
CCS GUIDELINES ON THE PROCEDURE FOR SETTLEMENT



<Version for Public Consultation>

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1 Introduction

- 1.1 These guidelines set out a framework for a settlement procedure (the “**Settlement Procedure**”) ¹ that seeks to achieve more efficient and expedient resolutions of investigations by the Competition and Consumer Commission of Singapore (“**CCS**”) into infringements of sections 34 or 47 of the Competition Act 2004 (the “**Act**”).
- 1.2 Undertakings which settle with CCS by resolving their infringements under the Settlement Procedure (e.g. by acknowledging their conduct and liability and waiving their right to contest CCS’s findings and decision of an infringement) can receive a settlement discount on any financial penalties that may be imposed. The settlement discount awarded by CCS is up to 30% and is applied as the final step in CCS’s assessment of penalties.²

2 Overview of the Settlement Procedure

- 2.1 Under the Settlement Procedure, both settlement parties and CCS can save on time and resources associated with the usual investigatory process and any subsequent appeals. For businesses, settlement can reduce administrative costs, operational uncertainty and provide an expedient way for businesses to obtain closure if they are under CCS’s investigation. For CCS, settlement allows for the better utilisation of its investigatory and legal resources.

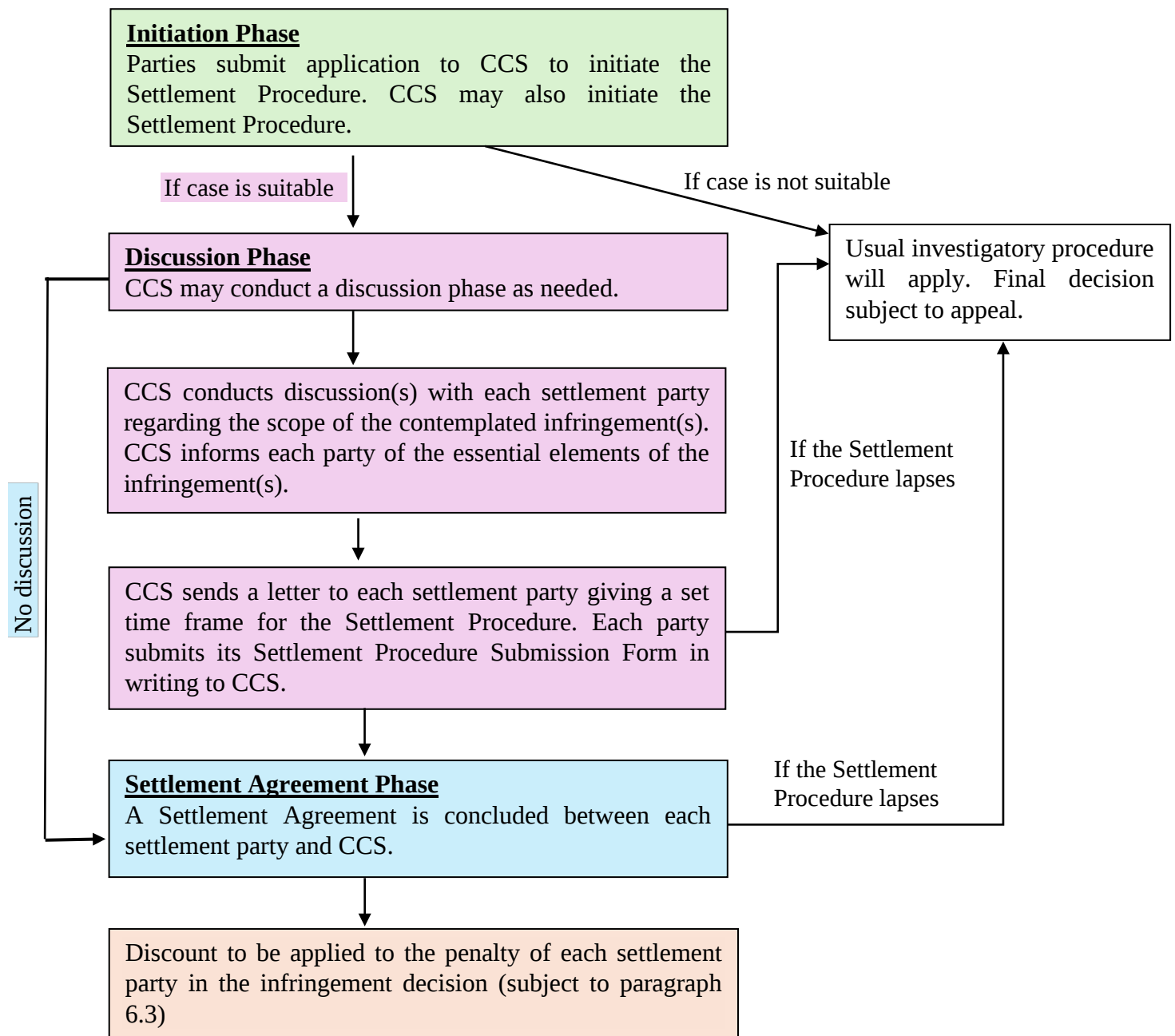
Procedure for Settlement

- 2.2 The Settlement Procedure is set out in the flowchart in Figure 1 below. In general, the Settlement Procedure consists of the Initiation Phase, the Discussion Phase, the Settlement Agreement Phase and the Acceptance Phase.

¹ Under the *CCS Practice Statement on the Fast Track Procedure for Section 34 and Section 47 Cases*, the procedure is known as the fast track procedure.

² The reduction is applied to the amount of remaining financial penalty, which the settlement party is directed to pay after other discounts awarded by CCS to the settlement party (if any), such as under leniency, have been applied. For more details, refer to *CCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016* provides general advice and information about the basis on which CCS will calculate financial penalties for infringements of the section 34 or 47 prohibition. S

Figure 1. Flowchart of Settlement Procedure



2.3 The Settlement Procedure is distinct from CCS's powers to accept commitments as set out in the *CCS Guidelines on Directions and Remedies* and the leniency programme set out in the *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity*. These differences can be summarised in the following manner:

