

CCCS GUIDANCE NOTE ON COLLABORATIONS BETWEEN COMPETITORS IN RESPONSE TO THE COVID-19 PANDEMIC

A. Introduction

1. As a result of the COVID-19 outbreak and global lockdowns, logistics and supply chains have been severely disrupted with companies facing great uncertainties over demand. The sudden disruption may necessitate collaborations between competitors in order to deal with the effects of the COVID-19 pandemic. This Guidance Note sets out CCCS's approach to collaborations between competitors in response to this exceptional period.
2. Under normal circumstances, certain collaborations between competitors may need further assessment to determine whether it complies with section 34¹ of the Competition Act (Cap. 50) (“**the Act**”). Agreements, which include collaborations between competitors, that satisfy the Net Economic Benefit (“**NEB**”) criteria under the Act² in normal circumstances are already excluded from section 34 of the Act and consequently, do not need to come under this Guidance Note.³ Similarly, agreements entered into with the Singapore Government or any statutory body, or conduct carried out on their behalf, are already excluded under section 33(4) of the Act.⁴
3. CCCS recognises that collaborations between competitors during this period may need to be put in place quickly to meet the demand for certain essential goods or services in Singapore.
4. Given the exceptional challenges brought about by the COVID-19 pandemic, CCCS will, for a temporary period, assume that collaborations that sustain or improve the supply of essential goods or services in Singapore, which are limited in scope and time as set out in this Guidance Note, and which do not include any elements specified in Section E below, likely generate net economic benefits and therefore are unlikely to infringe the Act. CCCS will generally not investigate such collaborations. CCCS will refer to the list of goods and services annexed to this Guidance Note in assessing whether a collaboration relates to essential goods or services.⁵

¹ Section 34 of the Act prohibits agreements between businesses which have as their object or effect the prevention, restriction or distortion of competition within Singapore. CCCS highlights that agreements that do not prevent, restrict or distort competition within Singapore are not prohibited.

² Paragraph 9 of Third Schedule to the Act.

³ This may include, for instance, research and development agreements that improve on existing, or develop new products and technologies.

⁴ Section 33(4) of the Act. *Nothing in this Part shall apply to any activity carried on by, any agreement entered into or any conduct on the part of – (a) the Government; (b) any statutory body; or (c) any person acting on behalf of the Government or that statutory body, as the case may be, in relation to that activity, agreement or conduct.*

⁵ This list 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](https://www.covid.gobusiness.gov.sg) until 1 June 2020.

5. This Guidance Note will apply to such collaborations put in place from 1 February 2020, and which will expire by 31 July 2021.

B. NEB Exclusion⁶

6. Section 34 of the Act does not apply to agreements that have net economic benefits. Such agreements should contribute to improving production or distribution, or promote technical or economic progress, but should not result in a possible elimination of competition in the market. The agreement should also not include any restrictions that are not critical to achieve the benefits resulting from the agreement.
7. In the following sections, CCCS will first set out the framework by which collaborations falling under this Guidance Note may satisfy the NEB criteria, followed by its enforcement approach in relation to these cases.

C. NEB criteria for essential goods or services under this Guidance Note

8. The section below deals with how the NEB framework could apply to business collaborations relating to essential goods or services that do not involve price-fixing, bid-rigging, market sharing or output limitation.

i. Improving production or distribution; promote technical or economic progress

9. The efficiency brought about by the collaboration must be objective and quantifiable, and there must be a direct causal link between the agreement and the efficiency.
10. For instance, a collaboration that brings about a greater or more efficient supply of an essential good or service to the public or a specific group of consumers can satisfy the first criterion. Without such a collaboration, there may be difficulties in meeting a sudden increase in demand, or supply may be inefficient and costly.

ii. Agreement or restriction must be indispensable

11. Both the collaboration and any restrictions imposed must be necessary to help increase supply or bring about more efficiencies than in their absence, and there are no better alternatives available to do so.
12. For instance, without sharing resources, individual firms may not be able to sustain the supply or distribution of an essential good or service. Hence, a collaboration to share resources may be necessary to ensure timely and sufficient supply of the essential good or service, or that supply is feasible in the first instance.

