

# FILING NOTIFICATIONS FOR GUIDANCE OR DECISION WITH RESPECT TO THE SECTION 34 PROHIBITION AND SECTION 47 PROHIBITION 2016

1	INTRODUCTION	181
2	HOW AN APPLICATION FOR GUIDANCE OR FOR A DECISION IS TO BE MADE	181
3	OTHER MATTERS WHICH APPLICANTS SHOULD NOTE	183
4	INSTRUCTIONS ON HOW TO COMPLETE FORM 1	185
5	INSTRUCTIONS ON HOW TO COMPLETE FORM 2	186
6	APPENDIX A: FORM 1	188
7	APPENDIX B: FORM 2	199

# 1

## INTRODUCTION

- 1.1 Section 34 of the Competition Act (Chapter 50B) (“the Act”) prohibits agreements, decisions by associations of undertakings and concerted practices which have the object or effect of appreciably preventing, restricting or distorting competition in Singapore. Section 47 of the Act prohibits conduct by one or more undertakings amounting to the abuse of a dominant position in any market in Singapore.
- 1.2 An undertaking may apply to the Competition and Consumer Commission of Singapore (“CCCS”) for:
  - guidance as to whether, in CCCS’s view,
    - an agreement (note that section 34(4) of the Act extends the term “agreement”, with the necessary modifications, to encompass a decision by an association of undertakings as well as a concerted practice) to which the undertaking is a party is likely to infringe the section 34 prohibition or whether the agreement is likely to fall under a block exemption (see section 43 of the Act) or is excluded; and/or
    - whether conduct by the undertaking is likely to infringe the section 47 prohibition (see section 50 of the Act); or
  - a decision as to whether
    - the agreement has infringed the section 34 prohibition (see section 44 of the Act); and/or
    - the conduct has infringed the section 47 prohibition (see section 51 of the Act).
- 1.3 CCCS has issued these guidelines to assist undertakings seeking to notify an agreement or conduct to CCCS for guidance or for a decision.
- 1.4 These guidelines are not a substitute for the Act, the regulations and orders. They may be revised should the need arise. The examples in these guidelines are for illustration. They are not exhaustive, and do not set a limit on the investigation and enforcement activities of CCCS. In applying these guidelines, the facts and circumstances of each case will be considered. Persons in doubt about how they and their commercial activities may be affected by the Act may wish to seek legal advice.
- 1.5 Undertakings are not required to notify their agreements or conduct and apply for guidance or a decision. However, they may do so if they have serious concerns as to whether they are infringing the Act’s prohibitions.
- 1.6 CCCS wishes to inform undertakings that they should not notify agreements or conduct that do not raise any real concerns of possible infringement of the Act. Where applications of such nature are received, CCCS may exercise its discretion to not give guidance or make a decision. Where this discretion is exercised, CCCS will notify the Applicant(s) that CCCS has determined the application by exercising its discretion not to give guidance or a decision.
- 1.7 Notification cannot be made in respect of prospective agreements (i.e. agreements where the parties have yet to enter into the agreement) or prospective conduct.

# 2

## HOW AN APPLICATION FOR GUIDANCE OR FOR A DECISION IS TO BE MADE

- 2.1 Applications for guidance or decision must be made by submitting Form 1 to CCCS. Form 1 requires information relating to, amongst other things:
  - the purpose of the application;
  - the Applicant(s) and the other parties to the agreement or conduct;
  - the relevant product and geographic markets; and
  - details of the agreement or conduct.

Form 1 is found in **Appendix A** to these guidelines.

## FILING NOTIFICATIONS FOR GUIDANCE OR DECISION WITH RESPECT TO THE SECTION 34 PROHIBITION AND SECTION 47 PROHIBITION 2016

- 2.2 Before completing Form 1, Applicant(s) should refer to these guidelines as well as to the various Regulations made under the Act ("the Regulations"). They may also wish to consider the self-assessment criteria in Form 1 and conduct a self-assessment to ascertain if their application is necessary. Applicant(s) may wish to seek legal advice if they consider it helpful. An application for guidance (under sections 43 or 50 of the Act) or for a decision (under sections 44 or 51 of the Act) is deemed as having been made only after the requirements in connection with the filing of Form 1 are met. Fees are payable, in accordance with Regulation 9 of the Competition (Notification) Regulations 2007. The quantum of fees payable to CCCS are specified in the Second Schedule of the Competition (Fees) Regulations 2007.
- 2.3 Where the information provided by the Applicant(s) in Form 1 is incomplete, CCCS will notify the Applicant(s) after receipt of the Form and specify a time frame for the Applicant(s) to provide CCCS with the outstanding information. If the Applicant(s) fails to do so within this time frame (or within any extensions granted), then the application will be deemed as not having been made. In addition, with regard to the section 34 prohibition, the provisional immunity referred to in sections 43(4) and 44(3) of the Act will not apply. For the avoidance of doubt, the provisional immunity begins only on the date on which the application is made (i.e. *CCCS acknowledges receipt of the application and deems it complete*). Where the outstanding information is submitted, the application shall be deemed to be made on the date on which CCCS receives all such information.
- 2.4 CCCS reserves the right to require the submission of Form 2, including relevant supporting documentation during the course of its assessment of a notification for guidance or decision. Where CCCS requires the Applicant(s) to submit Form 2, it will endeavour to notify the Applicant(s) of this requirement within two (2) months after receiving Form 1. CCCS will specify a time frame for the submission of Form 2 to CCCS.
- 2.5 Where the Applicant(s) fails to submit Form 2 within the specified time frame (or within any extensions granted), or the substantive information provided by the Applicant(s) in Form 2 is incomplete and the Applicant(s) fails to provide the outstanding information within the time frame specified by CCCS (or within any extensions granted), then in the case of an application with regard to the section 34 prohibition, the application will be deemed as not having been made, whereupon the provisional immunity referred to in sections 43(4) and 44(3) of the Act will not apply. In the case of an application with regard to the section 47 prohibition, CCCS may determine the application by not giving guidance or a decision.
- 2.6 Form 2 requires information relating to, amongst other things:
- the position of the relevant undertakings in the relevant product and geographic market(s); and
  - market entry and potential competition in the relevant product and geographic market(s).
- Form 2 is found in **Appendix B** to these guidelines.
- 2.7 Applicant(s) should note that where information required in Form 2 is submitted as part of Form 1, CCCS reserves the right to require the Applicant(s) to submit Form 2, notwithstanding that such information has already been submitted but is above that required in Form 1.
- 2.8 Applicant(s) submitting Form 1 may, if it so chooses, also submit Form 2 to CCCS at the same time. This will speed up the process in more complex cases.
- 2.9 CCCS may within two (2) months from the date of filing of Form 2 by the Applicant(s), give notice to the Applicant(s): (a) requiring the Applicant(s) to pay the appropriate further fee; and (b) specifying the time limit as CCCS considers appropriate for such further fee to be paid to CCCS.
- 2.10 In determining whether the further fee ought to be imposed, CCCS will, amongst other things, consider (i) the complexity of the case including but not limited to the time spent and resources allocated; and (ii) whether one or more of the Applicant(s) are SMEs.
- 2.11 None of the factors are determinative and CCCS will assess the entire facts and circumstances of each case in exercising its discretion on the imposition of the further fee. Applicant(s) should refer to the Second Schedule of the Competition (Fees) Regulations 2007 for the further fees payable for notifications for guidance or decision under the Act.