- In a voluntary commitments process, an investigated party offers commitments to CCS to address the competition concerns identified. There is no admission of liability by such parties for an infringement of the Act. There is also no finding of an infringement where CCS accepts the commitments to address the competition concerns identified by CCS.
- CCS's leniency policy and Settlement Procedure are not mutually exclusive, and it is possible for a leniency applicant to benefit from discounts arising from both the leniency policy and the Settlement Procedure. Please refer to paragraph 6.2 below on the computation of discounts and penalties in such cases.

2.4 In considering which cases may be appropriate for the Settlement Procedure, CCS may take into account the number of parties concerned in the investigation, the number of parties who have proactively indicated their interest in engaging in a settlement discussion, foreseeable divergences in the parties' relative positions, possibility of parties' contradicting positions regarding the attribution of liability, as well as the predicted margin for argument and extent to which facts may be contested.

3 Initiation of the Settlement Procedure

3.1 A party can initiate the Settlement Procedure by submitting an application to CCS, the Settlement Procedure Initiation Form, through the links set out in CCS's [website for businesses](#). A potential settlement applicant is required to provide all material information and evidence for CCS to effectively discuss the matters set out in paragraph 4.2 below. A potential settlement applicant may make such a request to CCS prior to or after a proposed infringement decision ("**PID**"), but not after an infringement decision ("**ID**") has been issued.

3.2 CCS may, where it is of the view that a case could be suitable for the Settlement Procedure, send a letter to a party to whom it contemplates issuing or has issued a PID, asking whether that party would be interested in participating in the Settlement Procedure. The Party will have to indicate in writing its interest in settling to CCS within a short, stipulated time frame.

3.3 In general, CCS considers that procedural efficiencies and resources savings are higher if the Settlement Procedure is initiated prior to a PID being issued. As such, a party that achieves settlement with CCS at an earlier stage in the investigation process would be awarded a higher discount than if that party achieved settlement at a later stage (e.g. after the PID has been issued).

3.4 CCS retains a broad margin of discretion in determining if the case is suitable for the Settlement Procedure or whether the normal investigatory procedure should apply instead. CCS will only consider the Settlement Procedure suitable for a case where CCS is reasonably satisfied, based on information and evidence it has, that the evidentiary

standard of proof has been met such that CCS would be prepared to issue a PID or ID (as appropriate given the stage of proceedings) in that case.

