



MEDIA RELEASE

20 December 2005

The Competition Commission Issues Finalized Guidelines of the Competition Act

1. The Competition Commission of Singapore (CCS) has today, completed its issuance of all the guidelines of the Competition Act 2004 ('Act') in relation to the prohibitions which will commence on 1 January 2006¹. The eleven guidelines, which will provide substantial guidance to businesses, are:

- CCS Guideline on the Major Provisions²
- CCS Guideline on the Section 34 Prohibition
- CCS Guideline on the Section 47 Prohibition
- CCS Guideline on Market Definition
- CCS Guideline on Powers of Investigation
- CCS Guideline on Enforcement
- CCS Guideline on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity Cases
- CCS Guideline on Filing Notifications for Guidance or Decision
- CCS Guideline on Transitional Arrangements
- CCS Guideline on the Appropriate Amount of Penalty
- CCS Guideline on the Treatment of Intellectual Property Rights

2. The CCS Guideline on the Treatment of Intellectual Property Rights (IPR) was finalized following a three-week public consultation³ which closed in October. A total of 13 submissions were received. The revisions to the IPR Guideline are outlined in **Appendix 1**.

3. The finalized IPR Guideline includes the following clarification and revisions:

a) The CCS has clarified the scope of the vertical exclusion⁴. IPR provisions will be covered by the vertical exclusion, provided that they do not constitute the main object of the agreement, and are directly related to the use, sale or resale of goods and services. For example, vertical restraints within a franchise

agreement, including IPR provisions such as the use of the trademark, are generally covered by the vertical exclusion.

b) The guideline was revised to reflect that agreements involving price-fixing, market-sharing or output limitations will be deemed to always have an appreciable adverse effect on competition, only in the case of agreements between competitors.

c) With regard to the evaluation of the competitive effects of grantbacks⁵, the guideline indicates that grantbacks generally do not pose competition concerns, especially when they are non-exclusive in nature.

4. The Guideline on the Section 47 prohibition (abuse of dominant position) earlier released on 29 July 2005 has been amended (at paras 7.6 and 7.7) to clarify the position on financial immunity following notification of conduct in relation to Section 47. Unlike notifications of agreements for guidance or decision on Section 34 issues (relating to agreements preventing, restricting or distorting competition), notifications of conduct for guidance or decision on Section 47 issues do not give an undertaking immunity from financial penalty for infringements occurring between the point of notification and the CCS' determination of the application. Relevant clarifications have also been made to the Guideline on the Section 34 Prohibition.

5. With regard to cross-sectoral competition case management, the CCS and sectoral regulators will be guided by the following principle: The CCS will work out with the relevant sectoral regulator on which regulator is best placed to handle the case in accordance with the legal powers given to each regulator, which will prevent double jeopardy and minimise regulatory burden in dealing with the case.

6. The CCS thanks all the contributors for their substantive comments at these public consultations over 2005. The 11 finalised guidelines are available on the CCS website at www.ccs.gov.sg.

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About the Competition Commission of Singapore

The CCS is a statutory body established under the Competition Act 2004 (Act) 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 was passed in Parliament on 19 October 2004 and assented to by the President on 4 November 2004. The law will improve Singapore's international competitiveness by enhancing the efficient functioning of markets in Singapore. The focus is on activities, that have an appreciable adverse effect on competition in Singapore and which 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 come into force at least 12 months after 1 January 2006. The CCS will publish draft guidelines for comment, and finalized guidelines, on the assessment of mergers and the procedures for notification in advance of commencement.

2. The **Guideline on the Major Provisions** provides an overview of the main provisions of the Competition Act and explains how the CCS will apply and enforce the prohibitions against anti-competitive activities under the Act with the aim of promoting healthy competitive markets in Singapore. The CCS has published more detailed guidelines on most of the topics covered in this guideline and the CCS would encourage interested parties to refer to the detailed guidelines.

Over 2005, four sessions of public consultation were conducted:

First set of draft guidelines (31 March – 13 May)

- Section 34 prohibition
- Section 47 prohibition
- Market definition

Second set of draft guidelines (26 May – 30 June)

- Powers of investigation
- Enforcement
- Lenient treatment for undertakings coming forward with information on cartel activity cases
- Filing notifications for guidance or decision

Third set of draft guidelines (17 August – 16 September)

- Transitional arrangements
- Appropriate amount of penalty

Fourth set of draft guidelines (3 – 24 October)

- Treatment of intellectual property rights

3. CCS conducted a public consultation on Draft Guideline on the Treatment of IPRs, from 3rd to 24th October 2005. Besides posting the consultation documents on the CCS website and the Government Online Consultation Portal, the CCS wrote to over 122 business chambers and trade associations to invite comments. The CCS also conducted a briefing on the draft guideline in conjunction with the Singapore Business Federation.
4. The 'vertical exclusion' refers to the exclusion for vertical agreements under paragraph 8 of the Third Schedule. The section 34 prohibition does not apply to any vertical agreement, other than such vertical agreement as the Minister may by order specify.

A vertical agreement will be defined as any agreement 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 goods or services and includes provisions contained in such 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 goods or services by the buyer or its customers.

5. Grantbacks are arrangements under which a licensee assigns to the licensor, or agrees to assign to the licensor, the rights over the licensee's improvements to the licensed technology.