# BUSINESS COLLABORATION GUIDANCE NOTE

COMPETITION & CONSUMER COMMISSION SINGAPORE

# 1. INTRODUCTION

1.1 The current economy is fast-moving and marked with great disruptions. Businesses and their industries are transforming the way they deliver their goods and services to adapt and capture new opportunities. Businesses may be seeking ways to collaborate for better and more efficient outcomes both in Singapore and internationally, but are unfamiliar with how competition law may apply to collaborations. It is therefore timely for the Competition and Consumer Commission of Singapore ("CCCS") to issue a guidance note on business collaborations to enable businesses to work together with greater confidence.

1.2 The aim of this guidance note is to provide clarity to businesses and trade associations on the ways to collaborate without harming competition. This includes providing greater guidance on the assessment factors (such as market share and structure) that CCCS would generally consider in determining whether a collaboration complies with section 34 of the Competition Act (Cap. 50B) (the "Competition Act"), when specific types of collaborations may give rise to competition concerns, and the conditions under which competition concerns are unlikely. This guidance note focuses on common types of collaborations.

1.3 This guidance note is not a substitute for the Competition Act or its associated subsidiary legislation and guidelines. This guidance note is intended to supplement and not to modify the *CCCS Guidelines on the Section 34 Prohibition 2016* and should be read in conjunction with it. For additional information on section 34 of the Competition Act itself, readers may refer to the *CCCS Guidelines on the Section 34 Prohibition 2016*[1]. This guidance note sets out CCCS's consideration of different types of collaborations generally. Please note that the examples given in this guidance note are for illustration purposes and are not exhaustive. They should not be understood as limiting CCCS's enforcement or assessment under the Competition Act. In referring to this guidance note, businesses should consider the specific facts and circumstances that apply to their intended collaborations.

1.4 Businesses that have any doubt about whether their commercial activities are compliant with the Competition Act may wish to (a) notify their collaborations to CCCS for guidance or a decision as to whether their collaborations are likely to infringe or have infringed the Competition Act, respectively or (b) seek legal advice.

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[1] https://www.cccs.gov.sg/-/media/custom/ccs/files/legislation/legislation-at-a-glance/cccs-guidelines/cccs-guidelines-on-the-section-34-prohibitions-2016.pdf?la=en&hash=E990CDA262BCD1BBBBD0C9F0E4129BC9B11F8022

## 2. APPLICABILITY OF GUIDANCE TO DIFFERENT TYPES OF BUSINESS COLLABORATIONS

### Horizontal and vertical collaborations

2.1 Horizontal agreements[2] refer to agreements between two or more businesses[3] that are actual or potential[4] competitors[5]. Horizontal collaborations would typically be assessed under section 34 of the Competition Act, which prohibits agreements between businesses, decisions by associations, or concerted practices[6] that are anti-competitive (the "section 34 prohibition"), unless they are excluded or exempted.

2.2 Vertical agreements refer to agreements between businesses operating at different levels of the supply chain in relation to how they may purchase or sell certain products, e.g., a distribution agreement between a manufacturer and its retailer. As vertical agreements are excluded from the section 34 prohibition by virtue of the Third Schedule of the Competition Act, this guidance note does not apply to collaborations or agreements that are purely vertical in nature.[7]

### Agreements

2.3 This guidance note applies to agreements as well as informal agreements or looser forms of collaborations, whether between businesses or through an association. [8] An

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[2] For the purposes of this guidance note, the terms collaboration and agreement may be used interchangeably.

[3] In this guidance note, businesses also refer to undertakings (as defined in the Competition Act) as any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services. The terms may be used interchangeably.

[4] Two businesses are treated as actual competitors if they are currently selling competing products. A business is treated as a potential competitor of another business if, in the absence of the agreement, it is likely that the former, within a short period of time, would supply a competing product. For a business to be considered a potential competitor, it would need to enter the market fast enough so that the threat of potential entry constrains the behaviour of the existing businesses in the market. As an indication, two years may be considered a short period of time, but this would also be on a case-by-case basis depending on the characteristics and dynamics of the relevant market(s), as well as the specific capacities of potential entrants.

[5] This would include agreements between actual or potential competitors coordinated by a facilitator that does not compete with them.

[6] A concerted practice may exist where there is informal co-operation, without any formal agreement or decision. A concerted practice would be found to exist if businesses, even if they did not enter into an agreement, knowingly substituted the risks of competition with co-operation between them.

[7] The fact that businesses are in a vertical relationship and/or appear to have a vertical agreement does not, however, preclude the finding of a horizontal agreement which has as its object or effect the prevention, restriction or distortion of competition within Singapore. For example, competing manufacturers A and B may enter into an agreement for manufacturer B to sell both of their products as a retailer. This may appear to be a vertical agreement but could also be considered a horizontal agreement to jointly sell their products. It is also possible that what may appear to be a vertical agreement is used in reality to implement a horizontal agreement, for instance, competing retailers have agreed to set a common retail price but implement this horizontal agreement by coordinating via the manufacturer to impose a common retail price through agreements with the retailers.

[8] Collaborations would include agreements, decisions by an association of businesses or concerted practices as set out in paragraphs 2.10, 2.15 and 2.18 of the *CCCS Guidelines on the Section 34 Prohibition 2016*, respectively.

example of a loose form of collaboration would be an informal buying arrangement between members of a trade association for joint purchases of inputs.

2.4 The guidance note would also apply to joint ventures between businesses not amounting to a merger within the definition as set out under section 54(5) of the Competition Act.[9]

**Restriction, prevention or distortion of competition by object or effect**

2.5 An agreement is prohibited if it appreciably prevents, restricts or distorts competition, i.e., it is anti-competitive to an appreciable extent, unless it is excluded or exempted under the Competition Act. There are certain agreements that are considered, by their very nature, to be anti-competitive to an appreciable extent, such that they infringe the Competition Act without the need for CCCS to examine the competitive effects of such agreements. These agreements are said to restrict competition 'by object'[10] or otherwise referred to as object restrictions. For example, agreements that have the purpose of price-fixing[11], bid-rigging[12], market-sharing[13] or imposing output limitations[14], will always be considered to have an appreciable adverse effect on competition. That said, any such agreement may still fall within the Net Economic Benefit ("NEB") exclusion[15]. If such agreements fail to meet the conditions for the NEB exclusion, they will be considered an infringement of the section 34 prohibition.

2.6 Under the NEB exclusion, an agreement that restricts competition appreciably would still be in compliance with the Competition Act if (a) it leads to economic benefits (for instance lower costs, improvements in the quality or services, or the production of

[9] Section 54(5) of the Competition Act defines that a joint venture constitutes a merger if it performs, on a lasting basis, all the functions of an autonomous economic entity. As set out in paragraph 3.23 of the *Substantive Assessment of Mergers Guidelines 2016*, a joint venture must thus fulfil the following three criteria before falling within the definition under section 54(5) of the Competition Act: (1) it must be subject to joint control; (2) it must perform all the functions of an autonomous economic entity; and (3) it must do so on a lasting basis.

[10] The assessment of whether or not an agreement has as its object the restriction of competition is based on a number of factors. The factors include, in particular, the content and context of the agreement, the objective aims pursued by it and the actual conduct and behaviour of the parties on the relevant market(s). In other words, an examination of the facts underlying the agreement and the specific circumstances in which it operates may be required before it can be concluded whether a particular restriction constitutes a restriction of competition by object. The way in which an agreement is actually implemented may reveal a restriction by object even where the formal agreement does not contain an express provision to that effect.

[11] An elaboration on price-fixing is found at paragraphs 3.3 to 3.7 of the *CCCS Guidelines on the Section 34 Prohibition 2016.*

[12] An elaboration on bid-rigging is found at paragraph 3.8 of the *CCCS Guidelines on the Section 34 Prohibition 2016.*

[13] An elaboration on market-sharing is found at paragraphs 3.9 to 3.10 of the *CCCS Guidelines on the Section 34 Prohibition 2016.*

[14] An elaboration on the imposition of output limitation is found at paragraphs 3.11 to 3.12 of the *CCCS Guidelines on the Section 34 Prohibition 2016.*

[15] Paragraph 9 of the Third Schedule to the Competition Act lists out the conditions of the NEB exclusion.

new innovative products) that outweigh the negative competition effects; and (b) these economic benefits cannot be achieved without the agreement and any restrictions in it; and (c) competition is not eliminated in a substantial part of the market.

2.7 More information on the NEB exclusion can be found in Annex C of the *CCCS Guidelines on the Section 34 Prohibition 2016*.[16]

2.8 In some collaborations, there may be potential object restrictions included amongst other broader provisions relating to the collaboration. An example would be a provision in a joint purchasing agreement requiring the collaborators to jointly decide on the price to purchase inputs from a supplier. These issues will be discussed in the relevant sections below, in relation to whether such collaborations could be regarded as restrictions by object as opposed to being assessed based on their effects on competition.

2.9 Agreements that do not have as their object the prevention, restriction and distortion of competition would be subject to an economic assessment of their effects on competition. The assessment of the effects of any such agreement may result in a finding that either (a) it has an anti-competitive effect, or (b) it brings about pro-competitive effects or has no effect on competition. The outcome of the assessment depends on the specific circumstances and market conditions surrounding each agreement. This guidance note sets out factors that CCCS will consider when carrying out an assessment of the effects of various collaborations. Collaborations that are anti-competitive by effect could similarly benefit from the NEB exclusion highlighted in paragraph 2.7 above. Most of the collaborations set out and discussed in this guidance note would typically be assessed on the basis of their effects on competition, except where otherwise highlighted.

**Exclusion under section 33(4) of the Competition Act**

2.10 Section 33(4) of the Competition Act provides that nothing in Part III of the Competition Act shall apply to any activity carried on by, any agreement entered into or any conduct on the part of

a. The Government;
b. Any statutory body[17]; or
c. Any person acting on behalf of the Government or that statutory body, as the case may be, in relation to that activity, agreement or conduct.

[16] https://www.cccs.gov.sg/-/media/custom/ccs/files/legislation/legislation-at-a-glance/cccs-guidelines/cccs-guidelines-on-the-section-34-prohibitions-2016.pdf?la=en&hash=E990CDA262BCD1BBBBD0C9F0E4129BC9B11F8022

[17] Section 33(6) of the Competition Act states that “statutory body” means a body corporate established by or under any written law.

2.11 Any businesses which seek to rely on section 33(4)(c) to exclude any collaborations on the basis that they are acting on behalf of the Government or statutory body should note that the exclusion set out in section 33(4) of the Competition Act is to be construed narrowly. Mere encouragement or endorsement of a particular collaboration by a government agency or statutory body will not be sufficient for the collaboration to benefit from the exclusion set out in section 33(4)(c) of the Competition Act. For instance, the sharing of commercially sensitive information with each other in response to a request for information from the Government or statutory body in a public consultation exercise will not benefit from the exclusion set out in section 33(4)(c) of the Competition Act.

2.12 Additionally, the exclusion set out in section 33(4)(c) of the Competition Act will only apply to the specific activity, agreement or conduct that businesses carry out on behalf of the Government or statutory body. It will not serve to exclude any activities by the businesses, which fall outside the scope of the specific activity, agreement or conduct that businesses carry out on behalf of the Government or a statutory body. For instance, where a government agency appoints two businesses to jointly procure products on its behalf and the businesses jointly determined the purchase price, this will not be an infringement of the Competition Act. However, activities outside of the scope of the appointment by the government agency will not benefit from the exclusion set out in section 33(4)(c) of the Competition Act.

2.13 If businesses have any doubts as to whether their collaborations fall within the section 33(4) exclusion under the Competition Act or if any request by a Government or statutory body may raise competition concerns, they should raise their concern with the relevant government agency or statutory board and/or approach CCCS.