## FILING NOTIFICATIONS FOR GUIDANCE OR DECISION WITH RESPECT TO THE SECTION 34 PROHIBITION AND SECTION 47 PROHIBITION 2016

- 2.12 CCCS may refuse to accept an application if it is incomplete, if it is not accompanied by the relevant supporting documents, if it is not substantially in the prescribed form or if it does not comply with any requirement under the Act or the Regulations. The receipt of an application by CCCS does not in any way indicate that the application is correct or complete.
- 2.13 In some cases, it may be possible for CCCS to dispense with the obligation to submit any particular information specified in Forms 1 or 2 where CCCS considers that such information is unnecessary for examining the agreement or consideration of the conduct in question.
- 2.14 Conversely, CCCS may request additional information that is not required under Forms 1 or 2, for the purpose of considering the notification. In this event, CCCS may require the Applicant(s) to furnish the additional information within such time frame as CCCS considers appropriate. If the Applicant(s) fails to provide CCCS with the information within the time frame (or within any extensions granted), CCCS may determine the application by not giving guidance or a decision, as the case may be.
- 2.15 The Applicant(s) is required to take all reasonable steps to notify all other parties to the agreement or conduct (as the case may be) that an application has been made and state whether it is for guidance or decision. The written notification to these parties must be given within 7 working days from the date on which the application is lodged with CCCS. If the Applicant(s) is unable, despite the exercise of due diligence, to contact the other parties to the agreement or conduct, CCCS may require him to publish the notice in such newspapers as it may specify.
- 2.16 Any confidential information in the Form or documents must be clearly identified. A confidential as well as a non-confidential version of Form 1 (and Form 2, where provided) and its supporting documents, with confidential information removed and replaced by square brackets containing the word "CONFIDENTIAL"<sup>1</sup> should be submitted to CCCS. A separate annex should accompany the non-confidential version of each Form or supporting document, identifying the confidential information and furnishing reasons as to why the information should be treated as confidential. A non-confidential version (and the accompanying annex) need not be filed if the Applicant(s) is of the view that the relevant Form or document can be posted on CCCS's website in its entirety.
- 2.17 Three copies of the confidential version of Form 1 (and Form 2, where provided) and accompanying documents, and one copy of the non-confidential version of Form 1 (and Form 2, where applicable) and accompanying documents, as well as soft copies of both the confidential and non-confidential versions of Form 1 (and Form 2, where applicable) in Microsoft Word format are to be submitted to CCCS. Supporting documents accompanying Forms 1 and 2 must, where possible, also be in a format which allows for cutting and pasting of text.
- 2.18 The Applicant(s) may get his lawyers to file the application on his behalf, subject to the inclusion of a letter of authorisation signed by the Applicant(s). However, the declaration in Form 1 (and Form 2, where provided) must be signed by the Applicant(s) and by the Applicant's lawyers or joint representative (where one has been appointed).

## 3 OTHER MATTERS WHICH APPLICANTS SHOULD NOTE

### Applicant's Obligations as to Accuracy of Information

- 3.1 The Applicant(s) must conclude Form 1 (and Form 2, where provided) with the declaration that the information submitted is correct to the best of the knowledge and belief of the person signing the declaration, and that all estimates are best estimates based on the underlying facts. The declaration must be signed by all the Applicants as well as by the lawyers for all the Applicants. Unsigned applications are invalid.
- 3.2 The Applicant(s) have a continuing obligation to inform CCCS of any material changes in the information contained in the application which may occur after the application has been made.

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<sup>1</sup> For example, if a document accompanying Forms 1 or 2 contains the statement "the turnover of the Applicant is 1 billion dollars" and the turnover figure is confidential, the confidential portion should be blanked out from the non-confidential version of the document and square brackets containing the word "CONFIDENTIAL" inserted over the blanked out portion. The non-confidential version of the document will therefore read: "the turnover of the Applicant is [CONFIDENTIAL] dollars".

## Removal of Immunity

- 3.3 Applicant(s) are also reminded that any immunity conferred by guidance of the nature specified in section 45(1) or 52(1) of the Act may be removed if:
- CCCS has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance;
  - CCCS has reasonable grounds for suspecting that the information on which it based its guidance was incomplete, false or misleading in a material particular;
  - a complaint about the agreement or conduct has been made to CCCS (in the case of agreements, the complaint is to come from a person who is not a party to the agreement); or
  - (in the case of agreements) one of the parties to the agreement applies to CCCS for a decision in respect of the agreement, under section 44 of the Act.
- 3.4 Similarly, any immunity conferred by a decision of the nature specified in sections 46(1) or 53(1) of the Act may be removed if:
- CCCS has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
  - CCCS has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.

