



MEDIA RELEASE

31 March 2005

Competition Commission Consults on Draft Guidelines of the Competition Act 2004

1. As part of the preparation for Phase II implementation of the Competition Act 2004¹(Act), the Competition Commission of Singapore (CCS) today issued draft guidelines for public consultation. Guidelines indicate how the CCS will interpret and give effect to the provisions of the Act, which will come into force on 1 January 2006.

2. Guidelines are intended to help businesses understand how the CCS will administer and enforce infringements of the prohibitions in the Act. This will improve transparency and provide greater clarity to businesses on the competition law regime. There will be public consultations to seek inputs and feedback before the guidelines are finalised.

3. The CCS invites views and comments on the first set of three draft guidelines pertaining to the *section 34 prohibition*, the *section 47 prohibition* and *market definition*. The remaining guidelines will be issued progressively for public consultation in the ensuing months. The CCS aims to complete the process by November 2005.

4. Section 34 prohibits agreements, decisions and concerted practices, that prevent, restrict or distort competition in Singapore. These include agreements between competing firms to fix prices, fix tender bids, reduce the quantity of goods and services sold, or to share markets. The provisions of any agreement that infringe this prohibition will be rendered void on or after 1 January 2006 to the extent of the infringement. The CCS will focus principally on anti-competitive agreements that have an appreciable adverse effect on markets in Singapore. The *section 34 prohibition* guideline sets out some of the factors and circumstances which the CCS will consider in determining whether agreements are anti-competitive.

5. Section 47 prohibits firms from abusing their dominance in ways that are anti-competitive and which work against longer term economic efficiencies. However it does not prohibit dominance or substantial market power per se – firms

can, and should, seek to increase or maintain their market positions through offering better quality, more competitive pricing or wider range of goods at higher quality of service standards. The *section 47 prohibition* guideline sets out some of the factors and circumstances which the CCS will consider in determining whether an undertaking has engaged in conduct amounting to an abuse of a dominant position in a market.

6. The *market definition* guideline provides the analytical framework on how the CCS will define markets when investigating possible infringements of the section 34 and section 47 prohibitions under the Act.

Guiding Principles and Framework of the Draft Guidelines

7. The key function and duty of the CCS is to promote healthy competitive markets in Singapore. In drafting the guidelines, CCS took into account our specific needs and circumstances, in particular, that Singapore is a small and open economy.

8. The CCS will prioritise its enforcement and target those that are clearly more harmful and warrant regulatory intervention. The application of the guidelines will depend on the facts of each case.

9. Commenting on the drafting process, Mr Ng Wai Choong, Chief Executive of the CCS said, "In crafting the guidelines, we avoided being prescriptive; instead, our guidelines outline the conceptual, analytical and procedural framework within which the CCS will investigate and assess complaints and undertake enforcement." He added, "Ultimately, we want to see competitive and robust markets which are not heavily burdened by complex compliance issues."

Public Feedback

10. The consultation documents on the draft guidelines can be downloaded from the CCS website at www.ccs.gov.sg under the section "Guidelines" and the Government Online Consultation Portal at www.feedback.gov.sg.

11. The closing date for submissions is on or before **12 noon, 13 May 2005**. The public is invited to send their feedback in both hard and soft copy (in Microsoft Word format) to Competition Commission of Singapore, 5 Maxwell Road #13-01 Tower Block, MND Complex, Singapore 069110 and e-mail at CCS_Draftguidelines@ccs.gov.sg

12. The CCS reserves the right to make public all or parts of any written submission. Submitting parties may however request confidentiality for any part of the submission that is proprietary or commercially sensitive.

13. The CCS, together with the Singapore Business Federation (SBF) will conduct outreach seminars for business associations, chambers, companies and

businesses. Interested parties can contact SBF at events@sbf.org.sg or call 6827 6877 to register.

14. Please refer to Annex 1 for more background information.

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About the Competition Commission of Singapore

The CCS is a new statutory body established under the Competition Act 2004 on 1 January 2005 to administer and enforce the Act. Its mission is to promote healthy competitive markets that will benefit the Singapore economy based on sound economic principles applied objectively and consistently. For more information, visit www.ccs.gov.sg.