## CCCS'S GUIDANCE ON SPECIFIC TYPES OF COLLABORATIONS

## 3. INFORMATION SHARING

3.1 CCCS recognises that information sharing between businesses may often be helpful in allowing businesses to understand the market and plan their affairs, e.g., to understand historical developments in the industry to plan their individual strategies. However, the sharing of commercially sensitive information between businesses, particularly between competitors, can harm competition. This section will cover the types of information that businesses might wish to share and the competition assessment of such information sharing.

3.2 The sharing of both price and non-price variables, such as output, quality, future business strategies or other important variables that are important to a business' decision on how to compete,[18] can affect competition.

3.3 Information sharing includes indirect forms of information sharing, such as the sharing of information by businesses through an intermediary like a consultant. Additionally, businesses should be mindful that sensitive information may be shared through a variety of means, including informal channels such as social media or text messaging software applications or through price announcements to their competitors.

**Information sharing can be pro-competitive**

3.4 In the normal course of business, businesses share information on a variety of matters legitimately and with no risk to the competitive process. Generally, where businesses share historical, aggregated or publicly available information, it is unlikely that competition concerns will arise. Risks of competition concerns are further reduced if independent third parties collated and aggregated the information. For example, the sharing of aggregated statistical data, market research, and general industry studies is unlikely to be anti-competitive, since the sharing of such information is unlikely to reduce individual businesses' commercial and competitive independence.

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| *Historical or aggregated information*<br><br>*Industry participants, such as business alliances or trade associations, may publish aggregated historical data such as statistics of past records, claims or awards, etc. For instance, in one case, an industry association wished to publish historical prices and capacities. If the data is aggregated such that parties are unable to reverse engineer the statistics to ascribe the data to individual players, such data sharing would tend not to be objectionable from a competition perspective. On the other hand, where the aggregated data concerns current or future plans, or is highly detailed and can be ascribed to individual players, this could allow individual players to discern the market strategies of their competitors and may give rise to an appreciable adverse effect on competition.*<br><br>*In relation to the sharing of historical information, CCCS is of the view that so long as the information is sufficiently historical, it is generally not objectionable. What constitutes sufficiently historical – be it a few days, a few weeks old or longer – would depend on the circumstances of each case. For instance, if it can be shown that data that is a few days old would be obsolete and is unlikely to influence individual businesses' commercial and competitive independence by the time it is published, the sharing of such data is unlikely to have an appreciable effect on competition.* |

[18] Depending on the specific product or service, such factors may also include customer lists, production costs, turnovers, sales, capacities, inventories, stocks, marketing plans, trading terms and strategic risks and investment options.

3.5 Indeed, competition may be enhanced by the sharing of information, for example, on new technologies or market opportunities, particularly where consumers are also informed. For instance, independent third parties may collect information from trade association members, aggregate and anonymise the data, to allow some performance benchmarking to be done by industry participants. Information may also be shared publicly or directly to consumers to allow consumers to be better aware about quality differences in products or to reduce information asymmetry between businesses and consumers. As a general principle, the more informed consumers are, the more effective competition is likely to be. Therefore, making information available to the public does not usually harm competition.

3.6 As another example, information may also be shared to ensure that there is interoperability between different technologies. This increases the options customers have when choosing between different technologies, or ensures that there is an effective transfer of technological know-how. In the context of research and development ("R&D"), information may also be shared to further technological innovation. The scope of such information sharing in the context of R&D and whether such sharing will affect the competitive state of the market will be considered in section 7 below.

**Common competition concerns with information sharing**

3.7 Information sharing may be anti-competitive where it impedes independent competitive decision-making. This occurs when the information shared allows businesses to reduce uncertainty from competition such that it reduces competitive pressure between competitors.

3.8 Generally, the more commercially sensitive the information shared, particularly between competitors, the more likely that the information sharing is anti-competitive. Further, the more recent or current the information shared, or the more frequent the sharing, the more likely that the sharing could be anti-competitive.[19] This would also apply to the sharing of future business intentions. Competition concerns may also arise where the sharing of commercially sensitive information takes place in (a) a highly concentrated market with few competitors; (b) a highly homogenous and stable market with products or services that are not differentiated; or (c) a market where businesses have similar cost structures.

*Price and non-price information sharing*

3.9 The sharing of individualised price information is likely to lead to price coordination and therefore diminish competition that would otherwise be present between

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[19] An elaboration on the impact of different information shared on competition can be found in paragraph 3.20 of the *CCCS Guidelines on the Section 34 Prohibition 2016*.

competitors. This will be the case regardless of whether the information shared relates directly to the prices to be charged or to the elements of a pricing policy, for example, discounts, surcharges, pricing terms, and dates of price change. Sharing between competitors of their individualised intentions regarding future prices or elements of their pricing policies will normally be considered a restriction of competition by object, as such sharing generally has the object of fixing prices.[20]

3.10 Whether sharing information on non-price variables is anti-competitive depends on the type of information shared, the structure of the relevant market and if such information reveals important factors that impact how businesses compete. Such non-price variables may include customer lists, production costs, turnovers, sales, capacities, inventories, stocks, marketing plans, trading terms and strategic risks and investment options. For example, information about individual production costs may allow businesses to estimate the pricing intentions of their closest competitors. Another example of a potentially sensitive non-price variable would be information on a business's intended future output.

3.11 One of the factors considered in relation to the structure of the relevant market is the market power of the businesses, for which market shares could be indicative. Generally, information sharing, if it does not relate to an object restriction of competition, will have no appreciable adverse effect on competition for actual and potential competitors[21] - if the aggregate market share of the parties to the agreement (including other entities belonging to the same group) does not exceed 20%.

3.12 The fact, however, that the market shares of the parties exceed the threshold levels set out in the paragraph above does not necessarily mean that they have market power or that the agreement would have appreciable adverse effects on competition. When conducting such an assessment, CCCS will take into account other factors such as whether the parties face strong competitive constraints from other credible competitors in the relevant market, potential competitors, any barriers to entry or expansion, whether the market is dynamic with low entry and expansion barriers, whether customers are able to switch suppliers, or have countervailing buyer power.

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[20] An elaboration on price and non-price information can be found in paragraphs 3.22 to 3.23 of the *CCCS Guidelines on the Section 34 Prohibition 2016*.

[21] Two businesses are treated as actual competitors if they are currently selling competing products. A business is treated as a potential competitor of another business if, in the absence of the agreement, it is likely that the former, within a short period of time, would supply a competing product. For a business to be considered a potential competitor, it would need to enter the market fast enough so that the threat of potential entry constrains the behaviour of the existing businesses in the market. As an indication, two years may be considered a short period of time, but this would also be on a case-by-case basis depending on the characteristics and dynamics of the relevant market(s), as well as the specific capacities of potential entrants.

*Discussions about prices*

In an infringement decision against certain owners/operators of hotels for exchanging commercially sensitive information (CCCS 700/002/14[22]), CCCS found that the sales representatives from the owners/operators of the hotels had shared commercially sensitive information through phone conversations, face-to-face meetings and even text messages, in connection with the provision of hotel rooms in Singapore to corporate customers.

Specifically, the information shared was about confidential corporate room rates that were individually negotiated between each customer and hotel. In addition, the sales representatives also discussed future price-related strategies such as their proposed price increases for the following contractual year, their proposed bid prices in response to customer requests and their intentions to agree to a customer's price reduction request during negotiations.

The sharing of such information was considered anti-competitive by object, as the information was likely to have influenced the hotels' subsequent behaviour in the market. Without such information, the sales representative of each hotel would have had to independently determine their hotel's behaviour on the market, and there would have been more competitive pressure on rates or terms offered to customers.

*Price recommendation by trade associations*

3.13 Recommendations or guidelines by trade associations on prices to be charged by its members (including surcharges or discounts) are generally considered to be anti-competitive, since such recommendations (even if non-binding) can act as focal points for competitors to co-ordinate or fix prices. This can include a decision requiring members to post their prices where other members can access them e.g., where such prices would ordinarily be confidential as between each member and its customers.

*Price guidelines*

In a Statement of Decision[23] issued by CCCS[24], CCCS considered the impact of a set of Guideline on Fees ("GOF") issued by the Singapore Medical Association ("SMA"). The GOF was a set of recommendations on private doctors' professional fees, which included fees for consultations, surgeries, preparation of medical reports and court appearances.

CCCS found that the GOF restricted competition by object and infringed section 34 of the Competition Act. Specifically, the GOF limited market players' independent decision-making and formed a focal point for prices to converge. Also, the fees were not based on actual price data, but were a recommendation by the SMA on what prices *should be*.

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[22] https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/id-against-hotels

[23] https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/singapore-medical-association--guidelines-on-fees

[24] CCCS was known as the Competition Commission of Singapore ("CCS") at that time.

Further, the GOF included minimum prices, contrary to the SMA's aim of preventing overcharging. CCCS also found that the GOF influenced new entrants' pricing decisions and fostered compliance by pressuring medical practitioners to keep within the recommended fee range. The SMA subsequently withdrew the GOF.

*Discussions about surcharges*

In an infringement decision issued by CCCS against ten freight forwarders (CCS 700/003/11[25]), CCCS found that the freight forwarders, which were foreign-registered companies in Japan with Singapore subsidiaries or affiliates, had engaged in information sharing at meetings of an association of which they were members. CCCS found that the freight forwarders shared their views on the security surcharges and the fuel surcharges, decided collectively what action they would take, fixed the prices they would charge customers and discussed the implementation of the security charges and fuel surcharges, including how successful they were in collecting these charges and surcharges from customers. This was found to have infringed the section 34 prohibition.

*Unilateral disclosures of information*

3.14 A one-way disclosure of information by one business to its competitor may also constitute a concerted practice between businesses to restrict competition where the latter requests it, or at the very least, accepts it. Such disclosure, if it relates to commercially sensitive information such as pricing intentions, reduces uncertainty amongst the competitors involved and increases the risk of collusive behaviour.

3.15 In fact, simply attending a meeting where a company discloses its pricing plan (whether current or future intention) to its competitors is likely to be caught under the section 34 prohibition, even in the absence of an explicit agreement to raise prices. When a business receives commercially sensitive information like pricing from a competitor, it will generally be presumed to have considered the information in determining its subsequent market behaviour.

[25] https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/ccs-fines-10-freight-forwarders-for-price-fixing

*Discussions about ticket prices*

In the infringement decision against two ferry operators, CCCS found that the ferry operators had shared price information in relation to ferry tickets sold to corporate clients and travel agents (CCS 500/006/09[26]). This was a restriction of competition by object.

CCCS found that one of the ferry operators had copied the other operator in an email to a travel agent (a corporate customer) regarding its prices for ferry tickets.

CCS found that the one-way flow of information from one ferry operator to another was anti-competitive, even though there was no reciprocal sharing. The second operator's future behaviour on the market was presumed to no longer be independent due to it receiving sensitive price information from the first operator.

Further, as this was a market with only these two players at the time, the flow of information made it easier for these two competitors to act in concert when there was already limited opportunity for competition.

3.16 In order to show that a business did not participate in an anti-competitive sharing of information such as pricing intentions at a meeting, it is important for the business to publicly distance itself from the anti-competitive information sharing. This means that the business needs to take clear and unambiguous steps to denounce the conduct at the meeting, including having their objections noted down in the minutes or leaving the meeting if the sharing continues. Businesses should also not attend subsequent meetings involving similar information sharing, and determine their behaviour on the market independently.

