

**Information Requested by Bills Committee on Telecommunications (Amendment) Bill 2002
regarding Regulation of Mergers and Acquisition Activities in Overseas Jurisdictions**

Countries with *Ex Post* Regulatory Regime

| Country | Competition test | Threshold which the regulator/competition authority considers to have, prima facie, effects on competition | Use of guidelines vs legislation to set out the factors for consideration in assessing effects on competition |
|-----------|--|---|---|
| Hong Kong | Substantially lessening competition in a telecommunications market | <p>Merged entity supplying at least:</p> <ul style="list-style-type: none"> • 40% of the market; or • 15% of the market where concentration ratio of 4 (or fewer) largest firms is 75% or more. <p>To be set out in the guidelines to be issued by TA after consultation.</p> | <p>Upon the enactment of the legislation, the TA will set out these factors in guidelines to be issued after consultation in accordance with the new section 6D(2A).</p> <p>The factors include, without limitation, the following :</p> <ul style="list-style-type: none"> • market shares • the level of concentration in the market • barriers to entry • the extent and effects of vertical integration |

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|----------------|-------------------------|---|--|
| | | | <ul style="list-style-type: none">• countervailing power• dynamic characteristics of the market <p>The factors different countries adopt for consideration in assessing effects on competition are, by and large, similar to those listed above.</p> <p>TA had already set out similar factors in the draft guidelines attached to his consultation paper on the proposed merger and acquisition regulation issued in April 2001.</p> |

| Country | Competition test | Threshold which the regulator/competition authority considers to have, prima facie, effects on competition | Use of guidelines vs legislation to set out the factors for consideration in assessing effects on competition |
|----------------|--|---|---|
| Australia | Substantial lessening of competition | <p>Merged entity supplying at least:</p> <ul style="list-style-type: none"> • 40% of the market; or • 15% of the market where concentration ratio of 4 (or fewer) largest firms is 75% or more. <p>Set out in the guidelines. Not incorporated in legislation</p> | A non-exhaustive list of factors (headings only) for consideration are set out in the legislation. Details of the factors are given in guidelines. |
| United Kingdom | Public interest test under existing legislation (Fair Trading Act 1973), but UK has proposed an Enterprise Bill which will change the test to “substantial lessening of competition” | At least 25% of the market incorporated in legislation ^{Note 1} | Under the Enterprise Bill, factors for consideration are to be set out in the guidelines issued by Competition Commission. Not incorporated in legislation. |

Countries with *Ex Ante* Regulatory Regime

| Country | Competition test | Threshold which the regulator/competition authority considers to have, prima facie, effects on competition, and factors for consideration | Use of guidelines vs legislation to set out the factors for consideration in assessing effects on competition |
|---------------------|---|--|--|
| European Commission | “Create or strengthen a dominant position”, but EC has issued a green paper for consultation on a possible change to “substantial lessening of competition” | None ^{Note 2} | Factors (headings only) for consideration are incorporated in legislation. Detailed guidelines not yet issued. Reliance on case law. |
| Singapore | Likely to unreasonably restrict competition | None | Factors for consideration are briefly set out in the guidelines (Competition Code of Practice) issued by the regulator. Not incorporated in legislation. |

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| United States of America | Substantial lessening of competition | <p>A Herfindahl – Hirschman Index (HHI) which measures the degree of concentration in the market will be calculated to assess the effect on competition.</p> <p>Set out in the guidelines. Not incorporated in legislation.</p> | Factors for consideration are set out in the guidelines. Not incorporated in legislation. |
| Canada | Substantial lessening of competition | <p>Merged entity which –</p> <ul style="list-style-type: none">• has a market share at or above 35%; or• concentration ratio of top 4 firms at or above 65% and the merged entity has at least 10% market share. <p>Set out in the guidelines. Not incorporated in legislation.</p> | An optional, non-exhaustive list of factors (headings only) for consideration is set out in legislation. Details are in guidelines. |

- Note 1 The UK legislation sets out also the jurisdiction thresholds (i.e. the definition of a merger which may be examined by the authorities). Under the Fair Trading Act 1973, when the gross value of assets to be taken over exceeds £70m (approx. HK\$850m), the Office of Fair Trading can investigate the deal. Under the Enterprise Bill to be enacted, the corresponding threshold is turnover in UK of at least £45m (approx. HK\$550m). These thresholds do not relate to the assessment of the effects on competition of a merger and acquisition.
- Note 2 In countries which adopt an *ex ante* regulatory regime like EC, Singapore, USA and Canada, there are a separate set of notification thresholds (statutory or administrative) whereby the relevant parties must seek prior approval for mergers and acquisitions above the thresholds. Because there is compulsory pre-notification, these thresholds are designed to exclude small scale mergers which do not merit examination by the authorities. The thresholds do not relate to the assessment of the effects on competition of a particular merger or acquisition.