

## INTRODUCTION OF NEW FAST TRACK PROCEDURE FOR SECTION 34 AND SECTION 47 CASES

### Overview of the new procedure

In administering and enforcing the Act, CCS has the power to investigate anti-competitive activities and make directions to bring the anti-competitive activities to an end, including the imposition of financial penalties on infringing parties.

When the investigations reveal that there is or has been an infringement of the Act, CCS will issue the infringing party(s) with a Proposed Infringement Decision (“PID”). CCS then allows the recipient(s) of the PID a reasonable opportunity to inspect the documents and evidence in CCS’s file and make written representations. Recipients of the PID may also request a meeting with CCS for the purpose of making oral representations to elaborate on the written representations made. After considering the written and/or oral representations (if any) and the conduct of any further investigations (if necessary), CCS decides whether to issue an Infringement Decision (“ID”).

CCS is exploring the possible benefits of introducing a fast track procedure for appropriate cases with a view to increase the efficiency of CCS’s investigation and enforcement process and shorten the time taken to issue a PID/ID.

Essentially, a fast track procedure will enable undertakings under investigation in a case to enter into an agreement with CCS where they will admit their liability by acknowledging their participation in an anti-competitive activity and in return, they will receive a reduction on the financial penalty to be imposed. Undertakings will also benefit from a shorter, expedited investigative timeframe. In drafting its proposal, CCS has drawn on the experience of other jurisdictions that have introduced similar procedures such as the European Commission and the Competition Markets Authority of the United Kingdom.

Key features of the proposed fast track procedure are as follow:

- i. The fast track procedure initiated by CCS will be available in appropriate cases that will be determined by CCS on a case by case basis.
- ii. Parties under investigations in an appropriate case and who wish to benefit from the fast track procedure will have to admit their liability in having participated in an anti-competitive activity.
- iii. A reduction of 10% in the amount of financial penalty that will otherwise be imposed according to the *CCS Guidelines on the Appropriate Amount of Penalty*. This reduction will be applied at the end of the penalties calculation and will be in addition to the leniency reduction conferred on an undertaking if it satisfies the requirements for lenient treatment set out in the *CCS Guidelines on Lenient Treatment for*

*Undertakings Coming Forward with Information in Cartel Activity.*

- iv. CCS will initiate the fast track procedure either before or after issuing a PID but not after an ID has been issued.
- v. Parties under investigations are under no obligation to agree to the fast track procedure initiated by CCS. To allow parties under investigations to determine whether they wish the fast track procedure to take effect, discussion will take place with CCS regarding the scope and gravity of the conduct, including identifying the infringements upon which CCS contemplates making a decision, how the reduction in financial penalty for fast track procedure will be applied; and the possible range and quantum of financial penalties calculated according to *CCS Guidelines on the Appropriate Amount of Penalty*.
- vi. If parties under investigations agree to the fast track procedure applying, parties will send a Fast Track Procedure Submission to CCS and enter into a Fast Track Agreement.
- vii. CCS envisages that in general, the fast track procedure will be applied only when all parties under investigations in the appropriate case agree to the fast track procedure.

[Draft CCS Practice Statement on the Fast Track Procedure for Section 34 and Section 47 Cases](#)

**Questions for Reflection and Consultation**

In addition to inviting any comments on the proposed fast track procedure, specific questions for the public consultation are set out below. CCS also welcomes suggestions on how to improve the proposed fast track procedure.

1. Do you think CCS should introduce a fast track procedure for appropriate cases?
2. Should CCS make the fast track procedure available for both section 34 and section 47 investigation cases? Or should it only be applied to section 34 cartel investigation cases only? Please give reasons explaining your view.
3. What criteria do you think should be applied for CCS to determine cases that are “appropriate” for the fast track procedure?
4. What information do you think is necessary for parties to determine whether they wish to go through the fast track procedure?

## **ANNEX B**

5. At which stage of the investigation and enforcement should CCS initiate the fast track procedure for parties under investigation? Please give reasons explaining your view.
6. Do you think CCS should apply a fast track procedure even where all the parties concerned do not agree to the fast track procedure? Please give reasons explaining your view.
7. Do you think a reduction of 10% in financial penalties is sufficient incentive for parties to want a fast track procedure to apply? Please give reasons and state what you believe the appropriate level of reduction in penalties for cases under the fast track procedure should be.

Please provide any other comments you have on the proposed fast track procedure.