*Information sharing in the context of other types of collaborations*

3.17 Information sharing often takes place in the course of businesses carrying out other types of collaborations. While the considerations around information sharing above generally apply, the information also needs to be viewed in the context of the collaboration within which the information sharing takes place. For example, some commercially sensitive information may need to be used for an efficiency-enhancing collaboration to take place. In such situations, there may be ways for the collaboration to continue while applying safeguards that minimise competition concerns arising from the use of the information, including only revealing information that is strictly necessary to implement the collaboration and ringfencing commercially sensitive information to prevent unnecessary sharing.

[26] https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/ccs-imposes-financial-penalties-on-two-competing-ferry-operators-for-engaging-in-unlawful-sharing-of-price-information

*Information sharing in the context of another type of collaboration*

In the Poultry Hub Joint Venture ("JV") Notification for Decision (CCCS 400/005/17[27]), CCCS was concerned that the JV could facilitate anti-competitive information sharing between competitors. In particular, the JV parties were shareholders who were able to appoint directors to the JV's Board of Directors, but they also remained as competitors in the downstream markets. As a result, CCCS was concerned that the JV could potentially facilitate the sharing of confidential and commercially sensitive information relating to the respective parties' chicken supplies and slaughtering requirements. The sharing of such information would reduce competitive pressure and potentially lead to less competitive prices for customers. However, when the collaboration was viewed in its entirety, there were also economic efficiencies to be gained from the JV.

Ultimately, CCCS allowed the JV after accepting commitments from the parties not to share commercially sensitive information with one another and to ringfence such information required in the running of the JV. The parties committed to forming a clean team to manage any such confidential information within the JV, and an independent third party (known as a "monitoring trustee") was also appointed to monitor compliance with the commitments. The parties also implemented a competition compliance programme. These measures helped to minimise competition concerns arising from the sharing of commercially sensitive information while allowing the collaboration to achieve the potential efficiencies.

[27] https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/proposed-joint-venture-poultry-slaughtering-hub

**Summary of how to minimise competition concerns for information sharing**

**In summary, competition concerns are less likely to arise when:**

a. **Information is publicly available or is not related to price or other important factors that impact how businesses compete;**
   **OR**
b. **Information is historical, aggregated (especially by independent third parties) and cannot be attributed to individual businesses;**
   **OR**
c. **The market has a large number of players with frequent entry and exits, and the relevant goods/services are highly differentiated or changes rapidly (on condition the information shared does not facilitate price-fixing, bid-rigging, market sharing or output limitation);**
   **OR**
d. **In the context of a collaboration where commercially sensitive and individual information is needed, only information strictly necessary to implement the collaboration is shared and there are safeguards to ringfence commercially sensitive information so that businesses are unable to access information affecting competition between them.**

**Even if the conditions above are not met, it does not necessarily mean that the collaboration will result in appreciable anti-competitive effects. A more detailed assessment could be needed to assess whether the information sharing may be considered to have anti-competitive effects and if so, whether it may nonetheless still qualify for the NEB exclusion.**

## 4. JOINT PRODUCTION

4.1 There are various types of joint production agreements. For instance, businesses may enter into a collaboration agreement or arrangement, in which a jointly controlled company operates one or several production facilities like a production factory to jointly produce required inputs that the businesses then use to produce competing products. Businesses may also choose to enter into looser forms of collaborations, such as agreements to share resources (e.g., production capacity or technical capabilities) or subcontracting agreements. Subcontracting agreements generally refer to the situation where one party entrusts to another party the production of a good or service. These types of agreements may be horizontal or vertical[28]. Horizontal subcontracting agreements refer to:

a. Unilateral subcontracting agreements;

b. Reciprocal subcontracting agreements; or

c. Subcontracting agreements to expand production.

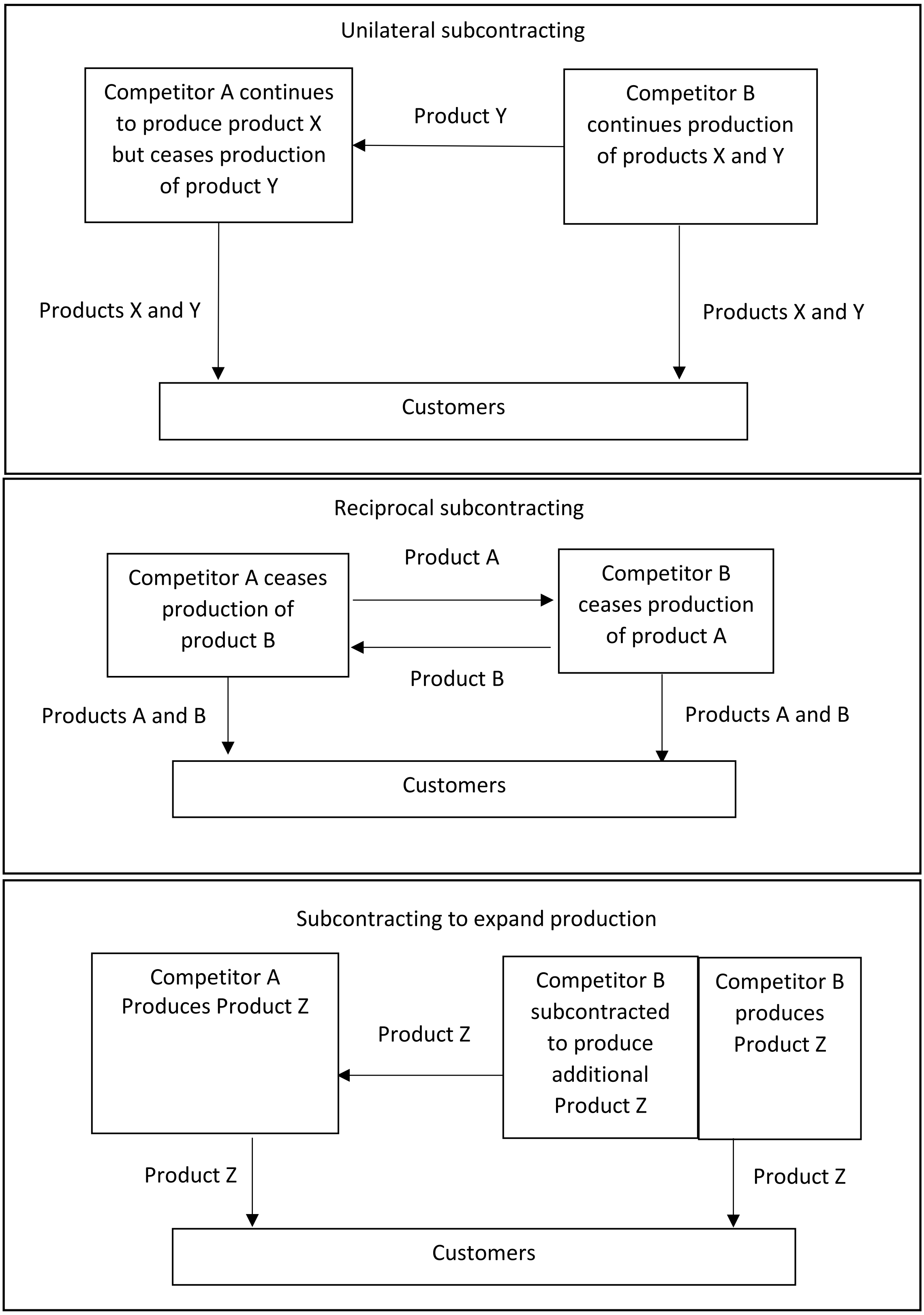
4.2 Unilateral subcontracting agreements refer to the situation where between two competing businesses, one business agrees to fully or partially cease production of certain products and to purchase them from the other business, which in turn agrees to produce and supply the products. The subcontracting is therefore one-way from one business to another.

4.3 Reciprocal subcontracting agreements refer to the situation where two or more competing businesses agree, on a reciprocal basis, to fully or partially cease production of certain products and to purchase them from the other businesses in the agreement.

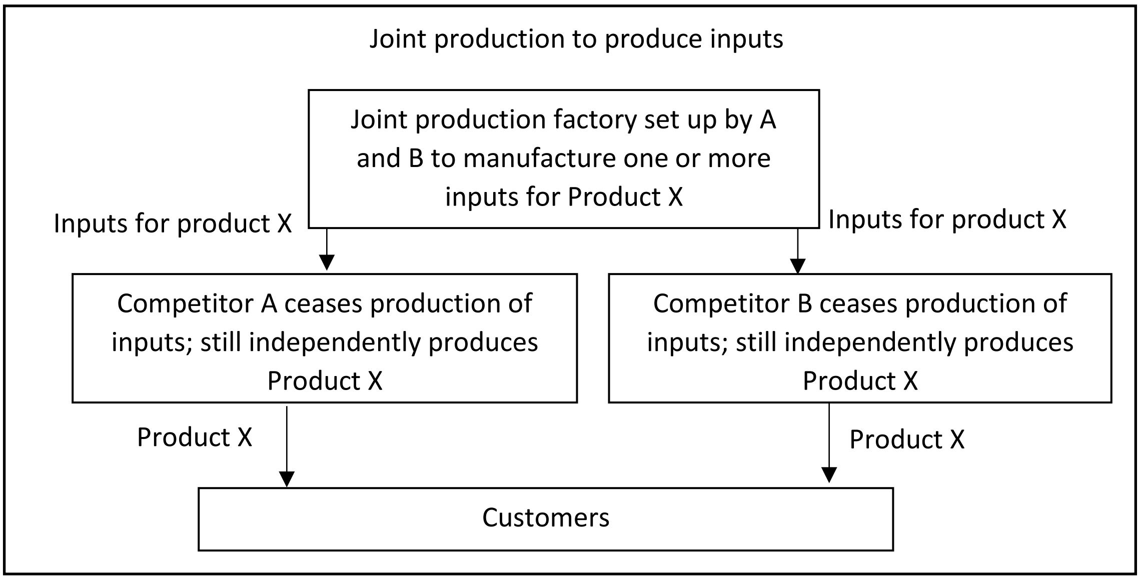
4.4 Subcontracting agreements to expand production refer to those where a contractor entrusts a subcontractor (who is a competitor) with the production of a product, but the contractor does not cease or limit its own production of the same product in question.

[28] This guidance note and more generally the Competition Act does not apply to pure vertical agreements.

**Examples of joint production collaborations[29]**




[29] These are non-exhaustive examples of joint production collaborations and can also apply to services. Using the joint production of inputs in the diagram below as an example, businesses A and B could jointly produce a service that is needed as an input for each of them to provide services to customers downstream.




**Joint production agreements may be pro-competitive**

4.5 Joint production agreements can generate economic efficiencies and be pro-competitive. For instance, such agreements may generate efficiency gains, by allowing businesses to achieve cost savings in production, or to utilise more efficient technologies. Production agreements may also help businesses achieve economies of scale by expanding production at a lower cost per unit.

4.6 In addition, such agreements may also help businesses to combine complementary technical know-how to innovate and produce goods and services of better quality or variety than if the businesses had produced them independently, or even produce goods and services that they could not produce on their own.

**Common competition concerns with joint production**

4.7 Joint production agreements, however, must not be used to facilitate market sharing, bid-rigging, price-fixing or output limitation. For instance, businesses should not use joint production agreements as a front to share the market and avoid competing with one another in certain products.

**Assessment factors**

4.8 In certain circumstances, joint production agreements which involve the setting of prices to be charged between the producers or agreement on the total output to be produced may not restrict competition by object, e.g., where the price setting or agreement on output is necessary for the joint production and other parameters of competition are not eliminated.

