

REVIEW OF THE CCS GUIDELINES ON THE APPROPRIATE AMOUNT OF PENALTY; CCS GUIDELINES ON THE POWERS OF INVESTIGATION; AND CCS GUIDELINES ON ENFORCEMENT

Overview of main changes

Amendments to the CCS Guidelines on the Appropriate Amount of Penalty

CCS proposes changes to the *CCS Guidelines on the Appropriate Amount of Penalty* to reflect the 6-step process adopted by CCS for the purposes of calculating financial penalties. The main changes are:

- i. Amending Part 2 to clarify the calculation of financial penalties as a 6-step process.
- ii. Providing at the revised paragraph 2.7 that where an undertaking is unable or refuses to provide CCS with its relevant turnover or is suspected of providing CCS with very low relevant turnover, CCS will attribute a proportionate relevant turnover to that undertaking based on a proxy formula.
- iii. Clarifying at the revised paragraphs 2.12, 2.13 and 2.14 that CCS will not usually make an adjustment for duration in bid-rigging or collusive tendering cases, i.e. the duration multiplier will be set at 1. However, CCS will treat as aggravating, at Step 3, every bid-rigging infringement that the undertaking participates after the first infringement.
- iv. Providing at the revised paragraph 2.14 that unreasonable failure by an undertaking to respond to a request for financial information or providing incomplete information may be treated as an aggravating factor taken into account in the calibration of penalties at step 3.
- v. Clarifying at the revised paragraphs 2.17 and 2.18 that CCS may impose an uplift to the financial penalty calculated, at Step 4, to ensure its policy objectives are achieved.
- vi. Providing at the revised paragraphs 2.21 and 2.22 that at step 6, CCS may take into account leniency and immunity reductions as well as discounts which may be applicable under the new fast-track procedure.

Amendments to the CCS Guidelines on the Powers of Investigation and CCS Guidelines on Enforcement

CCS proposes minor changes to paragraphs 2.1, 2.4 and 5.4 of the *CCS Guidelines on the Powers of Investigation* and paragraphs 1.1 and 1.3 of the *CCS Guidelines on Enforcement*. These changes reflect that CCS may exercise its powers of investigation and its powers of enforcements in respect of the Section 54 Prohibition, which is to be read together with the *CCS Guidelines on Merger Procedures 2012*.

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

[Draft CCS Guidelines on the Appropriate Amount of Penalty; Draft CCS Guidelines on the Powers of Investigation and Draft CCS Guidelines on Enforcement](#)

Questions for Reflection and Consultation

CCS Guidelines on the Appropriate Amount of Penalty

The objective of the changes to the *CCS Guidelines on the Appropriate Amount of Penalty* is to provide transparency and clarity in relation to the manner by which CCS calculates financial penalties.

1. Do you consider that the stated objective has been met? If not, please explain why?
2. In relation to the calculation of financial penalties, are there any areas where you think CCS should provide further clarification or consider additional changes?

CCS Guidelines on the Powers of Investigation and CCS Guidelines on Enforcement

The objective of the changes to the *CCS Guidelines on the Powers of Investigation* and the *CCS Guidelines on Enforcement* is to clarify that CCS may exercise its powers of investigation and its powers of enforcement in respect of the Section 54 Prohibition.

Do you have any feedback on the proposed changes to the *CCS Guidelines on the Powers of Investigation* and the *CCS Guidelines on Enforcement*?

