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Parliament passes Competition (Amendment) Bill 2007: Introducing merger control

The Competition (Amendment) Bill 2007 (the “**Bill**”) was passed in Parliament on 21 May 2007, following its first reading on 9 April 2007. The Bill will amend the provisions under the Competition Act (the “**Act**”) in relation to merger control. The principal merger control provision under the Act is section 54 which prohibits mergers which substantially lessen competition within any market in Singapore for goods or services (the “**section 54 prohibition**”). The section 54 prohibition is expected to be operative with effect from 1 July 2007 although no official commencement date has been fixed yet.

Essentially, the Bill will amend the Act for, amongst others, the following purposes:

- to extend the scope of the Act to include an anticipated merger which, if carried into effect, will result in the occurrence of a merger, as defined in the Act. The amendments will permit voluntary statutory notifications of certain anticipated mergers to be made to the Competition Commission of Singapore (the “**CCS**”) for decision;
- to allow for commitments to be accepted, so that a merger can be allowed to proceed on condition that parties undertake specific actions to address the competition concerns identified. It is hoped to allow for speedy clearances of anticipated mergers/mergers;
- to remove notifications for guidance in respect of the section 54 prohibition and to remove the provision that allows the CCS to re-open a non-infringement decision on a merger due to a material change in circumstances;
- to clarify when a merger occurs, the test for control for the purposes of determining when a merger has occurred, and who is a party involved in a merger for the purposes of notification, decision and appeal;
- to replace the criterion for a joint venture to be considered as a merger. The present criterion of “an indefinite basis” is to be replaced with “a lasting basis”;
- to clarify, in respect of the three prohibitions in the Act (sections 34, 47 and 54 prohibitions), that when the CCS gives guidance or makes a decision that one prohibition is unlikely to have been, or has not been, infringed, this will not preclude an investigation by the CCS into a possible infringement of the other two prohibitions;
- to exclude from the section 34 prohibition and the section 47 prohibition, mergers and ancillary restrictions (i.e. additional arrangements not integral to the merger, but which are directly related and necessary to its implementation); and
- to exclude from the section 54 prohibition, mergers where it can be proven that the resultant economic efficiencies outweigh any adverse effect from the substantial lessening of competition arising from the mergers, and to clarify the ambit of the exclusion in respect of mergers approved under any written law. For instance, the section 54 prohibition will not apply to any merger approved under any written law by any Minister or regulatory authority (apart from the CCS). The same prohibition will also not apply to any merger which comes under the jurisdiction of any regulatory authority (other than the CCS) under any written law relating to competition, or code of practice relating to competition issued under any written law.

The Allen & Gledhill Legal Bulletin has been following closely the progress of the proposed merger control regime. Please click on the hyperlinked titles below to read the relevant articles:

- [Parliament introduces Competition \(Amendment\) Bill 2007: Introducing merger control](#)
(April 2007)
- [CCS issues response to public feedback on proposed merger control regime](#)
(January 2007)
- [Competition Commission of Singapore consults on proposed merger regime](#)
(October 2006)

Please [click here](#) to view the full text of the Bill that has been posted on the website of the Singapore Parliament www.parliament.gov.sg

Should you have any queries as to how this may affect your business, please do not hesitate to contact your usual contact at Allen & Gledhill or any of the following:

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