## Confidentiality & Secrecy

- 3.5 The non-confidential versions of Forms 1 and 2 and their supporting documents, or any information within them, may be shared with third parties, whether by publishing on the CCCS website for public viewing or through other means.
- 3.6 CCCS may seek further clarification as to the reasons supplied in the explanatory annex justifying the claim of confidentiality. If CCCS rejects the reasons given with regard to any item of information, it may require the Applicant(s) to re-submit the non-confidential version of the relevant Form or document with that item of information included (“the appropriately revised non-confidential version”), by such deadline as CCCS considers appropriate. If the Applicant(s) is unable to revert with the appropriately-revised non-confidential version within the deadline, the Applicant(s) should submit a request for extension of time to CCCS as soon as possible. If the Applicant(s) fails to revert with the appropriately-revised non-confidential version within the timeframe (or within any extensions granted), CCCS may determine the Application by not giving guidance or a decision.
- 3.7 Similarly, any subsequent correspondence and documents sent by the Applicant(s) to CCCS should be accompanied by a non-confidential version, except those where the Applicant(s) are of the view that they can be freely disclosed in their entirety. CCCS may share the non-confidential versions of such correspondence or documents, or any information within them, with third parties, either by publishing them on the CCCS website or through other means. Paragraph 3.6 also applies to such subsequent correspondence or documents.
- 3.8 Even if CCCS allows any item of information to be treated as confidential, it may, at any subsequent point in time, require the Applicant(s) to re-submit the non-confidential version of the relevant Form, document or correspondence with that item of information included. This may happen when it becomes necessary for CCCS to share the information with third parties in order to properly assess the notification. Under such circumstances, paragraph 3.6 will apply.
- 3.9 Section 89 of the Act imposes a general duty on CCCS to preserve secrecy, although there are a number of exceptions to this duty. For example, communication is allowed where, subject to certain considerations<sup>2</sup> disclosure is needed to enable CCCS to give effect to certain provisions of the Act.

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<sup>2</sup> Section 89(6) of the Act states that before disclosing any information in order to give effect to any provision of the Act, the Commission shall have regard to:

- a. the need for excluding, so far as is practicable, information the disclosure of which would in its opinion be contrary to the public interest;
- b. the need for excluding, so far as is practicable,
  - i. commercial information the disclosure of which would, or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates; or
  - ii. information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interest; and
- c. the extent to which the disclosure is necessary for the purposes for which the Commission is proposing to make the disclosure.

### **Timeframe for Completion by the CCCS**

- 3.10 The time taken by CCCS to furnish guidance or decisions will depend very much on the nature and complexity of the application, as well as on the volume of applications which have been filed at that point in time. Applicant(s) may request for state-of-play meetings with CCCS at any time during the course of the assessment of the application for an indication as to when an outcome can be expected.
- 3.11 Where an application requires urgent attention, Applicant(s) may indicate this, together with reasons for requiring urgent consideration, in a cover letter submitted with Forms 1 or 2.

## **4 INSTRUCTIONS ON HOW TO COMPLETE FORM 1**

- 4.1 The following paragraphs highlight what Applicant(s) should take note of when completing Form 1.

### **Purpose of the Application**

- 4.2 Applicant(s) are required to specify whether the application is made in relation to the section 34 prohibition or the section 47 prohibition. Applicant(s) are also required to show why they consider that the notified agreement or conduct raises questions of compatibility with the Act's prohibitions.
- 4.3 Where there is genuine uncertainty about whether an agreement or conduct is likely to infringe the section 34 or section 47 prohibitions, Applicant(s) may wish to include arguments both for and against a finding that an infringement exists (in the case of notifications for decision) or is likely to exist (in the case of notifications for guidance).
- 4.4 It would be helpful if Applicant(s) could refer in their application to any principles laid down by any foreign jurisdictions which they consider may be of relevance to the determination of their application.

### **General Information and Contact Details of the Applicant(s) and all Parties to the Agreement or Conduct**

- 4.5 For the purposes of Forms 1 and 2 and of these guidelines, the term "agreement" bears the same meaning as that ascribed to it by section 34(4) of the Act.
- 4.6 The submission of a joint application on behalf of two or more parties to the agreement or conduct is encouraged as it is useful to have the views of all the parties concerned at the same time. Where a joint application has been submitted, the Applicant(s) are required to appoint a joint representative to act on behalf of all the Applicants, unless good reason is furnished as to why joint representation is not practicable.

### **The Relevant Product and Geographic Market(s)**

- 4.7 In supplying and explaining the Applicants' views on the definition of the relevant product and geographic market(s), Applicant(s) are reminded to refer to the relevant portions of the *CCCS Guidelines on Market Definition*. It would be helpful if Applicant(s) could refer to the alternative market definitions and explain why their preferred definition might be more appropriate than another.
- 4.8 Applicant(s) are also required to provide details of the level of concentration in the relevant markets.

### Details of the Agreement or Conduct

- 4.9 The form requires Applicant(s) to state the types of provisions in the agreement, or aspects of the conduct, which may restrict the parties in their freedom to take independent commercial decisions or to act on those decisions. In this regard, Applicant(s) should refer to the relevant parts of the *CCCS Guidelines on the Section 34 Prohibition 2016* for examples of anti-competitive agreements, as well as to the relevant parts of the *CCCS Guidelines on the Section 47 Prohibition 2016* for examples of conduct that amounts to an abuse of a dominant position.

### Financial Information of the Parties to the Agreement or Conduct

- 4.10 Applicant(s) are requested to submit information on their turnover. In this respect, please provide copies of annual reports and accounts. These must be copies of the most recent audited annual reports and accounts unless the undertakings concerned are exempted from the requirement to file audited accounts, in which case, management accounts should be provided where available.

### Exemptions and Exclusions

- 4.11 There is no need to notify agreements which fall within the categories of agreements specified in a block exemption order. In supplying and explaining why there is uncertainty as to whether the agreement is covered by a block exemption, Applicant(s) are reminded to refer to the relevant portion of the *CCCS Guidelines on the Section 34 Prohibition 2016*, in particular, the section on "Block Exemptions".
- 4.12 The provision for block exemptions does not apply to the section 47 prohibition.
- 4.13 By virtue of sections 35 and 48 of the Act, the section 34 and section 47 prohibitions respectively do not apply to matters specified in the Third Schedule to the Act ("the Third Schedule"). The section on "Exclusions" and Annex C of the *CCCS Guidelines on the Section 34 Prohibition 2016*, and the section on "Exclusions" and Annex D of the *CCCS Guidelines on the Section 47 Prohibition 2016*, further set out the analytical framework on how CCCS will assess if the criteria for exclusion under the Third Schedule are met.