4.9 In assessing whether joint production agreements that do not restrict competition by object are anti-competitive, CCCS will generally take into account the characteristics of the relevant market (such as the characteristics of the product and market structure), as well as the nature of the agreement. For example, subcontracting agreements to expand production are less likely to raise competition concerns compared to reciprocal subcontracting arrangements as the latter arrangement leads to an overall decrease in the production or production capacity of certain products and increases the common cost of both businesses due to the reciprocal purchasing. Comparatively, a subcontracting arrangement to expand production keeps the same number of competitors while allowing them to optimise production resources as necessary. In a joint production agreement, businesses may also have to agree on certain parameters such as prices they charge one another for sharing capacity or on the total amount of output to be produced to improve production efficiency[30]. In these cases, CCCS will assess on a case-by-case basis whether the agreement raises competition concerns based on the following factors, which are non-exhaustive:

- The extent to which the joint production increases market power of the businesses in the relevant market;
- Whether the agreement increases the businesses' commonality of costs (i.e., the extent to which the businesses have similar variable costs);
- The extent to which the businesses may foreclose competition in a neighbouring or downstream market; and
- The extent to which the joint production agreement may facilitate anti-competitive information-sharing.

*Market power*

4.10 One of the factors for analysing market power of the businesses is their market shares. Generally, an agreement will have no appreciable adverse effect on competition for actual and potential competitors[31] - if the aggregate market share of the parties to the agreement (including other entities belonging to the same group) does not exceed 20%.

4.11 The fact, however, that the market shares of the parties exceed the threshold levels set out in the paragraph above does not necessarily mean that they have market power or that the agreement would have appreciable adverse effects on competition. To assess the parties' market power, CCCS will take into account other factors such as whether the parties face strong competitive constraints from other credible competitors in the relevant market, potential competitors, any barriers to entry or

[30] Jointly fixing such prices can be distinguished from jointly fixing prices charged to downstream customers, which would restrict competition by object.

[31] Two businesses are treated as actual competitors if they are currently selling competing products. A business is treated as a potential competitor of another business if, in the absence of the agreement, it is likely that the former, within a short period of time, would supply a competing product. For a business to be considered a potential competitor, it would need to enter the market fast enough so that the threat of potential entry constrains the behaviour of the existing businesses in the market. As an indication, two years may be considered a short period of time, but this would also be on a case-by-case basis depending on the characteristics and dynamics of the relevant market(s), as well as the specific capacities of potential entrants.

expansion, whether the market is dynamic with low entry and expansion barriers, whether customers are able to switch suppliers, or have countervailing buyer power. Further, market concentration (whether most of the market shares are held by a small number of firms), which generally depends on the size and number of participants in the market, is also an indicator of the competitive pressure in the market. A collaboration that does not increase the level of concentration in a market significantly is less likely to be anti-competitive than one which does, because a significant increase in concentration may reduce competition by increasing the market power of all businesses in the market and increase the scope for competitors to coordinate their market behaviour.

*Assessment of a joint production agreement*

In the Poultry Hub JV cited above, the JV parties intended to establish a JV company which will undertake slaughtering services for and on behalf of each JV party (or its respective affiliates). CCCS was concerned that the parties to the collaboration account for a substantial amount of market share of [40 – 50%] in the upstream and downstream levels of the supply chain - in the downstream level for the marketing and sale of fresh and frozen chicken products to the wholesale market, the parties remained competitors. As such, competition amongst the JV parties downstream could be adversely affected if there was any sharing of commercially sensitive information arising from the JV.

CCCS also found that the overlapping products sold by the parties were homogenous in nature and there was a certain level of transparency in the market in relation to one another's poultry supply, cost structure and levels, output and even customers. Further, barriers to entry could be high as there was a significant extent of vertical integration in the industry, and consequently new entrants would need to operate at multiple levels of the supply chain to effectively compete with the existing vertically integrated players. There were also high regulatory barriers to entry.

Hence, even though there was a credible competitor that held a relatively high market share in the upstream market that was comparable to the JV parties, with five other competitors that collectively held only [10 – 20 %] market share and that therefore did not exert a strong competitive constraint, there was a risk that any information sharing amongst the JV parties could facilitate tacit or explicit collusion with this competitor, or the wider poultry industry in Singapore.

CCCS eventually approved the JV, conditional upon the implementation of and compliance with the commitments from the JV parties (see para 3.15 above for additional information on the commitments from the JV parties).

*Commonality of costs*

4.12 Commonality of costs refers to the extent to which variable costs are similar for parties to an agreement. If the joint production agreement increases parties' commonality of costs, the production agreement may make it easier for parties to collude. This is a concern especially if parties already have a high proportion of variable costs in common, or if the increase in the extent of common variable costs following implementation of the agreement is large. In such cases, the common cost structure increases the incentive and ability of businesses to collude as their interests becomes more aligned. However, CCCS recognises that joint production agreements may also reduce costs significantly. Economic efficiencies generated from a reduction in costs as a result of the joint production agreement may outweigh the harm from the increase in common cost structures.

*Foreclosure of competition*

4.13 The joint production agreement should also not be used as a mechanism by which the parties foreclose competition downstream. For instance, a collaboration may be set up to produce an intermediate good that is an important input for the downstream market while the collaborating businesses also compete in the downstream market. In such cases, CCCS will consider the extent to which the collaborating businesses are able to raise prices or limit supply of the intermediate good through their control over its production, i.e., the greater their market power, the higher the risk that they will push prices higher or limit supply. The higher prices or limited supply of this important input could then limit the ability of competitors in the downstream market to compete with the collaborating businesses. Relevant considerations in this regard would be the market power of the parties to the joint production agreement in the production of the intermediate input, the strength of other competing suppliers downstream, as well as whether customers of the intermediate good are able to switch to competing suppliers.

4.14 Where the parties engaging in joint production may be able to raise the price or limit supply of a key component for a downstream market, they may raise the costs of their downstream competitors and foreclose competition. For instance, the parties may raise prices or restrict access to technical capabilities for the production of services in a market downstream. This could have the knock-on effect of increasing the parties' market power in the downstream market. Their market power could be further entrenched if the other downstream competitors have weak market power, and customers find it difficult to switch suppliers in response to price changes.

*Information sharing*

4.15 CCCS will also consider the extent to which the joint production agreement may facilitate anti-competitive information sharing and whether the information shared is necessary for the agreement. For instance, a subcontracting agreement may potentially become a conduit by which parties share sensitive and confidential commercial information with one another beyond what is necessary for the joint production agreement. The sharing of information may serve to reduce or remove uncertainties inherent in the process of competition. For instance, if the joint production agreement allows parties to know each other's sales, pricing or output strategies or future intentions for other products and services, this may have an appreciable adverse effect on competition. However, if information shared relates mostly to historical, aggregated data or industry statistics, this is unlikely to have an appreciable adverse effect on competition. Where sharing commercially sensitive information between the parties to the joint production agreement is necessary, arrangements will still need to be put in place to ringfence such information to reduce the anti-competitive effects. More details on information sharing can be found in section 3 above.

*Information sharing in the context of joint production*

As noted in the Poultry Hub JV case cited above, one of CCCS's concerns was that the JV would facilitate anti-competitive information sharing. The structure of the JV was such that the parties to the JV are shareholders who have the power to appoint directors to the JV's Board of Directors. Yet they remained as competitors downstream. As a result, CCCS was concerned that the JV could potentially facilitate the sharing of confidential and commercially information relating to the respective parties' chicken supplies and slaughtering requirements. The sharing of such information would reduce competitive pressure and potentially lead to less competitive prices for customers. However, when the collaboration is viewed in its entirety, there are also economic efficiencies to be gained from the JV.

Ultimately, CCCS accepted commitments from the parties not to share any commercially sensitive information with one another. The parties also undertook to establish a special team to manage any such confidential information within the JV, and a monitoring trustee was also appointed to monitor compliance of the parties with the commitments. The parties also implemented a competition compliance programme. This helped to minimise competition concerns arising from the sharing of commercially sensitive information while allowing the collaboration to achieve the potential efficiencies.

**Summary of how to minimise competition concerns for joint production agreements**

**In summary, competition concerns are less likely to arise when:**

a. **The collaboration does not facilitate price-fixing, bid-rigging, output limitation and market sharing;**
   **AND**

b. **Collaborating businesses do not have market power, e.g., they have aggregate market shares of less than 20%;**
   **AND**

c. **The collaboration does not result in collaborating businesses having a significant proportion of common costs unless there is significant cost reduction that outweighs the potential harm arising from such common costs;**
   **AND**

d. **The collaboration does not raise concerns in relation to the types of information sharing or contain safeguards to minimise concerns with information sharing as summarised below:**

   i. **Information is publicly available or is not related to price or other important factors that impact how businesses compete;**
      **OR**

   ii. **Information is historical, aggregated (especially by independent third parties) and cannot be attributed to individual businesses;**
      **OR**

   iii. **The market has a large number of players with frequent entry and exits, and the relevant goods/services are highly differentiated or changes rapidly (on condition the information shared does not facilitate price-fixing, bid-rigging, market sharing or output limitation);**
      **OR**

   iv. **In the context where the sharing of commercially sensitive and individual information is needed, only information strictly necessary to implement the joint production is shared and there are safeguards to ringfence commercially sensitive information so that businesses are unable to access information affecting competition between them.**

**Even if the conditions above are not met, it does not necessarily mean that the collaboration will result in appreciable anti-competitive effects. A more detailed assessment could be needed to assess whether the joint production collaboration may be considered to have anti-competitive effects and if so, whether it may nonetheless still qualify for the NEB exclusion.**

## 5. JOINT COMMERCIALISATION

5.1 Joint commercialisation refers to agreements between businesses to cooperate in the selling, distribution, or promotion of their products, including joint bidding in a tender. There is a wide spectrum of collaborations possible under joint commercialisation agreements depending on the specific functions that the collaboration intends to cover. However, collaboration agreements covering more functions are more likely to limit the extent of each party's independent decision-making. For example, where a joint selling agreement requires all competing parties to jointly determine the price of a product, each individual party can no longer independently determine its own price. Generally, competition is more likely to be adversely affected when competitors' independent decision-making is more limited or when their commercial interests become more aligned.

**Joint commercialisation can be pro-competitive**

5.2 Commercialisation agreements can also be benign or even pro-competitive. For example, competitors may collaborate to enter a new market, through joint distribution efforts that may be too costly to invest in individually or through a joint bid for a tender if the businesses are not able to objectively undertake the entire project individually because of a lack of resources, capabilities, or capacities. Smaller competitors that do not have market power may also share common distribution system(s) to reduce costs, which can benefit consumers especially if these competitors continue to compete independently, for example, jointly appointing a third-party logistics provider to reduce transportation costs. Consumers may therefore benefit from such collaborations through increased availability of products, higher quality products, increased choices, or lower prices in the market.

*Joint advertising agreements*

5.3 An agreement to jointly advertise, promote or market products is likely to be less restrictive on competition given that fewer commercial and sensitive aspects will need to be coordinated by the parties. For example, businesses independently producing the same product may collaborate to pool resources together to jointly advertise and market the use of the product in a new market whereas they may not have the incentive or resources to do so independently. However, as the agreement does not touch on the need to jointly determine the prices (or quantity) of the product that each of the parties will sell, the agreement is less restrictive on competition and is unlikely to adversely affect the competition for the product.

*Joint distribution agreements*

5.4 While a distribution agreement generally refers to the vertical agreement between a supplier and a distributor for the latter to distribute, promote and potentially sell products, businesses operating at the same level of the supply chain may also collaborate horizontally through joint distribution. For example, competitors in the same market (e.g., selling the same good or providing the same services) may jointly appoint a third party as a distributor for their products to enter a new market. In such a scenario, each party remains free to set commercial terms such as price and quantity independently with the distributor, although there may be coordination on other terms between the parties to maintain the agreement. However, as will be discussed below in paragraph 5.7, reciprocal distribution agreements may raise significant competition concerns.

