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# CCS GUIDELINES ON THE FAST TRACK PROCEDURE

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# Competition and Consumer Commission of Singapore

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## 1 Introduction

- 1.1 These guidelines set out a framework for a fast track procedure (the “**Fast Track Procedure**”)<sup>1</sup> that seeks to achieve more efficient and expedient resolutions of investigations by the Competition and Consumer Commission of Singapore (“**CCS**”) into infringements of sections 34 or 47 of the Competition Act 2004 (the “**Act**”).
- 1.2 Undertakings that settle with CCS by resolving their infringements under the Fast Track Procedure (e.g. by (a) acknowledging their conduct and liability and (b) finally resolving the infringements as per the signed Fast Track Agreement) can receive a fast track discount on any financial penalties that may be imposed. The fast track discount awarded by CCS is up to 30% and is applied as the final step in CCS’s assessment of penalties.<sup>2</sup>

## 2 Overview of the Fast Track Procedure

- 2.1 Under the Fast Track Procedure, both fast track parties and CCS would save on time and resources associated with the investigatory process and any subsequent legal proceedings, including appeals. For businesses, the Fast Track Procedure can reduce administrative costs, management time, operational uncertainty and provide an expedient way for businesses to obtain closure. For CCS, the Fast Track Procedure allows for better utilisation of its investigatory and legal resources.

### *Flowchart*

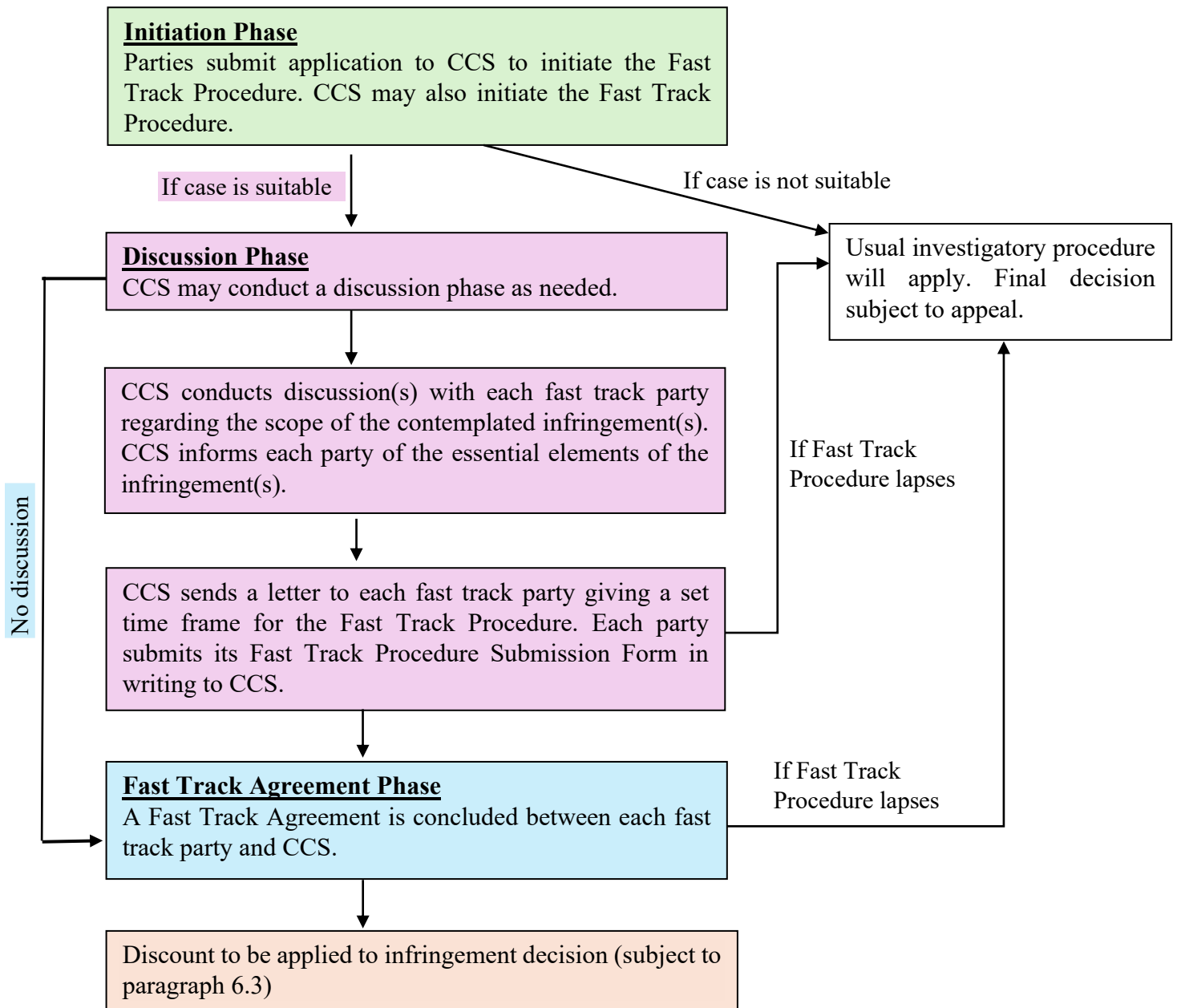
- 2.2 The Fast Track Procedure is set out in the flowchart in Figure 1 below. In general, the Fast Track Procedure consists of the Initiation Phase, the Discussion Phase, and the Fast Track Agreement Phase.

