

PUBLIC CONSULTATION ON THE DRAFT GUIDELINES

INTRODUCTION

1. The Competition Act ("Act") was passed in Parliament on 19 October 2004 and assented to by the President on 4 November 2004. The Act provides for three main prohibited activities:

- a. *Section 34* prohibits agreements, decisions and concerted practices that prevent, restrict or distort competition in Singapore.
- b. *Section 47* prohibits firms from abusing their dominance in ways that are anti-competitive and which work against longer term economic efficiencies.
- c. *Section 54* prohibits mergers and acquisitions which substantially lessen competition.

2. The *sections 34 and 47 prohibitions* will come into force on 1 January 2006. The *section 54 prohibition* will come into force at least 12 months thereafter.

3. Section 61 of the Act provides for the Competition Commission of Singapore ('CCS'), with a view to enabling any person to order his affairs in compliance with the Act, to publish guidelines in the *Gazette* indicating the manner in which the CCS will interpret, and give effect to, the provisions of the Act. The CCS will conduct public consultations before finalising the guidelines. The guidelines will be reviewed from time to time to ensure their continued relevance, taking into account market changes and the decisions of the Competition Appeal Board and the courts.

4. The first set of three draft guidelines on the *section 34 and 47* prohibitions and market definition were issued for public consultation between 31 March and 13 May 2005. The CCS is evaluating the submissions from the public.

5. The CCS invites comments from the public on the second set of four draft guidelines. These guidelines set out how the CCS will investigate and enforce infringements of the sections 34 and/or 47 prohibitions, CCS' leniency programme for 'whistleblower' cartel members and the procedure for notifying agreements or conduct for guidance or decision. The provisions relating to these guidelines will come into force on 1 January 2006

- a. *The Powers of Investigation*
- b. *Enforcement*
- c. *Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity Cases; and*
- d. *Filing of Notifications for Guidance or Decision*

6. The draft guidelines are in Annexes 1 to 4. The other draft guidelines will be released for public consultation in stages in the next few months. The CCS aims to complete the public consultation and publish the guidelines in the *Gazette*, by November 2005.

GUIDING PRINCIPLES AND FRAMEWORK OF THE DRAFT GUIDELINES

7. The guidelines are intended to provide the conceptual and procedural approach that the CCS will take in its enforcement activities. The determination and outcome of each case will depend on the specific facts and circumstances of each case. The CCS would abide by the guidelines as far as possible, even though they are not binding on the CCS under Section 61(4) of the Act.

8. A brief outline of the four draft guidelines in Annexes 1 to 4 follows:

DRAFT GUIDELINES ON THE POWERS OF INVESTIGATION (ANNEX 1)

9. This draft guideline 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 such powers and the procedure the CCS would adopt in exercising such powers. The offences relating to the exercise of such powers are also detailed.

DRAFT GUIDELINES ON ENFORCEMENT (ANNEX 2)

10. This draft guideline sets out the power 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.

11. 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.

DRAFT GUIDELINES ON LENIENT TREATMENT FOR UNDERTAKINGS COMING FORWARD WITH INFORMATION ON CARTEL ACTIVITY CASES (ANNEX 3)

12. This draft guideline sets out the rationale for a leniency programme in respect of cartel activities and explains how the CCS would administer its leniency programme as part of its enforcement strategy.

13. 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 penalties if it fulfils certain conditions. Such conditions include rendering full and complete co-operation to the CCS until the conclusion of any action arising as a result of the investigation and not being an initiator of the cartel. If an investigation has already commenced, the undertaking may still benefit from a reduction in the financial penalty of up to 100% if the 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.

DRAFT GUIDELINES ON FILING OF NOTIFICATIONS FOR GUIDANCE OR DECISION (ANNEX 4)

14. This draft guideline sets out how an undertaking may notify the CCS of its agreement or conduct and seek guidance or a decision from the CCS on whether there has been an infringement of the section 34 and/or 47 prohibition.

15. Undertakings are not required to notify their agreements or conduct and apply for guidance or a decision. However, they may do so if they have serious concerns as to whether they are infringing the Act's prohibitions. This draft guideline sets out the information which has to be submitted in an application for guidance or decision.

NEXT STEPS

16. Public Consultation: The CCS seeks feedback on the draft guidelines. CCS will review the submissions and make the appropriate changes accordingly.

17. Outreach Programmes: The CCS will work with the Singapore Business Federation (SBF) to conduct outreach programmes for the business community. This will include seminars to explain the intent and approach in the draft guidelines. Seminar details are available on the SBF website at: www.sbf.org.sg. Interested parties may also contact the SBF at events@sbf.org.sg or call 6827 6877 for details.

MODE OF CONSULTATION

18. 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

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) 6224 6929

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

- a. cover page (including the information specified in paragraph 21 of this consultation document);
- b. table of contents;
- c. summary of major points;
- d. statement of interest;
- e. comments; and
- f. conclusion.

20. 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.

21. 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.

22. The CCS reserves the right to make public¹ 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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¹ The consultation documents will be posted on the CCS website www.ccs.gov.sg and will also be available at the Government Online Consultation Portal www.feedback.gov.sg