive alerts on new job vacancies and allow their resumes to be searched by employers. Moreover, the platform is available to companies at no cost and potential employers are able to post job vacancies, manage job applications and search for local candidates. Jobs Bank is also used to

support WDA's career services and allow WDA to reach out to a wider pool of local job seekers beyond its career centres.

In CCS\*'s merger assessment, Jobs Bank was initially considered to be attractive to job seekers because it is a free government portal, which carries a public perception of trust and reliability. Moreover, there may be synergies with WDA careers centres which may increase public awareness and usage of the site. In turn, this would make Jobs Bank attractive to potential employers who now have access to a wide base of job seekers. Even though it was launched in July 2014, Jobs Bank quickly accounted for 17.1% of all online job listings by October 2014.

However, feedback from market participants indicated that Jobs Bank may not have been an effective and significant competitor to other private job portals as originally planned. As Jobs Bank has a specific regulatory purpose of enabling employers to fulfil the FCF requirements, it has significantly fewer features than private job portals. Recruitment advertisers have noted that this lack of functionality is an important difference between Jobs Bank and other private job portals. Hence, it is unlikely that Jobs Bank will crowd out the private job portals.

*Source: Competition Commission of Singapore, 2014, Seek Asia/Jobstreet Merger Decision*



### The Impact of Government Divestments on Competition

- 3.7 In addition, government agencies should assess whether the government can withdraw from markets that have traditionally been considered as natural monopolies or where government participation as a seller or supplier had been necessary to support the development of the industries.
- 3.8 In considering divestments of companies or assets held by the government to the private sector, it should be noted that such actions can have a significant impact on the structure of the industry concerned. If the company to be divested has significant market power, the market power which was vested in a public entity will be transferred to a private entity (following the divestment).
- 3.9 It is therefore imperative that government agencies adopt the most appropriate method of divestment based on the relevant industry structure, so as to ensure that there is no consequential distortion to competition in the market. In fact, where possible, the divestment exercise may give the government the opportunity to improve the market structure such that competition may deliver better outcomes for the society. For example, instead of divesting a company (with significant market share) as a single entity, an alternative approach could be to divide the assets of the company into several blocs and selling them to different buyers in order to facilitate competition.
- 3.10 It should be noted that generally, divestments of assets owned by the government is excluded from the section 54 prohibition of the Act which prohibits mergers that substantially reduce competition in a market.





## The Impact of Government Allocation of Limited Resources or Rights on Competition

- 3.11 Although the government does not participate directly in the market when engaging in competitive tendering (or other mechanisms) to allocate limited resources or 'rights' to supply some goods and services, these activities may similarly have an impact on competition. Officers in charge of government tendering should consider existing conditions in the affected markets, especially when the resources or 'rights' to be allocated are critical for private sector players to enter or expand in the markets.
- 3.12 The government's tender design and award decision can also have an impact on the overall prices and the range of products available in a market especially when the limited resources or rights to be allocated via the tender accounts for a significant share of the total supply in a particular market.
- 3.13 In addition, officers should consider whether the tendering process and outcome can:
- (i) increase the intensity of effective competition between existing sellers in the market;
  - (ii) create opportunities for increasing investment, innovation and the competitiveness of the market as a whole; and
  - (iii) influence long term market dynamics (for example, allowing the widest class of suppliers to participate in government tenders may create more competitive pressure on existing players as it remove barriers to entry and expansion. This also benefits buyers in the private sector as the range of better quality products increases).
- 3.14 Officers overseeing the competitive tendering process should also consider the risks of bid-rigging during the design and evaluation of tender. The pertinent points are discussed in section (B) on the impact of bid rigging on public procurement.
- 3.15 Government agencies which are considering
- (i) supplying goods and services directly,
  - (ii) partnering with the private sector,
  - (iii) divesting of government-owned companies and assets to the private sector or
  - (iv) allocating private sector the right to supply these goods and services through competitive tendering,
- may find it useful to consult CCCS on the impact of such government activities on competition.

Government agencies may choose to meet with CCCS officers from the Policy and Markets Division to kick-start the confidential advisory process. Alternatively, government agencies may consider filling out the information template in Annex B and sending the relevant information to [cccs\\_feedback@cccs.gov.sg](mailto:cccs_feedback@cccs.gov.sg) and CCCS officers will contact them thereafter to initiate a follow up meeting.



## (B) DIRECT PARTICIPATION: PUBLIC PROCUREMENT

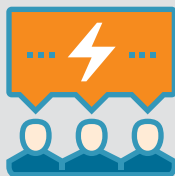
### Summary:



The government buys from the market in order to provide a public good or service or to support its role in carrying out its functions.



Where the government is a major buyer in a market, its purchasing decisions can have significant effects on competition.



Procurement officers should be mindful of such effects and design public procurement activities that minimise negative effects.



The ability to extract value for money through competitive tendering may be undermined when businesses engage in bid rigging.



CCCS can advise on ways to minimise risk of bid rigging and how to detect bid rigging.

- 3.16 Government procurement, defined as the acquisition of goods and services by ministries, departments, organs of state and statutory boards,<sup>11</sup> accounts for a significant proportion of both government expenditure and demand for goods and services in Singapore. According to the World Trade Organisation, the total value of non-classified procurement by the government amounted to S\$27.3 billion,<sup>12</sup> approximately 8% of Singapore's Gross Domestic Product, in 2011.<sup>13</sup>
- 3.17 The government acts as a buyer for two main purposes:
- To provide a public good or service, for example, health care, law and order, housing and pre-school education and/or
  - To support its role in carrying out its functions, for example, the government buys goods and services such as buildings, vehicles, computers, IT and consultancy services from businesses.
- 3.18 The Government Procurement framework ("GP framework") in Singapore is governed by the Government Procurement Principles which include (1) transparency, (2) fair and open competition, and (3) value for money.<sup>14</sup> As Singapore is a party to the World Trade Organisation's Agreement on Government Procurement and several free trade agreements, our GP framework is also aligned with international standards and obligations.<sup>15</sup>
- 3.19 Government procurement in Singapore is generally carried out via competitive tendering. All government agencies are required to post their invitations for quotations and tenders openly on the government electronic business portal (GeBIZ) for all procurements above a certain stated value by Ministry of Finance.<sup>16</sup> This process is to enable the government agency to identify the most cost effective supplier, thereby extracting the most value for taxpayers' money. In the United Kingdom ("UK"), a review commissioned in 2008 found that cost savings from competitive tendering in the UK were typically between 10 to 30 per cent.<sup>17</sup>

<sup>11</sup> Ministry of Finance, 2015, *Government Procurement*

<sup>12</sup> World Trade Organisation, 2015, *Trade Policy Review: Singapore*

<sup>13</sup> Department of Statistics Singapore, 2015, *National Accounts*

<sup>14</sup> Ministry of Finance, 2015, *Government Procurement*

<sup>15</sup> *Ibid*

<sup>16</sup> Ministry of Finance, 2016, *Procurement Process*

<sup>17</sup> DeAnne Julius, 2008, *Public Services Industry Review*



## The Impact of Public Procurement on Competition

- 3.20 The government's purchasing decisions can have an impact on the overall prices and the range of products available in a market when:
- The government accounts for a significant share of the total demand in a particular market; or
  - The government is a strategically important customer to certain businesses, for example, other buyers may view sellers that supply to government more favourably.

In these scenarios, the government as an important customer can exert pressure on the sellers, to get them to provide higher quality products and better services at lower prices.

- 3.21 However, public procurement can unintentionally affect competition through affecting the prices and quality of the goods and services supplied.
- 3.22 The short-term effects of government being an important customer can affect the intensity of competition amongst existing sellers in a particular market. For example, public procurement may inadvertently "favour" larger and more established businesses due to their lower perceived risks and greater abilities to provide the necessary volume of goods and services, which smaller businesses may not be able to provide. Furthermore, factors such as requirements on past experience and expertise may also be lacking in Small and Medium Enterprises ("SMEs"). This increases the barriers to entry and expansion for SMEs, which in turn reduces their ability to pose as a credible alternative to established businesses. To the extent possible, government agencies should seek to provide equal opportunities to efficient and promising SMEs while achieving their procurement requirements. As another example, tenders that unnecessarily require the use of specific technology or standards may restrict the participation of companies which may otherwise be able to provide a comparable service or product using different technologies. This may limit the ability of market players with competing offerings to expand and in turn discourage further entry into the market. Existing sellers will have less incentive to innovate, which affects investments and the competitiveness of the market in the longer term.
- 3.23 Buyers in the private sector are therefore unable to enjoy higher quality products, better services and lower prices due to the lack of competitive pressure on existing players in the market. Furthermore, buyers in the private sector may also take reference from the government's choice of sellers, further increasing the barriers to market entry and expansion. Government agencies should therefore consider the knock-on effects on buyers in the private sector as their purchasing decisions may affect the competitive dynamics in markets.
- 3.24 The effects mentioned above are invariably tied to the relative size of public procurement vis-à-vis total market demand, as well as procurement practices by the government. The larger the size of public procurement, the more mindful government procurement officers should be of such effects. As discussed earlier, the government is an important customer and its public procurement decisions may have an effect on pricing, the number of sellers in the market, the production technologies and the range of products available to consumers.

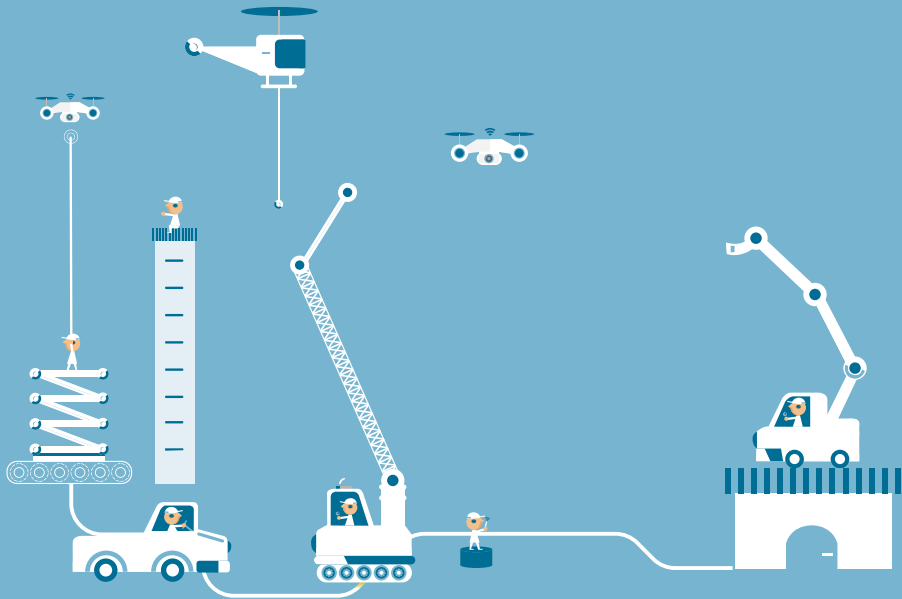




- 3.25 Procurement officers should consider market conditions in which sellers compete. In addition, procurement officers should consider whether a particular buying strategy can:
- (i) increase the intensity of effective competition between existing sellers in the market;
  - (ii) create opportunities for increasing investment, innovation and the competitiveness of the market as a whole; and
  - (iii) influence long term market dynamics (for example, removing barriers to entry and expansion in markets through participation in government tenders may create more competitive pressure on existing players. This also benefits buyers in the private sector as the range of better quality products increases).
- 3.26 As far as possible, procurement officers should provide smaller sellers or new entrants the same opportunities as incumbents and bigger sellers.<sup>18</sup> Case study D discusses the example of the United States (“US”) government defence sector procurement practice and its impact on technological innovations.

<sup>18</sup> This recommended good practice is subject to meeting the requirements in the Government Procurement IM and is dependent on the types of goods/services sought for in the tenders put up by government agencies.

## D: UNITED STATES GOVERNMENT DEFENCE SECTOR PROCUREMENT AND INNOVATION



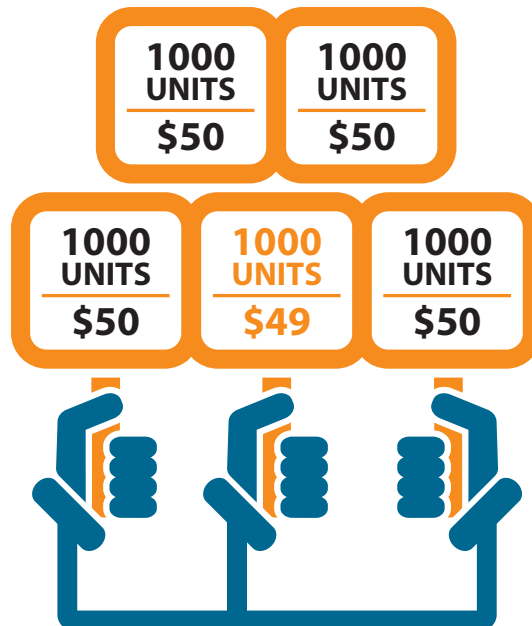
The United States (“US”) is a world leader in technological innovation and much of the credit could be attributed to the US government’s defence sector procurement programmes. Important innovation such as computers and the Internet had their origins in US government-funded projects. Innovation spread quickly throughout the US economy because the US government awarded military-related contracts to a diverse group of private businesses. These contracts helped to build up a pool of skilled professionals and technicians like engineers and programmers familiar with the latest technology. This knowledge enabled the technology to be adapted and built upon for uses outside the military domain. Furthermore, the government required the successful companies to share their technologies with other firms and engage in open technical standards that also helped to increase the rate of innovation.