iii. Does not eliminate competition in respect of a substantial part of the good/service

13. Exceptionally for the duration of this Guidance Note, CCCS will consider that this criterion is met if the collaboration is limited in nature to a particular good or market and limited in time as set out in this Guidance Note to deal with the effects of the COVID-19 pandemic. Competition should remain in the market as far as possible. For example, while the collaborators share capacity information, they still compete on price.

⁶ Paragraph 9 of the Third Schedule to the Act.

D. Examples of types of collaborations

14. CCCS has set out below some examples of collaborations that improve or sustain the supply of essential goods or services in Singapore, and which therefore fall under this Guidance Note if they do not involve price-fixing, bid-rigging, market sharing or output limitation.

i. Joint production

15. In response to critical shortages in supply of certain goods, companies may come together to pool resources such that they can ramp up production of an essential good or service. One such example could be to share production lines or inputs to increase total production of testing kits or its components for COVID-19. In this case, where the collaboration allows companies to produce the essential good or service in question that they otherwise would not have been able to produce effectively alone, the NEB criteria is likely met.

ii. Joint distribution and marketing

16. Companies may also need to collaborate to distribute essential goods or services to ensure that these are able to reach consumers. For example, joint distribution may allow companies, which individually are unable to distribute the essential good or service efficiently, to pool resources together to appoint a third party to collate and perform the distribution to consumers or to retailers on their behalf.
17. Joint marketing agreements may allow the companies involved to better inform or reach out to customers that they would otherwise not be able to reach effectively alone. In general, joint marketing agreements do not raise competition concerns as they do not involve coordination on price and quantity.

iii. Joint purchase

18. Joint purchasing may take place through formal joint ventures or informal trade associations or groupings. This could include collective bargaining. By coming together, the group may enjoy higher bargaining power and obtain a lower price for the essential good or service than they would otherwise have been able to achieve by negotiating alone. Joint purchasing may also allow companies which individually are unable to meet the minimum quantity required for procurement of critical inputs to meet it collectively.
19. For instance, healthcare providers may jointly purchase essential medical equipment. This could take place by way of jointly appointing an independent third party to aggregate their demand and enjoy the better bargaining power through the collaboration. The improved bargaining power may materialise in the form of better prices, or in the example above, allow them to procure supplies which they may not otherwise be able to procure on their own.

iv. Information sharing

20. In order to facilitate the meeting of demand for essential goods or services, some commercially sensitive information sharing between businesses in collaboration may be

necessary. In general, aggregate non-individualised information should be shared, although in certain cases, individualised information may have to be shared to enable the collaboration to take effect. For instance, companies may need to share information about each company's quantities of existing stock or overall predicted demand in order to be able to meet production needs, or to reallocate supplies or stocks.

21. In such cases, the companies involved have a responsibility to take all necessary precautions to ensure that the information exchange is strictly necessary to bring about improvements in production or distribution, and no other commercially sensitive information is exchanged. Further, there should be adequate safeguards in place, such as setting up "Chinese walls" to isolate information flows to a limited team that needs access to the sensitive information and to prevent information flows to people who may use such information anti-competitively, e.g. people who decide on pricing, using a neutral third party to aggregate and handle the shared information, taking comprehensive notes of meetings and/or submitting any agreements/decisions reached to CCCS for review if requested. The commercially sensitive information sharing should also cease upon meeting its objective of giving effect to the collaboration and not last longer than required.