**Common competition concerns with joint commercialisation**

5.5 Whether a joint commercialisation agreement is anti-competitive will depend on several factors including its purpose, how restrictive its terms are, and the nature and structure of the market. Generally, less restrictive terms and forms of joint commercialisation agreements will be less likely to result in competition concerns although this will also depend on the specific terms and context of the agreement.

5.6 Commercialisation agreements must not be used to facilitate collusion or harmful collusive outcomes in the market. For instance, restrictions involving price-fixing, bid-rigging, market-sharing, and output limitation are likely to be anti-competitive by their very nature, i.e., restricting competition by object. Thus, agreements such as joint selling, which involves the coordinated setting of prices or which leads to market-sharing or output limitation, will be considered to restrict competition by object.

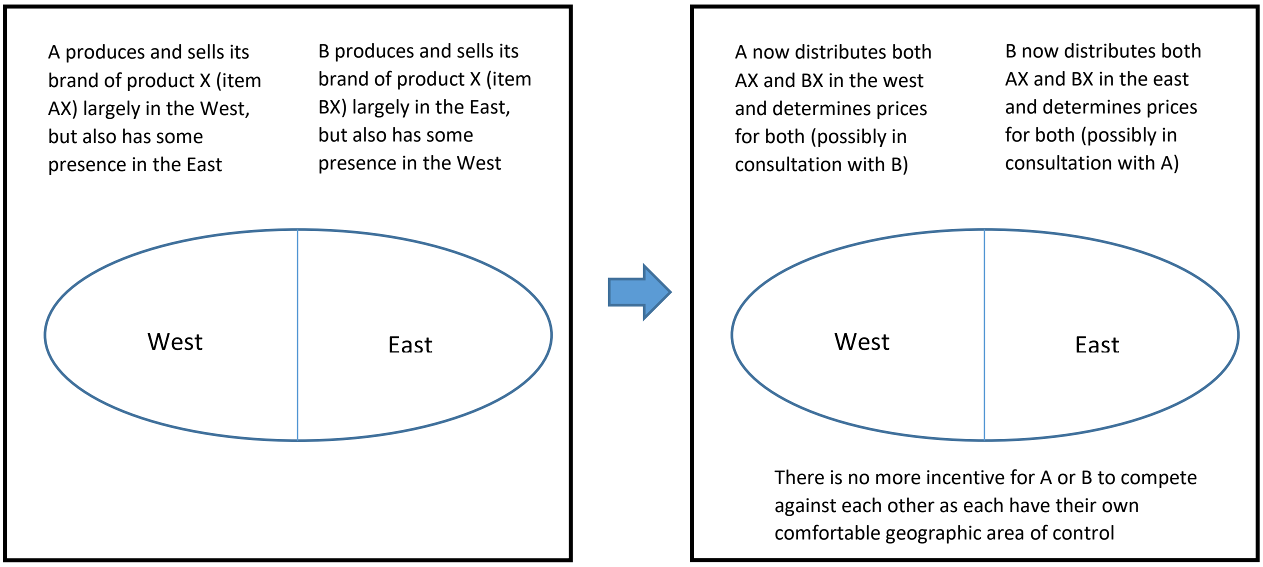
*Reciprocal distribution agreements*

5.7 While distribution agreements, in general, are less likely to raise competition concerns, one specific type of distribution agreement known as “reciprocal distribution agreements” can potentially raise significant concerns. Reciprocal distribution agreements refer to agreements where horizontal competitors agree to distribute each other’s competing products on a reciprocal basis. There is a concern that these competitors may utilise the agreement to allocate different market segments (especially geographically) or fix prices amongst themselves. For example, producers A and B (both producing “product X”) agree to distribute each other’s brand of product X in separate geographic markets, with only A selling both brands of product X in geographic market 1 and only B selling both brands of product X in geographic market 2. A and B would also control or agree on the prices of product X in each geographic market. The reciprocal distribution agreement has therefore resulted in A and B splitting geographic markets 1 and 2 between them (market sharing) as well as fixing the prices (price-fixing) for each market. As a result, A and B no longer compete with each other in these geographical markets.

**Reciprocal Distribution Agreement**

A to distribute and sell all item BX in the west;

B to distribute and sell all item AX in the east.



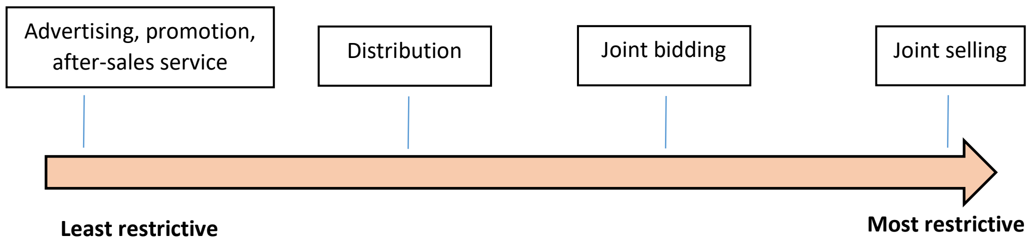

*Joint-selling agreements*

5.8 Another form of commercialisation agreement is the joint-selling agreement, where businesses come together to jointly sell their products or services. In certain circumstances, the parties to the agreement may have to agree on a wide-ranging number of factors, such as price and/or quantity to sell to customers, to operationalise the agreement. Where the joint selling agreement between competitors contains restrictions relating to prices and quantities to sell to customers, it would be considered as restricting competition by object and infringe the section 34 prohibition, unless the agreement can fulfil the criteria for the NEB exclusion.

*Joint-bidding agreements*

5.9 Businesses may also collaborate on joint bids for instance as a consortium in a tender. Generally, where the businesses in the joint bid are not actual or potential competitors to each other for that particular tender contract, CCCS considers that such joint-bidding agreements are unlikely to raise competition concerns. They are not actual or potential competitors for a particular tender contract if, for instance, they are objectively unable to take on the entire project individually. For example, it may be the case that a business may not have the required capacity, manpower, know-how, and/or financial resources required to carry out the entire tender on its own, and therefore it would be necessary to enter into a joint-bidding agreement with another business to put in a bid and complete the tender. In assessing whether a business has the required capability to undertake the tender on its own, factors such as whether the business has successfully completed a tender of a similar scale previously, whether the business has been pre-qualified by the party calling the tender, or a business' existing commitments to current projects may be taken into consideration. It is possible that businesses may not be considered actual or potential competitors for the particular tender contract even if they may be considered competitors generally.

5.10 The continuum of various collaborations and how likely they are to restrict competition is presented below.




## Other assessment factors

*Market power*

5.11 One of the factors that CCCS will look at, in considering the competitive effects of the joint commercialisation agreement, is the market power of the collaborating businesses. One of the factors for analysing market power is the parties' market shares. Generally, an agreement will have no appreciable adverse effect on competition for actual and potential competitors - if the aggregate market share of the parties to the agreement (including other entities belonging to the same group) does not exceed 20%.

5.12 The fact, however, that the market shares of the parties exceed the threshold levels set out in the paragraphs above does not necessarily mean that they have market power or that the agreement would have appreciable adverse effects on competition.

5.13 Apart from market share figures, CCCS will also consider other factors when assessing parties' market power, such as whether the parties face strong competitive constraints from other credible competitors in the relevant market, potential competitors, any barriers to entry or expansion, whether the market is dynamic with low entry and expansion barriers, whether customers are able to switch suppliers, or have countervailing buyer power. Further, market concentration (whether most of the market shares are held by a small number of firms), which generally depends on the size and number of participants in the market, is also an indicator of the competitive pressure in the market. A collaboration that does not increase the level of concentration in a market significantly is less likely to be anti-competitive than one which does, because a significant increase in concentration may reduce competition by increasing the market power of all businesses in the market and increase the scope for competitors to coordinate their market behaviour. For example, if two businesses jointly distribute their products through a third-party distributor, the supply of both businesses' products becomes concentrated through one distributor. If this results in a significant increase in the concentration, customers have fewer channels through which to purchase the products and the businesses and distributor may be able to raise prices.

*Commonality of costs*

5.14 Commonality of costs is a concern if parties already have a high proportion of variable costs in common, or if the increase in the extent of common variable costs following implementation of the agreement is large. In such cases, the common cost structure increases the incentive and ability of businesses to collude as their interests become more aligned.

5.15 To illustrate, suppose we have two firms in the business of selling product X, which is a high-tech product that requires significant marketing and promotion efforts for consumers to understand its benefits. Both firms therefore individually spend significant sums to advertise and raise awareness of product X, making advertising and marketing expenditure a large component of the costs of selling product X. As both firms have an interest to promote product X, they enter into a joint advertising agreement to share resources and research on how best to market product X. The agreement therefore further increases the commonality of a significant proportion of costs between the two firms, as they no longer have to individually decide on the amount of resources to invest in marketing (which is now fixed under the agreement). With a highly similar cost structure, the two firms may find that it is no longer worthwhile to differentiate themselves and to compete with each other, and may engage in collusive behaviour instead.

5.16 Commonality of costs is most likely to increase the risk of a collusive outcome if the parties have market power and if commercialisation costs constitute a large proportion of variable costs related to the products concerned. However, CCCS recognises that joint commercialisation agreements may also reduce costs significantly. Economic efficiencies generated from a reduction in costs as a result of the joint production agreement may outweigh the harm from the increase in common cost structures.

*Information sharing*

5.17 CCCS will also consider the extent to which the joint commercialisation agreement may facilitate anti-competitive information sharing and whether information shared is necessary for the arrangement. Businesses should not leverage a joint commercialisation agreement to share commercially sensitive information that is not required to achieve the objective(s) of the agreement. For example, even though some degree of information sharing is required to implement the agreement, such as the amount of marketing budget available for each business, competitors should not be discussing commercially sensitive information such as prices if it is not necessary for the agreement. Further, commercially sensitive information that is necessary for the agreement would need to be ringfenced to reduce the anti-competitive effects. For more details on information sharing, please refer to section 3 above.

**Summary of how to minimise competition concerns for joint commercialisation agreements**

**In summary, competition concerns are less likely to arise when:**

a. **The collaboration does not facilitate price-fixing, bid-rigging, output limitation and market sharing;**
   **AND**
b. **Collaborating businesses do not have market power, e.g., they have aggregate market shares of less than 20%;**
   **AND**
c. **The collaboration does not result in collaborating businesses having a significant proportion of common costs unless there is significant cost reduction that outweighs the potential harm arising from such common costs;**
   **AND**
d. **The collaboration does not raise concerns in relation to the types of information sharing or contain safeguards to minimise concerns with information sharing as summarised below:**
   i. **Information is publicly available or is not related to price or other important factors that impact how businesses compete**
      **OR**
   ii. **Information is historical, aggregated (especially by independent third parties) and cannot be attributed to individual businesses;**
      **OR**
   iii. **The market has a large number of players with frequent entry and exits, and the relevant goods/services are highly differentiated or changes rapidly (on condition the information shared does not facilitate price-fixing, bid-rigging, market sharing or output limitation);**
      **OR**
   iv. **In the context where sharing of commercially sensitive and individual information is needed, only information strictly necessary to implement the joint commercialisation is shared and there are safeguards to ringfence commercially sensitive information so that businesses are unable to access information affecting competition between them.**

**Even if the conditions above are not met, it does not necessarily mean that the collaboration will result in appreciable anti-competitive effects. A more detailed assessment could be needed to assess whether joint commercialisation collaboration may be considered to have anti-competitive effects and if so, whether it may nonetheless still qualify for the NEB exclusion.**

## 6. JOINT PURCHASING

6.1 Joint purchasing agreements refer to arrangements in which businesses agree to jointly purchase some or all their inputs from one or more suppliers. It will be considered a joint purchasing agreement whether the joint purchasing is done through a formal arrangement, for example through a company formed by a group of businesses (whether jointly controlled or even with minority stakes); or through an informal arrangement, for example collectively purchasing through a buying group, alliance, or trade association. Collective bargaining, where businesses come together to jointly negotiate prices with suppliers for the purpose of joint purchasing, is also considered under the joint purchasing agreement.

