SINGAPORE

Legislation and jurisdiction

The Law

What is the relevant legislation?

The relevant legislation is the Competition Act (Chapter 50B), together with the following regulations/orders:

- Competition Regulations;
- Competition (Notification) Regulations;
- Competition (Transitional Provisions for Section 34 Prohibition) Regulations;
- Competition (Fees) Regulations;
- Competition (Composition of Offences) Regulations;
- Competition (Appeals) Regulations;
- Competition (Financial Penalties) Order 2007; and
- Competition (Financial Penalties) (Amendment) Order 2010.

The Competition Act (the "Act") and the relevant regulations/orders are available at the Competition Commission of Singapore (CCS) website (www.ccs.gov.sg, under "Legislation").

CCS has also issued a set of 13 guidelines in order to provide greater transparency and clarity on how CCS will administer and enforce the Competition Act. They are available at CCS' website (www.ccs.gov.sg, under "legislation" > CCS Guidelines).

To whom does it apply?

The Act applies to **undertakings**, i.e., any natural or legal person (including individuals operating as sole traders, businesses, companies, firms, partnerships, societies, co-operatives, business chambers, trade associations or even non-profit organizations) capable of engaging in economic activities, regardless of its legal and ownership status and the way in which it is financed (Sections 2 and 33 of the Act and CCS Guidelines on the Major Provisions, §1.1 and §2.5).

Which practices does it cover?

Part III of the Act covers the following practices:

- **anti-competitive agreements**, which include decisions by associations and concerted practices (Section 34 of the Act);
- **abuse of a dominant position** (Section 47 of the Act); and
- **mergers and acquisitions that substantially lessen competition** (Section 54 of the Act)

Are there proposals for reform?

There are no proposals for reform at the date of publication. For the latest information please refer to CCS website at www.ccs.gov.sg.

The Authority

Who is the enforcement authority?

The enforcement authority is the **Competition Commission of Singapore (CCS)**, an independent statutory board under the Ministry of Trade and Industry (MTI).

CCS investigates and adjudicates anti-competitive practices. It also undertakes outreach

activities to promote competition and advises the Government on competition-related issues (Section 6 of the Act).

Are there any sector-specific regulatory authorities (RAs) with competition enforcement powers?

In Singapore, the following RAs have enforcement powers under their laws or competition codes:

- Civil Aviation Authority of Singapore (www.caas.gov.sg): regulation of airport services under the Civil Aviation Authority of Singapore Act 2009 (Act No. 17 of 2009) and Airport Competition Code;
- Energy Market Authority of Singapore (www.ema.gov.sg): regulation of electricity and gas services under the Energy Market Authority of Singapore Act (Chapter 92B), the Electricity Act (Chapter 89A) and the Gas Act (Chapter 116A);
- Infocomm Development Authority of Singapore (www.ida.gov.sg): regulation of telecommunications and postal services under the Infocomm Development Authority of Singapore Act (Chapter 137A), the Telecommunications Act (Chapter 323), the Postal Services Act (Chapter 237A), the Telecom Competition Code and the Postal Competition Code;
- Media Development Authority of Singapore (www.mda.gov.sg): regulation of media services under the Media Authority of Singapore (Chapter 172) and Code of Practice for Market Conduct in the Provision of Mass Media Services;
- Singapore Police Force (www.spf.gov.sg): regulation of auxiliary police force services under the Police Force Act (Chapter 235).

Anticompetitive practices

Agreements

Which agreements are prohibited?

Section 34 of the Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices, which have the object or effect of appreciably preventing, restricting or distorting competition within Singapore.

Section 34(2) provides for an illustrative list of such agreements which:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, markets, technical development or investment;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

The prohibition applies notwithstanding that the agreement was entered outside of Singapore, or that the party to the agreement is outside Singapore (Section 33(1) of the Act).

Only horizontal agreements are prohibited under Section 34. Vertical agreements, as defined in the Third Schedule to the Act, are excluded from the Section 34 prohibition (please see the section on Exclusions, under “Third Schedule” or refer to CCS Guidelines on Section 34 prohibition).

Which agreements may be exempted?