In contrast, where countries typically awarded government contracts to national companies (which are typically state monopolies), private companies were not able to leverage the improvements in technology to other areas. In addition, procurement programmes were designed too narrowly such that even when the private companies were awarded contracts, these were confined to traditional contractors who were the only ones capable of meeting the government’s narrow requirements. Innovation is unlikely to spread widely throughout the economy in the latter cases.

*Source: James Bessen, 2015, Foreign Affairs, The Anti-Innovators: How Special Interests Undermine Entrepreneurship*

## The Impact of Bid Rigging on Public Procurement

- 3.27 The ability to extract value for money through competitive tendering exercises may be undermined by anti-competitive practices such as bid-rigging. Businesses participating in government tenders may collude to raise the price or lower the quality of the goods or services provided through government tenders. Statistics show that the overcharge from bid-rigging in public procurement cases can be as high as 35%.<sup>19</sup>
- 3.28 Bid rigging can appear in various forms. Some of the most common ones include cover bidding, bid suppression, bid rotation and market allocation. Cover bidding refers to the act of tendering an artificially high price for a contract, so as to assist the designated winner to win the bid. Bid-suppression schemes involve agreements among competitors in which one or more companies agree to refrain from bidding or to withdraw a previously submitted bid so that the designated winner's bid will be accepted. Bid rotation occurs where, in a series of tenders, tenderers take turns to submit the lowest priced bid to win the contract for each tender. Market allocation occurs when competitors agree to share markets, whether by territory, type or size of customer, or in some other ways and they will therefore 'win' the bids in their respective markets.
- 3.29 CCCS has investigated several bid rigging cases in the public sector. For example, hotels and government schools were overcharged by pest-control services providers who engaged in a cover bid cartel uncovered by CCCS in 2006.<sup>20</sup> In another example, 12 motor vehicle traders were found to have suppressed bids at auctions of motor vehicles by public agencies in 2013. This resulted in lower bids for the motor vehicles put up for auction by government agencies.<sup>21</sup>



<sup>19</sup> Calculation based on cartel activities from around the world involving public procurement for the period 1990 – 2008.

<sup>20</sup> Competition Commission of Singapore, 2008, *Collusive Tendering (Bid-rigging) for Termite Treatment/Control Services by Certain Pest Control Operators in Singapore*

<sup>21</sup> Competition Commission of Singapore, 2013, *CCS imposes penalties on 12 motor vehicle traders for engaging in bid-rigging activities at public auction*



3.30 Procurement officers need to ensure that their tender processes are carefully designed to minimise the risk of bid rigging. Some useful principles to follow include:

#### Define a tender to allow the widest class of potential bidders to qualify.

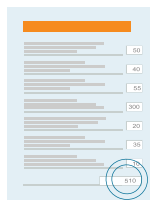


Where possible, the tender should not unnecessarily limit the number or range of sellers, through excessive requirements such as financial capabilities or experience. For example, tender specifications and terms of reference should focus on functional performance, namely on what is to be achieved, rather than how it is to be done, in order to attract more bidders to the tender, including sellers of substitute products. Firms of smaller scale could also be allowed to participate, even if they cannot bid for the entire contract. Increasing the number of bidders as well as reviewing the size of requirements will make it more difficult for companies to agree and coordinate their bids.



#### Solicit actively for companies and issue open tenders.

Encourage companies that are not active participants in tenders to enter bids. It is more difficult for cartels to form if there are more companies participating in a tender.



#### Request for detailed or itemised bids.

If a company is required to itemise its bid, each item can then be scrutinised to determine why a company's bid is substantially higher than its competitors. If there is no good justification for the substantially higher price, this may indicate that the company is deliberately making a cover bid.



#### Insert anti-collusion clauses<sup>22</sup> into the tender document.

These act as a strong deterrent to collusion as the bidder now knows that the government agency is alert to potential bid rigging activities and the potential high costs of bid rigging.

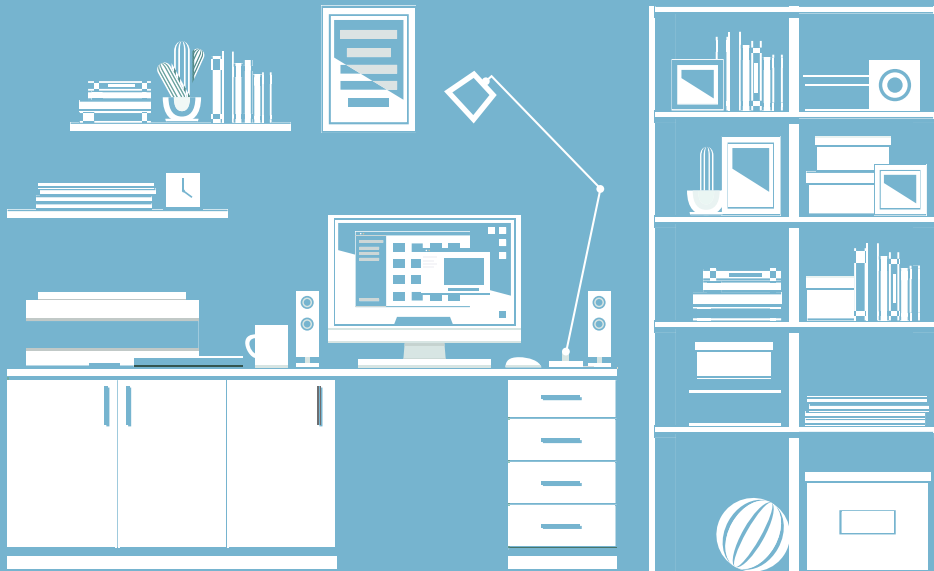
3.31 Case study E discusses an example on how CCCS worked with a government agency on bid rigging prevention.

3.32 Procurement officers may find it useful to consult CCCS on the impact of government procurement on competition, as well as competitive tender designs and methods to prevent and detect bid-rigging. Government agencies may choose to meet with CCCS officers from the Policy and Markets Division to kick-start the confidential advisory process. Alternatively, government agencies may consider filling out the information template in Annex B and sending the relevant information to [cccs\\_feedback@cccs.gov.sg](mailto:cccs_feedback@cccs.gov.sg) and CCCS officers will contact them thereafter to initiate a follow up meeting.

<sup>22</sup> Typical clauses include (1) requiring bidders to declare that their bids were made independently, (2) requiring bidders to disclose to the government agency any communications, agreements, arrangements or understanding involving anti-competitive conduct relating to the tender, and (3) requiring bidders to accept that the government agency has the right to not award the contract if there are suspicions of bid rigging.



## E: TENDERING OF OFFICE SPACES



CCS\* worked closely with a government agency on how to minimise the risk of bid rigging in tenders for office space as well as how to detect bid rigging activities in its tender.

This advice took place following a policy change on tendering of office space where a reserve rent would no longer be set as part of the tender. Based on the original tender framework, vacant office space are allocated to the highest bidder, as long as there are sufficient “competitive bids” i.e., two or more bids. Vacant office spaces that only received one bid would not be awarded and would be subject to another tender. Should such vacant office spaces still receive only one single bid in the second tender, the vacant office would then be awarded to the only bidder.

The government agency was concerned about the possibility of businesses colluding to win the tenders. For example, a business owner could submit a \$200 bid and get another business owner to submit a \$100 bid for the same office space. Given that there is more than one bid for the office space, the government agency would then award

the office space to the higher bidder. As such, the relevant government agency requested for CCS\*’s assistance to improve its tender framework to overcome such concerns, including warning potential bidders against bid rigging.

CCS\* advised that the government agency insert anti-collusion clauses into its tender documents. Such clauses signal to potential bidders that the government agency is alert to potential collusion activity. CCS\* also provided the government agency with sample clauses that the government agency can incorporate into their tender documents, and also highlighted possible ways to detect bid rigging activities. The sample clauses include:

- (i) the bidder declaring that the tender has been prepared independently, and
- (ii) the bidder disclosing prior anti-competitive conduct which it was sanctioned for.

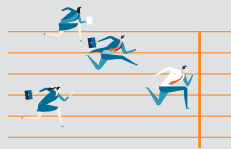
As part of the invitation to participate in the tender, government agency also informed potential bidders that it will report and provide information of suspected anti-competitive conduct to CCS\*.

## (C) INDIRECT PARTICIPATION: GOVERNMENT REGULATION

### Summary:



Regulation plays an important role in helping the government achieve wider policy goals and ensuring that markets function effectively.



However, regulation can distort competition through affecting the ability of firms to enter markets and altering the ability and incentives of firms to compete.



Government agencies should seek to achieve wider policy objectives with minimal regulation in order to limit any distortions to competition.



In addition, government agencies can explore the extent to which market-based approaches can replace or complement direct regulation, utilising markets in a manner which is aligned with wider policy objectives.

3.33 Regulations can be thought of as a set of rules administered by the government to shape the behaviour of businesses to enable proper functioning of the economy. For example, regulations such as property rights and contract enforcement are needed for markets to function effectively. Regulations can also offer protection for the population. For example, the Workplace Safety and Health Act<sup>23</sup> helps to ensure the safety and well-being of workers and the Enhanced Registration Framework<sup>24</sup> for private educational institutions ensures that the institutions are of an acceptable standard and student interests are protected.

### The Impact of Regulation on Competition

3.34 The government uses a wide range of instruments such as permits, quotas, quality standards and pricing controls to regulate markets. The use of these regulatory instruments can distort competition directly or as an unintended consequence.

3.35 For example, regulations on pricing, supply quantity and entry into a market often place a direct constraint on the way that businesses compete, thereby reducing the intensity of competition in affected markets. By imposing a price floor (or minimum price),<sup>25</sup> sellers do not have the ability and incentive to compete based on pricing. Licensing schemes that limit the number of sellers in the market reduce competitive pressure on existing sellers in the market as the threat of new sellers entering the market is reduced.

3.36 In addition, while regulations on product features, standards and quality are likely to impose fewer direct restrictions on competition, indirect effects should not be overlooked. For example, imposing a specific product standard will remove products that are non-compliant from the market, thereby reducing the number of competing options available to consumers. Setting minimum quality requirements can increase business costs and raise entry barriers, therefore discouraging new entrants. In some cases, existing sellers may not be able to meet these requirements and may exit the market. Case study F examines an example on service standards for third-party taxi booking applications in Singapore.

<sup>23</sup> Ministry of Manpower, 2015, Workplace Safety and Health Act

<sup>24</sup> Council for Private Education, 2015, Enhanced Registration Framework

<sup>25</sup> When a minimum price is set by the government, the price of the good or service cannot fall below the stated minimum.

## F: THIRD-PARTY TAXI BOOKING APPLICATIONS



To increase the chances of getting a taxi, particularly during peak hours, many commuters choose to make a taxi booking instead of doing a street hail. This could traditionally be done through calling any of the six taxi operators, or online booking through their respective mobile applications (“apps”), for a booking fee. Increasingly, commuters also make use of third-party taxi booking apps (“third-party apps”) to book a taxi.


In many countries, taxi drivers and companies have protested against third-party apps as these apps were not subjected to similar regulatory requirements. In response, some countries have decided to ban, impose restrictions or regulate their use. For example, the Shanghai authorities have banned the use of these third-party apps by taxi drivers during peak periods. Through feedback from stakeholders, CCS\* found that third-party apps were a form of disruptive innovation that could potentially resolve the mismatch between demand and supply of taxis as they bring taxis from different companies into a common pool to meet commuters’ demand. In turn, these third-party apps provide an additional option for commuters to book a taxi, increasing competition in the market for taxi bookings. Consumers could also benefit from more competitive booking fees and a higher success rate in booking a taxi. The third-party apps also provided an additional source of bookings for taxi drivers besides those from their respective taxi company.

However, these third-party apps also present their own problems. Third-party apps are not subjected to service standards or any other form of regulatory oversight. This makes it challenging for the Land Transport Authority (“LTA”) to safeguard

commuters’ interest and address potential complaints relating to over-charging or poor service. In addition, taxi companies, which are subject to LTA’s service standards, are concerned that they may face difficulty in meeting the call booking requirements (in terms of proportion of calls served) if their drivers are diverted away to service bookings from third-party apps instead. LTA and CCS\* recognised the benefits of embracing the disruptive innovations presented by third-party apps. At the same time, LTA and CCS\* acknowledged that some form of regulation is necessary to mitigate the negative spillover effects that these third-party apps bring, as well as the need to safeguard consumer interests in the longer term. Hence, a set of well-designed regulations will mean that these third-party apps can operate in Singapore with regulatory certainty and therefore facilitate their entry into this market.