**Joint purchasing can be pro-competitive**

6.2 CCCS notes that joint purchasing agreements may be pro-competitive in allowing businesses to combine their purchases together, thereby allowing them greater bargaining power to enjoy efficiencies such as volume discounts, or to share delivery and distribution costs. For instance, a supplier may be unwilling to supply a single buyer because the volume order is too small or will only supply at a higher price. By combining its purchases with other businesses for a larger order, the joint purchasing group will be able to either obtain supplies from the supplier which it may not have able to when purchasing individually, or be able to bargain for a lower price because of greater bargaining power or volume discount.

**Common competition concerns with joint purchasing**

6.3 As with other types of collaborations, joint purchasing agreements must not be used to facilitate harmful collusive outcomes in the market. For instance, restrictions relating to price-fixing i.e., a buyers' cartel[32], bid-rigging, market-sharing, and output limitation agreements are likely to be considered anti-competitive by their very nature, i.e., restricting competition by object. However, the joint determination of purchase prices by buyers in the context of a joint purchasing collaboration that does not amount to a buyers' cartel would not be considered as a restriction by object. Instead, this would be taken into consideration as part of the overall assessment of the effects of the joint purchasing collaboration.

6.4 When CCCS assesses the effects of any joint purchasing agreement, two markets are relevant – the purchasing market and the downstream selling market.

[32] A joint purchasing collaboration may be considered a buyers' cartel if it does not truly concern making joint purchases but is used as a front for collusion, e.g., it is used by businesses for no other purpose than to collude on buying prices.

*Purchasing market*

6.5 The purchasing market refers to the market in which the joint purchasing businesses interact with the suppliers, i.e., the market with which the joint purchasing agreement is directly concerned. For example, if healthcare providers purchase medical equipment through a joint purchasing agreement, the purchasing market would then be for medical equipment. One of the competition concerns that may arise in this market is if the buyers have a significant degree of market power when jointly purchasing or in the extreme, monopsony power[33], and push prices to such depressed levels that suppliers are not able to supply the products without compromising on safety and quality, or suppliers have to reduce their innovation efforts, leading to less product improvement in the future. It would also be a concern if the joint purchasing agreement results in other competing purchasers not being able to purchase from the suppliers, for instance where the joint purchasing agreement results in significantly less supply available for other competing purchasers or if the buying group demands that the suppliers supply them exclusively.

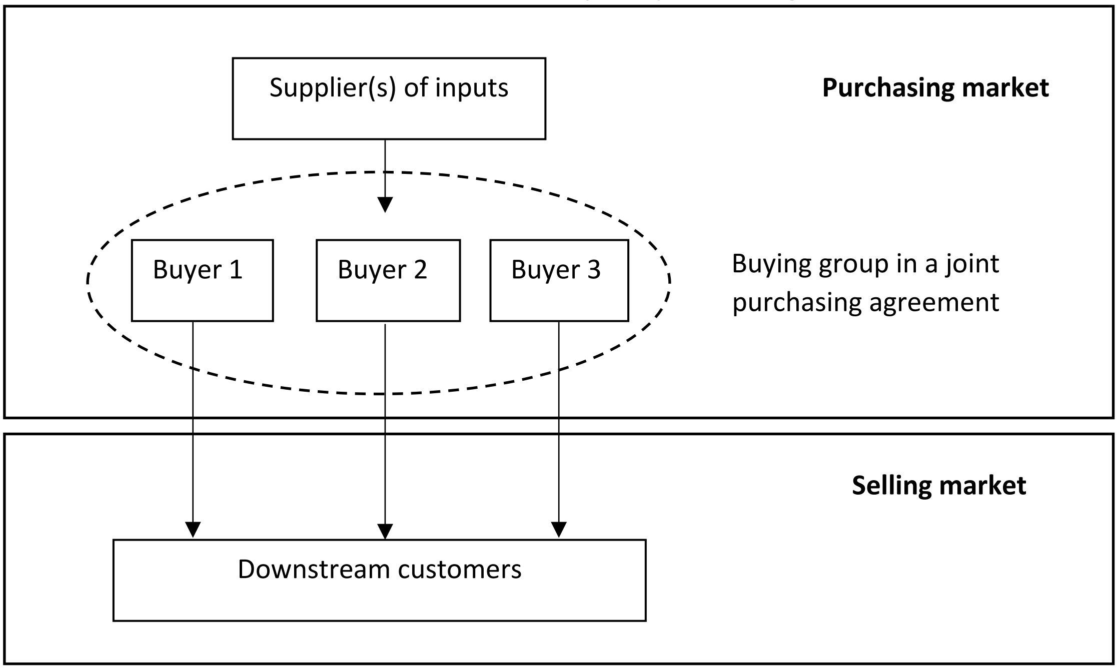
*Selling market*

6.6 The selling market refers to the downstream market in which the joint purchasing businesses are active as sellers, specifically the markets where the joint purchasing businesses are actual or potential competitors. Further to the example provided above, the selling market would then be for the provision of healthcare services. If the joint purchasing businesses have significant market power in the selling market(s), then it is likely that any potential savings from the joint purchasing agreement will not translate into downstream efficiencies such as lower prices or increased output.

6.7 Further, there may be a lack of price competition on the goods and services which are produced from the jointly purchased inputs, especially if the inputs form a significant portion of the costs of the final good or service, or if the joint purchase results in a high commonality of variable costs. Joint purchasing agreements may also give rise to concerns over the independence of price-setting on the part of the businesses involved in the agreement, e.g., if sensitive commercial information such as purchase volume or margins have to be shared as part of the agreement. The sharing of such information, without safeguards, may facilitate coordination on the output price and volume, and in turn would result in an infringement of the Competition Act in the selling markets.

[33] Monopsony power occurs when there is a single or a group of buyers that has the ability to decrease price below competitive levels and results in a corresponding decrease in the output of the supplier.

**The two markets in joint purchasing**




## Assessment factors

*Buyer power / Market power*

6.8 One of the factors that CCCS will look at, in considering the competitive effects of the joint purchasing agreement, is the buyer power and market power of the collaborating businesses. One of the factors for analysing buyer power/market power is the parties' market shares in each of the purchasing and selling markets.

6.9 Generally, an agreement will have no appreciable adverse effect on competition for actual and potential competitors - if the aggregate market share of the parties to the agreement (including other entities belonging to the same group) does not exceed 20%[34].

6.10 It does not necessarily mean that the parties have buyer power/market power or that the joint purchasing agreement will have an appreciable adverse effect if the market shares of the joint purchasing businesses exceed the thresholds highlighted above. CCCS will consider the facts and circumstances of each agreement holistically in assessing the effects of the joint purchasing agreement

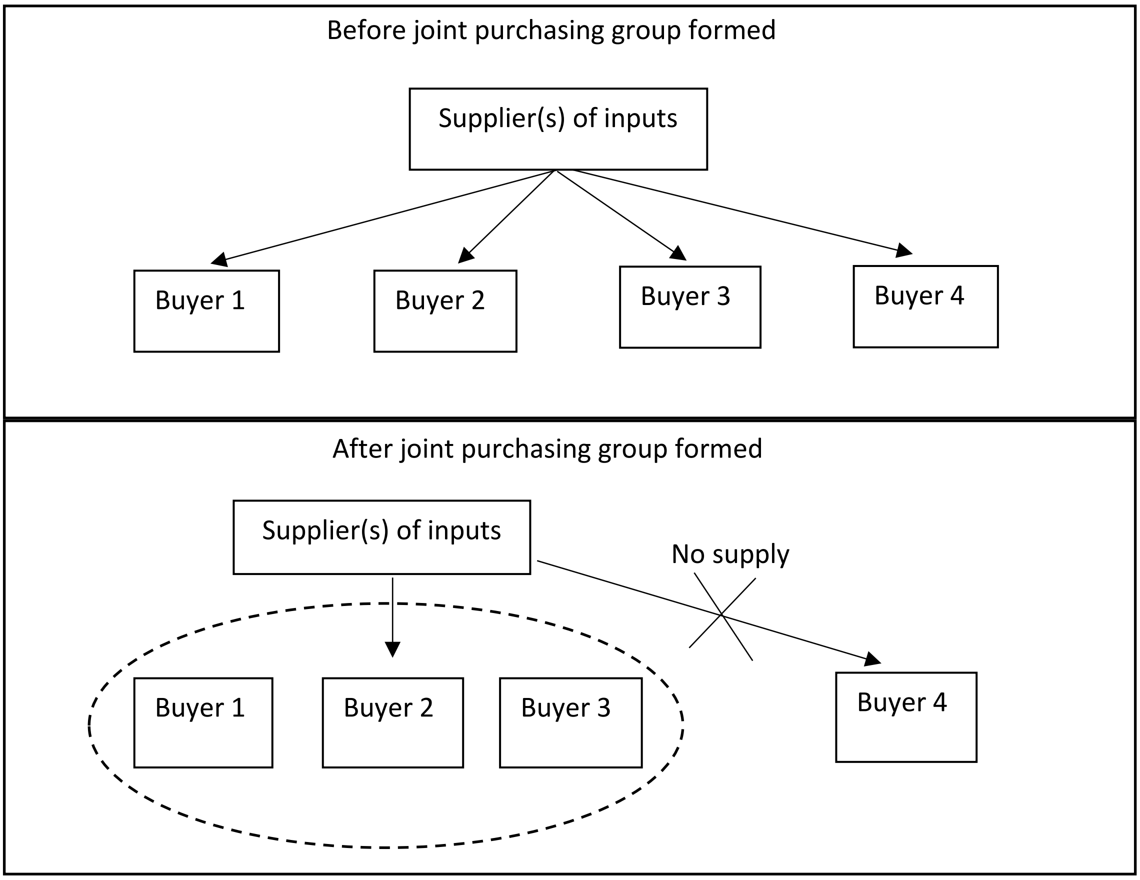
6.11 When assessing the joint purchasers' buyer power in a joint purchasing agreement, CCCS will consider the number of actual or potential upstream suppliers, or more accurately the market power of the suppliers in the purchasing market that can supply the required inputs. If the upstream suppliers have market power, there are

[34] In the case of joint purchasing, the collaborating businesses generally may be considered "competing buyers" in the purchasing market and the 20% indicative threshold usually applies in the purchasing market.

more compelling reasons to argue that a joint purchasing agreement will then balance the bargaining power between the suppliers and purchasers and lead to pro-competitive benefits such as lower prices or reduced transaction, delivery, and distribution costs in respect of the required inputs.

6.12 Upstream suppliers with market power would also be in a better position to counteract any exercise of joint monopsony power by the joint purchasing businesses. However, the fewer the number of upstream suppliers and the more limited the supply in the purchasing market, the higher the likelihood that businesses competing with the joint purchasing businesses in the purchasing market may be foreclosed from suppliers, i.e., businesses competing with the joint purchasers to buy inputs may face difficulties or be unable to obtain the inputs. For example, such foreclosure concerns may arise where there are exclusivity agreements (de facto or otherwise) between joint purchasing businesses and suppliers that would restrict the supply of inputs to competing purchasers. Any barriers to entry that may restrict the entry of potential upstream supplier(s) would also be an important determinant as to whether other competing purchasers may be foreclosed in the purchasing market.

