

## PROPOSED CHANGES TO THE CCS GUIDELINES ON THE SUBSTANTIVE ASSESSMENT OF MERGERS

### Overview of main changes

In order to strike the balance between reviewing potentially anti-competitive mergers and minimise regulatory costs through unnecessary merger filings, CCS administers a voluntary merger regime. This means that businesses can conduct their own assessment as to whether their merger or acquisition is likely to raise competition issues.

As part of efforts to continually streamline the merger filing process, the *CCS Guidelines on Merger Procedures* was revised in 2012 to include new initiatives such as confidential advice for mergers as well as a “safe harbour” for small and medium enterprises below a certain turnover threshold.

The purpose of the *CCS Guidelines on the Substantive Assessment of Mergers* (the “SAM Guidelines”) seeks to provide as much guidance as possible to businesses to help them conduct their own self-assessment.

To date, CCS has reviewed 49 mergers (with one merger notification pending CCS’s decision at the time when this document was prepared). As such, CCS is of view that it is timely to revisit and revise the SAM Guidelines, taking into consideration CCS’s experience in the previous merger assessments and feedback from practitioners in the course of these assessments, in order to better inform businesses and practitioners on CCS’s merger assessment framework for the purpose of conducting self-assessments and merger notifications.

CCS proposes changes to the SAM Guidelines to better reflect CCS’s current practice of assessing mergers and acquisitions and to take into consideration developments internationally. The main changes are:

- i. Clarify when the acquisition of minority shareholdings may lead to decisive influence, resulting in a reviewable merger.
- ii. Clarify what is meant by a “substantial” lessening of competition in assessing a merger.
- iii. Explain the different types of market power that a merger or acquisition may create or enhance.
- iv. Explain the factors considered when assessing a merger or acquisition between buyers.
- v. Explain that the approach for assessing vertical mergers (where merger parties operate on different levels of the supply chain) is the same as that for assessing horizontal mergers (where merger parties operate in the same level of the supply chain), i.e. CCS will develop theories of harm,

identify relevant markets and will assess the competition issues against a relevant counterfactual.

- vi. Explain the efficiencies that are considered in assessing whether a merger increases rivalry such that it prevents a substantial lessening of competition occurring.
- vii. Clarify when a merger or acquisition is likely to result in a substantial lessening of competition.
- viii. Clarify what happens when a merger or acquisition results in a substantial lessening of competition, namely the types of efficiencies and remedies that can be considered.

As the number of proposed changes to the SAM Guidelines is significant, changes are not tracked but highlighted. A table setting out the summary of some of the major proposed changes to the current SAM Guidelines is attached to this annex along with the draft revised SAM Guidelines.

### [Draft CCS Guidelines on the Substantive Assessment of Mergers](#)

#### **Questions for Reflection and Consultation**

The objective of the changes to the SAM Guidelines is to provide user-friendly guidelines for businesses undertaking a self-assessment of their merger and to assist businesses in providing feedback to CCS on mergers and acquisitions that affect their businesses.

1. Do you consider the revised SAM Guidelines to be user-friendly?
2. Do the revised SAM Guidelines better assist in your understanding of when a merger or acquisition would need to be notified to CCS?
3. Do the revised SAM Guidelines better assist in your understanding of when a merger or acquisition could result in a substantial lessening of competition?
4. Do the revised SAM Guidelines better assist in your understanding when and the types of economic efficiencies CCS may consider in assessing a merger or acquisition?
5. In relation to CCS's assessment of mergers and acquisitions, are there any areas where you think CCS should provide further clarification or consider additional changes?

Do you have any further feedback on the proposed changes to the SAM Guidelines?

