CCS GUIDELINES ON MERGER PROCEDURES

COMPETITION & CONSUMER COMMISSION | SINGAPORE

Table of Contents

CCS GUIDELINES ON MERGER PROCEDURES

1 Introduction

1.1 These guidelines describe CCS's procedures for the application of the Competition Act 2004 (the "Act") to mergers.

1.2 The merger provisions of the Act apply to completed mergers that have infringed (or anticipated mergers that, if implemented, will infringe) the section 54 prohibition, unless they are excluded or exempt under the Act. Section 54 provides that mergers that have resulted, or may be expected to result in a substantial lessening of competition ("SLC") within any market in Singapore for goods or services are prohibited. The focus of CCS's analysis is on evaluating the impact of the merger in Singapore and how the competitive incentives of the merger parties and their competitors may change as a result of the merger.

1.3 For ease of reference, the term "merger situation" is used in these guidelines to refer to both completed mergers and anticipated mergers.

1.4 In addition to these guidelines, the following CCS guidelines are also relevant to the framework for merger control:

- *CCS Guidelines on the Substantive Assessment of Mergers*: These set out some of the factors and circumstances which CCS may consider in determining whether or not a merger situation infringes the section 54 prohibition.

- *CCS Guidelines on Market Definition*: These explain the methodology CCS may use to define the relevant product market and geographic market.

- *CCS Guidelines on the Powers of Investigation in Competition Cases*: These explain CCS's use of its statutory powers to investigate suspected anticompetitive behaviour under the Act. These powers also apply to merger situations pursuant to section 62 of the Act.

- *CCS Guidelines on Directions and Remedies*: These explain CCS's powers to give directions and remedies, accept and vary commitments and to impose financial penalties. These powers also apply to merger situations.

1.5 The following regulations and orders are also relevant to CCS's assessment of mergers:

- The *Competition (Notification) Regulations 2007*: These regulations relate, *inter alia,* to applications to CCS for a decision in respect of merger situations.

- The *Competition (Fees) Regulations 2007*: These regulations state, *inter alia*, the fees that are payable in respect of merger situations that are notified to CCS for decision.

- The *Competition (Financial Penalties) Order 2007*: This order relates, *inter alia,* to the calculation of the level of any fine that CCS can impose, including in the context of merger situations.

1.6 All of the above guidelines, regulations and orders are available on CCS's website. Interested parties should read the relevant guidelines, regulations and orders to better understand the merger framework. CCS's previous merger decisions, which are also available on CCS's website, also provide useful information on how it has assessed mergers in the past.

1.7 The guidelines are not a substitute for the Act, the regulations or orders. They may be varied from time to time in accordance with legislative provisions. In applying the guidelines, the facts and circumstances of each case will be considered. The examples in the guidelines are for illustration. They are not exhaustive and do not set a limit on the investigation and enforcement activities of CCS. Persons who are in doubt about how they and their commercial activities may be affected by the Act may wish to seek legal advice.

1.8 A glossary of terms used in these guidelines is attached.

2 Overview of procedural framework

Definition of a merger

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

- two or more undertakings, previously independent of one another, merge;

- one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or

- the result of an acquisition by one undertaking (the first undertaking) of the assets (including goodwill), or a substantial part of the assets, of another undertaking (the second undertaking) is to place the first undertaking in a position to replace or substantially replace the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition.

In addition, section 54(5) of the Act provides that the creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity constitutes a merger.

2.2 Please refer to the relevant paragraphs of the *CCS Guidelines on the Substantive Assessment of Mergers* for more details of merger situations that fall under the Act.

Voluntary regime

2.3 Singapore has a voluntary merger notification regime. This means that there is no obligation, or mandatory requirement, for merger parties to notify their merger situations to CCS, either before or after implementation of the merger. It is the responsibility of merger parties to self-assess their merger and ensure that it does not infringe section 54 of the Act.

2.4 Merger parties have the option of notifying their merger situation to CCS under sections 56 to 58 of the Act, for a decision as to whether the merger situation infringes, or will infringe, the section 54 prohibition ("application" or "notification"). Parties should carry out their own assessment to determine whether or not notification may be appropriate.

2.5 Not notifying a merger situation that raises competition concerns under the Act carries risks since CCS can investigate mergers on its own initiative ("own-initiative investigations"). When it does so, and finds that the merger situation leads to a SLC, CCS has powers to give directions to remedy the SLC. For example, CCS can require the merger to be dissolved or modified and can impose financial penalties. For further information on whether or not to notify a merger situation to CCS, see Part 3 below. Parties may wish to seek legal advice if necessary.

Applications

2.6 Merger parties may make an application to CCS under section 57 of the Act in respect of an anticipated merger which has been made known to the public.[1] Alternatively, merger parties may wait until the anticipated merger has been carried into effect before making an application in respect of the merger under section 58. Merger parties notifying CCS are strongly encouraged to notify as soon as possible, preferably prior to the completion of the merger. After conducting its assessment, CCS will make a decision as to whether the section 54 prohibition has been or will be infringed.

2.7 CCS also has a process whereby merger parties can obtain confidential advice from CCS as to whether or not a merger raises concerns (see Part 3, paragraphs 3.18 to 3.29 below).

[1] Regulation 3 of the *Competition (Notification) Regulations 2007*.

CCS procedure for review

2.8 As a matter of administrative practice, CCS adopts a two-phase approach in evaluating applications. In general, upon receipt of a complete application, CCS will carry out an assessment (Phase 1 review) within 30 working days. For merger situations that clearly do not raise any competition concerns, a streamlined assessment will be applied by CCS and completed within 25 working days. CCS expects that this will apply to the majority of merger situations. In limited circumstances where merger situations require more scrutiny in order to ascertain whether competition concerns arise,[2] CCS may extend the Phase 1 review period (30 working days) by up to an additional 20 working days to enable any issues identified to be further assessed before deciding whether a Phase 2 review may be needed. Phase 1 may consequently be up to 50 working days in relation to such merger situations.

2.9 Upon the conclusion of CCS's Phase 1 review, CCS shall give a favourable decision in relation to merger situations where there is no SLC under the Act, or where competition concerns are appropriately addressed by the Applicant(s), through commitments or otherwise.

2.10 However, if CCS has reasonable grounds to suspect that the section 54 prohibition may be infringed upon the conclusion of its Phase 1 review, CCS will provide the Applicant(s) with a summary of its key competition concerns identified through an issues letter ("Phase 1 Issues Letter"), and indicate that CCS is unlikely to clear the merger if these concerns remain unaddressed. Following this engagement, if CCS's concerns are not appropriately addressed (eg., if the Applicant(s) does not submit any commitments proposal that appropriately addresses CCS's competition concerns, or if any additional information submitted does not satisfy CCS that these concerns are unlikely to arise), CCS will proceed to commence a more detailed assessment (Phase 2 review) upon receipt of a complete Form M2.[3] As a Phase 2 review is more complex, CCS will endeavour to complete it within 100 working days.[4]

[2] For example, where the complexity of the merger situation requires CCS to obtain more information for the assessment, or where there may be a novel theory of harm.

[3] For the avoidance of doubt, the submission of a commitments proposal is voluntary, and applicant(s) may choose not to submit any proposal at this stage if they deem it inappropriate.

[4] In respect of merger situations subject to the Singapore Code on Take-overs and Mergers (the "**Code**"), see Appendix 3 to the Code for the Guidance note on the Merger Procedures of the Competition and Consumer Commission of Singapore.

2.11 Although CCS will endeavour to meet the abovementioned administrative timelines, CCS may suspend its review (known as 'stopping the clock') for a variety of reasons, for example if the merger parties do not respond to CCS's requests for information within the stipulated time period or if commitments are being considered.

2.12 Merger parties who wish to make an application should refer to Part 4 of these guidelines for further details relating to the application procedure.

Powers of investigation

2.13 Under sections 62(1)(c) and (d) of the Act, CCS may conduct an investigation if there are reasonable grounds to suspect that a merger situation infringes the section 54 prohibition. When conducting an investigation, CCS's powers are as follows:

- to require the production of specified documents or information (pursuant to section 63 of the Act);
- to enter premises without a warrant (pursuant to section 64 of the Act); and
- to enter and search premises with a warrant (pursuant to section 65 of the Act).

2.14 The Act also sets out a number of criminal offences which may be committed where an undertaking fails to comply when these powers are exercised[5], as well as limitations on the use of CCS's powers of investigation.[6] For further information, please refer to the relevant paragraphs of the *CCS Guidelines on the Powers of Investigation in Competition Cases* pertaining to the exercise of CCS's powers of investigation, and Part 5 below.

Interim measures

2.15 Prior to completing its assessment of an application or an own-initiative investigation, CCS may impose interim measures to prevent any action that may prejudice CCS's ability to investigate the merger situation or its ability to impose appropriate remedies.[7] Interim measures may also be imposed as a matter of urgency for the purpose of preventing serious, irreparable damage to a particular person or category of persons or of protecting the public interest.[8] For further information, see paragraphs 4.70 to 4.78 below.