E. NEB criteria for price-fixing, bid-rigging, output limitation and market sharing

22. For collaborations that improve or sustain the supply of essential goods or services in Singapore but involve price-fixing, bid-rigging, market sharing or output limitation, it will not be sufficient that the agreement is limited in scope and time to fulfil the third NEB criterion, i.e., that the agreement does not eliminate competition in respect of a substantial part of the good or service. For such collaborations, factors to consider under the third NEB criterion include the extent of reduction in competition arising from the agreement and the competitive constraints in the market.
23. An example of an agreement satisfying the NEB criteria could be when it is necessary for companies to coordinate supply quantities for a range of essential goods or services, for instance, different medicines. Without coordination on the optimum supply quantities, there may be oversupply of some medicines and shortage in other medicines. This fulfils the first and second criterion on the necessity of the collaboration to improve supply of essential goods or services in Singapore so long as restrictions that may be unnecessary to achieve the improvement, e.g. price-fixing, are excluded. As for the third criterion, the companies could continue to face competitive constraints in the market if, for instance, there are other suppliers that could feasibly start production and compete to supply the medicines in the near future.

F. CCCS's enforcement approach

24. For the duration of the Guidance Note, CCCS will assume that collaborations that sustain or improve the supply of essential goods or services in Singapore, are limited in scope and time as set out in this Guidance Note, and which do not involve price-fixing, bid-rigging, market sharing or output limitation, generate net economic benefits and will generally not investigate them. For collaborations that only end after the Guidance Note

expires, CCCS will evaluate them using the criteria applicable under normal circumstances.⁷

25. As each case is highly fact-specific, businesses are encouraged to perform their own self-assessment as a first step to determine whether their collaboration falls within the framework set out in this Guidance Note. Businesses that wish to undertake collaboration on essential goods or services but have queries about the framework in this Guidance Note may contact CCCS for clarification at cccs_feedback@cccs.gov.sg. The option of notifying CCCS for guidance or a decision on the application of the Act to an agreement remains available.
26. Finally, businesses are cautioned against taking advantage of the COVID-19 pandemic as a cover to engage in anti-competitive activities that do not generate net economic benefit. CCCS retains the discretion to commence investigations in such cases.

⁷ For instance, if a collaboration with a competitor for the supply of an essential good or service commenced in February 2020, and ends after July 2021 (e.g. September 2021), the collaboration should be evaluated under the criteria applicable in normal circumstances for its entire duration, i.e., whether the collaboration raises competition concerns and if so, whether it fulfils NEB criteria applicable in normal circumstances. If businesses are concerned that a collaboration (that commenced during the period between February 2020 and July 2021 but ends after July 2021) may raise competition issues, businesses may consider reaching out to CCCS at an early stage: please refer to the *CCCS Guidelines on Filing Notifications for Guidance or Decision with respect to the Section 34 or Section 47 Prohibition 2016*.

Annex: List of Essential Goods and Services⁸

<u>A. Health and Social Services</u>	
1.	Acute hospitals (including offsite specialist clinics and offsite Ambulatory Surgical Centres), community hospitals
2.	Primary care services (i.e. polyclinics and private sector primary care services), non-elective and urgent/emergency dental services, renal dialysis centres, traditional chinese medicine (“TCM”) (adjuvant therapy for cancer and chronic conditions)
3.	Community care services a. includes nursing homes, psychiatric rehabilitation homes, psychiatric sheltered home, inpatient palliative care b. Home medical services, home nursing, home palliative care, meals on wheels c. For seniors with inadequate family support and intensive custodial care needs: Home personal care and designated senior care centres/psychiatric day centres
4.	Community mental health services, senior befriending, counselling and case management services, and alert alarm system/check-ins by Senior Activity Centres
5.	Supporting services (e.g. blood services, laboratories and radiological services, research related to COVID-19, pharmacies, disease surveillance and response services, medical and patient transport, provision of medical items and personal care items)
6.	Essential supply chains (e.g. medical wholesale and distribution, mask, personal protective equipment, medical supplies and equipment manufacturers, medical gas supply)
7.	Selected social services to support vulnerable segments of the population a. includes residential services for those with no alternative accommodation, community-based intervention for those with no alternative caregiving arrangements, community-based social services for priority cases, and public facing services for priority cases e.g. serious/urgent cases, cases requiring intensive supervision
8.	Selected care services for students such as those in preschools, Student Care Centres and SPED schools (including for children of essential services workers)
9.	All TCM medical halls
10.	All outpatient non-public health institution Allied Health Services (includes <i>Audiology, Dietetics, Occupational Therapy, Physiotherapy, Podiatry, Prosthetics and Orthotics, Speech Therapy</i>) and Psychology Services, including mental health services
<u>B. Food</u>	
1.	Food supply (including food and food ingredient production, food processing, abattoirs/ slaughterhouses, importers and traders, and food logistics – cold stores/ warehouses), supermarkets, convenience stores, grocery retailers, wholesale markets, wet markets
2.	Food Manufacturing and on-site preparation of all food including cakes and confectionery, ice cream, cocoa, chocolate and chocolate products as well as snacks
3.	F&B outlets including hawker centres, coffee-shops, food courts, restaurants, fast food, standalone stores selling cakes, confectionery, packaged snacks and desserts (except those located in parks) and their supporting operations

