

COMPETITION ACT 2004

PUBLIC CONSULTATION ON PROPOSED MERGER REGIME

COMMENTS OF
STAMFORD LAW CORPORATION
10 November 2006



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SUMMARY OF SUBMISSIONS

1. Introduction

- 1.1. Stamford Law Corporation (“StamfordLaw”) welcomes the opportunity to comment on the merger regime proposed for the Competition Act 2004 (the “Act”).

2. General Summary

- 2.1. StamfordLaw commends the Competition Commission (the “Commission”) on the merger regime that is presented in the consultation materials and fully supports the efforts of the Commission to avoid constraining merger activities in Singapore through the imposition of excessive regulatory and compliance costs. However, at the same time, we appreciate the need for a merger regime that is relevant to Singapore markets.
- 2.2. We do note however that the Commission has allowed a very short time for interested parties to digest the substantive papers issued by the Commission and consider the implications of the proposed regime. The abbreviated nature of our submissions reflects the time frame allowed.
- 2.3. StamfordLaw submits that consideration needs to be given to the following features of the proposed merger control regime:
 - 2.3.1. The exclusion proposed for the exception in Clause 54(7)(b) of the Act for subsidiaries with economic independence from the controlling shareholder may be unworkable due to difficulties in quantifying the amount of “freedom” enjoyed by the subsidiary;
 - 2.3.2. Consideration should be given to allowing for a category within the exclusions for mergers which have a primary object of creating an enterprise of sufficient size to compete internationally even if one of the ancillary effects of such a merger is a substantial lessening of competition in a market in Singapore; and
 - 2.3.3. Public consultation on notified mergers is to be welcomed, but realistic timeframes must be provided so that interested parties have sufficient time to undertake the necessary analysis.

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STATEMENT OF INTEREST

3. **Stamford Law Corporation**

- 3.1. StamfordLaw is a specialist corporate law firm established in 2000 and providing comprehensive legal services in all areas of corporate law.
- 3.2. StamfordLaw has consistently rated amongst the top mergers and acquisition law firms in Singapore by Bloomberg and Thomson Financial Consultants and advised on an aggregate of US\$ over 5 billion worth of transactions in 2005 and so far in 2006.
- 3.3. The primary focus of StamfordLaw is mergers and acquisitions and StamfordLaw is intimately involved in many mandatory, voluntary as well as partial offers under the Code of Take-overs and Mergers as well as schemes of arrangements undertaken pursuant to Section 210 of the Companies Act. StamfordLaw has also advised on competitive bid processes (on both vendor as well as purchaser sides) which precede many major acquisitions or disposals and advised on the sale and purchases of shares, businesses, assets and undertakings in many industries, both locally and regionally.

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SPECIFIC COMMENTS ON THE MERGER REGIME

4. THE SUBSTANTIAL ASSESSMENTS OF MERGERS

4.1. Paragraph 3.33 - Clause 54(7)(b)

In previous submissions, we highlighted our concern that Clause 54(7)(b) failed to take into account the effect, in certain circumstances, of allowing a certain category of Singapore companies to merge without any scrutiny by the Commission.

We now note that the Commission is proposing to exclude from the exception in Section 54(7)(b) only those subsidiaries which have “no real freedom” to determine their course of action and “no economic independence.”

We welcome this attempt by the Commission to deal with the issue raised in our earlier submissions. However, we have some concerns over how the Commission intends to measure “freedom” and “economic independence” in a market setting. From our experience, gauging the influence of shareholders on actions taken by the Board and senior management is not an easily quantified factor. Our fear is that the exclusion that is being proposed may be without meaning due to an inability to objectively assess actual “freedom” and “independence” and that the Commission may accept at face value statements from the Company or from the shareholders that no influence is exerted on a subsidiary without due investigation.

5. EXCLUSIONS AND EXEMPTIONS

5.1. Paragraphs 10.3 to 10.5

Paragraphs 10.3 to 10.5 deal with otherwise offending mergers that are excluded on the basis that net economic efficiencies are demonstrated. We note in Paragraph 10.5 that the Commission expects claimed efficiencies to arise in markets in Singapore.

We would submit that the Commission ought to give some thought to including in the Guidelines some scope to exclude mergers where the domestic effect of the merger may be a substantial lessening of competition in a market in Singapore but where the primary purpose of the merger is to create an enterprise of sufficient size and economic capacity to compete in markets outside Singapore. In our experience, a number of mergers have occurred in Singapore for the purpose of allowing Singapore companies to achieve the critical economic mass needed to expand their activities in markets outside Singapore. Even though domestic competition may be affected by such mergers, economic benefits also arise in Singapore from the overseas funds

generated by the merged enterprise flowing back into Singapore. It is not clear to us that the Commission has focused its attention on such mergers.

6. GUIDELINE ON MERGER PROCEDURES

6.1. Paragraphs 3.31 to 3.33

These Paragraphs deal with the Commissions intention to engage in third party consultations on notified mergers.

We commend the Commission on its willingness to engage in public consultation on notified mergers. We consider this willingness to consult an important step in developing an effective merger control regime in Singapore. Our only hope is that sufficient time is given for the public to develop full submissions on the relevant points, including alternative economic analysis. Too short a time-frame may, in our view, defeat the purpose of providing for consultation.

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CONCLUSION

6. As stated in the Introduction, StamfordLaw has made only abbreviated comments in these Submissions due to the relatively short time provided by the Commission.
7. We hope that the Commission provides a further opportunity to comment on the proposed merger control regime before the Guidelines are finalized.

Paul Fitzgerald

Stamford Law Corporation
10 November 2006

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