



Competition  
Commission  
SINGAPORE

## MEDIA RELEASE

26 May 2005

### Competition Commission Consults on Investigation, Enforcement and Filing Notifications for Guidance or Decision

*Leniency programme to encourage “whistle-blowing” to be put in place*

1. Members of cartels (‘whistleblower’ members) having second thoughts about their involvement in price-fixing and other types of cartels, may help uncover such cartels under a leniency programme that the Competition Commission of Singapore (CCS) will implement in January next year. This programme forms part of the CCS investigation and enforcement strategy. The details of this programme are included in a set of four draft guidelines on the Competition Act<sup>1</sup> that CCS issued today for public consultation.
2. These draft guidelines cover investigation and enforcement of infringements, the leniency programme, and notifications of agreements or conduct for guidance or decision.
3. The relevant provisions in the Act covered by these guidelines will come into force on 1 January 2006, together with the *section 34 prohibition* relating to anti-competitive agreements and the *section 47 prohibition* relating to abuse by a business of its dominant position.
4. The guideline on the powers of investigation<sup>2</sup> sets out the procedure for and powers of the CCS to investigate infringements. The offences relating to the exercise of those powers are also outlined.
5. The guideline on enforcement<sup>3</sup> sets out the powers of CCS to give directions on interim measures during an investigation, or to bring an infringement to an end and impose financial penalties on businesses that infringe the *section 34* and/or *section 47 prohibition*.
6. CCS will put in place a leniency programme<sup>4</sup> to encourage ‘whistleblower’ members to come forward with information and evidence regarding cartel activities.

This will facilitate investigation of and enforcement against existing cartels, as well as deter the formation of new cartels.

7. The guideline on filing notifications for guidance or decision<sup>5</sup> deals with how a business may notify the CCS of its agreement or conduct, and seek guidance or a decision from the CCS on whether there is an infringement.

## **Public Feedback**

8. This is the second set of guidelines issued by the CCS for public consultation. The first set of three draft guidelines<sup>6</sup> on the *section 34 prohibition*, the *section 47 prohibition*, and *market definition* were issued earlier for public consultation. The CCS is evaluating the submissions made by the public. The remaining guidelines will be issued for public consultation in the next few months. The CCS aims to complete the process by November 2005.

9. The consultation documents on the draft guidelines can be downloaded from the CCS website at [www.ccs.gov.sg](http://www.ccs.gov.sg) under the section "Guidelines" and the Government Online Consultation Portal at [www.feedback.gov.sg](http://www.feedback.gov.sg). The closing date for submissions is on or before **12 noon 30 June 2005**<sup>7</sup>.

10. The CCS, together with the Singapore Business Federation (SBF) will conduct outreach seminars on 14 and 17 June for business associations, chambers, companies and businesses. Interested parties can contact SBF at [events@sbf.org.sg](mailto:events@sbf.org.sg) or call 6827 6877 to register.

11. Please refer to Annex A for 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](http://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 and assented to by the President on 4 November 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, the principal focus will be on activities, 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; investigation, 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.

2. The draft ***Guideline on the Powers of Investigation*** sets out the various powers of the CCS to investigate suspected anticompetitive behaviour which may infringe the *section 34 and/or 47 prohibitions*. It also describes the triggers for the use of such powers of investigation, the scope of these powers and the general procedure the CCS will adopt in exercising such powers. The offences relating to the exercise of such powers are also detailed.
3. The draft ***Guideline on Enforcement*** sets out the powers of the CCS to give directions on interim measures during an investigation or to bring an infringement to an end. It deals with the procedure for giving directions, the enforcement of such directions and appeals against such directions. It also describes the power to impose financial penalties on undertakings infringing the *section 34 and/or 47 prohibitions*. The CCS may impose a financial penalty where the infringement has been committed intentionally or negligently. The guideline sets out the circumstances which the CCS considers in establishing intention or negligence and deals with the issue of who is liable to pay the penalty.
4. The draft ***Guideline on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Cases*** sets out the rationale for a leniency programme in respect of cartel activities and explains how the CCS will administer this programme as part of its enforcement strategy. An undertaking, which is the first to provide the CCS with evidence of cartel activity before the commencement of an investigation, will be granted total immunity from financial penalty if it fulfils certain conditions. Such conditions include rendering full and complete cooperation to the CCS until the conclusion

of any action arising as a result of an investigation and not being an initiator of the cartel. If an investigation has already commenced, the undertaking may still benefit from a reduction of up to 100% if relevant conditions are met. Subsequent leniency applicants, which are not first in line, may be granted a reduction of up to 50% in the amount of the financial penalty. A separate guideline will be issued subsequently on the factors to be taken into account when calculating the amount of the penalty.

5. The draft ***Guideline on Filing Notifications for Guidance or Decision*** sets out how an undertaking may notify the CCS of its agreement or conduct and seek guidance or a decision on whether there has been an infringement of the *section 34 and/or 47 prohibition*. Undertakings are not required to notify their agreements or conduct to seek guidance or decision. They may do so if they have serious concerns as to whether they are infringing the Act's provisions. This draft guideline sets out the information which has to be submitted in an application for guidance or decision.
6. The CCS is presently evaluating the submissions made by the public in response to its public consultation on the *Section 34 and 47 Prohibitions* and *the Market Definition*, which closed on 13 May 2005.

#### 7. **Mode of Consultation:**

a. Written submissions are to be sent to the CCS through email **and** either by post/courier or by fax:

Email: [CCS\\_Draftguidelines@ccs.gov.sg](mailto:CCS_Draftguidelines@ccs.gov.sg)

#### **AND**

Post/Courier: Competition Commission of Singapore  
5 Maxwell Road  
#13-01, Tower Block  
MND Complex  
Singapore 069110  
Attn: Director, Legal and Enforcement

Fax: (65) 62246929

- b. Parties that submit comments should organise their submissions as follows:
- i. Cover page (including the information specified in the consultation document);
  - ii. Table of contents;
  - iii. Summary of major points;
  - iv. Statement of interest;
  - v. Comments, and
  - vi. Conclusion

c. 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.

d. All submissions should be made on or before **12 noon, 30 June 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.

e. 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.