Section 36 provides that the MTI may issue block exemption orders to exclude particular categories of agreements, from the section 34 prohibition on anti-competitive agreements, decisions and practices, which contributes to —

(a) improving production or distribution; or

(b) promoting technical or economic progress,

but which does not -

- impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
- afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

The block exemption order may impose conditions or obligations subject to which the exemption is granted. The only block exemption currently in force covers liner shipping agreements, which is valid until 31 December 2015.

Specified goods and services are excluded from the Section 34 prohibition under the Third Schedule to the Act (please see the section on Exclusions, under "Third Schedule").

Is there any formal notification requirement and to which authority should a notification be made?

Undertakings may apply in writing to CCS for a **block exemption**.

Otherwise, undertakings may (but are not required to) notify their agreements (with respect to the section 34 prohibition) or conduct (with respect to the Section 47 prohibition) and formally apply to CCS for either:

- **guidance** as to whether the agreement is likely to infringe the Act (Sections 43);
- **guidance** as to whether the conduct is likely to infringe the Act (Sections 50);
- **decision** as to whether the agreement infringes the Act (Sections 44);
- **decisio**n as to whether the conduct infringes the Act (Sections 51);

if they have serious concerns as to whether they are infringing the Act's prohibitions.

Notification cannot be made in respect of prospective agreements (i.e. agreements where the parties have yet to enter into the agreement) or prospective conduct.

Is there a notification form?

Notification forms for guidance or decision from CCS can be found at CCS website (www.ccs.gov.sg, under "Reporting to CCS> Seeking Guidance and Decision"). Notifying parties are required to submit Form 1 and subsequently, if requested by CCS, to submit Form 2 (CCS Guidelines on Filing Notifications for Guidance and Decision with respect to the Section 34 Prohibition and Section 47 Prohibition.

Are there any filing fees?

Please refer to the table below on filing fees (source: CCS website www.ccs.gov.sg, under "Reporting to CCS> Seeking Guidance and Decision"):

	Initial Fee	Further Fee
Notification for Guidance	SGD 3,000	SGD 20,000
Notification for Decision	SGD 5,000	SGD 40,000

Is there any obligation to suspend the transaction pending the outcome of the assessment (standstill clause)?

There is no standstill clause. The notification for

guidance or decision provides parties to an agreement with immunity from financial penalties for any infringement of the prohibition occurring during the period beginning from the date on which the notification was given and ending with such date as may be specified in a written notice to the applicant by CCS when the outcome of the notification has been determined (Guidance - Sections 43(4) and 45(4), Decision - 44(3) and 46(4) of the Act). There is no immunity for notifications covering single-firm conduct.

Procedure and timeline

Applications for guidance or decision are made by filling out Form 1 and submitting it to CCS, together with the prescribed initial fee. Where requested by CCS, the applicant must also fill out and submit Form 2, after having submitted Form 1. The information in Form 2 may not be required in all cases. The application forms can be found on CCS website (www.ccs.gov.sg), under "Reporting to CCS> Apply for a guidance or decision".

In cases where Form 2 is submitted, CCS may, within 2 months of receiving Form 2, specify a time frame within which the applicant is to pay CCS a further fee, over and above that which was paid with the initial filing. This further fee will be levied in cases where CCS is of the opinion that the application requires significant analysis. The applicant may choose not to pay the further fee, in which case CCS may then determine the application by not giving guidance or a decision.

The applicant is required to submit the completed Form 1 or Form 2 in both hard and soft copies (stored in CD-Rom) to CCS from 0900 hrs to 1700 hrs on weekdays (except on Public Holidays).

The applicant is required to notify all other parties to the agreement or conduct about the application, either before the filing with CCS or later, within 7 working days from the filing.

The time taken by CCS to furnish guidance or decisions will depend very much on the nature and complexity of the application, as well as on the volume of applications which have been filed at that point in time.

Please refer to CCS website at www.ccs.gov.sg and CCS Guidelines on Filing Notifications for Guidance and Decision with respect to the Section 34 Prohibition and Section 47 Prohibition for more information.

Monopoly and dominant position

Is monopoly or dominant position regulated?