Under LTA’s proposed regulations, the third-party apps are required to apply for a certificate of registration every three years. Once registered, the third-party apps are required to dispatch only licensed taxis and drivers, and to uphold certain service standards to safeguard passenger interests. For example, the third-party apps must disclose upfront all price information such as fares, surcharges and the fees payable. The third-party apps must also provide basic customer support such as lost-and-found services and customer feedback channels. Third-party apps which are able to meet these basic requirements are able to enter the market and compete.

The entry of third-party apps into the taxi booking scene has already brought about benefits. For example, the matching of taxi supply and passenger demand improved from 65% to 68% from January to May 2014. The increase in competition for taxi bookings appears to have motivated improvements and sparked additional innovations into the market. For example, the third-party apps have started to introduce user-friendly features such as allowing passengers to make payment automatically through credit card transactions.

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- 3.37 It is important for government agencies to be clear on the policy rationale for implementing regulations and the objectives that these regulations seek to achieve. Government agencies should seek to achieve their policy objectives with minimal regulation in order to limit any distortions to competition.
- 3.38 Conducting a competition impact assessment during the policy formulation process can help to assess the impact of the proposed regulations. This is discussed in Section IV.
- 3.39 In contemplating the appropriate regulatory response, government agencies can consider whether market-based mechanisms can be used to achieve policy objectives. For example, the government regulates the number of vehicles in Singapore by issuing a limited number of Certificates of Entitlement<sup>26</sup> (“COE”) which permits a vehicle to be registered for use. The government chose to allocate these COEs by using a bidding system, as opposed to non-market mechanisms such as balloting or queuing. This allows the government to allocate the COEs efficiently according to individuals’ willingness-to-pay, while still allowing car distributors to compete for customers through pricing, quality of service and bringing in attractive vehicle models.
- 3.40 Regulatory capture is another concern that government agencies should be aware of when drawing up regulations. This occurs when regulations end up benefitting the regulated industry or special interest groups instead of the wider society.
- 3.41 Regulatory capture may occur because businesses or individuals directly affected by the regulations have a huge stake in shaping these regulations. These businesses and individuals may therefore have the incentive to channel substantial amounts of resources to obtain the policy outcomes that benefit them. On the other hand, individuals of the wider society each only has a small stake in the outcomes and hence will be less willing to invest resources to shape them. This results in the potential divergence of policies favouring the businesses and individuals that have more resources.
- 3.42 The presence of information asymmetry between the government and businesses increases the challenge for government to draw up well-designed regulations. Information from sellers is required to design policies, but sellers have the incentive to provide information in so far as to benefit from regulation. In this regard, market-based approaches may help to overcome the information asymmetry problem as less information is required compared to regulation in order to achieve efficient outcomes.
- 3.43 Government agencies may find it useful to consult CCCS as part of their revision or implementation of new regulations. Government agencies may choose to meet with CCCS officers from the Policy and Markets Division to kick-start the confidential advisory process. Alternatively, government agencies may consider filling out the information template in Annex B and sending the relevant information to [cccs\\_feedback@cccs.gov.sg](mailto:cccs_feedback@cccs.gov.sg) and CCCS officers will contact them thereafter to initiate a follow up meeting.

<sup>26</sup> Land Transport Authority, 2015, Certificate of Entitlement





## (D) INDIRECT PARTICIPATION: GOVERNMENT INFLUENCE

### Summary:



Government agencies may influence market outcomes indirectly through encouraging industry cooperation or self-regulation.



However, such efforts to encourage industry cooperation or self-regulation do not exempt the participating firms from the ambit of the Competition Act.



Government agencies should not encourage firms to agree on prices or fix trading conditions as such activities tend to result in less innovation, competitive pricing and consumer choices.

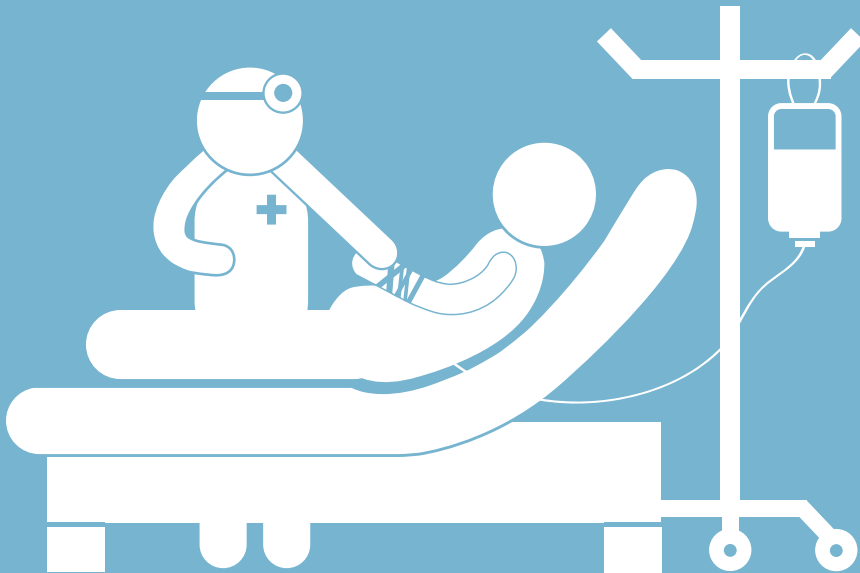
- 3.44 Government agencies may choose to work closely with industry associations to foster greater cooperation within the industry or industry self-regulation rather than to regulate the industry directly. This approach allows rules to be implemented more quickly (as compared to regulation) and be more responsive when market conditions change. Government agencies also avoid the risk of implementing overly-restrictive regulations as firms typically have access to better and more timely market information.
- 3.45 As part of industry self-regulation, it is common for firms to agree, through their respective industry associations, on a set of industry-wide standards pertaining to certain aspects of their operations or product offerings (for example, service standards). Government agencies have to be vigilant that such self-regulation initiatives do not cause private sector firms or associations to inadvertently infringe the prohibitions of the Competition Act or dampen competition and impede market developments more generally.
- 3.46 For example, following complaints from the public about over-charging, the Singapore Medical Association<sup>27</sup> ("SMA") issued a guideline on fees ("GOF") in 1987, setting out recommendations on private doctors' professional fees, which includes fees for consultations, surgeries, preparation of medical reports and court appearances. According to SMA, the GOF was an industry effort meant to provide patients with greater transparency on healthcare costs, thereby allowing patients to make an informed choice on private medical practitioners. CCCS subsequently found in 2010 that the GOF would contravene the Competition Act as price recommendations, whether mandatory or voluntary, are generally harmful to competition by signalling to market players what competitors are likely to charge, thereby creating focal points for prices to converge. CCCS's study showed that following the removal of the GOF, prices charged in the market became more dispersed. CCCS also found that there were other measures in the market which addressed the problem of information asymmetry in the medical sector without restricting market competition.<sup>28</sup>
- 3.47 Case study G explores another example of self-regulation from the Life Insurance Association of Singapore's<sup>29</sup> ("LIA Singapore") review of the Critical Illnesses benefit guidelines in 2014.

<sup>27</sup> The SMA is an association which represents the majority of medical practitioners in Singapore.

<sup>28</sup> CCS's Media Release on "CCS Decides against Singapore Medical Association Guidelines on Fees", 2010.

<sup>29</sup> The LIA is a not-for-profit trade body of life insurance product providers and life reinsurance providers based in Singapore.

## **G:** POTENTIAL ANTI-COMPETITIVE EFFECTS OF INDUSTRY SELF-REGULATION



Critical Illness (“CI”) insurance pays out a lump sum in the event that the life insured is diagnosed to be suffering from one of the critical illnesses or has undergone a surgical procedure covered by the policy. CI plans can be sold as a stand-alone policy or as an optional rider attached to a main policy. Each CI condition or surgery covered by the policy is precisely defined in the policy contract and benefits will be paid only if the policyholder suffers from a condition that meets the standard definition.

The LIA Singapore first standardised 37 CI definitions in 2003 to provide greater transparency for consumers to easily assess and compare insurance plans offered by different insurance service providers, and achieve greater assurance in insurance claim results. This reduces the incidence of one insurer paying a claim and another rejecting it due to differences in definition applied for severe stage of the 37 common CIs. In addition, the LIA Singapore also implemented a maximum insurance coverage cap of 30 critical illnesses for all insurance plans sold by its

members. Prior to the revision to the CI benefit framework by the LIA Singapore in August 2014, CI insurance plans in Singapore covered up to a maximum of 30 CIs under the framework. This limits insurers’ flexibility to introduce insurance plans that offer more comprehensive or tailored coverage that could benefit consumers.

Following consultation with CCS\*, LIA Singapore revised its framework to remove the cap on the number of CIs that can be covered under insurance plans. Under the new framework, any number of medical conditions can now be covered under a CI plan, and insurers can even offer single-illness CI plans. This allows insurers to compete more aggressively through offering a wider variety of products and allows Singaporeans to benefit from the introduction of more innovative products, catering to varied and more specific needs.

*Source: LIA Singapore’s Media Release on “LIA Singapore introduces updated Critical Illnesses benefit guidelines to meet changing needs of policyholders”, 2014*

\*CCS has been renamed CCCS with effect from 1 April 2018

## The Impact of Government Influence on Competition

- 3.48 Government agencies should be mindful that their efforts to encourage industry cooperation or self-regulation do not inadvertently cause the participating firms to breach the Competition Act.
- 3.49 In particular, government agencies should not encourage firms to discuss and agree on prices or trading conditions as such activities tend to result in less innovation, competitive pricing and consumer choices.
- 3.50 **Price Recommendations** distort independent pricing decisions. Recommendations of minimum prices<sup>30</sup> discourage price competition. When producers believe that other competitors will adhere to the minimum price, they have the incentive to follow suit instead of cutting costs and prices where possible. Recommendations of maximum prices may lead to a convergence of prices at or just below the maximum level. They may also discourage producers from offering premium products that cost more than the recommended maximum price, thereby reducing choices for consumers. In some cases, price recommendations can lead to price fixing which will result in significant over-charging of consumers.
- 3.51 **Fixing of Trading Conditions** restrict competition amongst firms as they limit the choices of goods/services that firms offer to compete for customers. Firms have less incentive to innovate or compete as they know their competitors would not innovate as well due to this arrangement. Potential competitors may also be dis-incentivised from entering or expanding in the market based on differentiated offerings.
- 3.52 Government agencies may find it useful to consult CCCS should they wish to embark on initiatives involving industry cooperation or self-regulation. Government agencies may choose to meet with CCCS officers from the Policy and Markets Division to kick-start the confidential advisory process. Alternatively, government agencies may consider filling out the information template in Annex B and sending the relevant information to [cccs\\_feedback@cccs.gov.sg](mailto:cccs_feedback@cccs.gov.sg) and CCCS officers will contact them thereafter to initiate a follow up meeting.

<sup>30</sup> When a minimum price is set, the price of the good or service cannot fall below the stated level.

## (E) INDIRECT PARTICIPATION: TAXES AND SUBSIDIES

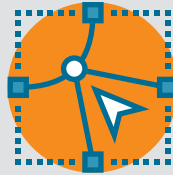
### Summary:



Taxes and subsidies alter the cost structure of businesses and hence influence their production decisions.



This can have positive effects on competition. For example, subsidies can be used to aid in the expansion of promising small businesses.



However, taxes and subsidies can also create barriers to entry and expansion in a market and allow firms to acquire and exploit market power.



When designing taxes and subsidies, government agencies should minimise the impact they have on market competition.

- 3.53 **Taxes** are primarily a source of revenue for the government to fund its activities and services. The Goods and Service Tax, which is a form of indirect tax, does not vary with the consumer's income. Direct taxes such as income tax, varies with income and other characteristics like the tax payer's residential properties.
- 3.54 **Subsidies** can be represented in many forms. Examples of government subsidies include the Productivity and Innovation Credit, Inclusive Growth Programme, Innovation and Capability Voucher and Absentee Payrolls. Support can also be in the form of preferential treatment to certain businesses or individuals such as allowing lower-than-market rental.

### The Impact of Taxes and Subsidies on Competition

- 3.55 Both taxes and subsidies affect the behaviour and commercial incentives of firms. As such, they may also affect competition in the market and ultimately market outcomes.
- 3.56 **Taxes.** A benefit of using taxes as a policy tool is that tax revenue collected can be used to reinforce policy objectives. Taxes that are applied generally and are not targeted at particular firms or individuals are unlikely to raise competition concerns. In cases of specific taxes on particular products or services, the impact on competition may be greater. Case study H discusses how excise duty on alcoholic beverages prior to 2008 may have disadvantaged industry players focussed on supplying alcoholic beverages with lower alcohol content.
- 3.57 Case study I on the German alcopop tax explores the unintended impact of the tax on consumer and business behaviours when it was not designed appropriately. The case study in particular highlights how the introduction of taxes led to unintended consequences and how it undermined the legitimate public policy objective of discouraging alcohol consumption among teenagers.

