

**The Legislative Council**  
**Bills Committee on Telecommunications (Amendment) Bill 2002**

**Note on Thresholds Adopted by Competition Authorities**  
**in Examining Mergers and Acquisitions in Overseas Jurisdictions**

**Introduction**

At the Bills Committee meeting on 9 June 2003, Members discussed the use of 15% as the threshold in the definition of “control” in the Telecommunications (Amendment) Bill 2002. This note aims to provide supplementary information on similar thresholds adopted by overseas competition authorities in examining mergers and acquisitions (M&As).

**Thresholds Adopted by Overseas Competition Authorities**

2. 15% is internationally taken as the threshold level that may confer influence on the operation of a telecommunications company. Thus it is not comparable to the 30% set out in the Codes on Takeovers and Mergers and Share Repurchases issued by the Securities and Futures Commission, which aim at protecting the interest of minority shareholders of listed company.

3. 15% is more generous than the international norm. Most jurisdictions do not prescribe a threshold in their laws. In other words, the authorities concerned may start a detailed investigation process when they consider that competition may be substantially lessened. In these jurisdictions, the practical guidance for investigation is set out in administrative guidelines, most of which put the threshold at 15% or less. Singapore is revising its code and a 12% threshold for instigating investigation is being proposed. Details on the thresholds adopted in overseas jurisdictions are attached.

4. It is worth pointing out that the 15% threshold does not necessarily and automatically invoke investigation of M&As. Most M&As are straightforward and will not need to go through this process. The test is “substantially lessening competition”. Details will be set out in administrative guidelines, for which the

Telecommunications Authority is obliged to consult the industry under the Bill. The Legislative Council (LegCo) will also be consulted during this process. Government has undertaken not to bring the amendments into operation without the guidelines. Thus LegCo will retain control over the commencement of the amendments if it is not satisfied with the guidelines.

**Commerce, Industry and Technology Bureau**  
**June 2003**

**Thresholds Adopted by Competition Authorities  
in Examining Mergers and Acquisitions  
in Overseas Jurisdictions**

<b>Jurisdiction</b>	<b>Thresholds for Examining Mergers and Acquisitions by Competition Authorities</b>
Hong Kong	- More than 15% (Proposed in Telecommunications (Amendment) Bill 2002)
United Kingdom	- No threshold provided for in Enterprise Act 2002 in what constitutes “ceasing to be distinct enterprises” (section 26)  - In the <u>guidelines</u> , the Office of Fair Trading (OFT) may examine shareholding of 15% or more in order to see whether the holder might be able materially to influence the company’s policy. “Occasionally, a holding of less than 15% could attract scrutiny where other factors indicating the ability to exercise influence over policy are present.” (para. 2.9, “Mergers: Substantive Assessment Guidance” issued by OFT in May 2003)
Canada	- In the Competition Act (section 91), the definition of “merger” covers the acquisition of “significant interest” in a corporation.  - In the <u>Merger Enforcement Guidelines</u> published by the Competition Bureau, it is stated in Part 1 that “[i]n the Bureau’s experience, direct or indirect ownership of less than 10 percent of the voting shares of a corporation has generally been found not to constitute ownership of a “significant interest” in the corporation”
Australia	- The Trade Practices Act 1974 (section 50) prohibits any acquisition of shares which would have the effect of substantially lessening competition.

<b>Jurisdiction</b>	<b>Thresholds for Examining Mergers and Acquisitions by Competition Authorities</b>
	<ul style="list-style-type: none"> <li>- In the guidelines published by the competition authority (ACCC), it is stated that “[T]here is no threshold shareholding for the purpose of s.50” (para. 3.19, Merger Guidelines issued by ACCC in June 1999)</li> </ul>
Singapore	<ul style="list-style-type: none"> <li>- No minimum threshold in existing Competition Code (any change in ownership, shareholding or management of the licensee is subject to approval) (para. 9.2.2 of Telecom “Competition Code”)</li> <li>- In May 2003, the telecom regulator (IDA) proposes to amend the Competition Code to provide for the following thresholds: <ul style="list-style-type: none"> <li>- less than 5% - no notification or approval required</li> <li>- 5% to less than 12% - notification to IDA required</li> <li>- 12% or more - IDA prior approval required</li> </ul> </li> </ul>