### Supporting Documents

- 4.14 Supporting documents submitted as part of Form 1 must either be originals or certified copies. Documents not in the English language must be accompanied by a translation certified by a court interpreter or a translation verified by the affidavit of a qualified translator.

## 5 INSTRUCTIONS ON HOW TO COMPLETE FORM 2

- 5.1 The following paragraphs highlight what Applicant(s) should take note of when completing Form 2, should Form 2 be required by CCCS, or if Applicant(s) choose to submit Form 2 themselves.

### The Relevant Product and Geographical Market(s)

- 5.2 Form 2 requires Applicant(s) to provide further details in relation to the relevant product and geographical market(s) such as the goods or services that might be considered as close substitutes from both the customer and supplier perspectives.
- 5.3 Applicant(s) also have to provide estimates of the total market size and market share. Market shares may be calculated on the basis of value or volume. However, if market share calculated by the alternative method would differ by 5 per cent or more, then both sets of figures should be provided.

## FILING NOTIFICATIONS FOR GUIDANCE OR DECISION WITH RESPECT TO THE SECTION 34 PROHIBITION AND SECTION 47 PROHIBITION 2016

- 5.4 It should be reiterated here that an agreement will only infringe the section 34 prohibition if it has as its object or effect an appreciable prevention, restriction or distortion of competition in Singapore and lacks net economic benefit.
- 5.5 The market share estimates given by the parties will also be taken into account in assessing whether an undertaking has a dominant position within the meaning of section 47 of the Act. Applicant(s) should refer to the relevant parts of the *CCCS Guidelines on the Section 47 Prohibition 2016* for guidance on what constitutes dominance.

### **Barriers to Entry**

- 5.6 Form 2 also requests Applicant(s) to describe the barriers to entry which exist in the relevant product and geographic markets identified. Entry may be influenced by factors such as the requirements of Government, the availability of raw materials, the length of contracts between an undertaking and its suppliers and customers etc. Applicant(s) should refer to the relevant parts of the *CCCS Guidelines on the Section 47 Prohibition 2016* for more details on entry barriers.

### **Competitors**

- 5.7 Applicant(s) are required to identify the five largest competitors, to describe and give details on the nature of competition and the best estimates of the competitors' market shares in the goods or services. Applicant(s) are also required to provide details on bidding markets, if applicable.

### **Countervailing Buyer Power**

- 5.8 In identifying the five main customers of the parties, the Applicant(s) are further required to provide details on the extent to which the Applicant(s) would be constrained by the conduct of the customers.

### **Exclusions**

- 5.9 Applicant(s) are required to describe any vertical relationships between the parties and the nature and extent of such vertical integration (i.e. the degree to which undertakings operate at more than one level of the production process, combining, for example, production, distribution or retail).
- 5.10 Applicant(s) are also required to describe any net economic benefits arising from the agreement or conduct and explain whether these benefits are indispensable to attaining the said benefits.



**FORM 1**

**Appendix A**

**INFORMATION REQUIRED FOR APPLICATIONS FOR GUIDANCE UNDER SECTIONS 43 OR 50 OR FOR DECISION UNDER SECTIONS 44 OR 51 OF THE COMPETITION ACT (CHAPTER 50B)**

**PART 1  
INTRODUCTION**

This Form lists the information and supporting documents which must be provided when making an application for guidance under sections 43 or 50 or an application for a decision under sections 44 or 51 of the Act.

The Commission reserves the right to give notice in writing to the Applicant(s), requiring submission of Form 2, including supporting documentation and payment of further fees in accordance with Regulation 9 of the Competition (Notification) Regulations 2007, in respect of information submitted but which has been deemed by the Commission to be above that required in this Form 1, at any time during the course of its assessment of this application.

If the Applicant(s) considers that the Commission should treat any part of the information submitted under this Form as confidential, the Applicant(s) must provide both a confidential as well as a non-confidential version of this Form with that item of information deemed confidential removed and replaced by square brackets containing the word "CONFIDENTIAL". The non-confidential version should also contain an annex marked "confidential information" identifying each item of information which has been removed from the confidential version and providing a written explanation as to why the information should be treated as confidential. The same treatment should also be extended to supporting documents accompanying this Form containing any information that the Applicant(s) considers should be treated as confidential.

**NOTES:**

- a. In completing this form, Applicant(s) are encouraged to refer to the principles outlined in the relevant paragraphs of the *CCCS Guidelines on the Section 34 Prohibition 2016*, the *CCCS Guidelines on the Section 47 Prohibition 2016*, the *CCCS Guidelines on Filing Notifications for Guidance or Decision with respect to the Section 34 Prohibition and Section 47 Prohibition 2016* and the *CCCS Guidelines on Market Definition*, where applicable.
- b. Please ensure that all answers are concise and where relevant, supported by reasons, evidence (where possible from independent sources) and pertinent examples.

## FORM 1

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

#### Purpose of The Application

1. Please specify whether the application is being made in relation to the section 34 prohibition and/or the section 47 prohibition.
2. Please specify whether the application is for guidance or a decision.

#### General Information and Contact Details

3. Please provide the names and the following contact details of the Applicant(s) and all parties to the agreement or conduct:
  - a. Address of registered office; and
  - b. Full name, designation, address (if different from that set out in (a)), direct telephone number, fax number and email address of the contact person.
4. Please provide the full name, designation, address, direct telephone and fax numbers and e-mail addresses (where available) of any representative(s) who has been authorised to act for the Applicant(s), indicating whom they represent and in what capacity (e.g. a solicitor). CCCS's correspondence in relation to the notification will be directed to the identified representative(s).
5. Please provide written proof of any solicitor's or representative's authority to act on the Applicant(s)' behalf.
6. Have steps been taken to notify all other parties involved in the agreement or conduct of this application?
  - a. If so, please state the names of these parties, and whether these parties have received a copy of the application and whether confidential information was included in that copy of the application.
  - b. If not, please state any reasons for not notifying these parties of the application.