Section 47 of the Act prohibits undertakings (whether established in Singapore or elsewhere) from abusing their **dominant position** in any market in Singapore.

These practices may refer both to **single dominance** and to **collective dominance**.

What is a dominant position?

A dominant position exists when an undertaking has **substantial market power**. An undertaking's market share is an important factor in assessing dominance but does not, on its own, determine whether an undertaking is dominant. For example, it is also important to consider the positions of other undertakings operating in the same market. Generally, as a starting point, CCS will consider a market share above 60% as likely to indicate that an undertaking is dominant in the relevant market (CCS Guidelines on the Section 47 Prohibition).

When are dominant positions prohibited?

Section 47(2) of the Act provides an illustrative

list of such conduct:

- predatory behaviour towards competitors;
- limiting production, markets, or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according or commercial usage, have no connection with the subject of such contracts.

Examples of conduct that may amount to an abuse can be found in Annex C of CCS Guidelines on the Section 47 Prohibition.

It is not necessary for the dominant position, the abuse and the effects of the abuse, to be in the same market. Examples of different possible scenarios where the Section 47 Prohibition may apply can be found in §4.6 of CCS Guidelines on the Section 47 Prohibition.

Can abuses of dominant position be exempted?

The Act does not contain provisions for block exemption from the Section 47 Prohibition. Specified goods and services are excluded from the Section 47 prohibition under the Third Schedule to the Act (please see the section on **Exclusions** under "Third Schedule").

Is there any formal notification requirement and to which authority should a notification be made?

Refer to section on procedures relating to filing a notification for guidance or decision with respect to the section 34 prohibition or the Section 47 prohibition above.

Merger control

What is a merger?

Section 54 of the Act prohibits **mergers**, that have resulted, or may be expected to result, in a substantial lessening of competition within any markets in Singapore.

Section 54(2) of the Act provides that a merger occurs where:

- two or more undertakings, previously independent of each other, merge;
- one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings;
- one undertaking acquires the assets (including goodwill), or a substantial part of the assets, of another undertaking, with the result that the acquiring undertaking is placed in a position to replace or substantially replace the second undertaking in the business (or the part concerned of the business) in which that undertaking was engaged immediately before the acquisition;
- the creation of a joint venture where two or more undertakings establish, on a lasting basis, an autonomous economic entity.

The Act covers both mergers which are already implemented and projects of mergers (referred to as "anticipated mergers").

The determination of whether a merger exists for the purposes of Section 54 of the Act is based on qualitative rather than quantitative criteria, focusing on the concept of control. These criteria include considerations of both law and fact (Section 54(3) of the Act).

However, Section 54(7) introduces four situations where the acquisition of a controlling interest does not constitute a prohibited merger:

- The person acquiring the control is acting

in its capacity as a receiver or liquidator, or underwriter;

- All of the undertakings involved in the merger are, directly or indirectly, under the control of the same undertaking (intra-group merger);
- Control is acquired solely as a result of a testamentary disposition, intestacy or right of survivorship under a joint tenancy; or
- Securities are acquired on a temporary basis by an undertaking whose normal activities include the carrying out of transactions and the dealing in securities, where the acquiring undertaking exercises its voting rights in respect of the securities: i) with a view to the disposal of the acquired undertaking (or of its assets or securities) within 12 months (or the longer period set by CCS) from the acquisition; and ii) not for the purpose of setting the strategic commercial behaviour of the acquired undertaking (Section 54(8), (9) and (10)).

Are foreign-to-foreign mergers included?

Foreign mergers are included when they have the effect of substantially lessening competition within a market in Singapore (Section 33(1) of the Act).

Do mergers need to be notified?

Notification is not mandatory.

Merging parties are not required to notify mergers or anticipated mergers. They may do so if they have serious concerns as to whether the merger or the anticipated merger has resulted (or may result) in a substantial lessening of competition (SLC).

Merging parties may, on a **voluntary basis**, formally apply to CCS for a decision on whether the

- **Anticipated merge**r will infringe the Act, if carried into effect (Sections 57);
- **Merger** has infringed the Act (Sections 58).