[5] Sections 75 to 78 of the Act.
[6] Sections 63 to 66 of the Act.
[7] Sections 58A and 67(2)(c) of the Act.
[8] Section 67(2)(d) of the Act.

Commitments

2.16 Section 60A of the Act states that CCS may, at any time before making a decision as to whether the section 54 prohibition has been or will be infringed, accept commitments that remedy, mitigate or prevent the SLC or any adverse effect arising from the merger situation. Where CCS has accepted a commitment, CCS will make a favourable decision.[9] For further information, see the *CCS Guidelines on Directions and Remedies*.

Directions

2.17 Where CCS has made an unfavourable decision, section 69 of the Act provides that CCS may give directions as it considers appropriate to remedy, mitigate or eliminate any adverse effects arising from the merger situation. Such directions may include the imposition of financial penalties.[10] For further information, see Part 6 below.

3 Self-assessment: Deciding whether or not to notify

3.1 This part provides guidance on the circumstances in which it may be appropriate for merger parties to notify their merger situation to CCS.

Voluntary regime

3.2 It is not a mandatory requirement for merger parties to notify their merger situation to CCS, either before or after implementation of the merger, but they have the option of doing so. It is the responsibility of the merger parties to assess for themselves whether or not their merger would infringe the section 54 prohibition, and they can apply to CCS for a decision as to whether the merger situation infringes, or will infringe, the section 54 prohibition.

3.3 While CCS becomes aware of mergers through notifications, it is also informed of mergers through its market intelligence function and complaints. It can investigate mergers on its own initiative (i.e. where the parties have decided not to notify), where it considers that there are reasonable grounds to suspect that the section 54 prohibition has been or will be infringed.[11] In those circumstances, it can carry out an investigation using its statutory powers (see Part 5 below).

[9] Section 60B(1) of the Act.
[10] Section 69(2)(e) of the Act.
[11] Section 62 of the Act.

Circumstances when it would be appropriate to notify CCS

3.4 Merger parties should assess if an application to CCS is appropriate for their merger situation, bearing in mind that mergers that give rise to a SLC within any market in Singapore are prohibited under section 54 of the Act. The following paragraphs explain in more detail when notification may be appropriate. In general, merger situations should be notified to CCS if the merger parties think the merger may result in a SLC within any market in Singapore.

3.5 CCS is unlikely to investigate a merger situation that only involves small companies, namely where the turnover in Singapore[12] in the financial year preceding the transaction of each of the parties is below S$5 million and the combined worldwide turnover in the financial year preceding the transaction of all of the parties is below S$50 million.

3.6 CCS considers that a SLC is unlikely to result, and CCS is unlikely to investigate a merger situation unless:

- the merged entity will have a market share of 40% or more; or
- the merged entity will have a market share of between 20% to 40% and the post-merger combined market share of the three largest firms (CR3) is 70% or more.

3.7 However, the above thresholds are indicative only, and CCS may investigate merger situations that fall below these indicative thresholds in appropriate circumstances. Conversely, merger situations that meet or exceed the thresholds stated in the notification guidelines are not necessarily prohibited under section 54 of the Act.

3.8 Merger parties may wish to seek legal advice if necessary; they may also refer to the following guidelines in their assessment:

- Part 7 of these guidelines to determine if the merger situation is excluded under the Fourth Schedule of the Act.
- *CCS Guidelines on Market Definition* to determine how to define a relevant market.
- *CCS Guidelines on the Substantive Assessment of Mergers* to determine the nature and extent of any possible concerns that CCS may have.
- CCS's previous merger decisions in relation to both market definition and the competitive assessment that CCS carries out.

[12] Turnover in Singapore in this context refers to turnover booked in Singapore as well as turnover from customers in Singapore.

Risks of not notifying

3.9 Merger parties should note that under section 62 of the Act, CCS may conduct an investigation if there are reasonable grounds to suspect that a merger has infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition.

3.10 CCS considers that there may be reasonable grounds to suspect that the section 54 prohibition has been or will be infringed, for example, where there are consistent complaints, or one or more substantiated complaints, from third parties; where there are preliminary indications that the merged entity may have a market share of 40% or more; or the merged entity may have a market share of between 20% to 40% and the post-merger combined market share of the three largest firms (CR3) may be 70% or more; where customers in Singapore appear, post-merger, to have limited choice, or – for vertical mergers – where there is a possibility of competitors being foreclosed. The examples given are not exhaustive.

3.11 When CCS has reasonable grounds to suspect that the section 54 prohibition has been or will be infringed, it is empowered under section 63 of the Act, to require from any person (including the merger parties and third parties) specified information or documents that CCS considers relate to any matter relevant to the investigation into the merger situation.

3.12 If CCS carries out an own-initiative investigation and ultimately identifies a SLC, this could have two consequences. First, CCS may direct the merged entity to remedy the SLC, for example by divesting all or part of the business.[13] Second, CCS has the power to impose financial penalties on merger parties that implement a merger that gives rise to a SLC.[14] For further information on directions that may be imposed by CCS, please refer to Part 6 below.

CCS's market intelligence function

3.13 CCS considers that a market intelligence function is an integral part of its voluntary merger notification regime. As part of its statutory remit in the context of merger control, CCS keeps markets under review to ascertain which mergers and acquisitions are taking place. Where it identifies transactions that it considers may potentially raise concerns under the merger provisions of the Act, it approaches the merger parties to gather further information about the transaction and its effect on competition. It may also approach third parties in this regard. Parties and third parties are encouraged to respond promptly and comprehensively to any information requests.

[13] Section 69(2)(f)(ii) of the Act provides that where CCS has made a decision that the merger situation has infringed the section 54 prohibition, it can require the merger party(s) to dispose of such operations, assets or shares in such manner as may be specified by CCS.
[14] Section 69(2)(e) of the Act.

3.14 In order to elicit information about particular mergers, CCS may publish a notice on its website indicating that it is considering whether or not a completed or anticipated merger that has not been notified to it may raise concerns under the merger provisions of the Act.

3.15 If the response of the parties or third parties to CCS's enquiries, or any other information available to CCS, indicates that there are reasonable grounds to suspect that the section 54 prohibition has been or will be infringed, CCS may use its statutory powers to investigate mergers that have not been notified to it.

Third party complaints

3.16 If any interested parties wish to make CCS aware of a merger that it considers might raise concerns under the merger provisions of the Act, they are encouraged to make use of the Complaint Form on CCS's website in order to register a complaint. Complainants should try to provide all the information requested in the form. CCS endeavours to keep complaints and the identity of complainants confidential.

3.17 It should be noted that there is no obligation on CCS to follow-up or investigate complaints relating to non-notified mergers as this would undermine the benefits of the voluntary regime. CCS will not investigate a merger simply because a complaint has been made to it; each complaint will be judged on its merits taking into account, among other things, the strength of any supporting evidence.

Obtaining confidential advice from CCS

3.18 As noted above, merger parties are required to carry out their own assessment to decide whether or not to notify their merger situation to CCS. However, to assist with planning and consideration of future mergers, in particular at the stage when the merger parties are concerned to preserve the confidentiality of the transaction, CCS is prepared to give confidential advice on whether or not an anticipated merger is likely to raise competition concerns in Singapore and whether a notification is advisable, with the necessary qualification that such advice is not binding on CCS and is provided without having taken into account third party views. Confidential advice is only available if CCS is satisfied that certain conditions are met (see Part 3, paragraphs 3.19 to 3.23). This is so that CCS can manage its resources appropriately.

Conditions for confidential advice

3.19 Following self-assessment, merger parties may approach CCS for confidential advice if the following three conditions set out in section 55A of the Act are met.

3.20 First, the merger must not be completed but there must be a good faith intention to proceed with the transaction, as evidenced to the satisfaction of CCS by the party or parties requesting the confidential advice.

3.21 Second, the anticipated merger must not be in the public domain. In exceptional circumstances, CCS may consider giving confidential advice in relation to anticipated mergers that are no longer confidential, but the requesting party or parties must provide good reasons why they wish to receive confidential advice and not proceed with a notification.

3.22 Third, the merger situation must, in CCS's view, raise a genuine issue relating to the competitive assessment in Singapore, so there must be some doubt as to whether or not the merger situation raises concerns such that notification may be appropriate. For example, there may be a genuine issue if there is a lack of relevant precedents and therefore CCS's approach to the merger situation is genuinely in doubt. On the other hand, there would be no genuine issue if, for example, both merger parties have an insignificant market presence in Singapore.

3.23 The requesting party (or parties) are expected to keep CCS informed of significant developments in relation to the merger situation in respect of which confidential advice was obtained, for example, completion date or abandonment of the merger.

