

Collaborating with Rivals During Covid? CCCS Issues Guidance

The COVID-19 pandemic has disrupted the supply of many goods and services. Against this backdrop, competing firms may have found it necessary or desirable to collaborate with each other on certain aspects of the production / supply chain, in order to sustain the supply of such goods / services amid the disruptions.

Such collaborations between competitors may have an adverse impact on competition, and as such, a detailed assessment is needed to determine if they infringe the prohibition on anti-competitive agreements/arrangements under Section 34 of the Competition Act ("**Section 34 Prohibition**").

In this regard, the Competition and Consumer Commission of Singapore ("**CCCS**") has, on 20 July 2020, issued a guidance note ("**Guidance Note**") setting out its enforcement approach to certain of such collaborations. This update looks at the key points of this Guidance Note and how it may benefit businesses which supply essential goods and services.

What type of collaborations does the Guidance Note address?

Agreements between businesses which have as their object or effect the prevention, restriction or distortion of competition within Singapore are prohibited under the Section 34 Prohibition. As such, cooperation or collaboration between competitors could raise concerns under the Section 34 Prohibition as it may adversely impact competition, e.g., competitors sharing information on commercially sensitive information such as capacity constraints.

The Section 34 Prohibition does not apply to agreements that have net economic benefits ("**NEB Exclusion**"), i.e., agreements which contribute to improving production or distribution, or promote technical or economic progress, but which do not result in a possible elimination of competition in the market, or include any restrictions that are not critical to achieve the benefits resulting from the agreements.

While a thorough economic analysis is typically required to assess if the NEB Exclusion may be applicable to a proposed collaboration between competitors, the CCCS has indicated that it will assume that collaborations that sustain or improve the supply of essential goods or services in Singapore, which are limited in scope and time, and which do not include any "hardcore" restraints (further detailed below), likely generate net economic benefits and therefore are unlikely to infringe the Competition Act. The CCCS has also indicated that it will generally not investigate such collaborations.

Does my business fall within the scope of the Guidance Note?

The Guidance Note only covers collaborations between competitors which relate to the supply of "essential goods and services" – this list is set out in the Annex to the Guidance Note (see link at the end of this update) and is based on the list of essential goods and services maintained by the Ministry of Trade and Industry on the website covid.gobusiness.gov.sg until 1 June 2020. Examples include hospitals and primary care services, food supply and manufacturing, energy-related products (e.g., electricity, gas and essential fuel products), water, waste and environment related services, transportation services, cybersecurity, social

media and messaging platforms, construction and maintenance services for critical infrastructure, manufacturing of essential goods, and certain types of financial services (e.g., banking, insurance, payment and remittance services).

Does my proposed collaboration fall within the scope of the Guidance Note?

Collaborations must "improve or sustain" the supply of essential goods or services in Singapore

The Guidance Note only covers collaborations that "improve or sustain" the supply of essential goods or services in Singapore. The collaboration must also be directly linked to, and be necessary to achieve, the claimed benefits. Examples provided by the CCCS of such collaborations include:

- (a) joint production – where pooling of resources allow companies to ramp up production of an essential good or service;
- (b) joint distribution and marketing – where the collaboration allows companies, which are individually unable to distribute an essential good or service, to pool resources to appoint a third party distributor;
- (c) joint purchase – where buyers come together to collectively bargain for a lower price for an essential good or service, or where this is necessary for buyers which are individually unable to meet the minimum purchase quantity for such essential good or service; and
- (d) information sharing – where sharing of commercially sensitive information is necessary to enable the relevant collaborations between competitors, e.g., sharing information on existing stock levels or overall predicted demand.

Collaboration with competitors must expire by 31 July 2021

The Guidance Note only applies to collaborations between competitors which were put in place from 1 February 2020 and which will expire by 31 July 2021. Do note that collaborations which end after 31 July 2021 will not be covered by this Guidance Note even if they commenced after 1 February 2020.

What other conditions apply in order for my proposed collaboration to be covered by the Guidance Note?