In the case of an anticipated merger, notification will not be accepted if the transaction is still confidential (CCS Guidelines on the Substantive Assessment of Mergers, §3.4, and CCS Guidelines on Merger Procedures 2012, §2.5).

In order to help merging parties identify the information needed for a complete submission, as well as any additional useful information to expedite CCS' review of the submission, merging parties intending to make an application may approach CCS for a **pre-notification discussion (PND)** (CCS Guidelines on Merger Procedures 2012 §§ 4.6-4.11).

With the revision of the CCS Guidelines on Merger Procedures in July 2012, CCS has introduced a new service whereby merger parties can obtain confidential advice from CCS as to whether or not a merger raises concerns, subject to the fulfillment of certain conditions. Essentially, businesses that intend to keep their mergers confidential for the time being, but nevertheless wish to get an indication from CCS on whether or not their mergers would infringe the Competition Act could approach CCS for confidential advice.

At the same time, new turnover guidelines that provide greater certainty to SMEs were implemented. The new guidelines make it clear that the CCS is unlikely to investigate a merger situation that involves only small businesses. For greater clarity, small business is defined by turnover. The CCS is unlikely to investigate a merger If the turnover in Singapore of each of the parties in the financial year preceding the transaction is below SGD 5 million, and where the combined worldwide turnover of all of the parties in the financial year preceding the transaction is below SGD 50 million.

The merger notification forms were also streamlined for greater clarity and to be more business-friendly. Applicants should refer to the CCS Guidelines on Merger Procedures 2012 and the Competition (Notification) Regulations before completing the forms. They may also wish to consider the assessment criteria in the forms to ascertain if notification is necessary.

Merger notification forms can be found on CCS website (www.ccs.gov.sg, under "Reporting to CCS > Notifying a Merger – filing a merger notification with CCS").

Are there any filing fees?

According to the Competition (Fees) Regulations, a fee is charged for filing the notification, depending on the turnover of the undertaking/assets acquired in the merger (i.e., "net aggregate turnover") and on whether the acquiring party is a SME.

For the following mergers involving SMEs, the fee payable is a standard SGD 5,000:

- in a merger situation under Section 54(2)(a) of the Act, where all the merging undertakings are SMEs; or
- in a merger situation involving the acquisition of undertakings or assets, where the acquiring party is an SME and there is no acquisition of direct or indirect control of the SME arising from the transaction.

In most of the other merger situations, the fees are based on the turnover of the target undertaking or turnover attributed to the acquired asset, and are calculated as follows (source: CCS website www.ccs.gov.sg, under "Reporting to CCS > Notifying a Merger – how much does it cost"):

Description	Amount of fees
The turnover is equal to or less than $200 million	SGD 15,000
The turnover is between $200 million and $600 million	SGD 50,000
The turnover is above $600 million	SGD 100,000

More details and updates can be found on CCS website (www.ccs.gov.sg, under "Reporting to CCS >Notifying a Merger").

Are there sanctions for not notifying?

There are no sanctions for not notifying, as merger notification is **voluntary**.

However, if a merger infringes the Section 54 prohibition, Section 69(2) of the Act provides that CCS may impose a financial penalty if satisfied that the infringement has been committed intentionally or negligently.

How long does it take for approval?

According to the CCS Guidelines on Merger Procedures 2012, the analysis of a merger consists of two phases.

In "Phase 1", within an indicative timeframe of 30 working days, CCS assesses that the notification form meets all applicable filing requirements, charges the filing fee and makes a quick assessment of the filing. This allows CCS to give a favourable decision for proposed mergers that clearly do not raise any competition concerns under the Act.

If CCS is unable during the Phase 1 review to conclude that the proposed merger does not raise any competition concerns, CCS will provide the applicants(s) with a summary of the key concerns, and upon the filing of a complete Form M2 and response to the Phase 2 information request, CCS will proceed to carry out a more detailed assessment ("Phase 2" review). CCS endeavours to complete "Phase 2" within 120 working days.

Is there any obligation to suspend the transaction pending the outcome of the assessment (standstill clause)?