Process for confidential advice

3.24 The process for obtaining confidential advice is as follows. As a first step, the party (or parties) wishing to request the advice should refer to CCS's website on how to contact CCS. The party (or parties) requesting confidential advice will need to provide basic information about the merger situation, such as the merger parties' names, sector, overlapping goods or services, timing, evidence of good faith intention to proceed with the merger and reasons for seeking the confidential advice. A provisional timeline for the submission of full information by the requesting party (or parties) and the provision of the advice by CCS can then be agreed. CCS expects to be able to provide advice within 14 working days of receipt of all the required information.

3.25 The requesting party (or parties) is expected to provide information similar to that required in Form M1 in order for CCS to begin its assessment. Since the process is confidential, no third party enquiries will be carried out and third party contact details do not need to be provided. In addition, CCS does not expect to request further information by way of written questions to the requesting party (or parties). In light of this, it is very important that a full and frank account of the likely competitive effect of the merger situation in Singapore is provided in the submission to CCS.[15]

[15] Note that pursuant to section 77 of the Act, it is an offence to provide false or misleading information to CCS.

3.26 Based on the information provided, CCS will carry out an internal assessment of the merger situation. A meeting may be arranged with the requesting party (or parties), providing an opportunity for CCS to ask questions and for the requesting party to state its views on the competitive effect of the merger situation orally. At the end of the process, CCS will provide a letter to the requesting party stating whether it considers that the merger situation is likely to raise competition concerns in Singapore and whether notification is advisable.

Important aspects of confidential advice

3.27 Confidential advice does not amount to a decision under section 57 or section 58 of the Act. As such, confidential advice is not binding on CCS, and in all cases where confidential advice is given, CCS reserves the right to investigate the merger situation where the statutory test for doing so is met.

Safeguards in relation to information provided

3.28 In circumstances when a party requests confidential advice and submits confidential information in that context, and CCS decides that the conditions for giving confidential advice are not met (see paragraphs 3.19 to 3.23), CCS will securely destroy the confidential information and ensure that no sensitive data remains accessible.

3.29 Information provided by the party requesting confidential advice, and the fact that confidential advice has been requested, will not be disclosed to other organisations or competition authorities in other jurisdictions unless the relevant waivers have been given.

4 Applications

4.1 This part provides a more detailed account of the application process, explaining how merger parties should make an application to CCS for a decision regarding a merger situation. It also describes CCS's powers to gather supplementary information from the Applicant(s) and the process for obtaining information from third parties. The Phase 1 and Phase 2 processes and CCS's publication policy are also explained.

4.2 For anticipated mergers, an application can only be made once the parties have a bona fide intention to proceed with the transaction and the merger has been made public (or if the parties have no objection to CCS publicising their merger). This is to allow CCS to seek third party views.[16] Parties to an anticipated merger should exercise due caution when exchanging commercially sensitive information (such as prices and customer details) in the context of the merger negotiations and the application and review process. The exchange of such information may infringe section 34 of the Act where it has the object or effect of preventing, restricting or distorting competition within Singapore.

4.3 In the case of completed mergers, an application may be made at any time, although parties are encouraged to notify as soon as possible after completion.

4.4 Merger parties can implement an anticipated merger while it is being considered by CCS, but they do so at their own risk. In the case of a completed merger, the merger parties may also proceed with further integration of the merger at their own risk.

Notification Guidelines

4.5 The circumstances in which notification is encouraged are outlined in Part 3, paragraphs 3.4 to 3.8.

Pre-Notification Discussions

4.6 Merger parties are strongly encouraged to contact CCS at an early opportunity to discuss the content and timing of their notifications. These discussions are generally referred to as Pre-Notification Discussions ("PNDs").

4.7 As a first step, merger parties wishing to engage in PNDs should send a written request for a PND to the CCS. Merger parties can refer to CCS's website for information on how to contact CCS.

4.8 While CCS encourages PNDs for anticipated mergers that may not yet be in the public domain, PNDs are not intended to relate to purely speculative or hypothetical transactions. At the point when parties approach CCS for PNDs, they should be in a position to show that there is a good faith intention to proceed with the transaction. Generally, CCS considers that there is a good faith intention to proceed with the transaction when, for example, a draft sale and purchase agreement is in place.

[16] Regulation 3 of the *Competition (Notification) Regulations 2007* provides that only such anticipated mergers as may be made known to the public may be notified to CCS under section 57 of the Act.

4.9 PNDs can be informal and brief, or more formal and prolonged, depending on the preference of the merger parties, the complexity of the transaction and the concerns that the merger may raise. PNDs are most useful for the parties where they can provide CCS with a draft Form M1 prior to, or in the course of, the discussions.

4.10 PNDs are useful because they permit the merger parties to ascertain what information CCS is likely to require in order to assess their transaction. PNDs also help CCS to understand the transaction early on, and serve to clarify the information and evidence which will be required in Form M1, thereby facilitating an expeditious merger review process. Wherever possible, CCS will indicate gaps in the information provided in the draft Form M1. Where Form M1 stipulates the provision of information that is not relevant to the particular transaction under consideration, the PND provides an opportunity for parties to point this out to CCS. For mergers involving more complex products or raising some competition issues, effective PNDs can help minimise the risk that the merger cannot be cleared in Phase 1. The more information that is provided at PND stage, the more useful the process will be.

4.11 In the context of PNDs, CCS does not give views on whether a merger situation would be likely to require a Phase 2 assessment, or if it would lead to a SLC. However, merger parties may approach CCS for confidential advice on a merger in certain circumstances. This is a separate process, details of which are outlined in Part 3, paragraphs 3.18 to 3.29.

Submitting an application

Form M1

4.12 An application under section 57 or section 58 of the Act must be made by submitting a completed Form M1 to CCS[17]. Form M1 may be varied from time to time, with an updated version being available on CCS's website.

4.13 When it receives an application, CCS will first determine whether Form M1 is complete and if the application otherwise meets all the requirements. CCS may require the Applicant(s) to provide additional information or clarification on the merger situation before the details of the merger situation are published on CCS's website.[18] If the application is satisfactory in all respects, CCS will notify the merger parties accordingly in writing.[19] The administrative timeline for Phase 1 review commences on the working day after the day of receipt of a satisfactory application.

[17] Regulation 6(1)(b) of the *Competition (Notification) Regulations 2007*.
[18] Additional information or clarification required may be required to rectify any areas of incompleteness in respect of the applicant's Form M1.
[19] Notification that an application is satisfactory does not preclude CCS from deciding in the course of its review that the notified transaction is not a merger within the meaning of section 54.

4.14 CCS may refuse to accept an application if it is:

- incomplete;
- not accompanied by the relevant supporting documents;
- not substantially in the prescribed form;[20]
- not accompanied by the appropriate fee;[21] or
- not in compliance with any requirement under the Act or any regulations made thereunder.

4.15 In the event of non-conformity, CCS will inform the Applicant(s) as soon as practicable. The administrative timeline for Phase 1 review will not commence until the Applicant(s) has filed an application with the non-conformity rectified.

4.16 To facilitate CCS's engagement with third parties, merger parties are required to provide a confidential version of Form M1 with confidential information clearly identified in square brackets within Form M1, and a written statement explaining why the information is confidential.[22] CCS does not require merger parties to provide a non-confidential version of Form M1, unless CCS considers it necessary.[23] Where CCS considers that the confidentiality claims made by the parties are excessive or unreasonable, it may stop the clock and extend the administrative timeline, until the confidentiality claims made by the Applicant(s) in Form M1 meet CCS's requirements. For further information on confidentiality claims, see paragraphs 4.29 to 4.35.

Form M2 and information requirements for commencement of Phase 2

4.17 If CCS is of the opinion that it is necessary to proceed to a Phase 2 review, it will notify the Applicant(s) accordingly. The administrative timeline of 100 working days for a Phase 2 review commences when CCS:

- notifies the Applicant(s) that the merger situation has proceeded to a Phase 2 review; and

[20] Regulation 7(10) of the *Competition (Notification) Regulations 2007*.
[21] Refer to CCS's website and the *Competition (Fees) Regulations 2007* with regard to the appropriate amount of filing fees.
[22] Regulation 8(1) of the *Competition (Notification) Regulations 2007*.
[23] Although the requirement to submit a non-confidential version of Form M1 is set out in regulation 8(1) of the *Competition (Notification) Regulations 2007*, regulation 8(2) allows CCS to dispense with the obligation to submit a non-confidential version of Form M1, if it considers the non-confidential version of Form M1 to be unnecessary for considering the merger application. CCS will inform the Applicant(s) on the requirement to provide a non-confidential version of Form M1 if necessary.

- receives a complete Form M2 and a response to the Phase 2 information request that CCS deems satisfactory. CCS may, by giving notice to the Applicant(s), dispense with the obligation to submit any particular information or document forming part of Form M2 if it considers that such information or document is unnecessary for the examination of the merger situation.[24] The Form M2 may be varied from time to time, with an updated version being available on CCS's website.

4.18 The administrative timeline for Phase 2 will not commence before both events have occurred. In any case, the Phase 2 review period will commence no earlier than after the expiry of the administrative timeline for Phase 1 review.

