



SINGAPORE INTERNATIONAL CHAMBER OF COMMERCE

FOUNDED 1837

10 November 2006

Competition Commission of Singapore
5 Maxwell Road
#13-01
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MND Complex
Singapore 069110

Attn: Director, Economics

The Singapore International Chamber of Commerce (SICC) is pleased to submit the attached comments in response to Competition Commission's public consultation on the proposed merger regime. These comments are submitted by the SICC on behalf of its members.

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Best regards,

A handwritten signature in black ink, appearing to read 'Phil Overmyer', written in a cursive style.

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Summary of Major Points

In response to the Competition Commission's public consultation on the proposed merger regime, SICC has prepared a set of comments on the CCS Guidelines on the "Substantive Assessment of Mergers" and "Merger Procedures". References to the Competition Act in our comments are to the Competition Act (Chapter 50B of the 2006 Revised Edition) as proposed to be amended by the draft Competition (Amendment) Bill 2007. A summary of our comments is as follows:

A. Comments on the CCS Guideline on the Substantive Assessment of Mergers

1. Notifying anticipated mergers that have been "publicized as to be generally known or readily ascertainable"

SICC seeks clarification in the Guidelines as to what constitutes an anticipated merger that has been "publicized as to be generally known or readily ascertainable" or knowledge of which is in the "public domain".

2. Joint Ventures – Joint Control

SICC requests that the wording in section 54(2)(c) as well as paragraph 3.19 of the CCS Guideline on the Substantive Assessment of Mergers be reviewed to provide greater clarity as to when a joint venture may fall within the scope of section 54(2) of the merger provisions.

3. Test for substantial lessening of competition

SICC requests that the point in time for when the test for substantial lessening of competition should be applied be set out in the Guidelines.

4. Mergers pre-1 July 2007

4.1 SICC requests that the Competition Act make clear that the exclusion from the section 34 prohibition and section 47 prohibition for mergers and anticipated mergers should also apply to mergers entered into before 1 July 2007.

4.2 SICC also requests clarification that mergers that have already been effected before 1 July 2007 should be excluded from the section 54 prohibition.

B. Comments on the CCS Guideline on Merger Procedures

1. Notification Thresholds

SICC requests the Commission to provide greater clarity as to what the "merged entity" means in each of the following scenarios:

- a) a merger [section 54(2)(a)];
- b) an acquisition of control [section 54(2)(b)];

- c) an acquisition of assets [section 54(2)(c)]; and
- d) a joint venture (section 54(5)).

2. **Pre-notification Discussions**

SICC requests that the Commission allow pre-notification discussions to start as soon as possible.

3. **Post-merger review and validity of non-infringement decisions**

SICC requests that the Commission clarify the purpose of the validity period of decisions issued by the Commission in the Guidelines.

4. **Notification Forms**

4.1 Information on groups to which parties to the merger belong - Sections 4 and 7 of Form 1

SICC is of the view that the requirement of having to provide such information in Form 1 imposes unnecessary and onerous obligations on the applicants for notification and this requirement should therefore be omitted from Form 1.

4.2 Supporting Documents – Section 5.1.6

SICC is of the view that applicants should only be required to submit copies of business plans for each party to the merger for the current year and the preceding 2 years, and only if they have any such business plans.

Statement of Interest

The Singapore International Chamber of Commerce (SICC) is the oldest Chamber of Commerce in Asia, being established in 1837 as the Singapore Chamber of Commerce. From its inception, the SICC has represented the interests of its member companies, all of whom are engaged in international and domestic commerce in Singapore.

Today the SICC membership totals over 800 companies all with major operations based and registered in Singapore. The largest group (40%) of the member companies are majority owned by Singaporeans, including many of the government owned companies. Companies from America, Germany, Japan, and Britain comprise the next largest nationality groups. In total, SICC member companies represent about 35 different nationalities. Nearly all of the SICC member companies, and the SICC itself, are subject to the Competition Act.

The SICC is proud of its long history of working closely with the Singapore Government to provide information, comments and recommendations on issues that affect its members and the overall business climate in the country.

Comments

C. Comments on the CCS Guideline on the Substantive Assessment of Mergers

1. Notifying anticipated mergers that have been “publicized as to be generally known or readily ascertainable”

SICC welcomes the Commission’s extension of the voluntary notification system to anticipated mergers that have been “publicized as to be generally known or readily ascertainable” (paragraph 3.2 of the CCS Guideline on the Substantive Assessment of Mergers) or “after knowledge of the anticipated merger is in the public domain” (paragraph 3.2 of the CCS Guideline on Merger Procedures).

It is clear that where a public announcement has been made on an anticipated merger, the parties to such a merger will be able to benefit from the voluntary notification system. What is less clear is whether an anticipated merger which has been made known to customers and employees of the merging parties, but for which no public announcement to the general public has been made or is intended to be made, is an anticipated merger that has been “publicized as to be generally known or readily ascertainable” or is in the “public domain”. SICC is of the view that the majority of private company mergers are likely to fall in the latter category.

SICC proposes that the Commission provide guidance and clarification in the Guidelines as to what constitutes an anticipated merger that has been “publicized as to be generally known or readily ascertainable” or knowledge of which is in the “public domain”.