**Example of foreclosure of competing purchaser**



*Commonality of costs*

6.13 CCCS will also consider the proportion of inputs that are jointly purchased by the collaborating businesses. The higher the proportion of each business's costs that the jointly purchased inputs make up, the higher the commonality of costs of the collaborating businesses. Highly similar cost structures between the collaborating businesses increase their incentive and ability to collude in the selling market(s) as their interests become more aligned, especially if the businesses have significant market power in the selling market.

*Information sharing*

6.14 CCCS will also consider the extent to which the joint purchasing agreement may facilitate anti-competitive information sharing and whether information shared is necessary for the arrangement. Businesses should not leverage a joint purchasing agreement to share commercially sensitive information that is not required to achieve the objective(s) of the agreement. For example, even though some consensus on the purchase price is required in collective bargaining, there is no necessity for the collaborating businesses to also discuss their downstream selling prices. Discussing and agreeing on downstream selling prices to customers would be considered a form of price-fixing agreement, which is an infringement of the Competition Act. Certain safeguards such as ringfencing of information may also be needed to minimise adverse competition effects arising from the use of the commercially sensitive and individualised information such as individual business' required inputs to be purchased which may provide indications of capacity or limitations. For example, there would be lesser concerns if there is a neutral third-party or a clean team responsible for collating the data and aggregating the information necessary for the joint purchase. For more details on information sharing, you may refer to section 3 above.

**Summary of how to minimise competition concerns for joint purchasing agreements**

**In summary, competition concerns are less likely to arise when:**

a. **The collaboration does not facilitate price-fixing, bid-rigging, output limitation and market sharing;**
   **AND**
b. **Collaborating businesses (a) do not have buyer power in the purchasing market, e.g. they have aggregate market shares of less than 20% and (b) do not have market power in the selling market(s), e.g. they have aggregate market shares of less than 20%;**
   **AND**
c. **The available supply in the purchasing market is not limited and other competing purchasers are not foreclosed from suppliers;**
   **AND**
d. **The collaboration does not result in collaborating businesses having a significant proportion of common costs unless there is significant cost reduction that outweighs the potential harm arising from such common costs;**
   **AND**
e. **The collaboration does not raise concerns in relation to the types of information sharing or contain safeguards to minimise concerns with information sharing as summarised below:**
   i. **Information is publicly available or is not related to price or other important factors that impact how businesses compete;**
      **OR**
   ii. **Information is historical, aggregated (especially by independent third parties) and cannot be attributed to individual businesses;**
      **OR**
   iii. **The market has a large number of players with frequent entry and exits, and the relevant goods/services are highly differentiated or changes rapidly (on condition the information shared does not facilitate price-fixing, bid-rigging, market sharing or output limitation);**
      **OR**
   iv. **In the context where sharing of commercially sensitive and individual information is needed, only information strictly necessary to implement the joint commercialisation is shared and there are safeguards to ringfence commercially sensitive information so that businesses are unable to access information affecting competition between them.**

**Even if the conditions above are not met, it does not necessarily mean that the collaboration will result in appreciable anti-competitive effects. A more detailed assessment could be needed to assess whether the joint purchasing collaboration may be considered to have anti-competitive effects and if so, whether it may still nonetheless qualify for the NEB exclusion.**

## 7. RESEARCH & DEVELOPMENT

7.1 R&D agreements can take many forms. It may refer to R&D collaborations between businesses on an existing product, technology (such as know-how or intellectual property rights which are marketed separately from the product), or innovation (R&D efforts for entirely new products with new demands). It also includes the outsourcing of R&D activities to third parties.

7.2 A collaboration may also include further commercial activities such as joint production or marketing efforts post-R&D. The different relevant sections of the guidance note as set out in sections 4 and 5 above would apply to these other activities.

**R&D agreements can be pro-competitive**

7.3 R&D collaborations can lead to efficiencies such as newer and/or improvements in products or technologies, or quicker developments as a result of the sharing of technical information, know-how, resources, and complementary skill sets. For example, a small business may have the necessary know-how to develop a new drug product but lacks the necessary resources to conduct experiments and trials on a large enough scale to enable the drug to be patented and approved to be marketed to the public. If the business collaborated with another company that has the necessary resources but does not currently produce or have the ability to produce similar drugs in the same category, the drug may have a higher chance of being approved and brought to market, and possibly within a shorter period of time. This would be a pro-competitive outcome. In such a scenario, there is no concern about any loss in competition as both businesses are not considered to be actual or potential competitors.

7.4 The question of whether the businesses are considered actual or potential competitors hinges on objective factors such as whether the businesses were in the midst of independent R&D on the same product or technology and whether the businesses have the separate and necessary capabilities to conduct the full R&D process in its entirety independently. The fact that businesses are currently competing in the R&D of a product or technology does not mean that they cannot collaborate on R&D on other products or technologies in which either one or both businesses do not compete in. That said, for businesses to be considered neither actual nor potential competitors, any R&D collaboration has to be limited to the non-competing product or technology and must not extend to other areas in which the businesses currently compete in.

7.5 Even where the businesses are competitors, R&D collaborations can still lead to pro-competitive outcomes, e.g., the sharing of knowledge may result in better quality products for both businesses, and may disseminate knowledge that in turn spurs greater innovation.

**Common competition concerns with R&D**

*Existing product or technology*

7.6 Competition concerns may potentially arise in an R&D collaboration when the businesses are actual or potential competitors in the market for an existing product or technology, or if the R&D removes a potential maverick[35] from the market. This is because where the businesses are competitors on existing products or technologies, collaborations between the businesses may reduce their incentives to compete and have negative effects on prices, output, quality, and/or variety.

*New product or technology*

7.7 For R&D collaborations on new products or technologies, the competition impact is likely to be on the level of innovation instead of on existing products or technologies. Competition concerns may arise if the collaboration reduces the level of competition to innovate, e.g., by reducing the number of competing innovators significantly or by removing a potential maverick, which will have an impact on the quality and variety of new future products or technologies and on the speed of innovation.

**Assessment factors**

7.8 An R&D collaboration between businesses that are neither actual nor potential competitors in the relevant R&D market(s) is unlikely to be anti-competitive. Some of the other factors CCCS will consider in assessing R&D collaborations are set out below.

*Existing product or technology*

7.9 Given that an R&D collaboration between competing businesses that is aimed at developing improvements to existing products or technologies may impact competition in these markets, CCCS will consider if the collaborating businesses have market power in the respective markets in the first instance. R&D collaborations between competing businesses in relation to an existing product or technology will only potentially raise competition concerns if the businesses have some market power in the existing product or technology market.

7.10 One of the factors for analysing the market power of the parties is their market shares. Generally, an agreement (between actual or potential competitors) will have

[35] Mavericks can be defined as businesses which may exert a disproportionate competitive effect in markets where they compete for example if it threatens to disrupt markets with a new technology or business model or if it has otherwise resisted prevailing industry norms in terms of how it competes.

no appreciable adverse effect on competition if the aggregate market share of the parties to the agreement (including other entities belonging to the same group) does not exceed 20%.

7.11 The fact, however, that the market shares of the parties exceed the threshold levels set out in the paragraph above does not necessarily mean that the parties have market power or that the agreement would have appreciable adverse effects on competition. To assess parties' market power, besides market share figures, CCCS will also take into account other factors such as whether the parties face strong competitive constraints from other credible competitors in the relevant market, potential competitors including any potential mavericks, any barriers to entry or expansion, whether the market is dynamic with low entry and expansion barriers, whether customers are able to switch suppliers or have countervailing buyer power.

*New product or technology*

7.12 For R&D collaborations which are aimed at developing entirely new products or technologies, CCCS would be concerned about the impact the collaboration has on the innovation efforts for these new product or technology markets. Therefore, CCCS will consider the number of current competing R&D efforts within the same or similar relevant product or technology market. If, for example, the R&D collaboration brings together the two frontrunners in the current race to produce a new product, with few or no viable alternative R&D efforts undertaken by competitors (competitors in this context refer to competing developers of the new products or technologies rather than competitors for existing products or technologies), there may be competition concerns in terms of the impact on prices, output, quality, or variety.[36]

[36] If there is no viable alternative R&D, the collaborating businesses may also become sole controllers of a new product/technology. If the product/technology is an essential input for other products, they can gain the ability to foreclose competition by denying access to the essential input.

**Summary of how to minimise competition concerns for R&D collaborations**

**In summary, competition concerns are less likely to arise when:**

a. **The collaboration is between businesses that are not actual or potential competitors or does not remove a maverick competitor from the market;**
   **OR**
b. **Where the collaborating businesses are actual or potential competitors for existing products or technologies, they do not have market power, e.g. their aggregate market share is less than 20%;**
   **OR**
c. **Where the collaboration is on new products or technologies, there are multiple viable, on-going alternative R&D projects undertaken by competing innovators that can produce close substitutes to the collaborators' resulting product or technology.**

**Even if the conditions above are not met, it does not necessarily mean that the collaboration will result in appreciable anti-competitive effects. A more detailed assessment could be needed to assess whether the R&D collaboration may be considered to have anti-competitive effects and if so, whether it may nonetheless still qualify for the NEB exclusion.**

## 8. STANDARDS DEVELOPMENT

8.1 Standards are a set of specifications or procedures that define technical or quality requirements that current or future products, production processes, services, or methods may comply with. They often cover grades, sizes, product, or technical specifications and are especially important in areas where performance or quality assessments, as well as compatibility and interoperability with other products or systems are required.

8.2 Standards are usually established by standard-setting organisations. In Singapore, the national standard development process is largely overseen by Enterprise Singapore ("ESG"), the national standards body with the support of the Singapore Standards Council. ESG has put in place an established process to ensure transparency, openness, impartiality, consensus, market relevance, and coherence in the standard-setting process. [37] However, standards development or standardisation work can also be undertaken on an industry-level by individual businesses and trade associations. These different standard-setting entities may

[37] These are based on the principles set by the World Trade Organisation for the development of international standards.

have different levels of sophistication/awareness when it comes to minimising competition concerns, and some businesses may be unaware of the potential competition issues that could arise in standard-setting.

8.3 This guidance note will not go in-depth into the specifics of developing standards and the standard-setting process. Instead, the focus will be on the applicability of the Competition Act to the various processes involved in the development of standards and this guidance will help to set out some considerations that individual businesses, trade associations, or standard-setting entities can consider in standard-setting.

**Standards can be pro-competitive**

8.4 Standardisation or standards development helps to reduce information asymmetry and fosters trust in the market. Standardisation frequently benefits businesses and consumers, by enabling businesses to lower costs, facilitate innovation and production, improve quality, and promote technical progress in the market. Customers also benefit from higher quality products, reduced uncertainty, and improved choices.

**Common competition concerns with standardisation**

8.5 There are three main potential areas of concern with standardisation:

<u>Foreclosure of innovation</u> – Standards may limit technical development and innovation when competing technologies are excluded during the standard-setting process. As different technologies compete to be included in the standard, competing technologies may be excluded from the market when the standard is chosen. Market expansion is thus hampered for these competing technologies, especially if the businesses developing these competing innovations were unjustifiably excluded during the standard-setting process. To prevent such anti-competitive practices, standards development should focus on performance-based or outcome-based requirements which will minimise the use of specific technologies or commercial products and schemes in the standards.

