

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

FORM 1

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.

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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.

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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.

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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.³

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.

³ 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*.

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**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)

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

Company Name and Designation(s):

Date:

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**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.

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**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.

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**PART 5
PAYMENT DETAILS FOR FEES PAYABLE**

All payments are to be made either by electronic bank transfer or by cheque to the “Competition and Consumer Commission of Singapore”.

i) By electronic bank transfer:

Recipient Name:	Competition and Consumer Commission of Singapore
Account No:	001-902280-0
Name of Bank:	DBS Bank Limited
Bank Address:	12 Marina Boulevard, DBS Asia Central Marina Bay Financial Centre Tower 3 Singapore 018982
Swift Code:	DBSSSGSG
Account Currency:	SGD

The details of the electronic bank transfer, including a copy of the record of transfer with the transaction reference number, transaction date and time need to be provided to CCCS after the payment has been effected.

ii) By cheque:

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

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

Company Name and Designation:

Company Address (in block capitals):

Date:

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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 power⁴?
 - 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.

⁴ 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.

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4.4 Are they small and medium enterprises⁵?

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.

⁵ 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.

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EXCLUSIONS FROM SECTION 34 AND 47 PROHIBITIONS

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 products⁶, 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.

⁶ 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.