- 3.5 CCS envisages that the Settlement Procedure will usually only be used where all parties who are contemplated to be addressees of any PID or ID agree to participate in the Settlement Procedure. However, depending on the facts and circumstances of the case, even if not all of such parties are agreeable to initiating the Settlement Procedure, CCS may still proceed with the Settlement Procedure with those parties that are minded to do so. For example, CCS may still consider it to be appropriate to use the Settlement Procedure if all parties who are suspected of having engaged in conduct that infringes the section 34 prohibition agree to participate the Settlement Procedure except for one party and CCS considers that the objectives of Settlement Procedure (such as significant procedural efficiencies and resource savings) would still be met.
- 3.6 Participation in the Settlement Procedure is voluntary. By opting for the Settlement Procedure, the settlement applicant declares that it wishes to reach a final resolution of the case i.e. to sign the settlement agreement and not subsequently retract its admission of liability and/or file an appeal.
- 3.7 Parties to any Settlement Procedure may not disclose to any third party any information received during the Settlement Procedure unless they have prior explicit authorisation by CCS. Unauthorised disclosure by a party of any information received during the Settlement Procedure may result in the Settlement Procedure being discontinued and/or may be regarded as a lack of cooperation within the meaning of *CCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*.

4 Discussion phase

- 4.1 Upon initiation of the Settlement Procedure (either by the settlement party or CCS), CCS may engage the settlement party in a discussion where CCS is of the view that a discussion phase would be helpful for the resolution of the case in question.
- 4.2 During the discussion phase, CCS and each settlement party will discuss, on a “without prejudice” basis, aspects of the contemplated infringement(s), including the following:
 - a. the essential elements of the contemplated infringement(s) such as the alleged facts, nature of the infringement(s), seriousness and duration of the infringement(s), and the liability of the settlement party for its involvement in the infringing conduct, upon which CCS contemplates issuing a PID/ID;
 - b. the key evidence used to determine the scope of the contemplated infringement(s);
 - c. the possible range and/or quantum of financial penalties calculated according to the *CCS Guidelines on the Appropriate Amount of Penalty in Competition Cases*; and
 - d. non-confidential versions of key documents that CCS determines are necessary to enable the settlement party to ascertain its position regarding the contemplated infringement(s).

Settlement Procedure Submission Form

- 4.3 At the conclusion of the discussion phase, a settlement party will provide to CCS a Settlement Procedure Submission Form that sets out the following, in relation to the contemplated infringement(s) by the deadline stipulated by CCS:
- a. a statement of the material facts surrounding the infringement(s) (for example, the description of the conduct, scope, duration, main facts of the case);
 - b. the financial information (e.g. the turnover of the business of the undertaking in Singapore for the relevant product and relevant geographic markets affected by the infringement(s) in the undertaking's last business year);
 - c. admission to the facts and liability to the infringement(s) without qualification (e.g. infringement(s) of section 34 by object or effect). This admission of liability to an agreed set of facts will be set out in the Settlement Agreement;
 - d. a statement that it has been sufficiently informed of CCS's proposed decision and that it has been given sufficient opportunity to explain itself to the extent it wishes to; and
 - e. a statement that it will not make written or oral representations to a PID (except for a concise memorandum identifying any material factual inaccuracies in the PID, if any) nor request to inspect the documents and evidence in CCS's file.
- 4.4 A settlement party can request an extension of the deadline to submit its Settlement Procedure Submission Form but must furnish reasons for its request. If any settlement party fails to submit its Settlement Procedure Submission Form within the deadline stated or any extension that has been granted by CCS, the Settlement Procedure will be deemed to have lapsed for that settlement party and CCS may in its discretion proceed to conduct its investigations in accordance with the usual procedure for that settlement party and other parties.

5 Agreement to accept the settlement procedure offer

- 5.1 Each settlement party that has agreed to the procedure will sign an agreement with CCS. Where a Settlement Procedure Submission Form has been submitted to CCS, the agreement will incorporate the information provided in the Settlement Procedure Submission Form (the "**Settlement Agreement**"). Examples of the terms that will be included in the Settlement Agreement are set out in Annex A.
- 5.2 Until the signing of the Settlement Agreement, both CCS and settlement party have the discretion to decide whether to continue with the Settlement Procedure.

6 Acceptance and CCS's decision

- 6.1 Subject to paragraph 6.3, following the signing of the Settlement Agreement by CCS and each settlement party, CCS will issue a streamlined PID or ID (as appropriate) reflecting the content agreed between CCS and each settlement party in the Settlement Agreement. Where a PID is issued based on the Settlement Agreement, each settlement party will have a limited time period set by CCS in which to make representations (i.e.

identifying any material factual inaccuracies, if any) as agreed in the Settlement Agreement. CCS's ID will consider and take into account representations received from each settlement party as appropriate.