## H: SINGAPORE'S 2008 ALCOHOL EXCISE DUTY REVIEW



Excise duty on alcoholic beverages is typically imposed to achieve public health objectives through discouraging excessive consumption. Sijbren Cnossen (2005) found that the price elasticity of demand for cigarettes and alcoholic beverages among the young is on average twice the price elasticity among adults. As such, price "increase" through excise duty would have an effect in deterring the young from smoking and drinking.

Singapore similarly imposes excise duty on alcoholic beverages. Prior to 2008, excise duty on alcoholic beverages was charged based on per litre of beverage, regardless of their alcoholic content. This approach was potentially problematic as it may have disadvantaged industry players focused on supplying alcoholic beverages with lower alcohol content when competing with other industry players. It may have also dis-incentivised

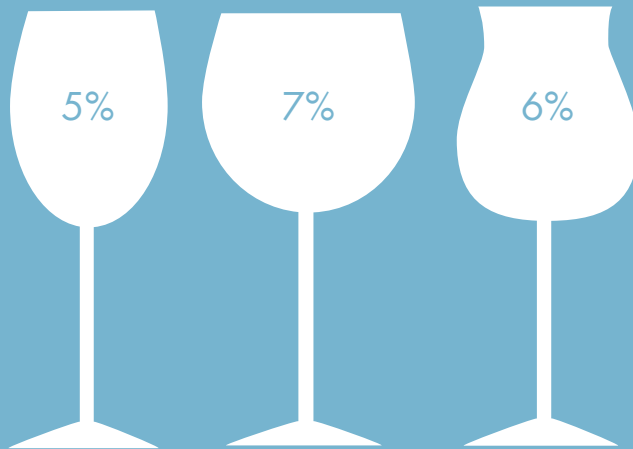
industry players from expanding their business operations in the "low alcohol content beverage" consumer segment.

This approach was reviewed and changed in 2008. Instead of charging by volume, excise duty on alcoholic beverages is charged based on the amount of alcohol they contain. Taxing alcoholic beverages on the basis of alcoholic content is a fairer and more rational approach as there is a direct relation between the alcoholic strength of the beverage and its tax rate. While ensuring that some industry players are not disadvantaged vis-à-vis others, the new approach to charging excise duty also better achieved the government public health objectives of discouraging excessive consumption of alcohol.

*Source: Theory and Practice of Excise Taxation Sijbren Cnossen 2005, Budget 2008 Annex B-5 "Special Tax and Liquor Duties" ; Singapore Customs e-Newsletter update 2008*

HS Code	Description	Current Excise Duty (Per litre of beverage)	New Exercise (Per litre of alcohol)
22041000	Sparkling Wine	\$9.50	\$70
22042111	Still wine, 2ltr or less, not exceeding 15% alc/vol	\$9.50	\$70
22042112	Still wine, 2ltr or less, exceeding 15% alc/vol	\$9.50	\$70
22042911	Still wine, more than 2ltr, not exceeding 15% alc/vol	\$9.50	\$70
22042912	Still wine, more than 2ltr, exceeding 15% alc/vol	\$9.50	\$70

## I: GERMAN ALCOPOP TAX



Alcopops are sweet and ready-mixed soft drinks containing between 5% and 7% alcohol by volume. To discourage consumption of alcopops among teenagers, Germany imposed a specific tax on this category of beverage in 2004, nearly double the retail prices of these drinks. The new tax will vary according to the amount of alcohol contained in the drinks.

Although conventional wisdom suggests; and empirical research documents the effectiveness of tax increases as a means for reducing alcohol consumption; the alcopop tax led to unintended consequences – teenagers actually switched to drinking other types of alcoholic beverage, such as spirits and beer, which are associated with riskier alcohol consumption patterns. This was established by empirical analysis of data from the German 2003 cross-sectional study of the European School Survey Project on Alcohol and other Drugs, conducted by the Institut für Therapieforschung (“IFT”). The data revealed that consumption of spirits increased after the

alcopop tax was introduced, thereby negating the positive impact of the tax. The same research also concluded that riskier drinking patterns such as binge drinking and earlier initiation of alcohol are not caused by alcopop consumption but by alcohol consumption in general.

As an aside, another unintended consequence from the alcopop tax was that it unwittingly “favoured” producers of spirits and beers over producers of alcopop.

The IFT called for more wide-ranging alcohol policies that did not target just one particular type of drink, “effective alcohol policies to prevent alcohol related problems among adolescents should focus upon the reduction of total alcohol consumption instead of regulating singular beverages”.

*Source: Stefanie Müller et. al (2009) Changes in alcohol consumption and beverage preference among adolescents after the introduction of the alcopops tax in Germany*



- 3.58 **Subsidies.** Subsidies may also distort competition in markets. Subsidies that are offered to only selected businesses may enable businesses receiving the subsidies to have a lower cost base such that they can outperform other competitors and acquire more market power to the extent that they face lesser constraints compared to their competitors. Competing sellers may be discouraged from entering or expanding in the market if they have to compete on an unequal basis against sellers who benefit from subsidies. Further, should subsidies result in only a small number of subsidised firms remaining in the market, the market may become more conducive to engage in collusive activities such as price fixing.
- 3.59 Subsidies may also impair the market mechanism. Inefficient businesses that would have exited the market under competitive conditions may be “sponsored” by subsidies to remain in the market as they do not face competition discipline to improve and innovate. This may even have a chilling effect on the level of innovation across the industry as it reduces the incentive of more efficient businesses to invest in research and development. Case study J on government subsidies to Japan Airlines explores this point in greater detail.
- 3.60 Government agencies may find it useful to consult CCCS as part of their revision or implementation of new forms of taxes and subsidies. Government agencies may choose to meet with CCCS officers from the Policy and Markets Division to kick-start the confidential advisory process. Alternatively, government agencies may consider filling out the information template in Annex B and sending the relevant information to [cccs\\_feedback@cccs.gov.sg](mailto:cccs_feedback@cccs.gov.sg) and CCCS officers will contact them thereafter to initiate a follow up meeting.



## J: GOVERNMENT AID TO JAPAN AIRLINES



The two largest Japanese airlines are Japan Airlines (“JAL”) and All Nippon Airways (“ANA”).

JAL was bailed out by the Enterprise Turnaround Initiation Corporation of Japan (a Japanese incorporated company funded by the Japanese government and other Japanese corporations) after it filed for bankruptcy in 2010. It turned around from bankruptcy in 2010 to profitability in a matter of two years as a result of government aid.

ANA criticized JAL’s bailout and the tax breaks it received from the Japanese government as “not fair” and having “distorted the competitive environment”. The ANA chief called on the Japanese government to rebalance the competitive

landscape. For example, ANA argued that it should get more airport take-off and landing slots than JAL during the distribution of new international slots at Haneda Airport (one of the two main airports serving Tokyo) in 2013. ANA went on to win more slots than JAL. Observers noted that this was a break from the past as new international slots at Haneda Airport were typically shared equally between JAL and ANA.

Japan’s Civil Aviation Bureau noted that it wanted to develop healthy competition in the industry, and had considered the help given to JAL as part of its decision when awarding the slots at Haneda Airport.

*Source: The Financial Times: ANA says JAL’s tax breaks were “not fair” and The Economist: From bloated to floated.*





# IV. THE COMPETITION IMPACT ASSESSMENT (“CIA”) FRAMEWORK

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- 4.1 Government participation in the market involves some form of benefits and costs. Indirect costs such as distortions to competition can easily be overlooked as government agencies are focused on achieving the policy objectives and accounting for direct costs of the intervention in their cost-benefit analysis. The impact on competition is particularly challenging to identify or measure as it may not be immediately apparent or felt in the market. Such impacts may emerge in the medium to longer term. However, these distortions to competition can be costly to consumers, businesses, and even the government.
- 4.2 CIA is one of the areas to be considered during policy formulation. For more information on other considerations, readers are encouraged to refer to the DREAM Framework which can be found in the Smart Regulation field guide. The CIA framework is developed to help government agencies consider the potential impact of their policies on competition. CIA refers to a process of evaluating government policies and/or activities to identify aspects that may unduly restrict or distort competition, and to identify alternatives that may achieve the desired policy objectives that are least restrictive of competition.
- 4.3 It is important that government agencies consider CIA as part of policy evaluation and to conduct the CIA at an appropriate juncture within their policy formulation process. The costs to competition should be considered as part of any cost-benefit analysis. The value and effectiveness of the CIA is significantly reduced when government agencies are already committed to a particular policy option. In such instances, the CIA is reduced to informing the government agencies about the potential competition pitfalls, leaving little room to improve the policy outcome.
- 4.4 CIA is a dynamic process which generally involves the steps listed below in Figure 2. The steps listed below assume that the CIA is conducted at a fairly early or “upstream” stage whereby policy options are still being generated. Depending on the policy formulation process of the agency, as well as the progress made in formulating the policy before CIA is conducted, the actual sequence of CIA may differ.<sup>31</sup>

<sup>31</sup> For example, if a detailed proposal is already in place, the agency may wish to conduct CIA of that particular policy only. The suggested steps could be (i) Identifying affected markets (Step 2), (ii) Using the CIA checklist to identify competition concerns (Step 3), (iii) Identifying policy alternatives (Step 1) and/or Mitigate adverse impact (Step 4), and (iv) Conduct ex-post assessment (Step 5).



## FIGURE 2: STEPS TO CONDUCTING COMPETITION IMPACT ASSESSMENT



**Step 1:**  
Establishing policy objectives and identifying policy options

As a first step, government agencies are encouraged to clearly identify the policy objectives and the options that can achieve those policy objectives.



**Step 2:**  
Identifying affected market(s)

Government agencies will identify the parties and the markets that will be affected, directly or indirectly, by the proposed policy options. Paragraphs 4.9 to 4.16 provide guidance on identifying affected markets.



**Step 3:**  
Evaluate and compare the impact of the policy options on competition in the affected market(s)

Government agencies will need to ascertain the state of competition in the affected market(s) and assess the impact of the respective policy options on competition.



**Step 4:**  
Select the most appropriate policy option and mitigate its adverse impact on competition

Based on the assessment in Step 3, government agencies will select the most appropriate policy option after cost-benefit analysis. Where possible, government agencies should consider possible measures to mitigate the adverse impact a selected policy option may have on competition in affected markets.



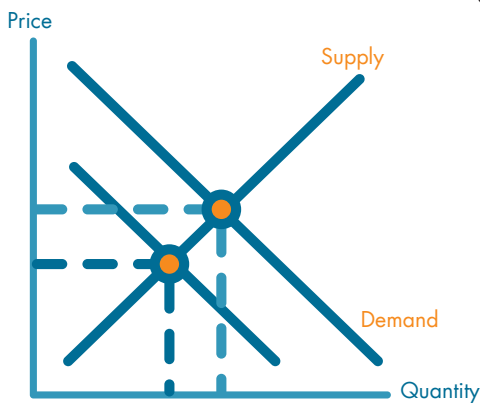
**Step 5:**  
Conduct ex-post assessment, if necessary

Lastly, government agencies may wish to conduct ex-post evaluation (i.e. after implementation of policy) to determine whether the selected policy option has achieved its desired objective(s) and if the measure(s) taken to mitigate any adverse impact on competition arising from the selected policy option was effective. This can help to inform and improve their CIA process in policy making.



## STEP 1: ESTABLISHING POLICY OBJECTIVES AND IDENTIFYING POLICY OPTIONS

- 4.5 The first step involves clearly identifying the objective(s) of the policy. For example, this could be to correct market failure, and/or for other social, security or environmental reasons. The problem(s) and the tangible outcome(s) that the policy or initiative seeks to bring about should be clearly established and articulated.
- 4.6 When generating possible policy options, it is useful to keep in mind the overall regulatory environment, as well as other government policies that are already in place in the market(s). This is especially so where multiple regulatory authorities have oversight of the sector based on their respective roles. It is also important to ensure that policy options are not unnecessarily ruled out at an early stage.
- 4.7 Government agencies may also encounter situations whereby a policy that creates competition concerns has been put in place. In these situations, it is still important to identify the specific elements of the policy that gave rise to competition concerns. The checklist in Step 3 can serve as a guide to identify the specific competition concerns, and assist government agencies in generating alternative policy options which are less restrictive of competition.
- 4.8 The pointers below can help government agencies in the generation of possible policy options:



- a. Economic incentives versus regulation to deal with market failure.

For example, the production or consumption of certain goods or services imposes negative effects on others such as pollution. A completely free market may lead to overproduction of such goods or services. While direct regulation of quantities or prices can help to mitigate these market failures, market-based approaches such as taxes when used appropriately can similarly increase the cost of these activities to the consumers or producers and reduce their consumption or production. Market forces can subsequently still work to achieve efficient prices and output with the latter approach.



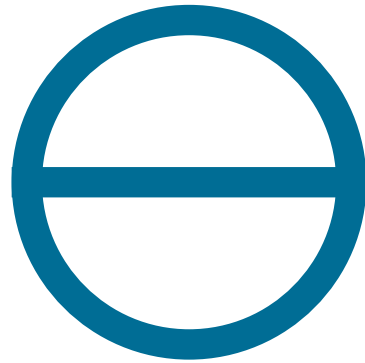
b. Adjustment programmes versus subsidies in declining industries.