The merger procedure has no suspensive or holding effect, and merging parties may carry the anticipated merger into effect or proceed with further integration of the merger prior to a decision (CCS Guidelines on Merger Procedures 2012, §4.66).

However, according to Section 58A of the Act, CCS may impose **interim measures** ("directions"), including suspension of the transaction, where it has reasonable grounds that the prohibition will be infringed by an anticipated merger, if carried into effect, or the prohibition has been infringed by a merger, to prevent the merging parties from taking any action that might prejudice CCS' ability to assess the merger situation and/or to impose the appropriate remedies. Such directions may also be issued as a matter of urgency in order to prevent serious, irreparable damages to a particular person or category of persons or to protect the public interest.

Which mergers are prohibited?

Only mergers which **substantially lessen competition** (SLC) within a market in Singapore are prohibited (Section 54(1) of the Act and Guidelines on the Substantive Assessment of Mergers, §4.3).

There are no specific criteria that automatically makes a proposed merger prohibited. Instead whether a proposed merger id prohibited depends on a range of economic criteria applied to the facts of each particular merger situation.

However, according to §3.6 of the CCS Guidelines on Merger procedures 2012, CCS considers that an SLC is unlikely to result, and CCS is unlikely to investigate a merger situation unless:

- the merged entity has a market share of at least 40%; or
- the merged entity has a market share of between 20% and 40% and the post-merger combined market share of the three largest undertakings is at least 70%.

Mergers may also be approved on the basis of **commitments** presented by the merging parties (Section 60A of the Act).

Some mergers are excluded from the Section 54 prohibition under the Fourth Schedule to the Act (please see the section on Exclusions under "Fourth Schedule")

What happens if prohibited mergers are implemented?

Under Section 69 of the Act, where CCS finds that the prohibition has been infringed, it may issue such directions as it deems appropriate to result in the prohibited merger from being effected and, where necessary, to remedy, mitigate or eliminate any adverse effects of such infringement, which include (CCS Guidelines on Merger Procedures 2012, §§6.17 to 6.29):

- de-concentration or other modifications;
- divestments;
- requiring the merged entity to enter into agreements designed to prevent or lessen the anti-competitive effects of the merger;
- financial penalties up to 10% of the turnover of each relevant merger party in Singapore for each year of infringement for a maximum period of three years ; and
- guarantees or other appropriate securiti

Can mergers be exempted/authorised?

Mergers may be exempted under public interest considerations.

The section 54 prohibitions does not apply to mergers specified in the Fourth Schedule of the Act (please see the section on Exclusions,

under “Fourth Schedule”).

How to apply for an exemption?

The Act provides that merging parties may apply to MTI for exemption on the grounds of **public interest considerations**, within 14 days from CCS’ notice proposing to issue an infringement decision (Sections 57(3), 58(3) and 68(3) of the Act).

Procedure

Investigations

How does an investigation start?

CCS is empowered to commence proceedings (formal investigation), either following a complaint or upon its own initiative.

A general complaint form and a merger complaint form can be found at CCS website (www.ccs.gov.sg, under “Reporting to CCS”).

Parties may submit a complaint to CCS via:

- Online form: http://www.ccs.gov.sg/content/ccs/en/Reporting-to-CCS/Making-Complaints/Complaint-online-form.html
- E-Mail: ccs_feedback@ccs.gov.sg
- Post: Competition Commission of Singapore, 45 Maxwell Road, #09-01 The URA Centre, Singapore 069118
- Fax: + 65-6224 6929

For queries on how to complete the Complaint Form, parties may contact CCS’ hotline at 1800-325 8282 for assistance.

CCS accepts anonymous complaints, but complainants are required to provide all the information requested in the complaint form to allow CCS to seek clarifications or further details necessary for the evaluation of the complaint (Guidelines on the Major Provisions, §8.2).

What are the procedural steps and how long does the investigation take?

CCS may launch a **formal investigation** if there are reasonable grounds for suspecting an infringement (Section 62 of the Act) of any of the prohibitions of the Act.

CCS may also conduct **preliminary enquiries** before launching a formal investigation.