#### The Relevant Product and Geographic Market(s)

7. State the specific products or services directly or indirectly affected by the agreement or conduct which is the subject of the application ("the affected products or services"). For branded goods, please indicate the brand name used in Singapore. Please list also the goods sold or services provided in Singapore by the Applicant(s) that overlap with those provided by the other parties to the agreement or conduct.
8. In respect of the affected products or services identified in question 7 above:
  - a. What do you consider to be the relevant product market(s)?; and
  - b. What do you consider to be the relevant geographic market(s)?

Where available, please provide a copy of the most recent market studies (produced by the Applicant(s) in-house or commissioned by the Applicant(s) from external consultants) which assess and/or analyse the relevant product market(s) and/or the relevant geographic market(s). Please also supply references to any external published studies of the relevant product market(s) and/or the relevant geographic market(s) or, where available, please supply a copy of each such study with the application.

9. For each of the relevant product and geographical market(s) identified in question 8, please provide the market share estimates (by value and/or volume, where relevant) for each of the parties (and any undertaking affiliated or connected to the Applicant(s), either wholly or partly) to the agreement and/or conduct.

## FILING NOTIFICATIONS FOR GUIDANCE OR DECISION WITH RESPECT TO THE SECTION 34 PROHIBITION AND SECTION 47 PROHIBITION 2016

### Ownership Structure

10. Do any of the Applicant(s) and all other parties to the agreement or conduct belong to a corporate group? A corporate group relationship exists where one undertaking:
  - a. owns more than half the capital or business assets of another undertaking;
  - b. has the power to exercise more than half the voting rights in another undertaking;
  - c. has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking; or
  - d. has the right to manage the affairs of another undertaking.
11. If so, please provide an overview of the group structure of the Applicant(s) and/or other parties to the agreement or conduct belonging to the same corporate group(s).
12. Please identify any other links, formal or informal, between the Applicant(s) and other parties to the agreement or conduct.

### Details of the Agreement or Conduct

13. About the agreement or conduct:
  - a. If the application is made in relation to a written agreement, please attach either an original of the most recent text of that agreement, or a copy certified by the Applicant(s) to be a true copy of the original. If the application is made in relation to an agreement which is not written, please provide a full description of the agreement;
  - b. If the application is made in relation to conduct, please provide a full description of that conduct; and
  - c. If the application relates to standard form terms and conditions, indicate the number of agreements expected to be entered into on those terms and conditions.
14. Please state how the agreement or conduct which is the subject of the application might in the Applicant's view raise questions of compatibility with the section 34 prohibition and/or the section 47 prohibition, and provide reasons in support. In addition, where relevant, please identify the relevant provisions of the agreement or aspects of the conduct that have given rise to such concerns.

### Financial Information of the Parties to the Agreement or Conduct

15. In the last financial year, what was each party's:
  - a. total (group) worldwide turnover; and
  - b. total (group) Singapore turnover.
16. Where relevant, please provide the Applicant(s)' turnover in respect of each of the affected products or services and the respective proportions of the Applicant(s)' total worldwide and Singapore turnover that this represents.

### **Exemptions and Exclusions**

17. If the agreement which is the subject of the application is considered to qualify for any existing block exemption within the Singapore regime, specify the exemption and give reasons why the Applicant(s) is unsure whether the agreement is covered by the exemption.
18. If the agreement or conduct which is the subject of the application is considered to benefit from any exclusion from the section 34 prohibition and/or section 47 prohibition, specify the exclusion and give reasons why the Applicant(s) is unsure whether the agreement or conduct is covered by the exclusion.<sup>3</sup>

### **Fees**

19. Please specify how the fee payable for this application has been paid and complete the details on the relevant payment slip at Part 5 of this Form.

### **Supporting Documents**

20. Please ensure that the Applicant(s) has attached the following documents (where relevant) to the application:
  - a. If paragraph 5 of this form applies, written proof of the solicitor's or representative's authority to act on the Applicant(s)' behalf;
  - b. If paragraph 13a of this form applies with regard to a written agreement, either an original or certified copy, of the most recent version of the text of the agreement which is the subject of the application;
  - c. All other relevant supporting documents to the responses in Form 1; and
  - d. Where documents are not in the English language, a translation of that document certified by a court interpreter or a translation of that document verified by the affidavit of a qualified translator.

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<sup>3</sup> Refer to Annex A of the *CCCS Guidelines on Filing Notifications for Guidance or Decision with respect to the Section 34 Prohibition and Section 47 Prohibition 2016*.

**PART 2A  
DECLARATION**

Under section 77 read with section 83 of the Act, it is an offence, punishable by a fine or imprisonment or both to provide information which is false or misleading in a material particular if the undertaking or person providing it knows that it is false or misleading, or is reckless as to whether it is. If the undertaking or person is a body corporate, its officers may be guilty of an offence under section 81 of the Act.

**DECLARATION**

The undersigned declare and confirm that all information given in the Form 1 and all pages annexed hereto are correct to the best of their knowledge and belief, and that all estimates are identified as such and are their best estimates based on the underlying facts.

Signature(s)

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Name(s) as in NRIC or Passport (in block capitals):

Company Name and Designation(s):

Date:

**FORM 1**

**PART 3  
ACKNOWLEDGEMENT OF RECEIPT**

This acknowledgement of receipt will be returned to the address inserted below if the Applicant(s) provides the information requested below.

*To be completed by the Applicant(s)*

To: (name and address of Applicant(s))

Re: The application dated (date of application) concerning (brief description of subject matter) involving the following undertakings: (names of undertakings) [and others]

*To be completed by the Commission*

Received on:

Registered under reference number:

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

**FORM 1**

**PART 4  
INFORMATION FOR THE COMMISSION'S PUBLIC REGISTER  
(TO BE COMPLETED BY THE APPLICANT(S))**

1. Please give the full names of the parties to the agreement(s) or conduct which is the subject of the application.
2. Please provide a short summary which does not contain any confidential information (no more than 250 words) of the nature and objectives of the agreement(s) or conduct which is the subject of the application. Please note that in the case of notifications for decision, this summary will be open to viewing by the public.
3. Please describe the relevant good(s) or service(s) involved as fully and accurately as possible.