While subsidies can help to slow down the loss of employment in declining industries or firms, they also tend to be offered to inefficient firms. However, these subsidies may lead to the efficient firms being disadvantaged, and in worst cases, exiting the market altogether. In place of subsidies, government agencies can consider adjustment programmes such as training programmes or productivity enhancing toolkits to assist individuals and businesses adapt to changing market conditions

c. Provision of information versus mandatory product standards.

Mandatory product standards are at times used to protect consumers who may not fully understand the products involved and therefore unable to effectively exercise their choices.

However, in some cases, provision of information by the government, or mandatory disclosure by businesses, for example, food labelling, may be sufficient to enable consumers to exercise their choices while allowing for more options in the market. Government agencies can also consider encouraging voluntary business participation in industry standards, rather than making these standards mandatory.



- d. Calibrate level of regulation for small businesses.

Regulations can often impose disproportionately heavy costs on small businesses given their size and set-up. This may in turn impact their ability to respond to changes in market conditions and their growth potential. Government agencies can consider calibrating their regulatory requirements for small businesses rather than taking a “one size fits all” approach.

- e. “Doing nothing” can also be a policy option.

At times the harmful effects of competition may outweigh the benefits that various policy options can bring. In such instances, the government agencies will have to carefully consider whether it is better to proceed to implement their policies or to hold back implementation until further developments materially change the initial assessment and address the initial concerns.

## STEP 2: IDENTIFYING AFFECTED MARKETS

- 4.9 A market is commonly understood to consist of both buyers and sellers of a product in a certain geographical area.<sup>32</sup> The essential task in defining a market is to define all the products on the demand side that buyers regard as reasonable substitutes for a particular product ("focal product"), and identify all the sellers who supply the focal and substitute products, or could potentially supply them.
- 4.10 Identifying the products or services directly affected by a proposed policy is relatively straightforward. For example, assume that a government agency introduces a set of restrictions regarding the form and manner in which qualified dentists can advertise their fees and services. The government agency may then stipulate the types of information that advertisements can specify and that advertisements can only be published on major newspapers and medical journals. The directly affected market is the market for dental services as the restrictions on advertising may limit the ability of new dental clinics to publicise their services, and as a result, limit their ability to compete with incumbent clinics. The sellers in this directly affected market are dentists and the buyers are patients who require dental services.



<sup>32</sup> Competition and Consumer Commission of Singapore, 2007, *Guidelines on market definition*



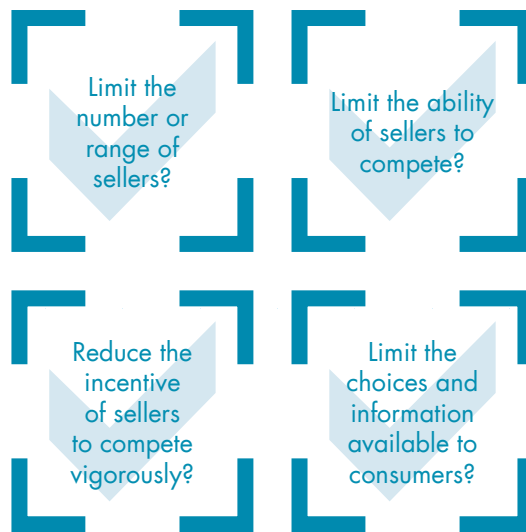
- 4.11 Once the directly affected markets have been identified, consideration should also be given to products and services which may be indirectly affected by the proposed policy because consumers or sellers may substitute to other products and services in response to policy changes.
- 4.12 To identify the indirect markets affected by the proposed policy, government agencies will need to consider the following:
- Willingness and ability of buyers to switch from the directly affected product to other alternative products not affected by the proposed policy.
  - Willingness and ability of sellers to switch to supplying the affected product or its alternatives not affected by the proposed policy.
- 4.13 Extending the example of the advertising restrictions on qualified dentists' services, an example of an indirectly affected market in this case would be the market for over-the-counter dental products, for example, teeth whitening toothpaste.
- 4.14 Indirect markets that may be affected by the proposed policy may include markets for complements and secondary products. Complements are groups of products that are consumed or produced together. For example, complements for lamps would be light bulbs. Secondary products are products that are only purchased if the buyer has already purchased the primary product. An example of a secondary product for cars is car maintenance services.
- 4.15 Indirect markets can also include the upstream and downstream markets of the product in question, i.e. its supply chain. For example, an upstream market for ready-mixed concrete would be the market for cement, whilst a downstream market would be the market for construction services. A proposed policy on ready-mixed concrete may have knock-on effects on competition in these other markets. Therefore, these markets should be incorporated into the assessment in order to assess the full impact of the proposed policy on competition.
- 4.16 Finally, in identifying the relevant market, it is also important to look at the geographic dimension when assessing the impact of the proposed policy on these market(s). For example, if a significant proportion of consumers are willing to travel to Johor Bahru for dental services, then this should be taken into consideration when assessing the affected markets.





## STEP 3: EVALUATE AND COMPARE THE IMPACT OF THE POLICY OPTIONS ON COMPETITION IN AFFECTED MARKETS

- 4.17 To evaluate the impact of different policy options on competition, government agencies should first have an understanding of the existing state of competition in affected markets. This includes:
- The current state of competition, for example, the number of sellers and their market shares, the number of buyers, their respective bargaining power, the extent sellers compete in the market,<sup>33</sup> the extent buyers switch between different sellers, and the rate of innovation.
  - The extent of potential competition, for example, the ease with which new sellers can enter the market,<sup>34</sup> the willingness and ability of sellers to switch to supplying the affected product or its alternatives,<sup>35</sup> buyers' willingness and ability to switch to different sellers of the same products or sellers of competing products.<sup>36</sup>
- 4.18 Next, government agencies should consider if each of the proposed policy option is likely to:



<sup>33</sup> For example, do the sellers in the market compete based on price, or by seeking to differentiate their products from the rest, for example, in terms of design, service quality or adding new features?

<sup>34</sup> Some potential factors affecting the ease of entry into a market include the need for licences, limited access to key inputs or sales channels etc.

<sup>35</sup> For example, producers of certain chemical products may be able to switch to or extend their product line to include other chemical products if they utilise similar production techniques, can easily reconfigure their plants and have the necessary expertise within their staff to do so. This enables producers to make the switch in a relatively short time.

<sup>36</sup> This asks how price-sensitive buyers are, and if they would switch sellers (e.g. from laptop brand A to laptop brand B) or switch to other substitutes (e.g. from laptops to tablets) when the prices of the products increase. Factors such as brand loyalty and switching costs (e.g. incompatible accessories) would also need to be taken into account.







- 4.19 The four questions above represent the four main categories of restrictions on competition set out in the CIA Checklist presented in Table 1 below. The CIA Checklist is meant as a tool to enable government agencies to undertake a preliminary competition impact assessment in the policy development process. While the CIA Checklist organises specific restrictions on competition under these four categories, it should be noted that some specific restrictions may fall under one or more of these categories. For example, the creation of a self-regulatory regime may lead to a limit on the number of sellers as well as a reduction in the incentive for sellers to compete. The four main categories of restrictions on competition are explained in greater detail in paragraphs 4.29 to 4.81.
- 4.20 If the answers to **all** four questions in the CIA Checklist are ‘no’, it is unlikely that the proposed policy option will raise any competition concerns. If the answer to **any** question in the checklist is ‘yes’, the proposed policy may require further examination as to whether competition concerns may arise. The extent of further examination should be proportionate to the extent of the potential adverse impact on competition. Government agencies which require guidance on a more in-depth competition assessment should contact CCCS. Please see Section V for details on CCCS’s advisory process.
- 4.21 **Comparison of Policy Options.** Once the policy options have been identified and competition impact assessment has been conducted, the policy options can now be compared based on the relevant factors or considerations including their impact on competition.
- 4.22 During this comparison process, both quantitative and qualitative analysis may be used. The analysis methods deployed depend on the nature of the problem and policy proposals, type and amount of data, and time available to the government agency. Most importantly, the process of comparing the policy options should be objective and systematic.
- 4.23 Government agencies should also note that policies that restrict competition need not be removed from consideration entirely. Comparing different policies and identifying specific features of those policies which restrict competition may allow the government agency to tweak or refine the specific restrictive features of those options to mitigate the competition concerns.



# TABLE 1: COMPETITION IMPACT ASSESSMENT CHECKLIST

If the answer is "yes" to any of the questions below, the policy will benefit from a competition impact assessment which can flag out any competition concerns early in the policy formulation process.

In affected markets identified, does the proposed policy:



For example, does the proposed policy:

- Grant exclusive rights to a seller for the provision of a product (for example, divestment of government-owned assets)?
- Involve procurement from a single or restricted group of sellers?
- Create a form of licensing scheme for sellers?
- Significantly raise the cost of entry or exit for a seller?

For example, does the proposed policy:

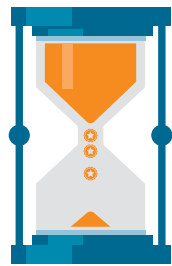
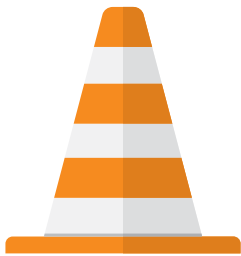
- Control or substantially influence product price, quality or choice, for example,
  - o Issue a schedule to standardise product price, quality or choice across sellers?
  - o Set product or quality standards that (i) advantage some sellers over others or (ii) are unnecessarily high relative to consumers' needs?
  - o Limit ability of sellers to introduce new products or supply existing products in new ways?
  - o Limit the geographic area in which a seller can operate or types of customers it can serve?
- Limit the freedom to advertise or market products?
- Raise the costs of some sellers relative to others?

For example, does the proposed policy:

- Facilitate market players to set rules or engage in practices that reduce the need for them to compete under the pretext of self-regulation?
- Require or encourage the exchange of commercially sensitive information between sellers (for example, prices, output, sales or cost) which may facilitate collusion?
- Facilitate the sharing of resources between sellers that constitute a key cost component of their businesses?
- Restrict the ability of sellers to grow the size of their business?

For example, does the proposed policy:

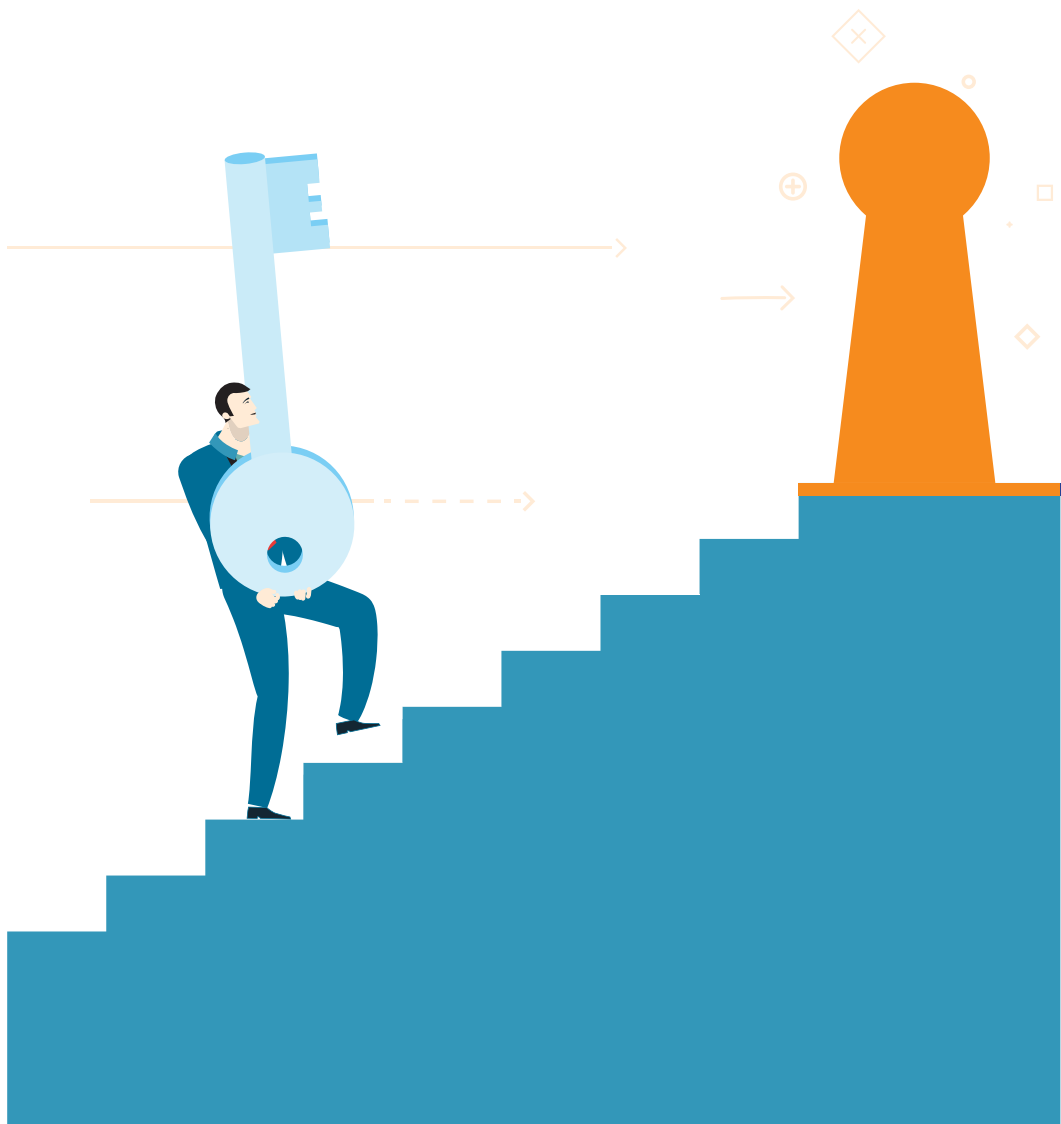
- Limit the ability of consumers to decide which seller to purchase from?
- Increase the cost (or inconvenience) of switching sellers for consumers?
- Reduce or limit information important for consumers to make purchase decisions effectively?





