

## PROPOSED CHANGES TO THE CCS GUIDELINES ON THE SECTION 34 PROHIBITION

### Overview of main changes

The proposed changes mainly concern setting out with greater clarity the various concepts and terms used in assessing anti-competitive agreements, as well as to align the Guidelines to the legal position adopted in other leading competition jurisdictions. The main changes to the *CCS Guidelines on the Section 34 Prohibition* are:

Paragraphs 2.12, 2.13, 2.14 and 2.19 of the draft revised *CCS Guidelines on the Section 34 Prohibition* (“draft revised *Guidelines*”)

- i. To provide an explanation of the key elements of the definition of ‘vertical agreements’ and to clarify that parties being in a vertical relationship with each other does not preclude the finding of a horizontal agreement or concerted practice between them;

Paragraphs 2.22, 2.24, 2.25, and 3.2 of the draft revised *Guidelines*

- ii. To set out the disjunctive nature of the object/effect restriction on competition. The amendments specifies that apart from the hardcore four type agreements (price-fixing, bid-rigging, market sharing or output limitations), once an agreement is found to have as its object the restriction of competition, it will also be regarded as restrictive of competition to an appreciable extent and consequently, there is no need to prove appreciable adverse effects on competition. The draft revised Guidelines will also clarify that in general, any provision and/or exchange of information, including price or non-price information, with the objective of restricting competition on the market will be considered as a restriction of competition by object;

Paragraph 2.23 and footnote 3 of the draft revised *Guidelines*

- iii. To amend the definition of a small or medium sized enterprise (“SME”) to reflect the new definition of SME by SPRING Singapore and to provide that while a SME is unlikely to be capable of conduct that has an appreciable adverse effect on competition in Singapore, CCS will assess each case on its own facts and merits;

Paragraphs 3.20 to 3.22 and 3.25 of the draft revised *Guidelines*

- iv. To clarify that CCS will undertake a competitive assessment of information sharing by undertakings, including the position that a unilateral disclosure of strategic information may in itself be indicative of an agreement or concerted practice, and that parties receiving the information will be presumed to be liable unless they distance themselves with sufficient clarity. Further, the draft revised guidelines

highlight that any information exchange with the objective of restricting competition on the market will be treated as a restriction of competition by object; and

Paragraph 3.5 of the draft revised *Guidelines*

- v. To provide that in general, price recommendations by trade or professional associations may be harmful to competition because they create focal points for prices to converge, restrict independent pricing decisions and signal to market players what their competitors are likely to charge.

The proposed changes in the draft revised guidelines are marked out in blue.

[Draft CCS Guidelines on the Section 34 Prohibition](#)

**Questions for Reflection and Consultation**

The amendments in the draft revised Guidelines have been made to clarify the following objectives:

- i. the interpretation of the meaning vertical agreements;
- ii. unilateral disclosure of strategic information may in itself be indicative of an agreement or concerted practice;
- iii. any agreement which has as its object the restriction of competition will be regarded as restrictive of competition to an appreciable extent;
- iv. in general, any provision and/or exchange of (price or non-price) information with the objective of restricting competition on the market will be considered as a restriction of competition by object; and
- v. in general, price recommendations by trade or professional associations may be harmful to competition.

Do you consider that these objectives have been met? If not, please explain why and outline what might be a better approach.

In relation to anti-competitive agreements, are there any other areas where you are of the view that CCS should provide further clarification or consider additional changes?