⁸ The list of essential goods and services was maintained by the Ministry of Trade & Industry on the website covid.gobusiness.gov.sg until 1 June 2020. Goods or services that are excluded under the Third Schedule to the Act have been excluded from the list in this Annex.

4.	Food caterers
5.	Food delivery services
6.	Food packaging and printing service providers
7.	Laboratory food safety testing and its supporting services
8.	Activities pertaining to extension of shelf-life (e.g. retort manufacturing) or manufacturing of ready-to-eat meals
<u>C. Energy</u>	
1.	Original Manufacturing Equipment (“OEM”) contractors/ suppliers and equipment/ spare parts/ repair/ maintenance providers relating to electricity generation, transmission, and distribution services
2.	OEM contractors/ suppliers and equipment/ spare parts/ repair/ maintenance providers relating to the supply, transmission and distribution of natural gas and town gas
3.	Services relating to the refining, supply, distribution and storage of essential fuel products, and their contractors
4.	Services provided by contractors for the production of town gas
5.	Bus transport operators for electricity/ gas (natural and town gas) facilities
6.	Services for the bottling and distribution of cylinder gas
7.	Petrol kiosks
<u>D. Water, Waste, Environment</u>	
1.	Potable water, NEWater and industrial water supply, collection and treatment of used water, management of storm water ⁹
2.	Supply of chemicals, equipment, material, spare parts and services to PUB for the above
3.	Supply of labour for operation and maintenance of process and systems for PUB
4.	Waste Collection & Disposal services (e.g. waste collection, disposal facilities)
5.	Funeral-Related Services (e.g. funeral directors/undertakers, crematoria, columbarium, funeral parlours)
6.	Environmental hygiene monitoring & public cleansing services (e.g. cleaning, disinfection, environmental research on COVID-19)
7.	Markets and cooked food centre management (e.g. cleaning and maintenance)
8.	Vector Control Services (e.g. Pest control, fumigation, research on vector control)
9.	Pollution control & monitoring services (e.g. toxic & biohazardous waste management)
10.	Meteorological services
11.	Radiation monitoring & control services (e.g. maintenance of healthcare related irradiation equipment X-ray, CT scans)
<u>E. Transportation and Storage</u>	
1.	Air transport services, runway enhancement and maintenance

⁹ Under paragraphs 6(2)(b) and (c) of the Third Schedule to the Act, the section 34 and 47 prohibitions shall not apply to the following specified activities: (b) the supply of piped potable water; (c) the supply of wastewater management services, including the collection, treatment and disposal of wastewater.