## STEP 4: SELECT THE MOST APPROPRIATE POLICY OPTION AND MITIGATE ADVERSE IMPACT ON COMPETITION

4.24 It is not always possible to select a policy option that does not have any adverse impact on competition. In such a case, after selecting the most appropriate policy option, government agencies should consider ways to mitigate its adverse impact on competition. Suggestions on ways to mitigate policies which restrict competition are elaborated in greater detail after explanation of Step 5, in paragraphs 4.29 to 4.81.



## STEP 5: CONDUCT EX-POST ASSESSMENT IF NECESSARY



- 4.25 Following the implementation of the selected policy options, ex-post evaluations can be conducted to assess whether the selected policy options had the desired effects. The implemented policy options may also have unintended consequences due to gaps in analysis or changes in circumstances that could not have been predicted. Thus, an ex-post assessment can help to determine if the original analysis was comprehensive and accurate. This not only helps to improve future policy formulation process, but also helps to identify any remedial actions needed to alleviate any competition issue(s) unintentionally introduced by the original policy.
- 4.26 Should resources be limited, ex-post assessments can be limited to policy initiatives which are the most significant, challenging, controversial or received the most public feedback.
- 4.27 In carrying out an ex-post assessment, a suitable counterfactual scenario should be identified to assess the effects of the implemented policy initiatives. For example, if a new policy was implemented, the counterfactual could be the “do nothing” status quo situation. If the intervention was a revision of an existing policy, the counterfactual could be the continuation of that policy.
- 4.28 Once the counterfactual scenario has been identified, the relevant market data can be collected for periods both before and after the intervention. A suitable time frame for the ex-post assessment should also be considered. If the period following the implementation is too short, there may be insufficient data, and there is also the possibility that the full impact of the intervention has yet to work its way through the market. On the other hand, if the period is too long, it may be challenging to distinguish between the actual impact of the policy and the impact of other changes that have affected the market. A possible time frame to consider for ex-post assessment is two to three years post implementation.



## POLICIES WHICH RESTRICT COMPETITION AND SUGGESTIONS TO MITIGATE THE COMPETITION CONCERNS

4.29 This section elaborates on the four main categories of restrictions on competition (see Table 1: CIA Checklist) and suggests ways to mitigate their respective adverse impact on competition.



### Policies that May Limit the Number or Range of Sellers

- 4.30 The government limits the number of sellers in the market for different reasons, for example, licensing sellers to ensure a minimum quality or standard. However, policies that limit the number or range of sellers may have the unintended effect of reducing the intensity of competition in a market and allowing some sellers to build up their market power.
- 4.31 Policies that prevent or limit entry by new businesses, whether directly or indirectly, can similarly reduce competition in the market. Entry, or the threat of entry, is an important source of competitive pressure on existing firms. New entrants have strong incentives to introduce new business ideas, produce the same products using better or more efficient production methods or use alternative channels to supply goods to consumers. New entrants may also choose to enter geographic markets previously not occupied by existing players. Hence, the threat of entry places pressure on existing sellers to be more efficient and competitive in the prices and quality of their offerings.
- 4.32 A proposed policy may limit the number and range of sellers, for example, if it:
- grants exclusive rights to a seller for the provision of a product (for example, divestment of government-owned assets);
  - involves procurement from a single or restricted group of sellers;
  - creates a form of licensing scheme; or
  - significantly raises the cost of entry or exit for a seller.



### (i) Grant exclusive Rights to a Seller for the Provision of a Product

- 4.33 Exclusive rights are sometimes granted as a means of encouraging substantial investments in infrastructure or research and development that would not be likely to be carried out otherwise.<sup>37</sup> Granting exclusive rights to a seller can also be a means of allowing the seller to reap economies of scale,<sup>38</sup> without which it may be unable to supply the product at all. However, the grant of exclusive rights to a seller in a market may result in the creation of a private monopoly for the exclusive rights period.
- 4.34 Policies that lead to the creation of a monopoly are likely to yield problems associated with substantial market power, such as high prices or low quality products. Government agencies need to carefully consider whether there is sufficient justification for choosing this policy option in view of the associated competition problems.
- 4.35 If other policy alternatives are not feasible, government agencies should take steps to address the competition concerns. For example, government agencies can consider granting exclusive rights through a bidding process to allow for competition for the exclusive rights. Government agencies should also consider limiting the duration of the exclusive rights to a period where the seller can recoup its investment costs. Alternatively, government agencies can also consider imposing price regulation (such as price caps) or other behavioural regulation (such as commitments to provide discounts or ensuring supply of essential inputs) on the monopolist.
- 4.36 The size of the contract may also reduce the number of sellers that are able to put in a bid for it. Policymakers can consider if it is possible to have smaller contracts that will also be open to smaller businesses, to foster competition.
- 4.37 **Divestment of Government-owned Assets.** Divestments of companies or assets held by the government can have a significant impact on the structure of the industry concerned. If the company to be divested has significant market power, then the market power which was vested in a public entity before the divestment will be transferred to a private entity (following the divestment).
- 4.38 Policy-makers should therefore adopt the most appropriate method of divestment based on the industry structure, to facilitate competition in the market. For example, instead of divesting a company (with significant market share) as a single entity, an alternative approach could be to divide the assets of the company into several blocs and selling them to different buyers in order to facilitate competition.
- 4.39 It should be noted that, generally, divestments of assets owned by the government is excluded from section 54 prohibition in the Competition Act (that prohibits mergers that substantially reduce competition in a market). Government agencies contemplating divestments are encouraged to consult with CCCS during the early phase of the divestment process.

<sup>37</sup> These investments typically require upfront costs, which need to be recouped through increased profits subsequently. Without the exclusive rights, profits may not be high enough to incentivise the investment in the first place.

<sup>38</sup> Economies of scale refer to the reduction in cost per unit resulting from increased production, realised through operational efficiencies.

(ii) Involves procurement from a single or restricted group of sellers<sup>39</sup>

4.40 The government's purchasing decisions can have an impact on the overall prices and the range of products available in a market when:

- The government accounts for a significant share of the total demand in a particular market; or
- The government is a strategically important customer to certain businesses, for example, other buyers may view sellers that supply to government more favourably.

4.41 In these scenarios, the government as an important customer can exert pressure on the sellers, to get them to provide higher quality products and better services at lower prices.

4.42 However, public procurement can unintentionally affect the intensity of competition in a particular market. For example, public procurement may inadvertently "favour" larger and more established businesses due to their lower perceived risks and higher abilities to provide the necessary volume of goods and services, which smaller businesses may not be able to provide. Furthermore, factors such as requirements on past experience and expertise may also be lacking in Small and Medium Enterprises ("SMEs"). The larger the size of public procurement, the more mindful government procurement officers should be of such effects.

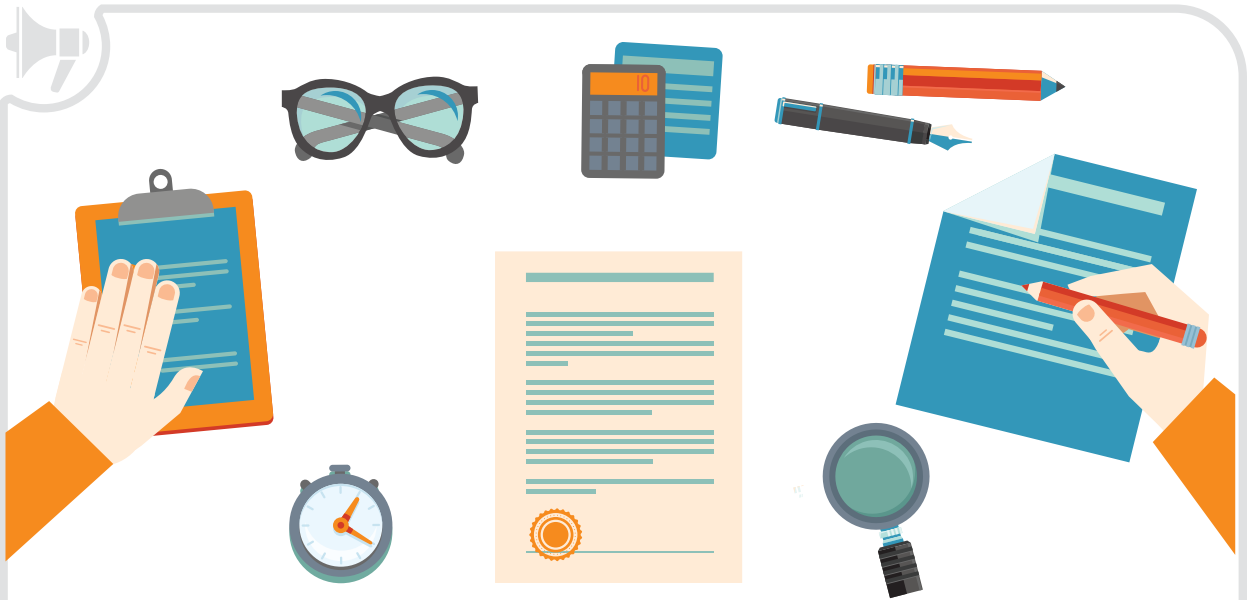
4.43 In addition, procurement officers should consider whether a particular buying strategy can:

- increase the intensity of effective competition between existing sellers in the market;
- create opportunities for increasing investment, innovation and the competitiveness of the market as a whole; and
- influence long term market dynamics (for example, removing barriers to entry and expansion in markets through participation in government tenders may create more competitive pressure on existing players. This also benefits buyers in the private sector as the range of better quality products increases).

4.44 As far as possible, procurement officers should provide smaller sellers or new entrants the same opportunities as incumbents and bigger sellers.<sup>40</sup>

<sup>39</sup> For more information on public procurement, please refer to Section III.

<sup>40</sup> This is subject to meeting the requirements in the Government Procurement IM.



### (iii) Creating a Licensing Scheme

- 4.45 Licences are often used to ensure that sellers meet certain minimum standards or licensing conditions in order to operate in the market. Some trades and professions may be limited to individuals holding certain qualifications only - such restrictions are also a form of licensing. Some licensing schemes may also set out a quota of licensees.
- 4.46 Such licences or permit schemes may be necessary where buyers are not well-placed to make their own judgments about the quality of the product, and where a poor choice results in serious and irreversible consequences.
- 4.47 However, these schemes may restrict the entry of new sellers into a market. Licensing restrictions are particularly problematic if they end up protecting the members of a profession rather than the public (although the proposals submitted by industry bodies may be made under the pretext of protecting consumers). Government agencies should therefore be mindful if such schemes erect unnecessary barriers to entry that have the effect of protecting existing businesses from competition, to the detriment of consumers.
- 4.48 Government agencies may instead consider ways to improve any information asymmetry between the sellers and consumers, for example, educating consumers to make informed choices in this area, thereby reducing the need to impose licensing schemes. Should there be a need for a licensing scheme, the conditions contained within the scheme should be scrutinised to ensure that they are no wider than necessary to achieve policy objectives.

### (iv) Significantly Raising the Cost of Entry or Exit for a Seller

- 4.49 Policies that raise cost of entry or exit for a seller tend to discourage potential entrants and will indirectly limit the number or range of sellers in the market. Examples of increased cost of entry include increased rigour in product testing requirements or higher requirements to demonstrate "financial capacity". An example of increased exit cost is more stringent regulation involving cleaning up of former industrial sites. Such policies may result in less vigorous competition in affected markets. Similar to licensing schemes, the cost to competition should be minimised to ensure that they are no greater than necessary to achieve the policy objectives.





## Policies that May Limit the Ability of Sellers to Compete

- 4.50 Businesses compete in a variety of ways, such as the price and quality of their products, service standards and innovation. Policies which restrict the ability of sellers to compete will in turn affect the extent of competition in the affected markets.
- 4.51 A proposed policy may limit the ability of sellers to compete, for example if it:
- controls or substantially influences product prices, quality or choice;
  - limits the freedom to advertise or market products; or
  - raises the costs of some sellers relative to others.