**FORM 1**

**PART 5  
PAYMENT DETAILS FOR FEES PAYABLE**

**All payments are to be made by cheque payable to the “Competition and Consumer Commission of Singapore”.**

To: Finance Department  
Competition and Consumer Commission of Singapore  
45 Maxwell Road  
#09-01  
The URA Centre  
Singapore 069118

I enclose herewith (bank and cheque no.) for the amount of (\$x) being the fees payable.

Signature

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Name as in NRIC or Passport (in block capitals):

Company Name and Designation:

Company Address (in block capitals):

Date:



## FORM 1

### PART 6 SELF-ASSESSMENT CRITERIA

**Section 34 prohibition:** An agreement will fall within the scope of the section 34 prohibition if it has as its object or effect the appreciable prevention, restriction or distortion of competition unless it is excluded or exempted.

**Section 47 prohibition:** Conduct that constitutes an abuse of a dominant position in a market, includes conduct that protects, enhances or perpetuates the dominant position of an undertaking in ways unrelated to competitive merit, and will fall within the scope of the section 47 prohibition unless it is excluded or exempted.

#### **Section 34 Prohibition**

1. **Is it an agreement entered into on the part of the Government, any statutory body or any person acting on their behalf in relation to that agreement?**  
If so, the agreement is excluded from the section 34 prohibition.
2. **Is the agreement one which falls within a matter specified in the Third Schedule of the Competition Act?**  
If so, the agreement or conduct is excluded from the section 34 prohibition. A summary of this appears at paragraph 4.1 of the *CCCS Guidelines on the Section 34 Prohibition 2016*, the contents of which have been reformatted in Annex A.
3. **Does the agreement involve at least two independent undertakings?**  
If the agreement involves a parent and a subsidiary, and the subsidiary does not have economic independence or freedom of action in deciding its policy and practices for the purpose of the agreement, there is no agreement as between at least two independent undertakings and therefore no agreement for the purposes of the section 34 prohibition.
4. **Do the parties have market power<sup>4</sup>?**
- 4.1 **Do the parties have a significant share of any market to which the agreement relates?**  
If not, they are unlikely to have market power.
- 4.2 **Are they small players in the context of the markets affected by the agreement?**  
If, for example, the parties are the third and fourth firms in the market and the first and second are much larger, or there is a dominant firm with a larger market share the parties may not have market power.
- 4.3 **Are the main customers strong buyers?**  
In the negotiation of prices, are the parties price-setters or price takers? If there is strong buyer power then the parties may not have market power.

If the parties to the agreement do not have market power, it is unlikely that the agreement will result in an appreciable effect on competition. If the self-assessment indicates that the parties may have market power, they may wish to consider whether this is likely to mean that the agreement has an appreciable effect on competition. If the agreement has an appreciable effect on competition but there is a net economic benefit (see paragraph 2.29 of the *CCCS Guidelines on the Section 34 Prohibition 2016*), the agreement is excluded from the section 34 prohibition.

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<sup>4</sup> Market power refers to, *inter alia*, the ability to profitably sustain prices above competitive levels or to restrict output or quality below competitive levels. An undertaking with market power might also have the ability and incentive to harm the process of competition in other ways, for example by weakening existing competition, raising entry barriers or slowing innovation. Market power arises where an undertaking does not face sufficiently strong competitive pressure.

## FILING NOTIFICATIONS FOR GUIDANCE OR DECISION WITH RESPECT TO THE SECTION 34 PROHIBITION AND SECTION 47 PROHIBITION 2016

### 4.4 **Are they small and medium enterprises<sup>5</sup>?**

Small and medium enterprises are unlikely to have market power. Nonetheless, other factors continue to be relevant in determining whether market power exists, including those mentioned in paragraphs 4.1 to 4.3 above.

## **Section 47 Prohibition**

### 5. **Is the conduct or activity carried on by the Government, any statutory body or any person acting on their behalf in relation to that conduct or activity?**

If so, the conduct or activity is excluded from the section 47 prohibition.

### 6. **Is the conduct or activity one which falls within a matter specified in the Third Schedule of the Competition Act?**

If so, the conduct or activity is excluded from the section 47 prohibition. Please see Annex A.

### 7. **Is there an abuse of a dominant position?**

#### 7.1 **Is the undertaking dominant in a relevant market, either in Singapore or elsewhere?**

Generally and as a starting point, a market share of less than 60% is likely to indicate that the undertaking is not dominant in the relevant market. In addition to market share, other factors, where relevant to the market, such as the history of the market shares, barriers to entry, the degree of innovation, product differentiation and the responsiveness of buyers or competitors to price increases may have to be considered in deciding if an undertaking has market power and is therefore dominant.

#### 7.2 **Is the behaviour of the undertaking an abuse of its dominant position?**

If the dominant position is maintained through conduct arising from efficiencies, such as through successful innovation or economies of scale or scope, or through the legitimate exercise of an intellectual property right, such conduct will not be considered as an abuse of dominance. If the undertaking can objectively justify that it has behaved in a proportionate manner in defending its legitimate commercial interests, such conduct will also not be considered as an abuse of dominance.

The above questions are designed to help parties decide for themselves if there is likely to be an issue for CCCS to consider. For more information, please refer to the *CCCS Guidelines on the Section 34 Prohibition 2016*, the *CCCS Guidelines on the Section 47 Prohibition 2016*, and the *CCCS Guidelines on Market Definition* as appropriate.

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<sup>5</sup> Small and medium enterprises in Singapore are defined as businesses with annual sales turnover of not more than \$100 million, or employing no more than 200 staff.

