

**Consumer Council
Submission on Telecommunications (Amendment) Bill**

Thank you Chairman, the first point I would like to make is that the Council welcomes the initiative of the Government to introduce specific mergers and acquisitions provisions, to clarify this area of competition law in the telecommunications sector.

The proposed framework in the paper setting out the key matters that should be addressed in the guidelines is similar to that found in comparable guidelines produced by competition authorities in other jurisdictions governing not only telecommunications markets but economic activity in general.

As such the Council has no general concerns with the proposed analytical framework.

Nevertheless, there are two issues the Council would like to raise for the Government's further consideration; regarding

- efficiencies; and
- how consumers can be assured that efficiencies will result from a merger or acquisition that raises prima facie competition concerns.

Efficiencies

Virtually any significant horizontal merger involves some loss of direct competition and would thus be anti-competitive unless there are efficiencies that lead to the creation of a stronger competitor. This means that the question of efficiencies needs to be closely examined whenever there is a horizontal merger.

The TA's paper notes that the economies of scale argument is likely to be considered as efficiency enhancing, and also notes that:

"It must be demonstrated that the efficiencies will be achieved by the merger and would be unlikely to have been achieved without the merger....."

This raises a question as to how efficiencies can be demonstrated to such an extent that the TA will be satisfied that a merger which raises a prima facie concern of substantial lessening of competition, should be allowed to proceed.

The Government's paper does not give an indication as to the standards the TA will require in order to be satisfied in this regard. Moreover, the Council queries the extent to which the TA will be able to satisfy himself:

- that efficiencies have actually been achieved, until after a merger has taken place and economies of scale have been utilized by the merged entity;
- and importantly
- whether any efficiencies achieved have resulted in improvements for consumer welfare by enhancing competition in the relevant market.

With regard to measuring consumer welfare, the Council has previously submitted there is a need for market information to be made available by the TA in order to gain a better understanding of the nature, extent, and impact of competition in the Hong Kong telecommunications sector.

The information requirements are headed under factors such as:

- Consumer outcomes, for example, consumers enjoying low prices, wide choices and high standards of service.
- Consumer behaviour, for example, consumers are confident and knowledgeable in using market information and taking advantage of market opportunities.
- Supplier behaviour, for example, that there is active competition in price, quality and innovation

The Council suggests that the above indicators should form the basis upon which the TA will consider factors against which efficiency arguments will be tested.

Ensuring that efficiencies are achieved

The Council has also submitted in the past that conditions should be placed on any mergers or acquisitions,

- where they are accepted on the grounds that efficiencies are expected to arise; and that
- if they do not occur, remedial action should follow.

We note that the Bill does not include any power for the TA to make conditions along the lines suggested by the Council. However, Section 7P of the Bill provides that the TA may give consent to a merger if he is of the opinion that the proposed merger would have, or be likely to have the effect of substantially lessening competition, subject to the direction that the carrier licensee concerned takes action that the TA considers necessary to eliminate any anti-competitive effect. .

In the absence of any other legislative powers for the TA to impose conditions, the Council suggests that the TA indicate in the Guidelines that he will use this power to make directions to ensure that claimed efficiencies are actually met by a merged entity.

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