### (i) Controlling or Substantially Influencing Product Prices or Other Characteristics

- 4.52 Price regulation inevitably reduces the ability of sellers to use price as a means to compete in the market. If a minimum price<sup>41</sup> is set, low-cost sellers cannot compete by providing cheaper variations of the product, which some consumers may prefer. A justification sometimes given by professional associations for setting minimum prices is to safeguard quality. However, setting minimum prices does not automatically guarantee that quality will increase to a satisfactory level. In fact, there is a risk that minimum prices may enable sellers of inferior quality products or services to remain in the market for a longer period of time. Minimum prices may also reduce these sellers' motivation to improve product/service quality. Conversely, a maximum price which aims to protect consumers from over-paying may reduce sellers' incentives to innovate to provide new and/or high quality products targeted at the higher end of the market. It may also have the unintended effect of causing prices to converge towards the price ceiling, reducing the intensity of price competition.
- 4.53 In view of the impact on market competition, it is useful for government agencies to consider alternatives other than price regulation, in achieving their policy goals. If the objective of setting minimum prices is, for example, to ensure minimum safety standards, government agencies should consider if direct monitoring of safety standards would be a more effective alternative to achieve that objective.
- 4.54 Government agencies may have overriding policy goals when implementing price regulation. However, over time, market conditions may change or the original policy considerations may no longer be applicable. Policies that involve price regulation should therefore incorporate periodic review such that price regulations that are no longer essential can be gradually removed.
- 4.55 Besides price, policies may also seek to regulate product characteristics such as quality, or they may limit the sales channels a seller can use, for example, certain medicines may not be sold over the counter. Such policies can also have an impact on competition, and where possible, restrictions should be limited to only those that are necessary to achieve the policy objective.

<sup>41</sup> When a minimum price is set by the government, the price of the good or service cannot fall below the stated level.






### (ii) Limiting the Freedom to Advertise or Market Products

- 4.56 Restrictions on advertising or marketing are usually aimed at limiting false or misleading advertising, or reducing advertisements on products that are deemed to be socially harmful when consumed excessively.
- 4.57 Preventing false and misleading advertising serves to protect consumers' interests or fulfil certain social goals. However, government agencies should note that advertising restrictions which are overly restrictive can limit the information available to consumers, and consequently their ability to make informed choices. In particular, such restrictions may prevent new entrants from informing consumers about their presence in the market and the quality of the goods and services that they offer.
- 4.58 If the policy objective is to reduce consumption of socially undesirable products and services, alternatives such as information campaigns or market-based approaches like taxes can be considered.

### (iii) Raising the Costs of Some Sellers Relative to Others

- 4.59 Policies may be structured in such a way that can inadvertently favour some firms over others. For example, a policy that requires firms within an industry to adopt a certain technology standard will favour those that have already adopted this technology or have the capabilities to do so. Firms that already use alternate technologies will suffer a competitive disadvantage and may exit the market if they are not able to switch to the mandated technology standard. Hence, such a policy may indirectly limit the number of firms in the market.
- 4.60 'Grandfather clauses' that exempt current sellers from certain regulation which are applicable to new entrants may also unfairly disadvantage the new entrants. For example, in relation to technologies, grandfather clauses are often put in place to allow sufficient time for sellers to amortise past investment.
- 4.61 Government agencies are encouraged to maintain a level playing field as far as possible when formulating their policies. For example, if grandfather clauses are required, the negative impact on competition can be reduced if the clauses are time-limited.





Reduce the  
incentive  
of sellers  
to compete  
vigorously?

### Policies that May Reduce Incentive of Sellers to Compete Vigorously

- 4.62 The extent of competition not only depends on the sellers' abilities to compete but also their incentives to remain competitive. Some government initiatives are put in place with the objective of enhancing efficiency within the industry, for example, promulgating best practices or facilitating industry-wide solutions to problems. However, they may also have the unintended effect of reducing sellers' incentives to compete by creating an environment that facilitates collusion among them. For example, a government initiative that encourages self-regulation may unwittingly facilitate the coming together of competing sellers to set anti-competitive rules or engage in anti-competitive practices. A government initiative may also require or encourage information exchanges between sellers. The information exchanged will have to be carefully scrutinised to avoid facilitating any collusion between the sellers. Government agencies may also limit the size of firms, directly or indirectly, that could lessen the sellers' incentive to compete and grow.
- 4.63 It should be noted that some markets are more susceptible to collusive activities. In general, the possibility of collusion is lower if the industry is characterised by many players with dissimilar costs offering differentiated products and low barriers of entry to the market. In such markets, government initiatives involving cooperation and information exchanges are less likely to raise competition concerns.
- 4.64 A proposed policy may reduce the incentive of sellers to compete vigorously if it :
- (i) facilitates market players to set rules or engages in practices that reduce the need for them to compete under the pretext of self-regulation;
  - (ii) requires or encourages the exchange of commercially sensitive information between sellers (for example, prices, output, sales or cost) which may facilitate collusion;
  - (iii) facilitates the sharing of resources between sellers that constitute a key cost component of their businesses; or
  - (iv) restricts the ability of sellers to grow the size of their business.



**(i) Facilitating Market Players to Set Anti-competitive Rules or Engage in Anti-competitive Practices under the Pretext of Self-regulation**

- 4.65 Government agencies sometimes choose to involve professional or industry associations in regulating their respective professions or industries, either independent of the government (self-regulation) or with partial governmental legislative backing (co-regulation). There are potential advantages that arise from self-regulation, one of which is that it ensures that the necessary expertise is available to properly regulate the industry or profession. Self and co-regulation can also yield benefits by ensuring that technical standards are appropriate and that technological advancements can take place.
- 4.66 However, rules and practices implemented by associations may also be used to protect the interest of the members of the associations instead. For example, self-regulatory bodies may impose rules aimed at preventing “price wars”, or other forms of binding or non-binding recommendations on prices, which may dampen price and non-price competition.
- 4.67 They may also impose stringent requirements (such as high level of qualifications) to practise in the profession on the pretext of serving consumer interests. However, imposing unnecessarily strict qualification requirements may be serving the industry association existing members’ interest by raising the barriers of entry into the industry and limiting competition, rather than protecting consumers.
- 4.68 Government agencies should therefore consider how self-regulation can be implemented without resulting in an adverse impact on competition. In particular, government agencies can consider whether they should retain the right to approve/disapprove or substitute association rules which are inappropriate. Another alternative is to include a wide representation of different stakeholders in the bodies or structures set up for self or co-regulation (such as consumers or independent representatives) to ensure that different stakeholders’ interests are considered in the process.

**(ii) Requiring or Encouraging the Exchange of Commercially Sensitive Information between Sellers which may Facilitate Collusion (for example, prices, output, sales or cost)**

- 4.69 Industry players sometimes come together to form industry organisations and engage in different types of cooperation. These include:
- forming of associations which allows industry players to meet and exchange information about industry trends and market conditions;
  - setting best practices guidelines and rules for industry players to follow;
  - setting up research and development joint ventures to promote innovation; and/or
  - setting up cooperatives for joint-purchases.





4.70 While some of these types of cooperation may bring about better outcomes for the industry, they may involve competing sellers exchanging commercially sensitive information that may facilitate collusion. Although the information to be exchanged may not appear to be commercially sensitive on the surface, they may still reveal business information and developments to sellers, and thus implicitly facilitate collusion. As a general rule, information exchanges will generally raise competition concerns if they are related to current and future costs, prices and/or output levels. In addition, regular information exchanges can also bring about more opportunities for sellers to include other information that was not part of the original set of information to be shared. As such, proper accountability mechanisms should be put in place to ensure the integrity of the information exchange process is maintained and the process is not misused for other purposes.

4.71 Some industry organisations may also take on the role of providing information on “acceptable” market rates to consumers and industry players via price guidelines. Such guidelines may facilitate coordination of pricing decisions, especially in markets where there is greater risk of collusion. This is because price recommendations, even if non-binding, generally harm the competitive process by restricting independent pricing decisions and signalling to sellers what their competitors are likely to charge. When sellers are able to predict the prices of their competitors with a reasonable degree of certainty, a focal point is created for prices in the market to converge, regardless of the competitors’ individual costs.<sup>42</sup> If the objective is to inform consumers of prices to reduce their search costs and enable better comparisons, government agencies can consider encouraging sellers to adopt measures to enhance price transparency to consumers, for example, by publishing or advertising their own prices to consumers. For example, the Ministry of Health publishes condition-specific public hospital bill sizes for common medical procedures and conditions to promote price transparency and competition in the healthcare industry.<sup>43</sup>

#### (iii) Facilitating the sharing of resources between sellers that constitute a key cost component of their business

4.72 If industry players share resources that constitute a key cost component of their business, this may inadvertently reduce the incentive to compete vigorously on prices. While there might be legitimate reasons to encourage the sharing of resources between sellers, for example, efficiency and productivity gains, an unintended side effect may be that competitors converge on prices and product quality/features, or it may lead to sellers exchanging commercially sensitive information that may facilitate collusion.

#### (iv) Restricting the Ability of Sellers to Grow the Size of Their Business

4.73 Government interventions may also directly or indirectly limit the size of firms. For example, policies which explicitly limit the number of employees or restrict size of firms by revenue or market share may be put in place to prevent big firms with significant market power from emerging. In some cases, policies may indirectly restrict size of firms if there is a “cut-off” for assistance schemes or size-based subsidies.

4.74 Such policies may curtail the incentives of firms which are near the “limits” to compete for greater market shares. In other words, such policy initiatives may harm consumers instead of protecting them. It should be noted that a seller having significant market power i.e. dominance *per se* is not a problem as it can be due to the market rewarding the firms offering better products/services. It is when such dominant firms engage in abusive business conduct such as tying up customers through exclusive contracts that is problematic and such conduct is likely to infringe the section 47 prohibition of the Act.<sup>44</sup>

<sup>42</sup> Refer to the Singapore Medical Association Price Guidelines Decision for more details on why price recommendations issued by industry association may lead to price convergence. Competition Commission of Singapore, 2010, Singapore Medical Association Guidelines on Fees

<sup>43</sup> Ministry of Health, 2015, Hospital Bill Sizes

<sup>44</sup> Refer to Annex A on the Competition Act





Limit the choices and information available to consumers?

### Policies that Limit the Choices and Information Available to Consumers

- 4.75 A proposed policy might limit the choices and information available to consumers, if for example, it:
- limits the ability of consumers to decide which seller to purchase from;
  - increases the cost (or inconvenience) of switching sellers for consumers (i.e., reduces mobility of buyers); and/or
  - reduces or limits information important for consumers to purchase effectively.


#### (i) Limiting the Ability of Consumers to Decide which Seller to Purchase from

4.76 Regulations may sometimes limit the ability of consumers to purchase from their desired seller. This can ostensibly be due to consumer safety or quality reasons. However, broad-brush regulations may not be effective in ensuring safety or quality, and the real impact may protect existing sellers from competition instead. Consumers may be forced to purchase from sellers with higher prices or products which do not fit their preferences or needs.

4.77 Similar to licensing schemes, the cost to competition should be minimised to ensure that they are no greater than necessary to achieve the policy objective of protecting consumers. Standards that are required should be clearly defined and communicated, and supported by objective justifications such that they can be clearly understood by all sellers, and that no sellers have been unnecessarily excluded from the market. These standards should also be reviewed regularly to ensure that they are still relevant in light of market developments. Government agencies may also consider ways to reduce information asymmetry between the sellers and consumers, for example, educating consumers to make informed choices in this area, thereby reducing the need for imposing such restrictions.

#### (ii) Increasing Cost (or inconvenience) of Switching Sellers for Consumers (i.e., reduces mobility of buyers)

4.78 Switching costs are the explicit and implicit costs borne by a consumer in switching from one seller to another. Switching costs may occur when there are long-term contracts with high financial penalties for terminating the contracts before the stipulated time period; or when assets or features are tied to sellers, such as tying a phone number to a particular mobile service provider; or voiding of warranties when car repairs are not done at authorised dealers' workshops. These make it harder for consumers to switch between sellers, and the sellers which the consumers are tied to can charge higher prices for their goods or services.