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<sup>1</sup> Prior to these guidelines being published, the Fast Track Procedure was set out in the *CCS Practice Statement on the Fast Track Procedure for Section 34 and Section 47 Case*.

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

Figure 1. Flowchart of CCS’s Fast Track Procedure



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### *Procedure for Fast Track*

2.3 The Fast Track Procedure is distinct from CCS's discretion to accept commitments under section 60A of the Competition Act 2004 and CCS's Leniency Programme set out in the *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*. The Fast Track Procedure, any acceptance of commitments, and CCS's Leniency Programme serve distinct purposes with key characteristics summarised as follows:

- In a voluntary commitments process, a party offers commitments to CCS to address competition concerns that it or CCS has identified as part of a notification or an investigation. Unlike the Fast Track Procedure, there is no finding of an infringement where CCS accepts commitments that address identified competition concerns.
- CCS's Leniency Programme and Fast Track Procedure are not mutually exclusive, and it is possible for a leniency applicant to benefit from discounts arising from both the Leniency Programme and the Fast Track Procedure. Please refer to paragraph 6.2 below on the computation of discounts and penalties in such cases.

2.4 In considering which cases may be appropriate for the Fast Track Procedure, CCS may take into account the number of parties concerned in the investigation, the number of parties who have proactively indicated their interest in engaging in a fast track discussion, foreseeable divergences in the parties' relative positions, possibility of parties' contradicting positions regarding the attribution of liability, as well as the anticipated extent to which facts or findings may be contested.

### **3 Initiation of the Fast Track Procedure**

3.1 A party can request the Fast Track Procedure by submitting an application to CCS, the Fast Track Procedure Initiation Form, through the links set out in CCS's website.<sup>3</sup> For the avoidance of doubt, the submission of the application is on a "without prejudice" basis. A potential fast track applicant is required to provide all material information and evidence for CCS to effectively discuss the matters set out in paragraph 4.2 below. A potential fast track applicant may make such a request to CCS prior to or after a proposed infringement decision ("PID"), but not after an infringement decision ("ID") has been issued.<sup>4</sup>

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

3.3 In general, CCS considers that procedural efficiencies and resources savings are higher if the Fast Track Procedure is initiated prior to a PID being issued. As such, a party that obtains CCS's agreement to use the Fast Track Procedure at an earlier stage in the investigation process would be awarded a higher discount than if that party obtained the

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<sup>3</sup> This is under the section "For Businesses".

<sup>4</sup> Decision made by CCS under section 69(1) of the Act.

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approval to use the Fast Track Procedure at a later stage (e.g. after the PID has been issued).