4.19 If the Applicant(s) fails to submit a complete Form M2, or a satisfactory response to the Phase 2 information request within the deadline stipulated by CCS (and any extensions which may have been granted), CCS may commence its own investigation into the merger using its statutory powers (see Part 5).

Additional information and stopping the clock

4.20 In both Phase 1 and Phase 2, CCS may from time to time ask the Applicant(s) to provide additional information. CCS will require the Applicant(s) to furnish the additional information by such deadline as CCS considers appropriate.[25] If the Applicant(s) is unable to provide the requested information by the deadline, the Applicant(s) should submit a request for an extension of time to CCS as soon as possible.

4.21 CCS may request the information in writing on an informal basis, or it may use its statutory powers under section 61A of the Act.[26]

4.22 Even if CCS extends the deadline, it may (depending on the nature of the additional information that is required) "stop the clock" for the period between the date of the original deadline and the date on which the Applicant(s) reverts with the requested information. If the Applicant(s) fails to provide the additional information within the deadline (and any extensions which may have been granted), CCS may determine the application by not giving a decision[27], but may then commence its own investigation into the merger using its statutory powers (see Part 5).

[24] Regulation 6(4) of the *Competition (Notification) Regulations 2007*.
[25] Regulation 7(7) of the *Competition (Notification) Regulations 2007*.
[26] In the context of own-initiative investigations, CCS may use its power under section 63 of the Act to obtain information.
[27] Regulation 7(6) of the *Competition (Notification) Regulations 2007*.

Publication of application on the register and invitations to comment

4.23 Upon acceptance of a satisfactory application that meets the requirements in Form M1, CCS will publish the details of the merger situation furnished by the Applicant(s) in Part 3 of Form M1 on the public register on its website.[28] Third parties are invited to comment on the merger via an invitation to comment on CCS's website or may be directly contacted by CCS.

4.24 The entry will be updated if CCS accepts commitments at either Phase 1 or Phase 2, if the merger proceeds to a Phase 2 review and once CCS takes a decision under section 54 of the Act. Third parties are invited to comment when CCS consults on commitments.

Giving notice of the application to non-applicant merger parties

4.25 If the application is made by one or only some of the merger parties, the Applicant(s) must give written notification to all the other merger parties that the application has been made. The written notification to these parties must be given within 2 working days from the date on which the application is submitted to CCS and a copy of the written notification must be provided to CCS (on the same day that the application is submitted if written notice was given prior to that, or otherwise within 2 working days of the submission of the application). If the Applicant(s) is unable, despite the exercise of due diligence, to contact the other merger parties, CCS may require the Applicant(s) to notify the other merger parties in such mode and manner as may be specified, eg. by publishing the notice.[29]

Requirements for submitting materials to CCS

4.26 The Applicant(s) is required to submit Form M1 and its supporting documents (including any agreements containing restrictions which may be ancillary to the merger and which are the subject of the application), with any confidential information in Form M1 or documents clearly identified in square brackets within Form M1 and its supporting documents (as set out in paragraph 4.29 below). In addition, the Applicant(s) shall furnish reasons as to why such information should be treated as confidential. The same applies to Form M2 and any information requests made by CCS during Phase 1 and Phase 2. Please refer to paragraph 4.29 below for more details on how confidential information should be identified within Form M1 and its supporting documents.

4.27 Forms M1 and M2 and their accompanying supporting documents are to be provided electronically and in a format as specified on CCS's website. CCS's website also sets out the manner by which the electronic application documents can be lodged with CCS.

[28] Regulation 30(1)(b) of the *Competition Regulations 2007*. For the avoidance of doubt, information for CCS's public register in Form M1 is part of Form M1 and will be checked by CCS for completeness when the applicant's Form M1 application is submitted to CCS. Please see paragraphs 4.12 to 4.15 for more details.
[29] Regulations 5(3), 5(4), 5(5), 5(6) and 5(7) of the *Competition (Notification) Regulations 2007*.

4.28 If an Applicant(s) engages legal assistance to file the application on the Applicant(s)'s behalf, CCS should be furnished with a letter of authorisation signed by the Applicant(s). If a joint application is submitted, a joint representative should be appointed.[30]

Confidentiality

4.29 If Applicant(s) or third parties identify that their submissions contain confidential information, CCS only requires a confidential version of these submissions. For Applicant(s), this includes Form M1 and its accompanying supporting documents. Confidential information within submissions made to CCS shall be clearly identified by enclosing it in square brackets. In addition, Applicant(s) and third parties must submit a separate annex identifying the confidential information and giving reasons why the information should be treated as confidential.

4.30 CCS may also require the Applicant(s) to submit a non-confidential version of Form M1 and their accompanying supporting documents. This is for the purpose of facilitating discussions and meetings with third parties and to enable it to publish a non-confidential version of its decision without delay. If the Applicant(s) is required to do so, redactions within Form M1 and their accompanying supporting documents must be marked by square brackets containing the word "CONFIDENTIAL".[31]

4.31 CCS cautions against blanket or overly wide confidentiality claims. Confidentiality should only be claimed over information that can reasonably be considered to be commercially sensitive or relating to the personal affairs of an individual. Section 89(6)(b) of the Act and regulation 2 of the *Competition (Notification) Regulations 2007* provide that confidential information means (a) commercial information the disclosure of which would, or might, in the opinion of CCS, significantly harm the legitimate business interests of the undertaking to which it relates; (b) information relating to the private affairs of an individual the disclosure of which would, or might, in the opinion of CCS, significantly harm the individual's interests; or (c) information the disclosure of which would, in the opinion of CCS, be contrary to the public interest. The following classes of information are not generally considered to be confidential by CCS:

- Information that relates to the business of any of the merger parties but is not commercially sensitive in the sense that disclosure would cause harm to the business;

[30] Regulation 4(3) of the *Competition (Notification) Regulations 2007*.

[31] For example, if a document accompanying Forms M1 or M2 contains the statement "the turnover of the Applicant(s) is 1 billion dollars" and the turnover figure is confidential, the confidential portion should be blanked out from the non-confidential version of the document and square brackets containing the word "CONFIDENTIAL" inserted in the blanked out portion. The non-confidential version of the document will therefore read: "the turnover of the Applicant(s) is [CONFIDENTIAL] dollars".

- Information that reflects the merger parties' views of how the competitive effects of the merger could be analysed. This type of information can be produced by any reasonably well-informed market participants, trade analysts or legal/economic advisors; or

- Information that is general knowledge within the industry, or is likely to be readily ascertainable by any reasonably diligent market participant or trade analyst.

4.32 Where CCS considers that the confidentiality claims made in respect of Form M1, Form M2 or any other submission are excessive or unreasonable, it may stop the clock until the confidentiality claims made by the Applicant(s) meet CCS's requirements.

4.33 It is CCS's policy to keep confidential those aspects of Applicant(s)' submissions in respect of which legitimate confidentiality claims have been made. In exceptional circumstances it may be necessary to disclose confidential information, for example in the context of third party inquiries or in order to explain the reasoning of CCS in its final decisions or to establish a point of precedent.[32] In these circumstances, CCS will consider the extent to which the disclosure is necessary for the purposes for which CCS is proposing to make the disclosure[33] and liaise with the parties in advance to consider how any detriment to the merger parties could be minimised.

4.34 Before CCS decides to publish a merger decision, it will give the Applicant(s) an opportunity to review the draft decision in order to determine whether or not it contains confidential information and to check the accuracy of factual statements relating to, or supplied by, the Applicant(s). In the interest of transparency, it is common practice for CCS to safeguard confidentiality by replacing market share figures with ranges in the public version of the decision. This approach may also be used for other numeric information. Moreover, wherever possible, confidentiality claims of third parties are respected by redacting, anonymising and/or aggregating their responses.

4.35 While CCS will treat all parties' submissions on confidentiality seriously, pursuant to section 89 of the Act and regulation 20(5) of the *Competition (Notification) Regulations 2007*, CCS has the discretion to decide whether or not information is confidential.

[32] Section 89(5) of the Act.
[33] Section 89(6)(c) of the Act.

Applicant(s)' obligations as to accuracy of information

4.36 Each Applicant(s) and any representative (where one has been appointed) must sign the declaration in Form M1 (and Form M2, where relevant) stating that the information submitted is correct to the best of the knowledge and belief of the person signing the declaration, and that all estimates are best estimates based on the underlying facts. applications which lack the requisite signatures will not be accepted. Applicant(s) have a continuing obligation to inform CCS of any material changes in the information contained in the application which may occur after the application has been made.

4.37 Section 77 of the Act provides that it is an offence to recklessly or intentionally provide false or misleading information. This applies to Applicant(s) as well as third parties who provide information to CCS in the course of its work.

Application procedure for ancillary restrictions

4.38 Ancillary restrictions (also referred to as ancillary restraints) are restrictive agreements, arrangements or provisions that are directly related and necessary to the implementation of a merger. Ancillary restrictions are excluded from the section 34 prohibition and the section 47 prohibition by virtue of paragraph 10, Third Schedule of the Act.