- 4.79 The locking and unlocking of mobile phones is an example of how switching costs can arise. In the US and UK, mobile phones are sometimes 'locked' to the mobile network service provider from which the mobile phones were purchased from.<sup>45</sup> This means the phones will only work when used with the particular mobile network service provider. Consumers who wish to switch to a different mobile network service provider while retaining the same mobile phone would need to request for the mobile phone to be 'unlocked'. The consumer will have to meet the 'unlocking' requirements of the particular service provider, and also possibly incur waiting time and monetary costs in the process.
- 4.80 Policies that reduce switching costs can help promote competition. For example, Singapore was among the first countries in the world to have numbers portability for mobile services, a move that has helped to promote competition in mobile telephony services.<sup>46</sup> Mobile operators are also not allowed to SIM-lock mobile phones that are sold to their subscribers as they could use SIM-lock as a means to prevent customers from switching to other operators.<sup>47</sup>

### (iii) Reducing or Limiting Information Important for Consumers to Purchase Effectively

- 4.81 Government agencies should ensure that their policy changes do not inadvertently restrict the information that consumers are able to obtain, or present information in a confusing manner. For example, many countries have regulations that require the provision of an annual percentage interest rate reported using a standard definition, to ensure that lenders or retailers do not mislead consumers with interest rates that are computed differently. However, a US Federal Trade Commission study concluded that the manner in which information is provided can also cause consumers to focus on aspects which are not relevant to making an informed purchasing decision. For example, if commissions are reported for one group of lenders (non-bank lenders) but not others (banks), consumers may end up choosing loans which have unreported commissions and are overall more expensive.<sup>48</sup> In this respect, it is also useful to take note of ideas from recent developments in behavioural economics, such as bounded rationality and loss aversion.<sup>49</sup>

<sup>45</sup> See United States of America Federal Communications Commission, 2015, *Cell Phone Unlocking and United Kingdom Of com, 2015, Mobile phone locking and unlocking*

<sup>46</sup> See InfoComm Media Development Authority website on "Consumer Guide Full Mobile Number Portability"

<sup>47</sup> See InfoComm Media Development Authority website on "SIM Locks"

<sup>48</sup> See Organisation for Economic Co-operation and Development, 2015, *Competition Assessment Toolkit, Volume 3: Operational Manual (Box 28)*

<sup>49</sup> 'Bounded rationality' suggests that people make irrational and sub-optimal choices, despite available information, because there is a natural limit to the human ability to process data and handle complex computations. 'Loss aversion' describes the observation that once a person takes ownership of something (money, material objects, even other people), he attaches a premium to his ownership of it, and would tend to be reluctant to let it go. Letting it go would be seen as a loss, which is felt more keenly than a gain of similar value. For further information, please see Civil Service College Singapore, 2008, *Behavioural Economics*



## V. SEEKING ADVICE FROM CCCS

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- 5.1 It is CCCS's statutory duty to advise the government or other public authorities on national needs and policies with respect to competition matters.
- 5.2 CCCS has provided advice to government agencies on the competition impact of new or existing government policies and initiatives, the structure of public procurement, the supply of goods and services by the government, and government divestments. CCCS has also collaborated with government agencies on joint market studies on market features and competitive dynamics within specific markets in Singapore.
- 5.3 The advisory process can be informal and brief, or more formal and detailed, depending on the preference and needs of the government agency.

### (A) ASSESSMENT

- 5.4 CCCS is keen to collaborate with government agencies on competition matters early in the policy-formulation process. This allows CCCS to provide its advice in a timely manner and work with the government agencies to shape the design and eventual implementation of their policies so that any potential negative impact on market competition is minimised. Government agencies are strongly encouraged to contact CCCS early in the policy formulation process to discuss potential competition concerns arising from their policies. Government agencies are also encouraged to assess their existing policies for any competition concerns.
- 5.5 CCCS's assessment will generally be limited to the effects of the proposed policy on market competition, and where possible, help to identify ways to alleviate these competition concerns. The government agency will then be able to weigh CCCS's advice on competition issues against any other relevant policy considerations in their policy formulation process. The length of time required for CCCS to complete its assessment of the policies depends on the availability of information and the complexity of the policies.





## (B) ADMINISTRATIVE INFORMATION



### Approaching CCCS

- 5.6 Queries can be directed to the Policy and Markets Division within CCCS. Government agencies may choose to meet with CCCS officers to kick-start the confidential advisory process. Alternatively, government agencies may consider filling out the information template in Annex B and sending the relevant information to [cccs\\_feedback@cccs.gov.sg](mailto:cccs_feedback@cccs.gov.sg) and CCCS officers will contact them thereafter to initiate a follow up meeting.



### Providing Information to CCCS

- 5.7 During the advisory process, CCCS may request for more information on the policy objective, the chosen policy option, alternative policy option(s) and their effects on businesses and consumers. The relevance and usefulness of CCCS's assessment will depend critically on the extent and quality of the information provided by the requesting government agency.
- 5.8 As policy formulation may be confidential, CCCS will not ask for information from, or consult with third-parties (for example, businesses and other government agencies) unless express permission is given.

### CCCS's Advice

- 5.9 The time frame for advisory process is dependent on the complexity of the issues assessed and the availability of information required. CCCS will work closely with the government agency early in the process to ascertain the amount of time required for CCCS's assessment so that the advice is provided in a timely fashion.
- 5.10 CCCS will issue a written advice to the government agency upon completing its assessment. The advisory process does not end with the issuance of the written advice. CCCS will continue to assist the government agency should it wish to seek clarifications on the written advice or decide to amend features of the policy for which CCCS's advice was sought.
- 5.11 It should be noted that the provision of an advice by CCCS to a government agency will not preclude CCCS from investigating activities of private sector players in the related market in the event of a complaint, or if CCCS is of the view that it should initiate an investigation. CCCS may also decide to embark on a market study on the related market.



# ANNEX A

## OVERVIEW OF THE COMPETITION ACT

1.1 CCCS enforces and administers the Act. There are three prohibitions in the Act.

### (a) Section 34 Prohibition

1.2 The section 34 prohibition covers agreements between undertakings that have the object or effect of preventing, restricting or distorting competition within Singapore. An “agreement” in the section 34 prohibition includes agreements between undertakings, decisions by associations of undertakings and concerted practices; which may include co-operation without any agreement or decision. These may be oral or written agreements and need not necessarily be legally binding; for example, an unwritten “gentlemen’s agreements”. An agreement made outside Singapore or where any party to the agreement is located outside Singapore, is also prohibited if it has the same object or effect of preventing, restricting or distorting competition within Singapore.



1.3 The Act provides a list of examples of prohibited agreements, namely those which:

- a. Directly or indirectly fix purchase or selling prices or any other trading conditions;
- b. Limit or control production, markets, technical development or investment;
- c. Share markets or sources of supply;
- d. Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- e. Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which by their nature or according to commercial usage have no connection with the subject of such contracts.

1.4 This list is not exhaustive and is for illustrating anti-competitive agreements. Any agreement that considerably prevents, restricts or distorts competition is likely to fall within the section 34 prohibition even if it is not covered in the list, unless it results in Net Economic Benefit.<sup>50</sup>

<sup>50</sup> An agreement that falls within the scope of section 34 may, on balance, have a net economic benefit if it contributes to improving production or distribution or promoting technical or economic progress, and it does not impose on the undertakings concerned restrictions, which are not indispensable to the attainment of those objectives or afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question. For more information refer to Annex C of the Competition and Consumer Commission of Singapore, Guidelines on the Section 34 prohibition 2016



## (b) Section 47 Prohibition

- 1.5 The section 47 prohibition covers conduct by one or more undertakings which amount to the abuse of a dominant position in any market in Singapore. The prohibition under section 47 relates to the abuse of a dominant position; there is no prohibition on being in a dominant position.
- 1.6 The Act gives examples of conduct that may constitute the abuse of a dominant position. The examples are:
- Predatory behaviour towards competitors;
  - Limiting production, markets, or technical development to the prejudice of consumers;
  - Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which by their nature or according to commercial usage have no connection with the subject of the contracts.
- 1.7 This list is not exhaustive and is for illustrating conduct that constitutes an abuse of dominance. It is not necessary for the dominant position, the abuse and the effect of the abuse to be in the same market.
- 1.8 An undertaking will not be deemed dominant unless it has substantial market power. Market power arises when an undertaking does not face sufficiently strong competitive pressure. It can be thought of as the ability to profitably sustain prices above competitive levels or to restrict output or quality below competitive levels. Market power can also be the ability and incentive to harm the process of competition in other ways, for instance, by weakening existing competition, raising entry barriers or slowing down innovation.
- 1.9 CCCS considers a market share above 60 per cent as a likely indication that an undertaking is dominant in the relevant market. An undertaking's market share does not, however, on its own determine whether an undertaking is dominant. When determining if an undertaking is dominant, CCCS also considers other factors such as entry barriers and the responsiveness of buyers and competitors to price increases. Dominance can be established at a lower market share if other relevant factors provide strong evidence of it.





### (c) Section 54 Prohibition

- 1.10 The section 54 prohibition covers mergers, which have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore. The prohibition applies to both completed and anticipated mergers.
- 1.11 CCCS considers that most mergers are either pro-competitive (because they positively enhance levels of rivalry) or are competitively neutral. Some mergers may lessen competition but not substantially, because sufficient post-merger competitive constraints will exist to ensure that competition, or the process of rivalry continues to discipline the commercial behaviour of the merged entity. The section 54 prohibition is only applied to mergers that substantially lessen competition and do not have net economic efficiencies.<sup>51</sup>
- 1.12 The focus of CCCS's analysis is on evaluating how the competitive incentives and abilities of the merger parties and their competitors might change as a result of the merger. In applying the substantial lessening of competition test, CCCS considers coordinated and non-coordinated effects arising from the merger, taking into account other relevant factors such as entry barriers and countervailing buyer power in its assessment. CCCS will also evaluate the prospects of competition in the future, with and without the merger.
- 1.13 As a guide, CCCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless:
- The merged entity will have a market share of 40% or more; or
  - The merged entity will have a market share of between 20% to 40% and the post-merger combined market share of the three largest firms is 70% or more.

<sup>51</sup> Efficiency gains can be taken into account at two points in the analytical framework. Firstly, efficiencies may be taken into account where they increase rivalry in the market, such as when a merger between two smaller firms leads to efficiency gains for the merged entity, resulting in the merged entity being able to exert greater competitive pressure on its larger competitors. Secondly, efficiencies may also be taken into account where they do not avert a substantial lessening of competition, but will result in net economic efficiencies in markets in Singapore. These efficiencies should bring about lower costs, greater innovation, greater choice or higher quality, and be sufficient to outweigh the detriments to competition in Singapore caused by the merger. In order to be taken into account by CCCS, the efficiencies must be demonstrable (in that the claimed efficiencies are clear and quantifiable, likely to arise with the merger, and will materialise within a reasonable period of time) and merger-specific (that is the gains must be a direct consequence of the merger).





## (d) Exclusions and Exemptions

- 1.14 The Act provides for certain exclusions from the section 34 and section 47 prohibitions in the Third Schedule to the Act, and certain exclusions from the section 54 prohibition in the Fourth Schedule to the Act. The Act also provides for exclusion for government activities.
- 1.15 Section 33(4) of the Act provides that the Act shall not apply to any activity carried on by any agreement entered into or any conduct on part of (a) government; (b) statutory body; or (c) any person acting on behalf of the government or that statutory body, as the case may be, in relation to the activity, agreement or conduct.
- 1.16 Accordingly, the activities, agreements and conduct of the government and its statutory bodies are generally excluded from the competition prohibition within the Act. The reason for the exclusion is because the intent of competition law is to regulate conduct of market players, and not the government and statutory bodies that perform public and statutory functions.
- 1.17 In relation to whether a person is acting on behalf of the government or a statutory body so as to fall within the exclusion of section 33(4)(c), a case-by-case assessment will have to be made based on the facts of the case. It should be noted that mere approval by a public authority of the actions of any person is usually insufficient for this purpose.

## (e) Market Studies

- 1.18 CCCS is also empowered to conduct market studies. Market studies are a key avenue for CCCS to better understand how markets are working and to assess the state of competition in various segments of the economy. The findings from completed market studies may be published on CCCS's website.<sup>52</sup>

<sup>52</sup> CCCS's market study report





# ANNEX B

## INFORMATION TEMPLATE FOR GOVERNMENT AGENCIES SEEKING ADVICE FROM CCCS



This information template serves as a guide on the types of information which CCCS typically uses for competition assessment. This information template also serves as a reference for initial discussions between CCCS and the requesting government agency. The competition assessment process will be more expeditious if government agencies are able to provide as much information as possible.

### Background

1. Describe the intention of the initiative.<sup>53</sup>
2. Explain the background for reviewing or introducing the intended initiative.
3. Describe the option(s) considered including:
  - a. Features of the option(s);
  - b. Factors considered in the choice of the option(s); and
  - c. Rationale for the recommended option, if any.
4. List the government agencies involved in the design and implementation of the initiative.

### Effects on competition\*

9. Does the proposed initiative:
  - a. Limit the number or range of sellers?
  - b. Limit the ability of sellers to compete?
  - c. Reduce the incentive of sellers to compete vigorously?
  - d. Limit the choices and information available to consumers?*\*refer to Table 1: CIA Checklist.*
10. Are there specific (potential) competition concerns which (may) arise from the initiative?

### Effects on different stakeholders

5. List the businesses involved in the design and implementation of the initiative.
6. Describe how businesses can be affected by the implementation of the initiative.
7. Describe how other stakeholders (e.g., consumers, patients, jobseekers) are affected by the implementation of the initiative.
8. Where possible, provide other relevant information, for example policy papers and reference materials which will help CCCS in its assessment.

### Administrative Details

11. Contact person(s) of government agency seeking advisory from CCCS.
12. Provide the key deadlines, for example internal updates to management, Minister, Parliament, implementation.
13. Can CCCS seek feedback on the initiative from:
  - a. Other government agencies;
  - b. Private sector stakeholders; and
  - c. Consumers/public?

<sup>53</sup> The term "initiative" refers to both policies and initiatives by government agencies.





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