The CCCS has cautioned that all necessary precautions must be taken to ensure that any exchange of commercially sensitive information between parties to a collaboration is limited to what is strictly necessary to achieve the benefits flowing from the collaboration, e.g., putting in place Chinese walls to limit information flow to a limited team which requires such information, and to prevent its flow to other persons which may use such information anti-competitively (such as persons who make pricing decisions).

Collaborations which involve any "hardcore" restraints, i.e., price-fixing, bid rigging, market sharing or output limitations are not covered by the Guidance Note. Any such collaborations would, in order to rely on the NEB Exclusion, also require the relevant firms to show that such arrangements do not eliminate competition in respect of a substantial part of the good/service in question.

Does this mean that I can take advantage of this Guidance Note to collaborate with my competitors?

The CCCS has expressly cautioned businesses against taking advantage of the COVID-19 pandemic as a cover to engage in anti-competitive activities that do not generate net economic benefits. Do note that the CCCS retains the discretion to commence investigations in such cases.

The full text of the Guidance Note can be accessed [here](#).

This update is accurate as of 20 July 2020. If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



Ameera ASHRAF

Head – Competition & Regulatory

d: +65 6416 8113

e: [ameera.ashraf](mailto:ameera.ashraf@wongpartnership.com)

[@wongpartnership.com](mailto:ameera.ashraf@wongpartnership.com)

Click [here](#) to view Ameera's CV.



CHAN Jia Hui

Partner – Competition & Regulatory

d: +65 6416 2794

e: [jiahui.chan](mailto:jiahui.chan@wongpartnership.com)

[@wongpartnership.com](mailto:jiahui.chan@wongpartnership.com)

Click [here](#) to view Jia Hui's CV.

 Connect with WongPartnership.

WPG MEMBERS AND OFFICES

- contactus@wongpartnership.com

SINGAPORE

-

WongPartnership LLP
12 Marina Boulevard Level 28
Marina Bay Financial Centre Tower 3
Singapore 018982
t +65 6416 8000
f +65 6532 5711/5722

CHINA

-

WongPartnership LLP
Beijing Representative Office
Unit 3111 China World Office 2
1 Jianguomenwai Avenue, Chaoyang District
Beijing 100004, PRC
t +86 10 6505 6900
f +86 10 6505 2562

-

WongPartnership LLP
Shanghai Representative Office
Unit 1015 Corporate Avenue 1
222 Hubin Road
Shanghai 200021, PRC
t +86 21 6340 3131
f +86 21 6340 3315

MYANMAR

-

WongPartnership Myanmar Ltd.
Junction City Tower, #09-03
Bogyoke Aung San Road
Pabedan Township, Yangon
Myanmar
t +95 1 925 3737
f +95 1 925 3742

INDONESIA

-

Makes & Partners Law Firm
Menara Batavia, 7th Floor
Jl. KH. Mas Mansyur Kav. 126
Jakarta 10220, Indonesia
t +62 21 574 7181
f +62 21 574 7180
w makeslaw.com

wongpartnership.com

MALAYSIA

-

Foong & Partners
Advocates & Solicitors
13-1, Menara 1MK, Kompleks 1 Mont' Kiara
No 1 Jalan Kiara, Mont' Kiara
50480 Kuala Lumpur, Malaysia
t +60 3 6419 0822
f +60 3 6419 0823
w foongpartners.com

MIDDLE EAST

-

Al Aidarous International Legal Practice
Abdullah Al Mulla Building, Mezzanine Suite
02
39 Hameem Street (side street of Al Murroor
Street)
Al Nahyan Camp Area
P.O. Box No. 71284
Abu Dhabi, UAE
t +971 2 6439 222
f +971 2 6349 229
w aidarous.com

-

Al Aidarous International Legal Practice
Zalfa Building, Suite 101 - 102
Sh. Rashid Road
Garhoud
P.O. Box No. 33299
Dubai, UAE
t +971 4 2828 000
f +971 4 2828 011

PHILIPPINES

-

ZGLaw
27/F 88 Corporate Center
141 Sedeño Street, Salcedo Village
Makati City 1227, Philippines
t +63 2 889 6060
f +63 2 889 6066
w zglaw.com/~zglaw