

**SUMMARY OF THE COMPETITION COMMISSION OF SINGAPORE'S  
("CCS") ASSESSMENT OF THE NOTIFICATION FOR GUIDANCE  
FROM THE INSTITUTE OF ESTATE AGENTS ("IEA")**

**Introduction**

1. The IEA applied for guidance from CCS on whether the IEA's "Professional Fees/Commission for Real estate agents/Agencies" ("the Guidelines" as reprinted on 15 September 2006) are likely to have the object or effect of restricting competition in the real estate agency market in Singapore, in contravention of section 34 of the Competition Act (Cap. 50B) ("the Act").
2. CCS has determined that the Guidelines are likely to infringe the Act because the Guidelines have the object of restricting competition in the real estate agency market.

**The IEA Guidelines: Background, Rationale and Brief Description**

3. Shortly after it was set up, the IEA introduced fee guidelines in 1999 recommending the fees payable and the fee structures (i.e., which party should pay) applicable to real estate agents for their services. The 1999 version was based on an earlier 1974 version published by the Singapore Institute of Surveyors and Valuers<sup>1</sup>.
4. The IEA said that they introduced the guidelines in 1999 to provide greater "uniformity" in fees because many agents complained that some agents were charging lower than the 1974 recommended rates. The IEA said that the objective of the Guidelines is to serve as an accepted and approved guideline for agents' remuneration for transactions and that it is usually consumers, who want to be informed of the market rate to avoid overpayment. The Guidelines also state that the scale of professional fees/commission is not intended to restrict or interfere with any private arrangements which agents/agencies may have with their clients.
5. The Guidelines set out the level of fees and the fee structures for sales, rental, assignment and management transactions involving all types of properties. For example, in addition to the minimum 2% fee payable by a seller to his agent, the Guidelines provide for payment of a 1% fee by a buyer to the seller's agent in HDB resale property transactions, where the buyer does not have an agent.

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<sup>1</sup> The guidelines in the 1974 Gazette were issued by the then Singapore Institute of Surveyors (SIS), which was not a statutory body, and were published in the "Advertisements" section of that particular issue of the Gazette. They hence have no official standing.

## CCS' Assessment

### A) *Decision of Association of Undertakings*

6. CCS is of the view that the adoption of the Guidelines is a decision by an association of undertakings within the meaning of Section 34 of the Act.

### B) *Object of Appreciably Restricting Competition*

7. CCS is also of the view that the Guidelines have the object of appreciably restricting competition amongst agents. The following were considered in the assessment:

#### (i) **The IEA's Intent in having the Guidelines**

The IEA's original intent in 1999 to ensure greater uniformity in fees charged by agents, remains unchanged. The IEA has also said that the Guidelines serve to keep consumers informed.

#### (ii) **The Potential Reach of the Guidelines**

The Guidelines are targeted at all agents and agencies. There are about 1,400 IEA members. Furthermore, there are about 21,000 agents from over 359 agencies, registered in the IEA's voluntary Central Registration System, which serves as a platform for the IEA and agencies to cooperate and exchange information. CCS also notes that some of IEA's members and the 5<sup>th</sup> Council members are heads of major real estate agencies. The IEA has also said that agencies tend to adopt the Guidelines.

#### (iii) **The Nature of the Guidelines**

The overall tone of the Guidelines is prescriptive, with the use of words and phrases such as "stipulates" and "minimum fee", and statements to the effect that agencies "shall" or "shall not" conduct themselves in a certain way. The Guidelines are specific on the fees and fee structures. The Guidelines have been significantly reinforced by the inclusion of the IEA fee levels in IEA standard contracts used by members.

#### (iv) **Treatment of the Guidelines by the IEA**

The IEA reviewed and reissued its guidelines almost annually up to 2004 and again in 2006. In 2002, the IEA removed the recommendation that 2% be the "minimum" fee, only to reinstate it

in 2004. The IEA's Legislation Committee consulted members and agency bosses on what should be the content of the guidelines during reviews. These show the importance and reliance placed by the IEA on the contents of the Guidelines.

*C) Likely Effect of Appreciably Restricting Competition*

8. An infringement of the section 34 prohibition can be established if it is apparent that the decision by the association has the object of appreciably preventing, restricting or distorting competition. It is not necessary to show the actual effects of the decision.

9. However, CCS also notes that the IEA had stated that:

- (i) the Guidelines are widely accepted and in practice in the industry today, and even non-IEA members carry a copy of the Guidelines in their day to day operations; and
- (ii) the Guidelines are the only set of guidelines in the real estate agency market and are therefore the de facto industry standard.

10. Price recommendations tend to signal a focal point for fees/fee structures to converge. In this instance, the fee payable by sellers of all types of properties is couched as a "minimum" fee. Such minimum fee scales generally discourage price competition below the recommended rate. More efficient agents, who are able to charge lower fees, will have little incentive to do so and will tend to follow the minimum fee, if they believe others will do so.

**Alternatives to Price Recommendations**

12. To guide consumers on the likely costs of a service, the IEA can consider, for example, encouraging agencies and agents to publish their own fees and services to consumers, and providing a breakdown of the prices to help consumers make informed choices when shopping around for an estate agent.

**Advice to the IEA**

13. The IEA has been advised by CCS on 25 June 2008 to remove its recommendations on fee levels and fee structures from the Guidelines and from materials it issues to its members and/or the public (e.g.: IEA's standard contracts and public communications) latest by 25 September 2008. The IEA has also been advised to take steps to inform its members, the industry and the public on the retraction of its Guidelines.

14. The IEA has also been advised not to encourage or facilitate any discussion,

agreements or arrangements on fees and other anti-competitive restrictions amongst its members or industry players.

## **Background Information**

### *The IEA*

1. The IEA is an association of real estate agents formed in 1998, through a merger of 3 real estate bodies. As at February 2008 its membership was about 1,400. The objectives of the IEA are to promote and protect the interests of i) real estate agents; and ii) consumers who engage real estate agents' services.