4.39 Merger parties should self-assess whether any restrictive agreements, arrangements or provisions which are concluded as part of the merger qualify as ancillary restrictions. For merger parties seeking greater legal certainty on ancillary restrictions that merger parties have self-assessed to raise competition concerns, the Act allows for ancillary restrictions to be notified to CCS in two ways:

- Merger parties may notify the restrictions as part of the application and provide the necessary information in Form M1. On the basis of information provided by the merger parties (eg. in Form M1), CCS will consider these restrictions in the review of the merger situation and decide whether or not they are ancillary restrictions. Applicant(s) should note that CCS only has jurisdiction to determine whether a restriction is ancillary to a merger in respect of its effect in Singapore. CCS reserves its right to investigate such restrictions.

- In the event that the merger parties do not make an application in respect of the merger situation itself, they can file a separate notification for guidance (under sections 43 or 50 of the Act) or a decision (under sections 44 or 51 of the Act) as to whether the agreement, arrangement or provision concerned constitutes an ancillary restriction. Merger parties should follow the procedures laid out in *CCS Guidelines on Filing Notifications for Guidance or Decision with respect to the Section 34 Prohibition and Section 47 Prohibition* in submitting such notifications. In filing such notifications, merger parties should provide the following:

- details of each restriction;
- an explanation as to why each restriction may infringe the section 34 prohibition and/or the section 47 prohibition but for the exclusion of ancillary restrictions from these prohibitions; and
- an explanation as to why each restriction is directly related and necessary to the implementation of the merger situation.

CCS will then make a decision as to whether the restrictive agreements, arrangements or provisions which have been notified qualify as ancillary restrictions.

4.40 Even if CCS gives guidance or a decision to the effect that a restrictive agreement, arrangement or provision is likely to qualify as an ancillary restriction, this does not prevent CCS from taking further action in respect of a restriction which is implemented if CCS finds that the underlying merger has infringed, or the underlying anticipated merger if carried into effect will infringe, the section 54 prohibition, or if the underlying anticipated merger is not subsequently implemented.

CCS's information gathering powers

Information from the Applicant(s)

4.41 CCS, after considering all the information available to it, may decide that it requires additional, or more comprehensive, information. To this end, CCS will issue requests for information when it is clear that the information is necessary. Applicant(s) are encouraged to comply with information requests promptly, so that CCS can complete the merger assessment within the relevant timeline. The deadlines for requests of information are likely to be short and, depending on the nature of the information, may usually range from three to five working days. CCS may also hold meetings with the Applicant(s) in both Phase 1 and Phase 2.

4.42 Applicant(s) receiving a request for information from CCS may wish to discuss with CCS at an early stage their likely timetable for responding, the extent to which the requested information is available, and the form in which it is available. Any request for an extension of time to respond should be made promptly as CCS is unlikely to grant any extension of time requested just prior to the stipulated response date.

4.43 Failure to meet the deadlines for response may result in a delay in the assessment process. In the event of any delay, CCS may decide to stop the clock, thereby extending the administrative timeline. The clock will be restarted once the requested information has been provided.

4.44 Finally, CCS is empowered under section 61A of the Act, when it has reasonable grounds to suspect that the section 54 prohibition has been or will be infringed, to require from any person specified information or documents that would assist CCS in its assessment of the application. CCS may use this power in appropriate circumstances to request information from Applicant(s).

Information from third parties

4.45 Information provided by third parties plays an important role in CCS's assessment of mergers. CCS obtains relevant information from third parties via public consultation and by contacting them directly. Wherever possible, CCS will respect confidentiality claims.

4.46 As stated above, details of applications accepted by CCS will be published on the public register. All interested third parties (including non-applicant merger parties) are invited to submit their views on the application. All interested third parties should submit their comments within ten working days after the applications are published on the public register so that CCS will have sufficient time to give due consideration to their submissions.

4.47 CCS also approaches third parties, such as the Applicant(s)' main customers (end customers and intermediate customers), suppliers and/or competitors, for information. CCS may also contact other government bodies for their views on the merger situation. Where any of the merger parties are regulated by another government authority, CCS will, in general, seek inputs from these authorities. These bodies may carry out their own public consultation before providing their comments to CCS. CCS may hold meetings with third parties in Phase 1, as well as in Phase 2.

4.48 When providing submissions to, or otherwise corresponding with CCS, third parties should indicate which information is confidential. CCS may share the non-confidential versions of third party submissions with the Applicant(s) or other parties, either by publication on CCS website or through other means, for example when it provides access to the file in Phase 2. In the event that CCS considers it necessary to publish or otherwise disclose confidential information, this will be done in accordance with section 89 of the Act, for example CCS may liaise with the provider of the information to obtain consent for the disclosure. Part 4, paragraph 4.30 sets out further details regarding the type of information that CCS is likely to regard as confidential.

4.49 CCS may, under exceptional circumstances,[34] further extend the administrative timeline (for both Phase 1 and Phase 2 review) to gather information from third parties, in order to make an informed assessment of the merger situation. When an extension of the administrative timeline is required for this reason, CCS will inform the Applicant(s) as soon as is practicable.

4.50 Finally, CCS is empowered under sections 61A and 63 of the Act, when it has reasonable grounds to suspect that the section 54 prohibition has been or will be infringed, to require from any person specified information or documents that would assist CCS in its assessment of the application. CCS may use this power in appropriate circumstances to request information from third parties.

Consequences of providing false or misleading information

4.51 There are penalties for both Applicant(s) and third parties who provide false or misleading information to CCS. Section 77(1) of the Act makes it an offence to knowingly or recklessly provide false or misleading information to CCS, an investigating officer or an inspector or any person authorised to assist CCS, investigating officer or inspector in connection with their functions or duties. The penalty for breaching this provision is a fine of up to $10,000 or imprisonment of up to 12 months, or both.[35]

4.52 Applicant(s) are also reminded that CCS may review its favourable decisions if, among other things, CCS has reasonable grounds to suspect that the information on which CCS based its decision was incomplete, false or misleading.

The review process

Preliminary thresholds

4.53 Upon accepting a complete Form M1 that meets all the applicable filing requirements, CCS will first determine:

- whether the transaction falls within the meaning of a 'merger' or 'anticipated merger' as defined in the Act[36]; and

- whether the transaction is excluded under paragraph 1 or 2 of the Fourth Schedule of the Act.[37]

[34] Exceptional circumstances refer to events that are beyond the reasonable control of CCS which would impact CCS's ability to make an informed assessment of the merger situation. An example of such circumstances would be a delay in the provision of essential information by third parties to CCS.
[35] Section 83 of the Act.
[36] Section 54(2) of the Act.
[37] Please refer to the relevant paragraphs of *CCS Guidelines on the Substantive Assessment of Mergers* for more details of merger situations that fall under the purview of the Act.

4.54 Where CCS considers that the transaction does not fall within the meaning of a merger or an anticipated merger as defined in the Act, or is excluded under paragraph 1 or 2 of the Fourth Schedule of the Act, CCS will inform the Applicant(s) as soon as is practicable.

Phase 1 review

4.55 A Phase 1 review entails a streamlined review and allows merger situations where there is no SLC under the Act, or where concerns are appropriately resolved by the Applicant(s), through commitments or otherwise, to proceed without undue delay. Please refer to the *CCS Guidelines on the Substantive Assessment of Mergers* for details of the assessment CCS conducts.

4.56 As set out in paragraph 2.8 above, CCS expects to complete a Phase 1 review within 30 working days, where day 1 is the working day after date of receipt of the complete notification. For merger situations that clearly do not raise any competition concerns, a streamlined assessment will be applied by CCS and completed within 25 working days. CCS expects that this will apply to the majority of merger situations. However, CCS's Phase 1 review period may be extended, from 30 working days up to a total of 50 working days depending on the complexity of the merger situation[38] CCS will inform Applicant(s) as soon as practicable where the Phase 1 review will be extended . In Phase 1, CCS will determine whether to issue a favourable decision and allow the merger situation to proceed, or to carry on to a Phase 2 review.

4.57 During Phase 1, CCS will gather information about the competitive effect of the merger situation from the Applicant(s) and from third parties, such as customers, competitors and, in some cases, suppliers, as well as other regulatory bodies and government departments, where relevant. CCS may hold meetings with the parties or third parties.

[38] CCS envisages that this extension may take place under limited circumstances. For example, where the complexity of the merger situation requires CCS to obtain more information for the assessment, or where there may be a novel theory of harm. Under exceptional circumstances which may impact CCS's ability to make an informed assessment of the merger situation (such as a delay in the provision of essential information by third parties to CCS), CCS will discuss with the Applicant(s) on the sufficiency of the 50 working day timeframe for Phase 1 review.