**EXCLUSIONS FROM SECTION 34 AND 47 PROHIBITIONS**

**ANNEX A**

1. The section 34 and 47 prohibitions do not apply to the following matters specified in the Third Schedule to the Competition Act by virtue of section 35 and 48 of the Competition Act. These are:
  - a. an undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly, insofar as the prohibition would obstruct the performance, in law or fact, of the particular tasks assigned to that undertaking;
  - b. an agreement/conduct to the extent to which it is made in order to comply with a legal requirement, that is any requirement imposed by or under any written law;
  - c. an agreement/conduct which is necessary to avoid conflict with an international obligation of Singapore, and which is also the subject of an order by the Minister;
  - d. an agreement/conduct which is necessary for exceptional and compelling reasons of public policy and which is also the subject of an order by the Minister;
  - e. an agreement/conduct which relates to any product to the extent to which any other written law, or code of practice issued under any written law, relating to competition gives another regulatory authority jurisdiction in the matter;
  - f. an agreement/conduct which relates to any of the following specified activities:
    - i. the supply of ordinary letter and postcard services by a person licensed and regulated under the Postal Services Act (Chapter 237A);
    - ii. the supply of piped potable water;
    - iii. the supply of wastewater management services, including the collection, treatment and disposal of wastewater;
    - iv. the supply of scheduled bus services by any person licensed and regulated under the Public Transport Council Act (Chapter 259B);
    - v. the supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act (Chapter 263A); and
    - vi. cargo terminal operations carried out by a person licensed and regulated under the Maritime and Port Authority of Singapore Act (Chapter 170A);
  - g. an agreement/conduct which relates to the clearing and exchanging of articles undertaken by the Automated Clearing House established under the Banking Act (Clearing House) Regulations (Chapter 19, Rg 1); or any related activities of the Singapore Clearing Houses Association;
  - h. any agreement or conduct that is directly related and necessary to the implementation of a merger;
  - i. any agreement (either on its own or when taken together with another agreement) to the extent that it results, or if carried out would result, in a merger; and
  - j. any conduct (either on its own or when taken together with other conduct) to the extent that it results in a merger.

**EXCLUSIONS FROM THE SECTION 34 PROHIBITION ONLY**

2. In addition, the section 34 prohibition does not apply to:
  - a. vertical agreements entered into between 2 or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain products<sup>6</sup>, other than such vertical agreement as the Minister may by order specify.
  - b. An agreement which contributes to:
    - i. improving production or distribution; or
    - ii. promoting technical or economic progress, but which does not:
      - a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
      - b) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

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<sup>6</sup> The definition of "vertical agreement" also includes provisions contained in agreements which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of the agreement and are directly related to the use, sale or resale of products by the buyer or its customers.

**FORM 2**

**Appendix B**

**FURTHER INFORMATION REQUIRED FOR APPLICATIONS FOR GUIDANCE UNDER SECTIONS 43 OR 50 OR FOR DECISION UNDER SECTIONS 44 OR 51 OF THE COMPETITION ACT (CHAPTER 50B)**

**PART 1  
INTRODUCTION**

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

If the Applicant(s) considers that the Commission should treat any part of the information submitted under this Form as confidential, the Applicant(s) must provide both a confidential version of this Form, as well as a non-confidential version of this Form with that item of information deemed confidential removed and replaced by square brackets containing the word "CONFIDENTIAL". The non-confidential version should also contain an annex marked "confidential information" identifying each item of information which has been removed from the confidential version and providing a written explanation as to why the information should be treated as confidential. The same treatment should also be extended to supporting documents accompanying this Form containing any information that the Applicant(s) considers should be treated as confidential.

**NOTES:**

- a. In completing this form, applicants are encouraged to refer to the principles outlined in the relevant paragraphs of the *CCCS Guidelines on the Section 34 Prohibition 2016*, the *CCCS Guidelines on the Section 47 Prohibition 2016*, the *CCCS Guidelines on Filing Notification for Guidance or Decision with respect to the Section 34 Prohibition and Section 47 Prohibition 2016* and the *CCCS Guidelines on Market Definition*, where applicable.
- b. Please ensure that all answers are concise and where relevant, supported by reasons, evidence (where possible from independent sources) and pertinent examples.

## FORM 2

### PART 2

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

##### The Relevant Product and Geographic Market(s)

1. For each of the affected products or services identified in question 7 of Form 1 Part 2:
  - a. give a brief description of the characteristics and intended use;
  - b. state where it is produced;
  - c. state to which customer group it is supplied;
  - d. identify any goods or services that might reasonably be considered as close substitutes on the demand-side (that is, substitutes from the customer's perspective);
    - i. explain the reason(s) why each good or service is considered to be a close substitute;
    - ii. state the price differential (if any) between the substitutes and the affected products or services; and
    - iii. indicate whether any of the substitutes are imported into Singapore and if so, from which country.
  - e. identify any goods or services that might reasonably be considered as close substitutes on the supply-side (that is, substitutes from a supplier's perspective);
    - i. explain the reason(s) for the supply-side substitutability, namely, how suppliers can switch to supplying the affected products or services quickly and easily with little cost.
  - f. provide details of:
    - i. how far customers are willing to travel to purchase the affected products or services (for example, locally, nationally, regionally);
    - ii. how far suppliers are willing to supply the affected products or services (for example, locally, nationally, regionally).
  - g. provide details of the time, cost and resources required to move to a different part of the supply chain, for example, a distributor moving to retail or manufacturer moving to retail activities; and
  - h. describe any differences in supplying different types of customers.
2. For each of the relevant product and geographic market(s) identified in question 8 in Form 1 Part 2, please provide the following data for the last three years:
  - a. Total market size (value and volume);
  - b. Market share estimates (by value and/or volume, where relevant) for each of the parties (and any affiliated or connected undertaking) to the agreement and/or conduct; and
  - c. Market share estimates (by value and/or volume of competitors, where relevant)

For (a-c), please explain any significant year-on-year variations.

3. If the geographic market identified in question 8(b) of Form 1 Part 2 is wider than Singapore, please provide the following data for the last three years in Singapore:
  - a. An estimate of the total value and volume of goods or services; and
  - b. Market share estimates (by value and/or volume where relevant) for each of the parties to the agreement or conduct and their competitors.

For (a-b), please explain any significant year-on-year variations.

4. Please identify the undertakings belonging to the same group (within the meaning of question 10 in Form 1 Part 2) as the parties to the agreement or conduct which are active in the relevant product market(s) identified in question 8 in Form 1 Part 2 and those active in products and/or services which are regarded as imperfect and partial substitutes for those products. Please provide the name, place of incorporation, exact product manufactured and the geographic scope of operation of each member of the group.