Upon completion of investigation, if CCS proposes to make an infringement decision, CCS shall give written notice of its Proposed Infringement Decision to the affected person and give that person an opportunity to make representation to CCS. CCS may, as it thinks fit, make an infringement decision after considering the representations.

What are the investigation powers of CCS?

Under Sections 63, 64 and 65 of the Act, CCS has the power to:

- require, by notice in writing, the disclosure of documents and information related to any matter relevant to the investigation (no privilege against self-incrimination is granted – Section 66(1)). CCS can take copies of, or extracts from, or seek an explanation of any document produced, with the exemption of legal privileged communications (Section 66(3) and CCS Guidelines on the Powers of Investigation, §7.1);
- enter premises with (Section 65) or without warrant (Section 64). If the premises are occupied by an undertaking under investigation, no advance notice of entry needs to be given. Premises include any vehicle, but do not include domestic premises unless they are used in connection with the affairs of the

business activities or documents related to the business activities are kept there.

According to Section 67, CCS may also impose **interim measures** ("directions") during investigations, where:

- there are reasonable grounds for suspecting an infringement; and
- it is necessary to act urgently, either to prevent serious, irreparable damage to a particular person or category of persons, or to protect public interest.

In addition, with reference to Section 54 prohibition of the Act, directions may also be imposed for the purpose of preventing any action that may prejudice CCS' investigations or its ability to give directions under Section 69.

What are the rights and safeguards of the parties?

Section 89 of the Act introduces safeguards to protect the **confidentiality** ("preservation of secrecy") of information, which may come to the knowledge of CCS when performing its functions and duties:

- containing commercial/business sensitive data;
- containing details of individuals' private affairs acquired during searches/investigations; or
- relating to matters which have been identified as confidential, unless disclosure is necessary, or lawfully required by any court or the Competition Appeal Board (CAB) or required by law.

The Guidelines on the Major Provisions also introduces safeguards to protect the identity and commercial interests of **complainants** (§8.4).

For these purposes, when providing information or documents to CCS, complainants may:

- clearly identify any confidential information;
- explain the reasons why the information should be treated as confidential; and
- provide confidential information in a separate annex. However, where it is necessary to reveal confidential information for effective handling of complaints, CCS will consult the person who provided the information (§8.5).

Sections 89(5), (6) and (7) introduce **exceptions to disclosure of evidence** and identify the extent to which disclosure is authorized.

Should CCS propose an infringement decision, Section 68 of the Act provides safeguards for the parties involved. The CCS must provide written notice to the party/parties likely to be affected by the decision and to give such parties an opportunity to make representations to the CCS. The Competition Regulations 2007 (§8) also require CCS to provide the relevant party or parties a reasonable opportunity to inspect documents relating to the decision issued.

Parties affected by CCS' decision may make an appeal to the Competition Appeal Board (CAB), an independent specialized tribunal which may confirm or set aside the decision which is the subject of the appeal. The CAB may also vary or revoke the amount of financial penalties. The functions and powers of the CAB are detailed in Section 72 and 73 of the Act.

The Act also provides for judicial review and private rights of action (elaborated subsequently in this section).

Is there any leniency programme?

According to CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity Cases 2009, lenient treatment is granted to organisations or persons participating or having participated in

cartel activities for providing effective cooperation to CCS, where certain conditions are meet, i.e.: i) coming forward with all the information to establish the alleged cartel existence and fully cooperate in the investigations; ii) refraining from further participation in the cartel; and iii) not being an instigator or coercer (§2.2).

Leniency includes:

- **immunity** from financial penalties: granted to undertakings which cooperate before an investigation has started, provided that CCS does not already have sufficient information to establish the existence of the alleged cartel activity (§2.2);
- **reduction of financial penalties up to 100%**: granted to undertakings being the first to come forward, which cooperate after an investigation has started, but before CCS issues a notice of its Proposed Infringement Decision (§3.1);
- **reduction of financial penalties up to 50%**: granted to undertakings which come forward after the first cooperative undertaking, but before CCS issues a notice of its Proposed Infringement Decision (§4.1).