4.58 If CCS has reasonable grounds to suspect that the section 54 prohibition may be infringed, and hence a Phase 2 review may be appropriate, it will communicate those concerns to the Applicant(s) in writing through a Phase 1 Issues Letter, setting out the main competition concerns that have been identified and indicating that CCS is unlikely to clear the merger if these concerns remain unaddressed. The Applicant(s) will be given an opportunity to respond to the Phase 1 Issues Letter. The Phase 1 Issues Letter will contain a deadline for the Applicant(s) to offer commitments or to submit Form M2. Should the Applicant(s) decide to put forward commitments, it will have to submit the final commitments proposal by the deadline stipulated by CCS. The final commitments proposal will have to adequately address all of the competition concerns identified by CCS.

4.59 If the final commitments proposal is accepted in principle by CCS for market testing, a 50 working day administrative timeline (that is separate from the review period) will commence for CCS to evaluate the proposal. Where necessary, CCS may, by giving written notice to the Applicant(s), extend this administrative timeline by up to 20 working days. If the final commitment proposal is not accepted in principle by CCS, CCS will require the Applicant(s) to submit Form M2 by a stipulated deadline. If the Applicant(s) does not submit the final commitments proposal or Form M2 by the stipulated deadline, CCS will generally proceed to open an investigation. If the commitments are accepted, CCS will issue a favourable decision.[39]

4.60 CCS will give notice of the decision to the Applicant(s) and announce the decision on the public register. If CCS intends to publish the text of the decision, the merger parties (and, where relevant, third parties) will be given an opportunity to indicate whether or not there is any confidential information in the decision. If CCS agrees with the confidentiality claim, the confidential information will be redacted before the decision is published.

Phase 2 review

4.61 Based on all information from the Phase 1 review, if CCS has reasonable grounds to suspect that the merger situation may infringe the section 54 prohibition, CCS will proceed to a Phase 2 review.

4.62 While the principles of substantive assessment for Phase 2 review are the same as those for Phase 1, a Phase 2 review entails a more detailed and extensive examination of the effects of the merger situation. As such, CCS will require detailed information regarding the businesses of the merger parties and the markets in question.

[39] Please refer to paragraphs 3.3 to 3.10 of the *CCS Guidelines on Directions and Remedies* for other relevant details.

4.63 Phase 2 reviews are more complex and CCS endeavours to complete them within 100 working days. At the end of this period, CCS will decide whether to issue a favourable or unfavourable decision. In exceptional circumstances, CCS may extend the Phase 2 review period upon informing the Applicant(s) in writing in advance.

4.64 During Phase 2, CCS will engage the Applicant(s) at appropriate junctures to set out its competition concerns. CCS will not extend the 100 working day review period to make its final decision on the merger for the purposes of evaluating commitments submitted during Phase 2, save in exceptional circumstances.[40] Consequently, Applicant(s) are encouraged to submit a commitment proposal that appropriately addresses CCS's competition concerns (whether such concerns are articulated through the Phase 1 Issues Letter or during Phase 2 engagements) as early as possible.

4.65 If, towards the end of Phase 2, CCS reaches a preliminary view that the merger situation is likely to give rise to a SLC, it will issue a Statement of Decision (Provisional) to the Applicant(s).[41] The Statement of Decision (Provisional) will state the facts on which CCS relies, as well as the reasons why CCS has reached the preliminary view that the merger is likely to give rise to a SLC. The Statement of Decision (Provisional) may also outline any commitments or directions that CCS considers may be appropriate.

4.66 After the issuance of the Statement of Decision (Provisional), CCS will give the Applicant(s) an opportunity to make written representations to CCS and it may permit the merger parties to make oral representations to CCS. The Applicant(s) will be permitted to inspect the documents in CCS's file. Internal documents, and confidential information will not be available for inspection.[42] The Applicant(s)' written response to the Statement of Decision (Provisional) will also be an opportunity for the Applicant(s) to propose commitments. The Applicant(s) may choose to submit the commitments proposal together with any written representations to the Statement of Decision (Provisional).

4.67 Once CCS has issued a notice setting out its Statement of Decision (Provisional), the merger parties can apply in writing to the Minister for Trade and Industry for the merger situation to be exempted on public interest considerations.[43] The parties should provide CCS with a copy of their submissions to the Minister.

[40] CCS will consider whether an extension of the review period is warranted on a case-by-case basis, including the state of the Phase 2 review process, the sufficiency of details required for CCS to assess the commitments proposal appropriately, and whether the commitments proposals are appropriate for market testing.
[41] Regulation 10(2) of the *Competition (Notification) Regulations 2007.*
[42] Regulation 11 of the *Competition (Notification) Regulations 2007*.
[43] Section 57(3) and section 58(3) of the Act; regulation 11(1)(d) of the *Competition (Notification) Regulations 2007.*

4.68 Having taken into account any oral and written representations made by the Applicant(s) in response to the Statement of Decision (Provisional), CCS will take a final decision on the merger. It will then give notice of the decision to the merger parties and announce the decision on the public register. If CCS intends to publish the text of the decision, the merger parties (and, where relevant, third parties) will be given an opportunity to indicate whether or not there is any confidential information in the decision. If CCS agrees with the confidentiality claim, the confidential information will be redacted before the decision is published.

Interim measures

4.69 Since the merger regime is voluntary, merger parties who have made an application may proceed with their anticipated merger or with further integration of their completed merger, as the case may be, at their own risk before CCS issues a decision.

4.70 However, section 58A allows CCS to impose interim measures, that is, directions it considers appropriate to prevent merger parties from taking any action that might prejudice CCS's ability to consider the merger situation further and/or to impose appropriate remedies. Such directions may also be issued as a matter of urgency to prevent serious, irreparable damage to persons or to protect the public interest.

4.71 Interim measures may include directions that (a) stop the acquiring party from implementing the merger; (b) prohibit the transfer of staff; (c) set limits on the exchange of commercially sensitive information such as customer lists and prices; or (d) where for example the merger has already been implemented, require a merger to be dissolved or modified. In the case of anticipated mergers, CCS may give a direction prohibiting the merger parties from acquiring control or equity interests. In situations where the merger does not involve the acquisition of shares, CCS may give a direction to require the merged entity not to proceed further with the transaction or take further steps to implement the merger until the application has been determined.

4.72 Section 58A(1) of the Act provides that interim measures may be imposed when CCS has reasonable grounds to suspect that the merger situation under consideration has resulted, or may be expected to result, in a SLC within the meaning of section 54 of the Act. Section 67(2) allows CCS to impose interim measures in similar circumstances in relation to mergers that have not been notified to it but that are under investigation. As a matter of practice, however, CCS is unlikely to use this power unless it believes that there is a real possibility that the merger situation will give rise to a SLC. The fact that CCS has imposed interim measures does not rule out eventual clearance of the merger situation.

4.73 Once interim measures have been imposed, CCS will consider any reasoned requests for waivers which are necessary to provide the parties with the flexibility required to run their business.

4.74 CCS may publish interim measures that it imposes on its website.

Procedure for imposing interim measures

4.75 Under section 58A, CCS must give prior written notice to the persons to whom it proposes to give the relevant direction (usually the merged entity in the case of a completed merger, or the acquirer in the case of an anticipated merger), indicating the nature of the proposed direction and the reasons for it. Such persons will be given an opportunity to make representations to CCS. They can also appeal against CCS's directions.[44]

4.76 *CCS Guidelines on Directions and Remedies* provide further information on the procedure for directions imposing interim measures.

Enforcement of directions imposing interim measures

4.77 If a direction imposing interim measures has not been complied with, CCS may apply to register the direction with a District Court in accordance with the Rules of Court. Any person who fails to comply with a registered direction without reasonable excuse may be found to be in contempt of court. The normal sanctions for contempt of court will apply, i.e. the court may impose a fine or imprisonment.[45]

4.78 Reference should be made to the relevant paragraphs of *CCS Guidelines on Directions and Remedies* pertaining to the enforcement of directions on interim measures.

CCS decisions

Favourable decisions

4.79 A favourable decision is a decision by CCS that a merger has not infringed, or that an anticipated merger if carried into effect will not infringe, the section 54 prohibition. A favourable decision may be issued at the end of Phase 1 or Phase 2. Where CCS makes a favourable decision, it will give notice of the decision to the merger parties. CCS may also publish the text of the decision on the public register. Before publishing the decision, the merger parties (and, where relevant, third parties) will be given an opportunity to indicate whether or not there is any confidential information in the decision. If CCS agrees with the confidentiality claims, the confidential information will be redacted before the decision is published.

[44] Section 71(3) of the Act.
[45] Section 58A(5) and section 85 of the Act.

4.80 Sections 59 and 60 of the Act provide that once CCS has issued a favourable decision, it will not take further action unless it has reasonable grounds for suspecting that:

- information on which CCS has based its decision (which may include information on the basis of which a commitment was accepted) was materially incomplete, false or misleading;

- a party who provided a commitment failed to adhere to one or more terms of the commitment; or

- where a favourable decision was given for an anticipated merger to proceed, the merger so effected, is materially different from the anticipated merger.