2. Joint Ventures – Joint Control

There is no apparent correlation between section 54(5) and paragraph 3.19 which states that “a joint venture may fall within the scope of the merger provisions where there is *joint control* by two or more undertakings, that is, its parent companies (section 54(2)(c))” (our emphasis). Section 54(5) refers to section 54(2)(c) which states that a merger occurs if the acquisition of assets allows one undertaking to replace the other in the business it was engaged in, without reference to control.

In order to provide certainty to businesses, SICC requests that the wording in section 54(2)(c) as well as paragraph 3.19 of the CCS Guideline on the Substantive Assessment of Mergers be reviewed, to provide greater clarity as to when a joint venture may fall within the scope of section 54(2) of the merger provisions.

3. Test for substantial lessening of competition

It is not clear from the Consultation Paper or the Guidelines the point in time when the test for substantial lessening of competition should be applied. SICC requests that the point in time for when the test for

substantial lessening of competition should be applied be set out in the Guidelines.

4. **Mergers pre-1 July 2007**

4.3 The Competition Act as amended will exclude mergers and anticipated mergers from the restrictive agreements and anti-competitive conduct prohibitions under section 34 and section 47 respectively, when the merger provisions come into effect on 1 July 2007. SICC requests that the Competition Act make clear that this exclusion should also apply to mergers entered into before 1 July 2007.

4.4 SICC also requests clarification that mergers that have already been effected before 1 July 2007 should be excluded from the section 54 prohibition. Businesses will otherwise have to spend time and resources in formulating historical company and market data (if still possible or available), or worse, in unravelling such mergers if they are found to have the effect of substantially lessening competition.

Accordingly, SICC requests the Commission to state clearly in the Competition Act that the section 54 prohibition will only apply to mergers that are effected after 1 July 2007.

D. Comments on the CCS Guideline on Merger Procedures

1. **Notification Thresholds**

It is not clear what the “merged entity” means in the thresholds mentioned in paragraph 3.3 of the CCS Guideline on Merger Procedures.

Under the voluntary notification regime, businesses are left to decide if they want to seek the Commission’s clearance of their mergers.

The Commission states at paragraph 3.3 of its Guideline on Merger Procedures:

“As an indication to merger parties on whether their mergers should be notified, their attention is drawn to paragraph 5.14 of the CCS Guideline on the Substantive Assessment of Mergers 2007. CCS is generally unlikely to intervene in a merger situation if it falls below these concentration thresholds:

- the *merged entity* will have a market share of 40%; or
- the *merged entity* will have a market share of between 20% and 40%, and the post-merger combined market share of the three largest firms (CR3) is 70% or more.” (our emphasis)

The Commission also states at paragraph 2.1 in its Guideline on the Substantive Assessment of Mergers that merger situations to which the provisions of the Competition Act apply include “mergers between previously independent undertakings”, “the acquisition of control” and “joint ventures that constitute mergers and acquisitions of assets”.

To enable businesses to accurately self-assess and decide whether they should seek the Commission's clearance of their mergers, SICC requests the Commission to provide greater clarity as to what the "merged entity" means in each of the following scenarios:

- a) a merger (section 54(2)(a));
- b) an acquisition of control (section 54(2)(b));
- c) an acquisition of assets (section 54(2)(c)); and
- d) a joint venture (section 54(5)).

2. **Pre-notification Discussions**

While the Commission intends that the proposed merger provisions should only come into force on 1 July 2007, it will be most helpful to businesses if the provisions on pre-notification discussions were to come into force as soon as possible.

SICC therefore urges the Commission to allow pre-notification discussions to start as soon as possible.

This will give businesses the opportunity to review their merger situations and to obtain guidance from the Commission before the section 54 prohibition comes into force on 1 July 2007.

3. **Post-merger review and validity of non-infringement decisions**

Under the proposed amendments, the Commission may, at the time of issuing a non-infringement/favourable decision for an anticipated merger/merger, specify the validity period of the decision (para 3.55). Both the Consultation Paper and the Guidelines are silent on the purpose of stipulating such a validity period. On first reading of paragraph 19 of the Consultation Paper, it appears possible that the Commission may re-open a non-infringement/favourable decision once the validity period expires. SICC does not believe that this is the intention of the Commission, and requests that the Commission clarify the purpose of the validity period of its decision in the Guidelines.

4. **Notification Forms**

4.3 Information on groups to which parties to the merger belong - Sections 4 and 7 of Form 1

It is not evident why the Commission would require information on groups to which the parties to the merger belong, if the focus of the Commission's analysis is on the merging parties and the merged firm. SICC is of the view that this requirement should be omitted from Form 1 as it imposes unnecessary and onerous obligations on the applicants for notification. Removing this burden would be in keeping with the Commission's wish not to impose excessive regulatory and business compliance costs, which may unduly constrain merger activities.

4.4 Supporting Documents

Paragraph 5.1.6 of the guideline states that “copies of all business plans for each party to the merger for the current year and the preceding 5 years” are to be included in the application for decision under sections 57 and 58 of the Competition Act.

For the same reasons stated in paragraph 4.3 on the preceding page of this document, SICC is of the view that applicants should only be required to submit copies of business plans for each party to the merger for the current year and the preceding 2 years, and only if they have any such business plans.

Conclusion

The SICC would like to express its appreciation to the Commission for continuing the practice established by the Ministry of Trade and Industry to seek Public Comments on the important Competition Act. The SICC strongly endorses this continued level of public consultation. We believe that the final version of the Act benefited from the consultation process, and we are confident that the associated Guidelines will also benefit directly from this process.