<u>Exclusion or discrimination on use of the standards</u> – After the establishment of a standard, certain businesses may be prevented from obtaining licences or effective access to the standardised technology. This can take the form of partial or complete refusals to license, or licensing access only on prohibitive or discriminatory terms. For example, a trade association may set industry standards that only its members can meet, thereby preventing non-members from competing with its members. The organisations holding the rights to intellectual property, e.g., patents, making up the standard could also refuse to license or impose conditions such as excessive royalty fees, thereby effectively preventing access to the standard. This can be especially

harmful to competition if the standards represent an important entry barrier to the market(s).[38]

Elimination or reduction of competition – Businesses may engage in anti-competitive discussions, e.g., agree to decrease quality collectively on the pretext of meeting standards, during the standard-setting process, thereby reducing or eliminating competition in the industry or markets concerned, resulting in collusive outcomes.[39]

8.6 In view of the above, businesses or organisations interested in pursuing standardisation should be mindful to avoid any unfair practices during the standard-setting process. Unnecessary restrictions in the licensing terms to standardised technologies or access to the standards should also be avoided. Competition concerns are less likely to arise when standards (through licensing/licences or otherwise) are established fairly through a transparent process and access to the standards are fairly given to interested parties.

**Assessment factors**

8.7 CCCS will generally assess standardisation processes based on their effect on competition (unless the conduct in question is clearly harmful to competition, e.g., agreements by competitors to fix their selling prices during the standardisation process). CCCS will assess if the standards were established objectively, and whether the standards are used to exclude or discriminate unfairly against certain businesses, or if access is granted fairly.

Whether the standards were established objectively – Standards should be set objectively, where all stakeholders that are likely to be affected by the eventual, established standards have the unrestricted right to participate or provide feedback during the standard-setting process. All standards should preferably also be established by consensus. This will help to ensure that the standard-setting process is clear, transparent, and the standard is established objectively and does not discriminate against any business or stakeholder. Standard-setting entities need to work towards having relevant stakeholders be involved in the development of standards and that consensus is preferably reached before the standards are published. As an example, to ensure transparency, when a standards project is initiated, standard-setting entities may announce the initiation of such a project so that it becomes transparent to the public, and the public will be given the opportunity to provide comments as well as participate in its development. This is a practice implemented by ESG in the development of national standards.

[38] More information on CCCS's consideration of intellectual property rights can be found in the *CCCS Guidelines on the Treatment of IP Rights*.

[39] If the public or participants of the standards development work encounter anti-competitive discussions or practices during the development of standards, they are encouraged to raise such concerns to CCCS.

Whether access to the standard (through licensing/licences or otherwise) is provided fairly – After a standard is established, licences or access to the standards should be provided fairly to interested parties. This will help to ensure that the standards are accessible and not used to discriminate or exclude certain interested businesses. For example, where there are underlying patents essential to a standard, having the patent holders provide fair, reasonable, and non-discriminatory ("FRAND") commitments to the standard-setting entities before their patents can be considered for the standard would allow fair access and licences to the standard and is more likely to mitigate competition concerns relating to refusal to license or the imposition of unreasonable fees. There should not be any restrictions for members to develop alternative standards or products, which help to provide room for competition.

Availability of alternatives in the market – Apart from the established standard, the availability of alternatives in the market to the standard is also important in assessing whether competition concerns may arise. For industries where existing competition to the standards is present, competition concerns are less likely to surface.

## 9. STANDARD TERMS AND CONDITIONS IN CONTRACTS

9.1 Standard terms and conditions ("standard terms") are used in certain industries where the sector regulator or trade association attempts to improve standards in the industry. Standard terms of sale or purchase can be voluntary (i.e., optional for a business or member to adopt) and are separate from licensing requirements, which are compulsory. When standard terms are widely used within an industry, the conditions of purchase or sale in the industry may become so aligned that there are few alternatives available and less choice.

9.2 For the purposes of this guidance, only standard terms shared among competitors that establish the conditions of sale and purchase of goods and services between them and their customers are covered. Standard terms that are generated for a business's own internal use are not covered as they do not relate to competition between businesses.

### Standard terms and conditions can be pro-competitive

9.3 Standard terms can benefit both businesses and consumers. Standard terms may help to lower business costs for businesses, and can also help customers compare across competing offers more easily, improve efficiency in the sales process and facilitate switching.

### Common competition concerns with standard terms

9.4 Standard terms generally do not limit the innovation of products or product quality and variety. However, competition concerns may still arise under certain conditions:

Prescriptive standard terms that define the scope of a product or service become industry norm – When standard terms that define the scope of a product or service are established as the industry norm, the incentive to deviate and offer a more competitive and differentiated product offering may be reduced. For example, if standard terms for a particular service is so prescriptive that it must consist of only items A, B, and C and nothing else, there may no longer be an incentive for service providers to compete by offering other options such as sub-sets of the items at a cheaper price, or by including item D into the scope at a significant discount.

Affecting price competition – In circumstances where standard terms relate to or prescribe prices, price competition will be affected. This is especially so when a majority of the industry adopts the prices or pricing components under the standard terms, reducing incentives for businesses in the industry to compete in terms of prices. For example, if the industry standard for a certain surcharge is stated at $X, or if the standard terms provide that a surcharge is to be charged, there may not be any incentive for firms to compete by offering their products or services without the surcharge or with a lower-priced surcharge (i.e., essentially undercutting other firms that charge the standard surcharge amount).

In view of the above, businesses or organisations interested in establishing standard terms in their industry should be mindful not to have overly extensive or prescriptive benchmarks, or standard price or non-price terms that facilitate price-fixing, bid-rigging, market sharing, or output limitation. Businesses should not be compelled to adopt the standard terms and should retain the ability to come up with their own terms if they wish to. Competition concerns are less likely to arise when standards terms are concise and relate specifically to their objectives in mind and businesses are not compelled to adhere to them.

**Assessment factors**

9.5 CCCS will assess if the standard terms are unnecessarily prescriptive and/or extensive, the level of existing competition in the market, and the proportion of the market adopting the standard terms.

Whether there are overly prescriptive terms or terms relating to important factors of competition – While standard terms seek to establish best practices in the industry that businesses can look to adopt, they may be overly prescriptive and establish benchmarks on important metrics of competition such as price, output or the scope of product including ancillary terms such as cancellation charges, after-sale service, warranty, and refund policies. If these metrics are established as binding standard terms, individual competitors will have little incentive to deviate from the standard terms and conditions, eliminating competition in that respect. This may be an infringement of the Competition Act. For example, if binding standard terms are established in a service industry on the scope of work, service providers will not have any incentive to innovate and compete to provide value-adding services other than those already included in the standard terms. Customers may therefore face diminished competition and choices in the market. Further, standard terms that facilitate price-fixing, bid-rigging, market sharing, or output limitation would infringe the section 34 prohibition.

Existing competition to the standard terms – In industries where there are credible alternatives to the established terms, competition concerns are less likely to surface given that firms in the industries retain the choice to not follow the standard terms. Implicitly, this assumes that any established standard terms are non-binding and competitors remain free to adopt or adapt the standard~~s~~ terms according to their preference.

How extensive the standard terms are – Standard terms can cover a large proportion of the market in two ways. Firstly, they can include most of the terms relating to a product offering, leaving little room for competitors to innovate or compete in other ways. Secondly, they can be so well-established in the market that most businesses are using the standard terms. This can lead to a scenario whereby firms have no incentive to deviate from the standard, impeding innovation and competition. Furthermore, the two are not mutually exclusive, meaning to say that standard terms can be so entrenched in a market that it covers most of the terms relating to a product offering and is used by most of the industry.

## 10. ADDITIONAL INFORMATION FOR TRADE ASSOCIATIONS

10.1 CCCS notes that the section 34 prohibition also applies to decisions and guidelines by trade associations. CCCS recognises the important role that trade associations play in advancing the interests of its members, the industry, and the economy. For example, trade associations may often be the link between government policymakers and the industry in surfacing issues encountered by their members, or to provide suggestions and feedback to proposed policies.

10.2 Trade associations often drive collaborations to enhance the efficiency of their members and the industry, and may spearhead standardisation efforts on products and technologies or dissemination of good industry practices to raise quality and ensure inter-operability. Trade associations may also engage in the preparation of industry studies or the dissemination of aggregate market information to help businesses with performance benchmarking or with their discussions with government policymakers.

10.3 In fact, trade associations partners CCCS to educate their members about competition law. CCCS recognises that trade association activities in general, such as those described above, are important for the continuous development of various industries and the economy. The issuance of this business collaboration guidance note is not meant to curtail such activities. On the contrary, this guidance note is meant to provide greater clarity and assurance on how to collaborate so that businesses and trade associations can be more confident that their collaborations comply with the Competition Act.

10.4 When supporting collaborations, trade associations can take reference from the information set out under the various types of collaborations described in this guidance note. The information highlights the conditions under which competition concerns are less likely, and what factors association members can look out for when considering collaborations. CCCS further highlights that supporting activities that trade associations carry out to help their members' collaborations, such as discussing collaborations with government agencies, searching for possible investors, getting a consultant to carry out feasibility studies, are unlikely to raise competition concerns if information sharing, if any, follows the guidance in section 3 above. As a further safeguard to avoid instances where members unknowingly discuss topics that infringe the competition law at association meetings, associations are encouraged to establish a clear and specific agenda before the meeting. Trade associations may also wish to remind their members ahead of and at the meetings to comply with the Competition Act. It may also be useful for trade associations to keep records of the minutes of meetings so that discussions during the meetings, including any objections, are properly documented.

## 11. SEEKING GUIDANCE OR DECISION FROM THE CCCS ON COLLABORATIONS

11.1 The guidance set out for the different types of collaborations is meant for businesses to self-assess if the collaborations will raise competition concerns. The assessment factors and the conditions under which competition concerns are less likely are highlighted in this guidance note to provide businesses greater confidence to collaborate in compliance with the Competition Act.

11.2 Alternatively, if businesses remain in doubt as to whether a specific collaboration complies with the Competition Act, they may wish to notify the collaboration to CCCS for guidance or decision as to whether it would be likely to infringe or has infringed the section 34 prohibition respectively. Please note that there is no legal requirement for businesses to notify their collaborations to CCCS. It is for the businesses to self-assess and decide whether to make a notification for guidance or decision[40] to CCCS. Businesses in doubt as to whether their collaborations comply with the Competition Act can seek independent legal advice.

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[40] Notifications for a guidance or decision to CCCS incur a notification fee. More details of the notification process can be found on CCCS's website as well as the *CCCS Guidelines on Filing Notifications for Guidance or Decision with respect to the Section 34 Prohibition and Section 47 Prohibition 2016*.

## 12. CROSS-BORDER COLLABORATIONS

12.1 Businesses should note that even where the collaborations are cross-border where the agreement is made outside Singapore or any party to the agreement is outside Singapore, the Competition Act could still be applicable where competition in a market in Singapore is affected. The section 34 prohibition applies to any agreement or collaboration which has as its object or effect the prevention, restriction or distortion of competition within Singapore.

12.2 For example, a joint production collaboration between two businesses for products that are to be manufactured overseas and sold to various countries including Singapore may have an effect on competition in Singapore, and therefore need to be evaluated against the Competition Act.

12.3 Conversely, local collaborations could also be subjected to competition law in affected overseas markets, including within the Association of Southeast Asian Nations ("ASEAN") countries. The website [41] of the ASEAN Experts Group on Competition ("AEGC") contains useful information on the competition law and regime in the various ASEAN countries. A particularly useful resource would be the Handbook on Competition Policy and Law in ASEAN for Business 2019, a copy of which can be obtained from AEGC's website.

## 13. CONCLUSION

13.1 This guidance note sets out how CCCS assesses seven common types of collaborations, and makes clear the conditions under which competition concerns are less likely to arise. It seeks to serve as a reference to provide businesses and trade associations with the information they need to collaborate with greater confidence.

13.2 However, as noted above, if businesses and trade associations require some form of legal certainty, there is the avenue of coming to CCCS for guidance or decision or to seek independent legal advice.

13.3 For easy reference, the flowchart in Annex A below sets out, in summary, the various steps for businesses to consider in structuring or assessing their collaborations.

[41] www.asean-competition.org/aegc

## Annex A: Flowchart