2.	Shipping, shipping-related services, safety and navigation services, port and port marine service ¹⁰
3.	Provision of key supporting services for public transport services ¹¹
4.	Monitoring and management of traffic and road operations
5.	Taxi services, and chauffeured private hire car services booked through ride hail applications (i.e. excluding private arrangements and chat groups), and key supporting services and suppliers
6.	Third party logistics providers, residential and commercial movers, freight forwarders, trucking, air express integrators
7.	Transportation that is necessary to support other essential services
8.	All warehouses and storage services to support other essential services
<u>F. Information and Communications</u>	
1.	Data centres
2.	Postal services ¹² , security printing services
3.	Information and communications technology support tools, software and services for enterprises and individuals (to enable telecommuting, videoconferencing, e-commerce, finance, and enterprise networks/systems, information technology (“IT”) services)
4.	Cybersecurity in support of other essential services and digital economy
5.	Platforms and services such as ride hailing, food delivery, groceries, and online payments
6.	Social media and messaging platforms
<u>G. Defence and Security</u>	
1.	Defence and Security firms, supporting firms and establishments protecting buildings and homes
2.	Development and research projects that support essential services or national security
<u>H. Construction, Facilities Management and Critical Public Infrastructure</u>	
1.	Companies involved in epidemic control (e.g. sanitation, disinfection, cleaning, laundry)
2.	Defence and Security firms, supporting firms and establishments protecting buildings and homes
3.	Development project that support essential services or national security
4.	Selected development projects assessed to be in critical stages of construction and are unable to stop due to potential safety risks
5.	Construction work in progress for (i) critical public infrastructure, (ii) maintenance and services to ensure public safety, and (iii) emergency repairs & maintenance

¹⁰ Under paragraph 6(2)(f) of the Third Schedule to the Act, the section 34 and section 47 prohibition shall not apply to the specified activity of cargo terminal operations carried out by a person licensed and regulated under the Maritime and Port Authority of Singapore Act (Cap. 170A).

¹¹ Under paragraphs 6(2)(d) and (e) of the Third Schedule to the Act, the following specified activities are excluded from the section 34 and section 47 prohibitions: (d) the supply of bus services by a licensed bus operator under the Bus Services Industry Act 2015, and (e) the supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act (Cap. 263A). This does not include other forms of public transport which are not specifically excluded by the Third Schedule, such as taxis.

¹² Under paragraph 6(2)(a) of the Third Schedule to the Act, the section 34 and section 47 prohibition shall not apply to the specific activity of the supply of ordinary letter and postcard services by a person licensed and regulated under the Postal Services Act (Cap. 237A).

6.	<p>a. Safety critical works. These are works assessed by the Building and Construction Authority to be in critical stages of construction, and that cannot be stopped suddenly due to potential public safety risks.</p> <p>b. Projects that support essential services or are necessary for public safety. These are projects that support the supply of essential services (water, electricity) to the public, or that are essential to maintain public safety.</p>
7.	<p>Provision of facilities management services for buildings and infrastructure (e.g. plumbing, electrical works, conservancy services). Includes all facilities management firms, as well as firms involved in the maintenance of key equipment such as:</p> <ul style="list-style-type: none"> i. Air-conditioning and mechanical ventilation systems; ii. Fire protection systems; iii. Security and surveillance systems (such as CCTVs); iv. Electrical and plumbing works; and v. Building management systems
8.	Provision of lift and escalator maintenance services, and facilities management services for buildings and infrastructure (e.g. plumbing, electrical works, conservancy services)
9.	<p>Landscaping for public safety (e.g. tree pruning a.k.a. arboriculture services; shrub pruning, grass cutting a.k.a. horticulture services)</p> <p>a. Essential landscape sector services critical for maintaining public safety</p>
10.	Animal-related services for public safety (e.g. veterinary services – need to maintain surveillance of health of companion animals; managing wildlife like monkeys, snakes, boars)
<u>I. Manufacturing & Distribution</u>	
1.	Manufacturers of essential goods (e.g. chemicals and petrochemicals, healthcare supplies, medical equipment, food and food ingredient, or materials needed for other essential services) and their suppliers/contractors
2.	Semiconductor, pharmaceutical, and biomedical science companies and their suppliers
3.	Marine & offshore engineering companies involved in ship/vessel repair, and maintenance and overhaul services; and their contractors
4.	Aerospace maintenance, repair, overhaul companies and their suppliers
5.	Manufacturing of printing, packaging and pallets to support food services, food manufacturing and any other essential goods and services herein-mentioned
6.	Distributors of essential goods, including food-related items, packaging materials (both food and non-food), household items, personal care products
<u>J. Banking and Finance</u> ¹³	
1.	Services relating to maintenance of monetary and financial stability
2.	Currency issuance, services relating to cash management and payments for the Government
3.	Banking services (e.g. cash withdrawal & deposits, lending and related processing, treasury management, payments and funds transfers)