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Notes to Editor:

1. The Competition Act 2004 (Act) was passed in Parliament on 19 October 2004. The new law will improve Singapore's international competitiveness by enhancing the efficient functioning of markets in Singapore. Instead of attempting to catch all forms of anti-competitive activities, our principal focus will be on those that have an appreciable adverse effect on competition in Singapore or that do not have any net economic benefit. The Act is being implemented in phases:

Phase I - On 1 January 2005, the provisions establishing the Competition Commission of Singapore (CCS) were brought into force.

Phase II - On 1 January 2006, the provisions on anti-competitive agreements, decisions and practices; abuse of dominance; enforcement; appeal process; and miscellaneous areas will come into force.

Phase III - The remaining provisions relating to mergers and acquisitions will likely come into force at least 12 months after Phase II.

Draft guideline on the *section 34 prohibition (Agreements, etc., preventing, restricting or distorting competition)*

2. This draft guideline sets out some of the factors and circumstances which the CCS will consider in determining whether agreements are anti-competitive. It indicates the manner in which the CCS will interpret and give effect to the provisions of the Act when assessing agreements between undertakings.

3. Agreements or concerted practices between undertakings at different levels of the production and distribution chain, for example manufacturers and retailers; or dealers and retailers; are excluded from the section 34 prohibition (Third Schedule). As a result, only anti-competitive agreements or concerted practices between undertakings at the same level (competitors), for example manufacturers or dealers, as among themselves, are prohibited. In practice most anti-competitive agreements and concerted practices occur between those who compete in the same market(s).

Draft guideline on the *section 47 prohibition (Abuse of dominant position)*

4. This guideline sets out some of the factors and circumstances which the CCS will consider in determining whether an undertaking has engaged in conduct amounting to an abuse of a dominant position in a market. It indicates the manner in which the CCS will interpret and give effect to the provisions of the Act when assessing abuse of dominance.

Draft guideline on *market definition*

5. Market definition is the first step in a full competition analysis. It provides a framework for competition analysis. It is also a key step in identifying the competitive constraints acting on a seller of a given product.

6. Market definition and the measurement of market shares are important in determining

- a. whether agreements, decisions between associations of undertakings or concerted practices have as their object or effect an appreciable prevention, restriction or distortion of competition in a market (the *section 34 prohibition*) or
- b. whether an undertaking with substantial market power amounting to a dominant position in a market has abused its market power (the *section 47 prohibition*).

7. Once the relevant market has been defined, market shares can be measured. The other aspects of the competition analysis, including the potential for new entry into the market, will then be considered. In cases where it may be apparent that an activity is unlikely to have an appreciable adverse effect on competition, or the undertaking under investigation does not possess substantial market power within any sensible market definition, it would not be necessary to formally establish a definition of the market.

Mode Of Consultation

8. Written comments should be sent through the following means:

Email : CCS_Draftguidelines@ccs.gov.sg

Post/Courier : Competition Commission of Singapore
5 Maxwell Road
#13-01
Tower Block

MND Complex
Singapore 069110
Attn: Director, Policy/Mergers & Acquisitions

Fax : (65) 62246929

9. Parties that submit comments should organise their submissions as follows:

- a. cover page (including the information specified in paragraph 11 of this consultation document);
- b. table of contents;
- c. summary of major points;
- d. statement of interest;
- e. comments; and
- f. conclusion.

10. Supporting material may be placed in an annex. All submissions should be clearly and concisely written, and should provide a reasoned explanation for any proposed revision to the draft guidelines. Where feasible, parties should identify the specific paragraph of the draft guidelines on which they are commenting. In any case in which a party chooses to suggest revisions to the text of the draft guidelines, the party should state clearly the specific changes to the text that they are proposing.

11. All submissions should be made on or before **12 noon, 13 May 2005**. Submissions must be submitted in both hard and soft copies (in Microsoft Word format). Parties submitting comments should include their personal/company particulars as well as their correspondence address, contact numbers and email addresses on the cover page of their submissions.

12. The CCS reserves the right to make public all or parts of any written submission and to disclose the identity of the source. Commenting parties may request confidential treatment for any part of the submission that the commenting party believes to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If the CCS grants confidential treatment, it will consider but will not publicly disclose the information. If the CCS rejects the request for confidential treatment, it will return the information to the party that submitted it and will not consider the information as part of its review. As far as possible, parties should limit any request for confidential treatment of information submitted. The CCS will not accept any submission that requests confidential treatment of all, or a substantial part, of the submission.

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