- 3.4 CCS retains the discretion in determining if the case is suitable for the Fast Track Procedure or whether the normal investigatory procedure should apply instead. CCS will only consider the Fast Track Procedure to be suitable for a case where CCS is reasonably satisfied, based on information and evidence available to CCS, that the evidentiary standard of proof has been met such that CCS would be prepared to issue a PID or ID (as appropriate given the stage of proceedings) in that case.
- 3.5 CCS envisages that an application for the Fast Track Procedure will usually only be taken forward where all parties who are contemplated to be addressees of any PID or ID agree to participate in the Fast Track Procedure. However, depending on the facts and circumstances of the case, even if not all such parties are agreeable to initiating the Fast Track Procedure, CCS may still proceed with the Fast Track Procedure with those parties that are prepared to do so. For example, CCS may still consider it to be appropriate to use the Fast Track Procedure if all parties who are suspected of having engaged in conduct that infringes section 34 of the Competition Act 2004 agree to participate the Fast Track Procedure except for one party and CCS considers that the objectives of Fast Track Procedure (such as significant procedural efficiencies and resource savings) would still be met.
- 3.6 Participation in the Fast Track Procedure is voluntary. By opting for the Fast Track Procedure, the fast track party declares that it wishes to reach a final resolution of the case, i.e. to sign the Fast Track Agreement and not subsequently retract its admission of liability and/or file an appeal.
- 3.7 Parties to any Fast Track Procedure may not disclose to any third party any information received during the Fast Track Procedure unless they have prior explicit authorisation by CCS. Unauthorised disclosure by a party of any information received during the Fast Track Procedure may result in the Fast Track Procedure being discontinued and/or may be regarded as a lack of cooperation within the meaning of *CCS Guidelines on the Appropriate Amount of Penalty in Competition Cases*.

## 4 Discussion Phase

- 4.1 Upon initiation of the Fast Track Procedure (either by the fast track party or CCS), CCS may engage the fast track party in a discussion where CCS is of the view that a discussion phase would be helpful for the resolution of the case in question.
- 4.2 During the discussion phase, CCS and each fast track party will discuss, on a “without prejudice” basis, the aspects of the contemplated infringement(s), including the following:
  - a. the essential elements of the contemplated infringement(s) such as the alleged facts, nature of the infringement(s), seriousness and duration of the infringement(s), and the liability of the fast track party for its involvement in the infringing conduct, upon which CCS contemplates issuing a PID or ID;
  - b. the key evidence used to determine the scope of the contemplated infringement(s);

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- c. the possible range and/or quantum of financial penalties calculated according to the *CCS Guidelines on the Appropriate Amount of Penalty in Competition Cases*; and
- d. non-confidential versions of key documents that CCS determines are necessary to enable the fast track party to ascertain its position regarding the contemplated infringement(s).

### *Fast Track Procedure Submission Form*

- 4.3 At the conclusion of the discussion phase, a fast track party will provide to CCS a Fast Track Procedure Submission Form that sets out the following, in relation to the contemplated infringement(s) by the deadline stipulated by CCS:
- a. a statement of the material facts surrounding the infringement(s) (for example, the description of the conduct, scope, duration, main facts of the case);
  - b. its financial information (e.g. the turnover of the business of the undertaking in Singapore for the relevant product and relevant geographic markets affected by the infringement(s) in the undertaking's last business year);
  - c. admission to the facts and liability to the infringement(s) without qualification (e.g. infringement(s) of section 34 of the Competition Act 2004 by object or effect). This admission of liability to an agreed set of facts will be set out in the Fast Track Agreement;
  - d. a statement that it has been sufficiently informed of CCS's proposed decision and that it has been given sufficient opportunity to explain itself to the extent it wishes to during discussions with CCS; and
  - e. a statement that it will not make written or oral representations to a PID (except for a concise memorandum identifying any material factual inaccuracies in the PID, if any) nor request to inspect the documents and evidence in CCS's file.
- 4.4 A fast track party can request an extension of the deadline by which to submit its Fast Track Procedure Submission Form but must furnish reasons for its request. If any party fails to submit its Fast Track Procedure Submission Form within the deadline stated or any extension that has been granted by CCS, the Fast Track Procedure will be deemed to have lapsed and withdrawn by that fast track party. CCS may in its discretion proceed to conduct its investigation in accordance with the usual procedure for that fast track party and other parties. Any application to reinitiate the Fast Track Procedure and the means in which such reinitiation shall proceed will be subject to agreement by CCS.

## 5 Agreement to the Fast Track Procedure

- 5.1 Each fast track party that has agreed to the Fast Track Procedure will sign an agreement with CCS. Where a Fast Track Procedure Submission Form has been submitted to CCS, the agreement will incorporate the information provided in the Fast Track Procedure Submission Form (the "**Fast Track Agreement**"). Examples of the terms that will be included in the Fast Track Agreement are set out in Annex 1.

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- 5.2 Until the signing of the Fast Track Agreement, both CCS and the fast track party have the discretion to decide whether to continue with the Fast Track Procedure.

