

**Bills Committee on
Telecommunications (Amendment) Bill 2002**

Meeting on 7 January 2003

**Information note on issues relating to the Guidelines
on the Competition Analysis of Mergers and Acquisitions
in Telecommunications Markets**

Purpose

This note recaps the key issues raised by deputations and members during past meetings of the Bills Committee which are to be addressed in the "guidelines on matters to be taken into account in deciding whether a particular merger and acquisition activity would substantially lessen competition in a telecommunications market" (M&A Guidelines) to be issued by the Telecommunications Authority (TA) after enactment of the Bill.

Issues of concern

2. In the course of deliberation, deputations and members have raised, inter alia, the following concerns relating to how TA will exercise his powers in dealing with M&A matters. In response, the Administration has advised that consideration will be given to providing for the detailed arrangements in the M&A Guidelines.

- (A) Competition analysis (proposed section 7P(1))
 - (i) Criteria for assessing the potential effect of an M&A on market competition;
 - (ii) methodology of conducting economic analysis in determining whether there was "substantially lessening competition"; and
 - (iii) the test of "substantially lessening competition".

- (B) Definition of "market" in which competition analysis will be made (proposed section 7P(1)).

- (C) Time limits within which TA must take a decision on a completed M&A (proposed section 7P(1)); or approve an application for consent to a proposed M&A (proposed section 7P(5)).
- (D) Recovery mechanism for costs and expenses incurred by TA in relation to processing of an application for consent to a proposed M&A (proposed section 7P(11)).
- (E) Arrangements for TA to receive representations before making a decision on a completed or proposed M&A, such as by way of written submissions, conducting public hearings, recording oral representations etc.
- (F) Arrangements for joint venture/non-compete covenants which involve acquiring beneficial ownership or control in a carrier licensee.
- (G) Whether a definition of "principal officer" should be included in the M&A Guidelines or in the Bill.
- (H) Information required to be submitted to TA in an application for consent to a proposed M&A (proposed section 7P(5)).

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