

REVIEW OF THE CCS GUIDELINES ON THE APPROPRIATE AMOUNT OF PENALTY AND CCS GUIDELINES ON ENFORCEMENT

Overview of main changes

Amendments to the CCS Guidelines on the Appropriate Amount of Penalty

In relation to the calculation of the base penalty, or Step 1 of the penalty calculation, CCS has been relying on the relevant turnover of the undertaking's last business year in the financial year preceding the year when the **decision is issued**. CCS now proposes to use the figures from the financial year preceding the year the **infringement ended**, which would align with the practices adopted in the EU and the UK, and also better reflect the actual value accrued as a result of the undertaking's infringing conduct. The main changes are:

- i. Amendments made to paragraphs 2.1, 2.5 and 2.6 and Glossary of the guidelines to clarify that the undertaking's relevant turnover refers to the undertaking's turnover, for the relevant product and geographical markets affected by the infringement, in the financial year preceding the year when the infringement ended.
- ii. Clarifying at revised paragraph 2.19 that the total turnover of the business of the undertaking in Singapore, for the purposes calculating the statutory maximum amount of penalties under section 69(4) of the Act, refers to the applicable turnover for the business year preceding the date on which the decision of the CCS is taken, or if figures are not available for that business year, the previous business year.

For completeness, the proposed changes will mean that relevant turnover will be calculated based on an undertakings' turnover for the business year preceding the year when the infringement ended. Whereas, the statutory maximum penalty will be calculated having regard to an undertakings' turnover for the business year preceding the date on which the infringement decision of CCS is taken.

Amendments to the CCS Guidelines on Enforcement

CCS has also reviewed its process with regard to the issuance of the PID, and proposes to clarify at paragraph 4.18 of the *CCS Guidelines on Enforcement* that, in line with CCS's practice, the proposed amount of financial penalty will be set out in the PID so as to permit addressees of the PID to make written and oral representations to CCS on matters of liability as well as penalty.

Marked up in blue in the attached Penalty Guidelines and Enforcement Guidelines are the textual changes proposed in CCS's First Public Consultation. Marked up in blue and highlighted in yellow highlight are the proposed textual changes the subject of this second public consultation. CCS is inviting feedback on these yellow highlighted changes..

Questions for Consultation

CCS Guidelines on the Appropriate Amount of Penalty

The objective of the change to adopt the year preceding the year when the infringement ended for relevant turnover in the *CCS Guidelines on the Appropriate Amount of Penalty* is to better capture the value accrued as a result of the undertaking's infringing conduct. There will also be greater certainty in terms of the financial figures against which a penalty will be calculated since the determination of relevant turnover is no longer dependent on when CCS completes its investigation and moves to issue a PID and where appropriate, subsequently ID. This amendment will also bring the method of penalty calculation in line with the practices of established competition authorities, such as the European Commission and the United Kingdom's Competition and Markets Authority.

CCS proposes that its transitional practice will be to apply the amended *CCS Guidelines on the Appropriate Amount of Penalty*, in relation to the new method of penalty calculation at Step 1, for all cases that move to PID after the date on which the amended *CCS Guidelines on the Appropriate Amount of Penalty* come into force.

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?
3. Do you have any comments on the proposed transitional practice?

CCS Guidelines on Enforcement

The objective of the changes to the *CCS Guidelines on Enforcement* is to clarify the procedure and process in relation to the imposition of a financial penalty in the PID and ID. Such a practice allows addresses of PIDs to make a holistic assessment of whether they should make representations, and if so, the scope of such representations.

1. Do you have any feedback on the proposed changes to the *CCS Guidelines on Enforcement*?