Should any of these circumstances occur, the favourable decision may be revoked and CCS may commence an investigation into the merger.

4.81 CCS may, at the time of issuing a favourable decision for an anticipated merger, specify the validity period of the decision within which the anticipated merger must be carried into effect.[46] CCS will not take further action if the anticipated merger is effected within the validity period, unless any of the circumstances stated in paragraph 4.80 occurs. In specifying the validity period, CCS considers that one year will generally be sufficient for merger parties to act on the favourable decision and carry the anticipated merger into effect. However, CCS will take account of the circumstances of each merger situation when specifying the duration of any validity period.

4.82 If the Applicant(s) is unable to carry the anticipated merger into effect within the validity period, the Applicant(s) may make a request to CCS to extend the validity period. If the application had been jointly made by more than one Applicant(s), any request for extension must be jointly made by all of them.[47] The Applicant(s) requesting for an extension must notify all other parties to the anticipated merger about the request for extension within two working days from the date on which the request is made.

4.83 A request for extension must be made to CCS in writing, and must contain the following:

- an explanation as to why the anticipated merger cannot be effected within the validity period;

- a statement as to the duration of extension sought and an explanation as to why this duration is necessary;

[46] Section 57(7) of the Act.
[47] Section 57(8) of the Act.

- an explanation as to how the competitive environment has changed since the favourable decision was issued and how it may be expected to change further within the period of extension sought; and

- an explanation as to how the competitive impact of carrying the anticipated merger into effect within the period of extension will differ from that if it had been carried into effect within the initial validity period.

All explanations should be clear and accompanied by relevant supporting documents.

4.84 Requests for extensions will be considered by CCS on a case-by-case basis. Extensions may also be granted subject to conditions imposed by CCS. Generally, CCS is more likely to grant an extension if there is no material change in the competitive environment since the favourable decision was granted and the competitive impact from carrying the anticipated merger into effect within the period of extension sought will not be materially different than if the merger is carried into effect within the initial validity period. If the determination of whether the validity period should be extended requires significant analysis of the competitive impact of the merger situation, the request for extension is unlikely to be acceded to. In such instances, the merger parties may wish to consider making a fresh application in respect of the anticipated merger instead.

Unfavourable decisions

4.85 An unfavourable decision is a decision by CCS that a merger has infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition. In other words, the merger has resulted, or may be expected to result, in a SLC within the meaning of the Act. An unfavourable decision is only issued at the end of Phase 2.

4.86 If, towards the end of Phase 2, CCS reaches a preliminary view that the merger situation is likely to give rise to a SLC, it will issue a notice to the merger parties. The notice will state the facts on which CCS relies, as well as the reasons why CCS has reached the preliminary view that the merger is likely to give rise to a SLC.[48] The notice will also outline any commitments or directions that CCS considers may be appropriate.

4.87 CCS will give the merger parties an opportunity to make written representations to CCS and to inspect the documents in CCS's file relating to the proposed unfavourable decision. Where appropriate, CCS will allow the merger parties to make oral representations to CCS. Internal documents, and confidential information will not be available for inspection.[49]

[48] Regulations 10(2) and 11 of the *Competition (Notification) Regulations 2007*.
[49] Regulation 11 of the *Competition (Notification) Regulations 2007*.

4.88 Once CCS has issued a notice setting out its Statement of Decision (Provisional), the merger parties can apply in writing to the Minister for Trade and Industry for the merger situation to be exempted on public interest considerations. The merger parties should provide CCS with a copy of their submissions to the Minister.[50]

4.89 Should the application to the Minister for Trade and Industry not be successful and having taken into account any oral and written representations made by the merger parties, CCS will take a final decision on the merger. If CCS makes an unfavourable decision, it will give notice of the decision to the merger parties and publish the decision on the public register. Before publishing the decision, the merger parties (and, where relevant, third parties) will be given an opportunity to indicate whether or not there is any confidential information in the decision. If CCS agrees with the confidentiality claim, the confidential information will be redacted before the decision is published.

4.90 CCS may also issue directions to remedy, mitigate or eliminate the adverse effects arising from the merger situation.[51] Reference should be made to the relevant paragraphs of *CCS Guidelines on Directions and Remedies* pertaining to the enforcement of directions.

Competing bids

4.91 Where there are competing bids for the same undertaking, CCS will try to consider them simultaneously. However, this may not be possible when the bids have been made or notified to CCS at different times, or where they raise different issues. If one of the bids has progressed to a Phase 2 review, it does not necessarily follow that the other bid(s) will follow suit. As in the case of a single bidder, each case must be considered on its own merits.

5 Own-initiative merger investigations

5.1 CCS may obtain information about merger situations through complaints from third parties or via its market intelligence function. CCS may conduct an investigation of mergers which come to its attention whenever there are reasonable grounds to suspect that a merger has infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition.[52]

5.2 The procedure for making complaints and the use of statutory powers to gather information are set out below.

[50] Section 57(3) and section 58(3) of the Act; Regulation 11(1)(d) of the *Competition (Notification) Regulations 2007*.
[51] Section 69(1)(c) and (d) of the Act.
[52] Section 62(1)(c) and (d) of the Act.

Complaints about merger situations

Procedure for complaints

5.3 In order to make a complaint about a merger situation to CCS, complainants may make use of the Complaint Form on CCS's website. The complaint should include the following details:

- a description of the relationship between the complainant and the merger parties or merged entity;

- a concise explanation of the reasons for, and details of, the complaint, including details of the merger situation to which the complaint relates, when and how the complainant became aware of the merger situation, and (where possible) the relative market positions of the parties named in the complaint; and

- available evidence directly related to the facts set out in the complaint, including appropriate copies of relevant correspondence, statistics or data which relate to the facts set out in the complaint (in particular, where they show developments in the market).

5.4 CCS may also contact the complainant to seek further information or clarifications.

5.5 CCS will consider each complaint on its merits and the strength of any supporting evidence to determine if an investigation is warranted. As mentioned in paragraph 3.17 above, CCS is not obliged to follow-up or investigate complaints relating to non-notified mergers, as this would undermine the benefits of the voluntary regime.

Confidentiality claimed by complainants

5.6 If a complainant does not wish to be identified publicly as a complainant, this should be made clear to CCS at the earliest opportunity. CCS will consider the complainant's reasons for wanting his identity to be kept confidential. However, potential complainants should note that it is sometimes necessary to reveal information which may identify the source of a complaint for the effective handling of the complaint. Additional steps which may be required to protect the identity of the complainant may also hamper investigations.

5.7 When providing information or documents to CCS, complainants should clearly mark out any information in their complaint over which confidentiality is claimed. Please refer to Part 4, paragraphs 4.29 to 4.35 for further details regarding confidentiality claims.

5.8 CCS recognises the importance of complainants voluntarily supplying information and their interest in maintaining confidentiality. If CCS considers it necessary in the interest of transparency to disclose any of the information over which confidentiality has been claimed, it will, to the extent that it is practicable to do so, consult the complainant who has provided the information.

Powers of investigation

5.9 CCS's powers of investigation include the power to:

- require the production of specified documents or information (pursuant to section 63 of the Act);
- enter premises without a warrant (pursuant to section 64 of the Act); and
- enter and search premises with a warrant (pursuant to section 65 of the Act).

5.10 In the context of own-initiative merger investigations, CCS may, for example, use its powers under section 63 of the Act to require the production of specified documents or information either from the merger parties or from third parties. The section 63 notice will specify which documents or information are required and state a deadline for response.

5.11 The Act sets out a number of criminal offences which may be committed where an undertaking fails to comply or cooperate when these powers are exercised, as well as limitations on the use of CCS's powers of investigation. Please refer to the relevant paragraphs of the *CCS Guidelines on the Powers of Investigation in Competition Cases* pertaining to the exercise of CCS's powers of investigation.

6 Remedies: Commitments and directions

6.1 Remedies may be implemented either by CCS's acceptance of commitments which address competition concerns arising from a merger situation, or by directions issued by CCS.

Commitments

6.2 CCS may accept commitments at any time during a Phase 1 review or during a Phase 2 review or during an investigation before a final decision on whether or not a merger situation infringes the section 54 prohibition has been taken. Commitments are generally proposed by the merger parties and must be aimed at remedying, mitigating or preventing the competition concerns which have been identified as arising from the merger situation. Commitments may be accepted by CCS if CCS deems them to be appropriate under section 60A of the Act. Please refer to the relevant paragraphs of the *CCS Guidelines on Directions and Remedies* for a more detailed discussion on commitments.

6.3 Commitments are binding on the merger parties when they are accepted by CCS and can be enforced by CCS via the courts.

Directions

6.4 CCS may give directions when it has made a decision that a merger situation infringes the section 54 prohibition. Directions are therefore only relevant following the issuance of an unfavourable decision as a result of a Phase 2 review or as a result of an investigation of an anticipated merger or merger. Directions may consist of a prohibition of the merger, or an order that the parties take certain steps to address the competition concerns. Directions may also relate to the imposition of financial penalties.