### 6 Acceptance and CCS's Decision

- 6.1 Subject to paragraph 6.3, following the signing of the Fast Track Agreement by CCS and each fast track party, CCS will issue a streamlined PID or ID (as appropriate) reflecting the content agreed between CCS and each fast track party in the Fast Track Agreement. Where a PID is issued based on the Fast Track Agreement, each fast track party will have a limited time set by CCS in which to make representations (i.e. identifying any material factual inaccuracies, if any) as agreed in the Fast Track Agreement. CCS's ID will take into account representations received from each fast track party.
- 6.2 The reduction in any financial penalty granted for the Fast Track Procedure will be applied to the financial penalty payable, after all other applicable reductions or increases in penalty have been imposed (such as any discount awarded under CCS's leniency programme) following the six step framework set out in the *CCS Guidelines on the Appropriate Amount of Penalty in Competition Cases*. For example, if a fast track party is granted a 50% reduction in financial penalties due to leniency and a further 30% reduction in financial penalties due to the Fast Track Procedure, the fast track party will receive an overall reduction of 65% in financial penalties.
- 6.3 CCS may however issue a PID or ID that departs from the position that is agreed to between itself and any fast track party in the Fast Track Procedure, for example where new evidence comes to light after the Fast Track Agreement has been signed but before CCS has issued a PID or ID. In such cases, CCS will inform the fast track party(s) concerned before issuing a PID or ID that the Fast Track Procedure is no longer available in the form that was agreed. The normal investigatory procedure will then apply unless the CCS and the fast track party(s) agree on the amendments to the Fast Track Agreement. If the normal investigatory procedure (instead of Fast Track Procedure) will apply to a case, any admission by a fast track party will be deemed to be withdrawn, and the fast track party concerned will be granted a reasonable time-limit allowing them, upon request, to present their defence, including the possibility to access the file and to request an oral hearing.
- 6.4 Should the Fast Track Procedure be discontinued and the normal investigatory procedure applies, any document provided by a fast track party in the course of discussions will be deemed to have been withdrawn and will not be used. However, CCS reserves the right to request any document using its formal powers at a later stage of its investigation, except those documents created for the purposes of the Fast Track Procedure. For the avoidance of doubt, for other documents, CCS retains the full discretion to decide as necessary on whether to request the documents.

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### Annex 1 – Clauses to be included in Fast Track Agreement

The Fast Track Agreement will include the following terms:

- a. confirmation of the fast track party's request pursuant to its Fast Track Procedure Submission Form to use the Fast Track Procedure;
- b. confirmation by the fast track party that it has been sufficiently informed of the contemplated infringement(s) and that it has been given the opportunity to explain itself to the extent it wishes to;
- c. confirmation of the material facts surrounding the alleged infringement(s) (including for example nature of any infringement of section 34 of the Competition Act 2004, scope, duration, main facts of the case and legal assessment, etc.);
- d. the fast track party's clear and unequivocal admission and acknowledgement of the facts, its liability for the infringement(s) and of its involvement in it (including for example nature of infringement, duration, main facts of the case and legal assessment, etc.);
- e. the fast track party agrees to cooperate throughout CCS's investigation;
- f. the fast track party agrees on how CCS has computed the financial penalty and the parameters of the financial penalty (including any penalty uplift (if any));
- g. that the fast track party agrees to the imposition of the specific discounted financial penalty that CCS will impose on it;
- h. that the fast track party agrees to the imposition of the specific structural and/or behavioural remedies required by the CCS, and confirms that it acknowledges that such remedies are necessary to remedy, mitigate or eliminate any adverse effects of such infringement or circumstances and to prevent the recurrence of such infringement or circumstances, and that the remedies are proportionate to the infringements committed;
- i. the fast track party agrees to not make oral or written representations (but it can provide a concise memorandum identifying any material factual inaccuracies in the PID) or request to inspect the documents and evidence in CCS's file;
- j. the fast track party agrees that the Fast Track Agreement is final and binding against it. It has agreed to finally resolve its infringements as per the signed Fast Track Agreement. It will not challenge or appeal against any part of CCS's findings and decision that does not deviate in substance from the Fast Track Agreement. It agrees to be bound by the Fast Track Agreement and not appeal the CCS ID or any findings within it even if another infringing party successfully appeals against the CCS ID issued to it or any directions given by the CAB or the courts;
- k. the fast track party agrees that the reduction in financial penalty under the Fast Track Procedure is given on the basis of amongst others, procedural efficiencies and resource savings. The reduction is therefore contingent on the fast track party:

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