

Regulation of Mergers and Acquisitions in the Telecommunications Market

Presentation to Information
Technology and Broadcasting Panel,
Legislative Council, 28 May 2001

Policy Objectives

- To promote fair and effective competition and protect consumer interests in the telecommunications market
- To have a transparent and efficient regulatory regime governing merger and acquisition activities
- To assist industry in making informed decisions and speed up process for regulatory approval

Existing Regulation

- Transfer of licence requires TA's consent (general condition)
 - merger and acquisition activities do not necessarily involve transfer of licence
- Transfer of shares of licensee requires TA's consent (special condition under some mobile phone licences)
 - merger and acquisition activities may involve only shareholding changes in holding companies of licensees

Existing Regulation (Cont'd)

- Changes in direct or indirect interests in licensees require notification to TA (special condition under some mobile phone licences)
 - notification only, consent of the TA not required
- Significant deviation from licence application requires TA's approval (special condition under some licences)
 - form of regulation vague and inadequate

Conclusion

- Existing regulation is inadequate
- To introduce regulation for the telecommunications sector

Proposed Regulation

- To introduce regulation for the telecommunications sector
- Already have empowering provisions under existing section 37(1)(ga) and 37(1)(gb) of Telecommunications Ordinance for the CE in Council to make regulation on
 - control to be exercised over licensees
 - beneficial ownership or control of the voting shares in licensees

Scope of Licensees Regulated

- Proposal - proposed regulation to apply to “carrier licensees” (network operators) only
- Alternative - proposed regulation to apply to all licensees (network operators and service providers), but TA to be empowered to exempt certain classes of licensees from regulation

Requirements for Prior Approval of TA

- Licensee to seek prior approval of TA for transactions resulting in a person acquiring
 - Beneficial ownership or control (direct or indirect) of 15%, 35% and 50% of voting shares in a carrier licensee
 - Direct or indirect interest in a carrier licensee which entitles the person influence to the extent equivalent to above shareholding
 - Control over carrier licensee if the person does not already have control

Rationale for Choice of Thresholds

- 15%: threshold to trigger regulatory concerns based on precedents in other countries (e.g. EC countries)
- 35%: general offer threshold in takeovers code (to be amended if threshold amended in the code)
- 50%: control in excess of 50% represents majority control

Additional Thresholds

- Additional thresholds being considered
 - 25% for consent by TA (25% shareholding entitles holder veto powers for certain important corporate decisions)
 - 10% for notification to TA (threshold for disclosure of interest under Securities (Disclosure of Interests) Ordinance)

Sanctions for Breach of Regulation

- Sanctions against licensees available under Telecommunications Ordinance for breaches of Ordinance
 - Directions
 - Financial penalties
 - Suspension or revocation of licence

TA's Considerations

- Main consideration of TA in deciding whether a transaction should be approved is whether
 - Transaction would prevent or substantially restrict competition in telecommunications market
 - Transaction would create or enhance dominance in telecommunications market
- TA to issue guidelines on manner he will exercise his powers under the regulation
 - Draft guidelines attached to consultation paper

TA's Considerations

- Presumption of minimal regulatory intervention in what is essentially market driven commercial transactions
- Steps of TA's analysis
 - Market definition
 - Competition analysis
 - Efficiency gain analysis
 - Balancing impact on competition and efficiency
- Interested parties will be given the opportunity to make representations

Appeals

- TA's decision under the proposed regulation may be appealed against through the Telecommunications (Competition Provisions) Appeal Board
- Section 32N of Telecommunications Ordinance to be amended to extend functions of Telecommunications (Competition Provisions) Appeal Board

Way Forward

- Industry consultation paper published by TA on 17 April 2001 - Comments to be received by 12 June 2001
- Enactment of legislation
 - (i) Regulation to be made by CE in Council as soon as possible for submission to LegCo in the next legislative session
 - (ii) Amendment to section 32N of Telecommunications Ordinance to provide for an appeal channel accordingly in the next legislative session

Office of
the Telecommunications
Authority

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