- 6.2 The reduction in any financial penalty granted for the Settlement Procedure will be applied to the financial penalty payable, after all other applicable reductions or increases in penalty have been imposed (such as any discount awarded under CCS's leniency programme) following the six step framework set out in the *CCS Guidelines on the Appropriate Amount of Penalty in Competition Cases*. For example, if a settlement party is granted a 50% reduction in financial penalties due to leniency and a further 30% reduction in financial penalties due to the Settlement Procedure, the settlement party will receive an overall reduction of 65% in financial penalties.
- 6.3 CCS may however issue a PID or ID that departs from the position that has been agreed between itself and any settlement party in the Settlement Procedure, for example where new evidence comes to light after the Settlement Agreement has been signed but before CCS has issued a PID or ID. In such cases, CCS will inform the settlement party(s) concerned before issuing a PID or ID that the Settlement Procedure is no longer available in the form that was agreed. The normal investigatory procedure will then apply unless the CCS and the settlement party(s) agree on amendments to the Settlement Agreement. If the normal investigatory procedure (instead of the Settlement Procedure) then applies, any admission by a settlement party will be deemed to be withdrawn.
- 6.4 Should the Settlement Procedure be discontinued and the normal investigatory procedure applies, any document provided by a settlement party in the course of discussions will be deemed to have been withdrawn and will not be used. However, CCS reserves the right to request any document using its formal investigation powers, except to obtain those documents created solely for the purposes of the Settlement Procedure.

Annex 1 – Clauses to be included in Settlement Agreement

The Settlement Agreement will include the following terms:

- i. confirmation of the settlement party's request pursuant to their Settlement Procedure Submission to use the Settlement Procedure;
- ii. confirmation by the settlement party that it has been sufficiently informed of the contemplated infringement(s) and that it has been given the opportunity to explain itself to the extent it wishes to;
- iii. confirmation of the material facts surrounding the alleged infringement(s) (including for example nature of any infringement of section 34, scope, duration, main facts of the case and legal assessment, etc);
- iv. the settlement party's clear and unequivocal admission and acknowledgement of the facts, its liability for the infringement(s) and of its involvement in it (including for example nature of infringement, duration, main facts of the case and legal assessment, etc);
- v. the settlement party agrees to cooperate throughout CCS's investigation;
- vi. the settlement party agrees on how CCS has computed the financial penalty and the parameters of the financial penalty (including any penalty uplift (if any));
- vii. that the settlement party agrees to the imposition of the specific discounted financial penalty that CCS will impose on it;
- viii. that the settlement party agrees to the imposition of the specific structural and/or behavioural remedies required by the CCS, and confirms that it acknowledges that such remedies are necessary to remedy, mitigate or eliminate any adverse effects of such infringement or circumstances and to prevent the recurrence of such infringement or circumstances, and that the remedies are proportionate to the infringements committed;
- ix. the settlement party agrees to not make oral or written representations (but it can provide a concise memorandum identifying any material factual inaccuracies in the PID) or request to inspect the documents and evidence in CCS's file;
- x. the settlement party agrees that the Settlement Agreement is final and binding against it. It has waived its right to contest CCS's findings and decision for the case. It will not challenge or appeal against any part of the findings and decision that does not deviate in substance from the Settlement Agreement. It agrees to be bound by the Settlement Agreement and not appeal any findings and decision even if another infringing party successfully appeals against any directions given by or that infringing party's settlement agreement with the CCS;
- xi. the settlement party agrees that the reduction in financial penalty under the Settlement Procedure is given on the basis of amongst others, procedural efficiencies and resource savings. The reduction is therefore contingent on the settlement party:

- a. not making oral or written representations (but it can provide a concise memorandum identifying any material factual inaccuracies in the PID), and not requesting to inspect the documents and evidence in CCS's file; and
 - b. not challenging or appealing against any part of the findings and decision that does not deviate in substance from the Settlement Agreement; and
- xii. the settlement party acknowledges and agrees that should it bring appeal proceedings before the Competition Appeal Board or any courts in respect of the Settlement Procedure or CCS's decision:
 - a. it has repudiated all benefits of the Settlement Agreement; and
 - b. it will lose the reduction in financial penalty under the Settlement Procedure entirely, even if the appeal is subsequently withdrawn by the settlement party.