

## PROPOSED CHANGES TO THE CCS GUIDELINES ON THE SECTION 47 PROHIBITION

### Overview of main changes

The proposed changes mainly concern setting out with greater clarity the various concepts and terms used in assessing the abuse of a dominant position. The main changes to the *CCS Guidelines on the Section 47 Prohibition* are:

- i. Amending paragraph 3.8 to highlight that a finding of dominance can be established at a market share below the indicative threshold of 60%.
- ii. Amending paragraph 3.9 on the definition of a small or medium sized enterprise (“SME”) to reflect the new definition of SME by SPRING Singapore and to provide that subject to CCS’s assessment, in general, an undertaking which is a SME is unlikely to be capable of conduct that has an appreciable adverse effect on competition in Singapore.
- iii. Deleting paragraphs 3.16 and 3.17 and replacing them with new paragraphs 3.16 to 3.21 on collective dominance to clarify what constitutes a collective entity and a collective dominant position.
- iv. Amending paragraph 4.4 to clarify the legal test for section 47 cases, in light of the Competition Appeal Board’s (“CAB’s”) decision in the *SISTIC* appeal. Essentially, an abuse will be established where CCS demonstrates that a practice has, or is likely to have, an adverse effect on the process of competition.<sup>1</sup>
- v. Inserting a new paragraph 4.8 to explain the role of counterfactuals in the effects-based assessment of section 47 cases.
- vi. Inserting new paragraphs 8.2 and 8.3 on CCS’s considerations for remedial actions in abuse of dominance cases.

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

### [Draft CCS Guidelines on the Section 47 Prohibition](#)

### Questions for Reflection and Consultation

1. In relation to abuse of dominance, are there any areas where you think CCS should provide further clarification or consider additional changes?
2. In relation to paragraph 3.8, is a 60% indicative threshold for dominance suitable for companies operating in Singapore?

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<sup>1</sup> *Re Abuse of a Dominant Position by SISTIC.com Pte Ltd* [2012] 1 SGCAB 1 at [290] to [291].