¹³ Under Paragraph 7 of the Third Schedule to the Act, the section 34 and 47 prohibitions do not apply to (a) the clearing and exchanging of articles undertaken by the Automated Clearing House established under the Banking (Clearing House) Regulations (Cap. 19, Rg 1); or (b) any activity of the Singapore Clearing Houses Association in relation to its activities regarding the Automated Clearing House.

4.	Insurance services (e.g. claims servicing, policy renewal and servicing, policy inception, insurance broking, financial advisory)
5.	Currencies, securities and derivatives trading, clearing, settlement, reporting, and depository and trust, and corporate finance advisory services
6.	Asset management services (e.g. portfolio management and trading, trade settlement and operations, trustee services, processing of subscriptions and redemptions in fund units, financial advisory)
7.	Payment services (e.g. fund transfers, credit card and debit card payments)
8.	Remittance services (excluding money exchange services)
<u>K. Legal Services</u>	
1.	Legal services relating to essential and urgent matters specified in the Registrar's Circulars issued by each court in respect of criminal, civil and family matters wherein: a. attendance by the solicitor is required by the court; and/or b. adjudication hearings fixed under the Building and Construction Industry Security of Payment Act (Cap. 30B)
2.	Commercial transactions or actions having statutory, regulatory or contractual deadlines (whether local or foreign) for which no waiver or deferment has been or will be granted or transactions or actions for which completion is due or time is of the essence
3.	Conveyancing transactions with deadlines where time is of the essence or with milestone deadlines to be met, including but not limited to exercise of option and completion deadlines, and timelines affecting progress payments, deposits, monies in escrow and completion monies
4.	Urgent and essential Wills and Probate related services (for example the drafting of wills and execution of lasting powers of attorney for the vulnerable), for which no deferment may be made
<u>L. Others</u>	
1.	Selected hotels, serviced apartments, dormitories, hostels a. includes establishments supporting Stay Home Notice; Government Quarantine Facility; Community Isolation Facility and accommodation needs of students, healthcare workers, foreigners, and foreign workers affected by travel restrictions, as well as for existing occupants only
2.	Online retail and related supply chains
3.	Optical services and sale of optical products by appointment only
4.	Plumbers, electricians, & locksmiths a. For emergency household services only
5.	Vehicle recovery and repair services a. For emergency vehicle services only, no vehicle grooming.
6.	Hardware stores a. For sale of building and maintenance-related equipment and tools only
7.	Repair of consumer electronics, IT peripherals, and household appliances
8.	Veterinary services a. For provision of emergency, non-elective veterinary services, including hospitalization
9.	Selected face-to-face Continuing Education & Training a. For training of essential roles supporting the national COVID-19 efforts
10.	Hairdressers and barbers (for basic haircut services only)

11.	Pet food and supplies stores
12.	Retail laundry services, industrial and unmanned laundry
13.	Private buses ¹⁴
14.	Testing, inspection and certification centres
15.	Unions
16.	All other critical and ancillary services contracted by the Singapore Government for the provision of supporting government functions or for the above-mentioned essential services

¹⁴ Under paragraph 6(2)(d) of the Third Schedule to the Act, the section 34 and section 47 prohibition shall not apply to the specified activity of the supply of bus services by a licensed bus operator under the Bus Services Industry Act 2015.