## FILING NOTIFICATIONS FOR GUIDANCE OR DECISION WITH RESPECT TO THE SECTION 34 PROHIBITION AND SECTION 47 PROHIBITION 2016

### Barriers to Entry

5. For each of the relevant product and geographic market(s) identified in question 8 of Form 1 Part 2, give an estimate of the capital expenditure and time required to enter the relevant market(s) identified on a scale necessary to gain a five per cent market share, both as a new entrant, and as a company that already has the necessary technology and expertise, and estimate to what extent this cost is recoverable should the firm decide to exit the market.
6. Give an estimate of the scale of annual expenditure on advertising/promotion relative to sales required to achieve a market share of five percent.
7. With specific reference to Singapore, provide details of any other factors affecting entry, for example, planning restraints, technology, R&D requirements, regulatory barriers, import restrictions (tariffs, licensing, quarantine), IP rights, availability of raw materials, length of contracts, etc.
8. Give details of instances of market entry and exit in the past five years.
9. Identify any companies that would be in a position to enter the relevant market(s) identified in the response to question 8 of Form 1 Part 2 in a manner that would be sufficiently timely and likely and of such scope as to adequately constrain the parties to the agreement or conduct.

### Competitors

10. With specific reference to Singapore, for each of the relevant markets identified in question 8 of Form 1 Part 2:
  - a. Identify the five largest competitors of each party to the agreement or conduct which is the subject of the application, providing each competitor's name, address, telephone and fax numbers, and, where possible, a contact name;
  - b. For the competitors identified in question 10a, give the best estimates of their market shares in the goods or services;
  - c. Describe the nature of competition (for example, do firms compete on price quality, innovation, tender process);
  - d. Describe the cost and the time it takes for a customer to switch between suppliers;
  - e. Describe and name any local or overseas firms that are not currently providing goods or services in Singapore, but which could do so relatively quickly on a material scale;
  - f. Describe the ability of actual or potential competitors to expand or utilise existing productive capacity; and any other material factors;
  - g. Provide details of any shareholding, agreement, or joint ventures with existing competitors that may affect Singapore; and
  - h. For the competitors identified in question 10g, please provide the best estimates of their market shares in the goods or services.
11. For bidding markets only, in respect of the relevant market(s), give details:
  - a. Of any bids made by each party to the agreement in the last five years; and
  - b. The outcomes of those bids (for example, whether the bids were won or lost) and the reasons why, if known).

### Countervailing Buyer Power

12. With specific reference to Singapore, for each of the relevant markets identified in question 8 of Form 1 Part 2:
  - a. Identify the five main customers of each party to the agreement or conduct which is the subject of the application, in the relevant product and geographic market(s), giving the customer's name, address, telephone and fax numbers, and, where possible, a contact name.
  - b. To what extent, and why, would each party to the agreement or conduct (and if applicable, the parties to the agreement as a collective entity) be constrained by the conduct of buyers following the implementation of the agreement or conduct.

## FILING NOTIFICATIONS FOR GUIDANCE OR DECISION WITH RESPECT TO THE SECTION 34 PROHIBITION AND SECTION 47 PROHIBITION 2016

### **Vertical Agreements** *(To be completed if there is (potentially) a vertical relationship amongst the parties to the agreement or conduct)*

13. Describe any vertical relationship(s) between the parties before and after the agreement or conduct, including the following information:
  - a. the extent of vertical integration before the agreement or conduct; and how this is created or strengthened by the agreement or conduct; and
  - b. any existing supply arrangements amongst the parties to the agreement or conduct.
14. For the competitors identified in question 10, provide details on the extent to which they are vertically integrated.

### **Agreements with Net Economic Benefits**

15. If the agreement or conduct has net economic benefits that would not be achieved except for the agreement:
  - a. Describe how the agreement or conduct contributes to improving production or distribution, or promotes technical or economic progress. In addition, please explain:
    - i. How the claimed efficiencies are achieved;
    - ii. A direct causal link between the agreement and the claimed efficiencies; and
    - iii. The value of the claimed efficiencies and how it outweighs the anti-competitive effects of the agreement.
  - b. Explain whether the agreement or conduct, and the individual restrictions of the agreement or conduct are indispensable to attaining the efficiencies described above in paragraph 15a. In addition, please explain:
    - i. If there are other means of achieving the claimed efficiencies;
    - ii. If there are economically practical and less restrictive means of achieving the claimed efficiencies than the agreement/ conduct notified; and
    - iii. If more efficiencies are produced with the agreement/conduct notified in place than its absence.

### **SUPPORTING DOCUMENTS**

Please ensure that the Applicant(s) has attached the following documents (where relevant to the application):

16. All relevant documents to support the claims made in this Form 2.
17. Source or sources of the information should also be given and one copy should be provided of any document, where available, from which information has been taken.
18. Where documents submitted are not in the English language, they should be accompanied by a translation certified by a court interpreter or a translation verified by the affidavit of a qualified translator.

FILING NOTIFICATIONS FOR GUIDANCE OR DECISION WITH RESPECT TO THE SECTION 34 PROHIBITION AND SECTION 47 PROHIBITION 2016

**PART 2A:  
DECLARATION**

Under section 77 read with section 83 of the Act, it is an offence, punishable by a fine or imprisonment or both to provide information which is false or misleading in a material particular if the undertaking or person providing it knows that it is false or misleading, or is reckless as to whether it is. If the undertaking or person is a body corporate, its officers may be guilty of an offence under section 81 of the Act.

**Declaration**

The undersigned declare and confirm that all information given in the Form 2 and all pages annexed hereto are correct to the best of their knowledge and belief, and that all estimates are identified as such and are their best estimates based on the underlying facts.

Signature(s)

---

Name(s) as in NRIC or Passport (in block capitals):

Company Name and Designation(s):

Date:



## FORM 2

### PART 3 ACKNOWLEDGEMENT OF RECEIPT

This acknowledgement of receipt will be returned to the address inserted below if the Applicant(s) provides the information requested below.

*To be completed by the Applicant(s)*

To: (name and address of Applicant(s))

Re: The application dated (date of application) concerning (brief description of subject matter) involving the following undertakings: (names of undertakings) [and others]

*To be completed by the Commission*

Received on:

Registered under reference number:

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