

ANNEX

**COMMENTS ON PROPOSED CHANGES TO
CCS' GUIDELINES ON MERGER PROCEDURES**

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1. STATEMENT OF INTEREST

Baker & McKenzie.Wong & Leow (“**BMWL**”) has a strong competition law practice which keenly follows changes in Singapore’s competition law landscape. Based on our experience so far, we are interested in providing our views to the issues set out below, in relation to the Public Consultation Proposed Changes to CCS’ Guidelines on Merger Procedures as released by the Competition Commission of Singapore (“**CCS**”) on 20 Feb 2012 (the “**Public Consultation**”).

2. SUMMARY OF MAJOR POINTS

Our response relates to Question 2 only. In brief, our view is that the proposed turnover thresholds for mergers involving small companies are too narrow. We are of the view that such proposed thresholds may unnecessarily deter small companies from merging or large companies acquiring small companies where such mergers would not likely result in any anti-competitive effects.

3. COMMENTS AND RESPONSES TO QUESTIONS

Please see our comments set out below.

- (a) *Question 2. Do you consider that the proposed turnover thresholds for mergers involving small companies is appropriate, too wide, or too narrow?*

We are of the view that the proposed turnover thresholds for mergers involving small companies are too narrow. In general, we are of the view that the thresholds applicable should be that either of the parties’ turnover in Singapore is below S\$5 million. Our view is that the central issue should be of the target company’s turnover since:

- If the acquiring party has a turnover of much more than S\$5 million (e.g. S\$100 million), the total impact of the merger would be marginal given the acquiring party’s relatively larger turnover; or
- If the acquiring party has a relatively small turnover (e.g. S\$8 million) and assuming that the target company’s turnover is S\$5 million, a total market of \$13 million would likely be a very niche market for which perhaps should be exempted from any notification requirements (even if this constitutes 100% market share of the relevant market).

Whilst we are aware that the recent response from the UK Government has indicated that the option of an exemption for mergers where the target’s UK turnover is less than £5 million would enable too many anti-competitive mergers to escape review from the Competition and Markets Authority (“**CMA**”), it nonetheless recognized that there was an advantage for a small business exemption.¹ The Government however did not see the reform as a matter of high priority at this point in time and as such, has not come to a conclusion on any proposed thresholds. Nonetheless the proposal to which the UK Government appeared to favour was one where there was a criteria for the target’s UK turnover (£5 million) and acquirer’s worldwide turnover (£10 million).

By contrasting the two discussed approaches above, we are of the view that CCS’ proposed turnover thresholds of S\$5 million and S\$10 million applying to both parties’ Singapore and worldwide turnover, we are of the view that CCS’ proposed turnover thresholds are to unnecessarily narrow and may not necessarily provide small companies (or large companies acquiring such small companies) the comfort which the exemption was intended to provide. This may also provide disincentive for small

¹ See <http://bis.gov.uk/assets/biscore/consumer-issues/docs/c/11-657-competition-regime-for-growth-consultation.pdf> and <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/g/12-512-growth-and-competition-regime-government-response> (last accessed: 20 Mar 2012)

companies that seek to be acquired easily and with little expense, should such mergers not qualify for the exemption.

4. CONCLUSION

Our view is that the proposed turnover thresholds are too restrictive and that in order for small companies to benefit from the proposed exemption, we propose that the turnover threshold should be one where either party's turnover in Singapore is below S\$5 million for the reasons as set out above.

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