CCS has introduced a **marker system** for leniency applications to obtain immunity or a reduction of up to 100% in financial penalties (§§ from 5.5 to 5.9). A marker protects an undertaking's place in the queue for a given period of time and allows it to gather evidence and necessary information on the cartel activity while maintaining its place in the queue for leniency. The grant of a marker is discretionary, but it is expected to be the norm rather than the exception.

Additional reduction from financial penalties (**Leniency Plus**) may be granted for a cartel member involved in completely separate cartel activities (failing to obtain 100% reduction in respect of the first cartel), where it provides information on a second cartel. Under the Leniency Plus system, the cartel member may obtain a significant reduction in the financial penalties for the first cartel, which is additional to the reduction which it would have received for its cooperation in the first cartel alone (§6).

Is it possible to obtain any informal guidance?

The Guidelines on Merger Procedures (§§ 3.7, 3.8 and 3.9) allow for (informal) **pre-notification discussion (PND)**, prior to the submission of a merger notification, in order to help merging parties to identify the information needed for a complete submission and make any additional useful queries pertaining to filing procedures. CCS has also introduced a channel whereby merger parties can obtain confidential advice from CCS as to whether or not a merger raises concerns

Undertakings may also obtain formal guidance from CCS in relation to anti-competitive practices (see the above section on Agreements).

Interested parties who require further information/assistance on procedures can call CCS' hotline number (1800-325 8282).

Adjudication

What are the final decisions?

Following the investigation, CCS may issue:

- an **infringement decision** establishing the infringement of the Act (Section 68);
- a **decision** establishing that there are no grounds for action.

What are the sanctions?

Sanctions for infringing the Act include:

- **directions** requiring among others to: i) modify agreement or conduct; ii) terminate the agreement or cease the conduct; or iii) make structural changes to the business of the undertaking involved (Section 69 (1) and (2));
- **financial penalties** provided that the infringement has been committed intentionally or negligently (up to 10% of the turnover in Singapore for each year of infringement, for a maximum of three years) (Section 69(3) and (4)). When setting the amount of penalties, CCS takes into account, among others: i) the seriousness and the duration of the infringement; ii) the deterrent value; and iii) any other aggravating or mitigating factor (CCS Guidelines on Appropriate Amount of Penalties); and
- **criminal sanctions** where a person fails to cooperate with CCS during investigations (e.g., refusing to provide information, destroying or falsifying documents, provide false or misleading information). Such person may be prosecuted in Court and be subject to fine (not exceeding $10,000) and/or to imprisonment (not exceeding 12 months) or both (Section 83). Section 81 of the Act also refers to criminal offences committed by a "body corporate", a "partnership" or an "unincorporated association (other than a partnership)".

Judicial review

Can the enforcement authority's decisions be appealed?

According to Section 71 of the Act, CCS' decisions and directions imposing financial penalties may be appealed before the Competition Appeal Board (CAB), an independent specialized tribunal.

The appeal does not have suspensive effect, except against the imposition of, or the amount of, financial penalties (Section 71(2)).

A further appeal from a CAB decision may be made, under Section 74, to the High Court and then to the Court of Appeal, either on a point of law arising from a decision of the CAB or from any decision of the CAB as to the amount of financial penalties.

Private enforcement

Are private actions for damages available?

Section 86 of the Act allows individuals who suffer loss or damage to seek damages for losses incurred following an infringement decision.

According to Section 86(6), actions may be brought before civil courts within the time-limit of two years from CCS' decision or from the determination of the appeal (if any).

Exclusions

Is there any exclusion from the application of the Law?

Activities of the Government

Under Section 33(4) of the Act, the prohibitions under the Act do not apply to any activity, agreement or conduct undertaken by the Government, any statutory body or any person acting on behalf of the Government or that statutory body in relation to that activity, agreement or conduct. Under Section 33(5), the Act shall apply to such statutory body or person acting on behalf of such statutory body or such

activity, agreement or conduct undertaken by a statutory body or person acting on behalf of the statutory body in relation to such activity, agreement or conduct, as the Minister may, by order published in the Gazette, prescribe.

