

Introduction

- Policy Objectives :
 - Promote fair and effective competition
 - Provide a clear and comprehensive framework to assist investors in making informed decisions
- TA will issue guidelines, after consultation, to give practical guidance to the industry
- Our proposals in the guidelines accord with international practices (e.g. US, Australia, EC)

Scope of Application

- Mergers and Acquisitions are normal business activities; TA to intervene only if there is regulatory concern
- In particular, TA is unlikely to investigate if:
 - acquirer holds less than 15 % of shares
 - change of control is transitory

Analytical Framework

- definition of the relevant market
- assessment of the effect on competition
 - consideration of factors affecting the structure of the market

Market Definition

- essential first step
- boundaries of the competition analysis
- product and geographic dimensions

Product Market

- Substitutability - likely response to a price increase
- demand side - consumers
- supply side - producers

Geographic Market

- demand and supply substitutability
- area within which competition is effective and conditions of competition are uniform

Competition Analysis

- change in the structure of the market
- “substantial lessening of competition” =
creation or enhancement of market power

Market Shares and Concentration

- less than 15% - unlikely to intervene
- more than 40% - detailed investigation
- number of companies in the market is also important

Removal of a Vigorous and Efficient Competitor

- characteristics of the company being taken over
- role in the market

Barriers to Entry

- extent to which the market is contestable
- types of barriers to entry:
 - ✧ intrinsic
 - ✧ regulatory
 - ✧ strategic

Vertical Integration

- less likely to be anti-competitive
- leverage of market power from one level to another level

Other Factors

Buying Power - countervailing market power

Efficiencies - can justify a merger

Failing Firm - possible defence

Time Frames

In issuing a direction under new section 7P(1)

- (1) Time limit beyond which TA is not empowered to initiate an investigation (3 months)
- (2) Time limit for TA to make a decision (4 months)

In processing an application for consent under new section 7P(5)

- (1) Time limit for preliminary investigation (one month)
- (2) Time limit for detailed investigation (4 months)

Way Forward

- Welcome Members' comments
- Subject to enactment of the Bill, TA to undertake public consultation on the draft guidelines