6.5 Section 69 of the Act provides that CCS may give such directions as it considers appropriate to remedy, mitigate or prevent the adverse effects to competition caused by the merger situation.

6.6 Section 69(2) of the Act provides examples of directions which may be issued by CCS. These include directions:

- prohibiting an anticipated merger from being carried into effect or requiring a merger to be dissolved or modified in such manner as CCS may direct;

- requiring the merger parties to enter into such legally enforceable agreements as may be specified by CCS to prevent or lessen the anti-competitive effects which have arisen;

- requiring the merger parties to dispose of such operations, assets or shares of such undertaking in such manner as may be specified by CCS; and

- providing a performance bond, guarantee or other form of security on such terms and conditions as CCS may determine.

6.7 Please refer to the relevant paragraphs of the *CCS Guidelines on the Substantive Assessment of Mergers* for more information on CCS's consideration of appropriate remedies for mergers.

Procedures for directions

6.8 The directions must be in writing and may be given to such person(s) as CCS considers appropriate.

6.9 Please refer to the relevant paragraphs of *CCS Guidelines on Directions and Remedies* pertaining to the procedures which govern the issue of directions.

Enforcement of directions

6.10 If a direction has not been complied with, CCS may apply to register the direction with a District Court in accordance with the Rules of Court. Any person who fails to comply with a registered direction without reasonable excuse may be found to be in contempt of court. The normal sanctions for contempt of court apply, i.e. the court may impose a fine or imprisonment. The court may also make orders to secure compliance with the direction, or to require any person to do anything to remedy, mitigate or eliminate any effects arising from non-compliance with the direction.

6.11 Please refer to the relevant paragraphs of the *CCS Guidelines on Directions and Remedies* pertaining to the enforcement of directions.

Directions as to financial penalties

6.12 Under section 69 of the Act, CCS may impose a financial penalty if a merger has infringed the section 54 prohibition and the infringement was committed intentionally or negligently. A financial penalty may be up to 10% of the turnover of each relevant merger party in Singapore for each year of infringement for a maximum period of three (3) years.

6.13 Generally, CCS prefers structural and (to a lesser degree) behavioural remedies over financial penalties in order to restore the competitive conditions in the market. However, in exceptional circumstances, financial penalties may be imposed, for example to reflect the seriousness of the infringement or to deter future infringements.

6.14 In determining the financial penalty imposed under section 69 of the Act, CCS will take the following factors into consideration:

- the seriousness of the SLC;

- the turnover of the relevant parties in Singapore for the relevant product and relevant geographic markets where competition is substantially lessened;

- the time the merger parties took to carry the infringing merger into effect and how long the merged entity has been in place; and

- other relevant factors, eg. deterrent value, the presence or absence of any aggravating or mitigating factors.

6.15 CCS may impose financial penalties only if it is satisfied that the section 54 prohibition has been infringed intentionally or negligently:

- Infringement is intentional if the merger parties were aware, or could not have been unaware, that the merger infringed the section 54 prohibition.

- Infringement is negligent if the merger parties ought to have known that the merger would, or was reasonably likely to, infringe the section 54 prohibition.

An example of where CCS may possibly impose a financial penalty is where merger parties, after having received an unfavourable decision from CCS in respect of an anticipated merger, proceed with an allegedly different merger which is simply a sham restructuring of the anticipated merger.

6.16 Should CCS issue a direction requiring an undertaking to pay a financial penalty, it will inform the undertaking of CCS's reasons for doing so. If an undertaking fails to pay the penalty within the date specified in CCS's direction and the undertaking has either not appealed against the imposition or amount of the penalty or such an appeal has been made and the penalty upheld, CCS may register the direction with a District Court in accordance with the Rules of Court. The effect of registration is that the imposition of the penalty has the same force and effect as if it had been an order originally obtained in the District Court and can be executed and enforced accordingly, for example, by writ of seizure and sale.

6.17 CCS will publish the details of all directions imposed under the Act on the public register.

Rights of private action

6.18 Parties suffering loss or damage directly arising from a merger that has infringed the section 54 prohibition are entitled to commence a civil action seeking relief against the relevant undertakings. Such rights of private action shall only arise after CCS has made

a decision that a merger has infringed the section 54 prohibition and the appeal period has expired or, where an appeal has been brought, upon determination of the appeal.[53]

6.19 Reference should be made to the relevant paragraphs of the *CCS Guidelines on the Major Provisions* pertaining to the rights of private action.

7 Exclusions & exemptions

Exclusions in the Fourth Schedule

7.1 The section 54 prohibition does not apply to the mergers specified in the Fourth Schedule to the Act, namely:

- Any merger:
    - approved by any Minister or regulatory authority pursuant to any requirement for such approval imposed by any written law (other than section 19 of the Significant Investments Review Act 2024);
    - approved by the Monetary Authority of Singapore pursuant to any requirement for such approval imposed 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 activity as defined in paragraph 6(2) of the Third Schedule of the Act:
    - The supply of ordinary letter and postcard services by a person licensed and regulated under the Postal Services Act 1999;
    - The supply of piped potable water;
    - The supply of wastewater management services, including the collection, treatment and disposal of wastewater;
    - The supply of bus services by a licensed bus operator under the Bus Services Industry Act 2015;
    - The supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act 1995; and

[53] Section 86 of the Act.

- Cargo terminal operations carried out by a person licensed and regulated under the Maritime and Port Authority of Singapore Act 1996.

- Any merger with net economic efficiencies where the economic efficiencies arising or that may arise from the merger outweigh the adverse effects due to the SLC in the relevant market in Singapore.

Exemption under public interest considerations

7.2 Under sections 57(3), 58(3) and 68(3) of the Act, where CCS proposes to make an unfavourable decision, it must give written notice of the proposed unfavourable decision to the merger parties. The merger parties may, within 14 days of the date of the notice, apply to the Minister for the merger situation to be exempted on the ground of any public interest consideration. Section 2 of the Act specifically provides that "public interest considerations" for the purposes of the Act means "national or public security, defence and such other considerations as the Minister may, by order published in the Gazette, prescribe." Hence, for a matter of public interest to qualify as a "public interest consideration" that may be relied on by the Minister when granting an exemption from section 54 of the Act, such a matter will have to first be gazetted. As of the date of publication of these Guidelines, the Minister has not exercised his power to gazette any other matters as "public interest considerations" under section 2 of the Act. The Minister's consideration of an application for a merger situation to be exempted on the ground of any public interest consideration is hence limited to matters of national or public security and defence, unless other matters are gazetted as such. The decision of the Minister for the exemption will be final.

7.3 The Minister may revoke any exemption of a merger situation which has been granted if the Minister has reasonable grounds for suspecting that the information on which the Minister based his or her decision was incomplete, false or misleading in a material particular.

Other exclusions

7.4 Under the Third Schedule, restrictions which are directly related to and necessary for the merger are excluded from the section 34 and 47 prohibitions (see paragraph 4.38). However, agreements by and conduct of the merged entity are still subject to the Act.

8 Appeals

8.1 There is a right of appeal to the Competition Appeal Board against any decision by CCS in respect of a merger situation or any direction (including interim measures) imposed by CCS.[54] An appeal against CCS's decision in respect of a merger situation may be made by any merger party, while an appeal against a direction may be made by the person to whom CCS gave the direction. An appeal must be brought within the time period specified in the *Competition (Appeals) Regulations*. Third parties can apply to the courts for review.

8.2 Reference should be made to the relevant paragraphs of the *CCS Guidelines on Directions and Remedies* pertaining to appeals against directions (including directions as to financial penalties) issued by CCS.

8.3 There is no right of appeal against CCS's refusal to accept any commitments offered, but parties may appeal against CCS's refusal to vary, substitute or release existing commitments.

9 Glossary

Ancillary restriction	Agreement, arrangement or provision which is "directly related and necessary to the implementation" of the merger. Ancillary restrictions are excluded from the section 34 prohibition and the section 47 prohibition under the Third Schedule of the Act.
Anticipated merger	Arrangement that is in progress or in contemplation that, if carried into effect, will result in the occurrence of a merger referred to in section 54(2) of the Act.
Applicant(s)	Merger party(ies) who have filed an application with CCS.
CR3	Concentration ratio (that is, the aggregate market share) of the three largest firms in the market.
Favourable decision	Decision that a merger has not infringed, or that an anticipated merger if carried into effect will not infringe, the section 54 prohibition.
Merger	A merger as defined in section 54(2) of the Act.
Merger parties	Parties to an anticipated merger, or parties involved in a merger.
Merger situation	Refers to both completed mergers and anticipated mergers.
Parties involved in a merger	Persons or undertakings specified in section 54(2) of the Act and includes the merged entity.
SLC	Substantial lessening of competition.
Unfavourable decision	Decision that a merger has infringed, or that an anticipated merger if carried into effect will infringe, the section 54 prohibition.

[54] Section 71 of the Act.