Exclusions from Section 34 and 47 prohibitions

The Law provides for certain exclusions from Section 34 and Section 47 prohibitions in the Third Schedule to the Act ('Third Schedule'). These are:

- An undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly, insofar as the prohibition would obstruct the performance, in law or fact, of the particular tasks assigned to that undertaking;
- An agreement/conduct to the extent to which it is made in order to comply with a legal requirement, that is any requirement imposed by or under any written law;
- An agreement/conduct which is necessary to avoid conflict with an international obligation of Singapore, and which is also the subject of an order by the Minister for Trade and Industry ('Minister');
- An agreement/conduct which is necessary for exceptional and compelling reasons of public policy and which is also the subject of an order by the Minister;
- An agreement/conduct which relates to any goods or services to the extent to which any other written law, or code of practice issued under any written law, relating to competition gives another regulatory authority jurisdiction in the matter (See Section under The Authority, for a list of goods and services under the jurisdiction of another regulatory authority);
- An agreement/conduct which relates to any of the following specified activities:
  - The supply of ordinary letter and postcard services by a person licensed and regulated under the Postal Services Act (Chapter 237A);
  - The supply of piped potable water;
  - The supply of wastewater management services, including the collection, treatment and disposal of wastewater;
  - The supply of scheduled bus services by any person licensed and regulated under the Public Transport Council Act (Chapter 259B);
  - The supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act (Chapter 263A); and
  - Cargo terminal operations carried out by a person licensed and regulated under the Maritime and Port Authority of Singapore Act (Chapter 170A);
- An agreement/conduct which relates to the clearing and exchanging of articles undertaken by the Automated Clearing House established under the Banking (Clearing House) Regulations (Chapter 19, Rg 1); or any related activities of the Singapore Clearing Houses Association;
- Any agreement or conduct that is directly related and necessary to the implementation of a merger;
- Any agreement (either on its own or when taken together with another agreement) to the extent that it results, or if carried out would result, in a merger; and
- Any conduct (either on its own or when taken together with other conduct) to the extent that it results in a merger.

In addition to the above, the Section 34 prohibition does not apply to vertical agreements and agreements which have net economic benefits.

Section 34 of the Act does not apply to **vertical agreements** (see definition in Part I of this Handbook), except for those whose primary object is related to intellectual property rights (IPRs) and other IPRs agreements, such as IP licensing agreements. However, MTI may, by order, apply the Act to vertical agreements if there is cause for concern under the Act (Third Schedule of the Act, §8 and Guidelines on the Section 34 prohibition, §2.12).

Under § 9 of the Third Schedule of the Act and Section 35 of the Act, agreements with **net economic benefits** (i.e. there are economic benefits from the agreement that are greater than the negative effects on competition) are excluded from Section 34 prohibition. In order to be excluded, the agreements must generate net economic benefits by improving production or distribution, or promoting technical or economic progress. The exclusion covers only those agreements leading to restrictions that are absolutely indispensable to achieve these benefits and do not unduly impose restrictions on undertakings or substantially eliminate competition.

Exclusions from the Section 54 prohibition

The Act also provides for certain exclusions from the Section 54 prohibition in the Fourth Schedule to the Act ('Fourth Schedule'). These are:

- A merger:
  - approved by any Minister or regulatory authority pursuant to any requirement for such approval imposed by any written law;
  - approved by the Monetary Authority of Singapore pursuant to any requirement for such approval under any written law; or
  - under the jurisdiction of another regulatory authority under any written law relating to competition, or code of practice relating to competition issued under any written law;
- Any merger involving any undertaking relating to any of the following specified activities:
  - The supply of ordinary letter and postcard services by a person licensed and regulated under the Postal Services Act (Chapter 237A);
  - The supply of piped potable water;
  - The supply of wastewater management services, including the collection, treatment and disposal of wastewater;
  - The supply of scheduled bus services by any person licensed and regulated under the Public Transport Council Act (Chapter 259B);
  - The supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act (Chapter 263A); and
  - Cargo terminal operations carried out by a person licensed and regulated under the Maritime and Port Authority of Singapore Act (Chapter 170A);
- Any merger with net economic efficiencies.

Enforcement Practices

Please refer to the Annex I - Case Studies.